



Treasury Committee

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

Tuesday 27 January 2015

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Members present: Mr Andrew Tyrie (Chair); Mark Garnier, Mr Andrew Love, John Mann, Teresa Pearce, Mr David Ruffley, Alok Sharma, John Thurso

Questions 412 - 584

Witnesses: **John Griffith-Jones**, Chairman, Financial Conduct Authority, and **Martin Wheatley**, Chief Executive, Financial Conduct Authority, gave evidence

Q412 Chair: Thank you very much for coming to give evidence to us this morning, both the Chairman and the Chief Executive of this extremely important regulator. Your work is crucial for this country. We need you to do a good job on behalf of the millions of people who use financial services and, of course, the hundreds of thousands of people who work in the industry. We are investigating what euphemistically could be described as “not a good day at the office” or what could more bluntly be described as “a catastrophe” that took place in late March, where the FCA broke its own listing rules, big time. As a result, there were major share movements in some of our important financial services firms and we need to be clear from this hearing, first of all, that we have got to the bottom of what happened and that the lessons have been learnt from it. That is what this hearing is all about.

With that in mind I have one question—or possibly a set of questions—to open to the Chief Executive. Mr Wheatley. Do you think that there is anything in this whole episode that is connected with the culture of “shoot first and ask questions later”, a phrase that you came out with in respect to what people—certainly at the receiving end—felt had become the FCA’s supervisory approach?

Martin Wheatley: We do not have a culture of “shoot first and ask questions later” and it is certainly not our supervisory approach. I regret using the phrase but, just to be clear, that phrase was used in the context of responding to a question about how our new early intervention powers would be used. You will remember our early intervention powers are ones where, rather than our usual sequence of analysing, consulting, coming out with a cost benefit analysis and then coming out with a rule proposition, we were given a power

to do the opposite to that: to come out with a rule proposition and then use those checks and balances at a later stage. So it was in that context I was asked, “How would it work?” and that is when I used the phrase. But, as I say, it is a phrase that I think has been taken out of context since and used more broadly. It is absolutely not the culture of the regulator.

Q413 Chair: None the less, do you think that the industry interpreted it to mean that the FCA was setting a more aggressive tone?

Martin Wheatley: I think “a more aggressive tone” is a subtly different point. We were asked—and we set out in our approach to the FCA document—to be more of a judgment-led regulator, to act sooner, to be less box ticking, and all of those things we have tried to do. So, if that translates into aggressive, it is a different approach and it is an approach that tries to capture and deal with issues before they become the multi-million pound issues that unfortunately we have seen in the past.

Q414 Chair: But you would agree that, having used the phrase, the industry might have been forgiven for interpreting it that way?

Martin Wheatley: I have tried to explain, every time I have had an opportunity to explain it, that that is not what the intention was.

Q415 Chair: I am asking you whether they could be forgiven for interpreting it that way, whether it was understandable that they did.

Martin Wheatley: As I say, it has been played back in the media a couple of times and each time I have tried to explain, “No, you must not take that out of context”. But I expect them to understand the point about being a regulator that is more on the front foot and that is what we have tried to be.

Q416 Chair: So there was an aspect of this phrase that you do not regret?

Martin Wheatley: No, I would separate entirely out the phrase. I do regret the phrase. The thing I do not regret is that we have tried to be—and I think are—a regulator that is much more on the front foot about important issues.

Q417 Chair: You do not regret the intention behind the phrase but you do agree that the phrase was not the right one and like all of us in public life, in one way or another, we

haven't always found the language that in retrospect we would have preferred. Would that be accurate?

Martin Wheatley: Again, the intention behind the phrase was to describe a very specific aspect of one of our powers and not anything more than that.

Q418 Chair: All right. Well, let us leave that there for the time being. Mr Griffith-Jones, on 28 March the FCA put out a statement, with respect to this extraordinary episode, saying that the board of the FCA would effectively investigate itself and that to do that it would involve an external law firm. In retrospect, do you think that that was a mistake?

John Griffith-Jones: I think that the process that we finally adopted turned out to be a good one. That statement was issued I think at about 5 o'clock, so two and a half hours after the incident had been closed down, and it lacked the precision that you drew our attention to very shortly thereafter. But the statement was made in good faith and it was certainly the view right from the beginning, at the very least, that it was from the non-executive directors. I know the statement came out as "the board" but there was never an intention of involving the executive.

Q419 Chair: It was more than just something that lacked precision. This is a statement that any reasonable person would conclude meant that the regulator was investigating itself for a very serious breach of its own rules.

John Griffith-Jones: The intent of the directors at that—

Chair: I am not asking you about the intent. I am not questioning your intentions. I am asking you whether, in retrospect, you realise now that it was a serious misjudgment—I used the word "mistake" a moment ago, but in fact a terrible misjudgment—to put out a press release that effectively was saying you were going to investigate yourself for this.

John Griffith-Jones: I personally do not think I would characterise it as a misjudgment. To the extent that it had the impact that you suggest, it clearly could have been phrased better and, indeed, in the subsequent couple of weeks—

Q420 Chair: But you would have been marking your own prep, wouldn't you?

John Griffith-Jones: It was never the intention that we would write the report.

Q421 Chair: I am not asking you about your intention. That is what the press release actually said. The press release said that you would be conducting an investigation into this very serious breach of your own rules.

John Griffith-Jones: It said that we would use an external law firm and it did not say how we would—

Q422 Chair: You would seek the assistance; you would have external support actually.

John Griffith-Jones: You have the words in front of you.

Chair: You would involve an external law firm.

John Griffith-Jones: And we did. Sorry, I do not wish to split hairs, my intention—

Q423 Chair: This is not splitting hairs. This is fundamental, Mr Griffith-Jones. There is a heap of difference between appointing an independent investigator with carte blanche to work out what happened, without fear or favour, and the board of the organisation that has made the blunder announcing that it is going to investigate itself and seek some external support. These two are as chalk and cheese. I have to say, I am perturbed by the fact that you do not recognise this as a misjudgment.

John Griffith-Jones: I am happy to go with the word “misjudgment”.

Q424 Chair: Okay. You and I then had intensive discussions—the Davis report alludes to these—about the terms on which the inquiry would be conducted. As a consequence, an independent reviewer was in the end appointed, Simon Davis. On 8 April the FCA published its terms of reference for inquiry. These again went back to the territory of that original press release. That said that Mr Davis’s work would be overseen by a committee of the non-executive directors of the board and that you would chair it. Did it not occur to you—putting out something like that—that some or all of these people might be perceived to be people who needed to be investigated but that they were going to oversee the work? In retrospect, do you think that was a misjudgment?

John Griffith-Jones: At the time I immediately realised that potentially all of us, including the non-executive directors, could be blamed or subject to investigation in the report.

Chair: Might be perceived to have been blamed, even if they had done nothing, and therefore merited investigation.

John Griffith-Jones: Sure, yes, absolutely. I know what we were trying to say, which—

Q425 Chair: The intention is not what I am getting at here. I am not suggesting for a moment that you have been engaged in some Watergate-style cover up. Maybe you have, but I am not at this moment making that allegation.

John Griffith-Jones: Thank you.

Chair: I am asking you much more straightforward questions about whether it was a blunder; a misjudgment. Once again to go back to the very point that, after intensive discussions with you, I thought that we had got across, on behalf of this Committee, that the investigation had to be wholly independent and seen to be independent of the regulator.

John Griffith-Jones: I believe the role that I always envisaged that the non-execs were going to play was to get the report done. Indeed, you and I had some very vigorous discussions as to precisely how that would be done. It was undoubtedly the case that you made some very telling points, which I think we incorporated in both the first edition and in the second edition of the terms of reference. But it was never the case that I, or the non-executives, felt that in some way we were going to write the report but that we were responsible for getting it commissioned and finished. As it transpired we did need to be involved, at least on a logistical basis, which is where we ended up and—

Q426 Chair: I will read you clause 11 of the terms of reference.

John Griffith-Jones: This is the original one?

Chair: The one that I have just referred to of 8 April, “The inquiry will be overseen by a committee of the non-executive directors of the FCA’s board” chaired by you. In the reply you have just given you have acknowledged that, outside the FCA, some of those people might be perceived to be people who needed to be investigated, so they were again overseeing their own work; overseeing their own wrongdoing. We are back straight in the quagmire—

John Griffith-Jones: Yes, I understand.

Chair: —that is so damaging to the reputation of the FCA, weeks after the event. You have had nearly two weeks to think about it and you are still coming forward with a crackpot proposal, one guaranteed to erode credibility in the FCA. Do you not see that even now that it was a colossal misjudgment to add clause 11 to that terms of reference?

John Griffith-Jones: Clause 11—and this is absolutely the case—was simply designed to ensure that someone was responsible for the thing coming to an end, which is not unimportant in reports of this nature. I understand again, obviously with hindsight, you are attributing to the word “oversight” some sort of control over what it said. Whereas, I am

attributing to the word “oversight” some sort of responsibility for getting it done. I do understand the implication of your view; yes, of course I do.

Q427 Chair: But this was not some hastily drafted word that slipped in when it should have been said, “The non-executive members of the board will ensure that in the end a report will be completed, but will have no influence on its content or the manner of its conduct”. That is what you have just implied you wanted clause 11 to say. It says something completely different and you have had nearly a fortnight to think about it, “The inquiry will be overseen” by a committee of the FCA. Do you still not see that that was a colossal misjudgment?

John Griffith-Jones: I know that the word was interpreted completely differently from the intent of the non-executive directors and we changed it in the subsequent version.

Q428 Chair: Let us just go forward a little to what happened then. This Committee then had a discussion about those terms of reference in private session and concluded that those arrangements were not acceptable. For the most part this is in the Davis report. I am not lifting the veil on anything in particular or, if I am, it is only in adding some detail and, if I may use the word, it is not my intention either to—and nor shall I, I hope—disclose private conversations that you and I may have had.

You then produced a new terms of reference and a protocol for the inquiry, after lengthy to-ing and fro-ing; very lengthy and protracted and difficult, which involved man days of my Clerk’s time and a good deal of my time. At the end of that process, it was agreed that the non-execs would be able to see the relevant passages of the report at the time of Maxwellisation. Is that correct?

John Griffith-Jones: I have a copy of your letter. Yes, I think it is, from memory anyway.

Q429 Chair: But the Committee has heard from Simon Davis and Clive Adamson that the FCA board saw Simon Davis’s report as part of the Maxwellisation process; the whole report. Is that correct?

John Griffith-Jones: That is correct.

Q430 Chair: Who decided to take that decision?

Martin Wheatley: Simon Davis, from memory.

Q431 Chair: Okay. So this was sent to you by Simon Davis. How did he get the idea to send you the whole report rather than each of you the relevant passage for the purpose of Maxwellisation?

John Griffith-Jones: Simon Davis had criticised the board in section 19 and I presume that he had decided that, having been collectively criticised, the board collectively should have a chance to respond to that criticism and his decision was that we should see the whole report.

