



BANK OF ENGLAND

**Bank of England response to the Final Report of the Parliamentary
Commission on Banking Standards**

7 October 2013

Bank of England Response to the PCBS Report

1. The Parliamentary Commission on Banking Standards (PCBS) published its final report in June 2013, making recommendations to the Government, to the regulators and above all to the industry itself, aimed at remedying the shortcomings in standards that it had identified. A number of recommendations were addressed to the Bank (including the Financial Policy Committee (FPC) and the Prudential Regulation Authority (PRA)) and this document sets out our initial response. It also meets a request from the Government to provide an outline of how the Bank would implement the proposed new framework for individuals. Initial FPC views were noted in the Record of its September meeting and the Bank will ensure it has the opportunity to consider work planned.¹

2. References in brackets throughout this document are to recommendations made to the Bank, corresponding to the table in the Annex, which in turn follows the numbering in the Government's response².

3. We welcome the Report and, with few exceptions, intend to take forward its recommendations.

4. The Commission highlighted four areas relevant to the Bank of England in which it judged reform was needed to enable trust to be restored in banking: individual responsibility, especially at the most senior levels; reforming governance within banks; greater competition in banking markets; and reinforced responsibilities of regulators. Our response is grouped under those headings.

INDIVIDUAL RESPONSIBILITY

5. A central theme of the Report was "to make individual responsibility in banking a reality", and the Report recommends a new framework to replace the Approved Persons regime for banks. The Bank welcomes both the aim of the Commission and its recommendation to deliver that. Assuming that the necessary legislative amendments to the Banking Reform Bill are enacted, it would then be for the regulators to give the new regime effect in practice (3, 4, 12, 14, 16). The PRA expects to consult on the design of the new regime and enact the final rules in 2014, ahead of implementation in 2015.

6. For **Senior Persons**, the regime is based upon a simple principle – as the Commission put it, 'responsibility that is too thinly diffused can be too readily disowned'³. Delegation of tasks is sensible and necessary in large and complex organisations but must not dilute the responsibility of the most senior individuals. The Senior Persons regime should 'ensure that the key responsibilities within banks are assigned

¹ See www.bankofengland.co.uk/publications/Documents/records/fpc/pdf/2013/record1310.pdf (para 17) and noting the Government's response on recommendations (34), (35), (98) and (99).

² See www.gov.uk/government/news/government-responds-to-parliamentary-commission-on-banking-standards.

³ See www.parliament.uk/documents/banking-commission/Banking-final-report-vol-ii.pdf, p.312.

to specific individuals who are aware of those responsibilities and have formally accepted them⁴. The PRA will require firms to ensure that key activities which they undertake, or key risks to which they are potentially exposed, are assigned to individual Senior Persons, including the Chief Executive Officer. This would include, for Senior Persons at ring-fenced banks, responsibility for the firm complying with the ring-fencing requirements. Some matters and decisions will remain within the remit of a firm's board as a whole, rather than a single individual (as part of good governance, or European law, or both). As part of its consultation the PRA will consider whether further action is needed to assess prospective directors on their ability to safeguard firms' safety and soundness.

7. The Government has indicated that Senior Persons will be subject under Financial Services and Markets Act 2000 (FSMA) to a 'reverse burden of proof'. This means they will be subject to disciplinary action if a contravention occurs in their area of responsibility and they did not take reasonable steps to prevent it, or to stop it continuing.

8. The Report does not recommend a strict liability regime, and evidencing individual responsibility in a way which proves the PRA's case will not be straightforward. Supervisory processes will need to establish and record responsibilities in a way which is consistent with the PRA's forward looking and judgement-based approach. And the use of remedial requirements or enforcement action must reinforce the deterrent effect of the new regime without encroaching upon human rights. The PRA is considering these questions closely with the Treasury and the Financial Conduct Authority (FCA).

9. The PRA's day-to-day focus will remain on *ex ante* action to prevent risks to its objectives crystallising in the first place. Significant strides towards making individual responsibility in banking a reality can be taken by firms' management, working with supervisors, to ensure greater clarity of responsibilities and improved corporate governance.

10. The Senior Persons will be within the separate "Licensing" arrangements, intended to 'provide the basis for upholding individuals' standards of behaviour', centred on the application of a revised set of **Individual Standards Rules** to a broader group than is currently covered by the *Statements of Principle and Code of Practice for Approved Persons*.⁵ The Senior Persons may be subject to additional rules. The PRA will consult with the industry before determining the exact population to which these standards should apply. Given its objectives, the key for the PRA will be to identify those roles that can directly affect the firm's safety and soundness.

11. Given the failings of the Approved Persons regime, the Report suggested that the regulators should advise on the merits of the new scheme's wider applicability (1). For the present, the Government's legislative proposals in this area will apply only to deposit takers, but not to investment banks and insurance companies. The PRA will therefore be applying different regimes across its regulated entities; though within the Approved

⁴ See www.parliament.uk/documents/banking-commission/Banking-final-report-vol-ii.pdf, p.312.

⁵ See www.parliament.uk/documents/banking-commission/Banking-final-report-vol-ii.pdf, p.311.

Persons scheme it will be able to review the standards applying to insurers and others, and will consult on any proposed changes.

