

BBA/AFME to response to PRA CP34/16

Strengthening individual accountability in banking and insurance: amendments and optimisations

January 2017

The British Bankers Association (BBA) and Association for Financial Markets in Europe (AFME) welcome the opportunity to comment on PRA CP34/16 *Strengthening individual accountability in banking and insurance: amendments and optimisations*¹.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

The BBA is the leading association for UK banking and financial services representing members on the full range of UK and international banking issues. It has over 200 banking members active in the UK, which are headquartered in 50 countries and have operations in 180 countries worldwide. Eighty per cent of global systemically important banks are members of the BBA, so as the representative of the world's largest international banking cluster the BBA is the voice of UK banking.

The BBA's members manage more than £7 trillion in UK banking assets, employ nearly half a million individuals nationally, contribute over £60 billion to the UK economy each year and lend over £150 billion to UK businesses. BBA members include banks headquartered in the UK, as well as UK subsidiaries and branches of EU and 3rd country banks. The BBA is registered on the EU Transparency Register, registration number 5897733662-75.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Executive Summary

- AFME and the BBA are supportive of the redrafted PRA SS28/15, including the feedback on Statements of Responsibility and Management Responsibility Maps, and the expectations on the new duty of responsibility.
- We are supportive of the proposals in relation to Non-Executive Directors (NEDs).
- We agree with the PRA that the technology and operations functions within banks are key areas which should be addressed at senior level and should fall within scope

¹ <http://www.bankofengland.co.uk/pradocuments/publications/cp/2016/cp3416.pdf>

of the Senior Managers Regime. However, we are very concerned by the broad drafting of the responsibilities of the new proposed SMF 23 and associated Prescribed Responsibility, which does not reflect how these critical functions are currently managed within our member firms. It is therefore not something we can support in its present form and would like to engage further with the PRA in order to achieve the optimum implementation for members whilst ensuring its regulatory objectives are met.

Questions

1. Do you agree with the proposed PRA expectations on the new duty of responsibility as set out in the revisions to Supervisory Statement SS28/15 in Appendix 3 to this CP? If so, do you have any comments on the draft text?

We agree that the PRA's expectations of the duty of responsibility set out in SS28/15 are clear. We note the PRA's statement that they have not changed materially as a result of changing the presumption of responsibility to a duty of responsibility and agree with this assessment, recognising that the proposed changes are required to reflect the changes to the Bank of England and Financial Services Act 2016.

We have no changes to suggest to the draft text.

2. Do you agree with the PRA's proposals for applying the Conduct Rules and/or Conduct Standards to Notified NEDs in RAPs and insurers? In particular, do you agree with:
 - a) the specific Conduct Rules and Conduct standards that the PRA proposes to apply to Notified NEDs; and
 - b) the proposed deadline for notifying the PRA of internal disciplinary action for breaches of the Conduct Rules against notified NEDs in RAPs under section 64C of FSMA?

We would welcome alignment of the terminology used by the PRA and FCA when referring to non-authorized NEDs. Currently the terms used by each are either 'Notified' or 'Standard'. It would be helpful if the authorities agreed to keep with one term either Standard or Notified, (we prefer 'Notified'). This should alleviate any confusion about the population being discussed.

We support the extension of the Individual Conduct Rules 1-3 to Notified NEDs in RAPs. We agree that it is appropriate only to apply the Senior Management Conduct Rule 4 to Notified NEDs, given their non-executive status and the fact that they have no managerial duties in relation to specific parts of the bank.

We agree that it is reasonable to treat all Material Risk Takers, including Notified NEDs, consistently for the purposes of section 64C notifications; and that submission of Form L should be subject to the same seven business day notification deadline.

3. Do you agree with the proposed modification to the PRA's Statement of Policy on conditions, time limits and variations of approval?

We agree with this proposal.

4. Do you agree with the proposal to create a Chief Operations PRA SMF and the proposed definition and scope of the function?

The BBA and AFME agree that the operational continuity and resilience of internal operations, systems and technology is a priority for all firms, and should be addressed at a very senior level. We also understand the PRA's desire to have greater oversight of these key functions, given their implications for the financial and operational soundness of firms. We believe responsibility for these areas is already captured through the existing SMF18/22 framework for the large majority of our members. On this basis, it is unclear what the proposal to create a single Chief Operations PRA SMF is designed to address.

We are strongly concerned that the approach as set out in this Consultation Paper involves much more than a straight transfer of individuals from SMF18 to the new SMF23, and that the proposals, as worded, may have serious unintended consequences for firms. We set out some of these concerns below, but also request that the PRA provides for more extensive consultation with the industry, preferably involving one or more meetings on the subject, in order that the PRA's aims can be achieved without unforeseen negative impact and in a way that does not conflict with the FCA's implementation of the SMCR.

