

The FCA's response to the Parliamentary Commission on Banking Standards

October 2013



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Introduction

- 1.** The Parliamentary Commission on Banking Standards (the Commission) was appointed to conduct an inquiry into professional standards and culture within the UK banking sector. The Commission was appointed in response to the LIBOR rate-rigging scandal, which followed the financial crisis and a series of high-profile conduct failures within the UK banking industry.
- 2.** We welcome the Commission's final report, Changing Banking for Good (the Report), which sets out a vision for a new approach for Government, industry and the regulators. The Report recognises that a fundamental change in the structure of financial services regulation has just come into effect, with the creation of the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA), and welcomes the FCA's commitment to a forward-looking, judgement-based regulatory approach.
- 3.** The report makes over 100 recommendations, of which 58 relate specifically to the FCA. We intend to take forward the majority of these recommendations. The table in the document shows our responses to each of them, along with our comments on recommendations for the Government and industry where appropriate.
- 4.** This document sets out our initial response to the recommendations directed at the FCA, and to the Government's response to the Report. It also describes our next steps in implementing the recommendations, and provides further details on how we intend to implement the four key themes of the Report:
 - 1.** Holding individuals to account
 - 2.** Governance and culture
 - 3.** Securing better outcomes for consumers
 - 4.** Regulatory judgement

Legislation and EU Directives

While this document sets out an initial response to the Commission's recommendations, our actions will ultimately be subject to the passage of the Banking Reform Bill, as well as EU Directives such as the Markets in Financial Instruments Directive (MiFiD) and the Capital Requirements Directive (CRD) III, and EU Directives that are still to be implemented such as CRD IV. A number of issues will also require consultation.

1.

Holding individuals to account

5. The Commission concludes that many bankers, particularly at senior level, have been allowed to operate with very little personal accountability. When things went wrong, individuals claimed ignorance or hid behind collective decision-making. Individual incentives were not linked to high conduct standards, and there was often little realistic prospect of enforcement action against senior individuals.
6. The Commission makes recommendations for improving individual accountability in three key areas:
 - i. **Framework for individuals** – replacing the existing Approved Persons Regime with a Senior Persons Regime and ‘Licensing’ arrangements based on a set of conduct rules.
 - ii. **Incentives for better behaviour** – reshaping remuneration regulation.
 - iii. **Enforcement against individuals** – cutting through the ‘accountability firewall’ and imposing tough penalties.
7. We note the Government’s intention, in its amendments to the Financial Services (Banking Reform) Bill, to limit the implementation of this framework to deposit-taking institutions – banks, building societies and credit unions. If the tabled amendments to the Banking Reform Bill are passed by Parliament, we will consult on the proposed new regulatory regime for deposit-taking institutions in 2014. We will also consider the implications for the Approved Persons regime, which would still apply to the wider financial services industry.

i. Framework for individuals

8. We support the creation of a Senior Persons Regime as set out in the Report. While the precise details of the regime require further analysis and consultation, we believe that key features will include the following:
 - **Pre-approval:** Senior Persons will be approved by the regulators before taking up a new post. Approvals may be subject to conditions – for example, where it is felt that individuals need to acquire a specific skill to carry out the job well.
 - **Key responsibilities:** Senior Persons will be required to formally accept a written Statement of Responsibilities which sets out their role. This will allow deposit-taking institutions and regulators to ensure that a named individual is accountable for each key risk in their businesses, and will help regulators hold these individuals to account in the event of failure.

- **Handover certificates:** Senior Persons must prepare a handover certificate when leaving a role or passing on duties. This will describe how they have met their responsibilities under the Regime, and any issues the person taking on those responsibilities should know about.
 - **Scope:** The Senior Persons Regime would only include the most senior individuals within deposit-taking institutions. The existing Approved Persons Regime will continue to apply to all non-deposit-taking entities. Individuals holding posts that oversee both deposit-taking and non-deposit-taking institutions within a banking group may be subject to both the new Senior Persons Regime and the existing Approved Persons Regime. There may also be people who perform the same role in different institutions, but are subject to different regimes depending on the permissions of their employer.
9. The new Senior Persons Regime will not just change the FCA authorisation framework for deposit-takers, but will become an integral part of the FCA approach across our Authorisation, Supervision and Enforcement functions. We will work with deposit-taking institutions to ensure that Senior Persons have clear roles and responsibilities, not just at authorisation stage but throughout their careers. This is consistent with our ongoing work to ensure that the roles and responsibilities of Approved Persons are more clearly defined by firms.
10. We will continue to require individuals to attest that remedial actions have been completed, or that other controls are fit for purpose, and this 'individual attestation' will be a key part of our approach to Senior Persons. We will also continue our current practice of considering action against individuals throughout all enforcement investigations. Our approach will be judgement-based, will vary according to the scope of an individual's responsibilities, and will be proportionate to the risks posed to consumers and the integrity of the financial markets. We will also consider whether aspects of the new Senior Persons Regime should be incorporated into our existing Approved Persons framework.
11. In addition to the Senior Persons Regime, we support the recommendation for 'Licensing' arrangements based on a set of Individual Standards Rules which apply to a wider population of employees than are covered by the current Approved Persons Regime. We will consult before determining both these standards and the population to which they apply, but believe features may include:
- **A set of Individual Standards Rules** which would apply not just to Senior Persons but to a wider population of employees. We will consider the extent to which the existing standards for Approved Persons should be adapted to reflect those applicable to this wider population.
 - **Use of our full range of enforcement powers** against a broader range of bank employees.
 - **No pre-approval by the regulator for individuals solely covered by the Individual Standards Rules.** We agree with the Commission that banks should not pass their duties and responsibilities on to the regulator or professional bodies. The Commission's recommendations will mean that banks must take more responsibility for the conduct of a wider range of their staff. Pre-approval will be introduced for Senior Persons, and will remain for Approved Persons, but will not be extended to the wider population of employees covered by the new Conduct Rules.

