Press briefing of the FCA's Business Plan for 2014/15

Thirteenth Report of Session 2014–15

Report, together with formal minutes relating to the report

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Treasury Committee

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1 Introduction

1. On the evening of 27 March 2014, the Daily Telegraph published an article on its website describing a forthcoming thematic review by the Financial Conduct Authority (FCA) into the life insurance market. The same story appeared in the print edition of the Telegraph the following day. The story, based on an advance briefing given by the FCA to the Telegraph earlier that week, gave a misleading impression of the scope of the life insurance review, and was published before the FCA had made any official announcement of its own. When the markets opened on 28 March, the share prices of several leading life insurers began to fall heavily. Only when the FCA published a clarifying statement about the scope of the review—several hours later that day—did share prices begin to recover.

2. On the day following the publication of the Telegraph article, the Chairman of this Committee called for a “full and transparent explanation about how such an apparently serious mistake came to be made by our financial services watchdog—the body appointed by Parliament to enforce high standards of conduct”.

3. Simon Davis, Partner at Clifford Chance LLP, was subsequently appointed to conduct an investigation, and reported his findings in December 2014. The Committee records its thanks to Mr Davis for undertaking this work and for the evidence he gave to it.

3. This incident came less than a year after the initial establishment of the FCA as one of the successor bodies to the Financial Services Authority (FSA). The Parliamentary Commission on Banking Standards (PCBS) concluded that the FSA—the UK’s former financial regulator for both prudential and conduct supervision—had left the UK poorly protected from systemic risk, and had also failed to regulate conduct effectively. In April 2013, the FCA inherited the FSA’s responsibilities for conduct supervision, and the Prudential Regulation Authority (PRA)—a subsidiary of the Bank of England—became the prudential supervisor. In its final report in June 2013, the PCBS concluded:

The FCA and PRA are new organisations. They have each set out their aspirations for a new approach. This is welcome. Whether they meet those aspirations, or whether they repeat mistakes of the past, remains to be seen.

[...]

The FCA is housed in the same building as the former FSA, has many of the same staff, and many of the same systems as the FSA. These continuities will make the transfer to a new judgement-based approach more difficult for the FCA than for the PRA.3

1 Treasury Committee, Press release, 29 March 2014
The FCA’s responsibilities expanded further in April 2014, when it took over regulation of consumer credit from the Office of Fair Trading.4

4. The work of the FCA affects millions of financial services customers and employees. The FCA also has an important role to play, on behalf of the UK, in international negotiations on financial regulation. It is vital that the public and the industry can have confidence in the regulator.

5. The FCA has a very difficult job. Its remit—which has expanded further since the FCA’s inception in April 2013—includes the protection of consumers, the enhancement of market integrity, and the promotion of competition in financial services. There was merit in creating a regulator with a greater focus on consumer protection. But while the PRA—the FSA’s successor body for prudential regulation—became part of the Bank of England, the FCA retained many of the systems and staff of the FSA. This has made it more difficult for the FCA than the PRA to break the link with the FSA, which had manifestly failed not only to protect the UK from systemic risk, but to regulate conduct effectively. The establishment of new and more effective conduct regulation will take a long time. It is the role of Parliament to scrutinise progress towards this goal.

6. The FCA’s core function is to ensure that markets work well. It contains the UK Listing Authority, which is responsible for ensuring that listed firms comply with the UK Listing Rules. Simon Davis concluded that the FCA’s own actions led to the creation of a false market in life insurance shares on 28 March. This was very serious. The FCA put its own statutory objectives at risk. It is therefore important that the FCA has learned the lessons from what went wrong and that it is taking the right steps to solving the problems exposed by this affair.

7. The FCA’s Board has accepted all of Simon Davis’s conclusions and recommendations, and has begun to make improvements accordingly. Mr Davis’s recommendations were concerned with specific FCA practices and processes. Notwithstanding the breadth of his terms of reference, Mr Davis chose not to draw wider conclusions about the FCA’s culture or the overall effectiveness of its management. In response to questions on these points, he told the Committee that wider issues about the FCA were for others to examine in the light of the evidence that he assembled. The Committee, as the Parliamentary body responsible for scrutinising the work of the FCA, has considered these wider questions.

4 Financial Conduct Authority website, ‘Enforcement’, accessed 11 March 2015
The FCA’s role as the markets regulator and the UK Listing Authority

9. The FCA’s objectives are set out in the Financial Services Act 2012, which amended the Financial Services and Markets Act 2000. The Act provides that:

The FCA’s strategic objective is: ensuring that the relevant markets (see section 1F) function well.5

Section 1F provides that:

“the relevant markets” means—

(a) the financial markets,

(b) the markets for regulated financial services (see section 1H(2)), and

(c) the markets for services that are provided by persons other than authorised persons in carrying on regulated activities but are provided without contravening the general prohibition.6

The Act also sets out three operational objectives for the FCA: the consumer protection objective; the integrity objective; and the competition objective. The integrity objective is defined as follows:

(1) The integrity objective is: protecting and enhancing the integrity of the UK financial system.

(2) The “integrity” of the UK financial system includes—

(a) its soundness, stability and resilience,

(b) its not being used for a purpose connected with financial crime,

(c) its not being affected by behaviour that amounts to market abuse,

(d) the orderly operation of the financial markets, and

(e) the transparency of the price formation process in those markets.7

10. The effects of the actions of the FCA on 27 and 28 March on the life insurance market were very serious indeed. Simon Davis was told by representatives of insurance firms that they believed that a “false or disorderly market” had existed on 28 March.8 Simon Davis defines a false market as follows:

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5 Financial Services Act 2012, section 6
6 Financial Services Act 2012, section 6
7 Financial Services Act 2012, section 6
For the purposes of this Report, and in the absence of any formal legal definition, we consider that a “false” market may exist in a number of circumstances including where investors are making investment decisions which are materially affected by unsubstantiated rumours, the dissemination of false or misleading information or the existence of a widespread misapprehension.9

He noted that:

It appears that a significant number of investors in life insurance sector shares based their investment decisions on the widespread misapprehension of the nature and scope of the Life Insurance Review.10

As a result, he concluded that “a ‘false’ market, as defined in paragraph 3.20 above, existed on 28 March 2014 prior to the issuance of the FCA’s statement via the RNS.”11

11. The UK Listing Authority (UKLA) is part of the FCA. The FCA is therefore responsible for monitoring market disclosures by issuers and others and for enforcing compliance with the FCA Disclosure and Transparency Rules, and for operating the UK listing regime, which requires listed issuers to comply with the UK Listing Rules.

12. James Palmer, Partner, Herbert Smith Freehills and Chairman of the FCA’s Listing Authority Advisory Panel, identified the rules that would be relevant to a listed firm, in the context of the events of 27 and 28 March:

[… ] there are market abuse rules on the communication of information, as well as the avoidance of insider dealing, or the equivalent of insider dealing; there are listing rules and listing principles about how listed companies should be operated; and there are disclosure and transparency rules about the way in which information is communicated.12

13. The FCA itself is not formally bound by all of these rules. It is subject to the rules relating to market abuse. But, as the regulator, it should always conduct itself to the high standards it expects of listed firms. We have therefore considered the extent to which the FCA’s actions were in breach of its own rules—whether or not these rules technically apply to the FCA—and the action that the FCA itself would be likely to have taken against a listed firm which had acted in this way.

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12 Q 317
14. On the question of whether the FCA had breached rules relating to market abuse, James Palmer told us:

The market abuse rules do apply to the FCA in relation to its own communication, and it is only because this was—in my view—probably not inside information that there was not a market abuse breach by the FCA. It was close to the line, but on the right side of it.13

15. As far as the listing rules were concerned, Mr Palmer said that “it does appear that if the FCA had been subject to the same requirements as a listed public company, there would have been a breach of the Listing Rules in relation to the events of late March last year.”14 He said that the two listing rules which would have been broken, had they applied to the FCA, were Listing Principle 1 and Premium Listing Principle 6. Listing Principle 1 states that “A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations”. Premium Listing Principle 6 states that “A listed company must communicate information to holders and potential holders of its listed equity shares in such a way as to avoid the creation of a false market in those listed equity shares.”15

16. On the question of the penalty to which a listed firm would have been subject for similar breaches, Mr Palmer explained:

[...] the FCA does not always take enforcement action when a Listing Rule breach occurs: it may make a private censure or criticism or take no action. [...] in this case, whilst I believe an Enforcement Division investigation would have been launched into a listed company on comparable facts, it is a possibility that no enforcement action would ultimately have been taken.16

He did not therefore consider it possible that “a particular level of fine can be identified as that which FCA would have suffered had it been a listed company.”17 He did, however, provide examples of penalties for breaches of listing principle 1 and premium listing principle 6. For the former, he gave the examples of Nestor Healthcare, fined £175,000, and Lamprell, fined £2,428,300, in 2013 and of Exillon Energy, fined £292,950 in 2012. He noted that “at paragraph 71 of the Lamprell finding an example is cited of the FCA’s private action without enforcement over systems and controls defects.”18 As breaches of premium listing principle 6, he noted the cases of the penalties listed for Cattles—which was the subject of public censure
for market abuse and breaches of the listing principles in 2012—and JJB Sports, which was fined £455,000 in 2011.19

17. In written evidence, Mr Palmer set out the bases on which action might or might not have been taken against the firm by the FCA. As bases for not taking action, he identified the following:

- it does not appear that the information in question was in fact “inside information”; the primary problem regarding price sensitivity related to the way in which the information regarding FCA’s Business Plan was reported to the market; and
- the FCA’s disclosures to the journalist do not themselves appear to have been inaccurate, even though communicated in an unsatisfactory manner.

On the other hand, as bases on which action might have been taken against the firm, he considered that:

- the extent of market disruption, and
- the absence of systems and controls to manage release of inside information within certain parts of FCA,

would both have been factors weighing towards pursuing enforcement action, had the relevant Listing Rules applied to FCA and the information been information about a listed company’s own business plans, impacting its own share price comparably.20

18. We asked Simon Davis what action he believed the FCA would have taken against a listed firm which had behaved as they FCA had done. He told us that “that there would evidently be alarm bells taking place within the company itself and within the FCA.”21 He said that he would have expected the firm in question, having taken legal advice, to go to the FCA to say “Something has clearly gone wrong here and we want to get to the bottom of it and we are happy to cooperate with you and do whatever we can to get to the bottom of it and present to you a report of what we found”.22 Alternatively, he said, the FCA itself could approach the firm and say “We don’t like what has happened and we, therefore, want to have some kind of investigation conducted, either by the company or by a separate, say, skilled person”.23 He thought that an investigation, similar to the one which he had conducted, would then take place—“which would involve retention of documents, analysis of documents, rigorous interviews and then the culmination of that would be the findings”. He said that “it would then be up to the FCA to decide what, if any, action should be taken

19 James Palmer, Chairman, FCA Listing Authority Advisory Panel (PRE00007)
20 James Palmer, Chairman, FCA Listing Authority Advisory Panel (PRE00007)
21 Q 3
22 Q 3
23 Q 3
as a result”.24 Asked what action the FCA might take if the findings of such an investigation were similar to those of his own report, he said “there will be a range available to the FCA and the FCA has available to it the ability to impose fines and there have been all kinds of fines in the past.”25

19. The FCA is exempt, under the Financial Services and Markets Act 2000 [as amended], from liability to damages. We asked James Palmer whether he considered that this created a level of complacency. He said:

I think that the complacency arose through the absence of having to focus on the issue and a lack of thought about responsibilities in relation to all parts of the FCA for inside information. I personally am a strong supporter of the statutory immunity. The regulators that are susceptible to litigation get bogged down and paralysed by it, and it is of great benefit to my profession only. 26

20. The FCA’s overarching strategic objective is “ensuring that the relevant markets function well”. One of its secondary objectives is “protecting and enhancing the integrity of the UK financial system”, which includes “the orderly operation of the financial markets”. In selectively releasing information to the press about its work, the FCA put these statutory objectives at risk. By effectively breaching its own listing rules, the FCA itself created a false market in life insurance shares. This is a matter of serious concern.

21. The FCA would have considered this kind of conduct from a listed firm to be a serious failure, and it is reasonable to believe that the FCA might well have imposed a substantial fine on the firm or firms involved. The fact that the FCA failed to meet the high standards it expects of firms put its credibility at risk.
The independence of Simon Davis’s inquiry

Announcement of the inquiry

22. It was clear on 28 March that the FCA had made a serious error, which was compounded by the length of time it had taken to correct matters. In the evening of 28 March, John Griffith-Jones, the Chairman of the FCA, telephoned the Chairman of this Committee. Simon Davis reports that:

Mr Griffith-Jones called Andrew Tyrie MP, Chairman of the TSC, at around 8.00 pm on 28 March 2014. Mr Griffith-Jones informed Mr Tyrie about the day’s events and the fact that the Board had agreed to appoint an external law firm to conduct an investigation. After the call, Mr Griffith-Jones arranged for Mr Tyrie to be sent the FCA’s two statements.

There were subsequent conversations between Mr Griffith-Jones and Mr Tyrie in relation to the scope and conduct of this Inquiry, including in relation to ensuring that the Inquiry would be conducted independently.27

On 8 April, the FCA’s non-executive directors announced that they had appointed Simon Davis to conduct an independent inquiry.28

23. The FCA’s Board did not seem at first to have fully grasped the need for the inquiry to be entirely independent of the FCA itself—including its non-executive directors. John Griffith-Jones had convened a Board call at 5pm on 28 March.29 The minutes of that call record that “The Chairman proposed that the Board should investigate what had happened and involve an independent law firm. The Board supported this proposal.”30 They further state that “Non-executive Board members interested in being involved in conducting the review were requested to contact Mr Griffith-Jones or the Secretariat”.31

24. At 6.15pm the FCA issued the following statement via the Regulatory News Service (RNS):


31 FCA, Minutes of the Board meeting on 28 March 2014, page 2
The FCA Board acknowledges the concerns of the market regarding today’s press coverage of the FCA’s proposed supervisory work on the fair treatment of long standing customers in life insurance. The FCA put out a statement of clarification this afternoon. The Board will conduct an investigation into the FCA’s handling of the issue involving an external law firm, and will share the outcome of this work in due course.32

25. John Griffith-Jones was asked in oral evidence whether he thought that the FCA’s original announcement—which had suggested that the investigation would be led by the FCA’s own Board—had been a misjudgment. He said:

I think that the process that we finally adopted turned out to be a good one. That statement was issued I think at about 5 o’clock, so two and a half hours after the incident had been closed down, and it lacked the precision that you drew our attention to very shortly thereafter. But the statement was made in good faith and it was certainly the view right from the beginning, at the very least, that it was from the nonexecutive directors. I know the statement came out as “the board” but there was never an intention of involving the executive.33

When pressed further, Mr Griffith-Jones admitted that the statement “could have been phrased better”,34 but added “It was never our intention that we would write the report”.35 He eventually conceded that he was “happy to go with the word ‘misjudgment’”.36

26. It was misguided of the FCA’s Board initially to announce that the Board itself should conduct the inquiry into the events of 27 and 28 March. The FCA’s statement—released on the evening of 28 March—said that the Board would “conduct an investigation into the FCA’s handling of the issue involving an external law firm”. The fact that the Board, in drafting this statement, did not grasp that it was wrong in principle for the FCA to be seen to be investigating itself is of considerable concern. This was a misjudgment.

27. John Griffith-Jones told the Committee that it was not the Board’s intention that the inquiry should involve the executive. It is clear from his evidence, and from the Board’s minutes, that the Board intended its non-executive members to be involved. This was another misjudgment. On 28 March, the role of the FCA’s Chairman in the events was unclear. Moreover, it should have been transparent to the Board from the outset that its own role—including the role of the non-executives—in what had happened would need to be examined by the inquiry. The FCA Board initially

32 FCA, Press release: FCA statement on supervisory work on the fair treatment of long standing customers in life insurance, 28 March 2014
33 Q 418
34 Q 419
35 Q 420
36 Q 340
considered that an inquiry with some independent support was sufficient, not recognising the need for demonstrable independence.

28. Following the call from the Chairman of the Treasury Committee on 29 March 2014 for an independent inquiry, the Chancellor wrote to the Chairman of the FCA to say that it was essential that the inquiry should be independent.

**Terms of reference and protocol**

29. On 8 April, the FCA’s non-executive directors published the terms of reference for Mr Davis’s inquiry. The Chairman of this Committee wrote to Mr Griffith-Jones on 15 April to raise a number of concerns about these terms of reference, including:

- The proposed scope of the inquiry;
- The role proposed for the FCA’s non-executive directors;
- Where responsibility for deciding on accountability should lie;
- The role of the Treasury; and
- The arrangements for publication of the report.

30. On the proposed scope of the inquiry, the Chairman wrote that “there should be no restriction on Mr Davis examining anything that he might reasonably consider relevant, nor on his making such recommendations as he sees fit.” The original terms of reference, published by the FCA on 8 April, had confined Mr Davis to answering a list of specific questions.

31. As far as the role proposed for the FCA’s non-executive directors was concerned, the terms of reference published on 8 April included the following provision at clause 11:

> The inquiry will be overseen by a committee of the non-executive directors of the FCA’s Board chaired by John Griffith-Jones, the FCA’s Chairman.39

In his letter of 15 April, the Chairman of this Committee said that this arrangement was “unacceptable”, because “the inquiry must be wholly independent of the non-executive directors, as it is possible that one or more of them may be investigated themselves.”

32. In oral evidence, John Griffith-Jones said that:

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37 FCA, Press release: FCA Independent Directors Appoint External Law Firm and Publish Terms of Reference, 8 April 2014
38 Letter from Mr Andrew Tyrie MP to John Griffith-Jones, Chairman, Financial Conduct Authority, 15 April 2014 (PRE0015)
39 FCA, Terms of Reference: Inquiry by the Non-Executive Directors of the Financial Conduct Authority (FCA) into the events of 27/28 March 2014 relating to the press briefing of information in the FCA’s 2014/15 Business Plan, 8 April 2014
40 Letter from Mr Andrew Tyrie MP to John Griffith-Jones, Chairman, Financial Conduct Authority, 15 April 2014 (PRE0015)
Clause 11—and this is absolutely the case—was simply designed to ensure that someone was responsible for the thing coming to an end, which is not unimportant in reports of this nature. I understand again, obviously with hindsight, you are attributing to the word “oversight” some sort of control over what it said. Whereas, I am attributing to the word “oversight” some sort of responsibility for getting it done.41

33. In his letter, the Chairman also explained that he understood that a draft protocol for Mr Davis’s inquiry had been drawn up. This protocol provided for the non-executive members of the FCA Board to request from Mr Davis the pre- and post-Maxwellisation versions of his report. The Chairman said that he did not see a need for the non-executives to see the report at the time of Maxwellisation, and that “they should wait for Mr Davis’s final report”.

