Thank you for inviting me to speak this morning.

The description of my talk is rather grand – advising businesses what they need to do to prepare for the challenges of the future – but I’m going to be spending most of my time talking about the subject of change, because frankly it is more than a cliché that change is the only constant nowadays.

With your indulgence, I want to set out why and how we are changing at the Commission and to reflect on the challenges we have faced – and no doubt at least some of what I say will be familiar to many of you, who are in or will have been in businesses or organisations that have gone through substantial change.

And how quickly change can come. Only a month ago I suspect quite a few people in this room wouldn’t have heard of the law firm Mossack Fonseca. I don’t need to rehearse the reverberations the “Panama papers” have caused – and that probably isn’t at an end – but it is a demonstration of how swiftly something can come out of “left field” and place unexpected demands on businesses or push them off plan.

If I can ask you to cast your minds back further than a month, economically we are still recovering from the largest financial crisis in living memory. That crisis led to some of the most far-reaching regulatory reform – both in terms of legislation and institutions – ever seen.

Like many regulators, during the financial crisis the Commission had to focus its limited resource on dealing with the day-to-day unfolding issues, and specifically how they affected Jersey. There was little time to deal with wider concerns, or invest in improving our systems or processes.

As the turbulence subsided we have been able to stand back and identify areas where efficiency gains can be made – to give you one small but quite visible example, we still issue paper authorisation certificates. Given we have a register of entities on our website, the need for those seems questionable.

As well as becoming more efficient, we have an ongoing desire to become more effective as a regulator.

Effectiveness can be considered in a number of ways, but to mention two drivers for the need to improve: first, we carried out a detailed review of some of the most serious cases we have dealt with, with the aim of drawing out lessons for us where doing things differently may have mitigated some of the outcomes; and second, and perhaps a little less well understood, is that we need to be able to prove the Commission’s effectiveness to others – we have to be accountable.
Occasionally the Commission is accused of thinking of itself as ‘above the law’, but of course the reality is that we are, and want to be, accountable. We are accountable to the States of Jersey before whom we will shortly be laying our Annual Report, with a session for any interested Members to question us on our activities.

As a manager and leader in the organisation, I also want to be accountable for demonstrating the effectiveness of our team in achieving positive regulatory outcomes. One of the main challenges of regulation is the difficulty in making a direct causal link between regulatory action and market outcomes. I can’t demonstrate my effectiveness via financial measures such as profit and loss; but it isn’t always easy to try to prove a negative, such as showing the direct link between an action taken by the Commission now, and the prevention of something ‘bad’ happening in a later period.

In fact, perverse incentives actually exist here: while logically it must be the case that the most effective regulator is one that stops bad things happening very early on so they never materialise, would it receive any credit for its work, given that the most visible regulator would be the one handing out fines and punishments like confetti once the harm had occurred.

The final reason for accountability, and being able to demonstrate our effectiveness to others, is that it is crucial for international market access for Jersey firms. It isn’t always appreciated that the Commission, and the Island as a whole, are subject to assessment by international standard setters and other bodies.

For example, last year a group of assessors from MONEYVAL, or to give it its full title, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, visited the Island to assess the jurisdiction. They spent time with the Commission, the police, the States and also individual firms asking a large number of searching questions about our laws, regulations and how things worked in practice.

The draft report on Jersey was discussed at MONEYVAL’s plenary meeting in December, and we’re looking forward to the final report being published in the next couple of months. It will be scrutinised in detail, including by those who desire to be critical of Jersey.

The Commission and other authorities invested a lot of effort in preparation for MONEYVAL – the Island will be rated on various criteria; in turn those ratings will be a key influence on others’ views of the effectiveness of our AML/CFT regime – and the ratings we get now stay in place until the next assessment, which may not be until 2021.

To give a concrete example of why this is important, two of the four criteria that the European Commission has said it will use to assess whether a jurisdiction should be entered onto what would colloquially be known as a “blacklist”, relate to compliance with standards set by the G20, the OECD, and those set by the Financial Action Task Force (of which MONEYVAL is an associate member).

Therefore during these assessments the Commission needs to demonstrate it is an effective regulator. This is even more so because of the changing nature of these international assessments. Previous assessments have mainly been based on whether laws and regulations were written down and in place, but increasingly these types of examination are now about how effective those laws and regulations are in practice.

This is a key shift in approach by the international regulatory community which has implications for both the Commission and regulated firms, especially given the difficulty of proving causality that I mentioned earlier.
As well as improving our efficiency and effectiveness, we needed to change because our employees deserve it. We need to be able to offer interesting and rewarding careers that encourage talented, thoughtful, people to come to work at the Commission. As I’m sure all of you who are employers know, one of the challenges of operating in the Island is recruitment, retention and training of quality staff, given the size of the available labour pool.

Commission staff are in demand by the industry, in particular for compliance and risk roles, but it is essential that there is an adequate base of skilled staff at the regulator for effective operation.

