Question Set A

For victims of alleged pension and investment scams

Please note all of these points before answering:

- If you have any questions please contact Andy Agathangelou, Chair of the APPG's Secretariat, at Email

- Only reply to this question set if it applies to you.
- This Call for Evidence is being handled by the APPG's Secretariat and support staff, who will collate the evidence and provide it to the APPG's members.
- Respondents' information will only be shared as necessary to enable the successful completion of the exercise and it will not be shared beyond the scope of this Call for Evidence.

- Please note that we ask respondents to only give evidence that they are free to provide. It is entirely the responsibility of the respondent to ensure they take into account any agreement(s) they may have entered into.

- Respondents may choose to skip answering any of the questions if they wish.

- It is for each respondent to decide whether their name and/or their responses are put into the public domain.

The process to follow

- Select the question set that relates to you. You may respond to more than one question set if you have different experiences of contact with the FCA.

- Download it, as a Word document, and save it on your computer.

- Provide your answers after each question.

- Please leave blank any questions that don't apply to you or that you do not wish to answer.

- Save the completed document on your computer.

- Please email it to Andy Agathangelou, **by 5pm on Monday 6th September**, at Email

Other important points to note

- This exercise is about gathering evidence on what people think about the FCA; it is not about providing any assistance, guidance or advice on any case a respondent may have against the FCA, or any other entity.

- Respondents are asked to only provide answers to the questions given.

- Respondents are asked to not provide any supplementary evidence or documentation.

- Respondents are asked that their written response does not exceed 10,000 words in total.

Question Set A

For victims of alleged pension and investment scams

Your Details

Name:

Mark Bishop

Company/Business (if applicable):

N/A

Address including postcode:

REDACTED

Email address:

REDACTED

Mobile telephone number:

REDACTED

Permissions

- Do you give permission that your name is put into the public domain?
  - Please enter Yes or No. Yes
- Do you give permission that your response is put into the public domain?
  - Please enter Yes or No. Yes

Questions

1. Please tell us about yourself and outline, just briefly to begin with, how you came to interact with the Financial Conduct Authority?

I was an investor in The Connaught Income Fund Series 1 ('the Fund'), a collective investment scheme originally promoted and operated by Capita Financial Managers Limited ('CFM'), at the time (and now) the UK's largest third-party provider of Authorised Corporate Director, depositary, trustee and related services to the financial services sector. I am the default chair of the Fund's liquidators' committee and have played the central role in its Action Group. Prior to this I had never worked in the financial services industry or had any dealings with the FSA or FCA; so my relationship with the regulator came with no preconceptions, good or bad, and no agenda.

My first contact with the Financial Services (now Conduct) Authority took place on or around 4 July 2012, prompted by me identifying evidence of misconduct and regulatory failure in relation to the Fund, which had been suspended some four months earlier.

2. What did you invest in; and when; and what went wrong?

In January 2010 I invested in The Connaught Income Fund Series 1 (originally named The Guaranteed Low-Risk Investment Fund Series 1).

3. If you're happy to mention it, how much money did you invest, and how much of that money do you have left?

I invested £300,000. Between the Fund's suspension in March 2012 and late 2018, approximately 75 percent of that capital was returned through recoveries (including litigation) by the liquidators and a partial redress scheme negotiated between the FCA and Capita plc, which had owned the Fund's original Operator, CFM, under which 'up to £66m' (in fact, around £57m) was paid to investors.

Unfortunately I and other investors also lost significant amounts of income or returns on our capital. The Fund guaranteed an annual income of a little over eight percent, roughly in line with the long-run returns of investment into a vanilla all-share tracker and the eight percent figure used by the Financial Ombudsman Service when calculating interest on redress payouts. Such a rate of return, applied to the outstanding balance and compounded from the time the investment was made to date, would come to a larger figure than the principal invested.

I would argue that our forfeit returns are greater even than this, because eight percent or thereabouts is appropriate to a highly liquid investment that pays periodic distributions and that allows near-immediate access to the capital if required. The Fund turned out to be hugely illiquid, and

it is reasonable to expect to receive an illiquidity premium. My private equity investments return around 35 percent a year and my angel investments north of 50 percent. The Fund has turned out to be less liquid than the former and only slightly more liquid than the latter.

Over and above the returns on capital, I and others who invested in the Fund have suffered further financial harms. Some have experienced consequential losses arising from the inability to access income or capital while others, me especially, have incurred very substantial time costs investigating what happened and campaigning for appropriate remedies.

Finally, in my case there's also the question of future career earnings. Once it became clear that the Fund failed because of a toxic combination of criminality, negligence and cover-up spanning scammers outside and on the periphery of the regulatory perimeter, a large firm very much within it, and the regulator, I realised that it would take a very specific combination of skills, determination and time to unpick it; I couldn't see anyone else suitably equipped stepping up to lead the process, so I did so. In deciding to devote myself to that fight, I walked away from a very well-paid career, including a hugely promising new business that, it soon became clear, would not receive the time or investment it deserved while I poured time into fighting for the interests of the 2000 victims and rebalanced my capital to provide me with sufficient passive income to be able to give up paid work for a time. I'm very fortunate to have been able to build up sufficient financial resources to give me that option; but that good fortune reflects the income I'd been earning, and is therefore a measure of the future earnings I chose to sacrifice in order to stand up for what's right.

Back then, I could never have imagined that I would still be fighting, more than 10 years later. Had I done so, I wonder whether I might simply have written off my losses and left my fellow investors to sink or swim. But actually I'm pleased I persevered: in doing so I have met people and been exposed to thinking that I would otherwise not have encountered, and I have also developed a level of understanding of the regulatory flaws that made possible not just high-profile cases such as Connaught and LCF and the many instances of mistreatment of SMEs by banks but also dozens of other scams and 'mis-selling'[1]. I now recognise that the path I've travelled on has put me in an almost uniquely advantaged position when it comes to making the case for reform, which in turn places a moral obligation on me to do so.

This career path means that I have spent the years from my early 40s to early 50s - for most men, our peak earning period - largely doing voluntary investigatory and campaigning work. I now find myself, aged 53, relatively unemployable, at least at the level at which I was working when the Fund was suspended, let alone where I might reasonably have expected to have progressed to a decade or so later, had I followed the trajectory I was on.

I took this route willingly, aware of the risks and possible costs; but it is absolutely clear that the Fund failed largely or wholly because of extensive regulatory failure (I believe also cover-up), that a reasonably competent regulator acting in good faith on the information and with the powers available to it at the time would have prevented the Fund from coming into existence and (even if it had failed to do so) would have closed it down long before I invested, and that the redress received

[1] a regulatory euphemism for fraud, usually by misrepresentation or material omission

by investors to date would never have been secured without the work I've done. For these reasons I gently but firmly observe that the sum I've lost, including the very significant fall in income I expect to incur for the remainder of my working life, is the result of my decision to stand up for myself and others who lost money as a result of the FSA's and FCA's shortcomings, and so is down to the FCA; I therefore hope that any eventual remediation package from the FCA or the Treasury includes recognition of the exceptional losses I have suffered.

I make this point in the knowledge that the cost must fall on the financial services industry, the taxpayer or some mix of the two. The former normally benefits from complacent and captured regulation; it is right that it should from time to time have to pick up the bills for the negative externalities that flow from such laxity. And the latter voted for successive governments, of different political compositions, that created this serially incapable, opaque, unaccountable and even dishonest regulator, and consistently ignored ample evidence that it was unfit for purpose, for a very long time. So there is also a compelling case for socialising the costs. Either way, the financial costs of regulatory failure cannot continue to be borne on the narrow shoulders of the immediate victims, of which I'm one.

As a wider observation, I believe it's essential that those among the victims of financial services misconduct and regulatory failure who campaign for improvements, and the whistleblowers who try to prevent or curtail such problems, are compensated, that the redress they receive is on the generous side of fair, and that such payments are made public. I say this because I know that the path for them can be long and tortuous, and it's essential that others considering whether or not to embark on a similar journey can see that if they're right, and if they do the right thing, they will ultimately be treated well by the nation. I'm 10 years into this fight, and the principal whistleblower in the Connaught case, George Patellis, is more than 11 years in. Leaving us out in the cold sends out an appalling message to others who find themselves facing the same choices we did. For that reason alone, and not for ourselves, redress must now be swift, generous, and public.

One of the deepest injustices about financial regulation in the UK is that there is, in the main, no means by which those who lose money as a result of regulatory failure can obtain financial redress. Later in this document, I explain why I believe Parliamentary intervention to remedy this situation is not only essential for equity and natural justice but is in fact a necessary precondition for fixing the FCA.

4. What was supposed to happen, and what actually happened, as far as you know?

A complete answer to this question would exceed the word length limit for responses to the entire question set! So I will give you the short version. The Fund was marketed as a bridging loan fund: investors would lend their money to the Fund (and English Limited Partnership), which would then lend it to a diversified mix of high-quality borrowers for bridging loans. A bridging loan is recognised by the industry as a loan on a residential property in a state fit for occupation and not requiring works for which planning permission is needed, having a duration of not more than six months, intended to bridge the overlap between the purchase of a new home and the sale of a previous one. Such loans are typically more expensive than conventional mortgages - those backed by the Fund were at an APR of around 17.9 percent - providing sufficient returns to enable the Fund's investors to receive returns

of a little over eight percent and for the parties involved in operating the Fund and making the loans to generate sustainable returns. Measures were supposedly in place to limit loan-to-value ratios and ensure there were first charges on property, and guarantees were offered in respect of both income and capital.

What actually happened is described in some detail in Raj Parker's external review of the regulator's handling of the case. Briefly, the Fund was a Ponzi-style fraud in which many of the loans (which were in fact almost all development funding, a much riskier, less liquid, unregulated category of lending) were made to refinance previous, non-performing lending, or were provided to connected parties (or both), often at increasingly fictitious valuations and underpinned by little or no tangible security. Sometimes loans were 'approved' but never proceeded with, but monies were drawn down nonetheless by Tiuta plc ('Tiuta') (the party responsible for identifying and approving borrowers), or when loans were 'redeemed', proceeds were retained. Tiuta failed to operate a separate client account for these monies so they were commingled with the firm's own resources and used to meet its operating costs, including the lifestyle costs of its principals. Borrowers included convicted fraudsters and people with learning difficulties, LTV ratios were ignored, valuations were clearly fraudulent, charges on properties either absent or defective and audits negligent or dishonest.

This was made possible by the Fund's operator, CFM, taking on and promoting the product with literally no due diligence into the Fund or its counterparties and with only minimal oversight of or involvement in how the Fund actually operated, which differed materially from the description in the Information Memorandum, a regulated financial promotion. When CFM realised what had happened, it and the FSA jointly sought a new Operator so CFM could rid itself of the business - and, it hoped, any resulting liability. After two false starts (firms that agreed to take on the role but walked away within days when they spotted problems with the Fund), a new Operator, Blue Gate Capital Limited ('BGC') agreed to handle the matter. Another Capita subsidiary continued acting as custodian of client assets until the FSA could grant BGC the necessary permissions, and CFM provided a seconded employee to help BGC administer the handover. At no stage was there full disclosure by either CFM or the FSA of the problems both knew existed with the Fund. Thus new investment continued to be attracted into the Fund and the commingling and dissipation of funds proceeded unabated.

As a result, by the end of 2011 - less than four years after the Fund's launch, and despite having raised more than £100m from investors - the Fund was unable to honour the quarterly income distribution, which required less than £2m in cash, without support from another of the parties involved. The following quarter it was unable to pay, so the Fund was suspended. Between January 2011 and the Fund's suspension in March 2012, the FSA was fully aware that Tiuta had been stealing investors' money, that it was insolvent on a cashflow and balance sheet basis and that it was in breach of its capital adequacy requirements and multiple other threshold conditions.

5. What, if anything, do you believe the FCA could have done that may have prevented you from allegedly being scammed in the first place?

This is another question that could alone cause me to exceed the allocated 10,000-word limit to answer in full! I've already linked to Raj Parker's external review, which devotes 55,129 words to the topic. Like many other victims, I think it's a partial whitewash and it barely scrapes the surface in

terms of the full extent of the regulatory failure and cover-up. But even with those reservations, it identifies more than enough flaws in the regulator's performance to be confident that a reasonably competent regulator, acting in good faith on the basis of the information and powers available to it at the time, would have prevented me and almost 2000 Connaught investors being scammed. These shortcomings include (but are not limited to):

- Authorising Tiuta despite knowing that its 'corporate controller' had previously attempted to defraud HMRC by falsifying invoices and failing to supervise it to a minimally competent standard[2];
- Failing to prosecute the founder and sole shareholder of Connaught Asset Management Limited ('CAM'), Nigel Walter, for operating an illegal collective investment scheme, namely UK Land Investments ('UKLI'), a boilerroom scam that defrauded consumers of some £69m, and failing to track his actions after he applied unsuccessfully for FSA authorisation;
- Failing to act on an alert from Jersey's financial services regulator, and another from a consumer;
- Ignoring, and supposedly subsequently losing[3], alerts from three whistleblowers;
- Failing to act appropriately in response to concerns raised about the systems and governance at CFM in respect of accounting errors and alleged fraud in another collective investment scheme for which it was responsible, Arch cru[4];
- Immediately thereafter, facilitating the transfer by CFM of the Fund to at least two operators who immediately resigned upon identifying problems with the product and a third, BGC, that did not;
- Failing to act on repeated, evidenced allegations that CAM was conducting regulated business despite being unauthorised, and that promotions for the Fund were misleading - despite knowing that the firm was led by a known fraudster;
- Identifying late, and failing to act when it became aware that, Tiuta's Compliance Manager Mike Davies was also Chairman of CAM - an obvious conflict of interest, and a flag pointing to collusion between the two;
- Allowing Tiuta to be supervised by a friend and former colleague of Mike Davies - another very obvious conflict of interest;
- Ignoring evidence that BGC may have been trading while insolvent, and allowing both it and (I would argue) CAM to operate with insufficient balance sheet strength and professional indemnity insurance to meet any liabilities that might arise, a breach of the threshold conditions;
- Ignoring concerns expressed by BGC that the Fund might be trading while insolvent;
- Failing to act appropriately on a SUP15/Principle 11 alert from George Patellis, Chief Executive Officer of Tiuta, that: he had concerns about the solvency of Tiuta[5]; there were risks to client monies belonging to the Fund; Tiuta's systems and records were defective and his fellow directors were conducting themselves with a lack of probity;

[2] The firm lacked the most basic systems and procedures from the outset

[3] I do not believe they were genuinely lost. If that were so, how come the FCA knows precisely how many there were?

[4] The FSA required CFM to commission a report under Section 166 of the Financial Services and Markets Act 2000 ('Section 166 report') into its systems and processes. Even today, the FCA refuses to disclose that report in response to Freedom of Information Act requests. We suspect it paints a picture of systemic shortcomings that were never remedied, and wonder if it even identifies UCIS products, perhaps even the Fund, as an area of concern. If this is true, it casts new light on why CFM resigned its role as the Fund's Operator in 2009 and raises serious questions about the extent to which that decision may have prompted by the FSA and of how much the FSA knew about risk to investors in the Fund at that time

[5] substantiated by an independent report by insolvency specialists from BDO LLP ('BDO')

- After Patellis resigned from Tiuta and returned to his native New York and the FSA required him to return to London at short notice and deliver up to them any evidence he held that substantiated his concerns; yet when he did so, it inexplicably refused to accept handover of an entire suitcase of such documentation;
- Refusing to require Tiuta to go into administration, despite advice from BDO that this should happen, overruling an FSA employee whose clear recommendation was that an insolvency process was required;
- Thereafter, allowing Tiuta to continue to trade, further dissipating the Fund's money, relying on subsequent reports from BDO which it knew were paid for by Tiuta from the Fund's resources and which contained prominent disclaimers to the effect that those reports were based solely on inputs from Tiuta's management[6] and that BDO had undertaken no work of its own to establish the true financial position nor the deliverability of any claimed turnaround plans;
- Overruling a Supervisor who expressed the opinion that investors in the Fund should be notified of concerns about the solvency of Tiuta, not least because that firm was the provider of a guarantee to the Fund's investors which it was unlikely to be able to honour;
- Publishing a grossly inadequate and misleading 'arse-covering' statement on its website;
- Requiring Tiuta to cease all regulated (bridging loan) lending, by implication endorsing the unregulated (development finance) lending that was jeopardising the Fund's investors' money and which breached the description of the use of capital provided in the (regulated) promotions[7]. This was seemingly driven by reputational concerns - the FSA believed that its own position could be enhanced by being able to argue that the small proportion of regulated lending had ceased[8];
- Requiring Tiuta to return to the Fund the proceeds of all loan redemptions - a requirement that proves the FSA knew that such monies were being retained (theft); no attempt was made to notify the police or other law enforcement agencies of this criminality[9];
- Mistakenly believing that CAM was regulated by the Guernsey Financial Services Commission when in fact it was a UK-based company so if, as was the case, the firm should have been authorised, that authorisation should have come from the FSA itself

These are just a few examples of what happened prior to and during the Fund's life; I have not rehashed what happened after it was suspended in March 2012 since you have asked at this stage about how my losses might have been prevented, not how monies might have been recovered and steps taken to protect others and deter other misconduct. Parker's review is fairly helpful on these points up to the FCA-imposed cut-off date in March 2015. There has to date been no third-party analysis of events since then; in my view such an exercise would raise even more grave concerns about the competence and, in particular, the integrity of the regulator than Parker's one looking at the earlier period.

