



Treasury Committee

Oral evidence: [Press briefing of information in the Financial Conduct Authority's 2014/15 Business Plan](#), HC 881

Wednesday 10 December 2014

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Members present: Mr Andrew Tyrie (Chair); Steve Baker, Mark Garnier, Stewart Hosie, Mike Kane, Mr Andrew Love, John Mann, Mr David Ruffley, John Thurso

Questions 1-118

Witness: Simon Davis, Clifford Chance, gave evidence

Q1 Chair: One of the Members of the Committee wants to declare an interest.

John Mann: Clifford Chance assists with my Parliamentary summer school, which is a most excellent activity, which I am very delighted—

Simon Davis: I am very pleased to hear it.

Chair: First of all, can I begin by congratulating you on getting the report out? Having done an inquiry, several of us ourselves earlier in the Parliament, into banking, we know how tough it can be to get these things to market. Thank you also on behalf of Parliament, having put in all the hard work that has been involved in producing it, which I am sure is always much more than you think when you set off.

Simon Davis: That is much appreciated and it is not just me; one of my members of my team is sitting right behind me and thanks to her and my team as well.

Chair: It is fair to say that you have come to conclusions that what was going on in the FCA with respect to this was both serious and shocking, is that right?

Simon Davis: Those are not my words, they are obviously yours. I have certainly come to some serious conclusions on the basis that my fundamental finding is that the strategy that was designed and the way it was implemented was high risk and inadequately controlled. Yes, I have come to the view that there were serious failings, as outlined in my report.

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Q2 Chair: If something is inadequately controlled there has been negligence, has there not, normally?

Simon Davis: Not necessarily. There can be all kinds of circumstances where there are errors of judgment made that do not necessarily constitute negligence. But on any basis, as can be seen from my report, there were serious failings.

Chair: This is not an error of judgment; this is inadequate controls we are talking about.

Simon Davis: Inadequate controls, yes. There are a number of failings I highlight and one of those is inadequate controls but, as can also be seen from the events of 28 March, there is not simply a question of controls but the question of what was done or, more importantly, not done, during the course of the day.

Chair: Do you feel that that is negligent or not?

Simon Davis: It is not a view that I have considered, Mr Chairman. I have come to the view that there were serious failings but—

Q3 Chair: Serious failings. In your experience, what action would a regulator take against a private firm if such behaviour, whether negligent or not, were uncovered?

Simon Davis: The starting point would be in light of the fundamental falls in the shares that took place that day, that there would evidently be alarm bells taking place within the company itself and within the FCA. I would expect, in very short order, either the company having taken legal advice to have gone itself to the FCA to say, “Something has clearly gone wrong here and we want to get to the bottom of it and we are happy to co-operate with you and do whatever we can to get to the bottom of it and present to you a report of what we found”.

Alternatively, the FCA could proceed on the basis itself and to say, “We don’t like what has happened and we, therefore, want to have some kind of investigation conducted, either by the company or by a separate, say, skilled person”. Then an investigation would take place very much along the lines of that, which I have conducted, which would involve retention of documents, analysis of documents, rigorous interviews and then the culmination of that would be the findings. Following those findings it would then be up to the FCA to decide what, if any, action should be taken as a result, that action—

Q4 Chair: What kind of action do you think would be likely in a case where the sorts of findings you have made in this report were made?

Simon Davis: Again, there will be a range available to the FCA and the FCA has available to it the ability to impose fines and there have been all kinds of fines in the past. But I should stress, so far as I am concerned, that the job that I have done—and I hope I have been very much faithful to what I told the Committee at the beginning I would do—is to

get to the bottom of exactly what happened, so that anybody reading my report can be satisfied that they know exactly what happened.

Chair: Then they can make their own assessment, is that what you mean?

Simon Davis: That is the point. I have also made—

Chair: Is that what you are saying?

Simon Davis: Yes.

Chair: That is you feel you have got to the facts and now it is for others to make the assessment of what was implied by them.

Simon Davis: That's right. I hope what I have done and I hope what we have done is set out in a great amount of detail—perhaps for some people's taste too much—but I thought it important that it was absolutely clear. Following that, bearing in mind the seriousness of these events—taking your words, Mr Chairman—to go into some detail as to what could possibly be done by way of my recommendations to avoid it happening again. Those were very much my priorities.

Chair: The question that I am asking you then has not been a top priority for thinking it through.

Simon Davis: No, it has not.

Chair: No, okay, so maybe we should go elsewhere for an answer to it.

Simon Davis: I think that's right.

Q5 Chair: The protocol agreed for your inquiry provided that you would not share matters of substance with the non-exec directors of the FCA, unless a matter was so urgent or important it needed to be disclosed to them. Did you need to raise anything with them in advance?

Simon Davis: No, I did not.

Q6 Chair: Did you show any of your report or recommendations to the board in advance or to any member of the board?

Simon Davis: The answer to that is no and yes. No, in the context of the protocol, I did not share—as I think in answer to a question by Mr Ruffley when I last appeared before you, albeit in private session—my emerging findings in any sense with anybody until we got to the stage of maxwellisation, which is that contemplated by the terms of reference and by the protocol. I am sure that members of the Committee are familiar with the process but if it would help you just tell you, to an extent, the process—

Chair: Before we get into maxwellisation, I just want to concentrate—

Simon Davis: In answer to the second part of it, therefore, the board saw the report in the context of maxwellisation.

Chair: The whole report.

Simon Davis: The whole report.

Chair: Did they see the recommendations?

Simon Davis: They saw the recommendations.

Q7 Chair: Why did you feel the need to show them the recommendations in the context of maxwellisation?

Simon Davis: In the context of maxwellisation, bearing in mind what maxwellisation is designed to achieve or to avoid is people not being treated fairly my view was that many of the recommendations that I set out are pregnant with criticisms of the FCA. So far as I was concerned I did not want to get to a position where anybody, at the conclusion of my report, was going to be able to say, “Look at this recommendation, that criticises us, we did not have an opportunity to deal with it”.

Q8 Chair: Okay. Did you disclose any of the recommendations to individual members of the board, for example, the chairman of the board, prior to the maxwellisation process?

Simon Davis: No, I did not.

Q9 Chair: Did you have any discussions about the conclusions independently of the maxwellisation process or in any way alter them?

Simon Davis: Not before or since.

Chair: Okay. There has been no communication of that type whatsoever between you and the chairman of the FCA.

Simon Davis: No, I set out my recommendations and in the context of maxwellisation I received various submissions from a range of parties, including the FCA itself, but I have had no separate discussions of any kind with the chairman.

Q10 Chair: Are they are substantive facts, material facts, that you felt it would have been helpful to have established that you have not been able to establish?

Simon Davis: That is entirely the right question and I think and hope that was behind the—

Chair: I am hoping all the questions so far were the right questions.

Simon Davis: I am sorry. Of course, I am not familiar with the etiquette, Mr Chairman.

Chair: But I will take special credit for having asked that one, yes.

Simon Davis: No, but the reason why it is an important question is because if I had felt during the course of this inquiry that there were material facts, which I had not been able to get to the bottom of, that might have been the kind of point that I would want to go to the chairman or come back to this Committee to say, “Look, I am in a jam here, the material facts I think important: I can’t get to the bottom of it, I need some help” so that is why I thought it was the right question.

Q11 Chair: Did you get the co-operation you wanted from *The Telegraph*?

Simon Davis: That is a more difficult question. The co-operation that I sought and, in particular, bearing in mind the importance of what was said during the course of the interview on the 26th, was that I would have liked to have seen the notes taken by *The Telegraph* itself of that interview or indeed any recording. That, I considered, would have assisted me. *The Telegraph’s* position was, as a matter of policy, that they would not share those notes with me, although ultimately they did agree to provide very limited extracts. To the extent that I would like to have been able to see more from *The Telegraph* the answer to that is yes.

Q12 Chair: Have you made everything you think can reasonably be made public about the exchanges with *The Telegraph* in order to try to secure that extra information?

Simon Davis: Sorry, can you just repeat the question, Mr Chairman?

Chair: You have clearly had a series of exchanges with *The Telegraph* in order to try to secure the information you felt might be of use. Have you put everything that is material about those exchanges with *The Telegraph* into the public domain?

Simon Davis: Thank you, I didn’t hear that first time. The answer to that is yes.

Chair: Okay, thank you very much.

Q13 Mike Kane: Good afternoon, Mr Davis.

Simon Davis: Mr Kane.

Mike Kane: Do you believe that the FCA’s media team exerted, commanded, an undue amount of influence over the organisation?

Simon Davis: Again, that is a difficult question for me to answer. Let me just see if I can try to get it right. My view, having spent hours interviewing the representatives and having seen the exchanges that I have reported faithfully in this report, is that the FCA, perhaps along with a number of other organisations—and as was accepted very clearly by the FCA when interviewed—seek to use the media as a tool of regulation. To that extent, does the

communications team exercise influence over the way in which the FCA regulates? The answer to that is yes.

Whether it is undue, my own view is that it was not undue because there was consistent collaboration and discussion within the FCA as to the way in which the media would be dealt with. Ultimately, the view I came to is that if you are going to use the media as a tool of regulation then you had better be pretty sure that you are using that tool appropriately in the manner that is controlled and I concluded that it is not appropriately controlled. But it is not undue influence, it is a bit of a long-winded answer to it, Mr Kane, but I hope it—

Q14 Mike Kane: The life insurance team said there was a lot of pressure from comms and in any organisation there needs to be a clear chain of command. What has come out of this report is the fact that reports were being signed off by comms and not by the head of life insurance. They were seeing the report, they were then handing it over to comms who were then changing that and then releasing it. Is that just not wrong in any chain of command in an organisation?

Simon Davis: Mr Kane, I have made it pretty clear that there were failings in that respect.

Q15 Mike Kane: Okay. Just how junior was this media associate who seemed to be doing all the heavy lifting?

Simon Davis: I have to be a bit careful there because the protocol is very clear that I am not supposed to be identifying junior employees so that is hard for me to answer without identifying the individual in question. He is somebody with a—

Chair: It is up to you to decide who you want to identify. You say you are not supposed to.

Simon Davis: No, and I would not want to identify.

Chair: You make a decision on that and—

Simon Davis: No, I would say it is somebody with a considerable degree of experience.

Q16 Mike Kane: Okay. I suppose what I want to carry on with then is, did the left hand know what the right hand was doing in the organisation? The market people who would have had experience of what was about to unfold were not communicating with or comms were communicating with the market people about what could happen, that does not sound good to me. What is your opinion?