12. The FCA maintains the Register covering all FCA and PRA approved persons. The PRA will hold further discussions with the FCA, Government and overseas regulators in relation to the impact of the new regime for individuals (16) and to consider whether additional information should appear on the Register (17).

REFORMING GOVERNANCE WITHIN BANKS

Remuneration

13. The Report recommends a new **Remuneration** Code, building on current provisions. The PRA will consult on a revised code in 2014.

14. The PRA's current approach embodies the requirements of the Financial Stability Board's Principles and Standards, and also European legislation (including CRDIV). The PRA assesses whether banks are striking an appropriate balance between risk and reward and, as part of that, whether an appropriate mix of financial measures is used to calculate remuneration (33). The Code already requires firms to have appropriate terms in relation to deferral in their employment contracts, and the PRA assesses firms' overall approaches (27). There is a presumption that non-executives should not receive variable remuneration (31).

15. It will not require a new statutory framework for the revised code to take account of the PCBS recommendations, which included: more and longer deferral of variable remuneration, including up to ten years; the greater use of instruments such as bail-in bonds (26)⁶; strengthening and broadening the application of malus to unvested awards and of clawback to vested awards (28); and tackling the practice of compensating recruits upon change of employment (32). They also included greater and more granular disclosure by remuneration committees in banks' annual reports (33). The Report also recommends that where direct taxpayer support to a bank is provided in the event of bank failure, the regulators should have an explicit discretionary power to render void or cancel all deferred compensation (30). The PRA will consider how to address this, consistent with European Human Rights provisions.

16. The revised Code will continue to apply to those staff who have a material impact on a firm's risk profile – 'material risk takers' – in a proportionate manner depending on a firm's nature, size, scope and complexity (24). The Regulatory Technical Standard required by CRDIV on criteria for the identification of material risk-takers is likely to increase the numbers identified within firms.

17. As the Report recommends, the PRA has examined whether there is merit in further powers in relation to recovery of vested remuneration in the cases of individuals who have been the subject of successful enforcement action – and has concluded that its existing powers are sufficient to advance the intent of this recommendation (29).

⁶ The European Banking Authority (EBA) is consulting upon a draft Regulatory Technical Standard setting out the classes of instruments which can be used for variable remuneration (23). See www.eba.europa.eu/regulation-and-policy/remuneration/draft-rts-on-classes-of-appropriate-instruments-for-variable-remuneration

18. The Report notes that ‘banks have moved towards linking fines more strongly to employee remuneration, so that the cost of fines is not simply passed on to shareholders but also falls on employees, thereby creating incentives for good behaviour’, and recommends that fines on banks be recovered from the pool of deferred compensation as well as current year bonuses (20).⁷ The PRA expects firms themselves to pay any fines imposed on them. In determining bonus pools firms should consider the size and nature of any regulatory fines alongside evidence of risk management failure, increased business risk, poor financial performance and reputational damage.

Risk Management

19. The Report’s recommendations on **risk management** include that each board should have a separate risk committee chaired by a strong and capable non-executive (38), who would also be responsible for protecting the independence and authority of the Chief Risk Officer (CRO) (42). The Report also recommends that dismissal or sanctions against the CRO, Head of Compliance or Head of Internal Audit should only follow agreement by the non-executives (42, 43, 44).

20. More broadly, the Commission emphasises that non-executive directors should ‘provide a genuine check and balance to the executives’. Its recommendations are intended to reinforce the leadership and challenge role of the Chairman and Senior Independent Director (36), and to emphasise the importance of a properly-resourced Chairman’s office. (40).

21. The Bank agrees with the intentions of these recommendations on governance and risk management, and will consult on them as appropriate in 2014. Some are consistent with CRD IV changes, upon which the PRA has already consulted. As part of this, the PRA will consider whether rules should be introduced to ensure effective monitoring and oversight of the skills of the management board. And, as recommended, the PRA will examine, with the FCA and the Financial Reporting Council (FRC), the merits of requiring each non-executive director vacancy at a bank above the ring-fence threshold to be publicly advertised (39).

22. The PRA does not believe that a director’s duties under the current Companies Act would override his or her obligations to comply with relevant PRA requirements. To emphasise this, the PRA will consult on a requirement that a firm must operate in a way which is consistent with its safety and soundness (41).

GREATER COMPETITION

23. The Government agreed with the PCBS recommendation to give the PRA a secondary objective for competition. The proposed objective is: “*When discharging its general functions in a way that advances its objectives... the PRA must so far as is reasonably possible act in a way which, as a secondary objective, facilitates effective competition in the markets for services provided by PRA authorised persons in carrying on regulated activities*”.

⁷ From www.parliament.uk/documents/banking-commission/Banking-final-report-vol-ii.pdf, p.495

24. The Bank agrees with the proposed secondary competition objective, as set out in the Treasury's amendment. We believe this is formulated in a way that should not divert attention away from the PRA's primary objective of safety and soundness and so does not repeat the mistake on which the FSA foundered – a multiplicity of objectives. Nevertheless, the secondary objective also serves to emphasise the important role the PRA can play in pursuing its objectives in a way that facilitates effective competition in banking and other markets (56).