[6] about which, the FSA already knew there were grounds for concern

[7] The Fund's investors were never notified of this change; it was buried on Tiuta's entry on the FSA register

[8] This technique of encouraging a firm to run down regulated activity, and even to reverse a firm's authorisation, is a technique the FSA/FCA has used in other cases to create plausible deniability for itself in cases where there has been misconduct enabled by regulatory failure

[9] The FSA varied Tiuta's permission (VOP) in June 2012. The variation required Tiuta to return redemption money to the appropriate funder when a loan redeemed. This VOP was added 3 months after the Fund was suspended and 17 months after the FSA first knew Tiuta was using redemption money for its own purposes - surely evidence of the FSA trying to create an evidence trail, after the event, falsely implying that it had been on top of events

In particular, any such exercise would have to answer some very difficult questions, including:

- Why did the regulator try to pin the blame on the independent financial advisers who put clients into the Fund (despite two sets of legal advice indicating they were not culpable)?;
- Why did the FCA rule out in June 2013 using its Enforcement powers against any other parties involved (a position we know to be incorrect, since we subsequently bullied and blackmailed it into reversing its stance and found there were regulatory breaches by both operators, CFM and BGC [there were breaches by other parties that have not been subject to such investigations])?;
- Why did the FCA refuse to issue a restitution order against CFM, which had deep pockets, but obtained a Pyrrhic one against BGC, which did not?;
- Why have there been no fines, removals of permissions or from the register, or prosecutions, of any of the authorised persons (firms and individuals) involved, almost a decade on, and why have none of those outside the regulatory perimeter been prosecuted, whether for criminality or for conducting regulated activities without being authorised to do so - despite ample evidence against multiple parties?;
- Why, until the publication of the Parker review in December 2020, did the FCA refuse to acknowledge any negligence or dishonesty in its handling of the case, both during the Fund's life and subsequently - especially given that its own internal review (circulated February 2016) apparently identifies multiple failings?;
- Why is the FCA's senior leadership team now falsely claiming that Connaught investors have been compensated in full by the partial redress scheme it negotiated with CFM and Capita in November 2017 and that resulted in payments being made approximately a year later, when it is self-evident that such losses still exist?;
- Why did the FCA allegedly persuade or even compel Woodford Investment Management to use CFM as its authorised corporate director (ACD) for its flagship Equity Income Fund, given what the FCA knew about CFM because of the Arch cru and Connaught cases? And why did Chris Martin, a key member of the regulator's Complex Events Team that supposedly investigated the Fund's collapse, wind up as Compliance Manager at Woodford, where he seemingly had no problem with the choice of AFM?

I expand on a number of these themes later in this document.

6. What interaction have you had with the FCA about what happened?

As you would expect given my roles with the Action Group and the Fund's liquidators' committee, I've had extensive dealings with the FCA (and FSA before it) over the past nine and a half years, from call centre level to that of successive CEOs. I'll therefore focus on some notable events and my observations thereon, in broadly chronological order, rather than try to provide an exhaustive list.

I mentioned in response to question 1 that my first interaction with the FSA came in early July 2012 when I phoned in to report initial evidence that the Fund had failed due to a combination of misconduct and regulatory failure. The switchboard put me through to Lorraine Wadhams, who was supervising Tiuta, that being an authorised firm and the epicentre of the alleged fraud.

Her reaction to my call was unexpected, to put it mildly. She refused to accept evidence from me, or to meet with me or other members of the nascent Action Group, who had also begun to look into what had happened. The unspoken message was, 'Go away; we're in charge, and we'll decide whether and how this gets investigated.'

So unusual was her response, and so unhelpful, that I became suspicious and started to investigate. I noticed from Wadhams' LinkedIn profile that she had previously worked at a sub-prime mortgage lender called Infinity Mortgages, a name that rang a bell. So I checked the profiles of some of the Connaught nominals and soon realised she had worked there alongside Mike Davies, who was both the Compliance Manager of Tiuta and the Chairman of CAM. So Wadhams was supervising, and now presumably investigating, a firm whose Compliance Manager was a former colleague, and who may also have been the link in any suspected collusion between that firm and CAM. Could this explain why she was so reluctant to engage with an external stakeholder who might have evidence against that firm?

A few weeks later, the Action Group published a blog entry entitled *Poacher and Gamekeeper: Getting Familiar?*, which highlighted legitimate concerns about the implications for conflict of interest management at the regulator and for the regulator's investigation of what happened to the Fund.

The FSA's response to this blog was not to eliminate the potential conflict of interest by moving Wadhams but rather to engage notoriously aggressive (and expensive) libel lawyers Carter-Ruck to send me a letter threatening litigation. I pointed out that I did not own the domain name, host the website or control its content and offered to pass on the correspondence to the site's editor. I should mention that, fortuitously, a prescient member of the Action Group had anticipated the risk of litigation and had arranged for all three aspects of ownership and control of the website to be based in the United States, where freedom of speech legislation would put it largely out of reach of such claims. The editor responded to the FSA with a without-prejudice offer of a right of reply if it could demonstrate that any part of the disputed blog entry was factually incorrect. Unsurprisingly, the offer was never taken up, but questions such as how much the FSA spent on Carter-Ruck and whether threatening an Action Group that was exposing regulatory failure was an appropriate response or an acceptable use of levy monies have never been answered.

Thereafter, updates to the Action Group website often contained barbed references to its American links, trolling the FSA/FCA by pointing out that the site could not be bullied into silence about events that were (and are) uncomfortable for the regulator.

Soon after the Carter-Ruck episode, I wrote to the then Chief Executive, Hector Sants, who passed my correspondence to Nausicaa Delfas, who was the overall head of the regulator's Complex Events Team ('CET'). So far as I can determine, 'Complex' is a euphemism for 'reputationally challenging', in that CET existed to deal with cases that were politically sensitive, perhaps because there was the suspicion or actuality of regulatory failure or capture, which might make it difficult to pass them to Enforcement for investigation and action. I suspect that CET had previously been involved in cases such as Keydata and Arch cru, and know that it negotiated the widely-criticised Interest Rate Hedging Product Redress scheme (confirmed by John Swift QC's independent review, which was highly critical

of the regulator's decisions not to impose restitution orders or a redress scheme and its decision to introduce sophistication tests to the voluntary scheme that had the effect of denying redress to around a third of cases by volume but three quarters by value, for which there was no basis in law or the regulations) and was heavily involved with another contested project, the investigation into the actions of RBS' Global Restructuring Group.

I met and corresponded with Delfas and her team on a number of occasions in the Autumn of 2012. They encouraged me to pass on to them any evidence I held or became aware of, and to persuade others to do the same.

One key piece of evidence I provided to them at that time was a set of minutes of a meeting between the principals of CFM and those of CAM that took place in September 2009 in which the former shared with the latter their concerns about the Fund, which they cited as reasons for wanting to terminate CFM's role as its Operator. This was significant for four reasons:

1. The principals of CFM should have made a Principle 11 disclosure to the FSA about those concerns. If they did so, we needed to know why the FSA did not intervene to ensure the Fund was suspended, the loans redeemed and any shortfall met by CFM; and if CFM did not make a Principle 11 disclosure, it would be in clear breach of its regulatory obligations, which had profound implications for its liability to the Fund's investors;
2. Given this proof that CFM knew that there were grave problems with the Fund, we also needed to know whether those concerns were shared with or withheld from the firms they were trying to line up to take over the Operator role. If they were withheld, again that could form the basis of regulatory action against CFM;
3. We know that CFM withheld those concerns from the Fund's investors and that it misled them about the true reasons for its decision to cease being the Operator (it cited a strategic decision to move away from UCIS products). Had it told the truth, the Fund would either have been suspended or fixed. The decision to withhold this information and lie to consumers would also provide grounds for regulatory action;
4. It meant that losses incurred by investors *after* that meeting, and after BGC, were also the result of CFM's behaviour during its period as Operator, and not just those that took place prior to the meeting or during its Operatorship

I should add that the only circumstances I can envisage in which the receipt of this evidence would not be seized gratefully by the FSA and immediately used as grounds to commence an Enforcement investigation leading to the issuance of a restitution order requiring CFM to compensate the Fund's investors for the totality of their losses and to other remedies that would either have removed the firm from the register, and hence the industry, or would have removed its then leadership team and required the firm to undergo significant change under new senior managers in order to retain its permissions, would be if the regulator had been an active and engaged party in the decisions made by CFM at that time. Or, to put it more bluntly, the only reason I can think of why the FSA would not immediately go for CFM's jugular is if the FSA had endorsed or even encouraged CFM in its decision to walk away from the Fund, without disclosing the problems to new Operators or consumers. I speculate in answering question 7 about why the regulator might have wanted CFM to behave in that way.

While I stress that I have no specific evidence that this is what happened, the FSA's response to disclosure of the crucial minutes was wholly consistent with this hypothesis, and made no sense whatsoever if you believe that the regulator was and is a 'good faith actor', genuinely interested in getting redress for mistreated investors and keen to protect other consumers from authorised persons who breach regulations. I was politely thanked for providing the minutes; but that's all that happened. I had hoped, and perhaps even expected, that I would be invited in to talk about how I came by them, how I knew they were genuine, whether I could introduce them to the person who had provided them to me, whether that person might be a conduit to other evidence. None of that happened then, and none has taken place since, almost a decade later.

Rightly or wrongly, I took this as a signal that the FSA was in some way compromised. A picture was beginning to form of an organisation that wanted me to provide information not so it could investigate the firms and individuals involved but because it wanted to know what I knew, for its own reputational and risk management purposes. And indeed we now know from the Parker report that the FSA's first instincts were to scapegoat independent financial advisers ('IFAs') through whom the Fund was distributed and that a key committee, ERIC, decided as early as June 2013 that the regulator would not use its Enforcement powers against any of the firms or senior managers involved (it also recommended that this decision be communicated to investors; this never happened, and indeed the regulator continued to give the impression that it was investigating and was contemplating such action. Had we been notified of the decision at the time, we might well have taken it to judicial review.)

My response was to put more of the information in the public domain. I suggested to the Action Group website's American editor that a blog on the CFM minutes might be in order; you can read it here. Even now, I find it both alarming and deeply suspicious that the FSA/FCA did not immediately launch an Enforcement investigation, and I consider it to be one of the many flaws of the Parker report that it does not address the question of why this did not happen.

I should mention that the FCA changed a key aspect of its procedures in relation to interacting with consumers, some time after my experience with Wadhams. It instructed its phone operators not to put through calls from consumers to named departments or individuals but, rather, to direct them to its call centre. While I can't prove that this happened as a result of the abovementioned incident, I can say that it caused me immense frustration. There were several occasions when I needed to speak with FCA officers and instead had to deal with poorly recruited, ill-trained, disempowered and demotivated functionaries from the call centre, operating inflexibly to predetermined response scripts. So it did not surprise me to read in Dame Elizabeth Gloster's report into the collapse of London Capital & Finance plc that the call centre missed hundreds of opportunities to escalate upward concerns expressed by consumers about that firm and on many occasions gave them incorrect information and flawed advice.

As a result, on the occasions when I've had to speak with specific individuals from the FCA, I've had to implement a workaround: I'd phone the FCA switchboard (its personnel don't give out direct numbers) and pretend to be a senior executive from an authorised firm in order to be put through. It speaks volumes to me about the culture of the FCA that it has instituted a policy that literally

prevents its people from hearing the voices of consumers, while allowing it to continue being exposed to those of the industry.

Another touch point between the regulator and myself in Autumn 2012 was my request for there to be a review of the regulator's handling of the case. By then I was aware of many shortcomings, and I guessed there were many more of which I was as yet unaware. My motivations were two-fold:

1. If I could establish that there was regulatory failure, whether due to incompetence, dishonesty or both, evidence of the same might lead to the payment by the regulator or the Treasury of redress; and
2. Whether or not such an investigation led to financial remedies for the Fund's investors, it would provide transparency about regulatory shortcomings, which ought to lead to improvements that would result in other consumers being better protected and served in the future

Unfortunately the FSA refused, arguing that an investigation might impair its ability to investigate. Given we now know that the FSA was not actually investigating at that point, and did not intend doing so, that response was in my view dishonest. It came from Delfas, who went on to become the FCA's Chief Operating Officer. She is now acting Chief Executive Officer and Chief Ombudsman at the Financial Ombudsman Service, and I have reason to believe it is the intention of the FCA's board that this secondment will in time be made permanent. Whether this happens or not, I believe the FCA is already in breach of its obligation under Section 212(5) of the Financial Services and Markets Act 2000, which obliges the FCA to appoint to the Ombudsman a Chief Executive who is independent of the regulator.

Between then and 2014, my focus was on placing stories in the media and briefing politicians with the intention of encouraging them to ask questions of the Minister in correspondence and the House and for there to be relevant Parliamentary debates. The idea was to put pressure on the FCA to proceed with its claimed strategy, which was to lean on Capita, parent of CFM, to reach a negotiated settlement.

I met with Delfas and her direct report, Simone Ferreira, on 10 December 2014 to express my concerns about the implementation of that strategy. I doubted that Capita would pay up, because there had been no Enforcement investigation and hence the FCA did not have sufficient evidence of wrongdoing by the firm for it to believe that a restitution order, fines, prosecutions and removal of permissions would follow if it refused to compensate victims. Sadly, that fear was justified, because negotiations - which had begun in July 2014 and been extended several times - broke up without a settlement in March 2015.

Another factor in that failure which I feel I must bring to your attention as it has a bearing on my assessment of the individuals involved is an interview given by the then Chief Executive of the FCA, Martin Wheatley, to Money Marketing magazine, published on 8 January 2015 - a sensitive time for the negotiations between the regulator and Capita. In it, he said the following:

"Given the problems we have had with Arch cru and Connaught, it is interesting whether those products would have been sold in a world where there was not that commission payback. There clearly is a cost [to the RDR], but I hope there will be benefits, and one of the benefits frankly is fewer scandals that fall on the Financial Services Compensation Scheme and then on the industry."

It's my view that it was grossly inappropriate for Wheatley to make *any* public statement about the underlying causation of the Fund's collapse while a team from the FCA was engaged in protracted negotiations with the parent of the deep-pocketed authorised firm clearly responsible for those losses, let alone for him wrongly (and knowingly so)[10] to ascribe blame to IFAs. Unfortunately, Parker is silent on whether Wheatley was just a fool out of his depth or whether the interview was some kind of signal to Capita that the regulator had its back; either way, the FCA went into those negotiations without the collateral needed to succeed, and its already weak negotiating position was fatally undermined by its own CEO. Small wonder it wasted a further nine months achieving nothing of value.

The upside of this failure is that it provided us with the leverage needed to finally get the Enforcement investigation commissioned in March 2015 that should have started in 2012 (actually, it could and should have started in January 2011, when Patellis blew the whistle, or probably even in 2009 when the Operator role was resigned by CFM against a backdrop of an FSA-mandated Section 166 report following the collapse of Arch cru; but I'm going from the date on which I first provided evidence that I knew at the time constituted grounds for starting such an investigation).

In effect, the purpose of the political and media campaign between 2012 and the end of 2014, and of my correspondence with the FSA/FCA during that time, was to bully and blackmail the regulator into going down the Enforcement route: we were in effect saying, 'We've given you ample evidence of wrongdoing; if you don't act, we'll be going after you for not acting instead of the firms for their misconduct. To save yourselves, you have to throw your partners in crime to the lions. Your choice!'

The handover to Enforcement came at an interesting time, because Mark Steward had recently been appointed to lead that department. A wiry, perhaps even pugilistic Australian, Steward is, for good or ill, quite different to the other senior FSA/FCA executives I've dealt with. Many would disagree with my assessment, but he's probably the only person I've encountered at or near the top of the organisation who does not strike me as a high-functioning sociopath who smoothly trots out the party line about being a proactive, pro-consumer organisation while deploying sophisticated passive resistance to protect the regulator, industry wrongdoers or both.

Steward began attending periodic meetings of the Fund's liquidators' committee. He explained early on that he'd removed many members of the team initially tasked with the Enforcement investigation on the basis that they were conflicted, and replaced them with his own choices (some of them fellow Aussies, presumably from ASIC, where he began his regulatory career). Obviously, it's a concern those he removed were ever deemed acceptable team members, but his admission and action provided some early grounds for cautious optimism.

[10] The Parker review confirms that the FSA received not one but two sets of legal advice following the Fund's collapse confirming that IFAs were not the underlying cause of investors' losses

Unfortunately the investigation took longer than we might ideally have liked (until November 2017, two years and eight months), the Final Notice was less critical than it might have been[11] and the voluntary redress package fell far short of putting victims in the position they would have been in had they not invested in the Fund[12]. Coincidentally (or perhaps not), the settlement was followed by the award of a valuable, multi-year contract by the Financial Services Compensation scheme to Capita plc to provide outsourced claims management services. A backdoor bung from another member of the 'three Fs' regulatory family under the FCA's control, in return for Capita coughing up in controversial circumstances?

The announcement of the redress scheme was a step forward; but, critically, based on the interactions we had with Steward at the time, it was not intended to be the end of the story. Conversely, the FCA had publicly stated that other Enforcement work was ongoing - into BGC, and perhaps into other parties. Steward was forthright about the fact that he would not continue such work unless 'there was realistic prospect of material financial upside', a clear signal that we should expect further redress from his team's continuing efforts.

Sadly, this was not to be. On 18 December 2020 the FCA published its Final Notice summarising the outcome of its investigation into BGC. Ironically given the absence of a restitution order in the far more serious CFM case, there was one awarded against BGC - but only for £203,007. This was not only a derisory sum but a liability the firm could not meet: by then, its minimal balance sheet and insufficient professional indemnity insurance[13] had been dissipated, and so far there is no suggestion that the FSCS will meet the shortfall.

Worryingly, the FCA's accompanying announcement repeated the lie that the 2017 Capita settlement[14] had put investors, as closely as possible, in the position they would have been in had they not invested in the Fund. This followed the FCA's response to the Parker review, published the previous day, which misleadingly implied[15] (but did not directly state) that Connaught investors had recovered at least their initial capital. I emailed Nikhil Rathi asking him to retract those two statements and publish a suitable correction; he refused. So I submitted a formal complaint, both about the statements and the refusal to correct them. The FCA is supposed to respond to complaints having investigated, 'as quickly as possible', providing its its findings or setting out an alternative,

[11] CFM breached far more Principles than the two identified in the Final Notice

[12] The intention of the settlement was to return to investors their initial capital, less any income distributions received during the Fund's life and the amounts of capital returned since its suspension. For investors to have been put in the position they would have been had they not invested in the Fund, the income received during its life would not have been deducted and there would also have had to have been compensation for the consequential losses and opportunity costs identified in my answer to question 3

[13] the inadequacy of which ought to have resulted in it breaching its threshold conditions years ago - I would argue the firm should never have been authorised, and should certainly never have been the Operator of a £100m+ UCIS fund with known problems - raising further questions about the competence of both Authorisations and Supervision teams in respect of the Fund

[14] which actually resulted in payouts for investors in late 2018 and early 2019, due to Capita by that time being in breach of its banking covenants and having to sell business units - including, with the FCA's approval, its financial services arm, CFM included, to the Australian group, Link - in order to honour its liability under the voluntary redress scheme, combined with appalling record-keeping by some SIPP platform providers

[15] Par. 1.2: 'Although the Fund failed 8 years ago and investors have now received these funds…'

reasonable timescale, within four weeks[16]. It took the FCA almost seven months to reject my complaint. The grounds? The presumption that the statement accompanying the CFM settlement had to be right, and therefore any empirical fact that investors in the Fund were still out of pocket had to be untrue.

