

# Treasury Committee

Oral evidence: [Future of Financial Services](#), HC 1158

Wednesday 27 January 2021

Ordered by the House of Commons to be published on 27 January 2021.

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Members present: Mel Stride (Chair); Rushanara Ali; Mr Steve Baker; Harriett Baldwin; Anthony Browne; Felicity Buchan; Mike Hill; Dame Angela Eagle; Julie Marson; Siobhain McDonagh; Alison Thewliss.

Questions 1 - 55

## Witnesses

I: Lord Hill of Oareford, Former EU Commissioner for Financial Services, European Commission; Baroness Bowles of Berkhamsted, Former Chair, ECON Committee, European Parliament; Dr Kay Swinburne, Former Member, ECON Committee, European Parliament, and Vice-Chair of Financial Services, KPMG.



## Examination of witnesses

Witnesses: Lord Hill of Oareford, Baroness Bowles of Berkhamsted and Dr Kay Swinburne.

Q1 **Chair:** Good afternoon and welcome to the Treasury Select Committee evidence session on the future of financial services. I am very pleased to be joined by three witnesses this afternoon. I am going to ask them, very briefly, to introduce themselves to the Committee.

**Baroness Bowles of Berkhamsted:** Good afternoon. I am Sharon Bowles, Baroness Bowles. I have been in the House of Lords since 2015. Before that I was a Member of the European Parliament with two mandates. I was on the Committee on Economic and Monetary Affairs, which I also chaired from 2009 to 2014, when I negotiated all of the post-financial-crisis legislation. My professional background is as a physicist, mathematician and patent attorney. I ran my own business for 30 years. I must also declare my financial services interests as in the register.

**Dr Swinburne:** Good afternoon, members. My name is Kay Swinburne. I am currently the vice-chair of financial services at KPMG, representing all financial services clients for the firm. Before I joined KPMG in 2019, I was a member of the European Parliament for 10 years for my constituency, which was Wales, and specialised in financial services, so I sat on the ECON Committee for 10 years as co-ordinator, and latterly served as vice-chair.

**Lord Hill of Oareford:** Good afternoon. I am Jonathan Hill. I was European Commissioner for Financial Services from 2014 to 2016. I am currently leading a review for the Government into the listings regime in the City. I have a range of different clients these days, all of whom are in the register of interests, in the financial services space.

Q2 **Chair:** Welcome to all three of you to the evidence session this afternoon. The questions will generally be directed very specifically at one or more of you as panellists, but if you are not asked to comment on something and you would really like to, just raise your hand and I will attempt to bring you in at that point.

Perhaps I could start the questioning by asking Sharon and then Kay specifically about the operation of the ECON Committee in the European Parliament, which I gather is about 60 members strong. How does it carry out its scrutiny of the financial services legislation that it looks at? It is quite a big question, really. How does it do that? Can you just unpack that for us?

**Baroness Bowles of Berkhamsted:** That is quite a big question. As you say, there are now 60 members. In fact, there is twice that number because there are also substitute members. Both members and substitute members can do work, as long as, when it comes to voting, you only have 60 voting. The work consists of both pre-legislative



## HOUSE OF COMMONS

scrutiny and consultation, then actually doing the legislation itself and then also scrutinising what happens afterwards through oversight of the regulators.

Because the committee is also dealing with the passage of legislation through Parliament as the body that amends and negotiates, ultimately, with the Council and the Commission on what the final form is going to be—which of course is endorsed in plenary, rather as in the US you get a body of members who build up a huge amount of expertise around the legislation—this helps in the scrutiny.

I could go into more details about what it does, but I would say the frequency with which the chairs and CEOs of the various regulatory authorities—there is a whole swathe of them—attend the committee and engage with the committee is more like on a quarterly cycle than a six-monthly cycle. There is a lot more exchange and interaction with the regulator than I would see with the Treasury Select Committee.

Going back to the point about the number of members, when the committee is handling legislation, because rapporteurs are appointed to lead for each of the groups, what happens is a bit like forming a committee of the whole House. Those who have the expertise in that particular area, whether it is on banking, insurance or another part of the market, will be self-selecting to be the ones who, along with the rapporteurs and shadow rapporteurs, will deal with the issue. The poor old chair has to do everything, or they can choose to do everything, and for obvious reasons I did. So size matters in that sense, because it gives a huge amount of additional resource. Like I said, a committee of the whole House is the nearest thing that we have in our Parliament, where you are using your numbers and your expertise.

The other thing that is relevant in comparing this to the procedures that I have discovered in Westminster—I am in the embarrassing situation that I still know more about European procedures than I do about Westminster—is the time factor in terms of the amount of time that is spent on a dossier. When some piece of legislation comes along, rather as you can with a draft Bill in Parliament, you are able to call in witnesses, discuss it, have reports from different various different places and engage with lots of people on it, but there is also a lot more time between that and when you actually have to come and put your amendments in, have the discussions around the amendments and then find the compromises that you can with other political parties.

It gives you a lot more time to go and find answers. When you suddenly discover, “I know there is a problem with this piece of legislation, but I do not quite know what the solution is”, there is time to be able to research that. With several people doing that, that is also part of how you can get to compromise solutions. In my instance, I also used that time quite a lot. You would use it if you were trying to persuade the Commission that you wanted a change. You do not only have to engage amongst



## HOUSE OF COMMONS

yourselves; you have to look towards what the Commission is going to say and whether it is going to agree with you or not. It is always wanting data. If you have time, you can also find the data to support or not support the point that you are going to take.

That is a bit of a flavour of how that works. I hope that was what you meant.

**Q3 Chair:** That is very helpful. There is an advantage in having a large committee in the sense that, as you say, you have those pockets of expertise that you can therefore draw upon. What kind of apparatus or number of people would there be around that committee supporting it? Can you give us a sense of that?

**Baroness Bowles of Berkhamsted:** I have forgotten how many we got up to in the end.

**Chair:** Kay is smiling. She might know.

**Dr Swinburne:** There are 23 members of full-time staff in the secretariat alone. That is made up of 10 policy people, five admin people and then eight people in an economic unit that sits alongside the main secretariat. There are 23 in total who are there to support the committee. As well as the full-time members of staff, certainly in my time there were always at least three national seconded experts who came from the regulators. Usually there was one from Germany, one from France and one from the UK at any one time. They would typically be the technical experts—rather than the lawyers, who were the permanent members of staff—who would support individual pieces of legislation.

There were a significant number in the secretariat, but we should bear in mind that every political group also had its experts on the ECON Committee. Smaller political groups might have only two full-time staff on ECON, but the large political groups would have in excess of 10 or 12. The political groups had their offices, and indeed MEPs' individual offices.

For those of us who specialised in a subject for a decade, our staff would naturally be FS experts. You would end up naturally selecting your staff for the type of committee work you were doing. Our budget, I suspect, was a lot higher in terms of staffing than probably our equivalents in Westminster.

**Baroness Bowles of Berkhamsted:** If I may add to that, there was external capacity that you could call upon through the various research departments in the European Parliament. There was also a budget for commissioning policy research in certain areas done by people who were not the secretariat. There was a list of people, and you could bid for them to produce a report.

**Q4 Chair:** Kay, turning to you, going back a step from when they arrive at the EU Parliament, could I just ask you to walk us through in fairly simple terms how new rules and regulations are proposed, designed and then



## HOUSE OF COMMONS

presented to the EU Parliament? Could you take us through that process, so we can mentally follow a regulation or rule change through?

**Dr Swinburne:** It is also important to understand that the Parliament, the ECON Committee in particular, had several different roles. There was the core legislative role, where we genuinely had co-legislative authority over draft legislation and then sat through trilogue with the Commission, the Parliament and the Council's negotiators. That primary legislative role was obviously a key driver for the work that we used to do. A lot of the resources we had were geared towards supporting that particular role.

Jonathan will be able to talk you through this much better than me, but all draft legislation comes from the Commission. It has the right of initiation, so it produces the draft text. That draft text then goes to Parliament and the Council simultaneously. The Council and its negotiating team discuss it and come up with their version of what they want it amended to, and the Parliament goes through a very complex procedure where you have a rapporteur, the lead negotiator and shadow rapporteurs from each of the political groups appointed to that file so you had a core team negotiating on behalf of the Parliament. Amendments are then submitted and on large files sometimes there are in excess of 1,000 amendments. The worst I saw was MiFID II, with over 2,000 amendments. Significant numbers of amendments come in from all members.

It is the role of that negotiating group, eventually, to find the compromises that get through the committee structure and then through the plenary structure, so there is a significant amount of work. Parliament then of course has a different text, potentially, to that of the Council, which is always in every instance different to where the Commission started off, so you end up with three versions of the legislation that you bring together in this lovely process called trilogue. It took me years to find out how to spell "trilogue". I had extra letters and vowels in it, but it is actually "trilogue".

That is done in private, and it is where effectively all three teams of negotiators can hammer out the detail and decide where the compromises need to be made between the three different units. A lot of time and effort goes into getting that level 1 text. That is the language that goes on to the statute book. Bear in mind that most financial services legislation post 2009 has been by regulation and not by directive. Therefore, it goes directly on to the statute book. That is the reason it has got far more prescriptive than it perhaps used to be before 2009. It is because of the use of that regulatory instrument rather than the directive route.

You end up with regulatory technical standards within that level 1 text or delegated Act that need further work doing to them. You signal to the regulators what they need to produce as a set of rules. Then the Parliament takes its role quite seriously in terms of scrutinising the rules that come back. The European supervisory authorities would draft the



rules as they are requested to by the Commission, and then those draft rules would go before the negotiating team again in order for them to decide whether they are in line with the political intent that was agreed at level 1.

Sometimes they were not quite what you expected; they were not quite in line. The regulators might have taken a slightly more liberal approach or indeed a slightly more authoritarian approach, and therefore the Parliament would say that they were minded to reject a particular regulatory technical standard. To be fair, in my 10 years we did not reject a single one. We threatened to reject several, and it always seemed to be the case that the ESAs, in their wisdom, would withdraw and change something in order for it to get through.

There was a lot of consistent dialogue from both parties, but the Parliament has always been a really active part of that rule-making, making sure it is in line. There are probably some parallels where you could envisage the UK system having a lot of focus on that level 2 scrutiny going forward.

