HIGHLY SENSITIVE

Report of the Inquiry into the events of 27/28 March 2014 relating to the press briefing of information in the Financial Conduct Authority's 2014/15 Business Plan

Simon Davis

Clifford Chance LLP

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CHAPTER 1

1. BACKGROUND TO THE INQUIRY

1.1 The immediate background to this Inquiry is as follows:

1.1.1 At 10.00 pm on Thursday 27 March 2014, having been briefed by the FCA in advance on an exclusive basis, *The Telegraph*[1] published an article on the front page of its online edition, under the headline "*Savers locked into 'rip-off' pensions and investments may be free to exit, regulators will say*."[2] The article reported that the FCA's Business Plan for 2014/2015 (the "**Business Plan**") (to be published the following Monday 31 March 2014) would include an inquiry into 30 million policies that had been sold by insurance companies between the 1970s and the year 2000. Clive Adamson, the FCA Director of Supervision, was quoted extensively in the article. For example, the article included the sentence "*Banning exit fees on old pension policies would be one of the strongest actions the FCA could take, Mr Adamson said.*"

1.1.2 The article appeared on the front page of the print edition of *The Telegraph* the following morning, under the revised heading "*Better deal for millions of savers*", repeating that the FCA was planning an inquiry into 30 million policies and stating that "*Savers locked into rip-off pensions and investments could be given a free exit or moved to better deals, regulators will say next week.*"

1.1.3 When the London financial markets opened for trading on 28 March 2014, the shares in a number of companies which specialise in pools of potentially affected insurance policies fell in value substantially.

1.1.4 The FCA issued a statement at 2.27 pm via the Regulatory News Service of the London Stock Exchange (the "**RNS**") and on its website, under the heading "*FCA statement on fair treatment of long-standing customers in life assurance*" explaining, among other things that "*The work on fair treatment of long-standing customers in life insurance is a supervisory piece of work*" and "*We are not planning to individually review 30million policies, nor do we intend to look at removing exit fees from those policies providing they were compliant at the time. This is not a review of the sales practices for these*

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[1] In this report, we use the term "*The Telegraph*" to refer to both the online edition, www.telegraph.co.uk and the print edition, The Daily Telegraph.

[2] *The Telegraph*, http://www.telegraph.co.uk/finance/personalfinance/pensions/10728440/Savers-locked-into-rip-off-pensions-and-investments-may-be-free-to-exit-regulators-will-say.html.

legacy customers and we are not looking at applying current standards retrospectively – for example on exit charges."

1.1.5 The price in the shares of the affected insurance companies recovered to a significant extent following this announcement, but not entirely.

1.2 The seriousness of these events was such that five insurance companies, Legal & General Group Plc, Phoenix Group Holdings, Aviva PLC, Partnership Assurance Group PLC and Resolution Limited, issued their own statements via the RNS on 28 March 2014. By way of example only, the first paragraph of the statement from Legal & General Group Plc at 12.43 pm on 28 March 2014 stated that:

> "*Legal & General notes media speculation about the FCA's potential review of the charging basis for legacy back books. We expect further, official clarification from the FCA when it publishes its business plan, and in view of today's disorderly market we are requesting that the FCA bring forward the publication of the plan.*"

1.3 The Business Plan was published by the FCA at 7.00 am on Monday 31 March 2014. At page 20, it stated under the heading "*Fair treatment of long-standing customers in life insurance*":

> "*We will assess whether firms are operating historic (often termed 'legacy' or 'heritage') products in a fair way and whether they have adopted strategies that exploit existing customers.*"

1.4 At page 35, in a section dealing with potential risks to the FCA's objectives, the FCA summarised the thematic review (referred to in this Report as the "**Life Insurance Review**") as follows, under the heading "*Large back books may lead firms to act against their existing customers' best interests*":

> "*Firms with large back books could take advantage of consumer inertia and make it difficult for them to switch, or not be clear about pricing, charging or different product options.*
>
> *Firms may use the value they get from existing customers to support low rates and introductory offers for new customers. So they may not offer existing customers the best or most appropriate rates and products.*
>
> *Some consumers may become trapped in unclear contracts and complex charging systems, leading to them paying higher rates or buying or retaining unwanted products through targeted sales. Where consumers hold legacy products, which are no longer widely available from other providers, there is*

a higher risk that they pay more due to their inability to switch. If customers do not or cannot switch, firms are not incentivised to compete or develop new products.

In 2014/15, we will look into whether life insurance firms are operating historic (often termed 'legacy' or 'heritage') products in a fair way and whether they have adopted strategies that are not in the best interests of existing customers."

1.5 The Business Plan was accompanied by a press release from the FCA under the heading "*FCA shines spotlight on emerging risks*", cross-referring to the accompanying Risk Outlook for 2014/2015 (the "**CRO**") and describing one of seven forward looking areas of focus to be:

> "*Firms with large* ***numbers of existing customers (back books)*** *have an incentive to act against their best interests, particularly where consumers don't often switch between products or accounts. For example, large firms may take advantage of big data to re-price products or change terms and conditions, or cross-subsidise products for new consumers to undermine competition...*
>
> *Consumers may get a poor deal from complex, opaque or overpriced* ***retirement income products****, with hidden charges or fees that make it difficult to compare options across the market. Costly exit fees may mean consumers remain trapped in poor value products.*" [Original emphasis.]

1.6 There was no significant movement in the share prices of the relevant insurance companies following the issue of the press release or the publication of the Business Plan on Monday 31 March 2014.

CHAPTER 2

2. THE INQUIRY AND TERMS OF REFERENCE

2.1 The Non-Executive Directors (the "**NEDs**") of the FCA appointed me and my firm, Clifford Chance LLP, to conduct an independent inquiry into the events of Thursday 27 March and Friday 28 March 2014 relating to the press briefing of information in the FCA's Business Plan (the "**Inquiry**").

2.2 The Terms of Reference of the Inquiry[3] state that I am to address the following questions and issues:

"*4. Business Plan*

(a) Was there an appreciation that the Business Plan could contain information that was price-sensitive;

(b) What was the process for selecting the items on which press briefings would be made.

5. Press Briefing

(a) Why and with whose knowledge and authorisation was this briefing given, particularly to a single journalist;

(b) What was communicated to the journalist;

(c) Were other briefings made and if so, how were these reported;

(d) Was the content of any briefing appropriate and did it go further than the agreed line;

(e) Was the briefing consistent with any internal guidance available to FCA staff or with previous practice, and who authorised such guidance or practice;

(f) To what extent this specific briefing is an isolated exception. If not, does this represent more general practice at the FCA, who authorised this approach and why.

6. Handling of Price-Sensitive Information

3 Available online at: http://www.fca.org.uk/your-fca/documents/inquiry-terms-of-reference

(a) *What procedures exist to identify and control the release of price-sensitive information;*

(b) *What process was or should have been followed to confirm whether or not the information was likely to be price-sensitive.*

7. *Friday 28 March*

(a) *How and when did the FCA first become aware of a problem;*

(b) *How was this communicated to the Executive/Board/other relevant persons in the organisation;*

(c) *How was the FCA's reaction determined;*

(d) *Why the FCA's clarificatory statement was issued so late during the day after the story was published, rather than Thursday night;*

(e) *What exchanges (particularly any involving price-sensitive information) took place with individual regulated firms or other market participants before the clarificatory statement was issued and who authorised the exchanges;*

(f) *Whether a false or disorderly market was present during this period;*

(g) *Does the FCA have an emergency action plan for situations such as this and if so, was it followed.*

8. *For the future*

(a) *What lessons these events hold for the FCA's approach to security around any draft Business Plan;*

(b) *What lessons these events hold for the FCA's approach to publicity and the media;*

(c) *Where senior accountability should lie*".

2.3 The Terms of Reference provide also that I can examine any other matters I might reasonably consider relevant and make such recommendations as I see fit. As will be apparent from the contents of this Report, in practice this has meant that I have investigated the origins of the events of 27 March and 28 March 2014, rather than limiting myself to the events in question. This approach has not only assisted me in assessing relevant events in their appropriate context but has contributed substantially to the recommendations I make for the future, with a view to avoiding a repetition of these events.

2.4 The Terms of Reference were approved by the FCA Board, shared with HM Treasury and the House of Commons Treasury Select Committee (the "**TSC**"), and published on 2 May 2014.

2.5 This Report contains the findings of the Inquiry. Its contents are based on documents and information provided by the FCA and third parties. Information and documents were provided by the FCA pursuant to a Protocol approved by the FCA Board, which was shared with the Treasury and the TSC and published on 2 May 2014 (the "**Protocol**"). A copy of the Protocol is included in the Annex to this Report.

2.6 As contemplated by the Terms of Reference and the Protocol, those potentially criticised in this Report, including the FCA, have been given a reasonable opportunity to make representations in relation to such criticisms and those responses were considered by me prior to this Report being produced. As set out in the Protocol, at Clause 21, this Report does not name FCA personnel below the level of Head of Department, but I have identified such personnel to the NEDs. Such individuals are identified in this Report by reference to their role within the FCA.

CHAPTER 3

3. INTRODUCTION

3.1 As said by the Chancellor in his letter to the FCA's Chairman, John Griffith-Jones, on 1 April 2014:

> "*These events go to the heart of the FCA's responsibility for the integrity and good order of UK financial markets, and have been damaging both to the FCA as an institution and to UK's reputation for regulatory stability and competence.*"[4]

3.2 With this firmly in mind, I have conducted an independent inquiry, adopting a thorough and forensic approach to the events in question, in order to give clear answers to the key questions: "*What happened?*", "*Who was at fault?*" and "*How can a repetition be avoided?*"

3.3 I have interviewed personally:

(a) former senior executives of the Financial Services Authority (the "**FSA**");

(b) members of the FCA Board;

(c) members of the FCA Executive Committee (the "**ExCo**");

(d) representatives from five insurance companies;

(e) present and former employees of the FCA;

(f) representatives from the Association of British Insurers (the "**ABI**");

(g) the Chairpersons of the FCA Statutory Panels;

(h) the Chief Executive of the Prudential Regulation Authority (the "**PRA**");

(i) a representative of HM Treasury; and

(j) the Chairman of the TSC.

3.4 My team and I have reviewed over 40,000 paper and electronic documents. As I have been assisted throughout this Inquiry by my team, during the remainder of this Report

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[4] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299877/document2014-04-01-095652.pdf

I shall use the term 'we' rather than 'I' when referring to the conduct of this Inquiry and our conclusions.

3.5 We have been given full co-operation by the FCA, and assisted throughout by the FCA's Internal Audit department ("**Internal Audit**"), led by the Director of Internal Audit, Lalitha Henry.

A note on terminology used in this Report

The meaning of "price-sensitive information"

3.6 We have been asked to consider the extent to which there was an appreciation within the FCA that the Business Plan could contain information that was "*price-sensitive*". We have also been asked to consider what procedures exist within the FCA to identify and control the release of "*price-sensitive information*", what the process was or should have been to confirm whether or not the information given to *The Telegraph* was likely to be "*price-sensitive*", and what exchanges took place (particularly involving "*price-sensitive information*") with individual regulated firms or other market participants prior to 2.27 pm on 28 March 2014.[5]

3.7 In order to answer these questions it is necessary first to consider what is meant by the term "*price-sensitive information*". It is instructive in that context to consider references to that term in relevant legislation, as well as internal documents within the FCA.

3.8 The term is used in the context of the insider dealing regime set out in Part V of the Criminal Justice Act 1993 (the "**CJA**"). The CJA creates offences related to dealing in securities whilst in possession of "*inside information*", which is defined in section 56 as information that:

3.8.1 relates to particular securities or to a particular issuer(s) of securities and not to securities generally or issuers of securities generally;

3.8.2 is specific or precise;

3.8.3 has not been made public; and

3.8.4 if it were made public, would be likely to have a significant effect on the price of any securities.

[5] Clauses 4(a), 6(a), 6(b) and 7(c) of the Terms of Reference.

3.9 The CJA provides in section 53 that no offence is committed where dealing in securities whilst in possession of "*inside information*" was not expected to result in a profit attributable to the fact that the inside information in question was "*price-sensitive*". The CJA states in section 56(2) that "*inside information*" is "*price-sensitive information*" in relation to securities, if and only if the information would, if made public, be likely to have a significant effect on the price of the securities.

3.10 In the context of the market abuse regime set out in the FCA Handbook and under Part VIII of the Financial Services and Markets Act 2000 ("**FSMA**"), the term "*price-sensitive information*" is not used. In that context, there are prohibitions related to the misuse of "*inside information*", which is defined in section 118C(2) of FSMA as "*information of a precise nature*", which:

3.10.1 is not generally available;

3.10.2 relates directly or indirectly to one or more issuers of qualifying investments or to one or more qualifying investments; and

3.10.3 would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments.

3.11 Section 118C(6) of FSMA clarifies that "*Information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.*"

3.12 Section 118(4) of FSMA contains a separate prohibition against the misuse of "*information which is not generally available to those using the market but which, if available to a regular user of the market, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in qualifying investments should be effected.*"

3.13 The FCA's Employee Handbook as at March 2014 (described further below in Chapter 7) defines information subject to "*Controlled Distribution*" as information the unauthorised disclosure of which "*could cause severe and long-term damage to the organisation or to a firm, would represent a breach of our obligations under FSMA, or could cause a movement in market prices (and might therefore be used for 'insider trading').*"[6]

3.14 Consistent with this definition, the term most commonly used within the FCA, as appears from the contemporaneous documentation, and confirmed by interviewees, is

6 FCA Employee Handbook, page 191, http://www.fca.org.uk/static/fca/documents/staff/fca-employee-handbook.pdf.

whether information is "*market-sensitive*". Interviewees interpreted this term in a number of different ways, but in essence used the term to mean information not publicly available and which, if it were available, could affect share prices.

3.15 For the purposes of this Report, we consider it appropriate to give price-sensitive information the same definition as "*inside information*" as used in the market abuse regime. We therefore define "*price-sensitive information*" in summary as information of a precise nature, that is not generally available, and which, if it were available, would be likely to have a significant effect on the price of relevant securities.

The meaning of "a false or disorderly market"

3.16 We have also been asked to consider the extent to which, in the period following the publication of *The Telegraph* article, a "*false or disorderly market*" was present.

3.17 While the terms "*false*" and "*disorderly*" are used often by market participants and the media, and also appear on various occasions in the regulatory framework, neither term is defined in that context.

3.18 For example, Premium Listing Principle 6 in the FCA Handbook 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*", but the words "*a false market*" are not defined.

3.19 In addition, the FCA has given guidance on factors it will consider when assessing whether there is disorderly trading in the context of regulating short selling, but does not define the term "*disorderly*". In a recent ruling on market abuse, the UK Upper Tribunal held that a "*disorderly*" market could also exist in the event that a company were to disclose regularly information of an inconclusive nature, leading to uncertainty and share price volatility, but gave no definition of "*disorderly*".[7]

3.20 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. We consider that a "*disorderly market*" may be said to exist, among other circumstances, if some but not all market participants have access to information which is material to share prices (whether that

[7] See the Decision of the Upper Tribunal in the appeal of *Ian Charles Hannam v The Financial Conduct Authority* [2014] UKUT 0233 (TCC), handed down on 27 May 2014, at pp. 113-114, http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Hannam-v-FCA.pdf.

information is true or false or misleading) and trade in the shares in a way that results in abnormal price movements or trading volumes.

CHAPTER 4

4. EXECUTIVE SUMMARY OF FINDINGS

Introduction

4.1 In the wake of the financial crisis that commenced in 2007, the widely-held view was that the UK's financial regulatory system had performed inadequately and it was abolished. From 1 April 2013, the FCA became responsible for the conduct and supervision of all regulated financial firms.

4.2 The FCA was given the strategic objective of ensuring that financial markets function well, together with three operational objectives including, in summary: to secure protection for consumers, to protect and enhance the integrity of the UK financial system and to promote effective competition in the interest of consumers.

4.3 In practice, the FCA has set out to be more proactive, transparent and consumer-focused in its approach than its predecessor, the FSA. The FCA's overall communications strategy has included using the media as a "*tool of regulation*" to communicate effectively to firms and consumers about the steps which the FCA was taking to achieve its operational objectives.

4.4 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.

4.5 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.

4.6 In this Chapter, we set out an executive summary of the findings of this Inquiry by reference to each of the questions in the Terms of Reference.

Findings in relation to question 4(a): "*Was there an appreciation that the Business Plan could contain information that was price-sensitive*"?

4.7 When developing the Business Plan for 2014/2015, the FCA adopted a different approach from that in previous years, intending the document to be less dense and more accessible to consumers and the industry, with less technical language and more transparency on the work the FCA was intending to carry out. For example, the FCA decided to include in the Business Plan for the first time, a full list and summary of the 25 thematic reviews it was at that stage intending to carry out in the forthcoming year.

4.8 The FCA has made greater use of "*thematic reviews*" than the FSA, which involve conducting a review in relation to an issue across a number of firms within a sector or market, to understand whether a risk to the FCA's regulatory objectives exists, which might merit some kind of action on the FCA's part.

4.9 Among the thematic reviews referenced in the Business Plan was the Life Insurance Review. The intended focus of the Life Insurance Review was to gather information from a range of insurance companies, to understand generally whether customers were being treated fairly, including, for example, the extent to which companies review historic products to ascertain whether they remain fit for purpose, whether the customers receive appropriate information about policy benefits and whether the apportion of costs and expenses to these products is fair.

4.10 The Life Insurance Review was a "*discovery*" piece of work, one part of which was to obtain information about the nature and extent of exit charges and whether those might potentially inhibit customers from switching to better performing products. Exit fees are those which a policyholder is required to pay upon cancelling a policy, including when moving to another provider.

4.11 Taking into account previous media interest, there was a concern among those in the Supervision Division responsible for the Life Insurance Review that, when the review was to be announced in the Business Plan, its nature and scope might be misunderstood. In particular, although the Business Plan made no reference to a review of exit fees, there was a concern that it may be believed wrongly that the FCA would address high exit charges in the Life Insurance Review, whereas the FCA was intending only to gather information to understand whether a problem existed in practice in relation to the way in which customers subject to those charges were being treated.

4.12 It was agreed within the Supervision Division and the Media Relations team (which is part of the Communications & International Division, referred to in this Report as the "**Communications Division**"), that the ABI should be briefed fully in advance of the publication of the Business Plan and that a communications plan should be developed with a view to avoiding misunderstandings in the media when the review was to be announced in the Business Plan.

4.13 Despite the risks identified, however, the question as to whether the Business Plan (including the description of the Life Insurance Review) could contain price-sensitive information was not addressed specifically at any stage of the development of the

Business Plan, up to and including approval by the Board. This remained the case even after the Chancellor's Budget announcement on 19 March 2014, which included a liberalisation of the annuities regime that impacted negatively on a number of life insurance companies.

4.14 Our view is that given the sensitivities for the life industry that were anticipated by the Supervision Division, there was at least a risk that the contents of the Business Plan, concerning the Life Insurance Review, were price-sensitive. This possibility was not addressed, nor was it addressed in relation to the other contents of the Business Plan. Furthermore, the issue of price-sensitive information was not addressed when any advance briefings (or "*pre-briefings*") of the Business Plan were considered, including in relation to the Life Insurance Review as discussed below.

4.15 There was therefore no appreciation within the FCA that the Business Plan could contain price-sensitive information.

Findings in relation to question 4(b): "*What was the process for selecting the items on which press briefings would be made*"?

4.16 The FCA agreed that the Life Insurance Review was to be the subject of a pre-briefing given to the media in advance of the publication of the Business Plan, for the reasons set out above. That decision was made by those in the Supervision Division responsible for the Life Insurance Review, together with the Media Relations department.

4.17 *The Telegraph* was chosen for the pre-briefing by an associate in the Media Relations department (the "**Media Associate**") because its Deputy Personal Finance Editor, Dan Hyde, was known to have a particular interest in legacy products and concern that exit fees were unfair. The Media Associate told us that Mr Hyde was selected, in part, because he recalled that Mr Hyde had understood previously why it was not possible for the FSA (as it then was) to review retrospectively policies which were fair according to the standards at the time.

4.18 The Media Relations team selected the other thematic reviews referenced in the Business Plan on which pre-briefings would be given, on the basis of what it considered would be of most interest to relevant journalists, with a view to publicising issues of interest to consumers.

4.19 The content of those other pre-briefings were agreed with the relevant review teams within the Supervision Division. Pre-briefings were given to: *The Independent*, about a thematic review in relation to packaged bank accounts; *The Times*, about a thematic review in relation to the handling of unauthorised transactions; and *Sky News*, about a thematic review in relation to the IT resilience at banks. As in relation to the Life Insurance Review, however, no consideration was given to any issue of price-sensitive information in relation to any of those pre-briefings.

Findings in relation to question 5(a): "*Why and with whose knowledge and authorisation was this briefing given, particularly to a single journalist*"?

4.20 Martin Wheatley, the Chief Executive of the FCA, told us that having asked the Communications Division to focus on making sure that there was a strong pipeline of external communication around consumer credit leading up to and following the FCA's takeover of that regime on 1 April 2014, there was a need also to ensure that the FCA's communications with the industry and the public in relation to the other areas of its work were not sidelined.

4.21 He told us that it was agreed in discussions at the ExCo that the FCA should place a number of stories in the press in advance of publication of the Business Plan in order to improve coverage. Mr Wheatley told us that his understanding from those discussions, which he recalled being led by Zitah McMillan (Director of Communications and International), was that the stories to be chosen would be "*safe*", in the sense of taking into account consumer concerns and interest, but not being controversial.

4.22 Mr Wheatley was unable to point to any minute of this discussion at the ExCo and our review of the minutes and manuscript notes of potentially relevant meetings did not find a record of any such discussion. There was some, but not consistent recollection of this discussion by other members of the ExCo. It is clear, however, that there was no discussion at the ExCo of the items that were selected for pre-briefing or the form the pre-briefings would take.

4.23 Ms McMillan's position is that she did not know of or authorise, the pre-briefing to *The Telegraph*. Rather, she explained that the detailed strategy was implemented within the Media Relations team, without her direct involvement. The Media Associate and his superior, a Manager in the Media Relations team (the "**Media Manager**"), told us that she did know.

4.24 The only other member of the ExCo who knew of the briefing in advance was Mr Adamson (Director of Supervision). He was involved in the decision to authorise the pre-briefing to *The Telegraph*, having been sent a copy of written bullet points to be sent to *The Telegraph* in advance. Mr Adamson told us, however, that although he authorised the provision of the written pre-briefing to *The Telegraph*, and had authorised in principle the giving of a subsequent interview, he was not aware of the interview taking place and expected to be consulted further before it took place, given in particular he understood that he would be asked to give or approve quotes.

4.25 Within the Supervision Division, the approach in relation to the pre-briefing was also known by and approved by Nick Poyntz-Wright, Director of Long Term Savings and Pensions, who gave the telephone interview to *The Telegraph* together with the Media Associate.

4.26 There were a number of drafts prepared of a written briefing before it was signed off and provided to *The Telegraph*. Those from the Media Associate focused initially on the question of exit fees, which the Media Associate knew was of interest to Mr Hyde and was consistent with the intention of the Media Relations team to publicise issues of concern to consumers. The drafts were amended by those working on the review in the Supervision Division to make it clear that the Life Insurance Review was a discovery piece of work only and that gathering information about exit fees was only one part of that work.

4.27 Following the Budget announcement on 19 March 2014, those working on the Life Insurance Review in the Supervision Division became increasingly nervous at the decision to brief *The Telegraph*. Their concerns were principally aired by email, with comments such as "*My view is that we shouldn't do a press story on this* ..." and "*My view is we should tell* [the Media Relations team] *we don't want this coverage to happen.*" In one email a concern was raised that an announcement in the press about the Life Insurance Review "*just piles the misery onto life companies*" who had "*taken a battering this week*". In a further email (which was shared with the Media Associate), express reference was made to the "*impact*" of the Budget "*on life insurers' share prices*".

4.28 On the other hand, there were also concerns that if there was no pre-briefing, the announcement of the Life Insurance Review might be misunderstood in any case, whether announced in the Business Plan or otherwise. As said by one member of the team within the Supervision Division, "*On the exit charges point the intention was that we make clear the scope on this is limited. But by mentioning it we draw attention to it – however by not mentioning it it might be assumed we are doing more than we are (key consumer sensitivity)*".

4.29 The view taken on balance by Mr Adamson and Mr Poyntz-Wright was that the briefing of *The Telegraph* should take place, so long as the ABI were also kept informed.

4.30 Our view is that the potential seriousness of the issues, which had been recognised explicitly, should not have been left to email. Mr Poyntz-Wright should have spoken to Mr Adamson and explained in detail the strong reservations held by him and his team about the pre-briefing even taking place.

4.31 Mr Adamson had sufficient awareness of his team's concerns, in any case, to have re-considered whether it was appropriate to have included reference to the Life Insurance Review in the Business Plan at all or for a pre-briefing to be given to *The Telegraph*.

4.32 Given the risks identified for the life industry, and the known impact of the Budget, it should have been appreciated that there was, at the very least, a risk that the pre-briefing to be given to *The Telegraph* could contain price-sensitive information, or that the way in which it might be reported could have a significant effect on share prices. The issue, however, was never addressed.

Findings in relation to question 5(b): "*What was communicated to the journalist*"?

4.33 Mr Hyde was contacted and offered an exclusive story about the Life Insurance Review using as a "*hook*" to attract his interest, the fact that he had previously been concerned about exit charges.

4.34 On 24 March 2014, Mr Hyde was sent an email containing "*key messages*" in relation to the scope of the Life Insurance Review. The draft had been commented on word-for-word by the team within the Supervision Division responsible for the Life Insurance Review in order to ensure that the focus was not on exit charges. The covering email to Mr Hyde with the text that had been approved, clearly stated that "*exit fees is just one part of* [the Life Insurance Review] *and that bit is more discovery work; the review is more about how the closed book products are being serviced*".

4.35 The written pre-briefing listed four key concerns of the FCA where life insurers may not be treating historic customers fairly. These concerns did not include exit charges. The briefing noted separately that some of the products might have high exit charges and that the FCA would collect information on this subject to understand if it was an area in which the FCA needed to intervene.

4.36 On 26 March 2014, Mr Poyntz-Wright was interviewed by Mr Hyde over the telephone in relation to the Life Insurance Review, with the Media Associate in attendance. During the call the Media Associate said that any quotations Mr Hyde wished to attribute to the FCA should be attributed to Mr Adamson, even though Mr Adamson was not participating in the interview.

4.37 Mr Adamson did not know that the interview had been arranged and had not given his consent to quotations being attributed to him. The Media Associate, however, had understood from earlier email exchanges that Mr Adamson agreed with what was proposed.

4.38 The interview was not recorded by the FCA. *The Telegraph* declined to be interviewed, but has answered some questions in writing. It declined also to provide a copy of Mr Hyde's note of the meeting, but has provided certain extracts by email. The Media Associate took a note of the meeting and Mr Poyntz-Wright produced his own note over the course of the week following the interview.

4.39 The notes prepared by the Media Associate and Mr Poyntz-Wright are consistent with the written briefing, namely they record that the Life Insurance Review was a discovery piece of work, that exit fees were not its focus and that the FCA would not be seeking to review the validity of terms and conditions in contracts entered into many years ago.

4.40 A principal focus of the questions posed by Mr Hyde was nevertheless on the issue of exit fees. In this important area, both sets of notes are incomplete. We learned, for example, from our interviews of the Media Associate and Mr Poyntz-Wright, that in answer to a question from Mr Hyde, it may have been accepted that banning exit fees was an action which the FCA could take but that this would be an extreme option, that it was not the intention of the FCA's review to look at making retrospective changes to exit fees and that any action would only be considered after the results of the discovery work were known.

4.41 There was no follow-up after the interview. Mr Hyde was allowed to use the material he had been given, on the record, attributing quotations to Mr Adamson. Neither Mr Poyntz-Wright nor the Media Associate alerted anyone in the team responsible for the Life Insurance Review to the fact that Mr Hyde had focused on exit fees nor sought to put in place any contingency plan were the article not to be written as intended. Control over the messaging had been lost.

4.42 The article was therefore to come as a surprise to the FCA, all the more so because it appeared online at 10.00 pm on Thursday 27 March, the day before the proposed advance briefing of the ABI about the Life Insurance Review was scheduled to take place.

Findings in relation to question 5(c): "*Were other briefings made and if so, how were these reported*"?

4.43 As well as giving a pre-briefing in relation to the Life Insurance Review, exclusive pre-briefings concerning thematic reviews to be announced in the Business Plan were given to: *The Independent*, about a thematic review in relation to packaged bank accounts; *The Times*, about a thematic review in relation to the handling of unauthorised transactions; and *Sky News*, about a thematic review in relation to the IT resilience at banks.

4.44 As with the Life Insurance Review, no prior consideration was given by those involved as to whether those pre-briefings gave rise to any issue of price-sensitive information. On these occasions, however, there were no telephone interviews, the pre-briefings were in writing and quotations were attributed to Mr Adamson but approved by him and commented on by his team in advance. The pieces appeared in *The Times* and on *Sky News*, but not in *The Independent*. There has been no suggestion that either led to an adverse market reaction.

Findings in relation to question 5(d): "*Was the content of any briefing appropriate and did it go further than the agreed line*"?

4.45 As set out above, a written pre-briefing was given to *The Telegraph*, with every word scrutinised in advance to ensure that it was consistent with the scope of the Life Insurance Review and did not lead to any misleading impressions, including in relation to the discovery work relating to exit fees. The content of the written pre-briefing, therefore, did not go further than the agreed line but no consideration was given as to whether the written pre-briefing could contain price-sensitive information, or whether the way in which it might be reported by *The Telegraph* could have a significant effect on share prices. We therefore do not consider that the written pre-briefing was appropriate without proper consideration having been given to these issues.

4.46 By contrast with the care taken over the written pre-briefing, there was no such care taken in agreeing to Mr Hyde attributing whatever he wished to Mr Adamson as quotations. Mr Poyntz-Wright's comments in the interview with *The Telegraph* should not have been attributed to Mr Adamson.

4.47 Taking into account that most of the speaking was done by Mr Poyntz-Wright, as the Head of the Long Term Savings and Pensions Department within the Supervision Division, the difficulty with the oral pre-briefing was not so much whether it went further than the agreed line, but that control of how the Life Insurance Review was to be reported had been given to Mr Hyde.

4.48 Given the sensitivities identified when considering the written pre-briefing, we do not consider that it was appropriate to have given an oral pre-briefing or that Mr Hyde should have been permitted to write an article as he saw fit. No consideration was given as to whether the further information being given to Mr Hyde could be price-sensitive or whether the way in which it might be reported could have a significant effect on share prices. Although the focus on exit fees was apparent from the interview, neither the Media Associate nor Mr Poyntz-Wright followed-up with Mr Hyde after the interview or prepared for the possibility that the article might not be as intended.

4.49 It is unacceptable in this context that, whereas the contents of written communications are the subject of close scrutiny by the FCA, oral briefings of journalists on potentially sensitive topics take place without any equivalent level of control. In this case, the oral briefing took place without any involvement (and possibly knowledge) of Ms McMillan, and without any close involvement by the Media Manager.

Findings in relation to question 5(e): "*Was the briefing consistent with any internal guidance available to FCA staff or with previous practice, and who authorised such guidance or practice*"?

4.50 The practice of pre-briefing the media is not the subject of any policy or internal guidance. It has developed further as the number of thematic reviews has increased.

4.51 Ms McMillan told us her understanding was that interviews with journalists should always be recorded. This was not the understanding of the Media Manager or the Media Associate, who told us that he had never recorded an interview with a journalist. Instead, the Media Associate took a handwritten note, which he typed up on 28 March 2014 in the context of the events that unfolded that day. As set out above, Mr Poyntz-Wright also prepared a note of his recollections in the week after the interview.

Findings in relation to question 5(f): "*To what extent this specific briefing is an isolated exception. If not, does this represent more general practice at the FCA, who authorised this approach and why*"?

4.52 The FCA has stated consistently that it would proceed on a presumption of transparency and will engage more with "*firms, trade bodies, practitioner panels and other stakeholders when we start new thematic work*". This has been implemented in practice in the insurance sector, for example, with pre-briefings being given on occasion to the ABI, Statutory Panels and the media.

4.53 We were told by all relevant FCA interviewees that pre-briefings (whether of the media or industry) would never knowingly take place in relation to a piece of work or announcement which might be price-sensitive. Where, however, the subject matter of an announcement is not deemed to be price-sensitive, it was explained by a number of interviewees that the practice of pre-briefing the media has a number of advantages.

4.54 The practice of giving pre-briefings to the media in advance of an announcement is therefore not new. There were, however, no policies or guidelines in place and no process for ensuring that any pre-briefing did not contain price-sensitive information.

4.55 The pre-briefing of *The Telegraph* was therefore not an isolated exception. The practice was not formally authorised by the Board or the ExCo but it was known to and participated in by various members of the ExCo and therefore authorised implicitly by the FCA.

Findings in relation to question 6(a): "*What procedures exist to identify and control the release of price-sensitive information*"?

4.56 The procedures which exist within the Supervision and Communications Divisions (the Divisions involved in the pre-briefing given to *The Telegraph*) relating to price-sensitive information are inadequate and not of the standard which the FCA expects of those it regulates.

4.57 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.

4.58 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.

4.59 Notwithstanding these deficiencies, we found that employees interviewed from both the Supervision and Communications Divisions had a broad understanding of what is meant by "*price-sensitive*" or "*market-sensitive*" information (the term most frequently used within the FCA). However, as set out above and in more detail elsewhere in this Report, those involved in the Life Insurance Review did not consider expressly the issue in relation to the pre-briefing given to *The Telegraph.*

Findings in relation to question 6(b): "*What process was or should have been followed to confirm whether or not the information was likely to be price-sensitive*"?

4.60 No process was followed to confirm whether or not the information to be given to *The Telegraph* was likely to be price-sensitive, because no process existed.

Findings in relation to the following questions:

Question 7(a): "*How and when did the FCA first become aware of a problem*"?

Question 7(b): "*How was this communicated to the Executive/ Board/ other relevant persons in the organisation*"?

Question 7(c): "*How was the FCA's reaction determined*"?

Question 7(d): "*Why the FCA's clarificatory statement was issued so late during the day after the story was published, rather than Thursday night*"?

The answers to these questions are addressed collectively below:

4.61 The content of the article in *The Telegraph* is almost precisely what the FCA had intended to avoid. The focus is on exit fees. The heading is: "*Savers locked into 'rip-off' pensions and investments may be free to exit, regulators will say*".

4.62 The Media Associate told us that upon reading the article when first published late on the evening of 27 March 2014, his view was that it was quite sensational and did not give a correct impression, but that the different parts were factually accurate or based on what may have been said to *The Telegraph* in the telephone interview. He did not share any concerns that evening with his superior, the Media Manager, who had provided no adequate supervision during the period. Instead, he sent to him a "*WhatsApp*" message saying "*A bit sensational, but it seems about right*".

4.63 The Media Associate also did not share any concerns that evening with members of the Life Insurance Review team, but instead provided what he considered to be a correct summary of events to those media outlets who were already asking about the Life Insurance Review based on what they had seen in *The Telegraph*.

4.64 Based on what he had been told by the Media Associate, the Media Manager forwarded the article by email to Mr Adamson, Mr Wheatley, Ms McMillan, Ms Darby-Walker, Mr Adamson's Executive Assistant, Mr Wheatley's Executive Assistant and the Media Associate saying that the article had been "*reported fairly straight*", telling Mr Adamson that his quotes had been "*given good prominence*". That email was also sent to the Life Insurance Review team and to Mr Poyntz-Wright, saying just "*FYI Front page of tomorrow's paper*".

4.65 The Media Associate, in our view, focused on the positive outcome of a high profile story for the FCA, without appreciating the negative consequences for the life industry when markets opened the next day. In any event, no complaint was made to *The Telegraph*.

4.66 In the circumstances, there was no prospect of the FCA publishing a clarifying statement on the evening of Thursday 27 March 2014. The Board, the ExCo and other relevant persons in the FCA were unaware that a problem even existed.

4.67 The organisation was therefore taken by surprise by the market reaction the next day. Even taking this into account, however, the delays in issuing the clarifying statement were unacceptable.

4.68 The print edition of *The Telegraph* appeared on 28 March 2014 with a less sensationalist headline, but the text of the article is otherwise substantially identical. Contrary to what had been intended by the FCA, there followed a widespread market misapprehension that the FCA intended a retrospective review of millions of policies and was considering banning exit charges. Shares in the affected insurance companies started to fall significantly when the London Stock Exchange opened. Before and after the market had opened, the insurance companies were receiving concerned calls from investors.

4.69 We summarise below the activities of the various FCA divisions in response to the events that unfolded that day.

The Media Relations team

4.70 In the morning of 28 March 2014, the Media Relations team proceeded on the basis that it was dealing with a media management issue and members of that team were therefore correcting journalists on those aspects of *The Telegraph* article which were considered to be inaccurate. Ms McMillan was working at home and it was not considered necessary to involve her.

4.71 Mr Hyde, in the meantime, had emailed the Media Associate explaining why his approach had differed from that desired by the FCA. He explained that it was a "*Broad brush investigation with potential conclusions highlighted strongly for news angle*". The response from the Media Associate was "*Happy with it too. probably a bit too much weight on exit fees, but it's a good piece ...*", with Mr Hyde clarifying further "*But for readers exits are the single major thing that stop people taking action themselves, so I went on it ... Also difficult for me to lead purely on accusations that insurers are treating customers unfairly when you obvs want to do the work first. Otherwise it became an industry focused story that wouldn't have done splash. Did my best to take all into consideration!*"

4.72 We put to *The Telegraph* in writing that Mr Hyde had sought to focus on exit fees and to downplay the fact that the FCA was only seeking to gather information, all in order to achieve a front page "*splash*". In response, *The Telegraph* told us not only that the story was based entirely on what it had been told by the FCA, but that the "*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 emails in question showed *"Mr Hyde doing no more than his job*". In circumstances where the Media Relations team's reaction was that Mr Hyde's article was sensational and gave an incorrect impression, but where Mr Hyde had been allowed to speculate and was subsequently told that the Media Associate was "*happy with it too*" and "*it's a good piece*", we have not criticised *The Telegraph*.

The Supervision Division

4.73 Mr Adamson read first thing in the morning the email from the Media Manager of the previous evening which set out the full text of *The Telegraph* online article. Mr Adamson responded by email at 7.42 am saying, "*Thanks – looks good*". He did not, however, read the article, despite the concerns that he knew his team had about the briefing taking place. He also did not react to the reference to his quotations being given good prominence, although he had not given any quotations. Mr Adamson told us he had been reassured by the covering comment from the Media Manager that the article had been reported fairly straight and because he had given quotations for a number of other pre-briefings.

4.74 At 8.53 am, Mr Adamson took a call from furious representatives of a major insurance company. He had not yet read *The Telegraph* article and was therefore taken by surprise. He was told by the representatives he spoke with that the company's share price was falling significantly, that they did not know how to respond and that the FCA should issue a retraction.

4.75 Mr Adamson has told us that he appreciated that a price-sensitive issue had arisen. Mr Adamson's Executive Assistant asked the Media Manager to provide some lines for Mr Adamson and the FCA's insurance company supervisors to use in fielding calls from insurance companies. Once received, these were amended by Mr Adamson who then asked the Media Relations team to issue them publicly. However, the wording proposed did not contain any input from the Life Insurance Review team and was inadequate. Mr Adamson also did not contact any other members of the Supervision Division or Ms McMillan, or the Markets Division or escalate to Mr Wheatley that he was aware a price-sensitive issue had arisen.

4.76 Mr Adamson told us that by asking for the lines to be issued "*publicly*", he had meant they were to be issued by way of a market announcement. It was not reasonable in our view to have left the issue of communication to the market with the Media Relations team particularly without having consulted with the Markets Division and without specifying whether an announcement via a Regulatory Information Service ("**RIS**") was required. The Media Relations team instead used the lines to continue to correct journalists on those aspects of *The Telegraph* article which were considered to be inaccurate.

4.77 The Life Insurance Review team also did not contact Mr Adamson but initially had prepared their own clarifying messages to share with affected insurance companies. No consideration was given as to whether any communications with individual insurance companies might themselves be price-sensitive, even though they were intended to clarify the position for those companies.

4.78 The meeting with the representatives of the ABI took place at 10.00 am at which the ABI was given the full briefing which had been promised. The ABI, like the team responsible for the Life Insurance Review, had been taken by surprise by the article.

The Markets Division

4.79 The significant movements in share prices were brought to the attention of Marc Teasdale, Head of the UK Listing Authority Department (the "**UKLA**") at 9.15 am. The UKLA and Market Monitoring teams considered whether the FCA should issue a clarifying statement, but had themselves no information available to them to inform that decision.

4.80 The issue was raised to David Lawton, Director of the Markets Division, who telephoned Ms McMillan at home at 10.07 am. At that stage, neither of them was aware that the content of the article was considered by the Supervision Division to be inaccurate. Mr Lawton considered at that stage that the issue was only whether the information from the FCA about the Life Insurance Review should properly have been broadcasted via an RIS, rather than through a press interview. Mr Lawton's decision was that no clarifying statement was required.

4.81 Notwithstanding the significant share price movements, 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.

Mr Wheatley's Office

4.82 No further progress was made on issuing a clarifying statement to the market until Mr Wheatley's office took a coordination role in the mid-morning. No issue had been escalated to him by Mr Lawton or Ms McMillan. Mr Adamson had not escalated that a price-sensitive issue had arisen. Mr Wheatley had learned that Mr Lawton did not consider that a clarifying statement was required, but once he understood, after around 11.30 am, the full scale of the falling share prices and that the ABI had strong concerns, he asked urgently that the decision be re-visited by Mr Teasdale from the UKLA.

4.83 The materials which had been provided to *The Telegraph* were then brought together at around 11.50 am for the first time. Mr Teasdale received a telephone briefing. He promptly formed the view that a clarifying statement was required. Drafting then moved forward, with a revised draft being circulated at 12.32 pm.

4.84 Mr Wheatley told us that he learned at around 12.45 pm that a statement had not yet been issued. However, at 1.00 pm, Mr Wheatley participated in a telephone call with the ABI and then raised various drafting comments and issues on the proposed statement by way of emails from his Executive Assistant. Instead, the relevant participants should have been brought together urgently in a meeting or on a conference call to finalise the statement.

The issuance of the Clarifying Statement

4.85 The wording of the statement was approved at 2.01 pm but there was then a further delay of almost half an hour before the statement was issued via the RNS. Part of that delay was because the process for issuing the statement to the market had not been considered earlier in the day.

4.86 The statement was issued at 2.27 pm, following which the share prices in the affected insurance companies recovered substantially, but not entirely.

4.87 At 4.12 pm, an email was sent on behalf of the FCA's Chairman, Mr Griffith-Jones, convening a Board call at 5.00 pm.

Findings in relation to Question 7(e): "*What exchanges (particularly any involving price-sensitive information) took place with individual regulated firms or other market participants before the clarificatory statement was issued and who authorised the exchanges*"?

4.88 There were multiple exchanges with individual regulated firms or other market participants during 28 March 2014 as described further in Chapter 15. The issuing of the statements to these companies was authorised by Mr Adamson.

4.89 There was in our view, an obvious risk that the information being supplied was price-sensitive, permitting the immediate or ultimate recipients of the information to make investment decisions which took into account selective clarifications of the position by the FCA. Instead, a holding announcement should have been considered, explaining that there had been widespread misapprehension and urging customers to take no action, pending a formal announcement by the FCA once the issue had been clarified.

Findings in relation to Question 7(f): "*Whether a false or disorderly market was present during this period*"?

4.90 As set out above, when the London Stock Exchange opened for trading on 28 March 2014, the share prices of life insurance companies began to fall sharply. Within minutes of the publication of the FCA's announcement via the RNS at 2.27 pm, the share prices of the affected life insurance companies began to recover, but did not return to the levels at which they had been trading before the start of the day. The significant movement in share prices was restricted to insurance companies and was anomalous when compared with the performance of the rest of the market. In addition to the fall in share value, the trading volume of life insurance company shares was markedly higher than usual.

4.91 Representatives of a number of insurance companies told us in their view that a "*false or disorderly market*" existed on 28 March 2014. We were told also that a number of insurance companies privately communicated this view to the FCA at the time. Legal & General stated publicly in its statement of 12.43 pm on 28 March 2014, issued via the RNS, that a disorderly market existed in the shares of UK listed insurance companies.

4.92 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. Our view, therefore, is 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.

4.93 That misapprehension was derived from the article in *The Telegraph* rather than information disseminated to the market via an RIS. Given therefore, the abnormal price movements and trading volumes, we consider it possible also that a "*disorderly*" 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.

Findings in relation to Question 7(g): "*Does the FCA have an emergency action plan for situations such as this and if so, was it followed*"?

4.94 When the events unfolded on 28 March 2014, the FCA was taken by surprise. There was no emergency action plan in place to deal with an adverse market reaction to a story which appeared to have originated with the FCA.

4.95 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.

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

Findings in relation to the following questions:

Question 8(a): "*What lessons these events hold for the FCA's approach to security around any draft Business Plan*"?

Question 8(b): "*What lessons these events hold for the FCA's approach to publicity and the media*"? and

Question 8(c): "*Where senior accountability should lie*".

4.97 We have set out in detail in this Report, the causes and impact of the events of Thursday 27 March and Friday 28 March 2014.

4.98 In Chapter 19 we set out where we consider senior accountability should lie, together with a number of recommendations intended to avoid a repetition of the events of 27 March and 28 March 2014.

CHAPTER 5

5. STRUCTURE OF THIS REPORT

5.1 The remainder of this Report is structured as follows:

5.1.1 Chapter 6 provides an overview of the functions, objectives and structure of the FCA;

5.1.2 Chapter 7 sets out the FCA's procedures as at March 2014 which existed to identify and control the release of price-sensitive information;

5.1.3 Chapter 8 addresses the FCA's communications strategy, including in relation to thematic reviews and the practice of giving briefings to the media in advance of announcements;

5.1.4 Chapter 9 summarises the background to and content of the proposed Life Insurance Review, as well as its inclusion in the Business Plan and a consideration of whether there was any appreciation that the Business Plan could contain price-sensitive information;

5.1.5 Chapter 10 explains the origins of the strategy to give advance briefings to the media in relation to the contents of the Business Plan;

5.1.6 Chapter 11 describes the events leading up to and including the written advance briefing given to *The Telegraph* on 24 March 2014 in relation to the Life Insurance Review that was to be announced in the Business Plan, as well as advance briefings given to the ABI;

5.1.7 Chapter 12 discusses the telephone briefing given to *The Telegraph* on 26 March 2014 and subsequent events that day;

5.1.8 Chapter 13 describes the events of 27 March 2014, prior to the publication of the article in the online edition of *The Telegraph* at 10.00 pm that evening;

5.1.9 Chapter 14 considers the article published online by *The Telegraph* and describes the events which followed that evening;

5.1.10 Chapter 15 describes the events of 28 March 2014 up to and including the issue by the FCA of its clarifying statement at 2.27 pm, and addresses the existence of any emergency action plan;

5.1.11 Chapter 16 describes the events of 28 March 2014 and thereafter following the issue of the FCA's clarifying statement;

5.1.12 Chapter 17 sets out the impact of *The Telegraph* article on the market and considers whether a false or disorderly market existed before the issue by the FCA of its clarifying statement on 28 March 2014;

5.1.13 Chapter 18 summarises the origins and outcome of the advance media briefings of other thematic reviews announced in the Business Plan (other than the Life Insurance Review); and

5.1.14 Chapter 19 answers the forward looking questions set out at paragraph 8 of the Terms of Reference and considers senior accountability for the events in question.

5.2 At the end of each Chapter, where relevant, we set out our conclusions and answers in relation to the correlating questions in the Terms of Reference.

CHAPTER 6

6. OVERVIEW OF THE FCA

Introduction

6.1 An explanation of the events of and leading up to 27 March and 28 March 2014 would be incomplete without a description of the statutory and regulatory background relating to the FCA. Further, we consider that an assessment of senior accountability for those events requires a consideration of the relevant management structures of the FCA. We address both areas in this Chapter.

The FCA's creation, functions, and objectives

6.2 Following the financial crisis that started in 2007, the widely held view was that the UK's financial regulatory system had performed inadequately. The tripartite system, comprised of the Treasury, the Bank of England and the FSA, was abolished.

6.3 On 1 April 2013, the FCA and the PRA succeeded the FSA as the bodies that regulate the financial services industry. The FCA became responsible for the conduct supervision of all regulated financial firms and the prudential supervision of those not supervised by the PRA. The PRA became responsible for the prudential supervision of all deposit-takers and significant investment firms.

6.4 Section 1B(1) of FSMA requires the FCA, so far as is reasonably possible, when discharging its responsibilities, to act in a way which is compatible with its overarching strategic objective and which advances its operational objectives.

