

Treasury Committee

Oral evidence: Maxwellisation, HC 1038

Wednesday 16 May 2018

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Members present: Nicky Morgan (Chair); Charlie Elphicke; Stewart Hosie; Mr Alister Jack; John Mann.

Questions 1-38

Witnesses

I: Andrew Green QC, Blackstone Chambers, Author of Maxwellisation Review, Specialist Adviser to the Committee; and Fraser Campbell, Barrister, Blackstone Chambers, Co-author of Maxwellisation Review, Specialist Adviser to the Committee.

Examination of witnesses

Witnesses: Andrew Green and Fraser Campbell.

Q1 Chair: Apologies for the delay in getting started—who knew that a Select Committee report could be so exciting to agree? Thank you very much for coming to this evidence session. We are going to start with Maxwellisation and your review—the Green review, published in November 2016—and then we will go on to the SME finance inquiry. We have some other witnesses coming in to join you, and Andrew will talk about a financial services tribunal.

Let me get straight on to the first bit on your review. Obviously, it was published 17 months ago. It is colloquially called Maxwellisation, but in your report you rightly call it a “representations process”. For the benefit of the Committee and those watching, can you perhaps summarise the key recommendations from the report?

Andrew Green: Yes, of course. Probably the most helpful way of doing that would be to take you to paragraph 13, because we have a section entitled “Principal Conclusions”, and we list a number of them. May I cherry-pick a few of them?

Chair: Yes, please do.

Andrew Green: Paragraph a: “The common law imposes no rigid requirement that a Representations Process must always be conducted.” In the next sentence, we identify what we call the central legal principle—the fundamental principle—which is as follows: “What is required is that a person be given a fair opportunity to respond to criticism prior to its publication in a report.”

In paragraph b, we set out what the legal consequence of that is: “It follows that, if a person has already been given a fair opportunity to respond to the substance of a proposed criticism contained in a draft report (such opportunity being given at the evidence-gathering stage of an inquiry), there is no need to give that person a further opportunity to make any representations prior to publication of the report.” In those circumstances, you don’t need to go through a representations process.

In paragraph c, we set out the general approach that we recommend: “It is important that those conducting inquiries have flexibility to determine the procedures (including any procedures relating to the Representations Process) to be adopted for the purpose of fulfilling the terms of reference of the particular inquiry in a way that is fair, while recognising the importance of expedition and cost efficiency.”

In paragraph d, we come to what really, in many ways, has become the principal mischief, as we see it: “It is an error of approach (unless required to do so by...the Inquiry Rules 2006) to adopt a procedure, at the start of an inquiry, which includes a commitment to conduct a Representations



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Process applicable to every person who is to be criticised in the final report." Let me just pause there. The importance of that point is that it has now become, in effect, standard practice for the written protocols right at the outset of an inquiry to commit the chair to conduct a full, all-singing, all-dancing representations process, applicable to absolutely every person who is potentially criticised in the report. We say that is an error of approach because it goes beyond what the law requires, inhibits flexibility on the part of the chair, and has the propensity to delay a public report and cost extra money. That is the key error of approach.

If you then go over the page to paragraph g, we say: "It is generally appropriate to use the Representations Process as a 'sweeping-up' exercise so as to ensure fairness to those specific people who, by the time a draft report has been produced, have not already had a fair opportunity to respond to proposed criticism."

You have got our overall conclusion in paragraph i: "Thus, the Representations Process can (as a matter of law) and should (for reasons of expedition and cost efficiency) generally be used considerably more sparingly than is the case at present."

Q2 Chair: That is helpful, thank you very much for that. Moving on, given that it was 17 months ago, I wonder how widespread your understanding is of the representations process in terms of how it is being used. Why do you think inquiry chairs are not following the approach that you have recommended? The suspicion is that this is about overcautious inquiry chairs. How do we persuade them to be less cautious?