Obviously, this position is incorrect. If nothing else, would Steward and his team have spent several years on an Enforcement investigation into BCG if they didn't believe there were unremedied losses? My guess is that he believed he could obtain a much larger restitution order against the firm, which he could then pass on to the FSCS once the firm defaulted, resulting in the losses being socialised in the industry. If so, I speculate that BGC's management argued, not without some justification, that they were set up as the 'fall guys' by CFM - and perhaps also by the FSA - when it became clear that the Fund was toxic and CFM wanted to be out of the picture when the money ran out, as it inevitably would. If this is the case, I suspect that any attempt by Steward to secure a material restitution order would have been thrown out by the Regulatory Decisions Committee, the Upper Tribunal or a Court, on the grounds that CFM or the regulator, or both, were the underlying causes of loss. So in pursuing BGC, the FCA may have been attempting to divert attention away from its failure to pursue a restitution order against CFM - which may have been rendered impossible by its own role in the Operator handover - and thus, ultimately, been trying, ultimately unsuccessfully, to avoid the liability returning to its own door.

The interactions I've described, with the exception of me asking for a review of the regulator's behaviour in 2012, largely describe the major touch-points in the process of trying to obtain financial redress for the Fund's victims. I should also mention the other main workstream, namely the battle to encourage or compel the FSA/FCA to learn from past failings.

Having had my request for a review rebuffed in 2012, since then I have watched and learned, and noticed a number of other cases in which the regulator had not performed with the competence, proactivity or integrity that I believe the public has a right to expect. These include: the many instances of poor treatment of small businesses by banks; the tail-end of the PPI scandal; the mistreatment of whistleblowers such as Paul Moore, Nicholas Wilson, Paul Carlier, John Banerjee, Sally Masterton and Joanne Russouw; many other investment scams[17]; payment systems problems[18] and much, much more.

During this time, since the inception of the FCA in 2013, I have written to every Chief Executive of the organisation, both interim and permanent, requesting a meeting in order that I can share with them some observations about areas in which the regulator might raise its game, based on my observations in Connaught and other cases. Not one has agreed to such a meeting. Most recently, Nikhil Rathi turned me down. When he later made some public comments suggesting that he was committed to improving the FCA's diversity of thinking, I approached him again offering a much shorter meeting to discuss five easily actionable proposals aimed at achieving that goal; he refused.

[16] Complaints Scheme, par. 6.5

[17] For example: Ready2Invest; Lendy, Funding Secure and Collateral; Store First and Park First; Secured Energy Bonds; Blackmore Bond; Bentley Global and Exmount; and, of course, the big one - Woodford

[18] Authorised Push Payment Frauds (APPFs); the role of banks as enablers of fraud through opening accounts without proper checks and the role of Barclays plc in the PremierFX case

Does he really want to improve cognitive diversity? His own refusal to expose himself to diverse thinking leads me to suspect not[19].

I should mention that two CEOs eventually and reluctantly granted me meetings with direct reports. The first of these (Spring 2015) cancelled two pre-arranged appointments, the second when I was already on my way to the office. Throughout most of the presentation, he rocked on his chair, feet on a desk, sometimes picking his nose; the intended message of his body language was clear[20]. He observed that the FCA was doing just fine as it was, and there was no scope for improvement, and even parroted the FCA Public Affairs line, used extensively in early briefings of MPs, that those who invested in the Fund had been greedy and naive[21].

The second (Dec 2016/Jan 2017) was politically more astute; he claimed to take my observations seriously, but concluded that the then-underway FCA Mission Review (remember that?) would fix any shortcomings; he also suggested if I wanted the FCA to change, I should apply to become the next Chief Executive (clearly, I would never even get an interview) or, failing that, should put myself forward to be a member of the Financial Services Consumer Panel (he may or may not have been aware that I have done so several times; and one year, when the initial shortlisting was contracted out to a search firm, received an interview; I was rejected, on the grounds that the FCA 'felt I might criticise it'[22]).

I learned some years ago that the FCA commissioned an internal review into what went wrong in its regulation of the Fund from its Regulatory and Compliance Oversight ('RCO') team in June 2015; it was delivered in February 2016. I have made a number of Freedom of Information Act requests to see

---

[19] Rathi attended a Transparency Task Force online symposium on 16 September 2021 entitled *The FCA's Transformation Programme, and beyond….* TTF kindly gave me a speaking slot, which I used to present a brief summary of the points I've been trying to make to the organisation since 2014 about governance, transparency, accountability, culture, people and proactivity. Sadly, Rathi and his colleagues left the call shortly after his Q&A session, so did not see it

[20] I took it that he really did not want to be in the meeting, that he resented my presence, and that he was trying to bully me by presenting an unwelcoming facade

[21] Given that the Fund promised a similar annual return to more liquid investments such as a FTSE-All Share tracker, I consider the greed allegation unfounded. Likewise, the naivety claim is unfair, for two reasons: first, it is an important principle that consumers should be allowed to rely on financial promotions approved (and in this case also issued) by authorised firms; and second, it is a consequence of the Fund's UCIS status that it could be issued only to sophisticated, professional and high net worth investors. While they may have their own vulnerabilities, in the round they are intelligent and financially and legally literate. Among those I've met are: several QCs; one of the UK's top insolvency lawyers; a past President of the Law Society; a former Big Four audit partner; a retired Chief Financial Officer of a FTSE100 company; the Chair of a listed property firm; successful entrepreneurs from sectors such as hospitality, property development and recruitment; and a BAFTA award-winning TV producer/director. They are not easily dismissed as fools. That the FCA should gaslight and scapegoat those individuals while trying to persuade politicians and the victims that an entire office full of statutory regulators, many of them lawyers and all of them with extensive powers to demand evidence and enter premises, genuinely could not spot the fraud, is in my view indicative of the toxic culture of the organisation, and of the lack of scrutiny and accountability that has allowed it to survive for so long

[22] In fact, that's the idea: according to the Financial Services Act 2012, the FCA is 'required to consider' representations made by the Panel and to publish responses to them; so Parliament intended it to be a 'comply or explain' regime. Sadly, it doesn't seem to operate that way, with the FCA choosing the members (many of whom have obvious industry connections, and few of whom have obvious track records as consumer advocates) and using it as, at best, a sounding board, rather than giving it free rein to drive the regulatory agenda from a consumer perspective

this document, all of which were initially declined on the basis that the FCA requires a 'safe space' for discussion. The validity of this argument weakens with the passing of time and, in my view, expired when the Parker review into the same events (which I believe he based loosely on the RCO report) was published in December 2020. Eventually, the Information Commissioner's Office overruled the FCA and ordered it to disclose the document to me. At first, it provided me instead with a redacted version of a PowerPoint summary of the lessons learned that was presented to its Board. I had to ask the ICO to challenge this egregious breach of its ruling; it again ordered the FCA to disclose the requested document. This turned up just a few days before I submitted this testimony, but only up to a point: the FCA had redacted it to remove some of the most contentious passages. It argued it had a right to do citing two sections of the Freedom of Information Act:

- Section 44: it can't disclose information where prohibited from doing so by law. The relevant law being the Financial Services and Markets Act 2000, specifically Section 348. The problem with this is that FSMA says S348 applies only to information supplied to the regulator (not created in-house) and for which permission to disclose is not forthcoming from the party who provided it or to which it relates. I suspect that some of the redacted information was created in-house and know for certain that permission was not sought from the relevant parties before refusing to disclose it;
- Section 31: it has discretion to withhold information if disclosure could impair or prejudice its law enforcement activities. The flaw to this argument is that the FCA's Enforcement Director Mark Steward told me in 2021 that its investigations were complete and there would be no further actions.

I wonder what uncomfortable truths might be contained within, that the FCA doesn't want me to see? As you would expect, I will continue to press the matter with the ICO, seeking to obtain a version of the report with the sensitive passages unredacted.

It's my view that there's an overriding public interest in the full disclosure of that document. As I'm sure readers are aware, when the Parker and Gloster reports were published, the FCA committed to a transformation project aimed at remedying the shortcomings identified - which were very similar. Were these same problems identified in the RCO report, almost half a decade earlier? If they were, why were changes not made back then? And if they weren't, why was that report a whitewash?

We need to know why the process of remedying the organisational flaws that allowed the Fund to come into existence, to fail and the parties involved to get away with it - there have been no prosecutions, fines or bans, and Steward informs me there will be none - did not begin until December 2020, if indeed it started then (I have my doubts - see my answer to question 20), instead of in February 2016 or earlier. Had such measures been taken sooner, many other scams, not least

LCF, in which taxpayers face a £120 million bill, and investors are left nursing similar losses[23] - could have been prevented.

Incidentally, at one point the FCA became convinced that I had received a copy of the RCO report from an internal whistleblower. Its response, which echoes its behaviour when I identified the conflict of interest represented by Wadhams supervising Tiuta, was to threaten to prosecute me. It seems to me unlikely that the receipt of a digital copy (or a photocopy, using the employee's own printer and paper) of such a report would involve the commission of a criminal offence; and even if a technical offence had allegedly taken place, the public interest surely overrides such considerations.

Let's say - *purely hypothetically, of course* - that I *have* had sight of a draft (perhaps not the final version) of that report. And let's say it identifies many of the same problems as the Parker and Gloster reports. If that's the case, it would surely mean that the FCA board chose not to act on credible internal warnings of serious problems for almost half a decade. That would be a very grave matter indeed, especially given the number of frauds and other instances of consumer detriment that could have been prevented had it chosen to act. It might also explain why the FCA became so aggressive when it suspected I had a copy - and why, even now (March 2022) it is desperately resisting my Freedom of Information request for the final version of the report, which I can then disclose to politicians and the media.

Finally, I'd like to recount my interactions, specifically my attempts to meet, with Charles Randell and Andrew Bailey, and to have a rant about both.

Having been refused meetings with successive FCA CEOs, I decided to try for an appointment with the recently-appointed Chair, Charles Randell. My plan was to attend the FCA's 2018 annual public meeting - back then, they happened physically, not online - sit at or near the front, then when proceedings ended, approach Randell as soon as he left the stage; my thinking being that, with journalists within earshot, he would agree to meet with me. The good news is that it worked: he introduced me to his PA, Ian Runacres, who provided his card and undertook to set something up. The bad news is that the position changed when I emailed Runacres to arrange it; it seems the offer was not made in good faith.

[23] LCF collapsed some three years ago. Assuming it took a further six months to distribute the HMT compensation, someone who invested two years before LCF went under would have forfeit five years' returns on their capital at some 8% pa - around 47% after compounding. I'll round it up to 50 percent to make the maths simple. The Treasury is proposing to compensate the victims with 80 percent of invested capital, less income received during the scheme's life, and subject to a cap of £68,000 (80 percent of the FSCS's £85,000 limit). Someone who invested £20,000 two years before LCF collapsed would have forfeit around £10,000 of returns on the principal by the time the compensation is paid, making a total of £30,000. Under Treasury proposals they'll receive £16,000 - just over half the total. And someone who invested £200,000, as some did, and could reasonably expect investment returns of £100,000, a total of £300,000. They'll receive £68,000 - just over 22 percent of the total. These calculations exclude sizable time costs and expenditure incurred by those of the victims who investigated what happened, worked with the FCA and Dame Elizabeth, briefed the media, lobbied politicians and pursued a judicial review and now an appeal. And finally some people have suffered consequential losses and opportunity costs as the LCF collapse has prevented them withdrawing their money to use for other purposes, including in their businesses or for property purchases.

Now, a rant. I accept that Randell is a busy and important man, and that I'm a nobody. In the normal course of events, I would not expect him to see me, and I would understand that he has many more important calls on his time. But in the specific circumstances in which we find ourselves, I'm not a nobody: my role leading an action group and liquidators' committee for a complex investment fraud in which there has been, at a minimum, extensive regulatory failure, makes me a very important stakeholder. The FCA's leadership team should engage with me, and the many others in similar positions, in a spirit of gratitude and humility, anxious to apologise, help us, and learn from us. Until the FCA 'gets this', in my view it is doomed to keep repeating the same inevitable mistakes. If I were in a position of authority over the FCA, I would dismiss Randell for this matter alone. The arrogance and unaccountability that underpin his refusal to engage are, in my view, profoundly representative of the dysfunctional culture that prevails at the FCA, especially in relation to consumer interests, and the presence of such thinking at the very top of the organisation is an obvious barrier to change. His public binning would act as a powerful signal to FCA staff that the world is changing and that past behaviours will no longer be deemed acceptable.

Next, Andrew Bailey. Following the publication of the FCA's announcement of the Parker review, I contacted Bailey to raise a number of concerns about the choice of reviewer, the terms of reference and the protocols under which he would operate[24]. These concerns, along with my fears that the review would not lead to meaningful reform, formed the basis of a subsequent complaint. I requested a meeting with him, in part to establish whether some input could be retrospectively engineered into the specification and oversight of the review for the Fund's liquidators and liquidators' committee, but also to discuss why he was trying to achieve a partial whitewash and to establish whether a solution could be found that might work for all parties. For instance, if he feared that a rigorous review might identify evidence of a cover-up, which might lead to prosecutions, we might be able to agree to terms of reference that excluded such considerations in return for an undertaking that financial redress would be paid to the victims and a commitment to a package of reforms without the need for admission or public proof of wrongdoing. It was my understanding that the meeting would be one-on-one and that it would be conducted on a without prejudice basis.

Unusually, Bailey eventually agreed to meet, perhaps conscious of the complaint. When I arrived, I found Bailey flanked by two colleagues: his Private Secretary Toby Hall, a barrister, and an unnamed note-taker, who I later learned worked in Mark Steward's Private Office. Bailey said the meeting was on-the-record and not without prejudice. Three interesting things emerged from the interaction:

1. On the issue of redress, when I challenged him for repeating the FCA's November 2017 statement (referenced earlier in my answer to this question) that the CFM redress package had put investors in the position they would have been in had they not invested in the Fund, he accepted it was inaccurate, and agreed not to make that claim again; in short, he acknowledged that there were still unremedied losses to be dealt with;

[24] I should add that I had previously been in extensive correspondence with Charles Randell, who chaired the board sub-committee that oversaw the report, about these matters, seeking to secure stakeholder input; instead of agreeing to work with us on an open and transparent process, the FCA announced all three parameters as a *fait accompli*, with no involvement from any outside stakeholders. His chosen reviewer, Raj Parker, had been a colleague of two members of the FCA senior leadership team when they, like he, worked at magic circle City law firm Freshfields: General Counsel Sean Martin and Chief Operating Officer Nausicaa Delfas. Both were intimately involved in the events he was required to review; had he not agreed to the FCA's request to redact the names of accountable executives, I believe both would have found their positions untenable

2. When I floated the idea of the FCA compensating Connaught victims either without admission of liability or on the basis of negligence rather than misconduct, he said, 'As far as we're concerned, we've done nothing wrong; if the review finds otherwise, we'll reconsider'. This is significant for two reasons:
    a. The denial of failings is at odds with the commissioning and rumoured contents of the RCO report referenced earlier in my answer to this question. Given that it was presented to the FCA board in February 2016, less than five months before Bailey assumed office, it is implausible that he would have been unaware of it and its contents;
    b. Parker's report, despite its many shortcomings, *did* find that the FCA had done a lot wrong - it found that the regulation of the Fund and related entities was 'neither appropriate nor effective' - yet when the report was published, the FCA pivoted from denial of causation to its current, preposterous position, namely the pretence that there are no unremedied losses to be made good
3. He rejected entirely the idea of the FCA implementing any of the changes I've been advocating, either on its own or with my input, again reiterating the 'at this stage, we don't believe we've done anything wrong' argument. Given the existence of the RCO report and the need to commission the Parker one, he must surely have known that this was untrue. His refusal to set in train desperately needed reforms delayed the process of fixing the FCA, putting yet more consumers at risk of serious financial harm.

I accept that organisations are comprised of people, and that people make mistakes. I can forgive honest errors - provided, once identified, they result in contrition, offers of redress and zeal for reform. Bailey's conduct and demeanour at my one and only meeting with him was both defensive almost to the point of paranoia (he was accompanied by a lawyer, a lackey took minutes, he quickly became flustered) and aggressive, contained no hint of contrition and was dominated by point-blank refusal to acknowledge the need for redress or change, despite him having to admit, when the facts were against him, that the Fund's investors remained substantially out of pocket, the internal publication of what I understand to have been a damning RCO report and the unprecedented commissioning of not one but three independent reviews into alleged regulatory failure, the Parker, Gloster and Swift ones. It was abundantly clear to me, not least from the forced error on the 2017 redress statement, that Bailey was rattled, that he had no satisfactory answers, and that he was simply trotting out an agreed position, most likely that of the Treasury.

So, time for a rant! I see Bailey as a bloviating PR man, whose term as Chief Executive of the FCA will be judged by history as a colossal missed opportunity to fix a profoundly broken organisation. His 'mission review', which he presented at the outset to the Treasury Committee and other stakeholders as a transformational programme, did not amount to a hill of beans. I challenge any reader of my response to this call for evidence to list three meaningful improvements to financial services regulation that happened as a result of it. Despite being well trained to handle public speaking and events where questions are easily anticipated and answers heavily rehearsed, Bailey's composure fell apart in our close-contact meeting and I realised what I was dealing with is little more than a malevolent Forrest Gump, a City patsy holding back long overdue reform while glad-handing gullible politicians and selling them a convincing story.

The FCA under Bailey's leadership not only failed to prevent more, and more egregious, misconduct causes than have occurred under any previous CEO[25], but it has also been a major causative factor in the biggest for a generation, namely Woodford. Anyone who doubts the extent of the regulator's complicity in this case should read Built on a Lie, Owen Walker's excellent account of the case. He actually misses several of the regulatory failures in the case, but picks up more than enough of them for it to be impossible for any impartial reader not to reach the conclusion that Andrew Bailey is profoundly unsuited to performing a leadership role in any major organisation, let alone the central bank of the world's fifth largest economy. Incidentally, I predict that if the FCA somehow survives the fallout from this call for evidence, it will be brought down by the truth about Woodford. The failings were almost as extensive as in the Connaught case, but the number of investors and quantum of loss were an order of magnitude greater - and, crucially, the story demonstrates the FCA's boneheaded resistance to learning from past mistakes.