6.5 The FCA's overarching strategic objective is to ensure that the relevant (i.e. financial) markets function well. To support this strategic objective, the FCA has three operational objectives: to secure an appropriate degree of protection for consumers; to protect and enhance the integrity of the UK financial system; and to promote effective competition in the interests of consumers.

6.6 In addition, the FCA is obliged by section 3B of FSMA to have regard to eight regulatory principles which it shares with the PRA, including Principle 4 (the "*consumer responsibility*" principle) which requires consumers to take responsibility for their decisions and Principle 8 (the "*transparency*" principle) which requires the FCA and the PRA to exercise their functions as transparently as possible.

Structure of the FCA

The FCA's Board

6.7 As at 28 March 2014, the governing body of the FCA (the "**Board**") comprised twelve board members: four executives Mr Wheatley (Chief Executive), Mr Adamson (Director of Supervision), Tracey McDermott (Director of Enforcement and Financial Crime) and Lesley Titcomb (Chief Operating Officer), and eight NEDs Mr Griffith-Jones (Chairman), Amanda Davidson, Amelia Fletcher, David Harker, Mick McAteer, Sir Brian Pomeroy, Jane Platt, and Andrew Bailey (Chief Executive of the PRA).

6.8 The roles and responsibilities of the Board are set out in a document entitled "*Corporate Governance of the Financial Conduct Authority,*"[8] adopted by resolution of the Board on 1 April 2013. These include:

6.8.1 "*overseeing the discharge by the executive management of the day to day business of the FCA*";

6.8.2 "*setting appropriate policies to manage risks to the FCA's operations and the achievement of its regulatory objectives*";

6.8.3 "*seeking regular assurance that the system of internal control is effective in managing risks in the manner it has approved*"; and

6.8.4 "*taking specific decisions, outside those specified in the Schedule of Matters Reserved to the Board, which the Board or executive management consider to be of a novel or contentious nature or to be of such significance that they should be taken by the Board*".[9]

6.9 The Board retains all decision-making powers except those which it has delegated to either a committee or an individual.[10] Powers reserved to the Board include:

6.9.1 the approval of the FCA's "*overall strategy* ... [and] ... *annual Business Plan*";

6.9.2 the review of "*performance against the* [*FCA*]*'s strategy, objectives, business plan and budget and ensure any necessary corrective action is taken*";

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8 'Corporate Governance of the Financial Conduct Authority' (the "**Governance Memorandum**"), http://www.fca.org.uk/static/documents/fca-corporate-governance.pdf.

9 Ibid, at p. 5.

10 Ibid, at p. 8.

6.9.3 the "*maintenance of a sound system of internal controls and internal risk management*";[11] and

6.9.4 the approval of and agreement to any revisions to various specified policies, which includes the Communications Policy.[12]

6.10 The Board delegates its powers to a number of sub-committees, including:

6.10.1 *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.[13] The Audit Committee's members as at 28 March 2014 were Sir Brian Pomeroy (Chair), Ms Davidson, Mr Harker and Mr McAteer; and

6.10.2 *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[14]. The Risk Committee's members as at 28 March 2014 were Mr McAteer (Chair), Ms Fletcher, Ms Platt and Sir Brian Pomeroy.

The FCA's Executive Committee

6.11 The ExCo comprises nine members including the Chief Executive, Mr Wheatley, who is responsible for the leadership of the FCA and managing it day-to-day, within the authorities delegated by the Board.[15] Each of the remaining eight members, who all report to Mr Wheatley, is responsible for a division of the FCA:

6.11.1 *Victoria Raffe, Director of Authorisations.* The Authorisations Division is responsible for the authorisation of financial service activities in the UK.

6.11.2 *Mr Adamson, Director of Supervision.* The Supervision Division is responsible for the conduct supervision of authorised firms, including insurance companies. This includes responsibility for the conduct of thematic reviews.

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11 Ibid, at p. 38.

12 Ibid, at p. 34.

13 Ibid, at p. 8. The Terms of Reference of the Audit Committee are set out at p. 42 of the Governance Memorandum.

14 Ibid, at p. 8. The Terms of Reference of the Risk Committee are set out at p. 47 of the Governance Memorandum.

15 Ibid at p.6, para. 1.20.

6.11.3 *Mr Lawton, Director of Markets.* The Markets Division includes the UKLA, which is responsible for enforcing compliance with, among other matters, the FCA's Disclosure and Transparency Rules ("**DTRs**"). The Primary Market Monitoring team within the UKLA monitors press, media and price movements to identify potential leaks of inside information and to determine whether an announcement is required to be made by a listed company. The Markets Division also includes the Market Monitoring Department, which is responsible for the surveillance of market activity to identify potential cases of market abuse and for the conduct of initial inquiries into such cases.

6.11.4 *Christopher Woolard, Director of Policy, Risk and Research.* The Policy, Risk and Research Division is responsible for conduct policy, competition and consumer issues.

6.11.5 *Ms McDermott, Director of Enforcement and Financial Crime.* The Enforcement and Financial Crime Division is responsible for investigations and enforcement across the FCA's regulatory responsibilities.

6.11.6 *Ms Titcomb, Director of Operations.* The Operations Division is responsible for the FCA's Human Resources, Finance and Operations and Information Systems functions.

6.11.7 *Ms McMillan, Director of Communications and International.* The Communications Division is responsible for the FCA's approach to internal and external communications and includes the Media Relations team (also referred to within the FCA as the Press Office), which has particular responsibility for dealing with the FCA's communications with the media.

6.11.8 *Sean Martin, General Counsel and Director of the General Counsel's Division*. The General Counsel's Division (the "**GCD**") is responsible for providing legal advice to the FCA Executive and the Board.

6.12 The Executive Regulatory Issues Committee (the "**ERIC**") is a sub-committee of the ExCo and is responsible for taking decisions on regulatory issues escalated to it from across the FCA including thematic reviews from the Supervision Division.

6.13 The Divisional Supervisory Risk Committee (the "**DSRC**") is a sub-committee of the ERIC. It is responsible for exercising oversight of the supervisory processes, and supervisory decision-making, including in relation to thematic reviews.

Internal Audit

6.14 Internal Audit is an independent division within the FCA, responsible for reviewing the adequacy and effectiveness of the FCA's governance, processes, controls and risk management across all FCA's activities. Internal Audit reports to the Board and to the Audit Committee.

The FCA Statutory Panels

6.15 The FCA is required by section 1M of FSMA to make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties. In particular, the FCA is required to establish three practitioner panels and a consumer panel, each of which comprise persons who express independent views to the FCA. The FCA is required to have regard to any representations made to it by the panels (the "**Statutory Panels**"). The Statutory Panels are as follows:

6.15.1 The FCA Practitioner Panel, which includes senior level representatives of each of the major regulated sectors. The Chairperson is Graham Beale, Chief Executive of Nationwide Building Society;

6.15.2 The FCA Markets Practitioner Panel, which includes senior level representatives of sectors participating in financial markets. The Chairperson is Paul Swann, President and Managing Director of ICE Clear Europe;

6.15.3 The Smaller Businesses Practitioner Panel, which includes senior level representatives of smaller regulated firms, whether by market capitalisation, funds under management, size of balance sheet or employees. The Chairperson is Andrew Turberville Smith, Finance Director of Weatherbys Bank; and

6.15.4 The Financial Services Consumer Panel, which includes members that encompass a broad range of relevant consumer expertise and experience. The Chairperson is Sue Lewis, an independent policy consultant.

6.16 In the next Chapter we set out the FCA's procedures as of March 2014 for the identification, handling and control of the release of price-sensitive information.

CHAPTER 7

7. THE FCA'S PROCEDURES IN RELATION TO PRICE-SENSITIVE INFORMATION

Introduction

7.1 The FCA is the recipient of an extensive volume of price-sensitive information. In particular, the Supervision, Markets and Enforcement Divisions receive confidential information from regulated firms, much of which is potentially price-sensitive.

7.2 The FCA itself generates information which is potentially price-sensitive. In this Chapter we set out the procedures which exist within the FCA to identify and control the release of price-sensitive information, with particular focus on the Supervision and Communications Divisions, being those which gave the briefing to *The Telegraph*.

7.3 The FCA's interviewees accepted that the FCA as regulator should regard itself in practice as subject to at least the standards it requires from those it regulates. We therefore start with a summary of a number of potentially relevant standards expected of others by the FCA in relation to price-sensitive information.

FCA Requirements applicable to authorised firms and issuers

7.4 All authorised firms that come into contact with inside information are required by the FCA to have effective systems and controls in place regarding the management of inside information,[16] to ensure confidentiality and prevent the risk that any inside information they hold is improperly disclosed contrary to the market abuse regime.

7.5 Issuers of listed securities are also subject to more detailed requirements in the Listing Rules (the "**LRs**") and DTRs, which contain specific requirements in relation to the control and handling by listed companies of inside information. Through various publications, including Technical Notes issued by the UKLA, and Market Watch newsletters, the FCA (and the FSA before it) has clarified its interpretation of relevant requirements in this area.

7.6 The core obligation in the DTRs is that issuers of listed securities must notify an RIS as soon as possible of any inside information which directly concerns the issuer (subject to exceptions). The stated purpose of this overarching obligation is to promote prompt and fair disclosure of relevant information to the market as a whole to avoid leaks, protect investors and prevent insider dealing.

[16] The term "*inside information*" in this context and as used in this Chapter is as defined in section 118C(2) of FSMA (see paragraph 3.10 above) and is referred to in this Report as "*price-sensitive*" information.

7.7 Pursuant to the LRs and the DTRs, all listed companies are required to have effective systems and controls in place regarding the management of inside information to counter the risk that their employees could (inadvertently or otherwise) improperly disclose inside information to non-insiders. Listed companies are required to limit access to inside information, and to draw up "insider lists" of those who are given access. The FCA has made it clear that the overall policy for the identification, control and dissemination of inside information is the responsibility of the issuer's board of directors.

Market Watch Issues No. 21, 27 and 37

7.8 In Market Watch Issues No. 21[17] (of July 2007) and 27[18] (of June 2008), the FSA published good practice points for unregulated firms (i.e. companies that are neither authorised firms nor issuers of listed securities) involved in capital markets work, in order to assist in ensuring that they and their staff do not deliberately or inadvertently commit market abuse.

7.9 The good practice points include that such organisations should develop policies and procedures for the use and control of inside information, including media-handling, with clear responsibility for their oversight and regular review. The FSA also advocated that appropriate measures should be taken, including training, to assist staff in keeping information secret and among other matters, to understand the implications of improper disclosure – including the potential civil and criminal liabilities for the organisation and individual.

7.10 In so far as dealings with the media are concerned, the FSA in September 2010 issued Market Watch Issue No. 37,[19] which set out a list of best practice recommendations with a view, in particular, to preventing what was termed the "*strategic leak*" of inside information to the media. This was described as the deliberate leak of inside information to one or more journalists in advance of a formal announcement, designed to be advantageous to a party to a transaction.

7.11 The recommendations in Market Watch Issue No. 37 were addressed not only to authorised firms and issuers, but also referred to all organisations who handle inside information. The recommendations related particularly to leaks in the context of corporate transactions, but are of broader application, with a view to avoiding market abuse (a regime to which the FCA and its staff are subject) and included

[17] FCA Market Watch Issue No. 21, http://www.fsa.gov.uk/pubs/newsletters/mw_newsletter21.pdf.

[18] FCA Market Watch Issue No. 27, http://www.fsa.gov.uk/pubs/newsletters/mw_newsletter27.pdf.

[19] FCA Market Watch Issue No.37, http://www.fsa.gov.uk/pubs/newsletters/mw_newsletter37.pdf.

recommendations in relation to media-handling generally. The FSA recommended that all organisations handling inside information should have robust and detailed media policies, which should be aligned with policies concerning inside information, and that relevant staff should receive regular and structured training on the media and leak-handling as well as training on the relevant aspects of the market abuse regime. The recommendations in this regard in Market Watch Issue No. 37 prevail over those in earlier versions.

7.12 The FSA stated also in Market Watch Issue No. 37:

> "*Issuers should be careful how they deal with enquiries in respect of market rumours. There is no regulatory obligation to deny false rumours, and we have previously publicised our position on this. But should a company choose to make a denial, it should use the correct channel (i.e. an announcement via an RIS), which ensures the whole market is informed.*"[20]

7.13 In this context, the FSA has recommended that an issuer should make a negative statement via an RIS in circumstances where it is concerned that reaction to a wholly unfounded rumour is resulting in a disorderly market.[21] These statements are relevant when considering the FCA's reaction on 28 March 2014 to *The Telegraph* article.

Industry Regulator Guidelines

7.14 In December 2012, the UKLA issued a Technical Note for issuers entitled "*Assessing and handling inside information*" which made reference to announcements by industry regulators, trade associations and government departments. The Technical Note states:

> "*Announcements by industry regulators, trade associations, government departments and other bodies may affect the share price of many issuers. So it is advisable, where possible, for issuers to have an agreed understanding of the sensitivity of such statements and their likely effect on market expectations with these organisations so issuers can make announcements to the market where appropriate.*
>
> *We are party to an agreement with certain industry regulators which seeks to ensure that, if these regulators need to make an announcement that will affect an issuer's share price, they do so via a RIS and according to principles that*

20 Ibid, at p. 6.

21 See the now withdrawn UKLA technical note: Disclosure and Transparency Rules, "*DTR 2.7: Dealing with rumours - Press speculation and market rumours*", pp. 8-10, http://www.fsa.gov.uk/pubs/ukla/disclosure_transparency.pdf.

minimise leaks. A list of industry regulators who are party to this agreement along with guidelines for the dissemination of inside information by industry regulators can be found on our website."[22]

7.15 The agreement referred to is a document published by the FSA in 2002 as guidelines for the control and release of price-sensitive information by industry regulators (the "**Industry Regulator Guidelines**").[23] A number of other industry regulators were a party.[24]

7.16 The Industry Regulator Guidelines state in the opening paragraph, "*The leakage of price-sensitive information may create disorderly markets in the shares of listed companies and in some circumstances lead to insider trading. This may damage the reputation of the companies and their regulators including the Financial Services Authority (FSA), acting as competent authority for Listing. It is important that appropriate and early steps are taken to prevent these situations occurring.*"

7.17 The Industry Regulator Guidelines have never been withdrawn.

7.18 We have not considered it necessary for the purposes of this Inquiry to ask the other industry regulators to describe the controls they have put in place in relation to price-sensitive information pursuant to the Industry Regulator Guidelines. We are aware, however, that in January 2014, the Competition & Markets Authority ("**CMA**"), the successor entity to the OFT, issued a statement entitled "*Transparency and disclosure: Statement of the CMA's policy and approach*" in which it explained how the CMA has sought to comply with its commitment to transparency, while at the same time having regard to its responsibilities concerning the control and release of information which is price-sensitive (described by the CMA as "*market-sensitive information*"). The approach, in particular with respect to media-handling, is summarised on page 14, at paragraphs 3.21 to 3.27 and refers to the Industry Regulator Guidelines:

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22 UKLA Technical Note: *Assessing and handling inside information*, http://www.fca.org.uk/static/documents/ukla/knowledge-base/tn-521-1.pdf.

23 FSA Updated Industry Regulator Guidelines, http://www.fsa.gov.uk/pubs/ukla/ir_guidelines.pdf.

24 Civil Aviation Authority, Environment Agency, The Gaming Board for Great Britain, Independent Television Commission, Office for the Regulation of Electricity and Gas (previously Office of Electricity Regulation and Office of Gas Supplies), Office of the Rail Regulator, Office of the National Lottery, Office of Telecommunications, Office of Water Services. The Industry Regulator Guidelines state that although not a party, the Office of Fair Trading ("**OFT**") also agreed, where appropriate, to apply the principles set out in the Industry Regulator Guidelines.

Although Parliamentary Select Committees are not a party to the Industry Regulators' Guidelines, we were told that a Practice Note exists for Select Committees providing procedures for the identification and release of price-sensitive information in the context of reports by such Committees.

"*Market and non-market-sensitive announcements*

3.21 Where there are no market or other sensitivities about the fact or date of the announcement, the CMA will be open about the date and will generally inform media organisations of this before the date. The CMA will inform the parties directly involved in advance of informing the media. As a general rule, in non-market-sensitive announcements, the CMA aims to give the parties directly involved advance sight of the content of the CMA's announcement, in confidence, unless there is a compelling reason not to do so. However, the CMA will not, as a matter of course, discuss the text of press releases with parties in advance of issue.

3.22 When making a market-sensitive announcement, the CMA will, when appropriate, apply the Financial Conduct Authority's (FCA) 'Guidelines for the control and release of price-sensitive information by Industry Regulators' (originally published by the Financial Services Authority (FSA)).

…

Dealing with the media when making an announcement

3.24 For non-market-sensitive announcements, the CMA may sometimes brief the media in advance of the making [of] *a public announcement under an agreed 'embargo'. When this happens the parties and other relevant stakeholders such as trade bodies will be notified of the embargo. On occasion this may involve spokespeople giving interviews to both broadcast and print media in advance under an embargo.*

3.25 When making a market-sensitive announcement, the CMA never discusses the content with the media beforehand. The CMA may confirm that an announcement will take place on a certain day, at a certain time, and in some cases the CMA will agree in advance to interview requests for broadcast media.

3.26 Where the CMA statement is not known about in advance by the media due to market-sensitivity issues, and where giving broadcasting interviews is appropriate, it will be the CMA's practice to have spokespeople available in the expectation of receiving interview requests shortly after an announcement.

> 3.27 *Once a market-sensitive announcement has been made, the CMA will respond to media enquiries and, where appropriate, make spokespeople available for broadcast and print interviews.*"[25]

7.19 Against this background, we turn now to the FCA's own policies and procedures.

Policies and procedures within the FCA in relation to price-sensitive information

7.20 We were informed that the overarching policies and procedures in relation to the identification, control and release of price-sensitive information by the FCA as at March 2014, are set out in the FCA's Employee Handbook. This is a voluminous document which is provided to all employees of the FCA, and is available online.[26]

7.21 The Employee Handbook includes requirements for the classification of documents into different categories, including one category which relates to price-sensitive information, as well as controls on the handling of documents once classified. Most of the controls relate to the storage, internal distribution and disposal of documents. We discuss these further below.

7.22 There is no dedicated section in the Employee Handbook relating to price-sensitive information specifically, nor does the Employee Handbook contain any detailed guidance as to either the identification of price-sensitive information by FCA employees or procedures for the control and release of such information once identified.

Identification and Classification

7.23 The Employee Handbook contains a section, commencing at page 193, under the heading "*Employee Information Security Manual*", which includes requirements in relation to "*Information Classification, Marking and Handling*". That section includes a requirement that all information created or received by the FCA be classified according to the following matrix:

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[25] Transparency and disclosure: Statement of the CMA's policy and approach, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270249/CMA6_Transparency_Statement.pdf.

[26] http://www.fca.org.uk/your-fca/documents/staff/staff-handbook. References to the Employee Handbook in this Report are to the version of the Employee Handbook that was in use in March 2014. The version currently available online has been revised and updated in part.

Classification	**Description**
Unrestricted	Unauthorised disclosure of this type of information would have little or no impact on the organisation, the Government, firms or others. This includes all information which is already in the public domain and FCA information which is not sensitive (e.g. team meeting agendas).
FCA Restricted	Unauthorised disclosure of this type of information could cause embarrassment to the FCA, a firm or others, but would not cause long-term damage. 'FCA Restricted' information is open to all staff and to other contracted parties. However, depending on the type of information, it may be appropriate to restrict access or apply other controls. For example, this may be appropriate for personal or staff sensitive information.
Controlled Distribution	Unauthorised disclosure of this type of information could cause severe and long-term damage to the organisation or to a firm, would represent a breach of our obligations under FSMA, or could cause a movement in market prices (and might therefore be used for 'insider trading'). Access to information in this category will be restricted to those having a demonstrable 'need to know', and it is expected that in most cases, this will be a small group of people (for each instance of this type of information).

7.24 The category of "*Controlled Distribution*" information therefore includes what FCA personnel commonly refer to as "*market-sensitive information*" and which we refer to in this Report as "*price-sensitive information*". The Employee Handbook provides limited examples of information that fall within this category, including "*Firm information that could impact share prices or markets*", "*Information intended for a named list of individuals*" and "*Operational details of enforcement actions*". It explains that "*unauthorised disclosure*" of "*Controlled Distribution*" information "*could result in severe or long term damage for the FCA or a firm, or represents a breach of legislative obligations.*"

7.25 The classification requirements in the Employee Handbook are supplemented by policies specific to each FCA division or department, which reflect broadly the requirements in the Employee Handbook, and contain further non-exhaustive examples of the kinds of information which fall within each of the three core classification categories likely to be applicable to each division.

7.26 By way of relevant illustration:

7.26.1 The Information Classification, Marking and Handling policy for the Long Term Savings & Pensions Department within the Supervision Division, dated 17 June 2013, gives examples of the types of information more commonly handled within the department and the information classification that would "*be appropriate in most circumstances*". Included within the "*FCA Restricted*" category (not "*Controlled Distribution*") are "*Thematic project papers - papers explaining purposes of projects; variety of project-related documents*". Accordingly, the guidance is that such material would not normally fall to be considered as price-sensitive information.

7.26.2 The Information Classification, Marking and Handling policy for the Communications Division, dated 19 July 2013, gives examples of the types of information more commonly handled within the Communications Division. Included within the "*FCA Restricted*" category (again, not "*Controlled Distribution*") is "*briefing notes/journalist briefs*". Accordingly, the guidance is that such material also would not normally be considered as price-sensitive information.

7.27 Beyond the examples given, there is no further guidance in the Employee Handbook or the divisional/departmental policies which assists employees with how to classify information or how to identify price-sensitive information specifically. The classification appears to be dependent upon the individual generating the relevant document. Each policy states that, where in doubt, employees should contact their line manager.

7.28 We were informed that the only policies which deal specifically with the identification of price-sensitive information, beyond the Information Classification, Marking and Handling policies in each division, are those created by and for use within the UKLA and Market Monitoring Departments (within the Markets Division) respectively:

7.28.1 The UKLA has adopted a policy headed "*Information handling procedures*", the most recent version of which was approved in 2011 by Mr Teasdale, Head of the UKLA. That policy acknowledges that the "*the nature of the transactions reviewed by the UKLA department means that much of the information we handle is market-sensitive.*" Accordingly it requires all information handled by that department to be considered Controlled Distribution.

7.28.2 The "*Treatment of Inside Information Procedure Guide*" issued by the Market Monitoring Department states that:

> "*Actions by the FCA can create inside information, this is particularly the case in the area of Market Monitoring where staff have knowledge of Enforcement referrals, supervisory actions … or Enforcement outcomes. Decisions by the FCA concerning a regulated firm that may also be admitted to trading on a regulated market may be price-sensitive and therefore inside information. In such cases the information may only be known to the FCA and therefore staff will need to take responsibility for ensuring that insider lists and other appropriate controls are adhered to. It should be the responsibility of the department that originates the information to ensure that it maintains the necessary controls.*
>
> *N.B. staff should be alive to the fact that other departments may not recognise information as inside information or might not understand what controls should be exhibited. Staff should not assume that inside information may have been recognised by the originating department and should escalate concerns to the appropriate management. Staff should ensure that other departments agree who has responsibility for maintaining controls of the information*."

7.29 The policy from the Market Monitoring Department recognises, therefore, that staff in other departments or divisions may not have the same expertise in relation to the identification of price-sensitive information.

7.30 This is unsurprising, given that what is or is not price-sensitive is a question which is not straightforward to interpret and needs to be answered by examining all the prevailing circumstances, with input from those who have a detailed understanding of the relevant companies or sector.

7.31 In this context, we were told that individuals from the Supervision and Communications Divisions within the FCA have consulted the UKLA from time to time for guidance as to whether information or documents they are handling may be price-sensitive. Mr Teasdale told us that the guidance his department provides in response to such questions generally includes an explanation of the statutory test to be applied to determine whether information is inside information, but would not be fact-specific (as only those with detailed knowledge of the relevant sector can determine whether information may in fact meet the test of inside information). No guidance was sought from the UKLA or other departments in the Markets Division prior to the briefing given to *The Telegraph*.

Control of price-sensitive information

7.32 Both the Employee Handbook and the divisional policies contain certain controls applicable to information once classified, including as "*Controlled Distribution*". As noted above, the controls relate principally to storage, distribution and disposal.

7.33 If a document falls within the category of "*Controlled Distribution*" the Employee Handbook stipulates that "*Access to information in this category will be restricted to those having a demonstrable 'need to know', and it is expected that in most cases this will be a small group of people (for each instance of this type of information.)*" It also specifies that each document must be marked accordingly in the header, footer or email content.

7.34 The specific controls applicable to "*Controlled Distribution*" information include adherence to a "*clear-desk policy*" to ensure information is locked away when not in use. There are also controls in relation to email encryption when sending the information externally as well as network storage of such information.

7.35 There is no guidance in the Employee Handbook, nor the divisional policies or procedures, at least in the Supervision and Communications Divisions, about the use of insider lists in relation to inside information, nor do those policies set out other controls in relation to the dissemination and disclosure of price-sensitive information to the market.

7.36 By contrast, the "*Treatment of Inside Information Procedure Guide*" issued by the Market Monitoring Department states that in relation to the dissemination of market-sensitive information that "*Market Conduct staff should take appropriate measures to ensure that inside information is only made available to those who have a proven need to know. Sensible and proportionate precautions should be taken to ensure that inside information is not disseminated outside of the restricted group. The good practice recommendations that have been issued by the FSA in Market Watch 27 offer a good introduction to appropriate controls*." No further guidance or procedures are set out in this policy document.

Media-handling procedure

7.37 The Employee Handbook addresses media-handling in general terms, on page 182, under the heading "*Media Enquiries*":

> "*In order to help the FCA to maintain a consistent line when dealing with press or other media enquiries, all press enquiries must be referred to the Press Office (ext 63232).*

If you receive a media enquiry you should not comment on what is being put to you, but politely and firmly refer the journalist to the Press Office. You should also contact the Press Office yourself to inform them of the enquiry.

Only employees in the Press Office and those authorised by the Press Office should speak to the media.

There are no exceptions to this requirement and even those authorised to talk to the press (who have all received formal training on dealing with journalists) need to contact the Press Office before responding to calls from journalists. This is designed to minimise any risk to individual employees as well as the FCA.

Remember that the press may be present when employees are speaking at external conferences or events. Don't say anything you would be embarrassed to see in print, particularly during question and answer sessions."

7.38 In addition, there is a "*Communications and International Policy*", approved by the Board on 30 January 2014, which sets out high level communications policies that need to be adhered to when engaging in internal and external communications. It states that it should be considered alongside the Employee Handbook. The policy states that in order to maintain a consistent message and manage reputational risk, only staff in the Media Relations team, and those authorised by that team, can speak to the media.

7.39 There are, however, no policies which address how to handle the media in relation to price-sensitive and non-price-sensitive announcements specifically. There are, for example, no internal policies which reflect the guidance in the Industry Regulator Guidelines. This is to be contrasted with the statements published by the CMA referred to at paragraph 7.18 above.

Conclusions and answer to:

Question 6(a): "*What procedures exist to identify and control the release of price-sensitive information*"?

7.40 The FCA's relevant procedures are summarised above.

7.41 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.

7.42 There are no policies within the Supervision and Communications Divisions that seek to implement procedures consistent with those recommended by Market Watch Issues No. 21, 27 or 37 or the Industry Regulator Guidelines. 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.

7.43 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.

7.44 Our understanding is that the limited controls that do exist in relation to information classification are not adhered to strictly. In this context, we have seen an email sent to all staff within the Communications Division on 27 March 2014, reminding them of the requirements and referring to the introduction of a new monthly check regarding compliance with the Communications Division's Information Classification, Marking and Handling Policy referred to at paragraph 7.26.2. That email said that it was expected that there would be "*a vast number of breaches to begin with*". The Media Associate involved in briefing *The Telegraph* was not following the classification procedures that were in place and had received no training on price-sensitive information or market abuse.

7.45 In this context, we were informed that Internal Audit in 2013/2014 had conducted a review of the UKLA, including its controls for handling potentially "*market-sensitive*" information. The Internal Audit review, published in March 2014, identified additional possible controls and good practice. One recommendation among a number identified was "*Good practice includes providing employees with scenario-based training on the handling of MSI* [market-sensitive information] *upon starting their role as well as regular refresher training.*"

7.46 The way in which price-sensitive information is handled within the Supervision and Communications Divisions has not been the subject of a review by Internal Audit. We were told by Sir Brian Pomeroy, however, that before the events of 27/28 March 2014, a review of the FCA's external communications had been scheduled for the last part of the financial year 2014/15.

7.47 Specifically, the FCA told us that on 6 March 2014 the Audit Committee approved the audit plan for 2014/15, including 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.*"

7.48 Notwithstanding the deficiencies in the procedures relating to price-sensitive information, we found that employees interviewed from the Supervision and Communications Divisions had a broad understanding of what is meant by "*price-sensitive*" or "*market-sensitive*" information (the term most frequently used within the FCA). However, as we will see, those in the Supervision Division involved in the Life Insurance Review did not consider expressly the issue in relation to the briefing given to *The Telegraph.* Further, the Media Relations team relies on the relevant Division, in the present case Supervision, to draw to its attention any price-sensitive issues in relation to communicating issues on behalf of the relevant Division.

7.49 We turn in the next Chapter to the FCA's communications strategy.

CHAPTER 8

8. THE FCA'S COMMUNICATIONS STRATEGY

Introduction

8.1 This Chapter sets out by way of background and relevant context to the briefing given to *The Telegraph*, a description of the FCA's overall communications strategy and the practice of giving advance briefings to the media in advance of formal announcements.

8.2 Interviewees told us that the FCA has set out to be more proactive, transparent and consumer-focused in its approach than its predecessor, the FSA. This change of approach has been reflected in the FCA's communications strategy.

8.3 Mr Wheatley and other FCA interviewees told us that the FCA considers it is an important requirement to communicate effectively with companies and consumers about the activities of the FCA as regulator. We were told also that a proactive and co-ordinated media approach, including engagement with the media and the use of social media, is integral to this approach.

8.4 Mr Wheatley told us that in his view use of the media is a necessary "*tool of regulation*":

> "*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. 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. So my answer is the media is a very powerful tool, of course it is, and that is what we use.*"

8.5 The approach of the FCA with respect to communications has developed from that of the FSA, including the adoption of a formal communications strategy, and, for the first time, giving briefings to the media in relation to the content of the Business Plan in advance of its publication.

The FCA's overall communications strategy

8.6 The overall communications strategy of the FCA for its initial year was articulated by Ms McMillan in a document entitled "*FCA Communications Strategy Year 1, "Proof of Concept"*." We were told that this document was created at around the time of the inception of the FCA in 2013, following discussions with various members of the ExCo, and that it was presented to the Board.

8.7 The document references what was perceived to be an "*unequal external perception*" of the FSA, meaning that it had been perceived publicly as concerned almost exclusively with enforcement action. The strategy for the FCA was to broaden media coverage over all of the FCA's activities intended to achieve its previously mentioned three operational objectives: to secure an appropriate degree of protection for consumers; to protect and enhance the integrity of the UK financial system; and to promote effective competition in the interests of consumers.

8.8 This strategy would be implemented by a "*pipeline*" approach, with communications activity based around specific objectives in phases. The example given in the presentation was to raise awareness on a given issue through a speech, then to evidence action by the FCA through thematic work and, finally, to demonstrate success with a consumer outcome or enforcement action.

8.9 We were told that responsibility for communications strategy is a matter for the ExCo, with the implementation in relation to engaging with the media undertaken principally by the Media Relations team, liaising with the relevant divisions.

8.10 We were informed that, pursuant to the overall strategy, a specific communications plan would be created for any significant area of work to be communicated externally, which would include details of the specific methods to be used to convey the FCA's message: whether by speeches, interviews, a formal press release or other means. Among other methods available to the FCA is the practice of briefing journalists, as discussed further below. We were informed that, as at March 2014, the Supervision and Communications Divisions had no policies in relation to the conduct of interviews or the generation of press releases, although as a matter of practice, press releases were typically approved by a member of the ExCo and relevant members of the ExCo were typically informed about interviews taking place.

The FCA's communications strategy for the period to 1 April 2014, including the Business Plan

8.11 On 15 October 2013, the ExCo approved a paper presented by Ms McMillan which set out a specific communications strategy for the period leading up to the first year anniversary of the FCA on 1 April 2014. The presentation was headed "*Communications Strategy for April 2014*" and stated that, on 1 April 2014, "*the media, stakeholders and others will assess the impact"* made by the FCA in its first year and that the objective was therefore to "*evidence, in a compelling way, the* *successes and achievements of the FCA through 2013/14 and set out our priorities for 2014/15*".

8.12 The stated aims included being able to find ways to "*talk to consumers*" in advance of the anniversary as well as "*ensuring firms understand what we expect from them and understand what our priorities are and what that means for them*". The strategy was stated as being to "*bring together seemingly disparate work into one, cohesive narrative*" linked by the following themes: standing up for consumers; investing with confidence; creating a strong financial infrastructure; and regulating with clarity. The paper said that the FCA would seek to achieve its aims through the use of a variety of channels, including speeches, briefings to journalists and teach-ins, as well as the mainstream media including print, broadcast and online. The proposed communications strategy included the Business Plan as one of the key publications to enable the FCA to achieve its strategy.

8.13 At the meeting of 15 October 2013, the ExCo also approved a paper by Mr Woolard and others proposing a different structure for the Business Plan, less dense than that in previous years and intended as a statement of the FCA's new organisational approach, strategy and culture. The FCA considered previous business plans to be largely technical documents, accessible only to industry specialists.

8.14 The FCA sought, therefore, to make the 2014/15 Business Plan more accessible and appointed a dedicated member of the Communications Division to assist in drafting it in order that the content and tone of the document would appeal to the market, regulated firms and consumers. The FCA sought also to respond to the industry's calls for a greater insight into the FCA's planning and priorities for the year ahead by identifying in the Business Plan specific pieces of work linked to relevant FCA objectives. For the first time, the FCA included a full list of the thematic work scheduled to be completed in the coming year.

8.15 Chapter 9 contains, in more detail, a description of the background to the inclusion of the Life Insurance Review in the Business Plan, and the extent of any consideration as to whether publication of the Business Plan could give rise to the disclosure of price-sensitive information.

The FCA's communications strategy for thematic reviews

8.16 The general approach of the FCA to its communications strategy, including the "*pipeline*" approach to given areas of work, fed through specifically to its approach to communications regarding thematic reviews.

8.17 The more transparent and pre-emptive approach of the FCA has involved the greater use of thematic reviews, which involve the FCA looking into an issue or product across a number of firms within a sector or market, to understand whether a risk to its regulatory objectives exists which might merit some kind of action on the FCA's part.

8.18 In July 2013, the FCA explained its approach to thematic reviews in a document entitled "*The FCA's Approach to Advancing its Objectives*" (the "**FCA Approach Document**"):[27]

> "*We use thematic reviews primarily in pursuit of our consumer protection objective, analysing risk in the sector, looking at what is currently and potentially causing poor outcomes for consumers and market participants. Poor outcomes may arise either because firms are not complying with our rules (or the spirit of our rules) or because we do not have the right rules in place.*
>
> *The analysis uses the data we collect, our understanding of the products and firms and input from firm-based supervision to identify and assess risks.*"[28]

8.19 The FCA had previously published a discussion paper on transparency in March 2013 (the "**2013 Discussion Paper**"), in which it stated that "*Being a transparent regulator is at the heart of our approach*".[29] Amongst the ideas canvassed was a proposal that the FCA increase the transparency of its thematic work and early interventions. The FCA stated that "*by improving the content, clarity and accessibility of this information, we could be more transparent about thematic work we carry out.*"[30]

8.20 In its summary of the response to the 2013 Discussion Paper, published in August 2013, the FCA noted that there was "*strong support*" for increasing transparency of its thematic work.[31] However, some respondents "*expressed reservations about the consequences of publishing this information. ... A few firms felt that there was potential for the information to be misunderstood.*" In addition, the FCA highlighted that "*respondents expressed strong views about the timing of publications and engagement and communication with industry*."

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27 http://www.fca.org.uk/static/documents/fca-approach-advancing-objectives.pdf

28 Ibid, 18-19.

29 https://www.fca.org.uk/static/fca/documents/discussion-papers/fsa-dp13-01.pdf

30 Ibid, 22.

31 FCA, Feedback statement FS13/1, 16. http://www.fca.org.uk/static/fca/documents/feedback-statements/fs13-1-transparency-discussion-paper.pdf

8.21 In response to the respondents' reservations, the FCA stated that:

> "*As part of our commitment to be more open, we intend to engage more with firms, trade bodies, practitioner panels and other stakeholders when we start new thematic work on issues and products. We have started to review our approach to how and when we communicate with industry about the problems we are investigating, and how we intend to carry out the work.*"[32]

8.22 The FCA, however contemplated a limit on transparency in "*instances where we cannot say very much or communicate widely with stakeholders in advance, because of market sensitivity*". In light of this consideration, the FCA said that "*we may need to tailor our communications approach to individual thematic reviews and be guided by the issues and sector affected*."[33]

8.23 In September 2013, the DSRC considered a proposal for a new process for the communication of thematic reviews, sponsored by Mr Adamson. The proposal is set out in an internal document headed "*How we should communicate Thematic Reviews*" prepared for a meeting of the DSRC on 23 September 2013. The document refers in particular to the FCA Approach Document and states that "*we have made the commitment to communicate thematic reviews throughout the process rather than the end*".

8.24 The proposal describes a new joint process for the Communications Division to work with the Supervision Division to develop communications strategies to support thematic reviews, including in particular that every new piece of proposed thematic work would come with a communications plan articulating key milestones and a strategy for articulating the FCA's message through the right channel and "*at the right point of the thematic review life cycle*".

8.25 The proposal states that in each case the communications approach must include "*the ability to announce what outcome we are hoping to achieve and the possible action that may result of this review (e.g. new rules, guidance, possible enforcement action*".

8.26 The proposal stated that if successful, key stakeholders, particularly firms, would find the programme of thematic reviews predictable, greater and earlier engagement with the industry would be encouraged and the risk of press leaks and misrepresentation of the FCA's position or aims would be avoided.

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[32] Ibid, 18.

[33] Ibid, 18.

8.27 Under the heading "*Are there any risks involved?*" a key reputational risk identified in announcing thematic reviews early is that the FCA could not meet the deadlines to which it had committed. The paper contains a series of boxes which were completed, dealing for example with competition and equality and diversity implications of the proposal.

8.28 There was no box required to be completed addressing the implications of the release of price-sensitive information. Nor was the risk of disseminating price-sensitive information otherwise addressed, notwithstanding the FCA's concerns about "*market-sensitivity*" and needing to limit transparency in relation to the communications approach to individual thematic reviews (see paragraph 8.22 above).

8.29 Those we interviewed said that as at 28 March 2014, there had been no previous occasion where, so far as they were aware, there had been a significant effect on market prices caused by the announcement of the results of a thematic review, let alone an announcement that a review was being conducted. The working assumption within the FCA was therefore that the mere fact that a thematic review was being conducted did not raise issues relating to price-sensitive information.

8.30 The communications strategy for thematic reviews was approved by the DSRC on 23 September 2013.

8.31 We address in the next section the use of briefings as part of the FCA's communications strategy.

The FCA's approach to the media and the use of "pre-briefings"

8.32 As set out above, the FCA has stated consistently that it would proceed on a presumption of transparency. At paragraph 8.21 we referred to the FCA's intention to "*engage more with firms, trade bodies, practitioner panels and other stakeholders when we start new thematic work*". This has been implemented in practice in the insurance sector, for example, with briefings being given on occasion to the ABI, Statutory Panels and the media. These include briefings prior to the announcement of the commencement and results of thematic reviews, referred to within the FCA as "*pre-briefings*".

8.33 We were told by all relevant FSA and FCA interviewees that pre-briefings (whether of the media or industry) would never knowingly take place in relation to a piece of work or announcement which might be price-sensitive. Where, however, the subject matter of an announcement is not deemed to be price-sensitive, it was explained by a number of interviewees that the practice of pre-briefing the media has a number of advantages.

8.34 In some cases, a pre-briefing would be given to the media under an "*embargo*". This involves the briefing of the media in advance of the publication of an announcement, with the agreement by the media that no publication would take place until after the announcement had been published. We were told that the benefit of pre-briefing of this nature is to enable the media to become familiar with the contents of the announcement and to prepare stories in a better informed, accurate manner, for publication on the day of the announcement. The pre-briefing may include a "*teach-in*", where aspects of a particular piece of work which may be quite technical are explained in more detail.

8.35 We were told that the reason why an embargo is in place has nothing to do with the contents of an announcement being price-sensitive, since that would preclude any kind of briefing prior to disclosure via an RIS announcement. The principal reason is to ensure a more orderly release of the news item into the public domain than would otherwise arise if the media were permitted to publish freely in advance of the FCA's own announcement.

8.36 We were told that the briefing of journalists under an embargo is a practice which is common in the press offices of different organisations and is not limited to the FCA and that it was also a practice of the FSA. In this context, we are also aware of the statement of the CMA at paragraph 7.18 above, which refers to the use of embargoed releases in relation to material that is not market-sensitive.

8.37 We were told that no embargo restriction is imposed in circumstances where the FCA intends there to be no restriction on when the journalist can publish a story following the briefing. 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.

8.38 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 cover the particular piece of work in more detail than he or she would were the briefing to have been given more generally. We were told that this practice is also adopted commonly by the press offices of other organisations and was also adopted by the FSA.

8.39 We were told that, when selecting who to pre-brief, a number of factors would be considered. Where, for example, an exclusive is being given to the press, the selection of a relevant journalist might be determined by the demographic of the anticipated audience/readership and whether that was appropriate or suitable to the media message. The interest of the journalist in the subject matter, and therefore whether he or she would be likely to pick up the story and write about it, would also be a relevant consideration. The choice of journalist, and whether or not an exclusive would be given, is normally made by the Media Relations team.

Examples of past pre-briefings

8.40 We were provided with a number of examples of pre-briefings given by the FCA to the media in relation to thematic reviews. These demonstrate that the practice of issuing pre-briefings was not an exceptional or isolated practice. For illustrative purposes, the table below contains a summary of a selection of applicable examples provided to us:

Date of Announcement	Pre-Briefing
24 November 2013	The FCA announced the commencement of a thematic review of the practices of insurance price comparison websites.[34] Mr Hyde was given an exclusive pre-briefing, including an interview with Simon Green, Head of General Insurance and Protection. An article appeared in *The Telegraph* two days before the FCA's announcement.[35]
10 February 2014	The FCA announced the results of a thematic review in relation to Transition Management, a process used by asset owners, such as pension funds, to help move investment portfolios between different managers or markets while managing market risk and reducing transaction costs.[36] In advance of the announcement, on 6 February 2014, an exclusive pre-briefing was given to the *Financial Times* under an embargo. There was also a telephone briefing from Mr Adamson on 7 February 2014, with quotes agreed with the journalist for inclusion in the article following the briefing.[37]

34 http://www.fca.org.uk/news/the-fca-launches-review-into-price-comparison-websites.

35 http://www.telegraph.co.uk/finance/personalfinance/insurance/10469446/Investigation-into-misleading-comparison-websites.html

36 http://www.fca.org.uk/news/tr14-01-transition-management-review

37 http://www.ft.com/cms/s/0/d15f57d4-8fe7-11e3-aee9-00144feab7de.html#axzz3Bax7EEqI.

14 February 2014	The FCA announced the results of a thematic review of the annuity market and the launch of a competition market study into the sector.[38] In advance of the announcement, on 13 February 2014, a copy of the press release was issued under an embargo to press contacts of the Media Relations team. In addition, key trade and national media were given more detailed technical briefings under embargo on 11 February 2014 and 12 February 2014.
4 March 2014	The FCA announced the results of a follow-up thematic review of sales incentives at retail financial services firms.[39] The announcement was preceded by a pre-briefing on 3 March 2014 given to Mr Hyde at *The Telegraph.* The pre-briefing comprised the text of a comment piece written by Mr Wheatley for publication in *The Telegraph* on the day of the announcement. It was provided to Mr Hyde under an embargo until the day of publication of the announcement on 4 March 2014.[40]
12 March 2014	The FCA announced that from 1 April 2014 it would be commencing a review of the debt collection practices of payday lenders.[41] The review was pre-briefed under an embargo to all press contacts of the Media Relations team on 11 March 2014.

8.41 Pre-briefings are regarded as an uncontroversial and useful part of the FCA's communications strategy. By way of illustration, an email was sent by the Media Associate on 14 February 2014 to Mr Wheatley, Ms McMillan and Mr Woolard, in relation to the annuity pre-briefings referred to above, stating among other things:

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38 http://www.fca.org.uk/news/fca-finds-annuity-market-not-working-for-consumers-competition-market-study-launched.

39 http://www.fca.org.uk/news/the-fca-publishes-latest-review-of-sales-incentives-at-retail-financial-services-firms.

40 http://www.telegraph.co.uk/finance/personalfinance/bank-accounts/10674180/Martin-Wheatley-We-cant-change-bank-bonus-culture-overnight.html.

41 http://www.fca.org.uk/news/consumer-credit-countdown-review-into-debt-collection-practices-of-payday-lenders-starts-on-day-one-of-fca-regulation.

"*It was an excellent start to the day with an above the fold front page splash on the Telegraph. There were also large news stories in The Times, Daily Mail, FT, Express and lots of commentary and op-eds.*

[Mr Wheatley's] *interview on Radio 4's Today helped set the day's news agenda to the retirement market. Since then the story has run frequently on the BBC New* [sic] *Channel and Sky News with lots of third party comment. Crucially the third parties being interviewed were almost always those that we had pre-briefed, ensuring that they were on message and understood the scope of our work.*"

8.42 The approach of the FCA, when making any kind of formal announcement, is that quotes from individuals would generally be given in the name of a director. This is a strategy, we were told, that has been approved by the ExCo and is an approach that is taken in relation to pre-briefings where quotes are attributed to individuals.

The issue of price-sensitive information in relation to pre-briefings

8.43 As set out above at paragraph 8.22, the FCA had recognised in its response to the 2013 Discussion Paper, published in August 2013, that there may be a limit on what can be communicated to stakeholders in advance in relation to thematic reviews because of "*market sensitivity*" (the term used by the FCA as equivalent to price-sensitivity).

8.44 The issue was also addressed in an email exchange between a number of the members of the ExCo on 6 March 2014. The content of that email exchange was not a thematic review but the upcoming publication of the results of one of the FCA's first market studies. Market studies were not conducted by the FSA, being a methodology introduced by the FCA when it took over responsibility for addressing competition issues. They differ from thematic reviews in their focus on the potentially anti-competitive operation of a particular market, rather than on the risks to the FCA's regulatory objectives which might be posed by the conduct of individual firms or a sector.

8.45 The discussion on 6 March 2014 concerned whether pre-briefing, in relation to the results of a market study (in this case into the general insurance add-ons sector), was appropriate or not. At the time, the focus was on whether it was appropriate to pre-brief the ABI and the Statutory Panels, but the principles discussed applied equally to the media and a number of the interviewees who were on the email chain told us that the discussion related to pre-briefings generally, including the media.

8.46 The issue was raised by Mr Woolard, who had previously been a competition official at the Department of Trade and Industry. The new competition function was part of his responsibilities as Director of Policy Risk and Research at the FCA.

8.47 Mr Woolard was also previously Group Director at Ofcom with responsibility for a range of issues, including the content of briefings for the media. He told us that he was not only familiar with the practice of pre-briefings by the FCA of the media, but had participated in them, and that it had also been a practice of the communications team at Ofcom.

8.48 Mr Woolard's concern related to a possible pre-briefing of the findings of a market study into the general insurance add-ons industry. He said a number of things, including as follows:

> "*In advance of the publication of the GI study next week, I wanted to flag the following. My judgement is that we should treat the publication as market sensitive and not pre-brief.* [Ms McMillan] *agrees. However, given that's a reasonably fine call and we may each receive some negative feedback from industry contacts I wanted to share this.*"

8.49 He said also:

> "*Setting aside the specifics of this case, there is an argument that we should treat market study announcements as market sensitive by default. I've discussed with* [Ms McMillan] *and she would support this. (This is in line with CC practice, though OFT takes a case by case view.) This approach has the advantage of being clean, simple and predictable – it avoids having to judge in each case whether the findings could be market sensitive, and which stakeholders to trust with findings ahead of publication.*
>
> *We might also legitimately take a different approach for market studies – which by their nature cover an entire market, and where remedies may impact significant revenue streams (such as GAP) – and thematic reviews, where findings may relate primarily to the conduct of individual firms in the sample, and where there may be a stronger case for pre-briefing those who have participated in the review.*"

8.50 The ABI was said to have complained that a decision not to pre-brief it of the findings of a market study would differ from the approach which had been taken on thematic reviews.