25. The PRA is already taking forward a revised approach (announced by the Financial Services Authority and the Bank in March 2013) to authorising and regulating new entrant banks. The PRA will, with the FCA, conduct a review of this revised approach in Spring 2014 (62). The PRA will report annually on what it has done in furtherance of the objective, and will publish annual statistics on the authorisation process.

REINFORCING RESPONSIBILITIES OF REGULATORS

26. We welcome the Report's endorsement of the **forward looking, judgement-based supervisory approach** that the PRA has chosen to pursue. To support the implementation of this approach in relation to all firms it regulates, the PRA employs senior advisors with extensive industry experience (106). And consistent with a specific recommendation (108) the Bank has run courses on the history of financial crises, with input from senior staff involved in its recent crisis-focused operations. A programme on past financial crises and corporate memory will also be introduced within the PRA.

27. The Report rightly acknowledges that the regulatory framework is increasingly set **by international rules and regulations**. Banking is an international industry and so effective international co-operation is essential. The Bank, including the PRA, plays a full and active role with its counterparts globally and in the European Union in developing and implementing prudential standards and in supervising international firms (23, 110).⁸ An assessment of the Basel framework (93) is currently being conducted by the Basel Committee itself. As a member of the Basel Committee, the Bank will continue to shape that assessment, including on outstanding issues such as the trading book, securitisation and dependence on credit ratings (111). Given that work, the Bank does not intend to provide a separate assessment of the shortcomings of the Basel Framework but it will, once the Basel Committee's assessment is complete, share it with the Treasury Select Committee (TSC).

28. The Bank has played a leading role in developing the recommendations on **shadow banking** which the Financial Stability Board recently presented to the G20⁹. And the FPC has set out, in its response to the Treasury's 2013 Remit and Recommendations Letter, its intentions with regard to monitoring of the regulatory perimeter.¹⁰ The Bank thus has no hesitation in agreeing with the PCBS that it is essential to 'take seriously

⁸ See www.bankofengland.co.uk/pras/Pages/supervision/approach/default.aspx

⁹ See www.financialstabilityboard.org/publications/r_130829a.pdf.

¹⁰ That Response stated that 'The [Financial Services (2012)] Act provides for the Committee to make recommendations to HM Treasury relating to the boundaries between and within regulated activities and products. The Committee will receive regular briefing on the relevant risks to financial stability arising from less regulated sectors and activities from the Bank, PRA and FCA. It will also hold, at least annually, a regular dedicated discussion on the appropriate boundaries around, and within, the regulatory perimeter.'

the task of monitoring shadow banking'¹¹ and will maintain the momentum behind its domestic and international work in this area.

29. The PRA is required, under the Act, to investigate and report to HM Treasury on possible regulatory failure and matters of public interest in respect of any PRA-authorized firm¹². The PRA intends to engage independent, external specialists in connection with such investigations. In doing so, it will consult the Oversight Committee of the Bank's Court of Directors. As recommended by the Commission, the Bank is considering how best to facilitate Parliament's involvement in such investigations (112).

30. The PRA's policy is to keep a **summary record of all meetings and substantive conversations with those at senior executive level in all regulated firms** (92). This information is subject to statutory confidentiality. The PRA will continue to make documents available to Parliament on request, subject to its legal obligations and the need to preserve the willingness of firms to have open discussions with the PRA. As recommended, the PRA will provide to the TSC, by the end of 2013, a response to the suggestion that it may risk appearing to act as a **shadow director** of regulated firms (103).

31. The PRA sets out standards that firms must meet, described variously as rules, codes, principles or firm-specific requirements. Statute provides the PRA with a set of disciplinary powers to enforce these standards. The PRA will continue to use its **enforcement powers** to promote positive behaviour in all regulated firms and thereby mitigate risks to the PRA's objectives.¹³ The PRA will keep the use and effectiveness of its enforcement powers under review as appropriate (19, 21, 22). As recommended, the PRA will publish, in liaison with the FCA, a review of the enforcement arrangements for the banking sector in 2018 (91).

32. The Report recommended that the FPC be provided with responsibility to set a **leverage ratio** requirement for banks much sooner than would be the case under current Government plans. In the meantime, it called on the FPC to publish its own assessment of the appropriate level of such a ratio and its role in the regulatory framework (94) by the year end. The FPC intends to address this recommendation in that timescale but noted that a full assessment would depend on the definition of leverage agreed internationally.

33. The Report recommends that a new regulatory tool, '**special measures**', be introduced (90). It would take the form of a formal commitment by a bank to address concerns identified by the regulator. The PRA agrees with the intention of the recommendation – to help identify and tackle serious failings in standards and culture – but does not believe that any new powers are necessary. The PRA has a range of intervention powers, including the power to commission a 'section 166' report by a skilled person and to impose requirements on firms under section 55M of FSMA. The possible form of such requirements may include, for example, a commitment letter from the firm to the PRA and the nomination of an individual within the firm to take responsibility for fulfilling the commitments therein (both envisaged by the Report).

¹¹ See www.parliament.uk/documents/banking-commission/Banking-final-report-vol-ii.pdf, p.187.

¹² See www.bankofengland.co.uk/publications/Documents/other/pr/conductstatinvestigations.pdf.

¹³ See www.bankofengland.co.uk/pr/Pages/publications/approachenforcement.aspx.