Andrew Green: There are quite a lot of questions wrapped up in that. Let us start with how widespread it is. Obviously, without conducting an extensive review of all recent reports, it is difficult to be absolutely precise, but there are two points I would make on that. First, the Cabinet Office has issued inquiries guidance, which we refer to in paragraph 28. That guidance makes the point that it has become a standard practice. That is the first point.

The second point is that our experience was that that seemed to be absolutely right. We got evidence from 13 authors. Of those 13 authors, 12 carried out a representations process. In the financial services area, we got evidence from 10 authors and all 10 carried out a representations process. It seems to be extremely widespread.

In terms of why that is, you are absolutely right: it is an overabundance of caution. Entirely understandably, what has happened is that people are very concerned not to face the type of legal challenges that Mr Maxwell twice unsuccessfully mounted.

The other factor is that a lot of people have not regarded the law as terribly clear in this area. One of the responses we got to our call for evidence was from the FCA. They said that they have consistently received legal advice to the effect that a representations process must be carried out. Factors such as that have led to this overabundance of caution. How

are we going to change that? Hopefully, we will change it by people reading our review and taking our guidelines seriously.

- Q3 **Chair:** Absolutely. We might come back to what we might need to do if that does not happen. We will come back to the FSMA at the end. One of the points that you have already summarised is the extent to which a representations process is useful and desirable. From the responses you have had, can you set out any responses from the chairs about positive and negative experiences of the Maxwellisation process? I am sorry, Fraser, I should have said if there are things you want to say, please chip in.

Fraser Campbell: He is behaving himself so far.

Andrew Green: When we get to the difficult questions, I will pass them over to Fraser. In terms of positive responses, out of the 12 authors who provided us with evidence, it is fair to say 10 of them found the process to be generally pretty helpful in terms of enabling them to correct factual errors, to sometimes no doubt revisit criticisms they had made, to generally kick the tyres of their report and to ensure that it was robust and accurate. Generally, authors liked the representations process. Speaking personally, I did as well. I found it extremely reassuring.

On the negative side, there was the fact that it has the propensity to become rather unwieldy if it is not handled properly—certainly, in some instances, it clearly got out of hand. It has the capacity to dramatically extend the time of publication of a report.

- Q4 **Chair:** I will come on to timing in just a moment, because that is very much to the fore. A lot of reports take a long time, as we know from recent reports. Before we get there though, if future inquiry chairs were to take up your offer in the review and change the way the representations process is handled, they would have to be more tightly controlled about the process and really focus on when people were invited and at what stage. Does that mean a slightly different role for inquiry chairs, in the sense that they would have to be more proactive rather than just handing a report over and saying, “Let us have your view and take as long as you need”?

Andrew Green: I don’t think so. In many ways, you need more flexibility. One of the things that is clear is that every inquiry has its own problems. Some inquiries require more evidence to be reviewed; some inquiries have much more extensive issues to deal with. For example, in the HBOS report, which I am sure we will come to at some point, “Why did the bank fail?”, is an extraordinarily wide question. Many reports are much narrower in their ambit.

The essential thing is that you need to have chairs with flexibility to determine, in the light of the issues, what the terms of reference are. They need to determine flexibly exactly what procedures they want for the purpose of their inquiry. We deal with flexibility in our guidelines—they are on page 9. The approach that we would suggest is that of paragraphs F and G: “The Chair of an inquiry should have flexibility to determine the



procedures to be adopted for the purpose of fulfilling the terms of reference of the particular inquiry, including flexibility to determine how best to ensure fairness to those who may be criticised... It follows that the Chair should not be required...to conduct a Representations Process."

Paragraph G states: "The written procedural protocols drafted for the purpose of a particular inquiry...should generally enable the Chair to decide, once a draft report has been produced, whether it is necessary to conduct a Representations Process." In H, I and J, we set out various considerations that the chair ought to take into account at that stage. The starting point is flexibility. Then, we have identified various issues that chairs ought to consider to enable the process to run smoothly for the purpose of their particular inquiry.

