

Treasury Committee

Oral evidence: [Financial Conduct Authority](#), HC 812

Tuesday 8 November 2016

Ordered by the House of Commons to be published on 9 November 2016.

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Members present: Rt Hon Andrew Tyrie (Chair), Mr Steve Baker, George Kerevan, Kit Malthouse, Mr Jacob Rees-Mogg, Rachel Reeves, Wes Streeting.

Questions 1-153

Witnesses

John Griffith-Jones, Chairman, Financial Conduct Authority, Andrew Bailey, Chief Executive, Financial Conduct Authority.

Examination of Witnesses

John Griffith-Jones, Chairman, Financial Conduct Authority, Andrew Bailey, Chief Executive, Financial Conduct Authority.

Q1 Chair: I apologise for beginning a bit late but we had quite a lot of private business to get through. We have had a brief private word just now about GRG. This morning at 7.03 I received a document that I think was issued at 7.00, which was marked “highly sensitive information”. It was put into the public domain at 7.00am, I understand, because it is considered market-sensitive. I received a phone call last night from the chairman of RBS giving me an indication, in very general terms, of this statement or at least some of this information. I was told that this was information that would be put into the public domain at 7.00am. I was very surprised to wake up this morning to find this already on the bulletins, before 7.00am, and in all the newspapers. What happened?

Andrew Bailey: I share your surprise, frankly. I go beyond that: it is more than disappointing, frankly. We do regard this story or this news as market-sensitive, not least because obviously it has a figure in it for the cost of the return of complex fees that will be charged to RBS in the fourth quarter. That is a market-sensitive piece of information. It was always clear to us that whenever it came out, this was going to be a market-sensitive announcement and needed to be handled as such. I was extremely disappointed when, like you, I saw the evidence that it had been what looks like pretty comprehensively briefed in advance.

I can tell, from our side, we will be conducting a leak inquiry. I have to say to you, though, that obviously we are not the only place this could have come from, as you will understand. Having been around these things for a long time now, I would say some of the hallmarks that I would observe on the stories that were written would suggest to me it came from elsewhere.

I will put two things behind that comment. One is the pool of journalists that were writing it. It comes from a particular pool of correspondents, who are banking correspondents, on the whole, rather than regulatory correspondents. That is a clue, usually. Secondly, having been around far too many of these incidents, because there should not be any of them, you can see certain clues in the way that stories are written at the beginning, where there are slightly Delphic references to sources. I have learnt over the years that you can read things into these Delphic references. The Delphic references in those stories do not on the whole tend to point towards the regulator but, as I said, we are doing two things. One, we will be doing our own leak inquiry. Secondly, we will be insisting that RBS do so as well.

Q2 Chair: Rather than take the vexed question of how this got into the public domain when it was market-sensitive information any further, I



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think we should await the outcome of these inquiries. Having said, that it has to be also pointed out that the FCA has a very poor track record itself of putting information in the public domain in an inappropriate way, and, in addition, to be blunt, a long history of some form of leakiness, with somebody in your organisation handing information to the press that they should not. It seems to me that both organisations need a thorough examination.

Andrew Bailey: That is why we will do it. We will do it anyway whether there was a history or not, frankly. It is very important that there is good practice. I would, however, again, just point out, from my own experience of many years now, that there are other organisations in this country that have very bad records of leaking things as well.

Q3 **Chair:** Are you making reference to a particular one?

Andrew Bailey: No, there are practices of leaking stories ahead of time, and there are people who take the view that once markets are closed—particularly once UK markets are closed—it is okay to start briefing or spinning a story that is going to come out the following morning. I should also point out to you that just over a week ago there was a story in the *Sunday Telegraph* that purported to say that we were not going to take any further action against RBS as a result of this. As you may have seen in the statement that we issued this morning, towards the end we have been very clear that we are assessing what further work may be needed, given the findings from the Promontory report. That story is just not true, as I have been reported as having said, because that is the position. I do not think that came from the FCA because that is just blatantly not true. It would be a bit pointless for somebody in the FCA to leak a story that is so obviously not true.

Q4 **Chair:** It has not always been the case that FCA leaks have been rational or co-ordinated either. I would just point that out. Some of them look as if they have been destructive to the FCA as an institution, and indeed with have had a public exchange, Mr Griffith-Jones, on exactly this point at another hearing.

Andrew Bailey: If you do not mind me saying, going back to my time at the PRA and the Bank of England, they have also had quite a few examples of where there had been attempts to spin stories to suit another party against our own position. It is done, I am afraid. I think it is very regrettable that it is done and I agree with you that it is very regrettable in the context of the whole rules around market sensitivity.

Q5 **Chair:** We take this very seriously. This is market-sensitive information and we want you to get to the bottom of it and come back to us and tell us what the matter is.

Andrew Bailey: All I would want to say is that we take it as seriously as you do.

Q6 **Chair:** Why did all of this come to ahead at 7.00 this morning, just a few



hours before this hearing? Why could we not have got this out into the public domain in time for people to have had a considered look at it, so that we could ask questions on the basis of others' responses to it, rather than relying on our own initial overview of the papers you have published?

Andrew Bailey: I want to assure you of something to start with. It was never our intention to release this today in a way that constrained your time to do what you have said. I will be quite frank with you, because this has been commented on a lot: we wanted it done by today because I think it is important that this is done and, from the point of view of accountability, it is important that it is done in time for a hearing so that you can ask us questions. We wanted it done by today. The fact of the matter is that we have had the Promontory report for just over six weeks.

Q7 **Chair:** Just for the sake of those listening, that is the report that you had commissioned under section 166. That is a skilled persons report, in order to find out what happened.

Andrew Bailey: Indeed, and the findings of which are summarised in what we put out this morning. We had this report during September; I cannot quite remember when in September, but it was during September. Since that time, the emphasis and the absolute priority for us has been to get the complaints-handling scheme put in place by RBS.

Bear in mind that one of the complications here, and not for the first time, was that this is not a regulated activity. It is an activity undertaken by a regulated firm, which obviously has to meet our tests of fitness and properness and the senior people have to meet the senior managers regime tests. One of the factors behind those tests is that they put in place appropriate complaints-handling processes across their business. It is not a regulated activity and the reason that is significant in terms of timing is that in a regulated activity we could have determined and dictated what the complaints-handling process would look like. We could have centrally mandated it. It is reasonable to assume it would therefore have been a quicker process. It is not in this case.

Essentially, the firm has to put it in place. We obviously take a very great interest in it and it is relevant to tests of fitness and properness and the senior managers regime. Regarding the time that has been taken to get the thing into place, as I say, I regard it as absolutely important that this is done because it is the customers that matter most in this process. In the end rather more detail has gone into the announcement today than might have originally been envisaged. That has taken longer.

The key thing there for us is the details around an announcement of the third party. That is the retired judge, Sir William Blackburne. I am pleased that, in my view, there is a more robust role for the third party in this design than has been. That was always important and quite a lot of the substance of what we have gone through with the firm has been exactly around that. The fact of the matter is that it was always our



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intention to have it done by today. It has taken longer than we thought, I am afraid. It went down to the wire.

Q8 **Chair:** Why did it go down to the wire? I am sorry to interrupt. Is that because the proximity of this hearing was acting as a spur to get agreement out of RBS?

Andrew Bailey: Yes, that is a reasonable assumption to make.

Q9 **Chair:** That is not a very happy state of affairs either.

Andrew Bailey: No, it is not, but the counterfactual is: when would it have been announced if this hearing had not been in place? I cannot really answer that question for you.

Q10 **Chair:** You saying you are using Parliament as lever, which I understand and I am not criticising it. I am pointing out that that is what appears to have been going on, in order to obtain something from RBS when you might have hoped for more co-operation from them in the beginning.

Andrew Bailey: I think that is stretching the point. The fact of the matter is, quite rightly, you announce the dates of your hearings well in advance, so the date of this hearing has been known for some time. There has been quite a lot of press commentary around the fact that there would be questions at this hearing. Let us assume for a moment that the outcome had not been settled by today; there would have been pointed questions about why it had not been announced today. That had an effect. I would want to stop rather short of saying that in some sense Parliament was used as a lever to get an outcome, but I do not think any of us can deny that, since this hearing was well known about, it was a factor.

Q11 **Chair:** The discussion we have had so far on process seems to be at risk of overshadowing the fact that the announcement itself in substance seems a step forward from where we had been in compensation schemes. The compensation arrangement put in place for interest rate swap mis-selling were mishandled by the FCA. We pointed that out and we explained why we thought it had been mishandled. One of the points we made was that we needed more robust, independent oversight of the compensation scheme. It seems that that is what this scheme is now going to provide with the appointment of a judge. I think that the whole Committee would welcome that.

Andrew Bailey: I would just refer you to the comment that we have made earlier in our press release that we still need to see further detail about how the scheme will operate.

Q12 **Chair:** So do we, and we will be writing to RBS and to you to obtain a good deal of the further detail. We do have some interesting information. You need to bear in mind that some of us have been at this—I have—since well before the Andrew Large report, which we were also instrumental in triggering back in 2013. We are talking about something



going back four years and more, where we have been battling to get something done to help the people who were hit by this. We were told, when we first pressed it, that this was all a load of old baloney and that it was just put forward by people who were in distress about the fact that they were running firms that were insolvent anyway. We now have some answers to these questions. It seems, from what was put out at 7.00 this morning, that while a third of the firms would have been in insolvency or administration regardless of RBS's action, most of the rest probably would not be, or at least they were badly treated by RBS. That is correct, is it not?

Andrew Bailey: We have given a quite detailed summary of the findings.

Q13 **Chair:** It is pretty shocking, do you not think?

Andrew Bailey: Yes. Let's be clear: two-thirds were viewed as viable at the point when they were put into GRG. Now, it does not mean it is wrong to put them into GRG. It means that they were subject to—

Chair: They experienced some form of inappropriate action.

Andrew Bailey: Yes, exactly. They were subject to a list of inappropriate actions that we set out in the note, which was a summary of Promontory's findings.

Q14 **Chair:** Of the third that should, in any case, arguably have been in GRG's hands, how many of those were maltreated? After all, the fact that you are running an insolvent business does not mean to say you should be fair game.

Andrew Bailey: The important point, from our perspective, is that this sets up, as you said, a more robust process for assessing the claims of these people under the complaints scheme. That has been our concern all along. Promontory has looked at a larger sample than any previous report. It has drawn sensible conclusions around that. It is now over to the process to handle those claims.

Q15 **Chair:** The Treasury Committee will be expecting much more detail of how this scheme is going to operate. What we certainly do not want is compensation getting to the point where it is being paid before we can tell whether it is reasonable.

Andrew Bailey: Just on that point, it is important to refer back to the point you made earlier about interest rate hedging products. One of the important things is getting the third party in place and having the third party fulfilling a broader role. The role of the third party is not just to say, "And the firm did what it said it would do." It is actually, at the outset, to take a view on the construction of the process and also to hear appeals. The other point is that it is important that from the outset the whole process is laid out more transparently, because one of the criticisms of the IRHP process, as you know, was that it was not transparent.



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Q16 Chair: We will move on to another problem that has blown up very recently, which is the cybercrime at Tesco. Having had a chance to think about this just a little last night and again this morning, this looks extremely serious to me. It looks unprecedented. This is not locking out or people being unable to obtain access to their accounts for a while. We are talking about one in seven who have had something stolen, of the 140,000-odd accounts. Perhaps before asking one or two detailed questions about it, I will give you an opportunity to say what you think about it and where you are going to take the handling of this extremely serious discovery.

Andrew Bailey: It has been a busy weekend and yesterday for us, with these two things going on. I share your view that there are elements of this, as far as we can tell at the moment, that look unprecedented. It is serious, clearly. Let me just say one thing about the monies. We are obviously in very close touch with the institution and they are giving us assurances that the monies will be reinstated by the end of today. That is important but not by any means the heart of the concern. The heart of the concern is: what is the root cause of this and what does it tell us about broader threats? I have to tell you at the moment that it is too early to give you a comprehensive account of what the root causes are, because we do not know yet. We have various expert agencies involved in this, as we do in these situations.

Q17 Chair: Are you are talking about GCHQ?

Andrew Bailey: The cybercrime experts, yes.

Q18 Chair: As you know, in the last Parliament this Committee held two private sessions, one with the FCA, from which we came away quite concerned, and one of which we held with the PRA, which left us a little more reassured that the right work is being done. One of the important issues that we drew from that was we were concerned that the split of the regulator might lead to a lack of co-ordination between various parties.

Andrew Bailey: I can tell you that both regulators were involved from Sunday. If you go to the letter that I wrote to you last week on this, the so-called authorities' response framework was triggered on Sunday. That is the ARF, as we know it colloquially. That obviously involves the Government as well, and the Treasury. That is the umbrella under which these resources can be brought to bear. They are very much engaged now in the question of what the root cause analysis of this is. It is clearly been narrowed down and clearly it looks like it is online banking. It clearly appears to be the debit card side of online banking, as far as we can tell.

