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Highlights from the 4th Annual General Meeting of the Financial Conduct Authority

Article by David Bowden

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Executive speed read summary

The Financial Conduct Authority (FCA) was created in April 2013 and inherited legacy regulators such as the FSA and the OFT. The FCA held its 4th annual general meeting (AGM) at the Queen Elizabeth II conference centre in Westminster on 18 July 2017. This article summarises the main points in the annual report, the presentations made at this AGM and sets out a selection of questions that the Board faced. This piece also summarises the main findings from the FCA Panels (Smaller Business, Consumer and Practitioner) as well as what is in the FCA's Enforcement Performance, Competition, Diversity and Money Laundering Reports which were published around the same time as its Annual Report. Andrew Bailey as CEO has got a firm grip of the FCA. He stressed that the FCA still had to implement EU legislation until the UK leaves the EU. The FCA has been analysing all the EU financial services legislation and, whilst not taking a position of its own, has been continuing to provide advice to Government. 32 questions were asked from the floor but the number of questions about legacy failures such as PPI, IRHPs and HBoS collapse was down significantly.

What is the FCA?

The FCA was created by the coalition government. It was felt that the FSA had not been effective enough during the financial crisis. The FCA's 4th annual report was published in July 2016. How does its replacement regulator the FCA feel it has done in its fourth year? As well as the main FCA report, accompanying this were 3 companion reports from its Consumer Panel, Practitioner Panel and Smaller Business Practitioner Panel. The board of the FCA also took questions from the floor at its AGM on 18 July 2017 and attempted to answer these. The FCA's annual report is here:
www.fca.org.uk/publication/annual-reports/annual-report-2016-17.pdf

Who was at the AGM?

At the AGM were some of its main executive and non-executive directors. This included its:

- Chairman (**John Griffith-Jones**),
- Chief Executive (**Andrew Bailey**),
- Director of Supervision - Retail and Authorisations (**Jonathan Davidson**),
- Acting Chief Operating Officer (**Nausicaa Delfas**),
- Director of Strategy & Competition (**Christopher Woolard**), and
- Director of Supervision - Investment, Wholesale and Specialist (**Megan Butler**).

Although these executive directors of the FCA did attend the AGM, they sat in the front row with their backs to the audience and were not invited to join the others on the stage:

- Director of Enforcement and Market Oversight (**Mark Steward**),
- Director of Risk and Compliance Oversight (**Barbara Frohn**), and
- General Counsel (**Sean Martin**).

The only non-executives directors in attendance were Baroness Sarah Hogg, Ruth Kelly and Jane Platt. Once again Ruth Kelly and Jane Platt said nothing at all and it has to be questioned what value, if any, they bring to the FCA Board. During questions from the floor, one person asked about climate change and investment policy but despite Jane Platt's claimed background in investment and asset management she offered nothing in reply. Sarah Hogg was wheeled in to defend Andrew Bailey's bonus but she did so in a limp fashion and did not praise the efforts & achievements made by her Chief Executive.

In addition to the mutes the other 5 NEDs did not attend at all (that is Catherine Bradley, Amelia Fletcher OBE, Bradley Fried, Sam Woods and Nick Stace). In theory Georgina Philippou remains the Chief Operating Officer but the FCA says she is '*on extended leave*'. The Chairman is retiring in March 2018. Andrew Bailey really must get rid of all the dead wood on his Board as a matter of priority.

What about the FCA Panels?

In previous years, the FSA had always invited representatives of its 3 panels to its AGM to present their companion reports. Rather disappointingly once again the FCA has not followed this practice. Although Sue Lewis and a few other panel members were in the audience, they made no contribution to the meeting and were not called on to deliver a presentation or answer questions. In the interest of completeness, we set out below the main findings from these 3 panels and a link to where these other companion reports can be found.

What was the mood of the meeting?
Attendance at the meeting was up significantly on 2016 with the QE2 Conference Centre packed. In all around 600 people had registered to attend. Andrew Bailey is a real asset to the FCA. He is well briefed in all the main areas and answered all questions well and with a remarkable depth of knowledge with nothing fazing him or catching him out. The meeting was better managed than recent years with some of the contentious issues previously dealt with by hostile questions from the floor wisely headed off at the pass by their inclusion in the main presentations.

