

Treasury Committee

Oral evidence: The work of the Financial Conduct Authority, HC 475

Wednesday 7 February 2018

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Members present: Nicky Morgan (Chair); Rushanara Ali; Stephen Hammond; Stewart Hosie; Mr Alister Jack; John Mann; Catherine McKinnell.

Questions 171 - 288

Witnesses

[I]: Andrew Bailey, Chief Executive, Financial Conduct Authority; John Griffith-Jones, Chairman, Financial Conduct Authority.

Written evidence from witnesses:

- [Financial Conduct Authority](#)

Examination of witnesses

Witnesses: Andrew Bailey and John Griffith-Jones.

Q171 **Chair:** Good afternoon, everybody. Thank you very much for being here once more before the Treasury Select Committee. We have a series of questions to ask you on a whole wide variety of subjects, but perhaps for the benefit of those in the room and those watching, you might both introduce yourselves.

Andrew Bailey: Andrew Bailey, the chief executive of the Financial Conduct Authority.

John Griffith-Jones: John Griffith-Jones, the chairman of the Financial Conduct Authority.

Q172 **Chair:** Thank you very much, as I say, for being here. I do not think it will surprise you to know that we are going to start the questions with the follow-up from the session that we held with Howard Davies and Ross McEwan from RBS last week, in relation to the publication of the FCA's section 166 report. On 4 September last year, the Committee wrote to you, Mr Bailey, asking that you should secure the approval of RBS to publish Promontory's report in full without delay. Could you tell us if you ever followed up that request?

Andrew Bailey: We were in an extended process with RBS, going back at least to the point when I became chief executive, in the middle of 2016. If you go back to that point, RBS had made it clear to us that it had fundamental areas that were unacceptable to it in the report. It also made it clear that any publication of the report in that form would, in its view, be open to misinterpretation, unless it was modified, corrected, clarified, and appropriate context was put around it.

My view on that is that I was not prepared, on any account, to go into a process with RBS whereby it sought to water the report down as part of a process to get it published. I am afraid that that was not, in my view, acceptable. That is why we did not seek to, in a sense, negotiate with RBS a publication of it. I have been there before with previous reports, particularly the HBOS report, and I think it is unacceptable to do that.

As you know, we went for the summary version, or the extended summary. We got RBS's agreement to that. Both of us then used external counsel to compare that to the underlying report. Until last week, when things changed dramatically, at your hearing, because it signalled that it was prepared to have the report published, I was not prepared to go into any process that would result in a compromising of the report.

Q173 **Chair:** That is a very helpful summary of your thinking on that, but if you could just give a simple yes or no, between 4 September last year and 30



HOUSE OF COMMONS

January this year, did the FCA formally ask RBS whether or not it either consented, or removed any objection it had, to the publication of the report?

Andrew Bailey: No, we did not.

Q174 **Chair:** There was no request made to RBS.

Andrew Bailey: Not in that form, no.

Q175 **Chair:** The Committee had made that request in a letter to you dated 4 September. I think you already set out why that was, but were there any other reasons?

Andrew Bailey: Yes. I know where it goes; I have been there before, and the comment I just read out from RBS is pretty much verbatim, I should say, from a letter exchange. That meant that, in my view, we already knew what would happen if that process was gone through. That is why, as we made clear to you, we wanted to go down the route of publishing the extended summary, which had as much in it as we could do, we thought, to get RBS's consent to it, which we did. Obviously, we both then went through the process of getting those versions looked at.

Q176 **Chair:** The point is that RBS, despite the Committee's letter asking you, was not asked, because of an assumption based on previous experience of how banks treated requests.

Andrew Bailey: If you do not mind me saying so, it is two things. It is that, but also what it had said to us in the correspondence.

Chair: I understand that.

Andrew Bailey: That second point is important, because if it was only the first point there would be some follow-up. To me, the correspondence was very clear, and particularly this point about RBS's concerns with the report, and its view that it would have to be modified to get context and clarified.

Q177 **Chair:** Mr Griffith-Jones, can I ask you whether—and if so, when—the FCA board has, since the Committee's request last September right up until today, discussed publication of the full 166 report on RBS/GRG?

John Griffith-Jones: At the last meeting, I updated you on the number of times—which, from memory, was of the order of 10 out of 13—and we have had three board meetings since. At each board meeting, Andrew has updated the board as to where we have got to, but it is fair to say that in the update he has basically expressed the view that he is expressing now. The board has agreed with him, or at least agreed with his strategy, and therefore it has been in the nature of an update, rather than a first-principles discussion of whether we should or should not publish the report.

Q178 **Chair:** The difficulty is that on 22 January, Mr Bailey, you wrote to the Committee, stating that the FCA's decision not to publish Promontory's



HOUSE OF COMMONS

report on GRG had nothing to do with any stance taken by RBS. On 30 January—so hours after RBS had given us evidence and consented to publication—you issued a statement saying, “On this basis, we are content to publish the report”. RBS’s stance was material to the decision by the FCA to publish or not to publish.

Andrew Bailey: I have to say that I was not expecting that. I was actually pleasantly surprised when RBS agreed last week to the publication of the report. This was quite contrary to everything that it had given us to believe previously, as you will understand from what I have just said.

Can I add one other thing, which I should have done? As you know, we are in a further investigation process. Again, based on some past experience, it would be very difficult—and this, of course, involves individuals now, as well—to go to people and ask for their consent for publication while we are still conducting a formal investigation process. As you will be aware, one important distinction between a process conducted by us and a 166 conducted by a firm like Promontory is that the process conducted by us can end up in formal action.

Q179 **Chair:** Could you update the Committee as to where you have got to in that further investigation process?

Andrew Bailey: We are very well-advanced with that, and while I cannot give you an exact final date at the moment we are well through that process now.

Q180 **Chair:** Are we talking weeks or months?

Andrew Bailey: I would like to think that we are talking weeks, but I have learned in the past that things can come up at later stages. By the way, of course, that will lead us to a conclusion on the investigation. What happens thereafter will be determined as a result of the assessment we make of that investigation.

Q181 **Chair:** I think it is pretty clear to all of us who are involved, who look at social media, and people who are commenting on all of this, that there is an enormous desire for the full report to be in the public domain, and the final version of the report, which then enables the FCA to make further investigations, and potentially for further actions to be taken. You will be aware that, yesterday, there was a point of order in the House, and Clive Lewis MP had a version of the report, which has been handed to my office.

I think it is clear that, as I said to you when the BBC appeared to have a copy of the report, we know that versions are already out there. I urged you then, way back in the autumn, to publish at that point. RBS has now removed its objection to publication. You will be aware that the Committee has powers to compel the publication, so I am going to write to you, probably in the next couple of days, with a clear request to publish and a timescale within which to publish. Otherwise, I think it



HOUSE OF COMMONS

would be the case that the FCA will find that events overtake it, in terms of publication of that report.

Andrew Bailey: Yes, and I hope you will be aware that I wrote to you last week. I hope that you received that letter.

Chair: Yes.

Andrew Bailey: I set out the steps that would be required for us to complete, to get to the point of publication. That is all consistent with the statutory powers under which we fulfil that function. That is a FSMA process, and we will do that as soon as possible. If you would find this helpful, I am very happy to keep you regularly informed of the process as it goes along.

Q182 **Chair:** That would be very helpful. I am sure that that would be very welcome, and we publish all letters that come into us and everything else. The point I would make about the report—and I think we explored this last time—was that it does not refer to individuals; it refers to management collectively. Are you still of the opinion—and if so, perhaps you could explain why—that publication of the section 166 report as of today, with its references to management, not individuals, would prejudice your further investigations?

Andrew Bailey: It is a particular point about publication. We have taken counsel's advice on this point, and counsel's advice to us was that you can identify people in the report, even though they are not named. If you have an organogram—and there is an organogram in there—it is not difficult to work out who is being referred to. That is a point that we have had advice on now. One of the things that we are doing as a result of last week is working out exactly who that is, and again we will have to take legal advice on this, because we do not want it to be more people than is absolutely necessary for this process, as you will understand.

Q183 **Chair:** Surely, the knowledge about who was in RBS management or GRG management at the relevant time is fairly widespread. There are a lot of current and former RBS employees, so it is not just from the report. It is not going to take a rocket scientist to work out who these individuals might be that you are talking about.

Andrew Bailey: No, but that is the point. The legal advice we have had is that, if these people are criticised in the report, by virtue of being able to link them to statements in the report about management, they have a right to reply to criticism.

Q184 **Chair:** Do you need the consent of those individuals in order to publish?

Andrew Bailey: Yes, we do.

Q185 **Chair:** Is that a process that you are now going through?

Andrew Bailey: We will start that process. As I said in my letter to you, as soon as the investigation is done, we will start that.



HOUSE OF COMMONS

Q186 **Chair:** The point is, Mr Bailey, that I do not think you are going to get that period of time that you want. There is another version of the report that is now out in public under the ownership of a Member of Parliament. It is more than possible, particularly if the Committee exercises its powers to publish that version of the report, you may not get to that stage. Do you not think that you should be asking those individuals for their consent now?