Q432 Chair: After that is it correct that you had an exchange of letters with Mr Davis about one or two of the recommendations?

John Griffith-Jones: We wrote one letter. May I just explain?

Chair: Yes, I am asking you to explain.

John Griffith-Jones: The board met to consider the Maxwellisation version—if I might call it that—and from memory, although I never retained a copy, the criticism of the board in the Maxwellisation version was more or less identical to what was written here. As a board we wrote back and said, “We accept the criticism”. The board decided that what he had written about the board, blaming the board for lack of systems and controls, was appropriate. We also took the opportunity to write to him about four relatively minor amendments to his draft of his proposals, which we felt would make them more easily operable and we wrote in good faith. I rang him up and asked could we meet. He said, “No, you must write” and we wrote. We did not hear back from him but we wrote in good faith saying, “If you say that that will make it very difficult for us to do this”. We did not say “take it out” or anything. It was, “We accept the proposal but it will work better if we make some minor amendment to that” and—

Chair: Well I think we had better see these exchanges.

John Griffith-Jones: It is one letter. As far as I am concerned, the nature of this is completely transparent and I am more than happy to share it with you.

Q433 Chair: Does it not cross your mind—even sitting here now—that that could be construed as you trying to influence the outcome of his report? That is the body being investigated, having seen the recommendations in draft, securing alterations to the final report?

John Griffith-Jones: No, because I think—and you will be the judge of that when you see the letter—the suggestions were—

Q434 Chair: I have not asked you whether they did; I am asking you whether it would be construed as having done so; the fact that you have had those exchanges. The protocol drafted, and all those exchanges between you and me for over a month, were they not targeted on exactly this problem of trying to avoid exactly what we now have, which is a perception that the FCA may have tried to influence the report in draft?

John Griffith-Jones: I was slightly surprised when Mr Davis said we were to see the report but, having handed the entire process over to him, I did not feel it was appropriate to say to him, “I am now going to supervise how you do this report”. I absolutely can assure you, to the best of my ability, that the board felt that the recommendations could be marginally improved by four specific—

Chair: If I may say, you are repeating yourself.

John Griffith-Jones: I do not know how to—

Chair: There is no need to. We have that firmly on the record and that is very helpful.

John Griffith-Jones: Okay.

Q435 Chair: I am asking you a different question. I am asking you about the way this would be construed. You said you were slightly surprised, so when this got to you, did you not think, “God, I cannot see this. We cannot put this to the board. This is going to lead to the wider public and probably the Treasury Committee asking us, time and time again, ‘What on earth is going on? You have had an opportunity to redraft the recommendations before they are published. Whether or not you have taken it you have had the opportunity’”? Why were you slightly surprised? What was the element of the surprise?

John Griffith-Jones: That the process that he had designed, when we finally got there, he felt was best achieved by us seeing the pre-Maxwellised version.

Chair: But what was the element of surprise in all that?

John Griffith-Jones: Well, the memory of our exchange of letters.

Q436 Chair: Right. So it did not cross your mind to say, “This isn’t a good idea, Mr Davis. If I were you, I wouldn’t do this. In fact, I think it is a good idea that you try to pick out the errors that are relevant for each of us and not send us the whole recommendations”?

John Griffith-Jones: He did that. He did that—

Q437 Chair: After all, you then took advantage of the fact you had it to make proposed amendments to the report—

John Griffith-Jones: I am sorry, we didn't. No, we took no advantage.

Chair: —compounding the sense that you might have redrafted this.

John Griffith-Jones: We had no authority to redraft it. We had no intention of redrafting it. We accepted the criticism based on—

Q438 Chair: That is not in doubt. I have not been raising authority or intent. I am talking about capacity or even perception of capacity to redraft or to influence.

John Griffith-Jones: The alternative would have been just to write saying, “We accept the criticism”, which as I said we did. We took the opportunity in good faith to make these suggestions. I can only stand by: there was no motive of the sort that you are suggesting at any stage.

Q439 Chair: It is not a question of your motives. I have not challenged your motives at any point. I am asking you about how these things will be perceived. This is the regulator back investigating itself, at least to some degree, isn't it?

John Griffith-Jones: It is not.

Chair: You have broken the spirit of the protocol, haven't you?

John Griffith-Jones: No. I do not believe we have broken the spirit of the protocol at all. In fact—

Q440 Chair: Haven't you compromised the independence of your own report by having these exchanges?

John Griffith-Jones: No.

Chair: Don't you think that people will perceive that you have, even if you haven't?

John Griffith-Jones: No. You had Mr Davis in front of you who I think told you very clearly that we haven't in any way interfered with the report. I do not have his precise words to hand. I trust you believe what he said. I believe the public can balance up his responses with my responses today. As I said, I am very happy to show you the letter. I believe you will conclude that we were acting in good faith to try to get the recommendations into the best possible shape, which he did not have to accept in any way and we had no idea whether he would accept them or not.

Q441 Chair: For the sake of the record—so we can have this on record as I hope the answers are going to help the FCA—did you see or discuss or become aware of any part of Simon Davis’s report before it was completed and sent to you?

John Griffith-Jones: No, absolutely not.

Q442 Chair: Did you have any discussions with him about his work during the course of his inquiry?

John Griffith-Jones: Under the protocol we were in charge of the logistical support. I had a sub-committee of the board and, broadly speaking, we met with Mr Davis monthly to literally ask him, “Are you getting the information you want? How long is it going to take? How much is it going to cost? Are there any impediments to getting it done?” Those were the only meetings we had.

Q443 Chair: Did you have difficulty getting your board to agree to the protocol?

John Griffith-Jones: The protocol? No, very few at all. I think I was largely in charge of the detail of the drafting and the protocol was readily accepted.

Chair: I just wanted clarification on those points. That is very helpful. Thank you.

Q444 Mark Garnier: Mr Wheatley, can I turn to the wider subject of using press releases and communications as a tool of regulation. What does that mean?

Martin Wheatley: I think it means being clear about what we expect; about what we think “good” is and what we think “unacceptable” is.

Q445 Mark Garnier: Who are you addressing these communications to?

Martin Wheatley: To the regulated firms; to the employees of regulated firms, to the people who consult with them, who advise them; to the consumers of financial products and to broader stakeholders. There are a very broad number of audiences.

Q446 Mark Garnier: Yes, but they are also very, very diverse audiences. If you are a consumer of financial products, presumably, the message that you want to be receiving is that the regulator is being effective. If you are a provider of financial services products and you

are a regulated entity you want a completely different set of communication strategies. How does this communication strategy rationalise itself between the two opposing audiences?

Martin Wheatley: I think the regulated entities would probably prefer that everything was negotiated and resolved in private, if I am really honest. They would rather not have publicity around some of the things that we have discovered. I think it is our responsibility as a regulator to use multiple channels. The media is only one of multiple channels.

Q447 Mark Garnier: Can you talk about the others as well?

Martin Wheatley: The other channels would be our website itself and our e-mail traffic where we talk directly to firms. The channels would be in meetings that we have with firms, both informally and formally, and—

Mark Garnier: That is all 72,000 firms?

Martin Wheatley: Yes. The channels would be final notices that publicise wrongdoing where we have found it and, in some cases, Appeal Court judgments, different levels of court judgments. There are very many channels, is the point I would make, and we try to use them intelligently depending on what we are trying to achieve.

Q448 Mark Garnier: Graham Beale of the FCA Practitioner Panel told us there was an attitude within your organisation that headlines are good. He said there was a desire specifically to generate sensational headlines and that is what you were trying to achieve. Is there any truth in this criticism?

Martin Wheatley: There is no objective that anybody has, whether me or the comms department or the press department, which says, “Your objective is to generate sensational headlines”. That is absolutely not part of our culture; not part of any objectives.

Q449 Mark Garnier: What about any headlines?

Martin Wheatley: Generating coverage is different. As part of communicating, we want people to have access to forms of communication that they would read. While we would like to think that everybody reads our website diligently or our regulatory round-up diligently, they do not always, so we use a multitude of different media of which the press is one but it is only one. We try to make sure that our stories get covered accurately and dispassionately, and that is our intention whenever we have any communication strategy.

Q450 Mark Garnier: What about the Government, are you trying to impress the Government?

Martin Wheatley: Not in particular beyond it being a set of stakeholders, which of course would include yourselves and other MPs as well, but I would not say that the Government has any particular status within that.

Q451 Mark Garnier: Again, it comes back to this whole business of who you are trying to communicate to. When you look at the people who are meant to be protected by you, are you trying to impress that audience as much as anybody else? Are you trying to get out there and say, “Your tax pounds are paying”—actually they are not, are they, because you are financed slightly differently—“As a consumer, you are effectively paying fees to the regulated, some of which go out to the regulator. You do not have to worry about us because we are doing a good job. Look at the headlines we are generating” essentially? That is phrased in a cynical way.

Martin Wheatley: No, I would say, quite contrary to that, our objective is to empower consumers to act as their own defence. The best form of protection is somebody who can ask the sensible questions themselves, so when we are talking to consumers what we are trying to say to consumers is, “These are the sorts of things you should be asking to protect yourself”.

Q452 Mark Garnier: But they will turn round and say, “Well, you are the regulator”, so why should they be protecting themselves? I completely accept that a well-informed consumer is a good thing because a well-informed consumer will drive better regulation but, none the less, a consumer would not expect that they would be necessarily a key part of the—

Martin Wheatley: I would expect them to. I think if you expect the regulator and only the regulator to provide that degree of protection, we are going to have a losing battle. I would expect consumers to take a degree of responsibility, and a lot of our communications is about telling consumers, as we did yesterday when we put out some communications about the new pension changes that are coming through. We said, “Here are some of the things that we are going to expect you to ask when you are making decisions”.

Q453 Mark Garnier: Particularly in a case like this, the insurance market review, do you accept that trying to do that can come at the expense of the reputation of some of the firms that are being regulated? As was indeed the case with this when you saw massive share price movements.

Martin Wheatley: Maybe I could come back to this. The generic point about when the reputations of firms are affected, it is largely—not always—because there are questions to

ask about what the firms have been doing. So when we name a particular firm, and we do not do that in most of what we do, we do that on the back of evidence that that firm has fallen a long way short of the standards that it should have set for itself.

Q454 Mark Garnier: I find the whole idea of using the media as a tool of regulation completely bizarre. We know for a fact that communication can be misunderstood. We have just heard a dialogue between the two Chairmen—our Chairman and your Chairman—about the use of the words “overseeing this report”. I think it was related to clause 11, the thing that came out two weeks after this event. You have discussed at great length the difference of intent. You very clearly meant something—and I have no doubt that you are absolutely sincere in what you are saying—but the fact of the matter is it is not what you mean, it is what is being read. When you are using such a crude tool as the media to get this sort of communication out, you run a colossal risk of what you meant being misunderstood at many different levels. You could come up with an idea. Your media team does not quite understand the nuances of what you are trying to say. The media team communicate and the newspaper misinforms that; Chinese whispers. By the time it has got down to some poor compliance officer sitting in the outer reaches of the Outer Hebrides, who is trying to do an honest day’s work as an IFA, how on earth are they supposed to know what they are supposed to be doing even if they do read the right newspapers, which they may not?