Simon Davis: Only to agree with you. I don't think it was good and I highlighted in the report various failures of communication, particularly on the day where the relevant individuals were not communicating with each other. I agree entirely with the thrust of your question.

Q17 Mike Kane: The FCA does operate a pro-consumer agenda. Before I came to this place in February I was chief executive of an organisation called Movement for Change and we were campaigning on payday-loan issues and struggling to get a meeting with the FCA. I, therefore, decided to put 200 people on Brighton Beach with a big banner saying, “Come and speak to us” and they came and spoke to us. Do you think they are media-led?

Simon Davis: Again, my own view, based on the documents and the people I interviewed, is that they are not media-led but certainly extremely media aware. I have already said that the FCA itself proceeds on the basis—and without any kind of embarrassment—that it uses media as a tool of regulation. To that extent, whether the media leads the FCA or vice versa is always going to be difficult to tell.

Mike Kane: That is what Zitah McMillan suggests: it was just one more part of the regulatory toolkit.

Simon Davis: That is on the FCA website.

Q18 Mike Kane: Yes, okay. If this was their intention, why were regulators not the people driving the media?

Simon Davis: If this had worked, as was intended—I am just trying to give you a good example—if, let us say, that Mr Adamson had been spoken to and consulted about his quotations, as indeed he was and his team, in relation to the other thematic reviews that were publicised, my view, which I have stated in the report, is bearing in mind the care that he took over quotations is that he would have said, “I am not willing for quotations to be attributed to me when someone else is being interviewed”. If it had worked then you would have seen the two sides of supervision and communications working together effectively but it didn’t work and, therefore, they didn’t work together effectively.

Mike Kane: A systemic problem across the organisation.

Simon Davis: I have said that there was a lack of controls; whether you regard lack of systems and controls as being systemic I suspect I am dancing on the head of a pin. I have concluded that there was a lack of controls and I have gone into some detail in the recommendations to try to make sure that any gaps in the organisation are appropriately filled so this doesn’t happen again.

Q19 Chair: Would you be prepared to jump off the pin just for a moment because Mike’s question does seem pretty important?

Simon Davis: With respect to the question the trouble with the word “systemic” has a rather pejorative whiff about it. What I would say and have said—

Chair: There is something pretty pejorative about what has happened here, is there not? Crikey.

Simon Davis: No, what I have concluded is that there were inadequate controls in relation to the control of the media. To that extent the system broke down, that is the way I prefer to put it.

Q20 Mark Garnier: Can I develop this point a bit more? But before I do there is just one thing that I want to pick up on before I forget, which is in your recommendations in paragraph 19.60 and this is with regard the use of the press, your recommendations of control within Communications Division. This is a very interesting thing that you suggest here, which is, “The process to be developed may involve use of approved scripts, requirement for quotation approval and possibly even insistence on prior approval of an article.” Can I just be clear that what you are suggesting there is that if we were to re-run this scenario with this recommendation in place, that you would expect *The Telegraph* to submit its article to the Communications Division of the FCA for approval before printing?

Simon Davis: The reason why I put the words “possibly even insistence on prior approval” is because I am not naive to the extent that the press take as important—and I think rightly so—their freedom to publish as they see fit, then it wouldn’t be my natural instincts to say that a newspaper should submit an article for approval, no. But I have injected the word “possibly” because I can see that there will be circumstances where what was being said to a newspaper had such potential implications that an organisation may say to the newspaper, “I would really like to give an interview on this one but if I do it is going to have to be on the basis that you let me have prior approval” and the newspaper may say, “That is completely unacceptable” in which case the FCA may say, “That is absolutely fine but you understand these circumstances, therefore, I won’t be engaging with you”. That is why I put “possibly” because overall it is a difficult balancing act for the FCA to seek to get across publicly the messages it wants to get across, deterrents, highlighting the existence of scams and the like, but at the same time having to take into account the potential unintended consequences of that action more generally.

Mark Garnier: That is a very helpful answer and I have had one call from the press who picked this up and—

Simon Davis: On the record, I am not advocating the muzzling of the press in any kind.

Q21 Mark Garnier: Fantastic, they will be delighted to hear that I know.

Getting back to the systemic issues, if you like, regarding the regulator and I want to talk about the development of the FCA’s pre-briefing strategy, which is clearly incredibly important. Conceptually, this whole idea of pre-briefing of journalists on the business plan or indeed anything else, should this not have raised alarm bells within the regulator, given the risks of releasing price-sensitive information at any time?

Simon Davis: The view I have expressed in my recommendations—and I am rather agreeing with you, Mr Garnier—to an extent that pre-briefing is a common form of getting a message across and not just this regulator. By the way, that is why I recommended in the

recommendations that the FCA liaise with other comparable regulators to see how they are doing it. Sorry, I have lost my thread, just repeat your question.

Mark Garnier: It should have rung alarm bells that the whole concept of pre-briefing is fraught with risk that price-sensitive information could come out.

Simon Davis: Yes, using pre-briefings as a whole you need to be very careful as to what it is that you are pre-briefing about. I have made it clear in my report that certainly the FSA before it and indeed the FCA as is take the view that it is unacceptable to pre-brief about something that is price-sensitive or risks being price-sensitive, which is the main issue in my report. In those circumstances, yes, care should be taken because particularly where you are the regulator and particularly where the regulator's words can have quite significant impact in the market that I would say has to be particularly careful about pre-briefing. I have expressed some doubts, Mr Garnier, in my recommendations as to whether it is appropriate to be conducting pre-briefings of thematic reviews with journalists.

Q22 Mark Garnier: Given that, is it not fair then that the Executive Committee of the FCA should not only approve this type of thing, specifically where there could be this great risk but also have significant note-taking to prove that they had done that and they had considered this, either as a systemic idea or specifically on individual items?

Simon Davis: Where I got to on that—so far as these kind of recommendations—is rather than being too micro and prescriptive, what I have said is that the FCA needs to go out, consult with other authorities, find out how they are dealing with it, so that the FCA itself and its Executive Committee and board can be reassured that the systems that they then should be putting in place—because my recommendations are there should then be further systems that should be in place—if that kind of note-taking is appropriate I am sure they will do it.

Q23 Mark Garnier: Given the fact that it is the UK Listing Authority and who are absolutely charged with making sure that we get orderly markets, this is such a dangerous area to have pre-briefings on this type of stuff that could absolutely infringe their own rules and their own validity as the organiser of an orderly market.

Simon Davis: I agree with that sentiment, which is why my recommendations do, in relation to pre-briefings, express exactly those concerns. I think I used the phrase that if in doubt then erring on the side of caution is putting it quite mildly.

Q24 Mark Garnier: There is quite a lot about Mr Adamson and Ms McMillan who were contacted individually about the pre-briefing plans and did not seem to raise any concerns at those times. There are a lot of questions, certainly as I read through your report, that they just did not seem to be on top of their job as individuals. At a personal level what do you think is behind this? Do you think they just had not appreciated that there was a problem with this? Did they have the wrong interests? Were they thinking more about how the wider

consumer market perceived there was a regulator, as opposed to their function to make sure there is an orderly market as the UK Listing Authority? What went wrong? As I said, it seems to be focused very much on those two individuals.

Simon Davis: I have made it clear, so far as my criticisms are concerned in relation to Mr Adamson. Excuse me for looking back at my report because having been carefully through the maxwellisation process I don't want to start with a defective memory setting out the criticisms that I have made and the report should always take preference. If we just take it in the particular chronological sequence, the view I came to—whether you talk about the business plan, whether you talk about the written briefing—was that there was a risk that the details of the “Life Insurance Review”, either just as they were or as they might be reported, were price-sensitive or, put more accurately, that the way in which the information may be reported could have a significant effect on share prices.

Taking that as a starting point, Mr Garnier, that was missed. Then if we move on to what happened at the time of the quotations, as I have said, Mr Adamson was unaware that he was out there being quoted or about to be quoted in newspapers because he was not even aware an interview was taking place and was not aware that an interview was going to be taking place with Mr Poyntz-Wright, who was then going to be giving quotations in his name, so all of that he didn't know about. I do then have the concern that I expressed in the report that when the article came out and was sent to Mr Adamson and he was told that it looked good and that his quotes had appeared prominently, that he did not read the article in question. So far as that is concerned it comes down to the fact that Mr Adamson receives a great deal of e-mail traffic and had been reassured by the opening remarks. I think that is unfortunate. Then in the morning Mr Adamson took the view—as I sat across a table from him, as I am sitting across the table with you now, albeit obviously significantly closer—that he had acted appropriately in the morning, having received the furious call from an insurance company, that he then took steps to make sure that some wording was put together. So far as he was concerned the job was done and I have not agreed with that. It is a combination of points.

Q25 Mark Garnier: But it sounds as if it is veering more towards the fault of the individuals within the system, rather than the system itself. There are an awful lot of points and then what you do is a critical path-analysis of a plane crash you can identify points at which it went wrong and you get back to certain points where it is pilot error and it seems to be pilot error in this case, rather than necessarily the structure of the system. Would you think that is a fair comment?

Simon Davis: It is a combination of the two, that, yes, there were individual failings but so far as Mr Kane has already made the point I don't think it was just a question of individuals making poor judgments.

Q26 Mark Garnier: One of things I wondered—one last question, Mr Chairman—is the role in the FCA's Markets Division and on the basis of the evidence that you have seen, was the director of the Markets Division informed of the FCA's general pre-briefing strategy

prior to this appearance of *The Telegraph*? Did he know that this was the sort of thing that the FCA was going to do?

Simon Davis: If I take it from the specific to the general, the specific was that he was unaware that this particular pre-briefing strategy was taking place. From memory he had some general awareness that pre-briefings did take place and was indeed involved in a particular conference call about the potential pre-briefing so far as a question of competition was concerned. From that conversation alone he would have been aware that some kind of pre-briefing was taking place. But at the heart of your question is, should not the Markets Division or those who are very knowledgeable about areas of price-sensitive information be aware that this kind of strategy is in place and be aware of the kind of material that is being supplied? The answer to that is yes.