34. On 2 May, following further discussions with the Chairman and the Clerk of the Treasury Committee on the wording of the protocol, the FCA published a revised set of terms of reference for the inquiry, together with the protocol. The new terms of reference made clear that, in addition to addressing specific issues and questions:

Simon Davis can examine any other matters he might reasonably consider relevant and make such recommendations as he sees fit.

The new protocol provided for the Maxwellisation process as follows:

Insofar as you intend in your report to make criticism of individuals, groups of identifiable individuals or organisations (including the FCA), (1) you will identify those individuals, groups or organisations, who will be given a reasonable opportunity to make representations in relation to such proposed criticisms and, having received any responses, (2) you will consider those responses prior to producing your report.42

On the sharing of information with the non-executive directors, it stated that:

You will not keep the Non-Executive Directors informed as to the progress of the report, except with respect to the logistical progress and the cost of the inquiry, which will not include matters of substance. You should raise with the FCA Chairman or, if you consider it necessary, HM Treasury at any time any matter which you consider to be so urgent or important that it needs to be disclosed to them.43

35. The original terms of reference for Simon Davis’s inquiry, which were published on 8 April by the FCA, included a clause which stated that the inquiry would be overseen

41 Q 426
42 FCA, Protocol for the conduct of the inquiry into the disclosure on 27/28 March 2014 of the FCA’s Business Plan 2014/15, 2 May 2014, clause 22
43 FCA, Protocol for the conduct of the inquiry into the disclosure on 27/28 March 2014 of the FCA’s Business Plan 2014/15, 2 May 2014, clause 25
by a committee of the Board’s non-executives, chaired by the Board’s Chairman, John Griffith-Jones. This gave the impression that the non-executives would have control over the final report. John Griffith-Jones told us that this had not been the non-executives’ intention. It is regrettable that the original terms of reference gave this impression. In the event, the FCA removed this clause after its shortcomings were pointed out to John Griffith-Jones. But the fact that the clause was inserted in the first place shows that the non-executive Board members—who might conceivably have been implicated in any criticism of the FCA—had not fully understood that the inquiry had to be, and be seen to be, fully independent.

Was the protocol breached?

36. Clause 3 of the protocol for Simon Davis’s inquiry read as follows:

This Protocol sets out the procedures under which the inquiry is to be carried out, reflecting the requirement for this Inquiry to be, and to be seen to be, independent.44

37. Clause 22 provided for the Maxwellisation of the report:

Insofar as you intend in your report to make criticism of individuals, groups of identifiable individuals or organisations (including the FCA), (1) you will identify those individuals, groups or organisations, who will be given a reasonable opportunity to make representations in relation to such proposed criticisms and, having received any responses, (2) you will consider those responses prior to producing your report.45

38. Clause 25 of the protocol stated that:

You will not keep the Non-Executive Directors informed as to the progress of the report, except with respect to the logistical progress and the cost of the inquiry, which will not include matters of substance. You should raise with the FCA Chairman or, if you consider it necessary, HM Treasury at any time any matter which you consider to be so urgent or important that it needs to be disclosed to them.46

Simon Davis told the Committee that he had not needed to use this provision to raise any urgent matters of substance with the non-executive members of the FCA’s Board.47

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44 FCA, Protocol for the conduct of the inquiry into the disclosure on 27/28 March 2014 of the FCA’s Business Plan 2014/15, 2 May 2014, clause 3
45 FCA, Protocol for the conduct of the inquiry into the disclosure on 27/28 March 2014 of the FCA’s Business Plan 2014/15, 2 May 2014, clause 22
46 FCA, Protocol for the conduct of the inquiry into the disclosure on 27/28 March 2014 of the FCA’s Business Plan 2014/15, 2 May 2014, clause 25
47 Q 5
39. Mr Davis did, however, tell the Committee that he had shown the Board a copy of his full report—including his recommendations—as part of the Maxwellisation process. He explained why he had considered this to be necessary:

In the context of Maxwellisation, bearing in mind what Maxwellisation is designed to achieve or to avoid is people not being treated fairly my view was that many of the recommendations that I set out are pregnant with criticisms of the FCA. So far as I was concerned I did not want to get to a position where anybody, at the conclusion of my report, was going to be able to say, “Look at this recommendation, that criticises us, we did not have an opportunity to deal with it”.48

40. In his oral evidence, Clive Adamson, then Director of Supervision at the FCA, told the Committee that:

The non-executives saw the full report. The executives did not see the full report. They saw the main part of the report other than those parts that involved individual criticism. I believe Mr Wheatley saw the full report, including all the criticism.49

He said that there had been no discussions between John Griffith-Jones and Simon Davis about the recommendations—but there had been “one exchange of letters about one or two of the recommendations”.50 He said that, as far as he was aware, “there was no ‘mucking around’ with the report or recommendations”.51

41. John Griffith-Jones told the Committee that the decision to share the recommendations with the Board had been made by Simon Davis. He explained that he had been “slightly surprised” when Mr Davis had said that the Board would see the report, but that “having handed the entire process over to him, I did not feel it was appropriate to say to him, “I am now going to supervise how you do this report”.52 On the letter he had written to Mr Davis, he said that the Board “took the opportunity to write to [Mr Davis] about four relatively minor amendments to his draft of his proposals, which we felt would make them more easily operable and we wrote in good faith.”53 He assured the Committee that the Board “had no intention of redrafting” Mr Davis’s report.54

42. Mr Griffith-Jones provided the Committee with a copy of the letter he had sent to Mr Davis. The letter asked for changes to four of Mr Davis’s recommendations. First, the Board asked Mr Davis to reconsider a recommendation about the use of insider lists, expressing concern that his recommendation would lead to “large swathes of the
organisation [being] listed as permanent insiders”. As a result, Mr Davis amended his recommendation to make clear that he was proposing the creation of insider lists “in appropriate cases”.

43. Second, the FCA asked Mr Davis to redraft a recommendation about the price sensitivity of the FCA’s Business Plan. Mr Davis’s original recommendation was that “the FCA should proceed on the basis that the Business Plan contents are price sensitive information”. The FCA’s Board was concerned that this would constrain its ability to consult on the Business Plan. It proposed instead that Mr Davis recommend that the Business Plan be considered to be price sensitive once it had been approved by the Board. Mr Davis did not accept this proposal. Instead, he inserted the word “potentially”, so that the final recommendation read: “the FCA should proceed on the basis that the Business Plan contents are potentially price sensitive information”.

44. Third, the FCA expressed concern about a recommendation which originally read:

The wording of any announcement of a thematic review should seek to avoid direct or indirect messaging which suggests the FCA has a pre-determined view that poor conduct exists, rather than that it is proceeding to conduct a review to consider whether poor conduct exists at all.55

The FCA’s Board argued that “Many of our thematic reviews are triggered because our analysis, or intelligence that is available to us, suggests that there may be a significant risk to our objectives from poor conduct or behaviour”. It noted that it was “important that there is no pre-determination of our conclusions at the instigation of a particular review”. But it said that if the FCA were unable to make clear that it was launching a review in response to its analysis and intelligence, then it would “struggle to explain to interested parties, such as the [statutory] Panels and the industry and consumer representative bodies, why we had decided to take forward a thematic project on a particular issue”. As an alternative, the FCA Board suggested:

Any announcement of a thematic review should seek to avoid direct or indirect messaging which suggests that the FCA has a pre-determined conclusion about the precise nature and extent of any misconduct it believes may exist or about the actions, if any, it may take following the review.56

Mr Davis largely accepted this recommendation, removing only the words “precisely” and “it believes”, so that his final recommendation read:

Any announcement of a thematic review should seek to avoid direct or indirect messaging which suggests the FCA has a pre-determined conclusion
about the nature and extent of any misconduct that may exist or about the actions, if any, that it may take following the review.57

45. On the fourth recommendation discussed in its letter, the Board made two points. The first related to a recommendation that read:

*We recommend that the FCA urgently put in place price and volume monitoring procedures, combined with an action plan for the effective management of the FCA’s reaction to any issues involving price-sensitive information originating from or involving the FCA.*

The Board noted that the FCA often released price-sensitive information to the whole market in a controlled fashion, and said that it therefore assumed that Mr Davis was referring to the “uncontrolled release of such information”. The Board asked Mr Davis to let it know if it had misunderstood this point. In his final report, Mr Davis added the words “the uncontrolled release of” to his recommendation.

46. The second point related to the recommendation that the action plan recommended by Mr Davis should:

*[…] include the ability for the FCA to react swiftly, led by a sub-committee of the Board, including but not limited to the CEO and representatives of the Markets Division and Communications Division and a senior non-executive.*58

The FCA questioned the proposal for a senior FCA non-executive to sit on the Board sub-Committee leading the rapid response plan. It argued that this structure would inhibit its ability to react swiftly, because the non-executives are not usually on the premises and are not required to be available at all times.59 Simon Davis’s final recommendation does not require a non-executive director to be a member of the sub-committee.60

47. The terms of the protocol produced by the FCA were designed to safeguard the independence of the inquiry and to ensure that there could be no suggestion that the FCA itself had influenced Mr Davis’s conclusions. Mr Davis made a mistake by sharing his whole report—including his recommendations—in draft with the FCA’s Board. Mr Davis considered that it was necessary for him to do this as part of the Maxwellisation process. However, the Maxwellisation process, as set out in the protocol, was intended to give individuals, groups or organisations criticised by Mr Davis a reasonable opportunity to make representations about those criticisms that related specifically to them. Mr Davis’s recommendations did not contain direct criticism of individuals or groups. The Committee therefore does not accept that it was necessary for Mr Davis to

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57 Letter from John Griffith-Jones, Chairman, FCA to Simon Davis, Clifford Chance, 29 October (PRE0010)
58 Letter from John Griffith-Jones, Chairman, FCA to Simon Davis, Clifford Chance, 29 October (PRE0010)
59 Letter from John Griffith-Jones, Chairman, FCA to Simon Davis, Clifford Chance, 29 October (PRE0010)
share his recommendations with the Board as part of this process. In sharing them with the FCA’s Board, Mr Davis acted contrary to the purpose of the protocol that had been drawn up by the FCA to protect his own independence.

48. The FCA Board should not have accepted Mr Davis’s invitation to read his report in full. They failed to recognise, and tell Mr Davis, that their doing so was a breach of the spirit of the protocol.

49. In the event, not only did the FCA Board have the opportunity to suggest to Mr Davis that he alter his recommendations; it took that opportunity. This too was an error of judgment by the FCA Board.

50. Regardless of the nature of the representations it intended to make, it should have been obvious to the FCA Board, and particularly to its Chairman, that it was improper to write to Mr Davis about his draft recommendations. This was another reflection of the FCA Board’s lack of understanding of the necessity for Mr Davis’s inquiry to be, and to be seen to be, wholly independent.

3 The FCA’s approach to communications

Using communications as a ‘tool of regulation’

51. Part of the FCA’s regulatory approach is to use communications as a ‘tool of regulation’. Clive Adamson told the Committee:

   With Mr Wheatley’s arrival I am sure he felt strongly that communication, to the industry and consumers and the public, should be what he would call a tool of regulation. I think he felt very strongly about that relative to the FSA. We did incorporate that philosophy into how we did our business. Communication was not distinct from how we conducted ourselves. It was part of how we conducted ourselves.61

52. Asked what using communications as a tool of regulation actually meant, Mr Wheatley told us:

   I think it means being clear about what we expect; about what we think “good” is and what we think “unacceptable” is.62

53. The intended audience for FCA communications was, Mr Wheatley said, very broad, and included regulated firms, the employees of those firms, the people who consult with and advise those firms, consumers and broader stakeholders.63 The FCA used “multiple

61 Q 132
62 Q 444
63 Q 445
channels” to communicate with these audiences, including emails to firms, notices on the FCA website, meetings with firms, enforcement-related communications such as ‘Final Notices’, and—importantly—the media.\(^\text{64}\)

54. Mr Wheatley said that one of the FCA’s objectives in using the media to communicate its work was “to empower consumers to act as their own defence”:

> The best form of protection is somebody who can ask the sensible questions themselves, so when we are talking to consumers what we are trying to say to consumers is, “These are the sorts of things you should be asking to protect yourself”.\(^\text{65}\)

He told Simon Davis:

> We deliver regulation over products that caters for every single person in this country. So if 50 million people in this country want to know what’s going on, they won’t get it from reading our website, they will get it from the stories that exist in the media.\(^\text{66}\)

55. Mr Wheatley also said that the FCA used the media to communicate information to firms, including:

> Information about what our priorities are for the year ahead, information about areas where we have looked at and found both good and bad practice.\(^\text{67}\)

56. Responding to the view put forward by some witnesses that the FCA could simply use email and other direct communications to convey this information to firms, Mr Wheatley said:

> With regulated firms we communicate directly. We write directly to the CEOs. We communicate directly [with the] risk [and] the compliance people. We try to make sure that they pass that information on.\(^\text{68}\)

He added that “very specific things we send to specific firms”.\(^\text{69}\) But he said that “not everybody reads” the FCA’s direct emails, and the fact that FCA communications—including its ‘Regulation Round-up’, a “monthly email to all regulated firms, updating [them] on the latest news which affects the sector [they] practice in”—were written up by the national and trade press was “another way of communicating”.\(^\text{70}\) He also said that the FCA used the media to communicate not only with financial firms, but with the 2.4 million

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\(^{64}\) Qq 446-447

\(^{65}\) Q 451


\(^{67}\) Q 459

\(^{68}\) Q 465

\(^{69}\) Q 462

\(^{70}\) Q 459
people who work for them, because many of these “do not necessarily get direct communication from us at all”:\textsuperscript{71}

With the best will in the world our direct communications to the compliance officers in firms does not reach as broad an audience as we feel we need to reach, which is not just those people but all the employees in firms and consumers of financial services.\textsuperscript{72}

57. In his evidence to Simon Davis, Mr Wheatley suggested that the use of the media to communicate with firms was in part to prompt a behavioural response to the FCA’s views:

We now regulate 72,000 firms. They are the entities that we are directly responsible for. We can’t visit 72,000 firms in a year, so part of our methodology is if those firms see what it is we care about, they will respond to that.\textsuperscript{73}

Mr Wheatley also identified the payday loan industry as an example of where this approach had worked in practice:

We have made it quite clear, quite publicly, what our concerns are in [the payday loan] industry. I think that has driven a degree of change in the industry that has run ahead of our ability to get out there and supervise on the ground.\textsuperscript{74}

58. Otto Thoresen, Chief Executive of the Association of British Insurers, told the Committee that he “disagreed” with Mr Wheatley’s justification of using the media as a way of communicating with firms:

There is something in the point that mass communication has to be part of setting the tone and expectation of regulated organisations, but in the 21st century, with the capabilities that technology brings us, targeted communication with [...] individuals and groups is possible to quite a high level of sophistication. The problem with a broadcast medium is exactly that—it is a broadcast medium, and the ability to control the nuancing of the messaging is quite limited.\textsuperscript{75}

Andrew Turberville Smith, Chairman of the FCA Smaller Business Practitioner Panel, told the Committee:

\textsuperscript{71} Qq 465, 473
\textsuperscript{72} Q 520
\textsuperscript{74} Q 541
\textsuperscript{75} Q 302
I don’t think that very often the FCA is seeking to communicate to 72,000 firms in one go. A lot of the announcements that it is making are sector-specific. In that regard, if it is making an announcement to insurance brokers or financial advisors or any other sectors, such as asset managers and wealth managers, they are much smaller numbers than 72,000. We as a panel spend a lot of time talking to them about other methods of communication—simple things around e-mail, more direct communication, trade press, through trade bodies. That proves to be an effective communication channel for getting the message across to smaller firms.

[…]

It is not a problem if something is not in the national press, because things that are relevant to your specific sector are hopefully picked up, as I said, through a number of different channels that are perhaps more pertinent to you.76

59. Mr Wheatley told us that Mr Thoresen and Mr Turberville Smith were looking at the issue “relatively narrowly”, focusing on “communication with regulated firms”.77 However, Mr Thoresen’s comments also appear to relate to the sort of information that Mr Wheatley said the FCA would use the media to communicate, and which was also directed at employees of regulated firms:

The point is that if you are communicating about the regulatory objectives of an organisation, the regulatory priorities that it is setting and the impact that will have on individual firms and their expectations, you have to be as clear and specific as you can and be confident that the message has been received as it was meant to be transmitted.78

This also appears relevant to Mr Wheatley’s statement to Simon Davis that the FCA wanted, as part of its “methodology”, firms to respond to the views it expressed in the media.79

60. Mr Thoresen’s criticism extended specifically to the FCA’s approach to the particular press operation which led to the creation of a false market on 28 March 2014—the pre-briefing of an element of the FCA’s Business Plan for 2014/15:

When you move to mass communication techniques, you are taken by definition right out to the edge of what can be achieved. Yes, send the broad
signals and the big themes by all means, but do not get into trying to launch a specific part of your business plan.80

61. Responding to the suggestion that the media was a crude tool with which to communicate regulatory information, and created the risk of the FCA’s message being misunderstood, Mr Wheatley said:

I think you are right, of course there are risks. […] They are risks that have to be managed, and so we work very, very hard to try to manage those risks.81

But he also told us that firms often welcomed the FCA’s use of the media to communicate with them:

[I]n the last survey that the Practitioner Panel did, 48% of [firms] said they get most of their information from the media channels and they do welcome that.82

62. Graham Beale, Chairman of the FCA Practitioner Panel, accepted that “broad policy, strategy and direction of regulation can be communicated at a macro level”. But he said that it was important to consider the manner in which these messages were communicated:

It is right that consumers understand what the regulator is doing, but the way in which you convey these messages is hugely important. Mr Davis concludes that an approach that is based on fact and evidence and that seeks to remove the likelihood of a sensational headline is a better way of communicating than trying to create a set of circumstances in which you are likely to generate a sensational headline. That will lead to an undermining of confidence in financial services from a consumer perspective. One of the big issues that we are dealing with now, post the crisis and all the other scandals, is rebuilding confidence. If we are not careful, this could eventually become part of the problem rather than part of the solution.83

63. Mr Thoresen also commented on the tendency of the FCA to “extend into the territory of rhetoric away from the facts”—something which had made the ABI “consistently uncomfortable”.84 James Palmer, Chairman of the Listing Authority Advisory Panel, said that he and a number of other members of his Panel had expressed “strong concerns about the communications policy” to Zitah McMillan—then Director of Communications at the FCA—on this same point.85

64. Clive Adamson said that, in his view, the tone of FCA communications had occasionally gone “too far”, particularly “in the early days” when the FCA was “very overt”
at putting its messages in the public domain. Mr Wheatley conceded that “possibly in the very early days of the FCA the tone might have been too aggressive” because “as a new entity, we were trying to establish an identity and establish with the industry what we stood for”. Asked for a specific example of when the FCA had struck the wrong tone, Mr Adamson cited an FCA press release from March 2014, announcing reforms to the general insurance add-ons market, which contained a quotation from Christopher Woolard—then Director of Policy, Risk and Research at the FCA—that “Firms must start putting consumers first and stop seeing them as pound signs”. Martin Wheatley agreed that the tone of this communication was overly aggressive and challenging to the industry. But he added:

Clearly it was trying to communicate […] to a different audience and the different audience would be people who do not necessarily read our website or the Financial Times but who read the popular press, to try to make sure that people were empowered with knowledge that they should think about when they are being sold products. That was the intention behind it, but I know that the industry saw that as aggressive.

