HOUSE OF COMMONS

Treasury Committee

Oral evidence: Future of Financial Services, HC 1158

Monday 26 April 2021

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Watch the meeting

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

Questions 56 - 121

Witnesses

I: Edwin Schooling Latter, Director Markets and Wholesale Policy & Supervision, Financial Conduct Authority; Vicky Saporta, Executive Director, Prudential Policy Directorate, Prudential Regulation Authority.

Examination of Witnesses

Witnesses: Edwin Schooling Latter and Vicky Saporta.

Q56 **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 two key witnesses this afternoon. I am going to ask each of them to briefly introduce themselves to the Committee.

Edwin Schooling Latter: Good afternoon. I am Edwin Schooling Latter. I am director of markets and wholesale policy at the FCA. The reason that role is most relevant to this afternoon's session is that I have been involved in financial market rulemaking for the past seven years, mostly but not all on the wholesale market side. That means that a lot of that work has been within the EU framework, developing the various regulations and directives that have recently been onshored, but some of it has been in areas that remained a national competence within the FSMA framework.

Vicky Saporta: Thank you for having me here. My name is Vicky Saporta. I am executive director of prudential policy within the PRA. The reason I am here is that my area is responsible for PRA rulemaking. Exactly like Edwin said, a large share of it, up until the end of the transition period, was within the EU framework, but not all of it. Some of it was being done under FSMA or other issues.

Q57 **Chair:** Thank you and welcome to the Committee. Could I start with a question for both of you? A huge amount of new regulation is going to come down into our regulatory authorities. As I see it, there are two critical questions here. First, when it comes to scrutiny, what should Parliament be scrutinising? Should it be the line-by-line detail or an ex ante approach to scrutiny, or should it be more of an ex post approach to scrutiny, where we let regulators largely formulate the regulations but we reach in where we think there is a problem and have a closer look?

Secondly, who should be doing the parliamentary scrutiny? Should it be this Committee or a sub-committee of this Committee, or should it be another committee? I would really value your thoughts on those two questions.

Edwin Schooling Latter: There were, in the end, perhaps three questions, but let me start with the line-by-line approach or a different mechanism of scrutiny. As you said, an absolutely enormous volume of legislation has been created through the onshoring process. There are over 40 separate files, a lot of which go into a lot of technical detail. There are a lot of lines.

To give you a flavour of that, there are things that you will, undoubtedly, be reasonably familiar with, like MiFID and MiFIR, but also the market abuse regulation, the securities financing transactions regulation, credit agencies regulation and the European long-term investment fund regulation. I could go on and on, but that gives a flavour of the degree of

detail. It will be challenging to do every single line of that, and it will be well worth exploring what the most expeditious way of bringing those regulations and directives to life in the UK framework will be.

Your next question was around ex ante or ex post. My headline answer to that is that there is a role for both. From our perspective, we would like to hear parliamentary views before the process of rulemaking is complete, not just afterwards. It is good to get things right from the outset rather than only in the light of experience.

The third question was on who should do that scrutiny. Properly, that is a matter for Parliament rather than us, so you should be able to give however much scrutiny, in whatever areas you would like to give it. Our role would be to be at your disposal, to answer the questions that you might have on the detail and on how that will be reformed into our rulebooks and in UK statute.

Q58 **Chair:** Can I focus on one element of your answer, this ex ante and ex post approach, which I agree with, and the point about the sheer volume? It is going to be very onerous to pick over every single detail of every single proposed change. Would there, therefore, be a mechanism that could see new proposed regulation coming through the system, reach into it ex ante to examine things that appear to be more potentially contentious than others and, at the same time, have ex post scrutiny further down the line when things are bedded in and perhaps issues have arisen?

Thereby, it would both try to head off potential problems at the start of the process and look at them when they occur further down the line, without falling into a situation where you are completely overwhelmed by a huge volume of detail. Does that summarise where you might be coming from on this?

Edwin Schooling Latter: In addressing that question, it is worth being aware of the current challenge of dealing with the stock. With our 40 files inherited from the EU acquis, how are we going to deal with that process of making the onshoring real, in the sense that the rulemaking powers are then distributed appropriately across rulebooks and some parts remain in statute? Then there is the ongoing work that will exist ever afterwards, when it comes to changing elements of those rules.

Probably the relatively easier part of that is the future ongoing process, in that, as now under FSMA, whenever the FCA wants to change a particular part of the rule framework, it will have to do so through the process set out in FSMA. We will have to do the public consultations, respond to the feedback we receive and do the cost-benefit analyses before making the rules. That structure provides some really good opportunities for MPs or, indeed, parliamentary Committees to engage ex ante in the rulemaking process, as well as identifying and coming to us with problems that have been seen ex post.

The advantage in the longer term is that, hopefully, the flow of change will be relatively measured, or at least not more than can be digested, but we also have the near-term challenge of doing that real onshoring. There is a digestion challenge in terms of the sheer volume of legislation that needs to be brought into the rulebook. In a way, the Financial Services Bill, which many of you will have been engaging with, is a taster of some aspects of that challenge. Quite a few elements of that look at different EU regulations and try to change them in relatively small and narrow ways even, but you can see that that is still a big piece of legislation that has understandably involved a lot of time and input from all sorts of directions.

Q59 **Chair:** That is really helpful. I am going to put the same set of questions to you, Vicky, and ask for any observations you have on Edwin's observations.

Vicky Saporta: I agree that there is a separate issue, after Parliament has looked at the future regulatory framework that Government have consulted on and the distribution or allocation of responsibilities between the Government, Parliament and the regulators is agreed, about how we execute that distribution.

Issues might be a bit more complex for the FCA than for the PRA, because the PRA essentially looks after the safety and soundness of banks and insurance companies. What has been onshored at the moment is mainly the bits of Solvency II that went into primary and secondary legislation, and then the various bits of the CRR and banking regulations. It is pretty straightforward, if there is the will, to transfer it appropriately to the regulators, if that is what Parliament decides, but that needs to be done first.

At the moment, the rulebook that we have inherited from the EU is a strange patchwork, with a lot of detail on primary legislation, which can be changed only through Parliament. That impedes dynamism and agility, and requires enormous amounts of costly co-ordination between Government and the regulators.

In terms of ex ante and ex post, both have a role. It is important that ex ante scrutiny respects the operational independence of regulators, if Parliament decides that operationally independent regulators are the way to go, which is the global standard, but that does not mean that Parliament should not play a role ex ante on the big issues, because the source of regulatory legitimacy is Parliament.

On how to do it, this is ultimately for Parliament to decide, but if it was decided that you would want to have an ex ante view and a preview of the bigger issues, or those that you think, from a parliamentary perspective, require more scrutiny, we could certainly facilitate that through repurposing, for example, the PRA business plan that we submit each year for this purpose.

There are other mechanisms, and we will do whatever you decide. Then, of course, we can stand in front of you—you have oversight of the Bank of England and the PRA, among other things—or another committee, in line with whatever Parliament decides is appropriate, to answer any questions that you have on our plans. Thereafter, as we consult on proposed rules at any particular point in time in the consultation and draft rules process, we will stand ready to come and respond to your questions.