Q27 Mark Garnier: Combined, if you like, with my very first question about paragraph 19.60, which is the possible preapproval of an article is not the answer, rather than to try to preapprove a journalist's article is to write an article that the Markets Division and various other people take a look at, which is then sent out with absolutely everything that the FCA wants to be said so that there can be no vagaries, everybody has agreed, everybody has agreed the things, they have done it, and if the newspaper, therefore, wants to rejig it and turns it into slightly more readable language then that is up to them but anything that is wrong with it will be by the newspaper, as opposed to the regulator.

Simon Davis: Yes, Mr Garnier, I can see that that is a possibility and indeed I have been careful to say all these areas should be up for grabs and should be considered. You have a number of extremes, the one is you have no pre-briefing of any kind, then as you start to move across that you can have a pre-briefing but it must only be in writing. All of these about maintenance of control and when you get to one end, which is that you are having a short interview with a journalist that you agree to be on the record but you have no follow-up about it at all in circumstances where you already know that the consequences, if this goes wrong, could be quite serious, that may be exactly the kind of area where you may think, "Hold on, should this be something we should be doing at all or should we just be doing a written briefing and if it is going to be a written briefing, should we get that cleared by Markets?" Bearing in mind, however, so far as Markets in the UKLA are concerned, is that they are, by and large, experts on what is meant by price-sensitive information. The only people who are best placed to understand—if I can just speak very loosely about the test—is a reasonable investor likely to take this into account in making investment decisions? That is going to be very tough for the markets people to work out. They are going to need to join together with the specialists in the subject matter, rather like by analogy in the private sector you would expect that kind of question to be discussed with brokers and that is difficult.

Mark Garnier: Brokers and lawyers.

Simon Davis: Lawyers are good at saying what the tests are but, ultimately, if in doubt—what the FCA itself says—talk to brokers because lawyers are good at some things but asking a lawyer to predict whether an investor is going to take this into account in his or her investment decisions, that is quite difficult.

Q28 Mr Ruffley: Mr Davis, thank you for this report. Would you say, thinking of the evidence you have looked at, that the operatives in the comms area had the necessary technical awareness of market practice? These are press officers in the comms area. Do you think they were qualified?

Simon Davis: It depends on what they are qualified in. If I just—

Mr Ruffley: Technical awareness is what I mean.

Simon Davis: Mr Ruffley, certainly proficient in the PR skills. As to whether they had proficiency to spot whether something risked being price-sensitive or spot whether a newspaper, if they report it in this way, could have an impact, they were not. But I am quite sure that there wasn't an expectation within the organisation that those people within the media group should have that expertise, which highlights the whole question of you don't have control; these people don't know; who is going to be waving the flag.

Q29 Mr Ruffley: Sure. They obviously met some standard for being good at PR otherwise one presumes they would not have been hired by the FCA. I am not talking about that. That is a given that they were good at PR but do you not think it might be a good idea or an area for people to reflect on that maybe those who are briefing the press are the interface between the regulator and the outside world—the media, in its broadest sense—should be technically able, to use your phrase, to spotlight what might be sensitive in market terms?

Simon Davis: Mr Ruffley, I agree and in the recommendations, again, I have highlighted that. You just need to be careful that you don't necessarily want to try to turn your media individuals into experts. But they need to have sufficient training and in this case one of the individuals, in particular the media associate, had had no training. But they should at least have enough to be able to ask the right questions and to be able to say, "This doesn't feel right to me". I wouldn't necessarily go so far as to say that they should be turned into the experts on what is or is not price-sensitive information but at least have enough to know that this looks like something that is raising an issue. Agreed.

Q30 Mr Ruffley: Sure. The supervision area: one of our arguments for doing the pre-briefing at all was to avoid ambiguity about the scope of the insurance review. Is that an adequate explanation as to why they wanted a pre-briefing—this is the supervision area—because they could simply have made the business plan clearer, could they not, in a very public way and on their website or something like that?

Simon Davis: Again, you are likely to get into various degrees of what is clearer. The business plan was supposed to be, and is, a rather succinct description of what is going to be happening. The moment you start to expand the description of something then whether you are creating more clarity or less is quite a difficult issue. You will certainly have seen, so far as the representatives within the Supervision Division are concerned, a considerable degree of angst, certainly post the Budget, as to whether saying anything at all in those present circumstances was going to work. However, a feeling at the same time is that they

were caught in a catch-22, which is if you say something that may be misunderstood, but if you don't and just simply come out with a reference within the business plan that may, in itself, be misunderstood. Ultimately, we can see what happened in relation to the judgment call that was taken. What may have happened, had the business plan simply come out, is anyone's guess.

Q31 Mr Ruffley: How far do you think the consideration to get a big splash in one national newspaper was the driver in all of this? Was it not the comms function just taking over and trying to justify their own existence by getting a big splash in a big national broadsheet?

Simon Davis: I would agree, Mr Ruffley, that there were two aims that were intended to be achieved by the publication and the risk of being conflicting. The one was to achieve clarification to say, "We are not going to be doing this" but the other, absolutely, was to be able to getting out in the media the kind of work that the FCA was doing very much in the interests of the consumers and to the extent you were seeking, on the one hand, to have a low-key something that doesn't cause confusion but in the other something that gives profile I think, yes, they were mutually conflicting aims.

Q32 Mr Ruffley: Do you think within the comms area, in this case, they were too aggressively pro-consumer to the exclusion of the interests of financial service providers and market participants?

Simon Davis: I don't think so. My own view is that the combined teams were seeking to strike a difficult balance. They were concerned about effect on the insurance companies, just as much as what benefits there may be for consumers so no I would not agree with that.

Q33 Mr Ruffley: Do you accept Mr Adamson's claim that the written briefing on its own was not price-sensitive?

Simon Davis: As you will have seen from the report I haven't expressed a view as to whether the contents of the briefing were price-sensitive. Mr Adamson, when I interviewed him, is very strongly of the view that it was not. I took the view that seeking to work out whether something was or was not price-sensitive was rather missing the point here, which was that the FCA was not even thinking about was there a risk of this being price-sensitive and I thought that was more fundamental.

Q34 Mr Ruffley: But it is an interesting question. Do you think a reasonable person would have considered the written briefing on its own was or was not price-sensitive?

Simon Davis: A reasonable person, depending, of course, on what knowledge that reasonable person has—

Mr Ruffley: The reasonable bystander.

Simon Davis: The reasonable bystander with a degree of knowledge of the insurance industry would have taken the view that there is a risk here that this is price-sensitive and, following Mr Garnier's lead, we should stop in our tracks and think whether this is the right thing to be doing at all.

Q35 Chair: It somewhat conflicts with Mr Adamson's view, does it not? After all he had more than a modicum of knowledge and was more than a bystander. You are disagreeing with him, are you not?

Simon Davis: He has a strong view that it was not and my view, to the extent that disagrees with him, is that there was a risk that it was.

Chair: No, you are disagreeing with him.

Simon Davis: Yes.

Chair: Was that a yes or a no? It is very—

Simon Davis: If Mr Adamson was saying that there was no possible risk then I would be disagreeing with him but what he has said to me, his view was that it was not price-sensitive. I have not gone into the particular points with him about whether he would accept there was any risk.

Mr Ruffley: But a reasonable person would have deduced there was some risk that was price-sensitive.

Simon Davis: I think so.

Mr Ruffley: That would be your—

Simon Davis: That would be my view, yes.

Q36 Mr Ruffley: In the written briefing there is the statement and I quote, "It would collect information on exit fees to understand if it is an area, exit fees, in which we need to intervene."

Simon Davis: Sorry, which paragraph?

Mr Ruffley: This is in the written briefing that was put out by the FCA.

Simon Davis: Yes, the paragraph in my report you were just looking at—

Mr Ruffley: Yes. Do you not think just referring to exit fees was something extremely ill advised?

Simon Davis: The point there is that as part of the discovery piece of work, which the FCA was going to be carrying out, they were going to be having regard to the question of exit fees. They would have had to be careful that you don't want to be giving some kind of a briefing that in itself is misleading, by leaving out something that the FCA may be

looking at. I think what the FCA was seeking to achieve through the written briefing was to make it clear this was not the focus of what was going to be taking place and that was what they singularly failed to do.

Q37 Mr Ruffley: But it was a journalist who apparently had form on being interested on exit fees, is that correct?

Simon Davis: It was a journalist who certainly had a keen interest in exit fees, which was—

Mr Ruffley: Yes, so it was foreseeable that any reference to exit fees might excite him, would you say that was fair? It was reasonably foreseeable.

Simon Davis: It was probably not just foreseeable but it was the journalist's interest in exit fees in the first place that led to that journalist being chosen.

Mr Ruffley: Indeed, so it was very foreseeable. Could I just—

Chair: Are you disagreeing with that or agreeing with David on that?

Mr Ruffley: You are agreeing it was reasonably foreseeable.

Simon Davis: I am agreeing that—

Chair: We are asking you if you can agree whether it was reasonably foreseeable, Mr Davis.

Simon Davis: I am not sure whether it was reasonably foreseeable. So far as the choice of journalist was concerned and that the choice of a journalist who was interested in exit fees, the fact that that journalist during the course, Mr Ruffley, of the interview questioned on and on about exit fees, yes, it should have raised the alarm bells and somebody afterwards should have said, "Look, this journalist is most interested in exit fees. We are about to have an article going out there. Should we go back to the journalist and say, 'You kept asking about exit fees—it is not about exit fees?'" That didn't happen.

Q38 Mr Ruffley: It is very helpful but we take that to be a confirmation that it was reasonably foreseeable on the part of the FCA that this would be picked up. You recommend that the FCA consider recording telephone interviews. Can I just say most politicians, particularly long-in-the-tooth ones like me, work on the basis that whenever we speak to a journalist, on or off the record down the telephone line, that it is recorded. That has certainly been true of my experience of 20 years in politics. Any serious sentient human being in the PR business—and I am thinking about the FCA comms area now—must have understood that if they were not recording an interview, then *The Telegraph* journalist almost certainly was. I wonder, given what I have said is common knowledge, why you only consider the FCA record telephone interviews with journalists. Why do we not make this just a very hard and fast rule?

Simon Davis: I say “consider” and, Mr Ruffley, it is quite similar to the answer I gave to Mr Garnier that so far as dealings with the press are concerned how realistic it is to say in relation to any interview, “By the way, here is my tape recorder, I am going to be recording it” whether that was going to be something that would, in itself, be acceptable to the journalist. If—

Mr Ruffley: May I just say, journalists—certainly with political animals, MPs, Members of the House of Lords—routinely record interviews. Is it not a quality of arms? The FCA are not going to upset a journalist if the FCA PR person says, “By the way, we are recording this”.

