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Rt Hon Mel Stride MP
Chair
Treasury Select Committee
House of Commons
London
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11 April 2020

Our Ref: SA200304F

Dear Mr Stride

RE: Follow up - Pre-Appointment Hearing

At Andrew Bailey's pre-appointment hearing as Governor of the Bank of England on 4 March 2020, he committed that the FCA would write to the Committee addressing assertions made in the document recently published by Gina Miller and a number of the FCA's other longstanding critics, entitled the "True and Fair Campaign – Asleep at the Wheel report" (the TFC document).

Attached to this letter is our response to the issues highlighted in the TFC document, structured under the same headings as the document itself. In addition to those specific points I also want to share my observations about the document as a whole.

The document makes a number of highly personal allegations against Andrew Bailey himself. I know that Andrew pays little attention to such personal attacks, in part because he considers such criticism as inevitable in a high-profile public service role such as the CEO of the FCA, but also because he considers personal abuse to be a distraction from the job of tackling substantive issues. I agree: the authorities have an urgent and essential job to do in reducing the impact of the Coronavirus (Covid-19) on the financial lives of millions of people. We must continue to prioritise the actions which enable us to do that, and not allow ourselves to be distracted. So I will not respond to the personal abuse of Andrew: it is revealing about the authors of the document but it says nothing about him.

Overall the TFC document is at best a partial, limited and deliberately selective account of the FCA's work, some of which predates Andrew's time as CEO of the FCA. The document contains little that is new and chooses to ignore the major benefits our work has brought to some of the most vulnerable people in our society, including all those helped by our interventions in consumer debt, just as it ignores the challenge of the FCA's mandate in regulating the activities of nearly 60,000 firms across the full range of the UK's financial services industry.

As Andrew also said unequivocally in his appearance at the Committee, there have undoubtedly events been from which the FCA has lessons to learn, including events highlighted in the TFC document. But even here, the commentary in the TFC document is often inaccurate and based on tendentious assertions by the authors and others, rather than evidence. We address these points more fully in the main response which accompanies this letter.

The FCA is determined to continue the process, started under Andrew's leadership, of transforming its approach and capabilities to ensure that we discharge our mandate and supervise some 60,000 firms as effectively as we can. As a major public body with an important and very challenging remit which affects the lives of millions of people, it is absolutely right that the FCA should be subject to intense scrutiny. Our accountability to Parliament, including through the Committee's own scrutiny, is a central part of that. But I am sure that the Committee will agree that effective scrutiny is based on objective enquiry and engages fully with evidence.

I look forward to continuing to work with you and the rest of the Committee in the future.

Yours sincerely

Charles Randell
Chair

Response to the TFC Document

HBOS, Lloyds Banking Group and whistleblowing matters

Andrew Bailey has answered questions on this matter on many occasions, such as in his evidence to the Treasury Select Committee in June last year[1], and referred to the independent inquiries being carried out by Dame Linda Dobbs, a former High Court judge. The FCA will carefully consider Dame Linda's findings and will take action, including enforcement proceedings, if appropriate.

It is worth summarising the enforcement work the FCA and others have already undertaken in relation to HBOS more broadly, which demonstrate how we have tackled wrongdoing, including in challenging cases where significant resource is required.

The FSA took enforcement action against both Peter Cummings, the then CEO of Bank of Scotland's (BoS) Corporate Division, and against BoS itself for events relating to its collapse. Both cases concluded in 2012 with the publication of Final Notices.[2] Mr Cummings was fined £500,000 and prohibited from holding significant influence functions at certain types of firm on the grounds that he lacked competence and capability.

