PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

FINANCIAL SERVICES BILL

Twelfth Sitting

Thursday 8 March 2012

(Afternoon)

CONTENTS

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£5·00

PBC (Bill 278) 2010 - 2012

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Monday 12 March 2012

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr James Gray, † Mr George Howarth, Mr Edward Leigh

† Bradley, Karen *(Staffordshire Moorlands)* (Con)
† Burt, Lorely *(Solihull)* (LD)
† Durkan, Mark *(Foyle)* (SDLP)
† Evans, Chris *(Islwyn)* (Lab/Co-op)
† Fovargue, Yvonne *(Makerfield)* (Lab)
† Garnier, Mark *(Wyre Forest)* (Con)
† Gilbert, Stephen *(St Austell and Newquay)* (LD)
† Gilmore, Sheila *(Edinburgh East)* (Lab)
† Hamilton, Fabian *(Leeds North East)* (Lab)
† Hancock, Matthew *(West Suffolk)* (Con)
† Hands, Greg *(Chelsea and Fulham)* (Con)
† Hoban, Mr Mark *(Financial Secretary to the Treasury)*
† Jamieson, Cathy *(Kilmarnock and Loudoun)* (Lab/Co-op)
† Leslie, Chris *(Nottingham East)* (Lab/Co-op)
† Norman, Jesse *(Hereford and South Herefordshire)* (Con)
† Pearce, Teresa *(Erith and Thamesmead)* (Lab)
† Rutley, David *(Macclesfield)* (Con)
† Sharma, Alok *(Reading West)* (Con)

James Rhys, Marek Kubala, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 8 March 2012

(Afternoon)

[George Howarth *in the Chair*]

Financial Services Bill

1 pm

The Chair: As we commence this afternoon's proceedings, it might be helpful if I let the Committee knows that in the absence of a motion to close the proceedings, the Committee may sit to any hour. I say that for the purpose of information, not as an invitation.

Clause 22

Rules and Guidance

Amendment moved (this day): 149, in clause 22, page 82, line 10, at end insert—

'(c) provide for a legal sanction based approach introducing a strict liability for executives and Board members.'.—*(Chris Leslie.)*

The Chair: I remind the Committee that with this we are discussing amendment 150, in clause 22, page 82, line 10, at end insert—

'(c) provide for a requirement that an employee representative should be a member of the remuneration committee of a relevant body corporate; and

(d) provide for a requirement that the remuneration consultants advising on remuneration policy shall be appointed by the shareholders of a relevant body corporate.'.

Chris Leslie (Nottingham East) (Lab/Co-op): It seems such a long time since we were last serving under your chairmanship late on Tuesday evening, Mr Howarth. Spring has sprung and daffodils are beginning to come into bloom. That not only means that the sap is rising and there is a change in the air, but it is also relevant to the amendments.

The Chair: I am pleased to hear it.

Chris Leslie: I will explain why, Mr Howarth. Spring, as a general concept, is quite relevant to the joint consultation document that the Government said that they were intending to publish after they had received the recommendations of the Financial Services Authority arising from its inquiry into the circumstances surrounding the failures at the Royal Bank of Scotland. I know that, in Government terms, spring is one of those seasons that can last pretty much any time between January and June or July, but I hope that now that spring is upon us, the Minister will be able to tell us when this much-promised and much-awaited joint consultation document to explore those FSA recommendations will be brought forward. It would have been desirable for it to have been available to the Committee today, given the amendments that we are discussing. I am sure that the Minister will tell us that spring is perhaps another few weeks away, but I would be grateful for a more precise indication about when the joint consultation report is likely to be available.

Under our amendment, as we were discussing before the break, we have implicitly suggested twin provisions. One is that action must be taken on the excessively risky remuneration practices that had incentivised an over-exposure to risk that ultimately fell on the shoulders of the taxpayer. The second area for action is on stricter liability for directors and executives in the banking sector. There is an array of possible sanctions that we want to see in the Bill, but the pre-legislative scrutiny Committee also made some important recommendations that are relevant to this point. In paragraph 225, it said:

"The Government should consider the FSA's recommendations on changing the remuneration arrangements for executives and non-executive directors, or introducing a concept of 'strict liability' of executives and Board members for the adverse consequences of poor decisions, in order to ensure that bank executives and Boards strike a different balance between risk and return. Amendments could be brought forward to this Bill."

This is not something that I am dreaming up, but something that the members of the Joint Committee suggested for consideration. It is important to send a signal now—at this stage and in this Bill—about beginning that much-needed process to change the culture and behaviour in the banking sector. I do not understand why there should be further delays and further excessive risk-taking practices, if they are happening, in the limbo period during which there is uncertainty about whether the Government will take these things forward.

I know that the hon. Member for West Suffolk feels strongly about this issue. When I was rereading his book—probably for the third or fourth time—I spotted that he had written:

"rewards for failure must be unravelled and managers given something to fear".

I could not agree more, so I occasionally agree with the hon. Gentleman.

Sheila Gilmore (Edinburgh East) (Lab): Is my hon. Friend on commission for mentioning the book by the hon. Member for West Suffolk?

Chris Evans (Islwyn) (Lab/Co-op): Did he get a signed copy?

Chris Leslie: Perhaps, as my hon. Friend suggests, I could get a signed copy of that treatise one day. I do not know where the commission goes, although I am sure that the hon. Member for West Suffolk will be sharing the proceeds from that publication with a number of good causes, but I digress. I know that there are some members of the Committee who, in their heart of hearts, agree with the amendments. I urge them to search their conscience, to consider taking off the shackles and breaking out of the prison of government in which they are operating, and to take part fully in the legislative process, because these would be important changes.

I recognise that the Government have proposed within clause 22 new section 137F of the Financial Services and Markets Act 2000. That new section says that general rules about remuneration "may" be made, so there is the potential for the regulator to take steps on these matters at some point. However, it would send a

strong and purposeful signal if Parliament took this opportunity to say today that, in principle, we think that the concept of strict liability should be taken forward and that there should be action on remuneration practices to ensure that there are ways in which poor behaviour can be addressed. I know that many hon. Members have opinions about taking action to claw back bonuses or remuneration at a later date, and that is the purpose behind amendment 149.

Lorely Burt (Solihull) (LD): On amendment 150, I agree that considering how we can strengthen remuneration committees is well worth our while. The hon. Gentleman's proposal is to have employee representatives. I am very open-minded about that as an idea, but the Government are appointing a committee to investigate and consult on executive pay. Does he agree that we should allow that report to be produced before we make prescriptions on that issue in the Bill?

Chris Leslie: I am grateful to the hon. Lady for that intervention, although I have not actually dealt with amendment 150 yet. She helpfully sets out for the Committee the purpose of that amendment, which is indeed to follow up some of the policy suggestions made by my right hon. Friend the Leader of the Opposition and others. They have said that a key reform that we should be taking forward is the consideration of improving remuneration practices by giving a voice to the members of staff in an organisation—the employees—through a more formal role on remuneration committees, which is the purpose of amendment 150.

The hon. Lady said that the Government had appointed a commission to review executive pay. There are certainly good reasons to see what the review says, but my understanding is that the Prime Minister has specifically ruled out taking action on advocating that an employee should be on the remuneration committees of large financial services companies, or other corporations more broadly. I may be wrong, but as that the Government seem to have ruled out that option—at least that was the impression given by the Prime Minister during a recent Question Time—it would not be necessary to wait for that review. That is one reason why we wanted to amend clause 22 to

"provide for a requirement that an employee representative should be a member of remuneration committee of the relevant body corporate; and…provide for a requirement that the remuneration consultants advising on remuneration policy shall be appointed by the shareholders of a relevant body corporate.".

Fabian Hamilton (Leeds North East) (Lab): On the point raised by the hon. Member for Solihull, the German model is quite successful—Germany is probably the most successful economy in the European Union. Could we not learn from what the Germans have done with regard to employee representation on remuneration committees and boards of directors? Does my hon. Friend believe that both sides of the House should unite on that issue and send a signal to the public that Parliament is tackling something that angers so many of our constituents?

Chris Leslie: My hon. Friend makes a good point. On some occasions we can learn from other economies, although I would not want to give the impression that we should be copying and pasting from a German scenario. After all, in the debate about whether British summer time should be extended, the *Daily Mail* characterised that as "Berlin time" as a way of arguing against the suggestion. This is not a Germanic amendment; it is a British amendment that has been drafted in the spirit of traditional British fair play and good practice, and we should incorporate it into our British law in as firmly a British way as possible.

Mark Durkan (Foyle) (SDLP): The hon. Member for Solihull cautioned against prescription at this stage in anticipation of what might emerge from the Government's review. However, surely amendment 150 would not prescribe, because proposed new section 137F states that the "rules may", so the provision would be permissive, not prescriptive. If the hon. Lady believes that the Government review might yield something, she should support the amendment as a way of accommodating anything substantive that comes out of that review. If she opposes the amendment, she will be frustrating anything that might come out of the review.

Chris Leslie: I am afraid to say that that is the case. I know that things are difficult for Members representing the minority party in a coalition in which the dominant party is getting its way on so many—indeed, the vast majority—of policy issues. The Liberal Democrats rarely steer Government policy at all these days—*[Interruption.]* I did not want to touch a nerve. However, this permissive amendment would simply allow the general rules about remuneration to include the structures of remuneration committees, which I am not convinced would be allowed under the Bill. The Government's usual argument that an amendment is not necessary does not apply in this case. If clause 22 is to allow sufficient scope for such changes to made by the regulator, it is necessary to clarify that in the Bill. I do not want to dwell on this subject for any longer than necessary, because we have a number of other clauses to consider this afternoon, but we have not yet touched on the requirement under amendment 150 for remuneration consultants advising on pay policy to be appointed by shareholders.

1.15 pm

Sad to say, many practitioners and advisers will, from time to time, say things that please the person commissioning them. Where a company's senior executives and managers commission independent external advice, the consultants providing that advice tend to have an eye to the future commissioning of advice and to want to make recommendations that are pleasing to the people—the managers or senior executives—commissioning them. We have talked before about the age-old principle of agency dynamic, and it has to be addressed.

It would be preferable if the rights of shareholders—the owners of companies—were asserted in a way that ensured that remuneration consultants knew they were being commissioned by stakeholders with an interest in ensuring a proportionate approach to remuneration policy. I know that already happens informally, as good practice, in many companies, but it would be better if we could shift the commissioning of remuneration consultants to favour the interests of the shareholder more formally. That would be a more proportionate check and balance.

Amendment 150 would give employees and workers in a company at least a say in what happens on pay policy more broadly. The time has come for that change. Amendment 149 is very much inspired by the FSA and others bodies that have come forward with important recommendations.

Matthew Hancock (West Suffolk) (Con): I shall speak very briefly, because I have set out my thoughts on this issue elsewhere, as has been mentioned.