In particular the Consultation Paper (3.5) states that *"firms will only be required to have...the proposed Chief Operations function if they have an individual performing that function"*. Given the separate requirement to allocate the proposed new prescribed responsibility we are concerned that firms may be pushed to identify a single individual holding this set of significant and wide-ranging responsibilities. This does not reflect the way in which many of our members currently address the allocation of these responsibilities. We therefore request clarification as to whether this clause is meant to refer to all entities or only smaller entities, such as branches of foreign banks, and whether there is an assumption that all larger entities should comply with the requirements as set out.

For many firms, there is no single individual with overall UK responsibility for the operational continuity and resilience of internal operations, systems and technology. Even where a 'Chief Operations Officer' role exists within a firm, the responsibilities of this position are not standardised as with other executive roles, such as 'Chief Risk Officer' or 'Chief Finance Officer'. As noted above, these are areas of increasing focus and importance for firms and the responsibilities are considered so critical and diverse that in most firms they are allocated to more than one executive to ensure appropriate focus on each area. To create a single Chief Operations Officer position, as outlined in the Consultation Paper, would in many cases require significant restructuring, which may also impact on a group's non-UK entities. Alternatively it is likely to require firms to identify the CEO or another senior individual as being assigned overall responsibility for this very broad group of functions with consequential implications for the bandwidth of such individual and inevitably the level of exhaustive technical subject matter expertise that individual may have to have.

While some firms have taken the opportunity, provided by the implementation of SMCR, to review their governance and management structures, we do not believe that it is the intention of the regulators to impose a single structure on all impacted firms in any part of their businesses. Therefore, we suggest an element of flexibility should be introduced to the allocation of this function within firms. This should include the ability to split the responsibilities between more than one individual as is permissible under the FCA Regime (as opposed to sharing which is the only possible method under the PRA approach). For example, responsibility for technology is often allocated to a different individual from the rest of the operational function, given the differing knowledge base and skill set required.

We are currently collecting information from members about how the responsibilities described in the Prescribed Function are currently split between different individuals and will share this information with eh PRA as soon as practicable.

Additionally, there is a lack of clarity as to whether the existing individuals identified as performing the FCA's "other overall responsibility function" (SMF18/22) in relation to these areas would themselves remain Senior Managers or whether they would fall away and be replaced solely by the new SMF23. If the existing SMF18s are intended to remain, we would request guidance as to how the interaction between individuals would work as regards their responsibilities and how this should be reflected in documentation.

The wording used in the description of both the SMF and Prescribed Responsibility is essentially identical. We request clarification as to whether the policy intent is to have the same wording in the event that no SMF23 is identified. This means that our concerns in relation to the broad scope of the SMF apply equally to the Prescribed Responsibility (PR).

Additionally, the word "ensuring" used in the draft definition of the function does not seem appropriate as this would result in a higher burden being placed on the individual taking on the SMF/PR, since its dictionary meaning is "make certain that (something) will occur or be the case". No other SMF or PR contains the word "ensure". It implies that the PRA is imposing a zero tolerance on operational continuity and resilience shortcomings in an area which is more likely than not to be susceptible to such failings. Is this the PRAs intention? The terms being used in the definition currently are very broad and not sufficiently clear to allow firms to feel confident in how they should be allocated. For example, it is not clear what is meant by "internal operations" – is that the operations function supporting regulated activity or intended to be wider and cover all internal operations of a firm? There is also a risk of overlap across other PRs e.g. business continuity, recovery and resolution, financial crime etc. There should be greater clarity given and the finalised supervisory statement should provide further context about what areas are in scope, particularly given the closely connected nature of this function.

5. Do you agree with the proposed new Prescribed Responsibility for 'managing the areas, processes and systems aimed at preserving the operational resilience (including technology security), and the operational continuing of a firm's functions'?

As with our response to question 4 above, AFME and the BBA are concerned by both the definition of this new Prescribed Responsibility, and the implication that it should be assigned to only one individual. Further engagement with the industry on this would be welcome in order to ensure that the PRA's regulatory objectives are met in the most practical and appropriate manner. The description given of this responsibility encompasses a broad scope, and while our members agree that these functions should be led at a very senior level, activities such as business continuity planning (with a potential cross-over into resolution planning which is already covered by PR10), IT technology, IT application and design and execution of the banks' operational model may fall under the remit of two or (usually) more executives in the majority of our member firms. In particular, there is often a split between the technology and operations aspects of this Responsibility.