The other tool we had was the annual report. We used to use annual reports from the regulators and from the likes of the ECB and the EIB, where they produce an annual report on what they have achieved and what their outcomes were and we can then measure them against what they told us they were going to do the year before. Those annual reports are a relatively straightforward scrutiny measure that the Parliament can actually work with. That tends to be much more detailed and, of course, backward-looking rather than forward-looking. It is another instrument that is at its disposal to check that people are doing what they said they were going to do.

**Q5 Chair:** Thank you. That is very helpful. Jonathan, do you have anything to add to what has been said? What lessons are there from the European experience for us, in our deliberations, as to what the UK should be doing in this area?

**Lord Hill of Oareford:** The first and obvious point to make is that our system is fundamentally different from the EU system. As both Kay and Sharon are saying, there may be some broad lessons but there is no direct read-across from how the EU system works.

There was one thing that was most striking to me when I got there, having been a Minister in the UK system, where you can pass legislation if you have a majority and you can get yourself a slot. If you are half-sentient as a Minister, the task is to work out what you think the right thing to do is, construct your policy, see whether you can persuade the business manager to give you a slot and then off you go.

The best way of illustrating the difference, when I arrived there and had to try to get to grips with the European system, of which I was completely ignorant, was the officials. I would sit down and want to have



a conversation about what the right policy was, and they all started talking about what the French or the Germans thought or which particular group in the Parliament thought what. To start with, I thought, "Why is it that you keep wanting to gossip about people or personalities? I want to talk about the policy".

Of course, what that illustrates is the fundamentally different natures of a consensus-building system, which is the European system, and ours, which operates for all of us on the basis of majority. That drives very different behaviour; it drives different attitudes to scrutiny.

The key to it is in the phrase Sharon used, "co-legislators". Parliament in Europe is not a bit of process that does a bit of scrutiny at the end, you have some votes and either you do it well or you do not, and it is either guillotined or it is not, and then it is shoved up to the House of Lords where they may do some more detailed stuff. The co-legislators construct, shape and drive the whole shape of the legislation and the policy. That leads to a completely different set of behaviours and, therefore, the different way that the Parliament thinks about the resources it needs and so on. They are much more active shapers of policy than Members of Parliament are over there.

**Chair:** Yes, it is a little bit more coalition and a little bit less one-party Government, perhaps.

Q6 **Felicity Buchan:** Good afternoon. My questions are on the timing of the regulatory review. Let me stay with Jonathan. Now we have fully left the EU, it is logical that we have this regulatory review, but there is also an argument that we are going through a pandemic and that we should allow things to settle. Our regulators have done a pretty good job over the course of the last 12 months; none of our banks has been in any form of major crisis. What is your view in terms of the timing of the review?

**Lord Hill of Oareford:** I probably have stronger views on the need for it. We have just started to touch on it. There is a set of issues to do with scrutiny, which we have just started to talk about. There is a bigger set of more important issues to do with accountability, which is the question that lies at the heart of the regulatory review. My simple view is that, deep down, regulation is fundamentally political. It is a bunch of clever, decent people making their best stab at summarising what society's risk appetite is. That is a fundamentally political decision.

If you take the obvious example of banking regulation post crisis, a whole series of measures were taken to make the system more stable after the crisis. Here we are, 12 years on, facing the recovery from the pandemic and the challenge everywhere is growth. Is it likely therefore that all the regulatory bits and pieces that people put in place after 2008 are correct for growth? Where your bigger risk is—is it to financial stability or is it lack of growth?—changes.





In a way, I think of those as being fundamentally political judgments, or judgments for the whole of society that we mediate through Parliament. I do not think of those as technical decisions. There is clearly a technical aspect. You do not want a bunch of politicians interfering in the minutiae of technical calls. We are not set up like that in our system. The European Parliament, as Kay and Sharon explained, are more set up for that kind of technical depth; we are not. There are questions around the framework within which our regulators are operating, who sets it, whether our politicians are content that they are still right and how we hold them to account. Those are very big questions coming out of this review.

In terms of timing, my instinct is that you want to try to get the overall approach and intellectual underpinning of it right before you go too quickly on setting it in stone. I know there is a debate going on here. We have set up independent regulators, and they need to have more discretion to be able to correct things more quickly and be more decisive.

I completely understand all of that, but you have to get straight the debate that goes on here. The shorthand of it is competitiveness, but there are other facets. If you took the view of, "We do not want the bloody Treasury to have it, so let us give it to the regulators", and then we develop a situation where suddenly, collectively, in Parliament people think, "We need it set in a different way", and you have devolved huge amounts of decision-making to the regulators, where are your levers and pressure points? You do not want to answer that question later.

You do not want too much detailed interference, because the poor old regulators would go mad, we are not really equipped and it is not a good principle of regulation. Secondly, we have to look at the framework, the context we are operating in and the job Parliament is asking the regulators to do. What are the overall parameters we are operating in and what are we looking for them to take into account when they decide? Is it competitiveness, or whatever the word is, as well as stability? That is where I would say it is important to concentrate.

There is then Kay's point about how Government and regulators keep abreast of what is going on. Parliament has a rolling fix on what is going on. If it wants to, it can deliver messages into the system at appropriate times.

**Q7 Felicity Buchan:** That is fascinating. What I am taking away is that you believe regulation is fundamentally political; it is choices that we make. It sounds to me as though your choices are competitiveness and stability. Would you agree with that? What opportunities do you see coming out of Brexit in terms of regulation?

**Lord Hill of Oareford:** To be completely honest, I have not given as much thought as others will have done in terms of whether I am saying to you that it is definitely competitiveness and stability. Clearly, you have to start with stability. I do not know whether competitiveness is the right concept. The requirement to think through the implications of what you





are doing in a regulatory space for the overall economy and for jobs, investment and growth is extremely important.

When I was dealing with some of the supervisors in the European system, I generally had a view that you want stability but you do not want it to be so stable that there is no space for growth. I would try, as Commissioner, to have conversations with the supervisors—the ESMA and so on—and say, “Come on. You are being a bit narrow in your approach to these issues”. All regulators have their own incentives around risk aversion, because you do not want to be the person in charge of the thing going wrong, particularly when you have politicians, when things do go wrong, pointing the finger at you for having made a mistake.

You have a whole background where most incentives on regulators are to be risk-averse and it attracts, as a generalisation, people into it who see the downside. When I would say to them, “Look, do you not think you are being a bit heavy here? Could we not look at things a bit more flexibly?”, their response would be, “If you as Commissioner provide more space for me to do that and you are prepared to be blamed if something goes wrong and to say that publicly, then, okay, maybe I can be a bit more accommodating”, which I was prepared to do.

What that tells you is that sometimes people look at regulation and think it is a science and that there is a technical answer to every problem. It is everyone making their best stab. In terms of where you come down on any given issue, you are conditioned by your overall environment, by what you think the political mood is and what the media context is. I know we would like to think that might not be true, but it is true. How you keep control of that is important.

**Q8** **Felicity Buchan:** I am being told that I have one minute left, so I just have a very quick question. I get that it is an art rather than a science, but the speed of response is very important. How do we build that into the system?

**Lord Hill of Oareford:** Some of that is attitudinal and cultural. The FCA has its sandbox idea of working with people to try to address the regulatory challenges and understand how business can work sensibly to do that. That is a good idea and is worth looking at.

Some of it is cultural. You can also think about putting in time periods for responses. One of the criticisms from the industry sometimes is that things take too long or they are complex or duplicative. You can look at areas like that.

To your question just now, now that we are no longer in the EU, there is an opportunity not to rip everything up and go off on one. We can have discretion, proportionality and space to adjust things for a single market and then, through the political process, being able to adapt things more



## HOUSE OF COMMONS

quickly is where there is some opportunity. In the European system, once you have legislated at level 1, it was almost impossible to change.

**Q9 Harriett Baldwin:** As I understand it from what Sharon was saying in her introductory remarks, the ECON Committee was not only the committee that scrutinised legislation but also something along the lines of what we do in terms of scrutinising the regulators. It was a combination of the ad hoc committees that are set up in our Parliament in both Houses to look at the line-by-line scrutiny of the Government's legislation and then an element of what we have in this Committee.

If you, as we are, start with a blank sheet of paper in terms of what we should be doing at this point in our parliamentary history to change that, what would you recommend, Sharon? What structure would you want to see the UK Parliament set up, assuming that we will carry on with the ad hoc committees that will look at the line-by-line scrutiny in both Houses?

**Baroness Bowles of Berkhamsted:** We are not going to change the way we do legislation in the UK to a system that is like the EU one or the US one, where you have select committees that are also doing the line-by-line scrutiny. If you are looking at the scrutiny that happens in the Chambers, you also need to look at how much policy we really have in our legislation. The answer is not a lot, especially with skeleton Bills. There is a whole load of things that we should be looking at in that context, because it has wide ramifications for what you can scrutinise against. If you are looking at things like equivalence agreements, other countries want to know that a certain amount of your legislation is in fact not going to be changing in the blink of an eye of a regulator.

If you are looking at the committee accountability side, I would say you should certainly have a specialised committee, whether it is of both Houses or two separate committees that come together and co-operate or some look at one thing and some look at the other. You need to get more people involved.

**Q10 Harriett Baldwin:** What would that committee scrutinise?

**Baroness Bowles of Berkhamsted:** You need a lot more consultation and scrutiny of legislation and regulators. Given the structure we have, if you want a financial services select committee, for example, it would be intervening a lot more in terms of finding out what the regulators are thinking and it would have more capacity to scrutinise and maybe influence what they are doing, as to whether they are delivering on the objectives that have been set for them and that they have set themselves.

**Q11 Harriett Baldwin:** Just to be clear, you are talking about the UK regulators.

**Baroness Bowles of Berkhamsted:** Yes.

**Q12 Harriett Baldwin:** This would be doing more than we currently do as a



## HOUSE OF COMMONS

Treasury Committee in terms of scrutinising the UK regulators.

**Baroness Bowles of Berkhamsted:** Yes, I think so. I would say there should be a role for more consultation of the Treasury Select Committee. At the moment, once you have—

Q13 **Harriett Baldwin:** You mean consultation by the regulator.

**Baroness Bowles of Berkhamsted:** No, the Committee should be scrutinising the regulator rather more.

Q14 **Harriett Baldwin:** This is consultation from whom to whom.