I should mention, however, that financial regulation, as you know, is quite complex and, in certain areas, very technical. If Parliament decided that it wanted very thorough scrutiny of what we do, which we would welcome, particularly if our powers are expanded, because more of the acquis is passed on to us, as the Government's FRS consultation suggests, there needs to be some resource or support for the relevant parliamentary Committee, be it yours or some other Committee, whichever is considered more appropriate, to advise you, scrutinise us and hold our feet appropriately to the fire.

Q60 **Dame Angela Eagle:** Regulation is very technical and can seem very dry, but the outputs are very important and highly political. It is very important, for example, that our financial services industry provides the outputs that help rather than hinder our society. Vicky, you are doing prudential regulation. If you get that wrong, the consequences can be pretty disastrous for all of our constituents. Although it sounds dry and technical, it is really important. How can we best do it, with added support and technical support, so that we can keep you on your toes?

Vicky Saporta: It is up to you. At the moment, as the PRA—I am sure the FCA has parallel processes—we set out in our business plan what regulations we intend to do over the year. Jointly with the FCA and other regulators, we are now publishing a regulatory initiatives grid, which sets out all our joint initiatives and plans. We can supply you with more information, if you wish, with a little more detail on what we plan to do. That can then give you the opportunity to decide what questions you would like to ask us about our plans, before they are formulated. Once the plans are formulated and proposals put in place, we consult, taking into account the statutory objectives and the have-regards that you have given us.

Q61 **Dame Angela Eagle:** Because this is so dry and technical, your consultations tend to be responded to only by lawyers and people with an interest in a particular side of financial services. The consumer rarely gets a voice. Our constituents can have a voice only via us representing them in Parliament. How can we best ensure that those voices are heard among all the dry technicalities that, by definition, have to be gone through to regulate something as complex as financial services?

Vicky Saporta: You are right. Our consultations tend to be responded to mainly by those who are directly impacted, but others with a particular interest contribute to them. The FCA, which has a particular objective

around consumer protection, has broader mechanisms to take into account consumer panels and other views. All I can say is that we intend to share with you the impacts of our policies when we consult in the most appropriate way. We do cost-benefit analyses before we do rulemaking.

If you would like a more high-level way of describing what we are going to do, we stand ready to repurpose our business plan in an ex ante way, so that you can have a better understanding of what we plan to do and which actors among your constituents and the various interests are more likely to be impacted by them. You can then decide what to question us on, but you will need technical support to do that.

Q62 **Dame Angela Eagle:** Exactly, but, given that regulation is not done in a vacuum and, as you pointed out before, the powers to regulate are given to you by us, we have to make certain that the philosophy behind regulation and the way in which you are regulating is appropriate.

Mr Schooling Latter, your evidence to the Committee tends to suggest that we get in the way of you doing your job. There is almost a hint of, "You will make things worse if you stick your nose in too much". Can you say what you actually mean? The way I read that was that we are a nuisance that needs to be swatted away.

Edwin Schooling Latter: I hope that it did not come over like that to others. It certainly was not, in any way, the intention of what we wrote. Let me be clear that we positively welcome parliamentary engagement and scrutiny. You set our objectives. Markets that work well and consumer protection are the first of our objectives and ones that are defined by you. Therefore, you have a particular and special place in our range of stakeholders, and we want to make sure that we deliver on those. I want to repeat that: you are definitely not in the way. We positively want to hear from you.

There are ways in which the framework can be established that require you to be involved in more or less detail. The more-detail model is the way the co-legislators have done it in the EU; the less-detail model is more like the FSMA model that we have for some other parts of the framework here, where you set the objectives that you expect us to achieve. You might set a few more specific items that you want to have established.

For example, for the senior managers regime, Parliament said, "Financial firms cannot appoint people to senior management positions without an FCA approval". That is in statute. "The FCA is to work out which positions need to be approved by the FCA", so you delegate some of the detail to us. Then you say, "However, you can require FCA approval only for positions that have a material impact on the business, on other businesses or on the interests of the UK". You have a delegated framework and, if we get that wrong, you call us up and hold us to account.

Q63 **Dame Angela Eagle:** Is it worthwhile perhaps setting up an independent body that reports to Parliament, independently of regulators, about how things are going, so that we can have the technical support that both of you have mentioned in your evidence today, given the very technical nature and the sheer volume of the regulation that you are doing?

Edwin Schooling Latter: I would be a little wary about setting up additional bodies, because there are already quite a lot of parties rightly and properly engaged in the process—the regulators themselves and Parliament. For example, we have independent members on our board, which has the rulemaking power for the FCA. We have the statutory panels. Vicky referred to our statutory consumer panel earlier. We have panels from various bits of the industry, small businesses and market practitioners, which also have a role in holding us to account. We are subject to independent reviews, some of which there have been recently, and a complaints commissioner. Judicial review is another power that can be applied to us.

There are quite a lot of checks and balances. While we want all of those to work effectively, we would be concerned about anything that made it more difficult for us to make changes to the rules when you and other stakeholders wanted us to do that. We are rarely criticised for being too quick to act in making sure that our regulatory framework keeps pace with the needs of the consumers and businesses that it needs to serve.

Q64 **Mr Baker:** I want to return to this question that almost answers itself: would you like some more parliamentary scrutiny? You have been very generous to us so far. I hope you will not mind me saying that, when we say "Parliament has decided" or "Parliament has said", everybody knows that the Government control the business of Parliament, and the Government have a majority of 80. For the most part, Government just get their way.

Edwin, can I just put to you something that the FCA said in written evidence? The submission says, "We would be concerned if any additions created overlapping or conflicting obligations, or duplicative mechanisms, prevented a balanced representation across all our stakeholders, reduced our operational and regulatory effectiveness to address emerging harm or meet changing circumstances, or introduced additional costs that would be borne by firms and consumers". That is quite a long list of reservations. Could you explain to the Committee what you really fear? What is the heart of your concerns when you go through that long list?

Edwin Schooling Latter: The thing that would concern us is the point at the end of my last response to Dame Angela Eagle. If there are further mechanisms that mean it takes more time for us to change the rules, that would concern us in terms of being able to deliver against the objectives that you in Parliament have set for us. As I said earlier, we are rarely criticised for acting too quickly and are quite often criticised for being too slow to make sure that the framework is up to date. That is the heart of our concern. It is not a concern about scrutiny per se.

Q65 **Mr Baker:** It is not a concern about being scrutinised.

Edwin Schooling Latter: No, absolutely not.

Mr Baker: It sounds to me like it is fundamentally a concern about whether the scrutiny you face allows you to get on with the job.

Edwin Schooling Latter: That would be a much better description. We would like to have the scrutiny and be able to get on with the job.

Q66 **Mr Baker:** I am a free market liberal and I do not mind saying that. I am concerned about people's capacity to run their own lives and be accountable for bearing the costs of their own decisions within a framework of law. I am slightly concerned about this one point, so I want you to clarify it: you are not proposing to start changing the rules of the game very quickly, are you?