Bailey knew the FCA was unfit for purpose when he became its CEO: he called it 'broken' in a session with the Treasury Committee. Yet he plainly did not fix it. It matters not whether he's incompetent, wrongly believing he'd resolved its many problems, or dishonest, telling politicians he'd sorted the flaws while knowing he hadn't; there's no way someone incompetent or dishonest should be Governor of the Bank of England. I believe politicians should remove him from post, to protect the UK from systematic risk and the BoE from reputational harm and to send a powerful message to Nikhil Rathi and those who come after him: if you don't fix the FCA, you shouldn't expect to have much of a reputation, or a career, afterwards.

You may think I have a personal grudge against Bailey; you'd be right, in the sense that I consider him personally to be unfit for public office. But you'd be wrong to assume that this view is uniquely personal to me. There are a great many misconduct victims, whistleblowers and campaigners whose assessment of him is at least as negative as mine, and such views are also held by those with no axe to grind, including the Independent Financial Adviser Al Rush, who tried to help the victims of British Steel Pension Scheme, members whose savings were wrongfully transferred out on the advice of dodgy IFAs. His account of Bailey repeatedly nodding off in a crucial meeting about the scandal should in my view shame anyone who would set out to defend the regulator's leadership culture. When I first read it, I thought perhaps we should make allowances, maybe Bailey had to get up very early to make the meeting in South Wales. But no: it took place in the FCA's London head office, so it was the victims and those helping them who'd had the five-hour journey and Bailey who was on home turf. So there's no excuse.

I believe it shames us as a nation that Bailey was able to 'fail upward' from his period of reluctant leadership of the FCA into the job he has wanted all his adult life, that of Governor of the Bank of England, and it scares me that such a dubious individual is at the head of our central bank. I also question the integrity of the Court of the Bank of England, the Treasury and those members of the Treasury Committee who are close enough to the facts to be aware of Bailey's shortcomings in nodding through the appointment of such an obviously unsuitable candidate, just before the Parker and Gloster reports were published and as the Woodford implosion reached its zenith. There can be no doubt that plenty of people with the authority to stop Bailey's elevation knew what he was, and is. Yet they let him have the job. Why?

[25] The FCA itself admits the sum lost annually to investment frauds has tripled since 2018

7. How well or badly do you think the FCA have performed in your case?

I hope everything I've written in this response so far indicates that I believe the FSA and FCA have acted appallingly, whether that's in failing to perform the most basic functions of Authorisation and Supervision to prevent a £100m Ponzi fraud, in responding to repeated and credible alerts pointing to consumer detriment and in investigating, enforcing, obtaining redress and applying learning based on its past failings.

I've hinted a couple of times so far that I think some aspects of the regulator's handling of the Fund and its aftermath cross the moral boundary between innocent incompetence and wilful cover-up and inaction. I stress that I have no proof of this, but I do believe that I have reasonable grounds for suspicion. It's my view that it's unfair to make such insinuations without taking the time to explain the reasoning behind them, so I will do so here. And, again with a view to fairness, I must also point out that the Parker review (par. 18) found no evidence of wrongdoing by the regulator:

'I should make clear that as part of this Review I have found no evidence of complicity, bad faith, wilful misconduct, or dishonesty on the part of any individual working at the Regulator. I have found no evidence of any conspiracy or cover up, or any deliberate misbriefings of interested parties or inappropriate collusion with other regulators.'

Perhaps. The irony is that my suspicion that there *was* a cover-up is based on his report. While I accept that he found no 'smoking gun', in the sense of, for example, internal whistleblower testimony or an email proving collusion, I don't think he was ever going to find the same given that the review was set up in such a way that all evidence was supplied to him through an FCA email address and he was expected to make all requests for interviews with employees present and past through that regulator.

Rather, what he did discover is a lengthy series of decision points at which the FSA/FCA faced a binary choice between doing nothing and using its statutory powers; in every instance, it chose the former option. If we could create the world's most perfectly incompetent regulator, it would make every decision on the toss of a coin, totally uninfluenced by evidence or by law. In the long run, just as we should expect a fair coin to land heads-up half the time, so a genuinely incompetent regulator will decide to use its statutory powers at 50 percent of the decision points at which it has the opportunity to do so. A run of two, three, or even four or five coin tosses that land tails-up, or decision points at which a regulator chooses inaction, could be chance. But 20, 30, or 40? And the FSA and FCA have turned down more than 40 opportunities to exercise their statutory powers in consumers' interests, during the Fund's life (nearly four years), in the first three years thereafter that are also covered by the Parker review and in the seven years since the end of the period reviewed by Parker during which the FCA has continued to do the best it can to keep a lid on the case. That doesn't happen by chance; it's mathematically not credible to claim otherwise.

I'm prepared to accept that the initial errors and omissions were wholly innocent; I can believe that the decision to authorise Tiuta despite the controlling entity's history as a tax fraudster and the choice not to prosecute Nigel Walter (CAM founder) for his leading role in UKLI were consequences of the 'not just light-touch regulation, but minimal regulation' culture that the FSA was created to deliver, and that prevailed before (and in no small part caused) the Global Financial Crisis. But I simply can't accept that subsequent events were equally innocent. Anyone who doubts this should read the entirety of Parker's report (using the link I gave in my response to question 4) with this observation in mind, and ask themselves whether it's actually possible to staff a statutory body with enough stupid people for literally nobody to have spotted the need to act.

A cynic might wonder what motive the FSA or FCA might have for not doing the right thing. Again, I stress that I have no evidence, or even proof; but since I set this hare running, I feel it's my duty to offer up three credible theories:

1. Collegiate corporate culture. The FCA prides itself on an inclusive, collegiate, no-blame culture. Which sounds wonderful, until you think of it from a consumer perspective. If a 'colleague' (it's *verboten* to refer to those who work at the FCA as 'staff' or 'employees') screws up, the culture requires those around them not to judge or blame, to treat it - at most, and without embarrassing that 'colleague' - as a learning exercise. You can see where I'm coming from here: at the level of the individual, the department or the organisation, those around the problem area circle the wagons. It's a small step from this to putting external critics off the scent, and to covering up;
2. The myth of 'twin peaks' regulation. Prior to the GFC, the FSA was an omniregulator, responsible for both prudential and conduct regulation of all authorised persons (firms and individuals) in the UK. After the GFC, politicians (rightly, in my view) took the view that such a structure presents risks of conflicts of interest emerging, because the prudential side is disinclined to take measures that could create systemic risk (such as: eliminating 'bad actor' firms from certain sectors, especially those that are deemed systemically important; or reducing firms' profits through fines, restitution orders or measures designed to improve competition) and because the conduct team may be reluctant to take action against firms or individuals for actions that had been overlooked or even endorsed by colleagues in other areas, such as authorisation or supervision. It is often said that the FSA was replaced with twin peaks regulation when the FCA and Prudential Regulation Authority ('PRA') were created by the Financial Services Act 2012 and became operational in April 2013. That claim is partially true in respect of 1500 systemically important firms (mostly banks and big insurers[26]), but it is untrue of the vast majority of authorised persons in the UK, for whom the FCA continues to be the only regulator. Is it possible that its Enforcement team, both before and after the 2013 change, felt constrained in its ability to investigate parties involved with the Fund and impose a restitution order on CFM, because it was compromised by the actions and inactions of colleagues in other departments, Supervision especially, who may have endorsed and perhaps even encouraged the actions taken by CFM in 2009, or even those in Authorisations who allowed Tiuta onto the FSA register when it was so clearly unfit for admission? And could it be that they were reluctant to remove CFM's permissions because doing so would have presented them with a systemic risk in terms of both listed equities and collective investment schemes, because of the dominant position of CFM in the provision of services to those sectors?;

[26] The Prudential Regulation Authority supervises their financial stability

3. The GFC aftermath. Immediately after the late-2008 nadir of the GFC, politicians from all political parties identified lax, conflicted and non-existent regulation as causative factors, and began calling for its abolition. FSA employees risked being released into the softest City jobs market for a generation. Moreover - and I stress this is speculation; at this stage I have no proof - it may be that the establishment[27] realised that EU state aid rules prohibited it from rescuing the two big banks that were terminally insolvent, HBoS and RBS, so it embarked on a process of covert rescue, encompassing measures such as the RBS rights issue, the HBoS-Lloyds merger and a package of questionable measures aimed at rebuilding balance sheets, from manipulation of LIBOR and forex markets to the extraction of money and assets from small businesses through interest rate hedging product (IRHP) sales and RBS GRG/Lloyds Business Support Unit insolvency actions, respectively. These measures would have been made very much riskier for those involved had a genuinely independent, competent and proactive conduct regulator been created, but were made very much less challenging by the continuance of the ineffectual FSA, rebranded as the FCA, denuded of the prudential regulation of big firms, as the conduct regulator for those entities and the omniregulator for the rest of the sector. Hence, the hypothesis goes, the last thing the Establishment needed between 2009 and 2012, while the FSA was lobbying to be allowed to rebrand as the FCA and continue with those functions, was the emergence of a scandal in which it had so obviously failed in the performance of the roles it wanted to continue to perform. Put bluntly, the FSA could not credibly tell politicians that it was capable, rebranded as the FCA, of supervising non-systemically important firms and overseeing the conduct of the entire industry while simultaneously admitting that a colossal error in its supervision and conduct regulation had just crystallised in respect of the Fund. It may have desperately needed to kick the can down the road until what became the Financial Services Act 2012 could pass into statute.

I stress that the above paragraph is merely a series of hypotheses; I make no claim for their veracity, and whether you consider them right or wrong should have no bearing on the openness of your mind to the factual aspects of my testimony. Respectfully, it is not for me to determine what motivations might underpin any decisions by the FSA/FCA leadership not to act to prevent or remedy what happened with the Fund. It isn't even my job to prove that this is what happened, merely to provide some basis for my assertion that there are reasonable grounds for suspecting that this is what occurred. And I believe I have done so, using the basic truism that a genuinely incompetent regulator would make the right call 50 percent of the time, but that this one has never done so once in the entire Connaught saga.

There are some final recovery processes still underway through the Fund's liquidators. Once those are dealt with, it is my intention to ask the police to investigate the regulator's handling of the matters referred to in this document. While I'm no lawyer, my research leads me to believe that the criminal offence of misconduct in public office is committed when an officer of a public body wilfully neglects to perform his or her duties to such a degree as to amount to an abuse of the public's trust in the office holder, without reasonable excuse or justification. When I consider the consistent failure to act in respect of what happened with the Fund, whether to stop investors' monies being taken, to seek restitution or to remove bad actors through prosecution and other measures, I am absolutely certain that there's a case to be investigated. And I'm wholly determined that this will happen.

[27] meaning here banks, the Treasury and the Bank of England

8. What do you believe the FCA could have done better once they were aware that there was a problem?

I hope my answers to previous questions, 6 and 7, go a long way toward answering this one. As an overall observation, I would add this one point: I believe the regulator should take ownership of problems, instead of running away from them. When the Fund failed, the FSA should proactively have taken charge of communicating with investors, securing monies, appointing non-conflicted insolvency practitioners, and immediately begun the process of investigating what happened, with a view to identifying options for recovery (including the use of a restitution order). It should not have taken years of bullying and blackmail from us to get it to lift a reluctant finger, a tactic of passive resistance that continues even today.

Looking at the Fund in isolation, it is possible to speculate that it did not do this because the Fund's collapse was not an unexpected event or one in which it had clean hands; the FSA had many years of red flags pointing to that outcome, and it had been liaising closely with Tiuta since Patellis issued his Principle 11 disclosure in January 2011. What I've heard from my counterparts in other action groups over the years is little, if any, better; perhaps those, too, are cases in which the regulator is a participant and not just an innocent bystander?

Another area in which I suspect that the regulator could have served us better is by doing no harm, and more specifically, by not obstructing a police investigation. Early on, the Action Group decided to notify the police of our concerns about criminality in relation to the Fund. First, we went to the City of London Police, on the basis that the epicentre of any criminal activity was Tiuta, a firm located on its patch. After some reflection, CoLP decided it could not investigate. We understand (but cannot prove) that it sought guidance from the FSA about whether or not it should investigate, under the Memorandum of Understanding ('MoU') between the two; at the time, the FSA had even seconded an employee into that Police service to determine which cases should be pursued, and if yes, by which party.

We then took the case to the Metropolitan Police, on the basis that we believed there were obvious grounds to suspect that offences were committed by CAM and CFM, both of them located in the capital. It decided not to pursue the matter; we wonder, but cannot prove, whether it did so on the advice of the FSA, having contacted the regulator under the terms of the MoU between them. What we do know is that the officer we reported the matter to, Paul Whatmore, was shortly thereafter seconded to, and subsequently became employed by, the FCA. While this could of course be a coincidence rather than a pay-off, the optics aren't great. And a colleague who attended a meeting with the Met team said they used an argument we've seen the regulator use many times on politicians: 'Connaught investors were naive and greedy.' What are the odds of the same 'line to take' being dreamed up by the coppers independently and not as a result of being steered away from the case by self-serving regulators? I recently learned that the specific officer at the Metropolitan Police who closed their file on Connaught was Whatmore. While I can't prove that he was in any way influenced by the offer of a secondment that turned into a job with the FCA, it isn't a good look.

9. What would you say about the FCA's effectiveness and timeliness in taking action to protect consumers?

Again, I've covered much of this in previous answers. However, I'd like to look at it from another angle, and make the observation that the seeds of the next regulatory failure case are often planted in the embers of the previous one. In providing the FSA with the minutes of the September 2009 meeting between CFM and CAM in October 2012, I believe that I handed it the smoking gun it needed to launch a swift and aggressive Enforcement action that should have resulted in CFM or its parent Capita providing full redress to the victims and that firm either being transformed beyond all recognition under new senior managers (the old ones receiving lifetime bans) or the firm losing its permissions and hence exiting the industry.

Instead, the firm was allowed to get away with paying partial, voluntary redress six years later (£57m paid across in October 2018), with no action against any of the individuals or the firm. This meant that CFM remained in the marketplace, despite Arch cru and Connaught.

This regulatory laxity meant that CFM was able to win the mandate from Woodford Investment Management ('WIM') to be the Authorised Corporate Director ('ACD') of its new, flagship Woodford Equity Income Fund ('WEIF'), in 2014. WIM's leadership team insists that the FCA rejected proposals by the firm to use three smaller ACDs. There are widespread concerns about whether CFM[28] satisfactorily performed its fiduciary duties to Woodford Equity Income Fund investors; the FCA is now investigating[29], though there are suspicions that the investigation is at best dilatory[30] and may be artificially prolonged[31].

The Woodford case raises a further potential conflict of interest, which refers back to my answers to question 6. One member of the CET team that received intelligence from me and others in the first three years following the Fund's suspension and that held itself out to be investigating what happened (but never really did so) was Chris Martin. He subsequently surfaced as Compliance Manager at WIM. Of the 7.5 billion people on this planet, given his history, he would know more about the shortcomings of CFM than all but, at most, a couple of dozen of them. Why would a former regulator take up a senior compliance role with Woodford, knowing what he did?

Incidentally, I identified concerns with Woodford's flagship Equity Income Fund in 2016 or before and started making comments below blog posts on the fund manager's website, identifying conflicts of interest and other potential problems. As a result I was invited to visit the firm in February 2017 and offered to help them resolve the difficulties. While that offer was rejected - frankly, I believe they

[28] now rebranded as Link Fund Solutions ['LFS'] following its FCA-approved sale to the Australian Link Group in 2018, which the cash to enable Capita to honour its obligation to pay Connaught victims the sum of up to £66m agreed with the FCA the previous year

[29] despite the obvious concern that it is conflicted

[30] for example, I had extensive interactions with the WIM leadership team in 2017/8 and have emailed Steward offering to share my evidence, but have not been asked to do so

[31] the FCA must surely believe that there will be an independent review of its conduct in the case when its own investigations have concluded; you would have to be naive not to wonder whether this provides a compelling incentive to string out the Enforcement investigation as long as possible

strung me along - my interactions with them, and the documents I produced, all constitute evidence that could be helpful to the FCA. When the fund was suspended and an investigation announced, I emailed Mark Steward offering to give testimony and to provide my emails and other documents to those investigating. Despite repeating this offer subsequently, I have never been contacted. I cannot help but wonder whether the regulator is genuinely investigating, and also whether it may deliberately be extending the timeframe of its supposed investigation in order to delay the inevitable review of its own role in this spectacular fund collapse.

10. How helpful has the FCA been to you and others affected in securing redress from the alleged guilty parties, and in prosecuting or banning them so they can't do it again?

On redress, it has done too little, too late, very reluctantly, and when staring down the barrels of a metaphorical gun. Why was a restitution order not sought, and why not in 2012? Why only a voluntary, partial redress scheme, negotiated in late 2017 and fulfilled a year later? On prosecuting and banning, it has done absolutely nothing. Every single perpetrator and enabler is still out there, at liberty to do it again. And the Capita/Link guys have done just that, resulting in Woodford customers losing billions of pounds, and being deprived of access to their savings for years. I find all this grossly unacceptable.

11. What are your thoughts on whether the FCA lacks the powers that it needs; or conversely, that it doesn't make good use of the powers it already has?

If I could wave a magic wand and turn the FCA into a highly capable, proactive, honest, transparent and accountable regulator, there are some additional and improved powers I would ideally like it to have. However, right now, I would be vehemently opposed to it being granted them. There are three reasons for this:

1. It is not using, or is underusing, many of the powers it has. Over the years I've submitted many Freedom of Information Act requests and received some shocking information about, for example: the numbers of prosecutions for misleading financial promotions (none in the past six years) or fraud (most years, either none or one); or the frequency of issuance of restitution orders following breaches of the FCA's Principles for Business (just two, in the past six years, only one of which was actually paid). I believe it should use its existing powers to the full before being granted more[32];
2. Until changes are made to the governance, accountability and transparency of the FCA, and to its culture, there are risks that it might misuse any new powers;
3. The FCA's default response to criticism from politicians is to claim it lacks the necessary powers or that there is a lack of clarity in the regulations, in particular in relation to the definition of the regulatory perimeter. I believe what is needed is not piecemeal changes in response to FCA special pleading but rather an open and transparent discussion between

[32] The Fund is a classic example of this. There were many points, from December 2008 onward, when the FSA could and in my view should have responded to credible alerts that the Fund or the parties involved with it were in breach of regulations by using its statutory powers. To quote the regulator's website, 'The FCA has various powers under sections 97, 122A, 122B, 122C, 131E, 131FA, 165 to 169 and 284 of the Act and Schedule 5 to the CRA to gather information and appoint investigators, and to require the production of a report by a skilled person. In any particular case, the FCA will decide which powers, or combination of powers, are most appropriate to use having regard to all the circumstances'

politicians and genuine consumer representatives about what powers the FCA really needs and about the environment in which it should be operating.

