

Treasury Committee

Oral evidence: [The work of the FCA](#), HC 146

Wednesday 8 December 2021

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Members present: Mel Stride (Chair); Rushanara Ali; Harriett Baldwin; Anthony Browne; Gareth Davies; Dame Angela Eagle; Julie Marson; Siobhain McDonagh; Alison Thewliss.

Questions 194 - 308

Witnesses

I: Nikhil Rathi, Chief Executive, Financial Conduct Authority; Charles Randell CBE, Chair, Financial Conduct Authority.



Examination of witnesses

Witnesses: Nikhil Rathi and Charles Randell.

Q194 **Chair:** Welcome to the Treasury Select Committee session on the work of the Financial Conduct Authority. I am very pleased to be joined by Nikhil and Charles, and I will ask them to very briefly introduce themselves to the Committee for the public record.

Nikhil Rathi: I am Nikhil Rathi, chief executive of the Financial Conduct Authority.

Charles Randell: I am Charles Randell, chair of the Financial Conduct Authority.

Q195 **Chair:** Welcome. I should explain to those who are watching our proceedings on Parliament TV that we are expecting several Divisions in the House of Commons at about 3 pm. I will suspend the Committee at that time, and we will probably be off air until 4 pm or thereabouts, just to give advance notice of that. Welcome, gentlemen. Thank you for coming today.

Can I start with fees? Nikhil, your November fees proposals contain a significant uplift for firms' minimum fees from £1,151 to £2,200. Is this proposal not going to significantly affect a lot of the smaller firms that you regulate? What is your thinking around that? They have a lot of burdens coming at them from a lot of directions, let alone fees.

Nikhil Rathi: Thank you, Chair. I am pleased to cover that important topic with the Committee. We signalled in our fees consultation last year a desire to move towards a more consistent fee structure, including for smaller firms. From the conversations we have been having with the Committee, you will know the investments we are putting into the supervision of our small firm population: investments in the register, investments in our authorisation gateway and more holistic data-led supervision. Realistically, that needs to be funded. It is reasonable for that to be funded broadly, to the extent possible, by the population that we are looking after.

For example, in the case of LCF, which the Committee spent a lot of time on, a fee that would have been around £1,000 a year is not going to do justice to the kind of supervision we need to be undertaking, and the kind of investment we need in our data and infrastructure, for those types of firms in the future. It is a consultation, so we want to hear the feedback through the consultation, but we are looking to open a discussion about that rebalancing.

Q196 **Chair:** When does the consultation close?

Nikhil Rathi: It closes in February, I believe.

Q197 **Chair:** It is quite a hike, is it not? It is certainly quite a big stretch in proportional terms.



Nikhil Rathi: It is. We are open to hearing feedback about phasing and about the concept, but the underlying point is that we need to invest very heavily in supervision of these small firms, where there is a potential for significant harm. The healthy firms want us to go after those that are committing misconduct, because it cleans up the market for them. That is the principle that we want to have a conversation about.

Q198 **Chair:** How is the transformation programme going at the moment?

Nikhil Rathi: I am feeling encouraged by the progress we are making. I sent a letter to the Committee earlier in the week that set out where we had got to. You will have seen various announcements coming through across the different work streams for transformation. For example, we are looking for the first time at having consistent strategies across consumer and markets, which will bring in all divisions across the FCA in an integrated way, with concrete metrics.

One specific example of where we started testing that was our consumer investment strategy. We have put out specific targets to reduce the level of savings by consumers holding £10,000 or more in cash when they do not need to by 20% over five years. We have put targets out around reducing the FSCS levy. That is one example of getting performance-oriented. On our consumer engagement, we plan to extend that very significantly, including partnering with the FOS and the FSCS. We are also trying to be more experimental. You may have seen us on Instagram or TikTok, trying to communicate with a different audience in a different way about some of the risks that we are facing. We are also intensifying our work at the gateway with an early oversight programme for new firms. There is a range of initiatives.

We are also undertaking—I am sure the Committee will want to come on to this at some point in this conversation—a fairly wide-ranging change to our reward and grading structure. You have raised with me previously the issues of culture and silos in the organisation. I am happy to talk to those topics as well.

Q199 **Chair:** I will come to that. Before I do that, in September the board minutes note that you told them about “resourcing risks across the organisation and the potential impact on business delivery”. Can you tell us a bit more about that?

Nikhil Rathi: Whenever I am asked this question, I always flag that underpinning it is a good news story, in that we have a very hot jobs market. When we think about where we were a year ago and what we thought the economy was going to be like, it was a very different outlook. The labour market is very vibrant. There is a lot of movement, particularly in sectors like data and technology, where there is a huge demand for skills right across the economy and right across the country. We are no different to any other significant employer in having to manage those challenges. We do not see attrition in our organisation at levels elevated to what they were typically before the pandemic. We are



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alive to some of these challenges, and we have to prioritise carefully to make sure we can deliver on them.

Q200 **Chair:** Where are you finding most of the pressure on the recruitment side?

Nikhil Rathi: The areas of data and technology are very competitive. When I talk to financial services firms, they are facing the same issues. You just need to look at the announcements that the big tech firms are making about the number of jobs that they are creating, encouragingly in the United Kingdom. That is a healthy thing, but then all of us need to compete for those skills.

That is also why we have indicated that in future we want to explore opening an office in Leeds. We want to be able to access, in the medium term, the really outstanding talent pools from the universities there and visibly become a much more national regulator than we have historically been.

Q201 **Chair:** Coming on to the point you have raised about pay, can you tell the Committee a bit about how you see where you are on pay as an organisation and where you are trying to get to? There is this issue of bonuses. To clarify that specific point, is it the case that as things stand at the moment just about everybody in the organisation is getting a guaranteed bonus irrespective of performance? Is that a fair characterisation?

Nikhil Rathi: I would not describe it as guaranteed. It is a discretionary scheme.

Chair: Rather than “guaranteed”, I mean that people can expect to get it and 99% of the time they do.

Nikhil Rathi: In the years before the pandemic, typically 70% to 90% of colleagues got a bonus, which was attached to some kind of performance rating. Earlier this year in March, given the exceptional circumstances of the pandemic and the exceptional contribution that our colleagues had made over the year—other than for executive directors; we did not pay bonuses to executive directors last year—we paid £23 million of bonuses in March this year.

The thinking behind our proposals is fairly wide ranging. This Committee has asked me to transform and to transform quickly, to look at culture, to look at the silos in the organisation. What we are trying to do with our consultation—it is an open consultation; it closes in a couple of weeks—is to think about what kind of career grading and reward framework we want for the FCA in the future to be the kind of agile, pacy regulator that we want to be, and to attract and retain the talent we need.

Today we have 13 job families with 77 pay ranges. It is a very complex pay structure. I would like to get to a much more simplified job structure to enable colleagues to be mobile across the organisation and help us



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build that corporate spirit where colleagues are moving across divisions and thinking about FCA objectives as a whole. Over time, that will help us deal with some of those cultural issues around silos that we have talked about previously.

Before I get to bonuses, when it comes to base pay we have looked at various benchmarks. That has indicated to us that we have fallen behind when it comes to lower-paid colleagues. We have several hundred colleagues in our contact centres and our supervision hub, who are really at the front line of dealing with some very difficult queries, and we want to address their base pay. We are proposing moving from the minimum benchmark there of £23,000 to approximately £28,000, subject to the consultation. We carry a lot of risk in our supervision hub and our authorisations team. We want to make sure we motivate and incentivise our talent there.

We are also conscious of the need to spend money carefully. Having had lengthy discussions with the board around this, we have come to the conclusion that our bonus scheme does not motivate individual or collective performance of the nature that we need for the future.

Q202 Chair: Why was it failing? Was it because it had fallen into being a guaranteed payment and it was not driving or reflecting good performance?

Nikhil Rathi: That is part of it. We were not motivating the right collective behaviours across the organisation. We do not believe that for objectives like ours, which get demonstrated over multiple years, large one-off cash payments in-year every year are necessarily going to incentive the delivery of those objectives.

Q203 Chair: What sort of proportion would the bonus have been across the whole organisation in terms of the basic pay? What sort of percentage on average would a bonus have been?

Nikhil Rathi: They would have been in the region of 10% to 12%. The proposal that we have put out is that we are going to move away from bonuses from next year. Given the investments we are making in our operational infrastructure this year and next year, we are proposing a reduced bonus pool focusing on the top 25% of performers to make sure we invest effectively. For the future, we are proposing to move away from that scheme to a scheme that links base pay more clearly to performance and rebalances the pay pot.

Understandably, this is causing anxiety, concern and frustration among some colleagues. Those who are impacted are probably at the higher rather than the lower end of the pay scales overall. We believe that this will set us up in the right way to deliver the cultural change we need for the future. It is an open conversation. There is a consultation going on, and we will come to decisions early in the new year with the board's oversight.



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Chair: That is very helpful. Thank you very much. Charles, can I turn to you? You are going to be retiring from the FCA a year earlier than originally planned. As a starter, can you just talk us through the reasons for that?

Charles Randell: I set out my reasoning fairly fully in the letter I wrote to the Chancellor at the point when I informed him of my decision. I felt that the right point would be as we approach the summer of next year, because I will have achieved a few things that I regard as very important. First of all, we have kept the organisation moving during a period that, I think you could say, has not been straightforward. Quite apart from the challenges of Brexit, we had a change of the entire board and substantially all of the management team. I worked with three different chief executives, and all of those I served have been excellent. There have been some very challenging independent reviews, for which I have been the accountable face of the organisation. Then there has been the small matter of a global pandemic.

On top of that, of course, we are putting in train a fundamental transformation programme, which I identified as necessary fairly soon after my arrival and which is now being carried forward at an accelerating pace. I am confident that the roots of that have taken and that it will keep moving forward.

With all of that under my belt, it is a good time to pass over to the next chair, who can come in at a time when we probably have three years to go before we are very close to where we want to be at the end of this transformation process, and who will be able to shape the remainder of the change programme with a fresh pair of eyes.

Q204 **Chair:** In terms of your successor, what will his or her big or immediate challenges be? What would be your advice, if you had two or three minutes to speak to that person now?

Charles Randell: I am very reluctant to offer any advice to my successor, because the things that have dominated my time as chair have been events. Those of you who have held ministerial office will know that, however good your plans are when you arrive in the role, events fairly quickly take over.

The only piece of advice that I would offer to my successor is this. Because you will be buffeted by events, you need to do two things. You need to create an organisation that is agile and that can adapt, and one in which you are able to see that the executive knows from day to day how effective the work of the organisation is, and can prioritise and reprioritise very rapidly as circumstances change.

That has been a problem at the FCA in previous years. It has been an organisation that has tended to find very agile action challenging. It sometimes comes into its own in a real crisis. The performance of the organisation during the coronavirus has been outstanding. Budgets,



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divisional resource allocations and so forth have been quite static, despite the fact that the world outside has not been. Building in that agility and the ability to respond rapidly to changing events is what the chair needs to focus on.

Q205 Chair: You believe that the transformation programme and the things that are going on at the FCA at the moment are addressing those two issues you have raised, to your satisfaction.

Charles Randell: They are addressing them. Progress is being made. Frankly, there is more progress to make in a range of areas, but they are getting to those issues.

Q206 Chair: Nikhil, can I come back to data? It is going to become more and more central to what the FCA is doing in terms of looking at the 50,000-odd different entities you are responsible for. Could you describe the type of data it is that you are gathering, the purpose of it, the value of it, how it is used and perhaps also your reflections on the burdens that there might be on those you are supervising? They are the people who in many cases have to provide this information. It is quite a big question, but it would be useful to look at it rather holistically like that.

Nikhil Rathi: We have said that we would like data to be at the heart of our regulatory approach for the future. A huge amount of work has been undertaken over a number of years to help us get on the right track. We are well on the way, for example, to moving our systems on to the cloud. That feels like a technical thing to say, but it is very big for our organisation. It will enable us to scale and use data in a completely different way to anything we have been able to do before.