Following the publication in November 2015 of Andrew Green QC's report into enforcement actions following the failure of HBOS, the FCA and PRA announced in January 2016 that they had started investigations into certain former HBOS senior managers. This work is at an extremely advanced stage and you will understand that we are not able to comment on it in detail. As Andrew Bailey set out in his letters to the previous Chair of the Treasury Select Committee on 19 January and 30 May 2018[3], investigations such as these into events that took place several years ago can be very challenging and require extensive searching and examination of a large volume of documents. This means an investigation can take longer than it would take if the events under investigation were more recent. Fairness does not permit any shortcuts. Both Charles Randell and Andrew Bailey have made clear that the FCA treats this investigation as a priority, with senior oversight to ensure proper resourcing.[4]

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[1] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/103313.html at Q512

[2] https://www.fca.org.uk/publication/final-notices/bankofscotlandplc.pdf, https://www.fca.org.uk/publication/final-notices/peter-cummings.pdf

[3] https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Andrew-Bailey-FCA-HBOS-190118.pdf
https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/ab-nm-fca-investigations-300518.pdf

[4] https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Andrew-Bailey-FCA-HBOS-190118.pdf, https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/ab-nm-fca-investigations-300518.pdf

A further case relating to BoS's failure to be open and co-operative with its regulator in relation to suspicions of fraud at Reading concluded in 2019. The bank was fined £45.5 million.[5] As the FCA explained in April 2017, all investigative work was quite properly paused at the direct request of Thames Valley Police from early 2013 until early 2017, to allow the criminal prosecution to take place.[6]

More broadly, the FCA has changed its approach to enforcement so that it now opens investigations wherever it has reason to believe that serious misconduct may have taken place. The purpose of an investigation is to obtain a full understanding of the facts, so that the FCA can make a decision about whether and what kind of action may be necessary. This has resulted in a significant increase in the number of investigations conducted by the FCA. In the time Andrew Bailey was CEO of the FCA, the total number of open investigations increased from 256 to 634 at the end of February 2020. From July 2016 to date, the FCA has opened 677 investigations into individuals, imposed £700m in fines, prohibited 67 individuals, and obtained 20 convictions, which resulted in sentences totalling 61.1 years in prison (including suspended sentences).

GRG

The treatment of customers in GRG has been a subject of extensive scrutiny by the Committee. Many of the issues raised in the TFC document are addressed both by Andrew Bailey's testimony and in the letters which have been sent to the Committee (and which are published on its website). Any assessment of the FCA's performance on GRG needs to reflect the legal requirements to which we are subject and our regulatory scope, neither of which are recognised in the TFC document.

One of the accusations made in the TFC document is that the FCA 'withheld' Promontory's report into RBS's treatment of small business customers in its GRG ("the Promontory report"). We would have broken the law if we had published the Promontory report in full, as Andrew Bailey outlined in his letter[7] to the Committee. It is unusual for a regulator to be criticised for complying with the law and we make no apologies for doing so.

Furthermore, the TFC document does not mention that, in recognition of the public interest and a desire to be as transparent as was possible within the confines of the law, we published a high-level summary of the main findings and the key conclusions of the Promontory Report in November 2016. We supplemented this on 23 October 2017 with an interim summary of the Promontory Report.

We provided the specialist advisers appointed by the Treasury Select Committee, Andrew Green QC and Fraser Campbell, with the Promontory Report and other documents. The Specialist

[5] https://www.fca.org.uk/publication/final-notices/bank-of-scotland-2019.pdf

[6] https://www.fca.org.uk/news/press-releases/statement-fca-enforcement-investigation-hbos-reading

[7] https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Andrew-Bailey-Morgan-160218.pdf

Advisers had to report to the Committee on whether the Interim Summary published was a fair and balanced account of the findings of the Promontory Report. They concluded that "our assessment is that, subject to the issue described in paragraph 4 below, the Interim Summary (1) is a fair and balanced account of the findings of the GRG Report, (2) does not contain material omissions and (3) closely reflects the tone and narrative of the GRG".[8]

In respect of the (paragraph 4) issue referred to above, the Specialist Advisors concluded: "In consequence, there are material omissions from the Interim Summary as to the state of knowledge of GRG's management about the failings in GRG. We do not express that conclusion as a criticism of the FCA or its advisers, because: (1) the omission of such findings has been candidly identified in the Introduction to the Interim Summary; and (2) they have explained the reasons for it".

We also carried out an investigation to assess whether there was any action that could be taken against senior management or RBS. We did this, rather than commissioning Promontory to carry out further work, because - like any other enforcement authority - we do not subcontract our enforcement function: Promontory is a skilled person for supervisory work and is not equipped to undertake investigations where evidence is gathered in conformity with applicable forensic standards, and its opinion is not evidence that can be used in proceedings.