**Baroness Bowles of Berkhamsted:** There should be more consultation from the regulator to the Committee. That happens in the European Parliament. There will be a lot of conversations about the shape of the regulation coming up and to-ing and fro-ing, both formally and informally, maybe with reports from the committee on some views, whereas we have a system where they have the power and it is all them. They say, "We have analysed it and this is how it is". That is how it stays until you get the latest report on where it has all gone wrong.

Q15 **Harriett Baldwin:** Can I ask the same question to Kay, please?

**Dr Swinburne:** I will come at it in a slightly different way, on the basis that there are two things I would suggest as learnings from the European Parliament system. We need to park level 1 legislation to one side, because the system is so different that it is not comparable.

Level 2 is what they call the rule-making. That is done by the regulators and then they do the checks and balances to make sure the regulators have actually put in place standards and rules that are in the policy framework that has been set by the European Parliament. That is a really important role. Rather than potentially just doing it when there is a problem, you need to build the bridges before they are needed. You need to monitor everything they are doing routinely.

I suspect the Treasury Select Committee would take up too much of its normal time in doing that. Therefore, a sub-committee seems to make sense to me. You would have a sub-committee that has an eye for the detail of these rules and standards and can follow them. You build up within your secretariat as well a bit of institutional memory as to how they came about and what the intent was, and then you can match that with what they are doing.

If you go down the sub-committee route, it is important to get some stability in that structure. It may be, therefore, that a joint committee might work better. You could bring in the House of Lords to get some continuity. Having been in the Parliament in Brussels for 10 years, institutional memory was really important. Understanding why you got somewhere and how you got there was actually very valuable. If you are measuring against an intent, you need somebody who has been aware of the journey.



Q16 **Harriett Baldwin:** What both of you are saying is that ideally probably this Committee, with more resources, needs to get more stuck in in terms of ongoing engagement with the regulators, more on a rule-by-rule basis than we currently would do, where we take a more hands-off approach to the regulators. Jonathan, do you agree with that approach.

**Lord Hill of Oareford:** I think so, yes. To be honest, I have not thought particularly about what the best structure would be. My basic point is that you have to have parliamentary or political input into the process of regulation. If you are going to try to get regulation to move quicker and be more flexible and to have regulators take more responsibility, you do not want to be all over them. I am not arguing that you need to be completely second-guessing them on the detail, but, politically, you have to have a system whereby you set the overall direction and then you are able to check. Whether you do that with a sub-committee of your Committee or a committee of the whole House and stick in some peers, the basic point that Sharon and Kay are making about detailed knowledge of this stuff is well made.

Q17 **Harriett Baldwin:** What about the role that the European ECON Committee has played in terms of scrutinising what the European rules are and engaging with that? Is that a gap the UK Parliament needs to make changes to in order to keep up to speed on that, or should we really just be focusing on the UK regulators at this point?

**Lord Hill of Oareford:** I would concentrate on getting our own system correct, with proper accountability built into it.

Q18 **Harriett Baldwin:** Does anybody have any other points on the vision for where we need to go?

**Baroness Bowles of Berkhamsted:** Whereas I do not know whether Parliament trying to scrutinise the ESAs, the European bodies, is the thing to do, the Committee should certainly be doing more scrutiny of what the regulators and the Treasury get up to when they go off to the Basel Committee, IOSCO, the IAIS and all of these international bodies. That is not very transparent at all.

The European Parliament managed to get Basel to come and report to them a little bit, and they went on visits there. This is an issue that concerns Parliaments around the place. We have had the same conversations with the Senate Committee on Banking about what they are up to. There is so little policy that is in UK legislation at level 1, our primary level. There is not really parliamentary input to the policy in level 2. That is the Government coming through with regulations that we cannot change. They have usually consulted with industry ahead of time, as they have to, but they have not consulted with Parliament. There is no political input.

**Harriett Baldwin:** There can be at the beginning of the Bill process. On the Financial Services Bill recently, we took evidence from a variety of different organisations in the opening. It is quite limited; I agree.



Q19 **Julie Marson:** Perhaps I could go back to Jonathan and ask a simple question. We have skirted around sub-committees, joint committees and so on, but I want to ask you a specific question about the prospect of having a select committee specifically to scrutinise financial services. What would be your opinion about that structure?

**Lord Hill of Oareford:** My only observation would be that I do not know why you would only do it for financial services. The issues you are touching on go right across the piece. Although financial services is a big industry and some of this stuff is quite technical, I am sure people would say the same about—I do not know—digital legislation, telecommunications or whatever it happens to be, which is also technical and quite important.

I would not argue that there is a unique case for trying to think about what the best structure is just for financial services, but we need a structure that enables us to have sufficient knowledge and back-up to be able to dig into these issues.

There is also the political accountability point, which we have not touched on yet. There is also the point that you hear from industry. What they say is that the European system was in many ways maddening and often pretty opaque, but, if you wanted to talk to people about the detail of regulation before it was set in concrete, there were plenty of opportunities for doing that in the European system. I hear people saying that they are a bit worried about, if it is just the Treasury and then the regulators have more power, where their space is for having a discussion about what the real-world, as they would argue, consequences of the change might be. Having a place where you can drill into it and hold Ministers and regulators to account but also have a broader discussion with people who are affected by these discussions might be something to think about as well.

Q20 **Julie Marson:** Just following on from that, you mentioned a lot of the symbiosis of the issues between risk, growth and competitiveness. If you did take up that structure, you would be forming a committee that effectively splits Treasury responsibilities. There is obviously a lot of symbiosis between the impacts of regulatory failure on the public finances and so on. How would you see those implications in making that decision?

**Lord Hill of Oareford:** I cannot claim to have worked all this through. It is probably not terribly sensible to make up as we are going along something that is quite important. My point about competitiveness is that you have to set up an approach whereby when politicians, who are our elected representatives, think the balance might not be right in terms of risk, growth or whatever it happens to be—or that we are not being sufficiently cautious or too cautious—they have to be able, in a clear way, to influence the process.



That is why, at the top level, you have to be clear about what objectives you are setting your regulators and the framework in which you are asking them to operate. That is this a live debate that is going on about whether you should include some requirements on them to take that into account. That used to be the case, but it then got taken out. That is my main point on that.

You then need some of this scrutiny to see whether people are doing it. Then, if they are not doing it, there is a question around whether there is anything you can do about it. Quite a lot of these regulators have long fixed-term appointments: the Governor of the Bank of England is eight years; I think at the FCA it is five years. You absolutely do not want to set up a position in which a whole bunch of politicians are second-guessing, interfering and pushing so that you get unpredictability, but the bit that is worth thinking through is the framing of it and then what you do if that does not seem to be happening.

**Q21 Julie Marson:** Can I ask the same kind of question—it is a simple question but a complicated answer—to Kay, about a select committee of this kind specifically for financial services?

**Dr Swinburne:** A number of my financial services clients would agree that, if you had a special committee for FS, they would feel that they had a lot more attention given to them and the importance of the sector to GDP would be recognised. They would feel it was something positive. I probably have an equal number of clients who would think that you would then have a disconnect between what they see as the social impact of FS on wider society and the wider economy. If there is this disconnect, they wonder whether it will actually serve them well. There is a real difference of opinion, from one end of the spectrum to the other, as to whether or not they really want a particular focus on them or whether it is better to be within this broader context.

They are not alone in having those discussions. Every mandate in Brussels started with the ECON Committee deciding whether or not they should split their activities to focus on one thing or another: should tax have a bigger focus this time? Should it have a separate committee for it? Should you separate out FS, because post financial crisis you have had this big wave of regulation? It is an ongoing process that people discuss.

In my mind, on balance, the financial services clients who I talk to would suggest that it is probably better within one, under the Treasury Select Committee banner, but with a special focus, if needed, within a sub-committee. You then keep the continuity and consistency between the rest of the economy, monetary policy, taxation and everything else, and the FS agenda, so it does not get disconnected.

As I say, there are probably just as many views as there are solutions that you could propose for this. I am a little loath to go down one way or the other, but, having had these discussions repeatedly in Brussels, I can





see the benefit of keeping it under one umbrella and then specialising within that.

Q22 **Julie Marson:** Can I ask Sharon the same question, please?

**Baroness Bowles of Berkhamsted:** I have a lot of sympathy with what you say. While I was chair of the Committee on Economic and Monetary Affairs, we had to deal with, amongst other things, the eurozone sovereign crisis. Certainly when I was leading delegations to other countries and they wanted to know, "What is happening? Why do you not have a proper monetary union?" and all of those economic-type questions, I was able to weave together an explanation that covered what we were doing in financial services to stabilise the system together with how that fitted in with what we were doing in what we called economic governance and surveillance of the countries within the euro and how that presented a reinforcing picture. That was something they wanted, and I would not have been able to do that had not the committee and I had responsibilities for both of those.

The main reason I would make to have a separate committee is only if that gives you more resources. The main thing you need is capacity and resources. Eleven people cannot do the job—end of story. There would need to be a big rethink around what level of policy Parliament can be involved in and whether Parliament is at the centre of the conversations that go on about the direction of financial services. It is not in the UK. It is in the EU; they are part of the conversation, so they know what to expect.

The UK is in fact the most secretive nation in terms of revealing, even to its own MEP who happens to be chair of the ECON Committee, what its plans are. I used to get told what the Treasury was thinking either by industry, who had managed to get hold of a document because lobbyists there used to work at the Treasury, or I was given it by a German colleague because their Ministry had got it, but I, as ECON chair, had not.

That is the attitude. Parliament is just not involved until it is really too late to change the direction for the reason that Lord Hill explained: that is not how we do it; we have a Government that is in control, and there is just a bit of tidying up to be done by Parliament. The scrutiny cannot be done unless you have the capacity and the resources and you are at the centre of the conversation.

That is possible to do without you having to be responsible for the legislation as well, but it does mean an awful lot more about the information you are given and the powers that you have to access data. The German banking committee can have any supervisory data that it wants about any institution when they fear there might be something going wrong; that is obviously in camera. It would have to be set up as some of our security information can be shared with parliamentary committees; parliamentarians can be trusted.





There is a whole big rethink. To go back to one of the earlier questions from one of your colleagues, this review is extremely timely and extremely important. One has to think very much wider about what the role is and then whether it is possible and whether there is a will within Government for Parliament to take on that role. It is super-important for financial services, because they are our largest earner and our most important industry in that sense and the one that can, as we know, rock our economy if it goes wrong. That is not to say we would not be in a pretty bad pickle if we did not have telecommunications or whatever, but financial services and the stability of the economy has safety provisions around it in the same way as defence does in many international treaties, including the European treaties. That is for a reason.