ii. Incentives for better behaviour

12. Following the financial crisis, it became apparent that the remuneration practices of the banking industry had been a factor contributing to excessive risk-taking in the sector. The G20 leaders agreed the Financial Stability Board Principles and Standards for Sound Compensation Practices¹, which were implemented in the UK through the FSA's 2009 Remuneration Code. This Code has since been amended and updated to take account of the introduction of common European requirements in this area, and responsibility for its application is now shared between the PRA and the FCA.
13. The Commission recommends introducing a new statutory Code, which would give the regulators powers to introduce new measures to advance our objectives. We do not believe that a new statutory Code is necessary, and support the Government's view that the Commission's proposals can be achieved through existing rule-making powers and by adjusting the 2009 Code.
14. We do support the Commission's wider recommendations on remuneration, including the benefits of flexibility in firms' choice of instruments, and the development of legal and contractual arrangements to allow deferred remuneration to be recouped in a wider range of circumstances. We will work with the PRA on these proposals and may consult on any necessary changes to the Remuneration Code in 2014.
15. The Commission recommends that the Remuneration Code is extended to everyone in the Senior Persons Regime, or covered by Individual Standards Rules, who receive variable remuneration. The current Remuneration Code and relevant Directives only apply to 'Material Risk Takers' – those individuals who pose the greatest risk to the financial stability of an institution. Applying the Code to other individuals would go well beyond the international standards on remuneration. While we do not believe the Code should be extended beyond Material Risk Takers, we agree with the Commission that remuneration, including sales-based incentives, can cause conduct failings and poor consumer outcomes. We are currently conducting thematic work on sales-based incentives, after which we will consider the need for high-level remuneration principles for UK staff.

iii. Enforcement against individuals

16. The Commission believes that standards of conduct within banks would be improved by introducing a new criminal offence of reckless misconduct. The Government has agreed with this proposal and has produced draft clauses creating an offence that applies to the failure of banks and building societies.
17. The Commission recommends an extension, in certain circumstances, of the three-year time limit between the regulator learning of an offence and taking enforcement action against individuals. We would support an extension of this period to six years in all cases. We agree that the current time limit constrains our ability to build enforcement cases.
18. The Commission recommends that when successful enforcement action is taken against a bank, Senior Persons must show that they took all reasonable steps to prevent or mitigate the effects of a specified failing. We welcome this recommendation, which we believe addresses a key concern of the Commission – that bankers have not taken their regulatory responsibilities

¹ www.financialstabilityboard.org/activities/compensation/

seriously. This proposal protects those who have properly discharged their duties while, at the same time, making it easier for us to take action against individuals who have not done so. We believe that this, in combination with other aspects of the Senior Persons Regime, will enhance governance within deposit-taking institutions and reinforce the importance of meeting regulatory obligations.

19. We agree with the Commission that this presumption of responsibility should only apply to Senior Persons where there has been misconduct. However, we do not agree that we should always have to take separate (or prior) disciplinary action against that institution. This could add unnecessary delay and confusion, and could be unfair to individuals. The Government reflects this view in its amendments to the Banking Reform Bill.

2. Governance and culture

20. The Commission concludes that the financial crisis, and multiple conduct failures, exposed serious flaws in governance, including a lack of challenge from whistleblowers, boards, and the risk, compliance and internal audit functions.

Governance

21. We agree with the Commission's conclusion that boards must be responsible for managing the risks within their organisations, but that culture and overall approach are more important than structure or procedures. This conclusion is consistent with the FCA's new supervisory framework, which is focused on market integrity and fair outcomes for consumers, rather than only on compliance with the rules. We will consult on board-level corporate governance arrangements in 2014.
22. We agree with the Commission that banks require effective and independent risk, compliance and internal audit functions. We also agree that the chairman and non-executive directors require access to independent advice and expertise to provide effective challenge to the executive. However, we are concerned that overly prescriptive regulation may encourage a 'tick-box' approach to governance. We will consider whether to prescribe specific requirements for these functions as part of our consultation on the Senior Persons Regime.

Whistleblowing

23. The Commission concludes that not only did internal compliance and formal control structures fail to uphold proper banking standards, but that a culture of fear prevented employees from speaking out about serious wrongdoing. The Commission makes a series of recommendations for better arrangements and support for whistleblowers. We agree with these principles and believe a culture where people are prepared to speak up can significantly improve behaviour throughout a firm, and ultimately improve consumer outcomes. Formal whistleblowing practices play an important role in creating this culture but should not be a first port of call. If staff have a good understanding of conduct standards, and feel secure about speaking out, they will inform senior management when they see malpractice occurring, through both informal and formal channels.

These are principles which apply beyond banking, across the whole financial services industry. We will consult in 2014 on whether additional rules are needed to set minimum standards for whistleblowing and how prescriptive these should be. This consultation will include the proposal that a member of a firm's senior management is made personally accountable for whistleblowing procedures.

- 24.** The Commission recommends that regulators support whistleblowers and give feedback to them on how their concerns have been addressed. Although we do not believe it appropriate to disclose whether a firm is under investigation, we will be able to publish information about a Warning Notice when disciplinary action begins against a firm, and will ensure that, where appropriate, we tell whistleblowers when this happens. We are looking at how transparency can be increased further and will engage more actively with whistleblower support groups on this issue. For example, we will shortly be hosting a discussion forum with these groups to share experiences and challenges.
- 25.** We support the recommendation that firms must inform the FCA of any successful tribunal cases brought by employees relying on the Public Interest Disclosure Act. For deposit takers, we will implement this with an obligation on the relevant Senior Person to report these cases to us. Our consultation will also consider how to apply this principle across the wider industry.
- 26.** As the Commission notes, we have concerns over the impact of incentivising whistleblowers financially. We will conduct further research on this, working with the PRA, and will publish a statement in 2014.

3.

Securing better outcomes for consumers

- 27.** The Commission concludes that market discipline can improve banking standards and consumer outcomes. The new FCA objective and duty to promote competition gives us a strong mandate to pursue these aims, and to address competition issues across the financial services industry.
- 28.** The Commission recommends that we cultivate a robust pro-competition culture, with competition as the primary means of improving standards and consumer outcomes. We are committed to embedding a pro-competition culture throughout the organisation, with expertise at board, executive and working level. We have recently announced our programme of work into competition for the year ahead, including a market study into cash savings, and a strategic review of wholesale markets. We have built and continue to expand a team with significant competition expertise, and are building the capabilities of existing staff through a programme of competition training.

Authorisations and barriers to entry

- 29.** Our authorisation requirements impose a necessary barrier to entry that protects consumers and ensures that firms and individuals meet certain standards before they do business in the UK. We are committed to tailoring our authorisation requirements so that we only maintain necessary barriers, and so that consumers also see the benefits of improved competition and innovation. The Commission welcomed recent progress in this area following the March 2013 FSA review into barriers to entry, and new bank applications are increasing. The Government has asked the FCA and PRA for a follow-up review, and we will report to Parliament on this matter in 2014.
- 30.** We also support the Commission's recommendations around creating a more diverse retail market, and agree that this would create genuine choice and better outcomes for consumers, as well as encouraging better industry behaviour. We will report to Parliament on diversity in the retail banking market within four years as recommended.