65. Mr Wheatley and John Griffith-Jones both told the Committee that, while the Practitioner Panel had taken exception to the tone of some FCA communications, the FCA Consumer Panel—the statutory panel that represents the interests of consumers in the development of FCA policy—took the opposite view. Mr Griffith-Jones said that the Consumer Panel was “inclined to believe that [the FCA] should speak out” and wanted the FCA to “champion consumers”. Mr Adamson confirmed this, telling the Committee:

[W]e have to balance what the Practitioner Panel says versus the other panels. We have a Consumer Panel on the other side who probably welcomed some of the tone of our conversation.

66. Mr Wheatley said that he knew that “from the industry’s point of view some of the headlines […] were too aggressive”, but that the FCA “worked very hard to try to make sure that we were balanced in what we were sending out”. But he also told us:

The Practitioner Panel will not always agree with the balance being right, because frankly, when we are calling out bad behaviour, by and large people would rather not see that called out. When we have to do that—and clearly

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86 Q 128
87 Q 489
88 Clive Adamson (PRE0004) pages 1-2
89 Q 490
90 Q 490
91 Qq 543, 549
92 Q 543
93 Q 130
94 Q 491
we have to do it at times—we work quite hard to try to make sure that we get that absolutely right.95

67. Mr Beale also made a broader criticism in respect of the FCA’s media approach—that there appeared to be an attitude that “headlines are good”.96 The FCA Practitioner Panel referred to this criticism, with particular emphasis on the mishandled briefing on the Life Insurance Review, in its report to the FCA Board in April 2014:

There is inherent danger in the FCA’s desire to court headlines to raise the profile of its work. [The recent events relating to the release and publicity of the FCA Business Plan were] an unavoidable consequence of the direction of travel of the FCA’s media policy, despite the Panel’s attempts to encourage a constructive, balanced tone and some limited success in this space. Views were expressed by a number of Panel members that this was an ‘accident waiting to happen’ and an overly proactive use of the media is not conducive with the FCA achieving its statutory objectives.97

68. Mr Wheatley said that there was no culture or objective in the FCA requiring the generation of “sensational headlines”. However, he drew a distinction between generating sensational headlines and “[g]enerating coverage”, adding:

As part of communicating, we want people to have access to forms of communication that they would read. While we would like to think that everybody reads our website diligently or our regulatory round-up diligently, they do not always, so we use a multitude of different media of which the press is one but it is only one. We try to make sure that our stories get covered accurately and dispassionately, and that is our intention whenever we have any communication strategy.98

69. Mr Beale also drew the Committee’s attention to an FCA paper entitled “FCA Communications Strategy 2014/15 Year 2 ‘Truth and Proof’” presented to the Panel in June 2014—more than two months after the pre-briefing to the Telegraph. This paper examined a pre-briefing to The Times in September 2013 on the announcement of a market review of the cash savings market.99 The Panel took exception to the reporting of this announcement, and the resulting headline ‘Savers lose billions in hidden bank rate rip-off”. But Mr Beale said that the June 2014 Communications Strategy “described [the story] in a case study as an example of good media coverage”. The Communications Strategy paper as a whole was “poorly received” by the Panel, and “illustrated an attitude that

95 Q 489
96 Letter from the Chairman of the FCA Practitioner Panel to the Chairman of the Treasury Committee, 9 January 2015 (PRE0006) page 2
97 FCA Practitioner Panel report to the FCA Board, 1 April 2014, page 1
98 Q 449
99 Financial Conduct Authority (PRE0009) slide 17
‘headlines are good’ and tended to focus on quantity rather than quality of media reporting’. Summarising the Panel’s broad view, Mr Beale said:

[T]he Panel would recommend a commitment to a revised strategy where media activity is more constrained and measured. This will require a fundamental shift and reappraisal of their current stance where the media is regarded as a ‘tool of regulation’.

70. Mr Beale said that there was “frustration within the Panel that comments that we have repeatedly made sometimes go into a black hole”. However, Mr Griffith-Jones told us:

As you will appreciate, they are advising us, not telling us, what to do, so sometimes we agree and sometimes we don’t. We seek to provide them feedback. The more they disagree with us the more they are inclined to believe that their comment was not listened to. I think that is not fair.

And while the Practitioner Panel’s report to the Board in April 2014 sought to blame the FCA’s communications strategy for the events of 28 March 2014, Mr Griffith-Jones noted:

[T]he panel’s primary concern was nothing to do with price sensitivity. It was that they did not like a constant repetition of stories that were, in their view, damaging the reputation of the industry and their very clearly stated view to me at least when I was with them was that we, the FCA, were not helping matters by pointing out failings, as opposed to pointing out successes.

71. Nevertheless, Mr Adamson said that he took lessons from the events of 28 March 2014:

This is one of my reflections going forward […]. I think it is incredibly important that the FCA is seen as part of the solution to the industry’s difficulties, not part of the problem. What I mean by that is that I think it is very important that the FCA does not contribute to increased loss of confidence by consumers and investors in the industry by being too aggressive. I think it has to get the balance right. While it clearly has responsibility to identify wrongdoing and should do so, it has to do it in a way that does not lead to lack of trust or slowness in rebuilding trust in the industry.

72. Communicating with consumers and alerting them to conduct risks is an important aspect of the FCA’s work. It can help to raise consumer awareness, allowing customers to make more informed choices and advancing the FCA’s consumer protection
objective. The media can be an effective vehicle for this type of communication, since the messages can generally afford to be simplified as the broad intended audience does not need to be party to great levels of detail. In a similar way, the media can be an effective means of making employees of regulated firms broadly aware of the FCA’s work and aims.

73. However, the media is an inappropriate means of communicating specific regulatory information. Martin Wheatley suggested that part of the FCA’s aim in using the media was to prompt regulated firms, or their individual employees, to take note of the issues the FCA cared about and to take pro-active steps to address the FCA’s concerns. But if that is the effect the FCA seeks, it should communicate its concerns to firms with clarity; this cannot be guaranteed if the media is used as a substitute for direct communication.

74. It is reasonable for the FCA to seek to raise awareness in regulated firms of the conduct issues which it is tackling through rules and regulatory action. But the intention in using the media for this purpose should be limited to prompting firms and their employees to examine the official publications the FCA has issued elsewhere—for example, specific rules and guidance in the FCA Handbook, or Final Notices of enforcement action. Martin Wheatley has said that the FCA uses the media as a complement to its official communications. The FCA should not use the media as a substitute for its official communications. Email makes direct, targeted communication—even to 72,000 firms—cheap and straightforward. Firms that ignore the FCA’s direct communications should know that they do so at the risk of enforcement action if they fail to comply with its requirements.

75. There is merit in the FCA publicising wrongdoing where it has taken place. The FCA should treat this form of public explanation as an important part of its work. However, in all of its public communications, it should be aware of the risk of creating a misplaced wider antipathy towards the industry among consumers, when most firms may not be culpable of any misconduct. This would be harmful to regulated firms and to the FCA’s objective to protect and enhance the integrity of the UK financial system, and may not be in consumers’ interests. The FCA should take particular note of Simon Davis’s recommendation that it adopt a factual, evidence-based approach to communications, avoiding sensational headlines where possible.

76. The FCA says that it does not set out to generate sensational headlines. Nonetheless, the Practitioner Panel believes there are signs, even after the events of 28 March 2014, that the FCA still judges the success of its communications strategy by the quantity of media coverage, more than the quality of its content. The FCA needs to satisfy itself that this is not the case, in its communications area or any other part of the organisation. If it is not the case, the FCA needs to consider why this damaging perception still exists in the Practitioner Panel, and take steps to address it. The expertise of both the Consumer and the Practitioner Panels needs to be used to better effect.
### Pre-briefing the press on forthcoming FCA announcements

77. As part of its communications approach, the FCA often ‘pre-briefs’ the media on forthcoming announcements. ‘Pre-briefings’ can take a number of different forms. The FCA said that it conducts two broad sorts: embargoed pre-briefings, and trailed pre-briefings.

78. In embargoed pre-briefings, journalists are briefed in advance of an FCA announcement, but agree not to publish their stories until the announcement is made. The FCA uses this type of briefing to help to ensure that announcements are accurately reported.\(^{105}\) Mr Wheatley told us:

> [T]he media is very competitive and people want to file their stories as quickly as possible. If everybody received that story at exactly the same time, you would find some quite wild stories that are filed within two minutes, five minutes, 10 minutes, 15 minutes, so the objective of having an embargoed pre-briefing is to try to make sure that everybody writes about it in an informed way, and we have had a chance to iron out any idiosyncrasies or things that people have misunderstood.\(^{106}\)

Embargoed pre-briefings could involve an FCA release being sent to a press distribution list under embargo. They could also be tightly controlled—for example, the FCA might hold a briefing in its headquarters, in which journalists are kept in a secure room and only allowed to publish their stories once the FCA has made its official announcement.\(^{107}\)

79. In trailed pre-briefings, journalists are also briefed on forthcoming FCA announcements, but are allowed to publish their stories before the FCA has made any formal public statement of its own. Simon Davis described the rationale behind this approach:

In some cases, the FCA may wish to generate media coverage in advance of an announcement with the intention that, by the time the announcement is made, there is already sufficient interest in the media such that the issue or announcement is covered more broadly. This is the practice also known as “trailing” a story and is undertaken to increase coverage.

In some cases an exclusive will be given to a single journalist in order to encourage the story to be written in circumstances where it otherwise might not attract interest, if given to the media at large. We were told, for example, that the giving of an exclusive might encourage the relevant journalist to

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\(^{106}\) Q 479

\(^{107}\) Martin Wheatley (PRE0014) page 1; Q 486
cover the particular piece of work in more detail than he or she would were the briefing to have been given more generally.\textsuperscript{108}

80. Simon Davis told us that “the FCA [takes] the view that it is unacceptable to pre-brief about something that is price-sensitive or risks being price-sensitive”.\textsuperscript{109} Zitah McMillan confirmed that the FCA “would not, under any circumstances, do any form of pre-briefing in relation to market-sensitive information”, and Martin Wheatley said that this was established practice.\textsuperscript{110} However, it was a trailed pre-briefing to the Daily Telegraph on the FCA’s forthcoming “Thematic Review” of the life insurance market that led to the large falls in the share prices of several major life insurers on 28 March 2014.

81. Mr Palmer told us that he understood the benefits of pre-briefing, in particular to a single journalist:

[I]f you give someone an exclusive, you may get an opportunity to get more coverage—more insightful, thoughtful coverage—than if you just put something out through a mass press release. So I do understand the idea of pre-briefing.

My reaction is not to damn all pre-briefing, because I think a lot of other pre-briefing has certainly has not done any harm, and it may have helped the FCA’s communication of its policy goals around consumer regulation.\textsuperscript{111}

However, he added that the particular pre-briefing to the Telegraph had demonstrated an “absence of process, and review, and thought”.\textsuperscript{112}

82. The FCA had provided a written briefing and a telephone interview (with quotations attributed to Clive Adamson) to the Telegraph on the FCA’s forthcoming ‘Thematic Review’ of the Life Insurance Market. The aim of the review was to examine the treatment of long-standing customers in life insurance contracts.\textsuperscript{113} As part of its work, the FCA would assess “the nature and extent of exit and discontinuance charges that potentially inhibit customers from switching to better performing products”, but its aim was only to assess these “exit fees”, and not to consider whether they should be banned.\textsuperscript{114} However, the resulting Telegraph article—published online under the headline “Savers locked into ‘rip-off’ pensions and investments may be free to exit, regulators will say”—gave the


\textsuperscript{109} Q 21

\textsuperscript{110} Q 240; Martin Wheatley (PRE0014) page 1

\textsuperscript{111} Q 307

\textsuperscript{112} Q 307


impression that the scope of the FCA’s Thematic Review was far more significant than this.\textsuperscript{115} Since the article was published in advance of any official statement by the FCA, investors had no way of authenticating the article’s claims. The share prices of several major life insurers dropped heavily when the markets opened on 28 March, and only recovered following the publication of a separate clarifying statement by the FCA later that day.

83. Otto Thoresen told the Committee that the lack of an official statement by the FCA made the Telegraph story particularly difficult for the ABI to deal with:

\begin{quote}
From my point of view, the biggest challenge on the Friday morning when events were unfolding around us was that, unlike any other announcement of this type that has come from the conduct regulator over the last year, we did not have a press release or a report against which we could compare what was being said. Until we did—we got that later in the day, at least in terms of what it was not—it was very difficult to give people confidence.\textsuperscript{116}
\end{quote}

84. Clive Adamson told us that the FCA had assumed that Thematic Reviews were by definition not price-sensitive.\textsuperscript{117} Mr Wheatley therefore described the FCA’s surprise that the pre-briefing on a Thematic Review had had such a significant effect:

\begin{quote}
What we had not expected—and we got this wrong and it is a big learning for us—is the fact that we would look at an area, not that we had findings, not that we were stating we had concerns about it, but the fact that we would look at an area would itself become such a big story.\textsuperscript{118}
\end{quote}

85. Mr Davis criticised the FCA’s failure to consider at least the potential for the pre-briefing to be price sensitive:

\begin{quote}
The reasonable bystander with a degree of knowledge of the insurance industry would have taken the view that there is a risk here that this is price-sensitive and […] we should stop in our tracks and think whether this is the right thing to be doing at all.\textsuperscript{119}
\end{quote}

86. Mr Wheatley said that the FCA would not in future pre-brief on a piece of work that it thought was sensitive.\textsuperscript{120} However, this would not necessarily preclude an incident similar to that on 28 March, for two reasons. First, the FCA had assumed that the Thematic Review pre-briefed to the Telegraph, whose article prompted the share price movements, was not price sensitive. Second, the market response to the Telegraph article appears to

\textsuperscript{115} The Daily Telegraph, ‘Savers locked into ‘rip-off’ pensions and investments may be free to exit, regulators will say’, 27 March 2014

\textsuperscript{116} Oral evidence taken on 8 April 2014, HC (2013-14) 1189, Q 446

\textsuperscript{117} Q 156

\textsuperscript{118} Q 515

\textsuperscript{119} Q 34

\textsuperscript{120} Q 476
have been caused not by the announcement of the review per se, but by the exaggerated reporting of its scope.

87. The Davis Report considers how the exaggeration of the scope of the Thematic Review was allowed to arise. The FCA’s written briefing to the Telegraph contained the following wording:

In our 2014 Business Plan, published 31 March, we will be announcing a review of life insurers’ long-standing investment products to start this summer;

We’re doing this because millions of people have old (long-standing/established) investments that they have forgotten about or check very rarely (about 30m policies worth an estimated £150bn in total, and an estimated £18bn in new premium every year);

[...]

Some of these products also have high exit charges (Which? recently cited a 12% exit charge on one fund) which can act as a barrier to taking your money elsewhere—we will collect information on this to understand if it is an area in which we need to intervene.121

88. The FCA produced no transcript of the telephone interview with the Telegraph. However, Mr Davis says in his report that the FCA ‘Media Associate’ who sat in on the telephone interview told him:

that there may have been a question about whether banning exit fees was possible and that the response from Mr Poyntz-Wright may have been something along the lines of “that would be a very extreme option”, this was not the focus of the Life Insurance Review and any action would only be considered after the results of the discovery work were known.122

89. The resulting Telegraph article included the following text:

Savers locked into rip-off pensions and investments could be given a free exit or moved to better deals, regulators will say next week.

The City watchdog is planning an inquiry into 30 million policies so insurance companies from the Seventies to the turn of the Millennium, The Telegraph can disclose.

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A large number of policies also include obstructive exit fees that can halve a policy’s value if a customer attempts to switch to a cheaper provider. The watchdog will consider banning these “lock-in” fees if such a measure is deemed a practical way to overcome the poor treatment of policyholders.

Banning exit fees on old pension policies would be one the strongest actions the FCA could take, Mr Adamson said. Alternatives include asking firms to move customers to a better product, providing clearer information, investing more in the management of old funds, offering a greater variety of investment options within the policy or cutting fees.123

90. Mr Davis told us that the Telegraph article contained “speculation that went beyond the pure facts”.124 However, Mr Davis was clear that:

[E]nough had been said by the FCA in its written briefing and in the oral briefing to give The Telegraph the leg-up to speculate. It is speculation, as I think is apparent from the article—the use of the words “may” and “would”—a close reader would know that this is speculation, but people in a particular circumstance concerned about their shares are not going to be necessarily reading an article as closely as that.125

In a submission to Mr Davis, the Telegraph said that “the duty of a reporter is to extract from complex sets of data, information of significance and relevance to his/her newspaper’s readers” and that the journalist in question had done “no more than his job”.126 Mr Davis did not criticise the Telegraph, saying that the journalist in question was “supplied with a substantial amount of material to use as he thought best in the interests of his readers”, and “had been left to speculate as he thought fit”.127 Mr Davis added that there was “always going to be a possibility” that a written briefing could be used by a journalist to speculate beyond the limits of the briefing.128

91. Mr Palmer expressed a similar view:

123 The Daily Telegraph, ‘Savers locked into ‘rip-off’ pensions and investments may be free to exit, regulators will say’, 27 March 2014
124 Q 47
125 Q 47
128 Q 39
I actually think there is a strong argument that, if you look at the specific words communicated by the FCA in Mr Davis’s report to the journalist, the information shared was not price-sensitive information and was not inside information. It was the way that they lost control, as the report draws out, and the way that it was then communicated to the market which created a false impression of what was actually happening.\(^\text{129}\)

This did not, however, excuse the FCA’s mishandling of the pre-briefing—Mr Palmer added that “[w]hen you review for price sensitivity, I would expect a listed company, for example, to think about the risk of miscommunication at the same time”.\(^\text{130}\)

92. Clive Adamson told the Committee that three things had been recognised following the events of 28 March 2014:

First, that, even if we do not believe it is price sensitive, it could be construed as such; secondly, that the reporting of a piece of information could itself make it price sensitive, so we have to be extremely careful about that; and, thirdly, recognising we wish to be transparent about the work we are planning to do, we will do it in a way that does not cause the damage that has been caused by this incident.\(^\text{131}\)

93. Mr Davis told us that the FCA, as a regulator, has to be particularly careful when it comes to the effect of its communications on the market:

\[P\]articularly where you are the regulator and particularly where the regulator’s words can have quite significant impact in the market that I would say it has to be particularly careful about pre-briefing.\(^\text{132}\)

In an email exchange within the FCA in early March 2014, Tracey McDermott, then Director of Enforcement, had expressed a similar sentiment when considering the pre-briefing of a market study:

[I]f we do genuinely think this or any other study is market sensitive then we need to look not just at announcement process but a whole host of other things […]. Given our role as market regulator we perhaps have to be more careful about this than other regulators might have to be.\(^\text{133}\)

94. In his report, Simon Davis said that he was “not convinced that it is necessary to pre-brief the media in relation to forthcoming FCA announcements”. He recommended that the FCA satisfy itself that such pre-briefings were appropriate, and, to the extent that the

\(^{129}\) Q 312 [James Palmer]
\(^{130}\) Q 312 [James Palmer]
\(^{131}\) Q 161
\(^{132}\) Q 21
FCA wished to pre-brief announcements to the media, should put controls in place to ensure that the FCA remained in control of its message.134

95. In a letter to the Committee, Mr Wheatley said that the FCA had not conducted any pre-briefings of the sort given to the Telegraph since March 2014, in which the journalist was free to publish his or her story ahead of an official FCA announcement. Mr Wheatley added that the FCA intended “to continue in this manner, with briefings conducted only under strict embargo and with a statement released to our press distribution lists when the embargo lifts”.135 This appears to be somewhat more restrictive than Mr Davis recommended. However, Mr Wheatley also said that the FCA may continue to offer “exclusives” to individual journalists—so long as this received Mr Wheatley’s prior approval—which journalists would be allowed to publish immediately or at a time of their choosing. Mr Wheatley said that other organisations used this technique “to ensure that an issue has a better chance of securing media coverage”.136

96. Pre-briefing comes in many different forms. Properly controlled, it can be a useful tool, enabling announcements to be understood and accurately reported by the press. But ‘trailed pre-briefing’—in which journalists are briefed, and allowed to publish stories, on the FCA’s work before the FCA has published an official statement of its own—is unnecessary and ill-advised, whether the briefing given is written or oral. The use of the media as a substitute rather than a supplement for regulatory statements creates much greater scope for misunderstanding or partial communication of the intended message. Only by publishing an official FCA statement at the same time as any pre-briefed article can the FCA reasonably expect to avoid the risk of miscommunication.