**Q23 Anthony Browne:** I should declare my interest as former chief executive of the British Bankers' Association. I spent five years negotiating with all the different European institutions, including with our three panellists as well as the UK Government and the Treasury, and indeed the UK Parliament. It has been an absolutely fascinating discussion. You have explained really well the differences between the European system and the British system. I fully agree with your observation, Sharon, that the UK Parliament has no real handle on financial services. I was always shocked at how light-touch it was. The European Parliament, by contrast, was fully in grip of what was going on.

Looking forward to what the solution is, the answer to the question about whether we have to do this now is yes, because by default it has landed on our plate because we have left the EU. My first question is about what should be in the realm of politics and what should be in the realm of the regulators. Lord Hill, you made the observation that all regulation is ultimately political, but clearly there are technical areas that politicians do not have the capacity or ability to go into. I was always amazed at the technical detail that MEPs did have the time, capacity and ability to go into, but the UK Parliament does not have that.

My question is for Sharon first. In the UK context, what would it be right for politicians to think about? Is it the outcome of regulations, the social impact and the wider economic impact? In your role, you got very heavily involved with the pillar 2 capital stack of a bank or the liquidity coverage ratio, lots of really detailed technical stuff that 99.9% of the population do not understand. How would you define what should be the realm of politicians?

**Baroness Bowles of Berkhamsted:** To some extent it is going to be different depending on what bit of the industry you are looking at. If you are looking at the FCA, very interesting things are going to be around the regulatory perimeter, which is about how you catch the bad behaviour that they have deemed to be outside their perimeter and those kinds of things.

If you are looking at banks, some of these things are things the PRA could have been doing whilst the UK was in the EU. There are issues



## HOUSE OF COMMONS

around whether you are going to stick with a piece of legislation that covers all of banking or whether you are going to do what they are doing in the Financial Services Bill now and carve out bits, like the investment firms, that really did not need to be under the same Basel regime as the systemic banks. What are you doing about, if you like, the domestic non-systemic banks? What are you doing about community banks and very small banks?

Yes, it has been indicated that you want them to do these things, but it has not really happened. It would be a lot easier to understand if you had definite layering in that way. There could be almost separate regimes that you can understand. Of course they would have a lot of common factors in them, but you would not be stuck with the whole thing, wondering what discretion or not is being operated by the PRA when you are completely in the dark. You would say, "Okay, your balance sheet is this size. You are going to be in this slot", and you would have a good starting point.

If you looked at insurance, you could do similar things there, but again you can also look at different types. If you are looking at reinsurance and captives, Ireland has already managed to do a carve-out from Solvency II so they do not have to wade through everything that is not relevant to them. We could put things into these categories so we understand how our proportionality is operating in a big-picture sense. You are not saying what the nitty-gritty of the pillar 2 capitals are going to be, but you are actually saying, "You need to show us what difference there is", other than just saying, "There is a systemic risk buffer", or whatever it is. There are those kinds of things.

The Parliament has a very good and strong role in stopping regulatory capture. The regulators talk to themselves in these international bodies that are all regulators, and they have suffered regulatory capture. Basel II was rubbish. We have no proof Basel III is any better; it is just that we have not had a crisis yet. We suspect it is a lot better, but they have gone off in the wrong direction, both internationally and nationally. Parliament being able to ask these very penetrating questions is a good way to prevent regulatory capture. I did my fair share of that when I was ECON chair.

You are helping to stop the groupthink and to cross-check that they do not have groupthink. Are they too complacent? Are they going for a quiet life? They do not want to change what they have done because it has been working so far.

**Q24 Anthony Browne:** You make a very good point. Parliament can only challenge the regulatory capture if it has the wherewithal and the technical expertise to do that. The risk is that a politician speaks to a regulator and the regulator will say what they like, because the politician will not fully understand the implications of what they are saying.

Can I come to Dr Swinburne? What should be the realm of politicians and



what should be left to the regulators? How would you define where that barrier is? What should politicians get involved with and what should be left to level 2 in the UK context?

**Dr Swinburne:** There needs to be a clear demarcation of roles and responsibilities and, where you are delegating authority to the regulators, full accountability. That needs an enhanced accountability framework. We do not have it currently. If you talk to industry, they generally will say that, if they object to what a regulator's interpretation of something is, they have nowhere to go. There needs to be a mechanism by which there is enhanced accountability. We have very good regulators, but not everything is done perfectly, and you need a recourse mechanism. Parliament can play a really important role in that.

Q25 **Anthony Browne:** This would be as a safety valve if things go wrong between industry and the regulator.

**Dr Swinburne:** Yes. In the current system, because the current regulatory framework in the UK was set up in the shadow of the European supervisors being set up, the intention was always that the vast majority of the single-market financial services rules would be made by the ESAs, so the role of the UK regulators has been very much more a supervisory and enforcement role rather than a policy and rulemaking role over the last decade, certainly post 2011, when the ESAs came into being.

It has been a very different journey for them. They now need slightly different skills to do that forward-looking policy work, and they need slightly different skills in terms of how they interact with stakeholders. Having now just re-joined industry, there is very little engagement at our regulators in terms of roundtables, high-level working groups and all of these types of participatory fora where you can put forward your view on how things are going and how things are working to the regulators.

They need to change the way they work, and then Parliament needs to work out clearly where it then wants to hold them to account and how. There is a very clear role for the committee, whatever committee it is, but we ultimately should not forget that, while every regulator may be independent, there is a political influence to all of them. I only have to look at the CFTC or the SEC, where nobody claims they are not independent. They have phenomenal rulemaking ability, but the reality is that there are political appointees, the Commissioners, who run those entities.

Even the EU Commission—I am sure Jonathan can wax lyrical—is a political body. It is not apolitical. We should not kid ourselves that financial services around the globe is not politicised. It is. We just have to have a system with clear roles, clear responsibilities and full accountability. Then we will have a much healthier system.

Q26 **Anthony Browne:** To provide that accountability, would Parliament or a



## HOUSE OF COMMONS

sub-committee need different powers from what we have at the moment? As the Treasury Select Committee, we can wax lyrical about different things and we can summon people—normally they will turn up—but we have no formal role in regulation. There are Bill committees, and I have sat on my fair share of them. You do pass amendments, but it is heavily whipped so the Government basically get whatever they want. Is there any sort of room in between?

**Dr Swinburne:** If there is a mechanism for delivering it, I would encourage that it should be looked at and explored. It is a positive part of the engagement, and it is a mechanism by which stakeholders can come to you. A negative experience can be shared in order for you to help put things right or re-establish balance.

Q27 **Anthony Browne:** Can I come to Jonathan with the same question? You touched on it earlier. You said at one point that all regulation is political, which is sort of true, but on the other hand politicians should not get involved with all regulation because a lot of it is too technical. How do you decide the level at which Parliament and politicians should get involved and how do you decide which parts it should not get involved with? In terms of those bits that it is not involved with, how do you decide the accountability?

**Lord Hill of Oareford:** You have to start cracking through it and doing your best to set it at what you think is an appropriate level. You probably will not get it right, and you will need to address it over time.

I agree with the comments both Kay and Sharon have just made about it. What I would say is around this bit about the political input to setting the overall objectives that you want the regulators to work to at the top level, the issues you want them to take them into account. You have to clearly set those out.

**Anthony Browne:** These are the social and consumers impacts.

**Lord Hill of Oareford:** You will have to consider the contribution regulation makes to the growth of economy or whatever it might be. I say that glibly. That itself is not easy. Framing it right is hard. It is not just, "Let us just call it that".

It is the strategy that you should be setting, not how it is implemented in detail. You have to be able to measure how they have performed against the overall objectives. You should not underplay the effect scrutiny from a group of people like this Committee has on people who are trying to do these jobs. It will be a sharp accountability mechanism. You do not want to come in and be publicly held up for having failed on the delivery of the objectives. One should not underestimate the power, in this bit about holding them to account, that this Committee or a variation of it would have.

Q28 **Anthony Browne:** My time is up, but I just want to ask a question about whether the committee would have the same powers as the Treasury



## HOUSE OF COMMONS

Select Committee has at the moment, which is basically that we can ask questions and write reports, or whether you think it should have some other form of powers.

**Lord Hill of Oareford:** I do not know what other powers you have in mind. My short answer is that you have powers in terms of scrutiny. If something has not worked right and you are going to be held to account, sitting in front of the Treasury Select Committee is quite an exposed place to be. That is a powerful tool. I do not know whether there are particular things that, in addition, you might feel you need.

**Anthony Browne:** Unfortunately I have run out of time. I would love to carry on this conversation, because it is a very important and complex set of issues. Thank you all very much indeed.

Q29 **Dame Angela Eagle:** I just wanted to ask each witness whether they think there is any other jurisdiction where they have got this much closer to right than we have. What would be the features of the kind of rigorous and effective oversight that a Parliament could do? Can I start with Dr Swinburne?

**Dr Swinburne:** I am not sure anywhere really has got it right. Normally with global financial centres, you would look at the way in which the other global financial centres deal with it. If I look to the US in the first instance, it is very difficult for me to say their system is the exemplar, because it is not. The SEC does a whole lot of rulemaking and it does not really get held to account. The CFTC is slightly different: its budget comes from the Agriculture Committee, and therefore its budget every year to operate effectively gets held to ransom if it is not doing what the political committee wants it to do. Is that a good system? I would argue it is not, because then you are influenced every year by that budget description and the release of those funds.

For me, the US is not where I would look. The irony is that systems for financial services that work well are in places like Singapore. Nobody would ever hold them up as being the best place for democratic scrutiny, but the system works well where you have Government and the oversight of the regulators working hand in glove, which means they are very responsive. They are responsive without the public accountability in quite the same way.

Q30 **Dame Angela Eagle:** I suppose it is the public accountability and the parliamentary scrutiny that I am trying to get at. We can talk about scrutiny in general, but we are here as a committee of Parliament trying to think about how we can get some accountability into the scrutiny rather than just trusting the Treasury to do all of it and then give to the regulators the technocratic power to do the detail. What I am really asking about is how, as a Parliament, we can try to get some accountability and scrutiny from the democratic side into these very technocratic things that are going on at a high level.



**Dr Swinburne:** The two Parliaments that I had exposure to as a parliamentarian in Brussels that did scrutinise the European legislation before it got to trilogue stage were Sweden and Finland. Therefore, I would potentially look to those two markets. They are very different, but those are the two that I have had personal experience with that do parliamentary scrutiny even on European legislation at an early stage and in detail.