It requires further urgent analysis, which is now taking place, to understand the broader implications of this, which we will do. What I suggest is that we can perhaps have a discussion about how we can then brief you, which would obviously then have to take into account, as I



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hope you will understand, the sensitivities of whatever it is that we learn from this, bearing in mind the sessions that were had in the past. That is probably the best way to handle it.

What I can assure you is that we regard it very seriously. When I heard about this on Sunday, I thought that this looks unprecedented in the UK. It may not be unprecedented elsewhere in the world. That is one of the issues: that there are differing security standards around the world at the moment, which is not helpful. I must say, like you, when I heard about this I thought this was unprecedented.

- Q19 **Chair:** I have two questions that I would like a brief answer on. One is specific and one is general. The specific one is whether you are confident that Tesco know specifically which customers' accounts have been hit, even in the absence of information from that customer.

Andrew Bailey: We are confident of their analysis of the affected accounts. That is a look backwards. The question that remains very much outstanding, just to step back, is they have announced that they have switched off customer access to online payments, which are payments over the internet, using debit cards. Where neither they nor we can be confident until the root cause work is done is that of course you want to be able to switch that functionality back on as soon as possible but you want to be able to switch it back on safely. To do that you have to know more about the root cause. That is the issue I think.

Chair: Can I just ask the same question again? I think you gave me an answer, "yes", to it.

Andrew Bailey: It refers to the backward-looking question.

- Q20 **Chair:** It is a crucial question. That means every customer who has been hit has been identified by the bank even if the customer is not yet aware of it. The reason I am asking that question is we do not check our houses twice a day to check if they have been burgled. People, on the whole, check their accounts once a month or so to see what has been going on. There is a caveat aspect to this. People cannot be expected to check twice a day.

Andrew Bailey: No, the bank can obviously see the traffic that is coming over.

Chair: They can identify every case.

Andrew Bailey: They should be able to. They have assured us they can and we will obviously have to do work to understand that they have done that to our satisfaction.

- Q21 **Chair:** We need that reassurance too; the sooner you could give us that on behalf of those customers, the better. The second question is about whether we have enough resources going into combating IT fraud and whether there is a connection between the failure of IT systems generally and their weaknesses and the scope for fraudulent behaviour.



Andrew Bailey: There are a number of questions in there. Do we have enough resources? There is a slight danger in this question that the more you find out the more complex this landscape looks and the more resources you determine you need. It is obviously best practice that we, and indeed others, will do a "lessons learned" review from this incident, bearing in mind, as we have both said, that it appears to be unprecedented as to what we learn from this and what it tells us about our own capabilities and framework response. We will do that. I can tell you that we were not short of resources on Sunday to mobilise to do what we did and we have not had any lack of response from agencies that we have asked to come into play. It is an obvious question that you ask in any of these incidents, and we will do that. In that sense, so far so good.

The broader issue, if I could come back to it, is what we learn from this about broader weaknesses. You asked a specific question about whether that links back to the vulnerabilities of complex IT systems. Interestingly, this has actually affected a fairly small bank, which probably does not have complex systems relative to some of the ones that we typically think of in the context, of that question. Again, it will require a careful analysis of where the vulnerabilities are.

I still worry that, a priori, the more complex your systems are, the more you are exposed to things, in some sense. The people who do this sort of thing are obviously looking for weaknesses in systems and points of entry, if you like. The more complex your systems are, arguably the more weaknesses and points of entry there may inevitably be.

Q22 **Mr Baker:** If I was to start at the top of a business plan, you cited as a measure of success, in the medium term, a reduction in the number of critical system failures or outages in firms. For the purpose of that measure, how are you going to define "medium term", and what are you actually going to do in order to try to achieve it? As someone who has engineered software for banks, I am trying to imagine how it will actually work for you to deliver against that objective.

Andrew Bailey: The first thing that is very important here is to get consistent measurements of system outages and greater transparency around that. What has recently been put into place is a so-called dashboard system, which each bank has, so that the status of its systems is more visible. Unfortunately, these things are by no means, in my view, transparent enough to customers. That is an issue.

More consistent measurements of system performance is the first step, so that we can judge how they are performing. It should also help us to start to isolate potentially recurrent forms of weaknesses. From that there has to be a lot more work done to say, "Where would you look to identify potentially big weaknesses?" That requires specialist resource, clearly. Again, it comes back to the Chairman's question, which we all have to look at it in light of this incident, about whether we have enough resource. We did a lot of work, as I think you know, after the RBS IT



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failures several years ago now, across the banks on this whole issue. I have said before, and I have to say to you, it is never done. This is never done and that is the reality of it.

Q23 Mr Baker: You have obviously thought carefully about it but I am not sure I am any wiser. Do you think that the FCA will set certain software engineering standards for banks, or do you think it would just put in place performance indicators for banks?

Andrew Bailey: I do not think we are the best people to set software engineering standards. On the whole, that is not our comparative advantage and never will be. If that is a sensible route to go down—there is a big question mark on that and I am not an expert in this field—you would expect industry standards to appear, which we and others would want to look at very carefully to see whether they are in some sense consistent with our levels of risk tolerance.

Q24 Mr Baker: Just thinking about the levels of expertise you have and where they are, Mr Griffith-Jones, as the Chairman, do you think that you have adequate technical expertise on the board?

John Griffith-Jones: On the board we are not over-endowed with technical expertise but we have actually, in response to the increased threat in this area, recruited a special adviser very recently who has a deep, deep technical background, and we actually thought that was a sensible way forward: to have on hand the equivalent of a board member but actually with more time available than we would have on the board.

Mr Baker: So the equivalent of a board member but not on the board.

John Griffith-Jones: He is not actually on the board.

Mr Baker: Does he advise the risk committee or the board as a whole?

John Griffith-Jones: He has been working with us for two months now and he will report periodically to the audit committee under whose remit these matters fall.

Q25 Mr Baker: Do you know that all software has bugs?

John Griffith-Jones: Yes.

Q26 Mr Baker: How much more productive is a good software engineer compared to an average one?

John Griffith-Jones: Probably about the same as a good regulator compared to an average one.

Q27 Mr Baker: The reason I ask that is that it is a famous adage in software that a good software engineer will be 10 times better than an average one, and a really brilliant software engineer might be 10 times better again. These sorts of basics about software engineering and how it works and how difficult it is to engineer a system should really be implanted in the board if it is going to deliver against these objectives. Do you think



you are able to pay your software engineers? I do not have an interest and I am not planning to go back to software engineering, but do you think you are able? In my direct experience, a software engineer in the City, if they are any good, would earn at least the same as an MP. Are you able to employ software engineers and pay them enough to get the people you need?

Andrew Bailey: There is no question we have to pay a premium and there is no question, as you would expect, that this is probably one of the most competitive—if not the most competitive—market at the moment, and events like the one in the last few days will only make that more so. Everybody wants information security people. This is the thing and, unsurprisingly.

Q28 **Mr Baker:** Bearing in mind the quick canter around that we have had and what has just gone on, I was most concerned that the CMA were proposing with their open banking project that people should have a single application to access all their financial accounts. Mr Griffith-Jones, what did you think about that as a proposition, from the point of view of security?

John Griffith-Jones: There is a classic ying-and-yang here, in that it is highly desirable for competitiveness in banking that you can put all your data in one place, and it helps in transferring your accounts from one organisation to another if you are not happy. However, it creates a security dilemma. It is never going to be done or finished but it is the role of the regulator at least to balance the two together. These sorts of incidents that we appear to have just had with Tesco keep reminding us that convenience is one thing but that security, when push comes to shove, is more highly valued by the customers.

Q29 **Mr Baker:** My instinct, as a software engineer, is to run screaming from the proposal that we should have a single point of failure and a single point of access to all our bank accounts. Mr Bailey, is that an instinct you share or do you have more confidence?

Andrew Bailey: I do not have your background as a software engineer but I agree with you, as the Chairman has said, that there will be a very interesting trade-off between innovation to increase competition and security. Naturally, as a regulator, security will have to play a big role in this, because you are right in that it would be a mistake to go over to something that appeared very good from the point of competition but that opened the system up.

The only thing I would say about this, of course, is that you then have to go back to what the Chairman said, because it would probably be wrong to think that there is a dichotomy whereby, if you keep the old stuff, it would be more secure and, if you go over to the new stuff, it would be less secure. We know that is not necessarily true. The fact of the matter is that we will have to very carefully evaluate what comes through under the open banking standard, but I do not think that we should close our



mind to it at the outset on the basis that, if it has the word “open” in it, it must be insecure. You are obviously more of a technical expert than I am but that would be a sensible starting point.

- Q30 **Mr Baker:** Speaking as a person who has had to survey back office systems in the past and draw diagrams trying to explain to people how their bank actually processes their various transactions, I am aware that there is a lot of spaghetti at the back of an older institution. Are you concerned, as I am, that banks’ profitability really presses on their ability to maintain staff numbers, not only to maintain their systems but also to improve them dramatically in the way that they need to? Of course, over the decades, they have gone from mainframes doing batch processes to complex intra-day processes running in real time. Are you concerned that their profitability bears on their ability to deliver secure models?

Andrew Bailey: I am, and this comes back to a broader CMA point that we might come on to. There is an inherent tension at the moment between the desire to reduce costs—which obviously you would not object to—and the tension with the cost of reinvestment in IT systems. One of the biggest challenges that the banks face in this world is at what point they have to make major investments in renewing IT systems. You are right, and it is certainly my experience, that these things have tended to become more and more complex, often over long periods of time, because—and this is possibly one area where I might disagree with you—it is not true that all the old things have been thrown out. What has actually happened is that the wiring has become more and more complex as the old things have been engineered around in order to do today’s banking. It is not uncommon to see digital banking, which sounds all new, backing into something that is actually pretty old; the spaghetti, as you put it, that sits between those is complex.

You are exactly right in saying that there is a big tension here between cutting costs and the rate of return and the sort of investment that is needed in IT.

- Q31 **Mr Baker:** I am slightly conscious of time so, if I may, I would just like to ask you how you see the FCA working with the National Cyber Security Centre.

Andrew Bailey: Closely, and we saw it at the weekend. One of our first responses was to make sure that these people are brought in because they have the expertise. We are not going to try to replicate their technical expertise; that would be a mistake. I have said right along, going back to my PRA days, that the most important thing for us is that we know people who have that expertise and who can be brought in.

- Q32 **Mr Baker:** As a supplementary to that, I am very conscious—I am sure we have all seen it with our constituents—that people get caught out with fraud, which depends upon our frailties: our ability to be taken in by phishing, spear phishing and so on, which are very targeted attacks that exploit people’s psychological vulnerability to trust those who seem to



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know something about them. Are you concerned, again as I am, that people are sometimes over-focusing on the technicalities when, actually, the psychological factors involved in fraud are very important?

Andrew Bailey: Yes, and you see that cropping up in a number of areas of our focus. You see some of that in the super-complaint that Which? has brought. Which? is going to the Payment Systems Regulator; it is all about the handling of fraud and fraudulent behaviour that is somewhat of the nature you have just described. You see it, in a "standing back" sense, in our admission document when we are talking about vulnerability, because vulnerability takes many forms. This is one form of it with the ability to exploit technological weaknesses or to pull the wool over people's eyes. The answer to that, therefore, is "yes".

Q33 **Mr Baker:** John, you are nodding your head. Did you want to come in on this one?

John Griffith-Jones: Only to say that, when you look at these dreadful frauds on individual people, by the time the fraud is committed, the customer is completely convinced that they are doing the right thing. Any controls you put around "be careful", "take your time" and "check the numbers" come after the moment they have mentally crossed to believing that they are sending the money to the right person; thus, none of those controls will necessarily work. The reality with Faster Payments is that the money goes in after half an hour or sometimes a lot faster, whereas, with a cheque, it used to take four days. We have a great technological advance on the one hand and an opportunity for fraudsters to hone in on this sweetness.

Q34 **Mr Baker:** Since you raise Faster Payments, is the system as a whole capable of providing the audit trail necessary to prosecute those who exploit people's vulnerabilities?

John Griffith-Jones: That is exactly the subject of the super-complaint that we are doing a lot of work on at the moment. We are due to respond to that just before Christmas.

Andrew Bailey: I am somewhat involved in the creation of Faster Payments, which is a robust system. Interestingly, it was ahead of pretty much most other countries in the world in terms of what it does. I do not think it is lacking in robustness but it is a very fair question to ask: "Is the audit trail as good as it needs to be in those cases as opposed to as good as it needs to be to handle normal business?" That is a reasonable question.

John Griffith-Jones: The audit trail within the system will be fine: there will be evidence that the customer put their numbers in and the money went. The evidence you need is who made the telephone call to persuade them to put the numbers in in the first place, which of course is outside of the system.