97. Simon Davis said that he was not convinced of the need for the FCA to conduct trailed pre-briefings, and that the FCA should better control the process if it wished to continue. The FCA has told the Committee that it intends to refrain from this particular type of pre-briefing altogether; the Committee welcomes this decision. However, the FCA has not ruled out giving ‘exclusives’ to individual journalists, which may be published at a time of the journalist’s choosing. The FCA has not made clear what the subject of such exclusives might be. It should confirm that it will not in future use exclusives to brief the media on forthcoming FCA announcements without publishing an official statement of its own.

98. Martin Wheatley told the Committee that the FCA would not pre-brief information that it thought was price sensitive. The danger, however, is that even announcements that do not appear to be price sensitive can become so if they are handled incorrectly—a


135 Martin Wheatley (PRE0014) page 1

136 Martin Wheatley (PRE0014) page 1
lesson which Clive Adamson told the Committee he had learned from the events of 28 March.

99. Witnesses told us that the FCA’s pre-briefing to the Telegraph on the Life Insurance Review was not in itself price-sensitive. It contained some broad information about the review, including that the FCA would collect information on exit fees—penalty charges for long-standing policy-holders seeking to switch insurance providers—to “understand if it is an area in which we need to intervene”. The briefing also said that there were 30 million long-standing policies of the sort the FCA would consider. However, in handing over control of the presentation of this information to the Telegraph, the FCA gave the newspaper—in the words of Mr Davis—“the leg-up to speculate […] beyond the pure facts” on what possible regulatory responses at the conclusion of the review might be. In the event, the Telegraph article suggested that the FCA might ban exit fees, and that the review would be an “inquiry into 30 million policies”. This proved to be highly market sensitive. The FCA did not brief the Telegraph explicitly that it might ban exit fees or that it would examine 30 million individual policies. Nonetheless, it was reasonable of the Telegraph journalist—on the basis of the briefing given—to have speculated in this way. The result was a misrepresentation of the scope of the review. This misrepresentation, which prompted the share price movements on 28 March 2014, was inadvertently facilitated by the FCA’s briefing approach. It was not caused by poor journalism; nor did Mr Davis criticise the Telegraph in his report.

100. If the FCA is to avoid similar events in future, it must not only take more care to identify price-sensitive announcements, but consider how its briefing strategy could lead to non-price-sensitive releases becoming price-sensitive. It is not clear to the Committee, in the light of Mr Wheatley’s evidence, that the FCA has understood this important distinction. The FCA’s Executive Committee should conduct, and publish, a review of its communication methods to reassure Parliament, the regulated community and the public that it has grasped this important point, which Clive Adamson and others have made.

**A failure of strategy or controls?**

101. Simon Davis concluded:

The FCA’s strategy of giving an advance briefing to The Telegraph in relation to the scope of the Life Insurance Review was well-intentioned: the FCA had sought to avoid the nature and scope of the Life Insurance Review being misunderstood when it was announced for the first time in the Business Plan, to be published on Monday 31 March 2014.

The strategy and the manner in which it was pursued was, however, high risk, poorly supervised and inadequately controlled. When it went wrong, the
FCA’s reaction was seriously inadequate and fell short of the standards expected of those it regulates.137

102. As described, the FCA Practitioner Panel said in its April 2014 report to the FCA Board that events of 28 March were an “an unavoidable consequence of the direction of travel of the FCA’s media policy” more broadly:

Views were expressed by a number of Panel members that this was an ‘accident waiting to happen’ and an overly proactive use of the media is not conducive with the FCA achieving its statutory objectives.138

103. Graham Beale expanded on this criticism, telling the Committee that “this extensive pre-briefing and a desire to generate at times sensational headlines are very unhelpful and high risk […] and without appropriate control around it, it can go horribly wrong, which is what we saw in March”.139

104. Mr Wheatley, however, rejected the idea that the FCA’s communications strategy was at fault, and said that the events of 28 March were not a result of the policy or strategy itself:

I think you can be certain […] that the strategy we had was the right one. I do not think we had the wrong strategy. I think we made some mistakes in this particular instance and we have learnt from those mistakes. What we are not going to do and the message that I have put through to the organisation, is we cannot go into our shell in a way of being scared to communicate at all, because of the criticism that we rightly attracted on this occasion.140

105. Asked whether the approach of engaging with the media in order to communicate very difficult matters was an approach that was likely to get out of hand, Mr Wheatley replied:

No, I do not believe I can answer that. I do not accept that. I think it has to be managed carefully, and absolutely accept that there are risks to it. I think those risks are mitigated by the fact that we are trying to do a very difficult job in a very wide range of complex areas that need to be communicated.141

106. Mr Beale told the Committee that the FCA Board had also defended the media strategy in the face of the Panel’s criticisms:

The board has responded and argued that the use of the media in its communications strategy more generally was a regulatory tool and a way of communicating with the very large number of firms that it regulates. That is

138 FCA Practitioner Panel (PRE0001) page 1
139 Q 378
140 Q 533
141 Q 520
not a point that the panel agrees on. We wrote to the board and said it was a point that we would agree to disagree on, because we think it is high-risk.  

107. Mr Wheatley agreed that the strategy carried risks, but said that “[t]hey are risks that have to be managed, and so we work very, very hard to try to manage those risks”. However, Mr Davis concluded that the FCA did not give sufficient consideration to the question of whether the pre-briefing on the life insurance review could move markets, and that a reasonable bystander should have concluded that there was at least a risk of its being price sensitive. In addition Mr Palmer told us that he would expect a listed company to consider not just the information being communicated but “the risk of miscommunication”; the FCA did neither. 

108. Martin Wheatley did not accept that the FCA’s communications strategy was to blame for the events of 27 and 28 March. However, the FCA’s Practitioner Panel believed that what happened was an “unavoidable consequence of the direction of travel of the FCA’s media policy”. The Practitioner Panel was right to draw attention to the risks involved in the FCA’s communications strategy. This strategy made the events of 27 and 28 March 2014 not just possible, but likely—one of its principal aims was to ensure that FCA communications reached a large audience through media coverage, and this media coverage was secured in part by the FCA handing more control to journalists over FCA announcements than was appropriate for a regulator. This inevitably increased the risk of the FCA’s intended message being lost. It is incorrect to claim, as Martin Wheatley has done, that the communications strategy was not in some way to blame for the events of 28 March 2014. The Committee is concerned that Mr Wheatley still does not acknowledge this.

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142 Q 389
143 Q 455
145 Q 312 [James Palmer]
4 Failures of oversight and co-ordination at the FCA

The Executive Committee’s failure to oversee the communications strategy

109. The FCA’s Executive Committee is the “primary executive decision making body of the FCA and is responsible for the operations of the organisation, including policy decisions, regulatory issues and more general operational matters”. In March 2014, ExCo comprised the Chief Executive, the seven Directors of the constituent divisions of the FCA, and the General Counsel.

110. Zitah McMillan told us that Martin Wheatley, as Chief Executive, “owned” the FCA’s overall communications strategy. Mr Wheatley confirmed this, saying that he “discussed” the FCA’s communications approach with Ms McMillan, but that “it was very much my strategy”.149

111. Mr Wheatley said that other ExCo members were as engaged as they needed to be on the FCA’s communications strategy, though were probably less engaged than himself. Clive Adamson also said that he felt that ExCo was sufficiently engaged in the FCA’s communications strategy, and in particular that the general aims and purpose of the strategy were discussed and agreed by ExCo.

112. Despite this general level of engagement, Mr Adamson did not recall ExCo discussing the specific proposal to pre-brief its Business Plan, and—though Mr Wheatley recalls such a discussion—there is no minute of one. Simon Davis also reported that aspects of the operational framework for the communications strategy went without formal ExCo discussion: the practice of pre-briefing was never “formally authorised” by ExCo, although it was “authorised implicitly” since it was known to and participated in by several of its members.

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146 Financial Conduct Authority, ‘Our Executive Committees’, accessed 11 February 2015
148 Q 205
149 Q 509
150 Q 510
151 Q 137
113. Mr Wheatley, Mr Adamson and Ms McMillan told us that ExCo had never discussed the general risk that the FCA’s communications could significantly move markets.\textsuperscript{154} Ms McMillan said her assumption was that “everybody would think that an organisation who is the regulator could move markets”, and that it was not odd that she did not raise the issue with ExCo.\textsuperscript{155} Mr Wheatley said that it was not a discussion that ExCo needed to have in respect of the FCA Business Plan pre-briefings, because “it was only safe stories that were going to be briefed”.\textsuperscript{156}

114. However, as described, Mr Adamson told the Committee that even information that was not judged to be price sensitive could be construed as such or become so through being reported.\textsuperscript{157} He also said that this realisation had come as a surprise to the FCA.\textsuperscript{158} Asked if the Committee should be shocked that this had come as a surprise, given the level of regulatory experience in the FCA, Mr Adamson said:

Indeed you could. The only thing I would say to that is […] that we have had no such incident before.\textsuperscript{159}

115. Given this, the FCA might have been expected to consider how the market could respond to announcements even when they were not judged to be price sensitive, and how the FCA’s methods of communication could influence this. It appears that ExCo members did in fact discuss the risks informally. In an email exchange between several members of ExCo in early March 2014, Chris Woolard, then Director of Policy, Risk and Research, suggested that the FCA should treat market study announcements as market sensitive by default, and not therefore pre-brief them. Sean Martin, the FCA’s General Counsel, agreed, as did Ms McDermott, who added that “as market regulator we perhaps have to be more careful about this than other regulators might have to be”.\textsuperscript{160} However, no formal discussion of these issues—including whether there was potential for pre-briefings to result in a disorderly release of sensitive information—took place.\textsuperscript{161}

116. Mr Davis was critical of ExCo’s failure to discuss properly the pre-briefing strategy:

Taking into account […] that this was the first time there had been any pre-briefing of the Business Plan, the lack of clarity around the decision-making at the ExCo level in relation to pre-briefings, and the denial of knowledge by the Director of Communications of the exclusive pre-briefing strategy other

\textsuperscript{154} Qq 139, 226, 511
\textsuperscript{155} Q 227
\textsuperscript{156} Qq 511, 514
\textsuperscript{157} Q 161
\textsuperscript{158} Q 162
\textsuperscript{159} Q 163
than a general awareness that there was to be a “trailing” of a few stories in
the press (and in any event the lack of her involvement) are all serious
concerns.

The lack of consideration by the ExCo as to any possible risks being run,
including the possible dissemination of price-sensitive or misleading
information, and “the lack of any agreement as to the criteria to be applied
when pre-briefing, are all further serious concerns.”162

117. In his final conclusions, Mr Davis criticised ExCo’s oversight of the FCA’s
communications operations:

The ExCo bears collective responsibility, together with the Board, for the
inadequate controls which exist, but also bears collective responsibility for
the failure to address the issues of price-sensitive information or market
impact, or any other possible consequences of the revised approach to the
Business Plan. It also bears collective responsibility for the pursuit of an
inadequately controlled pre-briefing strategy […] 163

118. The fact that care must be taken in communications, to prevent them from having
unintended market effects, should be an overriding principle for any regulator—
particularly so for one including the UK Listing Authority. It should be far more
prominent in the regulator’s consideration of its communications strategy than the
pursuit of media coverage. But, in the FCA’s case, it was not.

119. Martin Wheatley told the Committee that members of the FCA’s Executive
Committee were as involved as they needed to be in the FCA communications strategy,
yet the risk of the FCA’s communications having an unintended price-sensitive effect
was never discussed. Ms McMillan and Mr Wheatley told us that no discussion was
necessary—the former because it was assumed that members were aware that the
regulator’s communications could be price sensitive, and the latter because the FCA
never planned to pre-brief sensitive information. The events of 27 and 28 March
showed that these assumptions were misplaced.

120. Mr Davis described various aspects of the Executive Committee’s handling of the
pre-briefing strategy—its lack of clarity about decision-making, its lack of
consideration of any possible risks, and the lack of any agreement about the
circumstances in which pre-briefing was appropriate—as “serious concerns”. Taken
together, they demonstrate a serious failure of the Executive Committee’s control of the
pre-briefing strategy. The Committee has also considered, however, whether this

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briefing of information in the Financial Conduct Authority’s 2014/15 Business Plan’, 20 November 2014 (published 10
December 2014), paragraphs 10.21-10.22

briefing of information in the Financial Conduct Authority’s 2014/15 Business Plan’, 20 November 2014 (published 10
December 2014), paragraph 19.11
incident indicates a broader failure by Executive Committee members to consider the implications of the FCA’s communications strategy for the FCA’s objectives.

121. The evidence of the Davis report has demonstrated that the individual members of the Executive Committee had all of the information they needed in order to engage in a full discussion of the FCA’s communications strategy and its operation. Executive Committee members had discussed by email in March 2014 the risks of price-sensitive information being briefed to the press, and most were aware that the FCA conducted pre-briefings. But these individual points—which together highlighted risks in the strategy of using the media to communicate with firms, and handing editorial control to the media to secure that coverage—were never put together. A full discussion of the risks implied by the strategy never took place.

122. Had the Executive Committee fully considered the FCA’s communications strategy, it might have realised that it involved risks to the FCA’s statutory role in respect of price transparency and the orderly operation of the financial markets. These risks might then have been better controlled. Instead, it appears that the Executive Committee merely ‘rubber-stamped’ the communications strategy. In doing so, it failed to engage fully in the question of how the FCA should use communications in a way that helped to advance its objectives—or was at the very least consistent with them. This was a serious failure by the FCA’s most senior managers.

A failure to share expertise in price sensitivity

123. The FCA contains the UK Listing Authority. In this capacity it has set out a series of ‘Listing Rules’ and ‘Disclosure and Transparency Rules’, which require firms to adhere to certain standards when handling ‘inside information’. The FCA has also published a series of ‘Market Watch’ documents for non-regulated and non-listed firms, setting out points of good practice in the handling of inside information. In particular, Market Watch Issue No. 37 sets out guidance discouraging ‘strategic leaks’—that is, “deliberate leaks of inside information sanctioned by the senior management of an issuer or its advisers with the intention of achieving a strategic advantage through media positioning.”

124. However, the FCA’s focus on issues of price sensitivity seems to have been largely absent from its consideration of the pre-briefing of its business plan. Simon Davis concluded that there were a number of control failures in the FCA regarding price sensitivity:

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166 Financial Conduct Authority, ‘Market Watch, Issue No. 37’, page 1
The procedures which exist within the Supervision and Communications Divisions relating to price-sensitive information (including as set out in the divisional policies and the Employee Handbook) are inadequate and not of the standard which the FCA expects of those it regulates.

There are no policies within the Supervision or Communications Divisions that seek to implement procedures consistent with those recommended by the FCA in external publications (for instance, Market Watch Issues No. 21, 27 or 37, described further below). There is no policy or detailed guidance (at least within the Supervision and Communications Divisions) to help staff identify what is price-sensitive information and to appreciate when issues concerning price-sensitive information might potentially arise or more generally the possible market abuse implications.

There is also no training provided to employees within these Divisions on the identification, control or handling of price-sensitive information or any possible market abuse implications.

Our understanding is that the limited controls that do exist in relation to information classification are not adhered to strictly.167

No process was followed to confirm whether or not the information to be given to the Telegraph was likely to be price-sensitive, Mr Davis concludes, because no process existed.168

125. James Palmer expressed surprise that staff in the communications area showed little awareness of price sensitivity:

I would have expected all the communications people to have been trained to a level to have thought about price-sensitive information and to apply that generally to all external communication of any material initiative.169

While Mr Davis told us that he “wouldn’t necessarily go so far as to say that [communications staff] should be turned into the experts on what is or is not price-sensitive information”, he did say that “they should at least have enough to be able to ask the right questions and to be able to say, ‘This doesn’t feel right to me’”.170

126. As well as agreeing that communications staff should be broadly aware of price sensitivity, Mr Davis also told us that the Markets area should be aware of the FCA’s communications approach:


169 Q 312 [James Palmer]

170 Q 29
Should not the Markets Division or those who are very knowledgeable about areas of price-sensitive information be aware that this kind of strategy is in place and be aware of the kind of material that is being supplied? The answer to that is yes.171

However, Mr Davis said that David Lawton, then-Director of Markets at the FCA, had not been aware of the particular strategy to pre-brief the business plan.172

127. Mr Davis said that, while the Markets area were “by and large, experts on what is meant by price-sensitive information”, they would need to consult with the specialists in the subject in question—in the case of the Telegraph pre-briefing, the supervision team responsible for the Thematic Review—to establish the context to decide whether particular information was price-sensitive.173

128. Mr Davis recommended in this Report:

that there be substantial improvement in the procedures relating to the identification, control and release of price-sensitive information, and the market abuse implications of a wrong decision. This should include, not only centralised policies and training, but also detailed procedures tailored for the relevant business team.174

129. The FCA accepted Mr Davis’s recommendations, saying in its response to the Report:

We have introduced substantial improvement in the procedures relating to the identification, control and release of price sensitive information. We have informed staff of the revised policies and guidance. We have begun central training about these revised procedures for all managers and further training and awareness initiatives will be rolled out to all staff within their divisions shortly.175

130. As examined in a later section, the UK Listing Authority was also insufficiently consulted on 28 March when share prices began to fall in response to the Telegraph article. Clive Adamson failed to alert UKLA when he became aware that a “price-sensitive issue” had arisen. Zitah McMillan failed to alert the Markets area of the FCA when she learnt that the Telegraph article had misreported the facts of the life insurance review. More generally, staff in the Media Relations team and the Supervision Division were briefing the media, the ABI and insurance companies to clarify the scope of the review, without consulting UKLA.