The TFC document fails to note that the business of GRG was largely unregulated and therefore that the FCA's powers to take action in such circumstances, even where the mistreatment of customers has been identified and accepted, were very limited. The FCA is not responsible for determining what falls within its scope; that is the role of Parliament. After carefully considering all the evidence, the FCA concluded that its powers to discipline for misconduct did not apply and that an action in relation to senior management for lack of fitness and propriety would not have reasonable prospects of success. The TFC document also fails to note that the FCA consulted with independent, external leading counsel who confirmed that the FCA's conclusions were correct and reasonable. The TFC document further fails to note that in the interests of transparency, a report setting out how we came to our decision is published on the FCA's website. Finally, there is no recognition in the TFC document of the role the FCA played in the establishment of the GRG complaints scheme which has been widely viewed as robust and fair.

On the allegations of signature forgery, the FCA has been clear in a letter to each of the former Chair of the Committee and the Chair of the APPG on Fair Business Banking, that we are keen to see any evidence which suggests serious misconduct. Any allegations of serious criminality or fraud may also be of interest to the National Economic Crime Centre and Serious Fraud Office. This is an example of where there are other agencies with a role to play, something which the TFC document fails to set out.

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[8] https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/andrew-green-qc-report-chair-rbr-grg.pdf

London Capital and Finance (LCF)

Andrew Bailey provided testimony on LCF at the Committee Hearing of June last year[9]. As he explained, there were a number of interventions made by the FCA and it will be for Dame Elizabeth Gloster to judge our actions. While Dame Elizabeth's review is continuing it would not be appropriate to comment on the specific allegations made in the TFC document. The fact that the FCA Board asked the Treasury to direct it to commission the investigation[10] is, however, recognition of the fact that the failure of the firm raises issues for the FCA which required such an investigation.

The FCA would like, however, to make two more general points. First, the issue of mini-bonds is not currently a regulated activity, but there is no comment in the TFC document on this or on the role of others, including external auditors or those profiting from the internet marketing of these unregulated products. We would encourage the Committee to join us in demanding that Google and others take more action more quickly in respect of investment scams that are advertised on-line – an area where our powers are limited.

Second, together with the Serious Fraud Office, we are investigating actions relating to the sale of mini-bonds and ISA bonds by LCF. The FCA is investigating multiple lines of enquiry concerning individuals and companies connected to LCF. To date, we have obtained tens of thousands of documents and are undertaking a thorough and forensic review of those. Thousands of hours have been spent on the investigation by FCA enforcement staff since it was opened and we are actively pursuing all reasonable lines of enquiry.

ARAMCO

Andrew Bailey wrote to the Chairs of the Treasury Committee and Business, Energy and Industrial Strategy Committee in October 2017[11] regarding Aramco.

The FCA rejects any suggestion in the TFC document that the new arrangements would "bypass shareholder protection measures": the criteria for the new listing category has all the requirements of the pre-existing Premium Listing category except in two regards, both relevant to an issuer controlled by a sovereign state.

As set out in the above referenced letter "the new category is clearly delineated within Premium Listing, investors would be fully aware that companies had chosen it because of their particular relationship with their sovereign shareholder. Investors could choose whether or not to invest, in the knowledge of that relationship, and with the benefit of greater protection than if the

[9] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/103313.pdf
[10] https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Letter-from-Charles-Randell-to-Nicky-Morgan-20190401.pdf
[11] https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Bailey-fca-Morgan-Reeves-061017.pdf

company had a Standard Listing." Companies applying for listing are currently under no obligation to apply for Premium Listing, and can choose Standard Listing.

The Committee may also wish to note the recent FCA consultation relating to our proposals to enhance climate-related disclosures by listed issuers. These proposals would require issuers to state whether they comply with the recommendations of the Financial Stability Board's Taskforce on Climate-related Financial Disclosures (TCFD) and to explain any non-compliance. This would apply to all commercial companies with a UK premium listing including those in the category for sovereign controlled commercial companies.

