



HOUSE OF COMMONS

## Treasury Committee

Oral evidence: [Work of the Financial Conduct Authority](#), HC 146

Wednesday 12 May 2021

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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.

Public Accounts Committee Member present: Nick Smith.

Questions 85-193

### Witnesses

[I](#): Nikhil Rathi, FCA Chief Executive, and Charles Randell, FCA Chair.



## Examination of witnesses

Witnesses: Nikhil Rathi and Charles Randell.

**Chair:** Good afternoon and welcome to the Treasury Committee evidence session on the work of the Financial Conduct Authority. I am very pleased to be joined by two witnesses from the FCA this afternoon. I will ask them to briefly introduce themselves.

**Nikhil Rathi:** Good afternoon. My name is Nikhil Rathi, chief executive of the Financial Conduct Authority.

**Chair:** Thanks, Nikhil, and welcome. Charles, please.

**Charles Randell:** Good afternoon. I am Charles Randell. I am chair of the Financial Conduct Authority.

Q85 **Chair:** Thank you very much, Charles, and welcome to the Committee.

I am also very pleased to be joined today by a special guest—Nick Smith, Labour MP for Blaenau Gwent and a member of the Public Accounts Committee. He is guesting on the Committee to ask some questions later on in our proceedings. I am told he is here by virtue of the powers of the Committees to work together under Standing Order No. 137A, just in case anybody was curious about that aspect of our arrangements.

Welcome, everybody. My first question is to you Nikhil. Obviously, Greensill has failed. It has been a major issue in terms of investors losing a lot of money, the taxpayer losing a lot of money and lots of jobs being lost. One of the issues you will know the Committee is looking at is the issue of regulation and whether the regulatory environment for the kind of activity that Greensill was carrying out, albeit it had its own particular way of doing it, is fit for purpose, or whether changes are needed.

I think the Committee would value the reflection that you have on the question of regulation. I know they are regulated under the money laundering regulations, and Mirabella is regulated as well. Can you talk to Greensill and that kind of business in that context for us?

**Nikhil Rathi:** Certainly, Mr Chairman. I set out for the Committee in a letter last week, which you have now published, details of certain interactions with Greensill and some details around the regulatory framework. I also pointed out in that letter that there are now investigations under way into a range of matters. We are co-operating with other UK agencies and other international agencies. At the outset, I stress that the fact of an investigation does not suggest that we have reached a conclusion as to whether there has or has not been any wrongdoing. The investigators will obviously approach this with an open mind, engaging in all the evidence that they uncover.

Q86 **Chair:** How long do we think the investigation might last, Nikhil? Do we have a feel for that?

**Nikhil Rathi:** There are a range of issues that are being looked at for a range of entities. They are complex investigations across multiple



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jurisdictions, as you will be aware, and, as I pointed out in the letter, there are investigations going on in a number of other countries, so I am unable to give you an absolutely cast-iron timetable. The work started in recent months, but we will proceed as expeditiously as possible and as much as possible in lockstep with our international colleagues.

**Chair:** Okay. Sorry, I interrupted you.

**Nikhil Rathi:** In the letter, I also talked about the meeting that the FCA had had with Mr Greensill. I would also point out that that does not include anything in relation to those enforcement investigations, which will obviously remain confidential.

The issue of the regulation of Greensill is linked to the way in which commercial lending has been historically regulated in the UK and in most major jurisdictions. Broadly speaking, commercial lending between large wholesale counterparties has been outside the regulatory perimeter. The broad thinking has been that the commercial counterparties are able to make decisions for themselves. There is a nexus with regulation in the context of the money laundering regime, which is a registration regime, not an authorisation regime. We are one of the supervisors, along with HMRC, for estate agents and others, and a couple of other institutions in the UK.

The other angle is when these businesses start interacting with capital markets. That is where you saw the role of GCSL and Mirabella, because there was a permission to deal in investments. So, they started interacting with capital markets and, although there wasn't anything reported in this case, securitisations. Then there is a regulatory nexus.

There were other entities in this group, outside the UK. There was a very significant bank in Germany—a deposit-taking bank that has been the subject of other investigations there—a parent company in Australia and other relationships in other parts of the world. There were different regulatory relationships, depending on the activity in those jurisdictions.

What I would say about the overall regulatory framework is that it would be a very big step to start to seek to regulate all commercial lending in the UK. You would be bringing a very large swathe of the economy into regulation, and that would need to be thought about very carefully. What this experience does show is that, where there is interaction, intersection, with regulated activity, be it a bank or with capital markets, there is scope for us further to strengthen the information that we are gathering about what these activities are and how they are being undertaken.

I also set out in the letter some work that is already under way on appointed representatives, to understand whether this regime, which dates from the 1980s in UK legislation and is now used very widely, is appropriate for the scale of capital markets activity that was being undertaken in contexts such as these, and whether the regulatory hosting model, where there are principals who do nothing else but rent out their licence, is appropriate.



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There is a bigger strategic question on which we are talking to our international counterparts about the growth of non-bank finance. Bank finance after 2008-09 was subject to very stringent capital liquidity leverage regulation. Since then, the speed of growth of non-bank sources of finance has increased considerably, be that money market funds or this kind of activity. We are considering what further steps we must take as an international regulatory community in that regard.

Q87 **Chair:** That is IOSCO is it?

**Nikhil Rathi:** IOSCO, FSB—the Financial Stability Board—as well, yes.

Q88 **Chair:** Thank you for your letter, which was very helpful. You mentioned the areas that the FCA is looking into in terms of the parameters. You mentioned appointed representatives. There are five areas set out in your letter. When you think of Greensill and that kind of model, what are the elements within those areas that you are looking at that are most pertinent for you to explore?

**Nikhil Rathi:** I mentioned the concept of regulatory hosting, where there is a principal whose sole business is to give their licence to others to use. They are also exempt from certain capital requirements in the UK regime. That does need closer examination. There is also the appointed representatives regime, and the potential scale of business allowed to be undertaken under that regime.

Going back to the history of that regime, it was designed for insurance sales people going door to door selling insurance products, or a sole trader, or a self-employed mortgage broker. What has happened over the years is that it has been used for a much wider set of activities. We will be looking at whether there are steps we can take to ensure the system and controls are much more rigorous. If not, is there legislative change that we need to discuss with the Government?

I also pointed out there is a nexus to markets in other jurisdictions. One of the notable things here is that, very often when these instruments are produced, they are listed in markets outside the UK, but they are able to come in to market to UK investors, where there are also some tax concessions for those venues. There needs to be greater alignment between the regulatory regime here and the tax regime. The way these decisions are taken by investors is a complex matrix of regulation and tax that needs to be aligned.

Although it was not the activity that brought the collapse of Greensill, one activity was employer salary advance schemes. Chris Woolard has looked at those and has made some recommendations about a code of conduct there and we stand ready to work with the Government on those recommendations too.

**Chair:** All right. We look forward to hearing more on that work as it progresses, and thank you for that. Can I go to Felicity?

Q89 **Felicity Buchan:** Good afternoon, and it is great to see you both again.



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My topic is the lessons that we have learned from Greensill. That may be slightly premature, because I know that you are doing the analysis at the moment and working with other agencies in the UK and abroad. But just at first look, what would you say the lessons are here?

**Nikhil Rathi:** I want to be careful in what I say about specifics, because there is an actual investigation under way and I would not want to prejudice those ongoing investigations. However, as a general point around non-bank finance, I would say that we need to have a mindset and a regulatory and legislative regime that at least allows us to get information, and get some more information. We can then take a decision, with the Government and with Parliament, as to whether more things need to come into regulation or be supervised, but I think we sometimes have a paucity of information and notification requirements.

For example, under the money laundering regulations, these annex 1 firms do not have a reporting requirement to us. We can go out and proactively ask for information, but there isn't a standardised reporting requirement to the money laundering supervisor.

I think this will be relevant in the context of the future regulatory framework and the discussions that the Committee is having on that. The Treasury, for example, is looking at a significant piece of legislation in the UK, the overseas person exclusion, which has also been in legislation since the 1980s. It enables firms to act through UK markets without notifying the supervisor. It is very healthy if the Treasury is looking at it, because I think that, at the very least, we need to know what is going on in these areas, which are not formally regulated.

Q90 **Felicity Buchan:** You are talking about potentially looking at regulation of a huge sector—non-bank finance. What sort of timeframe are you potentially considering this in?

**Nikhil Rathi:** I am not talking about regulation of the entire sector; I think it is quite important to say that. We are looking at certain specific areas as a priority. Money market funds are one, which is a significant focus. We saw some very significant distress in the markets in March and April last year. We are working very closely with the Bank of England and international colleagues to try to get a road map for a global regulatory framework there this year. That is one significant area.

You haven't asked me yet about other incidents, but the Archegos failure is another major failure of a family office that has been in the news. I think that also points to the need for some discussions around how reporting of these transactions, how family offices and how some of these hedge funds work across borders as well. I am sure we will want to make progress on that this year too.

Q91 **Felicity Buchan:** In terms of other areas that possibly need to be regulated, I want your views on that. You have touched on commercial lending, but clearly that really would be taking on a lot in changing the nature of that market. Do you think that supply chain finance should be regulated, for instance? Mr Greensill, in his witness testimony yesterday,



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said that he thought credit insurance should be regulated. Do you have views on either of those?

**Nikhil Rathi:** I wouldn't jump to regulating all supply chain finance. I mean, bank credit insurance is in very large sectors of the global economy, touching a whole range of businesses and bringing them into financial regulation, when actually they are often just straightforward commercial transactions between counterparties in different parts of the world. I think that would be a very big step.

However, I do think we need to be looking closely at when there is a nexus between these activities and capital markets, and other systemic regulated activities. So, in this case, there was ownership of a bank in Germany, where there has been a failure and a very significant liability to the German deposit insurance scheme, which is being worked through there. There was a capital markets nexus. I think those domains need to be looked at a bit more closely.

Q92 **Felicity Buchan:** Yes, that makes sense. Coming back to Greensill, you have touched on the German bank and the Australian parent company. It seems to me as though national regulators were in some instances involved, but no one was looking at Greensill holistically, as an entire entity. Do you think that we need more international co-operation—for one regulator to be looking holistically?

**Nikhil Rathi:** I think it would be a panacea to get one regulator to look at it. We all have our national responsibilities, and responsibilities to our national Parliaments and Governments, but your fundamental point is, do we need to have more international co-operation on these types of issues? Yes, absolutely. We have been very proactive in signing international memoranda of understanding and we all very much want to be co-operating with colleagues in this work. I imagine that will also be a significant component of the IMF's work on the UK financial system, which it will be doing in the next 12 to 21 months.

Q93 **Felicity Buchan:** You mentioned that you are reviewing the appointed representative regime. That seems to be a way for companies to enter the financial system almost under the radar, without full scrutiny by the FCA. Would you agree with that?