That’s the why of change at the Commission. I want to now talk briefly about the how.

First, we are investing in overhauling our key IT infrastructure. We will be doing this in an iterative way, so that we can test and prove changes to ensure they deliver defined improvements internally and externally. We aim to create a comprehensive electronic gateway to do business with us, which should mean less paper, electronic payment options, and quicker processing times as less need to re-key information.

We want a ‘tell us once’ culture with regard to information; and all of that should reduce firms’ day-to-day costs of interacting with the Commission. We have also invested in improving our own HR and finance functions, and in the longer term will be looking to revamp our external website.

Second, we are changing the way we carry out our core role of supervision of financial firms. On an organisational front, where regulated firms have carried out more than one type of business, they have previously had multiple supervisors. From now on, an entity will be supervised by one team, regardless of the numbers of licences it holds.

Supervising on a ‘per licence’ basis allowed areas of specialism to develop within the Commission, but it also meant that firms were potentially subject to multiple examination visits which overlapped in some cases, and multiple points of contact at the Commission.

Ironically, it also meant on occasion that issues fell between the cracks of separate supervisory teams or there were unclear areas of responsibility. Supervision at an entity level will avoid these problems; and we intend to maintain specialists within the separate entity teams, who will cooperate across the Commission to ensure knowledge is shared and maintained.

The other supervision development is that we have created a small but focussed risk team, who will have a remit to consider issues on a ‘macro’ as well as an individual firm basis. This will work as a feedback loop: the team will be able to consider whether an issue found in an individual firm is indicative of a broader sector-wide risk that needs investigation, or vice-versa. It will also be able to provide aggregated risk data which will help answer the type of question such as ‘What is the level of risk of terrorist financing in Jersey?’

Increasingly, these sorts of questions are the starting point for the international assessments I mentioned earlier, and the inability to easily present a convincing answer will put a jurisdiction on the back foot. Of course the answers to these sorts of questions are also of importance to all the stakeholders to whom we are accountable.

Apart from structural improvements, we want to alter the nature of some of the conversations we have with regulated firms.

Over my career I’ve seen changes in the way that regulation ‘operates’ – rules-based regulation, principles-based regulation, governance-focused regulation, outcomes-focused, culture-focused – but fundamentally what we are trying to understand are the key risks in a business, and whether
they are recognised, understood and mitigated. How a firm makes its money is often a good question to start with in this regard.

Policies and procedures have their place, but a little like the assessments of the Commission framework, it’s what actually happens in practice that is important. We hope that our developing approach will have a positive secondary effect in reinforcing compliance officers’ comfort in taking a sensible and robust, but risk-based approach, to business.

So we will also be re-developing the risk model that we use to assess firms. Parts of the current version date back to the late 1990s and the model isn’t sufficiently responsive to new risks or appropriate for the kind of learning organisation that we want to be.

As part of this, we need to review the data we currently ask firms for. We will robustly assess both our existing data requests and any proposed new items to see whether they will genuinely assist in risk identification or mitigation. We have no interest in collecting data just for the sake of it.

Our aim is to create better systems to give regulated firms an easier-to-deal-with Commission. Better conversations with firms about their business and a better targeting of regulatory resource to areas where risks aren’t adequately mitigated, helping to protect well-run and compliant businesses from the reputational risk to Jersey as a whole that arises from wrong-doing.

These changes in themselves mean working at the Commission will be more interesting, but over and above that, investment in our systems needs to be matched by investment in our people, whether that be training in technical or soft skills – or wider use of flexible working, the removal of ‘boring’ bureaucratic tasks or the myriad of other aspects those joining a modern organisation now expect as a matter of routine.

We are part way through our change programme, and I said I would reflect on our experience to date. Everything I have experienced shows that the success of a change programme is entirely about people, not systems or processes.

The first aspect is the challenge of getting ‘buy in’ and ‘bringing people with you’ to change. We’re probably all familiar with the models of human reaction to change (from ‘denial’ to ‘testing’ to ‘acceptance’), and we have tried to bring people through this process with a mix of constant communication, including regular all staff briefing sessions, and trying to create a shared vision of what the future might look like. The challenge in this is setting out a realistic picture of future working practices once change has been implemented, and holding to that outcome as implementation proceeds.

It’s fair to say that in any big change programme you are not likely to bring everyone with you, and our turnover did show an increase in 2015, with the uncertainty of change likely having played a part. That’s not necessarily a bad thing however.

Before launching into IT projects we were careful to spend a great deal of time understanding and elucidating our requirements for new systems: while essential to do, it’s fair to say that this created a sense of frustration among some of our team who were keen to move into the ‘new world’ as soon as possible.

Secondly, the ‘bandwidth’ requirements on team members of a change programme, when people are also trying to do their ‘day jobs’ shouldn’t be underestimated. This includes the leadership team.
In a relatively small organisation like the Commission, that can also highlight the issue of ‘key person’ risk. We have had to be ruthless around prioritisation, including of what would be classed as ‘business as usual’, to be realistic about what can be delivered in any particular timescale.