Lendy Peer-to-Peer (P2P) firm

The FCA's letter to Lord Myners[12] set out the reasons why we judged that Lendy complied with our Threshold Conditions and could therefore be authorised. We published this letter to be transparent as to the factors that had been considered and the rationale for the judgement reached. During the assessment of Lendy's application, we were in close and continuous dialogue with the firm, providing feedback on their application until we determined that it met Threshold Conditions. Given the legal and policy constraints to which the FCA is subject, much of the information which was assessed would not have been seen by the authors of the TFC document.

Whether a firm meets Threshold Conditions is not a point in time exercise but a continuous judgement. For the same reason as above, the authors will not be aware of information we received following the authorisation of Lendy which informed our supervision of the firm and also led to us starting an investigation into the circumstances that led to its administration, which continues.

The account presented by the TFC is unbalanced and implies that we did not supervise the firm when in fact there was significant supervisory scrutiny of Lendy, both face to face and through other frequent communications. We thereby obtained a considerable amount of information from the firm which guided our actions.

The FCA has carried out a significant amount of work on the P2P sector, which we have always been clear is outside the scope of the Financial Services Compensation Scheme. For example, in December 2019, we introduced new rules[13] that are designed to help better protect investors by limiting the amount of their savings they can invest with P2P. We have also concentrated on the wind-down arrangements we demand of these firms[14] and undertaken considerable supervisory work (which we are often unable to disclose because of the legal restrictions under which we operate).

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[12] https://www.fca.org.uk/publication/correspondence/lord-myners-lendy-ltd.pdf
[13] https://www.fca.org.uk/news/press-releases/fca-confirms-new-rules-p2p-platforms
[14] https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-loan-based-crowdfunding-wind-down-arrangements.pdf

Illiquid Funds

The TFC document suggests that the FCA ignored a warning from a regulated firm about the mispricing of numerous property funds immediately after the June 2016 Brexit Referendum. The FCA closely monitored property funds both before and after the Referendum given the heightened risks for this asset class, including in relation to fund flows and property valuations. After the Referendum, our monitoring of flows and valuations moved to a daily, and in some cases twice-daily, interaction with authorised fund managers. We observed that pricing adjustments were applied to a number of authorised property funds to reflect a change in the value of the underlying property holdings from as early as 24 June 2016. There is a report[15] on our website setting out the findings of our review of the fund suspensions and pricing adjustments in 2016. While we did not see evidence of flawed valuation practices we did articulate lessons learned for the industry from the experience.

The document also refers to the structural mismatch inherent in open-ended funds holding illiquid assets. The FCA has acknowledged the inherent risk in these structures and the measures proposed in our Consultation Paper on illiquid assets and open-ended funds (CP18/27) and our subsequent Policy Statement (PS19/24) relate directly to managing these risks and disclosure of them to investors. We are also working closely with the Bank of England to assess how funds' redemption terms might be better aligned with the liquidity of their assets, following a request from the Financial Policy Committee. As set out in the Financial Stability Report and Record of July 2019, 'The Bank and FCA review will examine the costs and benefits of aligning redemption terms, including pricing and notice periods, with the typical time it takes to realise market prices for funds' assets in normal and stressed market conditions.' The planned survey of approximately 300 funds in the context of the Bank and FCA review has been postponed to reduce the operational burden on firms at this time given the unprecedented challenges posed by Coronavirus (COVID-19), but intensive supervisory work continues in this sector.

Woodford

Many of the points in the TFC document regarding the failure of the Woodford fund are answered by Andrew Bailey's extensive testimony to the Committee in June 2019[1] and his letter to the Chair of the previous Committee[2]. There are limits to the additional information that can be provided due to the enforcement investigation that the FCA is carrying out.

Insider Trading

The TFC document relies nearly entirely on press articles from early 2018 which quote figures and statistics from 2017. These figures are not a reflection of the situation in 2020. The most recent data used in the document is that from a July 2019 article which the TFC document references to illustrate the low number of FCA insider trading prosecutions. In fact, the focus of

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15 https://www.fca.org.uk/publications/multi-firm-reviews/review-property-funds-and-liquidity-risks

the underlying article is to highlight the increase in the rate of prosecutions by the FCA and the effectiveness of the FCA at prosecuting insider dealing.