Q35 **Mr Baker:** Indeed, but the point I am making is that there should be an



audit trail of where that customer's money moved to and it should be possible to find out who the owner of the account is. Otherwise, why do we do all these money-laundering checks?

Andrew Bailey: It is clearly inherent in any payment system that you know where the money has gone.

Mr Baker: I raise it because of a specific constituency issue but I ought not to say any more about it just now.

Andrew Bailey: If you want to get in touch with us on a constituency issue, you can.

Mr Baker: I am grateful; thank you.

Q36 **Wes Streeting:** Returning to the issue of Brexit, Mr Bailey, on 28 October you wrote to us—we will be publishing that letter today—listing five principles that an ideal framework for UK/EU relations after Brexit should adhere to. Looking at those principles, you call for both cross-border access for financial services and influence over the common standards governing those markets. What mechanism do you envisage whereby both the UK Government and the FCA have influence over those regulatory standards in a single market post-Brexit?

Andrew Bailey: I will make the obvious point: it is not for the FCA to negotiate the Brexit agreement. This was a matter of sorting out what we think are sensible principles and what lies behind that. You are right to point out that if this is going to be based on what I call a system of equivalence, which you could imagine happening, then the setting of the equivalent standards has to be something that UK regulators can influence. I do not think any of us would feel comfortable if we were just a taker of standards as opposed to being involved in the making of them. That is, in a sense, what lies behind the point about the influence over standards.

My own view, which was embedded in the principles, is that we would be in a better place, frankly, if we had consistent global standards of those principles. If the principles and standards were more global, that would be a lot better, because global free trade in financial services is something that is worth having. If something can come out of this, the nearer we can get to global free trade, the better. What should lie behind that is global standards. Those global standards would need to be set at a higher level. It would not go down to the level of detail that is seen in EU rule-making. You would have a cut-off to say that equivalence did not need to go down to that level and that national authorities can deal with that lower level without jeopardising equivalence.

That would be a sensible place to go to. Let me be clear: I am not a politician, as you know, but as a regulator I would love to get there, but it is very difficult to get there. It is not for a want of trying; this has been tried in the past, outside of Brexit. That would be sensible. That covers a number of the principles: access, global standards, co-operation and



influence. All of those then get bound up into that, if we can have strong global standards that set the terms of equivalence. With equivalence goes access to markets. That is the key point.

- Q37 **Wes Streeting:** I accept what you say: that it is not the job of the FCA to negotiate. The broad three possible options that might emerge post-Brexit—if we were beyond the WTO baseline by the time we leave—are that we would either be members of the European Economic Area, we would have a preferential trade agreement with market access to financial services, or we would have formal equivalence. It sounded to me from your answer that your expectation is we would end up with equivalence rather than the first two. Is that a fair reading of your first answer?

Andrew Bailey: “Market access based on what?” is the question there. That is where equivalence comes back in. These things are not independent. In the single market, clearly you have market access on the basis of EU rules, and that is where the passport comes in because the passport then is effectively an entirely difference mechanism than an equivalent standard because you have a regional free trade agreement effectively, which the WTO allows. It is carved out, you can set your own rules and that governs market access. The passporting follows from that. I do not know which one we are going to end up in but let us assume we are not in that world. An equivalence regime would then be a way of saying that, if we want market access—and, as a believer in free trade, I think we should—then we have to find another way of achieving it.

- Q38 **Wes Streeting:** Sticking with some of the existing models we can look at, Switzerland has restrictive market access and more flexibility to adapt its regime to suit its own needs. Norway, Iceland and Liechtenstein, as EEA countries, have greater market access but have to abide by the rules. Do you have a preference for either of those models?

Andrew Bailey: That is the influence-over-standards point you are rightly pointing to. As you went down the list, the trend there is to become more of a taker of standards, to use my own phrase. That is the influence-over-standards point. The more you become a taker of standards, as follows, the less influence you have over the standards. Honestly, that is a difficult place to be in for a major financial market like the UK.

- Q39 **Wes Streeting:** Before I come on to the next point, I almost let you get away with not answering my question, which is: do you have a preference for either of those models?

Andrew Bailey: I have a preference for a system where the UK—and we as regulators—has more influence over the standards. I am not going to answer your question by saying, “Therefore should we do a Switzerland or should we do a Norway?” That is not the point of the letter that we wrote. The point of the letter is to extract it to a higher



level of principle because it is not for us to judge what is on the table. To reiterate my point, global standards would be better.

- Q40 **Wes Streeting:** I read from your letter—maybe you can point me in a different direction—that you were pointing towards something that was more bespoke to the UK as a model or way of working. The standards or principles that you set out in your letter did not seem to me to conform to any existing model.

Andrew Bailey: That comes back to the point that I made. The UK is a major financial centre. There is a need for a commensurate degree of influence over standards. A world in which we were a taker of standards would be very difficult in that situation.

- Q41 **Wes Streeting:** Do you agree with Sam Woods that “running a leading global financial centre and a massive banking system on a set of rules over which we have no influence is not something that you would easily choose to do”?

Andrew Bailey: I absolutely agree with him on that.

- Q42 **Wes Streeting:** Turning to John Griffith-Jones for a moment, I want to pick up exactly what the FCA’s role will be throughout the negotiation process. The principles that Mr Bailey set out in his letter to us are helpful for guiding Parliament around some of the tensions and issues that Government needs to consider as they embark on the negotiation. Jon Griffith-Jones, following the referendum result, you called for the financial sector to inform the Government where your major opportunities and risks lie, along with other industries, as they form their plans for the negotiation of our exit. What role do you see the FCA playing in identifying those risks and opportunities?

John Griffith-Jones: Our principal role is to provide input to HMT, and the Brexit Department as well, on a technical basis as to how many industries are affected and how much, and whether the lobbying arguments being made are, in our opinion, valid in either direction. That is essentially what we have been doing thus far. There has been a lot of technical input as to how it works in detail, and whether people are as affected as they say they are. So far, that is what we have been asked to do and that would be entirely appropriate. That is not, of course, the end of the story. As the policy comes out, we will move to a next phase, but at the moment it is information-gathering.

- Q43 **Wes Streeting:** What role would you play in the negotiations themselves?

John Griffith-Jones: I do not suppose we would play any role in the actual negotiations but I anticipate that we would be asked our opinion on certain aspects. The things that I care about, from the FCA being an effective regulator are, first, that we fulfil our statutory objectives in the run-up to leaving so that the market works well in the two years; secondly, that we do not have a cliff edge at the two-year point when no



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one knows what they are allowed to do after the day they leave, a point that has been made many times; and thirdly, which is probably not at the top of the list now but will get to the top of the list in maybe another year's time, is what we want to do once we are out. That would crucially depend on the arrangements that Andrew has been referring to.

We have a responsibility to make our market work well. It is important to distinguish between what we would like to do in Europe and what we allow others to do in London. Sorry, I should not say "London"; I should say "the UK". We are in charge of what happens in the UK. We must be able to regulate that to ensure markets work well and protect the consumer.

Q44 Wes Streeting: Just before Mr Bailey comes in, in terms of your priorities or concerns, do you think it is important that we have a transitional period or transitional arrangements when the negotiations expire—

John Griffith-Jones: I do not know exactly. It depends how different what we end up with is from today; that will affect how many "transitional arrangements" you need. The overriding objective we have been set is to ensure that markets work well. Clearly, if you enter into a contract the day before 1 April 2019, you execute it the day after and you are not sure if it is legal or not, that is not a satisfactory state of affairs. That is not a great insight, but we must make sure that the firms understand what the arrangements are. We have just been talking about computers and their complexity. We cannot really tell people what the deal is on 31 March. Computers do not work like that. That probably leads to some sort of transitional provisions. You cannot argue for the transitional provisions until you have the broad structure of the agreement on the table.

Q45 Wes Streeting: Having said that, many of the firms that come within your scope are having to plan now. I understand what you are saying—that you cannot argue for transitional arrangements without knowing what the deal looks like—but many firms are already looking at their contingency plans now in anticipation of and fearing the worst. They do not have the luxury of being in the position where, a year or two down the line, they are then in a position where they have to move staff or offices or economic activity. Surely we need a bit of certainty now about transitional arrangements so that people do not make hasty decisions.

John Griffith-Jones: It is clearly a case of the sooner the better. If I was running one of the firms, in the absence of understanding what would happen I would have a contingency plan. That is precisely what I presume—in fact I know—that they are drawing up. The better or more pressing question is when they activate that plan as opposed to what the plan is.

Andrew Bailey: I want to make two points; one is that point. From our point of view as regulators, they should have contingency plans because



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we ask them to have contingency plans for every other scenario and event that could possibly pose a risk to them. We would be inconsistent if we did not say the same thing here. What is important is that, out of that, we understand where the particular points of tension are. That underlines that there are three parts to this: how you come out, what you do next and how you transition from one to the other. Those three parts are all important.

If you do not mind, there is one other point I wanted to make to your earlier question, in terms of what the FCA is doing. I wanted to make one other point, which I am sure you have thought of as legislators, but it is important. I want to talk about the great repeal Act for a moment. This is very important because, in a sense, it gives us certainty as to what the base of rules is going to be on the day after. There is a lot of work involved in this legislation, from our assessment. Just translating one set of rules from one place to another, we should not think that is a wave of the hand. That is for two reasons: one is that the devil is always in the detail with the stuff; the other reason is that the European approach to regulation goes into a lot more detail than typically the UK Parliament does. That is the boundary between what Parliament does and what we do as regulators. It is set in a different place typically to the way it works in the European Parliament, for instance, where they negotiate at a far lower level of detail. There are some very important questions there as to how this transition is done. I merely log the points that quite a lot of thinking is going to have to be done on how this works. This is not just in financial services; it is a general point.

Q46 Wes Streeting: I understand your point. You might be slightly overstating the importance of the great repeal Act on the basis that what the great repeal Act cannot do, given its timing, is anticipate what the future will look like beyond 31 March 2019. I agree with you about those questions and the challenges facing legislators, but, with respect, you might be putting too much stock in the great repeal Act and the Government certainly are putting too much emphasis on it.

Andrew Bailey: Maybe I have a slightly narrower interest. To be clear, you can understand that our interest is that on the day after Brexit we have a rule book that works. If we do not, we are in a mess. That is my first point. The reason I wanted to put the point on the table is simply to log the point that our estimation would be that getting from here to there is not quite as straightforward as is sometimes presented.

Q47 Chair: Can you just explain what you mean by “not quite as straightforward as is sometimes presented”? Is that one of those typically English phrases?

Andrew Bailey: “Does it mean ‘monumentally difficult’?” is what you are trying to ask.

Chair: I am just looking for whether you are nearer to “monumentally difficult” or nearer to “not quite as straightforward”.



Andrew Bailey: When you look through the body of legislation as it is today, from our perspective, and you say, "What would need to happen to get from here to there?" my conclusion would be that it is quite a bit more. Sometimes you hear references to this piece of legislation as if it would be quite a simple piece of legislation that says, "For this, read that". There is quite a bit more devil in the detail than that, from our estimation.

Q48 **Wes Streeting:** It seems to me from listening to your answers this morning that the FCA has set out for itself a fairly passive role in the process, which is to inform Government, provide guidance and give advice when asked about some of the central trade-offs. Some of your European counterparts seem to be taking a slightly more active approach to their Governments' approaches, both to negotiations and also their countries' national interests in seeking to poach some of the activity that takes place particularly in the City of London but also elsewhere in our financial services to get them into their financial centres.

I was told by one bank that they were approached not just by a Government of a nation state but hand-in-hand with their regulator, offering not just government incentives but regulatory incentives to relocate jobs and financial activity to other countries. Are we therefore at a disadvantage, because we have a passive regulator informing Government and they have an active regulator looking to bolster the national interest?

Andrew Bailey: Can I be a bit blunt at this point? I am sorry to say this.

Wes Streeting: That is alright. I am being slightly provocative so you can be blunt in return.

Andrew Bailey: The disadvantage the UK has is that we cannot tell you what the future is going to be. I am sorry. We may—and we do—take a different view of our role as a regulator possible, but let us heroically put that to one side for a moment. It would be quite a hard pitch anyway, because what is the future? I am afraid that is over to you, if you do not mind me saying so.

Q49 **Wes Streeting:** It is over to the Government because we cannot do anything.

Andrew Bailey: I mean "you" collectively. I am not saying you personally.

Q50 **Wes Streeting:** It is a challenge, though, is it not? We are all operating in the dark at the moment. It seems to me from your letter that I have a clearer sense of what the FCA's principles and objectives are for Brexit than I do our own Government's. That is a problem for everyone, is it not?

Andrew Bailey: I am afraid I cannot answer that question.



Wes Streeting: You almost did with your previous answer.

Andrew Bailey: We set out our own principles. I hope they are helpful. We are not going to enter into the political mechanism because that is not our role. It would be inappropriate for us to do that. I hope we are being helpful. That is as far as we can go, frankly, at the moment, until the lie of the land is clearer.