171 Q 26
172 Q 26
173 Q 27
on whether these briefings may be price sensitive, and whether individual briefings were appropriate at all.\textsuperscript{176}

131. Since 2001, the UK Listing Authority has formed part of the FCA or its predecessor the FSA. The FCA is therefore the UK’s primary repository of expertise on listing requirements and the importance of clear communication to the market. This expertise seems to have been wholly absent from the FCA’s consideration of the pre-briefing strategy.

132. Simon Davis concluded that the FCA’s procedures in respect of price sensitive information were “inadequate and not of the standard which the FCA expects of those it regulates”. Mr Davis’s report makes clear that on some of the most important issues on which the FCA imposes guidance on firms, it imposed no guidance on itself. In particular, there were no policies consistent with the guidance the FCA issues for regulated firms on the handling of price sensitive information, no guidance designed to help staff to identify price-sensitive information, and no relevant training provided to employees. Worse still, such limited controls as did exist were not adhered to strictly. Were a regulated firm to have behaved similarly, the FCA—rightly—have considered it a serious omission. For a regulator to have behaved in this way was serious. For a regulator containing the UK Listing Authority, it was shocking. This was a case of ‘do as I say, not as I do’.

133. Mr Davis recommended several improvements to controls over price-sensitive information, which the FCA has since made a commitment to implement. But the Committee has seen no evidence to suggest that the FCA has assessed the wider question of whether there might be a problem of culture, rather than just controls—of a failure to share expertise across the different areas of the organisation. This sort of failing could have been mitigated by proper discussion at the Executive Committee—the forum at which the constituent parts of the FCA come together—of the risks involved in the FCA’s communications strategy and their possible implications for the FCA’s objectives. As noted, no such discussion took place.

134. The expertise of the UK Listing Authority was not only absent from the FCA’s consideration of the communications strategy. On the morning of 28 March, Clive Adamson and Zitah McMillan both failed to consult the UKLA when they became aware that the Telegraph article had given a misleading impression to the market. Supervision and communications staff also failed to consult UKLA when they began to issue ad hoc clarifications to the press and the industry about the scope of the Life Insurance Review. In the event, the problem was brought to the attention of the Head of the UKLA by his own staff, who had observed the movements in share prices. It was not until 12.02pm on 28 March that the Head of the UKLA was provided with all of the

information he needed to advise Martin Wheatley that the FCA should immediately issue an official clarifying statement.

135. The non-executive members of the FCA Board should assess the extent to which the FCA may suffer from a culture of working in silos and of inadequate information sharing. It should take steps to ensure that staff at all levels across the organisation have a good knowledge of the objectives of other divisions of the regulator, and some familiarity with the areas of expertise of those divisions. Otherwise, incidents such as those on 27 and 28 March, in which one area of the FCA unwittingly acted in a manner harmful to the objectives of another area, will be likely to occur again.

An ineffective relationship between the communications area and supervision

136. The Davis Report describes several failures of control in the FCA’s communications operation, which contributed to the events of 28 March, including:

- Quotations from the Telegraph’s telephone interview with the FCA—in which Clive Adamson did not participate—were attributed to Mr Adamson without his knowledge, but with the permission of a junior member of staff in the communications area;177
- FCA communications staff did not record the telephone interview;178
- There was confusion within the communications area about what constituted standard FCA practice in some cases; for example, whether telephone interviews should always in fact be recorded;179
- In giving a telephone interview at all, the FCA handed control over how the Life Insurance Review was to be reported to the Telegraph;180
- As described above, the FCA failed to consider whether the pre-briefing was price sensitive.181

In its response to the Davis Report, the FCA said that it was “developing new operational protocols which will apply to communications with our audiences, including the media”.182

137. Beyond these control failures, however, Simon Davis’s report contains a number of extracts from internal FCA emails, which suggested that the communications area was seeking to publicise the work of the supervision area in a way with which the latter was uncomfortable.

138. Several emails from 20 and 21 March 2014 show that the supervision area was uncomfortable with the media team’s planned briefing on the life insurance review. An associate in the supervision team twice made the point that the media team’s proposed written briefing placed too much emphasis on exit fees, saying that “the wording for exit charges looks like we are actively looking to do something”.183 As described above, this emphasis on exit fees was one of the main exaggerations of the eventual Telegraph article.

139. The same supervision associate emailed the media team on 21 March, asking if the story could be postponed in the wake of the pension reforms announced in the Budget on 19 March.184 The media associate leading the pre-briefing of the Thematic Review said he would “still like to aim for Tuesday next week” because, given the large number of planned consumer-credit stories, “if we want to get some cut-through for this one we need to go a bit earlier”.185 The supervision associate replied:

[We] are probably not as keen as you that this needs to go out early next week as I am sure you have gathered—although I understand your reasons.186

140. A senior associate in the ‘Life Insurance Themes’ team later emailed the supervision associate, suggesting that he shared the latter’s concern:

Isn’t there a risk with announcing this next week that this just piles the misery onto life companies? They have taken a battering this week and I think the news that we’re going to be sniffing around legacy business is only going to make matters worse.

Surely better to let the "froth" die down a little bit, or at least not having such a negative view in the key messages below and position more about we are

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doing this review to confirm whether life insurers are treating all consumers fairly rather than go specifically into the concerns we have?  

And, later on 21 March, a technical specialist in the supervision team emailed her head of division, saying:

My view is that we shouldn’t do a press story on this but there is a lot of pressure from Comms on this (it may be picked up anyway and then the messaging is out of our control […]).  

141. Similar exchanges took place on 25 March in respect of a separate pre-briefing on packaged bank accounts. The media associate in charge of this pre-briefing emailed the relevant supervision team with some proposed briefing lines. A member of the team replied, questioning the tone of the draft release:

I’m not sure about the tone of this. I will consult with [a member of the review team] and get back to you. I’m not sure [Mr Adamson] would want to have an opinion on whether it was ”right” for firms to withdraw from the market for example.

However, the media associate persisted with his proposal:

On the tone / quote—can I request that we let [Mr Adamson] decide?

He may well agree with you, but as these stories are trying to highlight our consumer protection credentials as part of the one year anniversary, I’m keen that we align ourselves with the ’man on the street’ view and try and push the boundaries a bit compared to what we would normally say.

I’d also argue that [Mr Adamson] is on safe ground by agreeing that if firms are selling packaged accounts improperly, they should stop. I don’t think there’s anything too controversial there.

142. The supervision team member, however, continued to disagree strongly with the line proposed by the media team:

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For the record, I don’t think the tone is right, and I don’t want the email to go up implying I have signed it off. Your text below doesn’t say “firms selling PBA’s improperly should stop”. It says “firms have mis-sold PBAs in the past”, and implies that this was widespread. To be clear, we have no evidence to support that assertion.

We are not the man on the street. The FCA saying there has been mis-selling is an invitation to the CMCs to launch a new salvo of claims on the banks (a la PPI). We must avoid provoking this unless we have clear evidence of misselling.

By all means send the text up unaltered, but I will brief against it. As you say, it is up to [Mr Adamson] to decide what he wants to say. I have worked with [Mr Adamson] extensively though, and can tell you with a fair certainty that he won’t like the quote as written. [Original emphasis]

143. Zitah McMillan told us that she was “deeply disappointed” to read in the Davis report that her staff had been putting pressure on the supervision area:

Had you asked me even during the process of the inquiry being carried out, I would not have said that that was the relationship my teams had with their colleagues. […] I thought it was absolutely dreadful to read that a team within supervision felt that my team had been aggressive.

Ms McMillan also said that there “should always be a balance between what you think and what your colleagues may think in other parts of the organisation”. But she concluded:

The checks and balances in the system ought to be sufficient. Sadly, on this occasion they absolutely were not.

144. The events of 28 March were in part the result of a series of significant control failures in the FCA communications division. Mr Davis describes these failures—including the unauthorised attribution of quotations in the Telegraph article to Clive Adamson, the failure to record the telephone interview with the Telegraph, and the apparent confusion within the communications area as to whether this last failure was standard FCA practice—in detail. Mr Davis suggests a number of procedural remedies for these failures.

145. The problems in the FCA’s communications area revealed by this episode appear to range far wider than points of procedure. Evidence in Mr Davis’s report left the impression that there were shortcomings of standards and culture in the FCA’s communications division. Staff in supervision described the communications team as


192 Q 247

193 Q 217
putting “a lot of pressure” on them to pre-brief the Life Insurance Review to the Telegraph, even though the supervisors themselves considered this to be risky. Other exchanges show supervision staff raising concerns about the tone of draft press releases, and the communications area resisting their suggested changes to those drafts. Simon Davis did not draw any conclusions from this about the culture of the FCA, and did not propose any remedies.

146. The communications area of an organisation will, and should, contain staff who are skilled at conveying messages to various different audiences. These staff should advise the other divisions of the FCA on how best to communicate their work. But they should not seek to override the expert views of these areas—supervision, markets and enforcement—when those areas are more familiar with the substance of the work, its likely effect on the industry and the market, and the risks involved. This should be the case at all levels of the FCA, and should be reflected in interactions between junior supervision and media staff, as well as between Executive Committee members. The FCA’s Executive Committee needs to satisfy itself that the working relationship between the communications area and other areas of the FCA is appropriate, and take action to address this if it is not.

A failure of co-ordination between senior staff on 28 March 2014

147. When the markets opened on the morning of 28 March—following the publication of the online and print editions of the Telegraph article—the share prices of several major life insurance firms fell. By around 11.30am, the share price of some firms had fallen by as much as 21 per cent.194

148. The Davis Report examines in depth the actions of senior FCA staff as the regulator responded to the market reaction on 28 March. In summary, Clive Adamson was made aware that a price-sensitive event had occurred at 8.53am, by a telephone call from “furious representatives of a major insurance company”, who asked the FCA to issue a retraction.195 Mr Adamson, in conjunction with supervision staff, then proceeded to draft a clarifying statement. But he failed to alert Mr Wheatley, Ms McMillan, or David Lawton—then-Director of Markets at the FCA—to the incident, and the clarifying statement was not issued to the market as a whole. In any case, Mr Davis concluded that the statement was “inadequate”—in part because it failed to mention exit fees. One of the affected insurance


companies in fact concluded that Mr Adamson’s draft statement, if released, would have “added fuel to the fire”.\(^{196}\)

149. Marc Teasdale, Head of UKLA, became aware of the share price movements at 9.15am.\(^{197}\) While UKLA and the Market Monitoring teams considered whether the FCA should issue a clarifying statement, they had “no information available to them to inform that decision”.\(^{198}\) Staff in the Markets area escalated the issue to Mr Lawton, who called Ms McMillan at 10.07am to discuss the matter.\(^{199}\) But Mr Lawton was not aware that the content of the Telegraph article was inaccurate, and the responsible media team had not informed Ms McMillan as they had not considered it necessary to involve her.\(^{200}\) Mr Davis reports that, following the call:

> Mr Lawton did not contact Mr Adamson or otherwise conduct further inquiry. He also did not escalate the issue to Mr Wheatley. Ms McMillan learnt at about 10.15 am from the Media Relations team that it thought that there had been misreporting by *The Telegraph* but she did not tell Mr Lawton.\(^{201}\)

Despite not seeking clarification from the supervision department, Mr Lawton concluded that no clarifying statement was necessary.\(^{202}\)

150. Mr Davis reports that Mr Wheatley’s office began to take on a co-ordination role in the mid-morning. At 11.30am he requested that Mr Teasdale revisit Mr Lawton’s decision not to issue a clarifying statement. Mr Teasdale subsequently concluded that clarification was in fact necessary, and a draft statement was prepared and circulated to relevant senior FCA staff at 12.32pm. In part because the draft statement was examined and discussed via email, rather than in an urgent meeting or conference call, it took until 2.01pm for a final statement to be agreed. It then took a further 26 minutes for the statement to be issued to

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the market, because the FCA had to prepare an RNS message. Part of this last delay was “because the process for issuing the statement to the market had not been considered earlier in the day”.203

151. Overall, Mr Davis concluded that the FCA’s response was “seriously inadequate and fell short of the standards expected of those it regulates”.204 He found that while the FCA does have a number of business continuity or ‘disaster recovery’ plans intended to address situations where there is an interruption to the FCA’s business-as-usual operations, those plans were “not applicable to the events of 27 and 28 March 2014”. Similarly, while the communications area had a policy for the creation of an ‘Issues Response Team’, the aim of which was a process to ensure the “effective media-handling of specific crisis issues affecting regulated firms”, it did “not address a situation where the FCA is required, in response to media or market speculation, to correct a story about the activities of the FCA”. In any case, this plan was intended only to involve the communications area and the relevant individual area of the FCA, not the Executive Committee in its entirety.205

152. Mr Davis recommended that the FCA “urgently put in place price and volume monitoring procedures, combined with an action plan for the effective management of the FCA’s reaction to any issues involving the uncontrolled release of price-sensitive information originating from or involving the FCA”.206

153. Given the number of failures by senior FCA staff to escalate the issue to Mr Wheatley, or properly to co-ordinate with each other, the Committee asked Mr Davis whether, beyond the particular failure of the FCA to have in place an emergency action plan, there was a systemic failure of co-ordination at the FCA. He said:

I have said that there was a lack of controls; whether you regard lack of systems and controls as being systemic I suspect I am dancing on the head of a pin. I have concluded that there was a lack of controls and I have gone into some detail in the recommendations to try to make sure that any gaps in the organisation are appropriately filled so this doesn’t happen again.207

207 Q 18
Rather than speaking of a systemic problem across the FCA, Mr Davis preferred to say that “there were inadequate controls in relation to the control of the media” and that “the system broke down”.208

154. Mr Adamson similarly declined to say that the incident suggested systemic problems at the FCA:

I think this event exposed a breakdown of controls in multiple places, both within supervision, which is my area, that I take responsibility for, in communications and in UKLA. Systemic, to me, means much more, “There is a very systemic problem in the organisation”, which I do not think there is. This event exposed, as I said, a multiple breakdown across many areas.209

[...]

This particular event clearly exposed, on the day, a lack of co-ordination and [...] I do not think there is a systemic issue of co-ordination. I think this exposed a particular issue on the day.210

Ms McMillan also said that she did not think the events of 28 March showed a “fundamental breakdown in general terms”, and that the problem was “not systemic”.211

155. Mr Adamson, however, suggested that the FCA’s method of decision-making might have been partly to blame:

The way culturally the FCA makes decisions is essentially through a formal decision-making process of committees, written reports and so on. That does not work particularly well in a crisis. One of my reflection points for the organisation going forward is I think it has to think very hard about how to make sure that, while formal decisions are taken correctly through committees, in a crisis it needs to act differently. One of the things this exposed in the organisation is in a crisis it does struggle to operate because it is used to a different method of decision-making.212

156. Mr Wheatley said that the events in question were the result of “poor decisions on the day that obviated the controls that did exist”.213 He also highlighted a number of changes that the FCA had made that would help it better respond to incidents in future:

We have changed a number of processes as a result of that. One of the processes is notification, so if there is something that moves beyond a certain parameter in the market that is notified, not just to the market monitoring...
team but to the executive committee now. So whenever that happens there is something that goes out as a flash and my request every time is to say, “Tell me if there is an obvious public explanation of that flash or not” so that is now in place. If there is not an obvious public explanation for that flash then it escalates to me as to what level of rapid response we need to put in place. That did not happen on the day, and that is something we have had to change subsequent to that.214

157. However, Mr Davis ultimately concluded that:

It should not, in any event, have needed a formal plan for the senior executives of the FCA to have co-ordinated effectively and urgently to investigate what had happened, consider whether a holding or clarifying statement was required and to issue any such statement as a matter of extreme urgency, taking into account the FCA’s overarching strategic objective being to ensure that the financial markets function well.

The relevant senior executives failed not only to co-ordinate, but there was a lack of sufficient urgency.215

158. Simon Davis concluded that there was “a failure of co-ordination between the senior executives at the FCA” on 28 March, and a “lack of the urgent actions that the FCA would expect of a listed company in similar circumstances”. The incident could have been resolved much more quickly—thus avoiding some of the damage suffered in the life insurance market—if senior executives had shared information with each other and come together quickly to agree a response. Instead, the delay of six hours before a corrective statement was issued caused damage to the credibility and reputation of the FCA.

159. Simon Davis found that the FCA did not have a plan for dealing with a situation such as that which arose on 28 March. The lack of any formal contingency plan for dealing with this kind of emergency situation was a serious failure of the FCA’s management. An emergency plan to bring together the FCA’s leadership in response to such a major event should have been considered a basic requirement. The Committee welcomes the FCA’s acceptance of Mr Davis’s recommendation that a formal plan should be put in place.

160. In addition, as Simon Davis concludes, senior executives should not have needed a formal emergency plan in order to co-ordinate their response to the events of 28 March. This is not least because the FCA’s over-arching strategic objective to ensure that the relevant markets function well should have already focused senior staff on such a serious market-moving incident. The fact that this did not happen may or may not

214 Q 529
suggest a problem with standards and culture within the FCA, with even the Executive Committee failing to take sufficient initiative in response to a crisis or to keep the FCA’s objectives fully in mind when deciding on a course of action. The non-executive members of the FCA Board should investigate further to establish whether this is the case and, if so, what the remedy should be.
5 The FCA’s response to the Davis report

161. Simon Davis submitted his final report to the FCA’s Board on 20 November 2014. It was then up to the FCA’s Board to decide when to publish it. On 8 December 2014, the FCA announced a new strategic approach, together with a major restructuring. On 10 December, it published Simon Davis’s report in full.

Individual accountability

162. In its response to Simon Davis’s report, the FCA announced that it had accepted his conclusions and recommendations in full. The changes to the FCA’s process and practices are discussed in chapters 3 and 4 above. In addition to these changes, under the heading “individual accountability”, the FCA announced that:

In considering Mr Davis’ report the FCA Non-Executive Directors recognised that a number of individuals made errors. Having thoroughly reviewed the report the Non-Executive Directors have agreed the following actions.

Chief Executive, Martin Wheatley, Director of Supervision, Clive Adamson, Director of Communications and International, Zitah McMillan and Director of Markets, David Lawton will not be receiving a bonus for 2013/14.