OTHER RECOMMENDATIONS MADE BY THE COMMISSION

Accounting, audit and disclosure

34. The PRA works with the FCA and the FRC to improve the quality and usefulness of information disclosed on firms' safety and soundness. 'Disclosure of such information assists creditors in judging the risk they take in lending to the firm. This in turn improves firms' own incentives to mitigate those risks'.¹⁴ Consistent with that, we will work with the FCA and the FRC to review the extent to which there is scope to extend bondholder influence over banks, with a view to bringing forward recommendations in due course (35).

35. In line with the Report's recommendation (98), the Government has asked the PRA, working with other authorities including the FPC and the banks as appropriate, to review the nature and scope of information required to create a separate set of accounts for regulators and bring forward recommendations. In doing so, the PRA will take account of the costs and benefits of such an initiative, and also the international requirements that increasingly shape the regulatory environment: from 2014, for example, the new CRD IV regulatory reporting regime will form the basis of nearly the entire prudential dataset. We will also consider the Report's recommendations on the metrics and models used to measure profitability for remuneration purposes (34) and on auditors' commentary on subjective matters of valuation, risk and remuneration in their reports on banks' accounts (99).

36. The PRA has published a code of practice on the relationship between the external auditor and the supervisor¹⁵, and this applies to all PRA-regulated firms. The Code emphasises the importance of confidence in audited financial information 'to ensure that supervisory efforts and policies are effective, appropriate and based on accurate data'. Supervisors and auditors should engage in regular dialogue. In the past year, for each of the four largest UK banks, there were at least four bilaterals between supervisors and auditors. The PRA does not believe that it is appropriate to mandate the frequency of meetings in statute. Its Code is issued according to a statutory requirement, but the PRA remains able to apply its principles in a manner that is proportionate to the level of risk of the firm (102).

37. Annual reporting on the quality of dialogue between supervisors and regulated firms' auditors is in place, with the first report scheduled for June 2014. It is appropriate that this report be made initially to the PRA Board rather than to the Court of the Bank, given PRA responsibility in this area, though it will be shared with the Court Oversight Committee (102). In line with the Report's recommendation (100), the Government has asked the PRA to work with the FCA and HM Revenue & Customs (HMRC) to investigate where there is scope for usefully extending dialogue and information sharing. This review will conclude later this year with a report to HM Treasury.

Whistleblowing

38. Whistleblowing is important to the identification of wrong-doing that may have adverse effects on the PRA's objectives. The PRA agrees that a non-executive should be given specific responsibilities in relation to

¹⁴ From www.bankofengland.co.uk/publications/Documents/prapproach/bankingappr1304.pdf, p.19

¹⁵ See www.bankofengland.co.uk/publications/Documents/other/pr/policy/2013/codeofpractice1ss7-13.pdf.

whistleblowing (47), and that all Senior Persons should have an explicit duty to be open with the regulator (48). The PRA will bring forward proposals as part of its consultation on the Senior Persons regime. The Report also recommends that the regulator undertake research into the impact of financial incentives for whistleblowing in the United States (49). The PRA, together with the FCA, is assessing the benefits and drawbacks of incentivisation and will make recommendations in 2014.

39. The Report's other recommendations on whistleblowing would intensify the exchange of information between the firm and the regulator on particular whistleblowing cases (48), expect the regulator periodically to examine the whistleblowing records of firms and determine the information on whistleblowing that firms should disclose in their annual report (52), and empower the regulator to require firms to provide compensatory payments in particular cases of whistleblower mistreatment (53). The PRA, in liaison with the FCA, will give further consideration to these recommendations including the scope to advance them, if appropriate, within existing legislation.

Bank and PRA Governance and Accountability

40. The Report made several recommendations in relation to Bank governance and accountability. The framework for this is set by legislation, which the Government has announced it does not plan to amend (82). For example, the Government has confirmed that the Governor will continue to chair the PRA Board. The Bank will respond as quickly and completely as possible to reasonable requests for information from Parliament (85), and the Governor would raise the alarm if lobbying from any type of financial services firm posed risks to the Bank's objectives (86).

Payment Systems

41. The PCBS suggested (60) that the Government should consider the merits of requiring the major banks to relinquish their ownership of payment systems. While we understand the concerns around the effect of the current ownership model, it is important that the outcome is consistent with the Bank retaining a direct leverage in this area so as to meet its objectives: the mechanism for inter-bank settlement crosses its books, and payment systems are at the heart of monetary policy, as well as being critically important to financial stability. We note that the Government has committed to ask its new payment systems regulator to report on this issue, and we will work with the regulator to ensure that stability concerns are appropriately taken into account.