Andrew Bailey: The difficulty with doing that is that, if an individual believes that they are under investigation, the chances of them co-operating speedily in a process go down, in my experience. I have had this experience before.

Q187 **Chair:** Those individuals must know by now that they are in the report. There has been enough coverage of the report and enough coverage of the reference to the word "management". They will know by now whether or not they are likely to be investigated by the FCA.

Andrew Bailey: Yes, but if they say, "I am prepared to agree to what is in the report", and they therefore take the view that that might prejudice their case in an investigation, that will complicate the whole process. That is the essence of the point.

Q188 **Chair:** How many people are we discussing?

Andrew Bailey: We do not think it is a large number of people. It is a handful.

Q189 **Chair:** Mr Griffith-Jones, the FCA's response to what RBS said was very quick. Did you know that RBS was going to agree to this? I think Mr Bailey has talked about it being a pleasant surprise. Were you, or any members of the Board, aware?

John Griffith-Jones: No.

Q190 **Chair:** Related to RBS, you will be aware of the story at the weekend about the possible forgeries of customer signatures at RBS. As I understand it, in February 2017, the FCA was provided with evidence regarding these possible forgeries. Can you tell us how the FCA followed that up?

Andrew Bailey: The problem, I am afraid, is that this is a long saga. There are a lot of claims where we have been provided with evidence, which frankly are not supported. Just so you know, I got in touch with Norman Lamb MP again—and it is not the first time that I have done this—to say, "We are happy to meet you", because we have found it very difficult to actually meet these people.

Q191 **Chair:** Have you, either before or since the story was published on Sunday, done a trawl for emails or information received from this individual?

Andrew Bailey: We are redoing a trawl. We have done them many times before, but we are redoing it for the avoidance of any doubt.



HOUSE OF COMMONS

Moreover, as I said, I have, since the report came out on Sunday, once again contacted Norman Lamb's office, and said, "We would like to meet you, please. You are welcome to come and see us."

Q192 **Chair:** Do you think there is any substance in the allegations that RBS trained them in how to forge customer signatures, and that they subsequently carried out the practice in work?

Andrew Bailey: I will reserve judgment on that until I see the evidence, because we have to take it very seriously. If anybody makes any allegation of that nature against any firm, we have to take it seriously.

Q193 **Chair:** Just for the record, when I see Mr Lamb in the corridors of Westminster, I am able to say that you are happy to meet both him and the person who has contacted him.

Andrew Bailey: Please do. I would welcome that.

Chair: Excellent. I do not think that I have graduated to being a diary secretary yet, but I will certainly pass that on to his office. Thank you for that.

Q194 **John Mann:** Good afternoon. I just have a couple of very quick questions before I get on to my main questions, which are in relation to SMEs. They are not random, because they come up from your note to us on perimeters. I wanted to clarify a point on funeral plans. Not all funeral plans are covered by the Funeral Planning Authority. Is there not a weakness in regulation, therefore? You have handed it over to the FPA, but there is a gap in the market. Should someone not be covering it, and should you not take it away and consider whether you should be?

Andrew Bailey: It is a classic regulatory arbitrage, in one sense. I would not agree with you that we have handed it over to the FPA. The fact of the matter is that if you structure a funeral plan one way, you will be inside our perimeter, and if you structure it another way, you will be outside our perimeter. Possibly unsurprisingly, what has happened as a result of that choice being available is that they have predominantly been structured to be outside our perimeter. I would be happy to engage with the Government, if you would like us to see what we could do about that, but it would require action by Parliament, I think.

Q195 **John Mann:** We may come back to that, individually or collectively—who knows?—one way or another in the future. That is just to open the dialogue on that issue, but that is for another day. Similarly for another day, but just for confirmation, are there any issues relating to Motability that have required your investigation in recent times?

Andrew Bailey: Not recently. I saw the point come up, and I asked my staff to look at it yesterday afternoon, because it is not a firm that had crossed my radar. It has, I think I am right in saying, a couple of authorisations from us. One is to do with credit broking, I think. If you



HOUSE OF COMMONS

like, I would be happy to write on that one, because it came up only yesterday. That is fine.

Q196 **John Mann:** That would be helpful, thank you. Your note is very helpful.

Andrew Bailey: Thank you for asking the question, actually. It was good to be able to do it.

John Mann: It is very clearly written. Let me just quote from it: "In reality many SMEs behave in a similar way to individual consumers when buying and using financial products, for example when taking out credit. They can therefore also experience similar types of harm, such as entering into an unsuitable product, receiving poor customer service or suffering financial loss. The RBS GRG case is an example of the potential impact this can have on SMEs in particular". That is a very helpful description. What is your advice to us in terms of what we need to do in Parliament to strengthen your hand, or perhaps someone else's hand, to stop this scandal occurring again?

Andrew Bailey: It is interesting. I will give you a little bit of background. You have to go right back to the 1997 and 1998 debates on the FSMA legislation for this. There was a view at that time that SMEs should be kept outside the regulatory net to encourage innovation, and that they could fend for themselves; I am paraphrasing. Sadly, I think, experience has shown that that is not justified.

As you know, on dispute resolution, we have put out our consultation paper on extending the ombudsman scheme. I am happy to come on to that, if you like. Then there is the question, which your point goes directly to, about whether it would be sensible to extend the perimeter of the regulatory activities order. Obviously, that could be done.

Q197 **John Mann:** Is your recommendation to us that it should be done?

Andrew Bailey: I was going to say that we have done the thing that I said I would do at the last hearing, which is that we have put out our other consultation paper, which is how we can use the senior managers regime—picking up language that I think you may have used in one of the hearings last week—to put teeth into industry standards. There are standards that we can draw on here. There are both the Lending Standards Board and the restructuring board, or whatever it is.

There is a case—Tony Boorman possibly put this point in the hearing last week—that one way to do this is to say that you can get a greater degree of flexibility of approach by using industry standards. They can give that more easily, but frankly, in my experience, unless they have teeth, they are not going to do the job. There is a case for the combination of what we have put forward on the senior managers regime, which is a whole firm regime, as I have explained before—so it goes beyond the perimeter—and standards, as we said in the consultation paper, that we would be satisfied with, because we are not going to endorse any old standard, frankly.



HOUSE OF COMMONS

That is an alternative way of doing it, which means that we are not tied down by the process of rule-making. I see some merit in that, but I would be happy to have that debate with you as to whether the RAO extension would be a better way of doing it. I see some merit in what we are doing, and it is a new approach; it has never been done before, because we have not had the senior managers regime in the past.

Q198 **John Mann:** In it, you have used the phrase “serious and egregious misconduct”. Was misconduct in GRG serious and egregious?

Andrew Bailey: We have certainly said that we view it very seriously. We view the things that happened very seriously. I think there was some language used even by RBS last week; words like “horrific” were used. It is very bad. It is shocking.

Q199 **John Mann:** From the way that you are answering, you seem to be suggesting that regulated activities orders for SMEs are not the way forward.

Andrew Bailey: There is some merit in subjecting to examination the approach of having robust industry standards that are deliberately and explicitly hooked up to the senior managers regime.

Q200 **John Mann:** At the moment, you cannot even consider the costs and benefits of conduct rulings for SME lending.

Andrew Bailey: We do not have any rules. That is the thing, so once you go outside the perimeter—the regulatory activities order—we do not have any rule-making powers. No, we cannot do the sort of thing that allows you, as you rightly say, to do a cost-benefit analysis.

Q201 **John Mann:** So, at a minimum, you would like to see that.

Andrew Bailey: That is the alternative to using industry standards and the senior managers regime.

Q202 **John Mann:** You seem to be sitting a little bit on the fence between the two. I was only asking what your recommendation to Parliament was. You surely must have one.

Andrew Bailey: Well, we have, because we have put a consultation paper out. We do not put CPs out that we do not believe in.

Q203 **John Mann:** Is this not part of the problem? SMEs are not being treated fairly, but it is because people are sitting on the fence about what the system should be.

Andrew Bailey: I do not know about sitting on the fence. In the past, there has not been any system, frankly.

John Mann: We have seen the consequence of it, brutally.

Andrew Bailey: Yes. The only point I would make is that the big thing that has changed, which this Committee was involved in, was the



HOUSE OF COMMONS

creation of the senior managers regime. That is significant, because of the fact that it goes beyond the perimeter.

Q204 **John Mann:** Do you think anybody who comes to Parliament, such as this Committee, and does not tell the truth should be allowed in any way to be an authorised person regulated by you?

Andrew Bailey: It puts them in a very difficult position, frankly. The answer that we always have is that we have to look at every case individually, because that is the way that the law works, but it makes it very difficult when that happens. How can you think of somebody as having integrity?