**Nikhil Rathi:** I think it has evolved over time. I certainly do not think that it would be proportionate for the FCA to supervise a sole trader that is selling insurance in its local market, or a self-employed mortgage broker working as part of a network. That is what the regime was designed for, if we look back in history to the 1980s. Where it has moved into much more complex areas—it is quite liberal, the range of activities that an appointed representative can undertake; FSMA permits a very wide range of activities, basically everything other than deposit taking and managing investments—that feels to me like we need to look much more closely at the systems of control that the principal has in place, potentially placing some restrictions on the scale of business that can be undertaken through this mechanism.



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**Q94 Felicity Buchan:** Yes, that makes sense. One final question from me. I appreciate that you are at the initial stages, but do you have any regrets when you look back at how the FCA monitored Greensill?

**Nikhil Rathi:** I joined in October. We are dealing with the issues now, proactively. Whenever one of these situations happens, we—colleagues around the world—always think, “Was there something we could have done differently?”, and we can nearly always find certain things that could have been done differently or pursued in a different way, or more vigorously. I would also say that in the past year—as I pointed out in my letter, although obviously this is before my time—the resources of the FCA were deliberately redirected to supporting the economy, consumers and small businesses during the crisis. That was a deliberate and significant shift of resources—a very conscious decision to do that—as the Committee has heard in evidence during the course of 2020.

**Felicity Buchan:** Yes. Thank you.

**Chair:** Thank you, Felicity. Let us go to Angela.

**Q95 Dame Angela Eagle:** Mr Rathi, would you give us the benefit of your views on what is happening with the shadow banking area? Following the financial crisis, we had much stricter rules for regulated banks. It seems to me, looking at the shape of the activities of Greensill, that we had securitisation of what was initially meant to be supply-chain finance but actually became a lot of very different things as it grew. Do you think that the regulation of the banks has now opened up dangerous loopholes in the unregulated sector which, had Greensill lasted a bit longer and got bigger and bigger, would have demonstrated a systemic problem?

**Nikhil Rathi:** On that last point, there is a mechanism in the UK framework to identify issues that are systemic. The Bank of England can do that assessment and there can be greater prudential regulation in those instances. In this case, those thresholds were not crossed.

On your fundamental point about the way in which the markets have evolved in light of the regulation of 2008-09, I think that there is some work to do there. Let us bear in mind, there was a deliberate choice by the global regulatory community, the G20 and so on to regulate the banks in this way, because of the way in which risks had been concentrated in the system. We saw what happened—

**Q96 Dame Angela Eagle:** To be fair, I am not arguing with the fact that the banks had to be regulated after 2008. I suppose I am trying to get you to think about and share your thoughts with us on the way in which that has perhaps displaced certain activity, in particular around securitisation, so that the problems have migrated somewhere else, to a very unregulated space.

**Nikhil Rathi:** I think there has been a very big shift in activity towards non-bank finance, and there is a range of reasons for that. Part of it is the banking regulation; part of it is the persistent low interest rates environment, and therefore the search for yield that is going on; and part



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of it is the change in asset ownership across the world. You now see a very significant rise in sovereign wealth funds and family offices, not traditional asset managers—so operating in quasi-private spaces as well—and, in all honesty, across the world, there has been inconsistent implementation of some of the regulation that was agreed globally a decade ago. For example, some of the reporting requirements that exist for some of these transactions are different in Europe from the US or elsewhere, and therefore—to Ms Buchan’s point earlier—nobody can get a really global view of what is going on, because we have all implemented things in a slightly different way.

**Q97 Dame Angela Eagle:** There might also be arbitrage to the even less regulated spaces in a global structure like Greensill had.

**Nikhil Rathi:** There may be arbitrage to less regulated spaces. I mentioned the point about the way in which these things are listed, where there is arbitrage to markets that may have a different definition of listing to the one we have, and there may be arbitrage around tax. I do not think the way into this is a kind of sledgehammer, to bring everything into regulation: it is to get this on a much more systematic basis, collecting information about what is going on so we can analyse the risks within the UK, but also with our international partners, and then focus on the areas where we think there are more serious vulnerabilities that need attention.

**Q98 Dame Angela Eagle:** Do you worry about the rise of prospective receivables in this market?

**Nikhil Rathi:** I understand the question; I understand why you are asking it. There will be a whole range of issues covered in the investigation, so it is probably best that I do not comment in too much detail on that specific topic, but I can certainly understand the concern that you are implying in your question.

**Q99 Dame Angela Eagle:** Did the rise of prospective receivables raise any red flags at the FCA while it was going on, before the collapse?

**Nikhil Rathi:** As this institution was not a regulated institution—there were not reporting requirements—I do not think these things were being monitored in that level of granular detail. Again, what I would say about the market here is that these were notes being sold to other very sophisticated commercial counterparties, like Credit Suisse or others, and the general philosophy, not just here but around the world, is that they are fundamentally able to do sensible due diligence themselves on what they are buying. This was not marketed to retail investors, where you would have had a much more rigorous regime around it.

**Q100 Dame Angela Eagle:** But didn’t it find its way to retail investors once it was packaged up and securitised by Credit Suisse and various other people?

**Nikhil Rathi:** Not in the UK.

**Q101 Dame Angela Eagle:** Is that okay, then?



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**Nikhil Rathi:** I am saying that that has been broadly the thinking around commercial lending—the choice that has been made in the legislation by Government and Parliament—but that is not to say there are not risks here. We need to have much more information to be able to understand where those risks are building up, and then take action as necessary.

Q102 **Dame Angela Eagle:** Do you think that to some extent, Lex Greensill's use of people like David Cameron covered up some of these more nefarious activities; that they hid behind a sort of package of respectability when they were becoming anything but?

**Nikhil Rathi:** I am not in a position to comment on anything related to David Cameron. I said in the letter that obviously, any of our interactions with the Greensill entities were following direct contact with the firm, not with any advisor.

Q103 **Dame Angela Eagle:** Were you surprised when Greensill went bust?

**Nikhil Rathi:** There was very significant distress building in these markets during the course of 2020, and these markets were challenged. I do not think it is surprising that there has been distress in the markets, but given the specific way this has unfolded, there are obviously elements we will want to look at as to how that came about.

Q104 **Dame Angela Eagle:** What do you think those elements were?

**Nikhil Rathi:** Again, I think you are taking this in a direction that will be a subject of the investigation. It is quite important that I am careful about what I say there, but a lot of this has been quite widely reported, as to what triggered some of the failure of the institution.

Q105 **Dame Angela Eagle:** I mean, it is useful that the day before you come to give us evidence, you announced that you were looking into the Greensill collapse. Why weren't you looking into it earlier?

**Nikhil Rathi:** I wrote to the Committee on 4 May in reply to the Chair's letter of 19 April, but the investigation has been going on since significantly before then.

Q106 **Dame Angela Eagle:** Can I ask you about shadow directors? Do you think that someone who was not on a board of directors but had a standing invitation to visit it and went regularly could be regarded as a shadow director—doing the job of a director without having any of the legal requirements that being a director would leave you with?

**Nikhil Rathi:** That would depend on the circumstances of the case and the nature of the interaction of that individual with that board. There are obviously specific provisions in company law around shadow directorships, so I think you would have to look at it in a very fact-specific way.

Q107 **Dame Angela Eagle:** If you got information at the FCA, would you potentially investigate something like that?



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**Nikhil Rathi:** Anything that is relevant to our investigations—which are general, as I explained—into the circumstances of these failures, we would of course take into account.

Q108 **Dame Angela Eagle:** The FCA always seems to arrive after a collapse has happened, when things were fairly obviously dodgy but everyone has lost their money. Can't you be more proactive? We heard yesterday from Lex Greensill how terribly, terribly sad he was and how he took personal responsibility, but actually in the UK we never put anyone in jail for fraud, do we? It is almost like financial fraud has been decriminalised. The risks are so low, and the rewards, if you get away with it, are gargantuan. Why is it that you are presiding over a regime like that?

**Nikhil Rathi:** Obviously I am not going to make any comments around any specific allegations in relation to individuals in Greensill or the firm itself given the ongoing investigation. But the general point, as we have talked about in the Committee on a number of occasions, is that there is a challenge in the way in which fraud is resourced, prosecuted and investigated in the UK. As I said last time, at the retail end of the market there are 800,000 reports every year to Action Fraud, but only 1% of police resources is attached to it. Yes, you are also talking about the wholesale end where there are global networks that operate, and every agency has the challenge to prioritise what work it is doing there. So I think your underlying point that there is an issue is right, and it is going to require a global, cross-agency effort with the right resources to tackle it. Again, I should stress that I am not making any comments about a specific case; I am making a general point.

**Dame Angela Eagle:** Chair, I think it is very alarming that we have got to the stage where the globe is full of very sophisticated people who are making an awful lot of money by defrauding perfectly reasonable investors. They are getting away with it, and we do not seem to be able to have any kind of response.

Q109 **Chair:** Thank you, Angela. Nikhil, can I follow up quickly on your letter? On the concerns you just touched on there, you wrote, "In early 2020, and particularly after the onset of the pandemic in March, there was widespread distress in financial markets across financial services firms and other sectors of the economy. It was reported at various times in the media that Greensill may be one of many such firms facing defaults." How concerned was the FCA with that situation and with Greensill in particular at that moment in time back in early 2020?

**Nikhil Rathi:** As you know, I was not at the FCA at that time, so I can only speak from the records that I have seen. What I would say is, at that point there was enormous distress across the entire economy, across the financial services sector and across capital markets, so the picture of defaults in this one sector was replicated right across the economy, and that is what prompted the emergency schemes run by the Bank of England and the Treasury. So I think the concerns of the FCA during that period were directed towards how they could support the system-wide interventions that came in the weeks and months that followed. Then



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there was a direction of resources to those firms that were at risk of failure that would have had most harm to consumers, should they fail. That is where the resources of the FCA were directed in that immediate period.

Q110 **Chair:** You might find this a tricky question so let me take it one step away from Greensill. If you had a business that was securitising invoices in a supply chain finance operation and relying on an insurance company to underwrite the risk as they were sold on to fund managers, would you expect a business operating that model back in March 2020 to be getting quite concerned about whether that particular model was viable or not?

**Nikhil Rathi:** There was concern around boardrooms of a range of businesses in capital markets.

Q111 **Chair:** Going directly to Greensill now, would your expectation have been that they were sitting around the board table at that time in March 2020 thinking that, with the pandemic, we may well have some serious problems here?

**Nikhil Rathi:** I imagine that any significant board would have been having those conversations at that time.

Q112 **Chair:** Finally, when did the investigation into Greensill kick off?

**Nikhil Rathi:** The specific investigations into the most recent events started in the first quarter—in March, to be precise—but there was very detailed preparatory thinking going on during January and February as well.

Q113 **Chair:** So the first active involvement in the foothills of the investigation, although it had not been launched at that point—was roughly at the beginning of this year. Would that be about right?