What will Brexit mean for the FCA?
The Chairman started his presentation with Brexit saying that there was a '*significant amount of work to be delivered*' and adding that he expected 2017-18 '*will be busy'*. He claims the FCA is '*deeply engaged'* on Brexit with the FCA staff engaged on the '*unglamorous*' task of producing amendments to the FCA Rulebook.

The CEO went further saying that Brexit was the top one of his 4 stand outs. He claimed (but this must be taken with a pinch of salt because the FCA has not published any of its '*technical advice'* it has rendered to Government) that the FCA does '*not take any position as to whether it will happen'*. He says the FCA has been '*very involved'* with the '*so called Great Repeal Bill'* with his ambition for there to be '*seamless regulation after Brexit'*. The CEO said the FCA had hired '*extra legal staff'* to analyse thousands of pages of EU legislation. He said there were '*tight deadlines'* on this, that Brexit will be a major effect and that the FCA '*will have to make tough decisions'*. However he said the FCA '*remains internationally engaged*' singling out IOSCO and ESMA in this regard (but not Basel).

The FCA's annual report has this to say about Brexit:

> *'The UK's decision to leave the EU will have important implications for the financial services sector, the regulatory framework and hence our work. We are providing impartial technical advice to the Government to support the EU withdrawal negotiations and related legislative change, particularly where they could affect our ability to continue to meet our operational objectives. We are working with firms to understand their plans to continue to service their cross-border operations. We have begun work with the Treasury to provide technical input to work involving the Great Repeal Bill. This is a significant task that involves a line-by-line analysis of each piece of EU legislation for which we are the lead regulator. Our fundamental objective in this work is to give all interested parties certainty, so that there is a clear and functioning regulatory regime on the day that the UK ceases to be a member of the EU. We will continue to advance our statutory objectives and thus maintain high conduct standards and robust, proportionate and sustainable regulation. We gain significant benefit from our co-operation with other regulators in Europe and internationally. This allows us to share information, intelligence and best practice, and these relationships support consistent and effective supervision. It is important that we continue to be able to share regulatory information with our EU counterparts after Brexit*.'

What is the view of the chairman of the FCA on its performance?
John Griffith-Jones is the chairman of the FCA. He will be retiring in March 2018. Nothing was said about his successor. He claimed the FCA was focussed on reducing harm, wanted more transparency and more clarity on the FCA's intervention framework. He said the implementation by the FCA of the Senior Managers and Certification Regime ('SMCR') had been the '*most single significant issue in the last 4 years*'. He said the FCA wanted to cement the SMCR changes into '*permanent place'* so there would be a '*change in the industry'*.

He said the certain challenges remained the same for the FCA such as the 'small minority' of firms which try to abuse the financial system highlighting 155 Final Notices issued to firms and 25 issued to individuals last year. In addition to this the Chair highlighted these areas:

- Over-indebtedness,
- Technological change,
- Lack of competition '*in some areas'*,
- Advice gaps on pensions, and
- Consumer vulnerability.

He stated that these risks will remain.

Rather oddly the Chairman then strayed away from the FCA, to focus instead on both the Financial Ombudsman Service (FOS) and Financial Services Compensation Service (FSCS) which are separate organisations. He referred to FOS having received 1.4million enquiries last year and resolved 336,000 disputes. Disappointingly he did not pause to reflect that if FCA regulation of firms was working properly and producing good outcomes for consumers, why they FOS enquiry level remained sky high. However he did point out that regulation is *'not cost free to firms or consumers'*.

What about the forthcoming year?
At the meeting the Chairman said the FCA wanted to increase transparency and accountability in 2017-18 in these 4 areas:

- Supervision,
- Enforcement,
- Authorization, and
- Consumer strategic work.

The FCA Business Plan for 2017-18 is here: www.fca.org.uk/publication/business-plans/business-plan-2017-18.pdf. In there however are these 6 cross-sector priorities:

- Firms' culture and governance,
- Financial crime and anti-money laundering,
- Promoting competition and innovation,
- Technological change and resilience,
- Treatment of existing customers, and
- Consumer vulnerability and access.

The CEO sees these 4 things as key in 2017-18:

- FCA move to Stratford,
- Financial guarantees and claims bill (this will transfer regulation of CMCs to the FCA),
- OPBAML (the FCA will be the lead overseer of money laundering regulators), and
- PPI (in autumn 2017 there will be a publicity campaign leading to the *'last 2 years of the PPI process*').