As I indicated in my intervention, the need for sanctions is important, and they are there to deter. However, it is incumbent on us to get this right, and the problem with amendment 149 is that it does not deal with any of the unintended consequences that might arise from a legal sanction, and it is extremely widely drafted, giving no details of what the strict liability for executives and board members would be.

Likewise, in amendment 150, the idea of an employee representative does not help those of us who want to ensure that companies are better run for their shareholders and to deal with the problem of rewards for failure. It cannot answer the question of who will set the pay of the employee who sets the pay of the senior management. There is a strong principle in British corporate governance that people do not set their own pay or have their pay set by those whose pay they themselves are setting. The amendment would break with that principle and would therefore bring in exactly the sort of conflict of interest that we need to get rid of more broadly.

There is, however, a broader point about the need for sanctions. I have raised elsewhere the need for criminal sanctions in the case of those in charge of systemically important financial institutions, and I hope the Minister will address that concern, which has been raised by me and others. However, neither of the amendments goes anywhere near making the Bill better; in fact, they would make it worse.

Sheila Gilmore: Both amendments, but particularly amendment 150, touch on issues that have become important in recent discussions. People have begun to shine a light on matters such as how remuneration is arrived at, which have perhaps been taken somewhat for granted or wrapped in mystery. There is real concern about whether people in all fields of endeavour are remunerated properly and commensurate with their effort and the effect they have, and how that relates to how others are remunerated. It is important to try to improve how things happen. There has been a lot of attention on the remuneration of people in the public sector, and there have been suggestions that that should be looked at more closely. I do not have a problem with that, but it is wrong to suggest that we should not look at more regulation of remuneration in the private sector.

The argument, which I have heard previously, that employees should not be members of a remuneration committee because their remuneration will be set by that committee is true in one sense, but in another it is a bit of a red herring and a diversion. Everyone who is employed by a company has their earnings decided. For an employee that may be decided by negotiation, perhaps with their trade union. That is different from the specific decisions that are made about remuneration for executives, non-executive directors and so on, and sometimes in the non-for-profit sector. A board, perhaps of a housing association, may decide the remuneration of its chief executive or senior executives, depending on how many people they have a specific and direct say over. Strictly speaking, that executive will not be part of that decision-making process and may leave the room when it takes place. That is reasonable. There is such a close ongoing working relationship between such a board and, presumably, other boards and their chief executive and senior executive officers that it may be difficult to stand back, even when someone technically leaves the room. To say that an employee could not be part of the process is wrong.

It has been suggested that these things are widely drawn, but amendment 149 would not immediately introduce strict liability. As the hon. Member for Foyle said in his intervention, if the amendment were accepted, it would be covered by the words, "The rules may". That allows a lot of time for the organisation, in due course when it is formulating rules, to come up with the sort of details that I am sure are necessary—the hon. Member for West Suffolk is right about that. We certainly need to work these things out carefully so as not to have unintended consequences, but employees would bring a different attitude to such matters, and it would be a good step forward if the financial services industry worked in that way.

Mark Durkan: It is a pleasure, Mr Howarth, to serve under your chairmanship again. In support of the amendments, I reinforce the point I made during my intervention that they are permissive rather than prescriptive, just as the Bill in its provision for the rules in subsection (2)(a) and (b) is permissive in what the rules may provide. But if the Bill is specific on those points to show parliamentary consideration and concern, it should reflect other points to show parliamentary consideration and concern. That is what amendments 149 and 150 would do.

I had occasion to be at another event in this place this morning, and heard from the chief executive of the FSA that, in the event of anything requiring consideration, regulators will always refer to their mandate—and the mandate is that which they receive from Parliament under legislation. That is a reminder that, if we leave gaps in provisions, we should bear in mind that unintended consequences can be created not by our unduly putting provisions into legislation, but by our inappropriately and naively leaving measures out of legislation.

Lorely Burt: The hon. Gentleman said that the amendment was permissive. Will he explain what is permissive about

"provide for a requirement that an employee representative should be a member"?

Mark Durkan: The relevant provision is permissive. It states that the rules may

"(a) provide that any provision of an agreement that contravenes such a prohibition is void",

and

"(b) provide for the recovery of any payment made".

The amendment would insert

"(c) provide for a legal sanction based approach",

thus making it just as permissive as the provisions under the Bill. It would add an additional permissive reference and consideration for regulators.

By refusing to accept the amendment, we are arguing that regulators should not consider such matters. Under Lord Denning's logic, Parliament would be saying, "No, it would be wrong for regulators to consider such things." That would be the will of Parliament. Based on all we know about public scandal and remuneration levels and decisions, and such processes, it would be remiss of Parliament to stay silent. The hon. Lady was right to warn against Parliament being over-prescriptive about the issue.

Under the Bill as drafted, rules could prohibit persons

"or persons of a specified description, from being remunerated in a specified way".

The provision to which the amendments relate

"provide that any provision of an agreement that contravenes such a prohibition is void"

and cancels the right to those with excessive remuneration. Proposed new subsection (2)(b) would provide for recovery. Yes, the agreement can be made void and recovery can be sought, so the executive loses the executive remuneration. That is the only person who loses out in such matters.

There is no sanction on directors, people who were part of the decision and other executives who helped to engineer it. Nothing warns them to be careful if they were trying to do their friend a favour, be clubbable and go along with the group think because it will be okay. If someone blew the whistle and stopped such action, the money would be called back, but no one else would have to take responsibility for being party to the decision in the first place.

As my hon. Friend the Member for Edinburgh East said, issues of excessive remuneration do not relate only to financial services, but to many other organisations. In Ireland, such problems are arising in relation to several charities that receive a lot of state funding. There is a lot of scrutiny of who made certain decision and what level they were at. Were such people appropriate? In such instances, it is right that directors should be able to cite that they themselves are potentially liable for being party to the decision rather than just saying, "No, it will be enough if others step in, say that it was too much money and that they were taking it back." Directors in such a situation would have the protection of saying, "Sorry, it is not a matter of whether I like you enough or whether I think that the money given to someone in another institution provides a going rate for you. In taking this decision, it is not about you or what we can afford; it is about what stands over me in terms of the rates offered."

1.30 pm

We should be serious about applying shareholder responsibility. In the Chamber, we have heard a lot about shareholders having to take more responsibility on remuneration decisions and being able to exercise more influence. It is very hard to see how they can do that if we are derelict about ensuring that directors face a potential liability, if the regulators feel that such an approach is the best way to put manners on those decisions. The public want manners put on financial institutions and, indeed, other bodies, including some in the social sector, about how such decisions are made.

Amendment 149 would allow the regulators to move towards such an aim if, on the basis of experience, they decide that that is needed. It might be that, on that basis, they decide that a new mood is abroad in the financial services sector meaning that there is greater self-restraint and self-consciousness, so that their powers do not need to be exercised, or they might find that they have to exercise those powers. They could also listen to the outcome of the review referred to by the hon. Lady, which might inform them on whether to use such permissive powers in relation to the rules about remuneration.

Amendment 150, which concerns employee representatives and the appointment of remuneration consultants by shareholders, again seems sensible. The regulators should be allowed to stipulate such matters, if they think that those are the best ways to handle issues of concern. If good examples of best practice show that those are feasible, achievable and reasonable standards to hold people to, let the regulators use them.

If we reject the amendments, we are basically saying that no one has responsibility for such decisions; the money simply goes back, and no one has to answer questions about how those decisions are taken. That is the question that people often ask. They ask, "How could someone think that they are worth, or how could someone agree to take, that amount of money?" However, people also ask, "Who thought that that was the right decision? Who thought that someone was worth that amount of money in these circumstances?" That goes back to directors, and I cannot see why we would prevent the regulators from influencing such decisions.

Many decisions will be entrusted to the regulators. On other clauses, we are told that this or that amendment is not needed, because the regulators will take decisions in the round. I cannot see why we would restrict the regulators in using their powers reasonably; we should trust them to use the powers only when they thought that it was relevant and right to do so. That deals with the points made by the hon. Member for West Suffolk, in relation to leaving room for all sorts of unintended consequences. He seemed to say that the problem with the amendment was that it is not sufficiently prescriptive, in that it does not go far enough in what it specifies. Yet, on our other amendments in Committee, we have been told that such things can be left to the broad judgment of the regulators—they will exercise a good balance—and that the assumption is that a good rule of thumb or the rules of the road will be provided by what the FSA is doing, so that that is the way to go and nothing else will need to be done.

I am at a loss to understand how we can trust the judgment, reasonableness, experience and soundness of the regulators, and of the very good people who will be appointed to those bodies, while Parliament is told that we cannot ask the regulators to consider other matters. I end on the point made by the chief executive of the FSA, and which I heard this morning, that in an area of doubt, public controversy and sectoral concern and debate, a good regulator will look to their mandate. We will be derelict if, in that regard, we do not colour in something in that mandate.

Chris Evans: I shall be brief. I want to speak about the proposal to require an employee representative to be on the remuneration committee because of my experience of working in a bank many years ago. It gets up my nose when people talk about bankers' bonuses, because they think of greedy executives. I can tell the Committee that everyone in a bank is on a bonus—everyone from

[Chris Evans]

the cashier, the personal account manager, the regulated seller to the branch manager. They are all working towards a bonus, but, whether people's target is to open new accounts or to sell products, it is extremely difficult to earn a bonus in a bank.

A good bank or business needs motivated staff. People are saying to their staff members, "If you don't reach your target, not only will you not get a bonus, but you will be on a personal recovery plan to iron out your problems in selling products. You are not getting enough people through the door to open bank accounts." The same people who set personal recovery plan policies and threaten people by saying, "If you don't perform in this quarter, you will be on a written warning, disciplinary action will be taken against you, and you will lose your job because you have failed to hit your sales targets," are clearly failing. They are running their banks into the ground and everyone is saying, "If I worked in a bank, I'd be saying this: 'You are being very tough on me for not hitting your targets, yet you have failed by running this company into the ground. You have put sales policies in place that have caused our bank to crash, yet you can walk away with millions in bonuses.'"

What mystical policy brought the massive bonuses? I do not know. What makes the person at the top, who has failed, walk away with a bonus? If staff fail, they are sacked. The only way to get round the problem is to put someone on the committee to find out how remuneration for executives is set. The proposal is eminently sensible, so I hope the Government will see sense on the matter.

The Financial Secretary to the Treasury (Mr Mark Hoban): May I respond to a point made by the hon. Member for Foyle by saying a little about the background to the Bill? Through the Bill, Parliament will confer such broad powers on the FCA that if it wanted to impose an employee representative on a board it could do so without amendment 150. The FCA's rule-making powers are broad and not limited to the fine detail in the clause. We give the regulators wide powers, which Parliament constrains, and our not accepting amendment 150 would not prevent an employee representative being included on the committee.

Mark Durkan: The remuneration committee.