We collect an extraordinary range of data right across the financial services industry. You have done some work on the register before. Under FSMA, we are legally obliged to compile a register that contains basic details around everyone who has some kind of FCA authorisation or registration. It is very important that the integrity around the register is sustained. We are investing very heavily in that and data quality. We will perhaps come on to the work we have been doing with Google later. They are now looking at the register as a gateway to decide who can advertise financial services.

Q207 Chair: Just on that point, that seems to have been quite successful in keeping these scam adverts off Google. Would that be your assessment?

Nikhil Rathi: The policies came in at the end of August. Early indications are that it is making a difference, and we welcome that. It has taken a number of years for us to get here with Google. It does not detract from our suggestion to the Government and Parliament that the Online Safety Bill be adjusted to deal with fraud and paid-for online advertising. It is not just Google that we need to work with. We have to get everybody into the same place.

Q208 Chair: I have drawn you off the topic of data. We will come back to the



Online Safety Bill.

Nikhil Rathi: I just thought I would get that point in early. There is the register. There is then all of the regulatory reporting that firms provide us. During the pandemic, we learned how important it was to have information about their financial resilience, their people, their systems and controls, the level of income they are making from regulated activity, and risk data in terms of when they are breaching thresholds. What we collect varies, because we are supervising 51,000 firms. In the markets arena, we are collecting tens if not hundreds of millions of transaction reports about all the transactions and trades that are going on in all the different asset classes in the United Kingdom markets. Add to that our data-sharing arrangements with various partner agencies.

What are we trying to do with this? First, we are trying to go after serious misconduct. We will hopefully develop more artificial intelligence, machine learning and data analytics techniques, which we have done in the market abuse arena, to try to spot when manipulative trading or insider trading might be going on, so we can then home in, investigate more forensically and hopefully root out that kind of behaviour. We are trying to understand where there are risks. We have rolled out a single view of firm programme, where our supervisors can now see all the data coming in about each individual firm in one place. They can start to think about where the risks for that firm might be. That also enables us to do portfolio-level analysis about groups of firms.

Q209 **Chair:** Is this broadly all stuff that you are doing at the moment but you will now be able to do much more effectively? Are there areas of activity that will be new, driven by the transformation beefing up your data, putting it in the cloud and the new analytics that you have and that you are developing?

Nikhil Rathi: There is a fair amount that we are doing already, but our ambitions are very significantly larger. We want to do this at a much more industrial scale, given the scale of the activities that we are dealing with and the need to use our resources as effectively as possible. Our new chief data, information and intelligence officer, Jessica Rusu, gave a speech on this a couple of weeks ago, which I can share with the Committee.

We want to create what we are describing as a digital unified intelligence environment, bringing together all these different data sources that we and our partners collect, overlay that with the best data analytics capability that we can, and then use that to operate at scale when it comes to tackling misconduct. That vision is why we have said that data science capacity and data analytics capability is such a strategic need for us into the future, and why you are seeing a shift in terms of the types of firms that we are interacting with.

We joined the Digital Regulation Cooperation Forum earlier this year, working with our colleagues in Ofcom, the Information Commissioner's



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Office and the Competition and Markets Authority so that we can have a joined-up approach to how we talk to big tech. They are increasingly going to be part of the conversation for a financial services regulator like us.

Q210 **Chair:** Part of the question was about the burdens on business and the information they are providing. What are your thoughts on that?

Nikhil Rathi: With the Bank of England we published a joint data strategy to have an open conversation with regulated firms about the type of data we need and the formats we should be collecting it in, to try to make it as streamlined and effective as possible. As we work through the future regulatory framework, including bringing some of the EU legislation back onshore, we may come to the view that we need something slightly different or more proportionate for our markets than the data requests that have historically been in EU legislation.

Q211 **Chair:** Do you see the general direction there as moving towards being less burdensome? Given that you are collecting vast amounts of data and you will want to in the future, and conceivably even more data, is this going to be more burdensome for these businesses?

Nikhil Rathi: I would imagine that everybody is going to be needing to invest more. I would hope that we will be able to do it more smartly than we have historically. Let me give some other examples. I know the Committee has a parallel inquiry. When it comes to tackling money laundering, we have a common interest in trying to find ways for public-private data sharing so we can get our best tools in action to try to tackle this.

To use your language, Chair, that may be a bit more burdensome in terms of the types of data we are collecting, but hopefully it will help us tackle that crime more effectively and reduce the cost overall to the system as we do so. That is the kind of thinking that we have.

Charles Randell: The real burden to firms is that the costs of misconduct are substantially mutualised through our system of regulation and compensation. We want to get to targeted data collection that will ensure firms pay less for the misconduct of others. If we have more targeted data collection that enables us to intervene early and prevent misconduct at bad firms—this is part of our external commitment to try to stabilise and ultimately bring down the cost of the Financial Services Compensation Scheme—we would hope that the cost to industry will benefit from that and that there will be a reducing trend.

It is difficult to look just at the issue of data. We need to say, “What is that data going to be used for? How confident are we that the outcomes we are seeking will be delivered for the benefit of the industry?”

Q212 **Chair:** Yes, understood. That is a very good point. Thank you. As a final question, Nikhil, you mentioned that there was pressure on the vacancies side, particularly in the data area. In your view, is that slowing down the



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progress you should be making there within the transformation programme?

Nikhil Rathi: Inevitably, we have to make choices. You allocate financial resources, but you have to make sure you have the right human resources in terms of quality and quantity to be able to deliver. We will have some capacity constraints in delivering the scale of our data and technology plan as we are onboarding new colleagues. That is consistent right across the industry. I talk to some of our suppliers and they are seeing 30% to 40% turnover of staff.

Q213 **Chair:** There are all these pressures right across different operators and so on, but, in your case, are you satisfied that the plan is still on target? Is that development target on the data side being impeded by the lack of human resource?

Nikhil Rathi: The plan is on target. We will need to manage our ambition level over the next number of years as to how quickly we can deliver the full vision. Within that, we will have to prioritise. We are going through a business planning process now, which will go to the board early in the new year, where we will have to make some choices as to where we want to go hardest and first in this work.

Q214 **Chair:** Overall, you are happy with the trajectory of the data side of the plan.

Nikhil Rathi: Overall, I am seeing real meaningful progress.

Q215 **Chair:** What is the total budget on data? Is it over £100 million?

Nikhil Rathi: Over the coming years, we are investing a further £130 million in data and technology. That is what we have said. I would imagine that number is going to go up. We are working that through now, as we develop and work through our plans.

Q216 **Chair:** Could it go up very substantially? What is your gut feeling?

Nikhil Rathi: I would anticipate that it could go up very substantially, indeed, yes.

Chair: In an unexpected way?

Nikhil Rathi: No, not in an unexpected way, but completely consistent with what I have been setting out to the Committee about the direction we need to go in as an organisation. We need to invest very heavily in our infrastructure, because it is not just doing all these new whizzy things; it is the integrity of the data and all the security and resilience around it that you have to keep investing in. That is also becoming more expensive because of the range of heterogenous factors we are dealing with.

Q217 **Chair:** Just to clarify, I suppose this is my question. You have set out some budgets going forward. Are you saying that you are in a position around data where some of that budgeting has been unrealistic? Are you



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simply reflecting the fact that, further down the line, when you have further exercises as to what you are going to invest in and where, and the budgets that follow, you see this as an area where you are probably going to be upping your investment? That is a different thing, I guess. Are you on track financially with the project?

Nikhil Rathi: We are on track financially with the project, as we set out. We have our annual business planning round. You talked about the November fees consultation. That is a prelude to our consultation about the level of the levy, which will come out at the start of next year. In that, we will set out our plans for the coming year, which will include what we propose to spend on data and technology.

If I can give you one example, very recently we put out a discussion paper, which again the Committee has done some work on, on appointed representatives. It is not an area where we have systematically collected a huge amount of data, but we are proposing to increase the volume of data we collect on an annual basis around appointed representatives. We have identified meaningful harm that is taking place in that market. We will need to fund that. We started funding it last year. That will need to be funded into the future, too. It flows from the work around Greensill and other areas.

Chair: It would be useful to have a copy of that speech that you referred to on data. The Committee would value that. We will probably write to you a little more about the costs of the data stuff to ask some further questions.

Q218 **Julie Marson:** Hello, both. First of all, I have some questions on the consumer duty. Yesterday you published your new consultation paper with some feedback on the consumer duty. Could you tell the Committee what a consumer can expect from the consumer duty? What will it do in terms of changing their interactions with firms?

Nikhil Rathi: First, I thank the Committee, because we received a message of support from you when we put out the consultation. That has been an important element of our thinking. We do think the announcement we put out this week is a significant shift in the standards that consumers can expect from financial services providers. We are explicitly setting a higher standard of care. We are building on interventions that we have made already with respect to vulnerability, fair value and guidance.

To answer your question, consumers can expect firms to put consumer interests firmly in their mind at every stage of the product lifecycle, from the point at which they design the product to when they distribute and deliver it. That includes thinking, "Is this in the consumer's interest? Is the value fair? Is the service level provision that we are looking to provide consistent with what should be reasonably expected?" This is a significant shift from where we have been before.



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You will no doubt have received representations from both sides of the argument, consumer groups and industry bodies. We have put it out for a consultation, which closes in February, so we can make rules in time for the parliamentary deadline of July, which is what is in the Act.

Q219 Julie Marson: Do you have any areas of concern where you think this will particularly apply?

Nikhil Rathi: There are the areas that we have talked about before, for example firms putting grit in the system—so-called sludge practices—when consumers want to switch provider. We have seen that across multiple industries. There are firms perhaps presenting information in a manner that might persuade consumers to take products that are not suitable for them once they have been tempted into one product. There are firms selling products that may be too complicated or may not be fair value.

In our general insurance pricing practices work, where those rules are coming into place in January, we saw some insurance policies being sold where effectively, for every pound of insurance premium, only 5p was being paid out in claims. That raised questions for us as to some of the practices in that particular market, and we have acted on it.

Those are the things we are targeting. I should say that the firms that are doing the right thing have nothing to worry about from this. For those that put consumers at the heart of their governance and decision-making through their executive and board levels, this should be good practice. This is trying to target the types of practices that I just described.

Q220 Julie Marson: The outcome is “good outcomes”. I acknowledge what you say: people who are delivering those already do not have anything to fear. What does it say about the industry at the moment that you have had to do this and that “good outcomes” has had to be established as a principle?

Nikhil Rathi: It is concerning that polling evidence suggests that less than 15% of consumers have trust in financial services providers. There are some sectors where it is even lower than that, for example insurance. There are concerns about customer service as well. Because of that, we feel the need to set this new standard and set the bar. We will also be putting out in our rules and guidance our suggestions around how we are going to supervise and enforce this over time.

Consumer expectations have shifted. We all know the issues that we are dealing with and that we have dealt with historically. This is our attempt to get ahead of those issues. We think we can implement this in a way that is constructive and collaborative with both consumer groups and industry. That is our ambition.

Q221 Julie Marson: The FCA is having to balance the consumer duty of firms with the responsibility that consumers have for their own decisions and actions. How have you sought to balance that?



Nikhil Rathi: When firms are selling products, we want to make sure their consumers have the information they need to make informed decisions. Then a higher duty of care is needed when you are dealing with vulnerable customers. The problem we sometimes see is products designed deliberately to be confusing so that people are tempted into buying them when they are not appropriate at all for them. That is the kind of behaviour we are looking to challenge more forcefully going forward.

Q222 **Julie Marson:** Where do you draw the line? What if a consumer just does not listen or ignores a firm? How far down the line is the firm's responsibility to take responsibility?

Nikhil Rathi: I am glad you have raised that topic. We published another paper this week—we have a sort of advent calendar of publications at the moment—on the future of the Financial Services Compensation Scheme. We would like to have an open conversation about where the boundaries should be drawn for compensation in the future. We do have a fairly generous compensation scheme relative to other developed markets.

The point you make is relevant there. Are there certain types of product or certain types of behaviour by consumers where we just need to draw the line? The one I would highlight, which is very topical, is crypto assets. We have said repeatedly and consistently on Twitter and in many other fora that anyone who puts their money here should be prepared to lose all their money. So have our counterparts in the United States and in jurisdictions around the world. We still have several million UK consumers buying crypto assets. There is a separate conversation going on about the regulatory regime around that.