Martin Wheatley: I think you are right, of course there are risks. Whenever we publish something—

Q455 Mark Garnier: It sounds to me that you are saying they are acceptable risks when clearly they are not.

Martin Wheatley: They are risks that have to be managed, and so we work very, very hard to try to manage those risks.

Mark Garnier: But not hard enough.

Martin Wheatley: As I say, we work very hard to try to manage those risks. We put out—

Q456 Mark Garnier: But a lot of people lost a lot of money as a result of you not managing those risks properly. There were a huge amount of people who were operating in that market on that particular day when we saw that very, very false market created by you. Let us be clear, you created a false market in these insurance shares. They lost a lot of money and that was because you got it wrong; very badly wrong.

Martin Wheatley: But we have moved from a generic to a specific point.

Mark Garnier: We have because, when you are looking at generics, you need to use specifics in order to get examples of what is going on.

Martin Wheatley: I agree with that.

Mark Garnier: This is a very, very strong example of how you got it completely wrong at great expense. Some people made a lot of money out of it, I agree, because there is a zero-sum game, but a huge number of people lost a huge amount of money directly as a result of you creating a false market by your cack-handed approach to media relations.

Martin Wheatley: Clearly we did not set out to create a false market, and clearly our 100 to 200 press releases per year do not achieve that. It strikes me that the alternative you are suggesting is that we do not communicate outside the very narrow channels of communication.

Q457 Mark Garnier: I think you have to be clear about what you are trying to do. I was a compliance officer on two occasions—once under the FSA and once under the TSC, I think it was, way back when—and I can tell you it is not an easy job being a compliance officer, if you take your functions seriously and recognise the repercussions of getting it wrong, not only to your reputation but also the fact that you can potentially go to prison if you get it wrong or you could do. You worry about this. If there is an approach by the regulator that you should be reading *The Telegraph* one day and *The Guardian* the next day, and maybe *The Sun* the day after, to find out what it is you are supposed to be doing, clearly, you are going to have lack of faith in the regulator. If those people who are being regulated have lack of faith in the regulator, that will transmit through to those people who are being protected by the regulator.

Martin Wheatley: Again, with respect, if you are reading something very different every day in *The Sun* or *The Guardian* or *The Telegraph*, we try to make sure that we have a very consistent message. The industry welcomes our open communication approach. So, notwithstanding that we screwed up on this day in question—and that is why I mentioned the generic point—the industry values the fact that we do communicate and we are clear about what we care about. That is the feedback that we get and it comes through all of the surveys that we do.

Q458 Mark Garnier: So you have gone to the industry and you have had specific feedback from firms that they welcome the fact that you are using the media as a method?

Martin Wheatley: Yes, in the last survey that the Practitioner Panel did, 48% of them said they get most of their information from the media channels and they do welcome that.

Q459 Mark Garnier: What sort of information?

Martin Wheatley: Information about what our priorities are for the year ahead, information about areas where we have looked at and found both good and bad practice. Not everybody reads our direct e-mails. Not everybody reads our regulatory round-up, so the fact that it appears not just in the national press but the specialist journals, compliance journals as well, people write up the things that we put out and that is another way of communicating.

Q460 Mark Garnier: Does that worry you?

Martin Wheatley: Does it worry us?

Mark Garnier: A little bit?

Martin Wheatley: That people use a multitude of journals to get their information? No.

Q461 Mark Garnier: No, that some of this information is coming through having been translated from how you determined it in the first place. It is one thing when you send something out. You are the regulator; I am a compliance officer. You send something to me and say, “These are our priorities”. However, if I then get that from—I do not want to name specific newspapers in case they take offence but the point is they may interpret that in a slightly different way. They will highlight certain things that will be more newsworthy than others and you get the wrong nuances from this. It worries me that you think that it is a good thing that 48% of people prefer to read this through the press or think it is a good idea through the press, than to take a direct communication that has not been subject to Chinese whispers or a different interpretation or a different emphasis, when in fact we are talking about a very serious business. We are talking about people’s life savings. We are talking about financial services products. We are talking about huge numbers of people—what is it? 2.4 million people employed in the financial services industry in this country—who are relying on picking up bits of information about how to regulate themselves from the press. Half of them, 1 million people relying on the press to tell them how to regulate themselves properly.

Martin Wheatley: I think it is better than them not picking up any information, and one thing—

Q462 Mark Garnier: But you are the regulator. Surely you must be worried about the fact that the alternative to them not reading the newspaper is not reading anything at all?

Martin Wheatley: We send firms the information, so we do send to firms. We have a regulatory roundup that captures the things that we think are relevant. Very specific things

we send to specific firms. We know that everybody is busy and that people's mailboxes get full and people do not necessarily open or forward our communications.

Mark Garnier: But they have time to read the newspaper?

Martin Wheatley: Most people tend to find time to read the newspaper at some point in their day, but it is a broad brush.

Q463 Mark Garnier: Again, I would understand it if you were talking about the trade press, the press that is specific about this, and I think any reasonable person would agree that talking to the trade press is an incredibly good idea because a trade press is going to be much more cerebral and less sensationalist or one would hope they would be, but going to broadsheet or tabloid newspapers, who are trying to sell to parts of the mass market, does not seem to be a very good way of relying on people getting this information. When you accept that so many people—half the people that you are regulating—just do not read the e-mails they get from the regulator, what does that say to you about the respect in which you are held by 1 million practitioners?

Martin Wheatley: It probably tells me that they think they know it all already or they are too busy to read another document coming through to their—

Q464 Mark Garnier: Do you think they would like to hear you say that they think they know it already?

Martin Wheatley: Well, you are asking me to speculate on why they do not open their e-mails. I do not know, because if we sent them an e-mail asking them why they didn't, I do not suppose we would get an answer.

Q465 Mark Garnier: I have to say that Otto Thoresen and Andrew Turberville Smith both told us that they disagreed very strongly with this approach to communications. Why do you think that they are wrong?

Martin Wheatley: I think they were looking at it relatively narrowly, which is communication with regulated firms. With regulated firms we communicate directly. We write directly to the CEOs. We communicate directly risk with the compliance people. We try to make sure that they pass that information on. But you have just said yourself that there are 2.4 million people who work in the industry. They do not all get communications from—

Q466 Mark Garnier: Yes, but a compliance officer is required to pass on this stuff. Every firm has a designated individual and in bigger firms a designated department that is responsible for doing exactly this. It is their responsibility to pass that down. Now surely there is a structure, which is very carefully put in place, to make sure that this gets absolutely to the frontline, absolutely to the practitioner who is out on the street trying to rustle up business and all the rest of it. So that they know exactly what they are and are not allowed to do. You said you have informal meetings and sometimes formal meetings with these firms. You have 72,000 firms. Has your organisation met with every single firm it is regulating?

Martin Wheatley: No. I can almost certainly say we haven't.

Mark Garnier: Do you know what proportion of them you have met with?

Martin Wheatley: We would have met with certainly all of the 24,000 firms who were regulated prior to Consumer Credit. Since Consumer Credit has become our responsibility, we are now going through a process of authorising those firms. That is a process that is a two-year process so it will not be until another two years that we will have met those, so we are at a relatively early stage of that process.

Q467 Mark Garnier: Just a rough idea, of the 72,000 firms you regulate, how many would you have had direct contact with?

Martin Wheatley: When you say "direct contact"—

Mark Garnier: Sorry, a specific communication, one way or the other, preferably a meeting, a telephone call is fine; something that is a guidance-type of conversation.

Martin Wheatley: Again, if I can draw the true distinction because there is a very new community that we are dealing with. Of our 24,000 firms every single one of them would have had some form of contact, not necessarily face-to-face with a supervisor --

Mark Garnier: But you regulate 72,000.

Martin Wheatley: Right. So the 50,000 firms that have come in as part of Consumer Credit, every single one of them has had a specific communication from us to tell them what our expectations are. Every single—

Mark Garnier: That would be a round-robin type of—

Martin Wheatley: No, it would be very specific saying, "You are this sort of firm. You need to get your permission at this date. This is the sort of information we will need as part of that". So every firm will have had that and we are now going through the process of getting those applications in.

Mark Garnier: But informal guidance?

Martin Wheatley: Well informal guidance and in fact very formal guidance. In the credit industry we have put out some very, very formal guidance as to what we expect to happen. Most recently, just before Christmas on the Credit Bill.

Q468 Mark Garnier: Let me put the question another way. If I was to go along to any of your agencies, speak directly of the regulated entities, and say, “How well do you know the firms you are responsible for?” what do you think their answer would be? Have you met them?

Martin Wheatley: It would vary a lot. So you would go to a particular segment where they were looking after wealth managers or banks or insurers. We categorise all firms according to the most important and the least important. Clearly the most important firms we would have a lot of knowledge of. The least important firms we would have much less knowledge of. But that is the fact of having a 3,000 person organisation that is responsible for regulating a very large financial services industry.

Q469 Mark Garnier: What it sounds like is my constituents in Wyre Forest would be anybody’s constituencies around this table, who talks to a small IFA. What you have just said is that the regulator does not have any contact apart from informing—

Martin Wheatley: No, I haven’t said that at all. I have said—

Mark Garnier: That is how it has come over.

Martin Wheatley: No, there are different forms of contact they may have had. I just cannot tell for your constituents what form of contact they will have. But we use multiple channels—I think that is the most important point—not just the media.

Mark Garnier: Thank you.

Q470 Chair: Did you say earlier not all firms read FCA e-mails but I think you then went on to say that they do find time to read the newspapers?

Martin Wheatley: I cannot be absolutely definitive about the second point.

Chair: Well, words to that effect. Do you disagree with that point?

Martin Wheatley: I cannot be definitive about the second point. I can be definitive about the first point.

Chair: What, that you did say it?

Martin Wheatley: That I did say that: that not all firms open our e-mails. I know that for a fact.

Q471 Chair: That is a pretty serious state of affairs, isn't it?

Martin Wheatley: It depends whether the firm feels it is being able to get its information by some other route. All of our information is on our website, so it may be that firms have come in to our website and found the information.

Q472 Chair: When a regulated firm gets a communication from the regulator, do you think the regulated firm should read that communication?

Martin Wheatley: Ideally, yes. But again, can I be quite distinct, there are certain communications that we require a response to and absolutely we make sure, but when we are in the mode of sending information, so we do a regular regulatory round-up, that is for information to the firms of the things that we have been involved in or doing. They may or no decide to open that.

Q473 Chair: Do you think that, as a regulator, you need to get to the position where you are not relying on a third party to interpret what you need them to know and that, until you do that, your regulatory effectiveness is at risk?