Mr Hoban: To be clear, if we did not accept amendment 150, the FCA could still require a remuneration committee to include an employee.

Chris Leslie: That is helpful information. I did not read proposed new section 137F in that vein. Under what other provision will the FCA's powers to influence the structuring of remuneration committees be permissible?

Mr Hoban: At the start of the clause, proposed new section 137A states:

"The FCA may make such rules applying to authorised persons…with respect to the carrying on by them of regulated activities, or with respect to the carrying on by them of activities which are not regulated activities, as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives."

The proposed new section is helpfully titled, "The FCA's general rules." Thereafter is a series of more specific rules that can be applied.

Mark Durkan *rose—*

Mr Hoban: I want to make progress. We have had a lengthy debate in which some useful points have been raised; I want to respond to those to help the Committee make progress this afternoon. The framework is very permissive. Other proposed new subsections are amplifications of the responsibilities, which I am sure we will discuss later.

Amendment 149 would insert a reference to strict liability into the proposed new section on general rules about remuneration. I appreciate that this is probably a probing amendment, and it is worth reflecting on what strict liability might mean, because the hon. Member for Nottingham East uses it in the context of clawing back all the bonuses that someone may have earned. In a legal sense, strict liability could mean someone having to pay damages that go beyond the bonuses that they have been paid. The FSA has used it in the context of saying that a bank director who has failed should no longer be allowed to work in the sector.

Strict liability is a broad term and it is important that we get it right and think about it. That is why we have committed with the FSA to doing a joint consultation on some of the issues raised in the RBS report, including the point about strict liability. We will publish that consultation in the spring. *[Interruption.]* The spring starts on 21 March and ends some time in the middle of June. Just because it is spring-like outside does not necessarily mean that the season is spring. We are committed to publishing it. The RBS report raised some interesting and challenging issues and we need to proceed carefully. There are potential implications under human rights law and there may well be risk attaching to the recruitment of suitable people to work in financial services. There does, however, need to be proper understanding of strict liability. It needs proper public consultation and, where necessary, legislation. Alternatively, we may be able to use the FSA's rule-making power.

On the clawback of pay, hon. Members will be aware of the situation with Lloyds, where pay was clawed back in respect of PPI. The FSA's remuneration code means that banks must put in place provisions for the clawback of bonuses from all material risk takers. That was introduced on 1 January last year. It cannot apply legally to contracts that were entered into prior to 1 January 2011, but it is now a feature of the pay regime.

That is not the only change to the pay regime that the Committee needs to recognise. Hon. Members were right about the bonus culture; there are some big issues there. Not only is there clawback in the event of a material change to the business, but bonuses are now deferred for material risk takers. Some 40% are paid now, with 60% deferred. Bonuses are now paid in a combination of cash and shares. There was a point where at least one household name was simply paying bonuses out in cash on the day, which clearly does not work. The FSA's existing code covers deferral, clawback and the split between cash and shares, which is a significant improvement. It means that the interests of senior

employees and shareholders are more closely aligned than they were before. We are seeing the fruits of that now.

Amendment 150 relates to important issues. As I said before, when I made the general point to the hon. Member for Foyle, the FCA could introduce the amendment's provisions. The Department for Business, Innovation and Skills published a consultation paper last year asking for ways in which we can tackle executive pay. Trying to enhance shareholder accountability was one measure considered. It consulted on both the issues in the amendment: the employment of an employee representative and the role that remuneration consultants play in setting board pay. It is important that those issues are discussed and debated.

Members will have seen, when BIS published its response to the consultation on 23 January, that there was relatively little support for these two measures. That is not to say that the mood will not change. New evidence may come to light that suggests that the measures may be appropriate, but there was no significant support for either measure in it. As I have said, however, even if we do not accept the amendment today, it does not preclude the FCA introducing the powers into its rule book at a later date. With that reassurance, I hope that the hon. Member for Nottingham East will seek the Committee's leave to withdraw his amendment so that we can make some more progress.

1.45 pm

Chris Leslie: It is always helpful to hear the Government's rationale for resisting particular amendments. The hon. Member for West Suffolk, as my hon. Friend the Member for Foyle pointed out, used the cunning ploy of saying, "Oh, this set of amendments are drawn too widely; they are not specific enough." We are caught between the devil and the deep blue sea: when we try to be precise, we are told that it is not appropriate and that it is too detailed; when we try to be permissive and simply pass the power to the regulator to decide the finer points, we are told that we are being too broad. I do not agree that that is a strong reason not to set out, on the face of the Bill, Parliament's intentions in a public policy context.

It was intriguing that the Minister thought that proposed new section 137A on the FCA's general rule-making powers allowed for remuneration committee changes. I have a sneaky feeling that if I had specifically asked the Minister, perhaps in a stand part debate, whether that particular provision would allow remuneration committees to be set up, I might not have got the same answer. Proposed new section 137A allows the FCA some latitude, but only in respect of the FCA's "operational objectives". We had that debate some time ago. The strategic objective of the FCA to allow markets to function well, which might, at the extreme, potentially be allowed to stretch across issues such as remuneration committee arrangements, would not be part of proposed new section 137A. Therefore, the FCA would be able to act only on the operational objectives, which are integrity, competition and consumer protection. I could make a tenuous argument that one of those three should cover remuneration committees, but it would be moot indeed. Therefore, in a legal context, it would be far safer and sounder for the Bill to be explicit that the FCA has the ability to make provisions in respect of remuneration committees.

Mark Durkan: Proposed new section 137A refers to the FCA. Does my hon. Friend note that proposed new section 137F, to which his amendments refer, deals with both regulators, not just the FCA? If 137A is so good, do we need 137F at all?

Chris Leslie: In drafting the Bill, the Government probably felt under some pressure to put in something about remuneration, so the generality was inserted in that way. I welcome that; it is an important provision, but it does not go far enough. The public do not understand the Government's reticence on this particular topic. It is important that we take action, particularly in relation to 137F, on these two matters. I disagree with the Minister's anxiety over amendment 149 about the definition of strict liability. I would have been happy to withdraw my amendment if he had said that he wants to act on this, that he is moving forward on it and that he wants to provide a better and tighter statutory definition. Again, the clause is permissive, so it would be open to the sensible and rational interpretation of the FCA. I am afraid that I will have to test the Committee's views on these amendments.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 29]

AYES

Durkan, Mark	Hamilton, Fabian
Evans, Chris	Jamieson, Cathy
Fovargue, Yvonne	Leslie, Chris
Gilmore, Sheila	Pearce, Teresa

NOES

Bradley, Karen	Hands, Greg
Burt, Lorely	Hoban, Mr Mark
Garnier, Mark	Norman, Jesse
Gilbert, Stephen	Rutley, David
Hancock, Matthew	Sharma, Alok

Question accordingly negatived.

Amendment proposed: 150, in clause 22, page 82, line 10, at end insert—

'(c) provide for a requirement that an employee representative should be a member of the remuneration committee of a relevant body corporate; and

(d) provide for a requirement that the remuneration consultants advising on remuneration policy shall be appointed by the shareholders of a relevant body corporate.'.—*(Chris Leslie.)*

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 30]

AYES

Durkan, Mark	Hamilton, Fabian
Evans, Chris	Jamieson, Cathy
Fovargue, Yvonne	Leslie, Chris
Gilmore, Sheila	Pearce, Teresa

NOES

Bradley, Karen	Hands, Greg
Burt, Lorely	Hoban, Mr Mark
Garnier, Mark	Norman, Jesse
Gilbert, Stephen	Rutley, David
Hancock, Matthew	Sharma, Alok

Question accordingly negatived.

Amendments made: 95, in clause 22, page 85, leave out lines 40 to 47 and insert 'in accordance with section 166A.'.

96, in clause 22, page 86, leave out lines 4 to 6.—*(Mr Hoban.)*

Chris Leslie: I wish to move the amendment formally—no, I beg your pardon, Mr Howarth. My views in this instance are more than purely formal, and with your indulgence I will briefly speak to the amendment.

I beg to move amendment 151, in clause 22, page 89, line 34, at end insert—

137QA Advisory fees in respect of mergers and acquisitions

(1) Either regulator may make rules ("fee structures in respect of mergers and acquisitions") about the advisory or consultancy fee arrangements where an authorised person contracts a third party to give advice on the possibility of a merger or acquisition of control of any other body corporate.'.

It is sometimes difficult to keep track of the amendments that have been discussed in previous groups, and I imagine—I have mentioned this to my hon. Friends—that there could be any number of Government or Opposition amendments discussed previously, such as on clause 5, on which the question might be put during consideration of clause 22, to which they will relate.

Amendment 151 relates to an issue that was raised in the FSA report on the collapse of Royal Bank of Scotland, particularly in relation to its merger with ABN AMRO. The FSA shone a light in its report on the unfortunate circumstances in which a bank seeking to acquire or merge with another banking entity takes on board consultant specialists, to give advice on how the merger would work, and how institutions would integrate.

The FSA spotted that rather than making an entirely dispassionate analysis of the pros and cons of potential acquisitions or mergers, consultants, in those circumstances, would be very much rewarded if a merger or acquisition proceeded and would not be rewarded as amply if the merger or acquisition did not go ahead.

I find the situation that I have described quite strange. If a company is commissioning a consultant to give advice on a potential merger, it should ensure that that advice is not skewed by the advisory fees, but such is the hunger and has been the hunger in times past of banks wanting to make acquisitions and to ensure that deals go ahead—companies get larger and larger, taking on greater shares of the market—that even the fee structures as they relate to those advisers are skewed in favour, implicitly, of a green light to go ahead with those arrangements.

The FSA said in its report:

"The investment banking advice commissioned by the RBS Board was provided by brokers whose fees would for the most part be payable only on completion of the acquisition…as the adviser had a substantial financial interest in the successful completion of the transaction, it is difficult to regard the adviser as independent".

It was reported that 83% of fees were payable by RBS to the brokers only on completion of the deal. The FSA review team therefore recommended that

"the FSA formalise its more intensive approach to major corporate transactions involving high impact regulated firms".

It was said that there was a need to incorporate more explicitly a system of advice that is definitely independent and that is able to advise dispassionately on the merits or otherwise of the transaction.

My simple question to the Minister is: what is the Government's policy on that? Is the Minister content with the nature of advisory fees? Is he minded to reform those arrangements? If not now, when is he minded to make these necessary reforms? Does he agree with the FSA recommendations on the issue? If so, can he be more specific about when action will be taken?

Mr Hoban: The hon. Gentleman makes some very important points. It was helpful for the FSA, in its report on the failure of RBS, to highlight this issue. We are very conscious of the way in which the wrong type of remuneration arrangements can incentivise the wrong types of behaviour. We have touched on that in connection with bankers' pay. There are other regulatory reforms in train that reflect it. Because of the importance of the issue and our desire to make progress on it, we are working with the FSA on it. I hope that it will form part of the consultation paper that we are to publish with the FSA in the spring. I will counsel caution on one point, but before I do, I point out that of course the FSA already has powers to intervene in acquisitions. It will be able to use those powers as it thinks appropriate. If the hon. Gentleman asked me which operational objective it would be seeking to advance, I suspect the answer would be integrity—that is the answer I would have given in response to the previous debate—which is a key objective in terms of how markets function.