8.51 There were differing views expressed in the exchange. Mr Lawton, for example, said that whether or not the announcement was market-sensitive "*I can't see any* *operational reason why private sector parties need to have this information in advance. The only thing they could (legitimately) do with it is prepare their commentary.*" Mr Lawton told us that he did not have any detailed knowledge in any event about the practice of pre-briefings.

8.52 Mr Martin's position was as follows:

"*Thanks* [Mr Woolard]. *I can see the case here for not pre-briefing, but did you have in mind that we would discuss further whether we should adopt this as standard practice for market studies? I'm not yet 100% convinced of the distinction between thematic reviews (as focussing more on the behaviour of particular firms) and market studies, but am of course open to argument on this.*"

8.53 Mr Martin said that he was generally aware that pre-briefings took place, but unaware that they might include the recipients, including the media, being told about the detailed contents of any announcement in advance.

8.54 Ms McDermott said, among other things:

> "*So if 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 (and we have quite detailed and fairly onerous procedures on this). Given our role as market regulator we perhaps have to be more careful about this than other regulators might have to be. I think there are therefore dangers in defaulting to an assumption of sensitivity but not following the tight processes required.*
>
> *In an Enf context, for what it is worth, we consider on a case by case basis whether something is market-sensitive – and we usually consult with UKLA – and adapt our handling appropriately eg announcing before market opens etc. I recognise that is easier because it is firm specific rather than across an industry.*"

8.55 Ms McDermott was also generally aware that pre-briefings took place, but had no detailed knowledge. Another member of the ExCo on the chain was Ms Titcomb with extensive experience of dealing with the media. Ms Titcomb said that pre-briefings took place at the FSA and FCA, albeit never where there were issues relating to price-sensitive information, and that she had participated in them.

8.56 It was agreed in the email exchange that the issue would be discussed at the meeting of the ExCo on 10 March 2014. Ms Raffe suggested that the discussion "*doesn't just consider market studies vs thematic, but all major announcements that significantly affect the business of firms or sectors. That could include new Rules, CC cap etc.*"

8.57 We were told that the issue was discussed at the meeting of the ExCo on 10 March, but that the focus was only in relation to the issue of market studies. The conclusion as recorded in the minutes was that "*a consistent approach of not communicating the results of market studies prior to publication should be adopted, but that they should not be classified as market sensitive for internal handling.*"

8.58 It was therefore up to those working on a market study to decide when a stage in the work had been reached where issues relating to price-sensitive information might arise for the purposes of classification, with the policy being that there would be no pre-briefing in any event.

8.59 So far as thematic reviews are concerned, we were told that no discussion ultimately took place at the ExCo meeting. It was therefore left to the Supervision Division to identify whether there were any issues relating to price-sensitive information in the context of pre-briefings of thematic reviews. As we will see, the issue was not addressed specifically in relation to the inclusion of the Life Insurance Review in the Business Plan or the pre-briefing given to *The Telegraph*.

Conclusions and answers to:

> **Question 5(e): "*Was the briefing consistent with any internal guidance available to FCA staff or with previous practice, and who authorised such guidance or practice*"? and**
>
> **Question 5(f): "*To what extent this specific briefing is an isolated exception. If not, does this represent more general practice at the FCA, who authorised this approach and why*"?**

8.60 We will address in Chapter 12 the briefing given to *The Telegraph*. The previous practice is described above. The FCA regards an effective, co-ordinated communications strategy as an important part of its work to meet its statutory objectives. This strategy has involved a proactive and consumer-focused approach to media-handling, using media and industry pre-briefings, in common with other regulatory bodies.

8.61 The practice of pre-briefing is not the subject of any policy or internal guidance. It has developed further as the number of thematic reviews has increased. The briefing of *The Telegraph* was therefore not an isolated exception. The practice was not formally authorised by the Board or the ExCo. It was, however, known to and participated in by various members of the ExCo and therefore authorised implicitly by the FCA.

8.62 We turn in the next Chapter to the background to the Life Insurance Review and its inclusion in the Business Plan.

CHAPTER 9

9. THE BACKGROUND TO THE LIFE INSURANCE REVIEW AND ITS INCLUSION IN THE BUSINESS PLAN

Introduction

9.1 The Life Insurance Review was one of 25 confirmed new thematic reviews proposed to be undertaken in 2014/15 that were referenced in the Business Plan.

9.2 In this Chapter we summarise the internal discussions leading to the decision to commence the Life Insurance Review and the initial briefings given to the ABI. We also summarise the discussions leading to its inclusion in the Business Plan and the extent to which the FCA considered that it may have constituted price-sensitive information.

9.3 These summaries are of relevance in considering the pre-briefing given later to *The Telegraph*, which is addressed below in Chapters 11 and 12.

Origins of the Life Insurance Review

9.4 On 31 July 2013, the Supervision Division had held a risk planning meeting at which the treatment of long-standing customers in life insurance contracts was first identified as a potential area of risk appropriate for a thematic review.

9.5 The rationale for the Life Insurance Review centred on a concern that a combination of factors could mean that insurance companies were not treating customers in legacy products fairly. These factors included, amongst others, customer inertia and a possible lack of transparency on costs.

9.6 Associates in the Long Term Savings and Pensions Department within the Supervision Division ("**Supervision Associate One**" and "**Supervision Associate Two**") were given responsibility for developing the business case for the Life Insurance Review. Supervision Associate One and Supervision Associate Two identified the risks to be assessed, the methodology for assessment, the type of information to be requested from sample firms necessary to carry out that assessment, and the internal resources required to undertake the review.

9.7 On 13 January 2014, a paper setting out the business case for the Life Insurance Review was presented by Supervision Associate One and Supervision Associate Two to a meeting of the DSRC which was attended by, amongst others, Mr Adamson and Mr Poyntz-Wright, Director of Long Term Savings and Pensions within the Supervision Division. The paper said that the Life Insurance Review was intended to assess:

> "*Whether firms are operating historic (often termed 'legacy' or 'heritage') products in a fair manner. For example, the project will assess: whether firms' strategies towards these business lines adequately consider the fair treatment of customers; to what extent firms review legacy products to ascertain whether they remain fit for purpose; whether customers receive appropriate information about policy benefits; the causes of poor fund performance and whether apportionment of costs and expenses to these products is fair."*
>
> *"The nature and extent of exit and discontinuance charges that potentially inhibit customers from switching to better performing products.*"

9.8 The DSRC was advised that the Life Insurance Review was a discovery project and that a separate business case would be brought to the DSRC only if industry-wide mitigation was considered necessary, having regard to the nature and extent of the findings of the Life Insurance Review.

9.9 The DSRC paper stated that the Life Insurance Review was likely to attract significant attention in the industry and media and that it was (as discussed further below) likely to be identified as a future work project in the Business Plan. The DRSC paper highlighted that the Life Insurance Review would be "*contentious for the life industry and ABI, particularly as there is a possible perceived overlap with the ABI work on workplace pension charges.*" The paper noted explicitly "*Which? published a report in January 2013 about the impact on customers of high exit penalties in legacy pension products and there has been some interest in this area in the past. Consequently, there is a communications risk that our review may set expectations that we will address high exit and discontinuance penalties through our review*".

9.10 The paper also said, under the heading "*Communications comment*":

> "*Our communications approach at the start of the thematic review work will to be driven* [sic] *by how assertive we wish to be on this issue and how confident we are that we will be able to meet market and consumer expectations with regard to the final outcomes of the work. In view of the media's and consumer groups' often hostile views on legacy operations, the review may well attract a lot of attention. Given that our initial exploratory work will involve engaging with trade bodies and market participants and that we understand that the review is likely to appear in the Business Plan, we will prepare positioning statements and Q&As to help us deal with interest from wider audiences. In consultation with the project team we will also develop proactive, integrated communications plans to engage with the media, consumer groups and public affairs and wider B2B audiences if appropriate.*"

9.11 Supervision Associate One and Supervision Associate Two therefore recognised in their assessment that the scope of the review could, if communicated incorrectly, be misunderstood by the media, consumers and the insurance industry. In particular, there was a concern that the review may be misunderstood as seeking to address high exit and discontinuance penalties, when in fact the work was only seeking to gather information to understand whether a problem actually existed in practice in relation to the way in which customers subject to those penalties were being treated. It was therefore necessary to develop a communications strategy to seek to avoid any such misunderstandings.

9.12 Notwithstanding the seriousness of the concerns identified, there was no specific consideration given during the development of the business case for the Life Insurance Review or during the internal sign-off process, or at the DSRC, as to whether the existence or announcement of the Life Insurance Review might constitute price-sensitive information.

9.13 Mr Adamson and Mr Poyntz-Wright told us when interviewed that although the issue of price-sensitive information was not addressed specifically by the DSRC, their view was that the work on the thematic review was not price-sensitive. It was not an investigation into the conduct of individual firms. It was a discovery piece of work intended to find out if any risks existed which might justify intervention by the FCA; no conclusions had been reached and it would be unsurprising in any event for it to be announced that the FCA was considering legacy insurance issues.

9.14 The fact that the nature and extent of the Life Insurance Review might be misconstrued was, therefore, not considered in terms of whether it amounted to price-sensitive information, but as a communications risk which needed to be addressed in briefings of the ABI and the media.

9.15 The DRSC approved the Life Insurance Review at the meeting of 13 January 2014. Representatives from the Supervision Division and the Communications Division thereafter liaised on the briefings of the ABI and the media.

Development of the Business Plan, including reference to the Life Insurance Review

9.16 On 20 January 2014, a week after the DSRC meeting, the ERIC considered a draft of the Business Plan that had been put together by the Policy, Risk and Research Division and the Communications Division with input from the other divisions. Each division drafted its respective section of the Business Plan and fed back drafts to a Planning and Performance team (within the Policy, Risk and Research Division) which, working with the Communications Division, consolidated the information and edited the drafting in order to ensure a consistent approach to drafting and presentation throughout the document. Revised drafts were sent back and forth between the respective divisions and the Planning and Performance team until the document was agreed.

9.17 The Life Insurance Review was included in the draft Business Plan as one of a number of thematic reviews the FCA was planning to conduct during the 2014/15 financial year. In the meeting on 20 January, the ERIC, agreed to include in the Business Plan the list of forthcoming thematic review work for the year ahead. There was no discussion at that meeting of the detail of the Life Insurance Review or whether publishing this information would amount to the release of price-sensitive information.

9.18 The Business Plan was subsequently presented to the ExCo for approval in draft on 18 February 2014. The draft presented to the ExCo also contained reference to the Life Insurance Review as well as other thematic reviews to be conducted in the forthcoming year.

9.19 The document pursuant to which approval of the Business Plan by the ExCo was sought, contained under the heading "*Internal Considerations*", various boxes which were completed dealing with implications such as competition and equality and diversity. The issue of price-sensitive information was not identified as an implication. As at the ERIC meeting in January, there was no discussion at the ExCo meeting about the Life Insurance Review specifically, nor was there any consideration of whether publishing the Business Plan with details of forthcoming thematic reviews might give rise to any issues in relation to price-sensitive information.

9.20 The draft presented to the ExCo was approved. The Business Plan was subsequently approved by the Board on 27 February 2014.

9.21 On page 13 of the version presented to the Board, the Business Plan explained generally that "*We carry out thematic work to investigate issues in specific products and sectors – identifying the root causes of risks to our objectives. We analyse our findings and decide whether to explore supervisory, policy or enforcement action to put right any problems that we uncover. This not only helps us to protect consumers, but also supports and enhances market integrity.*"

9.22 In relation to the Life Insurance Review specifically, the Business Plan stated the following, in Chapter 2 under the heading "*Protecting Consumers*", which included a summary of various thematic reviews to be undertaken in the forthcoming year under the sub-heading "*Fair treatment of long standing customers in life insurance*":

"*We will assess whether firms are operating historic (often termed 'legacy' or 'heritage') products in a fair way and whether they have adopted strategies that exploit existing customers.*"

9.23 On page 27, in a section dealing with potential risks to the FCA objectives, further detail was given under the sub-heading "*Firms with large back books may not consider their existing customers' best interests*":

"*Firms with large back-books could take advantage of consumer inertia and make it difficult for them to switch, or not be clear about pricing, charging or different product options.*

Firms may use the value they get from existing customers to support low rates and introductory offers for new customers. So they may not offer existing customers the best or most appropriate rates and products.

Some consumers may become trapped in unclear contracts and complex charging systems, leading to them paying higher rates or buying or retaining unwanted products through targeted sales. Where consumers hold legacy products, which are no longer widely available from other providers, there is a higher risk that they pay more due to their inability to switch. If customers do not or cannot switch, firms are not incentivised to compete or develop new products.

In 2014/15 we will look into whether life insurance firms are operating historic (often termed 'legacy' or 'heritage') products in a fair way and whether they have adopted strategies that are not in the best interest of existing customers. We will also complete our market study into cash savings accounts, looking at which consumers switch accounts, how often, why and whether the information available to new and existing customers allows them to make informed choices."

9.24 There was no reference in the Business Plan to any consideration of exit fees and no mention of the number of policies which might potentially be affected.

9.25 There was no discussion in the Board meeting on 27 February 2014 in relation to the Life Insurance Review specifically, nor was there any consideration of the issue of price-sensitive information in connection with the publication of the Business Plan generally.

9.26 The GCD was asked to review aspects of the Business Plan, but it was not asked whether it contained any price-sensitive information and nor was the question addressed during the development of the Business Plan.

9.27 There was, accordingly, no express consideration given by any of those involved in drafting or approving the Business Plan to the possibility that the Business Plan could contain information that was price-sensitive. Consistent with what is stated at paragraph 9.13 above, Mr Adamson told us that had he considered the issue of price-sensitive information at the time, his view would have been that the references in the Business Plan to the Life Insurance Review were not price-sensitive.

9.28 Mr Adamson told us that the reason for this was that the focus of the review was not on exit fees, but more whether firms were operating contracts in a fair way, making changes which benefit the firm, but not the investor; allocating an unfair proportion of overheads; or not communicating correctly with policyholders. He told us that, by contrast, had the Business Plan used the words "*we are going to review the appropriateness of exit charges*", it would have been price-sensitive. Mr Adamson explained that what could be most damaging to life companies' revenue flow from 30 million policies, would be if policyholders could exit without the payment of any relevant fees.

9.29 Although no express consideration was given to the issue, Mr Woolard told us that his assumption during the development and drafting of the Business Plan was that it would not include price-sensitive information. Mr Woolard told us that the Business Plan was regarded as a very high level document which was drafted with a view to being published. He said that if anything within the Business Plan had been regarded as price-sensitive it would have been approached very differently and the information announced separately in the appropriate formal manner.

The FCA's meetings with the Statutory Panels in relation to the Business Plan and the Life Insurance Review

9.30 As part of its statutory transparency objectives, the FCA provided advance briefings to the Statutory Panels in relation to the content of the Business Plan and the forthcoming thematic review work planned for the year ahead.

9.31 In meetings with senior FCA executives in December 2013 and February 2014, each of the Statutory Panels was provided with a briefing as to the approach the FCA was taking with respect to drafting the Business Plan generally. The Statutory Panels were advised that the FCA was adopting a new approach to the development of the Business Plan, and that the document would have a clearer tone and structure.

9.32 Between 3 March 2014 and 5 March 2014, Mr Adamson attended meetings with the Consumer Panel, the Smaller Businesses Practitioner Panel and the Practitioner Panel at which he provided an outline of the programme of proposed thematic work for the coming year, which he explained would be included in the Business Plan. Mr

Adamson provided a high level overview of a number of the thematic reviews to be undertaken in the coming year in those meetings, including a summary of the Life Insurance Review. The panels did not raise any concerns about the scope of the Life Insurance Review.

The FCA's Initial Briefings to the ABI in relation to the Life Insurance Review

9.33 We were told that the FCA also consulted the ABI, from time to time, on the contents of relevant forthcoming thematic reviews.

9.34 On 16 December 2013, representatives of the ABI were told by the FCA that it was proposing work in the area of legacy insurance products but that this work had not cleared the FCA's internal processes.

9.35 Once the proposal had been approved by the DSRC, as agreed at the meeting on 13 January, the ABI received a further initial briefing on 4 February 2014. At that meeting Supervision Associate Two and a Technical Specialist in the Long Term Savings and Pensions Department within the Supervision Division (the "**Technical Specialist**") provided representatives at the ABI with a summary of the FCA's "*pipeline*" of planned reviews. The FCA informed the ABI that the Life Insurance Review had received internal approval and set out some details of the intended approach. In advance of giving this information, the FCA did not address expressly the question of whether the information to be provided would be price-sensitive.

9.36 The ABI's note of the meeting states that the ABI were told that the review would cover:

"- *savings products with an investment component (with profits, unit linked, life insurance, pensions);*

...

- *the operation and performance of funds and why some are not performing very well;*

- *the strategic moves ie: moving legacy products onto platforms;*

- *the exit penalties and see if they are a barrier to changing providers;*

- *guarantees and benefits and whether the clients are fully informed and told about options.*"

9.37 The ABI's note also states that the Life Insurance Review would "*start as a discovery piece"* of work and that the FCA would then decide on next steps, that it would commence in May or June of 2014 (depending on the completion of the annuities review) and that it would be set out in the CRO and the Business Plan to be published by the FCA on 31 March 2014. The ABI was asked to keep this information confidential until the publication of the CRO and the Business Plan.

9.38 Following that meeting, a representative of the ABI emailed Supervision Associate Two on 7 February 2014 asking to "*see the text of any announcement* [of the proposed Life Insurance Review] *in the CRO before it is published*" in order to determine whether the Life Insurance Review would overlap with the OFT legacy audit with which the ABI was already involved.[42]

9.39 In his response, Supervision Associate Two did not address the request to allow the ABI sight of any announcement of the Life Insurance Review prior to publication (in fact, the ABI did not see the content of the announcement before the Business Plan or the CRO were published). However, in answer to the ABI's question regarding the remit of the review, he explained that the FCA "*won't be looking at...the level of fixed, contractual charges such as product charges, policy fees etc and, therefore overall* [value for money]."

9.40 On 25 February 2014, a senior representative of the ABI met with Mr Poyntz-Wright. The ABI's note of that meeting records that Mr Poyntz-Wright told the ABI senior representative that the Life Insurance Review would "*focus on how customers were being treated, benchmarked to what they had been led to expect when they were sold the original policy*" and that the FCA was "*not interested in judging legacy contracts against modern standards*". Instead, the FCA's concern was "*to be sure these people are given the service and performance they would have been led to expect at the point of sale.*"

Conclusions and answer to:

Question 4(a): "*Was there an appreciation that the Business Plan could contain information that was price-sensitive*"?

9.41 The question as to whether the Business Plan could contain price-sensitive information was not addressed specifically at any stage of the Business Plan's development up to and including approval by the Board. This was despite the fact that the FCA had adopted a different approach to its structure and content than in previous

[42] The OFT legacy audit arose from a market study conducted by the OFT in 2013 into workplace pensions. The market study report was published in September 2013. Following the publication of that report, the ABI agreed to assist in the conduct of an industry-run and funded review of legacy workplace pensions.

years by including, for the first time, a list of 25 thematic reviews to be conducted during 2014/15.

9.42 In relation to the Life Insurance Review, as described above, Supervision Associate One and Supervision Associate Two were concerned that the life insurance industry and consumers may misunderstand its scope when the Business Plan was published. In order to avoid this risk, it was agreed at the DSRC meeting on 13 January 2014 that the Supervision team responsible for the Life Insurance Review would fully brief the ABI in advance of the publication of the Business Plan, and would develop with the Media Relations team a specific communications plan with a view to avoiding misunderstandings in the media.

9.43 Despite the risk identified, no specific consideration was given by the DSRC to any potential issues of price-sensitive information. There was also no consideration given at the ExCo or at the Board level as to whether the Business Plan generally, including the reference to the Life Insurance Review, could contain information that was price-sensitive. There was therefore no appreciation within the FCA that it could contain price-sensitive information.

9.44 Our view is that given the sensitivities for the life industry set out in the paper presented to the DSRC, there was at least a risk that the contents of the Business Plan, concerning the Life Insurance Review, were price-sensitive. This possibility was not addressed, nor was it addressed in relation to the other contents of the Business Plan. Furthermore, the issue of price-sensitive information was not addressed when any pre-briefings of the Business Plan were considered, including in relation to the Life Insurance Review.

9.45 In the next Chapter we deal with the strategy of pre-briefings in relation to the Business Plan.

CHAPTER 10

10. THE STRATEGY OF GIVING PRE-BRIEFINGS IN RELATION TO THE BUSINESS PLAN

10.1 As stated above in Chapter 8, planning in relation to the FCA's external communication strategy for its first year anniversary commenced as early as October 2013. Pursuant to that strategy, in the months leading up to 1 April 2014, the FCA set out to increase awareness and transparency of the key areas of its work in connection with achieving its overall objectives by, for example, publicising a series of announcements in connection with the thematic work it was proposing to undertake.

10.2 It is in this context that the FCA gave various pre-briefings to journalists in relation to certain consumer credit and other announcements, some of which are included in the table of examples at paragraph 8.40 above.

10.3 It is also in this context that the FCA sought to publicise the thematic work planned for 2014/15 as described in the Business Plan to be published on 31 March 2014.

10.4 Mr Wheatley told us that, having asked the Communications Division to focus on making sure that there was a strong pipeline of communication around consumer credit leading up to and following the FCA's takeover of that regime on 1 April 2014, there was a need also to ensure that the FCA's communications with the industry and the public in relation to the other areas of its work were not sidelined.

10.5 He told us that it was agreed in discussions at the ExCo that the FCA should place a number of stories in the press in advance of publication of the Business Plan. Mr Wheatley told us that his understanding from those discussions, which he recalled being led by Ms McMillan, was that the stories to be chosen would be "*safe*", in the sense of taking into account consumer concerns and interest, but not being controversial.

10.6 Mr Wheatley was unable to point to any minute of this discussion at the ExCo and our review of the minutes and manuscript notes of potentially relevant meetings did not find a record of any such discussion.

10.7 We asked all the members of the ExCo for their recollections. Mr Lawton and Mr Martin had no such recollection. Mr Adamson also had no such recollection (although, as discussed below, he was closely involved in the actual pre-briefings that did take place in March 2014). Mr Woolard recalled that Ms McMillan had said that there were going to be briefings of the media, by which he understood she meant pre-briefings, on three or four issues in the Business Plan.

10.8 Ms McDermott and Ms Titcomb did recall some discussions at the ExCo about pre-briefings of items in the Business Plan, but not when those discussions took place, nor who was present. Even those who recalled the discussions, with the possible exception of Mr Wheatley whose recollection is unclear, could not recall any discussion of the criteria to be applied when choosing the stories to be pre-briefed.

10.9 So far as Mr Woolard, Ms McDermott, Ms Titcomb and Mr Wheatley recall, the discussions were led by Ms McMillan. Ms McMillan told us that there were many discussions at the ExCo about publicising the work the FCA would be doing in connection with its taking over of consumer credit regulation on 1 April 2014, and that these included discussions on the subject of pre-briefings given to the press on various consumer credit-related matters.

10.10 Ms McMillan also recalled that, at some point in early 2014, there had been discussions about publicising the other work of the FCA set out in the Business Plan. Ms McMillan's recollection is unclear, she believes what may have been discussed at the ExCo was the idea of the FCA "*trailing*" a few stories in the press, by which she meant that the press, whether individual journalists or collectively, would be informed generally in advance about some of the FCA's proposed work.

10.11 In the next Chapters we will see how the general and unclear discussions at the ExCo developed into a plan of giving exclusive media pre-briefings in relation to thematic reviews to be announced in the Business Plan, including the briefing of *The Telegraph* in relation to the Life Insurance Review.

10.12 Ms McMillan told us, however, that she learnt of this plan and its implementation only after those briefings had taken place. She told us that she recalls asking the Media Manager, who was leading the work on the Business Plan in the Communications Division, to work on the proposed "*trailing*" of stories, but that she did not discuss with him in detail what stories were to be trailed or how this was to be done.

10.13 We have identified a small number of emails (set out in the next Chapter) that were sent to Ms McMillan in March 2014 which could potentially have alerted her to the fact of specific exclusive pre-briefings of thematic reviews. The relevant content of those emails is short and non-specific and Ms McMillan told us that she has no recollection of reading them as they were received in the context of a much wider range of information on activity being undertaken within the Media Relations team.

10.14 The Media Manager, however, as well as the Media Associate who was involved in the pre-briefing given to *The Telegraph*, told us that they recalled that Ms McMillan was at some point given specific detail of the pre-briefings that were given and in particular, the fact that *The Telegraph* was being pre-briefed. The Media Associate believed that it was discussed at a meeting on 5 March 2014. There are, however, no records we have seen of such a discussion and Ms McMillan has no recollection of the discussion taking place.

10.15 Maria Darby-Walker, then Head of Internal and External Relations and the individual to whom the Media Manager reported, told us that she was not involved in the strategy in relation to the publicising of the Business Plan. Ms Darby-Walker also had no recollection of the specific detail of the pre-briefings being discussed, but was at the meeting on 5 March 2014.

10.16 We have seen a draft copy of a "*Communications Plan*" for the Business Plan, dated 24 March 2014, which refers to the fact of pre-briefings being given in relation to the thematic reviews announced in the Business Plan. The document states, on the front page:

> "*Tailored releases / exclusives* ***before*** *the publication of the Business Plan focusing on key issues of concern to consumers:*
>
> - *Legacy long term savings issues*
> - *Packaged bank accounts*
> - *Unauthorised transactions*
> - *IT resilience*". [Original emphasis.]

10.17 The document states that sign-off was to be given by Ms McMillan. A copy was sent by email to her executive assistant, but Ms McMillan told us that she had not seen it previously and that she had never provided sign-off. Ms McMillan's executive assistant confirmed that he did not provide the document to her.

10.18 There is a conflict of evidence between Ms McMillan on the one hand and the Media Manager and the Media Associate on the other. However, whatever her knowledge, Ms McMillan was not involved in the selection of the items to pre-brief and did not have any input in the written or oral briefing of the media, including *The Telegraph*.

Conclusions

10.19 An important communications plan was adopted and implemented by the FCA, which included providing detailed exclusive pre-briefings to the media in relation to thematic reviews not previously announced, appearing for the first time in the

Business Plan. This was also the first time pre-briefings of the Business Plan had taken place.

10.20 The Board was not asked to consider any strategy of pre-briefing parts of the Business Plan. The Chairman, Mr Griffith-Jones, was unaware that it was taking place. Other NEDs, such as Mr Bailey and Sir Brian Pomeroy, were also unaware of any such strategy.

10.21 We do not consider that the detailed implementation of the communications strategy, including the carrying out of pre-briefings, was necessarily a matter for the Board. Taking into account, however, 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 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.

10.22 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.

10.23 We turn in the next Chapter to a detailed analysis of the events leading up to the pre-briefing of *The Telegraph*.

CHAPTER 11

11. THE EVENTS LEADING UP TO THE WRITTEN PRE-BRIEFING GIVEN TO *THE TELEGRAPH*

11.1 In this Chapter we analyse in chronological sequence the events leading up to the pre-briefing of the announcement of the Life Insurance Review given to *The Telegraph* on 27 March 2014. We also deal with the discussions with the ABI. The other pre-briefings of thematic reviews announced in the Business Plan are addressed in Chapter 18 below.

Wednesday 19 February 2014

11.2 The earliest document we have seen in connection with the decision to pre-brief the media about items to be announced in the Business Plan is an email dated 19 February 2014 from the Media Manager to members of the Media Relations team, attaching the "*latest iteration of the Business Plan*". The Media Manager said in that email that "*there are some pages worth having a look at. In terms of our future activity there is mention of ...*" and listed a number of activities, including various thematic reviews. The team's attention was drawn to a number of pages of the draft document, which he said illustrate "*the sort of work we are undertaking and we should consider how we play this work in our pre and post April 1st work.*" The Life Insurance Review was included in the Business Plan but was not listed by the Media Manager in his email.

11.3 The Media Manager told us that us that this email flowed from discussions around that time which he had with Mr Wheatley and Ms McMillan and that "*the strongest steer*" he had from them was that there was some good work in the Business Plan, which might be highlighted to make readers aware of the work, with him being asked to pick some stories and think about how to publicise them. He explained that he had not been told specifically to pre-brief the media about the announcements in the Business Plan, but he said that pre-briefings would be considered in any event as a normal part of his team's media tool-kit.

Friday 28 February 2014

11.4 At about the same time as the question of publicising thematic reviews was being considered by the Media Relations team, Supervision Associate One and the Technical Specialist (together, the "**Review Team**") (who were aware that the Life Insurance Review was to be announced in the Business Plan and were concerned about the potential impact of that announcement if not handled correctly) began to consult with the Communications Division, as agreed at the DSRC meeting on 13 January 2014.

11.5 Accordingly, on 28 February 2014 the Review Team together with a Manager within the Life Insurance Themes team in the Supervision Division (the "**Life Insurance Team Manager**") held an initial meeting with the Media Associate (who was responsible for press handling in relation to consumer issues) and a member of the Business-to-Business ("**B2B**") team within the Communications Division (whose focus was on communications with business rather than the press) to discuss the communications strategy for the Life Insurance Review.

11.6 The members of the Review Team told us in interview that they wanted to discuss in particular how to manage and control media reporting of the announcement of the Life Insurance Review in the Business Plan. The Review Team wanted to avoid a repeat of events in 2013 surrounding the announcement of the scope of the annuities thematic review, which was reported in the press as being much wider than it actually was and caused a general misunderstanding in the industry.

11.7 The Review Team explained that their main focus was on ensuring that when the Life Insurance Review was announced, the industry understood that it was to be a discovery project only, would not overlap with the OFT legacy pensions audit and that while exit fees formed one part of the review, the suitability of the original advice to the consumer would not be considered.

11.8 We were told that it was at that meeting that the decision to pre-brief *The Telegraph* was first discussed. The Media Associate told us that the idea to pre-brief in relation to the Life Insurance Review came initially from the Review Team, as a means of avoiding misunderstandings as to the scope of the Life Insurance Review once it was announced in the Business Plan. The recollection of the Review Team was that, either the Communications Division was already considering giving advance briefings in relation to the Life Insurance Review as part of the communications strategy for the Business Plan, or at least were considering generally which reviews were to be the subject of those briefings.

11.9 It was agreed in the meeting on 28 February 2014 that, as well as giving a pre-briefing to *The Telegraph*, the Review Team would consult with the ABI in advance of any article appearing in the press.

11.10 The Media Associate told us that *The Telegraph* was selected for the pre-briefing because he knew that legacy life insurance products and exit fees were an area the Deputy Personal Finance Editor, Mr Hyde, was interested in as he and Mr Hyde had previously discussed Mr Hyde's concerns at the lack of FCA action in the area at a time when Mr Hyde was at the *Daily Mail*.

11.11 The Media Associate also told us that when he suggested Mr Hyde as the journalist to pre-brief, he had recalled that when discussing legacy investments with him at the *Daily Mail* Mr Hyde was "*surprisingly*" understanding of the FSA's position, which was that it would not be able to challenge terms and conditions that were legally compliant at the time they were entered into. The Media Associate explained that when the subject of a pre-briefing came up in the meeting on 28 February 2014, he identified Mr Hyde as someone who was particularly worried about the issue, would be interested in the story and would have historical knowledge and technical expertise.

11.12 We were told that Mr Hyde was someone the Media Associate had known for quite a while, that they had a good relationship and that he was considered friendly, professional and very knowledgeable. In November 2013, the Media Associate had pre-briefed Mr Hyde exclusively about a forthcoming price comparison website thematic review.[43]

11.13 We were told also that shortly after this meeting, the Media Associate looked for any recent articles by Mr Hyde on the subject but was unable to find any. Our own press searches showed that Mr Hyde is a successful campaigning journalist, with a particular interest in potential abuses by pensions providers, including in relation to exit fees. Supervision Associate One told us that following the meeting on 28 February 2014, he had at some point researched past articles by Mr Hyde which demonstrated a particular interest in exit fees. It was for this reason that Supervision Associate One in his email of 24 March 2014 (see paragraph 11.88 below) was able to reference Mr Hyde's interest in "*exit charges*".

11.14 Following the meeting, the Life Insurance Team Manager then circulated a summary of the meeting by email to other members of the Long-Term Savings and Pension Department involved in planning the Life Insurance Review, stating:

> "*We met with Comms this pm ... Broad approach proposed is as follows:*
>
> ...
>
> - *To brief ABI and the media at the same time.* [Media Associate] *mentioned* [Mr Hyde] *(Telegraph) is interested in this.*
> - *To do this the weekend bf the Business Plan is published.*
>
> …

[43] See the table of examples in Chapter 8 at paragraph 8.40 above.

- [Media Associate] *will need sign off from you,* [Mr Poyntz-Wright, Mr Adamson] *etc*

- *Immediate next steps is* [Supervision Associate One] *to do slides by mid next week on detail of the project and what it might mean for consumers.*

It was a good meeting and [Media Associate] *is v. engaged.*"

Monday 3 March 2014

11.15 Following the meeting with the Review Team and the Life Insurance Team Manager, the Media Associate reviewed the Business Plan for other stories of potential interest from a consumer perspective to pre-brief and set out his views in an email to the Media Manager and to another associate within the Media Relations team, headed "*Biz plan – prebriefing* [sic] *some stories*":

> "*Have been flicking through* [the Business Plan] *again to see what I can pull out from a consumer perspective. All the following could produce some nice stories.*
>
> *I'm in touch with each business area to get more detail and will get our team looking into them to make them happen. These would certainly give us some nice content over the next few weeks before the Biz Plan is published, and some weekend filler if needed. …*
>
> *I've deliberately left a few bits in the Biz Plan untouched so we don't bleed it dry before it's published. …*
>
> ***Banking***
>
> - *Reviewing how well banks are handling our rules about unauthorised transactions (if somebody takes money from your account without approval). This is a big bug bear for consumer media.* ***Guardian Money (Saturday)***
>
> - *Reviewing how banks have adapted to our new rules on packaged accounts (implemented March 2013) … had to leave the market because they couldn't keep pace with our new rules so there is some history we can draw up upon.* ***Independent, Simon Read. Not massive circulation as we know but Simon writes a good pro-consumer/anti-bank story so would be a good fit. If not, James Salmon at the Mail.***
>
> ***Savings and Investments***

- *Assessing the treatment of long standing customers of life insurance firms, who tend to face massive penalty fees if they wish to exit a fund, which more often than not has rubbish rates of interest.* ***This will be a weekend story for the Telegraph near the end of March;*** **[Mr Hyde]** ***has written about this issue before so this will be music to his ears***

Lending (mortgages/consumer credit)

- *Investigation into hybrid equity release products. Equity release is bug bear for both* ***Daily Mail Money Mail (Wednesday) and Times Money (Saturday)*** *so either would be up for it.*

IT issues

- *Doesn't really need much introduction. We will be looking at how firms have responded to our Dear Chairman letter following the original RBS/Natwest IT outage.* ***Thinking a Sunday for Monday (31 March – the day the full biz plan is released) with the FT, Sharlene Goff (banking correspondent). Would need to be careful with this as Tyrie is big on IT issues.***" [Original emphasis.]

11.16 The email contained a brief rationale for the selection of the stories to be "*pre-briefed*" and the rationale for the choice of journalist in each case. The Media Associate told us that the language used in this email was colloquial shorthand and that there was no particular agenda for the selection of the journalists other than that he believed the stories would be of interest to each of the specific journalists listed and therefore, issues about which they may be more likely to write an article. He explained that the fact that the email used language such as "*bug bear*", "*music to his ears*" and "*writes a good pro consumer/anti-bank story*" was, in hindsight, unfortunate but at the time intended only, colloquial language aside, to highlight stories that would further the consumer protection agenda of the FCA. He told us that the tone of this email was not carried through to the communications with the media, including Mr Hyde.

11.17 The pre-briefings later sent to the press (as set out later in this Chapter and in Chapter 18) were indeed couched in a professional tone. But what this email highlights is that from the start of the discussion between the Review Team and the Media Associate, two potentially conflicting objectives were desired. The Supervision team wished only to avoid the Life Insurance Review being misreported. This, as the story develops, became translated into a desire for a "*low-key*" approach with respect to any pre-briefing. The Media Associate was, however, pursuing a mandate to publicise more widely the work which the FCA was intending to do in order to promote its consumer protection objectives.

11.18 We asked the Media Associate why his summary of the Life Insurance Review in this email focused on "*massive penalty fees*" to exit a fund. The Media Associate said that he had only had a very brief discussion with the Review Team and the Life Insurance Manager by the time he came to write this email and he did not yet know the full scope of the work, but was aware that exit fees had been mentioned at the meeting and the issue probably chimed in his head as the issue which Mr Hyde had asked about some years earlier at the *Daily Mail*.

Thursday 6 March 2014

11.19 Having received this email from the Media Associate, on 6 March 2014 the Media Manager included a reference to the pre-briefing work his department was undertaking in his weekly note to Ms McMillan, which contained a summary of ongoing activities of the Media Relations team. Among other matters, the note explained:

> "*We have also been speaking to the business about trailing some of the new stories in the Business Plan. This is a new approach for us, the Plan normally goes out without much work in advance, and we want to get the business used to making more of its work in the media. We hope to trail 5 pieces of work and get teams used to working up stories in advance of publication and getting increased exposure*."

11.20 Ms McMillan told us that she has no recollection of reading this paragraph of the note but would have registered that, as she had already known, there was to be a "*trailing*" of a few stories in the press (as described above), albeit she was unaware of the detail of what that would involve.

11.21 The email also highlights the desire for the Media Relations team to obtain increased exposure for the stories being trailed, rather than any focus on avoiding mis-reporting if the stories were not pre-briefed, which was the concern of the Review Team.

Wednesday 12 March 2014

11.22 On 12 March 2014 at 1.28 pm, Supervision Associate One circulated by email to those who attended the 28 February 2014 meeting, including the Media Associate, a draft PowerPoint presentation summarising the scope of the Life Insurance Review that was to be presented to the ABI in advance of the publication of the Business

Plan.[44] The draft explained that the review was "*a discovery project to assess whether life insurers are treating their long-term (legacy) customers fairly.*" In relation to exit fees, it stated the following:

11.22.1 On page 2, among other factors, that the FCA would "*consider exit/discontinuance charges with a view to assessing at this time whether there are any* ***significant*** *issues for us to address.*" [Original emphasis].

11.22.2 On page 3, that the FCA "*are not considering suitability of the original advice but will assess whether firms are meeting the original terms of the contract for the product*".

11.22.3 On page 6, that the work in relation to exit fees would be to "*assess the scope and extent of exit penalties as they may be a significant contributor to poor customer outcomes*". The work was described as "*discovery at this time with mitigation possible where significant customer detriment is identified through customers inability to switch exacerbating the other risks to consumers above.*"

11.22.4 On page 8, that desired outcomes of the review were set out under the heading, "*Customers investing in legacy products or funds are treated fairly*":

- "*Consumers are able to make full use of benefits available to them;*
- *Consumers receive a fair return on their investment;*
- *Legacy products remain fit for purpose and deliver the benefits that they were originally designed to;*
- *Changes are not made to products which unreasonably disadvantage consumers e.g. move to platforms; and*
- *Consumers are able to move from products which are no longer meeting their needs in a fair and reasonable manner.*"

11.23 The draft presentation was therefore consistent with what the ABI had been told (as set out in Chapter 9 above), namely that this was a discovery project, intended to assess whether life insurers were treating their long-term customers fairly, with exit and discontinuance charges being only one part of the review, with a view to

[44] The ABI ultimately only saw a copy of the slides, in hard copy, during the meeting on 28 March 2014, referred to below.

assessing whether there were any "*significant*" issues in this context for the FCA to address, such as customers' inability to switch products, but that the suitability of the original advice would not be considered.

11.24 At 3.59 pm, Supervision Associate One emailed Mr Poyntz-Wright to make him aware that he and the Technical Specialist planned to meet the ABI to discuss the Life Insurance Review. Supervision Associate One said:

> "*The business plan will include notification that our thematic review on the treatment of long-standing customers in life insurers will be taking place in the coming year.* [The Technical Specialist] *and I plan on meeting the ABI at the end of the month shortly before the business plan is released as we know they are still sensitive about the review. In particular we believe they are concerned about the review of allocation of costs and expenses and any possible overlap with the legacy workplace pensions work undertaken by them.*
>
> *At the meeting we will:*
>
> - *Discuss the review's scope*
> - *Manage the message that 'value for money' is not in scope for this review*
> - *Confirm we will be sensitive to any results arising from the legacy workplace pensions work*
> - *Reassure ABI that we will be happy to 'keep them in the loop'*".

11.25 Supervision Associate One made no reference in his email to the proposed pre-briefing to be given to *The Telegraph* in advance of the publication of the Business Plan.

Thursday 13 March 2014

11.26 At 11.59 am on 13 March 2014, the Technical Specialist emailed Mr Poyntz-Wright's Executive Assistant confirming, "*We intend to meet the ABI on 27 or 28 March just before the business plan is published. The ABI are already aware of this work but this meeting will provide more detail ahead of it being in the public domain.*"

11.27 At 5.04 pm on 13 March 2014, the Media Associate circulated to the Review Team and the member of the B2B team that had attended the meeting on 28 February 2014, a proposed "*media-handling strategy*" for the Life Insurance Review. It was, at that stage, anticipated by the Media Associate (as set out in his email) that the story would be given to *The Telegraph* that weekend, 22 March 2014 and 23 March 2014, a week in advance of the publication of the Business Plan. The Review Team, however, had understood previously from the meeting of 28 February 2014 that the story would run on 29 March 2014 and 30 March 2014, the weekend immediately before the publication of the Business Plan, after the ABI had been briefed.

11.28 The email from the Media Associate said "*I suspect the key message* [sic] *take a few liberties and will need some input*" and set out the following plan:

> "***One page plan – Fair treatment of long-standing customers of life insurers***
>
> ***Date to land: Saturday 22 / Sunday 23 March – Daily or Sunday Telegraph***
>
> ***Background / narrative***
>
> *The FCA is about to start looking into the way life insurers treat legacy customers, people who have been invested in the same fund for a long time (since at least pre-2000).*
>
> *Investors that want to leave these funds effectively find themselves trapped because* [of] *the out of date terms and conditions (written pre-2000), especially those written in the 80s and 90s. The T+Cs have high exit charges and therefore dis-incentivise switching. This outlook is even starker given the current record-breaking low interest rate environment.*
>
> *The FCA will explore how those customers are being treated, check that they are not being exploited, assess the communications sent to them, and consider the fairness of exit charges.*
>
> ***Key messages***
>
> - *We are concerned that people who bought into an investment decades ago are effectively being prevented from leaving because of out of date T+Cs that have sky high exit charges;*
> - *We also want to look closely at how fund providers are stripping back their investment strategies so they can maximise value from these legacy funds, and whether or not this is fair on the consumer;*
> - *In its first year the FCA has made some major interventions that have consumers in a better position and this is another example of us continuing* [to] *address the issues that really matter;*

- *There is approx £XXX sitting in legacy investments, with typical exit charges of XX%; and*

- *We'll be announcing this review in the FCA 2014 Business Plan, published 31 March.*

Media-handling

- *The legacy investments review will be formally confirmed in the FCA Business Plan, published 31 March 2014. However as there are a number of significant reviews being confirmed in it, and because this is an issue that affects a large number of people, we want to announce this early so it is picked up more widely.*

- [Mr Hyde] *(deputy personal finance editor of the Daily and Sunday Telegraph) has been following this very issue for a number of years at the Telegraph and in his previous role at the Daily Mail. We are proposing to give this story to him as an exclusive.*

- *w/c 17 March – press office to contact* [Mr Hyde] *and pitch the story to him, run him through the details and provide some information.*

- *19/20 March - telephone interview with* [Mr Adamson] / [Mr Poyntz-Wright] *to provide further context and quotes to use in the article.*

- *Story appears in the Telegraph on weekend of 22/23 March.*

- *w/c 24 March onwards -* ***no press release****, but press office will prepare a short quote and some details that can be given to other media following up on the story.*

- *Short Q+A to be drafted by Press Office with help from Life Insurance Themes team.*" [Original emphasis.]

11.29 Far from being drafted to avoid any misunderstanding that the Life Insurance Review was focused on exit fees, the briefing drafted by the Media Associate focused on the issue of "*high exit charges*". The Media Associate told us that his draft was an initial one and was caveated expressly by his covering words that the message might take a "*few liberties and will need some input*", but that generally the message was what he told us he had understood from his meeting with the Review Team and the Life Insurance Team Manager on 28 February 2014 that the review was about. He referred us to his handwritten notes of that meeting, which included that the Life Insurance

Review would look at "*how life funds treat existing customers and service them, plus exit fees*" and that it would not cover "*T&Cs that were agreed at the time*".

11.30 At that stage, the media plan contemplated not only written messages for *The Telegraph*, but also a telephone interview with Mr Adamson or Mr Poyntz-Wright with quotes to be used in the article. The Media Associate told us that an interview would give the FCA the opportunity to explain best what the Life Insurance Review involved and why it was being carried out, and with the message being conveyed in Mr Adamson's or Mr Poyntz-Wright's words, from which Mr Hyde could quote. It would be given as an exclusive in order to give Mr Hyde the incentive to write about the Life Insurance Review.

Monday 17 March 2014

11.31 The importance of keeping the ABI informed is a persistent theme in the communications leading up to the pre-briefing. At 8.51 am on 17 March 2014, for example, the B2B team member involved in the discussions responded to the Media Associate's media plan noting "*I can't recall what level of contact there has already been with the ABI on this. Ideally we wouldn't want this to fall on them out of a clear blue sky*".

Tuesday 18 March 2014

11.32 At 9.21 am on 18 March 2014, Supervision Associate One responded to the email from the B2B team member saying:

> "[Supervision Associate Two] *mentioned this to* [the ABI representative] *at a meeting in February and we had a couple of emails backwards and forwards about specific elements but have only discussed at a high level really.*
>
> *Will it be you who contacts ABI initially to set up a meeting or are you happy for us to go direct to* [the ABI representative]*? We are happy to go to them of course.*"

11.33 At 10.27 am the B2B team member replied "*I'm very happy for you to contact* [the ABI representative] *direct. It's important that we give them at least a heads up on our plans ahead of anything appearing in the weekend press. I guess that could be a conversation with the offer of a meeting. By the way, there aren't any other bodies that need to be forewarned are there in your opinion?*"

11.34 As for the message for *The Telegraph*, Supervision Associate One and the Technical Specialist told us that they were concerned about the plan proposed by the Media Associate because at that stage it focused on exit fees, contemplated wide coverage and could lead to such coverage more than a week before the Business Plan was due to be published.

11.35 At 11.26 am Supervision Associate One therefore sent a reply by email, suggesting that he and the Media Associate have a "*quick catch-up*" to discuss the content of the proposed plan and saying:

> "*I don't think we should lead on the exit charges. For the products we are including it isn't relevant across the board and our review is only gathering information on exit charges and not specifically looking at them. We also want to control the message about the scope so we wanted to be clear that we are not looking at value for money at this time for charges (but will look at whether firms are adjusting charges and costs of products appropriately) – and to distance this work from the ABI workplace pensions review.*
>
> *I think the consumer element is we want to review whether firms are exploiting consumer inertia and to assess whether consumers are now sat in poor performing products - which may no longer provide the benefits they were intended to provide - and they are unable to easily switch out of those products.*"

11.36 Supervision Associate One also questioned in this email whether it was necessary to pre-brief the media now after all (rather than simply to alert the ABI) saying "*Also, do we need the article now as the review doesn't start until May at the earliest – maybe June depending on timescales of its dependencies?*" The Technical Specialist also questioned the timing in a later email that day:

> "*I thought we were looking to go out (if we still feel we want to) next weekend (i.e. immediately before business plan publication). I think overall we need a balance between owning/controlling the messaging and raising expectations both on scope and timing.*"

11.37 The Review Team met with the Media Associate on 18 March 2014 to address these concerns. We were told by Supervision Associate One and the Technical Specialist that the Media Associate explained that the wording of the message was to an extent intended to be consumer focused and a "*hook*" for *The Telegraph*, by which he meant it was necessary to include a consumer angle in order for the story to be picked up at all. He agreed, however, to revise the message. He also explained that the timing was part of a more general strategy of pre-briefing stories in the Business Plan and that the intent in pre-briefing the Life Insurance Review the previous weekend was to ensure that stories were appearing at different times.

11.38 The Media Associate told us, in relation to the concerns raised about timing, that the Life Insurance Review would be featuring in the Business Plan in any event. Even though the review would not be taking place until later in the year, its description in one or two sentences in the Business Plan might be misconstrued by the media. As well as ensuring increased coverage for the Business Plan generally, the Media Associate explained that his intention was therefore, consistent with the objectives of the Review Team, to ensure that the Life Insurance Review was reported accurately, by giving a briefing to *The Telegraph* in advance of publication.