Edwin Schooling Latter: For any change in the rules, we would still have to go through the process rightly set out in FSMA to make our proposals public, do a cost-benefit analysis as part of those public rules, seek feedback and respond to that feedback before making the rule changes. All the relevant stakeholders who might be concerned about that, perhaps in industry or in Parliament, would have the opportunity to engage in that process with us.

Q67 **Mr Baker:** Angela has had to go off to some other business now, which is entirely reasonable, but she raised the point about the regulatory philosophy. Recently, in a paper for Politeia Barney, Reynolds floated this idea of going on to an English common law tradition of regulating. Do you recognise the argument that we have been regulating very much in a civil law tradition through the EU, and we now have an opportunity to settle our regulatory philosophy much more on an English common law basis?

Edwin Schooling Latter: That is quite a big question, and I would definitely benefit from having my general counsel with me to help answer it. We have very strong demand from our stakeholders, particularly in industry, to have clarity on what the regulations are. We also face very strong demand from other stakeholders, including on the consumer side, to make sure that that framework is comprehensive. To meet those two objectives, starting with the current framework but making sure we can develop it in a dynamic way, feels like the right place to start.

Q68 **Mr Baker:** I would commend to you Barney's paper for Politeia. I hope you feel able to have a look at it.

Edwin Schooling Latter: Indeed I will.

Q69 **Mr Baker:** I do not wish to repeat that list of reasons, but it sounds like a list of reasons very similar to the ones that are put forward against additional regulation. I have to say that, at the moment, we have a problem, in that we have so much regulation that it is rather difficult for you to enforce all of it on so many market participants. There is a deeper issue here. Do you recognise that this list of potential concerns that we

could get in your way is rather similar to the list of reasons why we should not have more regulation?

Edwin Schooling Latter: You highlighted in that list the fact that we would be concerned about mechanisms that imposed extra costs, which have to be borne, probably in the first instance, by firms but, in the end, by their customers. There is a read-across to why it is important that the regulatory framework is not more extensive and complicated than it needs to be. There will be opportunities, as part of onshoring, to simplify some bits of the regulatory framework that we have inherited from the EU, and a number of cases where the current degree of complexity is not fully justified.

Q70 **Mr Baker:** The Committee has received many evidence submissions in favour of creating new, specific parliamentary Committees to scrutinise the work of the regulators, in addition to the Treasury Committee, or a new body to assess whether the regulators are carrying out their remits. What would be the Bank's view of this proposal for additional parliamentary Committees?

Vicky Saporta: To be frank, this is not an issue that the Bank and the PRA feel best placed to answer. It is for Parliament to decide. However, it needs to be a Committee that can also understand the policy issues, the way that we have gone about solving them and whether we have gone about solving them in the right way. As I mentioned to Dame Angela Eagle, it must be a Committee that has the time, expertise and support to do that. As you can understand, it is difficult for me to speak in favour of X or Y Committee. It is the features that are the most important to us in order to get the right scrutiny.

Q71 **Mr Baker:** I do not want to torture you with questions that you do not feel you can answer, but from my own point of view, knowing how much time is required on the Treasury Committee and how much effort is required to develop sufficient expertise to ask the questions that we do, I would put on the record that I do not think there is very much chance of forming a committee with the time or the expertise to get into even more detail on what you do. Could you try to articulate where the scrutiny gap will be if Parliament does not put a Committee in place? From your point of view as the PRA, where will there be a scrutiny gap if Parliament does nothing in relation to having a new Committee?

Vicky Saporta: At the moment, if the Government's proposals for the future regulatory framework get through and are legislated, because they are Government proposals at the moment, subject to consultation, the PRA and the FCA will get more powers than we currently have. At the moment, a large share of the rules and regulations that are on the statute book and the rulebook were being decided in the European Union. Within the European Union, the European Parliament had a very detailed, arguably too detailed, role through the ECON committee in scrutinising rulemaking. The Government themselves played a role through the role that they had in Council.

If all of that is transferred to us, it makes sense to have a commensurate increase in the level of scrutiny that Parliament does of us, given that it would have conferred on us more power. That could be done in a way that is appropriate to the British model of regulation, which is more a FSMA style of model, whereby Parliament sets out the framework and we are scrutinised through you. That is the rationale.

Q72 **Mr Baker:** Can I just press you one point? You just said that the European Parliament was arguably looking at things in too much detail. Could you briefly elaborate on that argument?

Vicky Saporta: The ECON committee was supported by a very large number of staff. Each MEP and their staff had a lot of people and were looking at every detail of very technical rules and regulations. It is not for me to judge what the EU citizens say, but you could make the argument that the cost of that amount of scrutiny is disproportionate to the benefits. Particularly if you are a single country, and no longer have to worry about the single market and ensuring that every single rule applies in the same way to Greece as it does to France or Germany, there is a lesser need to ensure that the rules have gone through the European Parliament.

Q73 **Mr Baker:** Edwin, where does the FCA stand on this question of new parliamentary committees? Where would the scrutiny gap be if we did not do something?

Edwin Schooling Latter: First, I am going to agree with Vicky that it is a matter for Parliament to decide through which Committees it wants to scrutinise us. We also have the Treasury Committee, in our case, and quite a lot of our business is covered by the Work and Pensions Select Committee, to give another example.

From where I sit, the way that challenge is changing is in terms of not so much the type of scrutiny that is required but the breadth or width of the subjects that need to be covered. I do not sit here thinking that the scrutiny we get through this Committee or through the Work and Pensions Select Committee does not work. It feels very real to us, certainly at this precise moment, as well as more generally.

There will, of course, be an extra 40 files that probably warrant a little bit of parliamentary engagement. How do we address that challenge? I know that the ECON committee, which we have been talking about, had quite a large and well-resourced secretariat to help with that. It was able to call on a relatively rather large number of MEPs as well.

Q74 **Anthony Browne:** My question is going to focus not on future regulation but on the stock of EU regulations and directives that we now have in UK law. They were enshrined in UK law to ensure continuity when we left the EU, so we have a lot of very technical standards that are imprisoned in primary legislation and that you, as regulators, cannot change, even if you wanted to. How much legislation needs transferring out of primary

legislation into the regulators' orbit?

Vicky Saporta: From the PRA point of view, you are right that quite a lot of it is locked into primary legislation and quite a bit in secondary legislation. The Financial Services Bill unlocks, roughly speaking, a little less than half of the banking regulations, which is quite significant. What will then remain is another half banking and the insurance activities.

As far as the PRA is concerned, this could be done through one piece of legislation, when you decide to implement the future regulatory framework and transfer the responsibility to us with the appropriate objectives, have-regards and scrutiny. It could be done in one go, which would have the advantage that we could start the process of rationalising it appropriately and making the changes that we need to, in order to maintain the dynamism of the financial services industry.

Q75 **Anthony Browne:** Edwin, the FCA said it would take several years to do the transfer. How do you see the scale of it and why would it take so long?

Edwin Schooling Latter: We are conscious that there are those 40 files. In probably all those cases, there is quite a significant part of, in EU terms, level 1 regulation that needs to be transferred on to the rulebook. As I mentioned earlier, some of those regulations are very firm-specific and firm-facing—the benchmark regulation, for example, which applies to benchmark administrators, the credit rating agencies regulation and the central securities depository regulation.