The fees and remuneration for M and A work is a complex area. It is not just an FCA matter. For example, the takeover panel, which is responsible for this area, has a view; and of course there was a review of fees in relation to underwriting, which had been launched by the Office of Fair Trading or the Competition Commission, so the competition authorities have a role in this as well.

Jesse Norman (Hereford and South Herefordshire) (Con): Does my hon. Friend the Minister share my view that one lesson of the past 10 years has been that it is very rarely right for a contested takeover, particularly a contested cash takeover, for a financial institution to be allowed through without any scrutiny by the FSA?

Mr Hoban: This debate highlights an issue about the FSA's powers when it comes to acquisitions and change of control. We need to look at that important issue, which was touched on in the RBS report.

UK domestic authorities have an interest in the issue of fees, and that is also covered by European law in the acquisitions directive currently under review. There is much scrutiny of this area, and the points raised in the RBS report, which the hon. Member for Nottingham East reinforced today, repay careful consideration. Nothing in the Bill will prevent action from being taken if that is deemed to be the appropriate response.

2 pm

Chris Leslie: I am getting used to reading between the lines of the Minister's comments, and when he says that the Government will give something careful consideration, I recognise that as a positive remark. I would have

preferred a bit more enthusiasm for this arrangement, but I am sure that he is not hedging his bets. As the Minister says, spring is nearly upon us, and the consultation paper will be published. It would be most helpful if that paper could be published before the Bill reaches Report. I do not know when that is likely to be, but it would be useful to have some movement on this issue to put on the record before then.

Mr Hoban: I fear that the Bill will reach Report before the end of spring.

Chris Leslie: Indeed, but that does not necessarily preclude the publication of a consultation paper during spring rather than at the end, but let us not go down that avenue.

I hear the Minister's points; he is not against this idea and understands that we have tabled the amendment to push the matter as hard as we can. However, he does accept this reform. It is a sensible measure and the sort of thing that I wish we could put in the Bill. I will withdraw the amendment, but I place firmly on the record my strong belief that this provision should be included in the Bill. If we get a prompt from the Government before Report, perhaps we could bring it back for consideration at another time. For now, however, I feel that I have made my point, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chris Leslie: I beg to move amendment 152, in clause 22, page 93, line 43, after '1B(1)', insert 'and 1B(5)(a),'.

The Chair: With this it will be convenient to discuss amendment 153, in clause 22, page 95, line 10, after '2D(3)', insert 'and 2G'.

Chris Leslie: Page 93 lists a number of papers and items that should accompany draft consultations by the FSA. We have tabled amendments to that arrangement because the Bill appears to reduce the safeguards on the new regulators' rule-making powers, compared with the current situation for the Financial Services Authority. In future, as I understand, neither the PRA nor the FCA will be required to explain how their rules have had regard to the regulatory principles. Those are important considerations that concern proportionality, and consumer and senior management responsibility, and the loss of such accountability would be corrected by our amendment.

Mr Hoban: I commend the hon. Gentleman on spotting a gap, but I am afraid to say that although amendment 152 works, it will need to be redrafted by the parliamentary counsel, and amendment 153 is defective. Nevertheless, we accept the spirit behind the amendments and will come back on Report with appropriate changes. I make that intervention now rather than wait to make a long speech later.

Chris Leslie: Tears of delight are welling up in my eyes, although not in a Putinesque way. These are important achievements for the plucky Opposition Benches, if I may be so bold as to self-describe in that modest way. It is healthy that the Minister said that he accepted the spirit of the amendment even before I had elaborated on what that spirit was. Essentially, we need to ensure that there are references in the FCA rule-making arrangements with regard to those regulatory principles. I am grateful to the Minister for accepting the importance of those particular arrangements. He does not need to explain the anomaly. I simply thank him and look forward to seeing what emerges on Report. The Government Whip is also helpful in ensuring that we have this consensual approach. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chris Leslie: I beg to move amendment 154, in clause 22, page 100, line 13, at end insert—

'(1) The FCA and the Office of Fair Trading (OFT) must co-ordinate in the exercise of their functions to promote competition in financial services. The FCA and the OFT must prepare and maintain a memorandum of understanding which describes the role of each regulator in relation to promoting competition in financial services markets. The memorandum of understanding should make clear the OFT will only conduct a market study into a financial services market within the regulatory remit of the FCA in exceptional circumstances.'.

The Chair: With this it will be convenient to discuss amendment 155, in clause 22, page 102, line 10, at end insert—

'(1A) Before the end of 2013, a regulator may, in consultation with the Treasury, ask the Competition Commission to provide a report giving section 140B advice with reference to the Independent Commission on Banking recommendations on competition.'.

Chris Leslie: Clearly, my hon. Friend the Member for Makerfield and others will be well aware of the fact that there is a transition set of arrangements between the OFT's powers in respect of consumer credit and the Financial Conduct Authority. Therefore, we also need to ensure that any remaining powers of the OFT are properly co-ordinated with those of the FCA, particularly in respect of the new remit that the FCA has taken on to promote competition in the financial services markets.

The OFT will retain the right to conduct market studies in relation to financial services markets and, therefore, there is potentially a risk of duplication or a lack of co-ordination between those bodies. That is something that the Association of British Insurers pointed out in its briefing to members of the Committee. It said:

"Given the OFT will retain general competition law powers and the right to conduct market studies"

such duplication could arise. It said that there could be uncertainty over the expected roles of the two organisations, which might lead to poorer quality regulation, either for the industry or for consumers. Therefore, in its view, there needs to be some statutory duty to co-operate or to produce a memorandum of understanding. Currently, the FSA and the OFT have voluntarily published a MOU, but such practice will be essential when the FCA is established with a competition remit.

Will the Minister explain why the FCA and the OFT are not under a particular duty to co-operate or to produce an MOU? I know that we have a more tangled set of institutional players involved under the Bill—a proliferation of new institutions and new bodies. Ensuring

[Chris Leslie]

that we have clarity and good standards of co-operation is something that we have been concerned about throughout the proceedings.

If the Minister does not think that this amendment is necessary, I would be grateful if he could set out why he thinks that it is appropriate for the OFT to continue to conduct studies into financial services markets as a matter of course rather than in exceptional circumstances.

Mr Hoban: As I said this morning, the FCA will take on greater competition powers and a greater competition role in financial services, incorporating some of the OFT's present roles. I expect it to be dynamic in its competition role and I regard competition as a key driver for raising consumer outcomes.

The OFT will still have an important role. There is a debate about what engagement it should have in market structure reviews. We have discussed that matter with the OFT and the FSA. Given the nature of its relationship with the Competition Commission, the OFT must be able to make market investigation references in financial services. A mechanism exists that strengthens the link between the FCA's indentifying the need for such a review and the OFT's putting it into practice. The hon. Member for Nottingham East is absolutely right about the need for the OFT and the FCA to co-operate. I expect those bodies to have an MOU in place to govern their relationship. I am not sure how the hon. Gentleman might read between the lines in my use of the word "expect", but I am clear about what I expect them to do.

As I said in the debate on the FRC, we do not need to include in the Bill every MOU requirement. Even if we felt that it was important to include one in this provision given the elements of MOUs in the Bill, the division between the OFT and the FCA is very new, so it will take time to work out and balance how they should work together. I am clear that they should do so and take forward the work on competition, but I foresee the FCA being very much in the driving seat in a way that the FSA has not been. Martin Wheatley, the chief executive officer designate of the FCA, recognises that.

Chris Leslie: I should apologise to the Minister. In my confusion, I did not speak to amendment 155. He may wish to take advantage of that and get his dibs in first. With the Committee's leave, I shall make a few comments about amendment 155 in my response, and I hope I can persuade hon. Members, albeit ex post, of its virtues.

Mr Hoban: I had better get my dibs in first. I shall give the hon. Gentleman three reasons why he should not pursue amendment 155. First, the Independent Commission on Banking itself recommended that the market be reviewed in 2015, not 2013. The hon. Gentleman has prayed in aid the ICB before, so let me pray it in aid now. It wants to give the competition measures in its report time to bed down and work their way through, after which it will see whether those measures have been sufficient to improve competition in the system. If not, let us carry out the review in 2015.

Secondly, I want to be more ambitious than the hon. Gentleman. The review should not be limited in scope simply to the ICB recommendations. New problems might be identified that would need to be looked at. The amendment's narrow scope would preclude that from happening.

Thirdly, in its ongoing work, the OFT plans to review the personal current account market this year and it is likely to consider some of the issues covered by the ICB. The work is already going on. I hope that the power of my argument and those three reasons have persuaded the hon. Gentleman, and the Committee, that we do not need to hear his views.

2.15 pm

Chris Leslie: I am afraid that I want to try to change the Minister's mind. He has given his reasons. My hon. Friend the Member for Foyle has prompted me to say that the Minister has a Goldilocks strategy. An amendment is sometimes too broad or sometimes too narrow. When will it be just right? We will see. I think that amendment 155 is just right and important.

There has been a broad degree of consensus around the Independent Commission on Banking's recommendations, but more attention needs to be paid to the pace of the reforms, which might come with how quickly this competition review and report are triggered. A test at the end of 2013, rather than 2015, would be more appropriate. After all, the Government have already given generous provisions to the banking sector on many of the reform processes, some of which will stretch as far as 2019. The logic is already a little clouded on whether that is the right time.

Certainly as far as the consumer is concerned, those tests—on whether we are seeing sufficient diversity in the sector and whether we are seeing powers and changes that allow customers to switch between accounts, to ensure that they feel as though they are getting value for money and that there is a genuine feeling that there is choice and diversity in the market—need to done sooner than 2015. That is a considerable time away and it would be better if, before the end of 2013, the regulator had the option, in consultation with the Treasury, to ask the Competition Commission to provide that report under section 140, in accordance specifically with the reference to the Independent Commission on Banking. I know that the Minister says that that is too specific, but, at the very least, given that this amendment is permissive and would allow them to do it, it would not preclude the regulator from looking more broadly.

