

Treasury Committee

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

Tuesday 25 June 2019

Ordered by the House of Commons to be published on 25 June 2019.

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Members present: Nicky Morgan (Chair); Rushanara Ali; Mr Steve Baker; Mr Simon Clarke; Charlie Elphicke; Alison McGovern; Catherine McKinnell; Wes Streeting; Alison Thewliss.

Questions 442 - 568

Witnesses

I: Andrew Bailey, Chief Executive, Financial Conduct Authority; Charles Randell, Chairman, Financial Conduct Authority.

Examination of witnesses

Witnesses: Andrew Bailey and Charles Randell.

Chair: Good morning. Thank you very much to our witnesses, Andrew Bailey and Charles Randell, for being here for this regular session on the work of the Financial Conduct Authority. We have a lot of issues to get through and a lot of interest in this session. If members of the Committee have any relevant interests, I am going to ask them to declare them now for the purposes of the record.

Mr Baker: I am a customer of Hargreaves Lansdown and I have a small holding of LF Woodford Equity Income.

Mr Clarke: I have the same as Steve.

Q442 **Chair:** Of course, we all have constituents who are interested in the Woodford situation, but also London Capital & Finance, RBS and many other issues.

I wanted to start with the Woodford situation, in terms of the Woodford Equity Income Fund. Thank you for the letter that you sent back to the Committee last week in response to our questions. I am sure you will have seen the correspondence that Hargreaves Lansdown has sent us as well, and others. Mr Bailey, Hargreaves Lansdown told us that it first started talking about the liquidity position of the Woodford fund in November 2017. In your letter, you note that the FCA had regulatory contact with Link, the fund manager, regarding liquidity in February 2018. Can you tell us what prompted that contact? Why was there a delay between November 2017 and February 2018? Of course, we are now in 2019.

Andrew Bailey: First of all, the fund operates under the so-called EU UCITS system, the system of transferrable funds. There is what I might call a substantial package of rules in UCITS, which create things that can lead to alerts where the rule is breached. In February 2018, as you say, there was a breach of the so-called 10% unlisted assets rule. That is 10% of the value of the fund. The breach was 10.02%, so it was a small breach but it was nonetheless a breach. That is what prompted us to act at that point.

We had had a regular engagement with Link prior to that. I do not want you to think in any sense that this was the first point at which there was any engagement with Link, but it was the first point at which there was engagement on this 10% issue, which in a sense is the ceiling on unlisted assets. They corrected that intra-month. Obviously, it was a small breach, so in that sense it was not that difficult. There was a further breach the next month. Again, I am trying to remember the exact number, but it was less than 11%. It may have been up to 10.5%, and they corrected that again.



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That was the point at which we put an enhanced monitoring regime in place. To give you a bit of context for this, we have about 3,000 open-ended funds in this category. That is the sum of the UCITS funds and the property funds that we have talked about in the past. They are both open-ended. They are slightly different regimes, but they have similar characteristics. In the last 12 months, we have had breaches on this limit. There are a lot of other things that can be breached, but on this limit we have had two funds that have breached: the Woodford one and another one, which is a very small fund. As you can see, it is fairly rare to breach this limit. We put in place an enhanced liquidity-monitoring regime. I gave you some of the figures, both in terms of how we were looking at the limits that they were setting and how they were looking at what I might call the liquidation of the fund position. You can see it tilts in those two tables we gave you.

Secondly, we also sent you the picture of the overall profile of the fund. The overall profile is actually very important, and we may come back to it, if you like. One of the important characteristics of the Woodford fund is that it was launched in 2014 and by 2017 it had grown to just under £10 billion. That is the peak. You can see that sort of arch in the chart. At that point it starts losing funds consistently but not dramatically. We put in the letter that even up until quite recently it was about 1% a week. That was manageable for them. In terms of our liquidity monitoring, we were alert to the fact that this was a fund that was persistently shrinking. That should be able to happen, clearly. Funds can come and funds can reduce, but that further alerted us to the question of it. They did not breach the limit thereafter.

I do not know whether you want me to go on, but that is an important issue in itself. That really gets to the crux of it.

Q443 Chair: We are going to come on to a number of these detailed issues. As I understand it, the market could see how many days it would take to liquidate the fund. Is that not a marker for the FCA of a need to intervene or to ask questions?

Andrew Bailey: Yes, it certainly is to ask questions. The question about intervention is different. As I said, we were observing the outflow against the liquidity metrics. You may have seen the chart, but until right at the end of that period, which of course was the point of suspension, the outflow looked manageable, with the big exception, which I will come back to, of how they were actually reporting to us. This is the point about how they were reporting to us and what was unlisted.

Q444 Chair: At what point did you raise concerns? Was this part of the conversations you were having? You talked about having earlier conversations before February 2018 with Link. What was the basis of those conversations?

Andrew Bailey: If you go back in time, at the end of 2016 and the start of 2017, we had reviewed the valuation practices of Woodford



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Investment Management. At that time Woodford Investment Management was also the valuer of the fund, so it was acting in several roles. We said to Link, "We cannot have that".

Q445 **Chair:** You were concerned that there was a conflict of interest back in late 2016.

Andrew Bailey: Yes. We said, "You have to appoint an independent valuer", which it did, by the way.

Q446 **Chair:** You had to tell Link that. Link is presumably employed for its professional expertise.

Andrew Bailey: It had not done that, no.

Q447 **Chair:** It had not done that. Of course, Link was involved in both Arch Cru and the—

Andrew Bailey: It was called Capita at that point, but yes.

Q448 **Chair:** Exactly, yes, but the same entity, which Capita then decided to sell, was involved in Arch Cru.

Andrew Bailey: Link is a fairly large fund manager. As you may have seen, the UCITS structure is a somewhat odd structure. Link is the authorised fund manager, so Link is the organisation we authorise for fund management. It then outsources the investment management to Woodford.

Q449 **Chair:** Over which the FCA has no role.

Andrew Bailey: No, not quite. Woodford is an authorised investment manager, but in terms of the operation of this fund Link is the point of responsibility. I am very clear on that. When we introduce the senior managers regime in this world, which I expect will come out later this year, the primary point of responsibility will be Link. That is really important, because it will be responsible, and it should be.

Q450 **Chair:** You are saying already that Link failed to spot or did not take action on what certainly looked like a conflict of interest and clearly was a conflict of interest back in late 2016 and early 2017.

Andrew Bailey: Interestingly, we had to do the review and say to them, "We are not comfortable with this".

Q451 **Chair:** Mr Randell, at what point did this particular case come before the FCA board?

Charles Randell: This did not come to the FCA board prior to the point of suspension. The escalation of this, as Andrew has explained, with what appeared to be manageable and normal outflows, occurred when there was the very big redemption request, which caused the fund manager to decide to gate the fund.

Q452 **Chair:** Let us move on to the issues about Guernsey and the investment



in Guernsey. As I understand it, the Guernsey listing organisation, the International Stock Exchange, tried to get in touch with you. They started in April. They tried to make contact, and it was not until 7 June that suspension actually happened. Perhaps you could talk us through those contacts.

Andrew Bailey: I am sorry; that is not true. Let me give a timeline on Guernsey. The main listing on Guernsey took place on 21 March. There is a series of listings, because obviously each holding was listed separately. The biggest one was on 21 March.

By the way, let me explain a little bit about the background to that, because this is important in the UCITS structure. Under the UCITS structure, a fund manager can designate exchanges as approved exchanges. If you look at the prospectus for the Woodford fund as a whole, there is a whole list of them and they had designated Guernsey. I am not sure it was originally designated, but it was designated quite a while ago; it is not recent. Once an exchange is designated, it does not have to tell us what it is doing in that sense. It does not have to tell us that it is listing things on an approved exchange; it can do that.

The main listing took place on 21 March. The Guernsey exchange suspended the listings on 11 April. As we understand it, they did that—and I should say that we are waiting to get more details on this—because they were concerned that it was, to coin a phrase, regulatory arbitrage, which it was. I can come back to that, if you like. I will come back to the contact in a minute, but they lifted those suspensions between 23 April and 14 May. They did not do them all at once. My sense of that is, whether or not it was a regulatory arbitrage, they are allowed under the UCITS rules.

They first tried to contact us on 15 April. It is true that, for whatever reason, they contacted somebody in the FCA who was not at all involved in this area and quite junior, and the message got lost. Let me make the point that, by that stage, they had already both listed and suspended. They contacted us again on 26 April and there was an immediate conversation back on 26 April. Frankly, what they said a few weeks ago was at odds with that. That led to the setting up of what we might call the first conversation of substance, which happened on 8 May. You will see that. You have a letter from them.

Q453 **Chair:** It took from 15 April to 8 May for the FCA and the Guernsey stock exchange to have a substantive conversation.

Andrew Bailey: Let me go through that again. For some reason, between 15 April and 26 April, the initial call, which went somewhere else in the FCA, did not make contact, and they did not try again until 26 April. Once they tried on 26 April, they got an immediate response from us, saying, "Let us arrange to talk". I was not involved; clearly, that is their account.



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For whatever reason—I have to say that I think they are as much a part of this as we are—they teed up the subsequent conversation for 8 May. Their record of that conversation indicates, as far as we interpret it, is that they said, “This is what we know, and we are going to do further work on it”. They told us as much as they knew at that point. They then did further work and, as you say, there was a further conversation in early June. I was therefore a bit puzzled—I have to be honest with you—that you got a cover letter from the chairman of the Guernsey exchange saying that the first conversation of substance was in June, because our understanding is that they told us everything they knew at the time on 8 May.

Q454 **Chair:** There are the details and the dates and everything else, but there is also the broader point. You have sent us a long letter and the Guernsey exchange have set out their contacts and everything else, but let us just take a step back. You are saying that, throughout 2018, April to December 2018, the FCA was holding monthly monitoring meetings with Link.

Andrew Bailey: Yes.

Q455 **Chair:** On 28 February this year, Link informed the FCA of the Patient Capital Trust manoeuvre, and then the Guernsey situation became apparent a couple of months later. You mentioned the listing taking place on 21 March. Citywire covered concerns about the Guernsey listing and whether this was regulatory arbitrage, though perhaps those are your words rather than theirs, on 29 March. I suppose there is a broader point, and this is a point we are going to keep coming back to in the session this morning across a number of different cases. As was covered in one of the newspapers, does anyone in the FCA actually read the newspapers and listen to what is going on in the industry?

Andrew Bailey: Yes, they do.

Q456 **Chair:** If you are monitoring liquidity on a monthly, weekly or daily basis, how is it not clear? How does listing something on the Guernsey stock exchange not send some red flags to somebody in the FCA just to ask them more questions?

Andrew Bailey: That Citywire article, as you say, was what triggered our interest in it, and we did then make contact with Link on this. That is what started the process with Link to say, “What is going on here?” It is not true to say that we did not spot that. We actually did spot it, and it triggered out interest in it.

Q457 **Chair:** You had the conversation, but you were already in touch with Link. The Guernsey thing had not come on to the FCA’s radar until Citywire had covered it publically, despite the listing happening on 21 March.

Andrew Bailey: To go back to my point, it is not required to tell us that it has done that. I have to say that this is a flaw in the UCITS rules. I can



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come back to that point, if you like. Because it had designated Guernsey as an approved exchange, it was not required to tell us that it was listing something on an approved exchange.

If you do not mind, let me just go back a bit in time. We talked about February and March of last year. I think—I do not think; I am pretty sure I know, but we are still investigating what happened—the unlisted proportion of the fund was biting more on them as the total fund size shrank. If you think about it, it is straightforward arithmetic. It had these two breaches early last year. Some people have described them as technical, because they may well have been caused by market price movements, but actually they were symptomatic of the fact that it was sailing close to the wind, and that is what triggered our interest. Having had those two breaches, my view of it is that it then did something that, again, is allowed under UCITS but I personally think is on the wrong side of the spirit of it—it should have at least discussed it with us, but it can do this—which was that it designated a portion of the unlisted holdings as listed based on an intention to list. It can do that. Whether you think it is the right thing to do or not is a different question, but you can do that.

It then has a year to actually list under that particular UCITS rule, so the clock starts ticking at that point. My view on it is that is what triggered this. It then had to list, of course. If the period of time goes by and it does not—

Q458 **Chair:** Right, so Guernsey provided the opportunity.

Andrew Bailey: Exactly, yes. As you can work out from the dates, the deadline is at that point approaching.

Q459 **Chair:** I am going to bring in Charlie in a moment. We are going to move on to another little bit of this. This will come up again in the session this morning, but you have said a couple of times, “It did not have to tell us”, meaning Link. In your letter, you note a couple of times that there is no obligation on those involved to provide information to the regulator. The broad theme of this session, and the theme of the correspondence I know you are getting from the public and that we are getting from the people, is this: does the regulator not have a requirement to be more proactive in its regulation? Should the regulator not have a requirement to ask questions and to watch out for public coverage, press coverage and words in the industry about concerns that are being raised about investments or where consumers are not getting the protection that they think they are entitled to? Should they not be warned that they are not getting that protection?