What is the view of the chief executive of the FCA on its performance?
Andrew Bailey became the chief executive of the FCA in July 2016. This was his 2nd AGM as CEO. He has a tremendous breadth and depth of knowledge. It is clear that everyone else loves working with him. He is a huge asset to the FCA and an immeasurable improvement on the likes of Hector Sants who had been promoted beyond their abilities.

In addition to Brexit, the CEO said there were these 3 standouts:

- Consequence of prolonged lower interest rates with an inter-generational problem of savings and loans,
- 2 societal changes:
  - Impact of ageing population – with a focus for conduct risk,
  - More unpredictable forms of employment
- Technological change. Whilst the FCA wants to encourage it to happen, the greater the use of data, the greater the risk.

Moving on to the FCA's objectives, the CEO started with its consumer one. He questioned how '*vulnerable*' consumers were so defined but said this was a challenge that the FCA had 'to take on'. In autumn 2016 the FCA received 200 responses to its engagement paper. The CEO wants more systematic engagement with consumer bodies, he said he '*welcomed engagement'* with the FCA panels and mentioned some '*regional visits'* the FCA had undertaken.

The CEO said the FCA's operating costs had fallen by 6% last year as the set up costs for consumer credit regulation had fallen out. This meant the FCA was sitting on a huge cash pile surplus of £18million. Rather than reduce fees charged to firms, instead the FCA is blowing the cash on luxurious new purpose built offices in Stratford International in London instead. It also claims it is spaffing £2.5million for what it calls the '*incremental costs of Brexit'*.

To avoid getting ambushed in questions from the floor, the CEO moved on to what he euphemistically labelled 'legacy issues'. There were at least these 4 heaps of dung left for him by his predecessors to sort out:

- **Interest rate hedging products**. Once again he used the excuse of the pending appeal in *Holmcroft Properties* to the Court of Appeal in December 2017 to defer doing anything about this mis-selling scandal.

- **Royal Bank of Scotland – Global Restructuring Group.** In November 2016 the FCA received a 'skilled persons' report under FiSMA section 166 on this but the CEO declined to identify that person. The CEO promised to publish this (but did not say when) and said the FCA was '*undertaking investigations on the issues in the report*'.
- **HBoS.** The FCA published a review in November 2015. The CEO claimed the FCA was working with the PRA. He said it had '*started investigating'* and referred also to whether further enforcement action will be taken against the former directors which brought this bank to its knees by their recklessness, remain unpunished and have not been banned as directors or prohibited from working in a controlled function in financial services 9 years after its collapse. The CEO conveniently used the entirely separate investigation by Thames Valley police as a yet further excuse to prevaricate and delay on this.
- **Connaught.** The CEO claimed that this investigation was not in is '*later stages'* and that it had '*significant resources on all investigations'*.

For the CEO, the FCA's current work fell into these 5 categories:

- Protecting consumers,
- Market integrity,
- Promoting competition,
- Financial Crime, and
- Brexit.

Its consumer protection work has these 5 strands:

- **Pensions.** The FCA's retirement outcomes review was published last week. There remains a demand for advice in both the capital accumulation and decumulation phases.
- **High cost credit.** The FCA will publish something further on its '*broader work'* on this '*shortly*'. The pay day cap was for 2 years.
- **General insurance.** Firms have now implemented the new FCA requirement to tell customers at renewal what they paid last year.
- **Life insurance**. The FCA remains concerned about the fair treatment of closed book customers.
- **Retail banking.** The FCA is carrying out a '*broad review'* to assess the basis of charging by product particularly on overdraft charges. The CEO said there was a 'cross over' here with the FCA's work on high cost short term credit. He also mentioned the ring-fencing of retail banks which has to be implemented by 2019.

Its market integrity work has these 4 strands:

- **Primary markets review.** Do these support the needs of investors?
- **IPO market.** The FCA has issued a consultation paper on this.
- **MiFID2.** The CEO stressed the UK remains a member of the EU and this has to be implemented by January 2018.
- **Illiquid funding.** The FCA has issued a discussion paper on this. Last year this was a burning issue on an open ended property fund which had suspended redemptions. The CEO said there were '*lessons to be learned'* from this.