- Q5 **Chair:** That's very helpful. Let me come to timing, because that is one of the great frustrations with these reports. You are right to say that many are incredibly complex, but they take an inordinate length of time—years in some cases. One of the reasons the Committee asked you to produce a report was the 14-month delay in the publication of the HBOS report, due to the representations process. In the inquiries that you looked at where there had been significant delays, were the delays because of the length of the representations process or was there some other factor? Is the approach of the chair, or other evidence coming in late, making these things take longer?

Andrew Green: I think it is important to bear it in mind that there is no doubt that the full, all-singing, all-dancing representations process certainly is capable of dramatically extending the time for publication of a report. That is absolutely true. I think that the public perception that the representations process invariably or very often has that effect is a little unfair and somewhat inaccurate.

The position with the HBOS report is that, of all the 10 financial services reports that we looked at, the HBOS one was the only one where there was a very significant, disproportionate delay. All the others were in the bounds of reasonableness. Certainly, in the context of HBOS, it looked disproportionate. Why did it go wrong? We were not doing a proper audit of the report. I cannot tell you exactly why it went wrong, precisely what went wrong, whether it could have been different and who is responsible.

It is worth drawing out that the likelihood is that it went wrong probably at the evidence gathering-stage rather than at the representations process stage. There is some support for that in the PRA's own response to us, which is probably worth having a very quick look at. It is on page 124 of the appendices. Paragraph 15 is worth looking at, because it draws out quite a few issues. It says: "For the purposes of the HBOS Review, the Regulators adopted the process that individuals would be given sight of the criticisms themselves in the form of an extract from the text of the draft report". There, rather than giving summaries, they have sections of the particular report.



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The response goes on to say, “but that those individuals would not be given access to the underlying documentation on which those criticisms were based. However, during the process,”—the representations process—“the Regulators received a number of requests for underlying documentation. In those cases, the Regulators took the approach of asking the individual for an explanation of why they considered that they needed access to the documentation in order to make their submissions. If the Regulators were convinced, based on the individual’s explanation, that proper submissions could not be made without sight of some underlying material, they then allowed access to it. This resulted in 71 documents...being made available to certain Maxwellisees.”

This seems to suggest to me that during the evidence-gathering process witnesses were given pretty limited quantities of underlying documentation. The result is, if that were the case, the evidence-gathering process didn’t really enable the witnesses properly to engage with the issue and with potential criticisms. Now, if that is the case, the error in HBOS was more with the evidence-gathering stage than with the representations process. Actually, there is some support for that in the evidence that we have got from the Financial Services Lawyers Association, many of whom were lawyers acting for people in the HBOS review, so they would have been providing responses—they said that something went wrong with the evidence-gathering process.

Frequently, therefore, one of the problems with the representations process is what has happened before.

- Q6 **Chair:** Before I bring in Charlie, time limits were also talked about in your practical guidelines at H.i.: “time limits to be given to each person for responding”. Perhaps you will talk us briefly through that and how you came up with that. Also, the criticism of Ashurst in their response to the Committee—their worry—was that fairness could be at risk if the process was subject to a strict timetable. How would you answer that?

Andrew Green: I think Ashurst were also critical of us coming up in the body of the report with the suggestion that it would rarely be necessary to go beyond 21 days. The point that we make in H.i. is that the time limits to be given to each person have got to be considered by the chair. The chair should in general adopt the shortest time limits consistent with providing the person with a fair opportunity. I don’t think that Ashurst are critical of that. I think everyone accepts that one needs discipline in the process and that one needs relatively strict time limits, provided you give people sufficient time to respond to the criticisms.

The reason why we said that 21 days is generally sufficient was largely on the basis of the experience from the information that we got. If you go to paragraph 111, you will see that we have set out a chart relating to six of the financial services-related reports. If you look at the right-hand column, “Deadline for Representations Process responses”, you will see that in the case of all these reports people were given between one week and three weeks to provide their responses. Certainly in the context of my report, 21 days was absolutely fine. I think we actually have given an extra week.



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Twenty-one days is absolutely fine in most cases. There will obviously be cases where people need longer, and they will be given longer.