Martin Wheatley: We do not rely on a third party. All of the information in the—

Chair: Well, you have told us that you do. Indeed you told Mr Davis that you regulate 72,000 firms. You cannot get to them all directly, so part of the reason for press briefing is that you communicate with them via the press.

Martin Wheatley: When we say 72,000 firms, also the 2.4 million employees who do not necessarily get direct communication from us at all.

Chair: Yes. So you are using the press as a form of communication, as a substitute for putting out that maybe subject of interpretation then of course, for—

Martin Wheatley: I would not say it is a substitute. I would say it is a complement. When we use the press—

Chair: You have just said that it is a substitute because a moment ago you told us that you cannot rely on them to read the stuff.

Martin Wheatley: So it is a complement for those who do not open or read our own direct e-mails.

Chair: It is not a complement, it is a substitute. Where firms fail to get the message you are requiring that the method of communication is substituted with another. That is the press.

Martin Wheatley: No, I think the distinction is that they may use it as a substitute. From our point of view it is a complement, because we use both methods.

Q474 Chair: You said, in response to another question from Mark Garnier, that you put out 200 press releases a year, and others, and have not created a false market. If you were to investigate a firm that had breached the listing rules with a press release, how would you react if the firm turned around and said, “Well, we’ve put out 199 other press releases this year and nothing went wrong, so I don’t know that this is quite so serious”?

Martin Wheatley: Well, we would not. We would say, “This is the one that is serious and we require you to investigate this”. I am not saying that it was not serious. Please forgive me, if I am saying that. I am saying that is not a reason not to use this form of communication. That is the point I was trying to make.

Q475 Mr Ruffley: Mr Wheatley, in *The Telegraph* case you pre-brief *The Telegraph*, and they run a story before the FCA has made public its own explanation of its work officially. Can you just explain to us why you take that course of action in some cases and not in others?

Martin Wheatley: The case where we would take that course of action is where we believe we are not releasing something that is broadly sensitive, so that is the only situation in which we would have that sort of conversation with an individual journalist—whether it is *The Telegraph* or elsewhere—that we believed either the information was already known or of a general description. Where we believe the information was sensitive we absolutely would not take that approach. It would either be released through a 7.00 pm regulatory news announcement or through a very tightly controlled embargo process.

Q476 Mr Ruffley: Mr Adamson has told this Committee that reporting a piece of information could itself make it price-sensitive. Is it ever appropriate for the FCA to pre-brief journalists, if Mr Adamson is right?

Martin Wheatley: We have learnt a lot from this, so we clearly got this wrong. This information was taken and became more sensitive than we thought when we went into the process, so we would never do that again. We would not pre-brief something that we thought was sensitive, except in very strictly controlled conditions. That would not be to a single journalist and not absent any very strict embargo around it.

Q477 Mr Ruffley: It is not great comfort to the industry, is it, because you thought, or individuals in your organisation thought, that this was not price-sensitive? We all concede—and you concede—that they got it wrong, but in your answer to me just now you are suggesting that you might do this again, that is to say pre-brief, and a story is run before you have officially explained what your work is about. It relies on individuals deciding whether or not the pre-briefing in that way before you have done your official explanation publicly could trigger price sensitivity, couldn't it? It could happen again, couldn't it?

Martin Wheatley: It will not happen again, because we will not do pre-briefings in this way, and we have a strictly controlled process. People within our organisation do not make unilateral decisions. Everything is centralised through the press office. The press office would talk to the head of the press about any conversations that were proposed, and ultimately that would come to me if it was a sensitive issue, so it would not happen again.

Q478 Mr Ruffley: You have said you would not do it this way again. So I am clear about this, does that mean that there will be no occasions in the future where you pre-brief before you have officially explained the piece of work that is the subject of the briefing?

Martin Wheatley: Again, if we can talk about what we mean by pre-briefing. We would not do it on the basis that we did it this time, which is to an individual journalist, without tight controls around it. We might do it, and we did it in fact on the release of the Davis report when we got a group of journalists. We said, “Right, you can stay in this room. Nobody is allowed to use any phones. We will spend an hour talking to you about what this report is about prior to filing any stories” and that very tightly controlled method we might use again, but we would not use the method that we used this time.

Q479 Mr Ruffley: A lot of people—and I think there are some on this Committee—think you should cease pre-briefings on forthcoming announcements where you have not simultaneously made public your explanation of the work. Could you explain to us why that is not a sensible course of action, just banning these pre-briefings?

Martin Wheatley: We could do that, absolutely.

Mr Ruffley: You could. I am asking why you do not think in the interests of clarity everyone will know where they are. Everyone gets the same information. What is wrong with that?

Martin Wheatley: The reason being that, as you know, in practice the media is very competitive and people want to file their stories as quickly as possible. If everybody received that story at exactly the same time, you would find some quite wild stories that are filed within two minutes, five minutes, 10 minutes, 15 minutes, so the objective of having an embargoed pre-briefing is to try to make sure that everybody writes about it in

an informed way, and we have had a chance to iron out any idiosyncrasies or things that people have misunderstood.

It does mean that when whoever has come to that pre-briefing—and that is widely open to people who cover a particular topic—at the point when the embargo comes off they are all able to write an informed story at the same time. I think there are some risks in the other approach in simply releasing it through a regulatory news channel.

Q480 Mr Ruffley: Would you concede that it would be clearer if you ceased briefings of those kind?

Martin Wheatley: It would be clearer in terms of policy. It might not be clearer in terms of the messages that people got, or the stories that got written.

Q481 Mr Ruffley: Do you not think the advantage of clarity outweighs any potentially damaging effect if you get it wrong?

Martin Wheatley: As I say, as we have seen, the damaging effect of stories going wrong can be very damaging. If people are trying to file a story too quickly without having checked with us first there are damages that come from that as well. All I would say is that we would be very cautious in the future. We have not absolutely ruled out an embargoed pre-briefing, but we would do it on a very controlled basis.

Q482 Mr Ruffley: Going back to 13 September, there was a pre-briefing to *The Times* on the study you were doing into cash savings and introductory rates, marking the introductory rates. On that occasion you pre-briefed *The Times* at the same time as publicly making clear what that study was about. I am just puzzled as to why you did it that way in that case. It was released alongside the official FCA announcement of what that study was about.

Martin Wheatley: Yes, so there wasn't the risk that a single journalist could somehow pre-empt the story, but it was an attempt to try to make sure that the story was properly captured. It comes to Mr Garnier's concerns that it is often quite hard to manage the media who might want to write a particular story, so we spend a bit more time to try to make sure that the story is correct.

Q483 Mr Ruffley: When asked whether the FCA had conducted any further pre-briefing since March 2014 Ms McMillan told us that it had not. Is that correct?

Martin Wheatley: Yes.

Q484 Mr Ruffley: Ms McMillan also told this Committee that the bank had pre-briefed journalists on the bank's stress test published in December 2014, but this pre-briefing was made available to all journalists on the bank distribution list. Journalists were locked in the bank and not allowed to publish their stories until the bank had published an official statement of its own. That is very different from what you were doing before March 2014, is it not?

Martin Wheatley: Yes.

Q485 Mr Ruffley: Do you not think when Ms McMillan gave evidence to us she seemed to conflate that way of doing things with the pre-briefing activity you did that created the false market in March 2014?

Martin Wheatley: That was not how I read it and I do not think that was her intention. It was simply to say that it may take different forms. The bank's structure that you described there is a very tightly-controlled form and one that we would be more akin to in the future. It was a different form of releasing information.

Q486 Mr Ruffley: Is that a bank model that I have just précised? Is that something that you are actively considering doing?

Martin Wheatley: Yes, it is very important.

Mr Ruffley: Locking people in rooms and so forth, as I have described, are you committing to do that now?

Martin Wheatley: For certain types of things, yes, we would. We do not often have economy-moving announcements to make, so when the bank puts out its inflation report, it clearly has a very wide impact. Most of our impacts are more idiosyncratic than that, but when we have something—

Q487 Chair: You have certainly discovered that you have a market-moving announcement to make from time-to-time.

Martin Wheatley: Yes.

Q488 Chair: To clarify, you just revealed that you pre-briefed the Davis report?

Martin Wheatley: No. To be absolutely clear, we released it first thing in the morning and then we got a group of journalists in to talk to them prior to them writing their stories.

Chair: So after it had been released?

Martin Wheatley: Yes.

Chair: It was already in the public domain, so the electronic and other media?

Martin Wheatley: I believe that is right.

Chair: There was no pre-briefing of the Davis report? It is very important that you make sure that you correct your earlier evidence on this point.

Martin Wheatley: Yes.

Chair: You are very confident of that?

Martin Wheatley: I am going to come back to you now, because you have made me nervous that I have that right. I think I have.

Chair: I will come back to it after the next series of questions, but you may be able to consult staff behind you. I think it is absolutely essential that we have clarification on whether you pre-briefed the Davis report.

Q489 Mr Love: Mr Wheatley, can I come back to the issue of the tone of Authority communications in relations with the industry? Clive Adamson told this Committee that the “shoot first and ask questions later” went too far, and I think you have accepted that with your apology. He also had concerns about the tone of other communications, which were sometimes too aggressive. Do you agree with Mr Adamson?

Martin Wheatley: I think possibly in the very early days of the FCA the tone might have been too aggressive. That was because, as a new entity, we were trying to establish an identity and establish with the industry what we stood for. We had a number of conversations with both the Practitioner Panel and firms about that, and we tried very hard to get the balance right.

The Practitioner Panel will not always agree with the balance being right, because frankly, when we are calling out bad behaviour, by and large people would rather not see that called out. When we have to do that—and clearly we have to do it at times—we work quite hard to try to make sure that we get that absolutely right.

Q490 Mr Love: I want to come to your relations with the Practitioner Panel now, because we had some interesting evidence produced by them. Before I do that, let me ask you, Chris

Woolard made a statement on 11 March 2014—so not at the beginning of the FCA but more recently—that firms must start putting consumers first and stop seeing them as pound signs. Do you think that was overly aggressive and challenging to the industry?

Martin Wheatley: I think it was. Clearly it was trying to communicate, and this comes back to a different question, to a different audience and the different audience would be people who do not necessarily read our website or *The Financial Times* but who read the popular press, to try to make sure that people were empowered with knowledge that they should think about when they are being sold products. That was the intention behind it, but I know that the industry saw that as aggressive.

Q491 Mr Love: We have taken evidence from the industry and Otto Thoresen from the ABI told us that he thought the Authority approach of, and I quote here, “being active about its engagement publicly, using the media as a mechanism for telling its story had been”, and these are his words, “accepted and acknowledged as a misstep”. Do you agree that that was a misstep policy?

Martin Wheatley: It is quite nuanced and subtle. I know from the industry’s point of view some of the headlines that they saw they felt were too aggressive. I know from our point of view that we worked very hard to try to make sure that we were balanced in what we were sending out.