Annex

Ref.	Recommendation Title	Recommendation addressed to the Bank	PCBS Vol II Para 16 no.	Lead	Response category	Bank Para no.
Response category key: 1 – The Bank has already met the recommendation or intends to do so; 2 – the Bank intends to meet the recommendation, subject to legislative change, consultation, work with other authorities or other dependencies; 3 – the Bank will give further consideration to the recommendation before reaching a view, N/A – not a matter for the Bank to address						
<i>Each recommendation is assigned the same reference number as in the Government's response document¹⁷</i>						
1	Wider applicability of regime change	The arrangements for a Senior Persons Regime, for a Licensing Regime and for a register, reflecting the operation of these regimes, be put in place in the first instance separately from the Approved Persons Regime, which should cease to apply to banking. It is for the regulators to advise on the merits of the new schemes' wider applicability.	656	HMG Bank FCA	2	11
3	Senior Persons Regime – Regulators	Regulators should set out in guidelines how responsibilities are to be identified and assigned, and should have the power to take action against firms when it is satisfied that they are not following these guidelines.	618	Bank FCA	2	5
4	Senior Person Regime – Banks	It should be a requirement of those in the Senior Persons Regime that, before relinquishing any responsibilities that are to be passed to a successor, they prepare a handover certificate outlining how they have exercised their responsibilities and identifying the issues relating to their responsibilities of which the next person holding them should be aware. Such handover certificates should be held by banks as a matter of record, and should be available to the regulators both to assess the effectiveness of the Senior Persons Regime within a particular bank and to assist with the attribution of responsibility in the event of subsequent enforcement action.	627	Industry Bank FCA	2	5
12	Banking Standards Rules	Regulators should develop, after consultation with banks, staff, unions and those bodies already working on codes of conduct, a new set of Banking Standards Rules. These should draw on the existing principles and apply to a wide group of individuals, forming the foundation of their understanding for how they are expected to behave. The rules should be generally applicable to all individuals within the Licensing Regime, rather than sub-divided depending on category of employee.	634	HMG Bank FCA	2	5

¹⁶ www.parliament.uk/documents/banking-commission/Banking-final-report-vol-ii.pdf

¹⁷ www.gov.uk/government/uploads/system/uploads/attachment_data/file/211047/gov_response_to_the_parliamentary_commission_on_banking_standards.pdf

14	Implementation of the Licensing Regime by the Bank	Banks' implementation of the Licensing Regime should be subject to monitoring by regulators and enforcement action where firms are found to be failing in their duties. An individual within the Senior Persons regime should be responsible for the performance of a banks Licensing Regime.	642 643	Industry Bank FCA	2	10
16	Reforming the Register	A single register should cover both the Senior Persons Regime and the Licensing Regime, although for individuals covered only by the Licensing Regime it is likely to be more proportionate only to include their details where there has been enforcement action against them. Banks should inform regulators if they take disciplinary action against an employee for reasons related to a breach of the banking standards rules. In such cases regulators should assess whether any further sanction is merited. The regulators should explore whether information about disciplinary dismissals could also be communicated to prospective employers.	651	HMG Bank FCA	2	12
17	International agreement	Of particular benefit would be an obligation on firms to take account of any misdemeanours recorded on the register in other jurisdictions before hiring staff. The need for such an obligation between the US and UK is particularly important. The Commission recommends that the Government and the UK regulators initiate early discussions with US counterparts on this issue.	654	HMG Bank FCA	2	12
19	Enforcing fines	To provide greater incentives to maintain high levels of professional standards, both the FCA and the PRA should be prepared to review again their penalty setting framework in the future to allow for a further substantial increase in fines.	1132	Bank FCA	1	31
20	Fines on banks recovered from the pool of deferred compensation as well as current year bonuses	There should be a presumption that fines on banks should be recovered from the pool of deferred compensation as well as current year bonuses. The recovery should materially affect to different degrees individuals directly involved and those responsible for managing or supervising them, staff in the same business unit or division, and staff across the organisation as a whole. The impact and distribution of fines on deferred compensation should be approved by the supervisors as part of a settlement agreement.	1131	Bank FCA Industry	1	18
21	Penalties for failure to bring issues to regulators' attention	Cooperation by firms in bringing issues to regulators' attention and assisting with their investigation should be a given. Regulators should make full use of the flexibility in their penalty policy to punish cases where this does not occur.	1133	Industry Bank FCA	1	31
22	Swift resolution and enforcement	The regulators should bear in mind the advantage of swift resolution of enforcement action against firms, in particular in cases where settlement with the firm is a precursor to action against responsible individuals.	1134	Bank FCA	1	31
23	Flexibility under CRD IV	The UK Government and the Bank of England should ensure that the technical standards under CRD IV contain sufficient flexibility for national regulators to impose requirements in relation to instruments in which deferred bonuses can be paid which are compatible with the Commission's recommendations.	896	HMG Bank FCA	1	14