Wednesday 19 March 2014

11.39 On 19 March 2014, the Chancellor announced in his Budget that pension savers no longer needed to annuitise defined contribution pension savings. The Chancellor announced in particular that as of April 2015 anyone who is aged 55 or over will be able to take their entire pension fund as cash, with no caps or drawn down limits. Following this announcement, the market capitalisation of the UK's largest annuity providers fell by £6 billion[45] amid concerns that life insurers would lose a substantial proportion of new annuity business, suffering potentially irrevocable damage to their business model and profitability.

11.40 As is discussed further below, this announcement triggered new concerns within the Long-Term Savings and Pensions Department in relation to a pre-briefing of the Life Insurance Review.

11.41 Before those concerns were aired with the Media Associate the following morning (see below), at 7.49 pm on 19 March 2014, the Media Associate circulated a revised set of the "*key messages*" for *The Telegraph* reflecting the discussion he had had with the Review Team on 18 March 2014. He noted that due to the "*show stopping budget*", the story might be held back until the following week. He explained that he would talk with *The Telegraph* once the messages were agreed. The revised messages in his email were as follows:

- "*In our 2014 Business Plan, published 31 March, we will be announcing a review of legacy investment funds to start this summer;*
- *We're doing this because millions of people have old investments that they have forgotten about or check on only very rarely (30m policies worth £150bn, £18bn in new premium every year)*

45 http://blogs.deloitte.co.uk/financialservices/2014/03/implications-of-budget-announcement-on-annuities.html.

- *Many of these funds are performing badly and we are concerned that life insurers may be exploiting this lack of engagement*

- *Our key concerns are that life insurers are*

    - *Making changes (such as moving to platforms) which benefit the firm but not the investor*

    - *allocating an unfair amount of overheads to these historic funds (i.e. using 'forgotten' funds to pay their bills)*

    - *not servicing them frequently so consumer*[s] *lose out on investment returns*

    - *the communications firms use may be making the problem worse because they are not clear or engaging*

- *Many of these funds 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*

- *In our first year we have made some major interventions that have consumers in a better position - this is another example of us getting to the heart of issues that really matter.*"

Thursday 20 March 2014

11.42 The Media Associate told us that he first spoke with Mr Hyde about the Life Insurance Review in the morning on 20 March 2014. He told us that the conversation was brief and during it he reminded Mr Hyde that a couple of years ago he had been interested in legacy investments and asked if he would be interested in a possible exclusive story from the FCA as it was working on a review to appear in the Business Plan.

11.43 The Media Associate told us that he also mentioned exit fees in the discussion, reminding Mr Hyde that he had been concerned previously that the FCA was doing nothing about the issue. It was therefore a *"hook*" to remind him what the Media Associate was talking about, because at first Mr Hyde could not remember. The Media Associate recalled saying words along the lines to Mr Hyde that whereas previously he had told Mr Hyde there was not much the FSA (as it then was) could do, the FCA may be about to have a look at the area. The Media Associate asked whether Mr Hyde would be interested in hearing more. The Media Associate told us that he believed that Mr Hyde confirmed he was interested, but that given the Budget being announced that week, it was not a story that he would be able to run that weekend.

11.44 At 10.55 am, the Media Associate reported back to the Review Team that *The Telegraph* "*are full to the brim this weekend, unsurprisingly, so they will run a story on Monday or Tuesday next week.*" He asked therefore for any comments on the revised briefing points.

11.45 At 11.04 am, Supervision Associate One replied by email asking if the story could be held off until the following weekend. He said that "*the budget has come to us as a bit of a shock and there are obvious knock on effects we need to consider for the annuities selling practices work. I would also like to consider the impact on the Legacy project before we say anything externally and overall the fallout means we have very little time at the moment. I imagine with the impact on life insurers' share prices* [Mr Poyntz-Wright] *is probably quite busy at the moment.*"

11.46 Although in this email Supervision Associate One referred to "*insurers' share prices*" being affected by the Budget, he did not consider whether the contents of the pre-briefing might be price-sensitive. The reference to share prices in this email also did not trigger any concern with the Technical Specialist that the proposed pre-briefing might be price-sensitive.

11.47 Supervision Associate One included in his email some comments in the wording proposed by the Media Associate, including on the penultimate bullet point, in relation to exit fees:

> "*I think this still makes it look like we are actively looking at this – we will collect info on it and see if it is an issue but we do not know that many products have high exit charges.*"

11.48 The Media Associate responded at 1.53 pm, saying that he would "*still like to aim for Tuesday next week. There are a large number of stories (mainly consumer credit) planned for the end of next week and the weekend and if we want to get some cut-through for this one we need to go a bit earlier.*" He did not at this stage address Supervision Associate One's comments on the key messages.

11.49 The Media Associate told us that he was focused on controlling how the Life Insurance Review would be reported in the press and that by taking ownership of the story, and taking the time to talk it through with Mr Hyde, this would control the FCA's risk. He told us that his concern was that the reporting of the Life Insurance Review, in light of the Budget, would take place anyway following the publication of the Business Plan. The judgement of the Media Associate in this regard was that the

Life Insurance Review would be reported much more accurately by taking *The Telegraph* through it, so that the journalist could understand what the review was and was not about.

11.50 Earlier that afternoon, at 12.03 pm, the Media Manager sent another "*weekly note*" to Ms McMillan, which stated in the final sentence "*We are also working on trails for the business plan to run next week in advance of the 31st*." Ms McMillan told us that she has no recollection of this sentence, but again would have registered that, as she had already known, there was to be a "*trailing*" of a few stories in the press, albeit she was unaware of the detail of what that would involve.

11.51 In the meantime, the Review Team and the B2B team member who was involved in the internal correspondence remained concerned to ensure that the briefing of the ABI took place in advance of any press coverage. In particular, the B2B team member commented by email at 1.55 pm:

> "*At the risk of sounding like a broken record/CD/download, my main concern is that we've briefed the ABI before something appears in the press, and I'm assuming that* [the Technical Specialist] *and* [Supervision Associate One] *are happy to deal with this.*"

11.52 This concern was addressed by email from Supervision Associate One at 2.10 pm, which summarised previous contact with the ABI, and said:

> "[Supervision Associate Two] *gave* [the ABI representative] *a quick briefing while at an update meeting with ABI in early February. I think this illustrates that they are aware of the overall subject matter of the review and that we have answered a specific query on it which shows they have understood our brief.*
>
> *We understand however that they continue to have some concerns so we wanted to manage the relationship and give them a more detailed briefing before we publish the Business Plan and CRO.*"

11.53 The Technical Specialist replied at 2.15 pm that "*This is basically the approach we agreed if it were to go out this weekend isn't it? I think the ABI will already know pretty much as much as we will give the press so it will just be a case of informing them it will happen in case they get questions.*"

11.54 The B2B team member replied at 2.24 pm "*Thanks* [Technical Specialist], *this is fine with me. The key point is that although the ABI might know that this project is being developed, we need to let them know that we are imminently about to talk publically about it.*"

Friday 21 March 2014

11.55 There were further exchanges of emails in the morning of 21 March 2014, with the Review Team remaining concerned at the emphasis of exit fees in the draft message for *The Telegraph*. In an email at 10.31 am, for example, Supervision Associate One stated *"... we still think that the wording for exit charges looks like we are actively looking to do something*", referring the Media Associate to the amendments proposed in his email of the previous day.

11.56 At 11.21 am, the Media Associate circulated revised points as follows:

- "*In our 2014 Business Plan, published 31 March, we will be announcing a review of back book funds to start this summer;*
- *We're doing this because millions of people have old investments that they have forgotten about or check on only very rarely (30m policies worth £150bn, and an estimated £18bn in new premium every year)*
- *Many of these funds are performing badly and we are concerned that life insurers may be exploiting this lack of engagement*
- *Our key concerns are that life insurers are may be* [sic]
    - o *Making changes (such as moving to platforms) which benefit the firm but not the investor*
    - o *allocating an unfair amount of overheads to historic funds (i.e. using 'forgotten' funds to pay their bills)*
    - o *not regularly reviewing them to ensure they still meet their intended purpose*
    - o *the communications firms use may be making the problem worse because they are not clear or engaging*
- *Some of these fund 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 info on this to understand if it is an area we need to intervene*
- *In our first year we have made some major interventions that have consumers in a better position - this is another example of us getting to the heart of issues that really matter.*"

11.57 The ABI was still not being overlooked. At 12.32 pm, the Technical Specialist emailed the ABI to arrange a meeting in order to brief them on the Life Insurance Review in more detail. The Technical Specialist wrote:

> "*I am sure you are very busy on pension and retirement issues at the moment but I think you got a message that we wanted to set up a meeting with you (and whoever else is relevant at the ABI) in relation to the review into 'Legacy' or 'Back book' products in life insurance companies which you spoke about previously with* [Supervision Associate Two]. *We would like to set up a meeting with you on Thursday or Friday next week to discuss our planned project in more detail (we are happy to come over to you).*"

11.58 The Technical Specialist stated that the FCA would include "*a few lines in the business plan on our work plan for the next year and will announce that we will be undertaking the review in Quarter 2 of 2014. We felt it appropriate to ensure that you had an understanding of the review and to give you the opportunity to ask any further questions before the announcement*."

11.59 At 12.32 pm, Supervision Associate One agreed by email the text of the revised briefing points that had been circulated by the Media Associate, subject to certain further amendments. He asked the Media Associate to raise the briefing with Mr Poyntz-Wright:

> "*I am not sure what* [Mr Poyntz-Wright's] *appetite is as I have not mentioned this to him. Can you please highlight to them that we will ensure ABI are aware that we will be publishing. (I know you will do this but it is an obvious query that will come our way).*
>
> *Also – on timing – 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*."

11.60 The Review Team had not yet raised the question of *The Telegraph* briefing, let alone their concerns about timing or content, with either Mr Poyntz-Wright or Mr Adamson.

11.61 Further emails were exchanged on the issue of the timing of the announcement. For example, a Senior Associate in the Life Insurance Themes team who was copied on the email correspondence emailed Supervision Associate One and the Technical Specialist at 12.43 pm on 21 March 2014, raising his concerns:

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

11.62 At 12.47 pm, the Technical Specialist emailed Mr Poyntz-Wright to flag the issue for him for the first time and to ask for his views:

"*Just a quick email to get your view on some press coverage that Comms are pushing on for the Legacy project. We originally asked them about this as we wanted to keep control of the messaging in terms of managing expectations on timing and scope once this is announced in the business plan. Timing is now less of an issue in that the business plan will show this as starting in Q2 (i.e. not starting now) but the scope point still stands (for example managing expectations on what we will do on exit charges – which is just gather information to understand them).*

[The Media Associate] *wants to give this to the Telegraph who have an interest in this area for a story next week and want to potentially arrange for you to do an interview ...*

My question is on our appetite for this given the current focus on pensions in the press (both in terms of wanting to draw attention to the legacy work and our time to deal with the comms elements).

More generally the business plan will be announcing this and the with-profits review which could be seen as even more woe for insurance companies – should we be concerned about this?"

11.63 Shortly afterwards, at 2.19 pm, the Media Associate also emailed Mr Poyntz-Wright and Mr Adamson. This was the first time Mr Adamson had been informed of an issue of such importance. The email explained the nature of the proposed story and set out the key messages for their comment:

"*As you know, the business plan is being published on 31 March; it contains a number of upcoming reviews we are conducting in the coming year.*

Normally, on the day of the business plan, the lead news story is almost always "FCA to spend £XXXm in 2014". That means all of the other interesting bits get lost in the noise. To that end, we are pulling some of those *stories to give to selected media before 31st so that other pieces get some more attention. We will also be using these as a platform to celebrate the work we have done in Year One.*

The first review we are using is the closed life fund review that [the Technical Specialist] *and* [Supervision Associate One] *are handling.*

Working with [Supervision Associate One] *and* [the Technical Specialist], *we have pulled together a one page media plan so you understand what we want to achieve and how. What is not directly referenced below is the B2B communication, but rest assured we are planning to give the ABI a heads up on the story before it is published and offer them a briefing on the work itself.*

Please could [you] *review the below and let me know if you have any concerns? All going to plan, I would give this to the Telegraph on Monday for Tuesdays paper.*

Other stories from the business plan will run later next week and over the weekend of 29/30. [Mr Adamson] *– we're just finalising the plans for those and will send over early next week.*

…

Background/narrative

The FCA is to start looking into the way life insurers treat legacy customers, people who have been invested in the same fund for a long time (since at least pre-2000). Investors that want to leave these funds effectively find themselves trapped because [of] *the out of date terms and conditions (written pre-2000), especially those written in the 80s and 90s. The T+Cs sometimes have high exit charges and therefore dis-incentivise switching. This outlook is even starker given the current record-breaking low interest rate environment. The FCA will explore how those customers are being treated, check that they are not being exploited, assess the communications sent to them, and consider the fairness of exit charges.*

Key messages

- *In our 2014 Business Plan, published 31 March, we will be announcing a review of life insurers' back book product funds to start this summer;*
- *We're doing this because millions of people have old 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);

- *Many of these funds are performing badly and we are concerned that life insurers may be exploiting this lack of engagement;*

- *Our key concerns are that life insurers are may be* [sic]*:*

  - *making changes (such as moving to platforms) which benefit the firm but not the investor*

  - *allocating an unfair amount of overheads to historic funds (i.e. using 'forgotten' funds to pay their bills)*

  - *not regularly reviewing them to ensure they still meet their intended purpose*

  - *the communications firms use may be making the problem worse because they are not clear or engaging*

- *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*

- *In our first year the FCA has made some major interventions that have put consumers in a better position – this is another example of us getting to the heart of issues that really matter.*

Media-handling

- *The legacy investments review will be formally confirmed in the FCA Business Plan, published 31 March 2014. However as there are a number of significant reviews being confirmed in it, and because this is an issue that affects a large number of people, we want to announce this early so it is picked up more widely.*

- [Mr] *Hyde (deputy personal finance editor of the Daily and Sunday Telegraph) has been following this very issue for a number of years at the Telegraph and in his previous role at the Daily Mail. We are proposing to* ***give this story to the Telegraph as an exclusive****.*

- *24 March – if needed, short telephone briefing with* [Mr Adamson] / [Mr Poyntz-Wright] *to provide further context and quotes to use in the article. Quotes to be attributed to* [Mr Adamson].

- *Story appears in the Telegraph on Tuesday 25 March.*

- *25 March onwards –* ***no press release****, but press office will prepare a short quote and some details that can be given to other media following up on the story.*

- *Short Q+A to be drafted by Press Office with help from Life Insurance Themes team.*" [Original emphasis.]

11.64 There then followed an internal discussion by email within the Supervision Division involving Mr Poyntz-Wright (but not Mr Adamson), before he replied to the email from the Media Associate. Mr Poyntz-Wright said, for example, in an email to the Technical Specialist and Caroline Gardner, Head of the Life Insurance Department within the Supervision Division, at 3.03 pm that "*this week's news is only just being digested and it may not be the best initiative to headline next week – the life insurers will begin to feel 'got at'!*" Mr Poyntz-Wright also commented that "*the messaging I have seen from* [Media Associate] *also majors more than I would like on the question of exit charges (referring to 'trapped customers') and it isn't clear about several areas which I think we concluded <u>weren't</u> in scope ... If we are talking about this work I would have thought we would want to take the opportunity to highlight what it isn't as well as what it is.*" [Original emphasis.]

11.65 Ms Gardner had not previously been included in email traffic. The Technical Specialist therefore emailed Ms Gardner at 4.00 pm explaining her concerns:

> "*Our original understanding had been that we were looking potentially for press coverage next weekend and had been working on this basis. Comms were then seeking to bring this forward to this weekend and then the budget hit. There followed much confusion with comms about whether this would/could even happen and the key messages have literally only just been developed (this morning).*
>
> *Apologies I should have updated you and sent to you for your thoughts before* [Mr Poyntz-Wright] *but I knew* [the Media Associate] *was going to be contacting* [Mr Poyntz-Wright] *imminently.*

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 – which is what we experienced on annuities)."

11.66 Ms Gardner told us that her understanding of the advice from the Media Associate at this stage was that the FCA had a better chance of controlling the understanding of the scope of the Life Insurance Review by way of the recommended approach of a pre-briefing with *The Telegraph*.

11.67 Ms Gardner told us that, following the Budget announcement, the interest in the sector was huge and that she believed that all it needed "*was a small thing to go wrong to have an exponential effect on the market, so it was even more important to actually get it right*." In view of the forthcoming announcement in the Business Plan, however, there was no option, so far as she knew, of saying nothing.

11.68 Ms Gardner's view, therefore, was that there was a risk in pre-briefing, but also in not pre-briefing, bearing in mind the advice from the Media Associate that the Life Insurance Review would in any event be picked up by the trade press and may be potentially mis-reported. Her view on balance was that the best way forward was for the scope of the review to be correctly reported in advance in a very low key way.

11.69 At 5.03 pm, Mr Poyntz-Wright replied to the Media Associate and Mr Adamson copying Supervision Associate One, the Technical Specialist and Ms Gardner, among others:

> "*Thanks for your note. I am checking one or two points with* [Ms Gardner] *and* [the Technical Specialist] *but in the interests of speed I thought I would share an initial view.*
>
> *I certainly like the approach of highlighting one or two initiatives to ensure a more constructive reception in the media.*
>
> *What I am not so sure about is whether this is the right topic to headline at this particular moment. The life insurers are badly bruised and rapidly reacting to last week's Budget announcements, and this would begin to feel like a campaign.*
>
> *I also noted your introductory paragraph focussed particularly on exit charges and 'trapped customers'. Although as part of our work we propose to collect information on exit charges, this is only one element of the work and I would be concerned about giving it too much prominence and raising unrealistic expectations*."

11.70 The Technical Specialist sent an email to Mr Poyntz-Wright and Ms Gardner at 5.20 pm, without copying the Media Associate or Mr Adamson, commenting that she agreed with Mr Poyntz-Wright 's response and that:

> "*When we considered this as an approach we were in a different situation. On the exit charges point the intention was that we make clear the scope on this is limited. But by mentioning it we draw attention to it - however by not mentioning it it might be assumed we are doing more than we are (key consumer sensitivity). I agree in terms of the out of scope messages too especially on the workplace pensions work (which is the key industry sensitivity* [sic].
>
> *My view is we should tell* [Media Associate] *we don't want this coverage to happen. We can prepare Q&A for post business plan and brief media then. We are briefing ABI in more detail next week (if we can get a meeting with* [the ABI representative] *who is currently very busy on the annuities side).*"

11.71 At 5.24 pm, Mr Poyntz-Wright responded to the Technical Specialist's email, saying that he was sensitive to the fact that she and Supervision Associate One were supportive of the idea, and a week ago "*the situation was rather different*!", but he did not address the Technical Specialist's view that the press coverage should not now go ahead, nor her proposed alternative communications approach.

11.72 Mr Poyntz-Wright told us that he had worked closely with the Media Associate on a number of other communications pieces over the previous months and developed a considerable amount of trust and confidence in his judgement. He said that there was logic and a rationale in pre-briefing *The Telegraph* by way of an exclusive, which would give the journalist the time to understand the content of what was in the Life Insurance Review and what was not.

11.73 Mr Poyntz-Wright told us that in his view, if there had been no pre-briefing, the FCA would have had to adopt a reactive communications approach where the Life Insurance Review would have been highlighted when the Business Plan was published, in a changed environment following the Budget. He told us, however, that he still had concerns about the approach which he had summarised in his email to the Media Associate of 5.03 pm, copied to Mr Adamson.

11.74 Mr Poyntz-Wright did not speak at any time to Mr Adamson. He told us that looking back, he asked himself why he had not challenged what was planned more firmly, but he was not sure at that time what Mr Adamson's previous involvement had been. He did not know, for example, whether Mr Adamson had been involved somehow in agreeing the communication strategy for the Business Plan as a whole and decided to wait and see what Mr Adamson was going to say.

11.75 At 6.34 pm, the Media Associate sent an email to Mr Poyntz-Wright:

> "*Thanks* [Mr Poyntz-Wright]. *Having spoken with the team about this over the last few days I can see the review is not just about exit fees, and the focus is elsewhere. I suppose for the purpose of reviewing this email, it's more important to focus on the key messages.*
>
> *I understand the concern about highlighting this story, but it will be public on 31 March anyway; this way we get more control over it by giving it to* [Mr Hyde] *only*."

Sunday 23 March 2014

11.76 There were no emails on Saturday 22 March 2014. Mr Adamson replied to the media plan at 1.25 pm on Sunday 23 March 2014, as follows:

> "*Looks sensible and getting ahead of the curve. Given possible sensitivities of life firms as* [Mr Poyntz-Wright] *points out might be worth pre-briefing them as well*".

11.77 Ms Gardner also replied that evening, at 7.11 pm, as follows:

> "*I support the idea of doing something (relatively low-key) – and giving it as an exclusive to one paper seems a good way. As you say, it gives us some control – I assume other publications may still have interest in following this up – but maybe will be less likely to present this as a 'scoop'?*
>
> *As* [Mr Poyntz-Wright] *says, we wouldn't want this to be positioned as being a study that is majoring on charges and value for money – although we will be looking at aspects of these such as the expense allocation. For me, the project is more about exploring the extent to which insurers 'are doing their best' to ensure they 'add value' and continue to work hard for consumers they may feel are relatively inert. This could be in areas such as investment performance and access to original benefits associated with the policy.*"

11.78 Ms Gardner told us that she assumed that Mr Adamson had overruled Mr Poyntz-Wright. Mr Poyntz-Wright, for his part, told us he assumed that Mr Adamson had reached his decision having taken into account the concerns that Mr Poyntz-Wright had raised in his email of 5.03 pm on 21 March 2014 (on the basis that Mr Adamson had referred to what Mr Poyntz-Wright had said in his email) and forming a view that those risks could be mitigated.

11.79 Mr Adamson told us that he did not speak to Mr Poyntz-Wright and did not know that Mr Hyde was a campaigning journalist on the issue of exit fees. He was aware of the Budget announcement on annuities and the upcoming cap on pension charges (discussed further below), but he understood that the Life Insurance Review would appear in the Business Plan anyway and he was supportive of the pre-briefing.

11.80 Mr Adamson told us that because the Life Insurance Review was going to be the third issue in relation to the life industry in a matter of weeks, it was clearly going to be more sensitive than it otherwise would. But he said to us that just because the issue was sensitive to the industry it was not necessarily a reason not to go ahead, unless it was considered that the release of the information would be price-sensitive. He told us that his very strong view, even now, was that what was proposed to be given to *The Telegraph* in the written briefing was not price-sensitive.

11.81 Importantly, however, Mr Adamson understood from the media plan that what would happen next was a short interview with him or Mr Poyntz-Wright with separate quotes to be sent to Mr Adamson for approval. He did not interpret the phrase in the plan "*quotes to be attributable to* [Mr Adamson]" sent to him at 2.19 pm on 21 March 2014 by the Media Associate to mean that, whichever of them was interviewed, the quotes would be attributed to Mr Adamson (as in fact occurred, as described further in Chapter 12 below). Mr Poyntz-Wright also did not interpret the phrase in that way. The Media Associate explained to us that, after Mr Green was quoted by *The Telegraph* on 22 November 2013, he was told by Ms McMillan that the ExCo wanted only members of the ExCo or the Board to be quoted on behalf of the FCA. His intention was therefore to convey to Mr Adamson and Mr Poyntz-Wright that whichever of them was interviewed, the quotes would be attributable to Mr Adamson. In light of Mr Adamson's positive response to the media plan generally, the Media Associate said that he believed at the time that Mr Adamson had agreed to being quoted in this way.

11.82 Ms McMillan explained to us that only named members of the ExCo or the Board should be quoted in external communications, but that their approval for quotations in their name should always be obtained and that it was not appropriate for statements by Mr Poyntz-Wright to have been attributed as quotations to Mr Adamson. The Media Manager also told us that this was inappropriate unless the consent of the executive in question had been obtained (which the Media Associate believed he had obtained).

11.83 The fact that the Media Associate thought he had approval for quotes given by Mr Poyntz-Wright to be attributed to Mr Adamson, whereas neither Mr Poyntz-Wright or

Mr Adamson believed that such consent had been given, is significant. Our conclusion from interviews and the contemporaneous documents is that Mr Adamson takes particular care in ensuring that any quotation attributable to him publicly is accurate in tone and content, and that had he realised this is what was proposed, he would, therefore, have declined to permit statements by Mr Poyntz-Wright to be attributed to him as quotations without an opportunity to review them carefully first.

11.84 Each week a Supervision Update is circulated internally at the FCA to members of the ExCo, which provides an update on the work being undertaken by the Supervision Division. The Supervision Update for the week ending 21 March 2014, circulated on 23 March 2014, discussed the planned press coverage of the Life Insurance Review, noting that there were industry sensitivities about the announcement of the review:

> "***Thematic review of the fair treatment of long-standing customers in life insurance*** *– The business plan will include our plans to carry out a thematic review to assess whether life insurers are treating back book customers fairly. We anticipate some industry concern around the topic of this review and specifically whether this review will look at 'value for money' in charges and overlap with the current ABI review into workplace pensions, both of which are not in scope.*
>
> *There is likely to be some planned press coverage next week to pre-empt these concerns and manage the message about the scope of the review.*" [Original emphasis.]

Monday 24 March 2014

11.85 At 9.24 am on 24 March 2014, a representative of the ABI responded to the Technical Specialist's email in which the Technical Specialist had sought to arrange a meeting with the ABI. A representative of the ABI agreed to meet but raised concerns regarding the timing of the Life Insurance Review "*in light of the Budget announcements*" and the impact on the annuities market. She said that there were a number of pieces of work affecting pension and annuity providers taking place contemporaneously, in particular "*the OFT legacy audit, the FCA market study of annuities, the likely imposition of a charge cap for auto-enrolment pensions, the development of the framework for independent governance committees, and the auto-enrolment project itself*", and advised that "*the timeframe for a further thematic review of legacy products needs to consider these pressures and cannot be set in a vacuum.*"

11.86 Supervision Associate One replied to confirm that the FCA had not changed its planned timeframe for the Life Insurance Review but that it would "*look to verify* *whether the timescales are still appropriate when factoring in the implications on firms of the budget*." The meeting to brief the ABI was arranged to take place at the offices of the ABI at 10.00 am on 28 March 2014.

11.87 At 10.32 am, the Media Associate emailed the Supervision Division, removing Mr Adamson from the email chain, and saying as following:

> "[Mr Poyntz-Wright], [Ms Gardner],– *as* [Mr Adamson] *seems happy I wanted to condense the mailing list and address your concerns directly.*
>
> *If I can summarise feedback so far, everybody seems happy with doing the story pre-biz plan, providing we make sure the relevant trade and (some of the) major life co's get a heads up the day before so they're not surprised. That's absolutely fine and was indeed part of the plan.*
>
> *I also appreciate that the intro may have misrepresented the thrust of the story. That was only ever just an internal summary to try and put the story in context and tell the story – I* [sic] *won't be leaving this building.*
>
> *The only stuff I will be sending the Telegraph (*[Mr Hyde]*), and supporting with a short phone call with* [Mr Poyntz-Wright]/[Mr Adamson]*, will be key messages below. Of course* [Mr Hyde] *may have further Qs that we will address on an ad-hoc basis.*
>
> *For other media that wish to follow the story, we will provide the bullets below and a short quote from* [Mr Adamson] *(that I am drafting now).*
>
> *Doing an exclusive with The Telegraph will - on balance - give this story more prominence; that's because with so many stories in the biz plan it's quite possible this will get lost in the noise and won't be picked up at a national level. The trades will cover this in either case.*
>
> *Grateful if, based on the above, you could let me know if you are happy for me to proceed. Ideally I'd like to speak to The Telegraph today.*"

11.88 Supervision Associate One replied on 24 March 2014 at 2.02 pm:

> "*I am only repeating our previous conversations and* [Mr Poyntz-Wright] *and* [Ms Gardner's] *comments from the email trail below, but I think it is important that we address these points when we present the scope of the review.*
>
> [Mr Poyntz-Wright] *and* [Ms Gardner] *may have additional comments*
>
> <u>*Value for money and ABI/OFT legacy workplace pensions audit*</u>

> *There will be natural concerns that we will be looking at value for money of ongoing charges on back-book products and that our review could have overlap with the ABI work. These areas are specifically not in scope and we would like to ensure this is clear if possible. It would be good to have something in our bullets or* [Mr Adamson's] *quote which covered this?*
>
> *Exit charges*
>
> *I understand that the journalist at the Telegraph will probably want to include exit charges as a subject in the article.*
>
> *It is not a large part of our review and including exit charges as a bullet does make it more prominent than it is.*
>
> *Would we be better discussing exit charges as an ad-hoc response to his questions? That way it would not be part of our briefing which you state will go to any of the other media who get in touch. If asked we can then answer that it is a part of our review but we are gathering information at this time to better understand if we need to act.*"

11.89 The Media Associate told us that he considered the suggestion by Supervision Associate One but thought that, as exit fees would be a part of the review, it would not be right to exclude it from the messages to *The Telegraph*.

11.90 Ms Gardner also sent an email at 2.36 pm with some additional comments on the key messages, being those previously approved by Supervision Associate One. She made a number of comments/additions in red saying "*I realise I have toned down the messages a bit, so I will leave it to your judgement to strick* [sic] *the right balance*". One suggestion was to amend the third bullet point as follows (her comments appear in bold):

> "*Many of these funds are performing badly and we are concerned that life insurers may be exploiting this lack of engagement (**that's quite hard-hitting! Might be better to say we are concerned that life insurers are not giving these customers the same priority as new customers get)***".

11.91 At 2.43 pm, Mr Poyntz-Wright sent an email to the Media Associate confirming that he was "*happy to proceed as you have outlined, subject to comments already made, and* [Ms Gardner's] *amendments below*."

11.92 The Media Associate responded at 3.50 pm that he was happy to proceed as per Supervision Associate One and Ms Gardner had suggested and said that he would "*get this over to the Telegraph now and keep you posted*." The Media Associate told us that he recalled showing the bullet points to the Media Manager. The Media Manager told us that he had not previously seen the bullet points nor was he aware of the concerns which were being expressed to the Media Associate about the risks being run by the interview with *The Telegraph*.

11.93 Mr Hyde, some 20 minutes before, had sent an email to the Media Associate headed "*Exit Fees*" asking "*Any thoughts on this?*", chasing for an update on the story.

11.94 At 4.43 pm, the Media Associate emailed Mr Hyde, attaching the "*key messages*" that had been discussed with the Supervision Division. The email stated as follows:

> "*Sorry for the delay. Just had the bullets signed off. See below.*
>
> *I should point out, exit fees is just one part of it and that bit is more discovery work; the review itself is more about how the closed book products are being serviced.*
>
> *When do you think you can run this? I'm not giving it to anybody else. Happy to set up a quick call for you with* [Mr Poyntz-Wright] *tomorrow. Thursday would be good for us if possible.*
>
> …
>
> - *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);*
> - *We are concerned that life insurers are not giving these customers the same priority as new customers get, and it's possible that some may be exploiting customers' lack of engagement;*
> - *Our key concerns are that life insurers may be:*
>   - *making changes (such as moving these long standing investments to platforms) which benefit the firm but not the investor,*
>   - *allocating an unfair amount of overheads to historic funds (i.e. using 'forgotten' funds to pay their bills),*

- *not regularly reviewing them to ensure they still meet their intended purpose,*

- *the communications firms use may be not solving the problem because they are not clear or engaging,*

- *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*

- *The FCA will be one year old next Tuesday and in our first year we have made some major interventions that have put consumers in a better position - this is another example of us getting to the heart of issues that really matter.*"

11.95 The Media Associate told us that he had noticed the heading "*Exit Fees*" in Mr Hyde's email (in our view, most likely used by Mr Hyde because this was how the story had been introduced to him by the Media Associate) and therefore went out of his way to explain at the beginning of his email that exit fees were only one part of what was being considered and that part was "*more discovery work*". The draft message sent to Mr Hyde in any event had not included exit fees as one of the FCA's "*key concerns*".

11.96 It appears from the messages sent to *The Telegraph* that the amendments proposed by Ms Gardner were not taken into account fully, with the third bullet point still containing the word "*exploiting*". It does not follow, however, that the briefing to *The Telegraph* therefore went further than the agreed line, as Ms Gardner had left it to the Media Associate's judgement as to which of her amendments to accept. Furthermore, the word "*exploit*" was in any event used at page 20 of the Business Plan itself in relation to the Life Insurance Review.

11.97 Separately, at 5.21 pm, a senior representative of the ABI emailed Mr Poyntz-Wright to raise the ABI's concerns regarding the timing of the proposed thematic review and the convergence of projects affecting the insurance industry. He said that "*when we met* [a Senior Associate in the Competition department] *and those responsible for the annuities market study earlier they were certainly in the process of re-considering their timescales and objectives in the light of the announcements in the Budget. The same issues apply to the legacy products review. The same people in our member companies who respond to this review will be those dealing with the fall-out from the Budget, and Q2 will be challenging. You would get a much better response from a delay of a quarter, and I hope the Business plan does not cement Q2 into the workplan*."

11.98 This email shows that the concerns of the ABI at the time, based on the limited amount that they knew of the Life Insurance Review, still related to the timing of the review and its potential overlap with the OFT's legacy audit.

Tuesday 25 March 2014

11.99 On 25 March 2014, the Media Associate sent an email to Mr Hyde asking "*Any views on the below*", referring to the bullet points which had been sent to him the previous day. Mr Hyde responded "*Yes keen to do something. Sorry got caught up in other stuff ... Shall we set up a call with* [Mr Poyntz-Wright]".

Wednesday 26 March 2014

11.100 At 7.42 am on 26 March 2014, Mr Poyntz-Wright replied to the ABI's email of 24 March 2014 as follows:

"*We will certainly do our best to avoid putting an excessive burden on firms' resources, recognising their current focus on the recent Budget announcements*."

11.101 At 10.34 am, Mr Hyde sent the Media Associate a follow-up email with the following questions:

> "*Couple of details. What time period are you talking about here? 1970s – 2000 or something?*
>
> *Can we set up a call with* [Mr Poyntz-Wright]*?*
>
> *Still attributing quotes to* [Mr Adamson]*?*
>
> *Lots of this will be money inside pensions right? Can I say pensions – that's what most people were sold I think?"*

11.102 The Media Associate told us that he called Mr Hyde shortly after this to answer the questions and set up a call with Mr Poyntz-Wright. The Media Associate could not recall in interview precisely what was said on this call and there was no note taken. He said to us that he would have confirmed that quotes given in the briefing were still to be attributed to Mr Adamson.

11.103 Shortly afterwards at 11.38 am, the Media Associate sent an email to Ms Gardner and Mr Poyntz-Wright, copied to Supervision Associate One and the Technical Specialist (together, the "**Wider Review Team**"), noting that the story in *The Telegraph* "*will now run in Friday's paper*". The email stated:

"[Mr Poyntz-Wright] – *I've put 30 mins* [in] *your diary this afternoon (4.15pm) to speak to* [Mr Hyde] *so you can give some scope and context. That then leaves Thursday for* [Mr Hyde] *to write up the story, bring in some case studies, and consumer QA for his piece. That also leaves us Thursday for any outstanding Qs he may have.*

[Supervision Associate One] / [the Technical Specialist] – *is the ABI presentation the best one for* [Mr Poyntz-Wright] *to use as a reference point when he's on the phone? Grateful if you could make sure* [Mr Poyntz-Wright] *has the necessary detail to hand for the call.*"

Conclusions

11.104 An interview was therefore arranged with a campaigning journalist, with a known particular concern about exit fees, who had been offered an exclusive by the FCA, using exit fees as the "*hook"* for the story. This was against a background of strong reservations within the Supervision Division, not only about the messaging to be used to ensure the Life Insurance Review was reported accurately, but also that a pre-briefing of *The Telegraph* might lead to adverse consequences for the life industry were the story to appear so soon after the Budget announcement.

11.105 Those reservations were balanced ultimately against the concerns that not pre-briefing could lead to the Life Insurance Review being misunderstood when announced in the Business Plan, again with serious consequences.

11.106 We turn in the next Chapter to a description of the telephone briefing which was given to *The Telegraph* in the afternoon of 26 March 2014, without the involvement of either of the Directors of the Supervision or Communications Divisions. At the end of the next Chapter we address the questions in the Terms of Reference in relation to the content, scope and authorisation of the briefing.

CHAPTER 12

12. THE TELEPHONE PRE-BRIEFING GIVEN TO *THE TELEGRAPH*

12.1 The interview between the Media Associate, Mr Poyntz-Wright and Mr Hyde took place on the telephone at around 4.30 pm on 26 March 2014 and lasted less than 30 minutes.

12.2 The FCA made no recording of the telephone call. We were told by Ms McMillan that her understanding was that interviews with journalists should always be recorded. This was not the understanding of the Media Manager or the Media Associate, who told us that he had never recorded an interview with a journalist.

12.3 Instead, the Media Associate took a handwritten note, which he typed up on 28 March 2014 in the context of the events that unfolded that day. Mr Poyntz-Wright also prepared a note of his recollections in the week after the interview. Mr Poyntz-Wright told us that he believed his note to be an accurate representation of the questions and discussion, although not necessarily in the right order. *The Telegraph* declined to provide a copy of Mr Hyde's note of the interview, but did provide certain extracts by email, which we refer to below.

12.4 According to Mr Poyntz-Wright, before the call started, the Media Associate told him that Mr Hyde was, in his view, an up-and-coming journalist, and that he felt he was someone who really "*got it*". According to Mr Poyntz-Wright's note, the Media Associate also explained to him, before the call started, that the Media Associate "*had been impressed in previous interactions that* [Mr Hyde] *had decided not to run a piece on exit charges because he realised they were contractual and couldn't be unpicked.*"

12.5 This is broadly consistent with what we were told by the Media Associate in his interview. For his part, the Media Associate confirmed that he had a short discussion with Mr Poyntz-Wright immediately before the call with Mr Hyde, in which he discussed the proposed structure of the briefing and ran quickly through everything that he anticipated that Mr Hyde would ask.

12.6 On the subject of exit fees, the Media Associate explained to us that he told Mr Poyntz-Wright that Mr Hyde was interested in this subject and that it was likely to come up and therefore, it was important to stick to the lines that had been prepared.

12.7 The notes of the call prepared by Mr Poyntz-Wright state that, at the outset of the discussion with Mr Hyde, the Media Associate confirmed that the call was to be "*on the record*". That is a different recollection to that of the Media Associate, who told us in his interview that the call was initially conducted "*off the record*" and that it was only agreed at the end of the call, once he and Mr Poyntz-Wright were content with what had been said, that the discussion could be treated as "*on the record*".

12.8 The distinction between a discussion with a journalist that is "*off the record*" and one that is "*on the record*", we were told, is that if a discussion is "*off the record*", the journalist would be unable to quote what had been said and attribute it to an FCA source, whereas in relation to an "*on the record*" discussion, the journalist would be able to do so.

12.9 In any case it is clear that, by the end of the call, whether the discussion was agreed to be "*on the record*" from the outset, or whether this was only agreed at the end of the discussion, Mr Hyde had been told by the Media Associate that he could quote anything that had been said by Mr Poyntz-Wright and attribute those quotes to Mr Adamson.

12.10 Mr Poyntz-Wright told us that it was during the call that he learned for the first time that this was the approach to be taken and that he was surprised as he thought it was an unusual practice. He told us, however, that as by then he was already on the telephone with *The Telegraph* it was difficult for him to challenge. He assumed that this was an arrangement which might happen more frequently, so said nothing, placing his confidence in the Media Associate.

12.11 At the outset of the call, Mr Poyntz-Wright gave an overview of the proposed Life Insurance Review based on the slides to be presented to the ABI and the key messages already provided to *The Telegraph*. Mr Hyde then asked a series of questions about the review.

12.12 The notes of the call typed by the Media Associate on 28 March 2014 state as follows:

"***Interview between* [Mr Poyntz-Wright] *and* [Mr Hyde] *on 26 March***

Intro by [Mr Poyntz-Wright]

- *This is about closed book / legacy investments*
- *FCA is one year old on Tuesday, in that time we have made some major interventions*
- *There are particular groups of consumers we need to protect – in this case people who have long-standing investments*
- *Essentially we don't want people with longer contracts to be forgotten about*

- *These are contracts that have been in force for 10-20 years, so many people won't know what is happening with their investments*

- *There's lots of outsourcing so it's likely the service people were promised 10,20,30 years ago is not the same today – we want to be sure the products are still right for these people*

Question: so are you saying that new customers are getting a better deal than old customers?

- *That's one of our concerns, the risk is that these older customers get forgotten – and they are disengaged*

- [addressing the Tel suggestion that these policies were unfair] *You do need to be careful about deciding what is fair/unfair – the T+Cs are from decades ago and we have no reason to believe they aren't fair.*

- *Some firms are purely set up to operate closed books and we want to make sure their customers are treated fairly*

Question: Pre-2000 contracts have anachronistic charging, such as 7% ongoing charges. This is not progressive charging and there are layers and layers of it. Do fees and charges come into this work?

- *Yes*

- *The fees and charges are old which will make them look steep – but that doesn't make them wrong or unfair, so difficult for us to challenge*

- *What we are more concerned about is the disinclination to switch*

- *On exit charges, we recognise it's a popular concern and we will gather information on this, but it's not a key driver of our work*

- *We are worried that this may be a barrier to exit these funds*

Question: But exit fees are an obvious barrier, hence me asking about it – what things might you look at or recommend?

- *Our work will be thematic and look at a sample of firms*

- *At the end of that work we will communicate publicly about whether there is good and bad practice*

- *We may need to go further and make recommendations*

Question: specifically on high exit charges, what can you do?

- *Again, this is not the sole focus of our work, but on this area we would maybe ask:*
    - o *what other investment options are available to people in a closed book*
    - o *is the firm confident that the product is still fit for purpose?*
    - o *is the customer getting a good service*
- *Some firms give the option to modernise/upgrade to newer products; where that is the case we would want to be reassured that it doesn't just benefit the firm, but it benefits the consumer too (eg. moving to a platform will cost the consumer but is it offering them a good service and does the customer need all of the extra options it provides*

What has spurred you into action?

- *The FCA is a forward looking regulator so we are taking an interest in certain areas*
- *This is a big market and we want to take a look at the strategy of providers to their long term customers; some providers are specifically focussed on legacy*
- *The modernisation of investment models means older customers may not be getting what the originally signed up for*

What types of products are included?

- *Pensions (not workplace because OFT is already doing a review of this), endowments, investment bonds, whole of life policies.*"

12.13 This note is substantively consistent with the handwritten contemporaneous notes made by the Media Associate during the call.

12.14 The notes prepared by Mr Poyntz-Wright in the week after the interview, state as follows:

"*1* [Media Associate] *introduced the call and referred to a short summary of the FCA's proposed thematic work on long-standing customers of life insurance firms, which he had sent to* [Mr Hyde] *by email. He explained the work would be referenced in the FCA Business Plan, due for publication the following Monday 31st March 2014, and noted that FCA was keen to selectively brief key media contacts so reporting of the work could be more informed in terms of its purpose and scope.*

2. [Media Associate] *confirmed that we were briefing this work exclusively to the Telegraph. He said that the interview would be "on the record", with any quotes to be attributed to* [Mr Adamson].

3. [Mr Poyntz-Wright] *began by emphasising the long-term nature of many life insurance and pension contracts – they often spanned a number of decades. They were also characterised by a relatively low level of customer engagement. The key question FCA wanted to address was: "Are the firms who are responsible for looking after these contracts paying sufficient attention to the customers' interests (for example compared with new customers investing in new products)?"*

4. [Mr Hyde] *asked what lay behind the FCA's decision to focus on this area.*

5. [Mr Poyntz-Wright] *commented on the degree of 'back book' consolidation in the sector, and the widespread use of outsourcing. In the case of a product purchased 10 or 20 years ago, the chances of a customer being looked after by the same brand, let alone the same people in the same building, are very remote. Would the organisation which has inherited the responsibility of looking after these customers have their best interests at heart? The potential concern was that changes made to the administration of these products may have been motivated more by the pressure to achieve cost reductions or operational efficiencies.*

6. [Mr Poyntz-Wright] *said that sometimes FCA gained the impression that firms regarded their existing customer base as a potential source of future business. Some firms tried to encourage their 'back book' customers to switch to more modern contracts (eg investment platforms) but they needed to stop and consider whether the ongoing charges of the new product may be higher, and whether the customer needed or wanted the extra features they were paying for.*

7. *In the end,* [Mr Poyntz-Wright] *said, FCA wanted to be satisfied the customer was getting what they were due. Firms should be considering – over the course of what could be a very long contract – whether the product remained suitable for the customer.*

8. [Mr Hyde] *asked what FCA might find to indicate potential problems in this area.*

9. [Mr Poyntz-Wright] *said older products often had a narrow range of in-house investment funds for customers to choose from. This was very different from the wide range of third party funds which tended to be available under more modern contracts. And sometimes the popularity of these internal funds had waned and they were in long-term decline. So there was a risk the customer may be stuck with a limited choice of poorly performing funds which may be bearing more than their fair share of expenses.*

10. [Mr Hyde] *was particularly interested in the high exit charges which often applied under these older types of product. He asked what steps FCA would be taking to address these.*

11. [Mr Poyntz-Wright] *said any exit charges were part of a long-term contract willingly entered into by the two parties many years ago and FCA would not be able to change them retrospectively – it was not the intention of our work to look at making changes to exit charges themselves. However what we were conscious of was that a high exit charge can present a barrier to exit so the customer has no realistic alternative. In this situation it would be all the more important to be confident that the customer's interests are being considered and the customer is getting what they are due.*

12. [Mr Hyde] *asked what the FCA would do if it found problems.*

13. [Mr Poyntz-Wright] *said we were not at that stage yet. This was a discovery piece of work, looking at a sample of firms, and we had not reached any conclusions at this point. What we often did at the conclusion of a thematic project was to publish a report on good and poor practice we had seen, so the key messages can be acted on by those firms not included in the sample. Depending on the findings, we may feel the need to go further and consult on changes to our rules. In any event we could not change contracts retrospectively when they had been compliantly entered into at the time.*

14. [Mr Poyntz-Wright] *asked if it would be helpful to clarify the scope of the work. The contracts considered were unit-linked and with-profit contracts written before the year 2000. Individual personal pensions were included but workplace pensions were not – this was to avoid overlap with the OFT-prompted audit of defined contribution workplace pension schemes.*

15. [Mr Hyde] *asked about flexible whole of life contracts and commented that he had received numerous complaints from customers who had been charged very high increases in their premiums if they wanted to keep their cover in force.*

16. [Mr Poyntz-Wright] *confirmed flexible whole of life contracts were included in the scope and said the review would look at how firms handled the use of options within the contract. However, it was unlikely that the review would address all of the complaints in this area.*

17. [Mr Hyde] *asked whether we had already discussed the work with the life insurance industry. We confirmed we had discussed it with the ABI.* [Media Associate] *asked* [Mr Hyde] *not to contact the ABI until we had had a chance to speak to them, to prepare them for the call.* [Mr Hyde] *was concerned that we impressed upon ABI that this was an exclusive, as he claimed to have previous experience of ABI sharing the story with other media and diluting the impact of the story.*"

12.15 The notes prepared by the Media Associate and Mr Poyntz-Wright are broadly consistent.

12.16 It is clear from both sets of notes that, although the Media Associate had said in his email to Mr Hyde on 24 March 2014 that "*exit fees is just one part of it and that bit is more discovery work*", Mr Hyde asked a number of questions about what the FCA was proposing to do about high exit fees, and what other remedies were available for customers. The focus of Mr Hyde in his questions was, therefore, on the potential outcomes of the thematic review work, in particular on those customers affected potentially by exit fees.

12.17 The notes are not, however, a complete record of the discussion. For instance, the Media Associate told us in his interview that, at the end of the briefing, Mr Hyde gave a short summary of what he had been told. The Media Associate also told us 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. These exchanges do not appear in either set of notes.

12.18 Mr Poyntz-Wright told us that exit fees could only be removed if there was also evidence of mis-selling or mis-disclosure at point of sale, there was no intention to look back at point of sale in the Life Insurance Review and it was only a theoretical possibility based on the results of the first stage of the review. Mr Poyntz-Wright told us he believes he made these points clear in the interview with *The Telegraph*, as supported by paragraph 11 of his attendance note.