We did a piece of analysis where we had a media firm analyse our announcements and the statements. What they came back with was that, by and large, the body of the text follows our announcements quite accurately but the headlines seem to take on a life of their own. It was absolutely the case that some of the headlines were quite excitable, but they were not something that we were trying to create. We were trying to create factual reporting of a particular issue.

Q492 Mr Love: What I am trying to get to is whether you have made any changes in recognition of the rather aggressive nature of the way in which the industry—and indeed many of your employees—have interpreted the press comments. Have you made changes? Have you accepted the thrust of them?

Martin Wheatley: Yes, we have. We have made changes and we have tried to be even more balanced about the information that we put out. The truth is always that the information we put out will itself—without any obfuscation or us prettying it up—be something that leads people to write quite strong headlines or stories. The fact is that bad things have happened in financial markets and people will write about those.

Q493 Mr Love: Mr Griffith-Jones, you are the Chairman. Did you ever have any reservations about the media policy, the rather aggressive nature in which it was quoted and if you did, did you raise them with the Chief Executive?

John Griffith-Jones: Yes, there were two specific instances that relate to the Practitioner Panel where they commented to me about press releases. One was around the risk outlook, in fact I think from memory both risk outlooks but specifically last year's one. We share an early draft of the risk outlook with the panel. It was their view that the risk outlook was too aggressive in tone about the fact that everybody was trying to do bad things in the industry, and it read very negatively. This was before the event, so it was a January meeting and the thing was published in March. I and one of my fellow board members specifically got on to this and were involved in the drafting of the report.

I know that by the time it came out it had materially changed. So there was a proactive intervention. The second one I am aware of was when Mr Beale saw me, I think, on 13 September—so after *The Times* article that has been referred to—where he was quite upset about the tenor of that article. I did talk to Mr Woolard, and I think I probably talked to Mr Wheatley as well, to say that that read quite aggressively.

Q494 Mr Love: Let me come on to the relationship with the Practitioner Panel. In their April 2014 report they said that some members of the board openly questioned the role of the panel. Graham Beale told this Committee that, “Comments that we have repeatedly made sometimes go into a black hole”. They did not believe that they were being listened to. Do you accept that characterisation? Had the relationship deteriorated so much that you were not talking to each other effectively?

John Griffith-Jones: I do not believe so. I talk to Graham quite a lot and I have throughout. His panel write a report to us immediately in advance of our monthly board meetings, as do all the other panels. The board consider those. As you will appreciate, they are advising us, not telling us, what to do, so sometimes we agree and sometimes we don't. We seek to provide them feedback. The more they disagree with us the more they are inclined to believe that their comment was not listened to. I think that is not fair. If we have failed to communicate very clearly back to them, “I am sorry, on this one we do not agree” we will do better.

We had a review commissioned in June—so this is after the events of 28 March—because the relationship with the Practitioner Panel was quite fractious at that moment, basically following on from what happened. In my view we got the arrangements between us back on track pretty quickly. From memory there were three issues that were important to them. One of them remains the tone in the press where essentially we said we take the point, but we are still not entirely in agreement as to what our responsible positioning with the press should be. That continues, but the other issues we dealt with reasonably satisfactorily, I believe.

Q495 Mr Love: Mr Wheatley, perhaps you can comment on a discrepancy that we found in the evidence given to us. Zitah McMillan told us that she had not received any direct feedback from the Practitioner Panel, yet Graham Beale said that on numerous occasions they had commented. Indeed, Mr Griffith-Jones has confirmed that they did comment on the media strategy. Who is right?

Martin Wheatley: It may well have been that they did not raise the issue when Ms McMillan was in front of the panel. I do not know, because I was not at the meeting, but I suspect that is what it would have referred to. As the Chairman has said, it is absolutely the case that the issue was raised with us. It was raised with me; it was raised with the board on a couple of occasions.

Q496 Mr Love: So the Practitioner Panel is effectively correct in that regard?

Martin Wheatley: They are correct that they have raised it with the organisation, yes.

Q497 Mr Love: The overall question that has to be answered is: has this media strategy done damage to the relationship with the industry? I think the panel would say that it probably has. What is your view, looking back now over the period when you had this more aggressive stance? Do you think it has done damage to the relationship with the industry?

Martin Wheatley: Clearly the particular instance that led to this review has done damage. I have absolutely no question about that. That has not helped us and we have had to do a lot of rebuilding since that. Absent that, when the Practitioner Panel did its own survey of firms—and it had around 3,000 responses of firms—all of the categories of their relationship with the regulator, the clarity of our views, their respect for what we stood for, had gone up in the year previously. I think overall our communication strategy—and I do not want to call it just a media strategy—has been successful. Clearly this event has set it back, but overall in the year up to that point it had been successful.

Q498 Chair: Zitah McMillan said that she did not know about the panel's concerns, so that must mean you did not tell her about them. Why not?

Martin Wheatley: I do not have the precise text in front of me, but I do not know if what Zitah meant was it was not raised with her in her session with the panel.

Q499 Chair: Why didn't you raise it?

Martin Wheatley: I was not in that session with the panel.

Q500 Chair: So you did not know about it either?

Martin Wheatley: I did know about it.

Chair: Why did you not raise it with her?

Martin Wheatley: I had done, and that is a discussion that I have had.

Chair: So she has just forgotten that she knew about it?

Martin Wheatley: I do not know what the narrow point was that she was responding to at the time, but as a general rule the organisation knew about the concern.

Q501 Chair: We may need to come back to it, but it is not a crucial point. Do you have the answer now on whether you pre-briefed the Davis report?

Martin Wheatley: The answer is we invited journalists in an hour before publication to read the report, but they were not able to—

Chair: So the answer is you did pre-brief the Davis report and your first evidence was correct?

Martin Wheatley: Yes, that we had an embargoed approach. They were not allowed to write anything. They read the Davis report. They then came into a press conference that John chaired at 11.00 am and at that point the Davis report was published on our website.

Q502 Chair: Do you accept—and indeed I am somewhat astonished, that you have come to a hearing on this subject not knowing whether or not you pre-briefed the Davis report and having to seek staff support to get the answer? This is a report about pre-briefing.

Martin Wheatley: I think, as we have found earlier that there is a distinction. David Ruffley has unfortunately left, but there is a distinction about whether pre-briefing is the same as embargoed briefing.

Q503 Chair: We might come on to what exactly constitutes pre-briefing in a moment, the various forms of pre-briefing, but what has clearly taken place here was a pre-briefing. There were a group of people in a room who were told beforehand about—

Martin Wheatley: Well, again, terminology. Pre-briefing I had taken to be the uncontrolled selective briefing of certain information.

Q504 Chair: So when you said to us “pre-briefing” in that earlier evidence you meant embargo briefing?

Martin Wheatley: Yes.

Q505 Chair: Do you think it was a good idea to do embargo briefing about a report on pre-briefing that might easily be perceived as pre-briefing, which had gone catastrophically wrong? Why did you not just get the guy who wrote it, in this case Mr Davis, to publish it and let him get on with it?

Martin Wheatley: Again, coming back to the concerns that Mr Garnier has raised about the press, the press typically—and particularly in the world of wires—rush to file stories. That is just the nature of the competitive press. If you have to file a story within two minutes, five minutes of first seeing a document there is a high likelihood that you will miscommunicate the content. The approach to embargoed briefing is to try to make sure that when people write they write an informed piece.

Chair: What is the answer to my question? Why did you not leave this to Mr Davis to decide how he was going to publish his report?

Martin Wheatley: I think that the protocol had been set up that he would deliver the report to us.

Q506 Chair: Yes, but why did you not say to him, “You publish the report. We can’t do embargo briefing or something that might look halfway to pre-briefing or a report on pre-briefing. You had better do it yourself. You can do it in the manner you think best”? Why did you not do that? I would rather have an answer from the Chief Executive because this was clearly a decision at least partly for you.

Martin Wheatley: It was a decision that it was an important report that would be very critical of our organisation and we wanted it to be understood properly and properly reported on. That is why the approach of an embargoed—

Q507 Chair: You did not have confidence that Mr Davis could accomplish that?

Martin Wheatley: He might have done, but I did not think that was part of his brief. I thought his brief was to deliver a report to the FCA.

Q508 Steve Baker: Good morning. Who is ultimately responsible for the FCA's communication strategy?

Martin Wheatley: I am.

Q509 Steve Baker: Did you personally originate the FCA's chosen approach to communications?

Martin Wheatley: When you say "originate" it was something that I discussed with the Head of Communications, Zitah McMillan, but it absolutely had my strong support, so it was very much my strategy.

Q510 Steve Baker: Thank you. So, Mr Wheatley, do you think that the members of the executive committee were as engaged as they needed to be with that strategy?

Martin Wheatley: Probably slightly less so than me, but as engaged as they needed to be, yes.

Q511 Steve Baker: When I had an exchange with Mr Adamson I asked, "Did the ExCo discuss the risk that the FCA's communications would substantially move markets?" and he said, no, it did not. Is that correct, that the ExCo did not discuss the risk that the FCA could substantially move markets?

Martin Wheatley: Again, if I could put it in context, if it was in the context of when the approach on the business plan was taken the assumption going into that was that we did not need to have that discussion because it was only safe stories that were going to be briefed. So in a sense the pre-selection of the stories were ones that would not move markets. Accepting that we did not get that right, but that was the going-in assumption.

Q512 Steve Baker: Do you think that conversation was properly understood by the executive committee, including the assumption that every briefed story would be incapable of moving markets?

Martin Wheatley: I think, and I know from the Davis report, that there were some different recollections about how and when that discussion had happened. I do appreciate that not everybody had fully said, "Yes, I understood that was the case" but certainly from my perspective that was the discussion that we had had.

Q513 Steve Baker: So when I think about the regulator, I quite often refer to a brilliant book I have found called “Big Players and the Economic Theory of Expectations”. It makes three points about your kind of organisation. You have discretionary power: it is for you to decide what you do; that you are relatively insensitive to the discipline of profit and loss; and thirdly that you have the power to shift markets. The particular book makes the case that when such big players are active you get instability in markets.

What I am very surprised about is that Mr Adamson was able to tell me that no, and I paraphrase, the executive committee did not discuss the risk that the FCA’s communications would substantially move the markets. Given your expertise in price sensitivity is that not extremely surprising?

Martin Wheatley: It is surprising. It is especially surprising since the business team responsible for insurance spent probably the two weeks prior to this announcement negotiating over every word of the announcement to ensure that it was not disclosing sensitive information. There was an absolute focus from the people in supervision to try to ensure that what got communicated was not going to be misleading and was not going to move markets.

Q514 Steve Baker: What explanation can you give specifically for a failure of the executive committee to consider the issue of whether communications would move markets?