Simon Davis: Yes, I take absolutely your point, Mr Ruffley, but that is why I say it should be considered. I am not ducking anything; I am not an expert in the area. If it turns out that it is realistic to have interviews with journalists, proceeding on the basis they are going to be recording and you were to record as well, absolutely. I am saying that people who know more about these things and the practicalities should make that decision. I am saying it should be considered.

Q39 Mr Ruffley: Sure. One of your main criticisms is that in conducting the telephone interview in the way that he did, it handed control over to the journalist. Is it not logically also the case that in doing a written briefing, it was just put out there, control was given to this journalist who was given an exclusive? Is it not handing over control in both cases, both the telephone interview and the written briefing?

Simon Davis: I think you are right, but it is a question of the degree of risk that you are running. To the extent that you are supplying a written briefing, there is of course always going to be a possibility that that written briefing will be used by a journalist to come to a conclusion or indeed to speculate, as indeed any journalist is entitled to do. The risk of them speculating in a way that you had not expected or desired I think is reduced by ensuring that the written briefing records exactly what you told that journalist.

Q40 Mr Ruffley: My final question is this: given the need for tighter controls on future pre-briefings, that really rather assumes that pre-briefings are good things, that we must have them, they are with us, but we need tighter controls. What do you say to the suggestion that some people have that these pre-briefings should be banned altogether? They do not serve any useful purpose. If the regulator needs to say something to the world out there, it can put it on its website. With the pre-briefings, do you think there is a case for just saying they are not necessary, and that in the interests of transparency and clarity, everyone gets the same information at the same time: get rid of pre-briefings?

Simon Davis: Yes. If we just divide it into a number of sections as to whom you are pre-briefing, I think what I have said in my recommendation is I can certainly see that if you are contemplating rolling out some kind of, let us say, thematic review, you may want to pre-brief, say, industry or the ABI or the like. So long as there are appropriate controls, that kind of pre-briefing, I get that. I have said at paragraph 19.59 that we are not convinced that it is necessary to pre-brief the media in relation to forthcoming FCA

announcements, including the business plan, and it is the FCA that needs to satisfy itself that such pre-briefings are appropriate. To the extent that it does, it should develop a process that ensures not only that no price-sensitive information is disclosed, but the control remains with the FCA. I think that answers your point absolutely.

Mr Ruffley: Thank you.

Q41 Mr Love: Earlier on in answer to a question you said that in your interaction with *The Telegraph* and the journalist, you had asked to see their notes of the telephone discussion, but in your report you say that you initially asked for a meeting with them, which was refused. The notes were refused. You were given “limited extracts”, I think were the words that you used. They were less than helpful to you. Is that not true?

Simon Davis: I think I answered it with a question earlier, that they did not give me the assistance I would have liked. I cannot really say more than that.

Chair: You could. You could give us some more detail about how they could help you.

Q42 Mr Love: What reason did they give you for withholding, not having been willing to attend the meeting, not being willing to give you the notes? What did they say?

Simon Davis: The reason I was given was that it was not the policy of *The Telegraph* to give interviews, to provide details of their sources. Similarly, I know that the members of the Committee have not had much time to digest my report, but I do make reference to the fact that there was supposed to be a telephone call between the journalist from *The Telegraph* and the media manager. I asked for the note of that, and again I was told that it was not the policy of *The Telegraph* to share telephone notes of that kind. It was a policy view that I received.

Q43 Mr Love: So you were feeling a bit lucky when you got limited extracts. What were the limited extracts? Did they focus on market-sensitive areas?

Simon Davis: No. The limited extracts that I was provided with, if I just perhaps go to them, are at paragraph 12.19 of the report. I will just let you get that. 12.19. Do you have it, Mr Love? It is 12.19. “*The Telegraph* has told us in writing”, 12.19.

Mr Love: 12.19, yes.

Simon Davis: Sorry. This in fact fits in, I think, quite well with the questions that were being put by Mr Ruffley about written briefings, the difference between written and oral briefings, and the absence of any kind of recording from the FCA, because we can see at 12.17 that the notes that were taken by the FCA were not a complete record, and that there was some discussion along the lines of whether banning exit fees was possible. The response from Mr Poyntz-Wright may have been—again, it is unclear—along the lines of, “That would be a very extreme option”.

Then at 12.18, he—“he” being Mr Poyntz-Wright—recalled that he made a number of points clear in the interview with *The Telegraph*, such as that exit fees could only be removed if there was also evidence of misselling and so on. It is at that point, because as part of maxwellisation I invited *The Telegraph* to review a number of the passages within the report, those that related to *The Telegraph*, again avoiding any later complaint by *The Telegraph* that although I have said I do not criticise them, there were criticisms of *The Telegraph*.

The Telegraph was able to look at parts of my report, was able to see what had been said by the FCA, was able to see the notes that were taken by the FCA, and it is in relation to that that I received some comments from *The Telegraph*. All of them are reported and recorded in this report. The most significant of which is the one at 12.19, where *The Telegraph* told us that in its view, Mr Hyde’s notes of the call—the ones that I had asked for and had not being provided with—suggest a more equivocal exchange, and here is where I receive an extract. Those are the ones that we can see dealing with exit charges. Those are the only extracts that I was provided with, and those are advanced to suggest that there was a more equivocal exchange that took place between *The Telegraph* and Mr Poyntz-Wright on 26 March.

Q44 Mr Love: Let me be very clear: they did not initially provide limited extracts. In response to you sending them a copy of your report they commented on the report and they also issued limited extracts as outlined in 12.19.

Simon Davis: That is absolutely right, Mr Love, just with the one clarification that in terms of the maxwellisation process, I did not allow the report out of the building. *The Telegraph* came into my offices and looked at it there. That was the only qualification. I did not send anything to them.

Q45 Mr Love: There seem to be two major market-sensitive areas, the 30 million policyholders and the so-called review of that, and exit fees. To what extent are you confident that *The Telegraph* clarified both of those issues in terms of the conversation that was held between the FCA and the journalist?

Simon Davis: In the sense of “clarified”, do you mean in the article that was published, or do you mean in these, in the extracts they gave to me?

Q46 Mr Love: I am going to come on to talk about and take your view about *The Telegraph*’s article. But how confident did you feel in interpreting in your report what you believed to be the conversation based on the evidence that was submitted by *The Telegraph*? After all, we have one side. The FCA has given a full explanation, as I understand it. *The Telegraph* has given a very partial explanation. How confident are you that you have been able to accurately interpret that conversation?

Simon Davis: All right, thank you. I am as confident as I can be, and the reason why I say that is because *The Telegraph*, as I said, was invited to come in to read the passages of the

report, and they only made three comments. To the extent that what I had set out was what the FCA's position was, I am quite confident that had the way in which I had outlined it been regarded as wrong by *The Telegraph*, they would have jumped up and down and told me. The fact that they did not means that I am pretty confident that what I have said they agree with.

Q47 Mr Love: Turning to the article, in your view was it accurate in terms of the information provided in *The Telegraph*? There would be some journalistic licence expected of it, but were the basic facts accurate, as far as you could see?

Simon Davis: This is probably the most challenging area of the whole investigation, because what you can see relatively clearly, I think, but with some areas of doubt, which I have set out in the report, is there was some discussion about exit fees, whether that was an extreme step that could be taken. But I have found within the report that the FCA were not saying that they were looking to remove exit fees, and, nonetheless, that was the impression given by the *Telegraph* article. Therefore, I have made it quite clear within this report that there was speculation that went beyond the pure facts.

That being said, I have also gone out of my way to make it clear within this report that enough had been said by the FCA in its written briefing and in the oral briefing to give *The Telegraph* the leg-up to speculate. It is speculation, as I think is apparent from the article—the use of the words “may” and “would”—a close reader would know that this is speculation, but people in a particular circumstance concerned about their shares are not going to be necessarily reading an article as closely as that. I think the risk of headlines—

Q48 Mr Love: Let me just ask you one final question. I have been asked to move on. The interpretation that you have just placed on it—it is on very limited information provided by *The Telegraph*; they are offered the opportunity to be more forthcoming; they have chosen not to do so—that leaves you with a slight quandary in how confident you can be that you have accurately interpreted the conversation. How confident do you feel in your report about that?

Simon Davis: I think as confident, Mr Love, as I can be, based on the fact that *The Telegraph* was able to come and see exactly how I had characterised the conversation, and, to be fair to *The Telegraph*, had made it clear within my report that because notes were not taken and there is uncertainty as to exactly what was said, there was room for *The Telegraph* to speculate. I am as clear as I can be because I have set out exactly what I was told by the FCA happened, but of course I have to bear in mind that their recollections are not going to be perfect. As far as I am concerned, I have been able to set out what the FCA told me happened, offer *The Telegraph* the opportunity to look at those passages, and the only ones they have challenged—

Q49 Mr Love: Let me just be absolutely clear about that. You are telling us that as far as you are concerned, the message that was given by the FCA allowed *The Telegraph* to

speculate and, therefore, in a sense, we must hold the FCA responsible for not being absolutely clear about what was in both the written brief and the telephone conversation.

Simon Davis: In terms of absolutes, so far as the FCA is concerned, they considered that they were clear.

Q50 Mr Love: But do you consider that they were clear?

Simon Davis: I have stated, I think, very clearly in my report that it was made clear to *The Telegraph* that the FCA were not seeking to ban exit fees. This is the problem, Mr Love, with a thematic review: you cannot predict what the outcomes are going to be. To the extent *The Telegraph* says there is going to be this review, and as part of it they are going to be looking at exit fees, I think what happened was that the FCA gave *The Telegraph* enough for them to be able to speculate as to what may happen in the future.

Q51 Chair: In a nutshell, *The Telegraph* did not mess it up. They took a story as they understood it and did what journalists might reasonably do.

Simon Davis: In my report I have explained why it is that I am not criticising *The Telegraph*.

Chair: That is what you are saying, is it not?

Simon Davis: I stand by exactly what I have said in my report.

Q52 Chair: I am just asking you now. Rather than keeping on referring to the report, just tell us. Do you agree with what I have just said?

Simon Davis: I stick with what I have said in my report about the reason I do not criticise *The Telegraph*. I think that is the easiest thing for me to do, because what I do not want to do, in my enthusiasm to answer your questions, is say something that may not be consistent.