12.19 *The Telegraph* has told us in writing that, in its view, Mr Hyde's notes of the call suggest a more equivocal exchange. The following is the extract of Mr Hyde's notes on this point that have been provided to us:

> "*Some times charges from long ago look significant [when viewed now] - but if [they] were entered into [in the] right way at [the] time, [they are] hard to [be] challenged.*
>
> *"[A] customer is likely to be disinclined to move [if there are exit charges, so it is] even more important that [they are] treated fairly.*
>
> *"[We, the FCA] recognise [the] concern and [will] gather information on exit charges.*
>
> *"If [exit charges are] an undue barrier to exit [they] limit choice [and there is an] increased risk [that customers are] taken advantage of.*"

12.20 We are nevertheless satisfied that both Mr Poyntz-Wright and the Media Associate believed, following the interview, that they had steered Mr Hyde away from any conclusion that the FCA was planning on looking at exit fees specifically. There was, in their view, no suggestion that he had been told that the FCA was looking to ban such charges. Both Mr Poyntz-Wright and the Media Associate told us that they did not consider at the time that there was a risk, following this call, that Mr Hyde would write an article stating that the FCA was planning to ban exit fees.

12.21 We were told that the Media Associate said to the Media Manager, in a brief conversation shortly after the briefing with Mr Hyde, that he thought the interview had gone well. We were told that the Media Associate also said that, unsurprisingly, Mr Hyde had been interested in exit fees, but that Mr Poyntz-Wright had been clear in telling him that this was not just about exit fees.

12.22 We were also told by Ms Gardner that Mr Poyntz-Wright said to her the next day, 27 March 2014, that he believed that Mr Hyde had a good idea of what the review was about and had understood the FCA's emphasis.

12.23 We are therefore satisfied, on the basis of the written briefing given to *The Telegraph*, our interviews of Mr Poyntz-Wright and the Media Associate, and their collective notes of the interview, that *The Telegraph* was told that the focus of the review was not about exit fees and that it was a discovery piece of work. We are also satisfied that the FCA did not say that it was seeking to ban exit fees.

12.24 Furthermore, we are satisfied that the FCA had no intention to communicate price-sensitive information to *The Telegraph*. However, the issue had not been addressed expressly. There was at the very least, a risk that the pre-briefing to be given to *The Telegraph* could contain price-sensitive information, or a risk that the way in which it might be reported could have a significant effect on share prices. The briefing should not, therefore, have been given selectively to a single journalist.

12.25 Crucially, in any event, control of the FCA's message had been lost. Mr Hyde was allowed to write an article as he saw fit, using what he had heard from Mr Poyntz-Wright, on the record, attributed to Mr Adamson, the Director of Supervision at the FCA, but with no suggestion that quotes should be put to the FCA for approval prior to publication. Mr Hyde had been left to speculate freely on the potential outcomes of the Life Insurance Review.

12.26 This created a significant risk which was unacceptable, given in particular the concerns that had been raised within the Wider Review Team in the days leading up to the briefing, and the detailed comments which had been made as a consequence on the written briefing to be sent across to *The Telegraph*.

12.27 Following the interview, there was no follow-up with *The Telegraph* by the Media Associate, who would be out of the office the next day at a funeral. At 6.43 pm, he sent an email to Supervision Associate One and the Technical Specialist, copying a junior member of the press team, but not the Media Manager. He said as follows:

> "[Mr Poyntz-Wright's] *interview went well today.* [Mr Hyde] *(the journalist) asked intelligent questions and seemed to get to grips with the study; it's shaping up to be a good piece.*
>
> *In terms of giving the ABI a heads up, can I suggest the following approach?*
>
> - *You speak to your contacts at the ABI* ***mid-afternoon Thursday****.*

- [junior member of the Media Relations team] *contacts the ABI press office shortly after to echo the message.*

I think the message to both stakeholders should be:

- *Monday's business plan will reference a review the FCA is doing on legacy investments.*
- *It will say: "We will assess whether firms are operating historic (often termed 'legacy' or 'heritage') products in a fair way and whether they have adopted strategies that exploit existing customers."*
- *We are announcing this a few days early to allow us to make sure it is reported accurately*
- *This will be an exclusive with the Daily Telegraph with an article appearing on Friday morning.*

I'm not in tomorrow, hence involving [junior member of the Media Relations team]. *Please can you let him know once you have spoken to the ABI?*

Finally, ***please don't contact them too early in the day*** *as there is a strong risk that they will try and scupper the story by briefing it to other nationals – in their own words. This is something they have done before."* [Original emphasis.]

12.28 The warning in bold is consistent with the concerns expressed by Mr Hyde recorded at paragraph 17 of the note of the interview prepared by Mr Poyntz-Wright, that it should be impressed on the ABI that this was an exclusive. *The Telegraph* has told us in writing that when Mr Hyde expressed those concerns, while he did refer to previous occasions in his career when organisations had leaked exclusive material and diluted the media impact, he did not say that the ABI had done so.

12.29 The Media Associate told us that the concerns about the story being "*scuppered*" by the ABI flagged in his email to Supervision Associate One and the Technical Specialist were not based on evidence, but on his understanding that the contact would be with the press office of the ABI and that a press officer's job is to represent and defend his employer.

12.30 Supervision Associate One replied at 6.48 pm, confirming that he noted the comment on timing and that the Review Team was meeting the ABI on Friday morning to discuss the project in more detail.

12.31 The Media Associate told us that he believed he had told the Media Manager, as he had done the Wider Review Team that the article would be coming out on the Friday. The Media Manager told us that he was still proceeding on the basis that the article would appear on Saturday 29 March 2014 and was not told to the contrary by the Media Associate. In any event, as described further below, both were taken by surprise when the article appeared online in the evening of 27 March 2014, the night before the briefing of the ABI was due to take place.

Conclusions and answers to:

> **Question 4(b): "*What was the process for selecting the items on which press briefings would be made*"?**
>
> **Question 5(a): "*Why and with whose knowledge and authorisation was this briefing given, particularly to a single journalist*"?**
>
> **Question 5(b): "*What was communicated to the journalist*"?**
>
> **Question 5(d): "*Was the content of any briefing appropriate and did it go further than the agreed line*"? and**
>
> **Question 6(b): "*What process was or should have been followed to confirm whether or not the information was likely to be price-sensitive*"?**

12.32 The decision to give an exclusive press pre-briefing in relation to the Life Insurance Review was made by those in the Supervision Division responsible for the Life Insurance Review, together with the Media Relations department. *The Telegraph* was chosen for the pre-briefing by the Media Associate because Mr Hyde was known to have a particular interest in legacy products and concern that exit fees were unfair.

12.33 The Media Relations team selected the other items on which press briefings would be given on the basis of what it considered would be of most interest to relevant journalists, with a view to publicising issues of interest to consumers.

12.34 Ms McMillan's position is that she did not know of, or authorise, the pre-briefing to *The Telegraph*. Rather, she explained that the detailed strategy was implemented within the Media Relations team, without her direct involvement. The Media Associate and the Media Manager told us that she did know.

12.35 The only other member of the ExCo who knew in advance was Mr Adamson. As set out above, he was involved in the decision to authorise the pre-briefing, having been sent a copy of written bullet points to be sent to *The Telegraph* in advance. Mr Adamson told us, however, that although he authorised the provision of the written pre-briefing to *The Telegraph*, and had authorised in principle the giving of a subsequent interview, he was not aware of the interview taking place and expected to be consulted further.

12.36 Our view is that the potential seriousness of the issues, which had been recognised explicitly by the Wider Review Team, should not have been left to email. Mr Poyntz-Wright should have spoken to Mr Adamson and explained in detail the strong reservations held by him and his team about the pre-briefing even taking place.

12.37 Mr Adamson had sufficient awareness of his team's concerns, in any case, to have re-considered whether it was appropriate to have included reference to the Life Insurance Review in the Business Plan at all or for a pre-briefing to be given to *The Telegraph*.

12.38 The Media Associate should have escalated the concerns which had been raised with him by the Wider Review Team to at least the Media Manager. The Media Manager should have provided adequate supervision.

12.39 No process was followed to confirm whether or not the information to be given to *The Telegraph* was likely to be price-sensitive, because no process existed.

12.40 Following the Budget announcement of 19 March 2014 in particular, in our view it was obvious that there was at the very least a risk that the pre-briefing to be given to *The Telegraph* could contain price-sensitive information, or that the way in which it might be reported could have a significant effect on share prices. The issue should have been addressed explicitly by Mr Adamson and/or Mr Poyntz-Wright.

12.41 As set out above, a written pre-briefing was given to *The Telegraph*, with every word scrutinised in advance to ensure that it was consistent with the scope of the Life Insurance Review and did not lead to any misleading impressions, including in relation to the discovery work relating to exit fees. The content of the written pre-briefing, therefore, did not go further than the agreed line but no consideration was given as to whether the written pre-briefing could contain price-sensitive information, or whether the way in which it might be reported by *The Telegraph* could have a significant effect on share prices. We therefore do not consider that the written pre-briefing was appropriate without proper consideration having been given to this issue.

12.42 By contrast with the care taken over the written pre-briefing, there was no such care taken in agreeing to Mr Hyde attributing whatever he wished to Mr Adamson as quotations. Mr Poyntz-Wright's comments in the interview with *The Telegraph* should not have been attributed to Mr Adamson.

12.43 Taking into account that most of the speaking was done by Mr Poyntz-Wright, as the Head of the Long Term Savings and Pensions Department within the Supervision

Division, the difficulty with the oral pre-briefing was not so much whether it went further than the agreed line, but that control of how the Life Insurance Review was to be reported had been given to Mr Hyde.

12.44 Given the sensitivities identified by the Wider Review Team when considering the written pre-briefing, we do not consider that it was appropriate to have given an oral pre-briefing or that Mr Hyde should have been permitted to write an article as he saw fit. No consideration was given as to whether the further information being given to Mr Hyde could be price-sensitive or whether the way in which it might be reported could have a significant effect on share prices.

12.45 Although the focus on exit fees was apparent from the interview, neither the Media Associate nor Mr Poyntz-Wright followed-up with Mr Hyde after the interview or prepared for the possibility that the article might not be as intended.

12.46 It is unacceptable in this context that, whereas the contents of written communications are the subject of close scrutiny by the FCA, oral briefings of journalists on potentially sensitive topics take place without any equivalent level of control. In this case, the oral briefing took place without any involvement (and possibly knowledge) of the Director of Communications, Ms McMillan, and without any close involvement by the Media Manager.

12.47 We turn now in the next Chapter to what happened when the FCA was taken by surprise by the publication of an article in the online edition of *The Telegraph* on the evening of 27 March 2014.

CHAPTER 13

13. THE EVENTS OF 27 MARCH 2014 PRIOR TO PUBLICATION ONLINE OF *THE TELEGRAPH* ARTICLE

Introduction

13.1 On Thursday 27 March 2014 the Department for Work and Pensions announced a 0.75 percent cap on auto-enrolment pension charges and a ban on certain other categories of pension charges to be effective as of April 2015. The announcement was met with concern by the insurance industry.

13.2 An all day Board meeting of the FCA took place that day. None of the members of the Board was aware that a briefing of *The Telegraph* had taken place the previous day and that an article on a most sensitive subject was due to appear imminently.

The Board and the ExCo learn of pre-briefings

13.3 The first details given to the Board as to the thematic reviews to be announced in the Business Plan, which were being pre-briefed exclusively in the press in advance of publication, was an email sent from the Communications Division at 1.42 pm:

> "*In advance of the Business Plan publication next week we are giving advanced previews of some sections to various media sources this week.*
>
> *The previews will be as follows:*

Section	***Media***	***Day***
IT Resilience	*Sky News Exclusive*	*This afternoon*
Closed book funds	*Daily Telegraph*	*Friday 28 March*
Packaged accounts	*The Independent*	*Saturday 29 March*
Unauthorised bank transactions	*The Times*	*Saturday 29 March*

> *Please note that this information is valid at the time of writing but may be subject to change.*
>
> *Further communications around our Business Plan will be issued next week.*"

13.4 None of the Board members we interviewed recalled reading this email at the time it was sent, during the Board meeting.

13.5 An email in the same terms was also sent to the Senior Leadership team of the FCA at around the same time.

13.6 Later that afternoon, at 3.55 pm, the Media Manager also sent an email to all members of the ExCo, with the subject "*Business Plan and Consumer Credit Forthcoming Media*", including an overview of all the planned media activity in advance of the publication of the Business Plan and an outline of the specific stories that would be pre-briefed:

> "*As you will all know, there is a lot of media activity taking place over the coming days in the run up to the launch of the Business Plan and Consumer Credit so I wanted to outline briefly what stories would be appearing over the course of the next few days.*
>
> *The aim of this activity is to demonstrate that as the FCA enters its second year, there is weighty body of work to build on the momentum of the first year. We have used the business plan to pick several pieces of work we will be undertaking in the coming year and trail them with the media, with the intention to come back to them later in the year and update progress.*
>
> *With consumer credit, we wanted to demonstrate that this entails more than just payday loans and covers quite a wide spectrum of activity. Again, underpinning this is a desire to show that the FCA will from April 1st be undertaking a range of important work in the coming 12 months that is varied and relevant to consumers.*"

13.7 The stories listed in the email which constituted pre-briefings of thematic reviews to be announced in the Business Plan, were as follows:

> "***Friday 28th March** – Sky News will run a piece about our plans to look at the IT resilience of banks. We will then send that out to journalists once Mark Kleinman has broadcast.*
>
> ***Saturday 29th March** – We have briefed The Times on our plan to look at how unauthorised transactions (basically when your bank account gets hacked into and fraudulent purchases are made etc) are dealt with by firms in relation to ensuring consumers get their money back.*
>
> ***Saturday 29th March** – We have briefed The Telegraph on exit fees and our intention to assess the treatment of long standing customers of life insurance firms, who tend to face massive penalty fees if they wish to exit a fund, which more often than not has poor rates of interest.*"

13.8 The email omitted reference to a pre-briefing of a thematic review in relation to packaged bank accounts, which was given as a story to *The Independent*.

13.9 In any event, it set out the position as understood by the Media Manager, that an article in *The Telegraph* would be appearing on Saturday 29 March 2014, when in fact, it was due to appear the next day, Friday, and actually appeared that very evening.

13.10 Furthermore, the summary by the Media Manager of the briefing given to *The Telegraph* was inaccurate, based only on the initial email circulated by the Media Associate in early March, before the extensive correspondence between the Media Associate and the Supervision Division as detailed in Chapter 11 above. This highlights the lack of knowledge of the Media Manager of what the briefing of *The Telegraph* had included or what it was actually about and his inadequate supervision.

13.11 As well as the pre-briefings in relation to thematic reviews, the email listed other media announcements that would be happening in advance of 1 April 2014. These do not appear to be pre-briefings of issues which would otherwise be announced for the first time in the Business Plan:

> "***Sunday 30th March*** *– Mail on Sunday will do a feature on how our regulatory regime will impact on payday lenders,* [Mr Woolard] *has given them some words.*
>
> *The Press Association will drop a feature on the main regulatory changes for consumer credit this weekend on their wire. This will be used by regional papers primarily.*
>
> ***Sunday 30th March*** *– The Observer will be running a feature on logbook loans and how it will be regulated by us after April and the size of the industry.*
>
> ***Monday 31st March*** *– Our intention is to brief the FT over the weekend on Martin's Monday speech about our Wholesale approach for the year ahead.*
>
> *Issue PN on Business Plan and Fees with briefing note to the media on the Risk Outlook.*
>
> ***Tuesday 1st April*** *– Consumer Credit. The interest will inevitably be on payday, but we will also try and point out some of the key facts and reference some research on UK consumers' relationship with debt. We have the BBC primed for a package to go live on Tuesday morning and are working with other broadcasters to be interested. The BBC's One Show is also planning to do a feature on payday as well.*"

13.12 The email concluded as follows:

> "*I appreciate this has been a slightly different approach to the Business Plan and the introduction of consumer credit from a media perspective, and I know that it sometimes has felt like you have been inundated with media briefing notes and PNs to clear, but I'm hopeful we will help create a real sense of momentum for these announcements and set the ground for the year ahead. So thanks for all your help and patience so far! We will be looking over how this has worked and what we need to differently in the future.*"

13.13 The ExCo members did not read the email at the time. Ms McDermott told us that she read the email after the Board meeting and emailed the Media Manager, copied to Ms McMillan but not to the other members of the ExCo, saying "*this sounds really exciting – and a great way of doing it. Very creative.*" Ms McDermott told us that the purpose of her email was to thank the Media Manager and the team for working very hard.

Contact with the ABI on 27 March 2014

13.14 In the afternoon of 27 March 2014, as agreed with the Media Associate the day before, the Technical Specialist attempted to contact the ABI by telephone in order to inform them that *The Telegraph* was to publish an article on the Life Insurance Review on the following day. At 3.36 pm, the Technical Specialist sent a follow up email to the ABI stating:

> "*We have tried calling today but were not able to get in touch. We just wanted to give you a heads up that there will be an article in the Telegraph tomorrow about our planned thematic review on legacy products in life insurers. This is as part of our wider communication strategy in relation to our business plan. The main points we want to make you aware of now are:*
>
> - *Monday's business plan will reference a review the FCA intends to do on legacy investments (of which you are aware).*
> - *It will say: "We will assess whether firms are operating historic (often termed 'legacy' or 'heritage') products in a fair way and whether they have adopted strategies that exploit existing customers."*
> - *We are announcing this a few days early to allow us to make sure it is reported accurately as we are aware that there is an interest in the media on this.*
> - *This will be an exclusive with the Daily Telegraph with an article appearing on Friday morning.*

I believe someone in our [Media Relations team] *is also sending a briefing to your press office.*

We are meeting with [a representative of the ABI] *tomorrow and intend to discuss the planned review in more detail at that meeting.*

Please give me or [Supervision Associate One] *a call if you have any questions*".

13.15 That afternoon a junior member of the Media Relations team also contacted the ABI's press office to advise that *The Telegraph* would be publishing an article and that Mr Hyde was likely to contact the ABI for comment. Mr Hyde also contacted the ABI's press office and requested a comment from the ABI in respect of the Life Insurance Review. The ABI had not yet received a full briefing on the Life Insurance Review from the FCA, which was set for 10.00 am the next day, nor had it yet seen the presentation referred to in paragraph 11.22 above.

13.16 In this context we were shown by the ABI an internal email sent by a member of the ABI's press team at 4.03 pm which stated:

"*Dear All,*

I've just taken calls from the FCA and from The Telegraph.

On Monday the FCA will be announcing a Thematic Review into "Legacy products" sold before 2000 (including more or less everything, endowments, investment bonds, pensions) looking at the fees charged and if those who have these products are treated fairly. The rationale is that some of these products have anachronistic penalties; particularly exit penalties.

[Mr Hyde] *in The Telegraph has been given an exclusive on this and has only asked the ABI. He would like a comment that says that the ABI is conscious of these problems and sympathetic, but there are difficulties with unpicking historic contracts; both for the individual company and the consumer and for the market – as it would reduce confidence that any contract being signed today, couldn't be unpicked in 20 years' time...*

[ABI representative] *mentions that there is already a review in place?*"

13.17 We have also been provided with an email from the same member of the ABI's press team to Mr Hyde at 5.20 pm, which stated:

"*Dear* [Mr Hyde],

Find our line below, as discussed earlier on today. Hope this finds you well and congratulations on such a scoop. Should be huge.

Hugh Savill, Director of Regulation at the ABI said:

"Companies take their Treating their Customers Fairly Obligations very seriously. Company Boards will regularly review all aspects of product design, customer servicing and product performance. This is as relevant to older product lines as it is to new ones. We will of course work closely with the FCA as they undertake this review."

13.18 The ABI told us that the quotation given to *The Telegraph* was based on what they had previously been told by the FCA (rather than on conversations with the ABI's press officer), which was that the industry was facing a discovery thematic review which would focus on governance and oversight of the way that all products were being managed within the books of businesses, from a treating customers fairly perspective. The ABI was waiting for the detailed FCA briefing scheduled for the next day.

Conclusions

13.19 A briefing had been given to *The Telegraph* on a subject which those involved knew was sensitive to the life insurance industry. Nevertheless, the Board and the ExCo were all unaware that this briefing had even been given. Even the Directors of the Supervision Division and the Communications Division, whose representatives had given the briefing, were unaware it had taken place. Mr Adamson had approved in principle the concept of a briefing but did not know that it had been given by Mr Poyntz-Wright. Ms McMillan told us that she did not know.

13.20 The Media Manager at least knew that the briefing had taken place, but believed that any relevant story would be appearing on the Saturday. No contingency plans were in place to cater for the possibility that the briefing might have unintended consequences. Mr Poyntz-Wright was due to be out of the office on the Friday. The Media Associate at least knew that the article was due to appear on the Friday, but was then himself taken by surprise when the piece appeared online on the evening of Thursday 27 March 2014.

CHAPTER 14

14. THE PUBLICATION ONLINE ON 27 MARCH 2014 OF *THE TELEGRAPH* ARTICLE

14.1 Without any warning to the FCA or the ABI, at 10.00 pm on 27 March 2014, *The Telegraph* published its article on the Life Insurance Review in its online edition.[46] The article appeared on the front page, under the headline "*Savers locked into 'rip-off' pensions and investments may be free to exit, regulators will say*" and with the sub-heading "*the City watchdog is planning an inquiry into 30 million policies sold by insurance companies from the Seventies to the turn of the Millennium, The Telegraph can disclose*". The full text of the article is as follows:

> "*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 sold by insurance companies from the Seventies to the turn of the Millennium, The Telegraph can disclose.*
>
> *The review, to begin this summer, will include pensions, endowments, investment bonds and life insurance sold by doorstep salesmen who were often spurred on by large commissions.*
>
> *The Financial Conduct Authority is concerned that insurers are now "exploiting" loyal policyholders, who are "not given the same priority as new customers" and instead face high fees and substandard service.*
>
> *The intervention marks a victory for The Telegraph's long-running campaign for action over rip-off charges, particularly on pensions that severely reduce retirement funds over time.*
>
> *The FCA will say that at the heart of the inquiry is an "unfairness" whereby some insurers use the returns from so-called "zombie" funds — which are shut to new customers and often neglected by existing clients — to pay bills from other parts of their businesses.*
>
> *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.*

[46] http://www.telegraph.co.uk/finance/personalfinance/pensions/10728440/Savers-locked-into-rip-off-pensions-and-investments-may-be-free-to-exit-regulators-will-say.html

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.

Clive Adamson, the director of supervision at the FCA, told The Daily Telegraph: "We want to find out how closed-book products are being serviced by insurance companies, as we are concerned insurers are allocating an unfair amount of overheads to historic funds.

"As firms cut prices and create new products, there is a danger that customers with older contracts are forgotten. We want to ensure they get a fair deal. As part of the review we will collect information to establish whether we need to intervene on exit charges."

Details of the inquiry will be included in the annual FCA business plan for the next financial year, which will be published on Monday. The watchdog said some policyholders may be funding plans that are "no longer suitable" for their needs. Insurers rarely performed suitability checks after policies were sold, Mr Adamson said.

It was wrong, he said, that some firms merely sent customers letters that were not "clear or engaging" and failed to spell out the extent of the charges.

Research published in The Daily Telegraph in September disclosed the array of costs associated with investments taken out in the Eighties and Nineties.

Some customers lost 5 per cent on each contribution to the fund, reducing every £1,000 saved to £950 immediately. One policy penalised customers who stopped saving by increasing management fees to 7.25pc a year, wiping £5,000 from a £10,000 pension over a decade.

A number of old plans levied additional administration fees of up to £65 a year, rising with inflation.

Having signed up at the prompting of a salesman, customers who later attempted to withdraw faced steep exit penalties, sometimes more than 50 per cent of the total pension pot.

Exit fees often last until the customer reaches the policy's retirement age, which is typically 60 for women and 65 for men.

The FCA will conduct a broad review of investment products sold before the year 2000.

Many customers are still contributing to the old plans. Around £18 billion of premiums flows every year into older endowments, pensions, life insurance and with-profit funds, the regulator will say. It fears this money is no longer managed carefully by insurance companies, who exploit customers' "lack of engagement". In particular, many are paying into so-called whole-of-life insurance, which pays a lump sum to a spouse on the policyholder's death.

Many elderly customers have been told to fund drastic increases in monthly premiums, or suffer cuts to the proposed payout. The FCA will investigate whether these customers are being treated fairly.

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.

The FCA estimates that the policies under review are worth £150 billion. Many companies that issued the products have since been subsumed into rival organisations through takeovers.

Mr Adamson said: "Consolidation and outsourcing within the insurance industry means that policies taken out 10, 15 or 20 years ago are unlikely to be managed by the same brand, and by people in the same building as they were at their outset. We want to make sure that customers who have been 'sold on' are treated fairly. Some terms and conditions that were common 20 years ago are not what we would want to see now."

The review will exclude workplace pension plans offered by employers.

The Association of British Insurers (ABI) said many products that now seem expensive were "the best available at the time". Hugh Savill, the director of regulation at the ABI, said: "Companies take their Treating Customers Fairly obligations very seriously. Company Boards will regularly review all aspects of product design, customer servicing and product performance. This is as relevant to older product lines as it is to new ones.

"We will of course work closely with the FCA as they undertake this review.""

14.2 It is clear that the emphasis of the article, including in particular, its headline and sub-heading, is focused on the potential outcomes of the Life Insurance Review. Contrary to what was intended by the FCA, we consider that this article gives the impression that the FCA was planning a retrospective review of the terms of many millions of policies and considering banning exit fees. That impression is created by the headline, "*Savers locked into "rip-off" pensions and investments may be free to exit, regulators will say"*, and the text of the article, including in particular the statements: (i) that the FCA was planning "*an inquiry into 30 million policies*"; (ii) the statement that the FCA was considering "*banning*" exit fees; (iii) that the FCA will collect information to "*establish if we need to intervene on exit fees*"; and (iv) that Mr Adamson had said "*banning exit fees on old pension policies*" is one of the "*strongest actions*" the FCA could take.

14.3 There is no express mention in the article of the difficulties that the FCA might face should it seek to challenge exit fees contained in terms and conditions agreed many years earlier (a point reflected in the notes of the discussion with Mr Hyde made by both the Media Associate and Mr Poyntz-Wright). The article states only that a ban will be considered "*if such a measure is deemed a practical way to overcome the poor treatment of policyholders*."

14.4 It is clear also that the emphasis in the article differs to that in the preface to the bullet point "*key messages*" sent by email by the Media Associate to *The Telegraph* in advance of the telephone briefing, which summarised the scope of the Life Insurance Reviews and clarified that "*exit fees is just one part of it and that bit is more discovery work; the review itself is more about how the closed book products are being serviced.*"

14.5 Moreover, we are satisfied, as described in Chapter 12 above, from the key messages sent to *The Telegraph*, from the interview of Mr Poyntz-Wright and the Media Associate and from their collective notes of the interview, that *The Telegraph* was told that the focus of the review was not about exit fees and that it was a discovery piece of work. We are also satisfied that *The Telegraph* was not told that the FCA was seeking to ban exit fees.

14.6 We asked for an interview with Mr Hyde. The FCA Chairman, Mr Griffith-Jones confirmed to *The Telegraph* in writing that the FCA would have no objection to Mr Hyde and *The Telegraph* providing any information or documents to us.

14.7 *The Telegraph* declined our request for an interview, but agreed to answer some of our questions in writing. Its position overall is that Mr Hyde's story was based entirely on what the FCA said in its oral and written briefing.

14.8 Mr Poyntz-Wright told us that, in his view, what had been said was taken out of context and given an inaccurate emphasis. Mr Poyntz-Wright told us that that the headline, in particular, was not based on anything he had said and that he believed he had actually said the opposite.

14.9 The headline does not, however, appear as a direct quote from an FCA spokesperson. Moreover Mr Poyntz-Wright and the Media Associate told us that what had been specifically quoted and otherwise attributed to Mr Adamson could have been deduced from the answers to the questions provided to Mr Hyde in the written and telephone briefing.

14.10 For example, although Mr Poyntz-Wright did not say to Mr Hyde that the FCA would be reviewing individually 30 million policies, this was the total number of policies falling within the scope of the Life Insurance Review and was referred to in the written briefing.

14.11 In addition, the Technical Specialist told us that, on Friday 28 March 2014, she asked the Media Associate about the statement in *The Telegraph* article "*Banning exit fees on old pension policies would be one of the strongest actions the FCA could take, Mr Adamson said*".

14.12 She told us that the Media Associate explained that Mr Hyde had asked Mr Poyntz-Wright about banning exit fees "*is this something you could do?*" and, the reply was along the lines of, "*yes, it is something we could do, but that would be extreme action for us to take*". This exchange is consistent with what we were told by the Media Associate.

14.13 Furthermore, without a recording of the conversation, or an agreed set of quotes, the FCA, when responding to the article, was reliant on a set of notes made by the Media Associate, which were incomplete in relation to a thematic review, whose outcome was inevitably uncertain. The FCA's ability to challenge the article's contents was therefore extremely limited.

Events following publication of the article on 27 March 2014

14.14 The Media Manager and the Media Associate exchanged a number of "*WhatsApp*" text messages following the publication of the article that evening, from around 10.23 pm to 10.56 pm. As already discussed, they were both caught by surprise that the article had been published that evening, earlier than expected. They only learned of the publication when contacted for comment by the *Daily Mail* and *The Times.*

14.15 Upon reading the article for the first time, the Media Associate described the article to the Media Manager as "*A bit sensational, but it seems about right*". The Media Manager subsequently read the article and in a later exchange of messages with the Media Associate, congratulated him for his "*excellent work.*"

14.16 Based only on his exchange with the Media Associate, and his reading of the article, the Media Manager sent a copy of the article by email at 10.56 pm to Mr Adamson, Mr Wheatley, Ms McMillan, Ms Darby-Walker, Mr Adamson's Executive Assistant and Mr Wheatley's Executive Assistant (copied to the Media Associate) with the subject heading "*Telegraph Splash*":

> "*Evening everyone,*
>
> *A little earlier than planned and possibly a touch more prominent, but the Telegraph have splashed on their front page our business plan story about consumers getting to exit older and poor value investments.*
>
> *Allowing for the victory for telegraph campaign line, it's reported fairly straight, and we have had a lot of follow up tonight.*
>
> [Mr Adamson]*, your quote is given good prominence.*
>
> *We did flag this was coming to the ABI as well so they were sighted on the story.*"

14.17 The fact that the Media Manager was still at this stage referring to the review being about "*consumers getting to exit older and poor value investments*" illustrates that, even after the article had been published, he remained unaware what the briefing of *The Telegraph* was actually about. His description in this email is, however, consistent with the text of the article that had been published.

14.18 Shortly afterwards, at 11.29 pm, the Media Associate forwarded that email to Mr Poyntz-Wright, Supervision Associate One and the Technical Specialist with the comment "*FYI Front page of tomorrow's paper.*" He did not forward the email to Ms Gardner, who had been the most vocal in expressing concerns about the potential impact of any press coverage. It appears that this omission was inadvertent. He also made no suggestion in his email that the article may have been misleading.

14.19 None of the recipients of the emails read either the email about the article, or the article itself, that evening. It was confirmed to us in interviews that the email was not read by any of the recipients until the following morning.

14.20 In the meantime, however, the Media Associate, who was that evening the duty on-call press officer responsible for fielding calls from journalists, had started to brief those journalists who had contacted him about the content of the article. He told us that in calls with both *The Times* and the *Daily Mail* that evening he clarified that the FCA was not intending to review 30 million policies nor would the FCA say it intended to cancel exit fees.

14.21 He did not, however, tell the Media Manager, or anyone else at the FCA, what he was saying to journalists, nor did he seek a retraction from *The Telegraph.* He told us that he did not consider that there was much of an issue to address. He had received only a few calls that evening from other media outlets and was of the view that although the impression given by the article was not helpful, the individual parts could be traced back to what had been said in interview.

14.22 The Media Associate told us that, with the benefit of hindsight, he should have sought a retraction or clarification by *The Telegraph* that evening. He explained that he did not do so at the time, because although the article was sensational, the quotes were factually accurate and the speculation based on what may have been said in interview. The article also contained caveated language such as "*may*", "*could*" and "*if practical*".

14.23 The Media Associate told us also that he believed obtaining a retraction from a national newspaper in relation to a front page story would be a serious step to take and his immediate priority was to correct the story with the other media. His view was that if the other media outlets he was speaking to were going to report the story more accurately, the fact that *The Telegraph* might not have done so, in his view, would become apparent. At this stage, the Media Associate had no expectation of any market impact and was treating the issue purely as a press issue.

Conclusions and answers to the following questions in relation to 27 March 2014:

Question 7(a): "*How and when the FCA first became aware of a problem*"?

Question 7(b): "*How was this communicated to the Executive/Board/other relevant persons in the organisation*"?

Question 7(c): "*How was the FCA's reaction determined*"? and

Question 7(d): "*Why the FCA's clarificatory statement was issued so late during the day after the story was published, rather than Thursday night*"?

14.24 In all the circumstances, we do not consider it appropriate to criticise *The Telegraph*. Mr Hyde published his article only after having been approached by the FCA with an exclusive, using as a "*hook*" his previous concerns that the FCA had done nothing about "*exit fees*". He was then supplied with a substantial amount of material to use as he thought best in the interests of his readers. The manner in which the article was drafted, particularly its headline, gave an impression, contrary to that intended by the FCA, that the FCA would say it was planning a retrospective review of the terms of many millions of policies and considering banning exit fees, but Mr Hyde had been left to speculate as he thought fit.

14.25 Furthermore, although the FCA, through its Media Relations team, became aware of the article shortly after it was published on 27 March 2014, no complaint was made to *The Telegraph*.

14.26 Despite the contents of the article being almost exactly what the FCA was seeking to avoid, the Media Associate did not immediately alert anyone that the strategy had backfired. The consequence was that no attempt was made to consider a clarifying statement that night. All that happened was that the Media Associate gave clarifications to interested media outlets, this being regarded by him as a media issue only.

14.27 Our conclusion is that the Media Associate and the Media Manager were satisfied that a high profile had been given to the FCA's consumer-focused work, and that the Media Associate (being the only person from the Media Relations team with any relevant involvement or knowledge of the background) had never understood the possible impact on the life industry of the kind of story which appeared in *The Telegraph*.

14.28 In the circumstances, there was no prospect of the FCA publishing a clarifying statement on the evening of Thursday 27 March 2014. The Board, the ExCo and other relevant persons in the FCA were unaware that a problem even existed. The organisation was, therefore, taken by surprise by the market reaction the next day.

CHAPTER 15

15. THE EVENTS OF 28 MARCH 2014 UP TO THE ISSUE BY THE FCA OF ITS CLARIFYING STATEMENT

Introduction

15.1 On 28 March 2014, Mr Hyde's article appeared on the front page of the print edition of *The Telegraph*, with the revised headline "*Better deal for millions of savers*". The content of the article was otherwise unchanged from the version that appeared online the evening before.

15.2 The content of the article, and what might be involved in the Life Insurance Review, was also discussed by several radio and television broadcasters that morning, including on BBC Radio 4 News, and the BBC Radio 4 *Today* programme.

15.3 A number of the insurance companies we met with told us that they began to receive calls from investors, brokers and members of the media, prior to and after the London financial markets opened that morning, asking for clarification of the scope of the Life Insurance Review. There was widespread concern that the FCA was intending to conduct a retrospective review of the terms of millions of insurance policies, including in relation to the payment of exit fees, and that those fees might be banned. Shares in the companies began to fall when the market opened.

15.4 In this Chapter we will deal with the events leading up to the clarifying statement by the FCA at 2.27 pm.

15.5 Before doing so, we are asked, in question 8(e) of the Terms of Reference to consider the extent to which the FCA had an "*emergency action plan*" for situations such as the events that unfolded on 27 March and 28 March 2014.

Emergency Action Plan

15.6 The FCA has in place 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.

15.7 A policy exists within the Communications Division providing for the creation of an "*Issue Response Team*" for handling specific media issues. The Issue Response Team policy was created to ensure that a process was in place for the effective media-handling of specific crisis issues affecting regulated firms. The principal objective of the policy is for the Media Relations team to engage speedily and directly with the appropriate Director or Head of Department from the Supervision Division or other relevant division within the FCA, and appoint a responsible person with whom the Media Relations team can agree the external communication in a timely manner. The policy also specifies that the offices of the Chief Executive and Chairman should be kept informed about any key developments.

15.8 The Issue Response Team policy does 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. Nor does it address situations where information affecting the market has originated from the FCA or processes for correcting widespread misapprehension in the market, (for example through the issuance of an RIS). Ms McMillan told us that from her perspective, while not formally invoked, the policy operated in practice on 28 March 2014 (for example, in so far as there was during the course of the day's events, direct engagement with relevant personnel in the Supervision Division, as described further below). Other individuals considered either that the policy had no relevant application or that it did not operate on the day in question.

15.9 We do not consider that the Issue Response Team policy was appropriate as an emergency action plan to fully address the events of 27 March and 28 March 2014. By way of example only, any appropriate emergency action plan applicable to a market reaction following the release of information attributed to the FCA should not be the preserve only of the Communications Division and relevant other divisions, but in our view should also include the Chief Executive and representatives of the Markets Division and the GCD. It should also include processes for issuing holding statements and clarifying statements via an RIS, as applicable.

15.10 We will see, as the events unfolded, not only that there was an absence of any plan, but also that there was a failure of co-ordination between the senior executives at the FCA, and a lack of the urgent actions which the FCA would expect of a listed company in similar circumstances.

15.11 In the remainder of this Chapter we describe the events of that day. We turn first to the reaction of the Media Relations team on the morning of 28 March 2014.

The Media Relations team

15.12 At approximately 8.00 am, the Media Associate arrived at the FCA's offices. He recalled that his telephone rang almost immediately upon his arrival to work, with calls from journalists asking about *The Telegraph* article. At this stage, just as he had the previous evening, he regarded the issue to be one of media management. He told us that he was not aware of the movements in insurance company shares. His priority at this stage was to ensure that the media understood the true scope of the Life Insurance Review.

15.13 The Media Associate drafted a briefing for his fellow team members to be able to respond to calls from journalists and proactively to call other journalist contacts. This briefing was circulated by him at 8.41 am to all members of the Media Relations team (which included the Media Manager, but not Ms McMillan), providing "*lines for story in Telegraph on investments*" for use with journalists:

> "*Copied below is what the Telegraph was sent. They also had a phone chat with* [Mr Poyntz-Wright] *and his quotes were attributed to* [Mr Adamson]. *The quotes in the Telegraph article are okay to use if others want something on the record.*
>
> *Telegraph story* <u>*here*</u>
>
> *In addition to the bullets below, I'd steer people away from these bits in the Telegraph:*
>
> *"**We will be offering a free exit from these funds**"*
>
> - *We haven't said this, and we haven't said what we kind of remedies we may introduce.*
> - *We can't just suddenly get rid of all the exit fees. We don't have the power to do so would assume that the T+Cs are flawed or unlawful* [sic] *– we haven't said that's the case.*
>
> "***An inquiry into 30m policies from the 1970s"***
>
> - *These suggested we will be reviewing 30m policies. Clearly we are not! That would take aaaages and it's simply not possible*
> - *Some policies may well date back to the 70s, but I think it's more likely the bulk will be more recent. The scope is pre-2000*
> - *We think that there about 30m of these policies in existence*
> - *Our review will include a number of firms that provide a representative sample of the market*
>
> ***The focus the Tel has put too much weight on exit fees.***"

- *The main part of the work is about looking at how these closed funds are serviced on an ongoing basis as many people will be disengaged with them and are not keeping a close* [sic] *on them*

- *Essentially, don't forget about people with longer contracts.*

- *We will take a look at exit fees, but only as part of the bigger picture.*

15.14 The email also contained the following text, described by the Media Associate in his email as what was sent to *The Telegraph*:

- "*In our 2014 Business Plan, published 31 March, we will be announcing a review of like insurers' long-standing investment products <u>to start this summer;</u>*

- *Types of investment this will affect include: pensions (nb – not workplace), investment bonds, endowments, whole of life policies*

- *This will be a piece of discovery work – we are going into the market to explore*

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

- *We are concerned that life insurers are not giving these customers the same priority as new customers get, and it's possible that some may be taking advantage of customers' lack of engagement;*

- *Our key concerns are that life insurers may be:*

    - *making changes (such as moving these long standing investments to platforms) which benefit the firm but not the investor,*

    - *allocating an unfair amount of overheads to historic funds (i.e. using 'forgotten' funds to pay their bills),*

    - *not regularly reviewing them to ensure they still meet their intended purpose,*

    - *the communications firms use may be not solving the problem because they are not clear or engaging,*

- *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*

- *The FCA will be one year old next Tuesday and in our first year we have made some major interventions that have put consumers in a better position – this is another example of us getting to the heart of issues that really matter*." [Original emphasis.]

15.15 The text of what had in fact been sent by the Media Associate to *The Telegraph* (by email on 24 March 2014)[47] was different. It did not include the bullet:

> *"Types of investment will affect include: pensions (nb – not workplace), investment bonds, endowments, whole of life policies"*

15.16 It also did not include the bullet:

> "*This will be a piece of discovery work – we are going into the market to explore*".

15.17 In addition, the text sent to *The Telegraph* by the Media Associate on 24 March 2014 stated:

> "*We are concerned that life insurers are not giving these customers the same priority as new customers get, and it's possible that some may be exploiting customers' lack of engagement.*"

15.18 Whereas the wording circulated by him internally on 28 March 2014 stated:

> "*We are concerned that life insurers are not giving these customers the same priority as new customers get, and it's possible that some may be taking advantage of customers' lack of engagement*".

15.19 The word "*exploiting*", which was regarded as objectionable by Ms Gardner,[48] was therefore included in the text sent to *The Telegraph*, but removed from the text sent to the Media Relations team.

15.20 The Media Associate told us that he did not recall why he made these various changes, but that it was likely that they were made to ensure that the Media Relations team,

[47] See paragraph 11.94, above.

[48] As set out in her email on 24 March 2014. See paragraph 11.90, above.

when describing the Life Insurance Review to other journalists on 28 March 2014, avoided using the language which had caused any misunderstanding of the scope of the review. He said he was not intending, by this email, to explain what had happened or how the article had appeared, but to ensure that when speaking to other journalists, any misapprehension of the scope of the review was corrected.

15.21 In any event, the Media Associate's email of 8.41 am with its revised version of what was sent to *The Telegraph*, was used later in the morning in the context of the FCA's assessment as to whether a clarifying statement was required. When the Media Associate's email was circulated later that morning to the UKLA in that context, he did not point out that the content of the written briefing given to *The Telegraph* had been edited from the original.

15.22 Ultimately, we consider that no harm was done, bearing in mind, for example, that the email to Mr Hyde from the Media Associate on 24 March 2014 had made it clear in the preamble that the review was a discovery piece of work (translating into the addition of such a bullet point in the revised version). It is, however, an illustration of the inadequate factual foundation available to the FCA on the morning of 28 March 2014 as it sought to react appropriately to the events unfolding in the market.

Communications between the Media Associate and Mr Hyde

15.23 The Media Associate had a number of email exchanges with Mr Hyde during 28 March 2014, commencing with an email from Mr Hyde at 7.57 am:

> "*Worked really well. Thanks again, really appreciate coming to me with it. Hope it ticks the right boxes for you guys. I made sure I wrote it close to the way we discussed, broad brush investigation with potential conclusions highlighted strongly for news angle and all quotes etc to* [Mr Adamson]."

15.24 When asked about this email, the Media Associate told us that he had not previously agreed with Mr Hyde an approach to how the article should be written. Nevertheless, Mr Hyde's position was not challenged in the Media Associate's email response at 8.51 am:

> "*… Happy with it too. probably a bit too much weight on exit fees, but it's a good piece and sets us up nicely for Biz Plan and FCA one year bday* [sic]."

15.25 The Media Associate told us that with the benefit of hindsight he should not have sent such an email, but it was sent to Mr Hyde early in the day, before the full impact of the article had been appreciated, and Mr Hyde was an important journalist with whom the Media Associate needed to maintain a good relationship.

15.26 At 9.12 am Mr Hyde responded by email:

> "*Yeah I can understand that. I kept it broad with moved to a better deal (which is purposefully vague) and that's the headline too. But for readers exits are the single major thing that stop people taking action themselves, so I went on it. Otherwise readers could say – why don't people just switch? Fact that people are treated poorly we know, looks better from FCA perspective to lead on potential solutions – more in tune with public opinion I think. Also difficult for me to lead purely on accusations that insurers are treating customers unfairly when you obvs want to do the work first. Otherwise it became an industry focused story and wouldn't have done splash. Did my best to take all into consideration!*"

15.27 The first sentence of the email appears to explain the phrase in the article that savers "*could be given a free exit or moved to better deals*." However, the headline in the online version had stated only that savers "*may be free to exit*" without the qualifying alternative.

15.28 When we put it to *The Telegraph* that Mr Hyde had sought to focus on exit fees, and to downplay the fact that the FCA, in any event, was only seeking to gather information, all in order to achieve a "*splash*", *The Telegraph* responded 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 email in question "*shows Mr Hyde doing no more than his job*".

15.29 The Media Manager arrived at the FCA's office at approximately 8.00 am. He told us that he was aware that the Life Insurance Review had been discussed on the BBC Radio 4 *Today* programme and that he had re-read *The Telegraph* article earlier in the morning. He told us that, whilst he considered that elements of the piece were quite excitable and a bit speculative, he considered that the Media Relations team could deal with it from a media-handling perspective.

15.30 The Media Manager told us that he would expect there to be a degree of speculation, in any article about a thematic review, as to the possible outcome and the action that the FCA might take. The Media Manager told us that it did not occur to him initially that such speculation could be damaging to the share prices of insurance companies.

15.31 In the circumstances, not only was no attempt made to ask *The Telegraph* to correct anything in its article, but the Media Manager did not consider it necessary to escalate any concerns to Ms McMillan. Ms McMillan told us that she was working from home on 28 March 2014, and had not read the email from the Media Manager of the previous evening at 10.55 pm with the online article from *The Telegraph*. Ms

McMillan, therefore, did not know that there was any problem with *The Telegraph* until she was telephoned by Mr Lawton at 10.07 am (addressed below at 15.89).

15.32 No attempt was made by the Media Relations team to alert the Wider Review Team to the volume of calls being received from journalists that morning in relation to *The Telegraph* article. The Supervision Division was, however, receiving its own concerned calls from the ABI and insurance companies, and contacted the Media Relations team. In the next section, we address the early involvement of the Supervision Division.

The Supervision Division

15.33 At 7.42 am, Mr Adamson emailed the Media Manager in response to his email of the previous evening at 10.55 pm, providing the online edition of *The Telegraph* article, saying "*Thanks – looks good*".

15.34 Mr Adamson told us that he was, at this time, at the FCA's office, but had not read *The Telegraph* article, had only read the first part of the email from the Media Manager and had not read the text of the article that was set out below. Mr Adamson told us that his positive comment was only in response to the Media Manager's statements that *The Telegraph* article had been "*reported fairly straight*" and that it had been flagged to the ABI, who had been cited in the article itself.

15.35 Notwithstanding the reference in the Media Manager's email that Mr Adamson's quote had been "*given good prominence*", Mr Adamson told us that he did not appreciate at this time that he had not provided, or approved, any quotes in relation to *The Telegraph* article, because he had been asked to contribute quotes for a number of pre-briefings.

15.36 Taking into account, however, that Mr Adamson was aware of the potential sensitivity of the Life Insurance Review as discussed further in Chapter 11 above, it is surprising that he relied only on the assessment of the Media Manager and did not read the entirety of the email or the article by Mr Hyde.

Mr Adamson's call with a major insurance company

15.37 Insurance companies' representatives were calling their Supervisors within the Supervision Division as well as Mr Poyntz-Wright seeking urgent clarification. Mr Poyntz-Wright, however, was at a funeral and not in a position to review his emails or voicemails until approximately 4.30 pm that day.

15.38 Senior representatives from a major insurance company called Mr Adamson at 8.53 am. Mr Adamson had not yet read *The Telegraph* article and was therefore taken by surprise. In summary, the company's representatives were outraged and alarmed that the company's share price was falling significantly following *The Telegraph* article, and that the company did not know how to respond as it did not have information about the scope of the FCA's proposed work, the Business Plan not yet having been published. The insurance company's representatives asked the FCA to issue a retraction that day and told Mr Adamson, among other things, that the FCA as a regulator had an obligation to run an orderly market and that if a director of a listed company had selectively briefed the media or investors, he would likely face disciplinary action.

15.39 Not having read the article, Mr Adamson was only in a position to say that he was aware that the FCA had provided some information to the ABI and selective media, with a view to being professional and transparent, and had not expected this response. He said that he would consider the points raised.

The origins of the FCA's clarifying statement

15.40 At around the same time as Mr Adamson was speaking to the insurance company, his Executive Assistant called the Media Manager and told him: (i) that Mr Adamson had received a telephone call from a major insurance company about *The Telegraph* article and was taken by surprise; and (ii) that the FCA's insurance company Supervisors were receiving calls and that they did not know how to respond. Mr Adamson's Executive Assistant asked the Media Manager to provide some lines for Mr Adamson and the teams in order for them to respond to the calls. She recalled that the Media Manager agreed to do so. Neither Mr Adamson's Executive Assistant nor the Media Manager recalled discussing whether *The Telegraph* article was accurate.