In terms of how that is done, there are quicker and more line-by-line ways of doing it. Which of those is chosen is, in the end, a matter for Government. We would like to see the task done in as effective and efficient a way as is possible, so that we then have the ability to keep that framework up to date in a dynamic way, rather than, for example, coming back to Parliament because we want to change the timing of a pre or post-trade transparency waiver for a derivatives transaction or something. That could be done in one lump or in chunks, whichever best serves the objective of getting this rule set into a place where it can be kept up to date.

Q76 **Anthony Browne:** Which do you think would best serve the objectives?

Edwin Schooling Latter: That partly depends on how it is done. If Parliament wanted to scrutinise each of the different files and we tried to do them all in one block, we might not get to number 40 until quite a long way down the track, and it would have been better to get numbers 1, 2, 3, 4 and 5, which might be the most important ones, done first.

Q77 **Anthony Browne:** With each file, you will need to decide what remains in primary legislation and what would then go into the rulebook, as it were, so you just have to decide where the line is that separates it out.

Edwin Schooling Latter: Exactly, yes.

Q78 **Anthony Browne:** If you did it bit by bit, would you change regulations when you needed to do it and when they came into your rulebook? Would it be on a demand basis or would you just start stacking up with a Bill every three months and transfer any bits over?

Edwin Schooling Latter: That is a good question. The broad picture would be one of continuity. On the other hand, if we knew there was a case to change something, why not take the opportunity to do that while the exercise was being conducted?

Q79 **Anthony Browne:** Vicky, would you look to make changes as it was transferred by the Government to the Bank of England and the PRA? Would that be a time to make changes or would you just transfer it en masse, as you wanted to, and then make changes at leisure afterwards?

Vicky Saporta: Even transferring it en masse requires some changes to make sure that cross-references work and that it functions in rules as it functioned when it was onshored into primary. As you will know, Mr Browne, the onshoring exercise in itself was quite an involved one. It involved 68 statutory instruments, and our lawyers and specialist teams were working through 10,000 pages of rules and another 6,000 of technical standards. That is just for the PRA, which is banking and insurance. Even the simple transfer with no change of policy will involve a similar process.

One would need to weigh up whether, at the same time, it is more resource efficient in the long term to change it and put it in the style that your vision of the final rulebook would be. The trade-off is between doing it up front, which is, in the long term, more resource efficient but, at that particular point, more expensive, and doing the technical bits and then changing it each time you want to change policy. We are considering and doing resource estimates about what these two plans would be as we speak. The Bank of England and the PRA do not have infinite resources either, so we will have to see what makes more sense.

Q80 **Anthony Browne:** We received written evidence from Aviva, the insurance company, and it said it would like some detail left in statute to allow legal review of regulator rule interpretation. If there was no detail left in statute, it would have no legal basis to challenge your interpretation of the rules. What is your view on that? Would you welcome that?

Edwin Schooling Latter: I would want to see the specific proposal. There will still be some bits left in statute. That is not in doubt. You are going to have the trade-off that we were talking about earlier in terms of the degree of detail that those go into.

Q81 **Anthony Browne:** Can I ask the question in a slightly different way? This is at the heart of whether you are transposing or creating new legislation. Exactly how do you define the high-level objectives and responsibilities that should be in statute? It is the high-level objectives that I am wondering about. To take prudential regulation—the stuff we

used to talk about, Vicky, when I ran the British Bankers' Association—you can have the high-level objective of ensuring financial suitability. You can then say that another high-level objective would be to transpose the Basel III regulations into UK law, or that the Basel III regulation should apply only to international banks and not challenger banks. Then we have other bits like the ring-fencing regulation, which was quite a detailed Act of Parliament that you have had to interpret as well.

Where is the line between what is high level and should be in statute, and what should be in regulation? I know we have been using the phrase "firm-facing", but there is a lot of stuff, like the ring-fencing regulation, that was very firm-facing and really could have been done only at a legislative level, as an objective.

Vicky Saporta: You are quite right. Even in the space that was not occupied by the EU, different approaches have been taken historically—the FSMA model, if you want—to the amount that is in statute vis-à-vis the amount in rules. Two recent examples that have affected the PRA are ring-fencing and the senior managers regime, and the approach is different there.

On the senior managers regime, what is in statute is very high level: you should have a senior managers regime that makes people responsible etc. All the detail and the substance beyond the high level is left for us to do, together with the FCA. When you look at ring-fencing, more detail is in statute. For example, it is defined in statute which activities should be in the ring-fenced bank and which outside. The regulators have had to flesh it out, but the relative allocation was more balanced in the case of the senior managers regime.

In the case of ring fencing, this made sense, because it was a really big structural change for the financial services industry, where property rights were affected. It seemed to us to have more parallel with the Regulated Activities Order, which is a piece of statute that says what activities are regulated. This is something that we can understand Parliament wants to decide upon. With areas such as the senior managers regime, the approach that was taken equally makes sense.

My view—a view that Sam Woods and others have expressed in public—is that the vast majority of prudential regulation that currently exists in primary legislation could be expressed more in the senior managers way, although you could choose to differentiate between insurance and banking in some ways. For example, in insurance, you might want to say something about the valuation regime being market-adjusted or wanting to have more of a matching adjustment—I do not want to go into the technicalities—than you do in banking. Broadly speaking, what is now in primary legislation could be well done under the SMR regime rather than under ring fencing.

Q82 **Anthony Browne:** Thank you for a very full answer. I have run out of time, but I want to give Edwin a chance to come in, if he has anything to

add to that about exactly how you define "high level".

Edwin Schooling Latter: A very short addition would be that, as Vicky said, there is regrettably no simple, one-size-fits-all solution for this. There might be a number of reasons why it was positively a good idea to have something in legislation itself. Parliament might decide, with the Government's recommendation, that a particular measure needs to be embedded in law, because it is a public policy priority. We might come along and say that, under these devolved objectives, it is difficult for us to take the action that we want to take, unless you legislate for it: for example, the cap on early exit charges from pension schemes. It is positively good for us to get written into legislation, "That cannot be higher than X".

Anthony Browne: You have to do it on a case-by-case basis. As I say, I have run out of time. Thank you both very much.

Q83 **Harriett Baldwin:** My questions cover pretty much the same areas in terms of ring fencing and the senior managers regime, so I will perhaps elaborate on some of the questions that Anthony did not have a chance to ask. I want to ask about the consultation. The Treasury has said that the ring fencing has constrained the PRA, Vicky. Have you been constrained by ring fencing? Can you give some concrete examples of how that has constrained the Bank?

Vicky Saporta: As I tried to explain to Mr Browne, the way that the ring fencing regime was set up was fine. We have not felt particularly constrained. The regime has been operating since 1 January 2019 and we have to be humble.

Harriett Baldwin: It is early days.

Vicky Saporta: It is very early days. We might see constraints that we have not yet seen. Ring fencing told banks that they had to split their activities and set up entirely new entities, so it is appropriate for Parliament to make these big framework decisions.

Q84 **Harriett Baldwin:** Was the Bank opposed at the time? I do not recall that it was.