Martin Wheatley: I think it is a difficult question because we did not explicitly have a debate about this part of the strategy. It was reported to the executive committee as something that we would be doing. We would be doing that having had the business area—in this case the insurance area—shape with us what would be a non-controversial piece. In a sense it was not a discussion that the executive committee needed to have because it had not been set up that we were trying to do anything that was particularly sensitive or market-moving.

Q515 Steve Baker: That is a very interesting point, because in the course of my journey into this place—and learning to be a politician, not an engineer—I remember somebody telling me that there were basically five categories of newspaper stories: scandal, danger to the community, novelty, human interest and sport. It seems to me that a newspaper story that is relevant to your sphere of operations is likely to be either a scandal story or a danger to the community story. That tells me, then, that more or less anything that a newspaper finds worth reporting about what you are doing is likely to be at least susceptible to being cast as a danger to the community or as a scandal. Do you ever have conversations in these terms about the categories of newspaper story that are run, and how you expected your communication strategy to fit into the reality of how newspapers will present a story to sell a paper?

Martin Wheatley: Yes. Most of the enforcement activity that we do is in your scandal category. It is backward looking. It is something that has happened. It went wrong and we are reporting what went wrong with the purpose of trying to make sure that people learn from it and it does not go wrong again.

Most of our forward-looking work is in our threat to the community, if I can use your terminology. In this case, though, what we were trying to say was nothing more than there would be a number of areas that we would turn our lens on over the incoming year, and these are what those areas are. They ranged from cyber crime to package bank accounts to insurance back books. What we had not expected—and we got this wrong and it is a big learning for us—is the fact that we would look at an area, not that we had findings, not that we were stating we had concerns about it, but the fact that we would look at an area would itself become such a big story.

Q516 Steve Baker: You have been very clear that you got that wrong. Mr Griffith-Jones. Do you think that the FCA board was engaged as it needed to be in the communication strategy, with the benefit of looking back and seeing what has happened?

John Griffith-Jones: Yes, but. Yes, in the sense that I think the two documents that you have been sent, “Truth and Proof” and “Proof of Concept”, the year 1 and the year 2 strategies, both came through the board. The board, including myself, believe that the public perception of us, both stakeholders at large and particularly the firms, was in a wholly unsatisfactory position at our inception. We had a survey, the Practitioner Survey, which was scoring—and I know these are rather vague numbers but they are statistically quite interesting—4.5 out of 10 for effectiveness of the regulator. To me, from a private sector, you cannot run a business when you are getting a customer score of 4.5 out of 10. Within a year that had gone up to 6.5 out of 10. I know from doing such surveys in the past that that is a hugely significant change in 12 months. It is fair to say that the board believe that some sort of communication strategy was important and the board, after the first year, believe that in the round we had made an improvement in the view of our effectiveness.

Whether that meant that we didn’t pay enough attention to the specifics of what was being done, with hindsight and with this case in mind, I suppose one has to say “yes”. In good faith we did believe that the strategy was broadly appropriate and we supported it as set out in those slides.

Q517 Steve Baker: In the course of reaching that view, to what extent did you discuss the risks involved in the strategy?

John Griffith-Jones: The risk of moving markets was not discussed, from memory.

Q518 Steve Baker: Okay, thank you. It feels to me like that too also was a mistake, that the main board did not discuss that risk. Would you accept that was a mistake?

John Griffith-Jones: With hindsight definitely.

Q519 Steve Baker: Okay. Thank you very much. Do you agree with the statement from the Practitioner Panel in its report to the FCA board that the events of 27 and 27 March were, “An unavoidable consequence of the direction of travel of the FCA’s media policy”?

John Griffith-Jones: Not entirely. They were written on 1 April, which is all of 48 hours after this happened, so it is not surprising they were using some quite punchy language at that moment. My understanding of the panel’s primary concern was nothing to do with price sensitivity. It was that they did not like a constant repetition of stories that were, “in their view damaging the reputation of the industry” and their very clearly stated view to me at least when I was with them was that we, the FCA, were not helping matters by pointing out failings, as opposed to pointing out successes. That was the thrust of the arguments that they were making.

When they said it was an accident waiting to happen, I do not have exact transcripts of every meeting, at no stage did anyone say, “You do realise you will move markets if you go on producing stories like that?”

Q520 Steve Baker: Just reflecting on the conversation we have had about the way that newspapers operate, and I think we have seen that, the way that markets are likely to react to the possibility of a scandal on a wide scale, would you accept that having an approach that is actively pursuing newspaper stories, together with their headlines that I think you said a few minutes ago will run out of control perhaps—I forget exactly what you said earlier, Mr Wheatley, but you said something that implied that headlines do not often reflect the thoughtfulness of the story. Do you not accept that this approach of engaging with the media in order to communicate very difficult matters was an approach that was likely to get out of hand?

Martin Wheatley: No, I do not believe I can answer that. I do not accept that. I think it has to be managed carefully, and absolutely accept that there are risks to it. I think those risks are mitigated by the fact that we are trying to do a very difficult job in a very wide range of complex areas that need to be communicated. With the best will in the world our direct communications to the compliance officers in firms does not reach as broad an audience as we feel we need to reach, which is not just those people but all the employees in firms and consumers of financial services.

Q521 Steve Baker: Finally, are you maintaining that the events that we have been discussing are as a result of poor controls, rather than as a result of the policy and the strategy itself?

Martin Wheatley: They are poor decisions on the day that obviated the controls that did exist.

Q522 Steve Baker: But you feel that the strategy was appropriate?

Martin Wheatley: Yes.

Chair: Very significant evidence that we have just heard there, which we need to reflect on.

Q523 Teresa Pearce: Mr Wheatley, the FCA has very broad and varied objectives. Do you agree?

Martin Wheatley: Yes, I do.

Q524 Teresa Pearce: What would you say they are?

Martin Wheatley: In a very technical sense?

Teresa Pearce: In plain English.

Martin Wheatley: In plain English, our overarching aim is to make markets work well. Below that we have objectives that provide the appropriate degree of protection for consumers, to encourage competition, and to ensure market integrity. Below that we have a series of “have regards to”, so have regard to the effect on competition, have regard to inclusion within that, so a reasonably complex cascade of objectives.

Q525 Teresa Pearce: How would you describe a market working well and who would it be working well for?

Martin Wheatley: For all players. A market that works well frankly is one where consumers get the products that they need at reasonable price, that there is innovation in that space, that there are new entrants into the industry, that firms can be profitable, that people without good propositions exit the industry because they are not profitable. A market that works well has to work well for consumers and suppliers.

Q526 Teresa Pearce: So a market working well is not just a market in which share prices never drop?

Martin Wheatley: No.

Q527 Teresa Pearce: Given the very wide and varied objectives of the FCA, how do you co-ordinate between the different departments? As you know I am on two Select Committees and quite often on the other Select Committee you talk to people who are completely different people than I ever see here. They seem to have a different point of view. How do you manage to keep those plates spinning?

Martin Wheatley: We try to manage it by having a clear set of priorities that we set as part of our business planning process for the year. The board holds us to account for the delivery against those priorities. I meet with that senior team on a formal basis once a month and on a much more informal basis weekly to discuss where we think we have challenges and where we need to respond to those challenges.

Q528 Teresa Pearce: Clearly the issue we have been talking about today, where there seemed to have been a lack of awareness of price sensitivity in an action that was going to be taken, is that peculiar to one part of the FCA or do you think that could have happened anywhere?

Martin Wheatley: I think it was an unfortunate sequence of events, but there was very sensitive treatment of what could be price-sensitive going into the process of the briefing. It lost control at some point in the briefing. That is what happened, that the journalist took what we had with some views of his own, decided that there was an interesting story to write here, but we almost did not catch up fast enough to correct. It was a very particular set of circumstances.

The sensitivity about price-sensitive information is very strong and very widespread within the organisation.

Q529 Teresa Pearce: What I have heard you say this morning is that it was a mistake, that mistakes were made. Also, that the mistakes were made not just in the pre-briefing and what happened there but it was the catch-up, it was the length of time of the catch-up.

Martin Wheatley: Yes.

Teresa Pearce: You have said you do not think that type of pre-briefing would happen, going forward, but what about reaction times? If something were to happen—

which we hope it would not—have you fully got on top of why there was that lag? A lag in the market is catastrophic.

Martin Wheatley: Yes, we have. We have changed a number of processes as a result of that. One of the processes is notification, so if there is something that moves beyond a certain parameter in the market that is notified, not just to the market monitoring team but to the executive committee now. So whenever that happens there is something that goes out as a flash and my request every time is to say, “Tell me if there is an obvious public explanation of that flash or not” so that is now in place. If there is not an obvious public explanation for that flash then it escalates to me as to what level of rapid response we need to put in place. That did not happen on the day, and that is something we have had to change subsequent to that.

Q530 Teresa Pearce: Given the seriousness of this issue, it could be suggested that you disengage completely from the press, because that would be the safest option. However, given that one of your objectives is to make sure that firms operate in a fair, open and transparent way, is not reputational damage one of the reasons why they do behave well and aren’t stories in the press and the effect on reputation a tool that you need to use?

Martin Wheatley: Certainly. If you look at the cascade of things that make people behave well, deterrence is certainly there and particularly when you manage a conflict of interest the deterrence that you will be detected and that there will be some public result around that is certainly a powerful effect. It is important to us.

Q531 Teresa Pearce: Is it not exactly the technique that many Government departments use? Is it not a technique that HMRC use to make sure that stories of people who evade their tax are in the newspapers to discourage the others?

Martin Wheatley: I cannot comment on other Government departments, but for regulators it—

Q532 Teresa Pearce: But is it not a normal tool where you are trying to alter behaviour to make sure that if your behaviour is not up to scratch you know that people will know about it?

Martin Wheatley: Yes, that is right.

Q533 Teresa Pearce: So engaging with the press is a tool that you need to use, and will continue to use, but how certain can we be that it will be used wisely in the future?

Martin Wheatley: I think you can be certain, as I have said earlier, that the strategy we had was the right one. I do not think we had the wrong strategy. I think we made some mistakes in this particular instance and we have learnt from those mistakes. What we are not going to do and the message that I have put through to the organisation, is we cannot go into our shell in a way of being scared to communicate at all, because of the criticism that we rightly attracted on this occasion.

Q534 Teresa Pearce: Do you have enough staff?

Martin Wheatley: I think that we probably do. We have had quite a lot of turnover of staff over the last year, but it does mean that we have been refreshing the skill sets that we have. Obviously we go to the board each year with a business plan as to what we need by way of resources, and I am not asking for significantly more than what I put into this business plan for this year.

Q535 Teresa Pearce: With your staffing levels, are they permanent staff or do you use consultants and agency staff?

Martin Wheatley: We use consultants, contractors, agency staff to a degree, but the vast majority are permanent staff.

Q536 John Mann: Mr Wheatley, a few factual questions first if I may, for the record. How many times has the Chancellor complained to you about your organisation's media approach since the organisation began?

Martin Wheatley: I do not think we have had complaints about the media approach. Clearly there was a very public letter on this occasion, which asked for—

John Mann: Separate to that?