Q53 Chair: Do not worry about the inconsistency. You are here to tell us what you think. I am not even particularly worried if you find yourself going beyond your report. We are asking you questions that are of interest to us, which may or may not have been the ones that in all cases are fully answered in your report. In this case I am asking you the question of whether you think what *The Telegraph* wrote was reasonable.

Simon Davis: That is a difficult question because it is one that I have not addressed specifically in my report.

Chair: That is what Andy has been getting to. Yes.

Simon Davis: I think it is reasonable for *The Telegraph* to speculate as they did as to what were the potential outcomes of a thematic review. In terms of the headline, I think that the

headline that was included when it came out on the evening of the 27th did give a misleading impression as to what was actually intended by the FCA, if that answers your question.

Q54 Mr Love: The corollary of that is there were shortcomings in the FCA that allowed that space to be created.

Simon Davis: Yes.

Q55 Chair: All right. We know that in the end there was something that was misleading. The question is, was that the FCA's fault or *The Telegraph's*?

Simon Davis: I am trying to say it in a number of different ways, and I hope I have answered Mr Love. I think it is a combination of the two.

Q56 Chair: So, *The Telegraph* did make mistakes?

Simon Davis: I think, so far as the way in which *The Telegraph* speculated, that that contributed to the misleading—

Q57 Chair: The answer is yes?

Simon Davis: Yes.

Chair: All right. It is quite hard work here this afternoon.

Q58 Stewart Hosie: Can I turn, Mr Davis, to the events following the publication of the *Telegraph* article and ask you this? In your view, how quickly should the FCA have been able to produce a statement correcting the misreporting in terms of the contents of its business plan?

Simon Davis: The difficulty with that is that the dots were not being joined on the day. I think the way in which I would have expected this to have worked, Mr Hosie, had they got it right, had they been speaking to each other—there is inevitably going to be some time trying to work out, “Has what I have said to *The Telegraph* been accurately reported? Is there going to be misapprehension in the market?” I would expect some time. But you are talking about, I think, a few hours, and certainly not the time that was spent.

Q59 Stewart Hosie: All right. Let me ask that question a slightly different way. How quickly do you think would a regulated firm be expected to publish a reply, or at least a holding statement, to the market if a similar situation arose there?

Simon Davis: Again, depending on the analysis of the facts, trying to work out to what extent that it is already out there in the market, I think you are going to be within a few hours.

Q60 Stewart Hosie: A shorter time than was taken in this case?

Simon Davis: A shorter time than was taken, Mr Hosie.

Q61 Stewart Hosie: You have criticised Martin Wheatley for failing to convene an urgent meeting of those involved in order to finalise the statement. Do you think that the FCA as an institution and Mr Wheatley as an individual failed to appreciate the urgency of the situation?

Simon Davis: Let us divide that into two parts. Mr Wheatley, to begin with, was aware there was some kind of an issue, which he thought was a media problem, and also to the extent that when he was briefed as to what was happening, he was also told that a decision had already been taken by Mr Lawton that there was no need for an announcement. I think that when the penny dropped and he realised that there were major price falls and the ABI were concerned, at that stage he was the one who then took action to join all the dots together.

Q62 Stewart Hosie: The delay was not caused by his involvement in drafting the statement. The delay was caused because it took some time for the FCA to recognise there was a problem.

Simon Davis: I think, sir, that is very fairly put. It was a failing during the course of the morning for people really to understand whether there was a concern that the piece was inaccurate or whether it was just reporting an interview that had been given by Mr Adamson. Yes.

Q63 Stewart Hosie: All right. You have also concluded that the delay—there was a further little delay of almost half an hour between the text of the statement being approved around 2.00 pm and the issue of the RNS at almost 2.30 pm—was due in part to the fact that the process for issuing the statement to the market had not been considered earlier, and it appears in your report that the media manager was unfamiliar with the process. That must have come as a shock to you to find the media manager could not issue a press release.

Simon Davis: I think the point was that so far as the media manager was concerned, if this had been a question of issuing a press release, that would have been absolutely within his territory, but what had happened was there was a lack of clarification as to exactly what was required to be done by way of an RNS. People had been working, I think, Mr Hosie, focusing very much on what the text should look like, and then it got to, “Right, we are ready; what do we do now?” Then it was, “Well, what are we doing?” I think that was more the point.

Q64 Stewart Hosie: This issue of issuing it via RNS, I have to say I am surprised, but I will come back to that in a moment. Surely to goodness the judgment should have been earlier in the day and consideration was given to the process, given that the FCA was going to have to communicate with the wider world and the market.

Simon Davis: I would agree with that.

Q65 Stewart Hosie: Just one final question. It is in your report and it ties this all together. It is in 15.8. I will just read the first part of this paragraph.

Simon Davis: Yes.

Stewart Hosie: “The issue response team policy does not address a situation where the FCA is required, in response to media or market speculation, to correct a story about the activities of the FCA. Nor does it address situations where information affecting the market has originated from the FCA or processes for correcting widespread misapprehension in the market.”

When I read that at first, it struck me that there was either an enormous oversight in the processes of the FCA or an arrogance that they might ever be questioned or called upon to explain what they have done as part of an episode like this. Were you surprised to see that that was the policy of the issue response team?

Simon Davis: I was not surprised when I looked at it because what I appreciated was that it was approaching the position from the regulator looking outwards. It was the regulator thinking about some kind of problem occurring with a firm. Apparently, from the document itself, the FCA had not considered that it might be in the position of the one whose actions need to be reviewed or corrected.

Q66 Stewart Hosie: What recommendation have you made in relation to that, if any?

Simon Davis: I have made a recommendation that there should be a proper emergency action plan. If we look at 19.62, I have said, “There is no plan in place to assist the FCA in dealing with the situation where the price movement in question may have been the result of the FCA’s own communications”. I have said, “We recommend the FCA” and so on, so I have recommended—

Q67 Stewart Hosie: Obviously that relates to the FCA, but that could equally relate to any other regulator whose actions also delivered a price movement in the market in the areas where they are responsible.

Simon Davis: Yes, and I have said also there in relation to that that input should be obtained, not just from the Markets Division, but one or more parties to the Industry Regulator Guidelines, which are exactly the guidelines that do deal with that kind of—

Stewart Hosie: That is helpful. Thank you.

Q68 John Mann: To clarify—I am still a little unclear—are you certain you said that the FCA had contacted *The Telegraph*? Are you certain it was that way around? I think I heard you say that. Is that a fact or is that a guess?

Simon Davis: That is a fact.

Q69 John Mann: There was no pre-lobbying by *The Telegraph* in order to get an exclusive?

Simon Davis: No.

John Mann: Of any kind?

Simon Davis: So far as I am aware, based on my questions, looking at the documents, looking at the e-mails, speaking to the individuals concerned, this was an approach made by the FCA to *The Telegraph*, and it is one of the reasons why I have not criticised *The Telegraph* here, where the FCA were the ones who reached out to this particular individual to offer him an exclusive.

Q70 John Mann: Yes, but I am just trying to guide us. Knowing the ways in which these financial journalists work with us, I just want to clarify that there was no possibility that *The Telegraph* had not actually been lobbying previously during that day for an exclusive.

Simon Davis: I am as confident as I can be. Unless I was being misled or told a falsehood by the interviewees, I am confident that it was the FCA who reached out to *The Telegraph* and not the other way around.

Q71 John Mann: That is clear. You alluded, I think, but you have certainly not—I am lending you the chance to be more specific. It seems to me rather an odd concept that the FCA should want to give an exclusive. The whole notion of that would seem not to fit with anything rational and logical.

Simon Davis: The logic of it, which I do understand—bearing in mind what the FCA was seeking to achieve here was a piece that would explain what the thematic review was and was not about—was that they would give an exclusive to a journalist on the basis that if a journalist is given an exclusive, then he or she is more likely to write about it.

Q72 John Mann: We give exclusives to journalists, and the higher up you are on the political chain, often the bigger the exclusives can be. They are given to people knowing the spin they are going to put on it. You do not give an exclusive to somebody who is not going to give the spin that you want on it. That would be counterintuitive.

Simon Davis: I think here the assessment that was made by the FCA was that they had chosen a journalist who would give it the right characterisation, and that turned out not to be the case.

Q73 John Mann: This is the bit I struggle with, the FCA's whole culture and approach, because that is a calculated decision to give it to a journalist, a newspaper, going to give a particular spin, with a clear outcome that would come from that. Otherwise you would not give an exclusive or you would give it to a heap of other journalists who would be happy to give something like this a high profile. It is not as if they are struggling to get it out.

Simon Davis: No, but that is why they chose a journalist who they thought had an interest in exit fees and, as a result, would be somebody who would understand the message they were trying to get across.

Q74 John Mann: Have you explored at all this culture of media management by the FCA and whether they believe it to be appropriate?

Simon Davis: I explored it in my report to the extent that I was saying that there was very much a view taken by the FCA that using the media as a tool in regulation was appropriate. I have said, to an extent that that is the view, that there should be further "input obtained—this is at paragraph 19.57—from the PRA and one or more other regulators, such as those party to the Industry Regulator Guidelines, on how other public bodies pursue communication strategies consistent with statutory objectives". I am saying yes, I am placing that very much in issue.

Q75 John Mann: Further, had the FCA handled it in a more collegiate way with the media and put something out to everyone at the same time, perhaps the next day or whatever day, *The Telegraph* could still have put their own piece out with the same spin, the same headlines. Would that have had an impact on the market?

Simon Davis: That is very hard for me to tell. It must have been a possibility.

Q76 John Mann: That is rather critical to your report, though, is it not? If that would have had an impact on the market regardless, it makes some of the seriousness of your report less relevant.

Simon Davis: It is impossible for me to tell what may have happened. Certainly you can see the concerns, and dealing straight with the point that you raised, certainly at least one of the members of the supervision team was saying, "Surely we should hold and now wait and then come out with our answers in response to any media coverage, assuming that some comes out". The view that was taken was that the best way to seek to control the message was to get out in front through the exclusive briefing of *The Telegraph*.

Q77 John Mann: After the FCA clarified matters, the market did not respond back to its previous day's equilibrium, did it?

Simon Davis: It came back, if we look at the charts, pretty much, which may well suggest, to the extent there was not a full recovery, that there may be—I think I make the point that it recovered, but not completely.

Q78 John Mann: If we take some actual figures, if we take Legal & General, Legal & General started at 212p and ended the day at 205p, so it came down 7p. Aviva started the day at 493p and ended at 483p, so it came down 10p.