**Nikhil Rathi:** In the context of the three entities you asked me about in the letter, yes. There is a whole set of other issues in relation to GFG Alliance and Wyelands Bank, which the Bank of England have also made public statements about, where there were conversations going on during the course of 2020 as well, led by the PRA, but where the FCA was very actively involved.

Q114 **Rushanara Ali:** I just want to pick up on some of the points raised by the Chair and Angela. We have had the Woodford and the London Capital Finance scandals, and the TSB technology failures. I have been on this Committee throughout those, and we have raised the issue with Charles Randell in the past. The FCA is often playing catch-up for all sorts of reasons.

Yesterday we heard Mr Greensill. There is a bit of a formula with executives who get themselves into trouble. They come and apologise, are often coached to do that, and then find all sorts of reasons and excuses, and blame lots of people and gaslight. That is what we saw yesterday. The FCA, because of all sorts of institutional barriers that we know very well about, finds itself relatively inept at holding these people



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to account. Ultimately, the taxpayers and our constituents end up paying the price. Lord Myners has said that the Greensill scandal is going to lead to a direct cost of about £1 billion. Others have said up to—Greensill was contesting this yesterday—an indirect cost of £3 billion to £5 billion.

So to concentrate minds—both Mr Randell and Mr Rathi, you are the regulators and we rely on you to protect the public interest. What we have seen is that the FCA often is playing catch-up. Would you have announced this investigation if it was not for the Treasury Committee calling on you to explain and address it in the letter from the Chair? Would you have proactively called for this investigation?

**Nikhil Rathi:** As I said, the investigation started some time ago before we received the letter from the Chair. We certainly considered during the start of that investigation whether to make an announcement or not. There are specific protocols around whether we announce an investigation. We only do so in exceptional circumstances, for reasons you will understand, because we do not want to prejudice ongoing investigations. At the point that the Treasury Committee launched an inquiry, and because of clearly the much wider context here and the public interest involved, we felt it appropriate in these specific cases to confirm that that investigation was underway. We have done that, and a few other regulators around the world have done that. There are others, as I note in my letter, investigating that have chosen not to confirm it. Each has its own protocols around it.

Q115 **Rushanara Ali:** Can you tell us when it started?

**Nikhil Rathi:** As I said, the investigation into these three entities started in the first quarter of this year—March, I believe—with preparatory work in advance of the formal commencement of the investigation.

Q116 **Rushanara Ali:** Should we expect more of the same? The reason I ask is that there has been huge disappointment in the past, because even when there are clear cases of wrongdoing, which we have seen since the global financial crisis, often not much seems to happen. As Angela said, people often get away with it. Charles Randell, did you want to comment on the wider issue of why our regulator does not manage to nail any of those people when—I am trying to find an appropriate phrase—frankly, they cause the taxpayer to be out of pocket?

**Charles Randell:** We do nail, as you put it, a number of people. We publish the results of both criminal and regulatory investigations on a regular basis. We prohibited a number of individuals and we recover hundreds of millions of pounds in penalties from firms. However, when we are investigating, we do not proceed on the basis that there has been clear wrongdoing; we proceed on the basis that there is a case to be investigated.

The safeguards that are enshrined in statute and the principles of fairness that apply in the UK mean that we have to follow procedures. Those procedures can be frustrating for us, and they can be very frustrating for you. But it is within a system of rule of law that we operate when we are



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investigating. That leads to our investigations taking time. They do, however, produce outcomes. We benchmark the time that our investigations take against other comparable jurisdictions; we benchmarked ourselves against the US SEC and the Australian securities regulator. Broadly speaking, the time to completion of the investigation is the same across those jurisdictions for complex cases. I understand the point you are making, but I cannot agree with it quite in the terms that you put it.

**Q117 Rushanara Ali:** Thank you for that. Nikhil Rathi, could you take us through what the FCA's expectations are of portfolio managers of securitisations in the Greensill case? Also, picking up on the earlier points about risks being concealed, some of that echoes financial crisis-style securitisation issues. Could you reflect on what those checks are, and what you think should happen? Leaving Greensill aside, there is a general point about systemic risk. Should we be worried about systemic risk that comes through in a different way, but can amount to huge problems?

**Nikhil Rathi:** In this specific case, there were no securitisations reported under the securitisation regulation; they were framed as commercial earnings, to the best of our understanding at this point. The general point I would make is that, clearly, anything that is touching the capital market we want to follow our rules around systems and controls, which is what the principal is responsible for in a principal-AR relationship.

As I said, I think we need to strengthen the information flows that we get globally, to understand how risk is accumulating.

I know you will be talking to the Bank of England as well, which leads on those assessments. The assessment to date has been that this was not a systemic event for the UK financial stability. We entirely understand the consequences for individuals and employees of some of the borrowers here. In terms of the tests and the UK legislation on financial stability, this was not identified as a systemic risk. It is notable that a significant number of the borrowers were able to get alternative financing. For the ones who haven't been able to get alternative financing, there are probably other wider commercial reasons why there are challenges. That is my understanding of the situation as it stands right now.

**Q118 Rushanara Ali:** What would both of you say about Lord Myners' comment? He referred to the FCA as being culpable for ignoring the warning signs on Greensill.

**Nikhil Rathi:** I am aware of Lord Myners' comments. I set out in the letter to the Committee the regulatory framework, which is obviously set by Parliament, for how these things are regulated, and we operate under that framework. I have also given you the points where I think the regime can be strengthened, and we will be looking at those steps as well.

**Q119 Rushanara Ali:** Just one more question. Can you give us a sense of what we should expect to see at the end of this process? I want to bring you back to the point about the cost to the taxpayer—the £1 billion of direct and indirect costs that Lord Myners was talking about. I bring it back to



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that because what is frustrating is that inquiries happen, the FCA conducts investigations, and the outcomes are often not satisfactory when it comes to recovering money, which the taxpayer loses. Should the taxpayer expect the FCA to be on its side and, once the investigation is concluded, to recover the money that was lost to the taxpayer without the taxpayer having to foot the bill?

**Nikhil Rathi:** It is not for me to comment on the specific taxpayer element. Obviously, that is about engaging with the Government. What taxpayers can expect from the FCA is that we will follow the law, which requires us, as we are starting an investigation, to do so open-mindedly. I can't answer your question, much as I understand that will be frustrating to you, about where the end point will be, because we are required by statute to go into this in a completely open-minded way. What I can assure you is that, with other agencies, it will be pursued vigorously and expeditiously.

Q120 **Rushanara Ali:** One final thing. We saw yesterday a barrage of emails and messages from WhatsApp and so on from the former Prime Minister, and obviously there has also been contact with the FCA—not during your time, but under your predecessor. Do you think that Greensill was off limits for the FCA, in terms of what your organisation was doing, because Greensill was so well connected and because a former Prime Minister was his patron, as well as his employee, and was vociferously lobbying for him across these very powerful institutions, including yours? Was he off limits? Was Greensill the company off limits, and could you have missed things as a result of that?

**Nikhil Rathi:** I have seen no evidence to suggest anything that would imply that because of the connection with the former Prime Minister, Greensill was felt to be off limits by the FCA. There is nothing to suggest that in the records I have seen.

Q121 **Rushanara Ali:** Okay. Charles Randell, did you want to say anything further?

**Charles Randell:** No, I have also seen nothing of that sort. I don't think it is evident from the documents that we sent to the Committee either.

Q122 **Rushanara Ali:** What about the culture of lobbying—the culture of power and people who are powerful? What about the barrage of those messages? I was a civil servant for a period, and they are often under the cosh. Their political masters give them direction, and it is not easy to defend. It can be challenging and can put them in an awkward position. Do you think there is a culture? You have said that there is no record in writing, but do you think there is a wider issue about culture relating to powerful people? I am not just singling out the former Prime Minister; it could be any former Prime Minister or somebody else who is powerful from a different party. Is there an issue with culture in our institutions and a clubiness? That can be quite damaging and can create the culture of certain people getting away with things, getting special treatment and having a different lane through which they operate. That sort of stuff is dangerous for our country if it happens. Do you think there is an issue



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around that?

**Charles Randell:** It is not something that I have seen. I have made it a rule during my time as chair that, if I am contacted by people who appear to me to be trying to lobby me in relation to decisions by the FCA, I politely decline and turn them away. I try not to meet people if I think that that is the reason they are contacting me. I meet a range of consumer and business stakeholders in order to get feedback about the performance of the FCA, but I always make it absolutely clear that our supervisory and enforcement decisions are not something that I intervene in. On occasion, one has to give that message quite strongly. It is a very important message. We are an independent regulator.

Q123 **Rushanara Ali:** Mr Rathi, you are a former Treasury official. Does that affect your independence? Could there be some issues here around that because this particular case involves the Treasury—some of your former colleagues and so on? Is the point about independence really important for the FCA? Do you think that we can be confident that the FCA will remain extremely independent as it proceeds with this inquiry, and others where they relate to political masters and powerful Government Departments?

**Nikhil Rathi:** Yes you can. You can see that, a few weeks ago, we took forward a criminal case against a very large bank, which is part Government-owned. I will not comment further on that because it is now subject to criminal proceedings. What I will say on my short period of time at the FCA is that I find investigators highly committed, highly purposeful, and looking to secure the right outcome for the integrity of the markets and to protect consumers. They are not influenced, based on anything I have seen, by any of the complexities of power that you describe. They want to get to the right answer.

**Rushanara Ali:** Thank you so much.

Q124 **Siobhain McDonagh:** Hello, Mr Rathi and Mr Randell. I am confused about a few things. In 2019, in April, June and July, Reuters published articles highlighting the precise reason why Greensill came to collapse two years later. They showed explicitly that the Greensill model was based on a fundamental deception of cheap money backed by cheap insurance for lending to high-risk investors. At exactly the same time, Lord Myners was asking questions about the Greensill model in the House of Lords—questions of which the FCA was made aware. Why did it take two years, a collapse of the business, the humiliation of a former Prime Minister and an inquiry by this Committee to get the FCA to act?

**Nikhil Rathi:** On the last point, that is not correct. As I explained earlier, the FCA investigation started before the Committee launched its inquiry. There had also been activity on related and affiliate matters during the course of 2018 and 2019, so I do not think it is correct to say that that was the trigger of FCA action. Clearly, you are pointing to press reports from 2019. I was not at the FCA at that time, but I imagine that the broader thinking will have been that because commercial lending was outside the regulatory perimeter, as set by Government and Parliament,

these were not matters that the FCA should immediately focus on. There were some specific issues around one fund, where the FCA did engage very closely with the fund manager to make sure that investors were repaid. That was in 2019.

Q125 **Siobhain McDonagh:** In advance of today's meeting, our Committee had specifically asked for a written description of when and how FCA staff first became aware of any potential financial difficulties or weakness at Greensill. We have already established that you were made aware of Lord Myners' parliamentary questions in 2019, and I am sure significant news articles and the suing of Reuters by Greensill would have gained the authorities' attention, but in your response of 4 May you state that the FCA was not aware of financial difficulties or weaknesses at Greensill until "early 2020". That is not correct, is it?