15.41 The Media Manager told us that Mr Adamson's Executive Assistant had also asked if Mr Adamson had received any notification of the pre-briefing of the Life Insurance Review. The Media Manager asked the Media Associate. In response, at 8.58 am, the Media Associate forwarded to the Media Manager his email to Mr Adamson and others dated 21 March 2014 at 2.20 pm which had referred to a "*short telephone briefing with* [Mr Adamson] / [Mr Poyntz-Wright] *to provide further context and quotes to use in the article. Quotes to be attributed to* [Mr Adamson]."

15.42 Mr Adamson had also by now read the article. The Media Manager told us that he spoke to Mr Adamson early in the morning. Call logs show that this call was at 9.00 am. Mr Adamson said he had received a telephone call from an angry insurance company and wanted to discuss how to respond. The Media Manager recalled that Mr Adamson said that the FCA would not be reviewing 30 million policies and asked the Media Manager to mention this in any response, but did not mention any concern about references in the article to exit fees. The Media Manager did not recall Mr Adamson saying anything about there having been an impact on insurance companies' share prices. Mr Adamson for his part does not recall this discussion.

15.43 At around 9.00 am, Mr Adamson attended the Supervision Division's management meeting.

15.44 It was clear to Mr Adamson from at least his call with the major insurance company that *The Telegraph* article had affected significantly insurance companies' shares. The insurance company referred to the FCA's obligation to run an orderly market and to the consequences for a director of a listed company selectively briefing the media. Mr Adamson told us that he appreciated that a price-sensitive issue had arisen. There was, however, no attempt by him to find out from the Review Team or Ms Gardner what had actually been told to *The Telegraph* or to involve them in the drafting of the response. There was no attempt to involve the UKLA or others in the Markets Division, or escalate the fact that a price-sensitive issue had arisen to Mr Wheatley.

15.45 The messages for insurance companies were drafted initially by the Media Manager. This draft developed ultimately over the coming hours into the clarifying statement issued by the FCA at 2.27 pm.

First draft of the statement

15.46 At 9.11 am the Media Manager emailed Mr Adamson's Executive Assistant, responding to her enquiry as to whether Mr Adamson had been notified of the pre-briefing by forwarding the Media Associate's email of 8.58 am (set out above at paragraph 15.41), and noting:

> "*Morning* [Mr Adamson's Executive Assistant], [Media Associate] *has been talking to the team, mainly* [Mr Poyntz-Wright].
>
> *As I said to* [Mr Adamson], *this would be in the Biz Plan on Monday anyway, so it would be free for people to look at and assess (and cover in the media).*
>
> *There is certainly an argument that by briefing it we have given it prominence, but equally, we're trying to be transparent and give people a clear outline of the work we intend to undertake in the year ahead. I don't think we would brief every firm individually for all aspects of the Plan.*
>
> *I'll draft up a par for any calls around the firms reaction and send it up.*"

15.47 At 9.17 am the Media Manager emailed Mr Adamson and Mr Adamson's Executive Assistant with a draft statement, copying the Media Associate, subject "*Exit fees*" (which the Media Manager told us was the Media Relations team's shorthand reference to the story) saying:

"*Morning, in terms of claims we have behaved unfairly here, this is what I would propose to say:*

> *"The FCA publishes its Business Plan on March 31st that provides a detailed look at the key priorities and areas of work for the year ahead.*
>
> *"The Work on fees will form a part of that Plan. We are not planning to review 30million policies, we will be speaking to firms about how we can undertake that review.*
>
> *"As a forward looking regulator, we want to examine areas that are of interest and relevance to consumers and to firms and assess whether there is an issue that requires any action. No conclusions have been reached, and the work has not started.*
>
> *"The Business Plan will outline the key priorities and areas of activity for the coming financial year.*"

15.48 Mr Adamson's Executive Assistant told us that she showed Mr Adamson the draft statement on her BlackBerry™, whilst they were in the Supervision Division's management meeting, which lasted until 10.30 am. She telephoned the Media Manager at 9.25 am from the meeting with Mr Adamson's amendments. The draft "*Work on fees*" was amended by her to "*work on the fair treatment of long standing customers*". The fact that the Media Manager referred to the "*Work on fees*", shows his lack of knowledge as to the nature of the review.

15.49 The draft was also amended by Mr Adamson's Executive Assistant to make it clear that the review was a supervisory piece of work and the last sentence was amended to "*No conclusions have been reached as work has not yet started.*"

15.50 At 9.30 am the Media Manager emailed Mr Adamson and Mr Adamson's Executive Assistant with a revised draft statement incorporating the amendments:

""*The FCA publishes its Business Plan on March 31st that provides a picture of the key priorities and areas of work for the year ahead.*

"The work on fair treatment of long standing customers in life insurance is a supervisory piece of work that will give us a better understanding of how this area functions. We are not planning to review 30million policies, we will be speaking to firms about how we can undertake that review.

"As a forward looking regulator, we want to examine areas that are of interest and relevance to consumers and to firms and assess whether there is an issue that requires any action. No conclusions have been reached as work has not started.

"The Business Plan will outline the key priorities and areas of activity for the coming financial year.""

15.51 At Mr Adamson's request, Mr Adamson's Executive Assistant responded by email to the Media Manager at 9.32 am, copying the Media Associate and Mr Adamson saying "*Thanks – that looks good. Can we get this out publicly as well as sharing with supervision teams?*" Mr Adamson told us that by "*get this out publicly*" he meant that the Media Relations team should issue a "*market announcement*" and that his view was that the Media Relations team would know how to do so. Mr Adamson did not, however, speak to the UKLA or others in the Markets Division, and it was not reasonable in our view to have left the issue of communication to the market with the Media Relations team without specifying whether an RIS was required. The Media Manager did not in any event interpret the email as an instruction to him to issue a market announcement. Rather, he understood that he was to use the statement in response to queries from journalists as evidenced by his 9.55 am email to the Media Relations team which noted "*should we get any calls about what we've done and why, this is has been cleared with* [Mr. Adamson]". The Media Manager later said in an email that the statement was being provided to journalists on the basis of "*FCA Spokesman says*".

Mr Adamson speaks to the ABI

15.52 The ABI attempted to contact Mr Adamson, but he was in the Supervision Division's management meeting. It left a message expressing concern at the disorderly market in shares that had been created, concern at the market reaction and the need for the FCA to retract its statements.

15.53 Between approximately 9.30 am and 10.00 am, Mr Adamson and his Executive Assistant called back the same representative of the ABI, who repeated the concern that insurance companies' share prices were falling. Mr Adamson said that the FCA would be issuing a clarification and read out the draft prepared by the Media Manager. Mr Adamson recalled that the ABI's representative's initial reaction was that the statement would calm the market. It should have been apparent to Mr Adamson that there was an obvious risk that the selective briefings he was authorising were price-sensitive and that no such briefings should be taking place without consideration having been given to the issuance of at least a holding announcement to the market, alerting it to the fact that there was a widespread misapprehension and urging investors to take no action.

15.54 Mr Adamson told us that having approved the draft statement circulated by the Media Manager and having spoken to the ABI, who seemed content, he considered that the issue had been solved.

15.55 We have considered whether the misapprehensions caused by *The Telegraph* article would have been solved, at or about 9.35 am on 28 March 2014 had the statement drafted by the Media Manager and Mr Adamson's Executive Assistant been published on the FCA website. Taking into account, as just one example, that the draft statement does not even address the question of exit fees, we do not consider that the draft would have resolved the misapprehension. One of the insurance companies we interviewed, which had been provided with the draft shared with the ABI, told us that the wording, far from calming the market, would have "*added fuel to the fire*". We also do not consider that it would have been appropriate for the Media Relations team to have published a statement on the FCA website nor via an RIS.

15.56 For the sake of completeness, a representative of one insurance company told us that she believed that she had seen a statement on the FCA website, which was withdrawn. Our inquiries of the FCA have not identified any evidence of a statement having been published on the website that morning.

The briefing of the ABI and the agreement of clarifying messages for insurance companies

15.57 The Technical Specialist and the Life Insurance Team Manager exchanged emails (starting at 6.24 am) which expressed concern about the nature of *The Telegraph*'s coverage, including for example:

> "*Front page of telegraph! I don't think it is very helpful and ABI are already concerned about this work*"; and
>
> *"The radio 4 news made it sound final like a massive misspelling* [sic] *review going back to products sold in the 1970s. I have asked* [Supervision Associate One] *if supervisors have lines to take as I expect they'll be getting calls.*"

15.58 The Technical Specialist also said in an email to Mr Poyntz-Wright, Ms Gardner, Supervision Associate One and the Media Associate, at 8.31 am:

> "*Having read it I am concerned about the exit charges focus and the reaction we will get from firms and the ABI (who we are meeting at 10). I will ensure supervisors have Q&As when back from ABI.*"

15.59 Ms Gardner was working at home. She told us that she read *The Telegraph* article at around 9.00 am, having reviewed the Technical Specialist's email of 8.31 am. She was also concerned that the article did not accord with her understanding of the Life Insurance Review and the written briefing that she had approved. Ms Gardner emailed the Life Insurance Team Manager at 9.17 am giving her view that *The Telegraph* article was "*sensationalist*" whereas Mr Poyntz-Wright had told her that "*he thought the journalist understood our emphasis*".

15.60 At 9.44 am, Ms Gardner responded to the Technical Specialist's email of 8.31 am, copying the Media Associate, Mr Poyntz-Wright and Supervision Associate One, recording her concern at the potential reaction from insurance companies and the ABI, and highlighting:

> "*Share prices of firms are falling. Phoenix down by 7 percent. Resolution a similar amount.*
>
> *I have had a call from Phoenix. I think we should consider the need for clarifying the scope, particularly as some of the wires are talking about this being focused on pensions.*"

15.61 At 9.49 am, the following briefing was sent to the relevant FCA Supervisors, drafted by the Technical Specialist, copying Ms Gardner, the Technical Specialist, Supervision Associate One and others:

> "*Many of you may have seen the headlines today referring to "an inquiry into 30 million policies sold by insurance companies from the Seventies" this relates to the publication of the business plan and the pre briefing that has been happening around this, below are some lines to take with your firms.*
>
> - *The business plan which launches on Monday will announce a review the FCA is doing on legacy investments*
> - *It will say: "We will assess whether firms are operating historic (often termed 'legacy' or 'heritage') products in a fair way and whether they have adopted strategies that exploit existing customers."*
> - *We have not yet identified firms for sample and will be taking into account other calls on their time (e.g. those heavily impacted by the budget changes, the OFT review) and in scoping out workplace pensions work to avoid overlap wherever possible.*
> - *Earlier in the week* [Mr Poyntz-Wright] *gave an exclusive interview to the Daily Telegraph, as part of a wider communications strategy in*

relation to the business plan, which is why an article appeared this morning. The article reported elements with a sensationalist spin, and we are briefing the ABI and others to help ensure the story is reported accurately.

A full Q&A will be circulated as soon as possible, in the meantime please refer any specific queries on to [Supervision Associate One] *and* [the Technical Specialist]."

15.62 Concurrently, insurance companies were demanding that the FCA clarify the position urgently. By way of example only:

15.62.1 At 9.52 am, the Chief Risk Officer of one insurance company emailed Mr Poyntz-Wright, copying its FCA Supervisor, stating that:

"*We are obviously shocked that an announcement such as this, coming on the heels of the pensions review and the budget announcement, would be released to the press without a briefing to the industry.*

We can find nothing to help us understand this on the FCA website and we have very limited information from our supervisory team this morning but this has already had a material impact on our share price".

15.62.2 At 10.01 am, a member of the Risk and Compliance team at another insurance company followed up on a call with Ms Gardner by email saying:

"*As discussed we have been inundated with enquiries relating to the scope of the review that was referenced in today's Telegraph. Given the recent budget changes and announcements on caps for work place pensions there is a lot of confusions and misleading speculation"*

and asking the FCA to:

"*consider either an announcement from the FCA directly or alternatively providing us and our peers with further details that would help us respond to the enquiries we are getting*".

15.63 At 10.00 am, while members of the Supervision Division were trying to clarify the position for the insurance companies, the briefing of the ABI was taking place.

15.64 At the meeting, the ABI said how disappointed it was by the FCA's media-handling of the announcement of the Life Insurance Review and was told that the engagement with *The Telegraph* had been intended to stop the media misunderstanding the issue, but that it had backfired. The FCA delivered the presentation, discussed at Chapter 11 above, which set out those issues that were considered to be within, and those beyond the scope of the review, the products that would be considered, and the desired outcomes of the review in respect of exit fees. The FCA explained that the review was a discovery project and that it would not look at historical exit fees by today's standards, rather, the FCA would consider how exit and discontinuance charges are related and could contribute to poor customer outcomes.

15.65 In addition to its concerns about the FCA media handling of the issue, the ABI reiterated its strong reservations about the timing of the review, but we were told by the Review Team that the ABI did not otherwise raise serious concerns, now that it understood the true nature and scope of the review.

15.66 The ABI asked to be provided with an advance copy of the CRO and the Business Plan, given that those documents would include reference to the Life Insurance Review. Following the meeting, the Technical Specialist emailed the ABI at 4.45 pm to advise that the FCA were not providing embargoed copies of the Business Plan to any external party prior to its publication, and that the ABI would be emailed a link to the published documents at 7.00 am on Monday 31 March 2014.

15.67 As for messages to insurance companies in general, at 10.28 am Mr Poyntz-Wright's Executive Assistant had emailed Ms Gardner, Supervision Associate One and others saying:

> "*As a result of the coverage in the Telegraph this morning we have had a lot of unhappy firms attempting to contact* [Mr Adamson] *regarding our position.* [Mr Adamson's] *office and Comms are putting together lines to take for supervisors and are also preparing a release stating our position that* [Mr Adamson's] *office also want supervisors to send out to the CEOs of the firms impacted.*
>
> *Once I have this wording I will forward on to you and then ask that you send to your firms asap.*"

15.68 At 10.35 am, the Media Manager emailed Mr Wheatley's Executive Assistant and Ms Gardner with the "*line he had agreed with* [Mr Adamson's] *office*", and forwarded his email of 9.55 am to the Media Relations team (set out at paragraph 15.51 above).

15.69 After Mr Adamson returned from the Supervision Division management meeting he was told by his Executive Assistant that no public statement had been issued. Mr Adamson therefore asked his Executive Assistant to send another email to the

Media Relations team, which she did at 10.50 am asking the Media Manager to confirm that his draft statement was going to be published *"as an FCA press statement*". Also at 10.50 am, Mr Adamson's Executive Assistant emailed the statement to Mr Poyntz-Wright's Executive Assistant and to Ms Gardner and noted *"as discussed, please can we proactively issue this to contacts at relevant firms*".

15.70 The Media Manager emailed the ABI with the draft statement and he and the Media Relations team used the draft to brief the media. Mr Adamson was informed by email at 10.58 am from the Media Manager that the Media Relations team had "*issued* [the statement] *to each journalist we have spoken to as an FCA Spokesperson*."

15.71 Because there was no mention of a public statement, Mr Adamson asked his Executive Assistant to tell the Media Manager that the FCA needed proactively to issue a statement, which she understood to mean that the FCA should upload a statement on to its website. Mr Adamson's Executive Assistant believes that she spoke to the Media Manager by telephone, who agreed which meant that she was able to email Mr Poyntz-Wright's Executive Assistant and Ms Gardner at 11.09 am to confirm that the statement would be uploaded to the FCA's website "*shortly*".

15.72 Communications were therefore taking place with the ABI, the press and insurance companies, and the FCA was contemplating issuing a public statement on its website. There had been no attempt by the representatives of the Supervision Division or the Media Relations team to involve the UKLA or others in the Markets Division.

15.73 In the next section we deal with the role of the Markets Division.

The Markets Division

15.74 In the period prior to the events of 27 March and 28 March 2014, the Markets Division was not responsible for, nor did it conduct, monitoring of the market for share price movements in response to FCA announcements. Representatives of the Primary Market Monitoring team did, however, conduct monitoring of the market for share price movements in listed companies in order to monitor compliance with the disclosure obligations under the DTRs.

Discussion between the manager of the Primary Market Monitoring team and Mr Teasdale

15.75 At around 9.15 am, the manager of the Primary Market Monitoring team (the "**Primary Market Monitoring Manager**") told Mr Teasdale that his team had observed a series of share price movements illustrating a general decline across a number of insurance companies, some more significantly affected than others. The Primary Market Monitoring Manager said he believed that the movements may have had been caused by a speech that Mr Adamson had given the night before. He gave Mr Teasdale a print-out of the share price movements.

15.76 Mr Teasdale went to Mr Lawton's desk, on the same floor. Mr Lawton was not there. Mr Teasdale left a print-out of the insurance company share prices with Mr Lawton's Executive Assistant and said that he wanted to speak to Mr Lawton when he returned. He found the speech by Mr Adamson, but could not identify anything within it that appeared to be relevant to the price movements.

15.77 Mr Teasdale then read *The Telegraph* article and appreciated that it was an interview, not a speech, which appeared to have been given by Mr Adamson which he reported by email to the Primary Market Monitoring Manager at 9.32 am and Mr Lawton's Executive Assistant at 9.33 am.

15.78 Mr Teasdale told us that once he appreciated that the impact on share prices may have been caused by an interview, he considered the issue to be more serious. Mr Teasdale told us that if an FCA speech was published on the FCA's website, it was available to everyone in the market at the same time, and therefore it was a nuanced question as to whether the FCA was required also to issue via an RIS. He said that the position would be quite different had there been an interview with the press, and that the FCA would view such selective briefing by a listed company very dimly.

15.79 A member of the Primary Market Monitoring team within the UKLA emailed the Primary Market Monitoring Manager at 9.37 am, attaching a chart of insurers' trading positions as follows:

	Name	Close	Last	Pct.Chng	Volume
RBS.L	ROYAL BANK SCOT	301.9	309	2.352	1977548
RSA.L	RSA INSRANCE GRP	88.65	89.9	1.41	16701900
STAN.L	STANDRD CHART BK	1232	1243.5	0.933	792017
HSBA.L	HSBC HOLDINGS	608.3	610.4	0.345	2797425
BARC.L	BARCLAYS	230.95	230.5	-0.195	7189995
LLOY.L	LLOYDS BNK GRP	75.38	75.1128	-0.358	41753659
OML.L	OLD MUTUAL	201.2	199.9	-0.646	821051
PA.L	PARTNERSHIP	134	132.6	-1.045	741092
PRU.L	PRUDENTIAL	1315	1285.79	-2.243	1301621
SL.L	STANDARD LIFE	386.3	375.8	-2.718	2321645
AV.L	AVIVA	483.5	459.6	-4.943	13013524
LGEN.L	LEGAL & GENERAL	212.4	201.9	-4.944	17751310
PHNX.L	PHOENIX GRP	737	674.0405	-8.684	266838
RSL.L	RESOLUTION	319	289.295	-9.31	5967747
CSN.L	CHESNARA	326.5	294	-9.954	183411

15.80 The table highlighted both the percentage change in the insurance companies' share price since the market closed on 27 March 2014, and the volumes of shares traded. The focus within the FCA on 28 March 2014 appears to have been on the fall in share prices, rather than the volumes of shares being traded which, as discussed further in paragraph 17.5 below, was markedly higher than usual.

15.81 After speaking with Mr Teasdale, the Primary Market Monitoring Manager spoke with the Media Relations team, and reported by email to Mr Teasdale at 9.39 am:

> "*It's supposed to come out in the business plan on Monday and they are trailing various things this weekend about it. As a starting point, they're preparing us some lines to use if we get a call from issuers. I said we'd discuss and come back to* [the Media Relations team] *with further thoughts (think the question is whether we shd push them to make a public statement over RIS ahead of Monday?)*"

Discussion between Mr Teasdale and Patrick Spens

15.82 At about 9.40 am Mr Teasdale told Mr Spens, Head of the Market Monitoring team, that the FCA may have briefed *The Telegraph* with price-sensitive information, and that the insurance sector was down by between six and ten per cent. Mr Spens was surprised and angry at the news. Mr Spens referred to Market Watch Issue No. 37 (discussed at paragraph 7.10 above) which prohibited the pre-briefing of price-sensitive information.

15.83 Mr Spens and Mr Teasdale told us that they were now focused on: (i) whether the FCA should be making an announcement via an RIS; and (ii) whether the FCA had committed market abuse. Neither of them, however, knew what *The Telegraph* had been told or whether the article was accurate.

15.84 Mr Teasdale and Mr Spens went to Mr Lawton's desk to escalate the issue internally. Mr Lawton was still in a meeting. Mr Teasdale had an external meeting scheduled for 10.00 am and left the FCA at about 9.50 am. Before he left, he asked Mr Spens to ensure that the Primary Market Monitoring Manager was involved in the conversation with Mr Lawton and said the same to the Primary Market Monitoring Manager.

Discussion between Mr Lawton, Mr Spens and the Primary Market Monitoring Manager

15.85 Mr Lawton just missed Mr Teasdale and found both Mr Spens and the Primary Market Monitoring Manager waiting for him at his desk at about 9.50 am.

15.86 Mr Spens said that it appeared that the FCA might have pre-briefed *The Telegraph* with price-sensitive information (contrary to Market Watch Issue No. 37) and that the information should have gone out via an RIS. The Primary Market Monitoring Manager reported that there had been some significant price falls, about five percent, in the shares of certain insurance companies, one or two by more, and Mr Spens mentioned that Resolution's shares were down about 19 percent. The Primary Market Monitoring Manager said that this reaction appeared to be due to an article in *The Telegraph* which quoted Mr Adamson. He was concerned that, since the information stemmed from the FCA, the FCA should consider putting out an announcement via an RIS "*to cleanse the market*" (i.e. make sure that everyone had the same information at the same time).

15.87 Mr Lawton told us that no-one suggested to him that *The Telegraph* article was inaccurate and that the discussion with Mr Spens and the Primary Market Monitoring Manager concerned, therefore, only the pros and cons of re-disseminating information via an RIS. He recalled that one of the cons was that disseminating the information again via an RIS would draw attention to how it was disseminated by the FCA in the first place. Mr Lawton said that he would speak to Ms McMillan to find out about the background and what was going on.

Call between Mr Lawton and Ms McMillan

15.88 Mr Lawton said he called Ms McMillan at 10.07 am.

15.89 Ms McMillan told us that Mr Lawton had spoken to Mr Spens, who believed that there was a problem with *The Telegraph* article, and that markets were moving. Mr Lawton recalled that he started the call by saying also that, whatever had been given to *The Telegraph*, the impact of the article was price-sensitive. Ms McMillan clicked on the link to the online article whilst on the call. Ms McMillan recalled that Mr Lawton said there was a difference of opinion with Mr Spens as to whether there was genuinely a problem that the FCA needed to fix, and that Mr Spens had been to see, and had alerted, Mr Wheatley's office. Mr Lawton told us that he did not make either of these comments.

15.90 Mr Lawton remembered Ms McMillan telling him that *The Telegraph* article was part of a strategy of disseminating aspects of the Business Plan. Ms McMillan also recalled referring him to the Media Manager's email to the ExCo of 27 March 2014 at 3.55 pm with the pre-briefings listed, including the pre-briefing of *The Telegraph*. Mr Lawton's Executive Assistant had sent to him the article referring to the quotations from Mr Adamson and he was therefore proceeding on the basis that *The Telegraph* had used information provided by the FCA. Ms McMillan recalled discussing that the information from the Business Plan, which had been given to *The Telegraph*, had turned out unexpectedly to have been market sensitive, but neither of them had the knowledge to comment.

15.91 Mr Lawton and Ms McMillan discussed whether the FCA should re-disseminate the information contained in *The Telegraph* article via an RIS. Mr Lawton said that there were pros and cons of doing so. Mr Lawton told us that, at this stage, he understood the issue to be that the FCA had announced the information in an unorthodox way, by interview, rather than via an RIS. Mr Lawton recalled that the pro of an RIS was that the FCA would then have followed the best practice in relation to price-sensitive information. However, the information was now publicly available and was being covered widely by the news media.

15.92 The con Mr Lawton identified was announcing via an RIS would cause the market to question why the FCA was distributing the information via an RIS now, drawing attention to how the information had been disseminated by the FCA, and he was concerned about the FCA's reputation.

15.93 Ms McMillan recalled that a pro discussed was that a statement from the FCA would clarify its intent in relation to the Life Insurance Review. Ms McMillan recalled a con as being the fact that a statement from the FCA might not help as it would be difficult to clarify a few lines in the Business Plan. Mr Lawton told us that these points were not made.

15.94 Mr Lawton said to us that he was not told by Ms McMillan that *The Telegraph* article was inaccurate. Ms McMillan said that she did not recall Mr Lawton asking if *The Telegraph* article was inaccurate, and nor would she have been able to comment in any case.

15.95 Mr Lawton recalls saying that his view, on balance, was that the FCA probably did not achieve much by re-disseminating information already supplied by the FCA, which he considered was the relevant issue, rather than correcting anything inaccurate. It was agreed that the other pre-briefing items in the email from the Media Manager should be reviewed for any issues of sensitivity. It was also agreed that it may be best to publish the Business Plan at 7.00 am in case there were any other price-sensitive issues in the Business Plan.

Events following the call between Mr Lawton and Ms McMillan

15.96 Mr Spens told us that he spoke to Mr Lawton after his call with Ms McMillan. Mr Lawton recalled telling Mr Spens and the Primary Market Monitoring Manager that the information in *The Telegraph* was from the Business Plan. Mr Spens told us his understanding from Mr Lawton was that the information given to *The Telegraph* was not price-sensitive and that he and Ms McMillan did not want to pour more fuel on the fire, which Mr Spens interpreted as them not wanting to issue a corrective statement as the information had already been published and the damage had already been done.

15.97 Mr Lawton gave him a printed copy of the email from the Media Manager that was addressed to the ExCo (set out at paragraph 13.6 above), which detailed pre-briefing items.

15.98 Mr Spens reviewed the email and considered that the reference to the "*intention to assess the treatment of longstanding customers and life insurance firms who tend to face massive penalty fees if they wish to exit*" the fund could be price-sensitive as it might either reduce exit fees (and thereby affect the profitability of insurance companies) or, in effect, ask insurance companies to make redress (as had occurred in the Payment Protection Insurance ("**PPI**") redress scheme).

15.99 Mr Spens went to see Mr Wheatley's Executive Assistant at approximately 10.20 am, taking with him a copy of the email, along with a copy of Market Watch Issue No. 37. Contrary to Ms McMillan's recollection at paragraph 15.90 above, we were told by Mr Spens that this was the first time that he went to Mr Wheatley's office. Mr Wheatley's Executive Assistant was not at his desk, but Mr Spens was told that he would return shortly.

The call between Ms McMillan and the Media Manager

15.100 Ms McMillan recalled telephoning the Media Manager after the call with Mr Lawton and asked him what was going on. The Media Manager also recalled speaking to Ms McMillan. Ms McMillan recalled the Media Manager saying that he thought that there had been misreporting by *The Telegraph* and that Mr Adamson wanted the FCA to issue a statement. Ms McMillan said to us that she was not told the detail of what may have been misreported, given that the Media Manager needed to get on with drafting the statement. Ms McMillan said also that she accepted the Media Manager's proposed course of action, but told the Media Manager that if Mr Adamson wanted to issue a statement, he should speak to Mr Lawton, because she had had a slightly different conversation with Mr Lawton and she wanted the appropriate people to speak about the issue.

15.101 Ms McMillan told us that she then focused on the risks of the other briefings identified in the Media Manager's email of 27 March 2014 at 3.55 pm. At 10.27 am, she emailed the Media Manager and Mr Adamson's Executive Assistant saying:

"*I've had a chat with* [Mr Lawton] *on the specifics of whether the insurance back book news should have been treated as market sensitive, given the reaction of the market and whether we should/could have anticipated the market reaction. It's too late for this particular one but* [Mr Adamson's Executive Assistant]*, as most of our list comes from Supervision are there any that would potentially impact the market? The one that could to my mind but I can't recall the details of it could be the unauthorised transactions one.*

[Mr Lawton] *suggests that when we publish the business plan on Tuesday we embed a short RNS in it.*"

15.102 The Media Manager responded at 10.38 am:

"The unauthorised transactions one is looking at whether people who have had their account hacked into or their bank card scammed and then see payments come out of it get that money back as they should as the present rules state they should."

15.103 At approximately 10.25 am, following his call with Ms McMillan, Mr Lawton walked round to see the Primary Market Monitoring Manager, and asked him to review the other items of the Business Plan which were to be pre-briefed, to consider if they might contain price-sensitive information. The Primary Market Monitoring Manager reported back to Mr Lawton that the other items did not appear to be price-sensitive. Mr Lawton recalls Mr Spens saying that he was not so sure about the passage dealing with the pre-briefing of *The Telegraph*. Mr Lawton did not, however, re-visit his view that there was no need for a corrective statement. His priority was those pre-briefing items which it might still have been possible to do something about.

15.104 Mr Lawton himself reviewed the other pre-briefing items and set out his conclusions in an email to Ms McMillan and the Media Manager at 10.50 am:

"*Further to the chat* [Ms McMillan] *and I have had, I've had a quick look at this list. As we discussed, I think the initiators of the material should take the prime view. For my part, while I can't claim to be an expert in any of it, the others (apart from the exit fees one) seemed largely to be elaborations or extrapolations of information already in the public domain (eg the impact of our new rules on consumer credit). The one not quite in this category might be the IT resilience one, but our activity in this space has already been signalled through comments and action on individual cases.*"

15.105 At this stage, therefore, the Media Relations team were briefing the media and the Supervision Division were briefing the ABI and insurance companies, in order to remedy the misunderstanding of the nature and scope of the Life Insurance Review, which was having a significant effect on share prices, with the next proposed step by those teams being the issuance of a public statement on the FCA's website. This was taking place without anyone from the Supervision Division or Media Relations team seeking to consult the UKLA or others in the Markets Division and without any consideration being given as to (i) whether these briefings might involve price-sensitive information, and (ii) whether individual briefings were appropriate at all, given the market uncertainty.

15.106 As for the Markets Division, Mr Lawton of his own initiative had contacted the Media Relations team through Ms McMillan, proceeding on the basis that, whatever had been given to *The Telegraph*, the impact of the article was price-sensitive. However, Mr Lawton had decided that there was no need for a market announcement. Mr Lawton based his decision on the reassurance from Ms McMillan that the information was taken from the Business Plan, and in the knowledge that the information was now in the public domain, but without himself contacting the Supervision Division.

15.107 We are satisfied that the FCA would have been far more demanding of a listed company, had significant market falls followed a report of an interview by a senior executive at a listed company. Mr Lawton should have made proper inquiry even if the article by *The Telegraph* was considered to be accurate, taking into account that it followed a selective briefing of that newspaper and a significant fall in share prices following publication of the article. Furthermore, such proper inquiry would have discovered that the FCA was in the process of providing further selective briefings to regulated firms, other market participants and the media, which might in themselves be price-sensitive.

15.108 Ms McMillan in her initial call with Mr Lawton should have made clear to him that she had no knowledge of any kind about what was said to *The Telegraph* and that some further inquiry was, therefore, necessary. Ms McMillan should, in any event, have contacted Mr Lawton as soon as she learned from the Media Manager that the article in *The Telegraph* was thought to be inaccurate.

15.109 These are all serious concerns, compounded by the lack of escalation to Mr Wheatley by Mr Adamson, Ms McMillan or Mr Lawton.

The involvement of Mr Wheatley's office

15.110 Mr Wheatley told us that he became aware of the media interest in the Life Insurance Review on his way to work at around 6.30 am, and that he had been surprised that it was a high profile story. He arrived at the FCA's office at around 7.00 am and spent the time before his first internal meeting at 8.30 am reviewing papers to prepare for a BBC interview and recruitment interviews later that day.

15.111 At 7.38 am, Mr Wheatley received an email from a consumer organisation congratulating him on the announcement of the Life Insurance Review, to which he responded "*it's certainly part of our new culture not to be afraid to tackle taboo subjects*." Mr Wheatley told us that he was making the point generally that the FCA was different from the FSA, and would not avoid tackling areas of detriment to consumers. He was not aware at that stage that there was anything inaccurate in the stories circulating.

15.112 Mr Wheatley told us that his Executive Assistant runs his office and supervises two other Executive Assistants. Mr Wheatley's Executive Assistant's role is to carry out Mr Wheatley's instructions, react to issues, and to filter information so that Mr Wheatley is informed only about pressing, important issues. Many emails seeking a response from Mr Wheatley's office were sent to Mr Wheatley's Executive Assistant alone, without copying Mr Wheatley.

15.113 Mr Wheatley's Executive Assistant had heard about the Life Insurance Review on the BBC *Today* programme, as its lead story. He asked the Media Associate about it and was told that the coverage stemmed from an article in *The Telegraph*, which had been published earlier and more prominently than anticipated. The Media Associate did not say to Mr Wheatley's Executive Assistant that the piece was inaccurate. *The Telegraph's* article's prominence was considered by the Media Associate and Mr Wheatley's Executive Assistant to be broadly positive.

15.114 Mr Wheatley's Executive Assistant received a call from Mr Adamson's Executive Assistant at 9.18 am, who relayed to him that messages had been left by a representative of the ABI for Mr Adamson to say that the ABI was unhappy with the media coverage. She told Mr Wheatley's Executive Assistant that Mr Adamson was considering whether the FCA needed to make a public statement. It appears that this call took place before Mr Adamson spoke to the ABI representative.

15.115 Mr Wheatley's Executive Assistant told us that, at this point, he considered *The Telegraph* article to be a "*media*" rather than a "*markets*" issue. There was no mention to him of market share price movements. Mr Wheatley's Executive Assistant told us that it was not unusual for stakeholders to be calling the Director of Supervision directly about media issues. Accordingly, Mr Wheatley's Executive Assistant believed that he suggested to Mr Adamson's Executive Assistant that Mr Adamson speak directly to Ms McMillan.

15.116 Mr Wheatley had an interview scheduled with Mr Simon Gompertz of the BBC at

11.00 am. The Media Relations team told Mr Wheatley's Executive Assistant by telephone, and by email at 9.54 am, that the BBC wanted "*to ask some questions about today's Telegraph story on exit fees*". Copied below this email was the Media Associate's email of 8.41 am (and which included the amendments made by the Media Associate described above at paragraph 15.15 to 15.19). This informed Mr Wheatley's Executive Assistant that elements of *The Telegraph* article were incorrect. Mr Wheatley's Executive Assistant forwarded the 9.54 am email to Mr Griffith-Jones' Executive Assistant, at 10.06 am.

15.117 Mr Wheatley's Executive Assistant told Mr Wheatley at approximately 10.00 am that Mr Gompertz wished to speak to Mr Wheatley about the Life Insurance Review. Mr Wheatley therefore asked Mr Wheatley's Executive Assistant to obtain the detail of the review work to enable him to prepare for the interview. Mr Wheatley's Executive Assistant arranged a call with Ms Gardner, bearing in mind that Mr Poyntz-Wright was not in the office.

15.118 At 10.15 am, Mr Wheatley's Executive Assistant and Mr Griffith-Jones' Executive Assistant were sent an email from a member of the Media Relations team with subject "*Insurers*" stating:

> "*Share price movements from the morning attached, with background info and public lines. The Telegraph were pre-briefed, and have an interview with* [Mr Poyntz-Wright] *(quotes attributable to* [Mr Adamson]*).*"

15.119 The email also set out the part of the email from the Media Associate of 8.42 am, that described what *The Telegraph* had been sent. It attached the same chart of share price movements sent by a member of the Primary Market Monitoring team to the Primary Market Monitoring Manager at 9.37 am. It also set out the text for a "*public line*", which was the statement that the Media Manager had agreed with Mr Adamson. Mr Wheatley's Executive Assistant told us that he believed that the share price movements were new information to him, but he did not regard the majority of the documented falls at this stage as particularly eye catching (a number were in fact significant but not as substantial as those which took place later in the morning).

Mr Spens shares his concerns with Mr Wheatley's Executive Assistant

15.120 At 10.25 am, Mr Spens walked again to Mr Wheatley's Executive Assistant's desk. Mr Spens provided Mr Wheatley's Executive Assistant with a copy of the email that had been sent by the Media Manager to the ExCo (which, as said above at paragraph 15.97, had been supplied to him by Mr Lawton). Mr Spens explained to Mr Wheatley's Executive Assistant that the FCA had pre-briefed *The Telegraph* with potentially price-sensitive information. Mr Spens showed Mr Wheatley's Executive

Assistant a copy of Market Watch Issue No. 37. Mr Spens said that he was angry because the FCA might have breached its own guidance and might have committed market abuse.

15.121 Mr Wheatley's Executive Assistant recalls that he was told in this conversation by Mr Spens that Mr Lawton and Ms McMillan had spoken and had agreed that the FCA did not need to make a public statement, but that Mr Spens disagreed with that decision. Mr Spens, however, does not recall making those points.

15.122 Mr Wheatley's Executive Assistant recalls relaying Mr Spens' concern about Market Watch Issue No. 37 to Mr Wheatley, but made it clear that Mr Lawton (who is Mr Spens' superior) and Ms McMillan's position was that the FCA did not need to issue a statement, and the fact that the Media Relations team had circulated some insurance share company prices. Mr Wheatley's Executive Assistant could not recall exactly when he communicated these points to Mr Wheatley, but believed that it was before the call with Ms Gardner (as described at paragraph 15.125 below).

Ms Gardner briefs Mr Wheatley

15.123 Mr Wheatley cut short a call on an unrelated matter at approximately 10.30 am in order to speak to Ms Gardner by telephone. Representatives from the Media Relations team, including the Media Associate and Mr Wheatley's Executive Assistant, also attended the call with Ms Gardner and stood at the table around Mr Wheatley's telephone.

15.124 Mr Wheatley was focused on preparation for the BBC interview to make sure that the interview did not make the story worse. Mr Wheatley's Executive Assistant told us that to help Mr Wheatley, before the call he printed off and showed to him the Media Associate's email of 8.42 am (which had been forwarded to Mr Wheatley's Executive Assistant at 9.54 am), which identified that areas of *The Telegraph* article were inaccurate.

15.125 Ms Gardner recalled Mr Wheatley asking why the story had caught the press interest and what the Life Insurance Review was about, so that he could understand what had been misreported and what was the truth. Ms Gardner told Mr Wheatley that the Life Insurance Review had been reported as a retrospective piece of work where the FCA would review the sales in relation to 30 million policies, and second, that it had been reported that the FCA would look at possibly removing exit fees. Ms Gardner made clear that none of these were within the scope.

15.126 Ms Gardner said that Supervision Division had received calls from the ABI and from furious insurance companies.

15.127 Mr Wheatley recalls being aware that the share prices of some insurance companies had fallen, having available the chart prepared by a member of the Primary Market Monitoring team as at 9.37 am, but not as severely as would happen later during the day. His view at the time was that the issue was primarily of media reporting.

15.128 At 11.00 am, Mr Wheatley attended the scheduled pre-recorded interview with Mr Gompertz of the BBC. Mr Wheatley recalled that he was asked if the Life Insurance Review was another PPI scandal. Mr Wheatley recalled that he explained that there was no suggestion that there had been misselling and that the FCA would in fact look at the situation as of now, and make forward-looking recommendations as to policy.

Further discussions between Mr Spens and Mr Teasdale

15.129 Mr Teasdale returned from his meeting at about 11.20 am. Mr Spens told him that Mr Lawton and Ms McMillan had decided not to make an announcement.

15.130 This was confirmed in an email to Mr Teasdale from the Primary Market Monitoring Manager at 11.25 am, which said:

> "*On balance,* [Mr Lawton] *decided that the horse had bolted and that pushing for an RIS might exacerbate things. I can see this view - market and press impact is pretty significant, Aviva and L&G now off 8% each, Resolution 12%, Phoenix Group 21%. Top story on FT.com, one of top stories on BBC.com. Probably not a time to risk pouring further fuel.*
>
> *I've copied the article below fyi …*
>
> [Ms McMillan] *also told* [Mr Lawton] *that there are a few other things being trailed over the weekend, he has asked that the relevant policy owners consider whether these are likely to move the market - at first blush* [Mr Spens], [Mr Lawton] *and I didn't think there looked anything too exciting. As a lot of this is generated from the business plan, press office are intending to link via RIS when it is released (9am Tue).*"

15.131 Mr Teasdale told us that the question he thought had been addressed was whether the FCA was required to ensure that the proper market formalities were observed in relation to the release of a piece of inside information, by releasing that information again via an RIS.

15.132 Mr Teasdale told us that he was not at that stage considering whether the FCA was required to clarify inaccuracies in *The Telegraph* article to the market as he did not understand the article to be misleading. Mr Teasdale told us that he could understand the logic for Mr Lawton's decision, in circumstances where the information in *The*

Telegraph article was now being widely reported and there was an argument that publication now via an RIS would provide no practical benefit.

Clarification in relation to exit fees added to the draft statement

15.133 Work on the draft statements for the press and the insurance companies continued. The Media Manager recalled that at some stage Mr Wheatley's Executive Assistant asked for the draft to include a clarification in relation to exit fees, and asked if that point could be checked with Ms Gardner. This followed Ms Gardner's explanation on the telephone call that an important misunderstanding was that the FCA was looking at exit fees.

15.134 At 11.12 am, the Media Manager emailed Ms Gardner and asked her to review a new draft which contained the words "*nor do we intend to look at removing exit fees from those policies.*"

15.135 Ms Gardner responded by email at 11.30 am to say that she was happy in principle for the clarification on exit fees to be included, but asked for the language to be revised to "*nor do we intend to look at removing exit fees from those policies providing they were compliant at the time*". Ms Gardner explained to us that the amendment was to allow the FCA flexibility for the future in relation to findings of the Life Insurance Review, rather than stating definitively that exit fees would never be considered.

15.136 At 11.35 am, Ms Gardner emailed Mr Poyntz-Wright's Executive Assistant to request that FCA Supervisors provide to their insurance contacts the revised statement agreed with the Media Manager, which contained the clarification in relation to exit fees, rather than the earlier draft circulated by Mr Adamson's Executive Assistant at 10.50 am (as discussed at paragraph 15.69 above). In an email sent at 11.38 am to members of the Supervision Division, Ms Gardner said that she thought that the change was "*important*".

Call between Ms Gardner and a major insurance company

15.137 Some time before 11.30 am Ms Gardner and another member of the Supervision Division spoke on the telephone to a major insurance company. Ms Gardner said that *The Telegraph* had misreported the scope of the FCA's proposed work and that the article contained inaccuracies. Ms Gardner confirmed that the Life Insurance Review was forward looking, rather than retrospective and intended to focus on the allocation of expenses between old and new books of business as well as the quality and clarity of communications to customers. Ms Gardner said that the FCA was discussing the possibility of issuing a statement and was asked that the FCA issue a statement in light of the market reaction to *The Telegraph* article.

Mr Wheatley's office takes charge of co-ordination

15.138 Mr Wheatley's interview with the BBC lasted until shortly before 11.30 am. He told us that after the interview he now not only appreciated that the share prices of insurance companies had fallen significantly but then learned that the ABI was extremely concerned and wanted to speak to him on a call which had been arranged for 1.00 pm. Mr Wheatley said that it was then that he appreciated that the FCA had a serious issue, that no-one appeared to have taken charge, and that, subject to confirmation from the UKLA, the FCA needed to issue a statement as quickly as possible.

15.139 Mr Wheatley cancelled a meeting with the FCA's HR Director which had been due to take place from 11.30 am and asked Mr Wheatley's Executive Assistant to find out what was actually said to *The Telegraph*, compared with what *The Telegraph* had written. He said to Mr Wheatley's Executive Assistant that if *The Telegraph* had misrepresented the position, the FCA should make a corrective announcement. Mr Wheatley's Executive Assistant recalled that he reminded Mr Wheatley that Ms McMillan and Mr Lawton had discussed issuing a statement and decided against doing so. Mr Wheatley's Executive Assistant recalled Mr Wheatley's response to be that this decision did not seem right to him, and that he asked Mr Wheatley's Executive Assistant to obtain formal advice from the UKLA, specifically from Mr Teasdale.

15.140 The Media Manager recalled that at around 11.30 am, he had a five minute meeting with Mr Wheatley and Mr Adamson in Mr Wheatley's office to talk about what was happening and what the FCA was saying at that particular point. The Media Manager recalled that Mr Wheatley was due to speak to the ABI and wanted to understand what had been said to the ABI already. Mr Wheatley and Mr Adamson do not recall this meeting.

15.141 The Media Manager responded by email to Ms Gardner at 11.31 am that he was happy with the amendment, that the statement would "*go up as soon as* [Mr Wheatley] *is content with it*", and that he would send it to Mr Wheatley's office. At this stage, the Media Manager was proposing to put the statement on the FCA's website as requested by Mr Adamson.

Mr Wheatley speaks to Mr Griffith-Jones

15.142 Mr Griffith-Jones had heard a report about the Life Insurance Review on the BBC *Today* programme, possibly the coverage at 7.04 am whilst at home, which to him sounded sensationalist. Mr Griffith-Jones does not normally work at the FCA on a Friday, but on 28 March 2014 he was scheduled to attend four recruitment interviews, with the first commencing at 9.00 am. Shortly after arriving at the FCA offices, he attended two interviews, followed by a conference call and a further interview.

15.143 Because he was participating in these interviews, Mr Griffith-Jones did not see at the time the emails sent to his Executive Assistant by Mr Wheatley's Executive Assistant at 10.06 am (set out at paragraph 15.116 above), from the Media Relations team at 10.15 am (set out at paragraph 15.118 above), or the subsequent emails described further below.

15.144 Mr Wheatley told us that he had a short conversation with Mr Griffith-Jones at around 11.30 am, in which he believed that he told him that the FCA had had a serious incident and was in the process of trying to manage it by putting out a corrective statement. Mr Wheatley told us that he highlighted the issue to Mr Griffith-Jones in case he received calls from insurance company Chairmen.

15.145 Mr Griffith-Jones recalled that he was told by Mr Wheatley that there was a serious problem, and that he was in the process of dealing with it.

The Media Relations team, Supervision Division, Markets Division and Mr Wheatley's Office co-ordinate by email

15.146 At 11.34 am, the Media Manager (as he had anticipated in an email to Ms Gardner at 11.31 am) emailed Mr Wheatley's Executive Assistant and Mr Adamson's Executive Assistant (copying Ms Gardner, the Media Associate, Ms McMillan and Ms Darby-Walker) saying:

> "*Here is the draft statement we have pulled together with* [Mr Adamson] *and* [Ms Gardner] *and are ready to post up on the website. …*
>
> *"The FCA publishes its Business Plan on March 31st that provides a picture of the key priorities and areas of work for the year ahead.*
>
> *"The work on the fair treatment of long standing customers in life insurance is a supervisory piece of work that will give us a better understanding of how this area functions. We are not planning to individually review 30 million policies, nor do we intend to look at removing exit fees from those policies providing they were compliant at the time. We will be speaking to firms about how we can undertake that review.*
>
> *As a forward looking regulator, we want to examine areas that are of interest and relevance to consumers and firms and assess whether there is an issue that requires any action. No conclusions have been reached as work has not started.*"

15.147 At Mr Wheatley's request, at 11.40 am Mr Wheatley's Executive Assistant forwarded the Media Manager's email to the Media Manager, Mr Adamson's Executive Assistant, Mr Teasdale, Mr Spens, Ms Gardner, the Media Associate, Ms McMillan, Ms Darby-Walker, Mr Lawton, Mr Lawton's Executive Assistant and Mr Spens' Executive Assistant (the "**Initial Email Group**") saying:

> "*There is a lot of email and phone calls on this so trying to coordinate into a single chain.*
>
> *Given what has happened we are pulling together the following:*
>
> - *The exact business plan text on this (*[Mr Wheatley's Executive Assistant] *to action)*
> - *Exactly what we sent to the Telegraph – notes and the write up of the interview with* [Mr Poyntz-Wright] *(*[Media Associate] *to action)*
> - [Mr Wheatley] *has then asked that* [if] *we compare this info to what was actually written* [Mr Teasdale] *he would like your view on whether we should/are required to issue a corrective statement to the market.*
> - *If so – what does this need to cover and how should we do this (*[Mr Teasdale] *to work with Supervision and* [Media Manager] *on this)*
>
> *We'll then take it from there.*
>
> *We have a call with* [a senior representative of the ABI] *at 1 so ideally would like to be able to answer these questions ahead of that.*"

15.148 Mr Adamson was in a meeting without his BlackBerry™ from 11.00 am and therefore did not see the above email until just before 12.18 pm, as described in paragraph 15.171 below.

Urgent advice is sought from Mr Teasdale

15.149 Taking into account the urgency required by Mr Wheatley, Mr Wheatley's Executive Assistant called Mr Teasdale at 11.43 am (after a brief call with Mr Teasdale's PA at 11.42 am), to follow up on his email of 11.40 am. Mr Teasdale's lines are recorded and we have reviewed a transcript of that call.