Simon Davis: Yes.

Q79 John Mann: If we go further, because you do say that there were other issues in the market at the time, if we take the day the Chancellor gave his budgets, if we take Aviva, they start at 515p, but the next day they are down to 490p, so we have a market that is already in problems. Despite the FCA's correction, Aviva went down 15p after the Chancellor's statement; it went 10p down after the FCA's. If we take Legal & General, they go down 19p the day after the Chancellor's statement. They go down 7p after the FCA's.

You have drawn in two concepts. First is clear in what you state, so there is no ambiguity, that it is a false market. Is it a false market just on that day, or is a false market during that week?

Simon Davis: The question that I was answering is very much with reference to the piece in *The Telegraph*.

Q80 John Mann: I understand that. I understand your brief. Therefore, I understand your difficulty answering the question, but I think it is a relevant question, nevertheless. You stated it is a false market. I can see your logic in doing that. Is it a false market from the moment the Chancellor spoke?

Simon Davis: That is not something I have looked at, and I think, so far as I understand, there was a very significant difference from the announcement by the Chancellor, because the announcement by the Chancellor was made to the market all at the same time, so far as I am aware.

Q81 John Mann: Yes, but with the FCA's clarification—come back to the earlier model, the FCA's clarification—so were the FCA's. In terms of how you looked at defining “false market” for the day—which is what you have done, for the day— would the same logical reasoning give a possibility that someone might conclude that in fact there was a false market throughout the week?

Simon Davis: I do not think so, because the reaction of shareholders to the Chancellor's announcement seemed to me—although I have not looked at it in any detail, based on the Chancellor's announcement to the market—the view that I have given at paragraph 17.16

is that a false market existed on 28 March prior to the issuance of the FCA's statement via the RNS. What I have focused on is the period prior to the clarification statement, rather than the period thereafter.

Q82 John Mann: Only prior to that statement?

Simon Davis: Yes, absolutely. I am sorry if I did not make that clear.

Q83 John Mann: Just to clarify, you do not hold that there was a false market after that statement?

Simon Davis: No, I do not.

Q84 John Mann: In relation to it being disorderly, your report is commendably crystal clear, other than on this one point. I am unclear, having read it, whether you think that there was a disorderly market prior to the FCA's statement or not.

Simon Davis: Yes. I have tried to add some clarification in circumstances where there is not a definition of "false" or "disorderly". To an extent I am making my mind up based on texts and the like out there, but the view that I have come to—now my report is out in the public domain, there may be learned authors who will seek to disagree with the definitions I have come up with—but what I came up with was, so far as I was concerned, as set out at paragraph 3.20—

Chair: Just tell us roughly.

Simon Davis: The essential point is a false market is where the market is proceeding on the basis of a widespread misapprehension, and a disorderly one, what I came down to is it is where there is an inequality of information in the market.

Chair: Yes, that is more helpful.

Simon Davis: In circumstances where they may not be inequality because everyone has it, it is still possible—because not everybody is going to be reading what was in *The Telegraph* or the pieces that came in the wake of it—there may still be an inequality of information in the market. That is why I am saying "possibly".

Chair: John, one more thing, and then we will move on. I agree with you—

Q85 John Mann: This is the one area where, I am afraid, in my view you are vague. I understand your rationale and logic: "false market". But "disorderly market", your explanation there is not at all convincing. A disorderly market must require somebody to have some preferential knowledge, and you cannot simply say, "Somebody listened to the Chancellor's budget and someone did not: that creates a disorderly market". Or, "Someone read *The Telegraph* and somebody did not. That creates a disorderly market". For there to be

a disorderly market, does there not have to be some evidence of someone having some information that others could not have?

Simon Davis: I have said that a disorderly market may be said to exist if some but not all market participants have access to information that is material, and it is for that reason, Mr Mann, that I conclude that it is possible. I am not in the same position as with the false—

Chair: We are repeating ourselves now.

Simon Davis: Sorry.

Chair: One last, quick go. I quite understand; you have come to a view, you are expressing it.

Simon Davis: I have come to a view because in circumstances where the material information is out there in the market, whether that is now disorderly—I have said it is false, and possibly—I cannot really go much further.

Q86 John Mann: No, but just to clarify, your evidence base for that is based on that some market participants may have seen *The Telegraph* article and some may not. That is your evidence base.

Simon Davis: I think I am saying something along the same lines. What I am saying is that to the extent that this definition is right, the disorderly market is one where there is an inequality of information, and I have said it is possibly disorderly here if some people were making their investment decisions based on something other than those who were making their decisions based on what they had heard about *The Telegraph* article. I do not regard this as easy because there is no definition. That is why I have said “possible”.

Chair: Absolutely.

Simon Davis: I am more in a more definite position with “false”.

Q87 Steve Baker: Mr Davis, you have mentioned in passing the use of media as a regulatory tool.

Simon Davis: Yes.

Steve Baker: Do you believe that the board understood that that was what was being done?

Simon Davis: The board collectively, I am not so sure, because what I have said is that to the extent the media strategy was being dealt with, that was being dealt with at the executive committee level. I would say there is little doubt, bearing in mind what you can see—I think it was Mr Kane who referred to something on the FCA’s own website—that the FCA board would be aware because it would see it in the newspapers that the FCA is seeking to get out messages. Whether the individual members of the board would be familiar with it I am not so sure, because I have not asked them about it, but certainly the

chief executive did; certainly a number of the other people who would be involved in pre-briefings and the like would be aware.

Q88 Steve Baker: When I look at *The Telegraph* article, it says, “The intervention marks a victory for *The Telegraph*’s long-running campaign for action over rip-off charges” and so on. It seems to me that the FCA must have known *The Telegraph* had this long-running campaign. Therefore, you would have thought that it would be very clear to them that *The Telegraph* would pick up whatever information was given to them and run with it and that that would have very distinct effects on the market. Do you think that that is a fair summation of why they spoke to *The Telegraph*, and do you think that fits into a strategy for communication with the media that the board was aware of?

Simon Davis: No. I think that what the FCA was seeking to achieve was controlling the message in the media about the thematic review, with a view to making it clear what the thematic review was about and was not about. The view that was taken, particularly by the media associate who was familiar with the journalist, was that this was a journalist who would understand the message that the FCA was seeking to get across and would deliver that message, but the board were entirely unaware that this briefing was even taking place.

Q89 Steve Baker: Where I am going with this, I am trying to drive towards the responsibility and accountability of the board, and I have some very specific questions. It seems to me that they are exercising quite large amounts of discretionary power, which moves markets, and that they are relatively insensitive to the consequences of moving markets. All of that seems to tie into this book, “The Black Swan”, which it seems to me is altogether too influential in regulation today. What I am wondering is whether the board realise, in holding them to account, that they have this discretionary power and just how powerful it is, and the extent to which they have assessed the degree to which they can control these stories once they are released.

Simon Davis: If I just look at paragraph 19.56 what I have said is, “In circumstances where the FCA is using media-handling as a tool of regulation, it is fundamentally important that it controls to the extent it possibly can the manner in which that tool is exercised and takes into account any possible unintended consequences”. I rather agree with you—

Steve Baker: That they have not adequately considered—thank you.

Simon Davis: —that the unintended consequences—

Q90 Steve Baker: Thank you. I will just move into some of the specific things. We have talked about their collective responsibility to the extent that they had not considered the control of price-sensitive information. Could you characterise just how serious a failing that is?

Simon Davis: Insofar as the seriousness is concerned, I have made it very clear in this report that to the extent that the risk that this information could be price-sensitive was simply not considered, I regard it as extremely serious, and I think I have made that very, very clear.

Q91 Steve Baker: How would you expect the FCA to react if a regulated firm behaved in a similar manner?

Simon Davis: This was very much like the opening question from the Chairman, which is I would certainly expect there to be the kind of rigorous investigation I hope that I have delivered, and at the end of it somebody would have to take a view as to what would be an appropriate sanction, disciplinaries and the like, and the terms of reference make it clear that disciplinary action is something that will be considered at the end of it. I have no idea what disciplinary action, if any, has been taken.

Q92 Steve Baker: The Parliamentary Commission on Banking Standards included the following: “The reality that responsibility that is too thinly diffused can be too readily disowned: a buck that does not stop with an individual stops nowhere”. That is what the Parliamentary Commission said. Do you think that an individual member of the FCA board should take ultimate responsibility for the absence of proper controls?

Simon Davis: Certainly I know—not as well as a number of the members of your Committee—the recommendations by the commission, and I know because I sit through numerous presentations being given by my firm on the senior managers’ regime as that goes forward. I get very much the idea of having responsibility maps; it makes sense.

In this situation, apart from the FCA obviously not being a financial services firm, but leaving that to one side, what I found was that there were a series of failings and there was not simply one that could be tied to a particular person, which is why I took the view, and as far as I am aware the FCA have not challenged it, that I allocated individual responsibility, and to the extent there were multiple failings I have attributed collective responsibility to the executive committee and the board.

Q93 Steve Baker: How should that collective responsibility be met if it is not going to fall to individuals to take responsibility in the circumstances?

Simon Davis: It takes the risk to the extent that no particular individual is going to be accountable, that the board itself will be carrying the can.

Q94 Steve Baker: I will put it another way. Is the process through which we are currently going an adequate way of holding the FCA board accountable for this set of failures?

Simon Davis: What I have done is set out the facts, set out what went wrong, set out my recommendations for the future, and I am now seeing, although I am not involved, a wholesale reorganisation of the FCA. Although I am not involved in that, the FCA is—

Chair: You are now being asked your view on this specific question, so we would really like you to give your answer to us now, to Parliament now, on that point.

Q95 Steve Baker: How can the board be held accountable for these failures?

Simon Davis: I think that the Chairman has just answered the question appropriately, which is to the extent that I find failings, I find failings by the board, by the executive committee, by individuals, that certain consequences will follow in relation to the individuals by the FCA. To the extent there are more fundamental failings, I think it is a matter for your Committee and HM Treasury, as those are the ones to whom the FCA is accountable.

Q96 Chair: We will do that, but what we are doing is we are asking you for your judgment of this particular question in the light of the fact you have been looking at the evidence for some months. Should we try to identify individual responsibility? You may want to answer the question phrased as Steve Baker has.

