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Sir Richard Lambert  
Banking Standards Review,  
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07 March 2014

Dear Sir Richard

## **Banking Standards Review**

This is the Financial Services Consumer Panel's response to the Banking Standards Review consultation.

The Panel supports the work you are doing and feels that addressing the culture that has led to the acceptance of poor conduct in the banking profession is vital. Despite the many statements by senior bank leaders that culture is changing, there continue to be numerous examples of banks failing to treat their customers fairly.

Your initiative, if effectively combined with the Prudential Regulation Authority (PRA) and Financial Conduct Authority's (FCA) implementation of a new Senior Persons Regime (SPR) for banks, offers real potential for positive change. Ensuring that high and consistent standards are maintained for the self-regulatory aspects of the SPR would give the new organisation a real and highly visible job to do.

### Professional and ethical standards

The Panel has commented at length on the area of professional and ethical standards, such as in its written evidence to the Parliamentary Commission on Banking Standards<sup>1</sup>. We have attached a copy.

Given the socially important role the banking industry plays in the UK, we believe the executives and senior managers that run UK banks should be required to meet mandatory professional and ethical standards.

Bankers in key positions should have the same high professional standards as other professions such as doctors and solicitors, given the impact their recklessness can cause. One of the biggest challenges the new banking standards organisation faces is achieving this without a statutory underpinning. We have seen one too many examples of self-regulation failing to work in financial services.

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<sup>1</sup> <http://www.fs-cp.org.uk/publications/pdf/cp-response-parliamentary-commission-on-banking20120924.pdf>

## Conclusion

We agree that changes to the regulatory framework and the leadership culture within banks are necessary, but that the new organisation should be more ambitious. It should seek to make a significant difference in placing consumers at the heart of a system that has not always served them well in recent years. For the new organisation to be judged a success we believe it will need to address the following:

- Low levels of professional standards (The Chartered Banker Institute has just 9,000 members, of which only 4,000 hold the highest level of qualification<sup>2</sup>);
- The failure of banks and individuals within them to face up to their responsibility to customers; and
- The lack of corporate responsibility within the banking sector.

We would like to see a confident new organisation, which is bold and ambitious in terms of its strategy and what it can achieve. Standards setting will not be enough unless it generates significant behavioural change. We look forward to further details of the new organisation, and how it will dovetail with the FCA's Senior Persons Regime, in due course.

Yours sincerely



Sue Lewis

Chair

Financial Services Consumer Panel

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<sup>2</sup> <http://www.fs-cp.org.uk/publications/pdf/cp-response-parliamentary-commission-on-banking20120924.pdf>

## Detailed responses

*Question 1: Do you agree with this objective?*

Broadly, yes. We also agree that good behaviour should be defined from the consumers' perspective.

The Panel also believes that significant changes need to be made to the way banks incentivise their staff. Fiduciary duty should be an underpinning principle for all banks. While employees are incentivised to maximise short-term profit, customers' interests will always be a secondary concern. We note that the FCA has just reported that all the major retail banks have either replaced or made substantial changes to financial incentive schemes, which played such a major role in the mis-selling scandals of recent years<sup>3</sup>. We agree with the FCA that this is a step in the right direction.

*Question 2: Do you agree that there is a case for a collective approach calling for the participation of all banks doing business in the UK?*

The Panel believes that if the new organisation is to be credible and successful the participation of all banks operating in the UK is essential. As history tells us, universal coverage without a compulsory mandate will be a challenge. Where banks and building societies are unwilling to participate without a valid reason, the new organisation should be bold in 'naming and shaming' them, and ensuring that consumers understand what non-participation means.

Whilst we understand the practical considerations of signing all banking staff up to the new initiative, we believe that from the start, the main board members of banks and building societies should be held to account as individuals. They should have to demonstrate their credentials for initial membership (where there is evidence of poor behaviours or low competence individuals should be excluded) and be ejected if they fail to meet the standards required. To maintain credibility the new organisation should make the public aware of participating organisations and individuals that fall short of required standards.

*Question 3: Do you agree with the proposed role of the organisation?*

There are numerous organisations in this area with similar aims. Furthermore, the FCA and PRA are implementing changes to the approvals regime required by the Financial Services (Banking Reform) Act to improve accountability among senior managers and reduce risks to firms and consumers. Industry groups such as the Chartered Banker Professional Standards Board and the Fairbanking Foundation also have similar initiatives in train. It will be important that all these initiatives are joined up and complementary.

With this in mind, the Panel is pleased that the Banking Standards Review Team is talking to the regulators about how the standards it promotes align with the new SPR. Demonstrating a coordinated approach will add credibility to the new organisation. Knowing which organisations and individuals are falling short of

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<sup>3</sup> <http://www.fca.org.uk/news/the-fca-publishes-latest-review-of-sales-incentives-at-retail-financial-services-firms>

required standards will undoubtedly be of interest to the regulators once the new organisation is established. Information on those expelled from the scheme could be passed onto the regulators through a formal information sharing agreement (e.g. memorandum of understanding). This could be written into the organisation's terms of reference. This would give teeth to the new body and promote compliance among its members.

*Question 4: Do you agree with the proposed scope?*

Broadly, yes. Establishing a common understanding of the outcomes the new organisation will deliver will be extremely important. Some potential questions to help with this process are:

- What will success look like?
- How will behavioural change be measured?
- How will good standards of training lead to the better treatment of consumers?
- How would the organisation have helped prevent recent scandals such as PPI mis-selling and LIBOR?

*Question 5: Do these proposals go far enough to ensure the body has credibility?*

The consultation paper rightly identifies that credibility will rest upon the organisation's ability to demonstrate independence from the industry. We would like to see more detailed proposals on governance, how impartiality will be maintained and decision-making kept independent.