**Nikhil Rathi:** I think that, at any one point, there will be a range of allegations made around a number of firms in the media. That does not automatically translate into there being a conclusion to this financial difficulty or weakness just because of that speculation. During the course of early 2020, there was more concrete information, including through regulatory channels, that the FCA became aware of. That is what I was pointing to in the letter, and I also pointed to the fact that at the same time, particularly as the pandemic was escalating, there were more widespread reports and clearer evidence of significant defaults actually happening, as opposed to speculation around them.

Q126 **Siobhain McDonagh:** There weren't just articles. Greensill attempted to sue Reuters. Lex Greensill connected himself to that personally and they lost in the High Court. As a result, investors left, so there was much more going on than just articles.

**Nikhil Rathi:** Yes. I understand the point you are making, but as I said earlier these were also discussions between commercial counterparties in the courts that were taking place. Where there was an investor link in terms of a regulated entity in the UK, the FCA did engage and take action. I will take it to the wider point that I made earlier. I do think there is a general point around the way information flows are available around these kinds of entity, and those are areas that we need to strengthen, along with our international counterparts. Bear in mind we are working here with a whole range of other international regulatory counterparts who are doing similar investigations to the ones we are undertaking now.

Q127 **Siobhain McDonagh:** As you, I think, referred to in your answer, in July 2018 the FCA reportedly wrote to GAM demanding action against investment director Tim Haywood following complaints received by a whistleblower, which were said to relate primarily to Mr Haywood's investments with Greensill. Haywood was suspended and later fired, but once GAM paid the investors their money back, the FCA appeared to turn away from the matter, despite Greensill still operating. I am a layperson, but if my car got stolen and the police just wanted to get a similar model back to me, I don't think they should then walk away. I think they need to investigate the theft. Didn't the FCA?



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**Nikhil Rathi:** I am not going to comment on whether the FCA did or did not, or is or is not investigating specific individuals and issues in relation to that incident. You will be aware that we have, under statute as well, obligations under the GDPR as to when we can confirm or not that specific people are under investigation. There is a test of strict necessity there that we have to bear in mind. What I would say is that the FCA was engaged with GAM and engaged in making sure investors got their money back. From what I have seen, during that period—again, it was before my time—I don't believe the FCA turned away from that situation.

Q128 **Siobhain McDonagh:** Clearly, they did, because Greensill continued to operate in the same way, which led two years later to the collapse of the company and large numbers of people being owed money. I appreciate it is difficult. I don't know, Mr Randell, when you took up your post, but knowing what you know now, would you have done things differently in 2018?

**Charles Randell:** I'm afraid I make it a strict rule—I have an enormous job to do at the FCA—to deal with what we face at the moment and what we will face in the future. So, I don't, I'm afraid, spend time revisiting history, trying to decide in the light of emerging events how I would have behaved if I had known things at a particular time. I didn't know, at the time, really very much at all about this case. It was reported to the board in 2018 as an issue relating to GAM, and the board were given information about the efforts that were being made to ensure that there was no investor detriment in that case. And I think, knowing what I knew then, I am satisfied that the board oversaw those activities as best they could.

Q129 **Siobhain McDonagh:** Obviously, it is up to you how you do your job, but I would suggest to you that looking back and understanding mistakes, and why things went wrong, is a good basis for looking to the future.

**Charles Randell:** You are misunderstanding me. When I judge my past actions, I try to judge them in the light of what I knew at the time.

Q130 **Siobhain McDonagh:** A court case. Articles. Somebody had to be removed. Paying money back. Are those not all things that you did know?

**Charles Randell:** The information that I had at the time related to issues at GAM.

**Siobhain McDonagh:** Okay. Thank you, Chair.

**Chair:** Thank you, Siobhain. Can we go to Julie now, please?

Q131 **Julie Marson:** I will move on to issues in a more general sense. We obviously deal with a lot of different issues and cases on this Committee. Aside from Greensill, we have looked at LC&F, for example. I will go to Nikhil to start. In the light of some of these things, do you think the FCA is overstretched?

**Nikhil Rathi:** I think the FCA has a very large remit. We have talked about that, including at our most recent hearing, and there is always a



need to prioritise. There have been particularly acute issues to deal with over the last year, and where we have needed more resources, we are going out and identifying where we can get those resources—for example, to do the work on appointed representatives—but I am not going to come here and say to the Committee that I think we are overstretched. You have given us a job to do. It is my job, with the executive team, under the oversight of the board, to allocate our resources to fulfil that remit as best we can. Where there are issues around powers and the regime, we have brought those to your attention; I am sure we will talk about some of them later. There are areas where we think the regime could be strengthened to help us and enable us to focus our resources in a more efficient way.

**Q132 Julie Marson:** We have heard a lot of talk about the importance of prioritisation, particularly when it came to LC&F, for example. How do you undertake that process? Do you think it is dynamic enough? Do you think you are flexible—on your toes—enough to be able to react to different events, different situations, in terms of that prioritisation?

**Nikhil Rathi:** Certainly, the record of 2020 shows that the FCA can move incredibly quickly to deal with very urgent and pressing issues. The challenge that I have, along with the executive team—there is a significant new executive team starting to arrive and arriving in the coming months—is to bottle that energy, that agility, which we have seen is possible at the FCA, into a more sustainable, business-as-usual way of working. I think it is correct to say—we have talked about this before—that in the past there were areas where we could have been faster, where we could have shared data more efficiently, and where we could have collaborated across departments. We are investing in our systems and our controls to enable us to use technology better, with better capability to enable us to move in a more agile way in the future.

**Q133 Julie Marson:** You are touching on the transformation programme there, really. Could you give us an update on what progress you are making across the three different areas of your transformation programme, and what are the key milestones that you are looking at achieving this year, for example?

**Nikhil Rathi:** We will say more in July in our business plan, but we have sent, I think, two letters, which the Committee will have, so I won't repeat all the detail there, but to summarise, we have made fundamental changes to our operating model. We have brought our policy and supervision divisions together, and there will be further changes later in the year, to go right to the point about the silos that have previously been felt to have existed in the organisation. We have made significant people change at the leadership level, but also at other levels of the organisation, building on the very strong capabilities we have and the very committed colleagues we have. We are also bringing in new skills and new capabilities in data and intelligence. The new executive director of markets has a specific economic crime background, looking at the issues that we were talking about at the start of the hearing. We have rolled out training in a



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whole range of areas, including on financial accounting, which is one of the areas of challenge that came out of the Gloster Review.

We are making very good progress in technology towards moving our data centre to cloud platforms, which will enable us to ingest data in a much more efficient way and at a much greater scale. As that embeds to improve our data integrity, that will then enable us to use data analytics and other tools to do our job much more efficiently.

That is one huge issue that Charles did touch on when he talked about important investigations. We have seen a 200% rise in the volume of data we have to process for investigations, including encrypted data through WhatsApp messages and so on, which is a big challenge we need to meet.

As we will be talking about to this Committee in due course, we are also thinking about how we can streamline our decision making in governance, again so that we can get faster. That will include thinking about whether we have the right structures in place to make some of the regulatory decisions in our Regulatory Decisions Committee, or whether we should be making more decisions at the executive layer to allow the Regulatory Decisions Committee to focus on the big enforcement cases and process them as speedily as possible.

There is some significant work under way there. We will also introduce new protocols in the organisation about how we approach legal risk. That is happening this month, in light of feedback from the independent reviews.

The final point I would make, and we have talked it about publicly, is that we have a new executive director for authorisations—the gateway into the FCA is one significant area of risk, which we have seen in previous cases. We are considering how we can introduce what we call the probation or nursery period for new firms coming in, so that when they first arrive into regulation, we have our arms around them somewhat more than we did historically. This is particularly where there are new firms that have never been regulated before, because often those are the ones which translate into difficulties later.

Those are some of the highlights, but I am happy to go into detail on any aspect.

**Q134 Julie Marson:** I am lacking a bit in time, so I need to cover a bit more ground, but in general terms that is really interesting and useful narrative, which is what we have the ability to do.

In terms of the specifics, KPIs for example, actual hard objectives and measurements through which we can judge whether the transformation programme is a success or not—is that something you will provide in writing? How can we judge the transformation programme?

**Nikhil Rathi:** I hope we can give you more of that in July as we publish our business plan. We are in the process of developing a framework similar to what we do already in some of the market abuse areas, where

we have market cleanliness statistics, for example. That is an outcome measure. It isn't perfect—these things are never methodologically perfect— but it gives us some sense of how clean UK markets are, to test how well we are doing. We would like to do that for our consumer objectives as well.

**Q135 Julie Marson:** I want to move on to another couple of areas. Could you give us an idea of the processes you are putting in place for the “In confidence, with confidence” campaign to encourage whistleblowers to come forward, with the confidence that you will act?

Just as an example, 691 cases of information coming from whistleblowers are still being assessed out of over 1,000. Does that give people enough confidence that if they come forward action will be taken, and that you have the right processes in place to deal with it?

**Nikhil Rathi:** I think that campaign demonstrates how seriously we take it. We do think this is a fundamental part of a sound and safe regulatory system, and the campaign has three objectives. We want people to have reassurance that they can report these issues to the FCA and they will be taken seriously; we want them to have clarity about how they can report; and we want them to have confidence, as you say, in what we are doing.

The whistleblowing team has increased in size from three people in 2014 to 16 people now. In 2020, we introduced regular periodic updates to whistleblowers about how their case is progressing, and as it is being assessed. This is part of a 12-month trial. Actually, sometimes it can be frustrating because we are not always able to disclose everything we do in relation to a firm to a whistleblower. Very often, the whistleblower wants to know exactly what you've done with the specific individual or issue they may be complaining about. That's not always possible because we have other statutory obligations as well. We are seeking to go as far as we can in keeping whistleblowers updated. We have also updated our website with more comprehensive information and made it more part of the protocol to meet with whistleblowers, virtually in the past year, so that they can have some face-to-face contact as well.

**Q136 Julie Marson:** I am sure we will keep track of that. Finally, because I am running out of time, I want to ask about fees. There have been significant increases across the FCA. People and businesses have no choice but to pay those fees. Do you think that the fee increases have been fair and proportionate? It has been a difficult time for all sorts of businesses in paying the costs. As an example, the FSCS—the Financial Services Compensation Scheme—has gone up from £649 million to over £1 billion. That is a very substantial increase. What is your assessment of that?

**Nikhil Rathi:** It is important to distinguish between the two—the FCA fees, which we charge for the regulation we do, and the FSCS. On the FCA fees, we have sought this year to keep minimum fees unchanged, other than for certain consumer credit firms, where we have felt we needed to increase.



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You've seen in the investigations we've been doing into RCF and other things that we do have issues to address in that small consumer credit firm domain, which does need attention. We have also given leeway, so that the payment of fees can be delayed or postponed for any small firm that is facing distress.