That is an important principle. The amendment would ensure that we hold to the fire the feet of both those charged with reforming the banking system and the banks themselves. We need to ensure that they are making the necessary changes to become more competitive and more diverse. I am not persuaded by the Minister on amendment 155, and I want to test the Committee's views on it. I will withdraw amendment 154. He said that he "expects" that its provisions will happen anyway, and I take him at his word. It is useful to have that on the record. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 155, in clause 22, page 102, line 10, at end insert—

'(1A) Before the end of 2013, a regulator may, in consultation with the Treasury, ask the Competition Commission to provide a report giving section 140B advice with reference to the Independent Commission on Banking recommendations on competition.'.—*(Chris Leslie.)*

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 31]

AYES

Durkan, Mark	Hamilton, Fabian
Evans, Chris	Jamieson, Cathy
Fovargue, Yvonne	Leslie, Chris
Gilmore, Sheila	Pearce, Teresa

NOES

Bradley, Karen	Hands, Greg
Burt, Lorely	Hoban, Mr Mark
Garnier, Mark	Norman, Jesse
Gilbert, Stephen	Rutley, David
Hancock, Matthew	Sharma, Alok

Question accordingly negatived.

Question proposed, That the clause, as amended, stand part of the Bill.

Chris Leslie: The vast bulk of the clause is essentially old wine, but in new bottles. The FSMA provisions are mainly being transposed under the aegis of the Financial Conduct Authority and the Prudential Regulation Authority. The divvying up of the existing powers has allowed the Government to make several amendments reflecting the different objectives of the two bodies. The two big changes under the clause that we have not debated so far are proposed new sections 137C and 137Q.

Proposed new section 137C will give the FCA new product intervention powers, which, in a nutshell, mean that, although the product breaks no rules at the present time, the authority might think that it would be bad for customers so it wants the power to stop it being sold. That is the general thrust of the measure. It is a good pre-emptive and useful power for the FCA. My specific question relates to some of the difficulties that the Financial Services Authority has had in recent years with other cases.

For example, the Minister will be familiar with the land banking scams when purchasers of land would package things together and sell them at a later date for profit, often after planning permission had been obtained. The FCA does not regulate the sale of land, but land banking can, in certain circumstances, clearly amount to a collective investment and therefore potentially something over which the FCA might want to have authorisation. I know that the FCA, with the support of the City of London police and others, has investigated particular practices, but has not had the fortune that it might have had in securing outcomes necessary for the public good. I do not want to refer to specific cases, but the hon. Gentleman will understand that the FSA has had frustrations in that sphere. Will he clarify that proposed new section 137C will expand the power to cover such circumstances? If he has other ideas about how the provision is likely to be used, it would be useful if he could make them known to the Committee.

The new power under proposed new section 137Q might not be new technically, but it is a new directional ability for the authority in financial promotions, a matter that we have talked about previously. In advertisements or marketing arrangements, we can sometimes get the sense that vast promises are being made by being told of guarantees or issues that promise a pot of gold at the end of the rainbow when, in fact, the reality in the small print is quite different.

Only the other day I saw an advert featuring a bank that stated, "For a small fee, your current account can yield this interest upon it." Such little emphasis was placed on the fee that people had to pay, while more emphasis was placed on the interest that it would supposedly yield that it was not proportionate to the fact that the fee often would counterbalance the interest that was made. I have doubts about some of those practices. Can the Minister confirm that the powers are steps forward in cracking down on such promotional arrangements?

Can the hon. Gentleman also confirm that, under the provision, some of the cold calling and texting practices that we all presumably experience can be attacked by the regulator? I picked up the phone at home last night, and the first words I heard were, "The average return on a claim for PPI mis-selling is"—at which point I hung up, as one is wont to do with pre-recorded messages. That practice is an annoyance for many people, and I am deeply worried that even if only one half of 1% of the people who receive such calls are drawn in, as seems likely to happen, they may give away great chunks of their compensation to companies that they need not use. Will the Minister confirm that proposed new section 137Q could be used to crack down on such practices?

Yvonne Fovargue (Makerfield) (Lab): The practices of debt management companies are particularly relevant to that subject which, as we all know, relates to people making a distress purchase—they are at the end of their tether when they are in debt—and looking for where to go. People who receive an unsolicited text saying, "New regulations mean that all your debts can be written off", find that very tempting. As a result, they may not go to the free advice agencies, which are much more appropriate.

Mark Durkan: Proposed new section 139A raises issues about the power of the FCA to give guidance, as does proposed new section 139B about the notification of that guidance to the Treasury. Several concerns have been brought to my attention, including some that have been expressed by the Institute of Chartered Accountants in England and Wales, but I will not ignore those concerns just because that organisation relates to England and Wales and to chartered accountants. I hope that the Minister will reflect on the need for more refinement about guidance.

The term "guidance" is used throughout, although in practice it might mean different things. I will not follow the detail in the way suggested by the ICAEW, because its precise remedies are not necessarily adequate or required. However, it has made the point that there should be a differential between formal advice and informal advice—between "Guidance" and "guidance". I remind the Minister that proposed new section 139A(1) provides for the FCA to give guidance consisting of information

"with respect to the operation of specified parts of this Act and of any rules made by the FCA;…with respect to any other matter relating to functions of the FCA;…with respect to any other matters about which it appears to the FCA to be desirable to give information or advice."

[Mark Durkan]

Even that differential suggests that there should be a grading system for the formality or informality of the guidance.

If that distinction is not made, there is a danger that someone might receive information that anyone else would understand as informal guidance, and would rely on it as though it had the full legal authority of formal guidance, as apparently provided for in the Bill. To protect the FCA in its working practices for communicating with others, and for the reassurance of those looking to the reliability of its guidance, some refinement of the language may be needed, which the Minister should be prepared to consider.

2.30 pm

Those two proposed new sections, which are about guidance, relate only to the FCA, and no provision about guidance is made in relation to the PRA, which seems to be a gap in the Bill. The Minister may think that I am saying that for every provision for the FCA there must be an equal and opposite, or even an equal and comparable, provision for the PRA. However, given that the Bill is littered with references to either regulator or both regulators, and we zoom in and out—it is a bit like the coalition; sometimes we are hearing from the duality, and sometimes from the specific parts, and we have to take our own guidance as to where we are—the Bill should make complementary and commensurate provision in respect of the PRA where specific provision is made for the FCA. It seems odd for provision to be made about guidance being produced and offered by the FCA, but for no such provision to be made for the PRA.

Interests as disparate as Barclays and local credit unions in Northern Ireland have expressed concerns to me about that apparent gap. Some people are concerned that the PRA will be denied a legal basis on which to assist affected parties in understanding its requirements. Particularly in the first years of its work, guidance will be necessary. I hope that the Minister will address that point in his response.

I have mentioned the concerns of Barclays about the apparent lack of a statutory framework in the Bill for the PRA in relation to whether to make its views public on particular issues. Local credit unions in Northern Ireland will now be regulated on an individual basis by the PRA. They want to know that they will not have to trouble the PRA, which has a limited number of staff, on every single detail, and that some sound and reliable guidance will be provided.

Those credit unions are puzzled about why guidance will be provided by the FCA but not the PRA; they will be taking on some new functions and will be able to provide some new services, and they will no longer have their current familiar regulatory relationship with the Departments and officials in Belfast. They want to know that regulation will not be done on a remote basis. They respect the people they have already met who will be dealing with those functions in the PRA, but they understand they will be limited to 10 people, so they do not want to trouble those people over every single detail. Authoritative and reliable guidance will be needed, and providing for such guidance in statute would give it some standing.

Not only the individual credit unions but the trade bodies—the Irish League of Credit Unions and the Ulster Federation of Credit Unions—have raised questions about the absence of provision of guidance on the part of the PRA. The trade bodies will engage with the PRA and make their own inquiries, and they will try to issue the resulting information to their members. The trade bodies worry that credit unions will rely on their interpretation of that information as PRA guidance, but that the PRA will say, "Well, no, that was not our guidance; that was somebody else's interpretation of what we told them informally. We have absolutely no power of guidance."

It seems to me that there is something of a gap here. I did not table a variety of amendments in this area, partly because I have decided to give amendments up for Lent—I was not getting anywhere with them anyway, and I made that decision before we saw the pig fly past behind the Minister when he made his concession earlier to my hon. Friend the Member for Nottingham East—and partly because the problem could be corrected by a number of adjustments in language in respect of the PRA, such as an insertion in this clause or a provision in another.

I will entrust the matter to the Minister's good consideration so that he can make good that apparent gap, about which legitimate concerns have been expressed by those who will be materially affected by it and those who will be trying to make the legislation work, whether they be credit unions or large banks.

Sheila Gilmore: I want to raise an issue and explore the Minister's response to it, and to ascertain his view on how this field might be better regulated.

Proposed new section 138K relates to consultation in respect of mutual societies. It deals with a situation where a rule is made that would apply both to financial organisations that are not mutual societies and those that are. The provision, as I understand it, says that in that situation the regulator has to prepare a statement which sets out its opinion on whether the impact of the proposed rule will be significantly different on other non-mutual legal personae.

Some concern has been raised by those in the mutual field that that is too subjective. They ask for a judgment on the part of the regulator as to whether the impact is different and whether that difference is significant. Only after having come to that opinion would a statement be issued. Some people working in the field are concerned that that could be over-subjective and, as a result, some situations where there could be a differential impact on the mutual sector might not be noted or fully understood. That might not become evident until much later.

I think people accept that to some extent that will depend on the degree to which the regulator is able to seek good advice and information from people within the sector. It is one of the reasons why the sector was particularly interested in issues such as the composition of the practitioner panel and who would be represented there, so that that point of view could be properly aired.

Some people have suggested that in all cases of the situation that section 138K(1) envisages, rather than having first to form an opinion and then to issue a statement, the regulator should actively satisfy itself as to the implications and go out to check that there are no

such implications. That would be better than the slightly more subjective wording here. I welcome the Minister's views on that issue.

Mr Hoban: This is an important clause. I am not tempted to give a subsection-by-subsection analysis of its importance, but the four areas that Opposition Members have picked up are four that I would want to touch on anyway.

Let me deal first with the comments made by the hon. Member for Edinburgh East. I am very conscious that regulation can have a differential impact on the mutual sector. As I have said before, there should be a level playing field for consumers who deal with any financial services organisations. But there are situations, such as those around capital, for example, where what might be appropriate for a bank might not be appropriate for a building society or a credit union because of their mutuality.

That is an important part of clause 22. It requires the FCA and the PRA to give more explicit consideration to the impact on mutuals than the FSA does at the moment. There is a widespread concern among the mutual movement that the FSA does not spend enough time thinking about the impact of its regulations or rules on mutuals. The provision helps to redress the balance.

To make the statement about the impact and its significance requires a degree of engagement by the FCA and the PRA with mutuals. They cannot do it in isolation. That engagement might come from their existing knowledge of the mutuals they regulate or they may reach out to the mutual sector and ask for its views. That is an important part of the process. I want to ensure that both the PRA and the FCA take greater recognition of the importance of financial mutuals to the overall landscape. It is a coalition commitment to promote diversity in ownership of financial services firms, including mutuals.

Jesse Norman: Hear, hear.