- Q7 **Charlie Elphicke:** Mr Green, reading your report on your review, and looking at the issues of when and how to conduct a representations process, if we go back to first principles, what we are really looking at is, in effect, how to ensure that we provide natural justice: first, that an inquiry chair or a Minister, if it is a Government Minister making a decision, must not be biased; and, secondly, that they must hear the other side—"audi alteram partem" it used to be called. Is it fair to say that what you are doing with a representations process is trying to ensure that the other side is heard and that natural justice is adhered to effectively?

Andrew Green: That is exactly right. The central legal principle, as I say, is that before a person is criticised in a public report, that person has got to be given an opportunity to respond to the proposed criticism.

- Q8 **Charlie Elphicke:** So we don't want a 1930s-style denunciation of someone for some remark or something like that—a case that is effectively not put to them so they can't answer it. We need to ensure that someone knows the case so that they can make an answer. That is at the heart of natural justice, isn't it?

Andrew Green: Absolutely.

- Q9 **Charlie Elphicke:** That would apply whether it was a Minister, an inquiry chair or any public official in a decision-making capacity.

Andrew Green: Yes.

- Q10 **Charlie Elphicke:** And to do otherwise would be misconduct.

Andrew Green: It would certainly be a breach of the duty of fairness, yes.

- Q11 **Charlie Elphicke:** Looking at the representations process for the other side, we don't want a situation in which we are providing for listening to the other side but hearing the other side warps the entire report, or delays the entire report, unfairly and unduly. That happened with the inquiry report about when we were going to war, which seemed to go on forever. Is that fair? So we want to make sure it is pithy.

Andrew Green: We want to make sure it's pithy?

Charlie Elphicke: The representations process must not be so long and so great that it causes the entire report to be delayed or, indeed, the conclusions to be altered.

Andrew Green: Of course. It is a balancing exercise. On the one hand, you have to ensure that the duty of fairness is adhered to, but on the other you have to recognise that there is a public interest in reports coming out expeditiously, in public money being spent properly and in costs not being wasted on an unnecessary process. That is exactly right.



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- Q12 **Charlie Elphicke:** Within that, your review quotes the PRA raising “concern at the lack of clarity as to ‘the threshold at which mere comment becomes criticism’”. Where would you strike that balance, and how do we make the guidelines in this area clear and easy to follow for an inquiry chair?

Andrew Green: The point about what constitutes a criticism and therefore triggers the representations process is obviously highly context-specific. It depends on precisely the nature of what is said in the particular report. The best we can do, in terms of giving guidance, is what we do in our guidelines at item C, where we set out what the current legal test is, outside the scope of the Inquiry Rules in rules 13 to 15. The test is that, “A criticism of a person is sufficiently serious to engage this legal principle if it may adversely affect their interests (including their career or reputation).” That is the point at which you have to consider a representations process in relation to that person.

Charlie Elphicke: In other words, you must not do anything—I think it was actually in the old Magna Carta—to take away the liberty of a person or, indeed, affect their standing or status, if I recall the article of Magna Carta.

Chair: Are you going to whip out a copy of it, Charlie?

- Q13 **Charlie Elphicke:** Isn’t the principle that you cannot affect someone’s status or standing—as you say, in modern times that effectively includes affecting their livelihood—without their having the ability to have a hearing and to make answer?

Fraser Campbell: That is absolutely right. I would only make one other point, which is that we should not necessarily think it is just a case of protecting private interests in terms of natural justice, and weighing that against a public interest in speed and expedition. There is also a public interest in reports being accurate, thorough and reliable.

We have heard from various authors of reports that not only does it potentially give an individual a right to be heard and protect their reputation, but a representations process, if it is proportionate and appropriate, can make the report more reliable. There is a public interest in accuracy as well as speed. That is part of what is to be weighed in the balance.

- Q14 **Charlie Elphicke:** Great. That is very important, because it goes to the heart of the rule of law, who we are as a country and how we govern ourselves. Let’s turn to rules 13 to 15 of the Inquiry Rules 2006. Do you think they strike the right balance, or do you think they need to be rewritten?