Where we have increased FCA fees has been around specific areas of work we are targeting. I just talked about appointed representatives, but we are also reclaiming costs from those who weren't party to the case on the business interruption insurance. It cost the FCA £7.5 million to fight that case and take it to the Supreme Court. We have to pay for that from some source, so we have asked the insurers, who weren't part of the case, to cover those costs.

You raise a fair point on the FSCS; it is of concern. We are dealing with an historic pipeline of mis-selling and other issues that are coming through, often from many years ago. They are coming through the system sometimes from as much as 10 years ago. It is a statutory scheme of last resort for compensation, so those are still coming through. Obviously, there has been a degree of stress, given the nature of the economy in the past year, although it is clearly looking more positive according to the latest economic data. Hopefully, there will not be as much failure as we feared six or nine months ago.

The way we are looking to deal with this, particularly in the area of consumer investments, as I wrote to the Committee, is to clamp down on the sale of speculative securities to consumers. We have been doing work on online safety and our scams campaign.

I understand it has been confirmed today that fraud will be included in the online safety Bill for user-generated content. Although that is welcome, we think that only captures part of the issue. Online advertising, which is where fees are generated for platforms, needs to be looked at very closely. We are trying to get to the source of some of these problems, to reduce the risk of failure, and then a bill to the FSCS at a later point.

**Julie Marson:** Thank you very much for your responses. I tried to gallop through that but I am out of time now.

Q137 **Emma Hardy:** Before I talk specifically about consumer responsibility versus protection, which is what I would like to focus on, I have a follow-up to the questions we had yesterday with Mr Greensill. I will ask it in a general manner, so that you can answer. Would you expect companies under investigation by the FCA to make the Treasury and the British Business Bank aware of it, if they were involved in lobbying them? Would you expect them to make the Government aware that they were under investigation?

**Nikhil Rathi:** We don't have a general expectation about who firms will tell about any regulatory action. That is obviously a matter for them and the advice they take on their interactions with Government Departments. I know that there is often a suggestion that we should be passing on

information directly to Government. This has been discussed at length previously, but section 348 of FSMA makes it a criminal offence for the FCA to share information about firms, particularly those under investigation, other than in very specific circumstances, so we have to weigh that up in each case very carefully and very specifically.

Q138 **Emma Hardy:** Do you think, in hindsight, that that needs to be changed—that if the FCA is aware of companies actively lobbying Government for funds, they almost have a public duty to make Government aware of that? I understand that at the moment you are not allowed, but do you think you should be in the future as a lesson learned?

**Nikhil Rathi:** We obviously get a huge amount of information about a whole range of firms, and we are investigating—it is public, in some cases—some of the very largest institutions in the country. There are some elements that are under investigation, and it would be complicated for us to inform the Government of what is going on in each case. Where we believe there are significant financial stability issues or significant risks to the regime, we have a gateway through which to do that, but to do that on a routine basis would be challenging. Also, you have to try and protect the integrity of the investigation as far as possible, and very often some of these investigations involve covert action as well as overt action. You want to try and keep the number of people who know as tight as you possibly can.

Q139 **Emma Hardy:** I have just one more question in this area, which again came out of the questions yesterday: are you concerned that some businesses like Greensill are choosing to operate as a financial firm rather than a bank, because of the lighter regulation?

**Nikhil Rathi:** The perimeter of what is a bank and what is a financial firm has been set out in legislation. I would not suggest that I am concerned about the choice there: if something is systemic, we have a mechanism through the Financial Services Act for it to be subject to prudential regulation.

I think the question is more about what the boundary is for regulation, full stop, be it a bank or a financial firm, and that is where we need to be much more systematic about the information we are gathering about some of these market developments, and then need to be able to assess within the UK and with our colleagues overseas whether regulatory action needs to be taken. However, I would also say that it is quite a big step in the area of commercial lending to move in and seek to regulate that entire sector, so it will probably need to be more focused on where there is a nexus into markets or the regulated system.

Q140 **Emma Hardy:** Turning now to consumer responsibility versus protection generally—this is for Mr Rathi—in your evidence in March on London Capital & Finance, you called for a conversation about “whether we need to be putting the same level of effort into sophisticated consumers and very high net-worth consumers in terms of regulatory safety, or whether...they can take their own decisions”. How well do you think the



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FCA can identify consumer sophistication, and how well can you stop people identifying as sophisticated when they are not?

**Nikhil Rathi:** It is a real challenge, and this is one area—again, I highlighted this in one of my letters to the Committee—where we are engaging with the Government. We believe the thresholds in the UK around the definitions of “high net worth” and “sophisticated” are outdated: £250,000 in net assets, given where property prices are and the way in which markets have developed over recent years, is not really a high net worth individual on any measure now. We think there are challenges there, and that exemption needs to be looked at, both in terms of the threshold and the ability to self-certify, which can be done very quickly—momentarily—online. You can just certify yourself that you are sophisticated, and then you can get access to these products without anybody doing an appropriateness test or checking the credentials there. That is a challenge that needs to be looked at.

Q141 **Emma Hardy:** If a vulnerable person wrongly identifies as sophisticated, who is at fault?

**Nikhil Rathi:** That is exactly why we want this point around self-certification to be addressed. In the context of LCF and in other cases too, we have seen that there is the ability for vulnerable people to be coached through the system, to tick that they are sophisticated, and then they get access to these investments. We aren’t even notified of how these exemptions are being used. That is not required under the legislation. It is also why it is important, as you are considering the online safety Bill, to think about online advertising being there as well, because it is the adverts, which are revenue-generating for the platforms, that are persuading some of these vulnerable customers to go after some of these high-risk investments and scams.

Q142 **Emma Hardy:** Are you concerned that the low interest rate environment encourages people to take excessive risks, whether they are vulnerable, sophisticated or otherwise?

**Nikhil Rathi:** Yes, it is a problem. People are looking for returns on their money and are tempted by all kinds of opportunities that are presented to them, including online. We are also seeing, and we have put warnings out around this, a very sharp increase—maybe as a result of people being at home during the pandemic—in highly speculative trading activity, including younger people speculating on cryptocurrencies or on US stocks like GameStop and not really understanding that in doing that, they are putting very significant amounts of their money at risk and, to some extent, perceiving that it is entertainment as much as investment.

Q143 **Emma Hardy:** You have obviously identified a problem and I am really pleased you see there is a problem regarding vulnerable people. What powers or regulatory changes would you like to have to address that?

**Nikhil Rathi:** We would like the online safety Bill, which is welcome, to have user-generated content subject to it in relation to fraud—we would like that extended to online advertising. We would like the financial



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promotions order exemptions to be looked at very seriously—the threshold and the self-certification.

Q144 **Emma Hardy:** In a letter to us, Andrew Bailey noted that “vulnerability is a hard concept to define with precision.” Is there a danger in placing too much emphasis on vulnerability as the requirement to receive protection?

**Nikhil Rathi:** There is a risk and we are always trying to strike the right balance on where you draw the line. At some measure, if you include the full range of potential characteristics around financial resilience and mental health and other health conditions and life events, you can get to tens of millions of people who could potentially be described as vulnerable. Then you are perhaps not getting the targeted support you need. There is no right answer to this question. We put out a framework where we sought to define it. We have put out guidance as to how firms should be taking account of the needs of vulnerable consumers at the product design stage and right through the implementation of their product processes. We have also started a consultation on updating our principles for doing consumer business, to see how we can strengthen those further, particularly in light of the debate in Parliament on the Financial Services Bill.

Q145 **Emma Hardy:** Your duty of care consultation follow-up has been delayed until this month. Given that delay, when would you expect to be able to implement any changes needed from it?

**Nikhil Rathi:** We have put the consultation out. We would like to have the debate during the course of this year and there is an extensive consultation process under way. Then we would hope around summer 2022 to be in a position to be able to make any changes to our principles and rules that flow from the consultation.

**Emma Hardy:** Thank you very much.

Q146 **Harriett Baldwin:** I wanted to get an update, for the benefit of the Committee, in terms of the peer-to-peer lending situation and the investigation with Collateral. Can you just update the Committee on that?

**Nikhil Rathi:** As you know, there have been investigations under way.

Q147 **Harriett Baldwin:** Are they still under way? Have they come to a conclusion yet?

**Nikhil Rathi:** What I would say is that they are very close to coming to a conclusion. The enforcement investigation is at an advanced stage. I am not going to comment too much further because one element of it is a criminal investigation, but they are at an advanced stage.

Q148 **Harriett Baldwin:** Okay, I understand that, but I understand also that the investigation covers a situation where someone was actually able to get into your computer systems and physically alter the records on your computer systems—a very sophisticated hack. I wondered whether you, as chief executive, are comfortable that it would no longer be possible for anyone to do that.



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**Nikhil Rathi:** In the context of the cyber-security risks that we are all dealing with, which are published by the National Cyber Security Centre, I don't think any chief executive is going to say they are comfortable; they are quite sobering in terms of the heterogeneous range of actors who seek to undermine us. For instance, you saw what happened in the US with an oil pipeline this week.

However, where we have taken action is to deal with that specific issue around the register, where there was an ability to adjust the contact details around permission. That specific issue has been tightened up very considerably, but this broader issue of cyber-security—just as we tell the industry, this is an area where we will have to keep investing very heavily to try to stay ahead of a fast-moving adversary environment.

Q149 **Harriett Baldwin:** At the moment, as I understand it, you encourage consumers to check your website to see if someone has got a registration and whether that registration reflects the current state of your evaluation of their business. So can you say to consumers at the moment that, as your website stands today, you feel comfortable that it fairly reflects all the current participants in the market—that what is on your website is accurate?

**Nikhil Rathi:** I am broadly comfortable that the website does that. Of course, I can't say it's perfect. There are 930,000 entries and they are dynamic; they are changing every day. We are investing very heavily in the register to continually improve the data integrity around it, and also to seek to, as we started to do last year, explain very clearly the warnings around different types of entry on the register. Just because a firm is on the register, it doesn't mean you get a full level of protection. We are dealing with everything from firms that are registered for money laundering right through to the largest banking and investment groups in the country. So we try to make it more comprehensive in terms of how people understand the information on there.

Q150 **Harriett Baldwin:** It is so important— isn't it?—because you were just talking about the online harms. If you are a consumer and you are trying to do your best to protect yourself, you kind of rely on the FCA website to be an accurate reflection of the products and the product providers that you are interacting with.

**Nikhil Rathi:** I agree. And that's why one of the early decisions I took on becoming chief executive was to invest more resources in technology, and one significant set of projects that we are working on is products around data integrity.

Q151 **Harriett Baldwin:** Going back to the situation with Collateral specifically, I understand that it was discovered in November 2019—was it?—that the information on your website had been changed by the person you are investigating, and then it took you until February of the following year to reflect that, in terms of the information that investors could see, and that between those two dates an additional £3.8 million was invested in Collateral. Do you think that the FCA should use a redress scheme to help



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those people who were affected by that particular regulatory failure?