Q51 **Wes Streeting:** What more certainty do you need, and by when, to do your job effectively as a regulator in terms of planning post-31 March 2019?

Andrew Bailey: It goes back to my point about there being three parts to this: how we exit, what comes thereafter and how we transition from one to the other. We have to have a greater amount of, frankly, understanding all three of them.

Q52 **Wes Streeting:** On a very practical level, there are a number of tasks currently performed by European authorities—the European Securities and Markets Authority and others. Do you have the skills, expertise and experience within the FCA to perform those functions, or is that something we will have to look at in terms of having capacity?

Andrew Bailey: We are heavily involved in ESMA, the European Securities and Markets Authority. I am a member of the Board of Supervisors. I am a member of the governing body of it. We provide secondees to it. We have been very heavily involved in its development of rule-making. That is true of all three of the European supervisory authorities because I was involved in the other two in my previous role. ESMA is a bit different from the other two, because it does carry out one or two functions directly, which the UK would have to replicate in a UK-only regime.

In other respects, we are deeply involved in them and, as I have said before in front of this Committee in my previous role, it has always been our approach, for both regulators, to say, “These organisations are very important. They do things that have a big bearing on us. Therefore, we are going to be heavily involved in them,” and we have been at a technical level. That is the correct approach.

Q53 **Wes Streeting:** Given you have just touched on your role at a European level and the secondees, will it be the case that those secondees remain in post throughout the negotiation process?

Andrew Bailey: Yes. We took the view from day 1 after the referendum that our role is to support the UK in the EU as long as the UK remains a member of the EU. We are doing that. We fully co-operate with these organisations and we are going on providing secondees. If they were to tell us that they did not want them, that would be a different matter but we have not had that said to us.

Q54 **Wes Streeting:** Is UK influence still as it was?



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Andrew Bailey: Where you have to draw the line here is that the ability of any of us operating on a European forum to drive a UK agenda, where that agenda is not aligned with the agenda of other countries, that is affected.

Q55 **Chair:** By which you mean diminished?

Andrew Bailey: Yes.

Chair: I am just trying to translate.

Andrew Bailey: It is too early at the moment. I cannot point to concrete examples at this moment: first, because it is too early, and, secondly, because we do not have a particularly heavy schedule of new European legislation going through. We have gone through the big wave of that.

Q56 **Chair:** You have listed three areas on the issue of how to leave, and you have referred to the greater complexity than some envisage in the Great Reform Act.

Andrew Bailey: The repeal Act, isn't it? That was 1832.

Chair: Sorry, the great repeal Act.

Andrew Bailey: You were there, weren't you?

Chair: Jacob is very hot on repeal.

Andrew Bailey: That is when he had to come out of his rotten borough, or something.

Chair: Are you sure that he has?

Andrew Bailey: No, I would not say that. That is you, not me.

Q57 **Chair:** That's enough stress for poor Jacob for one morning. Where we want to arrive seems to be something that is very important, in terms of what we want to achieve as our arrival point, and then there is the transition issue. Let us just set aside the transition issue for one moment. Do you think that it would help reduce uncertainty and facilitate good quality regulation if, before we set off, before we press Article 50, we have a rough idea of where we want to arrive and what our objectives are in field for which you are responsible?

Andrew Bailey: I suppose in life generally, if you take off in a plane it is quite useful to know where you are going to land, which I think you said.

Chair: Are you agreeing with that view?

Andrew Bailey: It is a useful precedent in life generally. In that sense, yes.

Chair: In any sense. You choose the sense. I am asking an open question.



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Andrew Bailey: It is for the Government and Parliament to decide this and whatever happens will happen. I agree with you as a feature of life that it is better to leave knowing where you are going.

Q58 **Chair:** I think we can divine an answer from that one without too much further interpretation. Can I just say that this is an extremely valuable and interesting document? On behalf of Parliament, I am very grateful for it, and a lot of the industries affected will be grateful for you having produced this. It provides clarity and, in doing so, it will reduce uncertainty. You have called these things principles but they are not really; they are objectives. Clearly you are agreeing with that too, I note.

I wanted to ask one crucial question at least with respect to one of the proposals. You say you would like to support the principle of consistent global standards. In evidence just now you have said that to some degree we may be able to substitute the European arrangements we have with global standards so, in a sense, leapfrog past the European arrangements to something that would in any case in principle be better because it is global. What proportion, by value, of our access to the EU market under passporting could reasonably be protected in that way on a good day?

Andrew Bailey: Do you mean with existing global standards?

Chair: In the event of a successful negotiation at global level, over the timeframe we have been talking about.

Andrew Bailey: Certainly. The most obvious global standard is the Basel standard.

Chair: That was what I was referring to. It is easier on the prudential field than it is in the conduct field.

Andrew Bailey: Absolutely. It is much easier in the prudential field.

Chair: It is the conduct field I am particularly interested.

Andrew Bailey: In the conduct field it is relatively little developed. IOSCO is the global body in our world as the institute of international securities regulators organisation. Relative to Basel, that is underdeveloped. The intermediary case is probably the insurance world where, again, it is relatively underdeveloped but they are trying to do work to move up.

Q59 **Chair:** Have you made any internal estimate, broadly speaking, of what would be lost if we took off without an arrival point of that time or, indeed, any other arrival point?

Andrew Bailey: No.

Q60 **Chair:** Would you be prepared to have a go?



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Andrew Bailey: Would you mind if we go away and think about how we would do that because that is a question that you could write books about, probably.

Chair: We do not need a book. I am sure you could summarise in a document as robust and concise as your letter?

Andrew Bailey: I will think about that one. I will reply.

Chair: I can hear your caution but you do agree that it is an important question.

Andrew Bailey: It is a very important question. I will definitely reply to you. You have my word.

Q61 **Chair:** We talked about three points that you wanted greater clarity on. We did not put it quite like that. One is that we need to sort out how we are going to leave, one is we have to sort out where we want to arrive and, given the helpful guidance that it might be useful to have thought about where we want to arrive before we set off, the third is transition. How much thought have you done on what kind of transitional arrangements might be appropriate and negotiable?

Andrew Bailey: Not a lot but, again, we can do some on that. It is obviously a bit conditional.

Q62 **Chair:** I do not want to overburden the FCA but that too is something that would be very helpful to have a considered reply from you on. In that respect, would a month be long enough?

Andrew Bailey: We will have a go. I have always thought that the answer to the transitional question is somewhat conditional on the answer to the second point, which is where we are landing, to use the analogy.

Q63 **Chair:** It does seem to me that this is the sort of material that the Government should have got deep into a long time ago. I am disappointed that they have not. Indeed, on various pretexts they seem to be getting virtually nowhere at all in this field. I have one more question on your letter. Did you discuss it with Mark Carney before sending?

Andrew Bailey: No.

Q64 **Chair:** Did you have any consultations—you or your staff—with the Treasury?

Andrew Bailey: Not on this letter, no. We worked closely with them and we worked closely with the Bank on the technical issues.

Q65 **Chair:** You have had consultation with Jon Cunliffe and the PRA.

Andrew Bailey: Yes, but let me be clear that this letter is an FCA letter.

Chair: I am not suggesting that it is quietly badged up by others. I am



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trying to establish the extent to which there has been consultation.

Andrew Bailey: No. It is clear this does not have the Bank of England's badge on it. They may or may not agree with it. I do not know. Where we do work closely with the Bank, the Treasury and indeed the Department for Exiting the European Union is the advice we give on legislation that is within our field; MiFID II, for instance, would be a case in point.

Chair: I have prolonged that discussion but I think it is of some public interest—to put it mildly—to the people you regulate.

Q66 **Kit Malthouse:** Can I just draw the Committee's attention to my register of interests entry as an FCA authorised controller of two FCA authorised companies. I want to take you back briefly to Steve Baker's questions about the Tesco issue. In a situation like that, where would the police be?

Andrew Bailey: They would be involved because there is an underlying question there about whether a crime has been committed. It could be one of a number of potential crimes. They would be involved, yes.

Q67 **Kit Malthouse:** When you say "involved"—

Andrew Bailey: Part of the investigation. A better way to put it is carrying out their own investigation but drawing on the work of the technical experts.

Q68 **Kit Malthouse:** This points to the question I have in my mind. All MPs will have incidents now of people who have been defrauded through their bank accounts—effectively had money stolen. As you go through the investigations, it does become clear that the police lack some expertise in this field as well. Is that your perception or is their expertise on a par with yours?

Andrew Bailey: Like us, they would not find it easy to maintain a stock of deep technical expertise in cyber issues. It is better that one place has that individual sector. From involvement over quite a few years in various aspects of this world, on the whole there has been a decline in the number of police forces around the country who have what used to be called fraud squads in old-fashioned language. I think there is some re-evaluation going on, from what I can see.

Q69 **Kit Malthouse:** You are saying two different things there. You see some value in having all the expertise concentrated in one place.

Andrew Bailey: I should be clear. There is a distinction. For the deep technical expertise, it makes sense to have it in one place because you get greater economies of scale.

Kit Malthouse: Some kind of joint investigatory—

Andrew Bailey: To support an investigation would typically be the way you would do it. Sorry, I was not clear. The second point I would



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make—and I think this is one for the Home Secretary of the police—is about the extent to which one views the front-line policing of anti-fraud as being sufficiently resourced. It is not for me to judge that but I would not be the only person to observe, because we have seen the number of police forces over the country that have that capacity has contracted.

Q70 Kit Malthouse: It would presumably be a nightmare from your point of view, given how many tens of thousands of Tesco customers have been defrauded, for each individual force to open an investigation.

Andrew Bailey: You would not want that, no.

Q71 Kit Malthouse: Right. There is some case for some kind of centralised police investigatory ability that might have some expertise that matches yours.

Andrew Bailey: Yes. That sort of thing, from my experience, would typically be handled by the National Crime Agency.

Q72 Kit Malthouse: Would it be the NCA involved in the Tesco case?

Andrew Bailey: It would be natural for them to be involved, at least in the early stages, to be part of working out what is going on.

Q73 Kit Malthouse: Do you know which police force is involved?

Andrew Bailey: I do.

Kit Malthouse: Which one is it?

Andrew Bailey: I believe the NCA is involved.

Q74 Kit Malthouse: It is the NCA who are doing it. Thanks. It strikes me that if you are going to construct defences against this stuff, have the police alongside as you design the system so they get the evidentiary trail they need, and the CPS have it as well. I agree with you: often they are a bit slow off the mark.

Andrew Bailey: To be fair to them, they were not. On Sunday they were actually pretty fast of the mark.

Q75 Kit Malthouse: Okay. Good. Was that with expertise?

Andrew Bailey: With involvement. I cannot comment on the expertise.

Q76 Kit Malthouse: The expertise or otherwise. I want to ask you a bit about retail banking. As you know, the Committee has been looking into retail banking. Last week we had what we could fairly say was a frustrating hearing with the CMA about their conclusions, where they seem to be pinning everything, pretty much, on this silver bullet of open banking designed to create the ability to move much more quickly, which has not been that successful in, for instance, the power market, but nevertheless they seem to be clinging to it. The rest of the recommendations seem to create a fairly light workload for you. Is that your impression?



Andrew Bailey: You probably saw the response that we have put out. That response picks up two points. They are important points and they are somewhat connected. The first point is one we discussed in my last hearing here, which is about taking a broader view of the issues around high-cost credit, including unauthorised overdrafts. We will do that. We said in our response that we intend to do that. That is the right thing for us to do. We are coming up to the point of reviewing the experience with the cap on payday lending. It is absolutely right for us to do that.

I said at the last hearing I had that one thing to note is that we have a broader range of powers and objectives in this respect than the CMA does, so, again, it is sensible that we do that. That will draw on the record with other forms of high-cost credit, it will draw on the experience of the implementation of the payday cap and what we have seen, and it will also be very important to take a view on the likely consequences of whatever actions we propose.

One of the things we have to be conscious of is the waterbed effect, which my team always talk about: if you push down on one part of a waterbed, the water comes up somewhere else. If you push down on a large part of the waterbed, of course we know in this one—I am murdering the analogy—we will not necessarily keep the water all in the same place because there is a world of illegal lending out there. Last week I was in Birmingham and spent time with the national illegal lending team, which was a fascinating session to have. We have to be cognisant that we do not want to create a market where there is a lack of supply of lending and we choke off reasonable supply and therefore encourage illegal lending.

To dwell on this point for a moment, John and I have both put a lot of emphasis on going around the regions. I have done two sessions recently in call centres with Citizens Advice and the National Debtline, which are fascinating to do. When you talk to people who do these call centres, all of whom are incredibly impressive when you listen to what they do, they would observe a number of things that have followed from the payday cap. There is definitely a decline in people citing payday lending as a cause of their debt problems. There is also a reduction in the amount of money that is triggering debt problems. More of the debt is now directly to councils and utility companies, either being refinanced through payday lending or whatever or coming independently out of the financial sector. We need to pull all of that together in the assessment of high-cost credit, which is so important.