Andrew Bailey: Can I say two things on that? First, we had it under liquidity monitoring, as I explained in my letter. It was using the rules to the full, and it was not telling us that it was doing that. That is the first point. Here we get to what I call the “rules versus principles” point. In my view, as I have said quite a bit recently, we should have much more of a principles-based system with enforceable principles, because quite clearly



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there is a distinction between what we might call the principle of the whole thing and what the rule is delivering. The principle is that there should have been an open conversation about the situation of the fund, which—I agree with you—would have brought this all out much more clearly.

Can I make my second point? What would that have led to? My best guess is that it would have led to the fund being suspended earlier.

Q460 Chair: That might have saved the people who have invested in it since. There are people who have money in there, but presumably there are people who put money in right up until suspension in June, who are now finding that they cannot get access to their money.

Andrew Bailey: Can I comment on that? This is a very important point. Obviously, there is a lot of commentary that runs again this, but I have to tell you that we take a very strong view on this. This is a collective investment scheme. That is very important. It is a collective investment scheme, so it has to act in the collective interest of the investors. Suspension is a tool that is very clearly set out in the prospectus. It is a tool that is there to be used. The reason that is important is because, in our view, suspension is in the interests of the investors of this product. The alternative of a fire sale would be contrary to the interests of the investors. There is a lot of commentary about suspension saying that it is a very bad thing. I am afraid we do not take that view. In this situation, we think it is the right thing to do.

Q461 Chair: In your letter to us, you said the suspension has to be reviewed every 28 days, and yet I think it is clear from the Woodford situation that he is intending to suspend for quite some time in order to get things back to an even keel.

Andrew Bailey: 28 days is next week, so there has to be a review, and we have to be party to that. We will have to see it, and we will take a view on it. The view we will take on it is that the timing of the length of the review is, as you say and as I have just said, what is in the interests of the investors. There is no fixed time to this thing. It would be damaging if there was. We have to have a very clear explanation of what they are doing and how that is in the interests of the investors.

I want to keep coming back to this point: it is in the best interests of the investors, particularly the small investors at this point, that their position is protected. As you saw in the chart we gave you, once you get the big sell order from Kent County Council, irrespective of their liquidity position—let us put that to one side for a moment—if it had put that order through, in our view, it would have tilted the makeup of the fund against the interests of the surviving investors. There would probably have been more small investors in that surviving population. Our view is that suspension is an important tool. It should not be somehow demonised. I realise that it stops people getting at their funds when they may want them, though these are predominantly long-term investments.



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It is in the collective interest of the investors, and that is our obligation.

To come back to the point I made, had the whole story come out in full and it had not relied on the rules, I suspect the answer is that suspension would have happened sooner. That may have been a better thing; I am not disagreeing with you on this point. It may have been a better thing, but it would still have been a suspension, I suspect, because this fund effectively has to manage the shrinkage.

Q462 **Charlie Elphicke:** Good morning. Let me just understand this. In 2017, the fund was at £10 billion. How much was it by May 2019 in terms of value?

Andrew Bailey: It is somewhere between £3.5 billion and £4 billion.

Charlie Elphicke: So it shrank substantially.

Andrew Bailey: You can see it in our chart.

Q463 **Charlie Elphicke:** Is that due to redemptions or is it due to poor underlying investment decisions?

Andrew Bailey: It is mainly due to redemptions. The large majority of this fund is quoted stocks, whose performance has been mixed.

Q464 **Charlie Elphicke:** The key question I am trying to get at is whether this fund was basically the subject of poor investment decisions and increasingly seen as a dog.

Andrew Bailey: It was clearly increasingly unpopular. The challenge of this is a point that Chris Hill makes in his letter to you, and this is important. You may want to come on to the Hargreaves question about how it judges funds. Chris Hill makes the point in his letter that Woodford's history is of having quite long periods of underperformance and then other periods of very strong performance. He has developed this sort of following as a consequence. The reason I give you that point is because I think it makes it a challenge—an interesting challenge—as to how you benchmark the performance of a fund like that against, say, a passive fund, which by definition does not have that characteristic.

You say the fund was a dog, and clearly there has been very poor performance over the last two years. As Chris Hill says, Woodford has had periods like that in the past. You can go back 20 or 30 years with Woodford and you can see that characteristic.

Q465 **Charlie Elphicke:** What I am trying to get at is that you cannot regulate for the market and you cannot regulate for a fund manager basically being a bad investor. Where is the balance to be struck between bad investments on the one hand and regulatory protections for the consumer on the other hand?

Andrew Bailey: Indeed. It is a fundamental question. I have two points. First of all, let us put the unlisted portion to one side and talk about the 80%, because much of the change in value obviously comes from the



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80%, not the 20%. You say they are bad investments. I would challenge that. Clearly, some major stock prices go up and some go down. Mr Woodford has set himself up as somebody who can predict these things, certainly better than I could. Clearly, sometimes he wins and sometimes he loses.

The second point I would make, which is fundamental and goes to your point, is that I have to say that some of the commentary on this indicates that, as the regulator, we should somehow be more intrusive in terms of how people pick stocks. That would be a very bad outcome. It would be a very bad outcome. Here is the big point in that, however, if you do not mind me going on a bit longer: we have moved into a system where far more of the responsibility for managing long-term savings is with individuals. Pension freedom is an obvious case in point. Over years, we have transferred responsibility from a system where employers managed the fund and took the risk to a system that has transferred it to individuals both in the accumulation phase and the decumulation phase. That is the first point.

We have also seen, over the last 10 or 15 years, a very progressive decline in what I call the old-fashioned life insurance industry, where there were guaranteed returns. That was a reflection partly of the interest rate environment we lived in, because the second thing to add to this of course is that we have had over a decade of very low real interest rates.

As a society we have transferred far more of that responsibility to individuals. That gets right to your issue of how much responsibility we are asking individuals to take in respect of these investments. I do not think the right answer is for the regulator to be involved in what I would loosely call stock-picking. That is not a good solution.

Charlie Elphicke: That is very central.

Andrew Bailey: It is a central issue.

Q466 **Charlie Elphicke:** It is a central issue, because there are three pillars here. You have regulation: have the regulations been met? That is your job. Is the investment manager picking rubbish investments or good investments? That must be left to the market. It must be left to the market to ensure a vibrant market, not one where everyone is taking the same risk, the same punt and getting the same level of returns. You need that variation.

The third pillar, which is really important, is information. It seems that a whole load of people were hitting the exit door from this fund, and people with less information and less knowledge were left in the fund until Kent County Council comes along—I represent Dover, so this is a matter of taxpayer interest to my constituents—and seeks to make the redemption and that tips the whole thing over. How do we deal with the information disparity that means a whole load of people are able to hit the exit door



on the up and then leave everybody else with the rubbish in an open-ended fund? It is not the first time that has happened, is it?

Andrew Bailey: Yes and no. It is the first time it has happened in the UCITS world. We had the property fund suspensions after the referendum, which are both similar and different in nature.

One of the paradoxes, as quite a lot of commentators have pointed out, about Woodford is that he is actually more transparent than quite a lot of the industry in terms of what the holdings of the fund are. To be clear, I did not declare an interest and I am not an investor, but I did do a trial. You may say I am not a representative consumer, and I would accept that, but I did do a trial.

Chair: You are more sophisticated than most.

Andrew Bailey: I accept that. I did do a trial on a Sunday afternoon when I had nothing else to do. I went onto the Morningstar website after I did a Google search to get the content of the Woodford fund. It took under a minute to get it. I may be a bit quicker than others, but it is not difficult to find out what is in the Woodford fund. That does not wholly answer your point. There is transparency and there is useful transparency. We are very concerned about that at the FCA across the board.

Q467 **Charlie Elphicke:** The reason I am addressing this transparency issue is because we want to empower consumers to make choices; we want to give them information. There is then an issue where it looks like they are being given these recommendations to invest in this fund by, it is said, Hargreaves Lansdown. Were they being given the right information and were they being given the level of transparency when everyone else is hitting the exit door, when the people with the knowledge are clearing off?

Andrew Bailey: I agree with you on that. First of all, Hargreaves does not give advice in a technical regulatory sense, but it does, of course, have these funds in their best—

Chair: Best-buy list.

Andrew Bailey: Yes, best-buy list or most popular; call it what you like.

Charlie Elphicke: Wealth 50 list.

Andrew Bailey: Yes, it is the top 50. We have looked at that practice several times. In fact, a few years ago back in 2015 we did a supervisory review and we told Hargreaves that it had to make changes to the way in which it controlled and governed the use of that table, which it did. We looked at it in the context of the market study we did a year or so ago, when we looked at the whole industry in this respect and how these best-buy tables were functioning. We then looked at it from the point of view of whether they delivered value. Across the industry, we found that there



were higher returns coming out of the recommended funds, but of course that is an average finding; there are outliers. This goes back to my point about the fact that of course Woodford, as Chris Hill has pointed out, has had long fallow periods and then periods of big returns.

To be clear, we are now going back to this question around how Hargreaves manages the controls around the table. The particular question—Hargreaves will know this—that we are on to them about is about whether it was too slow to take it off the table? It was on it, and this goes to your point. Was it right to leave it on for that long, particularly in the last two or three months when, going back to the Chair's point, there was information in the market. We have to judge that against the point Chris Hill made: Woodford has this very up-and-down record.

Q468 Charlie Elphicke: Looking at this and standing back from this current situation, at the moment a lot of people are saying, "This is a product of regulatory culture. As long as you tick all the boxes, you are fine and everything is tickety-boo. What we need is a change of regulatory culture from a tick-box regime to more of a principles-based culture with a duty of care".

Andrew Bailey: I have said that.

Charlie Elphicke: I believe you might have even made a speech on that.

Andrew Bailey: I did.

Charlie Elphicke: In terms of the spirit rather than the letter, which used to be the way of the City and the financial-services industry—it worked effectively—being brought back, tell us what your thoughts are on that.

Andrew Bailey: Yes, I must say that Charles and I have both been around for quite a long time. Of course, the old ways of doing things did have their problems. There have been hearings in this Committee going back a long way when things did go wrong.

By the way, I did not make that speech with Woodford in mind, because it was in the very early days in the Woodford saga at that point. The point is that, for me, the UCITS rules demonstrate the problem you get with an excessively rules-based system. That is a feature of much of the EU system. In my view, it does not have a sufficient element of principle in it. I mean "principle" in the sense that it can actually be enforced. What are we trying to achieve here? What are the principles and what are the outcomes? The outcome is that we have a fund that satisfactorily, going back to your point, combines the ability to take risk, which of course will mean that prices go up and down, with taking liquidity seriously in the sense that there is an overall management of liquidity.

Listing something on an exchange where trading does not happen, as far as I can see, does not count as liquidity. It is not liquid. I am still waiting



to hear that a trade has occurred in this stuff. Maybe there has been one; we have not been told.

Q469 **Charlie Elphicke:** Charles, as the chairman, you are one step removed. What is your perspective, first of all, looking at this across the piece, on whether the FCA could have acted any faster or could have done a better job? What are the overall key learnings? Finally, what is your view on this issue around whether, when we leave Europe, it is opportunity to have a principles-based system of regulation rather than a tick-box one? What is your overall view on all of these things?

Charles Randell: Andrew is too honourable a person to say what I am about to say, but my overall view is that, looking back at the first chapter of the FCA's existence, a lot of its activity was dictated by the huge mountain of conduct problems arising in very large firms in the wake of the global financial crisis. There was a lot of activity around fixed-firm supervision. The teams at the FCA have done a great job with taking forward important things like benchmark regulation and changing the whole landscape in the way the senior managers regime has been implemented for large firms. There are some success stories there. In the middle of that, the FCA was also given 34,000 consumer-credit firms to deal with. It would be quite a mild understatement to say that when they arrived they were not in the best of shape. The FCA has done a huge job in transforming the consumer-credit market.

One of the prices of that has been the resource allocation to small-firm supervision and resource allocation to some of the specialist areas, including fund supervision. Every regulator has to prioritise. If you look at the landscape we have, it is an enormous landscape. Thanks to a number of our stakeholders, including this Committee, it is suggested that it should get even larger all the time. With Andrew's arrival, the formulation of the mission statement in 2017 and the new approach to the way we supervise, we are in the project—this has many years to go; it is by no means completed business—of reorienting the activities of the FCA into a more flexible, more agile and more outward-looking supervisory position. That is something that Andrew has been leading, but the work is by no means finished.

A number of the things that this Committee comes back to us with time and time again in many cases have roots that go back into the distant past. In some cases it is the more recent past, but very often the roots go back as many as 10 years ago. The challenge for us as a board is obviously to oversee the way we are handling those situations but, at the same time, to support Andrew's team in the transformation challenge they face going forward. That is my principal priority as chairman: to get the right balance between dealing with the rear-view mirror, the crystallised risks today, and asking what this means for the type of organisation we need to be in the future.

Q470 **Charlie Elphicke:** What about the regulatory culture question of tick-box versus principles-based?



Charles Randell: One of the consequences of what I have described, which was a big stretch particularly on some of the flexible-firm stuff, with resource allocation skewed towards large firms and crystallised conduct risk skewed towards particular issues in the consumer credit sector, has been that other teams around the FCA have found it a little bit harder to step away from the day job and look at the bigger picture. It is natural that that is a challenge.

However, the regulations we are working with, many of which are maximum-harmonising, do require us to monitor a series of data points and do various processes. Over time, if we do have a freer hand in the setting of our rulebook, I would hope that we will be able to look more at outcomes. It is outcomes that I am interested in, supported by principles. I would hope that is the case, but we will just have to wait and see on that.