Transparency

- 31.** We agree with the Commission that the publication of information on firm and product performance can help consumers make more informed choices and promote more effective competition.
- 32.** The FCA's recent transparency discussion paper set out our initial thinking on how we could use transparency as a tool to empower consumers, hold firms to account and make competition more effective. We plan to issue a further call for evidence in 2014, inviting ideas on potential indicators of firm and product quality, before deciding which to take forward.

Complaints and compensation

- 33.** We agree with the Commission that serious shortcomings remain in the way some firms handle complaints, including PPI complaints. We also agree that in certain areas the number of complaints rejected by firms but upheld by the Financial Ombudsman Service have been too high for too long, and that previous regulatory action has not corrected these shortcomings. We stated our intention to undertake additional supervisory activity on complaints handling in our business plan for 2013/14. We also recently launched a complaints review to identify why complaint handling is not working for some consumers, and expect to publish the results in 2014.
- 34.** The mis-selling of interest rate hedging products (IRHPs) raised the question of whether access to the ombudsman service should be extended, as the relative lack of sophistication within many small businesses poses a risk of mis-selling. For IRHP, we set up a review and redress exercise to allow small businesses to have their cases reviewed independently. We agree with the Commission that it may be useful to broaden access to the ombudsman service more generally. We propose to consult on this in 2014.
- 35.** The Commission recommends that the FCA reconsiders requiring banks to write to all identified PPI customers. Our provisional view is that, at this advanced stage in the PPI redress exercise, this approach may be disproportionate and involve disruptions for consumers and practical difficulties for firms. However, we will consider the Commission's recommendation, and respond with our definitive view in early 2014.

4. Regulatory judgement

- 36.** The Commission recommends that the FCA pursues a judgement-based approach to regulation, allowing the regulator to take prompt and proportionate action rather than focus on the fine details of the rulebook. We welcome the Commission's support for our stated approach, and have set out the principles by which we will achieve this in our Journey to the FCA document.² We see the Commission's recommendations as supporting and building on the new supervision approach already adopted by the FCA.
- 37.** The Commission recommends that regulators should have a new tool to enable them to place a bank in 'special measures'. We have worked closely with the Treasury and the PRA to analyse our current powers and determine whether any additional 'special measures' powers are necessary. We believe the objectives of this recommendation are achievable under existing powers, which can replicate all the steps in the Commission's description of 'special measures'. For example, under the Financial Services and Markets Act (2000) we have a range of powers where we can require a firm to start or stop a particular activity.