One of the conversations that I would like to have, notwithstanding any regulatory regime that comes in place, is about whether we should start drawing some clear lines and say, "We have given you these warnings. We are doing our best through social media and elsewhere to make this clear. If you are buying anything that touches crypto, whatever happens, no compensation will be available in the future".

We are having a similar conversation with banks on payment fraud. Charles chairs the Payment Systems Regulator. Sometimes there are situations where a bank tells a customer repeatedly, "You need to think hard about making this payment. Are you sure you are not being scammed here?" and you have an insistent customer who says, "This is my money. I can pay the money to whomever I like, thank you very much". Again, we need to have a conversation with MPs and Government about where the liability should be for banks. We do not have a landing on those questions yet. It is all part of this conversation.

Q223 **Julie Marson:** Consumer groups were generally in favour of a private right of action; the industry was generally against that. You have come down on the side of the industry on that and decided to review the situation. Why did you take that decision?



Nikhil Rathi: We have not ruled it out, and we will come back to it. At the same time, we think it is important to get these standards out and get them embedded. It will take time for them to be embedded. We want to see how they work. We are also mindful of some of the legitimate arguments that were being made to us. You have the FOS scheme; you have other redress schemes in place. You need to be careful not to create excessive risk aversion in the provision of products by firms.

Saying that, if we feel that this is not landing as effectively as we hope it will, that option is always there for us on the table. I am well aware that there will be further financial services legislation coming through Parliament in the coming years. This topic is hotly debated in Parliament as well.

Julie Marson: Charles, I do not know if you have anything to add to what Nikhil has already said on that subject.

Charles Randell: The only thing I would say is that it is important to understand how this fits into our approach to how we will govern ourselves, which is to have a much greater focus on the outcomes that are being produced. We are determined to be quite bold and say publicly what outcomes you can expect from us. As I say, they will be stretch targets; we will not always hit them. We also expect the boards of authorised firms to be willing to account for the outcomes that their consumers are receiving.

To your point about where the responsibility of consumers lies, that needs to take account of the relationship we have with decisions. It is a very changed relationship, through digital marketing and online engagement, compared to when I was first in my 20s, when you could expect to sit down with a financial adviser or an intermediary who would talk you through a product journey. As consumers become effectively a bit more vulnerable to the press of the thumb and firms gain enormous quantities of data that enable them to optimise consumers' decision-making in the interests of the firm, it is really important that we set high standards for firms. They should look not at a journey of disclosure of small print, but at a journey that engages the consumer and produces the right outcomes for them.

Q224 **Julie Marson:** I have some further questions about bank closures. Nikhil, the Committee wrote to the UK banks earlier this year, and their response explained how they take into account a number of factors when deciding to close branches. Are banks doing enough to consider the consumer when they are making these decisions? Is it fundamentally a cost decision?

Nikhil Rathi: Clearly, the economics of the industry are changing and the nature of consumer preference is changing. Banks will legitimately consider those issues. There is also a different range of services being provided by other actors, including, for example, the Post Office.



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Directly to your question, are banks doing enough? No, not in all cases. We put out some guidance around bank branch closures, in particular the attention that should be given to making sure there is alternative provision particularly for vulnerable consumers, who may be particularly reliant on a bank branch. In some of our engagement with banks on these issues, we have felt that they have not provided information or given adequate time to those customer groups to adjust. In those cases, we have intervened.

The Treasury is looking at a much broader conversation now around access to cash. They have committed to legislation coming forward in the next year or so, which would give us a greater remit and more power over this. This also goes back to the Chair's question earlier about using data. This is an area where we are looking at where cash availability is across the country. If there are hotspots where there is a lack of access, we can use data much more effectively as a tool to help us supervise this.

Q225 Julie Marson: The FCA wants to see fewer complaints to banks about branch closures, but how can you achieve this? Does the FCA have powers to stop branches being closed?

Nikhil Rathi: We do not have the formal power to stop branches being closed. We can engage in terms of how customers are treated. This links to the question you asked about the new consumer duty. How are firms making these decisions? Are they keeping consumers' interests in mind when making them? As it stands right now, it is quite a high hurdle before we would be able to intervene and stop a commercial decision by a bank to close a particular branch.

Q226 Julie Marson: Going back to your first answer, are banks doing enough to put in place alternative arrangements and to protect vulnerable customers?

Nikhil Rathi: I think the conversation has moved on. Some important work, in pilot, has been undertaken by UK Finance around how to make sure alternative provision is available in areas where branches are being closed. There are further proposals in the works that will be industry-led. It is not just about vulnerable customers; it is also about small businesses having the ability to deposit cash. That can equally be an issue resulting from branch closures. There are some trials going on around deposit hubs in supermarkets and various other things, which may help us with some of those questions.

Q227 Julie Marson: What do you expect from the Treasury's access to cash consultation? How might that affect your approach in the future?

Nikhil Rathi: I do not want to prejudge what they are going to say, because they are consulting and thinking about legislation. They have put some ideas out there around having a duty to support the availability of cash. Some specific powers might come the way of the FCA in terms of supervising and overseeing that. Those are the kinds of things that are in the conversation at the moment.



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Q228 Julie Marson: Finally, on contactless payments, many people on low incomes often use cash as a means of budgeting. If you do not have it in your purse, you cannot spend it, so it is quite an efficient budgeting tool. With contactless transactions, that budgeting ability is less visible. What is the impact of the increase from £45 to £100 on potentially more vulnerable customers? What are the dangers of that increase in limit?

Nikhil Rathi: There are clearly risks, and we are aware of the potential risks both, as you describe, in terms of the impact on vulnerable customers and their ability to budget, and the risks of fraud. We looked at other markets. Australia, Canada and others have similar or higher limits.

What has been encouraging about the way banks have been implementing this limit is that they are seeking to give customers the choice. A number of the largest banks have said, "You can set your own limit where you would like it". If you do have a customer who is concerned about the budgeting element of it, they can set their limit at £30, £20 or something along those lines, depending on which bank they are using. That is quite a healthy development. There are other customers for whom filling the car is going to cost them more than £45. It is quite handy to be able to use contactless. You do not want to inhibit innovation and the customer convenience that brings for that category of customers, too.

Q229 Julie Marson: Just to be clear, is this an area where you might regulate to make that an option?

Nikhil Rathi: That is already available for us to do. We have not explicitly required banks to offer options, but a number of the largest ones have gone down that route in response to the raising of the limit from £45 to £100.

Sitting suspended for Divisions in the House.

On resuming—

Q230 Anthony Browne: My first questions are going to be about financial technology companies. Clearly, that has been a big ambition of the Government. I should refer Members to my entry in the register of Members' interests. In the past I have been involved in various financial technology companies.

There is concern among some of them that the FCA has lost focus on fintech. Clearly, it was a big thing and you have promoted it in the past. We had evidence from the chair of Fintech Founders on Monday. We have had various contributions of evidence about the experience of fintech companies with the FCA. Before I go into that in some detail, is there any substance to the general observation that the FCA has lost focus on fintech?

Nikhil Rathi: Thanks for the advance notice that you were going to mention this. One of the executive leaders we brought into the FCA's



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executive team earlier in the year came from a fintech. That is an indication of the diversity of skills and capabilities we want in the organisation.

We have not lost focus on it. It continues to be an important part of our work. If I look at the scale of investment in UK fintech, which is at record levels, the reports that have come out show that there is a pretty healthy financing environment and business environment for fintech. In the last two weeks, we have also published our final reforms on capital-raising in light of the Hill review, including some significant reforms for technology companies that want to access capital markets. Some have described those as the biggest capital markets reforms in the United Kingdom for two decades, meaning that technology companies can access the capital they need.

I would say that the focus remains. Our international cross-border focus remains. We have persuaded our colleagues in the Reserve Bank of India and the Australian supervisors to join our global financial innovation network, and we are working closely with them.

Saying that, there is always a balance to be struck. You asked me earlier how we strike the balance on the consumer protection side. When we are supporting fintech and supporting innovation, consistent with our competition objective, there is a set of issues that we have to balance. I am happy to talk about some of those in more detail later on.

Q231 Anthony Browne: One of the main areas of complaint from financial technology companies—I know that this applies to some other companies as well—is about delays in authorisations. We have been various examples of this, and some of them have met with me to go through their experiences.

One was a company that applied for three separate FCA licences on 5 December 2020. It was not assigned a case officer until March 2021. In November 2021, 11 months into a 12-month authorisation process, the team at the FCA concluded that the different applications were intrinsically linked and there was not enough time left to go through it. We had another fintech company that was applying for an appointed representative regime and was told that the response time was 48 hours. Then it became a week and then 10 working days, and then the deadline was left altogether.

These things will be frustrating for big companies. For smaller start-ups, it is existential. They live hand to mouth, cash-wise. They are trying to raise money. If they do not get the approvals, they may simply go out of business. Do you recognise these delays? What can you do about this?

Nikhil Rathi: There are different sets of issues here. First, I would recognise that there are backlogs in our authorisations queue that apply to all firms. We are working hard to address those. We are in the process of recruiting 100 new colleagues in those areas. Over the medium term,



we will make that process more digital. I hope we will crack most of those over the next year.

At the same time, I would draw the Committee's attention to the recommendations of the Gloster review and some of the recommendations that we have adopted, which included taking a more holistic view at the point of application, being more inquisitive, being more demanding and looking at financial resilience. We have written to the Committee setting out how we are approaching that. That necessarily means more grit in the system. We learned the lesson that, if you allow a firm in at the gateway that is not adequately meeting the standards, it can cause quite a lot of issues further down the track.

In the area of fintech, we see a whole range of firms. Some are genuinely innovative and competitive, and we want to support them to grow. The others are more challenging. If I look at the work we are doing with crypto exchanges, when they come to us for money laundering registration, the reality is that nearly 90% of those have either withdrawn or been refused, because we see a serious link to money laundering and serious organised crime being propagated through crypto exchanges and a culture in many of those organisations that does not respond to the level of systems and controls we would need from those firms as they are growing. We have allowed 17 through, but it has been a very challenging set of conversations. That is consistent with the posture we are adopting in the gateway.

In the case of payments firms, you know that last summer there was a big failure of a major German institution, which had operations in the UK. We have had to be more rigorous with e-money firms, because it is not always clear particularly to vulnerable customers, who use some of these electronic money wallets, that their money is not protected by the FSCS if things go wrong. We have had to take a more demanding stance with respect to some of these e-money firms. Some of the firms may not welcome that, but it goes to our point earlier about how we protect vulnerable customers who may be using them.

There is always going to be a balance to strike. The Committee itself, in your report on Greensill, expressed some scepticism about some of the firms that describe themselves as fintechs that are coming through the appointed representative route. We always have to make sure we let in firms that we think are going to add positive value to the system, but try to deliver the more assertive posture that we have said we are going to deliver.

Q232 Anthony Browne: No one is arguing that you should not do your job properly. I certainly support you in doing the proper checks that you need to do to make sure consumers are protected. The question is just about the amount of time it can take to do those checks. To take a year to do an authorisation that should be done within weeks can be quite frustrating.



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We heard many criticisms of the approval regime for the senior managers regime as well. It was meant to be done within—I cannot remember what your normal timeline is—a couple of months, but it is sometimes taking nine months or so. If you are a fintech, that can just put you out of business.

Nikhil Rathi: We have some work to do on that, I would accept. I will keep the Committee updated. It is certainly a priority for us.

Q233 **Anthony Browne:** Yes, write to us, if you could, about the work you are doing to improve your timelines.

Nikhil Rathi: I would say that we are in a world where we are putting more grit in the system. Some of that is deliberate. That applies right across the board.

Q234 **Anthony Browne:** Is that grit proportionate? For small companies, the regulatory burden hits them a lot harder than bigger companies. The regulatory burden can act as a barrier to entry and simply stop innovation outright. To regulate a company that is a global multinational in the same way as you regulate a fintech with half a dozen staff does not seem proportionate.