Andrew Bailey: I will just give you one fact. We recently passed 60,000 firms. We now have slightly over 60,000 firms in our world. At its last point, the FSA had about 25,000. That is just a metric of what we have.

Charles Randell: Of course, that is an understatement, because we have 60,000 firms but then we have 3,200 funds and 150,000 approved persons. I am not trying to turn the clock back; that is the job we have. What we do have to do, however, is have a data and intelligence strategy that leads us consistently towards the areas of greatest risk and allows us to discharge our responsibilities with the greatest pace we can. That is the challenge.

Q471 **Chair:** I will finish with a couple more questions on this topic, and then we will move on. You cover 60,000 firms and 3,200 funds. Tens of thousands—probably hundreds of thousands, if not millions, of consumers—exactly as Mr Bailey said, are being asked to take on more complex financial responsibilities, which is the way things are going. There is a broader policy question for Government about financial education and how people are prepared for that and everything else. However, do you accept that those consumers are very reliant on the FCA in terms of the regulation of those firms and those funds and everything else? I absolutely hear what you say about principles, which we discussed before, but how aware is a fund manager like Neil Woodford going to be of principles and behaviour unless the FCA makes it very clear that it is watching?

Andrew Bailey: I agree with you on that; do not get me wrong. One of the cautionary notes about advocating principles and outcomes, as Charles says, is that it is possible to say, "Have we not been here before? It did not end particularly well". That is why I said, very advisedly, "enforceable principles". Unless we can enforce the principles, I would not go there, because people apply their own judgments about what principles mean. Of course, we all know they mean different things to different people.



Chair: Exactly.

Andrew Bailey: By the way, this is a pretty strong message for the industry. I can tell you that, when I say that to them, they say, "Yes, we would like to have a smaller rulebook, but we do not like the idea of you people running around doing us on principles". They have a love-hate relationship with that rulebook. They hate the size of it, and we do not like the size of it either, but, going back to the discussion we have just been having, it is a defence.

Q472 **Chair:** There are rules on liquidity. The liquidity of the fund and everything else was very much on the FCA's watch, so I just have a couple of direct questions. Did the FCA have any direct meetings with Woodford Investment Managers as the liquidity position deteriorated?

Andrew Bailey: No, because the responsibility for this rests with the fund manager, which is Link.

Q473 **Chair:** You talked before about Woodford being a more transparent fund than others, and you were right to say that Neil Woodford had been appearing on videos explaining his strategy and all the rest of it. From the outside, would consumers not have been confused? Would they have understood why your relationship is with Link and not with the investment manager, particularly given the conflict-of-interest concerns?

Andrew Bailey: There are many confusing things about the UCITS world. That is one of them. The fact that Link's role is so important is confusing to the outside world.

Q474 **Chair:** Effectively, is Link, and its equivalents in other funds, a regulatory figure leaf?

Andrew Bailey: No, it is an important organisation. As I said earlier, when the senior managers regime comes in for the rest of the landscape later this year, my view is that it will absolutely sharpen that, as it should do.

Q475 **Chair:** If Woodford is making decisions about appointing Link—

Andrew Bailey: No, Link appointed Woodford rather than Woodford appointing Link.

Q476 **Chair:** What happened in reality on the ground? Did Woodford make the decision that Link was going to be appointed because he knew that Link would not be asking too many questions?

Andrew Bailey: No, it would be wrong to think that Link are any different from the other firms that are in that space.

Q477 **Chair:** That is despite their track record with Arch Cru and Connaught.

Andrew Bailey: That was quite a long time ago. A lot of action has been taken on that front. As you know, we have announced that we have



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investigations going on. It is not right to suggest that they are, at this stage, particularly worse than others in that respect.

Q478 **Chair:** Is the structure of the external ACDs something the FCA thinks it should be looking at? Is this structure done, given this latest episode?

Andrew Bailey: That comes back to what Charles and Mr Elphicke were saying about a post-Brexit world. We will see how much scope we have effectively to change the structure of this regulatory system in respect of that. We will see about UCITS, frankly.

Q479 **Chair:** What was the role of Northern Trust as the depositary?

Andrew Bailey: Northern Trust was the depositary. There has to be a depositary. By the way, it is also responsible, in the first instance, for monitoring things like breaches and for requiring them to be put right. It also has a formal role in terms of the safeguarding of the assets. They too have an important role in this, yes.

Q480 **Chair:** What was your relationship with them?

Andrew Bailey: We have quite a few relationships with Northern Trust, so we do have a strong relationship with Northern Trust in that respect, because their business model goes across quite a lot of things that we cover.

Q481 **Chair:** What about in relation to Woodford in particular, as a depositary?

Andrew Bailey: Again, we would go through the fund manager, because it is the fund manager who is authorised in this respect. That said, we will now look at what role Northern Trust did play in the whole thing, yes. By the way, we will also look at how Link held Northern Trust to account for what it should do.

Q482 **Chair:** Is Woodford down to a failure of rules or is it down to a failure of FCA supervision?

Andrew Bailey: It is more a failure of rules, frankly. I have to be honest with you. That is my view.

Q483 **Chair:** So the rules need to be changed to avoid a future Woodford.

Andrew Bailey: Yes, they do.

Q484 **Chair:** Charles, when will the FCA board be discussing this? Is changing the rules already on the agenda?

Charles Randell: In a sense, this 10% limit lies at the heart of it. What you have here is a so-called high conviction fund manager taking relatively concentrated positions in quoted securities and using the 10% illiquid limit to the full. That is the UCITS regime. It is an EU directive. It follows that, if you have a series of underperformance in the quoted part of the portfolio, with relatively static valuations in the unlisted part of the portfolio, you will quickly start hitting the 10% buffers.



The question to me is whether that is a complete design flaw. Is it a complete design flaw in an environment in which investors are expecting daily redemption, or is there some other regime that would work better for investors who want that investment mix? It is the daily redemption coupled with illiquidity and this 10% that seems to me to produce the perfect storm in case of the Woodford fund. It may be that this is something we need to look at some stage in the future. We have no latitude to look at it now, as far as I can see.

Q485 Chair: This Committee is doing an inquiry into the future of financial services, so it could be a very live issue for that. Is this a conversation you have had with the Treasury in terms of the future relationship between the UK and EU in relation to financial services legislation, where you are saying, "Actually, this is one where we would like to have far more leeway so that we can set the rules that are right for the UK industry"?

Charles Randell: In this context, it is not a specific conversation I have had with the Treasury. Clearly, the broader issue is the sort of equivalence regime we have. Will we have any equivalence regime? If we have one, what sort of equivalence regime will it be? To what extent will funds that are authorised here be marketable into continental Europe and vice versa?

Q486 Chair: Mr Bailey, have you had the conversation with the Treasury?

Andrew Bailey: I have talked to the Chancellor about it, actually.

Chair: I mean this specific point.

Andrew Bailey: I mean in a broad sense. In a sense, Woodford underpins it. In the Chancellor's speech at the Mansion House last week, he made a big point about the regulatory future, but he also made the point that, for him, there are some issues that they want to deal with today. He pointed to the burden of reporting and some issues around payment systems. I took the tenor of his speech to be, "I know there are some big post-Brexit questions, but we want to get nearer to there before we start to engage on them". As you know, I have made a speech on it; you will have seen that the Bank of England has said some things on it as well. We both have quite a bit in common in terms of what we are saying on these issues. We are very keen to engage with you on this, by the way, in your inquiry, because it is important.

I just wanted to make one more point on Woodford, if you do not mind. You pointed to this in your letter to Hargreaves Lansdown. This is another important question: did the fund grow too big too quickly? There is another important question: did that effectively mean that the investment objective that Woodford had was compromised because, to be a bit crude about it, the money was coming in too quickly? Does that point to the need to have a different system for, in a sense, imposing a limit?



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I should tell you that I have discussed this with senior people in the fund management industry, all of whom recognised the point but said they would never do it themselves. With all due respect, it is an issue and you were right to point to it.

Q487 Chair: Before I move on to Alison Thewliss, who is going to talk about the next issue, there is the fact about the money coming in. The other issue is about the fees and the way fees are calculated. It is often related to the amount of money under management. People are not going to say no if they are going to make money from fees, are they? You and I have both commented on whether Neil Woodford should still be drawing his management fee.

Andrew Bailey: There are two points there. First of all, on Woodford's own fee, I am totally aligned with you on this. I was careful to say what you said. The rules allow him to go on. As I said on the *Today* programme after you, he now has to manage the fund more than ever. On the other hand, I totally agree with you that, as a sign to his investors, it would be a good thing to do. He has not actually done that, I am afraid.

Chair: The question is whether he perhaps needs the fee to carry on for his business.

Andrew Bailey: The second point is a slightly different point that is also about fees, which is the Hargreaves point. Hargreaves, in its letter, made clear to you that it does negotiate fee discounts. Of course, Hargreaves is the biggest platform by some way in this country. It is also clear to you that it does not keep those fee discounts; it passes them on to the investors. However, that begs a second question: is the effect of that to increase the flow of funds? The investors benefit in one sense but not in another. We need to look at that as well.

Chair: So it is another area that needs to be examined.

Andrew Bailey: Yes.

Chair: We are going to move on now, because of course this is not the only issue where a number of investors have lost money and potentially lost faith in the system and the regulation. The next one is London Capital & Finance. I am going to ask Alison to ask some questions.

Q488 Alison Thewliss: I have some questions for you, Mr Randell, particularly. When the Chair of this Committee wrote to you requesting a section 73 inquiry into the FCA's regulation of London Capital & Finance, you replied, "Given complexities of the LC&F case and its interaction with the regulatory perimeter, the board was not able to conclude at this stage of the factual investigation that the conditions for a review under section 73 are met". Could you tell me which test under section 73 had not been met?

Charles Randell: There is a two-part test under section 73. The critical part is a finding that the events in question or the adverse effect that has occurred might have been reduced but for a serious failure in the system



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established by the Financial Services and Markets Act. That is a failure of the regulatory architecture, if you would like to put it that way, or the operation of that system. That second part is the role the regulators play within the architecture of the system.

When we examined this at our board meeting in March, in the first bit, the regulatory architecture, was quite a complex set of questions about an authorised firm, which was authorised initially as a consumer credit business, conducting unregulated activity, issuing mini-bonds, and whether that architecture itself was the cause of the problem. We were unable to conclude, of itself, that architecture was the root cause of the failure in question.

The second issue is about whether there was serious failure by the FCA, given that architecture? Should we have supervised this firm or not authorised this firm, given information that we had about it and about its activities? Let me just explain how we address these regulatory failure questions. We have a team within the risk division that is responsible for assisting regulatory failure investigations, and they conduct the fact-finding. Together with the general counsel division, they give advice to me and to the board on whether the statutory test is met. A series of issues including document retrieval and so on meant that they were unable, as of the end of March, to say definitively that they had established enough of the story to say, "Yes, this is a failure by the FCA".

We were faced, then, in the March board meeting with three options. The first was to say, "There has to be an investigation, but let us announce it as a non-statutory investigation". That was clearly not something that would command the confidence of investors in London Capital & Finance. The second was to say, "Let us defer it for a few days and have another emergency board meeting in a week or so, when we have got to the bottom of all the factual questions that are outstanding". I could not actually tell what the time limit was; I could not tell when we would be able to come to a definitive conclusion on that. I was not attracted by going out and saying, "Watch this space", rather than announcing something definite.

The third possibility was to invite the Treasury, under section 77, to direct us to conduct an investigation. That had the added advantage to me that we were also able to ask the Treasury, using its public interest direction powers, to direct an investigation that would look more broadly at the problems we see with unauthorised firms issuing mini-bonds and the question of the adequacy of the financial promotions regime to protect investors in those cases, and the board was hearing increasingly about concerns in that area as well.

After the board meeting I immediately contacted very senior Treasury officials, and I discussed with them where we had got to in the board. It was agreed that I would write requesting a section 77 direction from the Minister and that the Minister would write back giving that direction. That



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did not occur on the Friday immediately after the board meeting, because there was some need to agree the process with the Treasury. The background to that was that this would be an agreed approach between the two of us and that the Treasury would direct us, at our request.

That was the route we followed. It was slightly unfortunate that, early the following week, for whatever reason—I cannot imagine where this has come from—the impression was given that we had to be dragged kicking and screaming into a statutory investigation. It was absolutely not the case; the board was very firm that there had to be a statutory investigation and we needed to get it off the ground as quickly as possible. I hope that answers your question.

Q489 Alison Thewliss: I was going to ask around the differences between section 73 and section 77 that you touched on there. Was it really the public interest part of it that you were interested in? Are there differences in the outcome of that, depending on whether you or the Treasury initiated this?

Charles Randell: Section 77 can go much broader, so can look at issues other than just regulatory failure, but there is nothing that would in any way constrain the way the regulatory failure part of the investigation would proceed. It was very important to me that whatever was investigated as regards the FCA's performance in this under section 77 would be every bit as robust and transparent as it would have been, had we made an investigation under section 73. The assurance I got from our lawyers was that there was no reason to fear that it would be any different.