Q31 **Dame Angela Eagle:** They look at stuff before it is going to be discussed, not afterwards. What is it about their systems that you particularly admire?

**Dr Swinburne:** It is more the fact that they do it in detail. MiFID II, which is a big markets piece of infrastructure regulation, is several thousand pages long and it took several years to produce. During those discussions, I spoke at length to parliamentarians in the Swedish Parliament who were very knowledgeable. They had fully availed themselves of all the information and detail, particularly as it pertained to their market and how it was going to impact them and the companies that operate out of their market. What I really liked about that was that they understood the level of detail that we were having to deal with in Brussels, which is quite an unusual setup. Politicians are often much more interested in the political dynamics rather than the technical details.

Q32 **Dame Angela Eagle:** Baroness Bowles, do you have any thoughts?

**Baroness Bowles of Berkhamsted:** I have appeared more before the Parliaments in other countries than I have before this one. I am thinking especially of the Scandinavian ones. Denmark was very hot on capital requirements. They asked very much more technical questions than I tended to get when I appeared before Lords select committees.

The most intensive grilling I have ever had was before the banking committee of the Hong Kong legislature. I am happy to say I survived rather better than some others, because I did know about pillar 2 and all those kinds of things. Sticking that together with the macroeconomic thing was actually exactly what they wanted. Again, that is not what you would necessarily regard as what you would want to hold up as your democratic example.

Some of the US system works quite well. If you look at the Senate Banking Committee, they are quite influential and get down to the nitty-gritty of what has been going on. Yes, it suffers problems. Whenever I went on a visit to the States, I seemed to have to see an awful lot of different committees to cover the territory even of financial services.

They also have other things that help them. For example, they have the US Government Accountability Office, which each year conducts an investigation both into legislation and into how the federal agencies have operated. Individual members can ask for reports from them. There are





things like that. You could empower the committee to be able to get reports. Maybe the NAO or some body could do it.

Q33 **Dame Angela Eagle:** I was thinking that we could have a parallel NAO or expand the NAO to do that in more detail.

**Baroness Bowles of Berkhamsted:** Yes, that would mean you do not have to get into the nitty-gritty, but it could be useful where the question is about whether the level 2 and level 3 regulations are delivering what they are supposed to. You know what Government impact assessments are like. The time commitment on one, I was informed, was the time it took to read it, not the amount of time industry had to take to do it.

Those are very good for helping to keep up with what is going on. Just the very fact of reviews happening helps to keep regulators on their toes. The ESAs are reviewed regularly. Especially in the early days, they would get quite excited. If you do not have any power, you are not at the centre of the conversation. Industry is not going to come to you with their problems if you do not have the power to fix it for them.

Q34 **Dame Angela Eagle:** I agree. Lord Hill, do you have any particular insights into systems you thought were effective in that way?

**Lord Hill of Oareford:** Not really, no. There is probably not an off-the-shelf solution for us, in the sense that quite a lot of this is cultural and about how we are as a system. The observations Sharon was just making about review are worth reflecting on so that there is a constant process.

One of the opportunities for the UK as a unitary state is that, if you do have that system of review and things are not working correctly, it should be easier for us to adjust that than when we were part of a big 28-member consensus system. That is a good suggestion.

Q35 **Dame Angela Eagle:** The other thing that struck me from listening to the conversation was about the amount of resources that any committee, whether it was a sub-committee of this Committee, a separate select committee or a joint committee of both Houses would need so it could tackle the technicalities, especially if it was going to start looking at suggestions before they were put into effect as well as reviewing what had already happened.

What percentage of cost did the European scrutiny arrangements actually involve in terms of empowering the committees there? Dr Swinburne, are we looking at a big expenditure, NAO-like?

**Dr Swinburne:** I am going to defer to the former chair of my committee. I do not really know what the budget was.

**Baroness Bowles of Berkhamsted:** I am not sure I can answer that. It is a very much more substantial budget than is likely to be available at the moment. There were millions available for policy research and things. Admittedly, that is spread over the Parliament. It was allocated to some





extent dependent upon which were the hot committees of the moment. While I was there, we built up from having only about 10 staff to more, but we also got a bigger cut of the policy budget. I am sure we could research that and come back with a written answer.

**Q36 Dame Angela Eagle:** I suspect a global banking crash will do that for you.

**Baroness Bowles of Berkhamsted:** Yes. Now it is not the same. There will be another committee that is at the centre of attention. We cannot replicate anything that is anywhere else. The point I keep coming back to, as well as resources, is powers. You are pre-scrutinising and you can say, "Hang on. You have not got this bit quite right".

The resource available—it is not just London, because I have had fantastic meetings with asset managers in Edinburgh—in the whole of the financial ecosystem in the UK is an enormous resource. It puts it more at your disposal, because the lobby is not a bad thing. There is not a single meeting that you can have that does not give you a spark of an idea, even if it is, "My goodness, that is the way not to do it".

Usually, at least from my experience, you can have a very dynamic exchange with people from industry. You learn a huge amount of intelligence, and of course you check up all the way around and so on. You will not be at the centre to get that coming to you unless you have the power to make changes and to be able to activate that resource in your favour. That is a free resource. It is not free to the industry; they spend a lot of money on it.

At the moment that resource is primarily just directed to Government, because government will tap into it and regulators consult it. By and large, Parliament is left out. That is a big resource.

**Dame Angela Eagle:** Those points are very well made.

**Q37 Siobhain McDonagh:** My questions explore how giving more power over financial services rules to elected parliamentarians may risk politicising banking to the detriment of the sector for political purposes. Do you consider bankers' pay to be a legitimate concern for members of the public, given the size of the financial sector in the UK economy, or do you consider that the restriction on bankers' bonuses and pay would be damaging to these industries?

**Baroness Bowles of Berkhamsted:** You can find examples of where you say something has been done that is either a bit like the Dangerous Dogs Act for banks, but, if you take the saga around bankers' bonuses, when that started off there was a healthy majority of the ECON Committee against it. If you take my own political group, a liberal group, they thought it was a dreadful thing to do. Over the course of the debates that went on—and indeed, unfortunately, due to some of the attitudes of banks—and when we looked at the perverse incentives that went on, we thought that something had to be done. Something better probably could



have been done, if there had been other ways to address the perverse incentives that existed at that point in time. There were some really fantastic arguments made against capping bonuses, including by the PRA at the time. I will not go into them unless you are interested.

Basically, that was responding to public opinion over something that had happened and trying to right a wrong in terms of perverse incentives. If you only have the incentive to go after your bonus and there are not any restraints on you, if the conscience aspect is missing, you are in trouble. It was not unique as a problem in banking, but it was something that had potentially brought the country to its knees, and we still pay the price today. Austerity was the price.

**Q38 Siobhain McDonagh:** I am going to cover some of that in my next question. Just on the point that you make, according to the National Audit Office, peak support for the financial sector in December 2009 was £955 billion. Given this incentive and the practices of the banking sector at the time, does this justify political intervention in measures such as the banking levy?

**Baroness Bowles of Berkhamsted:** The same arguments apply. Those who have caused harm were going to help to remedy it. In a sense, that was done by the UK Parliament, but I understand exactly why they did it. Again, it seemed to be necessary to address the public concerns there were at the time.

There were aspects of it that some people thought were counterproductive, because it is difficult to build capital buffers when you are having to give more of your money away. Those two measures—the levy and the cap on bankers' bonuses—were not out of line with public sentiment or out of line with the seriousness of what had gone on within the banking industry.

Those are just two examples in a very big field. As I have said, Parliament can stop groupthink, regulatory capture and all of these things. Yes, it cost industry so of course they have moaned about it. They were not bad measures, and the good that Parliament can do, including those measures, is far more than the harm.

**Q39 Siobhain McDonagh:** Would Dr Swinburne or Lord Hill have any different view to that?

**Dr Swinburne:** My only reservation would be that when rules are made as a reaction to something that is going on at the time, they need to be reviewed and looked at to see whether they are still fit for purpose. My only comment here would be that, if we started off this conversation talking about UK financial services' competitiveness, we need to make sure we are not in any way putting the UK at a disadvantage through other means. It is a global financial market. We need to make sure the best and most talented people are prepared to come to work in the UK



and work for UK institutions. There is just a fine balance. We need to have at least one eye looking to that competitiveness agenda.

It is not unique to financial services. The problem here is putting caps on one sector of the economy. Post financial crisis, there were indeed behaviours that rightly needed to be remedied, but you now need to look more broadly across society as to what impact high salaries and high bonuses have in other sectors. To only keep this to the banking sector seems inappropriate. I would constantly keep it under review as part of your competitiveness agenda.

**Lord Hill of Oareford:** My only point would be relating your question to the earlier bit of the discussion about where the proper line to draw is and what the right level is for politicians to set the framework or get involved. I would say that bankers' bonuses, as an example, was a kind of detail that I would not think you would be wanting to set out up front, but, politically, in that situation, if we had a rerun of the whole thing, is it a proper thing for politicians to say what they think about those issues? Yes, of course it is.

In the case that it would arise now, would this influence the Government of the day to think about whether they wanted to introduce a cap or not? That is a proper matter of politics. Looked at in terms of the question of regulation, is this the kind of thing where the committee you are talking about should be setting such a granular approach? No. When you are calling in regulators and politicians to discuss the way they are approaching things, is that a proper subject to raise? Yes, of course it is.

Q40 **Siobhain McDonagh:** It would be remiss of me if, on International Holocaust Remembrance Day, I did not ask you a question about HSBC and its current activities in Hong Kong, particularly its freezing the accounts of Ted Hui and his family members. Ted Hui is the pro-democracy campaigner. What are your views about the political influence that should be exerted upon banks and financial industries that act as props to totalitarian regimes and that are actually supporting those regimes that are carrying out genocide against their own people?

**Dr Swinburne:** I am afraid I am not longer a politician, so I do not get to opine on these things anymore. I am an expert on financial regulation and the interaction of firms with their regulators. I understand that a financial regulator has been involved here and a company is complying with regulations. As far as I am concerned, we have to have a regard to what other pressures a global firm can be put under, and I would hope that Government and politicians in this country can put significant pressure in the political system to make sure that our global companies are not impacted in this way.