Nikhil Rathi: This is always the balance we are trying to strike. We hope that we can make it proportionate, but we also saw in the case of LCF that a small firm can do quite a lot of harm. One of the criticisms that we received was that we were not inquisitive enough, we were not demanding enough and we were not probing enough on a whole range of issues. Part of the issue we also deal with is that sometimes the applications that come to us do not have all the information we need and there is sometimes resistance to providing additional information in response to our questions.

This is going to be a learning journey for us. I can imagine that some firms will find some of the questioning that we are posing uncomfortable. That is the direction we are going in, and I hope we can strike the balance in the right place. There is always going to be this tension in the debate.

Charles Randell: From the board's point of view, ensuring that competition and innovation in the interests of consumers is well supported by the FCA is a priority objective for us. We have been asking for regular monthly updates on these backlogs in authorisations. As you can imagine, I get exactly the same feedback that you get whenever I talk to firms. We have been very pleased to see the executive respond with an action programme to invest more in our authorisations work and bring on 100 additional colleagues.

It does not end there. We need a good system of triage and prioritisation, and a realistic set of targets to work the backlog down and get firms through authorisation when they should be authorised. Of course, there is then our commitment to helping firms grow thereafter. We have taken



very seriously the recommendations of the Kalifa review. The idea of a scale-box as well as a sandbox is an important additional step. There is no lack of board support for our longstanding commitment to innovation in the interest of consumers, but we need to overcome the challenges that Nikhil has highlighted.

Q235 Anthony Browne: You mentioned the sandbox there. That has been widely praised, indeed by me and many others in the past. One frustration of fintech companies about the sandbox is that, as I understand it, it basically covers only activities that are already covered by your rulebook. If you have an entirely new business model that is not covered by the rulebook, you cannot go into the sandbox with it. It only helps the least innovative end of innovation, if you see what I mean, not the truly innovative companies that are trying to do something completely different. Do you recognise that criticism?

Nikhil Rathi: The sandbox has been a success. It has been emulated by 44 regulators around the world.

Anthony Browne: I know it is highly praised.

Nikhil Rathi: There are areas where we do seek to push the boundaries, but we have to prioritise resources. For example, in the last year we ran a special ESG sandbox where we are pushing the boundaries. That has produced some quite interesting new areas around data providers, which are not regulated by our rules right now. We also have specific sandboxes around financial crime. I would not say we do not push the boundaries, but we have to choose our themes. There is a limit to how many unfettered new ideas we can sponsor through that any one time.

Q236 Anthony Browne: We had some representations about open banking as well. There was a review by Alison White into Open Banking Ltd and the governance failures there. There were also accusations of bullying and harassment. How concerned are you about what has happened with open banking in terms of those governance failures? I do not know whether this is for Charles or Nikhil.

Charles Randell: I will start, because I also chair the Payment Systems Regulator. Open banking is clearly going to be an important project for both regulators going forward. I have engaged, both within my roles in the FCA and the PSR, and in conversations with the CMA, on the need for us to have the right setup as this organisation comes out of the CMA's purview, where it has been, and comes towards us.

It is really important, first of all, that the organisation has high-quality governance that represents the public interest objectives it has. That means a measure of independence from the CMA9, which effectively set it up in some senses, and proper consumer representation, including representation of the interests of end users.

The governance of the organisation needs to be subject to really good regulatory oversight, but there also needs to be clarity as to what the



role of the regulators is in relation to open banking. As I said, it engages both the PSR and the FCA, and I am keen to see a system that gives both organisations a role that is clear enough for success to be judged.

Q237 Anthony Browne: Many fintech companies and innovators clearly want open banking to be a big success. We had evidence a couple of weeks ago from Anne Boden, chief executive of Starling Bank, who said it was a “failure”. There is a concern among many companies that the CMA9, the nine banks that were asked by the CMA to set up the open banking process, have a conflict of interest there and want it to be set up to fail.

You talked about independence from the CMA9 there, but how can you reassure those who want open banking to be a success that those banks are not trying to set it up to fail?

Charles Randell: First, there are the regulatory requirements of the governance of the entity as it goes forward to ensure that the governance represents a public interest focus, not the interests of a particular group of sponsors. There are then the regulatory actions that we take about the way in which banks provide data that is so critical for open banking to be a success. We have fairly recently made some new rules in that area to try to remove some of the barriers to adoption. There were some really quite onerous rules about the frequency with which customers had to renew their—

Anthony Browne: It was 90 days.

Charles Randell: Exactly, so we have been addressing all of that systematically. We need to continue to do that. There are 3 million consumers who have been using open banking products in one way or another. That is not nothing, but clearly it has a huge potential to do more.

Q238 Anthony Browne: I want to move to a completely unrelated issue about the future regulatory framework. In the wake of leaving the EU, we need a new regulatory framework and a new way of making rules. Previously, a lot of this came from the EU, certainly wholesale rules and some retail rules. The Government are consulting on this. One of the things they have suggested for you and the PRA is a new secondary objective of promoting international competitiveness and economic growth. Some people in the industry have argued that it should be a primary objective.

I am just interested in your thoughts on that. I guess this is for you as chair, because it is a strategic objective. Are you comfortable with a secondary objective of promoting international competitiveness? Do you agree that it should not be a primary objective?

Charles Randell: I certainly agree that it should not be a primary objective. It would be a big ask of our society to say that the interests of consumers, protecting consumers, competition in the interests of consumers and market integrity should be traded off against the interests



of the financial services sector in growing. Bluntly, that would be a pretty strange form of levelling up, to my mind.

It is right that we remain focused on our existing public interest objectives, which are very clear. The Government's proposal to give us a secondary objective of this kind is certainly something we can work with. We look forward to seeing what responses they get to their latest consultation.

Q239 Anthony Browne: What difference would a secondary objective of international competitiveness make? The Treasury also says that this new secondary objective would not require or authorise the FCA to take any action inconsistent with your primary objectives. Is there anything that you would do differently in any circumstance as a result of this secondary objective or that you would not do if you did not have that secondary objective?

Charles Randell: There are some things we might do that are positive and there are some risks around the objective. The thing that is positive is that it would then be embedded in our governance that whenever a proposal came to the board or there were questions of how we should act, this would be something that we needed to receive evidence on and to consider in a very systematic way. You have seen the way that has worked with the secondary competition objective that the PRA was given some time ago. It feeds through into the governance process and it ensures that that issue is on the table whenever a decision-making body is making a decision. It puts it front of mind. That is the positive side of it.

The negative side of it, of course, is the risk that whenever we propose to do something we receive a large amount of lobbying input saying, "This rule does not exist in this country, that country or the other country, and therefore you should not do it". Of course, we are not regulating for consumers in Zurich or Singapore. We are regulating for consumers in Totnes or Tottenham. It is really important, therefore, that we have a grown-up discussion with industry lobbyists about what this means for us. There is clearly a distinction to be made between domestic conduct regulation and our work in international wholesale markets regulation.

Q240 Anthony Browne: Yes, they are very different. One of the issues that we have been considering as a Committee is the accountability of the regulators. You will get the broad view of where we are going, and the general principles and the objectives will be laid down in Parliament, but we do not have the capacity to go through all the detail. The regulators will end up with far more powers than you had under the EU system, and as a result you will need to be more accountable. I am just wondering whether you have any views about how that accountability could or should work as a regulator and what you would like to see. I realise that it is not your responsibility.



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Charles Randell: I am sure Nikhil will have views on this. My view is that we need to seize the opportunity that exists of becoming a more agile regulator able to make rules, perhaps, that are more responsive to the needs of our jurisdiction and less bound by the very prescriptive approach that was necessary when rules were being made to ensure uniformity across 28 jurisdictions. This is a big opportunity for us to become a much more agile regulator.

It is really important that the accountability mechanisms do not immediately negate all of that agility. Therefore, I would have a preference for a set of accountability mechanisms that ensured that the FCA could act at speed but was nevertheless accountable to Parliament, and that expectations were placed on the organisation as regards transparency and accountability that were perhaps periodically reviewed in arrears, but not for us to have an additional layer of governance and accountability to go through, in everything we do, before we can act. We may need to act quite swiftly.

Nikhil Rathi: I would echo that. As Parliament is debating these measures, we recognise that you will expect us to be showing more of our working to you and to all the stakeholders that are interested in our work. In the last year, for example, we saw a new consumer duty. It was a very significant piece of work to open up and have an open conversation.

The Treasury Committee's report into the FRF made some very useful recommendations, which could help bind the way in which a future accountability mechanism should work. There are other proposals being consulted on. It is important that there is a balance. There is a proposal, for example, that the Treasury could ask us to review our rules. We could put that formally into legislation. That is quite an important shift that is being consulted on. That might mean the time has come to put on a more formal basis the Treasury Committee recommendation for us to have a formal power to recommend perimeter changes.

As you are debating these issues, there is a question around how we can rebalance some of those mechanisms. We also have to accept that this is going to keep changing. Whatever we come up with in the next couple of years around the future regulatory framework may change quite quickly in a few years' time. I know you have talked to the Bank of England about it, but, in a world where we may one day move towards a digital currency, we are talking about potentially a very fundamentally different financial system, and we will need to be able to respond quickly to that, including in how we supervise and regulate banks and payment institutions. We are going to have to have quite an agile mindset around all of these changes.

Q241 **Siobhain McDonagh:** Chair, unfortunately I was unable to hear your questions at the very start, and Parliament TV has gone down. I was trying to get them checked; I apologise. I was at an Amazon fulfilment



centre this morning, and it took me a bit of time to come back from it, mentally and physically.

Turning to some of the things that you found out in advance of this meeting, Chair, I came across a very concerning letter from Unite, the trade union, outlining the results of its survey of FCA staff members, with 90% of staff describing their morale as low or very low. Is that worrying to you? Why do you think that is?

Nikhil Rathi: The Chair invited me to comment on some of the proposals that we are making around pay and reward. First of all, as you have seen through all the conversations we have had about the proposals we have put out in the last few weeks, I would commend my colleagues. I am very proud of my colleagues for the professional way in which they are working at the moment during a period of considerable external scrutiny and considerable change.

We also need to change our culture, and change our pay and reward. We have made some proposals around pay and bonuses for this year, which I would accept are challenging for colleagues, in terms of reducing the bonus pool. We have made some proposals around bonuses for the future. We are having a very open conversation within the organisation around those changes. There is a debate going on, which is healthy and important, about the kind of culture we want to build for the future.

As we have put our proposals out—maybe you were absent for this—we have also paid very particular attention to the benchmarking for our lowest-paid colleagues. We have put forward proposals that substantially raise the pay of those who are meeting clear performance thresholds. For example, we are proposing that a contact centre worker who is on £23,000 today will move to a base salary of around £28,000 from April.

The proposals are more likely to impact higher-paid colleagues negatively. I would accept that we think that is an appropriate rebalancing for us to embark on, given the scale of change that we need to make.

Q242 **Siobhain McDonagh:** In the press, the staff are said to strongly oppose the changes. Why is that?

Nikhil Rathi: Any time you are changing a bonus system, there is going to be a degree of concern around it, because colleagues will be uncomfortable that discretionary bonuses that were paid in the past may not be there in the future. Today, we are one of the highest paying public authorities, regulators or enforcement agencies in the country. We have committed to continuing to do that to attract the talent we need to deliver our objectives. Anybody who wishes to work in financial regulation and is committed to public services is likely to get a reward package of base salary and benefits from the FCA that is much higher than they would get elsewhere. We are proposing to change the composition of that, because we do not think large in-year cash bonuses are the way forward for a regulator of our type in the future.



Q243 **Siobhain McDonagh:** I understand that you are offering a 5% pay rise. That does not cover the gap, if somebody was getting a 10% or 20% bonus.

Nikhil Rathi: Any change that we make around the bonus scheme is going to be challenging, but, particularly given our responsibilities in terms of using public money effectively, this Committee would not welcome us putting a discretionary bonus pot fully into base salary. We have focused on the lowest-paid colleagues and on re-benchmarking them quite considerably. Our 800 lowest-paid colleagues will get an average base salary increase of £3,800. We have adjusted benchmarking at other levels.