The difference with section 77 is that it can be cast wider and it can look at the system as well and the regulatory framework. As it happens, subsequently the Treasury has, as you will have seen, decided that bit of work is something that is best conducted outside of the statutory investigation, but it is going to be conducted. That is very helpful, and it is very important that it is thoroughly and quickly conducted, and that that process is impartial and transparent. We will do everything we can to support that.

Q490 Alison Thewliss: How often does the board consider whether section 73 failures have occurred? How is monitoring for potential cases done?

Charles Randell: That is a great question, because one of the questions I have is about whether this is something I need to look at. I think the answer is, yes, it is something I need to look at. We have some exceptional and very hardworking individuals who work on regulatory failure stuff. We have announced three investigations in the course of the last few months. You can imagine that they have been under a significant amount of pressure.

One of the issues I need to look at is whether there is more flexible resourcing required. I hope this current level of activity will not be a sign



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of the way things are in the future, but it is in the nature of this activity that it can spike very quickly.

The second issue is to work out whether, under our 2013 document, where we explain how we will approach the question of regulatory failure, the processes are sufficiently connected to our business reporting. In an ideal world, if I were to wind forward 10 years and say what sort of organisation we would be, I would say that we would be an organisation where the escalation of issues was not seen as a path to regulatory failure investigations, where there was healthy reporting of near misses and areas of improvement of processes, and that this would all be part of a continuum, at the top of which sat somebody saying, "Okay, I think we have reached the point where this needs to be escalated to a regulatory failure investigation".

At the moment, my feeling is that regulatory failure function sits a bit off on the side of all of that, so we need to look at how that works and the frequency with which it reports to me and so forth. Just to be clear, before I got the Chair's letter about London Capital & Finance, I can assure you that the question of regulatory failure was very much in my mind and I was very busily studying the 2013 document and considering how and when we would bring this to the board.

Q491 Alison Thewliss: For those who were affected by LC&F, how will an independent inquiry ensure that those people who have been affected will be properly heard through that?

Charles Randell: That is an important question too, because, as you can imagine, when I discussed the role with reviewers, and in particular when I discussed it with Dame Elizabeth Gloster, one thing we were both absolutely clear about was that, in her work, the voice of the consumers who have been affected by this must come through very clearly. Exactly how that is best achieved is something for her to decide. It is something which, as an experienced and very senior appeal judge, she was extremely sensitive to. We will give her all the support she needs to engage in the best way possible with people who have been affected by this. There are thousands of investors who have been affected by this and how to engage most effectively requires quite a lot of thought, but I am determined, from the conversation I have had with her, that it is one of the central issues she is going to be delivering on.

Q492 Alison Thewliss: The Treasury is also undertaking work examining the wider regulation of mini-bonds. I wanted to ask how you intend to engage with that work and whether you would be intending to make a public submission to that inquiry.

Charles Randell: We have not reached a conclusion on that. We want to engage with it very actively. We are already in discussion with the Treasury about this issue. I have already had conversations with Treasury officials about mini-bond regulation but I am having those, I have to say, in a slightly broader context. As Andrew has pointed out, what we have



seen over the past few years is a very significant transfer of responsibility and risk from institutions—in particular, private employers—to private individuals who are expected to take responsibility for quite complex and sometimes very high-risk investment decisions.

I am personally very unhappy—and this comes out slightly through the perimeter report that we published—with the complexity of the perimeter of regulation, not just in this area but in plenty of other areas too. I think my colleagues at the Financial Services Compensation Scheme and the Financial Ombudsman Service would agree with me that it is not clear to consumers where they leave protection and where they remain within it. We have too many hinterlands where they are one foot in and one foot out. This has to stop, because it attracts bad people who wish to exploit those grey areas. I would like to see this in a broader context. Obviously the Treasury has a specific piece of work, but the broader context is really important.

Q493 Alison Thewliss: Lastly, in relation to things you have hinted at already in terms of staffing pressures, if you were to meet that challenge, the additional challenge of Brexit and new things that will be handed down to you, do you have enough resource to deal with that?

Charles Randell: I think we have enough resource. There is a question about whether we have, first of all, the right systems. I am not talking about rocket science here. By systems, I do not just mean technology; I mean ways of doing things. There is a question about whether we have the right systems. Andrew shares this question, I know, and has been on this since he arrived.

There is then a question of capabilities. One thing we see now—and this comes back to my earlier point about a focus on large firms that Andrew inherited when he arrived—is internet-enabled fraud by firms operating out of a small part of a serviced office, which can do hundreds of millions of pounds of damage to consumers. They are facilitated by, among other things, slightly blurry edges to the regulatory landscape. They are also, to be honest, facilitated by internet service providers, social media platforms and search engines. We need to stand back and say, “In this world where you can commit significant fraud without being a significant firm, what do we want to see?”

It joins up with some of the thinking the Government are doing about online harms. It is notable that the harms we are talking about here today are not within the scope of that. It is worth considering whether they should be. We need a fresh look at this whole issue of internet-enabled fraud by smaller firms targeting people who have been given, for the first time, responsibilities for making investment decisions about their retirement savings. It is a perfect storm that we need to deal with.

Andrew Bailey: If I can add one point there, which is a Brexit-related point, I am afraid, although as ever I do not take positions on this. We have done a lot of work to, frankly, get prepared for whatever you want



to decide. The fact that it is now going on longer is having an effect on our ability particularly to invest. We want to make a big investment in data analytics, going to what Charles has said. We are very conscious of the need to do that. We are very conscious, for instance, of the need to do advanced analytics on web scraping, for instance. I am having to take hard decisions and the board is having to take hard decisions about where we put our priorities at the moment, and obviously we are continuing to prepare for whatever you want to do on Brexit.

Q494 **Chair:** I take the point, and it is a good question that Alison has asked about resource and everything else. Mr Randell, you have used the word "capabilities". I go back to the earlier section. Sometimes it is not about capability and it is not even about resource; it is about curiosity. It is about asking the question and thinking, "There is a red flag here". I have had the same conversation with Treasury Ministers in relation to TSB. Sometimes, presumably, it is incumbent on all of us in positions to pick up the phone and ask, "What is going on? Something is not right here".

Andrew Bailey: Of course, yes.

Q495 **Chair:** On the issue of the perimeter, do you think the Treasury is abdicating its role on the perimeter? If it is not watching whether the perimeter should be extended and you are busy trying to deal with what is already within the perimeter, is it down to this Committee to be asking questions about whether the perimeter is set right?

Charles Randell: This Committee has been asking questions about whether the perimeter is set right. We have committed that we will annually report on some of the areas that are new and troubling us most. The mini-bonds issue, which is enormous for the many, many people who have lost money in those cases, should not be dealt with as an isolated issue that is directed to a definition of mini-bonds, because the people who are behind the worst of these schemes will simply pop up somewhere else. We have to ask ourselves, "Where will they be displaced to by regulatory activity?"

Andrew Bailey: Can I make two or three points on this? This Committee has been extremely helpful on this front, because the report we issued last week really has its genesis in the question Mr Mann asked a long time ago and the letter that I wrote to you about 18 months ago. It is really out of that that we have done it, so the Committee has been very helpful in this respect, actually.

Q496 **Chair:** We try to assist. The other question I have before I bring Simon in is about the letter that John Glen sent to me last night, which is publicly available, about the inquiry. He says that on 23 May he directed the section 77 investigation. He says, "I have approved the appointment of Dame Elizabeth Gloster to conduct this investigation". This letter is dated yesterday, 24 June. Are you not frustrated? I have had a number of members of the public saying they want to send in information to Dame Elizabeth and she has said, "I have not been formally appointed yet". Are



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you not frustrated? I am certainly frustrated that it has taken a month from the Treasury announcement. I assume this letter is saying that her appointment has now been approved. Do you understand why consumers get frustrated? That is yet another month where people are seeing money that they had invested having been lost?

Charles Randell: From my side, I can only speak about my own part in this, which has been to say very clearly to people at the FCA, "Do not wait for the formal appointment. Provided we can get a confidentiality arrangement that satisfies our obligations in terms of handing over regulatory information, give Dame Elizabeth whatever she needs and give it to her as quickly as possible".

Q497 **Chair:** Has that been happening?

Charles Randell: "Tell me what other support she needs". Those are the conversations I am having. I would not want to comment on anybody else's.

Q498 **Mr Clarke:** I am concerned there may be an element of being wise after the fact here. Mr Bailey, in 2015 apparently an independent financial adviser called Neil Liversedge raised concerns about the structure of LC&F. We are now four years on from that and only now is the machinery grinding into gear to hold this company to account, and obviously the damage is done. Are you satisfied that the FCA really did do everything it could when it should have done in order to prevent loss? It is alright learning lessons from the loss but we are after the fact now.

Andrew Bailey: You raise a hugely important point. First of all, this should never have happened. People should not be in this position. Secondly, of course it is incumbent on all of us to do everything we can to get this money back. We will support the administrators. There are obviously some very important issues that FSCS are going through as well.

Everything I say now should not be in any sense prejudging what Dame Elizabeth does, because she is independent, but I will comment. I have been through the whole timeline of this story. The question that stood out for me was that the final intervention came last autumn. I believe that that intervention was consistent with what I said to you at the end of the letter I sent you on the perimeter, which is that we would act more aggressively outside the perimeter where we saw things going on, and we did. That obviously begs the question, "What happened before that?"

What going through the timeline demonstrated to me was that there were five occasions between 2015 and immediately before the final intervention last year where the FCA intervened on London Capital & Finance, on its financial promotions. That incorporates the period when Mr Liversedge sent his thing in. I am not making the direct link there but I am pointing out that there were five interventions. Why did they not have the effect that they should have had? That is a big question. I can give you a few conjectures on that.



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First of all, I do not think the attitude towards intervening outside the perimeter was sufficiently aggressive, going back to the point I made about what we said to you in the letter. I do not think the risk warnings that were eventually adopted, as a result of interventions from the FCA, to be clear, did the job. There is a very interesting question there as to the extent to which they were overwhelmed by the ISA status coming in, because there is no question that the size of the thing picked up substantially thereafter.

To pick up a point Charles made, one of the big challenges we have in the mini-bond world now is internet marketing. It is a big challenge, frankly, for us. It goes back to my point on data analytics. We have teams now who spend their time trying to track the stuff down that is popping up on the internet.

Q499 Mr Clarke: You have dedicated teams specifically for what is being marketed online.

Andrew Bailey: Yes, you can come and see it. We would love you to come and see our war room and we will take you through work that the staff do. Seriously, if you would like to come to Stratford and do that, you are very welcome. As Charles said, first, it begs the question about the perimeter, which, as a colleague of mine says, looks like the coast of Norway: when you view it from a long way out it looks completely flat, and then you find it is actually 10 times longer than you think it is. Secondly, there is a big question about what we can expect from the internet companies: Google, Facebook and the internet service providers.

Can I also raise two more important points? First, one of the issues that we are also facing here, though fortunately LC&F has been taken on by the Serious Fraud Office, is the lack of capacity in the broader system for tackling fraud. If you have not seen it, there has been a recent report by the Inspectorate of Constabulary on fraud. I would strongly recommend you or your staff look at it because it is not a good story. One of the challenges we have, which comes back to our resources, is that we are having to pick up a lot more cases ourselves. We tackle this stuff but we are not a fraud investigator per se. We are having to do a lot more of it. If Mr Elphicke were still here, he would mention Premier FX, which is a case where we are having to do all the investigation because nobody has picked it up.

Q500 Mr Clarke: Would you accept, however, that whilst you are not a dedicated fraud investigator, you are providing FCA authorisation, which many consumers would regard as a badge of trust? It is rather like the red lion on an egg. It is the same principle, is it not? You are a quality mark.

Andrew Bailey: I completely accept that. That is why we clearly have to have this investigation into what went wrong and what failure happened. I totally accept that. If it was useful, I was trying to put a few issues, as I see them, around what the issues are that will be looked at in this



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investigation. The final one, which is an old one, is about what the role of the auditors is. What reliance can we put on auditors who were auditing this thing?

Q501 Mr Clarke: Indeed. While we are on the subject of the internet marketing, Surge, this company that was providing its services, was on a 25% commission. There was already an extremely generous rate of return on this product, such that in order to cover costs it basically needed up to a 44% return, which is very, very high. How did that not trigger an alarm bell? For any product of this nature, returning 44%, you do not even need to be thinking that this is fraudulent or potentially fraudulent; that is just on the boundaries of plausibility, is it not?

Andrew Bailey: That goes back to the question I was raising about the period, frankly, before we changed our level of aggression towards these things outside the perimeter. Why was that not flagging? If you do not mind, I am going to be very careful about what I say about Surge because you may have seen there was an arrest made last week. I cannot comment on that criminal side of things.

Q502 Mr Clarke: That is fine. In terms of the broader state of the mini-bond market, Mr Randell you referred to it earlier as something that needs considerable interest and investigation. What would you say about the health of that market at the moment? What I am trying to say is: can we expect this to be the first of potentially a series of very poor investment choices for consumers?

Charles Randell: It is in the nature of that market, leaving aside the incentive structures with 25% of the money going up front, that assuming you have a mini-bond that is offering a nominal fixed rate of return of 12% at a time when policy rates are not quite as close to zero as they have been but very, very low indeed, the implied risk premium that it would tell you that product has is very, very high. It is a high-risk product. It follows from that that we can expect failures where people will not get their money back. That is what a high-risk product does.