Mr Hoban: My hon. Friend the Member for Hereford and South Herefordshire is a keen proponent. He is a leading light in the Conservative co-operative movement. *[Interruption.]* It is not a contradiction in terms, because co-operatives are a sign of people coming together spontaneously in a voluntary collective effort. There is no contradiction at all.

Jesse Norman: Will my hon. Friend give way?

Mr Hoban: No, because I am in danger of being led away from the path of righteousness, Mr Howarth.

It is important that the PRA and the FCA engage with mutuals to enable them to make a statement.

The hon. Member for Foyle raised a point about guidance. We need to step back and think about the two populations that the PRA and the FCA are to regulate. The FCA will be regulating about 24,000 or 25,000 firms. The guidance set out is important to help communicate rules and regulations and their interpretation to that large population. Where it issues formal guidance, it must consult on that draft guidance, as the powers require. We believe the ability to give formal guidance would be a useful tool for a conduct of business regulator in securing better outcomes for consumers. That is particularly important given that the FCA will manage a large population of very small firms.

The PRA, on the other hand, will regulate a much smaller group of firms and will have much closer contact with them. There is less requirement for formal guidance. However, I would expect it to continue to communicate and to be mindful of the people with whom it is communicating. The hon. Member for Foyle and, I think, every other elected politician in Northern Ireland has written to me recently about Northern Ireland's credit unions, for which I am very grateful. The PRA will need to think how it communicates to that sector, where it perhaps has less day-to-day involvement than with a bank.

The PRA will be able to continue to issue press releases, policy statements and use other mechanisms to communicate its broader expectations of regulated functions. It is regulating a smaller population, so it does not have the same requirement as the FCA to issue formal guidance. I hope that clarifies why we have not taken a simple "copy out" approach. We have thought very carefully about the different populations to be regulated. I assure the hon. Gentleman that there will be methods of giving guidance to smaller firms such as credit unions.

Mark Durkan: First, the Minister has constantly referred to formal guidance in relation to the issues raised by the Institute of Chartered Accountants in England and Wales. It says that it might help if the presumption was not always that guidance was deemed to be formal and that there should be a differentiation. Secondly, the fact that it is dealing with a smaller base should not mean that the PRA should be precluded from issuing guidance.

Mr Hoban: No, and what I am saying is a difference. The guidance required by the Bill is for the FCA to give. It is formal guidance where there has to be a proper consultation process. The FCA can give other sets of guidance, but it is not bound by the rules in the Bill in all forms of guidance that it issues. It can go beyond that. It will issue some guidance on a statutory basis; that is guidance covered by the Bill. It can publish other guidance that is not on a statutory basis. Firms will be able to understand and see the distinction between the two.

2.45 pm

Let me pick up the point about cold calling and financial promotions. The related power is very important. The key improvement is that, not only can the FCA stop misleading advertising, it can highlight the fact that it has done so. At the moment, if it stops it, no one knows that it has, other than the advert being withdrawn. It is important that people are aware of what advertising has been stopped. One case that crops up every so often is Arch Cru. Arch Cru was first identified because the FSA looked at its marketing material. Perhaps if the FSA had been able to publish the fact that it had looked at Arch Cru's marketing material and had that market material changed, a message might have been sent to others. The power is, therefore, important. The FCA

will have powers to make rules on cold calling. By bringing consumer credit within the FCA's remit, the debt management company issue will be tackled.

The hon. Member for Nottingham East referred to land banking. Such schemes are often structured so as not to be collective investment schemes, and I suspect that may be deliberate. If they are structured to be collective investment schemes, they would fall within the framework of the Bill and the powers may be used. One of the challenges we face is on what falls inside and what falls outside the perimeter of regulation. If something is outside the perimeter, the powers cannot apply and we would need to find other ways.

We should always encourage our constituents to find out what protection they have when making investments. Some investments, such as land banking, are not necessarily regulated. We should always encourage constituents to look at the Money Advice Service websites to understand what happens if something goes wrong and to whom they can complain. Can they complain to the ombudsman? Can they complain to the Financial Services Compensation Scheme? The more we can do to put our constituents on guard, the fewer chances there will be of things being mis-sold.

Question put and agreed to.

Clause 22, as amended, accordingly ordered to stand part of the Bill.

Clause 23

SHORT SELLING RULES

Question proposed, That the clause stand part of the Bill.

Chris Leslie: I have a passing, but important, comment. Many hon. Members will be familiar with the concerns that have been voiced, especially during the global financial crisis, about the activities of hedgers or short sellers and the possible impact of such practices. I am not one to say that all short selling is inherently bad or inherently negative—there are circumstances in which good hedging practices can be sensible—but we have to have an eye to the report published by the FSA itself. When considering some of the circumstances of the global crisis, the FSA identified anxieties on the potential for market abuse, the disorderly arrangements and the deficiencies in transparency and settlement arrangements, which need to be addressed to ensure that reforms can be made.

The reform agenda is proceeding in a number of ways, although not particularly in clause 23. As I see it, clause 23 largely transposes the arrangements of the Financial Services and Markets Act 2000 to ensure that the new Financial Conduct Authority will be able to take forward certain rule-making powers.

My question on clause 23 addresses emergency rules on short selling. The Minister will, of course, be familiar with the fact that emergency rules were brought in in, I think, September 2008 to prohibit short selling of 32 major companies, including the UK's major banks. Such emergency rules may typically last for three months, but they may be extended to six months. My slight anxiety is that, from time to time, as we have seen, there can be extended periods of volatility that go beyond six months. I want clarity on the Government's view of the possibility of extending beyond six months certain emergency rules on restrictions on short selling. Will the Minister assure the Committee that the power to roll over such provisions beyond six months is available to the regulators? Does he think such provisions would need to be reviewed to be extended beyond six months? What would be the process for extending a provision, should the need arise?

Mr Hoban: The hon. Gentleman is right that, on the whole, the clause simply makes consequential amendments required by the Bill. The powers to make short-selling rules were of course taken in the Financial Services Act 2010, which was introduced by the previous Government. Subsection (2) deals with urgent cases, and one must be careful because it is right to have the power to roll over, but the power must be used carefully and sensibly and only when there is a genuine emergency, rather than as a way to introduce a general ban on short selling. Some would like that, but I am encouraged by the fact that the hon. Gentleman sees some benefits in short selling. I remember Ian Pearson, when he was Economic Secretary to the Treasury, making a passionate defence of short selling on the Floor of the House during the passage of the 2010 Act. There are some benefits, but we need to be careful that we use the roll-over powers only when there is a genuine emergency, so that a temporary measure does not become a permanent ban.

Question put and agreed to.

Clause 23 accordingly ordered to stand part of the Bill.

Clause 24

CONTROL OVER AUTHORISED PERSONS

Question proposed, That the clause stand part of the Bill.

Cathy Jamieson (Kilmarnock and Loudoun) (Lab/Co-op): Good afternoon, Mr Howarth. It is a pleasure to serve under your chairmanship once again. I am sure that we will continue to make good and steady progress during the rest of the afternoon with the co-operation—if I can use that word—of all.

Clause 24 deals with the important issue of control over authorised persons, and it provides another example of the twin peaks of regulation, which is a theme that has been running through much of our debates. In this case, however, one of the twin peaks or mountains seems to be higher or more important than the other, particularly when it comes to approving or objecting to an acquisition.

In proposed new section 187A of FSMA, the FCA has directive powers over the PRA as regards objections to an acquisition. The FCA can direct the PRA to object to the acquisition or direct the PRA not to approve the acquisition unless it does so subject to conditions specified in the direction. However, there are limitations on the FCA's power to give directions. The FCA can only give directions if it considers that there are reasonable grounds to object to the acquisition. The grounds for objection can only relate to the risk of money laundering or terrorist financing, as per section 186(f) of FSMA. The FCA must notify the PRA of its intention to give a direction before doing so. Can the Minister imagine any other conditions where there might be reasonable grounds

to object to an acquisition? For example, given the FCA's duty under new section 1B of FSMA, which is proposed in clause 5, to discharge its general functions in a way which promotes competition, unless this would be incompatible with its strategic and other operational objectives, would the Government not consider it appropriate for the FCA to consider the impact of an acquisition on competition issues, even within the constraints of the EU acquisitions directive? While the Minister contemplates that and comes to a conclusion, I have a couple more questions.

There are even further restrictions on the FCA giving directions as highlighted by proposed new section 187A(7) to FSMA, which states:

"Directions given by the FCA under this section are subject to any directions given to the FCA under section 3I."

That section is, of course, proposed new section 3I in clause 5, which is titled, "Power of PRA to require FCA to refrain from specified action". The section also gives the PRA the power of veto over the FCA. I hope that people are still following, because I must admit that it took me some time to work my way through it. The proposed new section allows the PRA to direct the FCA not to exercise a regulatory power in relation to a PRA-authorised person or not to exercise it in a particular manner, if exercise of the power might threaten the stability of the UK financial system, or lead to a failure of a PRA-authorised person in a disorderly manner, and the PRA considers that giving a direction is necessary to avoid that consequence. I raise that because the Treasury Committee has already highlighted it as a concern. Paragraph 96 of its report on the FCA states:

"By granting a veto right over decisions taken by the FCA to the PRA, the Government risks both the perception and reality that the FCA ranks below the PRA and is a second class regulator."

Some of those concerns have come out in discussions already and it relates to the point with which I started: one peak being higher than the other or, perhaps, in a more Orwellian setting, one regulator being more equal than the other.

The Treasury Committee has argued against the power. It believes that if veto powers are granted, they should be granted to the FPC rather than the PRA. According to the Treasury Committee report of 27 February, "Financial Conduct Authority: Report on the Government Response", the Government

"expects the veto to be used in exceptional circumstances".

The Committee states in paragraph 14 that it believes the Government are missing the point:

"The issue of principle of a PRA veto over FCA actions is not dependent upon how often the veto is exercised. The Committee still considers that the veto should be granted to the FPC rather than to the PRA. If the Government were to proceed with the introduction of a veto power for the PRA it should be subject to a statutory requirement for retrospective review at a later date."

Will the Minister address that specific point? Does he believe that the statutory requirement for review is adequately in place, and if not, how will he address the concerns?

The PRA must consult the FCA before giving a direction, and the direction and reasons for giving it must be given to the Treasury. The Treasury must lay that direction before Parliament, and the PRA must publish it, unless the PRA considers that it would be against the public interest to do so. Given that the theme of openness and transparency has run through the legislation, can the Minister say under what circumstances it would be appropriate for the PRA and not the Treasury to determine whether something was against the public interest? Under what circumstances would the Government not have a say?

Mr Hoban: The hon. Lady raises some helpful points. On the areas where the FCA can intervene, she raised a particular issue about the pursuit of its competition objective. Where there are concerns about competition, the people best placed to make decisions are the competition authorities. Their remit is to look at acquisitions to see if there is a significant increase in market share and so on, so that is clearly a matter for the competition authorities rather than the FCA.