15.150 Mr Teasdale's immediate reaction was to say that Mr Lawton had already formed the view that it would not be appropriate to put out an announcement.

15.151 In summary, Mr Wheatley's Executive Assistant then said that he knew that Ms McMillan and Mr Lawton had agreed that the FCA was not required to make an announcement, but that Mr Wheatley was due to speak to a senior representative of the ABI, and Mr Wheatley anticipated that he might demand that the FCA issue a corrective statement. He therefore wanted Mr Teasdale's views. Mr Wheatley's Executive Assistant told us that this was his diplomatic way of asking Mr Teasdale to reconsider a decision which had been made by his superior, Mr Lawton. Mr Teasdale said that he would speak again to Mr Lawton who might not have appreciated the ABI's concern.

15.152 Mr Teasdale went to see Mr Lawton and Mr Spens and said that the FCA needed to think again about whether to issue a statement as concerns had been raised that the article may have been inaccurate. Mr Teasdale said that some material would be circulated by Mr Wheatley's Executive Assistant to inform the decision.

15.153 At 11.44 am, Mr Teasdale received an email from Ms Gardner (sent to the Initial Email Group) saying "[Mr Teasdale], *I understand you are taking the lead on whether we need to issue a corrective statement to the market. I will call you on this, as I have had calls from a number of firms this morning on this subject.*"

15.154 At 11.52 am, Ms McMillan responded to the Initial Email Group saying: "*All*, [Mr Lawton] *and I spoke on this. There are clear pros and cons to issuing a corrective statement at this stage.*" Ms McMillan told us that she was not sure that everyone on the email chain was aware that there were pros and cons of issuing a statement, and she wanted Mr Teasdale to be aware of Mr Lawton's view. Ms McMillan told us that she was not herself giving a view as to whether a statement should be issued or not.

Materials are obtained for the first time to enable an assessment of what *The Telegraph* was told, and Mr Teasdale is briefed by Ms Gardner

15.155 At 11.52 am, the Media Associate circulated to the Media Manager and Mr Wheatley's Executive Assistant his typed up note of the interview with *The Telegraph* (set out at paragraph 12.12 above).

15.156 At 11.52 am, Mr Teasdale called Mr Wheatley's Executive Assistant to ask when he would receive the material being collated by Mr Wheatley's Executive Assistant and said that he would then sit down with Mr Spens to review it and answer the question of whether a clarifying statement was required. We have been provided with a transcript of that call.

15.157 Ms Gardner circulated a note of the Review Team's meeting with the ABI by email to Mr Wheatley's Executive Assistant (copying the Media Manager, the Media Associate, the Technical Specialist and Supervision Associate One) at 11.55 am and noted "*I expect* [a senior representative of the ABI] *will be pushing for a corrective statement to go out to the market (as the firms I spoke to this morning were). I know we have yet to reach a view on this.*"

15.158 At 11.59 am, Ms Gardner spoke to Mr Teasdale by telephone. We have reviewed a transcript of the call. Ms Gardner told Mr Teasdale that she had received many calls from "*irate CEOs of life insurers, saying that they've lost a billion, of their, you know, company value*".

15.159 Ms Gardner explained that the Budget announcement on annuities and the proposal to change caps for pensions, along with the announcement of the Life Insurance Review had, together, had an "*incremental effect*". Ms Gardner said that there was a strong appetite in the market for the FCA to clarify the position. Mr Teasdale asked Ms Gardner if the complaint was about the substance of the review, or the manner in which it had been communicated. Ms Gardner told us that she understood from this call that Mr Teasdale was not clear and sought clarity as to whether *The Telegraph* had misreported the Life Insurance Review. Ms Gardner gave her view to Mr Teasdale:

> "*the market has been misled because The Telegraph … actually went down a certain route that sort of more closely followed their agenda … it's hard to know whether it's to say it's absolutely inaccurate or whether it's just a question of balance or emphasis. But certainly the way that the market seems to have responded is, let's take out a couple of examples, is that we're going to go and look at exit penalties that exist in relation to all these sort of millions of long-standing policies and remove the exit penalties … which, of course, we wouldn't do at all because … whatever exit penalties were agreed at the time, as long as it's compliant then we wouldn't retrospectively be going back and doing that.*"

15.160 Ms Gardner explained to Mr Teasdale that if an insurance company's revenue was driven by the back book of business, the company had suffered more in terms of share price falls that morning, but that even organisations with healthy existing books had suffered. Mr Teasdale asked Ms Gardner to send him an email detailing the specific aspects that insurance companies had raised with her. Mr Teasdale told us that it was now clear to him that the FCA needed to issue a clarifying statement as the FCA itself had identified areas of significance in *The Telegraph* article which were incorrect. Ms Gardner told us that following this call, she was relieved that there was now a clear way forward for issuing a statement.

15.161 At 12.02 pm, during the call with Ms Gardner, Mr Teasdale received from Mr Wheatley's Executive Assistant an email sent to the Initial Email Group, with a link to *The Telegraph* article, saying "*what was sent to the Telegraph plus the notes of* [Mr Poyntz-Wright's] *interview*" and "*the business plan text (not yet public) – pages 20, 35, 44 (not a lot of detail)*".

Ms McMillan's Communications Division's weekly update

15.162 At 12.08 pm, Ms McMillan emailed Mr Wheatley from home with the Communication Division's weekly update, saying:

> *"In terms of the* ***business plan****, we have a range of stories going out leading up to publication (you'll have seen* [Media Manager]*'s note) including exclusives on unauthorised transactions, packaged accounts, the IT resilience of firms and then a proposal to lead on the planned work on benchmarks for the actual news release on 31 March. It's a pretty busy and packed couple of days, but should create a real sense of momentum in the media about our work coming into year two and hopefully show to staff how we are keeping up the pace of work. So far today's announcement on people locked into* ***historic 'zombie' funds and pensions*** *has been picked up well by the Telegraph, The Times and Daily Mail with most mentioning our forthcoming work that will allow people to transfer or exit these funds.* [Mr Lawton] *and I have spoken about whether we should have treated this differently given how the market reacted. I think there's more to it than just us, so with the budget etc the firms share prices are being hit from multiple fronts."* [Original emphasis.]

15.163 Ms McMillan told us that the weekly update had been drafted by her Executive Assistant and that she had added text about her conversation with Mr Lawton. Ms McMillan told us that, on reflection, she should have amended the wording by her Executive Assistant which indicated that the story had been "*picked up well*", which she overlooked. Given the seriousness of the situation it is surprising that Ms McMillan had not already contacted Mr Wheatley and instead amended partially the weekly update.

Mr Teasdale advises that the FCA should issue a clarifying statement

15.164 Mr Teasdale reviewed the information provided by Mr Wheatley's Executive Assistant by email and spoke to Mr Lawton, who now agreed that a clarifying statement was required.

15.165 Mr Teasdale told us that his view now was that *The Telegraph* article was inaccurate in two key respects: first the scale of the Life Insurance Review, as the FCA was not intending to review 30 million historic policies; and second, the FCA was not intending to intervene in respect of exit fees. Mr Teasdale told us that whilst there might be no legal obligation on the FCA as a regulator to correct an article which misrepresents the FCA's position and which has an adverse impact on share prices, he considered that there was a policy and moral obligation to do so.

15.166 Mr Lawton told us that once Mr Wheatley's Executive Assistant had circulated the information in his 12.02 pm email (at paragraph 15.161 above), he appreciated that the information in the article was significantly different from the true position, and therefore the clear advice was that a corrective statement was required. Mr Lawton told us that this was a different scenario to that discussed with Ms McMillan earlier that morning.

15.167 As we have previously mentioned, an inquiry of Mr Adamson's office earlier that morning would have told Mr Lawton that the Supervision Division and Media Relations team considered that the article was inaccurate and were issuing corrections to journalists and regulated firms.

15.168 At 12.11 pm Mr Teasdale, with Mr Lawton standing by his desk, sent an email to the Initial Email Group saying:

> "*From my discussion with* [Ms Gardner]*, it appears that one concern is that the story/spin in the Telegraph is not an accurate representation of our actual intention here. If this is the case, then I think it is clear that we should issue a statement (via an RIS) containing a full and accurate description of exactly what we are intending. This is entirely consistent with the advice we would give to a firm that found itself in the same position.*
>
> *It is difficult for me to comment in detail on exactly what the announcement should contain save that it should contain a full and accurate summary of our intentions in the area, and that we should be guided in terms of materiality by some of the conversations that* [Ms Gardner] *has been having with insurance firms today. The areas of particular concern they have highlighted should guide the content we propose to include in the announcement.*"

15.169 Mr Lawton in turn sent an email to the Initial Email Group at 12.16 pm saying:

> "*I would support this. (I think this is a different question from the one* [Ms McMillan] *and I discussed earlier, which was should we re-disseminate the information, as opposed to correct mis-information).*"

15.170 The contents of these emails highlight further that the Markets Division had not addressed the correct question from the outset. Delays were caused by both the failure of Mr Lawton to make proper inquiry of Mr Adamson given what he knew about the significant share price movements, and the failure of Ms McMillan to make Mr Lawton aware immediately after she had been told that the article in *The Telegraph* was thought to be inaccurate.

Mr Adamson reviews Mr Wheatley's Executive Assistant's email of 11.40 am

15.171 When Mr Adamson returned from his meeting, his Executive Assistant showed him on her BlackBerry™ the email chain initiated by Mr Wheatley's Executive Assistant at 11.40 am and expressed her frustration at the delay. Mr Adamson told us that he learnt for the first time that the statement he had approved, at around 9.30 am, had not yet been issued.

15.172 At 12.18 pm, Mr Adamson's Executive Assistant therefore emailed the Initial Email Group (adding Mr Adamson), on Mr Adamson's instructions, saying:

> "[Mr Adamson] *is very keen that we do issue a corrective statement, as we need to be clear that this is not a retrospective piece of work. We are stating an intention to do a piece of discovery work in this area, we are not planning to individually review 30million policies, nor do we intend to look at removing exit fees from those policies.*
>
> *When we explained this to the ABI this morning, they completely understood the intention of the work, and concern are how around how it has been reported.* [sic]"

15.173 Mr Adamson told us that by this email he was trying to send the message to the wider group to speed up and issue the FCA's statement. Mr Adamson considered that he had given an instruction at 9.32 am to issue a public statement, which had not been acted on, and that this was because other individuals and divisions had become involved. Our view is that the initial wording agreed by Mr Adamson was not adequate and that he should have involved the UKLA or others in the Markets Division, and Mr Wheatley's office from the outset.

The Media Manager circulates a revised draft statement

15.174 At 12.32 pm, the Media Manager emailed the Initial Email Group (and Mr Adamson) saying:

> "*From our perspective, I think we can issue a statement on the website that makes clear we are not reviewing the 30 million policies individually and not looking to abolish exit fees.*

We have made this clear to every journalist we have spoken to (and it has been reported on several sites, including ITV's business site).

I have spoken to ABI press office and made that point clear and also stressed that we were very clear with the Telegraph that we were not looking to come out and end fees etc.

The statement proposed is:

"The FCA publishes its Business Plan on March 31st that provides a picture of the key priorities and areas of work for the year ahead.

"The work on fair treatment of long standing customers in life insurance is a supervisory piece of work that will give us a better understanding of how this area functions. We are not planning to individually review 30million policies, nor do we intend to look at removing exit fees from those policies providing they were compliant at the time. We will be speaking to firms about how we can undertake that review.

"As a forward looking regulator, we want to examine areas that are of interest and relevance to consumers and to firms and assess whether there is an issue that requires any action. No conclusions have been reached as work has not started."

I hope this would help clarify our position in relation to the Telegraph angle."

Mr Spens and Mr Teasdale review further the materials supplied to *The Telegraph*

15.175 Between approximately 12.20 pm and 1.30 pm, members of the Markets Division attended a leaving lunch of a colleague. Mr Teasdale and Mr Spens reviewed briefly the material supplied by the Media Associate to *The Telegraph*. Mr Spens told us that having done so, his view at the time was that the words were not as bad as he had first imagined. Mr Teasdale told us that the information provided to *The Telegraph* looked reasonably bland, which lent credence in his mind to the view that the issue may not have been so much about what the FCA had told *The Telegraph*, but how it had been reported.

15.176 At 12.41 pm, Mr Spens emailed Mr Wheatley's Executive Assistant saying that:

"*I appreciate others may not get this but our biggest risk is if FT pick up the* [Market Watch Issue No. 37] *point. I've read what we sent to Telegraph and it* *is not as bad as I first imagined. We can probably spin that it was not price-sensitive (our text) and that Tele spun it. I am stretching though...*"

15.177 Mr Spens explained to us that he did not consider that "*inside information*" had been provided to *The Telegraph*, for example because it did not have the necessary precision, but may still be "*price-sensitive*" in the sense that it contained potentially relevant unpublished information under section 118(4) of FSMA, hence his reference to saying that the information was not "*price-sensitive*" might be "*stretching*" it.

The FCA issue to insurance companies earlier versions of the draft statement

15.178 From 12.46 pm onwards, a series of separate emails was sent by the FCA on behalf of Ms Gardner to various regulated firms with the subject "*Important statement regarding fair treatment of long standing customer*s". Each email stated:

> "*The FCA publishes its Business Plan on March 31st that provides a picture of the key priorities and areas of work for the year ahead.*
>
> *The work on fair treatment of long standing customers in life insurance is a supervisory piece of work that will give us a better understanding of how this area functions. We are not planning to individually review 30million policies, nor do we intend to look at removing exit fees from those policies providing they were compliant at the time. We will be speaking to firms about how we can undertake that review.*
>
> *As a forward looking regulator, we want to examine areas that are of interest and relevance to consumers and to firms and assess whether there is an issue that requires any action. No conclusions have been reached as work has not started.*"

15.179 These clarifications had been sent on behalf of Ms Gardner following the approval that she had previously received from Mr Adamson. No consideration appears to have been given by Mr Adamson as to whether these clarifications might themselves contain price-sensitive information, and therefore should have been issued via an RIS, or whether it was appropriate for them to be sent at all to selected regulated firms and market participants, while the FCA was considering making its own corrective statement to the market as a whole.

Call between Mr Wheatley and a senior representative of the ABI

15.180 At 12.00 pm Mr Wheatley was briefed on the FCA's Year One presentation. Mr Wheatley then prepared for a telephone call with the ABI. Mr Wheatley told us that he learned at around 12.45 pm that a statement had not yet been issued. The email from the Media Manager referred to at paragraph 15.174 above had not been shown to Mr Wheatley. We consider, however, that Mr Wheatley should then have given clear direction that all relevant individuals either met or spoke by conference call immediately in order to finalise and issue the clarifying statement. Instead delay resulted from further exchanges of email between his office and others.

15.181 At 1.00 pm, Mr Wheatley spoke to a senior representative of the ABI, with Mr Wheatley's Executive Assistant in attendance. At 1.18 pm, Mr Wheatley's Executive Assistant circulated a note of the call by email to the Initial Email Group (and Mr Adamson and Mr Martin) which said:

> *"Quick readout of the* [call with the ABI]*:*
>
> - [The ABI] *said that events had moved on somewhat, but the point of the call was clearly the significant market reaction to the Telegraph story.*
> - *Since then* [the Chief Executive of an insurance company] *had called and said that the Chief Counsels of the major firms had discussed what they felt was a 'false market'* [i]*n the shares and how this could be corrected. They felt fast tracking the relevant part of the business plan might do this.*
> - *One of the individuals involved in this call is going to make contact directly on this.*
> - [The ABI] *said the specific concern is the impression of some sort of retrospective redress style action, for example on exit fees.*
> - [Mr Wheatley] *accepted this was embarrassing but the Telegraph had not reported what we briefed.*
> - [Mr Wheatley] <u>*confirmed that we will issue a corrective statement before markets close today (and asap)*</u>
>
> [Mr Wheatley] *has asked that we confirm our statement asap making clear what we actually* ***will*** *be doing, and has asked whether the extract of the business plan is the easiest way to do this?*
>
> *While the text below* [the text of the first draft statement sent by the Media Manager at 12.32 pm] *says some of the things we're not doing, it might beg the question what we are. Should we combine the myth busting below with a clear explanation of what we* ***are*** *planning to do?*" [Original emphasis.]

15.182 At 1.18 pm, Mr Wheatley's office was informed by a member of the Media Relations team that Phoenix's shares had fallen by 20 percent, Chesnara by 8 percent, Aviva by 7.6 percent and Legal & General by 7.2 percent, but that the markets were "*now stabilising*".

The involvement of the Prudential Regulation Authority

15.183 Representatives of the PRA (and HM Treasury) were contacted by insurance companies and, in turn, during the day contacted the FCA seeking an understanding of the Life Insurance Review and an explanation for what was taking place in the market.

15.184 Mr Bailey, FCA director and also Chief Executive of the PRA, told us that his office pieced together the fact that *The Telegraph* article was inaccurate during the course of the morning, through queries received by the PRA's press office and through contact with Mr Wheatley's office. There were a number of communications, including, at 11.51 am, Mr Bailey's Private Secretary emailing Mr Wheatley's Executive Assistant saying "*fyi you might want to note that our press office thinks that the only effective way to calm the market and get your message across is to issue a statement.*"

The involvement of the General Counsel's Division

15.185 There was no consideration of involving Mr Martin from the GCD until early afternoon, the FCA regarding the specialists on market announcement issues to be the UKLA and the Markets Division, rather than the GCD. Shortly after 12.30 pm, however, Mr Griffith-Jones had received a message from HM Treasury that Mr Kingman wanted to speak with him.

15.186 At 12.50 pm, Mr Wheatley's Executive Assistant recorded the interest of HM Treasury to the Initial Email Group and Mr Adamson (adding in Mr Martin, the FCA's General Counsel) (the "**Wider Email Group**") saying "*so clearly an HMT concern about legal risk of the way this has been reported, and I think likely this is what* [Mr Kingman] *will raise with* [Mr Wheatley] *and/or* [Mr Griffith-Jones]."

15.187 Mr Martin was working from home and learnt about the issue for the first time when he was called by Mr Wheatley's Executive Assistant just before 1.00 pm. He was asked by Mr Wheatley's Executive Assistant to read the email of 12.50 pm which was on its way. Mr Martin was told that there was an issue around publicity attaching to the publication of the Business Plan; that there was a concern about market disruption and that there was interest from HM Treasury. Mr Martin's understanding was that the issue was being brought to his attention but that he was not specifically being asked to provide legal advice.

15.188 Also at 1.00 pm, Mr Martin received an email from a representative of an insurance company which informed him the General Counsel of a number of insurance companies sought a call with him as soon as possible. At 1.27 pm, Mr Martin received an email from the general counsel of another major insurance company, informing him that it had issued a statement via the RNS to the market and repeating the request for a call. This call was subsequently arranged for 2.30 pm (see paragraph 16.1 below).

Ms Gardner provides comments on the statement

15.189 At 1.26 pm, Ms Gardner emailed the Wider Email Group stating her view that the FCA needed "*to say broadly what we are doing (4 or 5 key areas) and specifically say we will not be doing the following:*

- *Looking at sales practices for these legacy customers.*
- *Looking at applying current standards retrospectively – for example on exit charges.*

These are the two areas of misunderstanding that appear to have caused the concern.

Who is holding the pen on this?"

15.190 Ms Gardner told us that she assumed that the statement had to be approved by Mr Adamson, Mr Wheatley and Ms McMillan. The purpose of asking about "*who was holding the pen*" was to clarify who was responsible for finalising its content urgently.

A revised draft statement is circulated by the Media Manager

15.191 At 1.39 pm, the Media Manager emailed the Wider Email Group with a "*first cut of a statement*", which was based on the points that Ms Gardner had raised at 1.26 pm (as set out in paragraph 15.189 above). This states:

> *"The FCA publishes its Business Plan on March 31st that provides a picture of the key priorities and areas of work for the year ahead.*
>
> *The work on fair treatment of long standing customers in life insurance is a supervisory piece of work. We enter into this work to gain a better understanding of how this area functions.*
>
> *We will be looking at how people in closed accounts are being treated.*
>
> *These accounts have been closed for many years in some cases, but there are still valid issues to be looked at around the questions of the service that*

customers receive in relation to those accounts. Are they getting the right information? Are they getting the right level of service? Are these investments still appropriate?

We will be reviewing a representative sample of firms who we expect to look at whether they are treating their customers fairly.

We are not planning to individually review 30million policies, nor do we intend to look at removing exit fees from those policies providing they were compliant at the time. This is not a review of the sales practices for these legacy customers and we are not looking at applying current standards retrospectively – for example on exit charges.

This work will commence in the summer and we will be speaking to firms about how we can undertake that review.

As a forward looking regulator, we want to examine areas that are of interest and relevance to consumers and to firms and assess whether there is an issue that requires any action. No conclusions have been reached as work has not started."

The involvement of HM Treasury

15.192 At 1.40 pm Mr Griffith-Jones spoke in person to John Kingman, the Second Permanent Secretary of the Treasury. Mr Kingman told Mr Griffith-Jones that: (i) HM Treasury were concerned that the FCA might have moved the markets; and (ii) insurance companies had been calling HM Treasury all morning and had said that they were getting mixed messages from investors and FCA junior staff. Mr Kingman was said to have questioned why the FCA was pre-briefing at all and said that if a listed company had acted in the same way, there would be serious consequences.

15.193 Mr Kingman is said to have advised strongly that the FCA make an announcement that day and to have questioned why an announcement had not been made the previous day. Mr Griffith-Jones had not been involved in the drafting of the statement but was aware that work was taking place on issuing a statement as soon as possible, which he told Mr Kingman. Mr Kingman is said to have given his view that the FCA Board should announce an independent inquiry into the events and was told by Mr Griffith-Jones that he would be contacting the FCA Board.

Finalising the draft clarifying statement

15.194 At 1.42 pm Ms McMillan approved the wording by email to the Wider Email Group.

15.195 At 1.44 pm Mr Adamson's Executive Assistant confirmed by email to the Wider Email Group that Mr Adamson was "*happy with this statement.*"

15.196 Mr Wheatley told us that in the meantime he had questioned whether using the Business Plan text might assist in the drafting.

15.197 At 1.44 pm, Mr Wheatley's Executive Assistant therefore emailed the Wider Email Group saying that he had shown the draft statement to Mr Wheatley, who had asked how it compared to the Business Plan text and what it actually said about the Life Insurance Review.

15.198 The Media Manager responded to Mr Wheatley's Executive Assistant's email at 1.46 pm by providing the extract from the draft Business Plan:

> "*Fair treatment of long standing customers in life insurance.*
>
> *We will assess whether firms are operating historic (often termed 'legacy' or 'heritage' products in a fair way and whether they have adopted strategies that exploit existing customers*."

15.199 At 1.47 pm, Mr Wheatley's Executive Assistant emailed the Wider Email Group saying that "[Mr Wheatley's] *concern is are we creating more problem the more we say. However, to* [Mr Teasdale's] *point, I don't think this goes far enough to correct the market misconceptions. I'll revert to clearing the longer text with* [Mr Wheatley]." Mr Wheatley's Executive Assistant told us that, having appreciated the brevity of the Business Plan, his view, and ultimately that of Mr Wheatley, was that it would not address the concerns of Mr Teasdale to remedy market misunderstandings.

Mr Wheatley's conversation with Ms McMillan

15.200 At 1.49 pm, Mr Wheatley's Executive Assistant emailed Ms McMillan to indicate that Mr Wheatley was about to call her (Ms McMillan had sought to speak to Mr Wheatley from 1.01 pm and exchanged several emails and a voicemail with Mr Wheatley's Executive Assistant). Mr Wheatley then spoke to Ms McMillan from a meeting room. Ms McMillan recalled that Mr Wheatley was unhappy that Ms McMillan had not personally called him sooner, and not simply relied on the fact that Mr Wheatley's office has been briefed.

15.201 Ms McMillan told us that her view was that Mr Adamson had been involved and could have called Mr Wheatley. Ms McMillan explained to us that the Issue Response Team policy (described at paragraph 15.7 above) provided that the business owner (in this case, Mr Adamson) was identified as the responsible person for working with Communications on a media issue involving regulated firms. Ms

McMillan also recalled Mr Wheatley asking if she was aware of the substance of the Life Insurance Review, to which Ms McMillan replied she was not.

15.202 At about the same time the Media Manager emailed Ms McMillan at 1.51 pm saying:

> "*I'm really sorry at how this story has turned out – I certainly never really thought of the market issue, and in retrospect should have ran something past UKLA just to make sure we had that covered off.*
>
> *I think the story was a good one to be honest and briefed well (clearly* [the Media Associate] *and I need to discuss how we handle headlines like the Telegraphs, but generally I thought we covered it off), but clearly there are implications on doing stuff like this and making sure the business fully understands that.*
>
> *Anyway, I'm sorry this is screwing everyone's Friday up!*"

15.203 Ms McMillan told us that she believed the Media Manager was being hard on himself, for example, because she did not consider that it was his role to second guess a decision made by a Division of the FCA as to whether a piece of material is market sensitive or not. For our part, the discussions between Mr Wheatley and Ms McMillan, and the email from the Media Manager only highlight the serious failures of co-ordination at the FCA.

Mr Wheatley approves the final statement

15.204 At 2.01 pm, Mr Wheatley's Executive Assistant emailed the Wider Email Group to confirm that "[Mr Wheatley] *has cleared the statement* [i.e. the statement circulated by the Media Manager at 1.39 pm] – *he has asked that we issue this asap.*"

15.205 At 2.07 pm, the Media Manager emailed the Wider Email Group with a copy of the statement confirming that his team was intending to put the statement on the website and "*alerting relevant press offices at ABI etc and to journalists*". The Media Manager asked Mr Teasdale if there was "*something additional we need to do around the market side of things?*"

15.206 At 2.12 pm, Mr Teasdale responded that the FCA's statement should be circulated via an "*RIS at the same time* [i.e. at the same time as being published on the FCA's website]. *Press office have I understand done this before and so should be familiar*."

15.207 At 2.14 pm, Mr Teasdale confirmed, in response to an email from Ms Gardner at 2.13 pm, that the FCA could send the clarifying statement directly to firms, once it had been put on via an RIS. The Media Manager confirmed at 2.15 pm by email to the Wider Email Group that "*we're doing that now*".

15.208 The statement was issued via the RNS at 2.27 pm. The delay of almost half an hour after the wording was approved at 2.01 pm appears in part to have been because the process for issuing the statement to the market once finalised had not been considered earlier in the day.

15.209 A further series of emails was sent by the FCA on behalf of Ms Gardner to various insurance companies with the subject "*Further communication on the proposed FCA thematic project on long standing customers in life insurance*". Each email stated:

> "*I write* [sic] *to you earlier today following the news coverage today in relation to our prospective thematic project on long standing customers in life insurance. I am now writing to let you know that the FCA has issued the following statement on our website and via an RIS.*"

Conclusions and answers to:

> **Question 7(b): "*How was this communicated to the Executive/Board/other relevant persons in the organisation*"?**
>
> **Question 7(c): "*How was the FCA's reaction determined*"?**
>
> **Question 7(d): "*Why the FCA's clarificatory statement was issued so late during the day after the story was published, rather than Thursday night*"? and**
>
> **Question 7(e): "*What exchanges (particularly any involving price-sensitive information) took place with individual regulated firms or other market participants before the clarificatory statement was issued and who authorised the exchanges*"?**

15.210 The FCA was taken by surprise by *The Telegraph* article and was therefore ill-prepared to deal with the market reaction. Even taking this into account, the delays in issuing the clarifying statement were unacceptable.

15.211 Mr Adamson acted promptly by initiating work on a draft statement, but should have alerted the Markets Division to the fact that he considered the article to be inaccurate. Mr Adamson has told us that he appreciated that a price-sensitive issue had arisen. Accordingly, in our view he should have taken steps to ascertain precisely from his team what had been told to *The Telegraph*, compared with what had been reported and taken advice from the Markets Division for it to advise not only on whether a clarifying statement should be issued, but what could be said properly to the press and regulated firms or other market participants in the meantime. He should also have contacted Ms McMillan and escalated the fact that a price-sensitive issue had arisen to Mr Wheatley, in order that the need for a holding or clarifying statement could be addressed urgently.

15.212 When the Markets Division learned of the market reaction, the steps taken by Mr Lawton were inadequate. Notwithstanding the significant share price movements, he did not contact Mr Adamson or otherwise conduct further inquiry. He should have escalated the issue to Mr Wheatley and have advised urgently, having made proper inquiry.

15.213 Once Ms McMillan knew from the Media Manager that he thought *The Telegraph* article to be incorrect (see paragraph 15.100 above), she should have contacted Mr Lawton, which would have avoided him proceeding on an inaccurate assumption, and she should have worked with him, Mr Adamson and Mr Wheatley to do whatever was necessary urgently to clarify the market uncertainty.

15.214 For his part, Mr Wheatley should not have left the resolution of issue to email traffic. He should urgently have convened the relevant individuals in a meeting or conference call to finalise and issue the clarifying statement.

15.215 There were multiple exchanges with individual regulated firms or other market participants during 28 March 2014. The issuing of the statements to these companies was authorised by Mr Adamson. There was an obvious risk that the information being supplied was price-sensitive, permitting the immediate or ultimate recipients of the information to make investment decisions which took into account selective clarifications of the position by the FCA. Instead, a holding announcement should have been considered explaining that there had been widespread misapprehension and urging customers to take no action, pending a formal announcement by the FCA once the issue had been clarified.

15.216 In the next Chapter we summarise for completeness what took place within the FCA after the clarifying statement was issued.

CHAPTER 16

16. THE EVENTS FOLLOWING THE ISSUE OF THE FCA'S CLARIFYING STATEMENT

GCD call with Insurance Companies

16.1 At 2.30 pm, the General Counsel of various insurance companies participated in a conference call with Mr Martin. The General Counsel were angry at all that had taken place, and demanded an explanation. Because Mr Martin had so little involvement previously, he was not in a position to comment in any detail. There was then correspondence and a further discussion with the General Counsel on Monday 31 March 2014.

Mr Hyde contacted the Media Associate and later the Media Manager

16.2 Mr Hyde contacted the Media Associate at 2.49 pm by email to explain further the approach he had adopted in his article:

> "*Hope all ok there. I'm sure insurers are unhappy – to be expected.*
>
> *Just a quick one – exit fees. I don't think I overplayed this, as it it's clearly an issue to be investigated. I take from your statement that it's been jumped on by others.*
>
> *But might I suggest that by any standard an exit fee that prevents a customer from getting a fairer deal later in life is in itself an unfair term on a policy. These companies did not know how regs / legislation would change over 30/40 years. Locking customers in could never be justified.*
>
> *That's not a standard from today, that's just TCF and applied irrespective of regulatory environment.*
>
> *Just a thought…*"

16.3 In a further email at 3.06 pm, Mr Hyde said: "*By the way, I think everyone in the media thinks you are bang on the money. Everyone I've spoke to. Markets might be jittery but consumer support is 100pc*".

16.4 The Media Associate did not respond to either of the emails from Mr Hyde. The Media Associate told us that he had not spoken to Mr Hyde at all on 28 March 2014 and that these communications were unprompted.

16.5 Later in the day on 28 March 2014, Mr Hyde called the Media Manager. The Media Manager told us that Mr Hyde had wanted to speak with the Media Associate, but by this time he was no longer in the office. The Media Manager also told us that in that call, Mr Hyde had said it was not his intention to cause trouble for the Media Associate. The Media Manager told us he replied by saying that he understood Mr Hyde was doing his job. He said that it was a brief call and that this was the end of the conversation.

16.6 *The Telegraph* has subsequently told us in writing that Mr Hyde's note of the call records that the Media Manager said to Mr Hyde that "*the coverage was exactly what [the FCA] were hoping for*". The Media Manager has told us that he did not say these words and that they are wholly implausible in circumstances where he had spent an entire day dealing with the reaction to the article and the FCA had announced an independent inquiry into what had happened. *The Telegraph* has declined to provide us with a copy of Mr Hyde's note and has declined to be interviewed. We were therefore not able to assess the weight of what *The Telegraph* has told us in writing.

Exchanges between Ms McMillan and the Media Manager

16.7 Ms McMillan and the Media Manager exchanged several emails after the FCA had issued the clarifying statement. At 3.23 pm, Ms McMillan responded to the Media Manager's email of 1.51 pm (described at paragraph 15.202 above and noted):

> "*We do need to deal with the fact that the Telegraph mis-represented the story and caused this, if they'd have gone with what was actually briefed then it wouldn't be as big an issue. That's always a risk with this but it doesn't help.*
>
> *The other element is the compound nature of this with the other pressure this particular industry feels at the moment which exacerbates the reaction, although I do think HMT's reaction is politically motivated and they see an opportunity to win back some points from industry by agreeing to use this as a stick to beat us with*."

16.8 The Media Manager responded at 3.36 pm and stated:

> "*Also from my own point of view I just didn't think enough around the budget impact etc*" and "[the Media Associate] *and I are discussing what we do with the Telegraph – the slight issue is that when they were briefed by* [Mr Poyntz-Wright] *I don't think we knocked exits out of the park, but we were firm that it wasn't on the table on briefing after*."

FCA Board updated on the FCA's clarifying statement

16.9 At 3.05 pm, the Board was informed by email that the FCA had issued "*a statement about fair treatment of long standing customers in life insurance*". The email simply contained the text of the statement. A number of Board members told us they would have expected to have been alerted earlier in the day about the issue. Mr Wheatley told us that he would not otherwise have expected members of the ExCo or the Board to have been told about the issue until it had been resolved and any corrective statement had been published.

Mr Bailey contacted Mr Griffith-Jones to request a Board call

16.10 At 3.11 pm, Mr Bailey emailed Mr Griffith-Jones with his view that an FCA Board call should be convened to discuss the day's events. We were told by Mr Griffith-Jones that he had previously been considering whether a formal Board meeting should be held on 28 March 2014, or alternatively on 31 March 2014, and that Mr Bailey's email led him to the conclusion that a Board call should be held immediately, which he then took steps to convene.

Representatives from HM Treasury contacted the FCA

16.11 As noted in paragraph 15.192 above, Mr Griffith-Jones had spoken with Mr Kingman in person at 1.40 pm, and Mr Kingman had suggested an independent inquiry. Mr Griffith-Jones told us that he believed it was important for the FCA to be transparent.

16.12 Mr Griffith-Jones spoke with Mr Kingman again at around 4.10 pm, and subsequently at 4.30 pm. Mr Kingman and Mr Griffith-Jones agreed that the inquiry must be independent. We understand that Mr Kingman proposed that an external law firm should conduct the investigation and that he relayed the Chancellor's view that the FCA should announce the proposed investigation that day.

16.13 Between 4.33 pm and 4.45 pm, Mr Griffith-Jones' Executive Assistant on behalf of Mr Griffith-Jones, liaised with Mr Kingman to prepare a draft of the FCA statement announcing an investigation, the final draft of which noted:

> "*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*".

FCA Board call

16.14 As described above, Mr Wheatley and Mr Adamson were involved in the issuance of the clarifying statement. Of the other executive Board members, Ms Titcomb was made aware that an issue had arisen at 1.30 pm, when she attended an unrelated meeting with Ms Darby-Walker. Ms McDermott was on annual leave and therefore unaware of the issue until contacted by her executive assistant shortly before the Board teleconference (referred to below), which she was unable to attend due to a family commitment.

16.15 Of the non-executive Board members, Mr Bailey was made aware of the reaction to *The Telegraph* article at approximately 10.35 am, by his Private Secretary, who had been alerted to the issue by a member of the PRA.

16.16 At 4.12 pm, an email was sent on behalf of Mr Griffith-Jones to convene a Board call at 5.00 pm. All other Board members became aware of the issue with *The Telegraph* article when they received a telephone call from either Mr Griffith-Jones's office, or their respective FCA Executive Assistants, letting them know that a Board call had been convened.

16.17 In advance of the Board call, a member of the Primary Market Monitoring team was asked by Mr Wheatley's office to circulate the market close pricing (set out below) for key life insurance companies, to determine if the FCA's statement had had any effect on the market.

Name	27/03/2014 Close (p)	28/03/2013 Intra-day low (p)	28/03/2013 Intra-day low (% change from y/day close	28/03/2013 4.30 pm (% change from y/day close)	Volume at 4.30 pm	Average Daily Volume
STANDARD LIFE	386.3	367.9	-4.76	-1.55	11,417,968	4,639,046
PRUDENTIAL	1315	1223	-7	-2.62	12,677,685	4,632,620
PARTNERSHIP	134	122.9	-8.28	0.75	2,225,439	589,310
AVIVA	483.5	442.4	-8.5	-2.75	42,143,971	8,285,352
LEGAL & GENERAL	212.4	193	-9.13	-3.48	73,801,843	17,206,748
CHESNARA	326.5	292.7	-10.35	-9.27	1,056,006	189,303
RESOLUTION	319	266.6	-16.43	-7.12	33,996,049	3,916,686

PHOENIX GRP	737	561.5	-23.81	-11.53	4,468,085	438,428

16.18 At 4.54 pm, Mr Griffith-Jones sent to the Board the draft statement, along with the market close pricing and volume information.

16.19 The Board teleconference took place at 5.00 pm. All board members attended bar Ms McDermott and Ms Davidson. The call was also attended by Mr Martin, Mr Wheatley's Executive Assistant and Mr Griffith-Jones' Executive Assistant as well as Simon Pearce (the FCA's Company Secretary) and the FCA's Deputy Company Secretary.

16.20 Mr Wheatley updated the Board on events, recorded as follows in the minutes:

> "*in advance of the business plan being published on 31 March 2014, certain journalists were briefed on some of the items included within it. One of these items was the review of fair treatment of long standing customers in life insurance firms, which had been briefed to the Daily Telegraph the previous day (Thursday 27 March); and*
>
> *the story was widely reported that day (Friday 28 March) and the share prices of a number of listed insurance firms decreased significantly. The FCA had issued a statement clarifying the detail of the review in the afternoon. The relevant shares then recovered to a large extent (although not to the previous day's levels) but some issuers had asserted that there had been a disorderly and false market in their shares for much of the day*."

16.21 We were told by Board members that they were informed that Mr Poyntz-Wright had conducted the interview with *The Telegraph* and that quotes were attributed to Mr Adamson. A number of the attendees recalled Mr Griffith-Jones saying that further details about what had happened would be the subject of an inquiry.

16.22 The Board minutes said that the Board "*noted the market movements and the way the information would have been released as part of the publication of the Business Plan*."

16.23 The minutes note that "*Mr Martin advised on the potential legal position.*" Mr Martin told us that, whilst at this point he had not analysed in detail the material provided to *The Telegraph*, he advised the Board that there was material risk that inside information had been disclosed and that the FCA could face potential civil claims. It is significant that the immediate reaction of Mr Martin was that the content of the briefing given to *The Telegraph* was inappropriate.

16.24 The minutes record that "*The Chairman proposed that the Board should investigate what had happened and involve an independent law firm*. *The Board supported this proposal.*" This was consistent with the discussions which had taken place between Mr Griffith-Jones and Mr Kingman prior to the Board call.

16.25 Several insurance companies made announcements via the RNS during the afternoon on 28 March:

16.25.1 At 3.53 pm, Resolution issued a statement via the RNS which stated "*We look forward to receiving further details from the FCA"*. Resolution further stated that *"Life insurance has been and remains a highly regulated industry. It has undergone a series of independent reviews to ensure transparency and fair treatment of customers. We therefore look forward with confidence to working with the FCA once it issues official guidance.*"

16.25.2 At 4.11 pm, Partnership Assurance Group issued a statement via the RNS highlighting the fact that the terms of reference for the Life Insurance Review had not been fully determined and clarifying that very few of Partnership's policies had been written prior to 2000.

16.25.3 At 4.36 pm, Aviva issued a statement via the RNS noting that the Life Insurance Review would not review exit fees of compliant policies. Aviva stated that its treatment of its customers to whose policies the Life Insurance Review might apply had been fair and appropriate. As a result, any impact on Aviva's group profits would be minimal.

16.25.4 At 4.43 pm, Phoenix issued a statement via the RNS and noted that "*little detail has been provided regarding the scope and nature of any review*" but that the Life Insurance Review would not seek to apply current standards retrospectively.

16.26 At 6.15 pm, the FCA issued a second statement via the RNS announcing the fact that an investigation would be conducted into the FCA's handling of the announcement of the Insurance Thematic Review.

16.27 The ExCo was updated on the day's events and the two FCA statements by email sent by Mr Wheatley's Executive Assistant at 7.11 pm. Of the ExCo members who had not attended the Board call, Ms McMillan was already aware of the issue (as described above), and we were told by Mr Woolard that his Executive Assistant mentioned the issue to him at around 2.00 pm. We have seen no evidence that Ms Raffe was informed of the issue prior to receiving this email.

Discussions around the form of the inquiry

16.28 Mr Griffith-Jones spoke to Mr Kingman after the Board call, and the form of the proposed inquiry was discussed. We understand that Mr Kingman proposed that the FCA's NEDs (rather than the Executive Directors) should lead the investigation, which was supported by Mr Griffith-Jones.

16.29 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.

16.30 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.

Input from the General Counsel's Division

16.31 Mr Martin spoke with Mr Adamson shortly after the FCA had issued its clarifying statement on the afternoon of 28 March. Mr Martin relayed the insurance companies' concerns and provided legal advice on the exposure that the day's events might give rise to (which, as noted above, he repeated on the Board call). Mr Martin also advised that any other pre-briefings in relation to the Business Plan should be reviewed. (See Chapter 18 on the pre-briefings of other thematic reviews announced in the Business Plan).

16.32 Mr Martin and two of his colleagues were provided with the text of *The Telegraph* article, the text in the Business Plan describing the Life Insurance Review and the note that the Media Associate had prepared of the interview between Mr Poyntz-Wright and Mr Hyde, along with the email sent to Mr Hyde at 4.44 pm on 24 March. They considered the material and concluded that there was a risk that the information disclosed to *The Telegraph* by the FCA was inside information within Section 118 of FSMA. This was consistent with Mr Martin's initial advice, which he had relayed to the Board on 28 March.

Publication of the FCA's Business Plan

16.33 In the afternoon of 28 March a series of emails were sent between Mr Adamson, Ms McMillan and Mr Wheatley's Executive Assistant discussing how to ensure that there were no additional items in the Business Plan which contain price-sensitive information. Mr Poyntz-Wright and Mr Adamson discussed the same topic in telephone calls on 29 and 30 March 2014. No topics of concern were identified following this review.

16.34 Mr Woolard, Mr Adamson, Ms McMillan, Mr Martin, Ms McDermott and Mr Wheatley's Executive Assistant considered on 29 March whether the FCA should include more detail in the Business Plan regarding the Life Insurance Review. Mr Adamson expressed a concern that if more detail was included on the Life Insurance Review, the FCA would be pressed to provide more detail on the other thematic reviews in the Business Plan. In the event, no amendments were made to the draft Business Plan before it was published on 31 March.

16.35 The Business Plan was published before the markets opened on 31 March. An announcement was published via the RNS at the same time.

CHAPTER 17

17. THE IMPACT OF *THE TELEGRAPH* ARTICLE ON THE MARKET

Introduction

17.1 We consider in this Chapter the impact of *The Telegraph* article, including an assessment of whether a "*false or disorderly market*" existed.

The impact on the market

17.2 When the London Stock Exchange opened for trading on 28 March 2014, the share prices of life insurance companies began to fall sharply. The majority of the affected companies' share prices began to plateau from approximately 10.30 am. The notable exceptions to this trend were the shares of Phoenix and Friends Life/Resolution, which continued to fall in price until around 11.30 am, before reaching a plateau.

17.3 Within minutes of the publication of the FCA's announcement via the RNS at 2.27 pm, the share prices of the affected life insurance companies began to recover, but did not return to the levels at which they were trading before the start of the day. For example, the share prices of Phoenix and Friends Life/Resolution recovered substantially but, at market close, had still sustained losses of 8.62 percent and 5.34 percent respectively.

17.4 The significant movement in share prices was restricted to insurance companies and was anomalous when compared with the performance of the rest of the market. Back book consolidators and companies known to have large books of legacy business sustained the largest losses; at their market low, the share prices of Phoenix and Friends Life/Resolution fell by approximately 21 percent and 15 percent respectively.

17.5 In addition to the fall in share value, the trading volume of life insurance company shares was markedly higher than usual. The table below demonstrates that, in the case of insurance back book consolidators such as Phoenix and Friends Life, trading volumes reached increases of approximately 997 percent and 708 percent respectively.[49] The trading volumes of other life insurers such as Aviva (an increase of 477 percent), Legal & General (an increase of 326 percent), and Prudential (an increase of 180 percent) also increased significantly:

[49] Percentage increases on the average daily traded volumes from 1 January 2014 to 27 March 2014.

Security	Average Daily Volume 1 January 2014 to 27 March 2014	Average Daily Volume 28 March 2014	% increase (Traded volume on 28 March over YTD to 27 March 2014)
FTSE 100 - RESOLUTION	3,012,794	24,354,788	708%
FTSE 100 - AVIVA	6,635,482	38,286,252	477%
FTSE 100 - LEGAL & GENERAL	15,259,350	65,001,406	326%
FTSE 100 - PRUDENTIAL	4,120,305	11,523,640	180%
FTSE 100 - STD LIFE	3,862,932	9,667,047	150%
FTSE 100 - ST. JAMES'S	1,208,765	2,389,289	98%
FTSE 100 - OLD MUTUAL	9,469,915	10,706,809	13%
FTSE 250 - PHOENIX GRP	253,895	2,784,222	997%
FTSE 250 - PARTNERSHIP	374,970	1,797,598	379%
FTSE 250 - JUST RETIREMENT	770,112	1,573,048	104%

17.6 The movements in the share prices of the affected companies are illustrated in the following diagrams (Exhibits 1 and 2), which are based on data from Bloomberg of all trades in shares listed on the London Stock Exchange on 28 March 2014. In order to assist in the comparison of relative share price movements and to allow a comparison to be made on a single graph, the figures shown in the diagrams have been rebased.