There are currently 117 investigations into insider dealing and market manipulation. There have been six convictions in relation to offences of insider dealing and for money laundering the proceeds of insider dealing since July 2016, totalling 14.8 years' imprisonment (including suspended sentences).

A recent example of this work is the case Andrew Bailey referenced during his testimony. In June 2019, Fabiana Abdel-Malek, a senior compliance officer at UBS, was sentenced to 3 years' imprisonment and Walid Choucair, an experienced day trader of financial securities, was also sentenced to 3 years' imprisonment in respect of five offences of insider dealing. This followed an eleven week re-trial prosecuted by the FCA after the first trial resulted in a hung jury. This case was one of the most challenging insider dealing cases ever prosecuted as it showed how insiders are organising themselves in increasingly subtle ways to avoid detection. The outcome should be viewed as evidence of the FCA's capacity and determination to tackle the most difficult cases.

The TFC document asserts that the FCA has just 63 full-time staff working on insider trading investigations compared to almost 4,000 staff investigating benefit fraud at the Department for Work and Pensions. We do not think that it is necessary or appropriate to employ 4,000 people to work on insider trading and there are a number of obvious differences between insider trading and benefit fraud. So, we are unclear as to the relevance of the comparison. The full resources of our Enforcement (559 people) Division are available to work on any relevant investigation and the number active on insider dealing investigations at any one time is determined by the amount of suspected serious misconduct we detect, including through the advanced techniques described below.

The FCA currently ingests approximately 9 billion transaction reports and around 35 billion order messages every year and interrogates this data set systematically using a surveillance system. We also use bespoke data analysis tools to identify potential market abuse in the secondary market. We have the capability to identify a wide range of suspicious activity, including behaviours which trading venues and firms cannot effectively identify themselves, such as cross market manipulation or insider dealing split across multiple accounts. In addition, firms and trading venues are required to report suspicious trading activity to the FCA and we review all of these reports (6,337 notifications in 2019). As a result of these and other forms of detection, we prioritise a large number of secondary market events for detailed review each year. Where these reviews lead to suspicions of serious misconduct, we commence an investigation.

The FCA also deters market abuse through many other means many of which, as you will understand, cannot be shared in detail in this open letter. These include disciplinary actions taken by firms and issuers against employees triggered by our regulatory activities. For example, dismissals of staff where they have breached a firm's own internal personal dealing policies and which the firm only became aware of with the help of our surveillance activity. Other examples include resignations, reprimands and loss of bonuses by individuals, following disclosure of their trading activity to their employer. In cases where we decide not to take enforcement action, we have taken into account the evidential merits of the case, whether there is a proper foundation for bringing the case and the public interest in starting proceedings to obtain the appropriate sanction or remedy.

We also work closely with firms to improve their conflicts management processes, staff training, and the way they handle sensitive information, all of which is critical to help prevent insider dealing from occurring in the first place. Our activities in this space cannot therefore be measured solely through prosecution statistics, as is done in the TFC document.

The document refers to a newspaper finding that a day before a company issued a profit warning, the share price fell in 67% of the cases and on the day before takeover announcement the share price increased in 70% of the cases. It further notes that this is higher than the FCA's published data from 2017 that unusual trading, that can be a sign of market abuse, occurred before 22 per cent of takeover announcements in 2017 – the highest level since 2010. Unfortunately, and further evidence of the lack of balance running through the TFC document, it does not note that the statistic for 2018 was 10%[16], the lowest level it has ever been since the statistic was first developed in 2006.

More generally, the FCA has publicly written about the limitations of such a metric. It cannot be used to identify the reason for abnormal price movements and so whether insider dealing has occurred. Other factors, such as financial analysts correctly assessing likely takeover targets or significant legitimate trades that happen to fall before an announcement, can influence the statistic. The statistic is also prone to sharp changes due to the small sample size available for the calculation.

Given these limitations, last year we introduced the new Abnormal Trading Volume statistic (ATV), which covers a much broader range of market activity (1,070 trading events compared to just 60 events used to calculate the market cleanliness statistic referenced in the document). Our methodology is publicly available on our website[17]. The ATV sat at 6.4% in 2018 and is down year-on-year.