24	Scope of application of proposals	The regulator will need to check that the bank has identified the key risk-takers and decision-makers and confirm that deferred rewards will flow only when the full, long-term consequences of their decisions have become evident. The Commission's proposals...should apply not only to all Senior Persons but also to all licensed staff receiving variable remuneration. The proposals require the careful examination of the remuneration of the highest risk Senior Persons Regime staff and spot checks on other licensed employees.	900 899	HMG Bank FCA	3	16
		A new Remuneration Code should be introduced on the basis of a new statutory provision, which should provide expressly for the regulators to prescribe such measures in the new Code as they consider necessary to secure their regulatory objectives.			N/A	
26	Deferral of remuneration	Legal and contractual arrangements should be developed whereby deferred remuneration comes to be seen as contingent, so that it can be recouped in a wider range of circumstances. There should be a presumption that all executive staff to whom the new Remuneration Code applies receive variable remuneration and that a significant proportion of their variable remuneration be in deferred form and deferred for up to 10 years, where it is necessary for effective long-term risk management. There are merits in the use of instruments such as bail-in bonds in remuneration. Flexibility in the choice of instruments (form of deferral) is vital. Banks should make this choice, dependent on particular circumstances.	878 880 881	HMG Bank FCA Industry	3	15
27	Regulators role – new employment contracts	The regulators should ensure that new employment contracts are consistent with effective deferral schemes and should be aware of the potential for gaming over-prescriptive rules, or encouraging the arbitrage of entitlements. In fulfilling these roles, the regulators should exercise judgement in determining whether banks are operating within the spirit of the Commission's recommendations as implemented.	886	Bank FCA Industry	1	14
28	Deferred remuneration as contingent	Deferred remuneration should be seen as contingent, so that it can be recouped in a wider range of circumstances.	882	HMG Bank FCA	2	15
29	Recovery of vested remuneration	In the most egregious cases of misconduct, recovery of vested remuneration may be justified. The regulator should examine whether there is merit in further powers, in the cases of individuals who have been the subject of successful enforcement action, to recover remuneration received or awarded in the period to which the enforcement action applied.	883	HMG Bank FCA	1	17

30	Void or cancel all deferred compensation in the event a bank receives state aid	In the event that a bank is in receipt of direct taxpayer support in the form of new capital provision or new equity support, or a guarantee resulting in a contingent liability being placed on to the public sector balance sheet, the regulators should have an explicit discretionary power to render void or cancel all deferred compensation, all entitlements for payments for loss of office or change of control and all unvested pension rights in respect of Senior Persons and other licensed staff.	884	HMG Bank FCA	3	15
31	Remuneration of non-executive directors	The new Remuneration Code should prohibit variable, performance-related remuneration of non-executive directors of banks.	890	HMG Bank FCA	1	14
32	Change of employment/ buyout:	The regulators should come forward with proposals for domestic reform where banks hiring staff from competitors compensate recruits for the value they have forfeited, by awarding them equivalent rights in their own deferred compensation scheme. They should consider whether banks could be required to leave in place any deferred compensation due to an individual when they leave the firm. The regulators should also examine the merits of a new discretionary regulatory power, in cases where a former employee would have suffered deductions from deferred remuneration, but does not do so as a result of having moved to another bank, to recover from the new employer the amount that would have been deducted.	885	HMG Bank	3	15
33	Disclosure by bank remuneration committees	Bank remuneration committees should disclose, in the annual report, the range of measures used to determine remuneration, including an explanation of how measures of risk have been taken into account and how these have affected remuneration. It is for banks to set remuneration levels, but it is for regulators to ensure that the costs and benefits of risks in the long term are properly aligned with remuneration. The regulators should assess whether banks are striking an appropriate balance between risk and reward. They should be particularly sceptical about reliance on return on equity in calculating remuneration. The regulators should also assess whether the financial measures that are used cover adequately the performance of the entire bank as well as specific business areas.	863	Industry Bank FCA	3	15

34	Transparency and reporting requirements	The PRA should monitor remuneration carefully and report on it as part of the regular reporting of its activities.	905	Bank Industry	1	35
		Banks' statutory remuneration reports should be required to include a disclosure of expected levels of remuneration in the coming year by division, assuming a central planning scenario and, in the following year, the differences from the expected levels of remuneration and the reasons for those differences. The remuneration report should be required to include a summary of the risk factors that were taken into account in reaching decisions and how these have changed since the last report.			3	35
		Regulators should set out, within the new Remuneration Code, criteria for the determination of profits for remuneration purposes, at company level and from business units. Unrealised profits from thinly traded or illiquid markets would usually not be appropriate for this purpose. Banks and regulators should avoid relying unquestioningly on narrow measures of bank profitability in setting remuneration.	861 862		3	35
35	Public disclosure of banks to bondholders	Market discipline from creditors subject to the potential of bail-in should encourage banks and their managements better to balance downside and upside risks. It is good practice for banks to publicly disclose and make widely available, the contents of their presentations to bondholders.	674	HMG Bank FCA FRC Industry	N/A	
		Bondholders, where they are sufficiently concerned, should raise such issues publicly where practical. The PRA should examine the scope for extending bondholder influence of this type.			2	34
36	Direct personal responsibility on the chairman	The importance of the Chairman's role should be reflected in the post's responsibilities under the proposed Senior Persons Regime. A full-time Chairman should be the norm. The implication is that the Chairman of a large bank should usually not hold any other large commercial non-executive, let alone executive, positions. The Senior Independent Director should, under the proposed Senior Persons Regime, have specific responsibility for assessing annually the performance of the Chairman of the board and, as part of this, for ensuring that the relationship between the CEO and the Chairman does not become too close and that the Chairman performs his or her leadership and challenge role. The regulator should maintain dialogue with the Senior Independent Director.	712 715 717	HMG Industry Bank FCA	2	20
38	The role of non-executive directors	Each bank board should have a separate risk committee chaired by a non-executive director who possesses the banking industry knowledge and strength of character to challenge the executive effectively.	729	HMG Bank FCA Industry	2	19