**Nikhil Rathi:** The enforcement investigation is under way. There are also, as you will be aware, a number of complaints relating to Collateral. So we will address all those complaints in the normal way, as the investigation reaches its conclusion.

Q152 **Harriett Baldwin:** Can you give the Committee an idea of how soon we might see that conclusion?

**Nikhil Rathi:** I am certainly hoping that, on the investigation, we will be able to give you a very substantive update in the next few months.

Q153 **Harriett Baldwin:** So by the end of July?

**Nikhil Rathi:** I would hope that by September we would be able to give you something, and we will seek to try and do it sooner. Without going into any specifics on this case, you will be aware that with the general enforcement protocol, where the FCA is seeking to potentially take action against anybody, there is a very specific process that allows firms or individuals to make representations and put their case before anything is made public. So we have to bear that in mind when we are making any enforcement decision. That is why it is always difficult to give you a hard timetable, because there is that statutory process we have to go through at the very end of an investigation.

Q154 **Harriett Baldwin:** So by 1 September?

**Nikhil Rathi:** I certainly hope so. We often have these conversations in the Committee. There are rules set out in FSMA around how people are able to make their case, and they often have very well-resourced lawyers who will use every point of process to delay things. I am not saying that is happening in this case; I am making a general point. I have seen, having been six months in the FCA, just how these things can get drawn out, particularly in a contested case.

Q155 **Harriett Baldwin:** Are there any words of wisdom you would like to share with consumers out there about peer-to-peer lending and investing in peer-to-peer vehicles?

**Nikhil Rathi:** We have said you need to approach with care and you should only invest money you can afford to lose, and we have put restrictions around the percentage of your net assets that can be invested in a portfolio of peer-to-peer opportunities. These are not bank deposits where the advertised interest rate is guaranteed. These are risky investments that, if you are going to invest in them, it should be as part of a much wider portfolio.

**Harriett Baldwin:** Thank you.

Q156 **Alison Thewliss:** I have got some questions mainly around insurance. First, I want to thank you and your colleagues at the FCA for taking forward the case for those who were not getting pay-outs through their business interruption insurance. I have a number of constituents who have businesses that were affected by that. What are you doing to ensure



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that insurers are now making prompt pay-outs to claimants, following the ruling on 15 September?

**Nikhil Rathi:** We are very much on it. We have been taking supervisory action. We have started publishing the data naming the insurers and how far they are getting in terms of processing the claims. We have published a list of policies of insurers that are in principle capable of being covered by the outcome of the Supreme Court case so that businesses can understand whether they may be able to take advantage of the verdict. And where we see any laggards, we are taking supervisory action. The latest data I have as of 6 April is that 35,400 claims have now been accepted—that is up from 21,000 at 3 March—and the number of decisions pending has fallen from 18,000 to 12,000.

Q157 **Alison Thewliss:** Okay, but still quite a lot of people are waiting for pay-outs.

**Nikhil Rathi:** There are, but obviously we have to respect the terms of the judgment as well. The judgment did say that businesses have to provide evidence of the loss and, as I understand it, we have had cases where businesses have taken time to provide their accounts or the historical data that shows the evidence of the loss. We are now in a process respecting the verdict of the Supreme Court, and that was a balanced verdict.

Q158 **Alison Thewliss:** Okay. I want to mention one particular business in my constituency, Sauchiehall Barbers, who feel as though their insurer, Hiscox, is still dragging its heels quite a lot. The business put in their claim on 23 March last year, so that is a long time to wait for that insurance to be paid out. Is there any scope for compensation for businesses that have been waiting for this length of time?

**Nikhil Rathi:** There is obviously a very active action group in relation to Hiscox; I am aware of that. I am very happy to hear more about that specific case if you are able to share the details, maybe after the hearing. Our focus is on trying to ensure that the pay-outs get there as quickly as possible rather than any further redress scheme, which I think would end up being contested in the courts.

Q159 **Alison Thewliss:** Okay. Some insurers also seem to be doing clawback of grants, self-employment support scheme, furlough or rates relief that businesses have received. That is not fair, is it?

**Nikhil Rathi:** That is one of the issues that I think is a grey area in the Supreme Court verdict: how do you define loss? To an extent, it is going to depend on the precise contractual terms in each policy. The court did not give completely clear guidance on that point—it can be interpreted either way depending on the policy. We are also in touch with the Treasury on that topic, to see what further guidance can be provided.

Q160 **Alison Thewliss:** Because that is public money, not money of their business.



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**Nikhil Rathi:** I understand that. The question is what some policies will define as loss suffered by the business—that is what was insured. Therefore, if the money for furlough was there to compensate in part for the losses that would have been incurred, the question is whether the insurer should pay out if they get their money from the Government and from the insurance. I think that will depend on the precise wording of each policy. The Supreme Court did not give us the holy grail of a completely clear answer.

Q161 **Alison Thewliss:** That is useful to know. Has there been any impact on the financial sustainability of insurers? Do you have a more general sense of what the broader impact will be on insurance policies for things such as pandemics?

**Nikhil Rathi:** We worked closely with the PRA throughout the work on business interruption. It is responsible for the solvency of insurers, and we do not feel that there was any particular systemic impact from the case. Obviously, many of the insurers are listed companies and have declared the losses or costs of the case.

Clearly, how a pandemic will be ensured in the future is a big question, which I know the Treasury has on its list of things to think about, but probably wants to get through this pandemic first. There is an increased prevalence of insurers that are adding exclusions in contracts for this type of event, because of the scale of the loss that can occur.

Q162 **Alison Thewliss:** That will be an uninsurable kind of risk, won't it?

**Nikhil Rathi:** Potentially, a bit like flooding became an uninsurable risk. It will not just be in the UK—how economies protect themselves financially against pandemics will be a global issue affecting global insurance and reinsurance markets.

Q163 **Alison Thewliss:** Do you think there is perhaps scope for the Government to look at a kind of Flood Re scheme for pandemics?

**Nikhil Rathi:** I certainly do not think that is something that the financial regulator could solve on its own. You would have to ask the Government what their appetite is for an economy-wide insurance scheme.

Q164 **Alison Thewliss:** Briefly, on Flood Re, do you take a view on whether it should be extended to cover more homes, particularly those built after 2009?

**Nikhil Rathi:** I am not aware that we have taken a view on that particular point, but I am happy to look into it and let you know.

Q165 **Alison Thewliss:** On a different insurance matter, but an area where there I feel there is actual or potential market failure: insurance for people who are in buildings with cladding. I have a number in my constituency; there is a significant building where hundreds of people found they were at risk of losing their insurance around Christmas last year. Your colleagues who I was in touch with were very helpful, but the situation remains that they can either be underinsured, which is just



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about affordable for some people, or insured, which is completely unaffordable. I wondered what further work the FCA is doing to address that problem, which will affect people up and down the country who now cannot afford insurance on their property.

**Nikhil Rathi:** That is a very challenging public policy issue that engages a number of public authorities. As you and others interested in the topic know, we have engaged with the insurers. We certainly expect insurers to follow our principles of business and treat customers fairly. At the core of the issue is getting the certificates out for those buildings and getting surveyors out there to certify them, and where there is remedial work to do, getting that work done and having a timetable for it. I know there was a vote in Parliament recently about those issues. Ultimately, we cannot force an insurer to offer insurance against a building that is not determined to be fire safe. The level of premium that they charge will ultimately be a commercial decision for them, but we certainly support the work that the Communities Department is doing to try to get the surveys done as expeditiously as possible, and we support firms taking a sensible, risk-based approach.

Q166 **Alison Thewliss:** I have had feedback from various constituents who feel as though the approach being taken to their properties is overly cautious. They are not in large high-rise buildings; they are in three-storey or four-storey buildings where the risk is absolutely minimal, but insurers and banks are backing off and refusing to grant either mortgages or insurance. Is there any more that you can do to deal with the situation where there is a risk aversion without any strong evidence for it?

**Nikhil Rathi:** We have encouraged banks to take a risk-based approach, and I think they have taken steps in that direction with respect to mortgages. The underlying issue is the lack of surveyors who can go out and certify that these homes are safe. We have to think about this for both sides of the market. When it comes to property—we have seen this in house sales—the buyer of the property also has a right to know that the property they are buying is fire safe. They will want a survey to do that, and if that survey is not available it will be challenging to get that assurance and get the mortgage lending or returns that they might ideally want. We are hoping, with the measures that Parliament has just voted through and the Government are taking, that this problem will gradually ease. The core of the issue, as we know, is that building standards in the UK for a number of years were not where they needed to be, which has left us dealing with this challenging problem.

Q167 **Alison Thewliss:** Do you have any specific comments about the applicability of the EWS1 form in Scotland? Obviously, we don't have leasehold in Scotland; we have an entirely different means of dealing with property. This doesn't seem to have taken Scotland into account, which is now having a knock-on effect on mortgages and insurance. Is there a Scotland solution that can be brought forward for this?



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**Nikhil Rathi:** The EWS1 form is probably a matter for the Communities Department, rather than for us, but if there is an angle that we have, I am happy to look at it.

**Alison Thewliss:** That would be very useful. Thank you very much.

Q168 **Anthony Browne:** My questions will be about the mortgage market—first, about mortgage prisoners, and secondly, about the loyalty penalty. The Government a couple of weeks ago rejected an amendment from the House of Lords on mortgage prisoners and said it would commit to working with the FCA to try to resolve it. There are 250,000 mortgage prisoners, and about half of them are not free to move because they are trapped by affordability requirements or they are in arrears. What are you going to do to help these mortgage prisoners?

**Nikhil Rathi:** We will work with the Treasury on the review. We recognise the commitments that have been made in Parliament. We have taken a number of steps already, including in 2019 modifying the affordability assessment for lenders so that they could look at historical payment records and not the traditional affordability metrics to enable them to offer mortgages to those who were able to switch.

Q169 **Anthony Browne:** It only gives them an option to do that; it doesn't compel them to do it.

**Nikhil Rathi:** Ultimately, it is up to a mortgage borrower whether they wish to switch or not. There are 12 lenders that have taken up that option at the moment. It is difficult to assess its precise impact, because obviously the last year has been slightly strange with the mortgage holidays and so on operating during the pandemic. We will see how many take up the issue.

Q170 **Anthony Browne:** That review doesn't actually help mortgage borrowers with inactive lenders.

**Nikhil Rathi:** That helps a portion of borrowers with inactive lenders, because it enables active lenders to offer borrowers with inactive lenders a mortgage on a different—

Q171 **Anthony Browne:** About half of them; not the other half.

**Nikhil Rathi:** We are probably close to the limits of what regulation can achieve, which is why it was so hotly debated in Parliament. If I look at the data—we will refresh this data—there are about 250,000 consumers who are with active lenders and about 125,000 can choose to switch if they wish to now. There may be affordability criteria. 70,000 are in arrears, and that is obviously complicated for a new lender to take on. They will have their own risk criteria around arrears.