I accept there will be an impact primarily for those who are at the higher paid grades, but we have also committed, subject to board approval, to a 5% increase for April 2022 and potentially a further 4% increase the year after. If that goes into base salary, colleagues get pension and other benefits on top of that.

Q244 **Siobhain McDonagh:** Will you have people who earn less next year than they earned this year?

Nikhil Rathi: Yes.

Q245 **Siobhain McDonagh:** Would you like that to happen to you?

Nikhil Rathi: No, but I also have to be open with the Committee that we need to change our pay and grading framework. We need to rebalance and redistribute it. We are rebalancing towards the lower-paid end of our colleague community. That will have implications more broadly.

Q246 **Siobhain McDonagh:** Will you earn less next year than you earned this year?

Nikhil Rathi: I am not in a position to answer that.

Siobhain McDonagh: I am not asking for your salary.

Nikhil Rathi: I am not in a position to answer that question. What I will say is that bonuses for executives were removed last year. I was not appointed with a bonus and I was appointed on a lower salary than my immediate permanent predecessor.

Charles Randell: This process started with the recruitment of Nikhil as a new chief executive on a lower pay package than his predecessors and without a potential entitlement to bonus. We then followed through with that in the treatment of the executive director population, who both no longer qualify for a bonus and are on a lower average pay packet than was the case before.

This further consultation with colleagues carries some of those principles forward, but, at the same time, we are thinking very hard about



rebalancing in favour of some of our lowest-paid colleagues and introducing pay structures that reward outperformance in the long term.

Q247 **Siobhain McDonagh:** How much did you spend on internal communication consultants to help sell your pay and benefit proposals to staff?

Nikhil Rathi: It is in the public domain. There was a tender for internal communication support for our transformation programme, which has incurred an expenditure of £492,000. If I could go back to some of the earlier conversations that I have had with the Committee, we have been open that we need to strengthen a number of our operational functions. Coming in, that is what I have sought to do in terms of a number of senior leadership changes.

The Committee has also been very clear in its recommendations that you want us to have open and competitive recruitment processes. Those things take time. We now have a new permanent director of communications, who has joined us from outside the organisation. He is also building his team. During this period of change and transition, we are drawing on external support where it is necessary to draw on the skills that we need.

We need change skills in the organisation for the scale of change that we are undertaking. We are drawing on that as proportionately and sensibly as we can. We are an organisation that has achieved a huge amount. In order to get to the operational integrity that we need, we are going through a period of deep, wide-ranging change. This will be challenging. You will hear noise out of the organisation for a number of months to come, because we are also being more rigorous, self-aware and self-critical about our performance, which is a challenging cultural journey for us to go through.

Q248 **Siobhain McDonagh:** Almost half a million pounds sounds like an awful lot of money for an internal communications consultancy.

Nikhil Rathi: This was a tender where we looked at market rates. It was a standard procurement. It supports our programme more broadly.

Q249 **Siobhain McDonagh:** Why are you requiring staff to go through the statutory recognition route for unionisation rather than entering negotiations if the majority of your staff want to join a trade union?

Nikhil Rathi: That is the critical point. We have put out publicly the position on this. I can entirely understand the interest in it. We have received a request for collective bargaining for all employees below head of department. We have responded in line with the statutory approach, because we have some colleagues—we entirely respect this—who would like to go down that route, but we also have colleagues who do not wish to be represented in that way by a particular union.



The statutory process, established by Parliament, allows there to be a regulatory process, subject to certain thresholds, for an independent ballot to be run, and therefore the views who would like it are properly accounted for and the views of those who do not wish to be represented in that way are also properly accounted for. To the best of our knowledge—this could also be independently verified through that process—the majority of colleagues are not members of a union. Of course, this process will allow all of that to be properly aired.

Q250 Siobhain McDonagh: As a public body, does it not just strike you that what you are saying is that you do not really want a trade union to organise there?

Nikhil Rathi: We have said very clearly that we are pleased to implement the method of representation that our colleagues would like. The question is whether moving to collective bargaining with a particular trade union is what colleagues would like. There is a regulatory process—we are regulators, after all—that allows that to be determined. We are not the only regulator that does not have a trade union. Ofcom does not have one either. There is no in-principle objection.

From our perspective as a leadership team, what is important is that all colleagues have the opportunity for their views to be properly accounted for.

Q251 Harriett Baldwin: I want to pick up on an issue that has come up a few times, which is cryptocurrencies. Nikhil, are they the tulip bulbs of the 21st century?

Nikhil Rathi: There is technology underpinning cryptocurrencies that we would recognise has some significant benefit and value. Distributed ledger technology can have value for tackling financial crime and in many other domains. We have raised concerns about a number of the innovations that have been developed on the back of that. We do not believe that some of these crypto assets have intrinsic value. They have been a vector for serious organised crime and money laundering. Anyone who invests in them must be ready to lose all their money. We have a money laundering registration responsibility for crypto exchanges.

I was in the US just in November. It was my first international trip; I was really pleased to get out there, now we are allowed to go. The same debate is happening there, as it is in all regulators around the world. Everybody is trying to grapple with the speed with which these assets are growing and to ensure that regulatory frameworks catch up. We will need to do the same here. There are significant risks attached to this and we need to get our arms around it much more.

I would refer back to the answer I gave Ms Marson earlier. When we talk about the compensation scheme, we are going to have to start drawing some pretty clear lines about where that compensation will be payable. Personally—this is without prejudice to whatever the FCA board decides—



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I would suggest that we simply say that anything crypto-related should not be entitled to compensation so that consumers are clear about that when they are investing.

Q252 Harriett Baldwin: You mentioned the anti-money laundering responsibilities that you have, but your website publishes a list of unregistered crypto asset businesses for anti-money laundering purposes. It is meant to be helpful, but it could also be helpful to someone who just wants to launder money through cryptocurrency in the UK.

Nikhil Rathi: We have this power to register exchanges. We also seek to alert people through our alerts—we have been putting out many more alerts—to firms that we think may be doing unregulated or inappropriate business. The purpose of it is to make sure consumers who look at our website recognise that they should be very cautious about interacting with those firms.

I hear what you are saying: it could be used by criminals who are also entrepreneurial. With other law enforcement agencies, we clearly need to work hard to clamp down on that kind of behaviour. Our priority is to make sure consumers know they should not be investing with those firms, because those firms may be making improper claims about their status.

Q253 Harriett Baldwin: We see the advertisements on the Tube, on the side of buses and so forth. You can read the small print, which says, “Your investment may go down as well as up in value”. It sounds as though you want to put more in the small print. That word “investment” sort of endorses the idea that this is an investment and it is on a par with a FTSE 100 company or a unit trust. Can you share with us your thinking on advertising and the wording that would be allowed on advertisements?

Nikhil Rathi: We are expecting to get some new powers around financial promotions and crypto assets. We will have a discussion about what the wording should be. We will seek to use principles that are consistent with we have done before, which is that adverts should be clear, fair and not misleading. We have intervened in certain cases, sometimes in partnership with the Advertising Standards Authority, where we have seen advertisements that we believe are misleading and inappropriate. The new powers coming our way will help us to do that even more.

It is interesting. When I was in the US, I travelled from New York to Washington. At the Amtrak station, the first banner you see right across Union Station is for crypto assets. I met with our equivalent over there on the consumer protection side, the Consumer Financial Protection Bureau. Everybody is having this same debate and conversation.

Q254 Harriett Baldwin: I did not hear you say whether you thought the word “investment” ought not to be in any part of these advertisements.

Nikhil Rathi: I am happy to take that away and look at it. I do not have an absolutely decisive answer for you on that question. We would



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probably want to do some behavioural research to understand what cues people respond to.

Charles Randell: If I can reassure you, as I go around London and see things on the sides of buses, the first thing I do is ring the office asking, "What can we do about this?" At the moment, the answer is quite often that we cannot do anything about it other than alert the Advertising Standards Authority to our concerns. I have also written to the chair of Transport for London offering our help to develop with them an approach to this sort of advertising that recognises the trust that the public puts in their brand. If we do have the powers to regulate cryptocurrency advertisements, we will need to look very hard at the behavioural science aspects of it and the type of messages that need to be given to people so they really understand what they are getting into.

Q255 **Harriett Baldwin:** What about the Treasury consultation on cryptocurrencies? Have you heard what has happened to that? I know it closed in March 2021. It sounds as though the Treasury is still analysing the results. Have they shared with you anything about the timetable that they have in mind? If we continue not doing anything, is it not possible there could be more consumer detriment in the meantime?

Nikhil Rathi: There will certainly be consumer detriment in the meantime—there is no doubt about it—which is why we keep warning very publicly that anyone who puts their money here should be ready to lose all their money. There is a decision to be taken as to the extent to which crypto assets are brought into the regulatory regime. I am not aware of a specific timetable that the Treasury has in mind. Through the Cryptoassets Taskforce that we participate in with the Treasury and the Bank of England, this is under active consideration.

It is also something that we are going to have to work on cross-border. With these types of institutions, it is eminently clear that we can take action in the United Kingdom, which we have done. You may have seen that we banned Binance, the largest crypto exchange, from doing regulated activity in the UK. We set out publicly our reasons for doing so. But UK consumers can access its overseas website. We need to work on this cross-border as well as just in the UK.

Q256 **Harriett Baldwin:** I did not hear any immediacy or urgency in that reply.

Nikhil Rathi: As you know, changes to the regulatory perimeter are a matter for the Treasury. I cannot prejudge where they may be going on this.

Harriett Baldwin: You guys chat a lot, though.

Nikhil Rathi: We do. This is getting a lot of attention, particularly on the financial crime front as much as anything. There is a spectrum here from crypto assets to stablecoin and digital currencies. All of those issues are getting attention. As a regulatory community, we know we need to move



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and move quickly in this space, but the specific timetables around legislation and so on are for the Treasury to speak to.

Q257 **Harriett Baldwin:** You have extended the end date of the temporary registration regime to 31 March 2022. What is going to happen then? Does this mean that, in the meantime, firms that may not be meeting those requirements could go on trading for longer?

Nikhil Rathi: We have set that deadline; we think we will meet that deadline in terms of working through all the applications. As I said earlier, the quality of applications here has been below par. We have seen a very substantial withdrawal and refusal rate. That is time consuming for us to work through. When we refuse a firm, we have to give a detailed explanation as to why we are refusing. The firms that are subject to those refusals have rights of appeal as well. We think we can get through all of them by the end of March. Anyone who is doing business that is not authorised after that point will be breaking the law.

Q258 **Harriett Baldwin:** Are the delays caused by any of the issues that the Chair was raising earlier about people, particularly people with the right kind of computer skills?

Nikhil Rathi: Some of the issues are there. The technical skills around crypto are hard to find. It is competitive. Some of those skills we have been able to recruit into the organisation.

There is another tender—you were going to ask me about tenders—we have put out for crypto expertise. That is a challenge that we have, and we need to build internally within our organisation. One of the consequences of more regulation coming into play for crypto firms is that they are all out there hiring compliance people who know about crypto. We have created a market for some of that talent.

The fair answer to your question is yes. There is an issue around the scarcity of some of the skills and understanding here. When I talk to my counterparts around the world, this is an issue that we are all dealing with as we try to get ahead of new and emerging technologies.

Q259 **Harriett Baldwin:** Are there any regulators that are ahead of the curve or finding a way to create a useful purpose from this new technology?

Nikhil Rathi: When it comes to getting our arms around crypto, we are probably a little ahead of our counterparts. In the US, there is still a big debate going on between the regulators and in Congress as to whether there even will be regulation here. There is a debate going on between the libertarian wing that says, “People should be able to put their money into whatever they like” and another wing in Congress that takes a different view. That is taking quite some time to play through.

We are not substantially behind. There is some talk about Singapore as leading the way in terms of wanting to be a hub for crypto, but there is a



bit more of a nuanced picture than is sometimes presented about what Singapore is doing.