12. In general terms, how would you describe what it's been like dealing with the FCA?

Hugely frustrating. I've found dealing with the FCA many times more traumatic than being defrauded. To the extent, in fact, that if I could have my time again, knowing what I now do about the regulator (both its culture/performance and the degree to which it has built layers of protection around itself), I would almost certainly write off my losses and walk away.

I've touched on culture and performance issues in some of the earlier questions and will return to them in later ones, so I'll use this one to deal with the issue of the FCA's defences, because it's actually these that make dealing with the organisation so soul-destroyingly slow and painful.

Rightly or wrongly (I believe the latter) when Parliamentarians created the FSA then the FCA, they deemed that the regulators should be exempt from civil liability, except for two very limited carve-outs: bad faith[33] and human rights breaches[34]. So far as I'm aware, neither of those carve-outs has resulted in successful litigation. It is therefore very difficult, perhaps impossible, to sue the FCA to secure compensation for losses sustained as a result of regulatory failure. I believe the time is long overdue for that exemption to be reversed, and for the Limitation Act to be waived so justice can be provided for the many legacy cases that have occurred under the current, FSMA-onward regulatory regime.

Aware of the regulator's broad exemption from civil liability, Parliament instead required there to be a Complaints Scheme that would provide a conduit through which the FCA (and other financial regulators) would be empowered to pay compensation to those who submitted valid complaints about their actions and inactions. It also required an 'investigator' to be appointed, to whom people could appeal and have their complaints independently investigated if the FCA refused to pay up.

I've already written about two complaints I've submitted and there's a separate question on the topic later, so I won't dwell on my specific experiences here. Instead I'll make some general points:

- Unfortunately, Parliament entrusted the regulators (principally, the FCA) to write the rules of the Scheme and appoint the Complaints Commissioner. The appointee cannot therefore be deemed to be independent of them;
- For four years (2016-20) the then Complaints Commissioner, Antony Townsend, criticised the regulators for setting rules for the Scheme that, in practice, prevented him from recommending compensation in cases of regulatory failure, or anything larger than *de minimis* sums, irrespective of causation;
- The regulators' response was to launch an accelerated consultation exercise in 2020 into proposed changes to the complaints scheme that would actually codify and formalise these

[33] in essence, criminality, such as misconduct in public office
[34] most likely, the right to the quiet enjoyment of one's possessions

problems, rather than remedy them. Transparency Task Force's response, to which I contributed, can be found here;

- Recently a new Commissioner was appointed. She is a controversial choice, both because of her colourful backstory, which might reasonably be expected to constrain her ability to return to a career in the legal profession or secure an equivalent role elsewhere in the public or private sector and hence may mean she's more reliant on her current appointment than is healthy, potentially limiting her ability to speak up or challenge wrongdoing, and because she is held by some to have been insufficiently critical of the Financial Ombudsman Service ('the FOS') in her previous role of Independent Assessor during a period when the FOS was exposed as failing by an edition of Dispatches. The problems identified were covered up rather than remedied, ultimately resulting in the accumulation of such a huge backlog of complaints that the Chief Executive resigned

As things stand, the rules of the Complaints Scheme mean it can't be used as a route for consumers, including investors in the Fund, to recover from the FCA the shortfall between the recoveries by the regulator and the sums they've lost. The regulators have twice extended the date by which they expect to publish consultation responses and new rules; this happened in part because the Complaints Commissioner has criticised the FCA's position (expressed initially to LCF investors seeking redress from the FCA for the shortfall between the compensation provided by the Treasury scheme and the totality of their losses) that the Complaints Scheme should not be a route to redress when regulatory failure is not the 'sole or principal' case of loss[35]. The FCA has rejected this finding, and consumer organisations are considering whether a judicial review might be possible. The costs of pursuing such potential remedies are high, and there's a huge inequality of resource. Sadly, FCA leadership has no qualms about spending large amounts of levy-payers' money, the intended purposes of which include consumer protection, to deprive consumers of valuable rights.

The best outcome for those who invested in the Fund would be the regulators backing down and turning the Complaints Scheme into a genuine route for the payment of redress in regulatory failure cases as Parliament intended. If that happens, I'm confident that Connaught victims will be compensated, whether by the FCA accepting the game's up and paying us, the Complaints Commissioner overruling it or us taking the matter to judicial review ('JR'). The next best would be the FCA being compelled to make the Complaints Scheme compliant with the law as a result of a JR. The worst outcome would be having to decide whether to commence expensive litigation, with uncertain prospects of success, on 'bad faith' grounds, more than a decade after the Fund was suspended. I would appreciate it hugely if any Parliamentarians reading my evidence would write to the FCA urging it to take the first of these paths.

This feeling that the FCA has rigged the rules in its favour is echoed in fields other than the issue of redress for regulatory failure. I've discovered that, at any one time, the Private Secretariat of the Economic Secretary to the Treasury contains either one or two seconded FCA employees. While I can't prove that any of those individuals have failed to pass on correspondence that I have sent the various holders of that post over the years, or passed it on to their employer, I also cannot be sure that this has not happened. What I do know, which concerns me greatly, is that one former holder of

[35] Given that regulatory failure leads to loss only where it enables misconduct, realistically it can never be the sole or principal cause of loss, but is always the or a enabling factor

that Ministerial office has told a mutual friend that they would have made a different public statement about the Fund than they did, had they been more honestly briefed on the issue.

During these past nine and a half years, I have had (or tried to have - they're largely insulated from the public by their staff, FCA secondees among them) dealings with almost every Economic Secretary to the Treasury. My take on the office is that many of those who've been appointed to it in recent years genuinely wanted to do a good job, came into the rule assuming that the FCA is a 'good actor' (broadly competent and honest) and discovered that the truth is more complex, after which they were moved on. I suspect that the current incumbent, John Glen, is an unfortunate outlier. It worries me that he sees himself as a cheerleader for the City and that he is wilfully ignoring compelling evidence of misconduct by the industry and its regulator alike. I believe it will be difficult, if not impossible, to remedy the longstanding problems that exist in the sector while he remains in post.

I know that the Treasury Committee has at times had a seconded FCA employee on its Secretariat. Again, I cannot prove that this has impaired the transmission of correspondence from me or other regulatory failure victims to the Committee's members or resulted in the regulator being tipped off, but I also can't rule it out. I do know that I wrote to the Committee in December 2020 urging it to launch an inquiry into the regulation of Connaught, similar to the one it conducted for London Capital & Finance, and that I have since provided additional evidence for the need for such an inquiry, but that the issue has not even been discussed by the Committee. I can't be sure whether this is the result of intervention by the FCA secondee or a political decision by the Committee Chair.

I also know that the FCA is not above misleading, or at least giving misleading impressions to, Select Committees. That's a bold claim; it's right that I should have to justify it. For now, I'll concentrate on two episodes.

For the first, I refer you to this email, originally to Mel Stride (Treasury Committee) and subsequently forwarded to Stephen Timms (Work and Pensions Committee) which shows how Mark Steward provided diametrically opposed explanations to the two committees to justify the paucity of prosecutions of financial services fraudsters.

For the second, please read my email to Mel Stride following Megan Butler's evidence session before the Treasury Committee about her role in the LCF scandal and the appropriateness or otherwise of her elevation to the role of Executive Director for Transformation at the FCA. While I accept that none of her comments was, so far as I'm aware, an outright lie, I do believe that she created a materially misleading impression when answering a number of the questions.

Finally for this section on politics, I am aware of an excellent researcher employed by a hugely supportive Member of Parliament, who was approached by the FCA's Public Affairs team about a potential move to the regulator. They were told that their role would be to 'tell us what MPs are being told about us before they get to know about it,' the obvious implication being that the job would entail persuading other MPs' staffers to provide tip-offs to the FCA about inbound casework critical to the regulator while either delaying or preventing it reaching those politicians.

These problems extend also to the FCA's governance. Over the years I've made multiple attempts to interest Chairs of the Financial Services Consumer Panel and those of the non-executive directors of the FSA and FCA supposedly appointed to represent consumer interests in the Connaught case. Their standard response is that they cannot take up individual cases; my response is that the Fund affects 2000 people, not just me, and that it throws up issues impacting more widely on the competence and integrity of the regulator - sadly, to no avail. And, of course, there's only one (nominally) Consumer Panel - but three industry ones set up under statute, and a fourth one, created informally by the FCA.

In short, I've learned the hard way that it is all but impossible for people who suffer as a result of the FCA's many shortcomings to achieve financial redress, whether through litigation or the complaints scheme, despite politicians intending otherwise; it's also exceptionally difficult to achieve traction with senior politicians, because messages are filtered through FCA secondees, or the FCA's senior team have privileged access and provide a version of events that is at times at best disputed and at worst misleading, or to harness the support of those who are supposed to hold the regulator to account from a consumer perspective.

13. What is your perception of the culture of the FCA, and what do you think about it?

Where to start? Probably by trying to be fair to individual FCA employees, many (perhaps even most) of whom do not deserve what follows. The FCA is an organisation of some 4500 people[36]. Many of them are extremely capable, many passionately want to help consumers, and some meet both criteria. But they are operating within a very specific cultural environment and are led by people who have followed very particular career paths and who are subject to very obvious financial incentives.

Last year, I watched the entirety of Dominic Cummings' evidence to two Select Committees. He described much of the UK's pandemic response as 'lions led by donkeys.' This led me to reflect on how I'd describe the FCA, were I in a similar position. Are the top brass 'donkeys' (ie stupid but fundamentally harmless)? In my view, no: I've already accused them of being high-functioning sociopaths, arguing that most are relatively intelligent, but determined to apply their skills to playing fast and loose with facts and regulations to provide cover for not performing their statutory duties.

And what of the ranks: are they 'lions'? Certainly, some are; those who stepped forward to provide testimony to this Call for Evidence strike me as such. But, sadly, I think they're the outliers; I don't detect a surfeit of bravery among those I've dealt with over Connaught. Quite the reverse, I'd describe them as depressingly complacent. Worse, some have struck me as unbelievably naive, overeducated fools, lacking in street smarts, who couldn't spot a fraud or tell when they're being strung along to save their own lives. Judging solely by their outputs, I'd therefore describe the FCA as

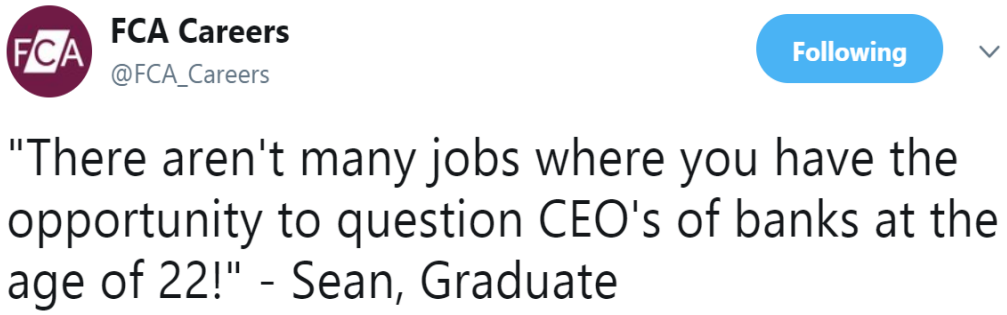
[36] assuming it's fully staffed; at the time of writing, the FCA is in the midst of a self-inflicted staffing crisis, with some departments suffering up to 50 percent vacancy rates

containing a critical mass of 'useful idiots led by high-functioning sociopaths[37]', albeit that I stress that there are some brave and capable souls within the organisation to whom neither label belongs. Any plan for fixing or replacing the regulator should consider how their skills and motivations can be utilised.

I should also stress that I'm not accusing the majority, or perhaps even many, of the FCA's staff of being idiots, in the sense of being cognitively subnormal. Rather, judging by their outputs, which in my view are often defective, I'm arguing that many of them are useful idiots in the sense that their work, which is mostly undertaken in good faith and executed to a reasonable standard, is being used to create the appearance of effective regulation without the inconvenient actuality, and that they've been naive in being hoodwinked into believing that their work is genuinely important and useful.

It's perfectly possible for intelligent people to produce defective outcomes if they're in an environment that discourages or deters them from using their capabilities effectively, or if they operate within a system prone to groupthink or other cultural biases that lead to inept thinking or flawed (or no) action.

If you dispute my assertion that it's possible to be a useful idiot without being an idiot, consider this tweet, sent by the FCA's careers team to promote its graduate training programme:



Sean is almost certainly not an idiot; he's a recent graduate, and on FCA form, probably from a Russell Group university and quite possibly from a law course, so it's likely that his IQ places him within the top decile of the UK population. But he *is* a useful idiot, in the sense that he plainly lacks the life

[37] I considered deleting these descriptions of the FCA's leadership and staff. Not because I consider them unfair (though I recognise there are some individuals for whom these descriptions might be inaccurate), but because I'm conscious that the FCA could exploit my choice of words to make out that my response, or even the entire exercise, is offensive or vindictive. It has form for this: see Andrew Bailey's comments about the 2016 New City Agenda report into the culture of the regulators. Bailey picked up on a single quotation from one respondent who claimed that when the FSA was abolished, 'all good people want to be in the PRA, all the dobbins went to the FCA.' I believe that the APPG Call for Evidence to which I'm now responding would have been unnecessary had the FCA's response to the NCA report, half a decade ago, been to accept the need for reform instead of feigning offence at the message delivered. Let's hope Nikhil Rathi reacts more constructively this time round; many of the criticisms are similar, including the observation that the majority of FCA staff may not be optimally intellectually equipped for the task at hand. If you consider the claim unreasonable, consider this: in September 2021, after the damning Connaught and LCF independent reviews, it was reported that 56 percent of FCA staff admitted they didn't understand why the FCA needed to transform. While some of this may be the fault of the leadership team watering down the message delivered to it by external stakeholders, this ignorance does point to a disturbing lack of situational awareness among FCA employees

experience and domain knowledge to present an effective challenge to the chief executive of a bank, so his role in such sessions represents the appearance of scrutiny without the inconvenient actuality. It's possible that the manager who rationalised that sending a recent graduate to perform this task is also a useful idiot, who rationalises sending Sean into unequal battle by telling himself or herself it's good to develop trainees' capabilities by giving them significant early experience; in her defence, I believe he or she is operating within a culture that places undue value on academic achievement and too little on life experience and economic incentives.

But what of those at the top, who engineer the organisational culture and operating procedures to deliver these outcomes? I've called them high-functioning sociopaths, and there's nothing in this illustration of organisational behaviour that leads me to feel uncomfortable about using that description. There is in my view zero possibility of fixing the FCA without a radical purge of these people.

To make matters worse, the FCA circles the wagons at the first hint of criticism, in my view because protecting the organisation enables it to continue to protect - as those at the top perceive it - the organisation's ability to defend the City. It is, in effect, a firewall between the public and the financial services industry - but one designed to protect the powerful from the weak, not the reverse.

The FCA's defensiveness means that anyone who challenges the complacency, groupthink and opacity is either frozen out (if internal) or briefed against (if outside); the perfect recipe for ensuring there is never meaningful change. One of the most depressing aspects of my involvement in this Call for Evidence (I'm on the Secretariat of the All Party Parliamentary Group on Personal Banking and Fairer Financial Services, and have been intimately associated with the exercise) has been interacting with decent, hard-working and motivated FCA employees who've given moving testimony about how colleagues or they themselves have been treated by management when they've challenged the organisational line on a particular issue. Some are bullied, overlooked for promotion, denied bonuses or pay rises; others are made to sit away from their team, ostracised or made redundant.

As evidence of my allegation that the FCA seeks aggressively to shut down those who seek to criticise it, I offer this example. I am aware of a manager at the FCA, who came under extreme pressure from someone much further up the organisation to remove from their team a colleague who had played a small part in an episode that resulted in the surfacing of legitimate and constructive information that proved to be embarrassing for the regulator. To the manager's huge credit, they resisted, successfully. When the APPG's Call for Evidence was announced, I asked them whether they would consider responding to the exercise and mentioning being placed under that pressure. Their reply was, 'No way - I might want to keep working!'

Elsewhere in this report I've talked about how this dynamic feeds through to organisational behaviour: the naivety when it comes to spotting wrongdoing; the reluctance to act; the instinct to deny, delay, deflect and defend.

There's also a particular irony that the FCA prides itself on being a diverse and inclusive employer, while also being one of the least diverse and least inclusive organisations I have ever dealt with. This dichotomy arises as a result of diametrically opposed understandings of what constitutes diversity and inclusion: for the FCA, it is about demographic factors (principally, protected ones; and even then, only some of these); for me, it is about path dependency and economic incentives. Put bluntly, if the FCA hires a bunch of law graduates and puts them in an office in London, it doesn't matter if half are female, some are LBGT+, some BAME, they'll still think like a bunch of law grads in a London office. And if many of them have ambitions to rotate into jobs in the financial services industry or in the professional services firms that feed off it, there must be a risk they'll act like a group of people who want to ingratiate themselves with those prospective employers.

Genuine, cognitive diversity would entail hiring more non-graduates, people who've had successful careers unrelated to the sector (in particular, those who have demonstrated the drive and ability to investigate and expose vested interests, such as detectives working on extremely high-value, complex cases, investigative journalists, intelligence officers and, yes, people who've led action groups representing the victims of financial services misconduct and regulatory failure). Since 2014 I've been trying to persuade the FCA to do this; so far, without success.

To provide just one illustration of the extent to which the FCA really does not get the basics of diversity, consider this Freedom of Information request disclosure: the FCA's own, recently-appointed Senior Adviser on the Public Sector Equality Duty is a long-standing insider, tapped up for the job, with no external candidates sought or considered for the position. How very diverse!

Incidentally, I think there's something even more fishy about this appointment than the fact it was handed to one of the FCA's own, without a competitive process: a FoI request by another campaigner revealed that there isn't even a job description. The beneficiary of this extraordinarily *laissez-faire* appointment, Georgina Philippou, achieved unintended fame in 2019 when her internal memo about the toilet habits of colleagues went viral. Could it be that Nikhil Rathi created a responsibility-free non-job and gave it to Philippou as a way of managing her out of her previous role as Chief Operating Officer without the hassle of a capability-based disciplinary procedure? If so, what does that tell us about how money is spent at the FCA, and also the economic incentives brought to bear on those working there - especially at and near the top? This episode reinforces my view that the FCA has a performance problem because it has a people problem, that it has a people problem because it has a leadership deficit, and that it has a leadership deficit because it lacks appropriate accountability.