² www.fca.org.uk/your-fca/documents/fsa-journey-to-the-fca

Annex

Table of recommendations and FCA responses

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
Holding individuals to account				
Setting and enforcing standards for individual conduct				
1	<p>Wider applicability of regime change</p> <p>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.</p>	656	HMG FCA PRA	The Government's legislative proposals will introduce the new framework for deposit taking institutions – banks, building societies and credit unions. We will continue to operate the Approved Persons Regime for all non-deposit taking institutions. We will consider whether any of the Commission's recommendations for the new Senior Persons Regime should also be incorporated into the existing Approved Persons Regime.
2	<p>Senior Persons Regime – Government</p> <p>The Approved Persons Regime should be replaced by a Senior Persons Regime. The new Senior Persons Regime must ensure that the key responsibilities within banks are assigned to specific individuals who are aware of those responsibilities and have formally accepted them.</p>	612, 616, 617, 620, 626	HMG	We believe the new Senior Persons Regime will be more effective than the current regime and, if implemented in the Banking Reform Bill, will consider detailed recommendations as part of our 2014 consultation.
3	<p>Senior Persons Regime – Regulators</p> <p>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.</p>	618	FCA PRA	We agree that a written Statement of Responsibilities for Senior Persons will improve individual accountability and enhance our ability to take action through our Authorisation, Supervision and Enforcement functions. We will liaise with the PRA to ensure that responsibilities for key areas are clearly allocated to individuals. This will be addressed in our 2014 consultation on the new framework for individuals.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
4	<p>Senior Persons Regime – Banks</p> <p>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.</p>	627	Industry FCA PRA	We agree that the recommendation for handover certificates would help in assessing the fitness and propriety of senior persons, day-to-day supervision of firms and individuals and determining individual responsibility in the event of conduct failure. We will take this into account when consulting on new rules and guidance for the Senior Persons Regime in 2014.
5	<p>Rebuttable presumption/ Reversed burden of proof</p> <p>A more effective approach than the blanket imposition of a rebuttable presumption would be one which reverses the burden of proof in a wider, but clearly defined, set of circumstances covering both prudential and conduct failures.</p>	1170	HMG	We agree with the Commission that the introduction of a rebuttable presumption that directors of failed banks should not work in such a role again is not desirable. We agree with the alternative proposal, which would, in effect, place a presumption of responsibility on Senior Persons when misconduct has occurred. (see also recommendation 15 below)
6	<p>Time limit for enforcement actions</p> <p>The current time limit of three years between the regulator learning of an offence and taking enforcement action against individuals could act as a constraint on the regulators' ability to build credible cases. The Government should address this problem by allowing for an extension of the limitation period in certain circumstances. However, swift enforcement action should be the priority.</p>	1173	HMG	We would support an extension of the time limit for enforcement action to six years in all cases.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
7	<p>Approvals for Senior Persons subject to conditions</p> <p>Regulators should be able to make approval of an individual Senior Person subject to conditions, for example where it is felt that they need to acquire a certain skill to carry out the job well.</p>	626	HMG	We welcome the Commission's recommendation and will set out proposals on how this power would be used in our 2014 consultation, subject to the necessary changes in legislation.
9	<p>Criminal sanctions</p> <p>There is a strong case in principle for a new criminal offence of reckless misconduct in the management of a bank. The offence should be limited to individuals covered by the new Senior Persons Regime, so that those concerned could have no doubts about their potential criminal liability. This offence should be pursued in cases involving only the most serious of failings, such as where a bank failed with substantial costs to the taxpayer, lasting consequences for the financial system, or serious harm to customers.</p>	1182, 1183	HMG	The Government has agreed with this proposal and has produced draft clauses creating an offence that applies to the failure of banks and building societies.
12	<p>Banking Standards Rules</p> <p>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.</p>	634	HMG FCA PRA	We will develop Individual Standards Rules and consult in 2014. We believe these rules will provide a clear set of behavioural standards for individuals within the banking sector.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
13	<p>'Licensing' Regime</p> <p>The establishment of a 'Licensing' Regime alongside the Senior Persons Regime. Under this a broader set of bank staff would be contractually obliged to adhere to a set of Banking Standards Rules, which the regulators could enforce against and which would replace the existing statements of principle. It would cover anyone working in banking, including those already within the Senior Persons Regime, whose actions or behaviour could seriously harm the bank, its reputation or its customers.</p>	632, 633	HMG	We support the creation of 'Licensing' arrangements centred on the application of the new set of Individual Standards Rules to a broader group of bank employees than is covered by the current framework. We will consult in 2014 on both the standards and the population to which they apply.
14	<p>Implementation of the 'Licensing' Regime by banks</p> <p>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 bank's 'Licensing' Regime.</p>	642, 643	Industry FCA PRA	We will review the effectiveness of Individual Standards Rules at key deposit-taking institutions as part of our judgement-based approach to supervision. We will consider the proposal that a Senior Person be accountable for employees' compliance with these rules in our 2014 consultation.
15	<p>Imposition of civil sanctions/ Presumption of Responsibility</p> <p>Legislation should be introduced to provide that, when certain conditions are met, the regulators should be able to impose the full range of civil sanctions, including a ban, on an individual unless that person can demonstrate that he or she took all reasonable steps to prevent or mitigate the effects of a specified failing.</p>	1171	HMG	We believe that placing this presumption of responsibility on the relevant individuals will enhance our ability to take enforcement action. We agree that it should only apply to Senior Persons where there has been misconduct by a deposit-taking institution.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
16	<p>Reforming the Register</p> <p>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.</p> <p>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.</p> <p>The regulators should explore whether information about disciplinary dismissals could also be communicated to prospective employers.</p>	651	HMG FCA PRA	Amendments to the register are being included in the Financial Services (Banking Reform) Bill, which will give us power to introduce the new regimes in relation to the Register. After the Bill receives royal assent we will consult on the necessary changes.
17	<p>International agreement</p> <p>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.</p>	654	HMG FCA PRA	We support the intention behind this recommendation, but its implementation may be constrained by legal or practical difficulties, including the number and variety of overseas regulators and legal constraints on sharing information. However, there may be scope for addressing some of the Commission's concerns through strengthening our current 'good standing' arrangements for information sharing.
19	<p>Enforcing fines</p> <p>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.</p>	1132	FCA PRA	We plan to review our penalty-setting framework after we have brought enough cases under the current policy to draw meaningful conclusions. The review will consider further increases in fines.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
20	<p>Fines on banks recovered from the pool of deferred compensation as well as current year bonuses</p> <p>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.</p>	1131	FCA PRA Industry	The Remuneration Code requires firms to reduce deferral bonuses in a number of circumstances, including where there is evidence of misbehaviour or error, or a business unit suffers a risk management failure.
21	<p>Penalties for not bringing issues to regulators' attention</p> <p>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.</p>	1133	FCA PRA Industry	Firms and individuals have obligations under the current Approved Persons Regime to bring breaches quickly and completely to the FCA's attention. We take enforcement action against both firms and individuals when obligations to report are breached, and consider the extent of cooperation when setting all financial penalties. Swift notification and extensive cooperation may be taken as mitigating factors.
22	<p>Swift resolution and enforcement</p> <p>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.</p>	1134	FCA PRA	The FCA is committed to conducting investigations efficiently and effectively. We typically investigate firms and individuals concurrently, rather than consecutively. This means the Commission's specific concerns about action against a firm delaying action against individuals will rarely apply.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
Remuneration				
23	<p>Flexibility under CRD IV</p> <p>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 that are compatible with the Commission's recommendations.</p>	896	HMG FCA PRA	The consultation on the Regulatory Technical Standards provides scope for firms to use instruments to pay variable remuneration.
24	<p>Scope of application of proposals</p> <p>The regulator will need to check that the bank has identified the key risk-takers and decision-makers and confirm that deferred rewards will only be paid when the full, long-term consequences of their decisions are known. The Commission's proposals should apply to all licensed staff who receive variable remuneration, including Senior Persons. The proposals require the careful examination of the remuneration of the highest-risk Senior Persons Regime staff and spot-checks on other licensed employees.</p>	900	HMG FCA PRA	The Remuneration Code applies to those staff considered to be 'Material Risk Takers' – those individuals who pose the greatest risk to the financial stability of an institution. We do not believe the Code should be applied to individuals who fall outside this category as this would go beyond international standards on remuneration.
24A	<p>A new Remuneration Code</p> <p>A new Remuneration Code should be introduced on the basis of a new statutory provision, which should allow regulators to introduce measures as they consider necessary to secure their regulatory objectives.</p>	899	HMG FCA PRA	We do not believe that a new statutory code is required. We support the Government's view that the Commission's proposals can be achieved through our existing rule-making powers and changes to the 2009 Code.
25	<p>Sales-based incentives</p> <p>The new Remuneration Code should include a provision to limit the use and scale of sales-based incentives at individual or business unit level, and for the regulator to have the ability to limit or even prohibit such incentives.</p>	864	HMG FCA	<p>We support the Commission's objective to reduce the extent to which remuneration encourages poor conduct and poor consumer outcomes.</p> <p>We are currently doing thematic work on sales-based incentives. Once this work is complete, we will consider the need for high-level remuneration principles that would apply to non-Code staff.</p>

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
26	<p>Deferral of remuneration</p> <p>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. Flexibility in the choice of instruments (form of deferral) is vital. Banks should make this choice, dependent on particular circumstances.</p>	878, 880, 881	HMG FCA PRA Industry	<p>We support the Commission's recommendation that deferred remuneration should be contingent on various factors, so that it can be recouped in a wider range of circumstances.</p> <p>The current Remuneration Code already gives regulators the power to require that a substantial proportion of remuneration be deferred for longer than the 3-5 year minimum required by CRD III/IV.</p> <p>We will work with the PRA on these proposals and may consult on any necessary changes to the Remuneration Code in 2014.</p>
27	<p>Regulators' role – new employment contracts</p> <p>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.</p>	886	FCA PRA Industry	<p>The Code already requires firms to have appropriate terms in relation to deferral in their employment contracts.</p> <p>We will consider whether additional guidance on minimum expectations for firms is needed, and consult as appropriate.</p>
28	<p>Deferred remuneration as contingent</p> <p>Deferred remuneration should be seen as contingent, so that it can be recouped in a wider range of circumstances.</p>	882	HMG FCA PRA	<p>We agree with this principle, and that firms' ability to recover remuneration following misconduct should be strengthened. We will work with the PRA on these proposals, and may consult on any necessary changes to the Remuneration Code in 2014.</p>