Culture within the FCA

We completely reject any suggestion that FCA has an 'institutionalised culture of toxic and unprofessional behaviour and conduct'.

To support this assertion, the TFC document refers to levels of complaints from employees and investigations into cases of bullying and harassment. This is an unbalanced account which is absolutely not consistent with the evidence about the organisation or its culture. For example, the FCA's employee engagement scores (which consists of pride at working at the FCA and intent to stay at the FCA) have risen each year for the past three years, and two-thirds of respondents say the FCA is a great place to work. Furthermore, while one case of bullying is one too many,

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[16] https://www.fca.org.uk/publication/annual-reports/annual-report-2018-19.pdf#page=40
[17] https://www.fca.org.uk/data/measuring-market-cleanliness

only three investigations have been upheld over the past three years, far from endemic as suggested by the document.

Andrew Bailey and the FCA's senior team have actively sought to create a 'speak up' culture where people feel comfortable raising concerns about all sorts of behaviours, including bullying and harassment. There is no recognition of this in the document. Furthermore, while among the FCA's nearly 4,000 employees there may – as in any large organisation – occasionally be a small number of employees who behave inappropriately, the document gives the FCA no credit for calling this out - in full knowledge that it might leak to the media - rather than trying to cover it up. We have called this out precisely because it does not reflect our culture and the behaviour of the overwhelming majority of our employees.

The TFC document further asserts that sick days have worsened at the FCA. As Andrew Bailey explained at the recent hearing, our sickness rate is slightly above the private sector average and slightly below the public sector. Andrew Bailey has been very vocal and very public in his support of mental health and employee wellbeing, and this has been supported by action. For example, over the past three years the FCA has trained 40 mental health first aiders. The FCA supports employees through any long-term sickness, whether related to mental health or not, through a comprehensive range of physical, mental and emotional wellbeing benefits. Information received from our suppliers suggests that this approach has made our employees more comfortable in declaring absences related to mental health. We make no apology for this.

There is a suggestion in the TFC document that we do not spend adequate resources on whistleblowing and therefore, by implication, that we do not take it seriously. Over the past two years we have made significant enhancements to our whistleblowing processes and increased resources in the team.

The senior leadership of the FCA is only too aware that they may be subject to personal abuse from a small number of individuals outside the organisation whose behaviour is often toxic and unprofessional. FCA leaders will, however, defend the nearly 4,000 other public servants who work for the FCA from similar abuse, and we deplore the blanket denigration of our staff which is evident in the TFC document.

Corporate Accountability

The Senior Managers and Certification Regime (SMCR) was established following a recommendation made by the Parliamentary Commission on Banking Standards. It has been rolled out in phases. From March 2016, it applied to 811 banks, building societies and credit unions, to 546 insurers from December 2018 and to approximately 48,000 other firms from December 2019. Accordingly, the number of investigations under the SMCR to date needs to be seen in the context that the population of firms that have fallen under it has, until very recently, been small. These investigations are a small proportion of the 677 investigations we have opened into individuals since July 2016, as referenced above.

As a general principle, if it appears that individuals may be involved in the suspected serious misconduct of a firm, the FCA will investigate those individuals at the same time it investigates the firm. This is especially important where relevant individuals have had a senior management or governance role in the circumstances under investigation. However, a senior manager is not liable just because the firm has breached a requirement. The senior manager's liability arises where they were knowingly concerned in such a breach or because he or she has failed to take reasonable steps to prevent the firm from being in breach.

The TFC document raises the case of Mr Staley. The PRA and FCA set out in final notices[18] the reasons for the action taken against Mr Staley. This followed a comprehensive investigation. The relevant events in this case occurred during the period when Barclays' whistleblowing policy applied only to employees. It was not until 7 September 2016 that the PRA and the FCA introduced new rules requiring firms to provide whistleblowing protections for 'reportable concerns' raised by 'any person' (i.e. not just workers).