Vicky Saporta: No, not at all.

Q85 **Harriett Baldwin:** Are you pushing now to have it taken out of statute?

Vicky Saporta: No.

Q86 **Harriett Baldwin:** Edwin, the senior managers regime is, again, another piece of domestic rulemaking. As we heard, it is defined in statute. Does it lack the flexibility that you need to do your job?

Edwin Schooling Latter: This is an example of a regime that has been created in quite a flexible way. It is a good regime, which has made and is making a positive difference to the way that we can regulate by holding individuals, not just firms, to account. As we were discussing earlier, the

legislation sets some quite high-level parameters. Firms cannot appoint senior managers without approval from the FCA. The FCA defines which senior managers need that approval, but limits the FCA's ability to say, "We need to approve absolutely everybody" by saying that it has to be somebody who has a significant impact on the business, other businesses or the wellbeing of the UK.

Q87 **Harriett Baldwin:** Vicky, I seem to recall at the time that the Bank of England had a lot of concerns about the bonus cap. Does that remain something that you are concerned about?

Vicky Saporta: As you know, this has been onshored in European legislation. This issue is and always has been, in all frankness, quite a sensitive one. At the time when the European legislation was being agreed, we expected that it would lead to more pay being done under fixed and, therefore, that it would reduce the flexibility that banks had during shocks and crises to reduce remuneration if it was flexible.

Q88 **Harriett Baldwin:** I remember you making that point at the time, which is why I am asking if you are advocating that it be changed now.

Vicky Saporta: We are not forcefully advocating it now as one of the primary changes, but, at the time, we made the argument that, for us, the structure of pay was more important: long deferral periods, malus and clawback. In the post-Brexit agenda at the moment, we have other issues that we are prioritising, but the arguments we made then stand.

Q89 **Harriett Baldwin:** What are the top three things that you would take off the domestic statute book, if you could persuade us to do that?

Vicky Saporta: I would unlock the rest of the banking acquis and Solvency II. One of the reasons for doing so is not least to enable us to simplify the regime for smaller banks and building societies. Sam Woods mentioned this at his Mansion House speech. It is something that we would have liked to look at and execute in an effective way. Indeed, we are issuing a discussion paper about this in the next few days to generate debate. For this to be executed, it will require rulemaking. At the moment, some of the powers are with Government through secondary legislation, some with Parliament and some with us.

The second initiative, which we have already started working on, after the Government issued a call for evidence in October, is on insurance and making Solvency II more targeted and fit for purpose for UK firms, while maintaining the broader philosophy. Again, that will necessitate an unlocking because, at the moment, where it is sitting, it is quite unwieldy. Some very detailed stuff is sitting on the statute book. Some is sitting with us and some in secondary legislation.

Q90 **Harriett Baldwin:** That is two. Edwin, do you have a top three of things in domestic legislation that you would change, now that you can?

Edwin Schooling Latter: Let me give you a couple of examples relevant to this future regulatory framework. In MiFID and MiFIR, the statutory level contains an enormous amount of detail across the regime for transactions in wholesale markets: precisely when a deferral from pre-trade or post-trade transparency can be waived or recalibrated to a different length, or the precise procedures for determining whether a particular financial product has to be traded on a platform. Those, to us, feel like things that are more sensible to delegate to the regulator, under objectives set by Parliament.

Another one would be the prospectus regulation, which currently sits in primary legislation: precisely when a security has to have a prospectus, the number of people and the amount. It came up in Lord Hill's review. There is another topical example, if you like.

Q91 **Emma Hardy:** Good afternoon. Edwin, the FCA has three objectives, eight principles and must have regard to seven aspects of Government economic policy, including having regard to levelling up, which must be super tricky to define. How does the FCA ensure that each of these factors has been considered when setting rules?

Edwin Schooling Latter: That is a great question. At a very practical level, whenever people in our policy-making teams put forward a proposal for a rule change, they have to fill in templates that explain why that proposal meets our statutory objectives, advances competition or at least is not anti-competitive in its effect. Those templates also call out the various have-regards and the regulatory principles that you have in FSMA. We are in the process of updating them to make sure that they reflect the very latest have-regards in the Chancellor's remit letter of last month, including the net zero ambition.

Q92 **Emma Hardy:** Easy then, yes. Vicky, the Bank of England submission to the inquiry states, "We do see some risk that proliferating objectives and 'have-regards' could dilute our effectiveness". Could you explain this further?

Vicky Saporta: Let me restate that we will, of course, assess our objectives and have-regards that you give us, whatever these are. You are our source of them. Having clarity of objectives and goals helps in focusing regulators. There is a risk that, if we are given too many objectives and too many have-regards, there will be a very large number of trade-offs between them. If there is no clear hierarchy, it will dilute our main focus.

As a prudential regulator, we are primarily concerned about low-frequency but very high-impact events, like the financial crisis. The focus on that is quite important. People have written about the fact that it was not the only or even the key reason for the financial crisis, but the fact that we had a single regulator at the time, which had a range of objectives before the crisis and no singular focus on a small set, could have diverted focus from safety and soundness and financial stability.

Q93 **Emma Hardy:** To double-check what you just said, would you say that the number of different focuses that the regulatory body had could have contributed to the lack of regulation in the financial crash? Is that what you are saying? Is there a fear, therefore, that all these have-regards that the Government are introducing now could lead to the same outcome?

Vicky Saporta: Yes, respectable arguments have been put forward that it could have contributed, although it was not the main cause, by diluting the focus on safety and soundness and financial stability at the time. However, the number of have-regards that have been introduced in the Financial Services Bill does not pose a big risk, because the statutory objectives remain unchanged and there is not a large number of have-regards. However, if one starts increasing the number, one needs to be mindful of avoiding a Christmas tree effect. The statutory objectives still remain quite focused, as was intended after the GFC.

Q94 **Emma Hardy:** The PRC has a primary objective, a secondary objective and an insurance objective; it must maintain regard for a series of regulatory principles, and like the FCA must have regard to seven aspects of Government economic policy. How does the Bank ensure that each of these factors has been considered when setting rules, especially given the point you just made that, if it does not consider them effectively when setting rules, we could face another appalling situation like we did in 2008?

Vicky Saporta: We put out a consultation in January about updating our rules for international standards under the Financial Services Bill legislation and the have-regards that were added to our regulatory principles. We set out how we looked into the trade-offs. The material is 29 pages in an annexe to the consultation paper. This is a job and we are going to do it, and we are going to bring the evidence, but going beyond that could pose certain challenges. We need to respect the have-regards, but if they impinge on the primary and secondary objectives, materially, those are the ones that we need to pursue. That is why clarity on the primary and secondary objectives is paramount.

Q95 **Emma Hardy:** You are setting the hierarchy yourself as a bank in terms of what it is that you follow.

Vicky Saporta: No, the hierarchy is a legal interpretation of the fact that you have given us two objectives: a primary and a secondary, which is subject to the primary.

Q96 **Emma Hardy:** Edwin, how do you manage scenarios in which one or more of your objectives, principles or have-regards are in conflict with each other?