While the Panel agrees that it is important to have some knowledge and experience of the banking sector on the organisation's board, it would expect bankers to be a minority in terms of representation. Given that consumer outcomes will ultimately determine what good behaviour is, we would expect the majority of representation to be from service users and consumer protection bodies. The CII Professional Standards Board has a majority of lay members, the new organisation should follow suit.

Where an organisation is funded by a particular industry there will always be questions around how independent it actually is. One potential model that could be explored to avoid such speculation is the establishment of a charitable trust with a separate board and trustees and a public interest objective.

*Question 6: Do you agree with this analysis? What are the pros and cons of aspiring to build individual membership overtime?*

The Panel agrees with the analysis and is in favour of moving towards the membership of individuals. However, we would question whether there is a need to include all 400,000 banking employees within this. For staff at certain levels demonstration of understanding and adherence to a code of conduct may be sufficient.

As mentioned above, we would at least expect the main board members of banks and building societies to be covered by individual membership from the outset. Ideally we would like to see individual membership go further and include all those captured by the SPR. Individuals aspiring to attain management positions tend to take professional qualifications. Linking those qualifications to membership would help expand coverage over time and embed principles of good ethical behaviour at more junior levels.

*Question 7: Is there a case for a more pro-active approach to managing ethical issues, and if so how should it be managed?*

One of the biggest obstacles to better ethical standards is the way banks incentivise their staff. The global survey conducted by the Economist Intelligence Unit, quoted in the consultation paper, is evidence of this. In December 2013 Lloyds Banking Group was fined a record £28 million for overly pressurising its sales staff to sell products. Some of the instances highlighted were particularly egregious.

We note the recent work of the FCA to address these issues in our answer to Q1 above but while such cases persist, ethical standards will always be a secondary consideration.

A possibility of the organisation running an ethical helpline for bank staff has been suggested. We think this is a sensible proposition that should be explored further. The consultation also states that the new organisation will help to set the standard for whistleblowing arrangements in the workplace. We would urge you to work with the FCA on this. The Panel made the following recommendations to the FCA on whistleblowing in response to its 2013 Transparency Discussion Paper:

- It should ensure all regulated firms have an effective whistleblowing policy in place, one not diluted by a culture of bullying or intimidation or limited (in the case of former employees) by the wording of compromise agreements. Supervisory and enforcement action should be taken against non-compliant firms.
- It should carefully examine the case for the introduction of monetary rewards for whistle-blowers, subject to effective screening to weed out fallacious allegations. Where relevant, the reward could be linked to the proceeds of revealed financial crime or fines obtained as a result of prosecution, thus emulating American practice<sup>4</sup>.

Any whistleblowing regime must also provide protection for employees who report allegations of such malpractice or misconduct. We stand by these recommendations and would be happy to discuss this area with you further.

*Question 8: Do you agree with the proposals to build best practice as set out in the regulators' guiding principles?*

Yes.

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<sup>4</sup> <http://www.fs-cp.org.uk/publications/pdf/CP-response-Transparency-DP20130426.pdf>

*Question 9: What would be the best way of assessing the implementation of a bank's code of conduct?*

We would expect to see measures of changes in behaviour, otherwise this risks being a 'tick box' approach. We would expect a reduction in the number of complaints upheld by the Financial Ombudsman Service to be one indication of behavioural change. However, individual returns from staff and mystery shopping exercises should also form part of a pro-active assessment approach.

*Questions 10, 11 and 12 (professional standards):*

This section in the consultation appears to shift from an early emphasis on the need for the new organisation to have authority and credibility to a requirement for it to have a more passive role. If the standards framework is going to be successful the new body will need to be in control.

*Question 13: Do you think such a benchmarking exercise would be of value?*

Yes. It should be transparent so that the regulator and other interested groups can see how organisations are performing and where improvements have been made.

*Question 14: Are these the right group of metrics?*

The Panel agrees with the categories identified. Measurement will need to be comprehensive enough to capture individuals' behaviours. For example, whilst measuring the extent to which employees understand the code of conduct may have some merit, we would like to see a measure that demonstrates how the code of conduct is embedded in peoples' work and incentives on a day to day basis.

*Question 15: Would it make sense for banks to adopt a set of standard questions to add to their existing surveys?*

Yes. There needs to be some element of standard measuring if benchmarking is to be meaningful.

*Question 16: is self-reporting appropriate? Might other methods deliver better results?*

We believe self reporting is appropriate providing there is a process in place for verification of submitted information.

*Question 17: are there non-bureaucratic alternatives to this approach that might work better? Is there a role for kite marking?*

Probably not. We do not think that there is a role for kite marking other than perhaps to highlight those organisations that do not meet appropriate standards or are unwilling to participate. The Fairbanking Foundation currently accredits specific products against a set of criteria that demonstrates they improve the financial well-being of their customers. Whilst this is product specific, if the new organisation was to introduce a kitemark it would need to be distinct from this and other marks in the sector. ,

*Question 18: Do you agree with this proposition?*

Yes. Bankers need to be treated as professional individuals rather than part of a sales force. We would like to see banking as a profession that youngsters aspire to be part of and one where those within it are proud of the role they play in society. Robust professional and ethical standards will help make this a reality. However, as mentioned earlier, there also needs to be a fundamental shift so that bankers can be rewarded for elements other than maximising profit at all costs.

*Question 19: Should the new organisation aspire to such a role?*

We don't have a firm view on whether the new organisation should be a thought leader. However, for it to be successful in this regard it would need to have a serious and well-resourced research and analysis capability.