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
29	<p>Recovery of vested remuneration</p> <p>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.</p>	883	HMG FCA PRA	We believe we already have sufficient powers to implement this recommendation.
30	<p>Void or cancel all deferred compensation in the event a bank receives state aid</p> <p>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 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.</p>	884	HMG FCA PRA	The FCA will consider how to address this, consistent with European Human Rights provisions.
31	<p>Remuneration of non-executive directors</p> <p>The new Remuneration Code should prohibit variable, performance-related remuneration of non-executive directors of banks.</p>	890	HMG FCA PRA	It is not common practice for non-executive directors to receive performance-related remuneration, but we will consider formally prohibiting this. We will work with the PRA on this proposal, and may consult on any necessary changes to the Remuneration Code in 2014.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
32	<p>Change of employment/buyout</p> <p>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.</p>	885	HMG FCA PRA	We will work jointly with the Government and the PRA to explore the options for implementing this recommendation, and consult accordingly.
33	<p>Disclosure by bank remuneration committees</p> <p>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.</p> <p>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.</p>	863	Industry FCA PRA	<p>We accept that there has been a lack of transparency over bonus calculations. This makes it particularly challenging when assessing whether appropriate risk adjustments have been made. European legislation will increase transparency – article 96 of CRD IV requires institutions to maintain a website explaining how they comply with their requirements on remuneration.</p> <p>Additional rules or guidance may be needed to ensure banks also publish this information in their annual reports for all Material Risk Takers. We will work with the PRA on this proposal, and may consult on any necessary changes to the Remuneration Code in 2014.</p>

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
Reforming corporate governance				
36	<p>Direct personal responsibility on the Chairman</p> <p>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.</p> <p>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.</p>	715	HMG FCA PRA Industry	We agree with the principles behind this recommendation and will consider further when we consult on the Senior Persons Regime in 2014. We will also focus on the effectiveness of the Board and Chairman through our routine supervision. Any new requirements will need to be sufficiently flexible to take account of differences in governance structures across the banking industry.
38	<p>The role of non-executive directors</p> <p>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.</p>	729	HMG FCA PRA Industry	We agree with this recommendation, which is consistent with our new supervision model.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
40	<p>Resourcing the office of the Chairman</p> <p>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.</p>	720	HMG FCA PRA	We agree that the office of a Chairman must be well-resourced so the executive can be held to account. We see this as a key element of the Commission's recommendations. We will not prescribe a particular model, but availability of adequate independent advice and expertise will be an important factor when assessing the effectiveness of the Chairman and the board.
41	<p>Directors' duties</p> <p>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 for banks, requiring directors of banks to ensure the financial safety and soundness of the company ahead of the interests of its members.</p>	708	HMG FCA PRA	The Government is consulting on this issue, and we understand that the PRA also intends to consult on the Commission's related recommendation to them. We look forward to seeing the results of these consultations.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
42	<p>Independent chief risk officers</p> <p>The risk committee should be supported by a strong risk function, led by a chief risk officer (CRO), with authority over the separate business units. Boards must protect the independence of the CRO, and personal responsibility for this should lie with the chairman of the risk committee. The CRO 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 CRO 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.</p>	HMG	HMG FCA PRA Industry	<p>We support these proposals and agree that banks require effective and independent risk, compliance and internal audit functions. However, we are concerned that overly prescriptive regulation may encourage a 'tick-box' approach to governance. Our current Senior Management Systems and Controls sourcebook sets out: i) the expectation that one person within the executive is accountable to the executive on risk issues; and ii) the need for some firms to appoint a chief risk officer. This requirement will also be picked up through CRD IV under article 76(5). Together with the PRA, we will consider whether to prescribe specific requirements for risk, compliance and internal audit functions and consult as appropriate.</p>
43	<p>Independent compliance</p> <p>Dismissal or sanctions against the Head of Compliance should only follow agreement by the non-executive directors.</p>	737	HMG FCA PRA	
44	<p>Independent internal audit</p> <p>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.</p>	741	HMG Industry	

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
47	<p>Whistleblowing – senior responsibility</p> <p>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.</p>	788, 791	FCA PRA	We support making senior management accountable for a firm's whistleblowing regime. These principles apply across the financial services industry, and we will consult on them as appropriate.
48	<p>Whistleblowing – role of regulators</p> <p>All Senior Persons should have an explicit duty to be open with the regulators. The FCA should regard it as its responsibility to support whistleblowers. It 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.</p>	796, 799	FCA PRA	<p>We agree that all senior management should have an explicit duty to be open with the regulator. All approved persons currently have this obligation under the Approved Persons Regime and our 2014 consultation will include a proposal to extend this obligation to Senior Persons.</p> <p>We also agree that should provide as much support and feedback as we can to whistleblowers. We will have a new feedback mechanism in place this year and will pilot a new forum to discuss the issues of feedback and confidentiality with whistleblower support groups and charities. However, we must work within the necessary confidentiality requirements contained in FSMA and European directives. We do not believe it is generally appropriate to disclose the fact of an enforcement investigation before we have reached any conclusions, but will now be able to publish a Warning Notice when disciplinary action begins against a firm.</p> <p>We support the proposal that firms are required to inform regulators when the employment tribunal finds in the employee's favour and will consult on this in 2014.</p>