The real concern I have is about how many people understand that and whether they are, in this period of low returns, desperate to achieve bank-deposit-like status, going after these investments and not understanding them? However much wording or verbiage we put on firms in terms of small print, what will the ultimate result be? Will people say at that point, "I had no idea that if I was getting a yield of 12% that was very risky". I am very concerned about that, because people will say that. They may in many of those cases be wrong to point the finger at us. They may in many of those cases have had disclosure that this investment is into quite a risky underlying asset class.

They would have had all sorts of risk warnings but a combination of the yield environment, the pension freedoms and a whole load of other things means that people are now in a position where they can take very high-risk investments. Whether you think that is a good thing or not I suspect



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depends on where you sit on the political spectrum in terms of the responsibility of the individual and the way that capitalism works in our society. I know what I think but I will probably keep it to myself.

Q503 Mr Clarke: You are absolutely right that this does raise a very clear moral and ethical question about where the boundary of personal responsibility—caveat emptor—lies. Do you believe that FSCS protection ought to be extended? I confess that I find myself in a position where I think it is quite hard to extend it to high-risk products.

Charles Randell: We have the most generous financial protection scheme of any country that I have come across. Most countries take the view that the financial protection scheme is largely to give people confidence in the banking system and that it is all about protecting a minimum level of deposits, genuine deposits, in banks that carry capital requirements and liquidity requirements and are subject to continuous supervision.

We have ended up with a system that extends protection to people who go and see an IFA and are then put into a very high-risk product. The consequence of that, in a world in which IFAs themselves do not have very large capital or professional indemnity requirements, is that it is effectively just a subsidy to that type of activity. I do not like it but we are where we are and if you have any good ideas as to how we start from somewhere else, I would love to know them.

Q504 Chair: The quantity of verbiage does not help, because people just stop reading it. It is far too much information.

Charles Randell: This is also a question about the principles and outcomes. At what stage should we look at the way in which firms engage with their consumers and say, "We are not going to test you on the size of the print or the wording in the warning. We are just going to do a sample of 100 of your customers and if fewer than 70 of them seem to us to understand what they have bought, you will be hearing from us"?

Andrew Bailey: The second problem with that is that the boundary is so complex that I could not explain it. I would challenge anybody to explain it in simple terms, as you say. This is particularly true on the advice. Why has FSCS not yet been able to reach a settled view on London Capital & Finance? The reason is not because it is not working on it. It is because it is so complex. It is having to listen to the tapes of the calls.

Q505 Wes Streeting: Good morning. I want to turn to the issue of innovative finance ISAs. In April, you issued a warning about IF ISAs, noting that they had been promoted alongside cash ISAs. I noted there has been quite a pushback from the industry on this, with the FCA being variously accused of a kneejerk response, restricting peer-to-peer products to sophisticated investors and even killing the industry. I wonder how you respond to those criticisms. Perhaps give some context as to why the FCA chose to speak out at this particular time on this issue.



Andrew Bailey: It really follows from the conversation that Charles was commenting on. First of all, we felt that, as you said, the level of understanding of the difference between the riskiness of a cash ISA and an innovative finance ISA was not well understood.

Secondly, as you say, we have had substantial pushback on this but we have not given way. We felt—and this goes, as you said, into the peer-to-peer world—that for the unsophisticated investor, we had to introduce a limit of the maximum part of their net investable resources that they could put into it. As we have been discussing, there are just too many examples coming our way of what is absolutely tragic, which is people saying, “I put my life savings into this thing”. We cannot leave people in that situation.

As you say, we have had strong pushback from the industry and pushback from some other quarters as well. In the end, I am afraid we have said, “No, we have to do this”, so we announced quite recently that we are going ahead. It leads to the sorts of conversations we are having this morning. It is not tolerable.

Q506 Wes Streeting: How does your experience square with what the UK Crowdfunding Association has said, which is that there are very low levels of complaints and that, effectively, there is nothing to see here and things are fine. The tone of its statement very much fell into the “The FCA is overreacting” category.

Andrew Bailey: I have met them, by the way. I would say to them that of course there are low levels of complaints until something goes wrong. It is a binary world at that point. I keep coming back to the central point that we have touched on a number of times this morning. One of the products of the financial crisis, quite sensibly—I have sat with this Committee many times and discussed this—is that we moved activity off the balance sheets of banks. We did that quite deliberately. There were too many illiquid assets on the balance sheets of banks in the crisis, across many countries and generally across the world. Therefore, the non-bank sector has grown.

The consequence of that when we come into this area, whether it be crowdfunding, peer-to-peer or mini-bonds in their broadest sense, is that some of the riskier investments are moved out into this world. Therefore there has to be a clear understanding of the risks that go with this because—and this is the final point I would make—we have not experienced an economic downturn in this world yet. This industry has not yet faced up to the consequences of an economic downturn. I am afraid to say that if we have an economic downturn—I am not predicting it—I am afraid we will have more conversations at this Committee on this, because it is inevitable that the concentration of risk has moved into that world.

Q507 Wes Streeting: I have a couple more questions on IF ISAs and then a more general question about the kind of innovation we are seeing in



fintech. You expressed concern very clearly about the presentation of IF ISAs being advertised alongside cash ISAs. To what extent are you concerned that firms are deliberately using the overall ISA brand to mask the riskiness of their own products?

Andrew Bailey: Let us go back to London Capital & Finance because, of course, it was not eligible.

Q508 **Chair:** It was not on the marketing materials. A member of the public contacted me this morning to ask us why we were talking about mini-bonds when actually it was sold as a growth bond, a growth ISA or something.

Andrew Bailey: Absolutely, and John Glen touches on that in his letter to you. Of course, we have to bring HMRC in at this point because we do not govern that part of the system. That is a glaring example of where the thing has been misused, yes.

Q509 **Wes Streeting:** That brings me neatly on to the two reviews that John Glen has outlined in his letter, one looking at the rules and the other looking at the market development. Are you doing any further research work on IF ISAs to inform those reviews? Which particular areas do you anticipate those rules covering and needing to address?

Andrew Bailey: We would not naturally do the research on IF ISAs because, as I say, it is an HMRC responsibility. I am very happy to support them. By the way, there are a number of things I would like to get out of all of this. One of them is that we should have a more structured and deeper engagement with HMRC on this world but they do need to come along and indicate what they want to see out of this in the ISA world, with the Treasury, obviously, because it is a joint endeavour because it is a policy issue.

Q510 **Wes Streeting:** Finally, the FCA has established a pretty good global reputation in terms of the approach it has taken to developments in fintech. This is going to be a rapidly developing picture in this country and others. To what extent is the FCA on the ball with things like the so-called Facebook currency—I am not sure it a currency, really—and other products that we may see developing from platforms we would not normally associate with banking and financial services but are clearly, by stealth, moving into that position?

Andrew Bailey: It is not particularly stealthy.

Wes Streeting: In some cases it is by stealth.

Andrew Bailey: They have been quite transparent about it in one sense. Yes, very much so, and indeed I can tell you that we are engaged with the Treasury and the Bank of England on it. We are working together on it, which is a sensible thing to do because it touches on all three of us.

My view on the Facebook announcement is that it has the potential to be extremely significant. It does raise very big issues for the public policy



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world. I would cast it at that level, because it is not just our world; it is a much broader issue. It will raise big issues for the Bank of England and the Treasury but, outside that, you get into the whole question about the role of Facebook.

At the moment, there is insufficient detail on it to really be able to understand what the business model is. My practical approach to this is the first thing you have to understand when somebody comes along is, "Okay, what is the business model? How do you make the money? What activities is it undertaking?" You build up from there. We obviously will have to engage both domestically, internationally, and with both Facebook and this organisation that is being set up, because they are not going to walk through authorisation without that at all. We will have to engage very heavily. As I say, we are gearing up with the Treasury and the Bank.

Q511 Wes Streeting: Finally, picking up on the recurring theme of this session this morning, Facebook has made its announcement. Is the FCA already knocking on its door to have a conversation? Is Facebook knocking on the FCA's door?

Andrew Bailey: We have already engaged with Facebook. There will be many more engagements, I expect. To be frank with you, at the moment we are waiting to see how the responsibility divides between Facebook and this new organisation that is going to emerge.

Q512 Rushanara Ali: I want to start off with a couple of questions about the trend of a number of things you have either had to inherit or have had to deal with: the RBS GRG scandal; HBOS Reading; mortgage prisoners, which we will come on to later; TSB disruption; service disruptions; Woodford Equity, which we have talked about; and London Capital & Finance.

Of course, there have been reports about criticism, Mr Bailey, that you have come under, particularly from one whistle-blower in the HBOS case, who has accused you of not investigating her complaints, despite assurances that you provided. Some would argue that you are not tough enough with bank bosses and cite the example of Mr Jes Staley, chief exec of Barclays, who twice tried to establish the identity of an anonymous whistle-blower. Instead of banning him, he was given a fine. The FCA and PRA fined him £640,000. That sum would be considered pocket change for someone like him. Are you too nice to bankers? Is it better to be feared than liked or loved? What would you say to those criticisms?

Andrew Bailey: I am afraid to say that I do not get up in the morning hoping that people will love me. Do not be chief executive of the FCA if you want that.

Rushanara Ali: We will leave that to the Tory Prime Ministerial candidate, Mr Johnson.



Andrew Bailey: Do not become chief executive of the FCA if you want to be loved. I do not agree with that conclusion. We have discussed many of these things before but I will go through a few of them. I remember we discussed the Staley case. I cannot remember how long ago it was now but it seems like quiet a long time ago. I said at the time that the challenge with the Staley case was the difference between stupidity and dishonesty. That is the essence of it. We investigated this. We have a large enforcement team that goes through these cases. We went through this exhaustively to say, "What does the evidence amount to?" These are governed by strong legal rules. You cannot make a dishonesty case there. You can make a stupidity case and that is why we ended up with the fine. You cannot make a dishonesty case. I am happy to go around that course again but that was the conclusion.

On the HBOS whistle-blower, can I explain this? I have said this many times. I intervened on this case with Lloyds and said that the way it was treating this person was unacceptable. Do not think I did not intervene. I think it is known—I hope it is known because I do not want to put her in a difficult position—that there was a settlement with her.

Why are we not investigating this, as I said before? This is because Dame Linda Dobbs is conducting her investigation into Lloyds' treatment of the HBOS Reading saga. I have spoken to the Dobbs team and I have said to them that our approach is, rather than us having to do our own parallel investigation, I would rather align with what they do and then we will take the output of what they do and decide whether there is an enforcement case or not. I have said to them—I hope they will not mind me saying this—that I have to be clear that they are doing the full scope, which is the full scope in the context of the whistle-blower and everything else. They have given me that assurance. That is where we are on that.

If you do not mind me saying so, we currently have over 650 investigations going on in the FCA. When I took over, we had about 250. We have to manage our resources.

Rushanara Ali: I am going to come on to that.

Andrew Bailey: Linda Dobbs has a big amount of resource. She is an independent judge.

Q513 **Rushanara Ali:** There is a broader issue about whether there are systemic problems, because some of these issues have taken a very long time and the public are not satisfied. There are the ones you inherited, for instance RBS GRG and so on. I appreciate what you are saying but it raises questions, which I have raised before, about whether there are institutional barriers that prevent the public from getting what they need, because these problems have been going on for years. That is the frustration. The Chair has already referred to questions about curiosity, whether the FCA has been proactive enough and so on. You have rightly highlighted this point about the number of investigations and how much you have on, not to mention the looming Brexit dimension to what your



organisation will have to do.

My question, really, is whether it is primarily institutional issues and resource issues and constraints that have meant people have had to wait for years and years, or is it that there are, as we have quite often heard, legal issues about the length of time it takes for investigations and so on? People are not satisfied with what has been going on, when you look at the sum of what is going on. I have dealt with London Capital and a number of my colleagues already have cases concerning tens of thousands of pounds and people's life savings. This is likely to take a very long time again, judging by the past patterns of other cases. What can be done to address these issues? Can you take personal responsibility for some of them, or is it institutional failure? Is "failure" too strong a word?

Andrew Bailey: I do take personal responsibility. I do not, frankly, pass the buck on this. On the fact that we have 650 cases, we are taking cases that would never have been taken before. We are getting outcomes. There is no target for fines in the FCA but the number has gone up in the last year or so. We are taking cases that have never been taken before. They are very complicated cases. They do, I am afraid, take time. If you want to land these cases, as opposed to fail, they do take time.

Q514 **Rushanara Ali:** What can be done to speed them up? There were obviously discussions about regulatory changes and looking at some of the emerging problems. What else can be done to stop the flow of the sense of inertia that seems to be there?

Andrew Bailey: I would be happy to look at that. Honestly, one of the problems I have is we do come up against people's rights. My colleagues will tell you that I am one of the people who pushes hardest on this front. Let me give you an example and you could note this. The last time I was here for one of these hearings I said the GRG report had gone into Maxwellisation and ought not to take long. Why did it take longer? You could reasonably think I was giving you the guidance on that point. You can read this in the report, so I am not giving away a secret: it is because we got very strong pushback from the individuals about naming.

Rushanara Ali: Yes, I am aware of that.

Andrew Bailey: That was a serious legal issue about people's rights.