Q205 **John Mann:** If there are rules, then, that might not be a rule that is expressly put in. It would be a bit odd to put in something quite as precise as that, but in terms of what rules we might be seeing that would fit within the general ambit of what rules should be.

Andrew Bailey: Yes, indeed, but we also have conduct rules under the senior managers regime, and those include things like acting with integrity as individuals.

Q206 **John Mann:** Therefore, if you do not tell the truth to Parliament—

Andrew Bailey: That would be a major problem for you, if you did that.

Q207 **John Mann:** What should we do precisely regarding the ombudsman service? What is your advice?

Andrew Bailey: You should support the proposal that we have put forward to extend it. I am putting myself in your position now. You should ensure that the ombudsman service, in a sense, understands that this is going to be a different sort of operation of the ombudsman service to the classic, PPI-type service—by the way, I can tell you that it does understand this, because we have had a lot of conversations, and Caroline Wayman has been very involved in these conversations—for two reasons.

It is far more of a mediation and arbitration process. Clearly, you want to solve the problems as they come up, rather than deal with them after the event. Second—and you see this in the difficult cases that we have encountered—while it is not completely unknown to have so-called consequential loss issues in individual complaints, it is much more common in corporate complaints. Again, you have to adapt this thing to handle that, and all of that is known.

Now, the ombudsman is what tends to be called an alternative dispute resolution process. It can be used as a means of mediating. The alternative, as we have discussed before—but it can also be a complement—is to legislate and put in place a tribunal system that can actually make law and is able to interpret law, whereas the ombudsman is a dispute resolution and mediation system. There is a case for having both. There are plenty of precedents for both existing, but as you know



HOUSE OF COMMONS

we can only create one. We cannot create the other. You can create the other.

Q208 **John Mann:** Indeed, but you are supportive, should that happen, of us doing that, and remain supportive.

Andrew Bailey: I am, yes.

Q209 **John Mann:** Without FCA rules on SME lending, how would the tribunals make decisions?

Andrew Bailey: The ombudsman essentially applies a test that is based on fairness. It is not a rules-based test. It applies a test that is outside that.

Q210 **John Mann:** Would a tribunal lead to quicker resolutions?

Andrew Bailey: Not obviously. I would not want to speculate, because we do not have a tribunal at the moment. It will be quicker to set the ombudsman process up, because we have started it. Once you have both of them up and running, to be honest with you, as neither of them exists at the moment in that form, I would not really want to speculate as to which would get quicker decision-making.

Q211 **John Mann:** Government would have to give more money to the ombudsman service, would it not, for it to be able to carry out this role?

Andrew Bailey: It is not paid for by government. It is paid for by a levy. They do not get the money from government.

Q212 **John Mann:** The levy would have to increase.

Andrew Bailey: Yes. We have a responsibility in respect of that, and John exercises it.

Q213 **John Mann:** That is how you would fund additional resource. Would that be within the timescales, for this to be doable by the end of this year?

Andrew Bailey: To put it in place? They are thoroughly involved in it, so all the planning is on the way.

Q214 **John Mann:** In terms of the GRG customers, and the general public overall, what is your conclusion in this that you would like to say, in terms of, first of all, the lessons learned to take forward, but also the situation of those people who have suffered through no fault of their own?

Andrew Bailey: People have suffered through no fault of their own. It is a terrible sadness, and it should never happen. It is interesting, reading these cases and reflecting back to this period about the culture that existed in the banking industry. As I have said many times, we have had two crises in the last just over a decade. We have had a prudential crisis and a conduct crisis, frankly, but there are common links in terms of attitudes and culture. We, in our role, have to play a big role in saying, "This cannot happen. You cannot have institutions that behave like this".



HOUSE OF COMMONS

As you well know, I have been involved in both prudential and conduct. I have seen it on both sides. We really cannot go back to this. This is a very bad lesson from history.

Q215 John Mann: I have two final questions. The ombudsman's binding award limit is £150,000. Would you be pleased if that were significantly increased? We have been told that, in Australia, it is very significantly higher. Would that be appropriate?

Andrew Bailey: My own view on this is that it will have to go up. There is a significant tail of cases that require that to be satisfied through that mechanism, unless you put something else alongside it.

Q216 John Mann: As to whether there should be a strengthened ombudsman role and a much higher limit, there is a precedent from the Legal Services Ombudsman from 2008. The Legal Services Ombudsman, in relation to industrial injury claims and the mishandling of them by solicitors, decided through a special report that involved half a million people, potentially, to allow cases to be retrospectively reopened. As a consequence, many people had their cases relooked at, and got significant amounts of compensation. Over £2 million was paid directly to my constituents for quantifiable losses.

Is there not a case, at some stage this year, for the ombudsman service to look at this question of whether claims should be reopened if there is a strengthened ombudsman role, allowing people to have their issues re-examined and, theoretically, compensated?

Andrew Bailey: I will say two things about that. First of all, the process that is in place needs to deliver appropriate outcomes, and that process is in train. Secondly, I have to confess that I am not familiar with that case. I will look at it. I do not know how the precedent works, so I will go away and look at it, because I could not comment on how much of a read-across there could be to the financial ombudsman. I am not familiar with that.

Q217 John Mann: Morally and ethically, there is a precedent.

Andrew Bailey: Morally and ethically, we want the issue dealt with. I would like it to be dealt with by the scheme that is in place. That is why I think we have to hold that scheme to account and demand high standards from it.

Q218 Stewart Hosie: Mr Bailey, I will ask a number of questions about push payment fraud. Before I do, in relation to the questions the Chair asked about the 166 report, right now on social media—on Twitter—there are people offering to host a published, leaked 166 report online. I have absolutely no doubt that that will happen.

If, in the meanwhile, the FCA, under a process of Maxwellisation, goes to a small number of unnamed managers who might be identifiable and are looking to potential future action, which could take some time to determine and negotiate—even though there is no negotiation involved—



HOUSE OF COMMONS

you could be weeks, months or years behind the curve, while politicians, those affected and the financial press are all discussing a leaked report. If, while there is a live discussion and debate going on, the FCA is still getting approval from some unknown manager about the word “could” or “did” on page 72 of the report, it would make a mockery of the FCA. I only put it to you like that in order to say that time is important. If you do not publish, others will.

Andrew Bailey: Let me say again that I agree with you that we have to do this quickly. If we do it under our powers, we have legal obligations, and frankly, if we abuse those, we can have action taken against us for that. Sorry, but that is the position that we are in. You have different authority and powers that you can act under. I recognise that; there have been previous discussions in this Committee in the context of other cases involving that. I have to say that, if somebody publishes it outside that framework, we will have to look at that from the point of view of our own legal position, because as I have said before that would not be consistent with the Act.

We know we have to get this done as quickly as possible, and I said to the Chair that it makes sense for us to commit to keep you in regular contact with the process. Frankly, that enables us jointly to assess where it is going. We have had this discussion in the previous Parliament in various contexts. Let me be frank: I would very much prefer you not to be put in a position where you have to use Parliamentary privilege to do this, but I recognise your point. We will try to do this as quickly as we can. We are constrained by the legislation that we operate under. We will do it as quickly as we can.

Q219 **Chair:** It sounds to me, Mr Bailey, as if the first half of your answer to Mr Hosie was you asking for the Committee to call for the report to be published. We are happy to do it. I am happy to draft the letter this afternoon.

Andrew Bailey: No, I am not. We have to have regard to, if we do it once, where it leads to.

Chair: Absolutely.

Andrew Bailey: That, I have to be honest with you, is a big concern that I had, and my predecessors had. It sets a very big precedent.

Q220 **Chair:** The genie is out of the bottle now, whether you are talking about RBS/GRG, or any other issues that Parliament deals with on a daily, weekly and monthly basis. As Mr Mann has just talked about, tens of thousands of people have been affected by GRG, and of course there are other incidents as well: other experiences and relationships with banks that have gone very sour, very wrong, and resulted in people losing livelihoods, families and health. Of course, it could be even worse. We know of cases where people have committed suicide over these issues.

This may be something that we have to look at in terms of changing



HOUSE OF COMMONS

legislation and making recommendations to Government. That is another letter that we will be drafting to the Treasury, but the report is now out there. Mr Hosie is right: versions are circling. As I said to you earlier, I do not think there is now time before the report is out there on the internet for you to go through the whole Maxwellisation process that you have talked about in the past.

Andrew Bailey: We are happy to receive your letter, but we should consider the implications of all of this. As I said before, there is an implication, if we use Parliamentary privilege, that that sets a very major precedent.

Chair: Absolutely.

Andrew Bailey: As you rightly said, drawing on what I was implying, another approach would be that, if it would take too much time, in this case, you could amend the legislation that we operate under to remove the requirements that are placed upon us, which are two-fold, in terms of getting consent and the so-called Maxwellisation process. I have to say that that has much broader implications outside of our sphere of operation, because these are not unique legislative provisions by any means. This is the bind that we are in, which, as Mr Hosie rightly says, is now made more pressing by the fact that the report is in various hands.