Linked to both of these points is the issue of governance around change of particular interest to this audience - and having an open culture. The Commission has a strong Executive team that meets fortnightly, and individual Project Boards have been set up for material change work streams.

We have an active Staff Forum, and working in an organisation full of inquisitive and probing regulators means we’ve never been short of challenge! There is a natural human tendency I think – or perhaps it is just a regulator thing – of wanting every ‘i’ dotted and ‘t’ crossed before implementing change.

Martin Wheatley, former Chief Executive of the UK Financial Conduct Authority, infamously made a comment about ‘shooting first and asking questions later’. This isn’t the approach we have taken to implementing change, but equally we have had at times to push through ‘analysis paralysis’ to get things moving.

So far we have begun delivering some of the supervisory changes I mentioned earlier and created the first phase of the electronic portal for communicating with the Commission. Our Finance system has been overhauled, our communications function greatly strengthened and our employment offering improved. I look forward to continued progress with our change programme over the next two years.

Moving from the Commission to Jersey more widely, how can firms prepare for change, to deal with the challenges and opportunities that will arise – and what might they be? One of the tools beloved of regulators is the use of stress or scenario testing. You may well be familiar with the use of stress tests dictated by regulators, including the Prudential Regulation Authority in the UK, to test whether banks hold enough capital in the event of a specified downturn in economic circumstances.

More broadly however, ‘war gaming’ of particular scenarios can be a useful way to pinpoint possible areas of weakness in an organisation’s operations, and whether planned management responses in the heat of a crisis could actually be credibly implemented – especially where all your competitors might be planning to do the same thing.

At the extreme, firms might want to consider what sort of events might make them fail altogether. There has been some criticism of whether organisations should spend time ‘preparing for their own funeral’, and that failure scenarios are so extreme that to spend time considering them would be time wasted, but if you don’t give even a little thought to this then it will possibly be too late to rescue a business if the worst happens...

In terms of what could cause terminal harm to any business, apart from solvency issues, I would suggest that damage to reputation is probably the area where the most severe consequences could arise – and this isn’t just a phenomenon of the modern social media world. Think of Arthur Anderson and Ratners, for example.

For the many of you here who are younger than me, Ratners was a jewellery chain. On 23 April 1991 Gerald Ratner made a speech to the Institute of Directors in which he jokingly remarked: “We also do cut-glass sherry decanters complete with six glasses on a silver-plated tray that your butler can serve you drinks on, all for £4.95. People say, ‘How can you sell this for such a low price?’, I say, ‘because it’s total crap!”
He also went on to say that some of the ear-rings on sale were “cheaper than an M&S prawn sandwich but probably wouldn’t last as long”.

Now assuming your CEO avoids the temptation to “do a Ratner”, I think one of the main potential causes of reputational damage these days for a services firm would be caused by a release of confidential client information. Ask Mossack Fonseca if you disagree!

This is my way of saying that adequate investment in cyber-defenses is crucial. That doesn’t just mean buying more and more expensive computer hardware to get into an arms race with hackers – it also means having proper systems in place on the basics, like disabling accounts promptly when people leave an organisation, refreshing passwords regularly, and training staff to be able to resist the kind of ‘social engineering’ attacks increasingly seen.

We’re no longer talking about the crude “if you pay me £1,000 you will get £1,000,000” back type scams; consider instead that a junior member of your finance team receives an email from the Finance Director’s work email address on a Friday afternoon asking for a payment to be made.

In this case, the email address was cloned, and the attempted thieves had worked out that the Finance Director was on holiday by means of his out of office message - presumably hoping that would mean no checking of the payment instruction would take place - and had worked out who in the organisation to target with the email by examining LinkedIn profiles to find members of the finance team.

Our Chairman has commented that this kind of attack represents the ‘dark side’ of technology, but of course it also seems clear that positive innovations in this area are likely to provide many of the opportunities for business in the future. I suspect the word ‘fintech’ will find its way into the dictionary before too long, and if nothing else a thriving industry in conferences and seminars to discuss the latest developments has been created!

Most of the technological innovation we have seen to date seems to be in the area of payments, and the concept of some kind of automated financial advice service has also had a reasonable airing, particularly in the UK. Given Jersey’s focus on anti-money-laundering controls, several know-your-customer applications have made it to market, and the Commission set out its expectations on regulated firms in using those products last year.

Regulators are often accused of lacking imagination, and so I don’t think I should try to lay out any further where opportunities may arise in future. In my relatively short time in Jersey it is clear that there is a positive entrepreneurial spirit alive in the Island.

It’s obviously disappointing when we see criticism of the Island’s financial services industry, particularly where so much of it is ill-informed or simply wrong; but the reality is we repeatedly get positive marks in international assessments and we are a respected member of the international financial community. The Commission will continue to do its best to ensure this is the case and that Jersey firms have market access as a result.

Thank you