39	Publicly advertising non-executive vacancies of a bank above the ring-fence threshold	The regulators should examine the merits of requiring each non-executive vacancy on the board of a bank above the ring-fence threshold to be publicly advertised.	707	HMG FRC Bank FCA	2	21
40	Resourcing the Office of the Chairman	It is essential that the office of the chairman is well-resourced to enable it to provide independent research and support to the non-executive directors.	720	HMG Bank FCA	2	20
41	Directors duties	The UK Corporate Governance Code should be amended to require directors of banks to attach the utmost importance to the safety and soundness of the firm and for the duties they owe to customers, taxpayers and others in interpreting their duties as directors. The PRA Principles for Businesses should be amended to include a requirement that a bank must operate in accordance with the safety and soundness of the firm and that directors' responsibilities to shareholders are to be interpreted in the light of this requirement. The responsibilities of Senior Persons who are directors should include responsibilities to have proper regard to the safety and soundness of the firm. The Government should consult on a proposal to amend section 172 of the Companies Act 2006 to remove shareholder primacy in respect of banks, requiring directors of banks to ensure the financial safety and soundness of the company ahead of the interests of its members.	708	HMG Bank FCA	2	22
42	Independent Chief Risk Officers	The risk committee should be supported by a strong risk function, led by a chief risk officer, with authority over the separate business units. Boards must protect the independence of the Chief Risk Officer, and personal responsibility for this should lie with the chairman of the risk committee. The Chief Risk Officer should not be able to be dismissed or sanctioned without the agreement of the non-executive directors, and his or her remuneration should reflect this requirement for independence. The Chief Risk Officer should be covered by the Senior Persons Regime, and the responsibilities assigned to the holder of that post should make clear that the holder must maintain a voice that is independent of the executive.	729	HMG Bank FCA Industry	2	19
43	Independent Compliance	Dismissal or sanctions against the Head of Compliance should only follow agreement by the non-executive directors.	737	HMG Bank FCA	2	19
44	Independent internal audit	Internal audit's independence is as important as that of the Chief Risk Officer and the Head of Group Compliance, and its preservation should similarly be the responsibility of a named individual non-executive director, usually the chairman of the audit committee. Dismissal or sanctions against the head of internal audit should also require the agreement of the non-executive directors.	741	HMG Industry Bank FCA	2	19

47	Whistleblowing – senior responsibility	A non-executive board member – preferably the Chairman – should be given specific responsibility under the Senior Persons Regime for the effective operation of the firm’s whistleblowing regime. The Board member responsible for the institution’s whistleblowing procedures should be held personally accountable for protecting whistleblowers against detrimental treatment.	788 791	Bank FCA	2	38
48	Whistleblowing – role of regulators	The FCA should regard it as its responsibility to support whistleblowers	796 799	Bank FCA	N/A	N/A
		All Senior Persons should have an explicit duty to be open with the regulators.			2	38
		[The regulator] should also provide feedback to the whistleblower about how the regulator has investigated their concerns and the ultimate conclusion it reached as to whether or not to take enforcement action against the firm and the reasons for its decision. The regulator should require banks to inform it of any employment tribunal cases brought by employees relying on the Public Interest Disclosure Act where the tribunal finds in the employee’s favour. The regulator can then consider whether to take enforcement action against individuals or firms who are found to have acted in a manner inconsistent with regulatory requirements set out in the regulator’s handbook.			3	39
49	Whistleblowing – financial incentives	The regulator should undertake research into the impact of financial incentives in the US in encouraging whistleblowing, exposing wrongdoing and promoting integrity and transparency in financial markets.	803	Bank FCA	2	38
52	Whistleblowing – internal filter	Whistleblowing reports should be subjected to an internal ‘filter’ by the bank to identify those which should be treated as grievances. The regulator should periodically examine a firm’s whistleblowing records, both in order to inform itself about possible matters of concern, and to ensure that firms are treating whistleblowers’ concerns appropriately. The regulators should determine the information that banks should report on whistleblowing within their organisation in their annual report.	792	Industry Bank FCA	3	39
53	Empowering regulators where a whistleblower has not been treated properly	The regulator should be empowered in cases where as a result of an enforcement action it is satisfied that a whistleblower has not been properly treated by a firm, to require firms to provide a compensatory payment for that treatment without the person concerned having to go to an employment tribunal.	805	Bank FCA	3	39
56	Creating a more diverse retail market	The FCA should ensure that other forms of provision in the retail banking market are not put at a disadvantage. This should be reviewed by the FCA within four years and be the subject of a report to Parliament. The PRA will need to support the FCA in this wherever possible, by avoiding prudential requirements which deter alternative business models emerging or place them at a competitive disadvantage.	343	Bank FCA	1	25