Q221 **Stewart Hosie:** I understand and respect what you are saying about the 166 reports not normally being published. This is exceptional: £45 billion into RBS directly, 73% owned by the state, the now-defunct asset protection scheme covering £220 billion of its liabilities and then GRG. This is not a run-of-the-mill investigation into some dodgy dealings in a small building society. This was systemic. It did not just affect some people in GRG, or some of the clients who were fleeced. This affected the whole economy.

Andrew Bailey: I understand that.

Stewart Hosie: I do not think that this necessarily opens the door to the demand to publish every 166. I am saying that to be helpful. I genuinely do not think it does. Anyway, I have some serious questions about push payment fraud. The PSR has noted a number of actions to be taken over authorised push-payment fraud. What would have happened if the banks had simply been liable for that type of fraudulent activity in the first place?

Andrew Bailey: Well, they would have had to meet the liabilities.

Q222 **Stewart Hosie:** Would that have encouraged the banks to take more rigorous action to wipe it out?

Andrew Bailey: It is not unreasonable to think that it would have speeded up some of the actions that have been taken.

Q223 **Stewart Hosie:** I would agree with that. However, the FCA has



HOUSE OF COMMONS

identified UK Finance's best practice standards as a "key initiative" in tackling push-payment fraud. Why are you placing such trust in that avenue?

Andrew Bailey: It slightly goes back to the earlier discussion that we were having. We have done another thing alongside that: we have written to all the authorised firms involved in this, saying that we want them to identify which senior manager designated under the regime is responsible for this. It will only work if UK financial standards—which, again, may be very sensible in terms of being adaptable to something that is unfortunately a fraudulent activity that can evolve and move around quite rapidly—are hooked up to our discipline in the broadest sense. Otherwise, it is not going to work. That is why we have written to firms—that is the action that we have taken—to say, "You need to be very clear about who is responsible for this under the senior managers regime".

Q224 **Stewart Hosie:** That is helpful, but one of the other things that you have done is to ask for better data. Now, the new statistics published by UK Finance are that, for the first six months of 2017, there were at least 19,000 victims targeted in this way, and the total amount was over £100 million. How significant of a reduction in fraud will there be—how big a quantum do you think it will fall by—as a result of the reforms that you have asked to be put in place?

Andrew Bailey: It will fall as a result of a number of reforms. There are the ones we have been discussing, plus there is technical work being done on a further set of technical developments to better identify these things, which give banks better means of taking them out before the transfer happens. The technological work is very important. Unless we see a substantial fall in this activity, we are going to have to look at something new, because you are right: we cannot go on like this. The risk is that, if nothing else is done, it will grow.

Q225 **Stewart Hosie:** In terms of "something new", the PSR tasked UK Finance with designing and implementing a contingent reimbursement model. Would you agree that it is in its interest to design a model in a way that leaves banks largely off the hook for reimbursing customers for APP fraud?

Andrew Bailey: To your point, we will have to look very carefully at how liability is attributed in that model, because you are right. We could all do this: we could write something that ended up with liability going predominantly one way, and we could probably write something with liability going predominantly the other way. We are going to have to be very clear—and I think the PSR has been very involved in this; I am looking at John, because he is the chair of the PSR, although I am on the board as well—to ensure the liability model ends up in a sensible place.

Q226 **Stewart Hosie:** Indeed. In order to do that, why do the FSA or the PSR not design it, rather than sub-contracting it to UK Finance?



HOUSE OF COMMONS

Andrew Bailey: It is not unreasonable to ask UK Finance to be involved in it, because it is closer to the ground in terms of what is actually going on in firms, how the systems work and how the fraud works. We have to have sufficient technical understanding of these issues to be able to go and say, "Hang on a minute; that is not right".

John Griffith-Jones: I agree. Hannah Nixon and I were here two weeks ago. We—I am now speaking with a PSR hat on—will pay very close attention to the design of the contingent reimbursement model, and be responsible for whatever shape it finally takes, as indeed we did in the previous session, completely.

There needs to be a decision as to what happens with the—hopefully much reduced—cases where, essentially, the banks have done all the right things, and therefore *prima facie* are not to blame for the incident. The customer feels that they are not to blame, although the fraud was perpetrated on them, and they got as far as putting the numbers into the machine themselves, so the bank were blissfully unaware of any of this. There is a point at which you say, "Well, that is possibly not fair on the bank, any more than it is fair on the individual". We will have to reach a decision as to where that line is, and it is not going to be that straightforward, but that is what the nature of the contingent reimbursement model needs to be.

Q227 **Stewart Hosie:** I would imagine that there would be very, very few instances where a customer could have taken any more steps to work out that the company they were about to pay to was somehow fraudulent. There would be very few cases, particularly if it is an online transaction. I suppose this is the real question: when we are likely to see the design of this system, and when is it likely to be implemented?

John Griffith-Jones: The PSR is leading on the design of the system. I would hope to see it this year. Clearly, if the first design that is proposed is not what we want, it tends to take longer, but there is an urgency here to have a model that works.

Q228 **Stewart Hosie:** Will it be up and running and providing customer protection this year, or shortly afterwards?

John Griffith-Jones: That will depend on whether we can get to a voluntary scheme that works to our satisfaction, which is quick, or whether we have to impose something via rules and consultation, which necessarily takes longer.

Q229 **Stewart Hosie:** Would that be the PSR, or would it be the FCA, if it came to imposing a system, or would that require legislation?

John Griffith-Jones: I believe, based on my briefings, that it would be within the PSR's power to do that.

Andrew Bailey: It does not require legislation.



Stewart Hosie: That is helpful. Thank you.

Q230 **Catherine McKinnell:** I will move on to something different.

Chair: It may not be better.

Catherine McKinnell: Oh, no, it is better. It has been suggested that leaving the single market in financial services could actually improve the FCA's ability to meet its consumer protection objective, because the comparatively high standards of conduct expected in UK institutions, in their governance and controls, put some UK firms at a disadvantage to those passporting in from EU member states. Do you agree with that?

Andrew Bailey: Not really, no, in part because the passporting system operates more in the sphere of prudential regulation than it does conduct regulation. Sorry, can I just divide that into two? I should say that there are two sorts of passport: a branch passport and a services passport. The important distinction between those two is that, with a branch passport, you have to have a bricks and mortar presence in this country, with people in this country. With a services passport, you are selling things over the internet or whatever. You have no presence, so there are probably slightly different answers for those two things.

For a branch passport, it is more the norm—and this is certainly true for banks—that our conduct rules tend to be the ones that apply to banks that branch in with a branch passport. In prudential supervision and regulation, leaving the EU makes somewhat less difference in that area, in terms of branches. It is not so true in services, because that is essentially a remote activity where you are therefore more dependent on the domestic consumer protection rules of the home country.

The challenge there—and, I have to say, this is one that I spend some time trying to get my head around—is, taking the internet as the prime example here, people can sell stuff over the internet from anywhere in the world, pretty much. It is an issue that we have, trying to stop that sort of thing happening when it is quite contrary to our own conduct rules, and that will not go away.

The thing I would say about Brexit is that the plan under the withdrawal legislation is that we will onshore—there is this terrible thing about turning every word into a verb—EU legislation into domestic legislation. That is taking up huge amounts of our time at the moment. I always characterise what you are doing in Parliament as like an iceberg. You are doing the bit above the sea—which is really important; do not get me wrong—and then there is a hell of a lot under the service that we are doing to bring in these rules. There will be a lot of secondary legislation, which you will have the joy of seeing. To the extent that there is European consumer protection legislation, that will bring it into the UK.

Catherine McKinnell: I have not heard it described as an iceberg so much as a fatberg.



Andrew Bailey: I was being polite.

Q231 **Catherine McKinnell:** The Treasury has announced that, in the event of no agreement with the EU at the end of the Article 50 process, it will establish a temporary permissions regime that will allow passporting, and allow firms to carry on doing their business. Are there risks from this, in terms of the statutory regime?

Andrew Bailey: There are issues and risks in doing it, and there are issues and risks in not doing it. By the way, we have been in close conversation with the Treasury, and we suggested that this would be a sensible thing to put forward, and it took it on board. As it says, it will enable us to continue the authorisations on an interim basis after the single market passport falls away. I said this in a speech that I made on Monday evening.

The real risk—and this is the other side of the argument—is that, if we do not have that, and the passport falls away suddenly, there is a set of what we tend to call very big cliff-edge risks, which I went through on Monday night. There are contract continuity issues, particularly with insurance contracts and derivatives, data exchange, and clearing houses. That is why we think it is sensible to do this. To your point, we would obviously then have to set up a system of memoranda of understanding with the home regulators in the EU countries to enable us to supervise the entities, which would be branches, essentially.

Q232 **Catherine McKinnell:** Are you confident that that can be done in time?

Andrew Bailey: I am. We work very closely with these authorities anyway. We have prioritised not breaking our relations up as a consequence of Brexit. We maintain very close relations; indeed, if anything, we have stepped it up as a consequence of what was going on elsewhere.