Reflecting their collective responsibility, the 2013/14 bonus payments for all other members of Executive Committee have been reduced by 25%. Other disciplinary action has been completed as appropriate.216

The FCA’s new strategic approach

163. The FCA published Simon Davis’s report on 10 December. Two days earlier, on 8 December, it had announced a “new strategic approach”.217 It said that:

The approach is shaped by a strategy that will provide a "sharper focus" on how firms are regulated and on delivering the right outcome for consumers and the markets.

It recognises the differences in approach required across the industry given its size and variety, based on emphasising sector and market-wide work and reflecting the FCA’s competition duties. It also aligns the data and intelligence gathered from all sources to present a consistent FCA-view of

216 FCA, FCA response to the Davis Review, 10 December 2014
217 FCA, Press release: New strategic approach to ensure “sharper focus” to regulatory challenges ahead, 8 December 2014
what is happening in the market and what behaviour is expected from firms.\textsuperscript{218}

164. The FCA also announced that this new approach would be complemented by “several structural changes”:

We will bring together the current Authorisations and Supervision Divisions, with our specialist supervision functions such as financial crime and client assets. Two Divisions will be created from April 2015 allowing for a clearer distinction between our approach to the regulation of large and smaller firms.

Tracey McDermott will take responsibility for managing this transition and will subsequently lead one of the new Divisions.

A new Strategy and Competition Division led by Christopher Woolard will build on our competition capabilities, bringing together more of our market-based work supported by an enhanced data, intelligence and research capability to enable better prioritisation and focus across the organisation.

A new Risk Division to provide a strategic approach to the management of internal and external risk. Richard Sutcliffe will be the acting Director for the new division.

A new Markets Policy and International Division led by David Lawton will focus on increasing the FCA’s focus and influence on the European stage.

A Market Oversight Division will be created incorporating our UKLA and Market Monitoring functions. This will be led on an acting basis by Marc Teasdale. Other specialist market supervision functions will be integrated with Supervision.\textsuperscript{219}

165. The press release announcing the new approach was accompanied by a document of just 8 pages, addressed to FCA staff, which gave some further explanation. In view of the paucity of information provided, we asked John Griffith-Jones when work had begun on the review. He told us:

At the board away day meeting in November 2013, by which time we had been operating nine months, we took the view that the first year was going okay, that we would allow the organisation to run for another year so that the theoretical structures that we put in place could bed in, but we would

\textsuperscript{218} FCA, Press release: \textit{New strategic approach to ensure “sharper focus” to regulatory challenges ahead}, 8 December 2014

\textsuperscript{219} FCA, Press release: \textit{New strategic approach to ensure “sharper focus” to regulatory challenges ahead}, 8 December 2014
conduct a strategic review during 2014 in order to decide whether further adjustments were necessary.\textsuperscript{220}

166. We asked Otto Thoresen, Director-General of the Association of British Insurers, for his views on the new approach. He told us:

I have to say, I don’t understand enough about that yet to even comment on the exact objectives it is trying to achieve. There are some interesting things there, though, around a shared view of markets, a better understanding of how markets are developing, consumer issues, an attempt to segment better the way they deal with the regulated in terms of smaller firms and larger firms, and so on.\textsuperscript{221}

167. James Palmer, Partner, Herbert Smith Freehills and Chairman of the FCA’s Listing Authority Advisory Panel, said that he had raised concerns with the FCA about the strategy review, “mainly because I did not feel they had fully articulated the reasons for some significant changes. Like Mr Thoresen I do want to understand better why they have done it.”\textsuperscript{222} He added:

[… ] it is another layer of change. I am sure there are good reasons, and I have had some response and some articulation of it, but there are some risks in the model they have gone to, because you are now going to have two supervision departments. You are going to have a smaller firms focus and a larger firms focus, as you describe. I think one of the important things will be for the FCA to make sure that they do not lose the expertise from one in monitoring the other, and that there is enough co-ordination between the two to make sure that you do not end up duplicating structure across, actually, the same kind of activity.\textsuperscript{223}

168. For her part, Zitah McMillan told us that she thought that the removal of the post of communications director from the Executive Committee was “fundamentally […] the wrong thing to do”.\textsuperscript{224} She explained:

[… ] you cannot differentiate between the substance of the work and how you might engage the intended recipient with the work. I think it is a mistake to do that. If you leave how you intend to engage with, say, small businesses and consumer credit right to the very end of the process, you will probably not get it right.\textsuperscript{225}
The documents published by the FCA on 8 December do not explain why this change was made.

**The departures of Clive Adamson and Zitah McMillan**

169. On the same day as it announced its new strategic approach, the FCA announced that three members of its Executive Committee would be leaving. Two of these—Clive Adamson, Director of Supervision, and Zitah McMillan, Director of Communications—had been the subject of serious criticism in Simon Davis’s report.226 The FCA’s Board had by this stage had the opportunity to read Mr Davis’s report: first as part of the Maxwellisation process, and then when Mr Davis submitted his final report on 20 November. Nevertheless, the FCA published a statement which announced that they would be leaving “as part of the structural changes.”227 This announcement was accompanied by quotes attributed to Martin Wheatley. About Clive Adamson, Martin Wheatley said:

> Clive is a respected figure in financial services and I know that his many friends here at the FCA and across the industry will join me in thanking him for all that he has done for the industry over the years.228

On Zitah McMillan, he said:

> Zitah has brought a professionalism to our communications that is greatly valued and has radically changed the way we engage with our stakeholders. We will miss Zitah’s creativity, curiosity and strategic contribution both at ExCo and across the FCA.229

170. We asked Clive Adamson why he had decided to leave the FCA. He told us that there had been three reasons for his decision. He described two of these as follows:

The first is that I have felt for some time that, at some point, I wanted to move on from the organisation. I raised that with Mr Wheatley some months ago and we felt that an appropriate time, if I were to move on, would probably be around the end of my current board tenure, which is March 2016. That was discussed at a RemCo meeting, I believe, in April of this year in terms of succession. The second reason is that, as you said, there is a reorganisation that was announced last Monday taking place. That has been some time in the planning and largely because of that reorganisation I felt that was a good opportunity or an opportunity to reconsider the timing of my leaving.230

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226 The third, Victoria Raffe, Director of Authorisations, played no part in the events described in Simon Davis’s report, other than in her capacity as a member of the Executive Committee.
227 FCA, *Statements regarding changes to the FCA Executive Committee*, 8 December 2014
228 FCA, *Statements regarding changes to the FCA Executive Committee*, 8 December 2014
229 FCA, *Statements regarding changes to the FCA Executive Committee*, 8 December 2014
230 Q 119
He said that the third reason was that he was “aware of the criticism in the Davis report”.

He explained:

I was aware of the individual criticism. I was aware that that would, as would be normal, likely lead to some discussion about disciplinary action against me. I felt I did not want to be, going forward, part of the story about the organisation. Therefore, overall, I felt this was the appropriate time for me to decide to leave.

For her part, Zitah McMillan told the Committee that she would have left the FCA whatever the conclusions of Simon Davis’s report had been. She explained:

Zitah McMillan: I would have gone anyway because, as Mr Adamson said, the iteration of the strategy, while I support some of the philosophical parts of it, I disagreed with elements of it that were personal to me and they would—

Chair: What were those?

Zitah McMillan: The removal of communications from the executive committee I fundamentally think is the wrong thing to do.

The timing of the announcement

Both Martin Wheatley and John Griffith-Jones told us that the FCA’s new strategic approach was not connected to Simon Davis’s report. We therefore asked John Griffith-Jones why the FCA had chosen to announce the new approach two days before it published Simon Davis’s report. He told us that:

It was quite necessary to publish the structural changes at the same time [as Simon Davis’s report] because some key members of staff were leaving. In terms of the internal handling of the organisation, we felt the need to publish it at or about the same time, two days before.

He then explained that “the restructuring would not have made so much sense without having an underlying understanding of the strategy as well”. Since, he said, the FCA had wanted “to tell our staff what pragmatically was going to happen given that some very senior people were leaving,” it had been necessary to publish both the new strategy and the new structure at the time of the Davis report. He said that “it
was not sensible” to publish both the Davis report and the new strategy “on the same day”.237 He conceded that:

If we had not had the Davis report being published, those changes would not have been brought out quite as quickly as they were, but that again was caught up with the people leaving.238

173. The FCA made no mention of Simon Davis’s investigation when it announced its new strategic approach, and a major restructuring, just two days before it published Mr Davis’s report. The FCA controlled the publication date in both cases.

174. The conclusions of the FCA’s strategic review have the appearance of being rushed out in an attempt to mitigate the effect of the publication of the Davis report on the FCA’s reputation. John Griffith-Jones acknowledged in evidence to the Committee that the new strategic approach would not have been published so quickly had it not been for the departure of senior individuals. The restructuring involved the departures of Mr Adamson and Ms McMillan—two people heavily involved in the pre-briefing incident. This compounded the awkward impression that a contrived media-handling operation was being rolled out: Mr Adamson and Ms McMillan were being made to take the blame for the pre-briefing incident, while the FCA was able to deny that this was the case.

175. The FCA published very little explanation of the reasons for the structural changes it was making—just a press release and an 8-page document addressed to FCA staff. Witnesses from industries regulated by the FCA, or who advised regulated firms, told the Committee that they were still getting to grips with the changes that were announced. The FCA consulted neither its statutory Practitioner Panels nor the public and the industry as a whole. The FCA should now publish a full explanation for the changes it has made. In particular, it should explain in detail its reasons for removing the post of Communications Director from its Executive Committee, in the light of the concerns expressed by Zitah McMillan about this change.

237 Q 579
238 Q 584
6 Regulating the regulator

Collective and individual accountability

176. On the extent to which the Board of the FCA was responsible for the events of 27 and 28 March, Simon Davis concluded that:

The position of the FCA, so far as regulated firms are concerned, is that the Board should be responsible for the overall policy for the identification, control and release of price-sensitive information.

The Governance Memorandum document adopted by the Board on 1 April 2013 (referred to in paragraphs 6.8, 6.9 and 6.10 above) reserves to the Board the maintenance of a sound system of internal controls and internal risk management.

The Board therefore bears collective responsibility for the inadequate controls which exist in relation to the identification, control and release of price-sensitive information.239

177. As far as the Executive Committee of the FCA was concerned, he concluded that:

The ExCo bears collective responsibility, together with the Board, for the inadequate controls which exist, but also bears collective responsibility for the failure to address the issues of price-sensitive information or market impact, or any other possible consequences of the revised approach to the Business Plan. It also bears collective responsibility for the pursuit of an inadequately controlled pre-briefing strategy and for the failure to react urgently and effectively on 28 March.240

178. We asked Clive Adamson whether he considered that Mr Davis’s criticisms of the Board and the Executive Committee were appropriate. He said:

In themselves they are appropriate. It does raise quite difficult issues to think through about the governance of the organisation and who is accountable for what, particularly when put against the other provisions of the new senior managers’ regime, which clearly we are in the process of working through. That does need to be thought about very carefully, I think.241


241 Q 190
Mr Adamson suggested that the Chairs of the Risk and Audit Committees should have clear responsibility, “as we would expect for a regulated firm”.242

179. The Senior Managers Regime, to which Mr Adamson referred in his evidence, was originally proposed by the Parliamentary Commission on Banking Standards, as the “Senior Persons Regime”. It was intended to replace the current Approved Persons Regime, which the PCBS had concluded was “a complex and confused mess” that failed “to perform any of its varied roles to the necessary standard”. In particular, the PCBS concluded that the APR did not “ensure that individual responsibilities are adequately defined”.243

180. The Commission recommended that its proposed Senior Persons Regime should “provide far greater precision about individual responsibilities than the system that it replaces”:

The new Senior Persons Regime must ensure that the key responsibilities within banks are assigned to specific individuals who are aware of those responsibilities and have formally accepted them. The purposes of this change are: first, to encourage greater clarity of responsibilities and improved corporate governance within banks; second, to establish beyond doubt individual responsibility in order to provide a sound basis for the regulators to impose remedial requirements or take enforcement action where serious problems occur. This would not preclude decision-making by board or committee, which will remain appropriate in many circumstances. Nor should it prevent the delegation of tasks in relation to responsibilities. However, it would reflect the reality that responsibility that is too thinly diffused can be too readily disowned: a buck that does not stop with an individual stops nowhere.244

181. The Senior Managers Regime was part of the Financial Services (Banking Reform) Act 2013. In July 2014, the FCA and PRA published a joint consultation paper in which they set out how they planned to implement the new regime. This included the following proposals for a ‘Responsibilities Map’:

The regulators propose to issue rules and guidance requiring firms to prepare, maintain and update a ‘Responsibilities Map’: a single document that describes the firm’s management and governance arrangements.

Responsibilities Maps should also set out how responsibilities have been allocated, including whether they have been allocated to more than one person.

242 Q 192
244 Parliamentary Commission on Banking Standards, First Report of Session 2013-14, Changing banking for good, HL Paper 27-I/HC 175-I, paragraph 616
A key purpose of the Responsibilities Map is to ensure that, when looked at collectively, the allocation of responsibilities to a given firm’s Senior Managers (as set out in their respective Statements of Responsibilities) does not leave any gaps in accountability.

A clear, comprehensive Responsibilities Map may also provide evidence that a firm is satisfying its obligation to have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility[…]

The FCA and PRA also propose requiring annual confirmation, from the firm’s board, that there are no gaps in the allocation of responsibilities within the firm.245

182. In February 2015, the FCA and PRA published a joint paper which set out the approach they intended to take to the application of the Senior Managers Regime to non-executive directors in banking. This made clear that the regime would apply to those non-executive directors with specific responsibilities—including the Chairman, the Chair of the Audit Committee and the Chair of the Risk Committee.246

183. Simon Davis reached conclusions about the responsibility of certain individuals for the events of the 27 and 28 March. However, it is not clear from his report where individual responsibility lies for the failures of the FCA’s Executive Committee and Board. Instead, he concludes that the Board and the Executive Committee are collectively responsible for their respective failures. This is a well-rehearsed and unfortunate mantra. The Committee has heard it often from regulated firms, and particularly banks. One of the key conclusions of the Parliamentary Commission on Banking Standards was that “a buck that does not stop with an individual stops nowhere”. The Commission made recommendations intended to establish beyond doubt where individual responsibility lies at the very top of banks, which are now on the statute book as the Senior Managers Regime for banks. The FCA (together with the PRA) has brought forward detailed proposals for the operation of that regime. As the regulator, it should be capable of demonstrating that it is applying standards at least as high to its own senior managers. Mr Davis should have paid closer attention to individual responsibility in reaching his conclusions.

184. In response to recommendations of the Parliamentary Commission on Banking Standards, the FCA and PRA have proposed, as part of the Senior Managers Regime for banks, a ‘Responsibilities Map’: a single document that describes a firm’s management and governance arrangements and allocates specific responsibilities to senior

245 Financial Conduct Authority and Prudential Regulation Authority, Joint Consultation on ‘Strengthening Accountability in Banking’, 30 July 2014, paras 2.67-2.71

246 Financial Conduct Authority and Prudential Regulation Authority, Joint Consultation on ‘Approach to non-executive directors in banking and Solvency II firms & Application of the presumption of responsibility to Senior Managers in banking firms’, February 2015, para 1.2
individuals. The Committee recommends that the FCA, and the PRA, draw up a ‘Responsibilities Map’ which allocates key responsibilities to individuals in their respective organisations. This document should be published. It should be compliant as far as possible with the SMR that the regulators require of banks.

Role of the Board

185. The FCA’s website says that “the FCA Board keeps a close watch on how our business is operating and holds us accountable for the way we work.” 247 A paper adopted by the Board, which describes the corporate governance of the FCA, describes the Board as follows:

The Board is the Governing Body of the FCA. It sets the FCA’s strategic aims and ensures that the necessary financial and human resources are in place for the FCA to meet its statutory objectives. It provides leadership of the organisation within a framework of prudent and effective controls which enables risk to be assessed and managed. It also reviews management performance. The Board sets the FCA’s own behavioural standards, for example through the Code of Conduct and the Corporate Responsibility Policy. 248

This paper lists the different elements of the Board’s role, which include “overseeing the discharge by the executive management of the day to day business of the FCA”, “setting appropriate policies to manage risks to the FCA’s operations and the achievement of its regulatory objectives” and “seeking regular assurance that the system of internal control is effective in managing risks in the manner it has approved”. 249

186. The Board delegates some of its functions to sub-committees. At the time of Simon Davis’s report, these included:

*The FCA’s Audit Committee* (the “Audit Committee”), whose responsibilities include reviewing and providing assurance to the Board on matters including the effectiveness of the FCA’s internal controls. The Audit Committee’s members as at 28 March 2014 were Sir Brian Pomeroy (Chair), Ms Davidson, Mr Harker and Mr McAteer; and

*The Risk Committee*, whose responsibilities include reviewing and exercising oversight of the risks to the FCA’s statutory objectives and making recommendations to the Board in relation to such risks. The Risk

248 FCA, Corporate Governance of the Financial Conduct Authority, published May 2014
249 FCA, Corporate Governance of the Financial Conduct Authority, published May 2014
187. The FCA told Simon Davis that its Audit Committee had approved an audit plan for 2014/15 on 6 March 2014. This plan included, as an item to be reviewed in the period January to March 2015:

Effectiveness of the internal and external communications strategy: This review will focus on the strategic approach to, and the key controls over, internal and external FCA communications including prioritisation of messages and alignment with organisational strategy.

188. We asked Simon Davis whether he had had an opportunity to review the Board’s risk register. He said that he had, but that he was “virtually certain it did not have anything of any relevance” to the events of 27 and 28 March. He told us that he had interviewed the Chair of the Audit Committee, Sir Brian Pomeroy, and that the Audit Committee had:

[...] looked at the internal controls within the UKLA so far as those related to the management of price sensitive information—and that was based, as I understand it, on the starting point that that is the part of the organisation which is most likely to have price-sensitive information regularly coming within it—but that work had not yet taken place in relation to any other areas of the organisation. I have not concluded that this was a failing on the part of the audit committee. What I have said is that the audit committee should now get on with it and look very much at that area.

189. In his oral evidence, Clive Adamson explained to us that risks were not normally discussed by the FCA’s Board. Instead, the Board received an oral report from the Chair of the Risk Committee. He could not recall an incident like that of 27 and 28 March having been identified as a risk. He explained that “the tone and contents of communications and the risks arising from that are embedded in each piece of work, rather than a general risk about tone.” On the question of what lessons could be learned by the FCA from this incident, he believed that “the board did not have sufficient oversight over the control framework in the organisation”. He proposed that “at least the question should be asked whether the board should have more intensive oversight over the executive.”