Edwin Schooling Latter: They can be in conflict. Vicky is right that it helps that have-regards are of second order compared to the statutory objectives. As she mentions, for example, a competitiveness have-regard could be in conflict with, in our case, a market integrity or consumer

protection have-regard. Let us say that it is about the amount of capital that a firm has to hold. Consumers get better protection and markets are less likely to suffer if there is more capital, but that makes it more expensive to do business, which has a negative effect, potentially, on the attractiveness of the UK as a place to do business.

Looking ahead, the net zero have-regard, which we welcome, would usually sit very easily with consumer protection and markets that work well in the interests of consumers, but let us say that it pushes the financial system towards prioritising financing of green investments: households that have low emissions or that do not rely on fossil fuels. How would that leave mortgage-holders who were in households that were not very efficient in one of those aspects, but were potentially vulnerable and still needed consumer protection? There will be balances to strike and we will have to do so in line with the legal requirements, but also sensitive to the ambitions and objectives of wider public policy.

Q97 **Emma Hardy:** It seems that you are saying that you like the hierarchy in terms of objectives, and that it gives clarity, but, when it comes down to it, the have-regards will be dismissed if they come into conflict with the primary objectives. That makes me wonder out loud how meaningful the have-regard principles are to start with. What would it change in practice for regulators to have an objective for financial inclusion? How might you seek to reflect that in policy-making?

Vicky Saporta: Financial inclusion is very important to achieve. With all due respect to Edwin, my view as a regulator is that it sits more comfortably with a regulator that has a consumer protection objective than one that has an objective of contributing to financial stability, safety and soundness. I would like to defer to Edwin, because it is more aligned with consumer protection.

I could come back to your point, if you would like me to, on what the point of have-regards is. It is a fair and well-put challenge. The point is that there are circumstances in which your primary or secondary objective might not be particularly impacted, but something that you do might have a big impact on one of your have-regards. In that particular case, the have-regard is the one that moves your policy.

Edwin Schooling Latter: Have-regards will not be dismissed. They are very real and we take them into account in a very real way. If they are in direct conflict with one of our statutory objectives, however, it is difficult and probably improper for us to prioritise the have-regard and ignore the statutory objective.

Financial inclusion is a very real consideration for us already, by virtue of two facts. One is our consumer protection objective, which financial inclusion is, in large part, about. We also have to take into account the public sector equality duties, as do all public bodies. Internally, the combination of those two things has allowed us to be quite front-foot on financial inclusion matters, such that we have quite good scope to take

forward issues of importance to financial inclusion even within the current framework.

Q98 **Julie Marson:** Edwin, as you know, the Treasury has consulted on specific activity-related regulatory proposals. In your response to the Treasury's consultation, you expressed some reservations about that proposal. Could you outline your concerns about that approach?

Edwin Schooling Latter: During this debate, one of the ideas put on the table was about whether we should have different have-regards or objectives, perhaps, when making regulations for different parts of the overall financial sector. That is something that we are a little nervous about. We regulate and supervise a wide variety of types of firms. There would, therefore, be quite a lot of additional complexity for us, if a slightly different set of objectives, have-regards or considerations applied to different firms.

It is not just a selfish point. If those differences in objectives and rulesets were based on type of firm, for example, we would create a regulatory arbitrage where a firm that is not in that category might find it easier to do business than a firm that is, because one is subject to those constraints and the other is not.

If it is done on the basis of activity rather than type of firm, we will probably have a slightly different problem, which is that firms may not be clear about whether the particular have-regard or objective is one that applies to them. Partly for avoiding confusion in the industry itself and partly for simplicity, but also because, if something is important, it is generally going to be important across the board, it is simpler and more straightforward to have a single set of objectives and have-regards.

Q99 **Julie Marson:** I do not want to paraphrase you. We have talked a lot recently at this Committee about LCF and perimeter issues. Are you concerned that we might be creating perimeter issues?

Edwin Schooling Latter: Yes, probably not with quite the severity of that very complex perimeter, which is an issue, but another version of that within the perimeter about exactly where the boundary between low and high tide was, or something like that.

Q100 **Julie Marson:** Can you also see the benefits of the Government's proposed approach, in that there might have been gaps in the previous FSMA regime, where a Government or legislature could not focus on those specific activities?

Edwin Schooling Latter: My understanding was that the Government were looking for a holistic approach in general, in which case we think that that is the right one.

Q101 **Julie Marson:** Could you explain to us how the FCA does it at the moment across different activities? For example, would you have staff specifically on one particular activity or would you have staff who would

look at a regulated company across different activities? Just give us a flavour of how it is done now.

Edwin Schooling Latter: It is a good question and, in practice, there is a bit of both. We have supervisory teams dedicated to particular portfolios of firms: for example, we have different teams for banks and for insurers. However, there are also specialist functions, which might be financial crime or cyber resilience, that cross those firm-type boundaries.

Q102 **Julie Marson:** Under the Government's proposals, would training staff be a particular issue?

Edwin Schooling Latter: Training staff is simpler if the framework is simpler and easier to understand. For example, we were talking about the statutory and operational objectives. There are only three: consumer protection, market integrity, and competition in the interests of consumers. Pretty much all FCA staff know those off by heart and work to them, but, once you start having 28 different considerations for some firms and 30 for others, training gets much more complicated.

Q103 **Julie Marson:** I suppose the same would apply to principles. If you have different principles across different activities, the same would apply. Does that make it more fragmented and difficult to apply?

Edwin Schooling Latter: Yes. If there were different principles for different sectors, that would make it more complicated.

Q104 **Julie Marson:** I do not know if Vicky would like to add anything to that argument about activity-specific proposals and regulation in general.

Vicky Saporta: I agree with what Edwin said. Edwin talked about 40 files. We are lucky in the PRA that it is two files: the CRR and Solvency II. Although it is simpler to have the same set of objectives and regulatory principles across these two files, it is manageable in our case to vary it a little between banking and insurance, if there is an argument in a particular case. We do banking and insurance, and we have different regulatory policy and supervisory teams for both, so it would be manageable for us, but it would increase complexity a bit.

Q105 **Rushanara Ali:** Good afternoon. My questions are about the independence of the regulators and the influence of the Treasury. The new proposals state that Ministers should be able to feed into policy development before it reaches the public consultation stage. At present, when are Treasury Ministers informed of a policy proposal?

Edwin Schooling Latter: We are already more or less in a routine of discussing with our Treasury counterparts during the policy formulation process. That applies for rules that were part of the EU process, where both Government and regulators had a role in engaging with European institutions, but also in terms of domestic rules, because, in the end, the rules and the legislation need to work together. It is better if the Treasury has the chance to comment on the ideas that we are working on and we have a chance to see those comments and take them into account, rather

than to find that our counterparts in the Treasury are surprised on the day of public announcements.

When things reach Ministers will almost always be determined by Treasury officials rather than FCA staff. They will decide when they need to escalate things. From observation from the side seat, there are quite a lot of things that do not get escalated, and there are sometimes things that do.

Q106 **Rushanara Ali:** On that, does the Treasury proactively approach you with issues that it wants you to address? How often does it happen? To what extent do those issues get prioritised?