Sorry for the length of the answer. The second point is so important because it sometimes gets badged as the free-if-in-credit banking point. Let me give you a snapshot of what I think. We are still thinking through how we should approach this. I have to say this before my inbox fills up: there is no such thing as free-if-in-credit banking. None of us get to have banking for free. The problem is we do not really know what we pay for



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it. That is the problem. It goes beyond that: that it can then have distributional effect we do not understand.

If you look back at history and the last 10 years, I would observe three things—two things and one other possible thing about banking business models that have proved to be unsustainable. Before the crisis it was unsustainable that banks were earning large amounts of money from fixed income trading with low capital. It was unsustainable that they were earning large amounts of money from selling PPI, which had to be reversed at tremendous expense. That has to be done. You would not want that as a business model if you sat down and drew it on a piece of paper.

It may be, going back to what I was just saying, that too much of the return in retail banking is coming from unauthorised overdrafts and the sorts of people who borrow. That is a long way of saying that we have to take a broader view of this and say that clearly banks have to earn a rate of return. They have to earn their cost of capital. We have to have an industry that is sustainable. It requires a closer look across the industry at where the earnings come from, what the effects of regulation are but also what the effects of things like free-if-in-credit are.

We can constantly whack things, but my gut feeling is that we have to come to the point where we stand back from this and ask: how do we get an industry that has sustainable business models, earns a return on capital and there is a view of what is a sensible set of distributional effects in business models?

Kit Malthouse: And has price transparency.

Andrew Bailey: And has price transparency. That is a massive agenda. We have got to tackle this issue because otherwise we are going through a whole series of bad experiences.

Q77 **Kit Malthouse:** It is encouraging to hear because this is what we would like to have heard from the CMA, it is fair to say—to see that broader look. They seem to have a bit of myopia, particularly about the free-if-in-credit model and how that skews the transparency of the market, creating two types of customers, one of whom is trapped and then milked. They also maintained to us, rather to my surprise, that the overdraft customer is probably the most profitable customer and therefore banks should naturally be competing for them. We did not anecdotally see any evidence for that. I do not suppose you have seen that either.

Andrew Bailey: No. They may be profitable for the reason I was saying a few minutes ago. The problem is there are also cross-subsidies within those customers. There is a difficult question—and we addressed it a bit in our mission document—about one of the things you see in high-cost credit. Divide the customers into two groups: one defaults at some point, and they are not profitable, ex post; the other does not default, and they



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are extremely profitable, ex post. Of course, that is somewhat inherent in the model of banking; do not get me wrong. There must be a point at which that cross-subsidy becomes too difficult.

Q78 Kit Malthouse: That makes sense. Before I hand over, I would be interested in your view on this issue: as far as we can see, the absence of price transparency caused by free-if-in-credit means that, even with the best will in the world, open banking is unlikely to work, because you have a group of customers who are indifferent because they are free-if-in-credit and you have a group of customers who feel trapped because there is no competition for overdrafts. The banks do not like overdrafts particularly. While it is profitable the capital requirements are enormous for them. They would much rather do other kinds of lending. Therefore, these people are going to be trapped and exploited. Would that be your take?

Andrew Bailey: I have a lot of sympathy for that point.

Rachel Reeves: It is good to see both of you here today. When you are doing your regional visits, if you ever come to Leeds then StepChange, which does much of the debt advice—

Andrew Bailey: I am happy to do that. I have done Manchester and Birmingham recently so Leeds would be natural.

Rachel Reeves: You would be very welcome and I would be happy to make an introduction if you do not already—

Andrew Bailey: I would love to do that. Let us make that a commitment.

Q79 Rachel Reeves: Excellent. I very much welcome the statement that the FCA put out last week that you are going to be looking at overdrafts in the context of your review on high-cost, short-term credit. Right now I would like to better understand what that means in practice, but I have a few questions, first of all, on the substance of the issue of overdrafts. In its new mission statement, the FCA refers to the needs of vulnerable customers. Although these are early days, would you expect a large proportion of those customers with overdrafts to be vulnerable customers, or is it a much wider group?

Andrew Bailey: It is a wider group but I would expect that a good proportion of those who are using unauthorised overdrafts in one way or another probably fit into that group. The reason it is a larger group is you also have people who are net asset-holders in society. This is particularly the ageing population point; they are also vulnerable in other ways.

Q80 Rachel Reeves: It seemed to me—I would be interested in your views—that the CMA report and the recommendations they made will help those with unauthorised overdrafts who are not financially vulnerable, who have made a mistake about when a direct debit is going to go out, for



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example. They fall into the trap of going into an unauthorised overdraft, even though they could quickly rectify the problem; the alert system and grace period will help those customers.

Andrew Bailey: The accidental person, yes.

- Q81 **Rachel Reeves:** Exactly. It will not help those who I am more concerned about, who are the financially vulnerable. You can give them a grace period of 24 hours and an alert, but if they do not have the money they are going to stay in that overdraft. That will help create the circle of debt. Is that your view of the CMA recommendations?

Andrew Bailey: That is a reasonable point.

- Q82 **Rachel Reeves:** The CMA recommendations help a group but probably not the group who we are most concerned about. Mr Bailey, you have spoken previously at this Committee, back in July, about the wider remit that the Financial Conduct Authority has in looking at overdraft issues. Given the CMA had competition as its focus, do you see unarranged overdraft charges primarily as a competition issue or a consumer protection problem?

Andrew Bailey: More of the latter, frankly. I do not want to diminish the competition issue but it slightly goes back to Mr Malthouse's point about where the competition comes from. You are right: banks are not busting a gut to compete for people who have unauthorised overdrafts in their histories.

- Q83 **Rachel Reeves:** Your worry about overdrafts is about the impact it has on vulnerable customers.

Andrew Bailey: As you have said many times, and we would agree with you, the rates of charging for unauthorised overdrafts bear examination, particularly in juxtaposition with payday. It goes beyond that. You go into other areas of high-cost credit as well, which are not coming out of the banking system, that have to be brought together. Otherwise, you have this waterbed thing that I referred to earlier.

- Q84 **Rachel Reeves:** I am keen to come back to that. On payday lending, which I will come back to in a bit, there is obviously the cap on charges. Which?, when it has given evidence to this Committee, seemed to prefer not to have a distinction between the charges for authorised and unauthorised overdrafts, whereas StepChange is keener to have a cap, like you have with payday lending. In the review—and I know it is early stages—will you look at both of those options to see which works?

Andrew Bailey: Yes. We are going to look broadly. If you go back to the points I made earlier, we are not going to commit at this stage to a broad cap, because the economics of it are quite well known in terms of the microeconomics of it. It is the thing that we could get wrong, which is that we do things for good reasons but the consequence is that we choke off the supply of lending. We then leave the gap with people unable to obtain credit who do not go elsewhere.



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Q85 Rachel Reeves: The CMA, when they gave evidence last week or the week before to the Committee, struggled to put a number on how much it expects overdraft charges to fall as a result of its remedies. Do you have any thoughts on the remedies that it has put in place—which I do welcome although I do not think they go far enough—and how much—

Andrew Bailey: No, we have not formed a view on that either. When we do we will be happy to come out.

Q86 Rachel Reeves: Will you form a view or will you wait to see what happens?

Andrew Bailey: Yes, we will. One of the things we need to do, as you pointed to, is take into account what we think is the effect of the remedies that the CMA have put forward.

Q87 Rachel Reeves: I would welcome that, if you could get back to us on that. On the issue of what you have already done on high-cost, short-term credit, my understanding—perhaps you could put a bit more detail on it—is that payday lending has fallen sharply since the cap. You have already alluded to some worries about the waterbed. Do you think that the problem has shifted elsewhere? If so, where has it shifted to? If people are not getting money through payday loans, are they going without and economising, or are they borrowing elsewhere?

Andrew Bailey: The interesting thing, talking to Citizens Advice, the National Debtline and the Money Advice Trust, is that what their people observe is that people are defaulting on direct exposure. These would be to local councils, utility companies and so on. They always get people to list the debts and do a balance sheet of debts. Their observation is that a much greater proportion is now of that sort and not financial debt—debts to financial lenders. There may be a number of reasons why this is happening, and one of them could well be the loss of availability of payday lending as the means to refinance. If you want to pay council tax, you go to a payday lender to lend you the money to pay the council tax. Now the payday lenders are not there in the way they were before, the default is to the council. That is one theory.

Q88 Rachel Reeves: There are two things there. You think that the cap on payday loans has meant that payday lenders are less willing to lend at the rate of return.

Andrew Bailey: I have one set of numbers I was given by the people who run the National Debtline. They said that in 2013, they had 23,000 calls relating to payday lenders. Last year, 2015, they had 13,000. That is quite a substantial reduction in the light of the cap coming into effect.

Q89 Rachel Reeves: Do you know what the net lending is for payday lenders?

Andrew Bailey: I do not. We can see if we can produce something.

Q90 Rachel Reeves: That would be useful. Presumably one of the things



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that you will be looking at when you are doing this wider review is whether, as I say, people are just not borrowing and so defaulting on other debts rather than my hypothesis of economising, or whether they are borrowing in other ways, which I would then argue that you should, as part of this wider review, crack down on.

Andrew Bailey: I would observe that one of the other things they say is that the fastest people to send bailiffs in this country are not payday lenders but local councils, but I do not want to be too critical. It is an important point.

Q91 **Rachel Reeves:** Yes, which is a challenge, but then other constituents will say, "I pay my council tax and others do not".

Andrew Bailey: Yes, they pay council tax to subsidise other people.

Q92 **Rachel Reeves:** I have one other thing on the payday loans before I move on to asking you about the timetable for your review. On payday loans, it was Parliament that legislated that there should be a cap and then the FCA put a number on it and implemented the cap. With overdrafts and other forms of high-cost, short-term credit, Parliament has not done anything. Does that make it harder for you to act?

Andrew Bailey: I will come back to you on this, if you do not mind, but we have discussed this and our preliminary assessment is that it does make it a bit harder and maybe it could take a bit longer, but it does not make it impossible.

Q93 **Rachel Reeves:** Can you explain why it makes it harder?

Andrew Bailey: The duty was just a very direct power, if you like, so it cut through some of the intermediate steps, as I understand it. I was not involved at the time but, from what my colleagues tell me, that was quite a shortcut.

Q94 **Rachel Reeves:** If Parliament gave you a wider remit, would that make it easier?

Andrew Bailey: I am not sure about a wider remit; it is the creation of this duty. The duty does not widen our perimeter. It makes it easier to get through the process.

Q95 **Rachel Reeves:** If you have a duty to cap high-cost, short-term credit rather than payday loans, would that make it easier?

Andrew Bailey: By analogy, the answer to that is "yes".

Q96 **Rachel Reeves:** Would you be worried about any unintended consequences of such a duty?

Andrew Bailey: We would certainly look carefully at that before we actually gave any view on it, so that is why I am not going to give you a view on whether it is a good thing or not today because we have not done the work yet to identify that.



Q97 **Rachel Reeves:** Just finally, Mr Bailey, on the timetable for this review, you have started a consultation now.

Andrew Bailey: Yes, we were always bound to do the two-year review of the cap, so we have started that, but we are now going to broaden that out. I have not yet got a timetable for how long that work will take but we will get on with that and we have our commitment to that. If you like, I could write to the Committee when we have a timetable to give you an idea of what it will involve and when it will happen. That would be a sensible thing to do.

Rachel Reeves: That would be very helpful indeed. You have started the consultation and you are asking for evidence on that.

Andrew Bailey: Yes.

Rachel Reeves: Is there a deadline for that?

Andrew Bailey: I think it is later this year. Sorry, I will have to get back to you on that.

Rachel Reeves: It would be really good to get that timetable.

Andrew Bailey: We will give you the full timetable, because obviously it is now not the same piece of work as we would have done if we only did the review of the payday cap.

Rachel Reeves: Yes. After the review, if action was to be taken—I suppose we would need the whole timetable.

Andrew Bailey: We would have to frame the solutions, and that is important because, as we were saying earlier, we need to understand the behavioural consequences on both sides, lenders and borrowers, of particular actions. We obviously have a duty to consult and we would want to consult on that at this point because different actions could have very different consequences.

Rachel Reeves: It would be great to have both the timetable and the impact of the CMA recommendations on overdraft charges. Thank you very much.

Andrew Bailey: Yes.

Rachel Reeves: Thank you very much.

Q98 **Chair:** Do you agree that high-quality competition can drive down bad behaviour?

Andrew Bailey: Yes.

Q99 **Chair:** So competition can be a very helpful regulator in that sense.

Andrew Bailey: Yes, and that is why we have divided the mission document into two parts.