The other issue we have is that a very substantial portion of these consumers are on interest-only mortgages, and many may not have a repayment plan. That was the framework of the market in the early



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2000s, when mortgages without a repayment plan other than sale of property were permitted. That is not how the majority of retail lenders work today in interest-only mortgages. That is a particularly challenging issue that cannot simply be solved by a regulation, which is why I think it is something for Parliament to consider.

Q172 **Anthony Browne:** Can I take up the issue of mortgages for people in arrears? I want to raise the case of a constituent of mine, although many other people are in the same position. He was with an inactive lender, he went out of the fixed interest rate period and his interest rate trebled, and because of the change in affordability criteria, he could not move to another lender. As a result, he went into arrears, and because he was in arrears, he could not then move to another mortgage lender. His house is being repossessed. He has done absolutely nothing wrong and has been entirely trapped by the regulatory position into basically having to default on his mortgage. Presumably you can see, from his point of view, the extraordinary injustice of this.

**Nikhil Rathi:** I can certainly see the distress that there is for a lot of these—

Q173 **Anthony Browne:** He is in arrears because he is paying three times the interest rate he would be able to get if he was allowed to move.

**Nikhil Rathi:** Absolutely, which is why we changed the affordability rules to enable—

Q174 **Anthony Browne:** That does not help him, because he is in arrears. The affordability rules only help people who are not in arrears.

**Nikhil Rathi:** The challenge we have, as a regulator, is that we cannot require another bank to take on a customer who has arrears, even recognising that the arrears are due to the high interest rate. As a regulator, we cannot direct a new lender to do that—

Q175 **Anthony Browne:** Could you not compel inactive lenders to charge a more reasonable market rate of interest, rather than penalty rates of interest to trapped mortgage people who are in arrears or other circumstances?

**Nikhil Rathi:** We do not have that power, and obviously Parliament rejected that amendment to the Financial Services Bill a few weeks ago. It is not a power we have, and it is not one that Parliament took.

Q176 **Anthony Browne:** Are you saying that in the review you are doing now, you will not actually be able to help any of the people in arrears?

**Nikhil Rathi:** I am saying that we will try to understand what is happening with the data and we will try to make sure that all options are tested, but as I understand it, it will be a Treasury review, because obviously the levers are primarily for the Government to consider. I think it was also the finding of the report by the London School of Economics that, at this stage, these are now matters for the Government, because some of the solutions are fiscal solutions.



Q177 **Anthony Browne:** I will move on to loyalty penalties, which is an issue that has been perplexing me for some time. You were subject to a super-complaint by Citizens Advice about the energy industry, the insurance industry and the mortgage industry. The issue is that loyal mortgage customers end up paying interest rates up to three times higher than if they shopped around every two years. I know that you have done a review of this and are looking at ways to help vulnerable customers. As a principle, do you think a market is really working well if people who take out a 20-year loan against a long-term asset—buying their house—have to shop around every two years in order not to be penalised?

**Nikhil Rathi:** First, thank you for the advance notice of the question. I saw your article in *The Times* where you set out the case.

Q178 **Anthony Browne:** As chief executive of the British Bankers' Association, I held discussions with your predecessor about this, and with the various banks. It is certainly an issue that a lot of the banks realise is grotesquely unfair, but they feel slightly trapped by the way competition and the market works into not behaving in a different way. It is clearly unfair to penalise customers who are loyal, particularly in a long-term loan situation.

**Nikhil Rathi:** As you mentioned in your article, we did a very detailed mortgage market study in 2019. The conclusion of that was that the market generally works well for consumers. I understand the point you are making around the frequency of switching, and perhaps there are customers who do not take the opportunity to switch when their fixed rate expires. We generally found the market to be competitive and that there is an opportunity to switch to competitive rates. The industry has agreed to let customers know several months before their mortgage rate expires that it will be expiring and what their options might be.

We have a cultural issue in our market, which is different from Germany or the United States, say: notwithstanding some banks offering 10-year fixed rates and occasionally something a bit longer, there has not generally been a predisposition on the part of consumers to take longer term fixed-rate mortgages. The prevalence for such mortgages has been two years, now starting to move towards the five-year segment.

Q179 **Anthony Browne:** As you say, banks are required to notify customers, but banks are experts at communicating with their customers, knowing what wording to use, what font size to use and what calls to action to use, and in what ways. They know which groups of customers will respond, and in which timeframe, to that. They can design it in a way so that there is a certain amount of friction, and if a customer stays on a standard variable rate for six months, for example, on average, that still dramatically boosts the profitability of the mortgage sector.

**Nikhil Rathi:** We will look at the evidence again and we will review the implementation of our market study in due course, to assess whether there are issues there. As I said, the detailed figures for 2019—I know you disagree with the conclusions, but the detailed study was just published—did not identify a structural issue in the way that you describe.



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**Q180 Anthony Browne:** I read your study, and you commissioned various other bits of research about it, but my issue with it was that you assumed that a market in which people can switch easily is a market that is working well. That may be one measure of it, but it is a lot more complicated because of behavioural economics. I know you looked at that, but a certain proportion of people—millions of people—end up on SVRs, paying far more interest every month than they need to. The banking industry knows that. It causes a huge cross-subsidy and is a barrier to new mortgage lenders—Metro Bank, for example—because they do not have the big back book of people on SVRs to subsidise buying the new customers on the front book. That acts as a hindrance to competition.

**Nikhil Rathi:** We will keep this under review. What I would say on the FCA's approach is that we are not averse to dealing with issues where we think that there is a loyalty penalty problem. We have taken action, as you know, on overdraft fees, and we are in the process of implementing action on general insurance pricing as well. Where we believe the evidence is strong and compelling to intervene, to take action and to deal with the loyalty penalty issues, we do. Recognising the force of your points, we have not yet seen that evidence to be compelling in this case, but we will keep it under review.

**Q181 Anthony Browne:** I am running out of time, but I will raise two issues very quickly. First, the market basically forces everyone to change mortgages every few years and that often incurs a lot of costs that are not regulated—things like mortgage arrangement fees, valuation fees and so on. You can get mortgage arrangement fees of up to £2,000 a time. They have ballooned because that is where banks can make money without people quite realising what they are committing to by the time they finish looking at those two-year deals. Is there a strong argument to regulate all the ancillary fees that are associated with changing mortgages?

**Nikhil Rathi:** Our expectation is that all those fees are disclosed to customers, as is the overall cost of the mortgage that they are taking on.

**Q182 Anthony Browne:** They are disclosed, obviously, but as you know, mortgage customers respond to the marketing of the banks and the price comparison websites, which do not rank products according to those fees. Customers get taken on a journey towards getting a new mortgage, lured by an apparently lovely low interest rate, but then get all those fees, to which they have not really had their attention drawn sufficiently—they are mentioned, but we know that there is a difference between mentioning something and making people aware of the true cost of a product.

**Nikhil Rathi:** I am happy to look again at whether there are specific issues there around customer understanding of the overall cost of the mortgage, based on the journey you have described.

**Q183 Anthony Browne:** Thank you. My very last question is on the regulation of price comparison websites. They are required to put the annual



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percentage rate charged, which is the overall cost for the lifetime of the mortgage, but they do not rank them by that. The thing that Citizens Advice has asked for is, basically, regulation of price comparison websites to rank products on the real cost, if the product is used as intended in the contract. Is there an argument for that? Have you looked at that?

**Nikhil Rathi:** I am not aware that we have looked at that in detail, but I am happy to take that away as well, Mr Browne.

**Anthony Browne:** Thank you. I have run out of time.

**Chair:** Thanks, Anthony. I know that Steve is a little pressed for time, so I will briefly go to him next and then will come to you Nick.

Q184 **Mr Baker:** Thank you. I want to turn to your competition objective and the issue of mutuals, because, as a member of the all-party parliamentary group for mutuals, I was pleased that we have taken steps, such as publishing a report into LV and writing to the governor in his capacity on the PRA. What assessment have you made of the reasons why mutuals do not enjoy the level of success in the UK that they do elsewhere, such as in the US, Japan, Germany and France?

**Nikhil Rathi:** There is a long history in the retail banking sector, where building societies demutualised and that saw a very significant reduction in the share that mutuals had of the retail business. The Co-operative Bank was a significant mutual provider that ran into difficulties in light of the 2008-09 financial crisis. That historical context has led to some of the structure we have today. I know Charles has been engaging on this topic with the all-party parliamentary group on fair business banking and maybe wants to add more on this point.

**Charles Randell:** We had this question when Andrew Bailey was chief executive. One of the issues we identified was the relatively limited range of options for raising capital in this sector and having capital remunerated at a level that ensured that, if firms hit a road bump, needed to expand or support their technology systems, they were able to get that capital. In various parts of the sector, that has been a real issue, particularly for some credit unions. The cost of migration to a digital business model, which all businesses are facing and very large banks are able to substantially invest in, is very difficult for mutuals to bear under the existing, rather atomised, structure of some of the industry.

Q185 **Mr Baker:** I am so sorry to cut you short because I would love to spend my full time on this, but I do have to go to a meeting for which I am now late. Can I ask you about the Mutuals' Deferred Shares Act 2015, which should go some way to solving this problem? Is it your view at the FCA that implementing that Act would assist in this problem and could help mutuals to compete?

**Charles Randell:** I think having additional forms of capital that can be raised—we saw this during the financial crisis with the evolution of participating deferred shares at that time as one of the ways in which mutuals could raise capital. The fundamental problem is the connection



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between a really large investor supply of capital and the firms themselves. I do not think just the form of capital is the issue. It is also about having a model which will remunerate people and return the cost of capital to them if you are going outside the existing membership.

Q186 **Mr Baker:** Again, I am sorry to cut you short, but as I listen to you, I feel like you have written off mutuals. Personally, I have always felt that in a free market it was essential that there was a good number of companies available whose business model put the customers who owned them first and foremost. I always felt that the carpetbagging of my teenage years was a mistake and I am rather afraid that LV is going to be a great loss. I wonder, as I listen to you, whether you share my passion for mutuals, quite frankly.

**Charles Randell:** Absolutely I share your passion for mutuals, which is why I have been an attender at functions when invited by the Building Societies Association, as I was last week, and why I engage regularly with leaders of building societies and credit unions to talk about their issues—but they are not all susceptible to a single solution. There is a range of issues around scalability of technology, and issues in small credit unions about just the cost of compliance. Sam Woods and I have discussed this and we are keen to encourage entry into the sector, but it requires people to come forward with propositions that are going to shake up competition. If we see those, we will certainly look at them and treat them with due expedition.