On promoting competition, this expanded to:

- **Asset management market study.** The CEO said the FCA wanted '*suitable transparency'*.
- **Credit cards.** The CEO highlighted the issue of persistent credit card debt and said the FCA had proposed remedies on this.
- **Innovation.** The CEO said the FCA was about enabling change and it didn't want to leave gaps in the market for financial services. The CEO referred to:
  - Innovation – 362 firms
  - Sandbox – 55 firms.

The CEO had these 3 things he wanted to highlight on financial crime:

- **Insider trading.** The CEO referred to Operation Tabernacle which had resulted in a number of convictions and sentences.
- **Anti-money laundering.** Reference was made to the £163million fine on Deutsche Bank.
- **Corporate market abuse.** Reference was made to Tesco and the £85 million it paid to investors. The CEO said this was a '*first for the FCA'*.

Has the FCA published any other reports?
Usually in July the FCA publishes its annual report and the board also publishes its business plan for the year. However this year (as well as the reports from the 3 specialist panels), the FCA has also published 4 other separate reports on these themes:

- Enforcement performance,
- Competition,
- Diversity, and
- Money laundering.

What does FCA say in its Enforcement Performance Report?
This new 40 page report sets out the FCA's position on enforcement which is differentiated into retail conduct, wholesale conduct, financial crime and market abuse. Interesting the top 5 open cases as at March 2017 fell into these categories (in descending order):

- Insider dealing (87 cases),
- Unauthorised business (69cases),
- Retail conduct (67 cases),
- Financial crime (56 cases), and
- Wholesale conduct (39 cases).

What does the FCA say in its Competition Report?
This is the FCA's 2nd such report and this year it runs to 56 pages but makes no mention of Brexit whatsoever. It highlights the work of the New Bank Start-up Unit (NBSU) which is a joint initiative from the Prudential Regulation Authority (PRA) and the FCA to help reduce barriers to entry for prospective banks, to stimulate competition and drive innovation to promote better outcomes for consumers.

It also homes in on complexity with the FCA saying that in its view '*financial products are abstract and intangible. They often have many features and complex charging structures. As a result, in many cases it is hard for consumers to predict how much they will pay for a product*'. It goes on to single out credit cards saying that 'the cost of using a credit card depends on what it is used for, how much consumers spend on it and when they make repayments' which the FCA claims is '*hard to predict in advance*'.

As to retail banking the FCA says that in April 2017 it launched a strategic review of their business models which it says is '*discovery work to examine the business models used in the retail banking sector, focusing on the links between different parts of the business and their relative profitability*'. On new entrants to the market the FCA notes that new digital-only retail banks such as Monzo Bank and Starling Bank have now come to market. In December 2016 the FCA granted initial authorisation to ClearBank to be a deposit taker noting that it is '*seeking to become the first full clearing bank entrant to the UK banking market for over 250 years*' when it starts trading in Q3 of 2017

Later this year the FCA promises to publish these 2 reports:

- Mortgages Market Study interim report setting out its analysis, preliminary conclusions and any potential remedies with a final report to follow in early 2018, and
- High-cost short-term credit - the results of a price cap review in summer 2017.

On so called '*big data',* the FCA is proposing what it terms a 'piece of discovery work' for either later this year or next year to look at the use of big data in pricing practices in a '*limited number of retail general insurance firms'*.

What are the conclusions in the FCA's Diversity Report?
Disappointingly this report only covers the results of the FCA's monitoring of diversity and inclusion of its own staff. There is nothing in there at all relating to the firms which the FCA regulates. It does set out how the FCA has wasted taxpayer's money having translated its website (for no obvious reason) into French, Spanish, Polish and Arabic.

What does the FCA conclude in its Money Laundering Report?
This is the FCA's 4th annual report on money laundering. Happily the FCA starts by saying that '*generally*' it has found that '*much day-to-day work designed to tackle money laundering works reasonably well, and that the steps the industry is taking to manage the risks presented by most of its standard risk customers are broadly adequate'*. There is also much boasting about how much the FCA

has raked in for HM Treasury on fines with special mentions of Deutsche Bank AG (£163million) and Sonali Bank UK (£3.25million).