Exhibit 1

17.7 Exhibit 1 illustrates, for comparative purposes, the relative positions of the FTSE100 index (a share index of the 100 companies listed on the London Stock Exchange with the highest market capitalization) and the FTSE350 Life Insurance/Assurance Index on 28 March 2014:

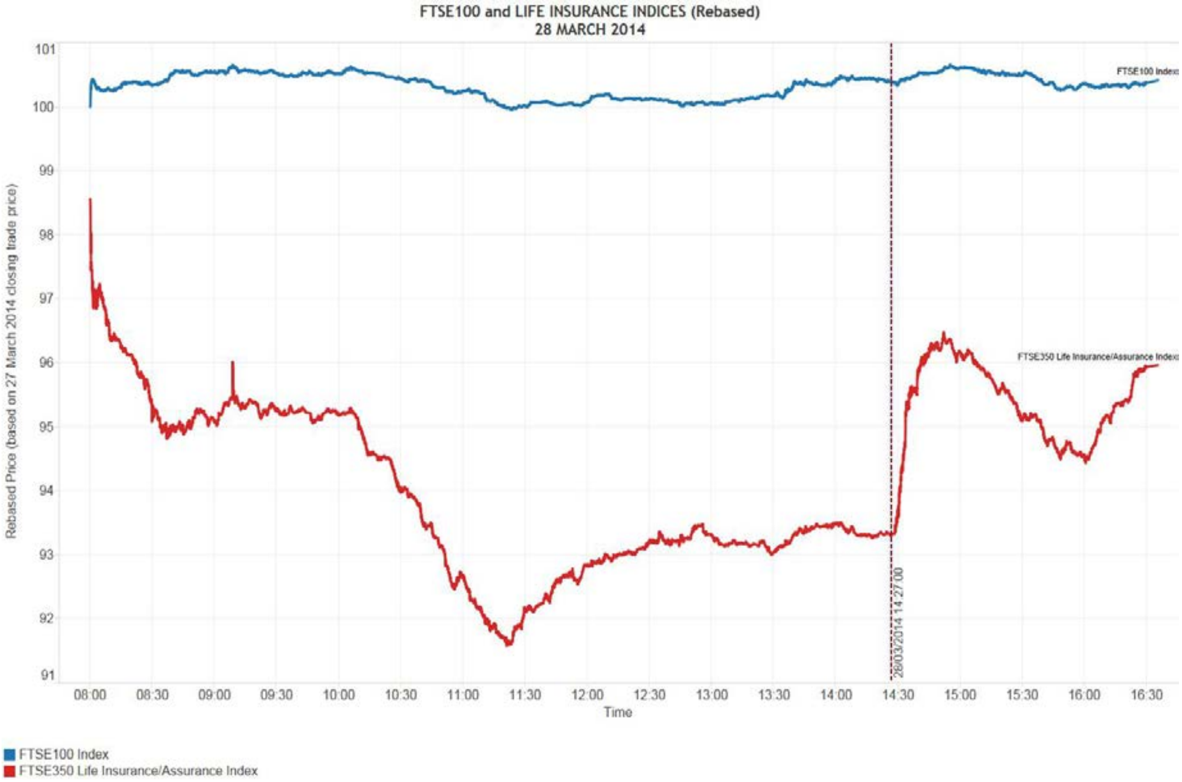
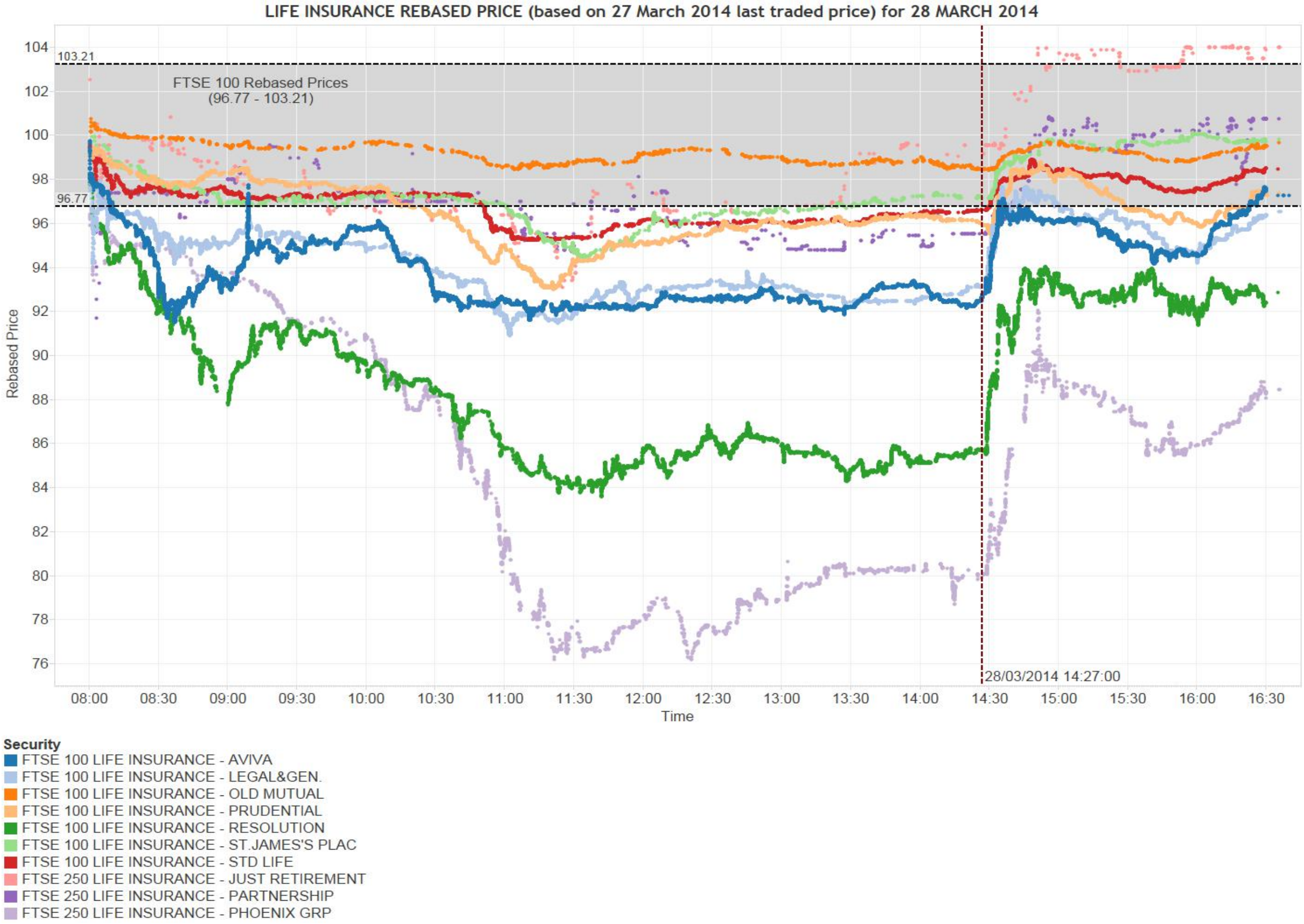


Exhibit 2

17.8 Exhibit 2 compares the share prices of the above-listed FTSE100 life assurance companies (each indicated by a separate colour) against the share price performance of all FTSE100 companies on 28 March 2014. The share prices of the majority of FTSE100 companies on 28 March 2014 fluctuated within a range of approximately 6.44 percent, which is indicated by the shaded 'corridor' at the top of the graph.



The market's perception of the Life Insurance Review

17.9 We interviewed a number of representatives of UK listed insurance companies, all of which were impacted by the publication of *The Telegraph* article. Each of the firms interviewed explained to us that, during the course of 28 March 2014, they spoke with a number of concerned investors as to the scope of the Life Insurance Review.

17.10 As mentioned at paragraph 15.3 above, those interviewed told us that there were a number of statements in *The Telegraph* article which gave rise to concern in the market. We were told, for example, that the suggestions in the article that the FCA were contemplating "*banning*" exit fees may have led readers to believe that the FCA was considering reviewing and rewriting the contractual terms of historic policies – with PPI being a recent precedent. The statement that the FCA would be conducting "*a broad review of investment products sold before the year 2000*" also suggested that there was no limit on the type of products subject to the review. We were told that investors feared that the FCA intended to look at the entire books of business pre-dating 2000.

17.11 In addition, there was concern that the article included estimates that the Life Insurance Review could encompass 30 million policies worth £150 billion. The representatives of one insurer told us that the Life Insurance Review, as understood by the market immediately after the publication of *The Telegraph* article, had the potential to be so expensive that it could have destroyed the economic model of some back book consolidators.

17.12 As previously mentioned, the publication of the article by *The Telegraph* on 28 March 2014 also came shortly after two significant events affecting the life insurance market. The first was the announcement in the Budget on 19 March 2014 of a liberalisation of the annuities market. The second, on 27 March 2014, was the announcement by the Department for Works and Pensions that it would be imposing a cap on auto-enrolment pension charges as well as a ban on certain other categories of pension charges, to be effective as of April 2015.

17.13 According to a number of analysts' reports we have reviewed, by the time *The Telegraph* article was published, the market was therefore more sensitive than usual to further announcements which might have a deleterious impact on the sector. This heightened sensitivity potentially exacerbated the market reaction to the announcement of the Life Insurance Review in *The Telegraph*. A number of the insurance companies we interviewed agreed with this assessment.

17.14 In this context, we were told by a number of the insurance companies that investors were concerned about increasing political and regulatory risk in the insurance sector and in the UK generally.

Conclusions and answer to:

Question 7(f): "*Whether a false or disorderly market was present during this period*"?

17.15 A number of the representatives of insurance companies told us in their view a "*false or disorderly market*" existed on 28 March 2014. We were told that a number of insurance companies privately communicated this view to the FCA at the time. Legal & General also stated publicly in its statement of 12.43 pm on 28 March 2014, issued via the RNS, that a disorderly market existed in the shares of UK listed insurance companies.

17.16 Based on these interviews and the analysis above, 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.

Our view, therefore, is 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.

17.17 That misapprehension was derived from the article in *The Telegraph* rather than information disseminated to the market via an RIS. Given therefore, the abnormal price movements and trading volumes, we consider it possible also that a "*disorderly*" market, as defined in paragraph 3.20 above, also existed on 28 March 2014 prior to the issuance of the FCA's statement via the RNS.

CHAPTER 18

18. THE PRE-BRIEFINGS OF OTHER THEMATIC REVIEWS ANNOUNCED IN THE BUSINESS PLAN

Introduction

18.1 As set out above, in addition to the pre-briefing of the Life Insurance Review, there were three pre-briefings of other thematic reviews to be announced in the Business Plan, namely:

18.1.1 the thematic review in relation to packaged bank accounts;

18.1.2 the thematic review in relation to the handling of unauthorised transactions; and

18.1.3 the thematic review in relation to IT resilience at banks.

18.2 Unlike the decision to pre-brief *The Telegraph* in relation to the Life Insurance Review the other thematic reviews in the Business Plan were selected for "*pre-briefing*" by the Media Relations team on the basis only of their potential interest to consumers.

18.3 Each of these pre-briefings and how they were ultimately reported in the press are addressed below.

Thematic review in relation to packaged bank accounts

18.4 On 25 March 2014, the Media Associate sent an email to the members of the Supervision Division responsible for the review of how banks and building societies have adapted to new rules on packaged bank accounts. The email attached a draft press briefing and proposed that the press briefing be given to *The Independent* in advance of the publication of the Business Plan:

> "*Please could* [you] *take a look at this and let me know your thoughts by mid-afternoon (3pm) if possible?*
>
> *This is one of the stories we are pulling out of the business plan to run early; in this instance we will be giving the story to the Independent to appear in Thursday's paper. That means I need to give it to the Indy tomorrow.*
>
> *If you are able to fill in any blanks too – that would be marvellous.*

Once you are both happy, I will get to [a member of the Supervision Division] *and* [Mr Adamson]."

18.5 The draft press briefing included a quote attributed to Mr Adamson, as follows:

""*The rules we switched-on in Spring 2013 had a significant impact and saw some firms pull out of the market, and in many cases that was the right response. Too many packaged banks accounts were being sold without proper consideration of whether people could claim upon them, and our tough new rules were much needed.*

Bit by bit we've seen firms come back into the market with revised offerings so it is a good time for us to look at whether the industry is putting consumers first, as they should be.""

18.6 One of the Supervision team members responded, saying that he considered the tone of the press briefing and the quote in particular was not appropriate:

"*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. I think it would be better to say (in proper English, not as I set out below).*

We set clear expectations of the market, which was the right thing to do to prevent mis-selling. Firms responded, some withdrew from the market temporarily. We are seeing some of these firms come back into the market, and new products coming to market from existing players. Now is the right time to kick the tyres."

18.7 The Media Associate responded as follows:

"*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.*"

18.8 The Supervision review team member did not agree with this assessment, and his email in response shows the difference of opinion between them:

> "*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 <u>must</u> 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]

18.9 Ultimately, the views from the Supervision review team member were taken into account. These exchanges illustrate how careful Mr Adamson and his team were to ensure that quotations attributed to him were appropriate in tone and content. The same care was taken in relation to the other two briefings below. The draft of the press briefing sent up to Mr Adamson later on the same day included the following quote attributed to him:

> "*"The rules we switched-on in Spring 2013 had a significant impact and saw some firms pull out of the market while they considered if and how they could meet our tougher consumer protection requirements.*
>
> *"Bit by bit we've seen firms come back into the market with revised offerings, so now is a good time for us to see whether the industry is designing and selling products that provide genuine value to customers - as they should be."*"

18.10 The accompanying email from the Media Associate to Mr Adamson stated:

> "*As you know, we are pulling a selection of stories from the business plan to run before its publication on Monday. This is so that they will get some decent coverage and don't get swallowed up in the inevitable 'FCA's budget for 2014/15 will be £XXXm' stories that always dominate when we publish the BP.*

This particular story is the review of packaged accounts that will begin in Autumn. I wonder if you could take a look at the below and give me your thoughts approve?

This will be given to the Independent's personal finance editor, Simon Read, for an exclusive story in Thursday's paper. It will then be given to the other media on Thursday.

I've sanity checked this with [members of the Supervision review team], *who are happy with the approach and the proposed release.*"

18.11 Subject to some minor proposed amendments, the press briefing was approved by Mr Adamson. Shortly thereafter, the Media Associate emailed Simon Read, Personal Finance Editor at *The Independent* offering the pre-briefing to him as "*an exclusive*" for publication the following day. There was no telephone interview, but the Media Associate spoke to Simon Read on the phone briefly to understand if he was interested in the story. Once Mr Read had confirmed he was interested, he was sent the written briefing.

18.12 The text of the briefing was as follows:

"***FCA to review how banks and building societies have adapted to new rules on packaged bank accounts***

An in-depth review of how banks and building societies sell packaged bank accounts and check that the insurance policies bundled into them are still suitable for existing customers will start in Autumn 2014, the Financial Conduct Authority (FCA) confirmed today.

Approximately nine million people have a packaged account in the UK which cost on average about £300 each a year. The packaged bank account market is estimated to be worth £2.7bn annually (Mintel). The FCA will formally confirm the packaged account review in its 2014/15 Business Plan, to be published on Monday 31 March 2014.

The review will assess how well UK banks and building societies have adapted to new rules that were introduced on 31 March 2013. These rules forced the industry to assess whether the people being sold a packaged account could actually claim on them, and then reassess their personal situation on an annual basis to ensure ongoing suitability. The FCA will also look at how firms are dealing with complaints.

Clive Adamson, director of supervision at the FCA, said:

"The rules we switched-on in Spring 2013 had a significant impact and saw some firms pull out of the market while they considered if and how they could meet our tougher consumer protection requirements.

"Bit-by-bit we've seen firms come back into the market with revised offerings, so now is a good time to see whether the industry is designing and selling products that provide genuine value to customers - as they should be."

The FCA will be one year old on 1 April 2014 and has made some significant interventions to make financial services better for consumers (see notes to editors). This review of packaged accounts is another example of it getting to the heart of issues that matter the most.

Packaged bank accounts combine a regular bank current account with a number of regulated products (such as mobile phone insurance, or travel insurance) and non-regulated products (such as a concierge service or music downloads) in exchange for a monthly fee.

More information on packaged accounts and the FCA's rules

The FCA's predecessor, the Financial Services Authority, had serious concerns about the market so in 2012 it consulted on new rules to improve the market for consumers. These became active at the end of March 2013 and required banks and building societies to:

- *check the customer is eligible to make a claim under each policy in their packaged bank account and share that information with them;*
- *provide an annual statement, explaining how to claim each of the benefits included in the packaged account; and*
- *ensure advisers selling packaged accounts checked each policy is suitable for the customer and tell them if not.*

There were around 45,000 complaints submitted to firms about PBAs in 2012 and a similar number in 2011." [Original emphasis.]

18.13 In an email exchange between the Media Associate and Mr Read, it was agreed that, due to space constraints in the paper, *The Independent* would run the story on Saturday 29 March 2014.

18.14 Mr Adamson said, in a later email on 26 March 2014 to the Media Associate, that it would be important to brief the Practitioner Panel in relation to this thematic review before the press as otherwise there would be a "*big problem*". The Media Associate agreed to alert the Practitioner Panel's press office.

18.15 At 2.47 pm on 28 March 2014 shortly after the FCA announced the clarifying statement in relation to the story in *The Telegraph*, Mr Read sent a draft of his proposed article to the Media Associate, having been asked to do so in view of the events of that day. The Media Associate then asked Mr Read to delay publication until Tuesday 1 April 2014 (i.e. after publication of the Business Plan). In a later email, the Media Associate explained his rationale for the delay as follows: "*The problem here is that important people are now worrying about any kind of pre-briefing, and while I personally don't think this is going to set hares running – I don't want to leave it to fate!*"

18.16 *The Independent* did not publish the story.

Thematic review in relation to the handling of unauthorised transactions

18.17 On 25 March 2014, the Media Relations team prepared a draft press briefing in relation to the announcement of the FCA's thematic review of claims that some firms were refusing to refund customers when fraudsters made unauthorised payments from their account. The draft press briefing contained a quote attributed to Mr Adamson as follows:

> "*"Victims of fraud need to be confident that they'll be treated fairly – and we want to ensure that consumers are properly protected. The rules are clear, and firms should be on notice that we'll act if they fail to meet our standards."*"

18.18 The draft press briefing was sent to the Media Associate for review and comment and, having incorporated his comments, it was also sent to the Media Manager for his review. The Media Manager replied, saying "*I've just made a couple of changes as sometimes there is a little too much use of official language, I've also made the quote a little more* [Mr Adamson] *-like.*" The quote was amended to read as follows:

> "*"It can be extremely distressing to discover that your account has been accessed by a fraudster. Consumers want to be reassured that they will not be brushed off or treated with suspicion by their bank when trying to sort out any issues that have arisen.*
>
> *The rules are clear on this issue, so I want to find out if they are being applied properly right across the board."*"

18.19 On 27 March 2014 at 9.14 am, the draft press briefing was sent to members of the Supervision Division responsible for this thematic review. The members of the Supervision review team, copied to Mr Adamson's Executive Assistant. The cover email noted:

> "*Please find attached a media briefing on unauthorised transactions, as part of the on-going work to trail the business plan. With apologies for the short notice, grateful for any comments by lunchtime, so I can get a version reflecting changes to* [Mr Adamson's] *office for sign-off today. The plan is to brief the Times tomorrow for the piece to appear in the Times money on Saturday*."

18.20 The text of the press briefing was sent to Mr Adamson for approval at 5.08 pm that evening, with the cover email stating: "*Please find attached a media briefing on unauthorised transactions – the plan is for the piece to appear in the Times money on Saturday. The team have reviewed this version, with apologies for the short notice, grateful for sign-off or any comments tomorrow morning if possible.*" This email was sent after the Media Manager' email earlier that afternoon to, amongst others, Mr Adamson, describing this as one of the stories that was to be pre-briefed (as described in paragraph 13.7 above).

18.21 Approval was received from Mr Adamson's Executive Assistant, who replied on behalf of Mr Adamson on 28 March 2014 at 8.22 am:

> "*Could we change the quote to the following, please;*
>
> > *"It can be extremely distressing to discover that your account has been accessed by a fraudster. Consumers want to be treated properly by their bank when trying to sort out any issues that have arisen.*
> >
> > *We expect banks to do the right thing in this area, so I want to find out whether that is being done across the board."*"

18.22 *The Times* was sent a written briefing including the agreed quotes. Ther*e was no* telephone review. We were told that there were, however, telephone calls between the Media Relations team and the journalist, Patrick Hosking, at *The Times* to ensure that he understood the scope of the work.

18.23 The briefing was given as an exclusive to *The Times* and appeared as a front page story online just after midnight on the night of 28 March 2014. The text of the article was published under the heading "*Banks must give fraud victims their money back*", as follows:

"*Hundreds of thousands of victims of card fraud wrongly denied refunds could finally get their money back in a crackdown on banks that try to wriggle out of paying compensation.*

The City watchdog will announce a review on Monday into whether card providers are fobbing off customers with excuses to avoid making redress.

More than 1.5 million people have cash stolen from their debt or credit card accounts each year, but one in ten is unfairly denied a refund, according to the Financial Conduct Authority (FCA). These customers suffer losses of tens of millions of pounds, which should rightly be shouldered by their bank. Others face long-winded negotiations to get back their money, and sometimes find themselves treated like criminals rather than victims.

The watchdog said that about 170,000 people a year might benefit from its crackdown. "The rules are clear on this issue, so I want to find out if they are being applied properly right across the board,"

Clive Adamson, director of supervision of the FCA, said. "It can be extremely distressing to discover that your account has been accessed by a fraudster. Consumers want to be treated properly by their bank."

The watchdog's review follows a campaign by The Times to highlight how fraud victims were being left tens of thousands out of pocket. In one case Barclaycard refused to refund a cardholder after she discovered £16,000 of fraudulent spending on her account, even though it had sent her replacement card to the wrong address.

In another, Santander suggested that the fiancé of a customer who had £10,000 stolen from her account was responsible, relenting only when police arrested one of its own employees for fraud. Even then the customer had to sign a confidentiality agreement before getting her money back.

Ross Anderson, of the University of Cambridge, who is one of the country's leading independent experts on card fraud, said that the FCA's review was "extremely welcome but long overdue".

He added: "I have cases going back seven or eight years of banks turning away genuine fraud victims with the response that 'our technology is secure, therefore it is your fault'. Many of those who work in bank fraud departments do not understand chip-and-PIN technology and assume it is safe because this is what they have been told by the engineers that sold it to them. Unfortunately this is not always the case."

Banks are supposed to refund customers who have had cash stolen from their accounts unless they can prove the victim was "grossly negligent" by failing to keep their card or card details safe. The review will cover cases where cards are allegedly stolen, online transactions where alleged stolen card details are used and so-called phantom withdrawals from cash machines.

The crackdown, while not directly affecting fraud victims who have had compensation denied, is expected to pressure banks into looking more favourably at past cases if asked to do so.

Banks could face fines if the watchdog finds evidence of serious failure to treat customers fairly. Martyn James of the Financial Ombudsman Service, which overseas disputes between customers and their banks, said: "Many of the people we speak to tell us they simply gave up pursuing a complaint about a disputed chip-and-PIN transaction because they thought there was no hope after their bank rejected it. But don't give up . . . the ombudsman may be able to help"

Card and internet fraud is worsening, according to the UK Cards Association, with £450 million stolen last year, up 16 per cent on 2012. However, as a proportion of the value of purchases on cards it is down by 4 per cent. Losses on purchases online or by phone or mail order soared by 22 per cent to £301 million.

UKCA, which represents debit and credit card providers, said that 97 per cent of claimants were given a full refund on losses. It added: "There are instances where cardholders are not eligible for a refund when investigations reveal that they have been grossly negligent or complicit with the fraudster.""

Thematic review in relation to IT resilience at banks

18.24 The pre-briefing in relation to the announcement of the FCA's thematic review of IT resilience was given to Mark Kleinman at *Sky News* as an exclusive story. We were told that the story was first discussed in the context of an interview that had been arranged between Mr Kleinman and Mr Adamson on unrelated matters on 26 March 2014. A short narrative and set of key messages was prepared by the Media Relations team and agreed with the PRA in advance, as the review was intended to be a joint piece of work.

18.25 The draft briefing included the following quote attributed to Mr Adamson:

"*"Half of us now regularly bank online and cards account for just under a half of payments made in shops, reflecting how convenient it is to move and manage your money when you want thanks to technological change.*

"But as IT systems have become the cornerstone of our everyday banking needs it is increasingly vital that they work properly and consumers aren't left financially stranded if things go wrong.""

18.26 The draft briefing was sent to Mr Adamson for approval on 26 March 2014 at 4.11 pm with the following comment:

"*Please find attached a press release announcing the review of IT resilience and board capability on IT issues at the major banks and building society. This will be formally announced in the business plan but to give stories fair prominence we want to get the notice out on Friday morning.*

I wondered if you could review the release and let me know whether you have any objections or requests for changes."

18.27 The email did not say specifically that the briefing would be given to *Sky News* as an exclusive. Mr Adamson approved the strategy in a reply email, saying that "*As with packaged accounts think we need to pre-brief practitioner and possibly other panels.*" He also said that it was a joint piece of work with the PRA and therefore that they ought to be alerted. He was informed that the PRA had signed-off.

18.28 The briefing was given as an exclusive to Mr Kleinman by email on 27 March 2014. We were told that there were then a small number of telephone calls to discuss publication date and time, but no further briefing was given.

18.29 At 12.05 pm an article appeared on the *Sky News* website on 28 March 2014 under the heading "*Bank IT Failures Probe Launched by Watchdog*". The text of the article was as follows:

"*The FCA will unveil the investigation following failures involving the industry's biggest names, Sky News can reveal.*

The City regulator will next week launch a probe into the resilience of high street banks' IT systems following a series of glitches which have threatened to further undermine the industry's image.

Sky News can reveal that the Financial Conduct Authority (FCA) will set out on Monday its intention to conduct a review of the systems of major lenders, just weeks *after the partly state-owned Lloyds Banking Group saw an IT glitch shut down half of its cash machines for several hours.*

The FCA will disclose its intention to carry out the work in its annual business plan, which details the key areas of focus for the regulator during the following 12 months.

The robustness of banks' IT systems has become an urgent priority for watchdogs amid concerns that repeated glitches are damaging already fragile consumer trust in the banking sector.

In December, Royal Bank of Scotland (RBS) suffered a systems outage on the busiest online shopping day of the year, the third time in about 18 months that such a problem had prevented customers from using cards, cash machines and online banking services.

Clive Adamson, director of supervision at the FCA, told Sky News that the IT resilience work would be a top priority for the regulator this year:

> *"To access and manage our money we depend on the banks' IT systems being reliable. But IT outages continue, interrupting key banking services.*
>
> *"We want to make sure that the banks have resilient IT systems in place that are able to cope with consumer demand, so customers aren't left financially stranded or disadvantaged."*

The regulator has the power to impose swingeing financial penalties on banks whose systems are defective, with RBS the subject of an ongoing investigation by the FCA's enforcement division into an IT crisis during the summer of 2012.

The FCA's new work will be carried out in conjunction with the Prudential regulation Authority and the Bank of England, and will examine how banks and building societies manage their exposure to IT risks.

It will also look at the level of engagement by bank boards on the issue as well as whether directors are sufficiently knowledgeable to challenge executives.

Industry sources expect the FCA's work to hasten the collective spending of billions of pounds required to modernise banks' IT systems, which have suffered from years of under-investment.

RBS has already said that it will increase its £2bn annual IT budget by £450m, with other major lenders looking at similar hikes.

The regulator, which expects its work to conclude early next year, signalled in a report last year that the growth of mobile banking by customers has outpaced banks' investment in their IT systems.

The RBS problems in 2012 prompted the FCA's predecessor, the Financial Services Authority, to write to the chairmen of the nine biggest banks and building societies to request information about their critical infrastructure and banking processes.

Industry insiders expect the watchdog to take tough action if insufficient progress is deemed to have been made on the issue since then."

Potential market impact of the pre-briefing of other thematic reviews announced in the Business Plan

18.30 On the morning of 28 March 2014, in light of the market reaction to the article in *The Telegraph*, a number of individuals within the FCA considered whether the three other pre-briefings of the thematic reviews announced in the Business Plan could impact the market and therefore ought to be clarified or revoked. At 10.27 am Ms McMillan emailed the Media Manager and Mr Adamson's Executive Assistant, referring to the list of thematic reviews that had been pre-briefed and stated:

> "*It's too late for this particular one but* [Mr Adamson's Executive Assistant] *as most of our list comes from Supervision are there any that would potentially impact the market? The one that could to my mind but I can't recall the details of it could be the unauthorised transactions one*."

18.31 At 1.29 pm Mr Adamson's Executive Assistant responded, stating that:

> "[Mr Adamson] *has questioned whether we pull the remaining press releases on the business plan? I think alone they are ok, but collectively they all have the potential to be sensationalised*."

18.32 The Media Manager also replied at 1.31 pm, stating that:

> "*We're not issuing anymore on the IT stuff –* [Mr Kleinman] *ran his piece at mid-day and we are leaving it at that. The Times had the unauth accounts piece, but I don't think they are going to run it right now. Everything else is all around consumer credit*."

18.33 The pre-briefing of the thematic review in relation to packaged bank accounts was given as an exclusive to *The Independent*. However, as set out above, the story was not published. The exclusive pre-briefing of the thematic review in relation to unauthorised transactions appeared as a front page story in *The Times* online edition just after midnight on 29 March 2014. The exclusive pre-briefing of the thematic review in relation to IT resilience at banks appeared on *Sky News* on 28 March 2014 at 12.05 pm.

Conclusions and answers to:

Question 5(c): "*Were other briefings made and if so, how were these reported*"? and

Question 5(d): "*Was the content of any briefing appropriate and did it go further than the agreed line*"?

18.34 The pre-briefings given of other thematic reviews and whether and how they were reported are set out above. There are a number of differences between these pre-briefings and that given in relation to the Life Insurance Review.

18.35 There was no issue of sensitivity already identified and considered by the Supervision team and Media Relations team. There was no telephone interview. The quotations were signed off in advance by Mr Adamson and therefore attributed to him correctly. It was possible to be sure that the briefings did not go further than the agreed line.

18.36 We are unable to conclude, however, that the pre-briefings to *The Independent*, *The Times* and *Sky News* were appropriate because in each case no consideration was given as to whether they contained price-sensitive information. The only review which took place was on 28 March 2014 after the pre-briefings had occurred.

18.37 Nevertheless unlike the briefing given to *The Telegraph*, the content and process in respect of these briefings were controlled tightly. In circumstances where the FCA is seeking to use the media as a "*tool of regulation*", control over its messaging is crucial and is addressed in the next Chapter, "*Lessons for the Future*".

CHAPTER 19

19. LESSONS FOR THE FUTURE AND SENIOR ACCOUNTABILITY

Introduction

19.1 We have set out in detail in this Report the causes and impact of the events of Thursday 27 March and Friday 28 March 2014.

19.2 In this Chapter we answer the following outstanding questions in the Terms of Reference:

> **Question 8(a): "*What lessons these events hold for the FCA's approach to security around any draft Business Plan*"?**
>
> **Question 8(b): *"What lessons these events hold for the FCA's approach to publicity and the media*"? and**
>
> **Question 8(c): "*Where senior accountability should lie*".**

19.3 We set out first where we consider senior accountability should lie. Overall, the FCA as an organisation must take responsibility for the collective and individual failings identified. We then turn to the remaining questions in the Terms of Reference, including our recommendations for the future.

Senior Accountability

19.4 We are satisfied that in deciding to pre-brief *The Telegraph*, the FCA's strategy was well-intended: to avoiding detriment to the life industry were there to be misunderstandings in relation to the nature and scope of the Life Insurance Review.

19.5 If that strategy had succeeded, any potential misunderstandings which might have arisen in any event, after the Business Plan was published or when the commencement of the Life Insurance Review became publicised in some other fashion, might have been avoided and the FCA not now subject to serious criticism.

19.6 However, the strategy and the manner in which it was pursued was 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.

19.7 We address below, the accountability of the relevant senior individuals (meaning Heads of Department and above) in alphabetical order, starting however with the Board and ExCo collectively. Notwithstanding the criticisms made below, we are satisfied that the senior individuals we criticise were intending to act in the best interests of the FCA, industry and consumers.

The Board

19.8 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.

19.9 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.

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

The ExCo

19.11 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.

Mr Adamson

19.12 The view taken on balance by Mr Adamson was that the briefing of *The Telegraph* should take place, so long as the ABI were also kept informed. Mr Adamson should have appreciated that, following the Budget announcement in particular, there was at the very least a risk that the pre-briefing to be given to *The Telegraph* could contain price-sensitive information, or that the way in which it might be reported could have a significant effect on share prices.

19.13 Even without a proper briefing from Mr Poyntz-Wright, Mr Adamson was sufficiently aware of the risk to have re-considered whether it was appropriate for a pre-briefing to be given to *The Telegraph* or for the Life Insurance Review to be included in the Business Plan at all.

19.14 Mr Adamson should have read the online article of *The Telegraph* prior to sending his email to the Media Manager at 7.41 am on 28 March saying "*Thanks – looks good*".

19.15 Mr Adamson learned of insurance companies' concerns and that share prices were falling, at the very least by 8.53 am on 28 March 2014 when he spoke to a major insurance company. Mr Adamson has told us that he appreciated that a price-sensitive issue had arisen. Accordingly, in our view he should have (i) taken steps to ascertain precisely from his team what had been told to *The Telegraph*, compared with what had been reported; (ii) contacted Ms McMillan; (iii) taken advice from the Markets Division; and (iv) escalated the fact that a price-sensitive issue had arisen to Mr Wheatley, in order that the need for a holding or clarifying statement could be addressed urgently.

19.16 Mr Adamson's Executive Assistant asked the Media Manager to provide some lines for Mr Adamson and the FCA's insurance company supervisors to use in fielding calls from insurance companies. Once received, these were amended by Mr Adamson who then asked the Media Relations team to issue them publicly. The lines prepared were inadequate, did not have input from the Review Team and it was not reasonable in our view to have left the issue of communication to the market with the Media Relations team without having consulted the Markets Division and without specifying whether an RIS was required.

19.17 Mr Adamson should not have allowed selective briefings to be given to the media and insurance companies on the morning of 28 March 2014 until advice had been taken from the Markets Division on whether such briefings were appropriate.

Mr Lawton

19.18 Mr Lawton was aware at about 9.50 am on 28 March 2014 that the FCA had provided information to *The Telegraph* which was being reported in a manner that had led to substantial falls in the share prices of insurance companies. It appeared from the article that Mr Adamson had provided the information in question.

19.19 Mr Lawton contacted Ms McMillan by telephone at 10.07 am. At that stage, neither of them was aware that the content of the article was considered by the Supervision Division to be inaccurate. Mr Lawton considered at that stage that the issue was only whether the information from the FCA about the Life Insurance Review should properly have been broadcasted via an RIS, rather than through a press interview. Mr Lawton's decision was that no clarifying statement was required. However, in that context one of the "*cons*" he took into account was the reputation of the FCA.

19.20 Notwithstanding the significant share price movements, Mr Lawton did not contact Mr Adamson or otherwise conduct further inquiry. He should have escalated the issue to Mr Wheatley and have advised urgently, having made proper inquiry.

Ms McMillan

19.21 It should not have been possible for a detailed strategy of exclusive media pre-briefings to have been developed without any involvement of Ms McMillan, and, possibly, without even her knowledge or approval. Ms McMillan should also take responsibility for the absence of adequate supervision of the Media Associate or adequate controls around media interviews.

19.22 As soon as Ms McMillan learned from Mr Lawton that a pre-briefing given by her team to *The Telegraph* had resulted in the substantial fall of share prices of insurance companies, she should have contacted, not just the Media Manager to understand what had taken place, but also Mr Adamson, and escalated the issue to Mr Wheatley.

19.23 When Ms McMillan learned from the Media Manager at or around 10.15 am on 28 March 2014 that the article in *The Telegraph* was thought to be inaccurate, she should have contacted Mr Lawton immediately to make him aware and worked with him, Mr Adamson and Mr Wheatley to do whatever was necessary urgently to clarify the market uncertainty.

Mr Poyntz-Wright

19.24 The view taken on balance by Mr Poyntz-Wright was that the briefing of *The Telegraph* should take place, so long as the ABI were also kept informed. Mr Poyntz-Wright should have appreciated that, following the Budget announcement in particular, there was at the very least a risk that the pre-briefing to be given to *The Telegraph* could contain price-sensitive information, or that the way in which it might be reported could have a significant effect on share prices.

19.25 Mr Poyntz-Wright should have spoken to Mr Adamson and explained in detail the strong reservations held by him and his team about the pre-briefing even taking place. The potential seriousness of the issues, which had been recognised explicitly, should not have been left to email.

19.26 Following the interview with *The Telegraph* Mr Poyntz-Wright should have briefed Mr Adamson and the Review Team, in particular about the focus of Mr Hyde on exit fees, and prepared them for the possibility that the article would appear in unintended, damaging terms, at a time when Mr Poyntz-Wright would be out of the office and unable to assist.

Mr Wheatley

19.27 Mr Wheatley was disadvantaged by the failures of Mr Adamson, Mr Lawton and Ms McMillan to escalate serious issues to him and takes credit for insisting that the advice given by Mr Lawton, that there was no need for a clarifying announcement, be re-visited by Mr Teasdale. It was also Mr Wheatley who then sought to co-ordinate effectively the FCA reaction from approximately 11.30 am on 28 March 2014.

19.28 Further delays, however, took place while Mr Wheatley prepared for, and participated in, a telephone call with the ABI at 1.00 pm and then raised various drafting comments and issues on the draft clarifying statement by way of emails from his Executive Assistant. Mr Wheatley should instead have insisted that all relevant individuals met in person or by telephone urgently to finalise the clarifying statement.

Lessons for the Future

19.29 Whereas we have made serious criticisms of the FCA, in the next sections we have expanded our answers to these questions to provide a number of core recommendations designed to avoid a repetition of the events in question.

Lessons for the FCA's approach to any draft Business Plan

19.30 Our understanding from interviews is that the revised form of the Business Plan was useful, for example in setting out transparently for industry the planned thematic reviews for the year ahead.

19.31 The lesson learned from these events, however, is that an announcement of the activities of the FCA as conduct regulator may have consequences which are not appreciated by the FCA and that even high-level information, depending on how it is worded, may be price-sensitive.

Recommendation – Procedures

19.32 We recommend 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.

19.33 The Markets Division should be included in the development of the improved procedures, which should have due regard to the good practice points in Market Watch Issue No.s 21, 27 and 37 including providing staff with scenario-based training, ensuring specific limitations on those that can access price-sensitive information and disseminate it, the creation of insider lists in appropriate cases and the carrying out of leak inquiries.

19.34 We recommend in this context that the FCA consult with the PRA and one or more of the parties to the Industry Regulator Guidelines, to understand what comparable policies and training they have in place in order to comply with those guidelines.

19.35 We recommend also that Internal Audit review the approach of the Supervision and Communications Divisions to the identification and handling of price-sensitive information, as was done earlier in the year in relation to the UKLA.

Recommendation – the Business Plan

19.36 We recommend that the FCA proceed on the basis that the contents of the Business Plan are potentially price-sensitive. Those from the relevant divisions providing input into the Business Plan should address specifically the issue of price-sensitive information at the time they propose wording for inclusion and confirm with the relevant development team that the material is not price-sensitive.

19.37 We recognise that in some cases consultation about the content of the Business Plan with the ABI (or equivalent industry body) and the Statutory Panels may be necessary. Price-sensitive information should not be shared other than where necessary for legitimate purposes. In those cases, the FCA must ensure that there are suitable controls and dealing restrictions in place.

19.38 The final version of the Business Plan should only be made available publically to all market participants at the same time.

Recommendation – Thematic Reviews

19.39 The FCA has learned from these events that it should not have any working assumption that information relating to the commencement of thematic reviews is not price-sensitive.

19.40 We recommend that the relevant review team address the issue of price-sensitive information in any assessment of a potential thematic review and that the issue is included as a specific consideration or potential implication in any paper submitted to the DSRC for approval.

19.41 Following approval by the DSRC, a member of the review team should be accountable for monitoring price-sensitive issues in a relevant review, with this question being readdressed when the time comes for an assessment of its inclusion in the Business Plan or in any announcement.

19.42 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.

Recommendation – Pre-Briefings of Thematic Reviews

19.43 As described in Chapter 8, the FCA has proceeded on the basis that there should be no pre-briefings of the announcement of market studies, taking into account the risk of price-sensitive information being included. The FCA needs to satisfy itself, in each case, that a different approach is justified in relation to the announcement of any thematic review.

19.44 Based on the interviews we have conducted, we can understand that consultation about the nature and scope of proposed thematic reviews with the ABI (or equivalent industry body) and the Statutory Panels serves a useful purpose. Price-sensitive information should not be shared other than where necessary for legitimate purposes. In those cases, the FCA must ensure that there are suitable controls and dealing restrictions in place.

19.45 We are not convinced, however, that pre-briefings of forthcoming announcements of thematic reviews (including pre-briefings to the media) are necessary. To the extent, therefore, that such pre-briefings continue, the question of price-sensitivity should be addressed specifically in advance and a pre-briefing should only proceed if the relevant team is satisfied that there are no issues. The approach at all times should err on the side of caution.

19.46 The views of the Markets Division should be sought where there is any doubt. This in turn would require a detailed internal briefing from the relevant sector specialist. We address the question of controls to be adopted in any media pre-briefings at paragraphs 19.59 and 19.60 below.

Lessons for the FCA's Approach to Publicity and the Media

19.47 In a report to the FCA Board on 1 April 2014, the Practitioner Panel commented on the "*inherent danger in the FCA's desire to court headlines to raise the profile of its work*" and stated that the events of 28 March 2014 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.*"

19.48 Those we interviewed from the Practitioner Panel, the Markets Panel, the Small Businesses Practitioner Panel, the ABI and insurance companies, told us that they had expressed concerns to the FCA, in various degrees, at the content and tone of the FCA's external communications, whether they be in press releases or interviews.

19.49 There was concern also, among some interviewees, that the FCA was at times too focused in its communications on beneficial outcomes for consumers, without having regard, for example, to regulatory principle 4, that consumers should take responsibility for their decisions. There was concern among some that the FCA was not taking into account the impact which its messaging might have on an industry whose shareholders in turn are consumers.

19.50 There was on the other hand, an understanding among some interviewees that effective media communications can assist the FCA to meet its statutory objectives. The Consumer Panel, for example, told us that the FCA's communications had a role to alert consumers about "*scams*" and to act as a deterrent.

19.51 The FCA's position is that it does not seek to sensationalise its work and that understandably, the work of a conduct regulator is likely to attract headlines that from time to time portray a negative view of the industry.

19.52 The FCA referred us to the survey published on 15 July 2014 by the Practitioner Panel, which concluded that industry's satisfaction with its relationship with the FCA was consistently high and that the proportion of firms surveyed who awarded the FCA a score of 7 and above out of 10 for satisfaction with their relationship with the FCA had increased from 45 percent in 2013, to 64 percent in 2014. The report stated that "*such a large improvement in satisfaction is unusual for most organizations and indicates a significant shift in perceptions.*"

19.53 The report also said, however, "*one specific criticism referred to the difference between statements made to the media or 'in speeches', compared to what was discussed with firms. The former were seen by some as 'headline grabbing' and there was a concern that such public pronouncements could undermine the relationship with the industry.*"

19.54 The FCA referred us in addition to reviews commissioned by the Communications Division from the Cicero Group in June and July 2014, which concluded, among other things, that the FCA releases stories and messages designed to deliver coverage, but not in a way that demonstrates a consistent courting of negative headlines.

Recommendation – Approach to Publicity and the Media

19.55 We consider that if its communications strategy is to be used in order to build the FCA's reputation and credibility as a regulator, the FCA should adopt a factual, evidential approach to communications, avoiding sensational headlines where possible.

19.56 Furthermore, in circumstances where the FCA is using media-handling as a tool of regulation, it is fundamentally important that it controls to the extent it possibly can the manner in which that tool is exercised and takes into account any possible unintended consequences.

19.57 We recommend that the review by Internal Audit of the internal and external communications strategy, scheduled to commence in October:

19.57.1 extends to the alignment in tone and content of the FCA's communications with all three of its operational objectives and the eight regulatory principles which it shares with the PRA;

19.57.2 includes input from the PRA and one or more other regulators, such as those party to the Industry Regulator Guidelines, on how other public bodies pursue communication strategies consistent with statutory objectives; and

19.57.3 includes input from the Statutory Panels.

Recommendation - Controls within the Communications Division

19.58 We have contrasted in this Report the control which the FCA seeks to exercise over the contents of its press releases, with the lack of control when pre-briefing the media in interviews.

19.59 We are not convinced that it is necessary to pre-brief the media in relation to forthcoming FCA announcements, including the Business Plan. The FCA needs to satisfy itself that such pre-briefings are appropriate. To the extent that the FCA wishes to pre-brief announcements to the media, it should develop a process which ensures not only that no price-sensitive information is disclosed, but also that control remains with the FCA so that no misleading impression as to the content of the announcement could be generated.

19.60 The process to be developed may involve use of approved scripts, a requirement for quotation approval and possibly even insistence on prior approval of an article. Quotes should be given and attributed only to those speaking in interviews. The use of recordings should be considered. The process to be adopted should follow the taking of advice from the Markets Division, with input from the PRA and one or more parties to the Industry Regulator Guidelines.

Recommendation – Price-sensitive Information Monitoring and Action Plan

19.61 There are currently no procedures in place to enable the FCA to monitor any market reaction to FCA communications. Even those procedures in place in relation to listed companies did not result in the Markets Division taking action in response to the significant price movements in insurance companies until some considerable time after markets had opened.

19.62 In addition, there is no plan in place to assist the FCA in dealing with the situation where the price movement in question may have been the direct result of the FCA's own communications.

19.63 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 the uncontrolled release of price-sensitive information originating from or involving the FCA. Input should be obtained from the Markets Division and one or more of the parties to the Industry Regulator Guidelines. The plan 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.

19.64 The GCD should be involved in the preparation and implementation of any such plan and assist in the decision-making. It was surprising that the FCA executives did not contact Mr Martin for his advice on the events of 28 March 2014 until it was considered that a specific legal question may have arisen.

19.65 We are aware that the FCA has already put in place improvements to its market monitoring procedures, its sign-off requirements for external communications and to its policy for the identification and handling of price-sensitive information. The latter seeks to address the particular issues in relation to price-sensitive information which might arise in the context of thematic reviews.

19.66 The FCA will no doubt take those improvements into account when considering the recommendations we have made and any further improvements required.

ANNEX

Protocol for the Conduct of the Inquiry

PROTOCOL

For the conduct of the inquiry into the disclosure on 27/28 March 2014

of the FCA's Business Plan 2014/15

A. Introduction

1. Simon Davis and Clifford Chance (together hereafter "you" or "your") have been appointed by the Non-Executive Directors of the FCA's Board to carry out an independent inquiry into the circumstances leading up to and following the briefing and disclosure by the FCA relating to its Business Plan for 2014/15.

2. The Terms of Reference set out the scope of the inquiry.

3. 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.

B. Administrative Matters

4. You will be given specific individual contacts at the FCA.

5. A dedicated email in-box for communications relating to your inquiry has been set up. You should send communications relating to the inquiry to this in-box.

6. The FCA will arrange for you to be given reasonable access to the FCA's premises in Canary Wharf.

C. Documents, other information and interviews.

(1) FCA documents: requests and production

7. You will send all requests for the production of relevant documents (to include, for the purposes of this Protocol, both documents and communications in hard copy and electronic form (such as recordings of telephone conversations or text messages)) by email to the email address referred to in clause 5 above. Such requests will set out the document or class of documents required for production.

8. Provided that the relevant documents requested are within the FCA's power, custody or possession, such documents will be provided to you (either on disc or in hard copy) as soon as possible. No such documents will be withheld from you.

(2) FCA general information requests and general explanations

9. In the event that you require other information and/or explanations as to the FCA's activities falling within the Terms of Reference, any such request will be sent by email to the email address referred to in clause 5 above.

10. The FCA will respond as soon as possible to any such request, and no such information will be withheld from you.

(3) Interviews of FCA personnel

11. In the event that you wish to carry out interviews with individuals currently or formerly employed by the FCA, you will notify the FCA (by email to the email address referred to in clause 5 above, attaching a letter from you to the potential interviewee, for the FCA to pass on to the interviewee) of the individuals whom you wish to interview.

12. The FCA will endeavour to secure the attendance at interview of all such potential interviewees who are current or former employees of the FCA. Interviews will be arranged at a mutually convenient time. You will provide to the FCA, to allow the FCA to pass on to interviewees no less than 3 working days in advance, (i) a broad outline of the topics you wish to raise with the interviewee and (ii) a list of the principal documents which you wish to put to the interviewee.

13. The FCA will provide the facilities necessary for the carrying out of those interviews. In particular, it will provide a suitable room at its premises at 25 North Colonnade or 1 Canada Square; and it will ensure that all interviews are recorded on dual recording equipment. It will also ensure that a transcript is prepared shortly after the interview, and provided on disc and in hard copy to you, to the interviewee and to the FCA.

14. Interviewees may be accompanied by a legal adviser, Human Resources or other suitable representative.

15. The information obtained by reason of the interviews may be relied upon by you in preparing your report.

(4) Third Party assistance

16. You may contact third parties directly for assistance in relation to the inquiry and the FCA will (to the extent it is able to do so) facilitate such assistance.

(5) Escalation

17. In the event that you consider that the FCA is not providing you with the cooperation or information you reasonably need, you can escalate this to HM Treasury.

D. Privilege & Confidentiality

(1) Privilege

18. It may be necessary for you to receive information which is subject to the FCA's legal privilege. The FCA will not withhold documents from you on grounds of privilege, but the FCA is not thereby waiving privilege in the documents so provided to you.

19. You may refer to privileged documents in your report, but the Non-Executive Directors will decide whether to redact parts of the final report before its publication on the basis that it refers to such privileged documents. If the Non-Executive Directors decide to redact parts of the final report on that basis, they will include in the published report an explanation of the reasons for the redactions.

(2) Confidentiality

20. You may be provided by the FCA with "*confidential information*" within the meaning of section 348 of FSMA. If so, when providing such information to you, the FCA will identify the fact that it is confidential. You may refer to such confidential information in your report. It will be for the contacts in Clause 4 to seek to obtain the consent of the person from whom the information was received and, if different, the person to whom it relates. If such consent is not obtained, you may nevertheless refer to such confidential information in the final report and the Non-Executive Directors will then decide whether to redact parts of the final report before its publication on the basis that it refers to such information. If the Non-Executive Directors decide to redact parts of the final report on that basis, they will include in the published report an explanation of the reasons for the redactions.

(3) Naming junior FCA personnel

21. Your final report will not name FCA personnel below the level of Head of Department but you will identify such personnel to the Non-Executive Directors.

E. Maxwellisation

22. 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.

23. The contacts listed in clause 4 above (1) will assist you (if so requested) in deciding which individuals, groups or organisations should be given an opportunity to make such representations, and (2) will provide you with such administrative assistance as is reasonably required by you for the purpose of conducting this Maxwellisation process.

F. Publication

24. The FCA will arrange for publication of your report on behalf of the Non-Executive Directors.

G. Governance and reporting

25. 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.

26. To the extent that you consider it necessary for the FCA to address issues relating to factual accuracy, or to address issues relating to information which may be confidential under section 348 of FSMA, you may share the relevant parts of your report with your contacts at Clause 4. These contacts will be entitled to share these with the appropriate people at the FCA for these purposes only, and only with your specific permission.