As I said on Monday night, these cliff-edge risks are symmetric. They affect the EU as much as they affect the UK. That message is increasingly understood. If we had been having this discussion last summer, I would have had to say to you, “I do not think it is”, but now I think it is increasingly understood. There is a commonality of interest here. What they would do to fix their side of the problem in the event of a disorderly end to Article 50, I do not know, and we cannot solve that problem, but in all my conversations with the national regulators on this there are good relations and a commonality of interest. We have to deal with these situations.

Q233 **Catherine McKinnell:** A number of organisations like Macmillan Cancer Support are calling for financial institutions to have a duty of care to people who are diagnosed with cancer or other serious conditions. I understand that you intend to publish a discussion paper.

Andrew Bailey: We do.



HOUSE OF COMMONS

Catherine McKinnell: But this has been put off until after we have left the EU.

Andrew Bailey: One issue that we had there, going back to what I was saying about the withdrawal legislation, is that we are having to rewire our rulebook, as it might loosely be called, very substantially for the withdrawal legislation. As you rightly said, there are consumer protections in European law that come across. It would be very difficult to do another rewiring, which a duty of care would involve, at the same time. We did say, "Look, we really do not think that we can address this issue until after Brexit".

Now, in terms of starting to address it, where it is important to issue a discussion paper and get the issue out on to the table—for reasons that I will come back to in a moment—when we are looking at a Brexit that might have ended next spring, that is one thing. If we are looking at a Brexit quite a long way in the future—which I hope we are, because I am a strong supporter of a transition period—that is a different kettle of fish. I was happy with the Economic Secretary saying in the House that we have agreed that we will do a discussion paper this year.

Just coming back to the point I was making, that discussion paper will need to deal with what a duty of care would be, and how it would interact with other legislation. We have legislation. There is this thing called the Consumer Rights Act that was passed in 2015, which already has some elements of it in it. There are some elements in European law, so we would have to work out how this might work if it is wanted, and that is where we would start with the discussion paper.

Q234 **Catherine McKinnell:** This is a little bit tangential, but you told me in your last appearance before the Committee that you were confident, or you believed, that the behaviour that took place at RBS and GRG was not evident in other high street banks. Is that something that you are still confident about? Have you taken steps to proactively look into that and make sure that that is not the case?

Andrew Bailey: I will try to distinguish between the present and the past. In terms of the present, we are looking at all institutions, and we look at institutions carefully, because although—going back to Mr Mann's questions—there is the perimeter, particularly with the senior managers regime, we have a view on what they are doing outside. We have a particularly close view on what RBS is doing, because it has a programme to implement the recommendations of the Promontory report.

If you go back in time, there is a second, well-known example, which is the HBOS/Reading case. That has its own programme of remediation being done, and we are very concerned to see that that is done and completed. As far as I can tell, it is quite well advanced. We have one or two other institutions where there are remaining cases still to be resolved, which fall into this area. They have been mentioned in Committee hearings on one or two occasions. We have not yet seen



HOUSE OF COMMONS

anything that looks like GRG in terms of scale, but there are individual cases sometimes that have to be sorted out.

Q235 Catherine McKinnell: In terms of proactivity, on that continued subject, can you outline the FCA's responsibilities when it comes to tackling economic crime?

Andrew Bailey: We have a series of statutory responsibilities, particularly in the area of anti-money laundering, for instance, and we tackle those. We have dedicated specialist supervision teams that tackle those, although the UK is going to go through a so-called FATF review this year, which is the Financial Action Task Force. That is the international review, and that is public.

As you know, there has been the economic crime review, and we are also working closely with the Home Office and the National Crime Agency on setting up the National Economic Crime Centre. We have seconded people to the work of setting that up. We are involved in the management of that work and are strong supporters of it. I would like to see more co-ordination. I also think that we could get some really big efficiency and gains in terms of effectiveness, for instance, by reforming the so-called suspicious activity reporting system to make it much more mechanised. It is a horribly inefficient system, which I do not think yields all the information that it should yield.

Q236 Catherine McKinnell: As I understand it, in the past five years, the FCA has imposed regulatory fines on just seven banks for money laundering failures, totalling £263.7 million. There have been no prosecutions of the corporate, active and money laundering offences that have taken place in the UK. What is the FCA doing to tackle this, to deal with individuals and to hold them accountable for it?

Andrew Bailey: You include in that the very big action we took against Deutsche Bank, which is very well known, about a year ago. That was a very large fine for the so-called mirror trade activity that involved Russia. That is an example of a very big case we took. We have, certainly in my time, increased the resources devoted to this. We do not take the same proportion of approaches that we do in some other areas, because we find that proportionality does not necessarily work in financial crime, because you can be quite small and do a lot of stuff. We have certainly increased the supervision of smaller institutions that we have found in the past can be quite heavily engaged in this sort of stuff.

Last month, we launched the so-called OPBAS function that was given to us, which is the oversight of the self-regulatory bodies—quite a number of them—in this country that have self-regulating responsibilities for financial crime and money laundering. That is now up and running.

Q237 Catherine McKinnell: Do you have an opinion on extending the "failure to prevent" offence, as set out in section 7 of the Bribery Act, to include all economic crime, including money laundering, and whether that would



HOUSE OF COMMONS

significantly assist in the prosecution of such crimes and help your work?

Andrew Bailey: That is a really good question. I have not studied it, but I will happily write to you on the subject.

Q238 **Catherine McKinnell:** That would be helpful. Thank you. I am offering our support and assistance here in this very important work, in terms of the regulatory framework and what the Government can do. Are there any gaps in your ability to tackle money laundering and corruption that could assist in your work?

Andrew Bailey: The economic crime review is an important opportunity. When I look back on my career, it is not the first time that we have tried to reorganise in this world. There is probably something behind that, which is a slightly restless feeling that it has never quite yielded the benefits that everybody wanted from it. It is natural that different agencies have different responsibilities, and you see that in other countries as well. If I am honest with you, previous attempts to reform the system have not quite yielded what was desired, which means that we are at it again. We really ought to get stuck in and try to make it work.

Q239 **Catherine McKinnell:** In terms of Brexit—going back to my original question—there are potential opportunities to reform within a new framework, but there are also clearly potential dangers as well, in terms of our international co-operation on these matters.

Andrew Bailey: That is a good point. You know better than I do that there is a very important constitutional point in the withdrawal legislation, which you do not need me to tell you about: the Henry VIII powers. When we do what I call the underwater iceberg work, that is done on a very strict set of rules of engagement. We all have things that we would like to tinker with in European legislation, but we are not doing that. This is strictly like for like.

You do come across areas—and this will have to be exposed to Parliament in some way or other, but in a way that is efficient—where you say, “If we were to take a literal approach to onshoring, so ‘delete EU, insert UK’, we would leave gaps in the oversight of the system”. I could point to things—say, market abuse—where we do not want that to happen. I am not sure this has come up in financial crime, but you do not want that to happen because of our literal approach. Equally, we need to expose that to you, because you do not want us to be off tinkering around in legislation where you say, “Hang on a minute; that is outside your remit”. We can do that.

Q240 **Chair:** On Brexit, Catherine was talking about, and you mentioned, Mr Bailey, that work with regulators. We asked Sam Woods about this when he appeared in front of us. Do you now have the go-ahead—and more importantly, I suppose, do your counterparts across Europe have the go-ahead—to discuss these things formally, regulator to regulator, or is it happening more in the fringes of existing meetings? Is it just because



HOUSE OF COMMONS

you have a good working relationship?

Andrew Bailey: Currently, it is a combination of fringes and very good working relationships. We are doing more of the bilaterals than we did before. You are absolutely right to put your finger on the point. We currently have more licence to engage than our counterparts do. Again, the point I made on Monday evening is that I fervently hope that we get a transition agreement—and I said we need it by the end of March—and that it opens that process up. What we need, then, is for the political process, if you do not mind my saying, to allow the regulators to do that, because coming back to my cliff-edge risk issues, which are absolutely real, we need to have joint solutions to these that are thrashed out by regulators to a good degree.

Chair: That is very helpful.

Q241 **Rushanara Ali:** Good afternoon. I have a few questions on the Office for Professional Body Anti-Money Laundering Supervision, derisking and a bit about unarranged overdraft fees. Kicking off with the OPBAS, you recently launched this, and your consultation and the source book seemed not to have been well received by, for instance, the Law Society and the Bar Council. Do you think that this puts the organisation in a disadvantageous position from the outset?

Andrew Bailey: I have to be careful about what I say here. I do not think that they were overjoyed at the thought of FCA oversight, I have to say. I do not think that I am putting words into their mouths. It was a decision that the Government took, and we have implemented it. We have published the so-called source book, which is effectively the rules of engagement, and we are going to use that during the course of this year to benchmark each of them against that set of rules of engagement, which will give us a starting point for judging the effectiveness of what is there. No, I do not think they were overjoyed by it, but there was a very clear message from the Government, and we have to get on with it, frankly.