Simon Davis: I think Mr Baker has put it almost in two questions. How do you make individuals accountable? I think I have covered that, and I would expect that to be dealt with in any disciplinarys that may take place. To the extent that we are talking about the board as a whole, then I am not ducking the issue to be saying that I really do consider that that is a matter for your Committee and for HM Treasury to take a view if there are concerns about the performance of the board of the FCA, and I have said they should be collectively responsible. I have given my view. I do not think I can go further and say what should happen to the board. I think that really is a matter for those who hold the FCA accountable, which is—

Q97 Steve Baker: As we go forward to do that, could I ask you if you believe the board bears collective responsibility for some of the other failures? For example, the possible consequences of the revised approach to business plans; for the pursuit of inadequately controlled pre-briefing strategy; and for the failure to react urgently and effectively on 28 March. Should the board be collectively accountable for all of those things too?

Simon Davis: In relation to that, so far as I am concerned, the board has to function through various delegated responsibilities, and the kinds of responsibilities where I have found there were failures were those that had been delegated to the executive committee. Those I considered still remained with the board, such as systems and controls, I said the board should be collectively responsible for them. My straight answer to that is that the executive committee bears the collective responsibility, and I am seeing out there in my press what is happening in relation to the executive committee so far as the withholding of bonuses and the like. I think that buck stops with the exco.

Q98 Steve Baker: Thank you. With that very much in mind, to what extent do you consider the chief executive and the chairman of the FCA to be responsible for these collective failures?

Simon Davis: Again, if I can divide my answer into two parts here, I think they are responsible to the extent that they are part of the board and bear that collective responsibility. To the extent that Mr Wheatley is part of the exco, he bears part of that collective responsibility, and I have highlighted where I consider he as an individual could have, as I have said, called together individuals with the right knowledge and the like at that particular time. I think, so far as I am concerned, I have covered Mr Griffith-Jones' responsibility as part of the board and Mr Wheatley's position as part of exco and as an individual.

Q99 Steve Baker: I sense from your previous answers that you would not wish to suggest any specific consequences that those individuals should face as a result of these failures.

Simon Davis: No. Again, I think it is quite clear from my terms of reference, and indeed it would not be in my skill set or knowledge set to tell the FCA what they should now do. As an organisation, it is very much now up to the FCA. I have set out, I hope, with great clarity what happened and where failings took place, and I would hope now the FCA will take that forward.

Q100 Chair: You have seen what was announced 48 hours ago. Do you see that as a response to your report, or does your answer suggest you are awaiting the FCA's judgment on that point?

Simon Davis: I have had no discussions with the FCA of any kind as to—

Q101 Chair: No, I have not asked you that. I asked you a different question. Would you answer the question I have asked?

Simon Davis: Yes. I am sorry. I was going to carry on. I appreciate you are short of time. I was just going to carry on. Just to make it clear, I have not had discussions with the FCA of any kind. Therefore, I am in the same position as you, Mr Chairman, that I am reading what is on the FCA's website, whereas, as I understand it, it has said, based on what I have read, "Although not a direct response to Mr Davis' report, we believe the changes we are making will also address some of the issues and challenges he has identified".

Q102 Chair: My question was a different one. My question was: do you consider what you have read in those reports to be an adequate response to your report?

Simon Davis: I think I have answered that, that it is for the FCA to answer that question of whether they consider this is a response. It looks like the changes they are making are

going to address some of the issues I have identified. All I can say is that so far as a number of the failings that I have found related to inadequate communication and also to ensuring that dealings with the media are controlled, I can see at face value that steps are being taken that are likely to address those issues. First, I can see the conflation now of Supervision and Enforcement, which is going to, I assume, assist in communications. I can see now the Communications Division being brought straight into a new division, Strategic, and that to me would seem, on the face of it, to be responsive to a substantial need for significant control over dealings with the media. That looks to me—

Q103 Steve Baker: At the risk of going out of the very deep waters, I have raised discretionary power and you did not recoil at that. We are touching on who regulates the regulators, perhaps even differential standards applying. We mentioned responsibility matters and so forth. I am only an engineer. I want to ask a lawyer. Do you think that the rule of law here applies adequately, or do you think we are verging into having regulation by the rule of authority? In other words, inadequately constrained by law so that it is predictable.

Simon Davis: That is quite a question. To the extent I make sure I have actually understood it, as far as I am concerned, it clearly is an issue because this Committee has made clear its concerns in the past that there is always going to be an issue as to who regulates the regulator. So far as I am concerned, if there is any lack of clarity about that, that is really a matter for Parliament. I do not think I really have a lawyer's answer, other than I think the rule of law is—

Q104 Steve Baker: I am very conscious that I want to hand over, but what I am really asking is: yes or no, have we adequately implemented the rule of law in relation to the FCA?

Simon Davis: I am not going to duck that question. I frankly do not know the answer to it, Mr Baker. I really do not.

Steve Baker: That is fine. That is fine, thank you.

Chair: There is, “Yes”, “No”, “Do not know”, or “I am going to duck it”. In this case it is, “I do not know”.

Simon Davis: It is, “I don't know”.

Chair: I am grateful.

Simon Davis: I am not a ducker, Mr Chairman.

Chair: No.

Q105 John Thurso: Thank you, Mr Chairman. At the very beginning of this hearing, Mr Davis, you used a phrase that caught my attention. You said that your report was,

“Pregnant with criticism of the FCA”. Having listened to our exchanges this afternoon, it seems to me that we are the midwives to that pregnancy. You have also been at pains to point out the detail of your report both in reconstructing what happened and arriving at a conclusion. Taking those things together, would it be fair to say that the conclusions of your investigation and the thoroughness with which you have done it is the most important part of your report, and to a certain extent the recommendations of what might need to happen are for us to look into?

Simon Davis: Yes, I would agree with that. First of all, can I just clarify? When I talked about the report being pregnant with criticisms for the FCA, what I was intending to refer to—if I did not, I apologise—the recommendations themselves being pregnant with criticisms, which is why I allowed the board to look at them.

Yes, I agree with you that what I set out to do from the off, I think as we discussed as a committee, was to make sure that there was great clarity and transparency as to what happened here and who was at fault and to set out my recommendations, but I absolutely agree with you that to the extent that those recommendations are or are not followed, I would not regard that as a matter for me. It is a matter for you.

John Thurso: The real point is the detailed work to give us the facts, and the judgments may well be for us.

Simon Davis: Yes.

Q106 John Thurso: The second point I am going to come on to is some of the discussion about what is happening at board level. It seems to me that there are three separate issues that come out of this. One is the actual policy in respect to going to *The Telegraph*, *The Independent* and all the other newspapers they went to to trail individual stories according to the individual likes and dislikes of different journalists.

Simon Davis: Yes.

John Thurso: The phrase is in the report somewhere, “Using the media as a regulatory tool”, whether that is a sensible policy or not, so there is the policy question. You make it very clear in a number of places that you have very strong reservations on the policy.

There is then the second question, which is, if you have decided you want that policy, then was it properly controlled and done in a responsible manner such as the outcomes would be ones that you would expect delivered on the policy, and you have been highly critical of that also.

There is a third one that goes beyond that. It is perhaps not in the report, and I might, therefore, ask for you to comment on, which is whether either the policy or the manner in which it was executed are part of a wider malaise or culture within management. In other words, “We are the new regulators, we are the new kids on the block. Our job is to get out there and be gung-ho”, rather than to act as a rational, straightforward regulator operating the regulations as Parliament has seen fit to put into place.

Simon Davis: I will answer that again starting with the narrow and then going to the general. To the extent that there are concerns about the way in which the FCA is using media-handling as a tool in regulation, I am absolutely with you. I have said that I think that the internal audit should look at the internal and external communication strategy—

John Thurso: 19.6 makes that absolutely clear.

Simon Davis: And 19.57. I have not used the word benchmark but that is pretty much what I had in mind: you should look at what other equivalent authorities are actually doing.

In terms of your more general point, I have gone to some pains to say that yes, I think the FCA has set out to be different from the FSA, and it has set out to be more proactive and has set out to be more consumer-focused, and it has used thematic reviews more than in the past. I would not go so far, based on my own reading of documents at the time and my own interviews of individuals, to take the view that that in some way was inappropriate or poorly motivated or anything other than—my own view, having interviewed these people for many hours, is that they consider that they were doing the right thing by the task they had been set by Parliament to do. I do not think either in my discussions with the insurance companies or with the practitioner panels that there were necessarily concerns about the good faith or otherwise of the FCA, but there were the concerns that I have set out deliberately, the concerns that the way in which the FCA was proceeding made what happened on 27 and 28 March—the term used was, “An accident waiting to happen”, and I have said that—

Q107 John Thurso: The purpose behind my question is: I have a lot of dealings with the Nuclear Decommissioning Authority, and to me this is a bit like the nuclear regulator, the Nuclear Installations Inspectorate, having a nuclear spill themselves. It is that sort of level that we are looking at. If you talk to people in that industry, nearly always where there is an incident somewhere it is not just that somebody has not observed the processes and the controls; it is that something cultural has happened in the management to mean that they do not think it is terribly important to follow those controls. The question I am asking goes, to a large extent, to the heart of what this is about and where the board fit in this: is this really a one-off in which a series of things happened to allow an accident, or is there a wider cultural issue that needs to be addressed and therefore addressed at board level?

Simon Davis: My own view is I did not consider there was a wider cultural issue. I consider that to the extent that my own view, having spoken to a number of people within the FCA, was that the FCA are setting out to be different from the FSA, are seeking to do the right thing; are using the media more. What I have said to the extent in relation to that latter point that the media is being used more—I do not think it is part of some cultural malaise but that is what they are doing—I do not consider the controls they had around that were adequate.

Q108 John Thurso: Inadequate controls. Can I come to the board? Did you get a chance to look at the board's risk register?

Simon Davis: I may have to ask my colleague that and if she knows the answer.

John Thurso: Feel free to be inspired.

Simon Davis: I am pretty sure that we looked at it but would you mind if I came back to you on that? I am pretty sure we did look at the risk register. I am virtually certain.

John Thurso: Was there anything—

Simon Davis: I am virtually certain it did not have anything of any relevance to this.

John Thurso: That is where I was going: was there anything in the risk register around this kind of an event?

Simon Davis: No.

Q109 John Thurso: There is a fairly catastrophic failing in risk analysis if what, frankly, we have already established is a pretty foreseeable risk has nothing in the board-level risk register, would you not think?