Martin Wheatley: I cannot recall any.

Q537 John Mann: How many times has the Governor of the Bank of England likewise complained?

Martin Wheatley: Again, I cannot recall any times.

Q538 John Mann: How many MPs have written to you complaining about your media approach?

Martin Wheatley: MPs write to me a lot. I do not know that the media approach has been a particular issue. They write to me about lots of other issues but I do not think the media approach has been one.

Q539 John Mann: If I give an example, when each of the political parties attempted to take credit for the changes in approach to payday lending, did anyone complain to you about the extremely harsh language that you used?

Martin Wheatley: Again, I do not think so.

John Mann: If there were such complaints it would be useful to the Committee to be informed in writing on any of those bases.

Martin Wheatley: Okay.

Q540 John Mann: What is your usual lead-in time for regulatory changes to take place?

Martin Wheatley: The usual lead-in time is probably 12 to 18 months, I would guess.

Q541 John Mann: So you have approximately 72,000 organisations that you are dealing with, employing lots of people, and there is an 18-month lead-in time. If you were not using the media would that create a problem in terms of effectiveness within which regulatory changes were enacted by practitioners?

Martin Wheatley: Yes, I think so. Again, some of the examples would be the payday loan industry. We have made it quite clear, quite publicly, what our concerns are in this industry. I think that has driven a degree of change in the industry that has run ahead of our ability to get out there and supervise on the ground.

Q542 John Mann: If practitioners were not fully aware from all sources of what regulatory changes were taking place, might that lead to ill-informed and possibly irregular market behaviour?

Martin Wheatley: I am sure the industry will tell you that the pure volume of regulatory change—and this now is not just from the UK but is coming from Europe as well—is a very, very high volume. They struggle to keep up with it at any case. Again, part of our broad communication strategy is to try to make sure that they keep up with what is a lot of change that is hitting the industry.

Q543 John Mann: Mr Griffith-Jones, you raised that the practitioner panel had twice complained about media strategy. What commentary have you had from your consumer panel about media strategy?

John Griffith-Jones: Broadly speaking, the opposite. The consumer panel are inclined to believe that we should speak out and, indeed, they want to speak out themselves. I think there is a natural—which you are alluding to—tension here between the consumer panel wanting us to champion consumers and—

Q544 John Mann: Would it be fair to say that the consumer panel is pressing you to have a strong or even stronger media strategy?

John Griffith-Jones: I would not say stronger but certainly pressing us to say things as appropriate, in their view, to the marketplace. I think that is a healthy tension. That is why we have panels and we get these conflicting, or sometimes conflicting, points of view.

Q545 John Mann: I appreciate this is a difficult question, but if your media strategy was curtailed and watered down, would you expect your consumer panel to respond positively to that?

John Griffith-Jones: No.

Q546 John Mann: The practitioner panel members, Mr Wheatley, the organisations therefrom, how many fines have you levied for impropriety on those organisations since the organisation was reformulated?

Martin Wheatley: I would have to come back. I cannot tell you specifically, but I know a number of them have been fined by us.

Q547 John Mann: Again, that would be useful to get the number. We have a number of practitioners who have been found to have behaved improperly. I do not know if any of their employees have faced criminal charges.

Martin Wheatley: Again, I would need to come back and confirm that because there are people in the LIBOR cases that are working through the court at the moment.

Q548 John Mann: There is the possibility that there might be some criminality involved with some of the practitioners?

Martin Wheatley: Well, not the people on our panels, I would hope.

John Mann: Not the individuals, their organisations.

Martin Wheatley: Possibly employees in their firms, yes.

Q549 John Mann: Yet they are commenting that you as an organisation need to focus less on consumers. Isn't it rather incongruous that a set of organisations where there is some potential criminality, where they have been fined for improper behaviour, including market rigging, are complaining about you focusing on consumers?

Martin Wheatley: The practitioner panel is there largely to represent the practitioners. We have a consumer panel, which very often takes a completely opposite view, which champions the consumers. In a sense, our panels will represent the part of the market that they are set up to represent.

Q550 John Mann: We do not have MPs complaining. We do not have the Governor complaining. We do not have the Chancellor of the Exchequer complaining. We do have the practitioners pressing for a focus away from consumer rights at the same time that they are getting fined for impropriety. Is there a danger that the general public would be very unhappy if you as an organisation first failed to use the media to explain what was happening and, secondly, watered down your emphasis on consumer rights?

Martin Wheatley: The answers to both of those questions would be "yes". I think there would be dissatisfaction from significant parts if we watered down the focus, if we did not use the media in the way we are. I think you are absolutely right.

Q551 John Thurso: I want to come to board responsibility, but can I first ask a quick question about the costs, which were £3.15 million? In that is £60,000 for strategic communications advice. Can you explain what that strategic communications advice in the cost of the inquiry was?

John Griffith-Jones: Yes, that was me. I felt that we needed some communications advice as a board. I did not know exactly what had happened, but I knew for a fact that our own communications people would be impossibly conflicted in giving me advice of what, if anything, the FCA needed to say as the inquiry completed or, indeed, god forbid, some findings got out halfway through. It was what I would call, I think, a responsible insurance policy that we needed some advice or we may have needed some advice.

Q552 John Thurso: Was that basically a media management exercise on the release of the report on how you would handle the media?

John Griffith-Jones: Yes, broadly speaking.

Q553 John Thurso: They would have advised you to do the embargoed briefing of the journalists in order to contain it and brief them and that sort of thing?

John Griffith-Jones: I do not think we asked them on that particular issue, but we did unashamedly ask them what the reaction would be to this and how to put our message across.

John Thurso: You asked them what the world would say and what you should reply?

John Griffith-Jones: Yes.

Q554 John Thurso: The other one was a million for advice to the FCA in witness representation. What was that used for?

John Griffith-Jones: This is a little more complicated. Obviously, we had set the inquiry up after the initial correspondence so that it was being done wholly independently, which had a great many benefits. One of the inevitable consequences of that is they do not know where to start, they do not know where anything is, and they cast their net extremely wide before narrowing it down as they understand what happened.

In casting their net extremely wide, they wanted to read every e-mail that had gone through particularly my and Mr Wheatley's inbox for, from memory, the previous three months or, anyway, some appropriate period, 40,000 e-mails in total. You will appreciate some of the e-mails that go through Mr Wheatley's box have some quite sensitive information in them, and we felt it was necessary to control and in some ways read and make quite sure that we had a grip on further leaks or any sort of improprieties around information in its passage to Mr Davis while ensuring that Mr Davis got everything.

Q555 John Thurso: Just to get that straight, your concern was that stuff would go to Mr Davis that he would leak?

John Griffith-Jones: Not that he would leak, sorry, that was extremely confidential relating to specific firms and nothing to do with the inquiry. Ideally, it would be possible to in some way avoid him seeing that unnecessarily.

Q556 John Thurso: Let me get this straight. You employed a very well-known firm of solicitors who you obviously trusted to help you work out what you would not give to the independent lawyer who was doing your inquiry?

John Griffith-Jones: That is not—

John Thurso: It is an interpretation of what you have just said, isn't it?

John Griffith-Jones: For clarity, it is absolutely not what happened. We had to have a process for transmitting a great deal of information effectively from our own vaults, as it were, into Clifford Chance. We were absolutely adamant that we would not commit any mistakes in so doing. That is half.

The other half—I say half but I should use the word “part”—of the expenditure with Kingsley Napley was, as is customary certainly with FCA or previously FSA practice, that people who were *prima facie* held under suspicion were entitled to have a lawyer attached to them so that they could be given reasonable support during the process and, in particular, so that were they to say something in the process of the investigation that either self-incriminated or was a material revelation as far as the FCA were concerned, we had some way of controlling that once it had been done. Not preventing it being done, you understand, but understanding what had happened. That is what we used Kingsley Napley for.

Q557 John Thurso: Go back to the first part. For clarity, is there anything that that process took out of what was transmitted to Clifford Chance?

John Griffith-Jones: Yes.

Q558 John Thurso: Clifford Chance has asked for information and they may not have got it all?

John Griffith-Jones: No. I need to be very clear. Well, I need to be as clear as I can. Obviously, I was not involved so I am telling you how I understood it to work. You need to ask Simon Davis if it was satisfactory by the time it got to him.

John Thurso: If I may, the reason I asked the question is I was surprised by your answer because my assumption was that any information he requested he would have been given. I did not realise or think about the possibility that there was a pre-sift.

John Griffith-Jones: No. There was a pre-sift. Anything that was redacted he was told that it was not relevant; something had been taken out of it that was extremely confidential and absolutely not related to the Davis inquiry. That was the easy part to establish. He then wanted to make quite sure that we had not obviously taken anything out that he should

have seen and he set up further procedures to entitle him to look at a sample of those—I think he looked at a sample but, again, you would have to ask—to make quite sure that he was satisfied that we had not removed—

Q559 John Thurso: I will leave it there because it is obviously a question we need to go back to him to make sure that that was satisfactorily dealt with. Can I come on to what I wanted to ask you about, which is around board responsibility? You as chairman are responsible for management of the board. That is your primary role.

John Griffith-Jones: Indeed, yes.

John Thurso: Leaving Davis aside, what assessment have you made of the operation of the board during this episode and what conclusions have you come to as to what the board will do differently?

John Griffith-Jones: We carried out a board effectiveness review at the end of the first year. The fieldwork was done immediately after this incident, I think, as it happened. That is just the coincidence of timing. That produced, in my view, a satisfactory answer. Of course, it is only asking the board themselves what they think of themselves, so these things are not—

Q560 John Thurso: No, forgive me, I am not asking for the board effectiveness review conclusions. I am asking you in your lead role as the person responsible for the management of the board what assessment you made personally and what actions you have taken relative to the board's management.

John Griffith-Jones: My view of the incident was that in the detail of it, it was very unlikely or negligibly possible that the board could have spotted what was about to happen happening on the basis that, as the Davis report explains, there were a whole series of decisions taken on a day-to-day basis that cumulatively led to a rather disastrous course of action. I do not think it would be reasonable to expect the board in the period between 10 March and 28 March to have understood that given that they did not know anything about it. The question is whether we were as effective as we could be or should be around systems and controls and, in particular, around risks. We have a risk register. I can explain that more if you would like. The risk register did not have on it the precise thing that happened.

Q561 John Thurso: Let me ask you then: what did the risk register have on it that was pertinent to this episode?

John Griffith-Jones: If you will allow me to quote, it was risk number 1544, which read, “Before the incident, reputation is damaged due to classified information being leaked by employees”. It then has a further description that expands on this a bit. I have to admit the focus of it was what I would call illegitimate use of leaking as opposed to inadvertent use of leaking.

Q562 John Thurso: In relation then to communication strategy, are there any identified risks in the risk register?

John Griffith-Jones: Before the event as opposed to after the event?

John Thurso: Yes, absolutely.