And if you think that's an isolated case, how about another: the role of Policy Manager, Consumer Policy and Partnerships? This position involves consulting with the FCA's self-selected group of consumer organisations - Transparency Task Force has asked to join, and been refused - on policy consultations. The successful candidate *must* be 'able to draft… communications *in line with the FCA tone*' and *should* have 'experience in *developing and implementing* changes to the FCA policy framework' (my italics). Do you think it's possible they may have in mind giving the job to an FCA insider, as opposed to a dangerous free-thinker from a consumer organisation? If so, why might they be so anxious to give this role to someone who they can be sure will communicate 'in line with the FCA tone', and 'develop and implement' the FCA's policy framework, and not, for instance, policies

advocated by the consumer groups supposedly being consulted? Certainly, whether intentional or not, the signal to consumer advocates is pretty clear: don't bother applying, you're not wanted.

Rather than riff further on the FCA's people problem here, I thought it best to link to this document, which is the Transparency Task Force's response to the regulators' recent consultation on diversity and inclusion. Notably, the regulators did not ask respondents to comment on how *they* are performing against these criteria, but rather on how the *industry* is doing. We decided to ignore this omission and provide a frank assessment (see our response to question 2). It provides multiple examples of what we see as the FCA's dysfunctional corporate culture, including:

- insider and crony hires;
- lack of educational and class-based diversity
- Under-representation of certain protected but low-priority demographic groups
- London-centric world view
- political and cultural biases
- misunderstanding organisational objectives
- too close to the industry
- too distant from consumers and whistleblowers
- 'the revolving door'
- culture of secondments
- insufficient staff turnover
- bonuses for failure

It's quite a read!

14. What do you think about the possibility of conflict of interest issues at the FCA?

I hope that I've already identified a number of examples in this document, some specific to my experiences with the Fund (but illustrative of organisational flaws), others generic. These include:

- FCA personnel able to supervise, and even investigate, firms in which key positions are held by former colleagues/friends[38];
- The inherent tensions involved in being an omniregulator, which the FCA is for all non-systemically important firms;
- Governance structures dominated by those appointed by the FCA or Treasury;
- FCA control of the Complaints Scheme and appointment of the Complaints Commissioner through which consumers ought to be able to achieve redress for regulatory failure, but can't;
- Insider and crony hiring, and a cultural predisposition against hiring for diversity of experience and economic alignment;
- The economic incentives presented by the potential for revolving door appointments

[38] I should add that in addition to the Wadhams conflict, I learned last year that a member of the FSA team called in to look at Tiuta after Patellis' principle 11 disclosures was a close friend of one of the directors of Tiuta. Patellis provided evidence of this to Parker but he chose to exclude it from his review. Why?

To these I would add one more. It surely cannot be right that when the FCA is accused of regulatory failure so egregious to merit an independent review, the FCA is allowed to:

- Choose who conducts the review (in the Connaught case, choosing someone who's a former colleague of at least two of those whose work he was expected to evaluate[39]);
- Determine what he or she is paid;
- Set the terms of reference and protocols under which he or she operates;
- Require all evidence submitted to be sent to an email address hosted by the FCA;
- Require the reviewer to request all meetings with current and former employees through the FCA;
- Award itself asymmetric Maxwellisation rights[40];
- Once the report is published, award the reviewer a cushy part-time job, without advertising it, briefing it out to search consultants or considering any other candidates for the position

All these things happened in the Fund's case! I have already linked to my complaint in which all but the last of these issues is raised, and the final item is included in the 'insider and crony hires' section of the diversity consultation response.

15. Have you ever complained officially about the FCA; if so to whom? What happened, and how do you feel about what happened? What feedback, if any, have you had about your complaint? How helpful was the feedback? How long has it taken for your complaint to be processed?

I've mentioned two complaints so far in this document. The first, about Randell and Bailey trying to rig the Parker review and trying to block genuine reform respectively, resulted in this determination from the Complaints Commissioner (the FCA agreed not to provide its own decision notice first, given that the complaint was about its Chair and CEO). The second, about the FCA's misleading and false claims to the effect that investors in the Fund are harbouring no unremedied losses, has so far resulted in this decision letter from the FCA; I have appealed it to the Complaints Commissioner. She has yet to publish her final report; draft ones have in my view given rise to grounds for questioning the competence and/or integrity with which she has approached the exercise. She asks complainants to keep confidential her draft findings, and there's such a provision in the Complaints Scheme as currently drafted; but there is no such provision in the Act, nor is there any such contractual constraint between her and respondents requiring them to maintain confidentiality, so I am unclear as to enforceability. Notwithstanding this, I have opted to respect her request, for the present at least. For this reason I have not provided evidence in support of my allegation at this stage; but if anyone wants to see it, they should contact me through the APPG or Transparency Task Force and I will furnish it as soon as I am able.

[39] Nausicaa Delfas (head of Complex Events Team), Sean Martin (General Counsel)

[40] It seems to me that Maxwellisation is legitimate when a person criticised by a statutory report has the right to include their defence, or their version of events, alongside an allegation; it is less so when permitted to remove that criticism, especially when other stakeholders who might have evidence that challenges the legitimacy of that person's objections is denied the opportunity to argue the case for a criticism's retention (which is what happened with Parker's report). Also the original intent of the right was to prevent a private individual being unfairly maligned by a statutory body, where there's the potential for an imbalance of power in favour of the latter. In granting itself Maxwellisation rights in relation to Parker's report, the FCA upended this principle, turning it into a right for a statutory organisation to reject criticisms made of it by an individual - something never envisaged when Maxwellisation became commonplace following the Pergamon report

Both complaints took much longer than the Scheme rules would suggest to be dealt with; it seems the rules preventing the payment of redress to consumers when there has been regulatory failure are enforced to the hilt, whereas those on the regulator and Commissioner about timeliness of response are more honoured in the breach.

In respect of my first complaint (that the FCA controlled the Parker review in such a way as to prevent it being a transparent exercise in establishing the truth, and that the regulator had no intent of implementing anything like the scale of change needed), I believe subsequent events have vindicated my concerns. The Parker report is less than a quarter of the length of the Gloster one, despite covering a longer timeframe. He capitulated to FCA lobbying to remove the names of accountable executives, whereas Gloster not only resisted but named and criticised those officers for making such representations. He claimed not to find evidence of bad faith or cover-up, despite the compelling mathematical argument that it must have happened. He excluded late evidence presented by Patellis that a member of the FSA team investigating his Principle 11 disclosures about Tiuta had a close familiarity link to a director of that firm. And, shamefully, once the fuss died down following the report's publication, he was given what looks very much like a 'thankyou job' by the FCA - a cushy, part-time sinecure as a Senior Legal Adviser, a role that was never advertised or briefed out to search consultants, and for which no other candidates were considered[41].

I should mention that I submitted a third complaint, in December 2021. This one concerns what might appear to be a small matter, but isn't: the FCA refused to trial a small change I suggested it try making to its ScamSmart campaign, which alerts consumers to the risk of being subject to financial scams. I suggested that the ads should carry a prompt asking consumers who've seen a scam to notify the FCA. It is my view that this would have a number of advantages, including providing a powerful deterrent to prospective scammers (raising the risk of detection), providing the FCA with earlier intelligence about specific scams and raising the probability that scammed consumers might be able to secure redress from the FCA by providing an audit trail of evidence that it was tipped off about their scam but failed to take action to protect them.

The FCA initially tried to reject the main part of my complaint on the grounds that I was complaining about 'general dissatisfaction' as opposed to a specific policy decision; obviously this argument is invalid, so I successfully challenged this decision. At the time of writing, the long-overdue final response is awaited. Meanwhile, a few days after I submitted the complaint, the FCA blew £41,000 on a spoof Christmas jingle - more than £2 per play, and many times what it would have cost the regulator to trial a single, transformative change to its ongoing creative, the effect of which, I still believe, would have been to transform the effectiveness of its multi-million Pound campaign.

The idea that the FCA should reject a constructive suggestion from an engaged and informed campaigner that might have helped protect other consumers, and even attempt to reject my complaint about its decision to do so, strikes me as illustrative of the complacent and unaccountable nature of the regulator.

[41] see FoI request

More widely, there are a number of ways in which the published Complaints Scheme falls short of the obligations placed on the regulators by Parliament. These include:

- They are required to appoint 'an investigator', whereas the Commissioner is empowered only to conduct 'a paper-based review', which does not extend to interviewing any of the parties or to a search for or of primary evidence - which means, in my view, that he or she isn't actually 'an investigator' but rather, at best, 'a reviewer'. Also, the regulator sees and can challenge the entirety of the complainant's complaint and evidence, whereas the complainant is never afforded a symmetrical opportunity to see and challenge evidence put forward by the regulator, the respondent;
- Prospective complainants are required to complain to the regulator within a year of becoming aware of the matter in question;
- Complaints may be brought only by those 'directly affected' by the matter complained of, or acting directly on behalf of someone who is. So whistleblowers, among other motivated and relevant stakeholders, are disenfranchised

In addition, the Scheme rules correctly reflect the Act in that the Complaints Commissioner is empowered to appoint someone to conduct part or all of the report (provided such a person is independent of the regulator), but the current Commissioner refused to make such an appointment when I challenged her basic lack of understanding (whether innocent or wilful) of the means by which the economic loss suffered by Connaught investors might be calculated.

16. Overall, what have been the consequences to you (and if relevant to your family) as a result of what happened?

The financial cost is many millions of pounds. The emotional cost is incalculable. Low points have included:

- The suicide of Alistair Mawdsley, someone who was on the periphery of the fraud; he emailed a great many people, me among them, blaming me for the decision to end his life;
- Having to sell a much loved holiday home to provide liquidity so I could continue the fight;
- The death from cancer of one investor in the Fund who persistently begged me to get the matter resolved before he died because he didn't want his daughter, a single parent with a disabled child, to have to deal with it once he'd gone (I was unable to deliver for him);
- The recent death from cancer of Charles Rodbourne, a fellow member of the liquidators' committee and Action Group activist who had been a particularly positive, engaging and supportive ally and who was an exceptionally decent and principled man. The matter really should have been resolved long before his passing. Everything I do now in relation to the Fund is in his memory.

On a personal level, the pain caused to me by the FCA arises from a combination of anger at its failure to prevent, stop and remedy what happened with the Fund, its refusal to 'fess up and pay up' when banged to rights and, perhaps worst of all, its shameless playing fast and loose with the truth to dodge the day of reckoning in which it is either abolished or made subject to radical, externally-imposed and -verified reform.

In recent years I've done a lot of work to help other victims in regulatory failure cases, and the most upsetting aspect of that work is the fact that I knew their cases were going to happen, in the sense that I was fully aware of the problems with the regulator that makes misconduct so easy to perpetrate and so unlikely to be detected, stopped or remedied, but have been unable to persuade the FCA or politicians to do anything to change this state of affairs so others don't have to suffer as I have done - a failure for which I blame myself. Similarly, I've worked with a good many whistleblowers from the sector, and seen how their evidence was ignored or downplayed by the FCA and they were hung out to dry in much the same way as happened with George Patellis. I've had to live with the fact that I've been trying and failing to get the regulator to fix these behaviours since 2014.

This is not merely a historical problem: I know, for certain, that there are many more cases arising now, and that will happen in the months and years to come, because we are still, as a country, refusing to confront the obvious truth that the FCA is spectacularly unfit for purpose and must be either binned and replaced or reformed beyond recognition.

This might be an appropriate time to deal substantively with a point first raised under question three and hinted at elsewhere: currently it is pretty much impossible for the millions of people who've lost money through regulatory failure by the FCA to obtain compensation for their losses. Given that this Call for Evidence exists to inform Parliamentarians, I'd like to take this opportunity to ask them to revise the legislation so we do have at least one and ideally more than one way to secure such redress.

Under FSMA, both the FCA and its employees are exempt from civil liability, with narrow and (to the best of my knowledge) untested carve-outs for acts of bad faith[42] and breach of the Human Rights Act[43]. Mindful of this, Parliamentarians legislated for the creation of a Complaints Scheme (most recently in the Financial Services Act 2012), imposing no constraints on the grounds for which compensation might be recommended or paid, or on the quantum of such awards. Unfortunately they entrusted the regulators to create the Scheme rules and appoint the Complaints Commissioner. The consequences are Scheme rules that in practice bar the payment of compensation where regulatory failure is the or an underlying cause of loss and the payment of anything more than *de minimis* sums, for inconvenience or distress rather than economic loss.

There are five reasons why I believe it is essential that legislation is needed to give citizens viable paths to the payment of financial redress for the full economic losses sustained as a result of regulatory failure, both through the Courts and the Complaints Scheme:

1. Currently those losses are borne by individual consumers, who have the narrowest shoulders. Making the FCA compensate them would relieve them of this burden and pass it to a stakeholder group with deeper pockets, namely the financial services industry, through the mandatory levy;

[42] In essence, deliberate inaction or wrongful action - a very high bar

[43] There are many difficulties in bringing a claim based on the HRA that are too complex to cover here; I am happy to discuss them with any Parliamentarians who may be interested. For the present, I will simply observe that, to the best of my knowledge, no such claim has ever succeeded

2. Among consumers, those who bear the heaviest burden are those who sacrifice their livelihood or retirement to lead the process of investigating what happened and campaigning for redress and reform. As I've argued elsewhere, society derives huge benefit from their activities and it is vital that their investment of time is repaid generously should it be found that competent, honest regulation could have prevented the misconduct that they've had to unpick. Failure to do so acts as a deterrent to others performing the same role in subsequent cases[44];
3. The consequence will initially be a substantially higher FCA levy, a substantial drag on industry profits. This is to be welcomed, in that firms - which normally benefit from complacent or captured regulation - will, for the first time, be forced to bear the negative externalities of that state of affairs, resulting in them pivoting from broad acceptance of the status quo to alignment with consumer and whistleblower representatives in calling for much improved regulatory performance and accountability;
4. Politicians and other interested stakeholders will, for the first time, benefit from a robust and transparent indicator of the effectiveness of the FCA, namely the annual bill for compensating regulatory failure victims. Unable to shield itself from such claims by citing legislation or using the Complaints Scheme, the FCA would come under huge pressure to minimise them by becoming a rigorous, proactive and effective regulator - surely a desirable goal;
5. Rolling back the FSMA exemptions would also open the door to regulatory failure victims suing officers and employees of the FCA individually. While the FCA Staff Handbook indicates (1.12) that the regulator indemnifies employees against certain claims brought against them in relation to acts and omissions occurring in the course of their work, there's a carve-out for bad faith. It may be that some campaigners will seek to use that to bankrupt bad actors; if so, there would be a salutary effect on their colleagues and successors

One of the two key things I hope Parliamentarians reading my response to the Call for Evidence will act on, it's this. Creating genuine routes for those harmed by the FCA to obtain redress from it would transform the organisation's accountability and transparency and would align economic interests behind transformation, to ensure that both the regulator and its officers would be at risk of adverse consequences if they fail to perform their statutory objectives to a reasonable standard. And in the interests of equity and social justice, it is important that the Limitation Act is waived so those of us harmed before any legislative change are not time-barred from pursuing our claims.

17. If you could change three things about the FCA, what would they be?

I think there are two viable overall plans to remedy the FCA; I call them 'plan A' and 'plan B'.

Plan A is as follows:

1. Create a Royal or Truth and Reconciliation Commission in which consumers, regulators and the industry can speak freely about what has gone wrong in UK financial services regulation since the FSA came into being, an improved version of the one that took place in Australia. The focus should be on providing financial redress for the victims, removing the perpetrators

[44] indeed I've spoken with victims of financial services misconduct resulting from regulatory failure who have declined the opportunity to put together and lead action groups for precisely this reason; and, as I have myself indicated, if I could have my time again, I would not have done what I have for Connaught victims

and enablers from the industry and its regulator and identifying the optimum structure and powers for any future regulator/s;
2. Abolish the FCA;
3. Create a new regulator, or perhaps two (prudential regulation of non-systemically important firms would either go to the PRA or to a new body; conduct regulation across the board would move to a new conduct regulator). It/they would have very much improved governance, transparency, accountability and legal liability arrangements and different powers, and would be barred from employing former managers and employees of the FCA, in order to extinguish its toxic organisational culture and institutional memory

Meanwhile, plan B looks like this:

1. Introduce an oversight board that would ensure that consumer interests were always at the forefront of the FCA's activities, similar to the one to be introduced in Australia, but with a wider remit as is appropriate to the greater importance and complexity of the UK's financial services sector and the more extensive regulatory problems here. Transparency Task Force has already developed a proposal for a Financial Regulator's Supervisory Council ('FRSC'), to which I've contributed and which I wholeheartedly support. It fixes many of the FCA's governance problems and provides a path to clearing out the top team, without scaring too many horses;
2. Put in new leadership, chosen by the FRSC and hence aligned with consumer, rather than producer, interests. This should encompass, as a minimum, binning the current Board and Executive Committee. It is only by cutting off the head of an organisation that you can stand any chance of eliminating the profound conflicts of interest that currently exist, destroying organisational memory and sufficiently disorienting those remaining to be confident that what follows will not become an echo of that which has existed hitherto;
3. Introduce a genuine duty of care, to be owed by 'authorised persons[45]' to consumers. The FCA has recently consulted on what it terms 'a new consumer duty', in response to a legal obligation placed on it by the Financial Services Act 2021 to consult on whether there should be a duty of care, and to bring forth rules in accordance with the findings of the consultation. I believe that the 'new consumer duty' is not a duty of care unless accompanied by a Private Right of Action (meaning a right of consumers to sue if they lose money as a result of breach) - something the FCA is steadfastly resisting - and that the initial consultation document misdirected respondents about the legal definition of a duty of care. I am concerned that the FCA is again positioning itself as a captured, pro-industry regulator, trying to avoid the imposition on the industry of a duty of care and the empowerment of consumers, who under a genuine duty of care (or the consumer duty combined with a Private Right of Action) would gain the right to sue financial services firms that harmed them instead of being dependent on the FCA to obtain redress by means of restitution order or negotiated settlement, both of which are very rare occurrences. Transparency Task Force has submitted responses to the initial and subsequent consultations; I was lead author on both, and strongly endorse their content;
4. Establish a historic claims panel under the aegis of the FRSC to examine and recommend redress for the many victims of historic regulatory failure and capture in UK financial services, combined with a backstop of removing the FCA's broad exemption from civil liability both retrospectively and going forward and waiving its right to decline historic claims under the Limitation Act, so those who've lost money through legacy regulatory failure claims can

[45] meaning both firms and individuals that appear on the FCA register

litigate if they're unable to get redress from the historic claims panel or if their claims arise after the panel has been wound up, its work completed

As you can see, these are two quite different approaches: one 'year zero' one, and one 'evolutionary'. On balance, I prefer the latter. There are two reasons for this:

1. I think it's a marginally easier (or less difficult) sell;
2. On balance, I believe it is more likely to deliver a solution that works. The biggest risk to plan A is that binning and replacing a financial services regulator is something that happens at most every 12-15 years, and achieving it would entail a long fight followed by a further extended period of consultation, legislation and implementation. There's a risk we might eventually win the battle, but lose the war: the FCA might be replaced by something almost as bad, or perhaps even worse. After all, there are lessons in what happened in 2012/3: responsibility for prudential regulation of systemically important firms was hived off to the PRA, but otherwise, the FSA largely continued unchanged: mostly the same people, doing mostly the same things, in the same building, with a different sign above the door and with the same history of regulatory failure and cover-up that nobody wants to own up to. Small wonder it remained subject to the same cultural biases, conflicts of interest, economic incentives and governance flaws; and even smaller wonder that it delivers similarly complacent and conflicted regulation.