252 Q 109

253 Q 110

254 Q 183

255 Q 189

256 Q 190
190. Asked for his assessment of the Board’s management, in the light of the events of 27 and 28 March, John Griffith-Jones told us that he considered it to be “unlikely or negligibly possible that the board could have spotted what was about to happen happening”.

Instead, Mr Griffith-Jones considered that the key question was whether the Board was “as effective as we could be or should be around systems and controls and, in particular, around risks.” He acknowledged that, while the Board did have a risk register, “the risk register did not have on it the precise thing that happened.”

He said that the most relevant risk on the risk register was “risk number 1544, which read, “Before the incident, reputation is damaged due to classified information being leaked by employees”.” He conceded, however, that this risk was focused more on “illegitimate use of leaking as opposed to inadvertent use of leaking.”

191. John Griffith-Jones accepted that “the risk register is clearly defective or was defective at that time in this particular locale.” He thought that there were two reasons for this:

One is that as a board it is more difficult to establish what is not there that should be rather than to review what is there and comment on whether it is precisely stated. The fact is it was not there.

The second supporting reason at least that affects my view is I was aware from the day I joined the organisation how much attention was paid to controlling information in the building, not the press part of it but everything else. I was rather aware of a high degree of understanding about price sensitivity, somewhat mistaken as it turns out. The combination of it not being there and a feeling that this was not an area that was underrepresented in importance I suppose gave us a false degree of comfort.

192. Mr Griffith-Jones told us that the Board had conducted a review of its own effectiveness at the end of the FCA’s first year in operation—that is, shortly after the events of 27 and 28 March occurred. He described this as “just the coincidence of timing”. He said that this review had produced, in his view, “a satisfactory answer”.

193. Simon Davis concluded that the FCA’s Board was responsible for the inadequacy of the FCA’s controls on the identification, control and release of price sensitive information. But it is also clear from Mr Davis’s report that the Board of the FCA failed in its oversight of the FCA’s executive and that it failed to identify the risks inherent in
the FCA’s communications strategy—risks that materialised on 27 and 28 March. It is therefore surprising that the Board’s review of its own effectiveness, conducted shortly after this incident, produced what its Chairman described as a “satisfactory answer”. The Board must, as a matter of urgency, commission an external organisation to conduct a review of its practices and effectiveness. This review should consider in particular the Board’s approach to the identification and management of risk. The results of this review should be published.
7 Overall conclusions

194. The events of 27 and 28 March, and the findings of Simon Davis’s investigation, revealed multiple flaws in the FCA’s processes and practices. These failings went right to the top of the organisation, including the Chairman and Chief Executive. Simon Davis found that:

- Procedures within the FCA for identifying and controlling the release of price sensitive information were inadequate and not of the standards that the FCA expects of the firms it regulates;

- The FCA’s communications strategy, and the way in which it was implemented, was “high risk, poorly supervised and inadequately controlled”;

- The FCA itself created a false market in life insurance shares, despite being the markets regulator and containing the UK Listing Authority;

- The FCA had no emergency plan for dealing with an incident of this sort; and

- The FCA’s response to the serious incident on 28 March was “seriously inadequate”. In particular, the Executive Committee failed to react “urgently and effectively on 28 March”.

Overall, the FCA failed to meet the minimum standards that it sets for listed firms.

195. Simon Davis’s report sets out factually what happened in detail. It makes sensible recommendations for improvements to the FCA’s internal processes—which, implemented in full, should go some way towards bringing the FCA into line with the high standards it sets for firms. But Simon Davis himself told us that he had not examined the wider implications of his findings for the FCA and its governance. He said that this was for others to do. This Report considers the extent to which the events of 27 and 28 March 2014 were simply the result of a failure of controls, or whether they might reflect broader problems at the regulator.

196. The FCA accepts that there were multiple failures across the organisation, both in the days and weeks leading up to the publication of the Telegraph’s article and in the period that followed. These failures took place in multiple divisions of the FCA and at senior as well as junior levels. They caused the FCA to breach its own rules. This must be the responsibility of the Executive Committee. Simon Davis concluded that “the system broke down”, and the overall impression left by the multiple failures he identified is of a dysfunctional organisation. In a regulated firm, these failings might lead the FCA to consider whether to initiate ‘special measures’. Using this tool—recommended by the PCBS—the regulator can examine whether individual failings are underpinned by a systemic problem throughout the organisation, and require the firm to take remedial action if this is found to be the case.
197. If the Executive Committee has failed properly to discharge its responsibilities, then the Board has consequently failed in its duty to oversee and challenge the Executive Committee effectively. It is also clear from the evidence that the Board as a whole failed in its duty to identify and manage risk.

198. The events of 27 and 28 March have been a major self-inflicted distraction from the FCA’s core purpose: ensuring that markets work well. It is not clear that the FCA has yet fully grasped the extent of the failings revealed by Simon Davis’s report. To address this:

- The Executive Committee should examine the FCA’s communication methods and poor working relationships between divisions;
- The non-executive members of the Board should investigate whether the FCA has a problem of inadequate sharing of expertise, and whether standards and culture contributed to the events of 27 and 28 March;
- The Board should commission an external review of its own effectiveness, particularly its approach to managing risk; and
- The FCA should produce a ‘Responsibilities Map’, as it expects banks to do, which sets out clearly where senior responsibility lies. The PRA should produce an equivalent document.

Individually, most of these pieces of work, and the remedial proposals of the Davis report, focus on relatively specific questions about the operation of the FCA. Taken together, they amount to an examination of whether the FCA is suffering from a systemic weakness in standards and culture. The FCA should prioritise this work, which is essential for the FCA to be able to assure itself and Parliament that it is not suffering systemic weaknesses. The Committee expects the FCA to publish the results of this work within six months.

199. Since its inception, the FCA has needed to grapple with the legacy of the serious problems it inherited from the FSA. This episode, and the evidence of the Davis report, suggests that the FCA may have a good deal of further work to do fully to address that legacy. The FCA now has an opportunity better to identify the scale of these problems and put them right. By grasping the scale of what remains to be done, the FCA’s leadership will be better placed to be able to use its new powers effectively, to perform its consumer protection function to the highest possible standard, and to develop a much higher level of constructive engagement with industry, which this incident may have prejudiced.

200. Millions of financial services consumers need a robust consumer protection body on which they can rely. It is the role of Parliament to do what it can to ensure that this independent regulator is working well on their behalf. When the FCA has published the results of the work that we have recommended, the Treasury Committee in the next Parliament should consider whether a detailed inquiry into the governance of the FCA,
the effectiveness of its Board, the extent to which it is fulfilling its statutory objectives, and standards and culture throughout the organisation, is necessary.
Conclusions and recommendations

Introduction

1. The work of the FCA affects millions of financial services customers and employees. The FCA also has an important role to play, on behalf of the UK, in international negotiations on financial regulation. It is vital that the public and the industry can have confidence in the regulator. (Paragraph 4)

2. The FCA has a very difficult job. Its remit—which has expanded further since the FCA’s inception in April 2013—includes the protection of consumers, the enhancement of market integrity, and the promotion of competition in financial services. There was merit in creating a regulator with a greater focus on consumer protection. But while the PRA—the FSA’s successor body for prudential regulation—became part of the Bank of England, the FCA retained many of the systems and staff of the FSA. This has made it more difficult for the FCA than the PRA to break the link with the FSA, which had manifestly failed not only to protect the UK from systemic risk, but to regulate conduct effectively. The establishment of new and more effective conduct regulation will take a long time. It is the role of Parliament to scrutinise progress towards this goal. (Paragraph 5)

3. The FCA’s core function is to ensure that markets work well. It contains the UK Listing Authority, which is responsible for ensuring that listed firms comply with the UK Listing Rules. Simon Davis concluded that the FCA’s own actions led to the creation of a false market in life insurance shares on 28 March. This was very serious. The FCA put its own statutory objectives at risk. It is therefore important that the FCA has learned the lessons from what went wrong and that it is taking the right steps to solving the problems exposed by this affair. (Paragraph 6)

4. The FCA’s Board has accepted all of Simon Davis’s conclusions and recommendations, and has begun to make improvements accordingly. Mr Davis’s recommendations were concerned with specific FCA practices and processes. Notwithstanding the breadth of his terms of reference, Mr Davis chose not to draw wider conclusions about the FCA’s culture or the overall effectiveness of its management. In response to questions on these points, he told the Committee that wider issues about the FCA were for others to examine in the light of the evidence that he assembled. The Committee, as the Parliamentary body responsible for scrutinising the work of the FCA, has considered these wider questions. (Paragraph 7)

5. The FCA’s overarching strategic objective is “ensuring that the relevant markets function well”. One of its secondary objectives is “protecting and enhancing the integrity of the UK financial system”, which includes “the orderly operation of the financial markets”. In selectively releasing information to the press about its work, the FCA put these statutory objectives at risk. By effectively breaching its own listing
rules, the FCA itself created a false market in life insurance shares. This is a matter of serious concern. (Paragraph 20)

6. The FCA would have considered this kind of conduct from a listed firm to be a serious failure, and it is reasonable to believe that the FCA might well have imposed a substantial fine on the firm or firms involved. The fact that the FCA failed to meet the high standards it expects of firms put its credibility at risk. (Paragraph 21)

**The independence of Simon Davis’s inquiry**

7. It was misguided of the FCA’s Board initially to announce that the Board itself should conduct the inquiry into the events of 27 and 28 March. The FCA’s statement—released on the evening of 28 March—said that the Board would “conduct an investigation into the FCA’s handling of the issue involving an external law firm”. The fact that the Board, in drafting this statement, did not grasp that it was wrong in principle for the FCA to be seen to be investigating itself is of considerable concern. This was a misjudgment. (Paragraph 26)

8. John Griffith-Jones told the Committee that it was not the Board’s intention that the inquiry should involve the executive. It is clear from his evidence, and from the Board’s minutes, that the Board intended its non-executive members to be involved. This was another misjudgment. On 28 March, the role of the FCA’s Chairman in the events was unclear. Moreover, it should have been transparent to the Board from the outset that its own role—including the role of the non-executives—in what had happened would need to be examined by the inquiry. The FCA Board initially considered that an inquiry with some independent support was sufficient, not recognising the need for demonstrable independence. (Paragraph 27)

9. Following the call from the Chairman of the Treasury Committee on 29 March 2014 for an independent inquiry, the Chancellor wrote to the Chairman of the FCA to say that it was essential that the inquiry should be independent. (Paragraph 28)

10. The original terms of reference for Simon Davis’s inquiry, which were published on 8 April by the FCA, included a clause which stated that the inquiry would be overseen by a committee of the Board’s non-executives, chaired by the Board’s Chairman, John Griffith-Jones. This gave the impression that the non-executives would have control over the final report. John Griffith-Jones told us that this had not been the non-executives’ intention. It is regrettable that the original terms of reference gave this impression. In the event, the FCA removed this clause after its shortcomings were pointed out to John Griffith-Jones. But the fact that the clause was inserted in the first place shows that the non-executive Board members—who might conceivably have been implicated in any criticism of the FCA—had not fully understood that the inquiry had to be, and be seen to be, fully independent. (Paragraph 35)

11. The terms of the protocol produced by the FCA were designed to safeguard the independence of the inquiry and to ensure that there could be no suggestion that the FCA itself had influenced Mr Davis’s conclusions. Mr Davis made a mistake by
sharing his whole report—including his recommendations—in draft with the FCA’s Board. Mr Davis considered that it was necessary for him to do this as part of the Maxwellisation process. However, the Maxwellisation process, as set out in the protocol, was intended to give individuals, groups or organisations criticised by Mr Davis a reasonable opportunity to make representations about those criticisms that related specifically to them. Mr Davis’s recommendations did not contain direct criticism of individuals or groups. The Committee therefore does not accept that it was necessary for Mr Davis to share his recommendations with the Board as part of this process. In sharing them with the FCA’s Board, Mr Davis acted contrary to the purpose of the protocol that had been drawn up by the FCA to protect his own independence. (Paragraph 47)

12. The FCA Board should not have accepted Mr Davis’s invitation to read his report in full. They failed to recognise, and tell Mr Davis, that their doing so was a breach of the spirit of the protocol. (Paragraph 48)

13. In the event, not only did the FCA Board have the opportunity to suggest to Mr Davis that he alter his recommendations; it took that opportunity. This too was an error of judgment by the FCA Board. (Paragraph 49)

14. Regardless of the nature of the representations it intended to make, it should have been obvious to the FCA Board, and particularly to its Chairman, that it was improper to write to Mr Davis about his draft recommendations. This was another reflection of the FCA Board’s lack of understanding of the necessity for Mr Davis’s inquiry to be, and to be seen to be, wholly independent. (Paragraph 50)

The FCA’s approach to communications

15. Communicating with consumers and alerting them to conduct risks is an important aspect of the FCA’s work. It can help to raise consumer awareness, allowing customers to make more informed choices and advancing the FCA’s consumer protection objective. The media can be an effective vehicle for this type of communication, since the messages can generally afford to be simplified as the broad intended audience does not need to be party to great levels of detail. In a similar way, the media can be an effective means of making employees of regulated firms broadly aware of the FCA’s work and aims. (Paragraph 72)

16. However, the media is an inappropriate means of communicating specific regulatory information. Martin Wheatley suggested that part of the FCA’s aim in using the media was to prompt regulated firms, or their individual employees, to take note of the issues the FCA cared about and to take pro-active steps to address the FCA’s concerns. But if that is the effect the FCA seeks, it should communicate its concerns to firms with clarity; this cannot be guaranteed if the media is used as a substitute for direct communication. (Paragraph 73)

17. It is reasonable for the FCA to seek to raise awareness in regulated firms of the conduct issues which it is tackling through rules and regulatory action. But the
intention in using the media for this purpose should be limited to prompting firms and their employees to examine the official publications the FCA has issued elsewhere—for example, specific rules and guidance in the FCA Handbook, or Final Notices of enforcement action. Martin Wheatley has said that the FCA uses the media as a complement to its official communications. The FCA should not use the media as a substitute for its official communications. Email makes direct, targeted communication—even to 72,000 firms—cheap and straightforward. Firms that ignore the FCA’s direct communications should know that they do so at the risk of enforcement action if they fail to comply with its requirements. (Paragraph 74)

18. There is merit in the FCA publicising wrongdoing where it has taken place. The FCA should treat this form of public explanation as an important part of its work. However, in all of its public communications, it should be aware of the risk of creating a misplaced wider antipathy towards the industry among consumers, when most firms may not be culpable of any misconduct. This would be harmful to regulated firms and to the FCA’s objective to protect and enhance the integrity of the UK financial system, and may not be in consumers’ interests. The FCA should take particular note of Simon Davis’s recommendation that it adopt a factual, evidence-based approach to communications, avoiding sensational headlines where possible. (Paragraph 75)

19. The FCA says that it does not set out to generate sensational headlines. Nonetheless, the Practitioner Panel believes there are signs, even after the events of 28 March 2014, that the FCA still judges the success of its communications strategy by the quantity of media coverage, more than the quality of its content. The FCA needs to satisfy itself that this is not the case, in its communications area or any other part of the organisation. If it is not the case, the FCA needs to consider why this damaging perception still exists in the Practitioner Panel, and take steps to address it. The expertise of both the Consumer and the Practitioner Panels needs to be used to better effect. (Paragraph 76)

20. Pre-briefing comes in many different forms. Properly controlled, it can be a useful tool, enabling announcements to be understood and accurately reported by the press. But ‘trailed pre-briefing’—in which journalists are briefed, and allowed to publish stories, on the FCA’s work before the FCA has published an official statement of its own—is unnecessary and ill-advised, whether the briefing given is written or oral. The use of the media as a substitute rather than a supplement for regulatory statements creates much greater scope for misunderstanding or partial communication of the intended message. Only by publishing an official FCA statement at the same time as any pre-briefed article can the FCA reasonably expect to avoid the risk of miscommunication. (Paragraph 96)

21. Simon Davis said that he was not convinced of the need for the FCA to conduct trailed pre-briefings, and that the FCA should better control the process if it wished to continue. The FCA has told the Committee that it intends to refrain from this particular type of pre-briefing altogether; the Committee welcomes this decision.
However, the FCA has not ruled out giving ‘exclusives’ to individual journalists, which may be published at a time of the journalist’s choosing. The FCA has not made clear what the subject of such exclusives might be. It should confirm that it will not in future use exclusives to brief the media on forthcoming FCA announcements without publishing an official statement of its own. (Paragraph 97)

22. Martin Wheatley told the Committee that the FCA would not pre-brief information that it thought was price sensitive. The danger, however, is that even announcements that do not appear to be price sensitive can become so if they are handled incorrectly—a lesson which Clive Adamson told the Committee he had learned from the events of 28 March. (Paragraph 98)

23. Witnesses told us that the FCA’s pre-briefing to the Telegraph on the Life Insurance Review was not in itself price-sensitive. It contained some broad information about the review, including that the FCA would collect information on exit fees—penalty charges for long-standing policy-holders seeking to switch insurance providers—to “understand if it is an area in which we need to intervene”. The briefing also said that there were 30 million long-standing policies of the sort the FCA would consider. However, in handing over control of the presentation of this information to the Telegraph, the FCA gave the newspaper—in the words of Mr Davis—“the leg-up to speculate […] beyond the pure facts” on what possible regulatory responses at the conclusion of the review might be. In the event, the Telegraph article suggested that the FCA might ban exit fees, and that the review would be an “inquiry into 30 million policies”. This proved to be highly market sensitive. The FCA did not brief the Telegraph explicitly that it might ban exit fees or that it would examine 30 million individual policies. Nonetheless, it was reasonable of the Telegraph journalist—on the basis of the briefing given—to have speculated in this way. The result was a misrepresentation of the scope of the review. This misrepresentation, which prompted the share price movements on 28 March 2014, was inadvertently facilitated by the FCA’s briefing approach. It was not caused by poor journalism; nor did Mr Davis criticise the Telegraph in his report. (Paragraph 99)

24. If the FCA is to avoid similar events in future, it must not only take more care to identify price-sensitive announcements, but consider how its briefing strategy could lead to non-price-sensitive releases becoming price-sensitive. It is not clear to the Committee, in the light of Mr Wheatley’s evidence, that the FCA has understood this important distinction. The FCA’s Executive Committee should conduct, and publish, a review of its communication methods to reassure Parliament, the regulated community and the public that it has grasped this important point, which Clive Adamson and others have made. (Paragraph 100)

25. Martin Wheatley did not accept that the FCA’s communications strategy was to blame for the events of 27 and 28 March. However, the FCA’s Practitioner Panel believed that what happened was an “unavoidable consequence of the direction of travel of the FCA’s media policy”. The Practitioner Panel was right to draw attention to the risks involved in the FCA’s communications strategy. This strategy made the
Press briefing of the FCA’s Business Plan for 2014/15

events of 27 and 28 March 2014 not just possible, but likely—one of its principal aims was to ensure that FCA communications reached a large audience through media coverage, and this media coverage was secured in part by the FCA handing more control to journalists over FCA announcements than was appropriate for a regulator. This inevitably increased the risk of the FCA’s intended message being lost. It is incorrect to claim, as Martin Wheatley has done, that the communications strategy was not in some way to blame for the events of 28 March 2014. The Committee is concerned that Mr Wheatley still does not acknowledge this. (Paragraph 108)