Chair: It is a very interesting and helpful document.



Andrew Bailey: I call one of those parts the “why” and the other the “how”. In the “how”, we have broadly put in three sets of tools: the competition tools, the supervision tools and the enforcement tools. One of the key things is that the FCA, interestingly, has probably more tools than any other financial regulator that we know of in the world, and that is largely because of the competition tools that not many others have. The task is that we have to explain how each of these works in their own right as well as how they fit together, because we think it is important that we are transparent about how they fit together and why we choose certain tools over others. One thing that is very apparent to me, coming into the FCA, is that the FCA has to make far more choices about where it goes in its landscape and which tools it uses, and we have to be transparent because some of the problems of the past are down to us not explaining ourselves as much as we need to do in how we go about these things.

Chair: It sounds as if you think that you can make effective use of your competition tools, and it is worth bearing in mind that you have them because this Committee was impressing that you should be given that power; the FCA and the Treasury were both opposed and it was hard work persuading them. Now, this Committee wants you to start using the power, and you have agreed helpfully today to trigger activity in the free-if-in-credit banking space as well as the overdraft charging space, and we are very grateful to you. There is this idea that this will create competition between the regulators, or maybe a bit of creative tension between regulators, which can occasionally—the United States is a bad augury—yield some benefit.

I just want to read to you a short email—and I very rarely do this—that I received from the Chief Executive of a small trust bank. He says, “Sadly, like a great many others, I remain firmly of the view that the CMA has utterly failed to put forward any meaningful solutions that address the root causes of the lack of broad-scale competition in UK banking. Professor Smith’s assertion that current account switching will double to 6% per annum in three years’ time is dangerously naive and serves to highlight the drawbacks of the CMA using non-practitioners on its panels. The fact is that, even if switching did double, it would simply see a merry-go-round amongst the dominant incumbents, which would spin a bit faster.” It goes on in the same vein. That is why we have been raising these questions with you today. If the CMA is not going to do the job, thankfully you have the statutory power to substitute for them and we would like you to get on with it.

Andrew Bailey: Yes, and, as you know, the powers are concurrent so we can do that.

Q100 **Kit Malthouse:** I wanted to move on and just ask about the senior managers regime and how things are going. Our spies tell us you wrote in the *Guardian* that you felt that culture was an intangible and subjective thing that was quite hard to get a grip on, and that the senior managers regime had had its issues. It has been in for six months now. How do



we think things are going?

Andrew Bailey: The reason I said that culture is intangible is that there is sometimes a bit of a debate in our world about whether you can supervise culture as a thing or whether it is a consequence of a lot of things. I am in the second camp: culture is the consequence of a lot of things that go on in firms such as governance, risk management and remuneration, which is very important because it sets incentives. A lot of things contribute to culture but I am in the camp that you cannot go into a firm and say, "Show us your culture" because it is not a thing in that sense; it is a consequence of a whole load of other things. However, it is very important.

To be frank, it is still of course early days. It came in in March, so we are still very much in the early days. However, I do hold the view that it is a very big change, and—obviously Parliament deserves all the credit for this—putting responsibility, and therefore credibility, at the heart of it was absolutely the right thing to do. That was a flaw in the previous system. Appropriately concentrating that responsibility in the senior managers' bit of the regime is the right thing to do.

Kit Malthouse: We understand the reasoning behind this.

Andrew Bailey: I was going to come on to one point that I can point to. As we went through implementing it, in its first seven or eight months of its life, the view from the outset was, frankly, mixed to sceptical. What has been encouraging is that we have seen more evidence of institutions coming to us and saying, "I have to say, honestly, when we got around to implementing it, it was quite helpful because it actually allowed us as a board to be more systematic and more thorough in going about understanding who was responsible for what, which improves governance." The evidence, such as it is, probably is more limited to that because we have not yet had to deal with cases under the senior managers regime but I do regard that as encouraging.

Q101 **Kit Malthouse:** You said in your article that there have been cases of overlapping in the allocation of responsibilities, and responsibilities being allocated to more junior staff who, presumably, were designed to be disposable and take the fall if anything went wrong. You said there had been all sorts of different issues. Do you think they are broadly ironed out now?

Andrew Bailey: We are on the case. Let me give you a bit of context for that. Broadly, we deal with two sorts of firms in this world, one of which is purely governed in this country and the other is obviously operating under various forms of subsidiary governance. We always knew, because this goes back to a lot of work that we have done since the crisis, that, in the second group, you have got complex matrix management structures of governance, because they are not UK firms but they have very big operations; we had a more complex but nonetheless important job to get the senior managers regime embedded



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in those firms. You often then have people operating in London in those firms who are heads of global business and heads of UK business. One of the things we did have in mind—there is a horrible tendency to turn every word into a verb—is “juniorisation”. It is easier to do that in a straightforward structure where everything is under our view with a chief executive downwards.

I am not saying that there was a vast amount of deliberate doing of this but we always knew that we had to pick through that pretty carefully to get to the right outcomes.

Q102 **Kit Malthouse:** As you have said, there have been no investigations yet under the regime.

Andrew Bailey: It is too early for that. Sadly, all of the things we are doing at the moment are under the old regime because there is obviously a lag in the system.

Q103 **Kit Malthouse:** When would there be?

Andrew Bailey: It is hard to tell. It could happen next year. We do not know.

Q104 **Kit Malthouse:** Are you saying that there have not been any investigations so far because it is too early?

Andrew Bailey: We cannot apply the senior managers regime retrospectively—obviously that is not allowed—so any misconduct that has taken place before March of this year is under the old regime.

Q105 **Kit Malthouse:** I understand that. You are not saying that “between March and now, misconduct...”; you are saying, “You have not had a chance to get to grips with the system.”

Andrew Bailey: We are saying that there is inevitably a lag.

Kit Malthouse: Right, okay. So stuff might start to feed through this year.

Andrew Bailey: Yes, at some point it will.

Q106 **Kit Malthouse:** On that basis, there is one issue that I wanted particularly to ask about, which is the position of the Regulatory Decisions Committee. Obviously the integrity of the system is key, but you seem to be resisting the RDC becoming an autonomous organisation—that supervision and enforcement should be separated. I happen to notice that, on your website, you went through a rather tortuous definition of where the RDC sits in your organisation. For the Committee’s benefit: “The RDC is an FCA board committee that is operationally separate from the rest of the FCA. The FCA board appoints the RDC chair and members, who are drawn from across a spectrum of business, consumer and industry backgrounds. The RDC has a team of support staff and its own legal advisers, which ensures separation from those recommending the action. This helps to ensure that decisions to issue statutory notices



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are made fairly.” However, you then caveat all of that by saying, “The RDC process is administrative, not judicial. It is not an appeal body; it is the final stage of decision-making for the FCA.”

You seem to be trying to ride two horses there by saying, “This is part of our decision-making and we appoint all these people; they are on the team but actually they are separate and we have nothing to do with them.”

Andrew Bailey: If you do not mind, John will answer that.

John Griffith-Jones: I will give you a little bit of background on this. I would start by saying that there is more than one way of organising all of this. My experience is since 2012, rather than much earlier, but what we essentially have is a three-stage process, one of which is that you settle with the enforcers because you plead guilty and you agree it, you can challenge the enforcers and go to the RDC where you get precisely what that document says; so it is quasi-judicial as opposed to a fully separate body and it has the advantages of relative speed, secrecy and informality.

Q107 **Kit Malthouse:** So it is an appeal body.

John Griffith-Jones: Yes. If you do not agree with the enforcement people, you go to the RDC. If you do not agree with what you get from the RDC, you then go back into the full legal process.

Kit Malthouse: You say on your website that it is not an appeal body.

John Griffith-Jones: Sorry. Absolutely, if you disagree with the enforcement guys, you go to the RDC.

Kit Malthouse: So it is an appeal body.

Andrew Bailey: You can settle a case but, if you do not want to settle, you go to the RDC.

John Griffith-Jones: Whether that is an appeal or not—

Q108 **Kit Malthouse:** So the RDC is arbitrating between its own organisation, the FCA, and the accused?

John Griffith-Jones: Yes. In contrast to some of your views, if you look at who has used the RDC and you ask them, “How was it?” actually the smaller firms do use it and the larger firms tend not to. That is a mathematical observation rather than a comment on whether that is how it should be.

Q109 **Kit Malthouse:** Is that because the larger firms are more likely to settle?

John Griffith-Jones: There are two possible explanations. One is exactly what you said: that they do not want to fight the regulator. That is not very healthy, but I cannot stop that other than to say, “I have set out a process and it is genuinely there; do not tell me it does not work if



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you never use it", which is the challenge, or "Go to the Upper Tribunal if you really want to challenge it".

Q110 Kit Malthouse: You point to an interesting conflict there because, if you are saying that the larger firms do not go to the RDC because they do not want to challenge the regulator, there is always a slight suspicion, "If we take this to the RDC, next time the FCA are just going to make our lives hell because, actually, they do not want things going to the RDC and they want us to settle." The fact that you are the same body, sitting in the same office with the same culture, under the same chairman, makes that conflict more apparent, does it not?

John Griffith-Jones: There are just one or two things to say there. I cannot avoid the suggestion that people say they do not want to fight the regulator if people say that; I have heard it said, so I am not denying it. However, I think it is unhealthy and I have made great efforts to make sure that the RDC is separate; I have to say thus far that we have not had a major firm come through the RDC. I have had some pretty crisp conversations with people who have objected very strongly to the settlement terms that the enforcers have proposed, and I said, "Why don't you go to the RDC?" To be honest, I think they should if they disagree and then they should go to the Upper Tribunal.

I have no control over the RDC. You had Tim Parkes, the chairman of the RDC, in front of you on appointment. He is a very senior guy. My board, my executive and I have absolutely no control over his decisions.

Kit Malthouse: You appointed him however.

John Griffith-Jones: We appointed him but, once appointed, he is there.

Chair: The RDC is a subcommittee of the board.

John Griffith-Jones: It has to be something.

Q111 Chair: We put it forward four years ago and you said, "No thanks" and you rejected it out of hand, and we have been at this discussion ever since—to make it statutorily independent.

John Griffith-Jones: We have put it in a box where it cannot be touched by the board. It has to be somewhere and I have to have some control, only in the sense that, if they did nothing, someone has to supervise the efficient running of the RDC; however, that is it. Actually, whether you called it a separate independent body or a committee of the board probably does not make that much difference, in truth. It is an independent body of people and they have their own culture. There is no way that the people who are appointed—I am sure you have looked at the list; they are a variety of practitioners—work for the FCA.

Andrew Bailey: John is right. When you are in the FCA, as I am now, the RDC feels very independent, but they recognise that, in the legislation, they are constituted as a committee of the board. As a



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consequence of the Treasury's review of this, we have a commitment to introduce a process by which people can choose to bypass the RDC and go to the Upper Tribunal should they wish to do so. That is on the record as something to be introduced. The question is whether that is sufficient or are you aiming, as the Chairman said, to address the question of the constitution of the RDC as opposed to its operation, which is the subsidiary point.

The final important point I would make is that sometimes it gets described as us wanting to separate enforcement from the FCA. We are talking about something much narrower here, which is that the right question is the governance and constitution of the RDC, not the process of enforcement. We set it out in the mission document, and very deliberately so, because we are very conscious that there is a saying out there that somebody is "in enforcement"; enforcement is a process of investigation. That is naturally done by us because that is done as to whether one of our rules has been broken or not. We are talking about what happens thereafter.

Q112 Kit Malthouse: Perhaps, looking at it from the other end of the telescope, then, what advantages does the RDC have by being part of the FCA?

John Griffith-Jones: I can only answer based on what people tell me. The advantage is that it is not a full-blown legal process. The danger of separating this is that small businessmen who are at the wrong end of regulation would have to employ barristers and QCs at considerable expense to come and argue their case. The RDC provides a more informal—but not wholly informal—and slicker process to hear their case; and many of them appear to be satisfied, as it were, to have had their day in court. If you look at the track record of what the RDC decides, on occasion and periodically they do disagree with the enforcement and they reduce the penalties charged.

You have to weigh up the balance of whether the value, especially to the smaller firms, justifies its being structured the way it is. My argument is not a passionate one; it is just that I observe that it appears to be so.

Andrew Bailey: My impression on this, which I have to confess is anecdotal, is that the RDC is used more by individuals, and, of course, that might grow in relation to your earlier question about the senior managers regime.

Q113 Kit Malthouse: Yes, particularly as you extend in 2018. I guess you could always go on to a tribunal. If you were subject to an increasing number of judicial reviews because of the seeming conflict, you might have to review your position. Do you accept that optically, at the very least, there is a conflict in having this organisation embedded as part of the—



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Andrew Bailey: John is right about the reality of how the governance feels once you are inside the place, but the optics of the governance is such that you cannot get around the fact that, in legislation, it is a subcommittee of the board of the FCA. John is right that he and his predecessor have done everything to create a separation.