Mr Staley was fined according to the FCA and the PRA's penalty regimes and on the basis of a breach of the rules as they applied before 7 September 2016. This was one of the largest fines ever imposed by the FCA on an individual for misconduct that did not involve any personal gain or profit. The detailed calculations of the penalty are set out in both the Final Notices. The PRA and the FCA have no discretion to depart from the penalty regimes in determining the level of a fine. The TFC document does not identify any specific evidence of why the PRA and FCA were incorrect in their interpretation of the prevailing rules and why, therefore, the decision reached was wrong. We are unable to comment on the current investigation relating to Mr Staley.

To focus solely on investigations under SMCR fails to appreciate the impact the regime has had in improving accountability and more clearly defining responsibilities. Indeed, it would be wrong to characterise the results of the SMCR by reference to enforcement cases given the intention and purpose of the SMCR has been to improve senior management accountability and standards. SMCR has rightly focused senior management attention on ensuring senior management line of sight is effective and that systems and controls are genuinely fit for purpose. This has meant some profound shifts in focus by senior management and demonstrable improvement in their oversight and conduct.

Finally, the TFC document fails to recognise our role in preventing Senior Managers from taking up roles where we judge they are not fit and proper. Since the introduction of the SMCR, just over 470 applicants have withdrawn their application after submitting it to the FCA, a large proportion of which, we believe, is as a result of our probing.

MiFID II Costs and Charges Legislation

The TFC document suggests that the FCA does not take seriously the implementation of MiFID II. At no point have the authors of the document ever appeared to recognise the leading role the FCA played in the development of this piece of legislation. Furthermore, the FCA has carried

[18] https://www.fca.org.uk/publication/final-notices/mr-james-edward-staley-2018.pdf

out a substantial amount of work on the implementation of MiFID II including on costs and charges. For example, over the past two years we have carried out a review of the costs and charges disclosure of retail investment firms[19], a review of research unbundling rules[20] and a review of disclosure of costs and charges by asset managers[21]. We continue to carry out work on firms' compliance with MIFID II.

As set out in our Mission, the FCA has a range of tools that can be used. On the implementation of MiFID II, we have been focused on supervisory action and tools to clarify our requirements, to assess how effectively firms have implemented the measures and to improve compliance within firms and across the sector. If there is evidence to suggest serious misconduct we will investigate. The significant increase in the number of investigations over the past three years to which we refer above is clear evidence that we will not shy away from investigating where it is necessary.

More generally, and yet further evidence of the lack of balance running through the TFC document, there is no reference to the impact the FCA has had on the asset management sector through the asset management market study. This represents a serious and significant multi-year intervention by the FCA. As a result of this work, the FCA has introduced measures to give protection to investors who are less able to find better value and to drive competitive pressure on asset managers.

Money Laundering

The Committee requested that we set out our work on money laundering and so we will address the comments made by the TFC document in that letter, which we are sending separately.

Final Salary Pensions

This is an area in which we have carried out considerable work and made significant interventions. For example, we have taken steps to gather information from all 3,015 firms that provide pension transfer advice and used this information to directly target firms where we have concerns over their activities, whether due to higher levels of transfers or a lack of transfer data that we would expect to have seen. Our interventions have had a real effect, for example, 378 firms, approximately 12% of the market, have stopped advising on pension transfers, either because they have removed the activity of defined benefit pension transfers from their permission or have had it restricted following action taken by the FCA.

Alongside this, we have made changes to our rules to improve the quality of advice. For example, we have confirmed new rules aimed at providing advisers with a framework which better enables

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[19] https://www.fca.org.uk/publications/multi-firm-reviews/mifid-ii-costs-and-charges-disclosures-review-findings
[20] https://www.fca.org.uk/publications/multi-firm-reviews/implementing-mifid-ii-multi-firm-review-research-unbundling-reforms
[21] https://www.fca.org.uk/publications/multi-firm-reviews/review-disclosure-costs-asset-managers

them to give good quality advice and have recently consulted on a potential ban on contingent charging for pension transfer advice (where the adviser is only paid if a transfer takes place). We have also opened investigations into over 20 firms where our principal concern is that unsuitable transfer advice may have been provided, in addition to a similar number of investigations where we suspect that in switching or transferring their pensions, consumers may have been exposed, to varying extents, to investments that are high risk or illiquid.