Failures of oversight and co-ordination at the FCA

26. The fact that care must be taken in communications, to prevent them from having unintended market effects, should be an overriding principle for any regulator—particularly so for one including the UK Listing Authority. It should be far more prominent in the regulator’s consideration of its communications strategy than the pursuit of media coverage. But, in the FCA’s case, it was not. (Paragraph 118)

27. Martin Wheatley told the Committee that members of the FCA’s Executive Committee were as involved as they needed to be in the FCA communications strategy, yet the risk of the FCA’s communications having an unintended price-sensitive effect was never discussed. Ms McMillan and Mr Wheatley told us that no discussion was necessary—the former because it was assumed that members were aware that the regulator’s communications could be price sensitive, and the latter because the FCA never planned to pre-brief sensitive information. The events of 27 and 28 March showed that these assumptions were misplaced. (Paragraph 119)

28. Mr Davis described various aspects of the Executive Committee’s handling of the pre-briefing strategy—its lack of clarity about decision-making, its lack of consideration of any possible risks, and the lack of any agreement about the circumstances in which pre-briefing was appropriate—as “serious concerns”. Taken together, they demonstrate a serious failure of the Executive Committee’s control of the pre-briefing strategy. The Committee has also considered, however, whether this incident indicates a broader failure by Executive Committee members to consider the implications of the FCA’s communications strategy for the FCA’s objectives. (Paragraph 120)

29. The evidence of the Davis report has demonstrated that the individual members of the Executive Committee had all of the information they needed in order to engage in a full discussion of the FCA’s communications strategy and its operation. Executive Committee members had discussed by email in March 2014 the risks of price-sensitive information being briefed to the press, and most were aware that the FCA conducted pre-briefings. But these individual points—which together highlighted risks in the strategy of using the media to communicate with firms, and handing editorial control to the media to secure that coverage—were never put
together. A full discussion of the risks implied by the strategy never took place. (Paragraph 121)

30. Had the Executive Committee fully considered the FCA’s communications strategy, it might have realised that it involved risks to the FCA’s statutory role in respect of price transparency and the orderly operation of the financial markets. These risks might then have been better controlled. Instead, it appears that the Executive Committee merely ‘rubber-stamped’ the communications strategy. In doing so, it failed to engage fully in the question of how the FCA should use communications in a way that helped to advance its objectives—or was at the very least consistent with them. This was a serious failure by the FCA’s most senior managers. (Paragraph 122)

31. Since 2001, the UK Listing Authority has formed part of the FCA or its predecessor the FSA. The FCA is therefore the UK’s primary repository of expertise on listing requirements and the importance of clear communication to the market. This expertise seems to have been wholly absent from the FCA’s consideration of the pre-briefing strategy. (Paragraph 131)

32. Simon Davis concluded that the FCA’s procedures in respect of price sensitive information were “inadequate and not of the standard which the FCA expects of those it regulates”. Mr Davis’s report makes clear that on some of the most important issues on which the FCA imposes guidance on firms, it imposed no guidance on itself. In particular, there were no policies consistent with the guidance the FCA issues for regulated firms on the handling of price sensitive information, no guidance designed to help staff to identify price-sensitive information, and no relevant training provided to employees. Worse still, such limited controls as did exist were not adhered to strictly. Were a regulated firm to have behaved similarly, the FCA would—rightly—have considered it a serious omission. For a regulator to have behaved in this way was serious. For a regulator containing the UK Listing Authority, it was shocking. This was a case of ‘do as I say, not as I do’. (Paragraph 132)

33. Mr Davis recommended several improvements to controls over price-sensitive information, which the FCA has since made a commitment to implement. But the Committee has seen no evidence to suggest that the FCA has assessed the wider question of whether there might be a problem of culture, rather than just controls—of a failure to share expertise across the different areas of the organisation. This sort of failing could have been mitigated by proper discussion at the Executive Committee—the forum at which the constituent parts of the FCA come together—of the risks involved in the FCA’s communications strategy and their possible implications for the FCA’s objectives. As noted, no such discussion took place. (Paragraph 133)

34. The expertise of the UK Listing Authority was not only absent from the FCA’s consideration of the communications strategy. On the morning of 28 March, Clive Adamson and Zitah McMillan both failed to consult the UKLA when they became
aware that the Telegraph article had given a misleading impression to the market. Supervision and communications staff also failed to consult UKLA when they began to issue ad hoc clarifications to the press and the industry about the scope of the Life Insurance Review. In the event, the problem was brought to the attention of the Head of the UKLA by his own staff, who had observed the movements in share prices. It was not until 12.02pm on 28 March that the Head of the UKLA was provided with all of the information he needed to advise Martin Wheatley that the FCA should immediately issue an official clarifying statement. (Paragraph 134)

35. The non-executive members of the FCA Board should assess the extent to which the FCA may suffer from a culture of working in silos and of inadequate information sharing. It should take steps to ensure that staff at all levels across the organisation have a good knowledge of the objectives of other divisions of the regulator, and some familiarity with the areas of expertise of those divisions. Otherwise, incidents such as those on 27 and 28 March, in which one area of the FCA unwittingly acted in a manner harmful to the objectives of another area, will be likely to occur again. (Paragraph 135)

36. The events of 28 March were in part the result of a series of significant control failures in the FCA communications division. Mr Davis describes these failures—including the unauthorised attribution of quotations in the Telegraph article to Clive Adamson, the failure to record the telephone interview with the Telegraph, and the apparent confusion within the communications area as to whether this last failure was standard FCA practice—in detail. Mr Davis suggests a number of procedural remedies for these failures. (Paragraph 144)

37. The problems in the FCA’s communications area revealed by this episode appear to range far wider than points of procedure. Evidence in Mr Davis’s report left the impression that there were shortcomings of standards and culture in the FCA’s communications division. Staff in supervision described the communications team as putting “a lot of pressure” on them to pre-brief the Life Insurance Review to the Telegraph, even though the supervisors themselves considered this to be risky. Other exchanges show supervision staff raising concerns about the tone of draft press releases, and the communications area resisting their suggested changes to those drafts. Simon Davis did not draw any conclusions from this about the culture of the FCA, and did not propose any remedies. (Paragraph 145)

38. The communications area of an organisation will, and should, contain staff who are skilled at conveying messages to various different audiences. These staff should advise the other divisions of the FCA on how best to communicate their work. But they should not seek to override the expert views of these areas—supervision, markets and enforcement—when those areas are more familiar with the substance of the work, its likely effect on the industry and the market, and the risks involved. This should be the case at all levels of the FCA, and should be reflected in interactions between junior supervision and media staff, as well as between Executive Committee members. The FCA’s Executive Committee needs to satisfy itself that the working
relationship between the communications area and other areas of the FCA is appropriate, and take action to address this if it is not. (Paragraph 146)

39. Simon Davis concluded that there was “a failure of co-ordination between the senior executives at the FCA” on 28 March, and a “lack of the urgent actions that the FCA would expect of a listed company in similar circumstances”. The incident could have been resolved much more quickly—thus avoiding some of the damage suffered in the life insurance market—if senior executives had shared information with each other and come together quickly to agree a response. Instead, the delay of six hours before a corrective statement was issued caused damage to the credibility and reputation of the FCA. (Paragraph 158)

40. Simon Davis found that the FCA did not have a plan for dealing with a situation such as that which arose on 28 March. The lack of any formal contingency plan for dealing with this kind of emergency situation was a serious failure of the FCA’s management. An emergency plan to bring together the FCA’s leadership in response to such a major event should have been considered a basic requirement. The Committee welcomes the FCA’s acceptance of Mr Davis’s recommendation that a formal plan should be put in place. (Paragraph 159)

41. In addition, as Simon Davis concludes, senior executives should not have needed a formal emergency plan in order to co-ordinate their response to the events of 28 March. This is not least because the FCA’s over-arching strategic objective to ensure that the relevant markets function well should have already focused senior staff on such a serious market-moving incident. The fact that this did not happen may or may not suggest a problem with standards and culture within the FCA, with even the Executive Committee failing to take sufficient initiative in response to a crisis or to keep the FCA’s objectives fully in mind when deciding on a course of action. The non-executive members of the FCA Board should investigate further to establish whether this is the case and, if so, what the remedy should be. (Paragraph 160)

The FCA’s response to the Davis report

42. The FCA made no mention of Simon Davis’s investigation when it announced its new strategic approach, and a major restructuring, just two days before it published Mr Davis’s report. The FCA controlled the publication date in both cases. (Paragraph 173)

43. The conclusions of the FCA’s strategic review have the appearance of being rushed out in an attempt to mitigate the effect of the publication of the Davis report on the FCA’s reputation. John Griffith-Jones acknowledged in evidence to the Committee that the new strategic approach would not have been published so quickly had it not been for the departure of senior individuals. The restructuring involved the departures of Mr Adamson and Ms McMillan—two people heavily involved in the pre-briefing incident. This compounded the awkward impression that a contrived media-handling operation was being rolled out: Mr Adamson and Ms McMillan
were being made to take the blame for the pre-briefing incident, while the FCA was able to deny that this was the case. (Paragraph 174)

44. The FCA published very little explanation of the reasons for the structural changes it was making—just a press release and an 8-page document addressed to FCA staff. Witnesses from industries regulated by the FCA, or who advised regulated firms, told the Committee that they were still getting to grips with the changes that were announced. The FCA consulted neither its statutory Practitioner Panels nor the public and the industry as a whole. The FCA should now publish a full explanation for the changes it has made. In particular, it should explain in detail its reasons for removing the post of Communications Director from its Executive Committee, in the light of the concerns expressed by Zitah McMillan about this change. (Paragraph 175)

Regulating the regulator

45. Simon Davis reached conclusions about the responsibility of certain individuals for the events of the 27 and 28 March. However, it is not clear from his report where individual responsibility lies for the failures of the FCA’s Executive Committee and Board. Instead, he concludes that the Board and the Executive Committee are collectively responsible for their respective failures. This is a well-rehearsed and unfortunate mantra. The Committee has heard it often from regulated firms, and particularly banks. One of the key conclusions of the Parliamentary Commission on Banking Standards was that “a buck that does not stop with an individual stops nowhere”. The Commission made recommendations intended to establish beyond doubt where individual responsibility lies at the very top of banks, which are now on the statute book as the Senior Managers Regime for banks. The FCA (together with the PRA) has brought forward detailed proposals for the operation of that regime. As the regulator, it should be capable of demonstrating that it is applying standards at least as high to its own senior managers. Mr Davis should have paid closer attention to individual responsibility in reaching his conclusions. (Paragraph 183)

46. In response to recommendations of the Parliamentary Commission on Banking Standards, the FCA and PRA have proposed, as part of the Senior Managers Regime for banks, a ‘Responsibilities Map’: a single document that describes a firm’s management and governance arrangements and allocates specific responsibilities to senior individuals. The Committee recommends that the FCA, and the PRA, draw up a ‘Responsibilities Map’ which allocates key responsibilities to individuals in their respective organisations. This document should be published. It should be compliant as far as possible with the SMR that the regulators require of banks. (Paragraph 184)

47. Simon Davis concluded that the FCA’s Board was responsible for the inadequacy of the FCA’s controls on the identification, control and release of price sensitive information. But it is also clear from Mr Davis’s report that the Board of the FCA failed in its oversight of the FCA’s executive and that it failed to identify the risks inherent in the FCA’s communications strategy—risks that materialised on 27 and 28 March. It is therefore surprising that the Board’s review of its own effectiveness,
conducted shortly after this incident, produced what its Chairman described as a “satisfactory answer”. The Board must, as a matter of urgency, commission an external organisation to conduct a review of its practices and effectiveness. This review should consider in particular the Board’s approach to the identification and management of risk. The results of this review should be published. (Paragraph 193)

**Overall conclusions**

48. The events of 27 and 28 March, and the findings of Simon Davis’s investigation, revealed multiple flaws in the FCA’s processes and practices. These failings went right to the top of the organisation, including the Chairman and Chief Executive. Simon Davis found that:

- Procedures within the FCA for identifying and controlling the release of price sensitive information were inadequate and not of the standards that the FCA expects of the firms it regulates;

- The FCA’s communications strategy, and the way in which it was implemented, was “high risk, poorly supervised and inadequately controlled”;

- The FCA itself created a false market in life insurance shares, despite being the markets regulator and containing the UK Listing Authority;

- The FCA had no emergency plan for dealing with an incident of this sort; and

- The FCA’s response to the serious incident on 28 March was “seriously inadequate”. In particular, the Executive Committee failed to react “urgently and effectively on 28 March”.

Overall, the FCA failed to meet the minimum standards that it sets for listed firms. (Paragraph 194)

49. Simon Davis’s report sets out factually what happened in detail. It makes sensible recommendations for improvements to the FCA’s internal processes—which, implemented in full, should go some way towards bringing the FCA into line with the high standards it sets for firms. But Simon Davis himself told us that he had not examined the wider implications of his findings for the FCA and its governance. He said that this was for others to do. This Report considers the extent to which the events of 27 and 28 March 2014 were simply the result of a failure of controls, or whether they might reflect broader problems at the regulator. (Paragraph 195)

50. The FCA accepts that there were multiple failures across the organisation, both in the days and weeks leading up to the publication of the Telegraph’s article and in the period that followed. These failures took place in multiple divisions of the FCA and at senior as well as junior levels. They caused the FCA to breach its own rules. This must be the responsibility of the Executive Committee. Simon Davis concluded that
“the system broke down”, and the overall impression left by the multiple failures he identified is of a dysfunctional organisation. In a regulated firm, these failings might lead the FCA to consider whether to initiate ‘special measures’. Using this tool—recommended by the PCBS—the regulator can examine whether individual failings are underpinned by a systemic problem throughout the organisation, and require the firm to take remedial action if this is found to be the case. (Paragraph 196)

51. If the Executive Committee has failed properly to discharge its responsibilities, then the Board has consequently failed in its duty to oversee and challenge the Executive Committee effectively. It is also clear from the evidence that the Board as a whole failed in its duty to identify and manage risk. (Paragraph 197)

52. The events of 27 and 28 March have been a major self-inflicted distraction from the FCA’s core purpose: ensuring that markets work well. It is not clear that the FCA has yet fully grasped the extent of the failings revealed by Simon Davis’s report. To address this:

- The Executive Committee should examine the FCA’s communication methods and poor working relationships between divisions;
- The non-executive members of the Board should investigate whether the FCA has a problem of inadequate sharing of expertise, and whether standards and culture contributed to the events of 27 and 28 March;
- The Board should commission an external review of its own effectiveness, particularly its approach to managing risk; and
- The FCA should produce a ‘Responsibilities Map’, as it expects banks to do, which sets out clearly where senior responsibility lies. The PRA should produce an equivalent document.

Individually, most of these pieces of work, and the remedial proposals of the Davis report, focus on relatively specific questions about the operation of the FCA. Taken together, they amount to an examination of whether the FCA is suffering from a systemic weakness in standards and culture. The FCA should prioritise this work, which is essential for the FCA to be able to assure itself and Parliament that it is not suffering systemic weaknesses. The Committee expects the FCA to publish the results of this work within six months. (Paragraph 198)

53. Since its inception, the FCA has needed to grapple with the legacy of the serious problems it inherited from the FSA. This episode, and the evidence of the Davis report, suggests that the FCA may have a good deal of further work to do fully to address that legacy. The FCA now has an opportunity better to identify the scale of these problems and put them right. By grasping the scale of what remains to be done, the FCA’s leadership will be better placed to be able to use its new powers effectively, to perform its consumer protection function to the highest possible standard, and to develop a much higher level of constructive engagement with industry, which this incident may have prejudiced. (Paragraph 199)
54. Millions of financial services consumers need a robust consumer protection body on which they can rely. It is the role of Parliament to do what it can to ensure that this independent regulator is working well on their behalf. When the FCA has published the results of the work that we have recommended, the Treasury Committee in the next Parliament should consider whether a detailed inquiry into the governance of the FCA, the effectiveness of its Board, the extent to which it is fulfilling its statutory objectives, and standards and culture throughout the organisation, is necessary. (Paragraph 200)
Draft Report (Press briefing of the FCA’s Business Plan for 2014/15), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 200 read and agreed to.

Resolved, That the Report be the Thirteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for publication on the internet.

[Adjourned till Monday 23 March at 4.00 pm]
Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at www.parliament.uk/treascom.

**Wednesday 10 December 2014**

Simon Davis, Clifford Chance  
*Question number: Q1-118*

**Tuesday 16 December 2014**

Clive Adamson, Director of Supervision, Financial Conduct Authority  
*Question number: Q119-201*

Zitah McMillan, Director of Communications and International, Financial Conduct Authority  
*Question number: Q202-271*

**Wednesday 7 January 2015**

James Palmer, Herbert Smith Freehills and Chairman, Listing Authority Advisory Panel, and Otto Thoresen, Director General, Association of British Insurers  
*Question number: Q272-366*

Graham Beale, Chairman, Practitioner Panel, Andrew Turberville Smith, Chairman, Smaller Business Practitioner Panel, and Paul Swann, Chairman, Markets Practitioner Panel, Financial Conduct Authority  
*Question number: Q367-411*

**Tuesday 27 January 2015**

John Griffith-Jones, Chairman, and Martin Wheatley, Chief Executive, Financial Conduct Authority  
*Question number: Q412-584*
Published written evidence

The following written evidence was received and can be viewed on the Committee’s inquiry web page at www.parliament.uk/treascom.

1 Andrew Tyrie MP (PRE0015)
2 Bank Of England (PRE0008)
3 Clive Adamson (PRE0004)
4 Financial Conduct Authority Communications Strategy (PRE0003)
5 Financial Conduct Authority (PRE0009)
6 Financial Conduct Authority Statutory Practitioner Panel Chairs (PRE0005)
7 Graham Beale, Chairman, Financial Conduct Authority Practitioner Panel (PRE0006)
8 Graham Beale, Chairman, Financial Conduct Authority Practitioner Panel (PRE0011)
9 Graham Beale, Financial Conduct Authority Practitioner Panel (PRE0001)
10 James Palmer, Partner, Herbert Smith Freehills and Chairman, Listing Authority Advisory Panel (PRE0007)
11 John Griffith-Jones, Chairman, Financial Conduct Authority (PRE0010)
12 John Griffith-Jones, Chairman, Financial Conduct Authority (PRE0012)
13 John Griffith-Jones, Chairman, Financial Conduct Authority (PRE0013)
14 Martin Wheatley, Chief Executive, Financial Conduct Authority (PRE0014)
15 Zitah McMillan (PRE0002)
List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee’s website at www.parliament.uk/treascom.

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