**Siobhain McDonagh:** They are putting people in concentration camps.

**Lord Hill of Oareford:** There is a point that Kay has just made about what the regulatory framework and approach is, which is what we are



## HOUSE OF COMMONS

discussing here. For politicians to bring pressure to bear in any way they think appropriate is obviously correct.

One of the other trends of recent years, which has been developing fast, is the way that pressure is brought to bear on companies through shareholders and investors. In this whole debate about accountability and who the right people are to hold companies to account, that is an important new trend. You can see companies increasingly being responsive to this, whether it is on environmental issues, which is developing fast, or in the broader kinds of areas you are talking about.

**Q41 Mr Baker:** I am going to be asking you about the remit of the regulators and their perimeter. I should just declare my registered shareholding in Glint Pay. Can I start by drawing your attention to the Government's consultation? It says, "The important question of whether an activity should be subject to regulation is more appropriate for Government and Parliament to decide". We have got into some of these questions already, but, in a nutshell, my question to each of you is to what extent the regulator should have an influence over its own remit and the perimeter of regulation.

**Dr Swinburne:** This is an exceedingly complex question. I have just been involved in Ron Kalifa's Fintech Strategic Review. I chair the chapter on policy and regulation. Having spent the last five months talking to various stakeholders, it is very clear that the regulatory perimeter is a real issue in many sub-sectors of financial services. In the payments sector in particular it is a real concern, but it is not exclusive to that sub-sector. There are lots of other areas where there are actors that are not regulated but are doing similar activities to those that are performing regulated activities. One then has to make a judgment as to whether they are or are not, according to the regulator, within their remit and come under the scope of their regulatory framework.

There needs to be a clearer outlook for them as to what is and is not included. We do need to re-look at some of the legislation that is out there. I understand that some of the reviews, such as the payments review, will be doing that. They will be looking more clearly at what activities, and therefore what participants—those who are performing those activities—get covered. In order to do their job properly, it seems that a financial regulator needs to have end-to-end oversight of systemic systems. In the payments system, not all the people involved in the payments system are regulated, but the regulator needs to be able to understand where the risks are. Indeed, if one of those actors who is not regulated fails in the system, does that create systemic risk to the system overall?

These questions will persist. Should regulators have the sole remit to decide their own perimeter? Absolutely not, no. It is the role of society to decide where that is, and it is ultimately, therefore, Parliament and Government that decide. At the edges, at the margins, there needs to be a little more discretion. It does not have to follow the activity to the



letter, but the old adage fits: if it barks like a dog, it probably is a dog. You need to be able to have a bit more discretion for regulators to include certain people at the periphery.

Q42 **Mr Baker:** Lord Hill, what is the role of the regulator in deciding their own remit?

**Lord Hill of Oareford:** I would agree where Kay was ending up, which is that it is primarily the job of Government and Parliament to set it. I have nothing to add to that. Regulators are there to do the job that you ask them to do. They are not there to exist, define their own role and, if they feel they want to roll it out in a further direction, it is up to them. That seems to me completely wrong. It is the politicians who need to set the framework.

The only thing I would add, which is one of the other themes of this discussion, is that you need to keep this under review, because these perimeters shift; industry shifts. If you think of banking and the emergence of digital competition and providers of banking services that did not exist before, that is a good example of where perimeters should go in terms of whether legislation should cover or not cover them. It cannot be regulators who do it, it seems to me, because otherwise you are saying that there is a class of people who wield huge economic power and there is nothing you guys can do about them if you do not fancy it. That seems to me to be absolutely wrong.

**Baroness Bowles of Berkhamsted:** This is quite a difficult subject. It comes down to whether, at times, it should be more that a firm is regulated rather than an activity, which of course is more where the PRA is at; it is more clear-cut.

If you are regulating by activities, there are new activities that come along and they are done by firms that are regulated for something else. As the Gloster report has quite categorically said, that is used as a badge of approval and an authentication of the business, but there is no warning that you are doing unregulated business. There are probably things you can do to try to right that kind of harm by warning notices. There are more things that ought to be within the regulatory perimeter. I would put contracts with small business and things like that within it, because the FCA would not touch them because of GRG. Yes, you probably do need to have some setting of boundaries, because otherwise I am not quite sure how the legal system that surrounds it ultimately operates.

Every time Parliament has tried to set something that is meant to catch all, like the senior managers regime, what has happened is the regulators have come in and tended to narrow its scope. The senior managers regime basically meant that, if you were a senior manager and something went wrong on your watch and you had been somewhat negligent, you should be for the high jump, but now there is this whole process of the contract that you are going to be responsible for. It has very much narrowed that.



An area that I would want to investigate, if I was investigating regulatory powers at the perimeter, is in terms of what has happened to the regulators' narrowing of a perimeter that has been set. That is what happens. It is really Government that do it, because most of it is done in SIs; Parliament does not have a voice on those in terms of content. Once something has been set by the Government and passed into legislation, there should not be reinterpretation of that by the regulators without it being referenced back to check whether it is okay. They come up with their rules, which narrow it. That is one way where the committee could certainly come in and say, "Hold on a minute. When we were doing this, we thought it meant much more. Go back and make it wider". That would be a useful dynamic.

**Q43 Mr Baker:** I am very relieved by your answers, especially Lord Hill's. I have a bit of a track record of saying that the exercise of power should be subject to democratic control, and regulation is certainly the exercise of power. Can I just drill in a little bit on that point that you have just raised about narrowing? You also raised a very interesting point about statutory instruments, which I will come back to. Is it possible that the regulators are afraid to exceed a very tightly defined perimeter because they might be found *ultra vires* if they are taken to court by a large and wealthy regulated entity? What is the motivation for the regulator to find that it cannot act?

Time and again we have seen consumer detriment in these cases. Parliament cannot have intended, for example, to think that a tiny little business would end up entering into interest-rate swaps that they did not understand. Because they were businesses, they were outside the regulation. What is the motivation in the regulator's mind when it narrows its perimeter?

**Baroness Bowles of Berkhamsted:** I am not sure it has a motivation as such, other than to try to make things clear for the people who are going to carry out their jobs. We have to acknowledge that it is not easy being a regulator, which Lord Hill said in his opening remarks.

They are trying to work out how to do it and how to catch things. Possibly, they do not necessarily catch things early enough to be able to snuff them out, but that is why the re-examination of how they define things by the legislators is not an interference; it would be a cross-checking. There will always be things that do fall outside. We should be keener to protect the small businesses.

I do not know anything much about the regulators' processes. Whether it is Gloster, Connaught or GRG, we get these reports that tell us all kinds of terrible things that they have got wrong. With the Promontory report, even the explanation of what was in it and what was actually in it seemed to be rather different things. You then get a load of responses that they are going to try to put their house in order. There should be independent reviews that monitor that process, rather like a section 166 report on the regulators themselves. They should bring in independent experts to make





sure they have their processes right. Some of this is process. They will not let the industry examine themselves. Section 166 processes can be very helpful. Something like that should happen to the regulator.

Q44 **Mr Baker:** I am so sorry to cut you short. You are all genuinely giving fascinating evidence, and I want to spend a lot longer on it, but I am also going to be told that I am out of time shortly. Can I just pick up on the point about statutory instruments? Many members of the public will not know that secondary legislation is not amendable by either House when it comes to us unless it is made under the Civil Contingencies Act. I wondered whether any of the three of you has formed a view on whether secondary legislation should be amendable in the House of Commons. Perhaps, Lord Hill, I might press you on this. Should Members of Parliament be in a position to amend secondary legislation when it comes before us?

**Lord Hill of Oareford:** I cannot say it is one that I have thought about properly. It is sensible, therefore, for me not to be drawn.

Q45 **Mr Baker:** I do not want to press you where you are not ready to go; that is for sure. Dr Swinburne, do you have any observations on that?

**Dr Swinburne:** My only experience is within the European Parliament where everything was amendable by Parliament. I have to say that the bar was set very high for me. I do not understand a system in which you would not be able to do it. I will leave it at that.

**Mr Baker:** Let me tell you: I went back to a blog post I put up in July 2010 after my first statutory instrument committee, which is quite a good rant, if anyone is interested. I was wondering whether there is any literature on this problem of what happens in democracies when there is a lot of detailed regulation to look at. I found this famous book called *The Road to Serfdom*. It is in chapter 5. On that happy note, thank you very much indeed.

**Chair:** Steve, thank you for that very Steve-like ending to your questions, if I may say so.

Q46 **Alison Thewliss:** Thank you very much to the witnesses for the evidence you have been giving so far. We have touched on some of the issues around regulators and how they operate. I wondered whether I could start by asking Lord Hill and Dr Swinburne about how independent you feel the regulators are at present under the current system, and then we will go on to talk a wee bit more about the proposals the Government have.

**Lord Hill of Oareford:** Technically and legally, yes, they are independent and they behave independently. I have not ever heard regulators complaining about interference. There is a point, which is linked to part of what Mr Baker was saying, about incentives for regulators and the broader context in which they operate. They are not





## HOUSE OF COMMONS

Trappist monks. They hear what is going on; they are conscious of the debate that is around them.

On this question that he asked about their incentives and so on, it is an incredibly hard job being a regulator. There is an important point here that goes with the whole thrust of the conversation we have been having about political accountability. You must have political accountability, but you do not want to end up in a system whereby your regulators are pecked to death. The risk is that you do affect their behaviour, and their risk appetite will only go one way.

Part of the way that regulation works is that we think of it in static terms and we think about people as being in conflictual positions: "You are business and you are bad. I am a regulator and I am good"; "I am a politician and I want to hold you all to account". The system that would work best would be one where you have more open relationships and rolling discussion, where people have enough space to be able to have some sensible conversations without being afraid that they will get beaten up if they get something wrong or they miss something.

That gives you a tendency towards being prescriptive and doing—it is the old phrase—box-ticking and back-covering instead of what we need in an ideal regulatory system, where there is more scope for judgment and more space for people to evolve things together in a less conflictual way. That is why I mentioned this sandbox idea that the FCA developed. I was quite interested to see whether you could take it further around Europe. You have a safe space that can help business get through things more quickly, but can also help regulators to be a bit braver and better informed about the people they are regulating.

**Dr Swinburne:** The way the FCA, PRA and the Bank in particular have been set up guarantees their independence, but they were set up in a system whereby it was envisaged that they would be part of the much bigger system of EU 28 financial regulators. The colleges they were operating and the ways in which they were participating, all of what were almost checks and balances of fellow regulators, are now gone. There needs to be a new look at this independence. It should not be independence for the sake of independence.