Chair: We are going to come on to that in a moment.

Andrew Bailey: We have to treat that seriously.

Q515 **Rushanara Ali:** I am very pleased that the consultation is underway. It comes to an end tomorrow. My questions are related specifically to the fact that there are issues around timing. First, there are a lot of people who will be waiting to find out when the final rules will be in place. Could you say something about that and when you expect them to be in place?

Andrew Bailey: We have said we will do it before the end of the year but it depends on what we find we get back in the consultation. I hope it



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is not difficult because it is an entirely reasonable thing that we are proposing. If so, we will do it as quickly as possible. The one thing I would say about the autumn is that we are somewhat in the gift of Brexit in terms of how we can push things through in the autumn but we will push things through as quickly as we can. We have adopted an approach where we have tried not to sacrifice things of substance.

Q516 **Chair:** I obviously understand about resource and brain space but, in terms of actually passing regulations on this, what will need to happen? Is it this place?

Andrew Bailey: This is down to rule-making by our board. We do not have to come to Parliament on this.

Q517 **Chair:** That means that hopefully Brexit should not be so much of a factor because this place is going to be consumed by Brexit.

Andrew Bailey: How many hands to the pump are we going to have? Frankly, some outcomes will lead to more hands on the pump than others. I have to be honest with you on that. We will do it as soon as we can, yes.

Q518 **Rushanara Ali:** We should expect the timing to be as you are saying. If it changes, you will tell us.

Andrew Bailey: We will obviously let you know. We will be transparent.

Q519 **Rushanara Ali:** The consultation paper proposes that unregulated inactive lenders should write to relevant customers within 13 months to give them information. Given this has gone on for years, why is it that it is going to take 13 months for them to do that?

Andrew Bailey: Again, we had to take a view on what was reasonable from the point of view of a rule-making body, because we could be challenged on it otherwise. Let me tell you this. We have had discussions with the industry and again we will be transparent about this, because we want it done quicker. I agree with you: 13 months may satisfy a legal protection but it is not good enough.

Q520 **Rushanara Ali:** It goes back to my earlier point about the lack of urgency. This has gone on for years. This review came out of this Committee pressing the FCA and the Treasury for at least a year before anything happened. People are very concerned that this is going to get kicked into the long grass, that there will be yet another way of delaying, with loopholes being found, reasons and excuses being found and action not being taken. That is the problem.

Andrew Bailey: No. We will do it. I want to do it faster. I do not want to end up with a judicial review, though. That is the thing. That just does not help. It punts it out longer.

Q521 **Rushanara Ali:** If we do not get anywhere, given people have suffered for years and if they find themselves in a situation where not very much



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changes despite all this work and effort, do you think there should be a case for the Government finding some sort of fund to protect people so that they are not paying tens of thousands of pounds more per year because they are not allowed to switch mortgage rates? Even if by your test it is possible, if the banks are not stepping in to protect them and prevent them from losing their homes, because they have been at this for years trying to sustain their mortgage payments when they cannot switch to cheaper rates, do you think there is a case for that? Do you think the Government should be doing that if you fail?

Andrew Bailey: There are two things here. I am careful not to dictate what Government should or should not do. It needs to be taken seriously. I agree with you on that.

There is another issue that I was going to come to first, which I have been thinking about a lot since our last hearing, which is that we know there is a portion of the population that will not benefit from the consultation we are doing. We have had this discussion before. What do we do about that? There are two options. Both need to be in the frame, because they are different. The first is the one you have just mentioned. The second one is that we have to take seriously extending the regulatory perimeter and saying that mortgage lending should be a regulated activity. That would allow us to make rules in that space. I have been thinking a lot about this, because I guessed you would ask this question. I do not know of another solution to this, honestly. As you know, we do authorise mortgage administrators but I do not think it works to go through that channel in the way that you and I would probably both want to achieve.

Q522 **Chair:** Is that a conversation you have had with the Treasury, about the perimeter?

Andrew Bailey: I have not had that conversation yet, no.

Chair: We might have it for you.

Mr Baker: What a fascinating session it has been already.

Andrew Bailey: It is about to get more fascinating.

Q523 **Mr Baker:** I am afraid so. We need to turn to the subject of GRG, which has come up briefly already. People have lost out very substantially indeed. The independent report found that there was systemic and widespread inadequate conduct. I am afraid you have suffered a great deal of criticism that the report does not provide any answers to the customers who have been mistreated. Before we get into the detail, can I ask you what your response is to the allegation that you have not provided answers to those who have lost out?

Andrew Bailey: There are two parts to this. I agree with you on the customers. The answer for the customers lies in the process that is being overseen by Sir William Blackburne, which is the review and redress



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process. I meet Sir William reasonably often. He is taking a very robust and fair approach. If you feel that that is not delivering what it should, then we should take that up and take it up both with RBS and Sir William. We will be happy to be part of that, by the way. It is well known that I intervened on the Griggs process in relation to Lloyds, because, as John Glen said, we did not feel there was sufficient public confidence in it. I do not get the same complaints back on the Blackburne process but if you feel differently, please tell me. That is the first thing. Taking care of the customers should come through that process. The report is done separately but in parallel.

Q524 **Mr Baker:** I have plenty of questions. Let us draw stumps on that point there, because I feel sure we will come back to that in due course. In your foreword, you said, "It is clear that GRG fell short of the high standards its clients expected". You also referred to the conclusion of the independent review, saying that there was "systemic and widespread inadequate conduct".

Andrew Bailey: It was "systematic and inappropriate".

Q525 **Mr Baker:** We have "systemic", but whichever. You are not taking enforcement action. I know you have touched on some of this in the report, but can you just put on the record why it is that you are not taking enforcement action?

Andrew Bailey: Yes, I am happy to do that. It is explained in the report. The test that we had to meet is under the approved persons regime; it is not under the senior managers regime. I know that point has been raised, and I am happy to come back to it later if you want, but let us just stick to the approved persons regime. The test is whether the outcomes were the stated intent and policy, and foreseeable, of the firm. The evidence just is not there to demonstrate that, I am afraid.

Two things are also relevant to that. First, because it is outside the perimeter, it is governed by contract law, not a combination of our rules and contract law. Contract law generally does not have a general principle that parties must act in good faith. You can write it into a contract, but it is not there if it is not. These were also—we made this point in the report—very powerful contracts, in the sense that, effectively, the bank was able to take a charge, which is often fixed and floating, over the assets of the company and sometimes obviously over the personal: the home and personal assets of the individual who is running the SME. These are very powerful contracts.

If you put that together with the lack of general protection in contract law, you get a very powerful situation going one way. In the absence of rules and regulation, we do not have the means to counter that. I would put that together with the point I made earlier. To bring an enforcement action, we would have had to have been able to find the evidence to demonstrate that it was the stated intent of the firm to do this, and the evidence just is not there. There is evidence that the behaviour was



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inappropriate, as you said. I agree with you and we agree with the independent report. There was evidence that it was systematically inappropriate over a period of time.

The final point I will make on this—we did also say this—is that, again as a legal matter, we have to reach this judgment against the conditions of the time. There is a test of reasonable expectation here and the conditions of the time. What blew GRG up was the crisis, so the number of firms going through the GRG process balloons up. Frankly, first, RBS is not able to handle it but, secondly and actually more damning, is that they do not take the steps that would be necessary to take to deal with the problem that was hitting them. To reiterate, we do not find that this was because of deliberate intent.

Q526 Mr Baker: As I listen to your answer, I am already wishing that we had a couple of hours just on some of the issues that follow from what you have said about the socialisation of risk and the nature of crises, but I really want to focus in on this point about enforcement, how people feel they have been treated and the extent to which you are able to do your duty to them as they expect you to. In your report, you also talk about the “fit and proper” test. How can it be that there was systematic inappropriate conduct and yet you were not able to reach the conclusion that there were any people who were not fit and proper?

Andrew Bailey: I have said many times to this Committee over the last 10 years that the test under the approved persons regime is culpability; it is not responsibility. The test under the senior managers regime is responsibility. This comes back to the point I made. You have to prove that they deliberately set out to do this, and that is not there. Bad things happened and they should have stopped bad things happening, clearly. I have no time for them in that respect, but the test is a different one.

Q527 Mr Baker: So we currently exist in a world where it is possible to have systemic inappropriate—

Andrew Bailey: No, because we have changed the world.

Q528 Mr Baker: There will be plenty of normal people who do not follow regulatory matters, other than perhaps the extent to which it has impacted on them, so can you try to put it in very plain language for those people? Can you explain how the world has changed to prevent this in the future?

Andrew Bailey: Correct me if I am wrong, but the simplest description I have seen of the senior managers regime is that it is responsibility and accountability. The test is now one of responsibility, not culpability. That is a big change, I think or I hope.

Q529 Mr Baker: We touched on the Maxwellisation process. It seems to me to be clear from the fact that you had a Maxwellisation process that you intended to name individuals, but you have mentioned already that you ran into their rights. Could you just explain a little more about the extent



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or the manner in which they pushed back in relation to their rights? I saw the reaction in the room, which is no doubt shared across people watching remotely.

Andrew Bailey: I cannot see what is going on behind me.

Q530 **Mr Baker:** What has occurred that meant you could not name individuals?

Andrew Bailey: First, we would have had to have had a Maxwellisation process whichever way we went on that, because of the fact that you can infer things. Not naming them would not have removed Maxwellisation. That is certainly not the advice I have had.

There are two points here, and they are laid out in the report quite transparently. The first and central argument is a legal argument. We have never before published a lengthy account of an enforcement action that did not lead to enforcement. We obviously do when they do lead to enforcement, but we have not before. We have found a way to do it. We could have left it to you to require us to give it to you to publish it, but I would prefer us not to do that, if you do not mind.

Chair: You do not want to set any examples.

Andrew Bailey: We were keen to find a way to do it without going down that road. The way to do it, as we laid out in the report, was that this report takes the form of guidance to the industry. In simple terms, we are saying, "Let us guide you. Do not do this. Here is a story you should not follow". The logic of that, as was pointed out to us, was that you do not need to name the names to give the guidance; you just do not need to do that. The guidance does not depend on identifying the individuals. My colleagues have spent a lot of time with counsel over the last few months on this question, and the legal argument just does not support it.

There is a supplementary argument, which I give less weight to in terms of the reasoning, although it is important in its own right. I know it is contentious, but we had representations about threats to personal safety. I have to tell you that we had those. Those were the two things.

Q531 **Mr Baker:** There is much to pick up on. I want to pick up, in particular, on the senior managers regime. In the report the FCA said, "We cannot say whether we would have been able to bring successful cases against RBS senior management had the SM&CR been in force during the review period". Are you saying, therefore, that you cannot be sure whether the current powers of the FCA are sufficient to hold firms' senior management to account, if similarly poor conduct was observed today? You are saying that you have issued this as guidance, but what about your powers?

Andrew Bailey: Let me be very clear, because this has also been contentious as well. We set out in the report how the senior managers regime applies and how, in our view, it will make a very big difference.



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It was put to us by another Member of Parliament that we should formally judge this under the senior managers regime, and we said that we could not do that. We cannot do that for two closely related reasons. One is that it would be applying a piece of legislation retrospectively, which I have to say that Parliament does not do and generally you do not do. I have to say I think there are good reasons why you do not do that. Secondly, closely linked to that, you would then have to be able to recreate the statements of responsibilities that would have existed at the time, and that is a near-impossible thing to do, frankly.

I have to say I am sorry that, yes, we believe that the senior managers regime would make a big difference, but we cannot retrospectively apply it.

Q532 **Mr Baker:** Can you now agree with the Committee that SME lending should be brought within the regulatory perimeter?

Andrew Bailey: We have had this discussion quite a few times before. I have to be honest with you: we were open to that, but it has not happened. We have sort of given up on it, to be honest. Therefore, we went down the other route of the FOS. We are going to do another thing later this year that is related to the senior managers regime. Obviously, senior managers regime is a whole-firm regime. We introduced a policy a year ago that allows us to adopt, under the senior managers regime, industry codes. One of the challenges that we have is that if something is outside the regulatory perimeter, we do not have rules. It is fine to have the senior managers regime, but we then have to have something to judge it against. I hope that we are going to adopt two standards that the Lending Standards Board have on small-firm activity, because that would be tremendously helpful.

Q533 **Mr Baker:** I want to get on to the Asset Protection Agency and its role, which is very important. Before I do, I want to ask you this. The theme of all the questions so far has been about justice for individuals. Do you recognise that there will be individuals out there who feel they have not had justice?

Andrew Bailey: Yes, but I cannot operate outside the law. I am sorry.

Q534 **Mr Baker:** In the nine years I have been an MP, I have certainly upheld the principle several times that there should not be retrospective legislation, and I am not going to say otherwise today.

Let me turn to the Asset Protection Agency. The page numbers of your report have not come out on this print, but under the title "Other demands on GRG senior management", you explain that the Government's Asset Protection Scheme "covered approximately 57% of GRG assets by value and meant that these assets came under the scheme rules". You go on to emphasise the importance, therefore, that the management placed on complying with the scheme's rules and how it was of critical importance to RBS, which I would infer means critical to whether or not it survived. To what extent have you investigated the role



of the Asset Protection Agency in the conduct of GRG?