Are there other grounds to object to change of control? Grounds to object are limited by European directive, and that is in part to create a level playing field in a single market. The Bill is not the place to add new grounds for objection; everything should be done within the framework of competition law.

On the veto, let me say briefly that I wholly reject the idea that the FCA is a second-class regulator. The FCA will touch more people's lives than the PRA, it will have much greater influence on how we buy goods and services, what we buy and whether we get a good deal. Prudential regulations are at the forefront of our minds at the moment, but let us hope that the banking and insurance systems move to a point where we do not need to worry that much about the prudential side and consumers can focus on whether they get a good deal.

3 pm

I do not believe that the FPC is the right body to exercise a veto. It will not have a detailed knowledge of the circumstances of individual firms unless it replicates the micro-prudential activities of the PRA, and that would not be a great idea. We have talked about the cost of its doing that, which would be expensive. In my magnanimous style, I said—

Chris Evans: So modest.

Mr Hoban: I was being sarcastic rather than modest, which I say to avoid such criticisms from Opposition Members.

During the debate, I said that we should come back to the point about who decides what goes into the public domain. It should not necessarily be the joint decision of the PRA and the Treasury. We should look at the arrangements to remove the bias towards non-disclosure, given that the thrust of our reforms is in favour of disclosure. I hope that I have reassured the hon. Lady.

Cathy Jamieson: The Minister's clarification has been helpful, particularly on the EU acquisitions directive and competition, and how such matters will work in practice. I hear his comments about the FCA touching more people's lives, and I heard murmurs—if not of approval, then certainly of agreement—from Opposition colleagues.

[Cathy Jamieson]

We have tried to make the important point that the Treasury Committee raised such concerns; they have not simply been thought up to make the Minister ask for more notes and have to think on his feet. The Treasury Committee has raised those issues, and I hope that its members, who were involved in producing its report, feel that they have been given assurance on those points.

I also hear what the Minister has said about who decides what goes into the public domain and what is in the best interests of the public. I am grateful to him for listening to that point, which is important. He referred to decisions being made jointly and to how else they might be arrived at, and I am sure that he will enlighten us with his thoughts during further debate on the Bill. He has given us reassurances and clarifications, and therefore I do not intend to oppose the clause.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25

POWERS OF REGULATORS IN RELATION TO PARENT UNDERTAKINGS

Cathy Jamieson: I beg to move amendment 156, in clause 25, page 108, leave out lines 29 and 30.

The Chair: With this it will be convenient to discuss amendment 157, in clause 25, page 108, leave out lines 34 to 39.

Cathy Jamieson: The amendments have been tabled because we are concerned that the powers of financial regulators to oversee parent companies of regulated financial subsidiaries leave a loophole, in that those powers will not apparently be extended to commercial, non-financial parent companies with financial subsidiaries. The amendments are important because they would close that loophole. They are based on the simple premise that if a conglomerate wants to run a bank, it should be regulated like any other banking business. They would create a level competitive playing field that will benefit consumers and reduce the risks to the taxpayer of banking failure. Opportunities to regulate such matters are infrequent, but getting the Bill wrong could be damaging both commercially and to consumers so, as has already been said several times, we should not miss this opportunity to put things right.

Mark Garnier (Wyre Forest) (Con): Is not the point about the overall controlling shareholder covered by the fit and proper person rules when an application is made to authorise a bank?

Cathy Jamieson: If I may continue, the hon. Gentleman will hear my concerns. The proposals do not relate only to that matter.

The Bill enables the new regulators to oversee parent companies that own financial subsidiaries. In other words, if a parent company owns a retail bank and an insurance company, the regulators will have powers to oversee them on a separate, solo basis, and to oversee the conglomerate as a whole, which is known as consolidated supervision. That is a welcome move; we do not have a principled objection to it. However, I am keen to hear the Minister's views on the Bill's seeming inconsistency, because some parent companies will be exempted. We were somewhat surprised that the Bill grants the power of consolidated supervision only to parent companies that are classified as financial institutions by the Treasury.

Proposed new section 192B(6) gives the Treasury the option to extend the jurisdiction of the regulators to non-financial firms by order, but refrains from directly giving that power to the regulators. Given the emergence of new-entrant, non-traditional banking firms, which are often the subsidiaries of non-financial parent companies, that loophole risks creating an inequitable situation, and it could be dangerous. I hope that the Minister can explain why the Government think that companies with regulated financial subsidiaries should not be treated equally. We are concerned about not empowering up front the regulators that have oversight of non-financial parent companies with financial subsidiaries. Leaving the matter to a possible decision by the Treasury creates a risk that the power might not be enacted unless there is already a problem, by which time it might be too late to fix it. We want to try to anticipate where problems might emerge and plug existing or potential loopholes. In short, if a company is or wants to become a bank holding company, why should it not be regulated as such? Giving the regulator jurisdiction over parent companies of any financial services provider would close the loophole and solve the problem.

It is important to note that the specified powers are limited and direct, and do not extend to non-financial activities of a parent company. The Bill provides that the regulators may exercise their powers only if they consider that a parent company's actions or omissions have or may have a "material or adverse effect" on the regulation of the regulated subsidiary or on consolidated supervision. Regulators may require the parent company to take or refrain from taking a specific action with reference to its group or other members of its group, and may compel a parent company to provide information. Those powers give the financial regulators jurisdiction over only those aspects of the parent company's business that are relevant to the safety and soundness of the regulated subsidiaries and the financial system. The Bill does not give the regulators any powers over the non-financial aspects of a parent company's commercial business. For example, the PRA or FCA will not be empowered to tell supermarkets how to stock their shelves or airlines how to plan their routes.

The loophole was brought to our attention by organisations such as the United Food and Commercial Workers International Union, which I thank for taking such an active interest in the Bill. It wants lessons from across the Atlantic to be learned; it does not want what it regards as mistakes that took place there to be repeated in the UK. People will no doubt be aware that in 2005 there was an outcry in the United States about Wal-Mart, the owners of Asda, being granted a licence to own a bank. The Federal Deposit Insurance Corporation, which is a US supervisory body, imposed an unprecedented moratorium on such applications. Even the then Federal Reserve chairman, Alan Greenspan, had reservations.

He called on Congress to examine the loophole in the US that prevented the Federal Reserve overseeing both the parent company and the banking subsidiary. I am sure that the Minister is aware of the concerns that arose in the US. Does he believe that Alan Greenspan was wrong to have such concerns? Indeed, does it not represent a cautionary tale for us here in the UK?

I have a short series of questions, to which I hope the Minister will respond. It may be that other hon. Members also have questions on this group of amendments. Why has the exemption to this regulation been made? Who was involved in the discussions on that? Was there any involvement of some of the larger supermarkets? Was it simply an oversight or was it by design that this exemption has been made? Are the Government hoping to attract new entrants to financial services by somehow offering special light-touch regulation? If that is the case, should that not be made explicit and be properly scrutinised? If it is necessary to regulate financial holding companies, why is it not necessary for new non-financial entrants? Are the risks any different?

The Minister will no doubt argue that the option is there to extend regulation to non-financial holding companies, but will he clarify under what circumstances and what criteria that power will be exercised? If it is his intention to extend the regulation before any problems arise, why not extend it automatically now? If an order extending regulations was not made until after a problem arose, surely the risk is that that would be too late. We would be repeating the mistakes that led to the banking crisis in the first place.

If one holding company with a banking subsidiary has less onerous regulation than another, that is both unfair competition and a greater risk to consumers and, ultimately, to the taxpayer. We are also concerned—this has been reflected in many of the discussions during the course of the debate—about some of the new entrants in the financial services sector possessing a large amount of data on their customers' non-banking activities. What guarantees can the Minister give that such data will not be misused or people's privacy infringed? Consumers feel strongly about that, so how will that be looked at in the future? Will there be any regulatory oversight on the use of such data for the benefit of the banking subsidiaries of non-banking conglomerates? I know that some of that has been covered, but it would be useful to hear the Minister's comments on those points.

Mr Hoban: This section of the Bill is a major advance, because it extends the regulatory perimeter to non-financial services companies. That is a significant change, which strengthens the system of regulation. There needs, however, to be a boundary set on its intrusion, because it intrudes into non-financial activities. That is not to say that a bank or insurance company or asset manager that is owned by a non-financial business is somehow exempt from regulation. The Co-op is a good example. Co-operative Financial Services is owned by a non-financial holding company. It is part of the Co-op group, but it is as closely regulated as Barclays, HSBC or Nationwide. There is no light-touch regime there, but we need to think about how, in extending these powers, they can be used proportionately and provide safeguards and reassurance about their use.

Mark Durkan *rose—*

Mr Hoban: I want to try to make some progress.

We have sought to extend that responsibility, but be clear about where it can be used. If there was a holding company in a group that owned shares in a financial subsidiary, it would be classified as being a qualifying parent undertaking, if its main business was holding those shares. We are trying to ring-fence within a larger group the financial services activities, as well as giving powers of direction to the FSA and a requirement to produce information. It needs, however, to be in relation to its financial activities. I was not sure where the hon. Member for Kilmarnock and Loudoun was heading on the use of other information, but, if information acquired by a regulator through a parent company was abused, there are clear penalties in place for that.

This is a proportionate expansion. We want to avoid the sense that the FCA or the PRA could intervene in the price of bread at Tesco or Sainsbury's. That is not the right exercise. We are trying to have a proportionate power of intervention that relates to financial holding companies. It is a sensible way forward. We are seeing a change in the financial markets landscape. That non-banks and non-insurance companies are coming in to take over some of the activities is not a bad thing from a customer perspective, but we need to make sure that, when we take additional powers, they are proportionate.

3.15 pm

Sheila Gilmore: Does the Minister think that problems could arise if there were a shifting of risk between the non-financial parent company and the financial subsidiary, for example, given the protection that is given from the public purse to banks? I do not mean that the bank would not be regulated, but perhaps it might not be fully aware of what is going on the wider group, and that could have an impact on the bank and, ultimately, the consumer and, indeed, the public purse.

Mr Hoban: I accept that point, especially if we consider whether a parent could make available more capital to help a financial subsidiary and inject equity if it were suffering losses. The regulator will need to think through the access to capital by a financial subsidiary in a non-financial group. There is a requirement to supply information to help answer such questions. In extending the regulator perimeter, we will have a proportionate use of powers that gives the regulator an insight into what is going on elsewhere in the group to ensure that the regulator does not become a regulator of groceries or petrol stations. Let us have a proportionate power.

Cathy Jamieson: I should perhaps declare my interest. I am a Labour and Co-operative Member of Parliament. I have a long association with the Co-operative movement, so I am well aware of the position of the Co-operative group and the operation of the Co-operative bank, having served on various committees.

We believe that there is a loophole in the clause. I hear what the Minister is saying, but we are certainly not suggesting that the regulator would somehow be setting the price of bread in supermarkets. We are worried about a potential difficulty, and wanted to test the hon. Gentleman's thoughts about it. It is something to which we might return.