John Griffith-Jones: It is a long way from where it was.

Andrew Bailey: It does not feel, in any sense, part of the everyday working of the organisation, but you cannot get around, as you say, the optics of it because it is in legislation.

Q114 **Kit Malthouse:** The final question from me was just about the change in strategy from large corporate fines to smaller individual fines. The numbers they have given me here state that last year you levied £905 million in fines and this year so far you have only levied £22 million, because enforcement actions are rising against individuals but falling against firms. Is that a declared strategy?

Andrew Bailey: There are two things going on here. Let us take the corporates for a minute. Let's fervently hope that we do not have Libor and FX happening every year; that was what was driving the big numbers in the past. I bridle when I see articles written, saying, "They're going soft because the level of corporate fines has gone down". Let's hope it does because, otherwise, something is really wrong.

Secondly, you are right that the senior managers regime ought to lead to a shift towards individuals. How much that will be, I do not know—that has to be seen—but it must be in the nature of it and the frustrations that have caused it to happen; individual responsibility must carry through into that regime. The second leg of the answer is, "Yes, that is a broadly sensible thing". However, as I say, more than one thing is going on here in those numbers.

Q115 **Kit Malthouse:** You could see it both ways. I agree with you that you do not want there to be things on the scale of Libor or whatever it might be, but, at the same time, it does give very large firms the option to devolve responsibility as low as they can get it and then have deniability, knowing that they will get a fairly paltry fine if something systematic comes through.

Andrew Bailey: I hope the senior managers regime does not do that, because it is designed to leave responsibility at the top of the firm, where of course it was not in the old regime during the crisis. That, in a way, would be a defeat if that was the outcome.

Q116 **Chair:** We will have to leave for another day the issue of the extent to which certification, rather than the senior managers regime, should be taking the strain for what are, after all, conduct failures that in the main have not been the direct result of the board but are the result of people much lower down. However, let us not get into that now. Perhaps you can drop us a note about progress in developing the certification regime.



Andrew Bailey: That would be fine.

Q117 **Chair:** I just want to press this RDC point a little bit further. As you said, Mr Griffith-Jones, you have made considerable efforts to make sure that it no longer internally feels like something that is part of the direct accountability of the FCA structure. You will understand, I am sure, that that is not how it feels to many firms. It is true that many of them are using it but it is also true that many of them are quite fearful of it for the very reason that we have just been discussing: that the perception of it as an organisation is that it is not independent. You have said that, if we were to give it statutory autonomy, this might lead to everything being lawyered up on both sides. Why is that the case? It can just carry on functioning in exactly the same way as it does now but with the perception of dependence and the perception of a reasonably close relationship to the board removed.

John Griffith-Jones: It could, but once it becomes independent, it will set its own rules, and once it sets its own rules, if it is independent, there is nothing I can—

Chair: Short of that, give it statutory autonomy within a framework that is agreed in law. That is what we have at the Bank of England and it works perfectly well. It is called the Monetary Policy Committee.

John Griffith-Jones: I defer to other experts on the words said but, if statute fixes its autonomy, that would be fine as far as I am concerned.

Chair: I think we are on the same page, so why don't you write us a proposal for giving the RDC statutory autonomy, and we will take a look at it and then see if, between us, we can get it on the statute books.

John Griffith-Jones: Maybe we can set out the arguments.

Chair: We have had the arguments and now we have come to a view about what to do about it.

John Griffith-Jones: We will write to you.

Chair: I do not know at this point what this letter is going to contain. If it does not contain the argument that I have had over the past four years since this became a recommendation of the banking commission, we are not going to make much progress.

John Griffith-Jones: We will make progress. I do not have my lawyers behind me to tell me what the implications of the word "statutory" are, if adverse.

Chair: We have to address the perception.

John Griffith-Jones: We are in rather vigorous agreement about the perception point.

Q118 **Mr Rees-Mogg:** I will begin by making reference to my declaration of members' interests: I am regulated by the FCA and I am chairman of



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Somerset Capital Management, which is an investment management company. As I am going to ask about MiFID II, the area of questions that I am going into is one that we have considered from the point of view of my company.

I will start on the independent report that is suggesting that the cost of implementing MiFID II will be £2.1 billion in 2017. Has the FCA made any analysis of the cost, and is that the sort of figure that it thinks is realistic?

Andrew Bailey: As we go through the consultation process, we will do. I should say that you may be aware that there was a figure that the European Commission came up with in the early stages of the MiFID II process which was considerably lower than that. Generally, we think that number is on the low side. We have not got a view on the number that has been put forward in the independent report.

Q119 **Mr Rees-Mogg:** So you think it is above the EU number but possibly below the independent number.

Andrew Bailey: I do not have a view particularly on that.

Q120 **Mr Rees-Mogg:** This is obviously, even if it is vaguely right, a huge amount of money. Do you think the benefits that are coming from MiFID II are heading in that direction in terms of the benefits they will give to the financial services sector in the United Kingdom?

Andrew Bailey: MiFID II is like a lot of European legislation. There is a very solid amount of beneficial content to it, and a lot of that had its origin in the UK Government and the UK regulator. There are a few elements of it where, frankly, if we had our way, we would not do it as it is done there.

Q121 **Mr Rees-Mogg:** There are two things that follow from that. One is that MiFID II is going to come in shortly before we leave the European Union and there is a question of what regulations the FCA would not have in the event that we had already left. The second is that, if the FCA were going to repeal a lot of these regulations as an independent regulator, is that not then unfair on the current incumbents who have to spend a lot of money implementing them? What guidance can you give, perhaps, for a minimal implementation or a suggestion that you do not look to repeal any of the regulation?

Andrew Bailey: I have to say to you I am very nervous, as a general matter, given the negotiation that has got to happen across the board, about the UK coming out and saying, "We are going to get rid of the list here". You are right that, in the best of all worlds, we would take a very rational stance at this point and come out with our own view of what parts of it need to be approved or simplified. However, you have to be very careful here, and I think you have said much the same yourself in commentary. We have to be careful about the negotiation in that, if we get out there as being, "We know what this is all about really; they are just hiding their intentions," that could be quite damaging. A substantial



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point, and not a pure point of presentation, is that much of MiFID II is actually sensible.

Q122 **Mr Rees-Mogg:** I absolutely accept your point that, as long as we are a member of the European Union, not only are we legally obliged to implement EU legislation but we are morally obliged to do so as well, and it would undermine—

Andrew Bailey: Yes. I will give you two examples of where it does bear looking at, and these are not novel. The rules on research are difficult and, frankly, at odds with the US rules. Coming back to the point I made earlier about global standards, that is a case of, “Just sort it out please”. We have had long debates about the rules on taping, which John and I have been heavily involved in—this is the taping where MiFID II says you have to do something analogous—and, again, there has been an interesting discussion as to whether taping is reasonably cheap these days or whether it is not cheap. For small firms, again, we have set out in the consultation document that, if they have a better idea, “Please tell us what it is”. We are open-minded on those points. MiFID II is actually rather ambiguous on that point, which is a problem.

Q123 **Mr Rees-Mogg:** I was going to go on to ask you about research but, before I do, I note on taping that, at the size that my firm is now, those sorts of costs are very easy to absorb. When I set up the business in 2007, it would have been very difficult. I hope you will consider the competition aspect. As an incumbent, I am quite in favour of you putting up obstacles but it was not that long ago that I was in the opposite position, and I hope you will think about new entrants.

Andrew Bailey: Absolutely. If you raise that to the level of the principle, of course we believe in proportionality. Now, it does not always, as we know from previous decisions I had in my former role, sit well with the nature of European regulation, which tends to be less observant of that principle.

Q124 **Mr Rees-Mogg:** With regard to unbundling and research, you have mentioned globalisation. It seems extremely difficult if they are unbundled in the UK but, if you place an order in the US, the US broker will still be entitled to send you the “free research”. How would you regulate to stop that happening, which would be very cumbersome? Would you not create an enormous disadvantage to doing business with brokers based in the UK?

Andrew Bailey: I agree with you. I have had discussions with firms on this, and there is a danger of direct contradiction between the SEC rules and the MiFID II rules. The logical outcome of this is that there is an understanding between the EU and the US that solves this problem. This is nothing to do with Brexit, frankly, whether we were to leave or not leave. Just leaving that contradiction out there is not at all helpful. It has to be solved.

Q125 **Mr Rees-Mogg:** The difficulty with unbundling in principle is that, once



the volume of your transactions goes above a certain relatively limited level, the profitability of a trade is so great that it is very hard to take out what is being paid for research and what is actually the profit of doing a multi-million or multi-billion dollar trade in some circumstances.

Andrew Bailey: I agree with you. If we get back to the original question you asked, if you put this in the spirit that I think we both mean, this is not about deregulation in the sense of creating more risk. It is about having sensible outcomes. I fear that this is an example of where we are heading towards something that does not actually look particularly sensible. It may be well-intentioned, but it is not necessarily sensible.

Q126 **Mr Rees-Mogg:** The intention is absolutely admirable. Moving away from the hidden soft commission model is a good thing; clients were paying for things by back-door methods. I am entirely in favour of that; it is just about making the structures work. From what you are saying, there is no intention of the UK gold-plating any of the rules.

Andrew Bailey: No. I will tell you why I slightly worry. It goes back to a point I made earlier. This may be an example where, in the old days, we could go to ESMA and say, "Come on, this doesn't make sense; we've got to sort this out," always recognising that the UK has a greater interest in this issue than other members because of the nature of financial activity in the UK. It may be an example—and I hope it is not—of where that becomes more difficult to pursue in the next two years because it is regarded as a UK agenda.

Q127 **Mr Rees-Mogg:** You have taken the next question pretty much out of my mouth, which was to ask whether the discussion on MiFID II in the 15 months before it is implemented are still strongly influenced by the UK or whether we are gradually side-lined.

Andrew Bailey: So far I would say that the discussions in ESMA are going on much as they have gone on. However, I was a bit disappointed to see one of the other members of the ESMA board of supervisors last week saying that I have some sort of hidden objective that must be smoked out in public. If you go back to this point that we are discussing, this falls into the category of broadly technical points that should be sorted out in a sensible fashion.

Mr Rees-Mogg: As functions of global regulation rather than specific European ones.

Andrew Bailey: Yes, exactly.

Q128 **Mr Rees-Mogg:** I think MiFID is about a thousand pages of technical regulations.

Andrew Bailey: I fear it probably is, yes.

Mr Rees-Mogg: Do you think the current deadline for implementation is realistic?



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Andrew Bailey: You have to strip it down to how much of it is really new. Less of it is probably new. As things stand at the moment, we are reasonably optimistic that it is doable, but I am always conscious with European legislation. One of the problems that we have had with the EU is that there is a great emphasis on the negotiation process and then an assumption that implementation follows as night follows day.

Mr Rees-Mogg: The AIFMD implementation process was problematic.

Andrew Bailey: Yes, and you have probably seen the issues around PRIIPs, which is the other one that is controversial and which looks like it will be paused.

Mr Rees-Mogg: You have done a very long session, so thank you very much.

Chair: We are not done yet.

Mr Rees-Mogg: I know we are not, but we have been going for over a couple of hours.

Q129 **Chair:** George has been very patient. Even before I let George in, I just want to clarify a few things. You have sent me a letter, which we have not yet raised, which I only saw last night, on your budget and your costs. I have not had a chance, partly because of GRG, to absorb it but, in a nutshell, this Committee remains very concerned about the costs of the FCA and the importance of obtaining value for money, and I will be writing to you. This is, after all, industry costs that are then passed on to the consumer. You need the resources to do your job but not a penny more and we need to have control over it, so we will be writing to you again and I expect that we will want some more information before what your letter alludes to, which I have just read again this morning, before next April on where you are taking this.

Andrew Bailey: Yes.

Q130 **Chair:** On another issue completely, we have been concerned for some time that minutes of board meetings do not record a challenge put forward by non-executives to decisions taken. It seems to us that the recording of those challenges can be of considerable use to regulators. One of the findings of the banking commission was that very little was written down, even when it later turned out that people alleged that they had made, vociferously, powerful points that might have been ignored. The regulators had no way of knowing that. Unfortunately, the body of company secretaries with whom we have been in correspondence have pushed back to the point that it is saying there will be no change in its current practice. We think that that is unacceptable and we would like you to take a look at it.

Andrew Bailey: We will. John and I have both seen the correspondence.

Q131 **Chair:** Could you give me an idea of how you will?



Andrew Bailey: I have to say that I was slightly concerned that they were answering a different question to the one you posed—correct me if I am wrong in this interpretation. Your concern is that the vast majority of these decisions are consensual in their outcomes and that it is important to give greater transparency on how the consensus is arrived at. If there are challenges, what challenges are put down during the process of reaching consensus even though, at the end of the day, everybody ends up on the same side? The response you got was to assume you were actually asking a question about dissents in boards and how they were recorded, which is actually uncommon, as ICSA pointed out, and not the issue. I was slightly concerned that there was a “ships in the night” process going on here.