If I step back a bit, global financial centres need the trust and confidence of all market participants, so the independence of a financial regulator is an important aspect of gaining that trust within a framework. That is critical, so you do need that degree of independence of thought and action.

The reality is that regulators do not work in isolation. As Lord Hill was referring to there, there are broader social implications to some of the choices they make. Going forward, they need to co-operate much more on policy objectives and how they are set. With the expertise they have, they need to help the Treasury understand some of the broader implications of what is being proposed. They are an under-utilised



## HOUSE OF COMMONS

resource. When I look at Government Departments and the lack of interaction they have with the absolutely brilliant people we have either at the Bank, the PRA or the FCA, they are not used as often as they need to be. When you are designing a digital future, why would you not use the experts in fintech sitting in the FCA and at the Bank? I just do not understand why that is not part of our system.

We need to look at this a little more closely, because independence does not mean they need to be compromised by co-operating. You need to actually make sure that, yes, we value and put that independence as a must for market integrity and global financial markets to operate, but that is actually no excuse not to co-operate. We need to find a way and a mechanism whereby they do not feel that involving themselves earlier in the process in any way compromises that independence.

It can be done. Certainly, the fintech journey has been an interesting one. The regulators are the ones wanting to assist Government Departments coming together to have a co-ordinated response. There are methods and ways we can make this happen. I hope this process of resetting, through this new route that we have to do our own independent rulemaking and everything else, is a way we can make that happen.

I also would not forget that this is not just about the three regulators I just named. You have lots of other financial regulators involved in the space. Whether it is the FRC, the Pensions Regulator, the CMA or the ICO, you have lots of regulators in this space. We should not just think of it purely as the FCA, PRA and the Bank.

**Q47 Alison Thewliss:** That makes sense. Baroness Bowles, the Government's proposals put in a formal role for Ministers in policy development. Does that put the regulator's independence at risk to any extent?

**Baroness Bowles of Berkhamsted:** A lot depends upon how you handle that. It could be in terms of setting a scene rather than saying, "Do this", as happens already to the Bank of England. Regulators need to know what Government priorities are and to understand the economic situation of the day. As has already been said, regulators should get out more, if I could summarise part of what Jonathan and Kay have said.

As I referred to previously, they should have conversations around things so they are not always the people appearing at the conference delivering a speech and telling you how it is going to be; they are part of the broader process of developing ideas and there is more sharing around it. We have some brilliant people in our regulators. You can do that sharing without it compromising that independence. I do not know whether that is where it comes from and why they do not do it enough, but it is a very different environment from the European one.

I had a really constructive relationship with the regulators, and they would come to me for help when they had a problem. They would say,



"The Commission is bullying us to do this. Help me", which happened more than once. I do not consider that my or their independence was undermined by having those sorts of conversations.

It may be that you would find that the regulator might come to the Treasury Select Committee and say, "I am being bullied too much by the Government on this", but you want to know the reason. "What is it they want you to do that you are not?" In the way it is phrased in the consultation, the Government are trying to do it in a reasonable way. When I come to think about it when I put in a response, I might have some more structured suggestions around it. I am all for more of these conversations, and not just with Government.

**Q48 Alison Thewliss:** Given that Government will be involved before there is public consultation, is there a need perhaps to formalise this process more and make it more transparent and more obvious where those influences come, so we can be clear on who is pushing what and why.

**Baroness Bowles of Berkhamsted:** As I said before, we are an incredibly secretive country, and we are also very leaky about secrets. Heaven knows where we would be without those leaks. Yes, there is nothing wrong with being open about how you might want to regulate or how you might not want to regulate, or for the Government to be open about what they are saying. Secrecy is a really big problem.

Of course, as soon as you mention that something might happen then everyone imagines the worst of it. There will be some silly ideas, and they will go running around in circles. That happens an awful lot in Brussels. We have had newspapers full of it here because somebody comes up with a half-baked idea and says, "Wouldn't it be good if we did this?" and everybody comes forward saying how rubbish it is. Two years down the track, it is something that is completely different. We just ought to grow up. After that first bit of conversation has been released, you carry on; you do not say, "No, my first idea is right". You say, "Yes, let us take the germ of this and see where it goes". If we had more of that, we would have fewer misunderstandings and fewer missteps.

**Alison Thewliss:** I have run out of time on this, but I would be very interested to hear any further submissions, perhaps more formally to the Committee in writing, about transparency and how we can enhance it and make sure it is gotten right. Thank you.

**Q49 Mike Hill:** Thank you, Panel. It has been really interesting so far. In my section, I would like to touch on the world of lobbyists and take a range of views with my first question. Are politicians more susceptible to lobbying than regulators are?

**Baroness Bowles of Berkhamsted:** It depends on what you mean by "susceptible". Politicians will sometimes listen when regulators will not and sometimes they will uncover something that the regulator has not



taken notice of because they think it is some of the same old coming again.

As I have said before, the lobby is an enormous source of information, but you have to know how to be sensible about it. Just as when you are doing an inquiry on a committee you take information from all sides, parliamentarians are not so stupid as to just listen to one side of an argument. Parliamentarians are not susceptible in the bad expression of that word. You probably cannot find a body of people who are not more tuned to the public antennae. Often, through that, they pick up things that regulators miss. That is why I want parliamentarians to be more involved. Yes, they will have more lobbying directed at them, and rightly so. They will be able to sort out the wheat from the chaff.

**Q50 Mike Hill:** Dr Swinburne, looking at that, lobbying is a necessary thing, then, to inform the legislature of the different impacts of changes on many things and in many perspectives. Would you agree with that?

**Dr Swinburne:** We have to be careful as to what we define as lobbying. For me, lobbying is what Sharon has just referred to: it is a useful transfer of knowledge from stakeholders to legislators. For me, it was always a useful tool that was used.

You always—believe me—within the first couple of minutes knew where the vested interests were. If you did not, you halted the conversation to find that out. You needed to know exactly what perspective and what kind of lens they were putting on it to come to give you the information. It is very much a way of getting evidence and data to support decisions you might take further down the road. Lobbying is not a negative activity. In terms of the UK connotation, certainly if I read the UK press, “lobbying” is always a pejorative term; it is never done in a positive way.

I would turn it around to the other side. Where do you get your information from in order to make really good and rounded decisions? I would suggest that you would consult all stakeholders. That includes people who work in the industry. In fact, I would say it has to include people who work in the industry, on whom you are trying to comment. It also includes all those other stakeholders. Whether it is the third sector or affiliated consumer groups, whatever it is, you need to balance the opinions you are hearing.

You can take that evidence in lots of different ways. “Lobbying” implies that it is a one-on-one activity. Some people might feel uncomfortable with that. The Parliament dealt with it with a register of lobbyists, so you had to have somebody who was registered. They were accountable, and they were held accountable for their actions within the parliamentary estate.

There are other mechanisms, and they are probably more efficient. For me to get a real feeling on something like MiFID II, a piece of legislation about financial markets, I would host roundtables. Hosting a roundtable



with lots of contrarian views around the table is very useful, because then you have all the participants arguing with each other and making arguments against one another. You have a bunch of experts there. I was never that expert compared to them. You can take public hearings and written consultations and you can have high-level working groups. We should not underestimate the role of those high-level working groups in the European system. They are an incredible way of getting experts with diverging views to come together around a table to argue against one another and come up with a solution that works for everyone.

Lobbying, in the broader sense, is stakeholder engagement. I would prefer to see the positives from it and put safeguards around the activities. In the UK, you already have some significant safeguards with the anti-bribery rules and everything else that goes alongside any activity where someone comes to talk to you.

**Lord Hill of Oareford:** I agree with that. As a Minister, Commissioner or regulator, you should want to be exposed to as many views as you possibly can be. That is the first point.

Secondly, there is a bit of an issue, which, if you are alive to it as a Minister or whatever, you should overcome. If you take the European system, Brussels is the most lobbied place in the world after Washington. There tends to be a bias towards big, well-set-up and equipped people. People like Kay, Sharon and me, when I was there, are conscious of that. You work hard to make sure you get the widest possible range. A regulator that thinks it is part of a monastic order and that if you meet anyone from business you will be corrupted—ditto a Minister—is thinking about it in completely the wrong way. Politicians are not more prone to lobbying than regulators.

The key issues here are checks and balances, and being open whilst talking to people.

Q51 **Mike Hill:** I would be fascinated to hear, Baroness Bowles and Dr Swinburne, from a practical point of view, how the ECON Committee managed its relationship with lobbyists.

**Baroness Bowles of Berkhamsted:** This was something that was undergoing quite a lot of change whilst I was chair. As Jonathan has said, it is one of the most lobbied places on Earth. I always used to do quite a lot of reverse-lobbying, in that I went to them and asked them questions before they got to me with their packaged deal. That is when it works best. Then you know exactly to whom to go to check it out.

When we were doing legislation, the person who is the lead rapporteur especially, but also all the shadow rapporteurs, would get lots of documents sent to them. What we started doing in the ECON Committee was pooling those. One rapporteur invented having a website, so that became the norm. All the documents that everybody who was working on the dossier got were put on a centralised site, so that, first, everybody



## HOUSE OF COMMONS

could see what you had, and, secondly, everybody had access to the same information. That is not to say that there, presumably, were not other things that never got on there, but at least we were trying to make sure that, as far as we could, there was parity of arms in information available. Otherwise, sometimes small groups might get ignored or people from smaller countries left out because they were perceived as not having as much power behind them.

Once the rules came in about having to be on the list to be able to get into the Parliament to lobby, that did not work too well, because what happened was that everybody was meeting in cafes, because they were not yet registered as lobbyists. It was rather irritating when you got back from a committee meeting and found your assistants had pushed off because they had to go and meet somebody in the internet cafe, because they could no longer come and lobby in the Parliament. All good intentions get undermined. Possibly, that started because it was too hard to get on the register at first and it was teething troubles.

Sharing of information is quite important, as is being transparent and putting up who you have met with and things like that. To be honest, when I was chair of the committee, you should just have assumed I had seen everybody.

**Dr Swinburne:** Individual members and individual political groups have a choice to make in terms of their transparency with regards to their interactions with lobbyists. Given we had a co-legislative role within the Parliament, as rapporteur or shadow rapporteur, a decision was taken that my Conservative group in the Parliament from 2009 onwards published all lobbying contacts. Anybody you spoke to about a piece of legislation, or indeed anybody you spoke to who came to talk to you to ask you to intervene in any way, had to be recorded with the title and description of what you were talking about made public record. We published those every quarter for the 10 years I was there.