Andrew Green: We have certainly recommended that they should be revoked. We have adopted the position taken by the House of Lords Select Committee. I don’t know if you want to go through them at all.

- Q15 **Charlie Elphicke:** Not in detail, just in general. Can you give us a more general idea of what the mischief is that needs to be fixed?



Andrew Green: The mischief that needs to be fixed is that rule 15 in particular is highly prescriptive. I think it was Lord Justice Leveson, giving evidence to the House of Lords Select Committee, who said that had he gone through the process in accordance with rule 15 he would effectively still be doing his inquiry. I think there was also evidence to us from Robert Francis, who did the Mid Staffordshire report, saying that complying with rule 15 was so onerous that it added something like six months to his report. It is a highly prescriptive process and it is completely unnecessary. We would suggest rules 13 to 15 should be revoked, and one is then left with the common-law position.

- Q16 **Charlie Elphicke:** It has become the case that a separate representations process seems to be automatically made for anyone facing any criticism in any report, whether it is by the NAO or anyone else. Do you think that also needs to change and that whole culture needs to be swept away and made more flexible?

Andrew Green: Whenever there is a public report, there is obviously an obligation and a duty of fairness. The duty of fairness should apply across the board, and it does apply across the board. What we are saying is that, insofar as you conduct a representations process, you should conduct it by applying it not to every single person who is criticised, but simply to those people who are criticised who have not already had an opportunity to respond to the criticism during the evidence-gathering phase of an inquiry.

- Q17 **Charlie Elphicke:** Turning to how to conduct a representations process, there is this issue of tension. To what extent should a person who is supposed to make answer to a criticism, or whatever is being put, be allowed to have disclosure and background evidence and documentation, so they know what they are actually answering? That will be quite a difficult one, because you could give them files and files, or you could give them a two page sheet to say it in general terms. How do you strike that balance?

Fraser Campbell: That is an important point at all stages, because that applies at the initial stage of evidence gathering as well. When someone is called for interview, how much warning should you give them and how much material should they have in advance? It is a question both of their private rights, and of getting the best information out of them and in getting to the heart of what has happened and what is being investigated.

From when the chair is appointed, they should be thinking about what issues emerge and how they can get to the heart of the matter quickly and fairly. That will often involve, perhaps more than is sometimes the case, giving people quite substantial disclosure—subject to sensitivity, public interest and so on—and allowing them to know from the start what it is they are supposed to be explaining. If you have done that right from the start, you are more likely to get a full picture and you are less likely to have to rely, at the end of the day, on a representational process, where you suddenly show them a fully formulated criticism, which they and their lawyers suddenly have to seek to get the chair to reverse. It is much better to front-up earlier.



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- Q18 **Charlie Elphicke:** So if, for example, I was an inquiry chair and I was going to invite a witness in, or a person I thought had a case to answer, it would not be the right thing to just give them two pages of disclosure five minutes before I then started discussing the matters with them. I would want to have given them proper stuff in advance, to get a proper answer.

Fraser Campbell: Exactly. We have this in guideline K of our report. What is reasonable will depend on all the circumstances of how complicated the materials are, how sophisticated the witness is and how serious the allegations might be. But it is certainly not five minutes and two pages.

- Q19 **Charlie Elphicke:** The review notes that the representations process can provide parties and their lawyers with an inappropriate opportunity to dilute the criticism I alluded to earlier. How often do you think that actually happens and how do we put a stop to it?

Andrew Green: We didn't see very much evidence of it happening. For the most part, the evidence that we got seemed to indicate that actually representees and their lawyers are not misusing the process at all. My experience in the report that I produced was that that was absolutely the case. People were entirely responsible. Obviously, sometimes you get responses that you don't agree with or are a little too long, but that is fine and is expected. We didn't really feel that there was a problem with people trying to negotiate. But in any event, our guideline J puts paid to that.

- Q20 **Charlie Elphicke:** Finally, in summary, in terms of how to conduct a representations process, would you say that your review provides a complete prescription for the inquiry chair to pick up and happily take forward, and avoid being overturned in a court of appeal?