Edwin Schooling Latter: That would be more unusual than the other way round. Most initiatives that we take will be grounded in our own evidence-gathering and observation. There are times when the Government have a concern about something, and may choose a particular route to investigate that and suggest that it requires some FCA action. Lord Hill's recent review of primary markets for the issuance of securities would be an example of a review that Treasury launched, completed and published, which suggests various things that the FCA should be pursuing.

In terms of prioritisation, we have limited bandwidth and will try to do the things that make the most difference, because they need to be done quickly and, therefore, everything has to fight for its place in the queue, but we certainly do not drop everything just because something new has come in from one particular stakeholder.

Q107 **Rushanara Ali:** This particular stakeholder is a very important one.

Edwin Schooling Latter: Yes, it is.

Rushanara Ali: Does that affect the weight of prioritisation?

Edwin Schooling Latter: It still has to depend on the gravity of the issue. If we think that we do not have adequate resources to push something forward that might be of interest to Government, without sacrificing other priorities that are important to us and other stakeholders, or are quite likely also important to Government, we will say that and we will prioritise accordingly.

Vicky Saporta: Similar to what Edwin said, we co-ordinate with and speak, as you would expect us to, to the Treasury regularly at the official level, not least because we need to co-ordinate certain policies, so that we do not come out with something that clashes with what Treasury wants to do, without having considered the appropriate timing for it or the issues involved. However, we are quite focused on our own priorities and workplan. We are operationally independent. The Treasury, in all my years in this role, has always respected that.

Q108 **Rushanara Ali:** Has either of your organisations ever been stopped at an

early stage because Treasury Ministers do not agree with a policy? Has there been that experience? There may be good reasons for it, but are there examples like that?

Edwin Schooling Latter: It is a good question. I cannot remember anything in my seven years of FCA rulemaking experience that would meet that description.

Vicky Saporta: No, but I have to say that there have been times, for instance while the Government were negotiating their new arrangements with the European Union, when we would consult Treasury on whether the timing was appropriate to do certain things, because we would not want to disrupt this whole process. Delay is different to stopping.

Q109 **Rushanara Ali:** If, in the future, Treasury Ministers were able to veto policy proposals prior to public consultation, would that damage your independence?

Edwin Schooling Latter: If they had a power of veto before we brought any rule changes forward, that would be an encroachment on the independence that we currently enjoy.

Vicky Saporta: Yes, absolutely.

Q110 **Rushanara Ali:** In terms of policies that you take forward and those that, say, the Treasury decided should not be pursued, so you did not pursue them, would there be transparency around that? Would Parliament be made aware of which ones were coming from where and why a particular policy might not have been pursued?

Edwin Schooling Latter: As I mentioned earlier, I cannot, in my own experience, think of an example of where the Treasury said, "Do not do that. You have to stop". Vicky is right that, during the period of negotiations with the EU, there was a particular concern not to take forward ideas that might have threatened equivalence. That was understandable. As Vicky said, that was not a case of "don't do it" but a case of "be sensitive to the overall negotiations".

If there were such an example in the future, where we felt it was important for our statutory objectives to do something, and that message of "don't do it" came in, that would be a very uncomfortable situation for us. It would be an exco or board-level discussion in terms of how we responded to that, but, in the end, our independence is there for a reason.

Q111 **Rushanara Ali:** The post-Brexit scenario could mean that we find ourselves in a situation where the Treasury has much more say over what happens. Could we envisage a situation where there is a muddying of the waters and risks around this, or are you confident that each side will understand their respective roles and remit, and respect the independence of your institutions?

Edwin Schooling Latter: There is a temporary situation whereby, because of the onshoring that we have done from the EU, the Treasury has a more specific role in approving certain changes to what in EU terms are called level 2 technical standards than would have been the case in the FSMA model of an independent regulator working to objectives. That is because the European Commission, the equivalent of the Treasury in the EU body politic, also had that right to say, "No, we are not happy with this technical standard going forward".

The completion of the process we have been discussing, which is the future regulatory framework, in terms of allocating all those rules down to handbooks in the main, with the statutory overlay, would take away that scenario. We would go back to the FSMA model, I hope, where, effectively, as a regulator, we were able to take forward rule changes in line with our parliamentary objectives and without a veto.

Rushanara Ali: Your organisation has made it very clear that you want to be the organisation that is doing the regulating. There was a story in the *FT* in March about a proposal, which the City is keen on in its submission to the Treasury, for an Office for Responsible Financial Regulation. There are issues around that. Your organisation has been under a lot of scrutiny and criticism. Just as we have asked the question, "Is the parliamentary scrutiny side up to the job?", do you think the FCA is up to the job? I am quite interested, not least because Lord Myners, for instance, a former City Minister, has taken aim at the FCA in relation to the Greensill Capital case. We have been looking at the London Capital & Finance case as well, and there have been others.

This is an institution that has been very stretched. This is not about the individuals, but you have had a lot on your plate. Are you up to the job? You mentioned the amount of regulation that needs to be scrutinised. There is the amount of regulation that now needs to be implemented. Are our institutions ready for that challenge?

Edwin Schooling Latter: We are up for the job. That does not mean it is an easy job. As you say, there are already 60,000 firms to regulate, with fewer than 4,000 staff. There are clearly mistakes that have been made. For example, the LCF investigation, which you referred to, uncovered some of those mistakes. It is imperative that we learn from those, and we absolutely intend to do so.

Q112 **Rushanara Ali:** Vicky, the specifics are more for Edwin, but did you want to comment on those points about capacity, support, resource and so on, in terms of what your institution is now going to need to do post-Brexit?

Vicky Saporta: We are up for the job. We need to somewhat increase our numbers and our resourcing in order to take on the new responsibilities, and we have plans to do so. We look forward to Parliament legislating on the future regulatory framework and giving us clarity about timelines in order to do that as effectively as possible.

Q113 **Alison Thewliss:** I have some questions about the potential for external

stakeholders to have influence on your policy-making. Edwin, do you think the external stakeholders, particularly in the general public, have sufficient ability to put their views into your policy developments, particularly given what you have said to Rushanara about the Government not really having all that much chance to influence as a stakeholder, due to the limited bandwidth that you mentioned?

Edwin Schooling Latter: The Government clearly have the opportunity to engage with our policy-making process, including through the exchanges we were talking about earlier. I do not want to trivialise how easy it is for an individual member of the public to engage with our consultation process. They can do so, and some of them do occasionally. We do consultations that get quite a large number of responses from the general public.

Inherently, it is easier for those with more resources to engage with those consultations. That is one of the reasons why it is so important that we have our consumer panel, established by statute. By far the greater proportion of our rule-making will engage the consumer panel during its preparation. The consumer panel is also empowered to request things to come back on to its agenda, if it thinks problems have emerged ex post.

Similarly, there is parliamentary engagement. You all have constituents. Many of you have contacted me or colleagues of mine with information and intelligence that builds on those genuine constituent experiences, which is relevant to our policy-making and rule-making. That is extremely useful to us, and I hope it is useful for the MPs who have reached out to us in that context as well.