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
49	<p>Whistleblowing – financial incentives</p> <p>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.</p>	803	FCA PRA	As the Commission notes, we have concerns over the impact of incentivising whistleblowers financially. We will conduct further research on this, working with the Treasury, the Department for Business, Innovation and Skills, and the PRA, and will publish a statement in 2014.
50	<p>Whistleblowing – duty to report</p> <p>Institutions must ensure that their staff have a clear understanding of their duty to report an instance of wrongdoing, or ‘whistleblow’, within the firm. This should include clear information for staff on what to do. Employee contracts and codes of conduct should include clear references to the duty to whistleblow and the circumstances in which they would be expected to do so.</p>	784	Industry	We support the Commission’s recommendation that staff must understand their duty to report wrongdoing, and will consider building this into the new Individual Standards Rules.
51	<p>Whistleblowing – mechanisms in place to raise concerns</p> <p>Banks must have in place mechanisms for employees to raise concerns when they feel discomfort about products or practices, even where they are not making a specific allegation of wrongdoing. It is in the long-term interest of banks to have mechanisms in place for ensuring that any accumulation of concerns in a particular area is acted on. Accountability for ensuring such safeguards are in place should rest with the non-executive director responsible for whistleblowing.</p>	786	Industry	We agree that firms should have mechanisms in place for employees to raise concerns, and that accountability for ensuring safeguards should rest with the NED responsible for whistleblowing.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
51A	Regulators should ensure that firms have appropriate whistleblowing mechanisms	797	FCA PRA	<p>We agree that the regulator must play a role in ensuring that firms have effective procedures for dealing with whistleblowing.</p> <p>We will implement this recommendation through the proposed changes to our supervisory approach. This will involve assessing the design and effectiveness of whistleblowing programmes in key firms. We will examine whistleblowing records, when this supports our supervisory focus, to gain intelligence on areas of concern and to ensure that firms are treating concerns appropriately. The use of whistleblowing will depend on the particular risks faced by the firm, and will be based on supervisory judgement.</p> <p>We will consult in 2014 on whether additional rules are needed to set minimum standards for whistleblowing, and how prescriptive rules or guidance should be.</p>
52	<p>Whistleblowing – internal filter</p> <p>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.</p>	792, 793	Industry FCA PRA	<p>We agree that we should monitor firms’ assessment of whistleblowing reports, where this supports our supervisory focus. We will implement this through the proposed changes to our supervisory approach, which will be adaptable to the particular risks faced by the firm.</p> <p>The contents of annual reports are generally set by the Department for Business, Innovation and Skills under the Companies Acts. If whistleblowing information was required in annual reports, this would apply to all public companies but not all authorised firms.</p> <p>An alternative approach would be to make this a regulatory reporting requirement. We will consider how best to take this forward and may consult on necessary rule changes in 2014.</p>

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
53	<p>Empowering regulators where a whistleblower has not been treated properly</p> <p>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.</p>	805	FCA PRA	<p>We support the principle behind this recommendation, but do not believe the FCA is the appropriate body to implement it.</p> <p>Although we can already require a firm to pay restitution to consumers where there has been a breach by the firm, we don't consider that these restitution powers were designed to compensate employees who have been mistreated.</p> <p>We believe that an independent body with expertise in employment law would be best placed to implement this recommendation.</p>
Securing better outcomes for consumers				
55	<p>Voluntary agreement on basic bank accounts</p> <p>Major banks should come to a voluntary arrangement which sets minimum standards for the provision of basic bank accounts.</p> <p>In the event that the industry is unable to reach a satisfactory voluntary agreement within the next year, the Government should introduce, in consultation with the industry, a statutory duty to open an account that will deliver a comprehensive service to the unbanked, subject only to exceptions set out in law. The Government also needs to ensure that the agreement, voluntary or not, is underpinned by a requirement on the FCA to uphold minimum standards.</p>	290, 291, 292	Industry HMG FCA	<p>We agree with the importance attached by the Commission to the availability of basic bank accounts, and welcome the recommendation for a voluntary agreement and the Government's commitment to take this forward with industry.</p> <p>Once the Government has completed its discussions with the industry, we will consider these proposals with them.</p>

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
56	<p>Creating a more diverse retail market</p> <p>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.</p>	343	FCA PRA	<p>We agree that creating a more diverse retail market would create genuine choice and better outcomes for consumers, as well as supporting better industry behaviour.</p> <p>We will consult this year on our approach to regulating crowd-funding and peer-to-peer businesses (some of which will only come into our remit in April 2014, when we become responsible for consumer credit).</p> <p>We will report to Parliament on diversity in the retail banking market in four years.</p>
58	<p>FCA regulation of alternative providers such as peer-to-peer lenders</p> <p>Regulation of alternative providers such as peer-to-peer lenders must be appropriate and proportionate and must not create regulatory barriers to entry or growth.</p>	356	FCA	
60	<p>Payments regulation</p> <p>Ownership of the payments system remains largely in the hands of the large incumbent banks. The merits of requiring the large banks to relinquish ownership of the payments system should be examined and that the Government report to Parliament on its conclusions before the end of 2013.</p>	334	HMG	We believe that this issue should be examined by the new payment systems regulator.
62	<p>Regulators reporting on progress on approving new entrants in two years' time</p> <p>The regulators' approach to authorising and approving new entrants, particularly those with distinct models, will require close monitoring by the Government and by Parliament. The regulator should report to Parliament on progress in two years' time.</p>	327	HMG FCA PRA	The Government has asked the FCA and PRA for a follow-up review on the barriers to entry and expansion work, and we will report to Parliament on the progress of the revised approach in 2014.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
64	<p>FCA embedding a pro-competition culture</p> <p>The FCA must – as a matter of priority – embed a robust pro-competition culture which looks to competition as a primary mechanism to improve standards and consumer outcomes.</p>	1078	FCA	<p>We are committed to embedding a pro-competition culture throughout the organisation, with expertise at board and director level.</p> <p>We have recently announced our programme of work in competition for the year ahead, including a market study into cash savings and a strategic review of wholesale markets.</p>
67	<p>Account switching fee</p> <p>The Independent Commission on Banking, the Office of Fair Trading and others have been clear that the new switching service and the per-switch fee should not impose disproportionate costs on new entrants or small banks. The per-switch fee should not be borne wholly by either the new bank acquiring the customer or by the bank losing the customer.</p>	380	Industry	<p>We agree with this conclusion, and welcome the Payments Council's commitment that development costs will be met by incumbent banks and that the recoverable cost-per-switch will be split 50:50 between the banks concerned.</p>
68	<p>Reviewing account switching</p> <p>The Government and the Payments Council should establish benchmarks to measure the impact of the new service.</p>	384	HMG	<p>We believe that the new 7-day Current Account Switching Service is a significant step in addressing barriers to competition in retail banking. We note that the Payments Council are establishing benchmarks to measure its impact.</p>
69	<p>Account portability</p> <p>The Government should immediately initiate an independent study of the technical feasibility, costs and benefits of the full range of options for account portability. Such a study must be conducted by an independent body rather than one linked to the industry. The Treasury should establish an independent panel of experts to consult widely and report on portability. It should report within six months of its establishment on switching and within 12 months on other issues.</p>	387	HMG	<p>The Commission recommends that an independent study of account portability should be conducted immediately. We support the Government's commitment to ask the new payments regulator to conduct a comprehensive analysis of account portability.</p>