John Griffith-Jones: Not in terms, no.

John Thurso: Not in terms as in no, there is not?

John Griffith-Jones: Not covering this point, no.

Q563 John Thurso: There is no risk identified in relation to communication strategy and its operation?

John Griffith-Jones: There are some risk-related communications but not this aspect of it.

Q564 John Thurso: What is your assessment of that as chairman, that there was nothing there?

John Griffith-Jones: Well, there are a lot of risks there but this one was not there. The assessment is that the risk register is clearly defective or was defective at that time in this particular locale.

Q565 John Thurso: Why do you think that was?

John Griffith-Jones: I will give you my view. I think there were two reasons. One is that as a board it is more difficult to establish what is not there that should be rather than to review what is there and comment on whether it is precisely stated. The fact is it was not there.

The second supporting reason at least that affects my view is I was aware from the day I joined the organisation how much attention was paid to controlling information in the building, not the press part of it but everything else. I was rather aware of a high degree of

understanding about price sensitivity, somewhat mistaken as it turns out. The combination of it not being there and a feeling that this was not an area that was underrepresented in importance I suppose gave us a false degree of comfort.

Q566 John Thurso: How often does the board discuss the risk register or the risks? What is the process?

John Griffith-Jones: May I explain the procedure because I think this is important for you to understand it, or at least for me to get the message across? The risk register is divided into two parts. We have what are called regulatory risks, which is essentially what can go wrong in the marketplace and that we should be on, and then we have operational risk, which is things that we do that could go wrong. I am not saying that is the only way of running a risk register but that seems to be a particularly reasonable way of doing it.

The risk committee reviews the regulatory risks, what I call the external risks, and the audit committee reviews the internal risks, of which this was clearly an internal risk. That is how it is set out. The words “risk” and “audit” perhaps do not precisely describe it. Each quarter, the risk committee reviews changes to the risk register and the audit committee reviews changes to the operation. The regulatory risks and the operational risks come to the two committees quarterly. There are roughly 200 on each limb of the register. That is a lot of risks, so the way they come to us is the ones that are the more important are reported physically, either deltas, ie coming on or going off, or the large ones that remain on there. They come to the two committees each quarter and then the committees report back to the board that they have done their work.

Q567 John Thurso: Does each risk have an owner?

John Griffith-Jones: In the register, yes.

Q568 John Thurso: What is the process for assessing whether the owner has taken ownership and is dealing with the risk?

John Griffith-Jones: That is more at the executive level.

John Thurso: Perhaps then I could ask Mr Wheatley.

Martin Wheatley: The process is that we ask people to sign off attestations on an annual basis that they have done exactly that, that they have taken control of the risk, they have a control process in place, and have signed off that that is in place.

Q569 John Thurso: Does your internal audit look at that as part of your internal audit report?

Martin Wheatley: I am pretty sure it does, yes.

Q570 John Thurso: The point I am getting to is that what actually happened was the most catastrophic risk materialising that anybody could imagine, which is the regulator who regulates the markets moves the markets. It could not get much worse than that. I am trying to work out where in the system that risk could have been picked up and worked on. I am, therefore, wondering who owned it and at what point the board should have perhaps made sure that the control was somewhat stronger. What is your assessment of that?

Martin Wheatley: The ownership of that, in this particular case the reputational damage of us miscommunicating information, would sit within the comms division. That is where the handling of that is. That is where I would expect the ownership of managing that risk to sit.

Q571 John Thurso: Who was—presumably you and that was why your bonus has gone—taking the responsibility for the fact that comms did not live up to its ownership of that risk?

Martin Wheatley: Yes.

Q572 John Thurso: Do you believe at the board level that the board gave enough thought to risk management and the way it was being managed given that the chief executive ultimately has had to give up his bonus because of this?

John Griffith-Jones: I believe we took and do take risk extremely seriously. I cannot sit here after this event and say that the controls at that time were foolproof. I think we still need to concentrate extraordinarily hard on what else would go wrong.

Q573 John Thurso: We are under the cosh for time so I am going to ask one other quick question, which is regarding the timing of calling the board meeting on that day. In the Davis report at 16.9, there is a comment that a number of board members said they would have expected to have been informed earlier in the day. At paragraph 16.10 Mr Bailey made contact with you with a request for the board to discuss. I would like to know whether you felt that the fact that the board members are expressing the fact they would have liked to have been called earlier and that Mr Bailey is asking for a board call, effectively a board meeting, earlier than the board, or rather you, were on top of the situation.

John Griffith-Jones: I feel I was on top of the situation that afternoon, definitely. I am just looking at 16.9. I think at 3.05 p.m. we informed the board by e-mail. The announcement had only gone out by 2.30 p.m. You have read the chronology. Mr Bailey was very insistent that the board meeting was that afternoon. It was not that we were not alive to that point, but it was helpful to have him and others insist that we move quickly and I was happy to do so.

John Thurso: Thank you. I have run out of time.

Q574 Chair: One remaining, quite important issue to explore now and then we have a few more things that we might follow up in writing. You published a new strategic approach on 8 December, two days before you published the Davis report. When did work begin on the strategic review, Mr Griffith-Jones?

John Griffith-Jones: At the board away day meeting in November 2013, by which time we had been operating nine months, we took the view that the first year was going okay, that we would allow the organisation to run for another year so that the theoretical structures that we put in place could bed in, but we would conduct a strategic review during 2014 in order to decide whether further adjustments were necessary.

Q575 Chair: When you took the decision to publish it 48 hours before the Davis report, did it occur to you that publishing it immediately before the Davis report might appear to be a form of media handling to deal with the criticisms of the Davis report itself?

John Griffith-Jones: I certainly realised that it would have some sort of impact, I hoped not negative, of that nature. It was quite necessary to publish the structural changes at the same time because some key members of staff were leaving. In terms of the internal handling of the organisation, we felt the need to publish it at or about the same time, two days before.

Q576 Chair: Would it have been more sensible, indeed more logical, to have awaited the publication of the Davis report and then published the strategic review as a response to it, including the structural changes?

John Griffith-Jones: The strategic review, or the key constituents of it, genuinely is not a response to Davis.

Chair: But you have just told me that the restructuring was.

John Griffith-Jones: Sorry, there is a difference between the strategy and the restructuring. The restructuring was necessary to tell our staff what pragmatically was going to happen given that some very senior people were leaving.

Chair: So you could have separated these two.

John Griffith-Jones: We could have. It would be difficult—

Q577 Chair: Why did you publish them at the same time?

John Griffith-Jones: Sorry?

Chair: Why did you publish it immediately prior to the Davis report?

John Griffith-Jones: Because we wanted to tell the staff and, indeed, the world at large at approximately the same time. We did not think it was particularly sensible to do it on precisely the same day.

Chair: But that is the restructuring point. You have just said the restructuring point was separate from the strategic review.

John Griffith-Jones: No, the restructuring would not have made so much sense without having an underlying understanding of the strategy as well.

Chair: Right, so they did need to be published together and, therefore, they were not separate.

John Griffith-Jones: The structure and the strategy logically would be published together and the structure and the Davis report need to be co-joined.

Q578 Chair: That is what I thought at the beginning, so back to the question I just asked you: why didn't you publish the structure and the strategy report, call it what you like, immediately after the Davis report rather than prior to it?

John Griffith-Jones: Rather than immediately before?

Chair: Rather than immediately prior to it, yes.

Martin Wheatley: I think—

Chair: I would like an answer from the Chairman, who is directly responsible for this board decision.

John Griffith-Jones: That seemed like a perfectly sensible way of doing it.

Q579 Chair: Why?

John Griffith-Jones: We had to put one out. We decided that it was not sensible to put them both out on the same day. It was very important to us, or to Mr Wheatley actually, which I suspect is what he was going to say, that the staff understood what we were saying, that we did not spring a structural reform on an unsuspecting 3,000 people, especially immediately after the publication of the Davis report. On balance—

Q580 Chair: Why?

John Griffith-Jones: Why? Because they—

Chair: Isn't that exactly when they would have expected it? In terms of the Davis report, you publish their independent review, as one does normally for fully independent reviews, and then you respond to it. What you did is respond to it and then publish the review.

John Griffith-Jones: We took a—

Chair: That is because you had had prior notification of its recommendations about structure.

John Griffith-Jones: Sorry, prior notification about structure?

Chair: Because you had seen the recommendations in the Davis report.

John Griffith-Jones: Davis said nothing about structure.

Q581 Chair: He talked about the relationship between various individuals near the top in the decision and those were clearly connected to the departure of two key people, were they not?

Martin Wheatley: I am sorry, I really—

Chair: I want an answer from the Chairman as this is a very important issue for a Chairman to have a grip on. Are we saying that the departure of Ms McMillan and Mr Adamson had nothing whatever to do with these events?

John Griffith-Jones: You have heard the two of them give their side of the story.

Chair: Okay, but are you saying that to us?

John Griffith-Jones: I know what they knew at the time that they decided to leave and I think Mr Clive Adamson did actually say that it was one of the contributory factors. In Ms

McMillan's case, I think that, with the restructuring, she just did not agree that comms should not be on the executive committee.

Q582 Chair: Very little information was put out in this initial information to the press 48 hours before. Some of it was published afterwards. It looked as if it was a rushed job. Was it a rushed job to get the strategy out?

John Griffith-Jones: No, it was not a rushed job. It was not a rushed job.

Q583 Chair: Okay. Did you consult the FCA statutory panels about the new approach?

John Griffith-Jones: No.

Q584 Chair: Why not?

John Griffith-Jones: I am going to have to ask Mr Wheatley.

Chair: I think it is a matter for the chairman again. This is a major change in the FCA and you have the statutory panels there. You have an obligation to consult them.

John Griffith-Jones: We knew internally that we absolutely had to tell our staff of the structural changes, whether it is 24 hours before or 24 hours after. We could not tell the panels because the Davis report was not published. We pretty quickly got to a view that we needed to say something. We thought what we said was very sensible. If we had not had the Davis report being published, those changes would not have been brought out quite as quickly as they were, but that again was caught up with the people leaving. My personal view is that the whole thing came together reasonably neatly. We are now having extensive discussions with the panel with the broad outlines in the public domain, and the intention is that the structure is finalised by 31 March.

Chair: Thank you very much for coming to give evidence this afternoon. I recognise it has not been an easy hearing at times. This is a very unusual hearing and a very important one for this Committee. We are the only body in practice that can hold the regulator to account and clearly something went very seriously wrong, something you yourself have been acknowledging. We may need to—in fact, I am confident we will need to—follow up on a number of points made and questions not yet addressed in this hearing in writing, and we would be very grateful for a prompt response, as we would to one of the three issues that we raised before with you on audit, which has still not been sorted out—the one that was discussed in the last hearing we had with you. Thank you very much indeed for coming to give evidence to us this morning.

Oral evidence: Press Briefing of Information in the Financial Conduct Authority's 2014/15 Business Plan, HC