We note that the language within Question 5 that is posed in the Consultation Paper refers to very different concepts and accountabilities than the actual wording used in the prescribed responsibility within the draft rules. Assuming that the wording being consulted on is that contained within the draft rule amendment, we would reiterate the comments made earlier that there needs to be greater clarity provided and regard given to the overlap among the other PR, given the scope for overlap. For example, the words "including technology security" - how does this sit alongside the PR for financial crime and what is the FCA's position on this? As outlined in our response to question 4, requiring one person to be responsible for all these activities could be interpreted as imposing a particular business and management structure on a bank. We therefore request that the PRA takes a more flexible and adaptable approach, and implements one of the following:

1. That the PRA allows firms the flexibility to split the PR (and also the SMF) between more than one individual in the same way that the FCA rules permit this, which is our preferred option; or
2. That the PRA redefines the PR (and rules) into more than one Prescribed Responsibility and provides associated guidance.

Finally, we request guidance as to whether the PR (either as it stands, or, preferably, in accordance with the suggestions outlined above) could be assigned to one or more existing SMF18s. We understand that this would not usually be permitted, but that given the areas of responsibility involved in this particular PR, in many firms the appropriate individuals would be currently in-scope as SMF18s.

6. Do you agree with the proposed redefinition of the Head of Key Business Area function (SMF6)?

We understand from the consultation paper that the intention of the changes to the definition of SMF6 is to ensure that those individuals responsible for business lines "sufficiently large and complex to have a potential impact upon the safety & soundness of RAPs" are in the scope of the PRA regime.

In considering how to apply this proposed rule, our members are of the view that it can only be interpreted from the perspective of "relevant business area or division" of

the RAP, the result of which is to simply look at the position from an entity perspective and therefore make the group analysis redundant.

However the proposed rule at Annex E 3.6B which introduces this alternative route to being captured as an SMF6 (by a consideration of the gross revenue of the firm versus that of the group) describes that where the “relevant business area or division includes activities located in more than one entity in the firm’s group” accounts for more than 20% of the gross revenue of the group this would result in the individual being captured as an SMF6. In the context of a global business that uses separately regulated entities, this wording is confusing and therefore difficult to apply.

And as we read it the proposed rule effectively means that a business which may be small for the relevant entity but large across the group when taken as a whole will also be brought into scope. Given the stated intention in the Consultation Paper we assume this is not the PRA’s intent and would suggest that the language is amended.

7. Do you have any comments, questions or suggestions relating to the PRA’s expectations on SORs and MRMs in the draft revised SS28/15 in Appendix 3?

The additional material in chapter 2 of the draft SS28/15 is helpful and we thank the PRA for sharing the results of its reviews of the Statements of Responsibility (SoR) and Management Responsibility Maps (MRM) but we assume the elaboration provided in SS 28/15 does not require firms to undertake an immediate revision of these documents, but rather for them to evolve in line with the new material in due course

However, the draft revised SS28/15 raises a number of issues and concerns as follows:

Role profiles still have a role

We agree that in theory SoRs and MRMs should be an important part of a firm’s internal governance. However, we are concerned at the implication that SoRs should replace role profiles within a firm – and in particular the requirement proposed at 2.51 that ‘role profiles and other supporting documents should not describe the responsibilities of a Senior Manager’.

On the face of it, this would seem to prevent firms having a substantial role profile at all for Senior Managers, as inevitably role profiles will describe responsibilities.

Completeness

The purpose of the SoR, as set out in FSMA, is to provide ‘a statement setting out the aspects of the affairs of the authorised person concerned which it is intended that the person will be responsible for managing **in performing the function**’ (our emphasis added). It is not intended to be a description of everything the person is responsible for at the bank. There may be a number of activities which a Senior Manager is responsible for which do not fall within the performance of their SMF. This is particularly likely to be the case in a Group context where the person may have responsibilities in relation to other entities outside the SMCR. But it could also be the case at smaller entities. For example a Senior Manager could have responsibilities for championing certain issues, such as diversity or wellbeing, which do not relate to the performance of the SMF for which they are approved.

Therefore, it is necessary to have a document such as a role profile where these responsibilities can be recorded. It will clearly be helpful for a Senior Manager to have all their responsibilities recorded in a single place, rather than having to consult multiple documents. So we consider that it is valuable for role profiles to include information that is also covered in the SoR, and hope that the PRA would not object to this, provided the language used is consistent across both documents and recognising that the SoR is the source document to which the PRA will turn in the event that it needs to identify the accountable individual.