Q260 Dame Angela Eagle: I just want to talk a little bit about the impact of so-called pension freedoms, five years on from when it happened. In evidence to the Work and Pensions Committee, John Glen, the Minister, said, "There is not significant evidence of consumer detriment and there is a range of issues that come from the size of the pots that people are taking out around the points of access for advice/guidance". Is that how the FCA sees it? Are you quite happy about pension freedoms and the way everything is going? Charles Randell, you have made some observations over the years about what keeps you awake at night.

Charles Randell: When people talk about the size of our remit, they are sometimes talking about the wrong issue. The issue, to my mind, is about policy coherence. Do we have a remit where the policy and what is expected of us work in concert? Are we at the end of a pipe where, by the time the thing comes to us, we cannot do our job as well as we would want?

In the area of pension freedoms, there is a perfectly legitimate debate about the need for people to be able to access particularly small pension pots or for people in financial or health difficulties to be able to access their pension pots. There are a series of situations in which it may make sense for somebody to be able to access a defined benefit pension pot, but for the vast majority of people that is not the right answer.

I was not there at the time the pension freedoms were introduced, but I would say the speed with which they were introduced gave rise to a very big execution challenge for everybody: trustees, the Pensions Regulator, us and the Money and Pensions Service, or Pension Wise, as it then was. You can see that, because there is still policy being made now to deal with the consequences of that.

Q261 Dame Angela Eagle: Some of it has taken a long time to come in—four years to ban cold calling, for example.

Charles Randell: We are still seeing policy around, for example, our stronger nudge policy to try to ensure that people are directed to a Money and Pensions Service guidance session.

Q262 Dame Angela Eagle: Are you happy that 50% of pension pots that have been accessed so far have been accessed completely independently of taking any advice at all?

Charles Randell: Again, these are issues that are ultimately for Parliament and policymakers to decide. We do not have the ability or, indeed, the mandate or the responsibility to say that this cannot happen.

Q263 Dame Angela Eagle: I know it can happen. I am asking you whether you feel happy that that number of people are accessing pension pots without any advice. If you look at the *Hansard* report of the passage of



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the Bill through the Commons and the Lords, there was much reassurance by Government Ministers about how advice would be available prior to this happening. In effect, 50% of people who access their pot do not get any advice at all.

Charles Randell: The problem is that, until you look at those individual cases in some detail, you cannot tell whether a particular consumer accessing their pension pot was the right thing for them.

Q264 **Dame Angela Eagle:** People cannot tell, in public policy terms, until 20 or 30 years down the road when it is too late.

Charles Randell: There may be people who have high-cost debt that they need to pay down and the pension is an asset that helps them to get their financial situation in order. There may be people who have other sources of retirement savings and who need to support children through various issues. Until you get down to the level of the individual decisions, it is very difficult to make a blanket judgment.

We have been clear, certainly for members of defined benefit pension schemes, that the general rule is that it will be better for people to retain their defined benefit pension.

Q265 **Dame Angela Eagle:** Why do you not go for auto-advice rather than stronger nudge?

Charles Randell: This issue came to Parliament and it was debated in Parliament as to whether there should be legislation effectively forcing everybody to go through a pensions advice session before they could access their pension pot. Parliament rejected that. We have done what we feel we can do without the limits of our regulation.

Q266 **Dame Angela Eagle:** What positive effect do you expect stronger nudge to have? Do you have targets that you would expect it to achieve? Will you look at it again to make it even stronger?

Nikhil Rathi: We will keep looking at it. At the point that a consumer comes to ask about a transfer or change to their pension, they should be given the Money and Pensions Service guidance and pointed to booking a free appointment with the Money and Pensions Service. There will be trials of some harder-edged measures as well. We will be looking at all those issues.

If I could just go back to the point Charles made about defined benefit pensions and link it to the other questions we have had, there are very limited circumstances when this is in the interests of consumers, but that is not what Parliament legislated for. There was a debate in Parliament. There was a debate about the extent to which consumers should have control over their own money. If you go through the *Hansard* records—I have looked at some of them—there was a conscious decision that sometimes people should be allowed to do things with their own money that may not be, in a narrow economic sense, in their financial interest,



but people should be free to do with their own money what they would like to do. That was debated at length when Parliament passed the law.

Q267 **Dame Angela Eagle:** They are free to be conned.

Nikhil Rathi: I link it also to the crypto asset conversation. Parliament has not prohibited the sale of crypto assets on a point of consumption basis to consumers in the UK, including if they are buying them overseas. Therefore, a large number of people will be losing money on that. There are limits to what we can do when those choices have been made here.

Q268 **Dame Angela Eagle:** Finally on this particular issue—I want to ask you about a couple of other things—are there specific targets for what you would regard as the success of the stronger nudge? What are they? If they are not met, are you going to have an even stronger nudge?

Nikhil Rathi: The pensions policy framework, including around the Money and Pensions Service, is a matter for DWP. The Pensions Minister has said in Parliament that he would like to see the use of the Money and Pensions Service as the normal approach that consumers use. The Government have not set specific targets around that. That will be a matter for the Government. We certainly want to play our part with the guidance we are producing around stronger nudge. There are other things that DWP is also consulting on.

Q269 **Dame Angela Eagle:** You said earlier in your evidence that you were doing some work around Greensill. Can you tell us what that is?

Nikhil Rathi: There are different elements of work. I have briefed the Committee previously on the various pieces of work we are doing on enforcement in partnership with enforcement agencies. I will not comment in any more detail on that, but there are various investigations under way.

The lessons around appointed representatives came through. We have a regime that dates back to 1986. The appointed representatives regime was designed for insurance salespeople in local markets. It is a very broad and permissive regime, which allows appointed representatives to do a fairly wide range of activities. As we saw in the Greensill case, some quite wide-ranging and complex activities are allowed using the appointed representative approach.

We have stepped up our oversight of appointed representatives, in particular the regulatory hosting model, where one firm has dozens if not hundreds of appointed representatives as its client base. In light of our enhanced interrogation, a number of firms have withdrawn from that approach. We are creating a new department specifically to supervise appointed representatives. We are consulting now on what information we want to get and on the diligence requirements we put on principals.

Alongside that, the Treasury is thinking about other measures. For example, should appointed representatives be subject to the senior



managers regime? Should there be more tightness around what principals can do and the permissioning that is available there? That also goes to the conversation we had earlier about proportionality. Where it is a genuine self-employed insurance broker in a small town, you do not want to be overloading them with data requirements and whatever. It is more that we want to target those where we think there could be the most significant harm.

Q270 Dame Angela Eagle: On mutuals, are the interests of the members of mutuals protected in the context of demutualisation when they have no voice in the regulatory process that is covering it?

Nikhil Rathi: You are talking about the case of LV=, which is live right now. Is that what is on your mind specifically?

Dame Angela Eagle: That is what triggered my thoughts about it, yes.

Nikhil Rathi: When we are approached by a board with a proposal, we have to assess that, as they are communicating about their proposal, they are doing so in a way that treats their members and their customers fairly. In this case, after several additional requests from us in terms of that communication, we allowed the procedure to go ahead. Let us bear in mind what the procedure is. It is a vote and, to approve it, 75% of the members who vote need to approve it. Then there is a court process around the scheme arrangements, so there are additional protections in place in this specific instance.

There is a balance that we have to strike, as we are thinking about this against our objectives. If you have a protection where the threshold is that 75% of members have to vote for something in order for it to go through, when would it be appropriate for us not to allow something to go ahead where members have decided for themselves the future of their institution?

Q271 Dame Angela Eagle: In that case, is the independent expert process justifiable in its current form? Again, in the LV= case, they were chosen and paid for by Liverpool Victoria. It is not really independent, is it?

Nikhil Rathi: We have guidance around how independent experts are chosen. There should be appropriate governance around that. In this case, we were satisfied that the governance was followed. We engaged with the independent expert, and we believe there was genuine independence around that.

In addition, there is a separate with-profits actuary within the organisation, with whom we have engaged, as well as a separate with-profits committee. I cannot comment on what may or may not happen in the vote this week, but, if it is approved, there is also a court process. Anyone who is concerned about fairness has an ability to air their concerns.

Q272 Dame Angela Eagle: Is demutualisation good for financial stability or do



you have no view on that matter?

Nikhil Rathi: We want to see competitive markets, including diversity of provision in financial services. The question of demutualisation is ultimately a matter for Parliament. Parliament has allowed a path for demutualisation. We are not asked to prevent it; we are asked to look at the fairness of decision-making, and at the fitness and propriety of any potential owner. That is what we are asked to do in terms of our processes, and that is what we are following in this case.

Q273 **Dame Angela Eagle:** Finally, we had a recent evidence session with the mutuals. Mike Regnier, the chief executive of the Yorkshire Building Society, questioned the extent to which regulators have a parity of esteem between mutuals and non-mutuals. The phrase “benign neglect” came up. Is that a reasonable way of characterising how you pursue your regulatory duties with respect to the mutual sector?

Nikhil Rathi: That is not my experience. I would be very open to hearing if there are any specific areas of the conduct rules where mutuals are concerned. I know we have done a lot of work with credit unions in the past. In that same evidence session—I read the transcript—a number of the mutuals that were represented welcomed much of the work we are doing and felt it was very much in line with the spirit of their work, whether that is on vulnerable consumers, fair value or the duty of care. They say they are some of the most enthusiastic proponents of some of those changes, which suggests that there is a good conversation when it comes to conduct.

I know there is a separate conversation that goes to the ability of mutuals to raise capital, the nature of the instruments that are available in the market and what the investable market or investor interest is, which is something for the PRA to think about.

Q274 **Alison Thewliss:** I have some questions around buy now, pay later. As we approach Christmas, many people will be starting their shopping. Pretty much anything you buy online now has a pop-up at the end for a buy now, pay later provider. I would expect that lots of people will be taking that up to spread the cost of Christmas. Do you feel that these options are materially different to the financial products you already regulate?

Nikhil Rathi: Yes. My immediate interim predecessor, at the request of the board, did a review into buy now, pay later and recommended that aspects of buy now, pay later are brought into the regulatory perimeter. The Treasury welcomed that and is now consulting on this. The debate is going to be about where to draw the line. If someone is buying trainers with three payments in a single purchase, do we want to regulate that? If that is happening regularly and frequently with a third-party lender, it turns into something different. That is the discussion paper that the Treasury has now put out there.

Q275 **Alison Thewliss:** In regard to the consultation they have put out, if the



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decision is made that you are responsible for taking on that regulation, how quickly will you be able to get that under way?

Nikhil Rathi: We want to operate in parallel with the consultation, but realistically it depends on the scope of the final change to the regulated activities order as to how quickly we do it. On some estimates, you could be talking about tens of thousands of firms coming into the perimeter. On others it is much smaller. Realistically, you would be talking about 12 to 18 months for us to get ourselves geared up to take this on.

That does not mean that we will not be proactive in trying to monitor this, sensitise consumers to potential harm and work with the firms to get ready for regulation.

Q276 **Alison Thewliss:** It seems quite a long timescale for an industry that is really booming in a lot of ways just now.

Nikhil Rathi: I recognise that, but at the same time we are asked to be proportionate in our regulation, in order to give time for firms to build systems and adjust to the rulebooks, and for us to collect data and build the skills we need to enable authorisation. In many cases, these will be new firms that have never experienced regulation before. That takes time to develop and bring into the perimeter.

Q277 **Alison Thewliss:** Do you have a picture of the type of risk that is being presented to consumers at the moment? As you say, if you are buying one pair of trainers once that is quite different to somebody who is buying multiple things across multiple accounts. This can be available for things like sofas, pieces of furniture or electrical goods, which can be quite expensive. That is a whole other measure of risk that people are getting themselves into.

Nikhil Rathi: That is right. One of the questions that the Treasury is asking is whether information about these types of transactions should also be shared with credit reference agencies. Should consumers who are purchasing goods on buy now, pay later in a more systematic way be subject to the kind of affordability framework that we would have for more traditional consumer lending? Clearly, there is an opportunity for consumers to get very severely overindebted. There is certainly evidence that, in these cases, there is a higher default rate than elsewhere.