As to the year ahead the FCA says:

- AML and financial crime will continue to remain one of its key priorities.
- It will use information from its new data returns to target its work on the '*highest risk firms and sectors'*,
- It aims to have the Office for Professional Body AML Supervision (OPBAS) operating on an initial basis by the end of 2017, and
- Serious organised crime will continue to remain a major threat.

How does the Financial Services Consumer Panel (FSCP) see things?
Sue Lewis is the Chair of the FSCP. She is a former civil servant from HM Treasury and now has a portfolio of non executive directorships. The FSCP Annual Report 2016-17 has not yet been published but will appear on its website in due course: www.fs-cp.org.uk/fca-publications

How does the Financial Services Practitioner Panel (FSPP) see things?
Anne Richards will be the new chair of the FSPP from 1 August 2017 (replacing current chair António Simões). She also Chief Executive Officer, M&G. The FSPP Annual Report 2016-17 can be found in full here: www.fca-pp.org.uk/sites/default/files/fca_practitioner_panel_annual_report_2016-17.pdf. It says it has these 4 cross-cutting themes to look at for 2017-18

- Consumer vulnerability, consumer and firm responsibility,
- Sustainability of regulation,
- Ageing population, and
- Competition.

On Brexit the FSPP has this to say:

> '*Following the referendum on leaving the EU, the Panel provided its views on the risks to the financial services industry as a result of the decision and specifically how the FCA's priorities and work plan should change in light of the referendum outcome. We recommended that the FCA should be focusing on engagement with the process, competitiveness of the UK (in as far as its remit allows this) and stability. The resilience of the UK financial system immediately following the vote was a sign that the relevant regulatory and supervisory bodies were successful in this area. The Panel continues to engage on Brexit-related topics on an ongoing basis*.'

How does the Smaller Business Practitioner Panel (SBPP) see things?
Craig Errington became the chairman of the SBPP on 1 April 2017 (taking over from Clinton Askew). He has been a Panel member since May 2013. He is Group Chief Executive of specialist financial mutual Wesleyan. The SBPP Annual Report 2016-17 can be found in full here: www.fca-sbpp.org.uk/sites/default/files/fca_smaller_business_practitioner_panel_annual_report_2016-17.pdf

It focuses on these key themes:

- Clarity of regulation from the FCA itself,
- Regulatory overload,
- 2nd Payment Services Directive,
- Complaints about connected lender liability with solar panels,
- Cyber security,
- Ring fencing of retail banks,
- Proportionality of extension of the Senior Managers and Certification Regime

For the year ahead, it sees its 4 priorities as:

- Engagement with FCA sector views,
- Input to thematic reviews, market studies and other FCA consultations
    - Mortgage market,
    - Asset management market study,
    - Financial Services Compensation Scheme funding review
    - MiFID 2 – taping of calls, and
    - General Insurance renewals.
- Consumer credit including:
    - Authorisations.

    - High Cost Credit Review, and
    - Direct debit guarantee scheme.
- Financial Advice:
    - Financial Advice Market Review, and
    - HMT Public Financial Guidance consultation.

On Brexit the SBPP has this to say:

> '*The result of the European referendum and the subsequent triggering of article 50 has resulted in significant additional uncertainty for financial services firms and for the economy in general. We have focused in our work with the FCA on its role in communicating with firms, and in particular to reiterate its initial message that firms must continue to abide by existing EU law and continue with implementation plans for future legislation. We have encouraged the FCA to consider the perspective of firms that may not have resources to monitor in detail the changes that are happening in the international and domestic post-referendum environment. Such firms will value visible and timely alerts from the regulator of any actions they need to take. In the longer term, we believe that any revision of the FCA rulebook is an opportunity to consider what good regulation looks like and to identify possible improvements to efficiency and effectiveness while ensuring that the UK remains competitive within the international environment.*'

What questions were asked from the floor at this AGM?
In total 32 questions were asked at the AGM. I submitted a question in advance asking what progress the FCA had made in its work on its review of the retained provisions of the Consumer Credit Act 1974. This question was not dealt with at the meeting so presumably the Board was too embarrassed to say no progress had been made at all. The Chairman promised that all questions submitted in writing would be answered by the FCA and published on its website in due course.