Andrew Bailey: We have done what is in the report. What you see in the report is what we have done. Can I add two things on that? First, it would not be appropriate for us to investigate an agency of Government. That would not be appropriate. I am not advocating that there should be an investigation, but, if an investigation is wanted, it should not be by us. It should be a public inquiry.

Mr Baker: You have forestalled at least three of my questions.

Andrew Bailey: Can I make a second point? I would simply just quote another statistic from the report: 92% of GRG's exposures were large firms; they were not small firms. That is important. You quoted that statistic about the coverage of the Asset Protection Agency, but you do need to see it through that lens as well. A lot of it was big firms, which are not in its scope.

Q535 **Mr Baker:** One of the things we learned is that a senior manager claimed, "They"—that is, the Asset Protection Agency—"would have loved us to just flog a bunch of those SME customers for next to nothing and walk away". Is that not an outrageous attitude to have been placed upon people?

Andrew Bailey: Our approach was to tell it as we heard it. We were not going to hide anything. The question was whether it ultimately changed the approach of RBS. We do not think it did.

Q536 **Mr Baker:** You do not think it did, even when 57% of those assets in GRG were material, and the management of them was in compliance with the APA's rules.

Andrew Bailey: I have given you the 92% statistic as well, which qualifies that.

Q537 **Mr Baker:** You have said that, if there were to be an investigation into the conduct of the Asset Protection Agency, it should be independent of yourselves.

Andrew Bailey: Yes.

Q538 **Mr Baker:** Mr Randell, I am afraid it does fall to us to ask the difficult questions. You had a role in setting up the APA; is that right?

Charles Randell: Yes, as you will know from the hearing in February of last year, I advised the Treasury on a range of interventions during the financial crisis, including in 2009 when it announced a scheme to guarantee the troubled assets of the large banks, the Asset Protection Scheme.

Q539 **Mr Baker:** I sense it would not be too controversial, and possibly would even be helpful to you, to suggest that, to avoid any conflict of interest, any investigation of the APA should be independent.



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Charles Randell: I would like to go a bit further than that. First of all, because there does seem to be some confusion in some quarters, I am not and have never been a decision-maker in relation to anything the FCA has done or not done relating to GRG. You will know that, in terms of time, the vast majority of the FCA's activities around the investigation of GRG, including Promontory's work, predated my arrival at the FCA. The decision to take no enforcement action was announced shortly after I arrived at the FCA, but I can assure you that I had no role whatsoever in that decision. Our enforcement decisions are taken on the basis of the facts found and the legal advice received. First of all, I was not a decision-maker in relation to that.

Secondly, I have done nothing to impede both of the reports that have been put out; I can assure you of that. I have not attempted to change references to the Asset Protection Agency. I would say that it was not until I saw the report that I actually realised that any small-business assets were under the Asset Protection Agency. At the stage when I left the story, the scheme that had been established was largely focused at large, complex-to-value assets in the major banks. In the case of RBS a very different kind of asset was in the sights of the scheme, as constructed in early 2009. It came as a surprise to me that these assets were in the scheme in the first place. I have had no role in the decision-making, and I have absolutely no intention of taking part in any decision-making relating to this issue or the Asset Protection Agency.

Mr Baker: I am grateful you have had the opportunity to put that on record.

Charles Randell: Finally, can I just clarify that I have also had absolutely no involvement in giving any advice to the Asset Protection Agency about its conduct in relation to any underlying asset?

Q540 **Mr Baker:** Andrew, you mentioned earlier that it would be inappropriate for you to investigate the APA as an agency of the Treasury. You are nodding. There was to be a second report by Promontory, which did not take place, as I understand it, because the FCA was to take enforcement action. I think you will agree that had the effect of shutting down what would have been an investigation into the APA. Would you agree that is the effect?

Andrew Bailey: No, I would not agree with that, because the Promontory report is a section 166 report, commissioned by the FCA, so I do not think you could use that section 166 route to investigate the Asset Protection Agency.

Q541 **Mr Baker:** That is not quite the point I was making. It might well be that you could not use that route to get that report, but was it not the case that the Promontory report was intended to investigate the role of the APA further?

Andrew Bailey: I do not think it was ever that explicit. I have to come back to the point that, had phase 2 been done by Promontory under



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section 166, we would still have had the same issue about a public body. It does not change it at all. In terms of the distinction between us doing it as an enforcement investigation and it being done as a section 166 investigation, there is no difference in that respect. It would just not be appropriate.

Q542 Mr Baker: I have two further points. Just to round up the GRG discussion at this point, can I ask each of you, perhaps separately, what lessons you have learned from this whole process and debacle, in terms of people's expectations of justice and your capacity to deliver justice for them, and the various things that you have touched upon where you have ended up suffering allegations in relation to it? What lessons will the FCA take from this debacle with GRG?

Andrew Bailey: Coming back to the point we have discussed before, the judgment that small firms do not need to be covered by, in the broader sense, regulatory protection was a wrong one. They are sufficiently vulnerable, in the broader sense, to dealing with large financial institutions to require protection that goes beyond contract law. That is the big message for me.

Charles Randell: Yes, I would share that. The long report that the FCA has published brings out the enormous inequality of bargaining power and the enormous asymmetry in the relationship between a very large bank and a small business where, in some cases, the owner has given a personal guarantee and mortgaged their house to the bank. That is a position of significant vulnerability. That is what we see coming out in the report: that people lost everything.

Some of the small businesses that were in GRG—and Promontory was clear about this—would have failed in the aftermath of the financial crisis, regardless of whether SME lending was subject to regulation or not. In a severe downturn, there will be failures. There are questions then about how people are treated when they are on the receiving end of a very traumatic experience, with an insolvency practitioner taking over their business. This has highlighted just how very one-sided that relationship can be.

There are others who may feel that their business was worth something, even if they were in breach of their loan agreement with RBS. I cannot judge how much difference small business lending regulation would make to the rate of failure in a downturn, but it clearly should make some difference to the way in which people are treated.

Q543 Mr Baker: We do not have time to sail out fully over some deep waters that have emerged here, in terms of the balance between socialising and privatising risk. Earlier on in evidence, you talked about it with some passion. You implied where you stand on it. Personally, I think that if people want to take high risk, so long as they understand what the risk is that they are taking, they should be allowed to take high risk, but they should certainly understand what risks they are taking.



One of the things I observe, which I think you have confirmed, before I move to my very final point, is that we have ended up in a position where the socialisation of risks through the asset protection scheme may or may not have influenced the way that GRG treated its customers, with all the profound effects that had, but we cannot answer the question of whether this agency of the Treasury did or did not influence the behaviour of the bank because you do not feel it would be proper for you to investigate it. Is that right? Because you do not feel you can investigate it, we simply do not know the extent of that.

Andrew Bailey: We cannot take you beyond where we have taken you in that report. There have been previous parliamentary reports on the Asset Protection Agency from the Public Accounts Committee. You may say that is more from the point of view of public money—I do not know—but it has appeared before in parliamentary investigations.

Q544 **Mr Baker:** The final point I would like to raise is about fraud. I think you said something earlier about a lack of capacity for prosecuting fraud, which is certainly something I have brought up in the past. It is absolutely fundamental, surely, to financial conduct that people do not commit fraud. The Bank of Scotland was fined £45.5 million, with four individuals banned. Does this mean the end of the FCA's investigations into HBOS Reading?

Andrew Bailey: No, not in terms of the investigation into HBOS, of which Reading is part. As we discussed before, there were two cases that were still going on. There is now one, and the one still going on is in respect of individuals. Cases involving individuals under the approved persons regime are harder, frankly—much harder—but that is the case that is still going on.

Q545 **Mr Baker:** What will happen if you run into instances where you think that fraud may have been committed? We have talked about the lack of capacity to investigate fraud. What will happen if you discover further potentialities of criminal fraud?

Andrew Bailey: We have a new process now in the public world, which is that there is now the National Economic Crime Centre, which we tend to call the NECC. Where we and other bodies get cases, we take them to the NECC, the NECC effectively takes the case apart and looks at it, and then there is a process of deciding whether law enforcement bodies—typically the SFO or the NCA, though it could also go to a local police force—take the cases on.

If you take London Capital & Finance, that was taken on by the SFO. We are very grateful, and we are working in parallel with the SFO on that case. If you take Premier FX, that case was not taken on and it came back to us. I just want to be very clear on this, and Premier is a good case in point: our attitude is that, if cases come back to us where we think there is sufficient evidence, we feel we have to tackle those cases ourselves. It is not the end of the story—that would be true in other parts



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of the landscape—because we owe it to the customers who are affected by it, so that one has come back to us.

Going back to the report of the Inspectorate of Constabulary, the amount of capacity to deal with fraud cases below the SFO's level—and bear in mind the SFO is only really doing a very top slice of the cases—has shrunk markedly.

Q546 Mr Baker: My very final point is that, more broadly, across the entire financial system, it has been brought to my attention—I have been shown some evidence—that in certain business processes, such as home repossession, the act of delivering capacity for these business processes might mean that paperwork is signed by somebody who is not the authorised signatory within the bank before taking possession of someone's home. I have been shown various signatures that demonstrate that it is clearly the case that within some institutions processes are taking place where it appears that anyone is signing these documents. Whether or not the repossession is justified, it does seem that is therefore a fraudulent transaction. Are you aware that this phenomenon may be happening? If so, what are you doing?

Andrew Bailey: I am aware of it. Yes, it does get talked about. If you would like to bring the evidence to us, we will look at it.

Q547 Chair: Before I bring in Catherine on a different subject, I just want to pick up on an earlier question. Steve has talked about the Asset Protection Agency and you have made it clear that is not within the FCA's ability to investigate. Have you then had the conversation with Government, saying, "We cannot do this but somebody needs to, based on what we have seen in this report"?

Andrew Bailey: It is not for us to say that somebody needs to. We have laid the evidence out. I am not going to go beyond that.

Q548 Chair: You have laid the evidence out in the report and left it to other people to pick up.

Andrew Bailey: Yes. If you feel there should be a report, you can make the case.

Q549 Chair: It is interesting to know whether you have already had that conversation with Government or whether it is for us or somebody else.

Andrew Bailey: Can I just be clear? Throughout the GRG investigation, we had an arm's-length relationship with the Treasury on this. You can understand why. Obviously, there are a lot of potential conflicts of interest in there. It only saw the findings very shortly before we published.

Chair: That was the final one last week.

Andrew Bailey: Yes. That was not with a view that it could change them, because otherwise it would be inappropriate.



Q550 Catherine McKinnell: I wanted to move on to the *Consumers' Access to Financial Services* report that this Committee produced and some of your responses to our recommendations, one of which was our conclusion that, in addition to the Equality and Human Rights Commission, the FCA should be given responsibility for enforcing the Equality Act. However, your response was that the FCA does not have the expertise as a financial service regulator to carry out enforcement. Can you explain why the FCA should not have that power to enforce the law?

Charles Randell: I will jump in on this because, at the end of the day, even if Andrew was to say he wanted to do it, the board would have some questions to ask about the appropriateness of us taking this on.

First of all, can I just say that we very much welcomed your report? On the vast majority of workstreams that you proposed in that report, we are already fully engaged in doing work.

Secondly, specifically on taking over the same role as the Equality and Human Rights Commission in relation to the financial sector, we do a huge amount of work in holding firms to account for their treatment of vulnerable consumers. We are in the middle of developing further our guidance to firms on the treatment of vulnerable consumers and, when we do that, we obviously consult widely with a wide variety of service users and service-user organisations, so this is not something we do nothing about. However, there is a commission. It has 200 people and a board of commissioners who are selected because of their expertise in issues relating to the treatment of people with protected characteristics and Equality Act issues. It will have specialist panels to support the quality of their policy-making and so forth, and it will draw conclusions about access across a wide range of industries that will all have similar issues, whether it is accessibility on websites, accessibility to physical premises or other things of that sort.

In terms of our taking on those specialist functions of accessibility, my heart tells me, yes, we must do it. My head tells me that, when we are in the middle of the transformation of the FCA that I have described to you as a result of the additional responsibilities that we have taken on in the past few years, when we do not know where we are going to land on Brexit and when people are suggesting we should be doing much more in the area of financial crime, anti-money laundering, small business lending or even bailiffs, the board needs to think about the capacity of the organisation to deliver what it needs to deliver without rushing into new areas that would broaden our responsibility.

Can I make absolutely clear that is by no means us saying that we do not take our responsibility in relation to consumer vulnerability very seriously? Pretty much the first issue that I encountered when I arrived at the FCA was our definition of consumer vulnerability. I have kept very closely in touch with how we are discharging our work on consulting on guidance, and I am fairly closely in touch with the five workstreams that we are working on, of the seven that you outlined in your report.



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Q551 **Catherine McKinnell:** The FCA already has the power to carry out its own prosecutions. Why does it treat obligations under the Equality Act differently to other legal obligations in terms of financial services?

Charles Randell: We deal with firms in terms of their compliance with our rulebook. We as a public authority have an Equality Act duty. Every paper that comes to the board has an Equality Act section in it, in which our people analyse whether they think there are Equality Act implications and how that is fed through into the policy. On the very specialist questions of accessibility—

Q552 **Catherine McKinnell:** Why is it more specialist than other financial service issues?