The number of people we have working on pension scams is not ten people: across the organisation we have more than 100 full-time staff working on tackling different aspects of pension scams and related issues. This includes staff in the specialist supervision team, the pension scam intelligence team, the whistleblowing team, the campaigns team and the supervision hub, as well as other teams across the FCA. While we agree that more work needs to be done, this area has been, and continues to be, a priority for the FCA.

More generally, this is another example – not brought out in the document - of where there are a number of other bodies that play a role, with whom we work closely, such as The Pensions Regulator, the Money and Pensions Service, the Financial Services Compensation Scheme, the Financial Ombudsman Service and the Pension Protection Fund. There are other organisations, with whom we also work closely, that seek to prevent customers being scammed such as HM Revenue and Customs, the Department for Work and Pensions, the Serious Fraud Office, the National Fraud Intelligence Bureau and the National Crime Agency.

While we stand by the action we took in response to the harm posed to members of the British Steel Pension Scheme (BSPS), we recognise lessons could be learnt. Some of these were set out in the review[22] carried out by Caroline Rookes into communications and support provided to BSPS members during the 2017-18 pension restructuring exercise.

Charles Randell and Andrew Bailey have both publicly highlighted the challenges for the FCA resulting from the pension freedom policy, which presented millions of individuals with complex decisions about retirement savings and income but which was introduced after a very short period of preparation. This is set to continue to be a very demanding area of focus for all the regulatory bodies, as we seek to limit the risk that consumers suffer further harm.

[22] https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/rookes-review-british-steel-pension-scheme-members.ashx

Appendix – Some relevant publications

HBOS / Lloyds Banking Group

https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Andrew-Bailey-FCA-HBOS-190118.pdf

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/95027.pdf#page=14

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/95027.pdf#page=15

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http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/103313.pdf#page=31

RBS / GRG

https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Correspondence-fca-rbs-grg-161017.pdf

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https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Andrew-Bailey-Chair-re-RBS-GRG-Connaught-010817.pdf

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/72428.pdf#page=2

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/72428.pdf#page=11.

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/72428.pdf#page=16.

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/written/72329.pdf

https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/fca-to-rbs-grg-281117.pdf

https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Andrew-Bailey-FCA-Skilled-Persons-090218.pdf

https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Andrew-Bailey-Morgan-160218.pdf http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/95027.pdf#page=14

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/103313.pdf#page=34

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/103313.pdf#page=37

https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Chief-Executive-of-Financial-Conduct-Authority-to-Chair-re-Bank-Signatures-Forgery.pdf

London Capital & Finance (LCF)

https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/Chair%20of%20Financial%20Conduct%20Authority%20to%20Chair%20re%20London%20Capital%20and%20Finance.pdf.

https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Letter-from-Charles-Randell-to-Nicky-Morgan-20190401.pdf

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/103313.pdf#page=18

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/103313.pdf#page=23

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http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/103313.pdf#page=25

Aramco

https://www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/news-parliament-2017/fca-saudi-aramco-listing-response-17-19/.

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/72428.pdf#page=33

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/78106.pdf#page=34

Lendy – Peer-to-Peer Firm

https://www.fca.org.uk/publication/correspondence/lord-myners-lendy-ltd.pdf

Woodford

https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Letter-from-FCA-Chief-Executive-to-Chair-re-Woodford-180619.pdf

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https://www.fca.org.uk/publication/correspondence/lord-myners-undertakings-collective-investment-transferable-securities.pdf

Insider Trading

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/78106.pdf#page=33

Corporate Accountability

https://www.fca.org.uk/publication/final-notices/mr-james-edward-staley-2018.pdf

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/85306.pdf#page=9

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/85306.pdf#page=15

MiFID II Costs and Charges Legislation

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/95027.pdf#page=22

Final Salary Pensions

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/the-work-of-the-financial-conduct-authority/oral/85306.pdf#page=20

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/pension-costs-and-transparency/written/90301.pdf
https://www.parliament.uk/documents/commons-committees/work-and-pensions/Correspondence/Andrew-Bailey-FCA-17-19.pdf