If the intention is just to prevent firms relying on additional information about a Senior Manager's responsibilities which appears in the role profile and is not included in the SoR, we suggest that the text of the supervisory statement be amended to make that clearer.

Temporary responsibilities

We note that Para 2.47C and 2.47D appear to suggest that firms should include more information about additional temporary responsibilities, projects and remediation activities. Whilst there has always been a place to do this within an individual's SoR, until now it has been left to firms to decide what to include. So whilst some very large undertakings e.g. creating a ring-fenced bank would typically feature as an individual item in SoRs, others may have not received an individual mention, perhaps because they would be deemed to clearly fall under the inherent responsibility of, say, the CFO. If members are being asked to change this approach, it would be helpful to have further clarification of the threshold for inclusion. Appropriate maintenance and updating of SoRs and MRMs is already a fairly onerous task for firms and it will be important to avoid the situation in which these documents were in a constant state of flux due to the inclusion and then removal of smaller temporary items.

Usability

The official version of the SoR provided by the regulators in pdf format is not at all user-friendly. For example, only a certain amount of text can be included in certain boxes, which then has to be continued onto a separate sheet. Similarly, the printed output of a SoR which has been submitted via the regulators' Connect system is not complete or easy to read. Therefore, in order to actually present the information to Senior Managers in a meaningful format, it is necessary for banks to create an internal version of the SoR, which may lead to version control issues. If the regulators really wish the official SoR to be used within a firm's internal processes, as we believe they should, the submission and on-line retrieval process should become much more user-friendly which would enable it to be used in a firm's internal governance process.

Our members have told us that it is difficult to make minor changes to MRMs without completing a new Form J. The usability of Senior Manager forms and the Connect system is something we would like to discuss further with the PRA and FCA.

Further clarification

Similarly Para 2.47B states that firms "should" provide "additional, clarifications details and explanations of the Prescribed Responsibilities". We believe that firms should only be required to do so where it would be necessary or helpful in

understanding what the Senior Manager's responsibilities are. Otherwise it is the responsibility of the supervisors to manage the progress of reviewing remediation projects they have mandated.

We accept that prescribed responsibilities will often involve carrying out multiple tasks. It does not follow that these tasks need to be listed and described, as Para 2.48B. seems to suggest, in order to clarify the scope of the responsibility. On the other hand, experience has shown that when a responsibility is shared, it will be necessary to use free text to describe how this has been done.

Similarly we agree with the suggestion in the same paragraph that SoRs can be used to capture responsibility for significant pieces of work that may have previously been the subject of an attestation.

However, there is a point about materiality; if every project an SMF is responsible for is listed out in the SoR it will become unwieldy and lose focus on the things that really matter. So some guidance from regulators on materiality would be helpful.

It will also be important to 'cleanse' the SoRs periodically when such programmes are completed or become less significant, suggesting that only the most important programmes should be included.

300 words

We note in Para. 2.49 the expectation that generally 300 words of free text should be sufficient to describe each Prescribed, Overall or Additional responsibility that an individual holds. The present guidance acknowledges that this will sometimes be necessary, but it is difficult to see how this can be necessary in all cases. It would be possible to produce further detail about how each of these responsibilities are being carried out, but that is something different. Our view is that SoRs should focus on the what, rather than the how. Moreover Para 2.50A states that "The aim of free text in SoRs should be to elaborate on the areas which an individual is responsible for, rather than on how that individual discharges his or her responsibilities".

Notified NED SoRs

Para 2.53 requires that SoRs for NEDs should provide a greater level of detail than merely stating that they are "responsible for chairing a given board committee in accordance with its terms of reference". But it does not clarify what the PRA thinks such detail should include. Do they have in mind here the kinds of additional temporary responsibilities here they have described in para 2.47D, and/or something else? One thing we particularly wish to avoid is any blurring of the dividing line between the roles of NEDs and executive SMRs, and it would be unhelpful if the requirement to include extra detail might be taken as implying this – even though we are sure this is not the PRA's intention.

We, like the PRA, are supportive of ex ante remedial action and believe that SoRs and MRMs can prevent things going wrong so we look forward to ongoing dialogue with the PRA as good practice continues to evolve in order that it can be shared.

The clarification about how to reflect shared responsibilities in an SoR is also helpful.

8. Do you agree with the proposed implementation dates for the proposals in this CP?

As per our response to questions 4 and 5, the BBA and AFME have significant concerns with the proposed Chief Operations SMF and Prescribed Responsibility. We therefore cannot support this proposal in its present form and request further engagement with the Regulators on this subject before final rules are implemented.

On the other changes resulting from this Consultation Paper, AFME and the BBA are supportive of the proposed implementation dates.

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