Q242 **Rushanara Ali:** You talk about the need for collaboration, so what has been done to inspire confidence and enable closer collaboration, to make sure that it is a success?

Andrew Bailey: Our team is now working closely with them. We have held various sessions and events, both individually and collectively, to explain what we are going to do, and to get their thoughts on what we should do. We have explained the cost recovery regime, which we have tried to keep to what we think is a sensible minimum in terms of what it will cost, because we will levy fees from them for it. We have gone back to explain why we think it is sensible to do it.

The way I explain it is that it is like a hub and spokes. The FCA has responsibility for the hub, which in many ways is the banking system and money transfer system, but we are quite dependent on what is going on



HOUSE OF COMMONS

in the spokes. Getting a stronger line of sight to the spokes will make it easier for us to do our job, and, I hope, improve the system.

Q243 **Rushanara Ali:** What does success look like? An estimated £90 billion worth of dirty money goes through the system. What percentage would you hope to be able to catch?

Andrew Bailey: I do not know yet.

Q244 **Rushanara Ali:** If you do not know the answer now, what would you hope to achieve, both in terms of activity and action?

Andrew Bailey: That is a good question. I really want to be in a position, by the time we have done our initial set of engagements and base-lining this year, to say what we think the nature of the issue is, where it is and what we can do about it. Of course, that will mean that we will have different requests and messages for each of the organisations in terms of what we find, and at that point I would be very happy to give you an assessment of what we think we can do.

Q245 **Rushanara Ali:** Do you have a particular goal around the kind of numbers that you would try to tackle, working in co-operation with other agencies?

Andrew Bailey: I do not have a precise goal. The slight problem is that all the estimates of what is going on are pretty imprecise. They could be quite wrong.

Q246 **Rushanara Ali:** What are those key objectives for the organisation?

Andrew Bailey: The key objective is to be able to say that we see robust processes in place in these various spokes.

Q247 **Rushanara Ali:** How do you measure the impact of what you have achieved? The process is one thing, but surely that has to feed into what you prevent.

Andrew Bailey: As I say, we have a baseline, which is what we observe today, to start with. Then we can come back and say, "This is what we expect to achieve". I am quite happy to keep you updated.

Q248 **Rushanara Ali:** It is a very important point that I would be very interested in knowing more about.

John Griffith-Jones: One of the biggest successes, which will be very, very difficult to measure, will be deterrence. If we can be seen to be making the legal profession, the accountancy profession, et cetera, more effective, the money will not come at all. That would, to me, be a measure of success, but one that is very hard to quantify, as opposed to catching the odd person, not that that is not important in its own right.

Q249 **Rushanara Ali:** Despite the critiques and criticisms from the sector, I can see that there are general issues that this agency could add value to, but are there any specific areas that you feel the agency will add



significant value to?

Andrew Bailey: We will get a better sight of what the scale of the issue is within the overview of this agency, because you may know that, although I talked about “hub and spokes,” we do not have all the spokes. There is a lot said about the property market. We will not have some of the spokes in that world, but we will have some others. One of the things that I am pretty keen to do is to say—I am happy to be transparent with you about this—“How much do we think we have a better grasp on that?”

We already have some grasp on it, in the sense of what the banks should be doing. I will give you an example. I saw the other day in one of the reports in the newspaper that somebody was complaining that, when they translated their cryptocurrency into cash and tried to buy a property, or put down a deposit for a property, the bank would not accept it, and that we needed to reform the money laundering laws. I thought, “Well, not necessarily, because that means you cannot demonstrate the history of where you got the money from”.

Rushanara Ali: Blockchain should help with that.

Andrew Bailey: It should do.

Q250 **Rushanara Ali:** We hope. Moving on to derisking, in December 2016, the previous Treasury Committee was told by Dominic Thorncroft, chairman of the Association of UK Payment Institutions, that derisking activities was leading to cash couriers, carpet shops and import-export firms dealing in cash and processing transactions in a Hawala-style system. Is this something that you recognise as a result of derisking?

Andrew Bailey: I cannot give you a view on Hawala, because it does not really come under our purview.

Q251 **Rushanara Ali:** But you are aware of it.

Andrew Bailey: I am very aware of it. I am also aware of what can go on in cash from my previous life as the chief cashier of the Bank of England. There is no question that one of the things we have to be very aware of with derisking is that it can displace activity into other areas, and particularly into illegal channels, and sometimes legal channels. The discussions I have participated in internationally on derisking have, over time, become more aware of that, but when some of it started I do not think that that was necessarily particularly high on the agenda. There was a different driver, which was, “We just want to stop this stuff. We want to stop what we can stop.” I have done quite a bit in this field. Mark Carney has done quite a lot in this field, in the FSB context. I think we have some greater understanding, but there is still quite a way to go on that front.

Q252 **Rushanara Ali:** In July 2017, in an article in the *Economist*, there were concerns expressed among the Financial Action Task Force members that



derisking is actually increasing the risk of financial crime by boosting cash transactions and the use of informal, unregulated financial networks. I know, from some of the issues I have been involved with following the money transfer business impact on those and remittance, that that was a major concern for those who had banking facilities stopped by Barclays, for instance, a few years ago. You mentioned that there is more awareness. At the time, there was not. There is more awareness, but it seems that awareness has not necessarily led to keeping up with this unintended consequence of financial crime.

Andrew Bailey: What has happened—and this is actually more in the PSR's domain—is that there is now a greater emphasis on not just throwing people out of the payments landscape, but saying, "Actually, we have to solve this problem". The banks became extremely nervous about this, largely because of what the US authorities were doing, because the fines are very big. That, particularly in the international context, obviously led to pressure for derisking. Over time, we got more engagement internationally on this from authorities, but domestically there is now a greater emphasis on saying to banks, "You cannot just kick correspondent banks out", for instance. "You have to really work to solve the problem, in terms of getting them to an acceptable standard". We are party to that, as well, and that is a better outcome.

Q253 **Rushanara Ali:** How are you capturing data on this? If you take the charity sector, for instance, some £20 billion worth of money for a group of charities is being managed by the banking sector. When they are trying to transfer money into conflict-affected areas—and this is where the international co-operation is key—they are very reluctant, when banking services are removed from them, to go public, because they worry about the reputational damage. What is the FCA doing to capture data on what is going on, particularly with the charity sector, but also others who are being refused banking facilities without explanation because of derisking efforts, so that you can work out where there should be intervention to avoid unintended consequences that are damaging, and could drive all of this underground and create more problems?

Andrew Bailey: I have to be honest with you: I do not think that anybody has a consistent map of data on this.

Q254 **Rushanara Ali:** Is that not something that somebody needs to be doing? It is a large amount of money, and there are implications, particularly for international NGOs. It is billions of pounds, and they have lobbied on this for years. Partly because of this issue to do with confidentiality and their ability to operate, the lack of transparency has meant that I certainly do not feel assured that enough action has been taken, despite the Treasury setting up the cross-border remittance group and so on, and a number of agencies being involved. We have seen lots of discussion, but not much clarity in terms of action. It is reassuring to hear that banks are being advised to not just stop providing banking facilities, but we are not clear about the evidence base. Is that something that we could be given more information on, perhaps in a confidential capacity?



HOUSE OF COMMONS

Andrew Bailey: I would be happy to write, and we could perhaps set out some thoughts on what is going on. I will also talk to the Treasury about it, because quite a bit of this does not fall into our particular remit.

Q255 **Rushanara Ali:** There are a number of organisations involved, but clearly you have a role in terms of seeing what the banking sector is doing.

Andrew Bailey: Although I know it quite often gets written up that banks are just throwing customers out, we are very clear with them that they first go through a process of asking customers for the necessary customer information to enable them to be authenticated. It is only if they cannot get that information that they should consider taking action. If you do not mind, I will come back to you on that.

Q256 **Rushanara Ali:** Thank you. My last question is about overdraft fees. As you know, in the last Parliament, colleagues raised this issue. You will also know the facts: an estimated 2.8 million people have used their overdrafts to cover everyday costs in food, housing costs, and so on. The FCA originally said that it would be looking to consult on remedies in spring 2018, and this has been pushed back to later this year, which means that any remedies that get implemented could happen by the middle of next year at the earliest.

Andrew Bailey: We published last week what I might call a “road map” for the work we are going to do this year. I very much hope that we will get proposals out in this area before the summer.

Q257 **Rushanara Ali:** The summer of this year.

Andrew Bailey: Yes.

Q258 **Rushanara Ali:** You are still expecting to come up with recommendations in 2018.

Andrew Bailey: Yes. We have done—and we published some of this last week—an analysis of about 1.5 million accounts. We divide those into unarranged overdrafts and arranged overdrafts, because they are different products. We found on unarranged overdrafts, first, that there is no relationship between the amount charged and the amount used. Secondly, with the way that the charging works, the charge levels are very high, considerably higher than the payday loan cap. You get these two things. We had one bank’s data; we could not publish it, because it was one bank, but it is essentially just a random distribution of charging. It is quite striking.