Interestingly, we were the only political group to formally do that. Individual members chose to do it separately. It meant that the journalists and other interested entities, particularly those who supposedly watch for civil liberties, would actually then use that data in strange ways. If you were doing a piece of markets-based legislation, I would have thought it was fairly obvious you had to meet the largest players in the marketplace in order to actually take evidence, to gain their experiences and to test certain things out. It was quite an amazing set of journalistic stories that would be produced as a result of these contacts that were published. You might want to think about publishing them, but be aware that they do not necessarily get a filter put to them. They do not take into account what you are working on in order to match who it is you have seen. There is a bit of caution to full transparency, but I certainly have lived with full transparency for 10 years and I would say it is the easiest way of doing it. Everybody knows who you are seeing and why.





**Mike Hill:** That is food for thought and valuable experience.

Q52 **Rushanara Ali:** Good afternoon. I am going to go back to competitiveness. I wanted to pick up on Lord Hill's remarks about needing to rethink the role of competitiveness. Obviously, we can see from the Brexit deal that financial services got a pretty raw deal. There are concerns about fragmentation and competition from the EU now. Can you just be very specific about whether you think that we now need to build in competitiveness within the framework for regulators? I would also be grateful if other witnesses, Dr Swinburne and Baroness Bowles, could set out yes or no in more precise terms. We have skirted around this, but it would be helpful to get a steer.

**Lord Hill of Oareford:** From my point of view, as I said before, I have not thought enough about it, and I do not know whether "competitiveness" is precisely the right word. Should you have, in the overall terms of reference for regulators, the ability, as part of a discussion, to be able to come back to them and say, "Have you properly taken into account the effect of what you are doing on the broader economy?" Yes, you should.

If you only have requirements to do with stability and risk reduction, particularly if it turns out, as part of this review, powers move from the Treasury to the regulators, you risk ending up with a system where there perhaps are not many checks and balances and where elected people do not really have many levers to operate, given that a regulatory decision—capital buffers or whatever it might be—has a massive impact on how much money a bank might be able to invest in a regional economy. You want to make sure, as we take responsibility for this stuff now, we do not construct a system where all of that is outsourced to a group of unelected people.

Q53 **Rushanara Ali:** I recognise what you are saying: we need to frame this correctly. Do you think that there is a risk, given the financial crisis, that some in Parliament, in the rush to try to rebalance some of the potential losses we are already seeing because of the Brexit trade agreement, will rush to build in competitiveness and forget some of the important lessons from the FSA experience of light-touch regulation—references have been made to that—and that we will end up creating more problems for the future. How do we avoid repeating history while recognising the new context and need for a new kind of business model in the new post-Brexit context?

**Lord Hill of Oareford:** It is an extremely good question. The fact that these things are not fixed and that they change over time adds to part of the definitional problem. The first reassurance is, if you want to be a global financial sector, which I assume we do, you are going to have to be consistent, broadly speaking, with global standards and have a reputation for being a well-regulated system. Otherwise, global capital is not going to want to come.





## HOUSE OF COMMONS

The answer to your question is one of the recurring themes throughout here. You need to be able to discuss these issues. You cannot create a secret regulatory garden, whichever way around it is. You put in place a framework that sets a high level and then you work at some of these things we have been talking about, like how you get your regulators in, how you make it more constructive, how you keep it under review constantly and how you involve the industry. Politicians, whatever their views, have the ability to keep checking, asking, challenging and balancing. If you keep working at that, you are more likely to end up in a better place. We will not get everything right, I am sure, but you at least have a balanced approach. You do not want to outsource these really important decisions to people over whom our elected representatives have no influence.

**Dr Swinburne:** There are two things here. I recently led a report on the UK competitiveness in financial services for TheCityUK, which has now ended up with HMT. That report was very much about what type of actions the UK can take, in terms of its primary legislation and in terms of its future strategy and objectives, in order to improve its global competitiveness. Outside of the EU, what might it want to do? None of that report is about deregulating. It is all about smarter regulation. It is about how you can make things more fit for purpose and have a proportionate regime that allows the global financial centre to really excel.

It is not just about the global financial centre excelling in today's world and today's environment, but how you set it up for the future digital capital market and the future world it needs to operate in competitively against everywhere else in the world. Regulators by their very nature tend to be fairly conservative. They have one eye to stability always, as a primary objective. If you want them to have an innovative agenda where they have to look to that future, they have to have an objective given to them that allows them to have some flexibility in how they approach this.

There is a competition objective within the PRA and the FCA at the moment. Both of them have a secondary objective where they have to facilitate either competition between firms or the FCA has to promote competition in the interests of consumers. There is a competition objective but not a competitiveness one. Having looked at the competitiveness agenda recently for the industry, I would suggest that the overarching policies and objectives set by Government and Parliament should be where that eye to competitiveness is. Therefore, nothing that they put in there should force the regulator. The regulator also should not put blocks up.

Sharon referred earlier to where they do not necessarily use all of their perimeter at this point in time. You need to make sure through oversight, like by your Committee and others, that, if they are given scope to utilise some flexibility, they are utilising it to the full. I would not give them a direct competitiveness objective, but I would set the policies overall in



such a way that they are in that framework and that they are then overseen to make sure that they use them to the maximum flexibility. It is not about deregulation; it has to be about smarter regulation.

**Baroness Bowles of Berkhamsted:** I do not know why people think competitiveness is always going to mean deregulation. That is not even what the FSA did. They just got an awful lot of things wrong and they had this deliberate light-touch regime that was at the heart of it. If you do not know where your biggest industry is as a country, you are in a bit of trouble. Obviously, you have to look at where other countries are taking competition from you and why, and address that in positive ways.

If you are looking at competition more broadly, there is nothing wrong with legislation laying out in more detail the various different aspects of it. For consumers in pricing and for choice, you have the development and encouragement of new products and industry. You have the benchmarking of where we are and what you could do if things are not going as one would like with productivity issues. What is the impact of change over stability? Above all, what is your reputation for good governance? If you want to be a global leader in financial services, then good governance has to be at the heart of it. Yes, you are going to say, "We are going to be outward-looking", which exposes you to more competition, but that means you have to sharpen your practices, in the good sense of the word, not the "sharp practice" sense of the word. We should not run away from this, but it would not be sensible to just put it in in such stark terms as were there for the FSA.

**Q54 Rushanara Ali:** That is really helpful. You can appreciate that some of our memories are pretty immediate in terms of the impact, as you pointed out, of the financial crisis and then a decade of austerity that our constituents have had to bear. It is a live discussion, and this is a moment to get it right, as you all have pointed out.

I just wanted to turn to a couple of other points. You talked about groupthink with regulators. You will appreciate over recent years, certainly on my watch while I have been on the Committee, there have been some big scandals, such as GRG, the TSB technology failure case and a number of others, where the FCA has had to give evidence and where there has been a great deal of frustration that consumer interest, the public interest, is not high up on its agenda. As all of you have pointed out, it is not an easy job being a regulator.

How do we make sure, as we look at how these reforms happen, that the FCA, as well as looking outwards internationally, is looking outwards into our regions and into the public and their interest, in a genuine sense? Otherwise, we are going to constantly run up against problems in relation to emerging issues—technology has been identified as a big emerging issue—and other areas that are unregulated and are causing huge headaches for the British people. What are the things that need to be done in this review to address this? How do we strengthen the scrutiny functions to make that happen?



**Baroness Bowles of Berkhamsted:** You strengthen the scrutiny functions first and then a lot of other things follow from that. That means you have to have more powers, whether it is to intervene, to have access to data so you can check whether what you are being told is true or not, or to have the support of some independent office, whether that be the NAO or something else, that can help you with some of the analysis of what is going on, checking that the perimeter has not been accidentally narrowed. You could perhaps have some oversight of that and those definitions to make sure it is not just left with the regulators.

Q55 **Rushanara Ali:** Baroness Bowles, you mentioned the point about secretiveness. This is certainly a problem that Parliament has experienced. The sovereignty of Parliament is under attack, frankly. It has been in recent years. Some of us—I am certainly in this category—feel less confident that we can get this right unless there is a willingness, particularly in Treasury and other Government Departments, to see the positives of building the scrutiny function, investing in resources. What would you say to our Ministers about the importance of scrutiny, given the big task at hand for our country in relation to financial services regulation and what they need to do? Otherwise, it is not going to happen.

**Baroness Bowles of Berkhamsted:** You have to go back to the start and say that we have lost a lot of scrutiny. Whatever you may have thought of the EU system, there is no doubt that, for those who wanted to bother to engage with it, there was a huge amount of transparency. That was the backdrop to our legislation. It is the backdrop to FSMA 2000. What is wrong with this consultation is that, going back to FSMA 2000 and even the 2012 update, that was against the background of what we got from Europe as well. It is very old-fashioned to be so lacking in transparency. I just do not see how we can be a global leader unless we mend our ways. It is as strong as that. If you want long-term success for the financial industry, without it just completely tearing to shreds what you care about in terms of social concern and other things, then the system has to be updated to give that power to the Parliament to do that useful scrutiny. This is not about getting at Government. It is not about getting at regulators. It is actually about being a world leader.

**Rushanara Ali:** Thank you. That is a great note to conclude on.

**Chair:** That brings us to the end of this session. Could I thank our three witnesses very much indeed for giving us your time this afternoon? It has been extremely helpful. It has been increasingly obvious as we have gone through the session just how complicated this whole area is. We have obviously touched on many important points, including the differences between the EU's system and approach and our own and the importance of technical depth when it comes to scrutiny and heading off any risks of regulatory capture. We have looked at the need to have a comprehensive approach to everything, but at the same time to have an efficient and speedy approach to expediting and scrutiny.



## HOUSE OF COMMONS

We have discussed the scrutiny and the role of the regulators, and we did get briefly into the foothills of the kind of structure that you say we might look at, including roles for this Committee, a sub-committee of this Committee, the House of Lords, the House of Commons and so on. It seemed to me that, the more questions that were asked, the more questions that were begged or hoveled into view. You have at least given us a sense of the enormity of the task that we all collectively have of getting this extremely important set of decisions right. Can I thank you again for helping us to navigate through some of this in this session? That concludes this session.