**Mr Baker:** Thank you very much for your time, and thank you, Chair. I am so sorry that I don't have the full time.

**Charles Randell:** If I may, I would just put in a plug for my local mutual, of which I am a member—London Mutual.

**Mr Baker:** Very good. Thank you very much indeed.

**Chair:** Finally, we come to Nick.

Q187 **Nick Smith:** Thank you, Chair, for allowing me to join as a guest today. It is good to ask the FCA about the British Steel pension scheme scandal. It is a big concern for MPs in steel-making regions. The sad thing is that for many pensioners this was presented as an opportunity to reinvest the biggest pot of gold they would ever have, but for pension sharks it was a massive money-making opportunity.

These are the facts. In December 2017, nearly 8,000 people transferred out of the BSPS, even though it was in their best interests to stay. The *Financial Times* reported a "feeding frenzy" of pension sharks targeting the steelworkers, and of course the commission then started to roll in. Now we have a situation where the compensation bill is somewhere between £250 million and £375 million. In my experience, vulnerable steelworkers' families with low financial education have not been supported in that. Unsurprisingly, my constituents also want the pension sharks to be jailed.

My question is to Mr Rathi. The FCA has been criticised by me and others



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for a slow pace of support and action. Why did it take the FCA until June 2020 to write to the 7,700 members who had transferred out, and why have you only just produced what is in my experience a pretty hopeless social media toolkit that is supposed to support steelworker pensioners?

**Nikhil Rathi:** Thank you for the questions, Mr Smith. First of all, I should say that we certainly understand the distress that you describe in this situation. The many consumers impacted by this were vulnerable consumers, and they had been advised to take decisions that, on one review, looks like it was unsuitable advice and not in their best interests. The origins of this we can chart through, obviously, pension freedom legislation, which permitted defined benefit pension transfers. In the specific situation around the British Steel pension scheme, the Government consultation created an alternative scheme and created that moment of choice. I know there has been a review by Caroline Rookes as well, which has made recommendations.

The FCA wrote in June 2020 to all members who have transferred to advise them that they might have grounds on which they can complain against their adviser and the different mechanisms that they can use. I recognise your feedback on the toolkit. We will take that feedback on board. We have also had alternative feedback that it has been useful for some. I recognise it might not be perfect, but we will certainly take that feedback on board. We will write again to everybody. As the public health situation improves and allows it, we certainly want to have people on the ground engaging in community meetings so that we can discuss the options. Obviously, over the last year, that has not been feasible in the same way.

We hope that that will help to some extent address the issues, but we are dealing with quite a complex situation, not least because a number of the firms who were advising have now gone bust or left the market in one way or another.

Q188 **Nick Smith:** I only have 10 minutes, so I will have to rattle along, but I must say that that seemed to be a pretty shame-faced response. Steelworkers tell me it is hard to make a complaint. They have to go back to the original adviser to complain. Some IFAs have been actively discouraging complaints. IFAs are not being obviously pushed so that steelworkers will know if it is worth coming forward. What extra measures can you take to help steelworkers complain and get justice?

**Nikhil Rathi:** As I say, we will write again to all of the affected members. If there is any evidence that you or others have that suggests that regulated firms are discouraging complaints, we will look into that. We will also have colleagues on the ground as well, as I described.

We are undertaking past business reviews of the largest firms that gave advice. Those are well under way and will be completed during the course of this year. We are directly speaking to those firms and engaging directly with them so that they proactively deal with the situation.

We are working with the FOS and the FSCS for the complaints that have been routed to them through the mechanisms for complaints about firms that are still functioning, and those that have failed have gone to the FSCS. We are happy to keep working with you and other local MPs to ensure that these vulnerable consumers understand the ability to complain.

We have taken a survey, too. One of the complexities of the results coming out of that survey is that a material number of people, notwithstanding that they may not have been given the best advice, feel comfortable with the decision they have taken, for their own personal reasons, as to why they wanted the money out at the time they did, and they have chosen not to complain. We can keep seeking to ensure that they understand the nature of the decision that they have taken.

Q189 **Nick Smith:** I have written to you on this next point twice and I haven't had a good answer from you on it. The FCA's guidance says that it is almost always best not to transfer out of a defined benefit pension. Given the high percentage who were advised to transfer, will you implement a consumer redress scheme for BSPS, as you did with the Arch Cru funds in 2013?

**Nikhil Rathi:** I know you have been meeting my colleagues, the executive directors for supervision and enforcement, and will be meeting them again tomorrow. I am pleased we have had the opportunity in this accountability hearing to talk about that specific issue, because I do think it goes right to the heart of the parliamentary accountability of the FCA. I will explain what I mean by that.

I certainly understand what you are saying about the potential to use the section 404 power in FSMA, subject to FCA board discussion, to introduce a redress scheme. There are things we have to weigh up as we consider that. You are right that in the vast majority of cases it is unsuitable to transfer out of a defined benefit pension, but Parliament passed a law in 2015 facilitating this. It was a key element of Government policy, and people have a right to exercise it. If we are to take this step, one of the things we have to weigh up is the cost of the scheme, not just the redress and administration costs. We heard Ms Marson's questions earlier about the FSCS and the significance of healthy firms paying for the historical redress bill.

We estimate that approximately 3,000 firms were advising on defined benefit pensions a few years ago. That market has narrowed now to 1,300. We would expect several hundred small firms to go under if we implemented a redress scheme. I am not ruling it out, but we also need to weigh up what the impact on the professional indemnity market would be. There were 15 providers; there are now five. It is possible that the market might harden to such an extent that it is not available any more.

The reason that I mention the context of accountability is that we could be using a power under FSMA to neutralise a right that Parliament has given to consumers through another piece of legislation. That is why, if we go



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down that route, it needs a really full conversation with the Government and Parliament so that we all understand what the implications are. That is the accountability conundrum we need to work through. I hope that helps with the explanation.

Q190 **Nick Smith:** I understand your thinking, but this issue has been going on for three and half years and involves many thousands of people, many of whom have very obviously been ripped off. You guys aren't addressing it, I think, sufficiently.

I am running out of time, so I am going to have to miss out some questions. It seems to me that in the past three and half years the FCA's enforcement strategy has been to concentrate on financial redress first. Why does it take so long to take any court action against the worst actors among the independent financial advisers?

**Nikhil Rathi:** The team is very focused on this. As you will be aware, there are two individuals who are subject to High Court action now. The fact of that is public; I cannot comment in any detail on that particular case. There are other cases that are following on shortly: there are 30 investigations under way, and I certainly hope there will be significant progress in those investigations through to the end of the year. You may have heard earlier in the Committee some of the challenges around the timing of those investigations and the need for representation, and obviously, the whole issue of what is suitable advice has to be looked at on a case-by-case basis. Defined benefit pension transfer advice is a very complex piece of advice, and therefore those who are seeking to challenge the decision to take enforcement action against them will throw quite a lot of complex analysis which, by law, we have to evaluate before we take any action against them.

Q191 **Nick Smith:** This example shows that these con artists will be getting away with it. The Work and Pensions Committee recommended that the FCA regularly publishes data about enforcement action to give people faith that the FCA is taking firm action and will bring this forward. Will you commit to this?

**Nikhil Rathi:** We have no problem publishing the data around the enforcement cases, when we are able to communicate publicly about them. As you know, when we are talking about individuals—sometimes, you are talking about sole financial advisers—we have to comply with certain laws about how we can name people. That is the statute under which we operate.

Q192 **Nick Smith:** This scandal has thrown up a multitude of so-called introducers who lure steelworkers to their IFA mates, and IFAs re-entering the market after being punished, returning to their old victims. Meanwhile, the Financial Ombudsman Service has only determined one BSPS case. Why hasn't the FCA tackled introducers and phoenixing, and how are you as a senior regulator putting pressure on the FOS, your unperforming partner?



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**Nikhil Rathi:** Obviously, I am not here to answer for the FOS. I know that the Committee has a separate investigation into the activities of the FOS, and it is independent from the FCA, but I believe it has resolved more than one case. That is the latest information I have.

The point you raise about phoenixing is a totally valid one. It is absolutely unacceptable for somebody who has been involved in misconduct to pass their liabilities off by letting their old firm go under and then trying to set up shop again as a new business—a new entrant. We have prevented at least nine of those cases, and we are considering formal rules against what we would term as lifeboating to try and prevent this from taking place. Obviously, some of these individuals will seek to do this before the cases have crystallised, and that is where we have some work to do to make sure we can catch those individuals, but in terms of the tenor of your question and making sure that we do as much as we can to stop these people coming back in some other guise, I think we are totally aligned.

Q193 **Nick Smith:** I have one final question. Dame Gloster's report on the LC&F scandal said that the FCA failed to protect consumers, and highlighted the FCA's slowness to act. If an inquiry looks into the FCA's handling of BPS—and I think it should—do you think it would have similar findings?

**Nikhil Rathi:** Maybe that is one that is appropriate for the chair, as the board deals with most things in relation to inquiries.

**Charles Randell:** Thank you, Mr Smith; obviously, we have met before to discuss this issue. It is really important to identify what the root cause of the problem is in the BPS case, and how we can prevent similar problems in other cases.

As Nikhil has said, the policy of pension freedoms was one decided by Parliament, and it presented people with incredibly complex decisions. Frankly, I think it was a policy that was designed by people a long way from Port Talbot, and it was implemented very quickly, but it gave rise to a problem that could only be solved with co-ordination between a large number of organisations: employers, pension trustees, the Pensions Regulator, the FCA, and the Money and Pensions Service. Caroline Rookes' report did highlight that the co-operation around the British Steel pension scheme was not what it should have been. I have been doing what I can to ensure that we are as good as we can be in preventing future harm in pension transfers. I hold regular meetings with the chair of the Pensions Regulator. We jointly chair sessions of our executives to hear how they are implementing the Rookes review recommendations.

In more recent times, the cross-authority response has been very effective. For example, we received some information about the Rolls-Royce pension scheme, and we immediately wrote out in a joint statement with the Pensions Regulator warning advisers off. As you know, we are also working on a strong nudge policy so that firms signpost Pension Wise guidance for any consumer thinking of transferring, and I really welcome



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the changes to the law that will enable trustees to refuse pension transfers in some cases.

I think that the lessons, very painful as they are, have been learned. On your specific questions about the speed of action in relation to BSPS, we are very determined to bring enforcement cases to the speediest conclusion we can. We are determined to crack down on phoenixing, which is why Nikhil has added to his management team by appointing an executive director for authorisations to make us as good as we can be in this area.

**Nick Smith:** Thank you, Chair, for the opportunity to attend the Committee today and to speak for steelworkers in south Wales and across the country.

**Chair:** Thank you very much, Nick, for joining us this afternoon.

That brings us to the conclusion of this evidence session. I thank both Nikhil and Charles for joining us and answering our questions this afternoon. Inevitably, there has been a lot about Greensill, on which we have an inquiry, as do many other bodies at the moment. Thank you for telling us what you could in response to our questions on that subject.

We have also covered a number of other important matters—Collateral, business interruption, insurance, mortgage prisoners, mutuals and, just a moment ago, British Steel pensions. Thank you very much indeed for your contributions and for answering our questions. That concludes this session.