Andrew Green: It is an extremely helpful set of guidelines that will certainly assist people. Nothing can be comprehensive and one needs flexibility in the circumstances, but I think that if they followed our guidelines and read the report, I would hope that they would be secure against any judicial review.

- Q21 **Charlie Elphicke:** So hopefully in future, the FCA, the PRA and financial regulators will use this and get these reviews done rather more quickly than they perhaps have in recent times.

Andrew Green: We would certainly hope so.

- Q22 **Mr Jack:** I have a couple of questions regarding the agreement with the Cabinet Office for an online resource for the procedure and protocols, using a selection of inquiries past and present, to streamline that part of the process going forward. Can you tell us how you think that online tool will work?

Andrew Green: I spoke with the Cabinet Office about this prior to producing the report and I anticipated simply a portal or a place on its website, which would basically store all terms of reference for the reports that we have identified and procedural protocols for the same. Chairs



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instructed on new inquiries could simply go to it and see how other people dealt with procedural protocols in the past.

Q23 **Mr Jack:** Has that been implemented by the Government yet?

Andrew Green: I don't believe so.

Q24 **Mr Jack:** Basically, would the online tool include the cost and length of previous inquiries, to provide some sort of benchmarking tool?

Andrew Green: I certainly haven't suggested that. Personally, I don't really see the advantage of that. Every inquiry has its own different issues.

Q25 **Mr Jack:** So you can't see a way of using it to benchmark for value for money?

Andrew Green: Not really.

Q26 **Mr Jack:** So it is really just to shorten the process?

Andrew Green: Yes. The evidence that we got from one witness was that, when they started creating their procedural protocols for the purpose of their inquiry, it was like reinventing the wheel. My experience with my HBOS inquiry was that it was very much like reinventing the wheel. I had absolutely no idea where to go to find procedural protocols and I effectively had to create them for myself, having spoken to other people who had been involved in inquiries. It seemed to me that it would be very sensible and helpful for people carrying out inquiries in the future if this resource was provided by the Cabinet Office.

Q27 **Mr Jack:** My last question is about whether the Cabinet Office have given you any timeframe for when it may be implemented.

Andrew Green: No, they haven't. To be fair, I haven't gone back and chased that.

Chair: After March 2019, maybe.

Q28 **John Mann:** How long should the Maxwellisation process for the HBOS inquiry have taken?

Andrew Green: It is impossible to say. As I say, we didn't conduct an audit, so I can't really say precisely what went wrong.

Q29 **John Mann:** But what is your feel for how long? Was it 14 months?

Andrew Green: My feel is that it could have been done somewhat more quickly had the evidence-gathering process been more efficient.

John Mann: "Somewhat" is a very vague concept.

Andrew Green: I'm afraid I can't really be more specific. I would very much like to answer your question and help you and give a specific timing, but I don't feel I am able to.

Q30 **John Mann:** The templates weren't used as provided. How big a problem was that?



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Andrew Green: Certainly the PRA, in their response to us, said that it was a problem. I think they also referred to the fact that a lot of answers were repetitive and very long, but what is repetitive and long to the PRA may not be regarded as such by the lawyers who produced them.

Q31 **John Mann:** Is it reasonable to use responses if they have failed to use the template provided?

Andrew Green: One thing that people could do, going forward, is that, if an inquiry chair wants to use a template, they can certainly say to people in advance that, if they don't use the template, their representations will not be considered. That may be something that people should do, going forward.

Q32 **John Mann:** There were two rounds of Maxwellisation with HBOS. Does having two rounds not make it more of a negotiation?

Andrew Green: Without actually looking at the nature of the representations made, I don't really know. The key point to note here is that, in the first round of the representations process, the FCA and PRA received something like 1,425 representations. The result is that it is pretty much inevitable that you will have a second round, because there will be criticisms of certain people who were not participants in the first round, and they will then need to be subject to a representations process.

What will also inevitably happen, and did happen, is that certain criticisms of people will in fact be strengthened, the result of which is that you need to give those people another opportunity in a second round. Because of the size of the representations process in the first round, it was virtually inevitable that there would be a second round.