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
70	<p>Transparency and amending S348 of FSMA</p> <p>The FCA should consult on a requirement to publish a range of statistical measures to enable consumers to judge the quality of service and price transparency provided by different banks. Such measures should be based on customer outcomes rather than just customer satisfaction levels. Amendment of section 348 of FSMA is likely to be required to facilitate the publication of appropriate information about the quality of service and price transparency.</p>	423	HMG FCA	<p>We do not believe an amendment to section 348 is required, as we can already require firms to publish data (such as complaints data). Our Transparency discussion paper also demonstrates that we can take forward meaningful transparency initiatives while maintaining section 348.</p> <p>We plan to issue a further call for evidence in 2014, inviting ideas on potential indicators of firm and product quality, before deciding which indicators to take forward.</p>
71	<p>Price transparency</p> <p>It should be the regulator's duty, wherever possible, to ensure maximum price transparency at every level of banking.</p>	536	FCA	<p>We agree that price transparency is very important in helping consumers make informed choices.</p> <p>We will examine the benefits of price transparency on a case-by-case basis as part of our broader transparency agenda.</p>
72	<p>Widening access to the ombudsman service</p> <p>The FCA should consult on options for widening access to the Financial Ombudsman Service for small businesses.</p>	523	FCA	<p>We set up a review and redress exercise to allow small businesses that were mis-sold IRHPs to have their cases reviewed independently. We agree with the Commission that it may be useful to broaden access to the ombudsman service more generally. We propose to consult on this in 2014.</p>
73	<p>FCA requiring banks to write to consumers on PPI</p> <p>The FCA should urgently consider again the case for requiring banks to write to all identified customers, except those who have already initiated a PPI complaint or been contacted as part of any discrete FSA-led PPI process in the past, and report to Parliament on the outcome of its considerations.</p>	530	FCA	<p>Our provisional view is that, at this advanced stage in the PPI redress exercise, this approach may be disproportionate and involve disruptions for consumers and practical difficulties for firms.</p> <p>However, we will further consider the Commission's recommendation, and present our definitive view of next steps in 2014.</p>

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
74	<p>Banks taking customer complaints seriously</p> <p>The evidence suggests that too often the banks have not taken customer complaints seriously. The regulators should consider this as a matter of urgency.</p>	532	FCA	<p>We recently launched a review to identify why complaint handling is not working for some consumers, and address poor practice within firms. We will use a new assessment approach, with a greater onus on senior individuals within firms, to understand:</p> <ul style="list-style-type: none"> • how effective complaints handling processes are, and • how the processes identify and correct systemic causes behind customers' complaints <p>We expect this review to conclude in 2014 and will respond accordingly.</p>
75	<p>Ombudsman service case handling fee</p> <p>Regulators should consider, as a matter of urgency, the case for a Financial Ombudsman Service case handling fee not to apply to banks where the ombudsman service finds that the bank has managed a customer's complaint fairly in the first instance. Conversely, banks who are found not to have handled a complaint appropriately would face a higher case handling fee.</p>	532	FCA	<p>We have discussed this issue with the ombudsman, which believes the proposal will be operationally challenging and raises questions over independence. We have also calculated that even the worst-performing banks would only be faced with a relatively small increase in their annual ombudsman charge. Given this, we do not believe differential charging will act as a deterrent. As an alternative, we will consider a variety of options to incentivise firms to improve complaints handling, including:</p> <ul style="list-style-type: none"> • doing more to hold senior management to account when things go wrong • increasing enforcement fines and pursuing cases against individuals • requiring firms to include their ombudsman uphold rates in complaint letters they send to customers and on annual statements and other communications

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
76	<p>Checks on customers' understanding of transactions</p> <p>Banks should commission periodic independent checks on customers' understanding of the transactions they have entered into and the outcomes achieved. The FCA should examine periodically whether banks' systems for carrying out their own assessments are adequate.</p>	416	Industry FCA	<p>We agree with the Commission that firms should consistently and independently assess consumer understanding of transactions, and that these studies have significantly greater value than 'customer satisfaction surveys'. We will consider the benefits of examining these studies as part of our judgement-based approach to supervision.</p>
Enhancing financial stability				
88	<p>TSC assessment of the FCA's approach to data collection</p> <p>The Treasury Select Committee, when undertaking its inquiry into the supervisory approach of both regulators, should assess whether the FCA's approach to data collection has been appropriate.</p>	946	Treasury Select Committee	<p>The FCA has recently published its data strategy. This seeks to ensure that:</p> <ul style="list-style-type: none"> • all data requests made of firms have a clearly articulated purpose linked to our statutory objectives or strategic priorities • all requests for data collected more than once, or from more than one firm, are subject to formal governance <p>Solving our legacy data issues will take some time, but we are committed to making immediate improvements in our requests of firms.</p> <p>We expect to be able to report substantial progress to the Treasury Select Committee in 2016.</p>

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
89	<p>TSC to consider the FCA's use of product intervention tools</p> <p>The Treasury Select Committee should specifically consider the FCA's use of its product intervention tools in its inquiry into the supervisory approach.</p>	953	Treasury Select Committee	<p>We note the Commission's concerns about the use of product intervention tools. We are committed to intervening quickly and firmly where there is a clear case for doing so to protect consumers. At the same time, we have no desire to discourage the development of new products that will meet genuine consumer needs. We expect the needs of customers to be the primary concern of firms in designing and delivering new products to the market. Good new products should be a feature of a competitive market operating in customers' interests.</p> <p>We expect to report on our use of temporary product intervention tools to the Treasury Select Committee in 2016.</p>
90	<p>Introduction of a special measures tool</p> <p>The regulators should have a 'special measures' tool to identify and tackle serious failings in standards and culture within the banks they supervise. Special measures will take the form of a formal commitment by the bank to address concerns identified by the regulator.</p>	970, 971	HMG FCA PRA	<p>The Government has expressed the view that new tools are not required and that existing powers are sufficient to deal with serious failings. We agree with this view.</p> <p>Using these existing powers, we can deliver all the steps specified by the Commission in their description of special measures. We are confident that the PRA and the FCA can work together to identify fundamental failings in a bank.</p> <p>We believe that in certain circumstances, it would be appropriate to ask a bank's own auditor (or a firm that might become the auditor in the near future) to produce a Skilled Persons report under section 166 of FSMA. For example, this may be the most effective option given an auditor's existing knowledge.</p>