Q114 **Alison Thewliss:** Can you give us any examples of where a policy of the FCA was changed due to a consumer interest group or an external organisation being able to input into policy development?

Edwin Schooling Latter: One example that I was personally very engaged in was the rules around defined benefit pension transfers. One of the other parliamentary Committees, the Work and Pensions Select Committee, was active in gathering evidence and submitting a report that was directly relevant to our rule-making process. It was extremely useful in our governance process and finalisation of the rule changes we put in place last year.

Q115 **Alison Thewliss:** Vicky, similarly, can you give me any examples of how external stakeholders have had the opportunity to shape Bank of England policy?

Vicky Saporta: I have to say up front that we engage with consumers less than the FCA does, given our remit. It is quite common for us to adapt our final proposals after consultation, given the feedback that we have. We issue feedback statements for that, very often clarifying what we mean and focusing on the scope of what we do. It is regular practice. We publish what we do when we do it. Most recently we published the finalisation of our operational resilience policy, for instance.

Q116 **Alison Thewliss:** Are there any examples you can give of where the Bank has perhaps changed its mind on an issue as a result of engagement with stakeholders?

Vicky Saporta: I can give you an example of where the Bank has changed its mind quite a lot and adopted recommendations as a result of engagement with Parliament, which is a key stakeholder. That was after the Treasury Select Committee review on Solvency II. We took on all the recommendations that Parliament made.

There have been quite a few times when we have initiated policy because of feedback that stakeholders have given us. For example, there were some changes that we made on capital rules for mortgages, where we have a secondary objective of facilitating competition, and the small banks and building societies had some very valid concerns, when we did the analysis and research, about being basically competed out of the market because of these capital rules on safe mortgages.

Q117 **Alison Thewliss:** On issues of some public concern, for example, Macmillan has raised the issue of the financial services duty of care, which has been discussed through parts of the Financial Services Bill and which may be discussed later on this afternoon as well. Are there particular issues that either of you would have with that as a policy, if that obligation was put upon you? Do you think that enough is done to make sure that the duty of care required by the people at the very bottom of the chain is being picked up?

Edwin Schooling Latter: Perhaps I should take that question, because it is particularly pertinent to the FCA. We have issued a discussion paper on the duty of care, and we have published a feedback statement. Next month, you are due to see some consultation proposals in relation to the duty of care.

It is not a simple issue, in the sense that those discussions about duty of care are often informed by a desire to be able to take legal action against firms that are perceived not to have fulfilled that duty of care. It is a high-stakes issue. The area as a whole is fundamental to consumer protection, and one that a number of our existing regulatory principles also speak to very directly, such as treating customers fairly, making sure that the information that they get is fair, clear and not misleading, avoiding conflicts of interest, and having requirements to take reasonable care with the advice and so on that you give to consumers.

There are some who argue that that is already the right way of dealing with those really important issues. We look forward to receiving feedback to the paper we publish next month before making any final decisions on how best to take that forward.

Alison Thewliss: I certainly look forward to seeing that paper. There is a lot more that needs to be done to perhaps make people feel as though they can come forward and ask the financial services organisation that

they deal with for support. Macmillan has presented some quite compelling evidence around that. They feel as though they cannot ask for help and that that would count against them. I very much look forward to seeing that.

Q118 **Felicity Buchan:** Good afternoon. Do you feel that you have all the powers that you need in order to fulfil your responsibilities? If the answer is no, what additional powers do you think you need, or what is constraining you at the moment?

Edwin Schooling Latter: In the status quo, where we have those 40-odd files that were downloaded from the EU with large parts sitting in primary legislation, there are some quite serious constraints on our ability to get done what we need to get done. You have seen some live examples of that in the FS Bill process, for example, where we asked for new powers to help arrange the orderly wind-down of the LIBOR benchmark so that mortgage-holders and small companies with LIBOR-linked loans did not find that those no longer worked or were not moved on to unfair rates.

During the discussion, we have touched on a couple of other examples of precisely what needs a prospectus to be issued as a security, or precisely what the transparency arrangements for transactions in wholesale markets are. Unless we complete that process, it will be very difficult for us even to keep the UK regulatory framework up to speed with some of the changes that are being made in the EU through its own process. There are quite a lot of examples there.

Q119 **Felicity Buchan:** You have cited a few examples. If you were to be asked, "What do you need tomorrow that will really make a big difference to how you operate?", are there one or two things of which you would say, "I absolutely need that tomorrow"?

Edwin Schooling Latter: The ones that were absolutely most urgent we have worked very hard to include in the Financial Services Bill that you have all been working on, including some quite recent additions. One area in the past days was about making sure we could keep reports on transactions so that we could successfully enforce against market abuse. There is quite a full pipeline of other things that we know we are going to need to fix over the months ahead.

Vicky Saporta: I do not have that much to add. I agree entirely with what Edwin said. In our case, it is not 40 files; it is fewer files. If they are not transferred through legislation, our job in making changes as circumstances dictate is more complex. It can be done, but it is more complex and time-consuming because it requires Acts of Parliament; it requires the Treasury to issue statutory instruments and then us to do something. That takes time. Therefore, it decreases our ability to respond.

The most urgent things have been put in the Financial Services Bill. We have co-ordinated with the Treasury in terms of statutory instruments so

that we are able to implement legislation in time, to update it for international standards, and to allow an equivalence determination not to be jeopardised because of timing. Unless these files are transferred and the future regulatory framework is well done, there is a medium-term issue about our ability to really respond to new challenges.

Q120 **Felicity Buchan:** We have the Financial Services Bill in the Chamber in a few hours' time. Hopefully that all goes through.

Vicky, let me ask you a very specific question. In its submission to this inquiry, UK Finance said that it thought that the regulatory model of FSMA should be applied to the Bank of England when the Bank is executing regulatory functions. Do you agree with that?

Vicky Saporta: Yes.

Q121 **Felicity Buchan:** Whenever the Bank is regulating activity, you believe that it should be operating under a regulatory model like FSMA.

Vicky Saporta: Yes, because FSMA sets in statute the framework of regulation, the objectives and the have-regards. The technical detail is then done through a regulator so that we can respond at speed. That is subject to sufficient parliamentary scrutiny, which is the debate we had earlier.

Chair: That brings us to the end of this session. I thank both Edwin and Vicky very much indeed for joining us this afternoon. We have discussed a number of issues relating to structure, scrutiny, legislation and regulation. Much of it is rather dry, but it is nonetheless extremely important. Everyone on this Committee recognises that.

We have addressed a huge number of questions. I will pick a few. What level of detail should scrutiny entail? How best do we accommodate ex ante and ex post scrutiny? How do we get the balance right between efficiency of process and the thoroughness of the scrutiny itself? How best do we handle the initial surge of work that there is going to be, before the scrutiny perhaps settles down to what we might call business as usual? What should stay in legislation or be transferred down to regulators? How should Parliament receive appropriate technical input on what are often highly technical matters? There are many other questions besides those that we have looked at today.

Your insights with us and the answers you have given to our questions have given us a great deal to think about over the coming weeks, as we consider the answers to the questions we have posed in our inquiry. I thank you once again for having spent your time with us this afternoon.