Q33 **Stewart Hosie:** The FCA is prohibited by section 348 of the Financial Services and Markets Act 2000—FSMA—from publicly disclosing information about firms and individuals acquired during the course of its work without consent. What are the merits of that provision, and do you think it gives rise to any problems?

Andrew Green: Section 348 was rather outside the scope of our review, so I am not really in a position to deal with that to any great extent. My experience, in the context of the review that I did, was that section 348 slowed things down. There is no doubt that the process of trying to get consents from people took time, and sometimes, people were relatively bloody and quite difficult about it. There is no doubt that section 348 does cause some difficulties to people producing reports. Having said that, it contains important protections.

Q34 **Stewart Hosie:** You have been into this Maxwellisation process in some depth. What is your feel about whether or not section 348 allows a culture of secrecy to develop in the regulators that might prevent them from being held properly accountable, because information that common sense might say should be in the public domain cannot be because of section 348? I am just trying to get a feel for where you think the balance lies between transparency and the proper protection of those who have



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been called in to give evidence.

Andrew Green: I am not sure that section 348 causes any secrecy on the part of the regulator. If the regulator is secretive, it may be—and I suspect it is—independent of section 348. I think frequently the regulator would actually like to make disclosures, and section 348 inhibits the regulator. I certainly think that one needs to consider whether or not 348 has the balance right—for example, on public interest grounds for making disclosures.

Section 348 is a big topic. You are raising absolutely fair questions. They are not questions that I have considered for the purposes of today. I would be delighted to come back at another time and answer the questions on section 348 having given it a bit more thought, but at the moment it is somewhat outside the scope of our Maxwellisation review.

- Q35 **Stewart Hosie:** In that case, it might be helpful to get your considered views later. I will just end with one more question. I am sorry it is still about 348, but it is slightly different. Did you get an impression at all when you were reviewing this that the FCA's approach to Maxwellisation interacted or conflicted with its obligations for confidentiality under that Act, or under 348?

Andrew Green: No, I didn't.

- Q36 **Stewart Hosie:** You had no sense of conflict at all with that?

Andrew Green: No, I didn't get any sense that there was a conflict.

Stewart Hosie: In that case, we may come back to that in more detail. Thank you.

- Q37 **Chair:** I have just one final question. In your review you talk about the definition of criticism—what is a criticism? I think you rightly say that it is impossible to be too prescriptive about that, because otherwise you could produce pages and pages.

Something occurred to me when I read the review and your conclusions. In terms of revisiting, and John's question about HBOS, where the process was, I think, revisited twice, is there a difference between the evidence gathering, where somebody wants to take issue with a piece of evidence that is submitted about them or their conduct, and the conclusion that is drawn, which perhaps cannot be drawn at that evidence-gathering stage by the inquiry chair until they are much further down the process?

I suppose I am asking you whether there will be a case—again, perhaps this depends on the flexibility of the chair—sometimes for the representations process to be revisited again, depending on the way the inquiry has unfolded.

Andrew Green: Without a doubt. Invariably what happens during these inquiries is that you interview a witness, and new information comes out that makes you reconsider some of the information that you put to the witness and some of their answers. In those circumstances, you can either



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re-interview the witness, send them further questions or, right at the end of the day, right at the end of the process, conduct a representations process.

Q38 **Chair:** Is there anything else that you wanted to draw to our attention from your review that we have not explored this afternoon? I am sure that there are lots of things, but there was nothing else major that you thought that we should pick up on?

Andrew Green: No.

Chair: Lovely! Thank you both very much indeed. Andrew, you are not escaping, because you are going to sit there for our second panel this afternoon.

Andrew Green: It's like speed dating.

Chair: People have called the Treasury Committee many things, but I think that might be a first. I think this afternoon might also be the first time we have had Magna Carta referred to in Treasury Committee questioning.

We will have a slight pause now. Andrew, you can stay there; Fraser, thank you very much indeed for being here this afternoon.