Q278 **Alison Thewliss:** Yes. They seem to be presented and being used by quite a different end of the market as well. This is predominantly targeted at younger consumers, who may be in more precarious jobs and may be less able to pay back those debts if something goes wrong.

Nikhil Rathi: That is quite right. It is clear that this is not just younger consumers but vulnerable consumers more generally, of all age groups. That is clearly a concern, which is why we think this is an area that needs attention.

Q279 **Alison Thewliss:** Perhaps there should be a targeted piece of work done



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towards that younger demographic. As an example, the Young Women's Trust said that 1.5 million young women lost income during the pandemic. As I say, they might not be able to absorb that kind of shock if they have run up a lot of debt.

Nikhil Rathi: I am happy to consider that as we take this on to make sure that our regulation takes account of different consumer cohorts.

Charles Randell: On this point, it is worth remembering that the path we have trodden so far is a bit unusual for the FCA: me asking someone to conduct a review into the necessity of some Government legal change here, them recommending that, and then the board coming out publicly and saying, "We want this". We have tried to be on the front foot, as we have seen this new product developing.

I am also personally in touch with the team at the FCA that is designing the timetable of our own policy interventions as Government legislative proposals become clearer, to try to make sure that as much as possible is done in parallel rather than in series, and that we can get regulation on this as quickly as possible. When we do get regulation, it is really important that we address not just the point of decision of the consumer and the information available to the very big buy now, pay later firms in terms of credit referencing and reporting, but the pathway through which they deal with distressed debt when it turns out that consumers cannot pay. That will be an important part of our regulation. My commitment to this personally has been to try to get it underway through policymakers.

Q280 **Alison Thewliss:** I am very glad that you are taking that initiative, because it is quite important. What kind of information are you gathering at the moment on that distressed debt and the way companies are treating individuals? Is that kind of information available to you at the moment?

Charles Randell: At the moment, we do not have a huge amount of regulatory access to this category of debt. I would just call out the fact that, in many cases, it will be replacing for consumers debt that was probably more expensive for them. In many cases people will be opting for buy now, pay later and paying it back in the three instalments as they can, when previously they might have put it on their credit card, been unable to pay down the balance at the end of the month and therefore incurred a higher cost. It is not necessarily the case that this is the wrong choice for consumers, but we do have an information gap until we bring it into regulation.

Q281 **Alison Thewliss:** Does the Consumer Credit Act remain fit for purpose?

Charles Randell: If you were asking me, I would say there is an assumption in your question in your use of the word "remain". Ever since 1974 it has been a pretty remarkable piece of legislation, which was deregulatory in many ways, but also created an enormous amount of red tape and tripwires for firms offering consumer credit. I do not think I have ever met anybody who was happy with the Consumer Credit Act.



This is the really difficult question, however. If you throw the whole regulatory and legislative framework for consumer credit up in the air, you are perhaps talking about a project that will last many, many years. The Consumer Credit Act was enacted in 1974, and there are some sections in it that have not yet been commenced. We should deal with the issues we can deal with today, as quickly as we can. The broader review of the regime for consumer credit, I am afraid, will probably have to wait.

Q282 Alison Thewliss: In March 2019, the FCA published the review of retained provisions of the Consumer Credit Act final report. What came after that? What is next? You were saying that some things are going to have to wait. I just wondered what you feel the next stages are.

Charles Randell: I see. I thought you were talking about the legislative review of the Consumer Credit Act and whether Parliament should re-legislate on consumer credit more generally.

Q283 Alison Thewliss: Should it?

Charles Randell: That is for Parliament to decide. The issue that is front of mind for us is continuing our work on our consumer credit priority to ensure that firms focus on creditworthiness. Since we took over the sector in 2014, we know that has been a recurrent problem. We have done a huge amount of clean-up work in that area, but colleagues across the Committee would probably say that there is always more to do. The affordability of consumer credit is still something that we need firms to focus on.

The pathways down which firms take consumers when they get into difficulty is something that we need to ensure the board is focused on. The new emerging challenge for us is around the new forms of credit, particularly very quick credit like buy now, pay later. Those are our immediate focuses.

Q284 Alison Thewliss: The 30 September minutes note, "The Board considered the impact that recent changes in government policy, such as the ending of the furlough scheme and the ending of the uplift in Universal Credit, may have on the consumer credit priority. The Board requested an update from the Executive Director of Consumer and Competition on the organisation's preparedness for these changes, noting that it was not the role of the FCA to facilitate credit that would be unaffordable." Can you tell me a bit more about that particular minute note? What do you think about the affordability of credit in that context?

Charles Randell: Arguments are made to us that, as we enforce our requirements around affordability, we may be causing people who do not have money real distress in terms of their ability to feed their families and clothe their children. It is really important that the board of the FCA focuses on its task, which is to ensure that the credit given is affordable, rather than trying to solve what may be much broader social policy problems by a loosening of credit standards, in which people get credit



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they cannot afford. That is one of the things that came through in that minute.

The other important thing—this comes back to the question of mutuals that was discussed earlier—is whether we can do more to foster the development of an affordable credit environment. There are many credit unions that provide a really good solution for vulnerable consumers and consumers in some difficulty, with a model of membership, saving and a much more personalised borrowing offering.

When Mike Regnier was at the Building Societies Association, I attended a conference he organised in Penrith to talk to the credit unions about what more we can do to develop the credit union movement there and other forms of affordable borrowing that are more personalised for consumers. One of the priorities for us as a regulator is to ensure that we support the development of good credit options for consumers.

Q285 Alison Thewliss: We have been through a difficult time with the pandemic. Some people have had debts build up; some people have had longer to pay back some of those debts. How are you monitoring firms to make sure they are being fair to their customers? We do not even know what is coming at 6 pm in this press conference the Prime Minister is having. What do you anticipate?

Charles Randell: We monitor this intensively. The board has been—Nikhil can add to this—very concerned since the start of the pandemic to ensure that consumer credit firms behaved appropriately and had systems in place for treating customers in difficulty in an appropriate way. The answer is that we have challenged at the board to ensure there is the resourcing and intensive monitoring of consumer credit firms. We have asked for and received the evidence that we need that that is happening.

Nikhil Rathi: We do have work ongoing on borrowers in financial difficulty. Interestingly, we are not seeing the kind of demand for debt advice that we were anticipating that we would see a year ago, or the kind of acute consumer distress we were concerned about a year ago. We are monitoring this closely. The healthy employment and labour market is cushioning some of the worst impacts that we feared might be coming our way.

Charles Randell: That can be very regional. I was in Blackpool last week talking to the local Citizens Advice bureau and the credit union there. They are beginning to see a tick-up in cases and demand. There are parts of the country where employment is recovering strongly and other parts that are more dependent on the entertainment and hospitality industry, where the recovery could be a bit more brittle.

Q286 Alison Thewliss: If I can ask quickly about your office in Edinburgh, this picks up on some of the issues that my colleague Siobhain asked about as well. There are only about 120 staff in Edinburgh, but I understand



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that your colleagues in Edinburgh feel as though they have not been part of your consultation in the same way as your London-based colleagues have been. They fear that Edinburgh, and the expensiveness of living and working in Edinburgh, has not really been taken into account within the salary benchmarking that you have done. Can you explain a little more why they feel that way?

Nikhil Rathi: Absolutely, I am very happy to do so. First of all, we are 100% committed to our Edinburgh office. In fact, we have said that we want to double our headcount. A number of the new colleagues we are hiring into our authorisations division will be landing in our Edinburgh base in the coming months. We are hugely excited by that and the quality of talent that we are able to attract.

As well as doubling our office in Edinburgh, we are going to be expanding into Leeds. As we were doing this wide-ranging career and grading review, we made a judgment that now was a time to introduce a national pay range. To date, because it has been a relatively small number of colleagues in Edinburgh, they have been on the same pay range as London. As we are expanding significantly and given that there are regional economic differences—differences in regional labour markets and differences in pay ranges, which is quite common across a number of employers—we felt that now was the time to introduce it. It is also because we have to use our money effectively and economically.

Understandably, that means there is a decision to be made about how you transition existing colleagues to a new national pay range. We have proposed to do that over three years. Colleagues will be subject to the same performance-related pay and base salary increases as other colleagues over the next two years.

I have been to Edinburgh and have met colleagues there, in person and virtually. That understandably causes anxiety and concern. We are listening really hard to the feedback from the consultation. We have not taken any final decisions. We have said that this is one area that we will look at, because we can understand the strength of feeling.

At the same time, if we are expanding very significantly outside London, it would not be appropriate for us in all cases to pay London rates. London rates are materially higher. We are having all these conversations and all this debate. This change process is not something the FCA has gripped in full in years past. A very complicated system has come up. We are trying to have a very open dialogue around this so we get to a platform that works for us in the future. I can assure you that we are very committed to our office in Edinburgh. We are pretty much the highest paying public authority, or at least one of the highest paying public authorities, with a base in Scotland.

Alison Thewliss: I might write to you separately on this point.

Nikhil Rathi: Of course, I would be happy to.



Q287 Gareth Davies: I am going to ask a few brief questions on climate change and specifically greenwashing. We have seen a significant increase in ESG funds over the last few years and the volume of assets in that part of the fund management industry. How prevalent is greenwashing?

Nikhil Rathi: It is a significant concern and it has the potential to increase. We are seeing very substantial inflows into ESG funds in the UK. Some estimates suggest that nearly a third of new funds in coming years could be into ESG. In a letter to authorised fund manager chairs in July, we put out some guidance around how we expect them to communicate about the design, delivery and disclosure of ESG products, how they have to make sure they have the right expertise if they are claiming to be an ESG fund, and how they publish data around metrics.

In response to the Treasury Committee's recommendations to us, in line with your green finance report, we have put out a discussion paper around labelling, what the rules are around sustainable investment labelling and what rules we need to have, which may be more involved for those marketed to institutions, and more clear and accessible for retail.

Q288 Gareth Davies: Can you describe how you are working with the Treasury to tackle greenwashing in financial products?

Nikhil Rathi: The Treasury is looking at the sustainability taxonomy. The Treasury is engaging in a debate as to the extent to which we derive what we do in the UK from EU rules, and the extent to which we may do something that builds on and is motivated by that but has other elements to it as well. We are fully engaged in that conversation with them. That will be a really important basis for the green finance framework in the future.

Q289 Gareth Davies: In terms of your day-to-day activities, how much is greenwashing a focus in your supervisory and enforcement role?

Nikhil Rathi: It is an increasing focus in the fund management space in particular. One of the new appointments that I made earlier in the year was a director of ESG, Sacha Sadan, who came from Legal and General. I know you have experience in the industry as well. He is building a team, because we know this is going to be a very significant part of our work for decades to come.

The next thing we need to do is mainstream these ESG considerations across all our supervisory, authorisation and enforcement activities. It is not just about one team; it is about how we train our staff to be able to manage this more holistically. It is going to be an increasing part of our work domestically and internationally, in fact. We co-chair the IOSCO group on sustainability disclosure, for example, so we have been playing quite an important role in the international debate, too.



Charles Randell: Could I take the opportunity to call out one other risk in this area? There is the risk in the area that we regulate of greenwashing in relation to products sold by the regulated firms that we authorise, but we must not forget that scammers are constantly alert to things that will pique investors' interest and will get investors interested in scam products. There is a real risk that we will see the label "green" used as a means to encourage people to engage with scam products. I would just like that warning to be out there.

Q290 **Gareth Davies:** Just on labelling, can I ask you about this? There are already labels in the industry. Lots of different research providers have labels, but they all have very different methodologies and definitions of what is good, what is bad, what is green or different shades of green. Where do you come down on this? I noted in some of the guidance that you gave an example that one of the funds included certain stocks that you did not regard as being in line with an ESG fund. Can you just describe for us how you would define "good"?

Nikhil Rathi: That is an existential question.

Gareth Davies: Let me put it another way. You implied that, because the fund did not employ a divestment strategy, it might not be regarded as an adequately strong ESG fund.