The answer to that is that we do have a common interest with you, going back to the consensual point. All the work we do on governance is to understand how boards reach their decisions and so I think it is quite sensible that we do this with the PRA, because they have the same interests, in a sense, as we have in this governance process in terms of looking at this governance question and seeing what we can do.

Q132 **Chair:** You have the powers, so we would like you to use them. Clearly, ICSA are not going to give the guidance that is needed, so we need you to get on with it. I would like you to feel that that is the clear message from Parliament; when there is challenge—strong challenge becomes dissent; we can use different words—that strong challenge needs to be recorded so that you have it available. It is very different from publications, which is another “ships in the night” point. That is completely irrelevant: this Committee is not calling for board minutes of private institutions to be published each month.

Andrew Bailey: I take your point.

Q133 **Chair:** I have a third point that I just need to clarify. I do apologise, George, but these are important issues for the Committee. In 2012, the Treasury legislated to provide itself with a power to stop a regulator handing to an independent person a problem that it had encountered for review. This struck us at the time as an extraordinary and unreasonable power, and it has not looked any more attractive with the passage of time. I cannot think of a good reason—and I would be interested to hear if you can—for why the Treasury might want this beyond protecting politicians or the Treasury itself from the conclusions that that review might reach. It seems to me that, as drafted, it is going to lead to pre-vetting of any external review that you do anyway. The last thing you want to do is say, “We would like to do an external review”, and then have the Treasury say “no”. They are now getting a high degree of control on reviews as they take place. Do you agree with me that this is not a happy state of affairs for an independent regulator?

Andrew Bailey: My understanding of this is that there is a commitment to make a ministerial statement to Parliament that would say that, if they



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used that power, they would always explain to Parliament why they were using that power.

Chair: On a quiet Thursday afternoon.

Andrew Bailey: You know how Parliament works. Frankly, from my point of view, you could control it that way or you could flip it round and say that the presumption is that there is no power and, if the Treasury or the Government had some particular reason, they would have to exercise a power to block rather than have an automatic power to block.

Q134 **Chair:** Which of those two do you think is more sensible?

Andrew Bailey: On the whole, if I were starting again, I would probably go for the second.

Chair: We can start again. Parliament legislates from time to time.

Andrew Bailey: It is for Parliament to do that and not for us to put this in legislation. It is quite hard to conceive of circumstances in which this would be done.

Chair: We can have a security override.

Andrew Bailey: You can have a national security override. That would be one thing. One would hope that that would be pretty unusual. Some of the commentary around the commitments that the ministerial statement talked about was that the Treasury could take a view on whether the costs of the thing outweighed the benefits. That is quite judgmental.

Q135 **Chair:** That is a matter for you. If you have decided you need an external review of something, you can come to us and explain why you want it.

Andrew Bailey: If I was starting again and had a legislative hand, I would go for the second.

Chair: We will set about working on how to make sure that you have the independence to examine yourself in a way that you think appropriate. After all, independent reviews were also a recommendation that Parliament made, which to some degree has been thwarted by this proposal.

Q136 **George Kerevan:** I would like to look at some redress issues. First of all, very briefly on the alleged leak that we were talking about at the beginning, the FCA statement that was for publication at 7.00am, was that issued before and to the press under embargo?

Andrew Bailey: No, it was not.

George Kerevan: It is just that my copy says 11.00pm on the night before.



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Andrew Bailey: That was when it was finalised. By the way, I was just thinking about this question while we have been in the hearing. One of the things that I would say is a piece of evidence on this is that a classic leak goes to one journalist. What we have had today is actually pretty much the spread having the story. I was thinking about this while we were having the other conversations. It does not really look like a classic leak in that sense.

Q137 **George Kerevan:** Understood. I was just going to make a point, as a former journalist, that embargos never work, so there is no point trying to issue anything ahead of time. If it is a good story, it will get used.

On the GRG report, you have said that there will be a redress scheme with RBS, and that Judge Blackburne will be adjudicating. Now, does that mean that he will make the final adjudication in this?

Andrew Bailey: He will do three things. He will be involved at the outset in determining that the process is set up robustly. That is important because that has not happened in the past. He will be involved in determining a piece that has happened in the past, which is that RBS do what they say they are going to do. He will also be the point of appeal.

Q138 **George Kerevan:** The complainant and bank will agree. If they do not agree—

Andrew Bailey: There is a redress.

George Kerevan: He adjudicates.

Andrew Bailey: He will set up a process for adjudication, yes.

Q139 **George Kerevan:** Is he the adjudicator?

Andrew Bailey: This is why we have concluded that we will need to see further detail about how the scheme will be operated.

Q140 **George Kerevan:** In past ad hoc redress schemes, the crucial weakness has been the availability of information from the bank.

Andrew Bailey: Yes.

Q141 **George Kerevan:** I would underline that in this case because, reading through your brief precis, you say that there was widespread failure by RBS with regard to its small business customers in the GRG scheme, and one major point of failure was the failure to ensure that appropriate and robust valuations were made by staff in carrying out internal valuations based upon insufficient or inadequate work, especially where significant decisions were based on such valuations. The valuations will be at the heart of it, and that means the information has to be better. Will you take steps to ensure, in approving the scheme, that the bank is made to provide the information?

Andrew Bailey: It is obviously inappropriate for me to put words into Judge Blackburne's mouth. I have not met Judge Blackburne yet.



However, you have put your finger on a very important issue here. It is important that this process is set up transparently, because one of the criticisms that you must have heard from people about IRHP—and I get many letters from people who complain about IRHP—is that people feel that it was not a sufficiently transparent process. You are right: this needs to be done in a sufficiently transparent way that people can understand it. One of the advantages of the Promontory report—and this is why we have put our summary in it—is that you can point to the things that happened, which will be the focus of this process. Transparency is very important.

Q142 **George Kerevan:** Will you publish the Promontory report?

Andrew Bailey: You will see that we have put some language in at the end that we will publish a full account of our findings when it is practical and once the work is concluded. We face two issues with the Promontory report, and this is why we wanted to give this account today as early as possible. First of all, it is a section 166 report. We do not publish section 166 reports—it is not a thing we do—and I have to be concerned at the effect that publishing one would have on the process of others. I do not want firms saying, “I am not going to co-operate with you because I know you are going to publish this at the end of the day”. We have to be wary. The other thing is that we have been to counsel. I hate to say this in this room but counsel have said that it will need to be Maxwellised were it to be published by us.

Q143 **George Kerevan:** Given that, some years ago, staff of RBS—former staff now—came to this Committee and made erroneous statements regarding GRG, to the effect that GRG was not a profit centre when quite clearly it was, and which we have said again today here in this report, would you, therefore, in those specific circumstances, be prepared to let the Chairman of the Committee read the full unredacted report in private?

Andrew Bailey: We will consider all options, so I will not rule anything out. You obviously need to reach beyond your position as well. I do not rule anything out. We will be looking at that carefully. Obviously, as to the point about what some individuals said to this Committee, there has been some subsequent correspondence about that in terms of what they meant to say. Let’s be clear, because we have said it again in the last section on next steps: we are looking at what further work we need to do given what is in the report.

Q144 **George Kerevan:** Do you draw any general conclusions about these ad hoc redress schemes and how we can move forward on that?

Andrew Bailey: I do. The problem goes back to what I said right at the beginning, which is that, when it is outside the regulatory perimeter, these are schemes that are created by the firm. We, as I said earlier, have levers that we can use on them, and we do. However, what I have learnt from my IRHP involvement, coming late into it, is that people feel



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that they have not had their day in court. Now, they do not want to have a literal day in court because that is obviously very expensive. However, what I conclude from this is that it is not satisfactory from the point of view of the FCA, because the FCA has been involved in creating a lot of bespoke processes. We discussed this on the board a number of times. Were there to be a mechanism that could substitute for these—let us loosely call it a tribunal, for the sake of argument—rather like the ombudsman but for more complex cases, because corporate cases often are more complex, this would be a big step forward. From the point of view of the things that come out, we are creating a lot of work for ourselves. However, I am very sympathetic to the people involved, so we have to do it. However, if there were to be a process that could substitute for this and to which people could go and know that they could go, I think this would be a big step forward.

Q145 George Kerevan: I am going through your brief statement because this is the first chance that we have had to see your response to the events of GRG on paper. You have made it clear that the Promontory report did not find a widespread practice of identifying customers for transfer to GRG for inappropriate reasons. Does that mean that there were instances or there were no instances?

Andrew Bailey: No, they do not find that. Let us be clear. What that means is that they do come to different conclusions from the Tomlinson report in this respect. I think I am right in saying that the sample of cases used by Tomlinson was much smaller than the Promontory sample, at about 10% of the Promontory sample. All the Tomlinson cases were in the Promontory sample.

Q146 George Kerevan: The trouble is that all we have now is your precis of what Promontory said, rather than any of the detail, which makes it difficult to come to a judgment.

Andrew Bailey: One of the reasons why it took us until this morning to get this out was to get this level of summary out.

Q147 Chair: Just to be clear, you mean to get this level of summary agreed from RBS.

Andrew Bailey: Also Promontory as well, because they wrote it. They were not difficult but, as you can imagine, they took a keen interest in it because they are the authors of it.

Q148 Chair: Somebody was difficult; who was it?

Andrew Bailey: It is complex. I can tell you that we have ended up with a longer summary, as a result of taking a bit more time, than we would have done otherwise.

Q149 George Kerevan: You have said throughout the Committee hearing today, and you say again in this report, that one of the issues is that we are dealing with a set of redress cases that arose from unregulated



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products being sold by regulated bodies, and that leaves you in an anomalous position when it comes to dealing with them. What would you change? Where should the debate go in order to try to deal with that?

Andrew Bailey: You can do that in a number of ways. You could extend the regulatory perimeter. I am not sure that the case is proven for that. Or, coming back to your previous point, you say that you now have the senior managers regime.

Let me step back for a moment. One of the differences between the PRA and the FCA is that the PRA, naturally in prudential supervision, looks at the whole firm because firms obviously stand or fall together. FCA conduct supervision is done by activity. That is a big difference. However, the FCA has now got more whole-firm tools—it has always had some—from the senior managers regime as well as the fitness and properness requirements.

Now, you could say that—and this is certainly worth looking at—we have got that and it gives you more of a hold over the firm. If we were to go back to our previous conversation and say that we could solve the complaint scheme/redress process—which frankly is the most difficult part of this—through some form of tribunal, I think we should answer the question before opting for extending the regulatory perimeter. Do you think that acceptably does it? That is a valid question to tackle.

Q150 **George Kerevan:** I just want to turn to a couple of very brief updates on current redress issues. There have been a number of occasions where the Complaints Commissioner has made criticisms of FCA practice. One was the HSBC/John Lewis debt collection issue where the FCA, prior to you taking post, had promised to look at that whole issue. What is the progress on that?

Andrew Bailey: I am sorry; I will have to write back to you on that. I do not know where that particular case has got to.

George Kerevan: Mr Griffiths-Jones?

John Griffith-Jones: I am sorry.

Q151 **George Kerevan:** Perhaps you could write to us on that. There was another judgment by the Complaints Commissioner on Lloyds Bank's buying back of its high yield bonds, which went to the Supreme Court. The Supreme Court found in favour of Lloyds but nonetheless did criticise the FCA of how it handled complaints from individuals. Again, there was some suggestion that the FCA would look at that history and come back.

Andrew Bailey: I have a feeling that that is still possibly with the Complaints Commissioner but let me come back to you on that one as well. I also just have to declare an interest there because, in my PRA context, I was involved in that case.

Chair: Jacob has a quick question on redress.



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Q152 **Mr Rees-Mogg:** Just on where we are on swaps.

Andrew Bailey: Is that on interest rate hedging?

Mr Rees-Mogg: Yes.

Andrew Bailey: The complaints-handling process is largely done. There is a case going to the appeal court, which is the Homecroft case. The third point is that we will be conducting a "lessons learned" review and we will be quite transparent in setting up a mechanism for the people involved so that they can participate and input into that review.

Q153 **Mr Rees-Mogg:** Depending on how the case goes, we will see what redress arises.

Andrew Bailey: If the case went a different way, obviously we would be in a different place. At the moment, the first round, as it were, was quite decisive. Quite rightly, they can appeal and they have and that will go through the process.

Mr Rees-Mogg: There may be more to ask you in six months' time.

Andrew Bailey: Hopefully, yes.

Chair: Thank you very much for coming to give evidence to us. We have been going for over two and a half hours, which is slightly longer than we normally run. It has been full of interesting replies. We are very grateful to you and we will follow up a good number of the points in writing.

Andrew Bailey: There are quite a lot of follow-ups.

Chair: There is a lot going on. Thank you very much.