In this piece not all of those questions are set out and questions have been grouped according to theme. The contentious questions fell into 9 main groups:

- Brexit
- EU pipeline legislation
- GRG and HBoS collapse
- FCA spending
- Cyber security
- Climate change
- Financial technology
- Recruitment of former financial services sales staff by CMCs
- High cost short term credit

Brexit
Andrew Bailey said there was a requirement to implement EU law until the UK leaves the EU. After that the future shape will be determined by the Brexit negotiations and outcome. For wholesale markets, the EU is sensibly shaped by global standards such as from the Basel Committee and this global work will continue. Both the FCA and PRA have asked for Brexit contingency plans from firms and the FCA knows this is a big issue for firms. Andrew Bailey said it was very important to conserve open markets and that London is a very important financial centre which works for the benefit of everyone. The FCA has a long history of seconding its staff to the European Commission but the number of these secondments has been falling.

EU pipeline legislation
Andrew Bailey said that the 2nd Payment Services Directive (PSD2) will be the 2nd biggest implementation firms face in the year ahead. Andrew Bailey said the FCA worked with other regulators including the Bank of England, Payment Systems Regulator, PRA, the Pensions Regulator, FOS and FSCS. EU pipeline legislation has to be implemented and he made particular reference to both MiFID2 and the General Data Protection Regulation (GDPR). Andrew Bailey said GDPR '*raises very challenging issues*' and was a '*very significant piece of legislation'* noting that the Information Commissioner's Office in the UK was responsible for its oversight. Chris Woolard said the FCA is '*about to publish'* a document on the implementation of the Insurance Distribution Directive.

GRG and HBoS collapse
Andrew Bailey said the FCA will publish the skilled persons report into Royal Bank of Scotland's Global Restructuring Group '*as soon as we can'*. He promised that GRA '*will draw to a conclusion'*. The Chairman (being a former partner of KPMG – which had audited HBoS) is recused from answering

questions on HBoS. Andrew Bailey said the issue of action against the former directors of HBoS had not been kicked into the long grass but he could not give a date when this will be concluded.

FCA spending
The acting Chief Operating Officer (Nausicaa Delfas) gave a lamentable defence of the FCA wasting £60,000 on its new logo and it was apparent she did not believe the explanation she was reading implausibly claiming it was '*necessary for the visually impaired'*. Lady Hogg weakly defended Mr Bailey's £65k bonus saying that only £26k had been paid in March with the remainder deferred. She said that the view of the remuneration committee was that Andrew Bailey had '*done an exceptional job in the last year at the FCA'*.

Cyber security
Roland Barker (a member of the public) asked why cyber security was not mentioned in the FCA's Annual Report and said block chain was a main threat. He accused the FCA of complacency. Although Andrew Bailey thanked him for raising the issue this was followed by an incomprehensible babble from the dreadful acting Chief Operating Officer.

Climate change
The FCA was asked what it could or should do about climate change with a focus on investment policy decisions. Andrew Bailey had the integrity to confess that it was not an area for the FCA '*at the moment'* but that the PRA has done some work. He said that life funds were regulated by either the PRA or tPR and that we '*don't both need to do it'*.

Financial technology
Damask Smith a PhD graduate student from UCL asked about the use of both financial technology and artificial intelligence ('AI'). Chris Woolard (Director of Strategy & Competition) referred to Sandbox and that the FCA understood the technology deployed. He mentioned other initiatives such as RoboAdvice for pensions and life products. He mentioned a Tech Spring Event where technology was used to solve regulatory problems. On AI, he said the machine either learned something '*exactly right'* or *'exactly wrong*'.

Recruitment of former financial services sales staff by CMCs
John Muldoon (a compliance consultant) referred to the number of former financial services sales staff now employed by CMCs. He said these staff had earned commissions on the sales in the first place, and were now seeking to earn commission again for themselves and the CMC they worked for by claiming the products they sold had in fact been mis-sold. Andrew Bailey said the FCA was scoping the future regulation of CMCs and the FCA wanted to learn more. He encouraged Mr Muldoon to provide further details. Jonathan Davidson said it would not be until April 2019 that the FCA takes over CMC regulation.

High cost short term credit
Jamie Patel, Senior Compliance Officer at PDL Finance asked whether the price cap for HCST credit had been a success or not. Chris Woolard said the FCA was committed to reviewing this and it was '*close to publishing its findings of that review'*. He said a *'feedback statement is coming shortly'*.

18th July 2017

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