For clarity, I don't believe that plan B on its own would make much difference, because the same cultural problems (which in turn are about people and leadership) would remain. But, crucially, plan B represents the absolute minimal set of changes that are needed to create the governance and incentives environment in which those problems can finally be resolved. And I have no doubt that the culture created by these defective circumstances is at the heart of why it persistently fails; indeed both Dame Elizabeth Gloster and I said so when giving evidence to the committee charged with examining the Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill recently.

These are both 'grand plans' aimed at delivering fit-for-purpose financial regulation in the UK. I accept that both are multi-year projects requiring extensive political buy-in and legislation. In the meantime, I think some good work could be done, with the co-operation of the current FCA leadership team, to make the organisation much more transparent and thereby a little more accountable.

I've mentioned at several points in my testimony that the FCA ruthlessly games its compliance with requests for disclosures and Data Subject Access Requests under the Freedom of Information Act. Politically sensitive requests are delayed, refused on dubious grounds or extensively (and in my view, often unnecessarily) redacted. Meanwhile it covertly tracks and logs the activities of individual campaigners (me among them), consumer groups such as Transparency Task Force, and we know from DSARs that senior managers close to the CEO even email others forewarning them about the content of our Twitter feeds and even online meetings.

I think it would be productive for politicians to ask, or perhaps instruct, the FCA to sign up to a transparency agenda comprising pledges such as:

- Don't monitor campaigners' social media or event activity;
- Comply with all DSARs and FoI requests within the statutory deadlines;
- Appoint an independent data reviewer, acceptable to campaign groups, whose role it would be to consider and approve any proposed redactions and refusals to comply with requests
- Publish all FoI disclosures on its website, as soon as possible after disclosure (at the time of writing, nothing has been published since May 2021);
- Publish all consultation responses, except the tiny number whose authors elect to refuse permission (this is important because currently stakeholders must take it on trust that the FCA accurately reflects the balance of opinions expressed in the responses received, and because we are denied the opportunity to see and learn from others' inputs or to force into the open the positions lobbied for by industry participants);
- Publish a register of interests for every member of its industry and consumer panels to include disclosure of industry and financial interests of both, complaints/regulatory sanctions for the former and history of consumer advocacy for the latter (there are suspicions that many are not genuine consumer representatives)

18. What positives are there about the FCA that you would like to comment on?

My initial reaction is, 'you've got to be joking!' My more considered, and more generous one, is to say that some people who work at the FCA genuinely want to do a good job, and are intellectually capable of the same, given the right training, leadership and incentives. It behoves politicians to change the rules such that the preconditions are put in place that make it possible for this potential to translate into performance.

19. Do you believe there should be spot checks by the FCA on regulated and/or unregulated entities, perhaps similar to the spot-checks by VAT inspectors?

I think there could be value in this idea, provided the FCA's culture and people problems were resolved such that it employed more people who were streetwise, astute and proactive at spotting and challenging anything suspicious. Without that change, such checks are unlikely to be of much value, because one of the FCA's many cultural weaknesses is that it employs few people who could spot a fraudster if one pirouetted throughout its Head Office in a pink tutu holding a neon sign flashing the words, 'I'm a fraudster' and fewer still who feel empowered to challenge wrongdoing when they see evidence of it.

You may consider that last comment frivolous or hyperbolic. Perhaps. But consider this: Dame Gloster, a sober, measured QC, told the Treasury Committee that such were the cultural problems at the FCA during the LCF era (which is relatively recent, and I have seen no evidence that the claimed transformation programme will change this) that even if one of the hundreds of alerts about the firm received by the FCA's call centre had been escalated into Supervision, in all probability it would not have been identified as a red flag and consequently nothing would have been done about it.

Is it credible that of literally hundreds of consumer inquiries, not one made it out of the call centre? Or is it more likely that concerns *were* escalated, but no action was taken, and that the FCA concealed this from Gloster because it was easier to blame lowly call centre operatives than Supervision?

20. The FCA is undertaking a Transformation Project. Do you have any comments to make about that?

I think the best way to answer this question is to set out what I think a satisfactory transformation project would look like, then consider to what extent the one currently underway at the FCA meets that description.

In my answer to question 17, I set out two approaches to fixing the FCA - plans A and B. Both share three common characteristics:

- There's genuine recognition that the FCA has failed consumers and that these failures have been widespread and have occurred over many years. This recognition is not mere rhetoric; it is backed up by full financial redress for those who've suffered loss as a result and unambiguous civil liability going forward;
- Change is not merely operational: the regulator's governance, accountability, staffing and culture are also changed beyond recognition;
- The lunatics are not in charge of the asylum (or the convicts of the prison): the job of fixing the situation is taken out of the hands of those who caused the problems and handed to other stakeholders, especially consumers

In short, plans A and B would genuinely transform financial services regulation in the UK, and therefore merit the use of the term 'transformation'. In contrast, the project currently underway at the FCA is at best a modest, operational change programme designed to placate politicians and, at worst, defensive displacement activity designed to convince politicians that the regulator has learned its lesson without actually changing anything that matters.

I suspect the latter is the more accurate description. Four reasons:

- Nikhil Rathi promoted Megan Butler to the newly created role of Executive Director for Transformation, without advertising the role externally, briefing it out to search consultants or even considering more than one other internal candidate[46]. Butler was named in the Gloster report as one of the executives responsible for what went wrong with LCF; had Parker not caved in to FCA representations to omit names, I believe she would have featured prominently in his report, too. I supplied this FoI response to the Treasury Committee, which quizzed Rathi and John Glen about the appointment; I'm pleased that its report into the matter was highly critical of the appointment. Given that both Gloster and the Committee identify the FCA's culture as the principal challenge, how can it possibly be appropriate for

[46] almost certainly Jonathan Davidson; like Butler, he led one of two Supervision departments due to be merged into a single entity following the Parker and Gloster reports' publication

Butler, who was a founder employee of the FSA[47] and played a significant role in some of its most controversial cases, to be the lead change agent[48]? The FCA, which prides itself on diversity, should have sought a cognitively diverse candidate from outside the organisation, the industry and the professional services sector that feeds off it, and should have worked with external stakeholders, including genuine consumer representatives, to find someone in whom we could have confidence;

- When Butler subsequently announced her intention to leave the FCA, Rathi said the role would cease to exist as a standalone position, with the Transformation brief being added to the existing duties of recently-appointed Executive Director for Authorisations, Emily Shepperd. Speaking to the Treasury Committee in December 2021, Randell admitted that a further three years of the Transformation programme were needed before it could be said to be close to completed. Under such circumstances, why turn the role of leading it into a part-time job? And why give it to someone whose own department was criticised (for slow processing of applications, and authorising firms and individuals that should be screened out) in the same Treasury Committee meeting, and who therefore already has a very full-time job with no certainty of a successful outcome? My suspicion is that Rathi is desperate to avoid hiring an outsider into the role, as he or she would expect to execute a genuine transformation and might blow the whistle if blocked from doing so. Once the Treasury Committee criticised for giving Butler the job without advertising it externally and she left, the only option still available to him was the profoundly unacceptable workaround of tacking it on to the responsibilities of an existing executive;
- I believe his hard sell for the supposed transformation project at the recent webinar to launch the FCA's 2021/2 business plan was a ruse. If you watch the Q&A session (from 36:40) you will notice that some questions are credited to individuals while others are anonymised. As one of the people who watched the webinar as it went out and who submitted questions via the online platform, I can tell you there was no option to omit one's name. My suspicion is that the no-name questions were therefore soft balls prepared in advance by the FCA's comms team. Which might, just, be excusable if there were a shortfall in genuine questions from the audience. But there wasn't: I for one submitted eight, and none of mine was used…[49];
- Cracks are already starting to emerge in the FCA's claims about the supposed transformations being delivered by the programme. In Transparency Task Force's response to the FCA's recent

[47] I believe she joined in Autumn 2000 but can't confirm this as she appears to have deleted her LinkedIn profile - I wonder why...

[48] I also believe that Butler was less than wholly transparent in her own evidence session with the Treasury Committee; I mentioned these concerns in my response to question 12

[49] This manipulation of an event to evade genuine scrutiny is not an isolated example. I've been to most of the FCA annual public meetings since 2013; over the years, the increasingly convoluted processes by which the regulator seeks to avoid its top table being exposed to challenging questions in front of the media have been entertaining to witness. Media reports such as this, this and this accurately reflect that the meeting ended in chaos, with the audience jeering and booing the board and a line of security personnel having to protect the stage while those on it were escorted to safety. However none of them reports why this happened. The FCA's policy in recent years had been to encourage those booking to attend to submit questions in advance. In 2019, those whose questions had been selected to be answered (I was one) were told on arrival that this was the case and thus that they shouldn't raise them in an open Q&A session, which was held first - a reversal of previous years' arrangement. However, once questions from the floor had been taken, Charles Randell announced that time had expired - so the most motivated stakeholders, those who'd submitted questions in advance and who might reasonably be expected to be the source of the most critical questions, were disenfranchised. Was this Bailey's ploy to mute critics at a time when he was desperate to avoid criticism so he could land the top job at the Bank of England? I can't help but have my suspicions… Covid, of course, resulted in the 2020 event happening online; the same is planned for 2021. It's my bet that there will never again be an in-person FCA APM; a virtual one is so much easier to manipulate!

diversity consultation, we demonstrate that the execution of the 'In confidence, with confidence' whistleblowing initiative is already failing due to unremedied and destructive groupthink near the very top of the organisation (Mark Steward, and the Executive Casework Unit that deals with correspondence for the board and Executive Committee). The stats on what the FCA does with whistleblower evidence (hint: sweet FA, in the main) is particularly damning

If nothing is done to terminate the current displacement activity and impose genuine transformation on an obstructive FCA, I confidently predict that in years to come we will look back on this exercise in exactly the same way we now see Bailey's largely pointless and now forgotten Mission Review: a dead cat strategy designed to placate gullible politicians.

Sometimes, I become bitter and angry at the fact that I've had to spend the past 10 years of my life trying to unpick a wholly avoidable mess created by the FSA and attempting to prevent others suffering similarly, and worse when I think that there are many more years of this ahead of me - a police investigation and litigation, unless the FCA caves. At other times, I see upsides to the longevity of my involvement. One is that doing this stuff for so long means I have a continuity of understanding of the regulator that has outlived the terms in office of members of the Treasury Committee and successive Economic Secretaries to the Treasury.

This has put me in the almost uniquely advantaged position of being able to spot and identify patterns of regulatory behaviour. The most obvious is the one I call 'the public affairs change promise.' When Martin Wheatley became the FCA's inaugural CEO, his position with the Treasury Committee was straightforward: 'The FSA is broken; I'm going to fix the situation with my wonderful FCA.' When Andrew Bailey succeeded him, his pitch to the Committee was only a slight pivot: 'The FCA is broken; I'll fix it with my amazing Mission Review.' And Rathi? 'The FCA is broken; I'm going to fix it with my wonderful Transformation project.'

If there's one message I desperately want any politicians to take away from my response to the call for evidence, it's this: the liars at the top of the FCA have been, and are, lying to you; whatever the Chair and CEO of the FCA and their gimps are saying publicly, they're not going to change voluntarily. Trust me: I've spent the past eight years trying to persuade, cajole and even bully them into changing, and they've tried every imaginable ploy to avoid doing so, or to appear to comply without actually implementing material change. Either you turn a blind eye to the FCA being spectacularly unfit for purpose and let innocent members of the public continue to be mistreated by the financial services industry and the wide boys on its periphery, or you flush away the sociopaths at the top, taking the matter wholly out of the hands of those whose interests are served by the status quo and transform the governance and accountability structures so consumers are in the driving seat. Your choice. But don't duck the decision, pretending change will come without your intervention, then feign surprise a few years down the line when it turns out that things stayed the same. Because I promise you they will. And real change must be accompanied by liability for regulatory failure - including a genuine means for those of us who've lost money as a result of FSA/FCA screw-ups since 2000 to be compensated. Until the regulator stops trying to duck responsibility for its own screw-ups, real change is a chimaera.

21. Are there any other comments that you would like to make?

Yes; I'll use this question to deal with matters I think are important but that don't really fit in the answers to any other of the questions.

'He has an agenda'

The FCA has a sizable and capable public affairs team, and its senior leadership devotes time and effort to the management of politicians as a stakeholder group, recognising that they possess a unique ability to determine the regulator's future. I suspect that the organisation will see this call for evidence as a threat, recognising its potential to undermine an image of the regulator that it has worked hard to create in Westminster and perhaps being able to bypass the seconded FCA gatekeepers in the Treasury and the Treasury Committee who might have the potential to filter the flow of information to powerful stakeholders. Indeed, in the Connaught case, I wrote to the Committee in December 2020 following the publication of the Parker report requesting that it undertake a similar inquiry to the one it held for London Capital & Finance; after it declined to do so, I later learned from an extremely credible source that the matter wasn't even laid before the Committee for discussion before being rejected. While I can't determine whether this decision was taken by its Secretariat or its Chair (Mel Stride, himself a former Treasury minister), I find the decision suspicious given the huge missed opportunities to press for redress for the victims and ensure learning is genuinely implemented.

Given the history, and in particular the FCA's desperation to avoid being held accountable, there must be a risk they'll try to discredit the Call for Evidence by trying to undermine the credibility of the witnesses. In my case, they may claim I've 'got an agenda': they'll say I want the FCA to compensate Connaught victims (and the victims of other regulatory failure cases); that my bill will be the biggest, because of the time I've spent on the matter; that I want the FCA to adopt my proposals for reforming the organisation and engage me to either oversee or to implement them.

Those claims are all true. So what? Why *wouldn't* I want the victims to be compensated, myself very much included? And what kind of a campaigner would I be if I *didn't* have constructive proposals for reform, and want to be sure they would genuinely be put in place? For clarity, I don't seek any more compensation than the sum I've lost, and if fully compensated, I would not expect to be paid for any oversight role in respect of any change programme.

'He's an extremist'

The FCA admits that it monitors my social media activity, as well as that of Transparency Task Force, of which I'm an active member. The FCA may attempt to misrepresent some of this material to portray me as some kind of extremist and, by implication, a crank whose views can be dismissed.

For the avoidance of doubt, I am a Red Tory, a populist, a communitarian and a Leave voter. If you follow opinion polls you'll know that my belief set is shared by many British voters, perhaps the majority of those outside London and the university cities - including those who don't normally vote Conservative. The woke corporatism practised by the FCA is a niche belief set relative to mine.

‘He’s a conspiracy theorist’

In responding to the call for evidence, I have tried very hard to signal clearly where I am making assertions of fact, where I’m expressing opinions and where I’m floating hypotheses. The FCA might alight upon one or two of the hypotheses and claim I’m some kind of tinfoil hat merchant, making unsubstantiated allegations. If so, this is grossly unfair: you can choose to believe or reject a hypothesis; it does not undermine the validity of the facts conveyed in this document, nor does it warrant rejection of my opinions, which I believe are mostly or wholly the logical corollaries of the facts.

If any reader of this document wants to question the accuracy of any statement in this document that I present as fact but that is not fully substantiated within it, they are welcome to contact me and I will endeavour to do so. I would also readily accept an opportunity to give evidence to the All Party Parliamentary Group for Personal Banking and Fairer Financial Services or to any Parliamentary Committee about the matters contained in my response, knowing that it is a criminal offence to mislead Parliament, and I will say the same things as I have said in this document. Likewise, I will gladly sign an affidavit confirming that the statements I’ve represented as fact in my evidence are to the best of my knowledge all true.

I’m aware of other campaigners who’ve submitted Data Subject Access Requests (‘DSARs’) to the FCA, in order to see information held by the regulator about them. Often, compliance with such requests takes many times longer than the statutory timescale and documents are withheld or redacted, perhaps unnecessarily so. But there have been some worrying instances, which may be referred to in their testimony to this Call for Evidence, of documents emerging which indicate that the FCA has been monitoring their social media activity, tipping off authorised firms about complaints or correspondence they’ve sent the regulator, referring to comments they’ve made at Transparency Task Force online events (implying that the FCA monitors campaigning activities) or otherwise acting in ways that many would consider unethical, improper or even illegal.

This Freedom of Information Act response confirms that the FCA does indeed monitor the activities of Transparency Task Force, while this email from the regulator’s Executive Casework team confirms that the FCA also conducts covert monitoring of my Twitter account, and TTF’s. Setting aside the fact that this activity almost certainly breaches privacy rules, how can this possibly be an acceptable use of monies raised from the industry - and ultimately from consumers - to fund the execution of a set of statutory duties? I’ve put these questions to the FCA; at the time of writing, a response is awaited. I wouldn’t hold your breath.

‘He’s got it in for us’

It’s true that an impartial reader might conclude from my response to the Call for Evidence that I’m not the FCA’s biggest fan. My use of phrases such as ‘useful idiots led by high-functioning sociopaths’, allegations of the leadership team misleading politicians and covering up misconduct combined with claims that those they employ consistently fail to act in the face of evidence of consumer detriment might suggest that I question the integrity of those at the top and the capabilities of some mid- and

low-level employees. The FCA might leverage these and similar passages to suggest that I am bitter about the regulator's shortcomings in the Connaught case and am seeking to smear its reputation.