Arranged overdrafts are a bit different. They are arranged; they have a different ratio. You can have a debate about the level of charging, but that pattern is not random. Although we have to choose our words carefully because we have not reached a final conclusion, we put a pretty strong hint in our paper that we think that unarranged overdrafts,



HOUSE OF COMMONS

certainly, are an area where we will be making proposals, and we will do that. That is the work that we are now doing.

We also write in that paper—because that paper covered the whole spectrum of high-cost credit—that there is another important piece of work, which, again, goes beyond our remit, but we think can hopefully be helpful here, particularly for the more vulnerable and less well-off members of society who need some access to credit. That is: “What is a better means of getting access to credit than the ones we have at the moment, which, frankly, we do not like the look of in some cases?”

Q259 Rushanara Ali: It should not be the middle of 2019; it should be this year.

Andrew Bailey: I hope so. We have done a lot of work already.

Q260 Rushanara Ali: That would be very positive from the point of view of this Committee. What about encouraging banks to voluntarily take action now? Some of them have. Perhaps you could say something today, Mr Bailey, to encourage others to get moving, rather than waiting for consultations and recommendations. If they wanted to take action, they could do, could they not?

Andrew Bailey: I am happy for them to do that, but I would just put in one caveat: we are not going to accept any actions, because some actions may be better than others.

Rushanara Ali: True. We want positive, appropriate action that is going to be in the consumer’s interests.

Andrew Bailey: You are right: it is encouraging that there is a direction of travel here, and that there is a recognition that this is an issue.

Q261 Chair: Just before we move on, we are obviously holding an inquiry into household finance and income, which we might well have raised with you before. You will be aware of other evidence that has been given. Given your last reference there to thoughts on other forms of credit, particularly for households that might be vulnerable, we would welcome all evidence or thoughts that you might have on that.

Andrew Bailey: We would be very, very happy to do that.

Q262 Chair: One of the other questions that was also raised with me before the hearing was about access to insurance products for those with disabilities. That is something that Scope, in particular, has been looking at. Is this an area that the FCA has been looking at?

Andrew Bailey: Yes. We did a piece of work with Macmillan that we put out last year. We took one example, which was access to insurance for people who have had cancer, and we pointed with Macmillan to a number of areas where we are concerned that it is not easy, or not as easy as it should be. Ironically, this may have got somewhat worse as a consequence of what I might call automation and big data, which may



HOUSE OF COMMONS

have worked very well for members of the public who are what one might call relatively standard—

Chair: Who can access such things, yes.

Andrew Bailey: —but may have made it somewhat harder for people who have less standard characteristics. The focus of that work, which we will be following up, is how you can ensure that people have access, they know where to look and there is some competition.

Q263 **Chair:** Is that something that you will do? The point about this is particularly in relation to insurance, so vulnerable customers, including those with disabilities, and whether the FCA is considering whether disabled people and similar under-served groups have access to insurance that fairly reflects risk. Is that something that is ongoing, or part of ongoing work?

Andrew Bailey: It is part of our work under vulnerability, and it is something that we have an ongoing engagement with the industry on.

Q264 **Chair:** Is that in the same timescale as you have just been saying to Ms Ali? Obviously, that was particularly in relation to overdrafts. Is that an area of work that is suffering because of Brexit?

Andrew Bailey: I will let you know on that, if you do not mind. I do not have that precisely in my head.

Q265 **Stephen Hammond:** Gentlemen, good afternoon. Open banking is obviously the new digital standard that aims to give customers more access to their financial information. It was launched on 13 January. I wonder if you could say what the FCA's perception of the reaction from the general public and the press has been.

Andrew Bailey: There has been quite a lot of coverage of it, which is good. It has set out the opportunities from it. We have authorised, I think, about 40 firms in that field for that period, and we have more coming along in the pipeline that are putting authorised applications in. Frankly, it will take a while to take off, as services develop. As you may know, the CMA has granted some extensions to a number of banks that were not ready. That something that is within the CMA's powers, not ours.

The other thing—and this has been exacerbated by disjointed European timetables and domestic timetables—is that there is an issue at the moment. We expect later this year that the European regulatory standards will be introduced, which essentially increase the security level and effectively put security in. There is this thing called screen-scraping, which you may be familiar with, which is essentially where people give their account details with no protection. It is envisaged that that will be replaced in this new world by the new standards.



HOUSE OF COMMONS

At the moment, that European legislation is not in place, but the requirement to be open is in place. We have been working with the various industry bodies to say, "Can you please put in place some sensible standards for the meantime?" We balance this openness objective against a security objective. If we have too many frauds going through this, we will be back to the discussion that we were having with Mr Hosie. On the other hand, we do not want to see a suppression of the benefits of open banking, so that is where we are at the moment.

Q266 **Stephen Hammond:** Thank you. Can I pick up on a couple of the things that you said? You said that there was a lot of press coverage, and that that is good, but, if I look at a lot of that press coverage, it is pretty sceptical about the arrangements. I just wondered if you thought it was convenient that there was this sceptical press that plays into the hands of the incumbent banks, which are trying to protect that data.

Andrew Bailey: That is one thing that we and the CMA will be very alert to. If the banks seek to use the security argument to suppress competition, as opposed to raising standards of security, that will require intervention by one or both of us.

Q267 **Stephen Hammond:** Who has the powers of intervention there?

Andrew Bailey: We probably both do, on that front.

Q268 **Stephen Hammond:** You mentioned that the CMA has granted a number of banks an extension to the deadline. You said that that was within its competence, and these were not small banks, either. It was Barclays and RBS.

Andrew Bailey: They were household names.

Stephen Hammond: They were household names. Were you, as the FCA, consulted by the CMA about whether it was appropriate to grant that extension?

Andrew Bailey: We were not part of that process, no. We were aware of that grant, but we were not formally part of that process.

Q269 **Stephen Hammond:** Were you informally part of that process? Were you asked for your reaction?

Andrew Bailey: We were kept in touch with it—put it that way—but it is not something that we have been involved in, because the open banking initiative is the CMA's initiative.

Q270 **Stephen Hammond:** Were you surprised that household names that have known about this for a long time were granted that extension?

Andrew Bailey: I am not close to the question of how it got to that point. We all have these issues: "Are they on track to do the things that they are supposed to do on time?" It is a question that you would really need to ask the CMA, as to how that evolves.



Q271 **Stephen Hammond:** Fair enough. You are undertaking a review of retail banking at the moment, and the business models. Obviously, part of that will be the future of branches. I wonder if there is anything you can say to us on what early conclusions you may have drawn, particularly with regard to closure programmes; what objective you are looking at in terms of customer protection if those branch closures were to happen; and what powers you may or may not have in preventing those.

Andrew Bailey: Branch closures are not directly under our responsibility.

Q272 **Stephen Hammond:** Presumably, it will be part of looking at the business model.

Andrew Bailey: It is relevant to that, because we are looking at what I might call products and customers. You inevitably get to the question that some products and some customers are more frequent users of branches than others.

The primary focus of it—and this picks up, again, where the CMA started and we took over, and comes back to the point about overdrafts in part—is whether there are cross-subsidies and, if you like, inequalities in the charging and cost recovery for products that have effects in terms of business models, and effects in terms of customers. You inevitably get to the “free if in credit” issue, but you also get to the overdraft issue, which we were discussing. One of the obvious questions is whether one of the consequences of the “free if in credit” model that those who go into overdraft are paying for a disproportionately large part of the retail banking service.

It will also come to another issue that I think John and Hannah were discussing at the last hearing, which is the ATM question. Obviously, that is also tied somewhat to the question of branches.

Q273 **Stephen Hammond:** Sure. If you take the view that ability to access internet and broadband coverage is the way that people might access accounts in future, that will be part of it. Can I bring you back to the comment you have just made about taking over the work from the CMA? You will be aware, of course, that in the last Parliament, this Committee looked at that in some depth.

Andrew Bailey: I am very aware, yes.

Stephen Hammond: The Committee was extremely critical of the CMA report, particularly in its lacklustre response in terms of its inability to get the banks to provide information about cross-subsidisation. How are you going to be able to do something different from the CMA, to make sure that that information is available?

Andrew Bailey: At a previous hearing in a previous Parliament, I said that it makes sense for us to pick this up. We are in an intensive data-gathering phase. I am rather conscious that, I think, Mr Malthouse



HOUSE OF COMMONS

asked me at the last hearing essentially the same question: “Why are you going to do something that nobody else ever seems to have done in the past?”

Stephen Hammond: As it was such a good question, I thought I would repeat it.