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
91	<p>Regulatory Decisions Committee</p> <p>An autonomous body should be created 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. The FCA and the PRA should publish a joint review of the workings 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.</p>	1202	HMG FCA PRA	<p>The Government has decided that we should have the discretion to design our decision-making framework in a way that best suits our resources and regulatory approach, and that a statutory Regulatory Decisions Committee is not required.</p> <p>We consider that a new autonomous body, chaired by a judge, would be likely to duplicate the role of the Upper Tribunal. This would risk delays in enforcement action.</p> <p>The Commission commented on the composition of the RDC, and in particular on its lack of banking-related expertise. We have recently appointed three additional members to the RDC, two of whom have senior banking experience.</p>
92	<p>Records of meetings between regulators and senior executives</p> <p>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 Select Committee.</p>	965	HMG FCA PRA	<p>We agree with the Commission that a successful relationship between any firm and regulators will depend on regular, frank discussions with senior executives, including meetings at chief executive level and periodic attendance of senior regulators at firms' boards. We expect records to be kept of all meetings between firms and representatives of the FCA as a matter of course.</p> <p>The Government has already highlighted the importance of confidentiality, which we believe is essential to our ability to hold open conversations with individuals at firms.</p>

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
98	<p>Accounting – separate accounts</p> <p>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 for 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.</p>	1039	HMG FPC PRA	The Government has asked the PRA, working with other authorities and firms as appropriate, to review the nature and scope of information required to create a separate set of accounts for regulators, and bring forward recommendations. The FCA will support this review.
100	<p>Sharing of information and expertise</p> <p>HMRC, the PRA and the 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.</p>	1047	HMG FCA PRA	We will work together with the PRA and HMRC to explore how we can improve the sharing of information. This review is currently underway and we will report to the Chancellor of the Exchequer later this year.
102	<p>Dialogue between auditors and supervisors</p> <p>The Court of the Bank of England should commission a periodic report on the quality of dialogue between auditors and supervisors. 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. This should be required by statute, as recommended by the House of Lords Select Committee on Economic Affairs.</p>	1053	Bank of England PRA FCA	We support an open dialogue with the external auditors of banks and recently published a Code of Practice for the relationship between external auditors and supervisors. We believe this Code of Practice will deliver the level and quality of engagement sought by the Commission, without the need for frequency of meetings to be defined by statute. The new Code is supported by a supervisory approach that encourages an active dialogue with the external auditors, especially for those firms carrying the highest risk to our supervisory objectives, and encourages discussions with auditors on thematic issues.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
103	<p>Regulators acting as shadow directors</p> <p>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.</p>	942	PRA FCA	We note the Commission's concerns, and are preparing a report which we will send to the Treasury Select Committee before the end of the year.
104	<p>Banks' duty on new products</p> <p>Banks should thoroughly test what might go wrong with new products before their launch. They should ensure that products are not sold to the wrong people, and that staff incentives do not contribute to mis-selling. Those who design and market products should have personal accountability, which must be clear under the Senior Persons Regime.</p>	954	Industry	We will consider the Commission's recommendation to include those responsible for designing and marketing products in the Senior Persons Regime, and consult on our proposals in 2014.
105	<p>Super complaints</p> <p>The FCA should provide clear reasons when it does not consider that initiation of a collective consumer redress scheme is appropriate.</p>	957	FCA	We are required to publish a response to super-complaints within 90 days which sets out how we propose to deal with the complaint, explaining whether we have decided to take any action, and if so, what action we propose to take, with reasons. In some cases it may be useful to include our views on the use of collective consumer redress schemes, but this may not be appropriate for all complaints.

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
106	<p>PRA and FCA mobilising the experience of former senior management in the banking industry</p> <p>The advice and evidence of some experienced bankers untainted by recent crises has been extremely helpful in exposing the flaws we have identified in the banking industry and in proposing remedies. 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.</p>	911	PRA FCA	<p>We recognise the importance of utilising the experience of former senior management from the banking industry. We currently employ six senior advisors from industry and plan to increase these numbers. We also use ad-hoc advisors on specific issues.</p> <p>We propose to give further consideration to how we utilise these individuals, and to how we can attract a diverse mix of experienced executives from the industry to support the FCA in achieving its statutory objectives.</p>
107	<p>FCA powers of restitution</p> <p>The FCA should have the powers it needs to ensure restitution is made as a result of the interest rate swap scandal.</p>	19	FCA	<p>It is for Parliament to decide what products are regulated by the FCA, and to decide whether the regulator should have the power to take retrospective action for sales that were unregulated at the time of sale. In the case of interest rate hedging products (IRHPs), commercial loans which "embed" IRHPs fall outside our regulatory scope and the IRHP redress scheme agreed by the FCA with the banks reflects this.</p>
109	<p>FCA operating at lower cost</p> <p>The FCA should replicate the Bank of England's stated intention for the PRA to operate at a lower cost than its equivalent part of the FSA, excluding what is required to fund new responsibilities. The FCA should set appropriate timescales for implementing this recommendation.</p>	985	FCA	<p>We inherited a £446m budget from the FSA to deliver work we continue to commit to under the new regulatory regime. For the next financial year, 2014/15, we will deliver this FSA-legacy work within the same budget. However, new responsibilities, such as consumer credit and our competition objective, will require additional funding.</p>
111	<p>Removing dependency on credit rating agencies</p> <p>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.</p>	1002	PRA FCA Bank of England	<p>The Commission's recommendation on credit rating agencies is primarily an issue for the PRA.</p> <p>The FCA does not depend on credit rating agencies in assessing capital requirements, and credit risk has limited relevance for the firms that we supervise prudentially.</p> <p>We will work with the PRA as they lead on this recommendation.</p>

Ref in HMG response	Recommendation	Paragraph in PCBS report	Lead	FCA response
112	<p>Regulators consider the case for investigation led by an independent person</p> <p>Where regulatory failure may also be an issue in the failure of the bank, the regulators should consider the case for an investigation led by an independent person appointed with the approval of Parliament.</p>	1103	PRA FCA	<p>In April 2013, the FCA issued a policy statement on how it will meet the new statutory requirement to investigate possible instances of regulatory failure and provide reports to Government for publication.</p> <p>We believe we can largely accommodate this recommendation within our existing policy. We will consider changes to ensure that independent investigations can be conducted within a reasonable time frame and cost. We will review our code in 2014.</p>

Financial Conduct Authority



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