Simon Davis: I think, so far as media handling was concerned, based on my recollection, that was not the kind of risk which would have been looked at by risk. However, it would have been the kind of issue—because I have made the point that it had already been decided that internal audit were going to be conducting a review of media handling and whether it was consistent with the strategic objectives. I think that is—

John Thurso: I can tell you that, having sat on a number of plc boards and a number of audit committees, I cannot think of one that did not have reputational risks and media management in the register. They are very often mitigated but they are always there.

Simon Davis: Thank you.

Q110 John Thurso: You mentioned internal audit. Did you have a chance to talk to the chair of the audit committee, and were you satisfied that they were given sight of any of the—because this is also a failure, is it not, also of the audit committee and the risk committee in not having seen that there were controls of this in place?

Simon Davis: I interviewed Sir Brian Pomeroy and, so far as internal audit was concerned, they proceed from, I think it is fair to say, a risk-based standpoint. They had looked at the internal controls within the UKLA so far as those related to the management of price-sensitive information—and that was based, as I understand it, on the starting point that that is the part of the organisation which is most likely to have price-sensitive information regularly coming within it—but that work had not yet taken place in relation to any other areas of the organisation. I have not concluded that this was a failing on the part of the

audit committee. What I have said is that the audit committee should now get on with it and look very much at that area. It is very hard to—

Q111 John Thurso: You have concluded, broadly, that there were no controls in place to stop a junior media associate from basically busking it. You make the point that, whilst the e-mail that was sent to the journalist had gone through various iterations and the exit charges had been removed, the e-mail that the associate sent referred to it as the hook to get the journalist to take the story. There is clearly a complete absence of control at that point and it would seem that the board and the relevant board committees have not actually thought of that as a risk. It is not the job of the board to think through the risks; it is the job of the board to ensure that management have thought of the risk. It would be fair to criticise the board for inadequate control of management in relation to how they manage risk.

Simon Davis: In relation to that, what I have concluded is that the failings to which you have just referred were very much the collective responsibility of exco more particularly; not simply in a vacuum, because a number of the representatives of exco to whom I spoke did recall there being some discussion about pre-briefing. However, that was just left rather than asking, “What does this mean? What is it going to be about? What are the risks?” I have said that there was a failing there of the exco collectively.

To the extent that there is then a view that has to be taken by the board about the conduct of exco, that is obviously, I assume, the subject of the disciplinary actions that have taken place. What I had not concluded was that the board itself should collectively be responsible for the failings of exco. I have taken the view that is the exco itself, which has had, effectively, the day-to-day management of the FCA—

John Thurso: Sorry. If I may, this is frightfully reminiscent of sessions we had in the Banking Commission where the great and the good of the world were at pains to point out, to the (inaudible PTV 18:06:37) of their boards, that it was not their fault; there was a wee fellow down there who actually did it. One of the conclusions we came to, one of the conclusions that I think most corporate governance comes to, is that the primary responsibility of a board is to ensure they have controls and oversight over executive management because if they do not have it, nobody does.

If you are saying there was a failure of exco there is automatically a failure within the board, which they are remedying through this report and that may be all that is required. But simply to say the board collectively are responsible for having controls and they did not do it—there is actually quite a detailed failure in their inability to identify the risk and to see whether or not the executives responsible had systems in place that were likely to act as the necessary lines of defence. Would you not concur that that is as serious as the individual breaches further down?

Simon Davis: I am going to be in the “I do not know” category for this reason: what I have focused on is where the failings were. I focused on accountability. So far as the board is concerned, what I have not analysed is to what extent the board itself—

Q112 John Thurso: The final question, then, is this: starting with where I began, you have a very detailed report and an investigation that is hugely useful, clearly a great deal of work and very thoroughly done, but to a certain extent it is for us to take those conclusions on how it happened. A conclusion that I could very reasonably draw, as I appear to be drawing, that the board has a culpability that needs to be explored, would be a reasonable issue for us to take forward.

Simon Davis: I think that to the extent that I have set out the facts of what went wrong, it is entirely appropriate for you as a Committee to take what I have done and do what you think is appropriate with it.

John Thurso: Thank you.

Q113 Chair: Your report shows an appalling lack of internal communication, no controls, nothing on key risks in the risk register; yet I think you have concluded that there was nothing culturally amiss. Is that right?

Simon Davis: Yes. It is not a conclusion in my report. It is in answer to the question.

Chair: You do not find anything a bit incongruous about those two—

Simon Davis: No, I do not, because, again, my assessment of the FCA is that this was and is an organisation, culturally, which is trying absolutely to do the right thing in very difficult circumstances.

Chair: Of course.

Simon Davis: That is absolutely my view of the FCA.

Chair: We all agree with that.

Simon Davis: That is why my answer is that I do not think there was anything culturally amiss.

Chair: We all agree with that, but that is not quite an answer to the question.

Simon Davis: Sorry.

Q114 Mark Garnier: This is something I forgot about a bit earlier but I just thought I would raise. It has been suggested to me that the PRA got in touch with the FCA fairly early on the morning of the price problem in the market. Have you heard anything about that at all and indeed have you done any investigations into what contact the PRA had with the FCA in order to give them advice on the day?

Simon Davis: I have, and have referred to it within my report at paragraph 15.183.

Chair: Just tell us what it is.

Simon Davis: Yes. I interviewed Mr Bailey, the chief executive of the PRA, and his office were contacting the FCA during the course of the day. They were making it clear by 11.51 am that, “The press office thinks the only effective way to calm the market and get your message across is to issue a statement”. Yes, the PRA were alive to this, yes, the PRA were raising concerns and yes, the PRA were saying, “You need to get a statement out”.

Mark Garnier: Sorry, that was at 11.51? It was still two or three hours before a statement came out.

Simon Davis: Yes. If I divide it in two parts, in the morning there were communications from the PRA, who of course were picking up concerns from the insurance companies and hearing about the share prices. They were ringing up the FCA to understand what was going on, so they were seeking to obtain clarification, just as the FCA itself was seeking to.

Mark Garnier: You will forgive me if I have not picked this up in your report as I flipped through it.

Simon Davis: No, you have only just had it.

Q115 Mark Garnier: This is quite an important point. The prudential regulator has picked up this and the conduct regulator is still taking two or three hours to pull its finger out and actually do something about it.

Simon Davis: What I can say, as I think I have said throughout this, is that there were a number of concerns being expressed by a number of people as to why no clarifying statement was out there, which had started early in the morning with a major insurance company ringing up Mr Adamson, telling him share prices were falling, telling them they had no answer to give to anybody as to what was going on and telling him quite graphically that if this was happening with a listed company then disciplinary action would be taken. That was happening early in the morning, so you can see throughout the morning there are requests for information.

Mark Garnier: The reason I particularly pick up on this one is we have had a lot of different people who have come along and contributed: the insurance companies—we have also had consumers getting in touch with Martin Wheatley and saying, “What a fantastic job of nailing the insurers”—but this one is a very big deal. I stress it again: the Prudential Regulation Authority are the people who regulate the nuts and bolts of the financial system, or them to raise it and for it still to take several hours for the FCA to get their act together and realise the importance of the complete mess they have made. To us, certainly on this Committee it would be quite staggering. I also appreciate that you look at this with a very detailed legal mind.

Simon Davis: I think I can answer the question, which is that it is only at 11.30 that Mr Wheatley starts joining all the dots together so by 11.51 am—the internal aspects of the FCA—it is only at this time that Mr Teasdale is being provided with the information to work it out. So by 11.51, the FCA has got it and I think this is adding to the sense of, “Get on with

it". It is not as if it was the FCA waking up to something, prompted by the PRA; by then they are alive to the fact.

Q116 Mark Garnier: Just one final, very small point: it is just that from our point of view it is very important that we get the sense that these regulators are doing a good job. In the context of this, do you think the PRA did as good a job as they could be expected to do, if not better, in terms of raising their concerns?

Simon Davis: So far as I am concerned the PRA were not the focus of my investigation, but based on my interview of Andrew Bailey and what I saw at the time, I thought that the PRA's actions were entirely appropriate.

Mark Garnier: Fantastic. Thank you.

Q117 Chair: The crucial conclusion of your report is that you are confident that it was the FCA's desire to clarify the scope of the life insurance review rather than a desire of the communications department to obtain a strong pro-consumer message that led to the pre-briefing in the beginning, is it not?

Simon Davis: I have said that the origin was certainly the supervision department. That then coincided with the desire of the media team to—

Chair: Yes. I am sorry, it is quite hard work here this afternoon but the point is that 4.4 says, "The strategy was well-intentioned", correct?

Simon Davis: Yes.

Chair: Therefore you are confident that it was the desire to clarify, presumably? That is what you must be referring to.

Simon Davis: Yes.

Chair: It was clarification of the scope of the life insurance review rather than a media operation?

Simon Davis: Yes.

Q118 Chair: Why are you so confident about that when elsewhere in your report there is so much evidence of the media team wanting, very actively, to use this for exactly the purpose which would betoken something no one could describe as being "well-intentioned"? "We have been flicking through the business plan again to see what I call pull out from a consumer perspective. I am in touch with each business to get more detail and we will get our team looking into them. These would certainly give us some new nice content over the next few weeks before the business plan is published." I am just reading directly from your report. "This will be a good weekend story for *The Telegraph* near the end of March. Mr Hyde has written about this," and it carries on in like vein. There is quite a bit of this in your report.

Simon Davis: Yes.

Chair: How did you manage to come to the conclusion that this was all well-intentioned when, at the same time, you were seeing all this evidence?

Simon Davis: I think what I have tried to make clear is that the supervision team were the ones who came up, to begin with, with the notion that we need to somehow deal with the avoidance of any kind of confusion. That was then taken forward by the media team. The media team, I am also satisfied, shared the view that the purpose of the exclusive interview with *The Telegraph* was to avoid misunderstandings but I also said that, so far as the media team was concerned, they could see that an additional benefit for them would be that this would coincide with their desire to be obtaining publicity for the FCA. I am satisfied that the primary driver, and therefore why I consider this was well-intentioned, was to avoid misunderstandings.

Chair: That is a key judgment.

Simon Davis: That is where I have come to.

Chair: It is helpful to have that clarification. It is a key judgment. Thank you very much for coming to give evidence to us this afternoon.

Simon Davis: No, thank you very much.

Chair: We may need to see you again for further clarification after we have heard other witnesses in the New Year.

Simon Davis: I am at your disposal.

Chair: Thank you very much.