An alternative response might be to reflect on the possibility that my claims are warranted, especially given that they are likely to be echoed in many of the other responses to the Call for Evidence. A statutory regulator charged with protecting consumers, ensuring that there is effective competition and preventing market manipulation and failures, would surely be lauded by consumers and detested by industry incumbents. The FCA, broadly, provokes the opposite reactions. What should that tell politicians about the regulator?

What goes for me, goes for others too

It goes without saying that the four observations I've made above are likely to apply equally to the vast majority of other respondents. I say 'the vast majority' because I am aware of a small minority of whistleblowers and victims of financial services misconduct and regulatory failure who have suffered such emotional and financial distress as a result of spending many years trying in vain to attract help and remedy situations that they have suffered mental harms as a result. Occasionally, some of them *can* see conspiracies where there may in fact be none.

I would ask readers of these replies to the call to evidence not to reject out of hand an entire response, or the whole exercise, because they see a single allegation that is self-evidently untrue or because the person appears to be eccentric; rather, I urge them to consider what level and duration of distress the person making it could have been exposed to, by whom, and why, that might have led them to that mental state. And if some respondents allege that the FCA is profoundly incompetent, has deliberately not investigated their allegations or has ignored evidence of wrongdoing (especially when made against bankers, or involving cases in which there has been a legacy of regulatory failure that could be exposed by retroactive enforcement), I would ask you to look beyond the confines of the Overton window: perhaps, *just perhaps*, some, at least, of their assertions might be true…

The elephant in the room

In this paper I've concentrated on my personal experience of the FCA, which relates to a collective investment scheme in which it failed spectacularly to protect consumers, then covered up its own failings and lied about the victims' losses. From there, I've touched on other cases in which the regulator also fell short of one of its three statutory duties, namely to protect consumers. I have therefore not written in any depth about its performance against its two other mandatory functions: ensuring there's effective competition and working to make wholesale markets operate fairly.

I hope that anyone who reads my evidence will ask themselves this question: if the FCA is not up to the job of detecting, deterring and punishing those who scam and mistreat consumers, what's the chance of them policing competition, or wholesale markets? The defining feature of scams such as Connaught is that they're actually really, really easy to spot, and to prosecute: by definition, they involve making false representations to large numbers of consumers (so ample evidence of fraudulent claims exists) and of using the money raised other than as described (easily demonstrated by following the flows of capital through bank accounts and into other assets). If the FCA, more than 13

years after it was first alerted to the risk of wrongdoing with the Fund and 10 years after the money ran out, has achieved zero prosecutions, what chance does it stand against a shadowy network of investment bankers rigging an obscure index via messages over the dark web, across multiple jurisdictions? Anyone who seriously thinks the Keystone Cops are a match for that kind of thing must be delusional.

In my darker moments, I wonder if that's part of the reason the FCA has been left in charge, despite all the evidence it's so catastrophically out of its depth: it suits certain City interests to keep the high-functioning sociopaths and useful idiots in post, creating a credible illusion of regulation without the bothersome reality of material constraints on behaviour.

If I'm right in this suspicion, getting genuine change will be a challenge, because corporatist interests in the Treasury and in politics will fight it, claiming (and in some cases, perhaps even believing) they're protecting the City but in fact just helping its bad actors and hence damaging the overall reputation and prospects of the industry.

So is HM Treasury the real problem?

I accept that the City establishment faced a difficult dilemma when the Global Financial Crisis came to a head. EU state aid rules precluded Government rescuing the two nominally Scottish banks, RBS and HBoS, since they were catastrophically insolvent on a balance sheet (and not just a cashflow) basis. With the scale of the former alone exceeding the UK's GDP, a catastrophic failure of either, let alone both, would have had disastrous effects for ordinary citizens. My hypothesis - and I accept it is no more than that, at this stage - is that bank bosses, auditors, regulators and politicians conspired to rescue them anyway, illegal or not. Ordinary shareholders were defrauded by a fraudulent rights issue and merger; submitters were ordered to lowball LIBOR to give a misleading impression of market sentiment about banks' survival prospects; SMEs were destroyed and assets appropriated and sold by RBS' Global Restructuring Unit and Lloyds' equivalent Business Support Units; mortgages were packaged up and sold to rent-extracting US vulture funds that yanked up interest rates; many markets were routinely rigged and gamed.

Since then, with the short-lived exception of the well-intentioned but incapable Martin Wheatley, the Chair and CEO jobs at the FCA have consistently gone to people who were members of the clique of individuals who I believe were central to these acts. How could it be otherwise? Anyone not in the club might quickly identify criminality and do something to convict the perpetrators. So I suspect we face a bizarre situation in which a handful of people, many of them ill-suited to regulation and almost certainly not wanting to be regulators, are obliged to perform such roles, to protect themselves and their peers.

As I've hinted many times in this testimony, it feels to me that the FCA is a 'three monkey' regulator that sees, hears and speaks no ill of the banks and other incumbent City interests, and that the decision to build a culture that protects those parties means it cannot credibly adopt a different approach with smaller and less influential bad actors, such as rent-seeking asset managers and scammers on either side of the regulatory perimeter. And there's an enduring suspicion that just as the FCA protects the banks, so the Treasury protects the FCA. If this is so, then achieving genuine

change requires elected politicians to deliver an unambiguous message to the Treasury that it must first abandon its corporatist ties to the City, pivoting from the rent extractors to the wealth creators and strivers who together pay the lion's share of the bills.

I believe that the way in which the Treasury reacts to this call for evidence and its aftermath will provide a litmus test. It could acknowledge that good people did bad things for good reasons, back in the day, and that the time has come to fess up, pay up, and make the perpetrators leave the stage. If so, I think we should respond to them constructively; as I've suggested elsewhere, I think immunity from prosecution is a fair offer, if there's a willingness to right historic wrongs and hand over regulation to those who represent consumer, rather than producer interests.

The usual platitudes followed by the inevitable delaying and dilution tactics will tell us that it's the real obstacle to change. I hope HMT surprises on the upside, but I think we must be prepared to be disappointed. If that's the response, I think campaigners should pivot to guerilla tactics. By this I don't mean non-violent, or even violent, direct action, but rather, asymmetric activities such as crowdfunded private prosecutions of key individuals, selected to cause maximum reputational harm to the City and its institutions and designed to encourage those targeted to switch sides and provide evidence against others - and, crucially, the system.

Sadly, assuming that John Glen is still Economic Secretary to the Treasury when, as I hope happens, Parliament and the Treasury Committee debate this Call for Evidence, I expect him to tell them that the FCA is largely doing a good job in difficult circumstances and that Rathi's transformation plan will deal with any isolated shortcomings - I could almost write the speech for him. If the Government, and the City, accept that the time has come to do the right thing, he has to go.

If any MPs or Peers are reading my statement and thinking of challenging Glen, whether in the APPG, the Treasury Committee or a Parliamentary debate, I offer a constructive suggestion intended to demonstrate whether I'm right in my suspicion that he knows as well as I do that the FCA is a busted flush. All you need to is ask him this:

'If you think the FCA is basically sound and its failures few and far between, why not remove its exemption from civil liability and explicitly prevent it from relying on the time limits set out in the Limitation Act? If what you say is true, few - if any - cases will succeed against the regulator.'

Glen will bluster his way through a response not even he believes, the upshot of which is 'no', but the consequence of which is that whoever asks the question will know what Glen is, and whose interests he's protecting.

While I have concerns about the biases and motivations of the current Minister, even if he were replaced, without a willingness to change that starts at the top, I'm conscious that any successor would still be operating within the culture and structures of the Treasury. And I see that as a department at best influenced and at worst captured by City incumbents, the banks especially. Recently, George Patellis kindly shared with me the results of a Data Subject Access Request he'd

submitted to HMT to obtain everything it held on him. One of the patterns that most disturbed (but least surprised) me is the extent to which there had been liaison between HMT and the FCA when Ministers from the former were expected to respond to questions and debates in Parliament, and correspondence from MPs, about Connaught. Those same Ministers had refused to meet with George, and with me; on the most literal level, they chose to hear only one side of the story.

I've previously mentioned the secondment of at least one FCA employee at any given time to the Private Secretariat of the Economic Secretary to the Treasury, a position of influence that enables them to give the Minister the regulator's view on events, to filter or spin what he or she hears that might cause him or her to question those lines and even to give their employer an early heads-up about any incoming criticism. How ever could that be deemed acceptable? And Swift found that bankers and Treasury officials and even Ministers lobbied the regulator to reduce the liabilities of banks for IRHP 'mis-selling'. While he couldn't prove that the Scheme's subsequent defects were a response to that lobbying, he found that the regulator was unable to provide any other explanation for why the sophistication tests were created. I suspect that this matter will result in an investigation by the police, private criminal prosecutions, or both.

Any such process will have to look at other cases, too. We know the Treasury sought to influence the FCA over IRHP redress; is it credible to suggest similar pressure was not brought to bear in other cases, whether those affecting SMEs (HBoS Reading, RBS GRG etc), wholesale and investment banking (LIBOR, forex) or consumer harms, including Connaught. Indeed in the last of these cases, I've already pointed out that George Patellis' DSAR shows there was liaison between HMT and the FCA to agree a common (untruthful) position about him and his evidence; we must assume it was not confined to this narrow aspect of the case. What's more, in response to a Freedom of Information request from me, the FCA has already admitted there are more than 2400 items of correspondence between the two organisations about the case - conveniently, too many for it to disclose within the £450 labour cost ceiling provided for under the Act.

As you'll see from the above link (below the FCA's email) I've made the case for the cost limit being waved in the public interest, and even offered to pay any excess. The FCA has rejected both arguments out of hand. Why might a regulator that has already been found to have been lobbied by the Treasury in John Swift's £8.6m independent review be so reluctant to disclose documents relating to its engagements with HMT over the Connaught case, if it has nothing to hide? Setting aside the obvious public interest in disclosure, would the FCA not be desperate to demonstrate that any similar suspicions were misconceived? The harder the FCA fights disclosure, the more strongly I expect that some of the documents will be damning, showing that there *was* collusion between the two bodies to delay then reduce admission of regulatory shortcomings (and worse) and attempts to deny the victims the financial redress they deserve.

Swift has done campaigners a great service by showing that the opaque, unaccountable links we've long suspected exist between City, Treasury and FCA really do exist. As things stand, the end game will be prosecutions of officials for misconduct in public office and politicians' careers ending in disgrace, their names too toxic for the firms they helped to be able to honour any expectations of post-politics 'thankyou jobs'. I believe those stakeholders know this, which is why I believe they will have to accept the offer of an evolutionary outcome, in which the victims are compensated, bad

actors leave the stage and ultimate oversight of the regulators is handed to transparent, accountable consumer representatives. It's either that or we build a huge new, FCA-branded wing at Ford Open Prison! Crucially, the cost of settling rises with every year that passes, as new regulatory failure cases emerge and interest racks up on legacy ones. So if the industry, Treasury and FCA accept my premise, the sooner they sue for peace, the better for all concerned.

The irony is that replacing the unofficial, behind-closed-doors links between the FCA, Treasury and City with statutory, democratic, consumer-oriented accountability would actually be in the interests of the financial services industry as a whole, even if it might ruffle a few feathers in the boardrooms of the big banks. Why? Because the widespread and well-founded suspicion among consumers and small business owners that the industry, and the scammers on its periphery, will treat them badly and that the regulator won't help them is causing many to avoid using the sector in ways that might well benefit themselves, the industry and the wider economy. That's a classic deadweight loss for society, the financial services sector included. Also, regulatory complacency and capture is the reason why the European Union chose not to grant UK financial services equivalence-based access to its markets[50].

The case for financial services benefiting from effective regulation (whereas incumbents gain from the captured variety) is made, in my view well, by Transparency Task Force's response to the Treasury's consultation on its proposals for the Future Regulatory Framework, which addresses the controversial plan to give regulators a remit to promote the growth and competitiveness of the UK financial services industry.

In my view there should be a zero-tolerance approach to corporatism in regulation, politics and the civil service. If we suspect that the Treasury may be subject to capture by City interests, we should act decisively to outlaw revolving-door hires such as this. The risk is not just lobbying, it's the message that such appointments send to senior civil servants and indeed politicians: look after the banks' interests while notionally serving the public's and the favour will be returned at a future date.

George Patellis matters very much

I've mentioned George Patellis a number of times in this response. Not only did he make a series of Principle 11 disclosures to the FSA but he also became a whistleblower to the Fund's Action Group, providing us with access to vital evidence which we used to bully the FCA into negotiating the redress payment from CFM.

[50] I know this because I provided the EU commission with a dossier demonstrating the shortcomings of the UK's regulatory regime, asking it not to grant equivalence. While I don't pretend that this evidence proved decisive - the EU wanted to deny equivalence for its own reasons - I do believe it provided an evidence base for that decision. Some may question why I did this; was it out of spite? No; I did it for two reasons: first, I wanted to protect EU consumers from bad actors in our industry (the regulator won't); and second, I believe it's vital that the industry bears some of the costs of regulatory failure, because it has more influence than we do as consumers, and if the honest majority in the sector realise they have more to gain from effective regulation than from the captured variety, they'll align with us in calling for the situation to be remedied

I know George has provided his own testimony to the call for evidence, using the question set designed for whistleblowers. I urge you to place plenty of weight on it. Having known him for almost 10 years now, I can assure you that he is a highly intelligent individual of great personal integrity. You may be tempted to dismiss as incredible some of his allegations, which point to the FSA deliberately setting out to allow Tiuta to continue to trade and dissipate the Fund's money, but I would gladly swear under oath that everything he tells you is true.

Like many whistleblowers, George has suffered a huge emotional and financial toll as a result of doing the right thing, made worse by the regulator not just ignoring his evidence but subsequently 'outing' him publicly, and even blaming him for its own decision not to involve the police when it was blatantly obvious that criminality was occurring and that the Fund's investors' money was being appropriated. Any politicians reading this should please do all they can to encourage the FCA to include George in any financial redress package paid to Connaught investors; he is as much a victim of the regulator's handling of the Fund as is any investor.

What's more, as a US national, George faces a risk of being sent back to the country of his birth as a result of the career impacts of his whistleblowing, and the FCA outing him. I understand he has applied for leave to remain as an exceptional case; I urge politicians and any other influential stakeholders reading this to write to the Home Office backing his application.

So does Transparency Task Force

In the first couple of years following the Fund's collapse, I became aware of media coverage of other cases in which the financial services industry had treated the public badly and regulatory failure, capture or cover-up, or some mix of the three, appeared to be significant factors in enabling the harms to take place and obstructing the achievement of redress for the victims and justice for the perpetrators.

Having tried without success in 2014 and subsequently to interest the FCA in the concept of reform, I reached the view that there was an unmet need for an umbrella organisation that would bring together victims of misconduct and the action groups that coalesce around specific cases with whistleblowers and other honest actors from the industry who shared their desire for reform. In the absence of such an organisation I began to work informally with some of those stakeholders, learning about their cases and sharing my own experiences, hoping that this might help them to achieve justice. I even toyed with the idea of setting up an umbrella organisation, but lacking the time and resources to do so while still fighting for the interests of Connaught victims.

In late Spring 2020 I was introduced to Andy Agathangelou, founder of Transparency Task Force ('TTF'), a campaigning group I was aware of for its work, commencing some five years earlier, on transparency on fees and charges. I had decided not to become involved with it back then, on the basis that while those campaign goals were valid, I felt there were bigger and more important battles to be fought. By the time I was introduced to Andy, the group had reached the same conclusion, having evolved to challenge all aspects of how financial services treat consumers - its mission statement being 'to promote the ongoing reform of the financial sector, so that it serves society better.'

I fully endorse that goal, so agreed to become involved. That role has evolved into a voluntary, part-time position as its Head of Strategy and Public Affairs. In that position I have met a great many kindred spirits, learned from them, shared my experiences with them, and together we continue to evolve our understanding of the problems and proposals to remedy them.

TTF has evolved into the umbrella organisation I've long felt was needed. It's also the FCA's worst nightmare: more than 5000 people, spread across the globe, comprising misconduct victims, whistleblowers, consumer advocates and honest industry participants who want to reform the sector from within, with a shared intent to pool knowledge and skills to fight for the industry to give the public a better deal. In the UK, which accounts for the majority of members, TTF makes it possible to share experiences of dealing with the FCA, an exercise that often reveals disturbing patterns of behaviour by the regulator. TTF played a significant role in the formation of the All Party Parliamentary Group for Personal Banking and Fairer Financial Services, provides that APPG's Secretariat, and is performing a key role in the operation of this call for evidence.

Whatever comes out of this exercise, I very much hope that there will be an understanding among politicians that the FCA must become the servant of consumer interests, not the industry's. And those consumer interests are best expressed through TTF, and not through the FCA's Consumer Panel or Consumer Network, the membership of both of which is selected by the FCA[51].

I also hope politicians will reflect on the inequality of arms that exists between consumers and the industry, which may explain some of the FCA's cultural biases. One way in which this imbalance might be lessened might be through the introduction of even very modest amounts of public funding for an umbrella organisation representing consumer interests. If so, I believe that TTF should be that organisation, and should be instrumental in the creation of a statutory body such as our proposed Financial Regulator's Supervisory Council. A combination of path dependency and network effects mean TTF is already head and shoulders ahead in size, expertise and sapiential authority of any other financial services campaign group in the UK and it is vital to avert the risk of the FCA or industry creating an AstroTurf FRSC and presenting it as the authentic voice of consumers.

TTF is currently run on a shoestring, based on 'pay what you can afford' membership fees and the occasional donation or support from small grant-giving bodies (many of the big ones are linked to the City, one way or another; for reasons that may be self-evident, they don't fund TTF).

Every week I see examples of more that this amazing organisation could do, if given access to even relatively modest amounts of funding. From counselling misconduct victims and whistleblowers facing financial ruin, depression and suicidal thoughts to judicial reviews of regulatory decisions,

[51] I should mention that Transparency Task Force recently asked the FCA how it decides which consumer organisations are eligible to join the Consumer Network; on the face of it, TTF was eligible, so applied to join. The FCA responded that it is not currently open to adding further groups to the Network. I suspect its fear is that TTF would brief consumer organisations to consider responding to consultations with arguments that might be at odds with the 'lines to take' helpfully supplied by the FCA…

there are many wonderful and valuable things it could achieve but currently can't, for want of a relatively modest source of secure income.

~~ END ~~

Thank you