Nikhil Rathi: I am not familiar with that specific example. I am happy to look at the specific example you draw to our attention. What is concerning us is that the claims that a fund may make about being green are consistent with its investment strategy, the skills and expertise it brings to the investment strategy and the disclosures it makes. We may be concerned about a fund giving the impression that it has divested from certain industries or it plans to divest from certain industries, but not in fact doing so and consumers thinking that they have bought such a fund but then realising, when you get into the fine detail, that that might not be the case.

I do not have the answer to where we are going to draw the line. This is a fascinating area, where the industry is asking us to regulate more. In terms of my inbox and the letters coming in, it is an area where people are saying, "Please think about how you can regulate ESG data providers". There is this proliferation of labels, standards, benchmarks and indices all over the place, and the industry is calling out for more standardisation.

Linking to the Treasury's work on the taxonomy, we will need to think about where we draw the line. It is going to be quite hard for us to be absolutely clear, because this is an area that is evolving and where there is innovation. We are all still learning about how this transition is going to work.

Q291 **Rushanara Ali:** I have some questions about economic crime. I am going to start with money laundering and then go on to the Online Safety



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Bill. The FCA has succeeded in securing a conviction of NatWest for failing to exercise proper money laundering controls. Is it correct that this is the first money laundering prosecution the FCA has conducted?

Nikhil Rathi: It is the first criminal prosecution against a bank.

Q292 **Rushanara Ali:** Why did the NatWest prosecution take so long, given that the offences took place in 2016?

Nikhil Rathi: The Chair has written a letter to me on this topic. The Committee will understand that the sentencing has not yet taken place. We are anticipating a court hearing in the not-too-distant future, at which point the basis of our case and the facts around that case will be more public and I will be in a position to give you a bit more information.

Q293 **Rushanara Ali:** Why did you choose to prosecute NatWest and not Standard Chartered, which you fined over £100 million in 2019? What were the differences between the cases? I know it is before your time, but perhaps Charles can come in.

Nikhil Rathi: On the criminal prosecution, it is not going to be too long before there will be more information available, and you will be able to see the nature of the offence and why we chose a criminal prosecution in that case. We will be able to give you more information.

Q294 **Rushanara Ali:** Would that explain why you did not pursue a criminal route for Standard Chartered?

Charles Randell: When we can write to you about the NatWest case, it will be much easier for us to explain why it was a criminal prosecution. It will also be clear from that why, by comparison, that was not the case for Standard Chartered. It is going to be very difficult for us to give you answers today on that, given the restrictions that we are under in terms of the court.

Q295 **Rushanara Ali:** I will ask you a general question on that, then. Can we now expect you to be looking for more prosecutions and fewer regulatory fines for the failure to prevent money laundering going forward?

Nikhil Rathi: I have said publicly—I said it in July when we published the business plan—that we want to be assertive and test our powers to the limit. That includes taking criminal prosecutions for the most egregious failings.

Q296 **Rushanara Ali:** On the one hand, this country has a good reputation around financial services; on the other hand, there is a lot of concern about money laundering and London being a route for it. Today a report has just come out—it is hot off the press—called *The UK's kleptocracy problem* by Chatham House. This is not directly your responsibility, but this think tank says that unpoliced and often unenforceable anti-corruption laws have made the UK the global money laundering capital for a post-Soviet Union elite, severely damaging Britain's international reputation and the rule of law.



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Given this, what other powers do you need? This question is particularly relevant to our other inquiry into economic crime. We keep revisiting the subject. What other powers do you need in order to prevent financial institutions from laundering money?

Charles Randell: We do get a mention in the Chatham House report in the capacity of being the Office for Professional Body Anti-Money Laundering Supervision. We have a really important role in supervising other bodies for lawyers and others who should supervise money laundering.

That is a relatively new responsibility for us. We have been very clear that what we have found is not good enough, and that what this report calls the “network of enablers” is not strongly regulated enough. That includes estate agents, lawyers and all sorts of intermediaries who assist people to come to the UK and live in great style or to launder the proceeds of their crimes here. I am really pleased that we are upping the game for the other professional bodies. It is really important that we continue to do that with a lot of focus.

In terms of our own interventions in the proactive supervision of firms, the actions we have taken in terms of penalties and criminal prosecutions have announced that we are here and we mean business in this area.

Q297 **Rushanara Ali:** Would you say that you have the right powers? There are these so-called enablers, according to the Chatham House report. Do there need to be further powers here?

Charles Randell: What was very interesting about the report was the fact that it draws together the need for a system-wide approach to this. Whether we are talking about Companies House or the National Economic Crime Centre, the various agencies that participate in that and the various professional bodies that play roles, it needs a system-wide solution. The National Economic Crime Centre has been established in order to produce that system-wide solution, but I would be the first to say that more needs to be done across the system.

Nikhil Rathi: I would make two points on powers, which is what you are asking about. One is about the ability to share data, between the public and private sectors but also between public sector agencies. For example, HMRC has some very highly relevant information on money laundering, but clearly there are always sensitivities about the way in which tax data is shared across the system. We need to be thinking about how we can find solutions to enable the intelligence that might be gained from their data to be used.

Second is a more technical point, which we have drawn to the attention of the Committee before. Some of our powers lapse at the point when a firm falls out of authorisation or registration. Our ability to pursue investigations can be compromised if they deregister or de-authorise, which is a technicality but has been a challenge in one or two situations.



Q298 Rushanara Ali: That is an area to work on. Moving on—I am conscious of time—to the Online Safety Bill, in your evidence to the Joint Committee on the Online Safety Bill, you strongly supported extending the Bill to include paid-for online advertising. On this Committee, we unanimously think it is a good idea. Given that it is already illegal to advertise unauthorised financial products anyway, what are the areas where we need to build in a provision for prevention, as you called for in the evidence you gave?

Should there be should a duty of care as part of the provision? Should there be a regulatory body to oversee that? In addition, should online companies be liable for compensation where there are particular cases of bad behaviour? I know that was quite a few questions, but it is well rehearsed.

Nikhil Rathi: Yes, we have made our position clear and we are very grateful for the Committee's engagement and support on this. We asked for two things: first, that fraud becomes a priority harm in the Online Safety Bill; and, secondly, that paid-for advertising is also included. The question of liability is really one for other policymakers to judge, because you are weighing up a whole range of issues as you make that judgment.

To your earlier questions about financial crime more generally, there is definitely an appetite from the financial services industry to see tech companies and telecommunications companies contributing more to the industry-wide funding and the efforts to tackle financial crime, given that they are often the transmission mechanism for a lot of that activity.

Q299 Rushanara Ali: It emerged that it cost you £600,000 to take down adverts that were on Google. You paid them to take fraudulent products off their sites. They have since offered you \$3 million in credit. What have you used that \$3 million in credit for? Was it more online advertising of dodgy products that they had put up? Have you got the £600k back?

Nikhil Rathi: We have not got the £600k back.

Q300 Rushanara Ali: Would you like it back?

Nikhil Rathi: We would like it back, but from our latest conversations with Google I am not expecting that in my Christmas stocking. I understand that the Treasury Committee has engaged on it. We will take up the offer of advertising credits, and we will use that advertising to sensitise consumers to the risks that they may face, if they click on some of these links.

Q301 Rushanara Ali: Have you used much of it?

Nikhil Rathi: No, we have not used it. We are in discussions around how we may use that in the future.

Q302 Rushanara Ali: Do you envisage that being about prevention, or is it going to be about taking off fraudulent products advertised by Google? That would be rather ironic, would it not?



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Nikhil Rathi: This is going to be more about prevention. On the point about the gateway, Google has done what it has done on its policies, which came in at the end of August. That is a helpful step. Clearly, legislation would be more decisive than anything that we could do.

Q303 **Rushanara Ali:** Google is not the only culprit here. Others are Facebook and other online companies. I do not know if you are aware—it is a related issue around harms—that Facebook is now going to be sued by Rohingya Muslims because of its contribution, according to the UN, in playing a determining role in the Myanmar genocide. They are suing it for \$150 billion. That is a group of people who have been persecuted and a million of them expelled to another country. It is a UK-US case. It is enormously courageous of them. Should our institutions and our Government be getting their act together and making sure that, given how serious some of these activities and crimes are around incitement to violence, they get their skates on around financial crime?

What we heard recently in the Minister's response was that there are some barriers to making the appropriate changes that you are asking for in relation to financial crime here. Are you confident that anything is going to happen in terms of the changes that you and we are all asking for to the Online Safety Bill?

Nikhil Rathi: I would make the general point that it is not just Google. We are talking to other platforms too. One of the reasons we want the powers is that it is very time consuming to have to seek to persuade every single platform to adopt a similar approach, each through negotiation, through its own specific procedures and with a different perspective on it. Having a common approach is going to be the most effective way to stop arbitrage.

We are having good constructive conversations with the Government about the Online Safety Bill. In many respects, you will be closer to that determination than we are. It is now before Parliament to decide, and there is going to be a period when there is a possibility for amendments to be tabled. I heard what the Economic Secretary said here, and I was grateful for his comments that he was very sympathetic to what the FCA had been presenting in terms of the change that was needed.

Charles Randell: I was also very pleased to see the comments that the Economic Secretary made. I am very hopeful that we will see progress on this issue. We need to move beyond the idea of the FCA being given free advertising credits to try to neutralise harmful advertising. We need to move to a world where Google does what it does for things such as coronavirus. If you were to search on Google about coronavirus, you would get some public health information at the top of your search result that Google puts there for you. I would like to see the same for a variety of search terms that are likely to lead consumers in the direction of harmful products. That would be part of the duty, if you like.

Q304 **Rushanara Ali:** This will require cross-governmental agreement. The



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Treasury Minister is not solely responsible; it will require co-operation with Home Office and DCMS. Is there a risk that it could fall between the stools? What would be your advice on this? What is your own role in making sure this change is made?

Nikhil Rathi: We are talking to the Treasury, DCMS and the Home Office. We are talking to Ofcom as well, which would have the lead responsibility coming out of this Bill. Everybody is engaged on this topic. I am not seeing this as a topic that is not getting cross-Whitehall attention.

Q305 **Rushanara Ali:** Finally, since you mentioned Christmas stockings when you spoke about the £600k, is it not mean-spirited of Google not to pay back the £600k? Should it—just in time for Christmas?

Nikhil Rathi: We would, of course, prefer to be refunded, but it is a commercial decision. They have made their position known, including to this Committee.

Charles Randell: I would adopt what Nikhil has said. I would just like to say that I was pleased that Google moved on this. I am very determined that we make sure that the focus is equally applied to Facebook, Instagram and TikTok. We see a lot of harm potentially coming through on those platforms as well, so we need to make sure we are focusing on the whole problem. The only solution to that, ultimately, is going to be legislative.

Q306 **Rushanara Ali:** You have not had to pay any other companies like you have paid Google, have you?

Nikhil Rathi: We shared the figures with the Committee before. We have paid some other companies, yes.

Q307 **Rushanara Ali:** Did you get any of that back?

Nikhil Rathi: No.

Q308 **Rushanara Ali:** No, so it is not just Google. There are a number of others. Can you just remind me of which other companies have not paid you back?

Nikhil Rathi: I would have to write to you with the details. Can I come back to you on that, please?

Rushanara Ali: I hope they pay you back before Christmas, too.

Chair: That brings us to the end of this session. Nikhil and Charles, let me thank you both very much indeed for appearing before us today. We have covered a wide range of questions, and you have given pretty full, helpful and often thoughtful answers to those. We thank you for that. There are a few matters that we are going to write to you about, as you know. We look forward to receiving that further input.

It is interesting to watch your journey in terms of the transformation, which is quite a significant challenge. We recognise that. It is only right to



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say that we will expect it to be bumpy along the way, because that is what happens when you make major change. Keep going. We want you to succeed, and we look forward to scrutinising you and the FCA in the future.

Charles, can I wish you every success and every happiness in your retirement? There are probably many buffetings, as you referred to earlier, that you will not now be subjected to, which will probably come as a great relief.

Charles Randell: Thank you very much. I am not sure that this will be my last appearance. I will not do a Frank Sinatra-type farewell. I suspect I will be back here again before very long.

Chair: Can we nonetheless thank you for your service in the very important role you have had? I do not think we will see you this side of Christmas, so happy Christmas.