Andrew Bailey: No, it is a fair question. I will repeat the answer, which is that we are going to stick at this, because it is very important. It is not easy. Unpicking business models in this way is not easy. There is a question mark about how will the firms have responded to some of these questions, before it gets to us. It is so vital to some of these questions that we are wrestling with—such as overdrafts, for instance—that I do not think that we can let it go. We are giving this our absolute best shot, and I am a bit like a dog with a bone with this question, because I have been on about it for five or six years now. I am determined.

Stephen Hammond: You can be assured that this Committee will support you in finally eating that bone, because many of us found it surprising that current-day, modern management information systems cannot provide some of that data.

Andrew Bailey: That was interesting.

Q274 **Stephen Hammond:** Can I take you to 3 January, when MiFID II and MiFIR went live? Article 40 of MiFIR, of course, is the new product intervention powers. It gives huge new powers to European supervisory authorities, and article 40, as I understand it, was supposed to be a tool of last resort, only if there were significant consumer protection or systemic risks to markets.

In particular, therefore, is it not a surprise that on 18 January, just over a fortnight later, ESMA announced a direct product intervention, using those powers, on the contracts for difference market? Can you give your view? This is a market where, whatever you think about the product, there is really no significant investor protection issue. If you look at the number of complaints, it is a relatively small number against all the other complaints you have. Are you, as the FCA, concerned that ESMA has rushed into this without publicly sharing detailed evidence that suggests that there is an investor protection issue here?

Andrew Bailey: I am afraid that I do not agree on that, because the history of this is that the FCA did quite a bit of work on what I might call a UK regulatory regime in that respect. We then decided that it would make sense—in large part, because these things are classic cross-border instruments sold to retail investors—if ESMA were to take the initiative on this. It did not surprise me when it happened. Obviously, it has to go through a proper process to do this, and I think there are already reports that it is attracting a lot of responses. When we have done things on CfDs, you do get a lot of responses.

Q275 **Stephen Hammond:** Inevitably, because a number of people use that



HOUSE OF COMMONS

product, and despite what you say, as I understand it, in comparison to other things, there have been very few complaints. Can you tell us the number of complaints that you have had in the last five years?

Andrew Bailey: Not off the top of my head, no.

Q276 **Stephen Hammond:** Could you confirm that for us, please?

Andrew Bailey: I can.

Q277 **Stephen Hammond:** Thank you. I hear what you say, but are you not concerned that by doing a blanket intervention against well-regulated UK firms that you personally regulate—as we have discussed a moment ago—the only consequence of this action is likely to be that you are going to push those customers into poorly-regulated markets that take very little cognisance of ESMA?

Andrew Bailey: One of the interesting things from the discussions that we have had is that there are certain measures that, if we or ESMA were to take them, the more established parts of the industry would welcome. At least, they say they would, because they feel it would draw a line between what they do and what I might call the fringe of the industry. The area of leverage limits is particularly contentious in that respect, as to what is a sensible leverage limit regime. This is probably the heart of the contention.

Q278 **Stephen Hammond:** It is at the heart of the contention. Particularly as this is a relatively new power, can you say why the FCA did not push ESMA, rather than using article 40, to insist that NCAs had exhausted all of the measures that were available to them in their own market, particularly as there are a number of new measures under MiFID?

Andrew Bailey: The thinking behind it was, as I said, that this is a classic services passporting activity. I will be absolutely frank with you: they will end up going to the weakest link.

Q279 **Stephen Hammond:** Well, that is what is going to happen, because you have not exercised that power. Because of the way that ESMA has done this, the reality is that consumers in Britain are going to be at greater risk. They are going to rush to use less well-regulated authorities. You regulate well in the UK, but there are well-known examples elsewhere in Europe where it is poorly regulated. My concern, and the concern of many—including trade bodies across Europe—is that this is only going to create a race to places where people are going to be under considerably less protection.

Andrew Bailey: ESMA is in a consultation process. All of this will have to be discussed. I do not think that this issue is easy, but we see evidence of consumer harm in this industry. You may say—and I would not necessarily disagree with you—that that is coming from a fringe of providers, but if you look at things like the loss rate from these products, that is obviously related to the leverage question, as we were discussing.



HOUSE OF COMMONS

Q280 **Stephen Hammond:** To the point, the issue is that there is a loss rate, and there is pretty good evidence to suggest that everybody who uses these products knows that there is likely to be a loss rate. The issue is how many complaints you have had that they are unhappy about using these products. Some people accept that there is a loss rate, because they simply use it as a hedging tool for other things, so there may or may not be a loss rate. The issue is how many complaints you have had from people.

Andrew Bailey: I will come back to you. I do not know the figures off the top of my head.

Q281 **Chair:** I have two further areas, one sort of picking up on what we touched on before. I want to talk about insider trading. The *Times* newspaper analysed some share price movements on the day before every major profit warning and every merger or acquisition announcement over the past two years, and found that, on the day before the profit warning, the share price of the company that issued the warning fell in 67% of cases. Do you agree that this suggests that investors are offloading shares in advance of bad news here in the UK?

Andrew Bailey: I certainly think that that activity goes on. We are taking a lot more cases into investigation than we have done in the past. We have had a big increase in the number of market abuse cases that we are taking into investigation. That is not necessarily because there is more market abuse; we have more data, frankly, as well. That is one of the interesting things about MiFID: we now receive 13 million trade reports a day, so our ability to see a picture here has improved. I agree with you, and we agree that this is something that has to have more attention, and constant attention. We are getting better tools to do it with.

Q282 **Chair:** Were you surprised by the figures in the *Times*, or was this something where the FCA was already in the process of realising that it needed to step up?

Andrew Bailey: It was not a total surprise to us, no.

Q283 **Chair:** In summer 2017, the ONS announced that it would no longer give Ministers and government officials advance sight of important economic figures, because there had been reports that some of that data had found its way into the marketplace. Is that a decision from the ONS that you agree with?

Andrew Bailey: We had communication with the Committee on this subject. I met the national statistician. We advised the ONS on how the market abuse regime works, and you may know that there was an announcement made that the pre-circulation of official statistics was very substantially reduced as a consequence of that, from the beginning of July last year, if I remember rightly. I know that he was very concerned about the scale of pre-circulation of official statistics, and he said that he found it helpful that we were able to explain why, with the market abuse



HOUSE OF COMMONS

regime, there was a strong case for change. There were people, obviously, who felt that it was essentially that they had those statistics in advance.

I have to tell you that I do not have evidence as to what changes we have seen since July. One of the reasons is that we looked at the previous evidence, but we can only look at it in regulated markets. For instance, we do not have the same evidence on the FX market, because we do not regulate it, so we were not really able to provide a lot of help in that respect. When we looked at the regulated markets, we could not see much going on, notwithstanding the fact that there were concerns expressed. I think it would be better to ask the national statistician what they think has been the consequence of the action taken at the beginning of last July.

Q284 **Chair:** Given your own answer there, based on the increased amount of data that is coming through to the FCA, the increasing focus on this and the increase in personnel, your expectation would be that, at least, there might be more investigations. Obviously, prosecutions are a matter for the courts.

Andrew Bailey: Yes. That has already happened.

Q285 **Chair:** Turning to something else that we have also raised before, in relation to Saudi Aramco and the potential changes to the listing rules, I think your consultation closed on 13 October.

Andrew Bailey: Yes, it did.

Q286 **Chair:** Your policy statement is expected in spring 2018, but as we have heard in other questions timings can be elastic. What does "spring" mean in this context?

Andrew Bailey: I am not particularly close to this, because there was apparently some great significance to me having any discussion on this subject, which kept getting mentioned by my staff. As you know, there was a range of views on this issue, on both sides of this issue. We are talking to all the interested parties who have responded to it, to see how we can take those views into account and come up with something sensible.

Q287 **Chair:** I think we raised it in the evidence session last October. Have there been any further discussions between either the FCA and Saudi Aramco, or the FCA and the Treasury, on these matters?

Andrew Bailey: I think I said last time that I am pretty strict about the fact that we do not discuss these things, particularly with Ministers, I am afraid, because we have seen the consequences of that. I can honestly tell you that I have had no contact with the Saudis since we had the last hearing. I am sure that the Stock Exchange, for instance, has, because it is doing it from a different perspective, in terms of the commercial perspective. Our focus is very much on, given what we heard from



HOUSE OF COMMONS

people, whether we can make some sensible adjustments and see if something emerges out of it.

Q288 **Chair:** But has that decision not been taken yet, or has a decision been taken and it is just being written up? Has that decision not been taken?

Andrew Bailey: No, no decision has been taken.

Chair: Well, thank you very much indeed. I think there are lots of letters due to come from you to us, and a couple of letters to come from me to you, particularly in respect of the RBS report. For now, thank you both very much indeed. John, I want to just say—I hope I have this right—that you are standing down on 31 March, correct?

John Griffith-Jones: You do have that right.

Chair: I expect this to be your last appearance before the Committee, although of course we have several weeks left of that. If that is the case, perhaps we can thank you very much for your appearances, and wish you well in life after the FCA.

John Griffith-Jones: Thank you.

Chair: Lovely. Thank you both.