62	Regulators reporting on progress on approving new entrants in 2 years time	The regulators' approach to authorising and approving new entrants, particularly those with distinct models, will require close monitoring by the Government and by Parliament, and the regulator should report to Parliament on progress in two years time.	327	HMG Bank FCA	1	25
82	Court of the Bank of England to be reformed into a Board	The Court of the Bank of England should be reformed as far as possible into a meaningful board—along the lines recommended in 2011 by both the Joint Committee on the Financial Services Bill and the Treasury Committee.	1107	HMG Bank	N/A	40
85	Bank of England providing information for Parliament	The Bank of England should have a duty to respond to reasonable reports for information from Parliament	1093	HMG Bank	N/A	40
86	Governor of the Bank of England sounding the alarm on bank lobbyists	The Governor of the Bank of England is, by virtue of his responsibilities and independence, uniquely well-placed to sound the alarm if bank lobbying of Government is becoming a concern. It should be the specific personal responsibility of the Governor to warn Parliament, or the public in such circumstances.	1113	HMG Bank	1	40
90	Introduction of a special measures tool	The regulators should have available to them a “special measures” tool to identify and tackle serious failings in standards and culture within the banks they supervise. As part of the continuing dialogue between the PRA and the FCA at the most senior levels, and through their risk assessment frameworks, we expect the two regulators to consider cases which might require the deployment of this tool. Special measures will take the form of a formal commitment by the bank to address concerns identified by the regulator.	970, 971	HMG Bank FCA	1	33
91	Regulatory Decisions Committee	The creation of an autonomous body to assume the decision-making role of the Regulatory Decisions Committee for enforcement in relation to the banking sector. The body should have statutory autonomy within the FCA. It should be appointed by agreement between the boards of the FCA and PRA.	1202	HMG Bank FCA	N/A	
		The FCA and the PRA should publish a joint review of the working of the enforcement arrangements for the banking sector in 2018. This should consider whether a separate statutory body for enforcement as a whole has merit.			2	31
92	Records of meetings between regulators and senior executives	The FCA and the PRA should keep a summary record of all meetings and substantive conversations held with those at senior executive level in banks, the most senior representative of the FCA or PRA present in each case. We would expect those records to be made available on request retrospectively to Parliament, usually to the Treasury Committee.	965	HMG Bank FCA	1	30

93	Bank of England – Basel III	The Bank of England should report to Parliament on the extent to which, in its view, the shortcomings of Basel II have been addressed by Basel III, and whether they consider that any improvement to the process through which the Basel accords are agreed could lead to better outcomes.	997	Bank	2	37
94	Leverage ratio	The Government should relinquish political control over setting the leverage ratio. If the Government maintains its current position, the newly-established FPC publish its own assessment of the appropriate leverage ratio. Furthermore, the FPC should consider explicitly the question of whether the leverage ratio should be a regulatory front-stop rather than a back-stop given the recognised deficiencies in the risk-weighted assets approach to assessing capital adequacy. This work should be completed and the results made public by the end of the year.	1013	HMG FPC	1	32
98	Accounting – separate accounts	Flaws in IFRS mean that the current system is not fit for regulators' purposes. Non-EU mandated regulatory returns should be combined, with any other accounting requirements needed, to create a separate set of accounts for regulators according to specified, prudent principles set by the regulator. This second set of accounts should be externally audited and a statutory duty to regulators be placed upon auditors in respect of these accounts. Where there is a public interest for these accounts to be published, the regulator should have a legal power to direct that they (or where appropriate, abbreviated accounts) are included in the financial statements, alongside a reconciliation to the IFRS accounts.	1039	HMG Bank	3	35
99	Auditors reports to include subjective matters	Auditors' reports on banks' accounts should include specific commentary on subjective matters of valuation, risk and remuneration, amongst other key judgement areas, that are crucial to investors' understanding of a bank's business model.	1042	HMG Bank FRC	3	35
100	Sharing of information and expertise	HMRC, PRA and FCA should jointly publish a paper setting out how they intend to bring about appropriate useful sharing of information and expertise within the existing rules.	1047	HMG Bank FCA	2	37
102	Dialogue between auditors and supervisors	The Court of the Bank of England should commission a periodic report on the quality of dialogue between auditors and supervisors.	1053	Bank FCA	1	37
		Both the PRA and the FCA would need to meet a bank's external auditor regularly, and more than the minimum of once a year which is specified by the Code of Practice governing the relationship between the external auditor and the supervisor.			1	37
		This should be required by statute, as recommended by the House of Lords Select Committee on Economic Affairs.			N/A	

103	Regulators acting as shadow directors	The regulators should publish a further considered response to the risk that they may appear to be acting as shadow directors. They will need to do so in the light of recommendations elsewhere in this Report and other reforms already in train. The regulators should report to the Treasury Committee within six months.	942	Bank FCA	1	30
106	PRA and FCA mobilising the experience of former senior management in the banking industry	The PRA and FCA should give consideration as to how best they can mobilise the support and advice from the accumulated experience of former senior management in the banking industry.	991	Bank FCA	1	26
108	Awareness of past financial crises by regulators	The PRA should ensure that supervisors have a good understanding of the causes of past financial crises so that lessons can be learnt from them.	982	Bank	1	26
110	European constraints on PRA regulatory approach	The PRA should provide an explanation if it considers that there are legal constraints at a European level which prevent them from pursuing the desired regulatory approach.	998	Bank	1	27
111	Removing dependency on credit rating agencies	Progress by regulators internationally in weaning themselves off dependence on credit rating agency ratings for the purpose of assessing capital adequacy is essential. Regulators should prepare a report for Parliament on progress made and further plans for action by June 2014.	1002	Bank FCA	2	27
112	Regulators consider the case for investigation led by an independent person	Where regulatory failure may also be an issue in the failure of the bank, regulators should consider undertaking reports to examine what goes wrong in banks, the regulators should consider the case for an investigation led by an independent person appointed with the approval of Parliament.	1103	Bank FCA	3	29