Charles Randell: In terms of questions of the adequacy, for example, of Braille services or of physical access to premises, if those are the issues that it is suggested we should be taking on expertise on, it will have an implication for our resources and I imagine we will end up duplicating some of the expertise that exists at the Equality and Human Rights Commission.

Q553 **Chair:** It is partly to do with that, but you used the phrase, “verbiage”. There is a general issue about the amount of documentation that customers are expected to sign. The evidence that we heard in one of our sessions was about the average financial literacy age. If Mr Mann were here, he would talk about literacy generally and about the fact that we are all dealing with constituents who struggle to read. However educated many of us are, we struggle to understand our mortgage documentation, our ISA documentation or whatever it is. That surely is a matter for the FCA to be asking questions about.

Charles Randell: That is absolutely right.

Q554 **Chair:** Why is this verbiage—“terms and conditions” is perhaps the better phrase, but I think you probably have the right phrase there—impenetrable for most people to understand? That is a question that only the FCA can ask firms that it regulates. The EHRC cannot. Do you not agree?

Charles Randell: I absolutely agree with that.

Q555 **Chair:** That is what we are talking about in the report. We are saying that there are things that you could be taking on.

Charles Randell: I absolutely agree with that. We do not need to take on duties under the Equality Act to do that; that just comes straightforwardly to customers’ understanding, treating customers fairly and the additional expectations of vulnerable consumers. Whether it is vulnerable consumers who are undergoing bereavement, whether it is customers who have protected characteristics, whether it is people who are driven to distraction by their inability to deal with their partner’s bank after their partner has had a stroke, because their partner cannot sign a power of attorney, you will have had exactly the same complaints that I



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have when I go around the country and talk to consumers, which are heart-rending. Those are fair and square for us to deal with and deliver on, and we do not shrink from that.

There is a separate question of whether we should have additional specialist expertise in the treatment of people with protected characteristics and some of the duties that the Equality Act puts on the Equality and Human Rights Commission. That is a bridge too far given where we are at the moment, but can I be clear? We will be issuing guidance on vulnerable consumers, I talk to firms and consumer groups about our work in this area and I am very engaged with the work that we are doing in all of these areas, whether it is powers of attorney or whether it is other forms of accessibility.

- Q556 **Catherine McKinnell:** One of the big challenges here is that these customers appear to be falling between the two stools of the FCA, which is suggesting they should be done somewhere else, and those other organisations that say they are not carrying out this work. For example, you made reference to the Equality Advisory and Support Service, the EASS, being better placed to set the standards when it comes to communication, providing other formats: Braille, Moon. They said in clear evidence to us, and it was presented to you, that they do not have the power to set rules or standards. Why are you suggesting that they should be setting the standards, when they say they do not have that power, and you have the power but suggest it should be being enforced somewhere else?

Andrew Bailey: In the letter, I was trying to be careful to say we would work with them on this, because they have one set of skills and we have another set of skills. As Charles has said, our skills are not really in the specialism of—

- Q557 **Catherine McKinnell:** That is the question: should you not be getting those skills? That is the question I am asking. If it was a priority, would you not be getting those skills in?

Andrew Bailey: This is the point we are putting back: would it be better if we worked with them, so that our skills meshed with their skills? That is the point.

- Q558 **Catherine McKinnell:** Who is going to enforce it? Who is going to make sure that is happening? Who is going to make sure vulnerable and disabled customers of financial services are getting access to those services?

Charles Randell: The answer is that we will, because we have very clear rules around treating customers fairly. We have engaged with the industry and consumer groups over the past year on the definition of what a vulnerable consumer is, and guidance as to how they identify vulnerable consumers. We are very clear in our expectation that firms treat vulnerable consumers appropriately. As for whether we can then go on to specify our own standards in relation to Braille, British Sign



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Language or whatever the issue happens to be, or whether we are better drawing on the expertise of the Equality and Human Rights Commission in that area, I personally think it would be a mistake for us to try to develop our own specialist skills in this area. That is the only area of difference, as far as I can tell, between—

Q559 Catherine McKinnell: One of the challenges is that, when it was put to our witnesses, “What would you do with a BSL user when they are provided with a telephone number to access their banking services?” they suggest going to the website. There is just a general lack of understanding, but also appreciation that people, adults, BSL users, do not want to have to ask their parents or family members to support them to access their own banking information. When asked about this, the witnesses told us that they do not set the standards; the financial service firms do. The question is who is setting the standards, and whether the legislation is adequate, therefore, in allowing the financial service providers, and the regulators overseeing them, to set these standards, which clearly are not adequate at the moment. Who is going to make sure that it is adequate?

Andrew Bailey: We should ask that question in the context of the guidance we are going to put out on vulnerable customers. It is a good question, so we should take it on.

Q560 Catherine McKinnell: Great, marvellous. Moving on from the report, I have another couple of issues that have been raised with me. I have had a constituent contact me about being told by the bank that he will require a mobile phone in order to partake in online shopping through his bank. This constituent does not have a mobile phone, does not want a mobile phone and does not want to have to pay for one, but this has to do with the strong authentication that is being brought in, which requires you to get a text message. What options are open to this constituent? I presume there are others who are affected by this.

Andrew Bailey: We have had to delay this introduction of strong authentication because the European Banking Authority has not produced its guidance on time. If you can send the story, please do, by the way. I would really welcome that, because it goes to this same question. I want to use “vulnerability” carefully because I do not want to presume anything about your constituent, so please do not think I am, but the point is that we cannot have security standards that effectively lock out part of the population. I am a bit of a rebel on this stuff.

Catherine McKinnell: A luddite.

Andrew Bailey: You have to be sometimes.

Q561 Catherine McKinnell: There is another issue that has been raised with me: a concern about an unintended consequence of the 2012 retail distribution review. It has been described as an advice gap within that. The incentives created by the switch from commissions on product sales to a recurring annual advice fee has led to high street banks, investment



management firms and financial advisers focusing on wealthier clients, to the exclusion of those with less to invest, so those who want to see an increase in that wider investment pool are seeing an unintended consequence of this.

Andrew Bailey: We are about to undertake the scheduled review of the RDR, and that point will be central to it. To put a bit of background on this, the reason for this is that the RDR, rightly in my view, removed hidden commission. That is a good thing in many ways, but it obviously made transparent how much people pay for advice, and it made quite a few people say, "Ah, I do not want to pay that, particularly if I think what I am doing is not that big a thing". That leads to, as you say, the so-called advice gap emerging, and it does have a differential effect across the population. You can characterise it as a wealth management system, but it does have that effect.

There has been quite a lot of work in the meantime. There has been quite a lot of hope that robo-advice would mushroom, grow and provide low-cost advice. We have to look at it and ask, "Is it really happening or is it not?" That point will be front and centre of the review. It is a known point. I do not want to take away from the fact that the RDR did a very sensible thing, but with unintended consequences.

Charles Randell: It is quite important that we do not get too nostalgic about the good old days of commissions, or think we can solve this problem by going back to commissions that are somewhere in the paperwork given to the customer. To Mr Baker's point, if you are told that 4% of your assets are going to be taken by the adviser on an annual basis, it may be that a number of the customers we are talking about have no real idea that that means they will end up, ultimately, with very little indeed. We have to make sure that whatever we do chimes with our understanding of how customers take decisions, but let us not be misty-eyed about the world we left.

Q562 **Chair:** That plays into the broader issue we were talking about this morning, going back to where we started, on investments in Woodford, London Capital & Finance and elsewhere about people having the correct advice.

I have a couple of final questions. This one picks up from where Steve started on the GRG issue, about customers who had been mistreated and their access to compensation. A point that has been raised with us is that many GRG customers cannot access the Blackburne process because, if the company went bust, they need permission from the administrator or the liquidator in order to get to Blackburne, and of course Blackburne comes at the end of the process. There was a view, Mr Bailey, that potentially you are hiding behind the Blackburne process, rather than addressing the issue. A number of the banks appointed very distinguished individuals to conduct these investigations and look at everything else, but the point remains that there are still people who feel, as Steve has said, they suffered a gross injustice.



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Andrew Bailey: I am not hiding behind the Blackburne process, actually. It needs to be robust. To be honest with you, on the Griggs process, as is well known, I stepped in and said it was not delivering, transparently, what it needed to.

There is an issue about insolvency. It is a problem because, obviously, you cannot override insolvency law at a stroke. There is a piece of work now going on in the context of the work that UK Finance is doing to put in place the new scheme and the scheme to try to deal with all the cases in the past that have not been dealt with somewhere else. It has a workstream, which we and Treasury are supporters of, to ask, "Is there a way through this insolvency process?" It is not us hiding behind a problem; we cannot override the law. On the other hand, we recognise the point. It is a really troublesome point, because obviously you get to the counterfactual issue. What if the company had not failed as a consequence of the actions that were taken? How would you then treat it? Of course, the fact is it did fail. How do we deal with that tension?

Q563 **Chair:** Moving on, we had a series of questions on funeral plans that have come in, and I will probably write to you on those rather than go through them now. In a way, it ties in with that last point. In terms of coming up with the new rules, it is a new area, but when somebody has saved money for their funeral, and then the said provider is no longer able to provide that funeral service, how are you going to design a system that is speedy? Often people will not discover their funeral plan provider has gone bust until the person has died and the funeral is to take place within days. How are you going to deal with the fact that the policyholder will be deceased? The company is in administration or liquidation; the person is deceased and no longer there to launch the claim themselves. Compensation and money will not do it. The family, friend and loved ones will want a funeral provided, in the way the person saved for.

Andrew Bailey: I agree. To go back to the perimeter for a moment, funeral plans are an example of where the perimeter is being moved. We agree, and the Treasury has done the consultation. It is in the process of handing it over to us. We have all those questions you raise on our list, and a few more as well. One thing we always hear anecdotally, I am afraid, is that one of the most common places for selling funeral plans is at the funeral of your spouse. It seems to me that good things cannot follow from that. There are issues around selling, around fees and around customer awareness. As you say, there are important issues about the failure of the firms, and then a question about how the estate of the person can take action. We will aim to cover all of those, and we will have to put consultations out about how we—

Q564 **Chair:** What is the timing on the consultation?

Andrew Bailey: Can I write back to you on that?

Chair: Of course you can. We have some further questions.



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Andrew Bailey: You write to me and I will write.

Q565 **Chair:** There are two final areas that we have also had raised with us by members of the public. The first is the peer-to-peer platform, Lendy, which requested the FCA's assistance in October. Seven months later, Lendy had collapsed. Do you have a view on what went wrong?

Andrew Bailey: Yes. We had restrictions on Lendy from the first date you mention onwards. Those restrictions were so tight that we were having to approve the payments in and out of the firm. Remember, a peer-to-peer firm is an administrative firm. I am going to be a bit careful about what I say because, as you can imagine, we have enforcement going on in this field. Let me think about how I could tell you as much as I can about how we approached that, but we had restrictions on the firm.

Q566 **Chair:** With other peer-to-peer platforms, there are lessons. There is obviously this specific case, but does the FCA have any lessons?

Andrew Bailey: It also goes back to some of the things we said earlier about retail investment.

Q567 **Chair:** Exactly. The other one is a different platform, Collateral, where it has been reported that it collapsed because it was operating under the impression it was regulated by the FCA, when in fact it was not. Is that a true reflection of why it collapsed?

Andrew Bailey: We also have an investigation in that field but, on the face of it, yes. Actually, I can be quite clear: it was on our interim permission register, which was set up for consumer credit firms, which included peer-to-peer. It appears—and I am saying this carefully, because of the investigation—that there was a fraudulent reregistering of the information, which made the firm appear what it was not. We are investigating that. We are in very close contact. We have had a lot of complaints and MPs' letters; put it that way. We will deal with those. I am very conscious of that case. Again, it is a very unfortunate case.

Q568 **Chair:** There has been press coverage about the FCA register potentially being out of date and people relying on it when things are perhaps not so accurate. Is this another example, or is that a different issue?

Andrew Bailey: It involves a sub-register but, put in the broadest sense, yes. How did the register get changed without the change having any authorisation? By the way, I just want to be clear: there is no suggestion it was done from inside the FCA. I do not want you to think that. We are investing £5 million of our investment budget this year in the register. I have said before, I think at a previous hearing. I will be honest with you: I had a list of things in my head when I became CEO—I was a board member before—of things that needed doing in the FCA. The register was not one of them. It is one where I have had to change my view quite dramatically, because it clearly needs a lot of work.

It is very important. We have a legal responsibility to publish it. It is used by the public and it should be. I am also very conscious, to this point



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about how it got changed, that it is a very big public register with a lot of information on it, which is now a target. I have to say that quite carefully, but it is a cause of a lot of work and quite a bit of concern.

Chair: Thank you very much and thank you both for being here this morning. The fact that this has been one of the longest sessions we have done for quite a while shows that, as you said, Mr Randell, the FCA has a very broad remit. We have an interest in a lot of that remit, so we want to thank you for your time this morning. I know that not everybody enjoys preparing and coming before the Treasury Select Committee. Given the remit, we may well explore with you where there is opportunity to perhaps increase appearances, which I am sure will fill you with great joy, unless of course, Mr Bailey, you are wearing a different hat in future. You do not have to comment on that.

Andrew Bailey: I have answered all your questions. I am not commenting on anything to do with whatever you may be implying.

Chair: There we are. Thank you very much for your time.