Mark Durkan: Did my hon. Friend detect in the Minister's reply why condition C under proposed new section 192B(4) is necessary? It states that

"the parent undertaking is a financial institution of a kind prescribed by the Treasury".

The points that he made may all be relevant, but none of them were arguments why condition C should be in the Bill.

Cathy Jamieson: I thank my hon. Friend for making that point. He is absolutely right. In trying to be helpful and explain matters, we did not hear the Minister—

Mr Hoban: I said that we are extending the powers to cover holding companies. In terms of limiting the intrusiveness of the powers, we recognise that they should relate only to a company that holds shares in another financial institution.

Cathy Jamieson: I thank the Minister for that clarification. As I was saying before my hon. Friend the Member for Foyle intervened, we wanted to probe matters to see whether the Minister accepted that there was a problem. I am disappointed that he does not see the provision in the same way as we do, but I am not sure that pressing the amendment to a Division at this stage would take us much further forward. As I said, we might return to the issue in the future, but we should now move on. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 25 ordered to stand part of the Bill.

Clause 26

EXEMPTION FOR RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

Question proposed, That the clause stand part of the Bill.

Cathy Jamieson: I will try to be relatively brief as there are some issues on clause 26 that we wish to speak about. I am not sure whether other hon. Members will want to speak on this. The clause deals with the exemption for recognised investment exchanges and clearing houses. It pertains to amendments to section 285 of FSMA, which defines recognised investment exchanges and recognised clearing houses. The FCA will supervise recognised investment exchanges but the Bank of England will be responsible for recognised clearing houses and other infrastructure such as payment systems.

This clause and section 285 of FSMA are fairly complex to understand in terms of who is being regulated by which regulator. According to the explanatory notes, subsection (2) provides that a

"recognised investment exchange need not be separately recognised as a recognised clearing house in order to provide clearing services."

The notes then go on to say, that the general effect of subsection (2) and (3) is that

"a recognised investment exchange will need to apply for the status of, and be specified by the Bank of England as, a recognised clearing house in order to provide clearing services. However, recognised investment exchanges will continue to benefit from an exemption in relation to any regulated activities carried on for the purpose of facilitating the provision of clearing service by another person."

As I understand it, and I may have misunderstood this, in plain speak that means that if the investment exchange provides third-party clearing services, it is exempt from any regulation for those services. Clearing houses will also benefit from this exemption. Paragraph 322 of the explanatory notes gives as an example of this the situation

"where clearing services are provided by a related company (which might be regulated outside the UK) and the UK recognised clearing house or recognised investment exchange routes trades not arranged using its facilities to a separate clearing house."

Can the Minister explain who will be regulating an exchange that provides clearing services? If it is a dual-regulated recognised body, what will be done to ensure effective co-ordination of regulation and that there is not a duplication of effort, costs and resources in terms of regulation? We have been round this house a few times but again that is just for clarity. If the UK exchange or clearing house starts routing trades through these third parties to take advantage of regulatory arbitrage, but through less than savoury clearing houses—if I can put it in those careful terms—how can the Bank ensure that those services will be safely regulated and who will regulate those services if they are exempt from the regulation as proposed in the Bill?

Mr Hoban: There is an interface here between a clearing house and a recognised investment exchange. Recognised investment exchanges are regulated by the FCA. The hon. Member for Kilmarnock and Loudoun was right that a UK clearing house is regulated by the Bank of England because it is part of the financial infrastructure. Information has to be transferred from the recognised investment exchange to the clearing house. So there has to be a report of trades done. That transfer of information from the exchange to the clearing house helps facilitate clearing. It is described as a clearing service. It is not clearing itself: it is a clearing service. So providing information that helps to facilitate that clearing is not the same as clearing and so is regulated by the FCA as part of a recognised investment exchange's activities. That is where that interconnection is regulated.

The hon. Lady referred to clearing houses outside the UK. The authorisation and regulation of clearing houses in the EU will be covered by the European market infrastructure regulation which ensures a consistent approach to authorisation across Europe. I hope that that clears up why we have this exemption in clause 26.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Clause 27

POWERS IN RELATION TO RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

Question proposed, That the clause stand part of the Bill.

Cathy Jamieson: The clause again raises some issues to which the Minister has referred. The clause is an example of unclear drafting of the Bill. I am sure it is not deliberate, because people write these things for

good reasons, using a particular form of words. My hon. Friend the Member for Nottingham East has already pointed out that the Bill is a cut-and-paste job, grabbing a bit from here and pasting it into there. That means that it is sometimes difficult for a lay person to read.

I will give an example of where the meaning is obfuscated. Clause 27(1) proposes an amendment after section 285, to insert 285A, which inserts three subsections of which subsection (3) is entitled, "In Schedule 17A". It then goes on with three paragraphs (a), (b) and (c) with details around schedule 17A. Then section (2) says,

"After schedule 17 of FSMA 2000 insert schedule 17A set out in schedule 7 to this Act."

When legislation is formulated in this way it can make things difficult. I would hope that we are able to ensure that legislation is accessible and understandable without having to go from one section or one schedule to another. I hope that the Minister will take that on board.

I have a couple of other brief points about clause 27. Will the Minister confirm that entities that offer both exchange services and central counterparty clearing services will be regulated by the Bank of England? I think he has referred to that, so I will not press that point too much. The other point is in relation to a series of memorandums of understanding that need to be set up under the clause. According to the explanatory notes, the Bank and the FCA are required to prepare and maintain a memorandum describing how they will work together in "exercising their functions". That is a recurring theme throughout the Bill. There is a lot of emphasis being put on memorandums of understanding and we need to see how that is going to work.

Will the Minister report what progress has been made on the MOU between the Bank of England, the FCA and the PRA regarding the co-ordination of regulation for those dual-regulated entities to be established, and how and when—as FSMA schedule 17A requires—that will be published in the way appearing to them to be

"best calculated to bring them to the attention of the public"?

Mr Hoban: On the hon. Lady's first point, she is right. If she thinks this is difficult and challenging to put together, just wait until the Finance Bill comes. This year's Finance Bill will amend a host of previous legislation and will be more mind-boggling than this, and she will enjoy getting to grips with it.

It is because we are putting together FSMA and this Bill that we have produced the consolidated Bill. That will enable people, when the Bill is enacted, to see a single version so they can find their way through it quite easily. The hon. Lady asked who is going to regulate central clearing services. Central counterparty clearing services will be regulated by the Bank of England. If it is a service that facilitates clearing it goes back to our previous debate.

On the MOUs, work is underway by the authorities, they will be published by regulators and they will be laid in Parliament.

3.30 pm

Cathy Jamieson: Obviously, we need at least two MOUs. Are there likely to be any more?

Mr Hoban: The MOUs that are required by statute are set out in the Bill. As we said earlier this afternoon, there may be occasion for other MOUs on a voluntary basis, such as the one between the Office of Fair Trading and the FCA that I expect to be produced.

Question put and agreed to.

Clause 27 accordingly ordered to stand part of the Bill.

Schedule 7

Application of provisions of FSMA 2000 to Bank of England etc

Question proposed, That the schedule be the Seventh schedule to the Bill.

Cathy Jamieson: I apologise because again I have some technical questions to ask on schedule 7, which introduces proposed new schedule 17A into FSMA 2000.

On page 210, line 46 of the Bill, proposed new schedule 17A(6) states:

"The parties to a memorandum under paragraph 1 or 2 must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public."

I am not sure that the Minister has answered my query on that point. However, I may have missed his response in my search for areas in which I thought there was obfuscation, so I would be happy to hear the Minister's views.

We have dealt with a number of issues on clearing houses and the regulator, so I will not press those points again in relation to the schedule, although there are still concerns about the Bank of England's role. At the beginning of the Committee stage, we discussed at great length whether it was a twin peaks model, or given the role of the Bank of England, whether there was a further peak. I do not intend to pursue that point to any great extent now, but a question that has arisen from that is why we are not expecting an annual report from the Bank relating to clearing houses, given its role.

There were also questions about fees, because the Bank can charge clearing house fees related to the discharge of its functions. Will the FCA have the same right in terms of the investment exchanges? A pertinent question, to which I may have missed the answer in our deliberations, is who gets the fees for investment exchanges that provide clearing services? Hopefully, the Minister can give me an answer—I will allow him to think about it. If he wishes, I can press on.

Mr Hoban: The FCA.

Cathy Jamieson: That is helpful. Another couple of queries have been raised during the passage of the Bill. Back in 2011, the Law Society of Scotland, in written evidence to the consultation on the Government's blueprint for reform, said

"with respect to the regulation of settlement and payment systems within the United Kingdom, that the Bank of England should be required by statute to give equal weighting to the needs of the consumer as opposed to the demands of the banks in relation to the regulation of settlement and payment systems."

Has that been taken account of in the context of schedule 7, and if so, what has been done as a consequence?

[Cathy Jamieson]

The Minister raised the issue of the existing situation with the European Securities and Markets Authority around European market infrastructure regulation, and how that will impact on the regulatory framework for investment exchanges, clearing houses and so on. I will not press that point further, but will the Minister explain how he thinks banks will deal with the costs of complying with EMIR and Dodd-Frank, and the new regulation in the UK? Will they find it prohibitively expensive to use certain markets? Could that lead to fragmentation of the intermediary market? Have the Government thought through some of the unintended consequences of regulation in this area, and how will the Government deal with that?

In pre-legislative scrutiny, the issue of the gap in resolution arrangements for market infrastructure firms that may be of systemic importance was raised. The pre-legislative scrutiny Committee recommended that the Treasury should take action to ensure that that gap is closed. Again, I ask the Minister to update the Committee on the findings of the Committee on Payment and Settlement Systems and the technical committee working group of the International Organisation of Securities Commissions, which are looking at those powers? I hope that is not too much.

Mr Hoban: That is quite a lot, actually. I could speak for hours on EMIR and Dodd-Frank, but on this occasion I will not. Suffice it to say that the Government, the Bank and the FSA are closely engaged on these matters and recognise the importance of a proportionate regulatory regime for market infrastructure. It is important that the regime is stable and prudentially regulated. Proper prudential regulation would achieve the Law Society of Scotland's goal of ensuring proper balance between the interests of banks on the one hand, and consumers on the other hand.

The MOU will be widely available to the public. I suspect that it will appear on a website, although I doubt we will get it down to Twitter.

The hon. Lady also asked about the annual report. Paragraph 31 of schedule 7 refers to the need for the Bank to report along similar lines to the PRA. I hope that reassures her.

Cathy Jamieson: Briefly, I am sure that EMIR and Dodd-Frank could take up a whole debate, although there might not be a great audience and people might not rush to the Public Gallery. I do not mean that to be disrespectful to the Minister, but obviously a lot of this is extremely technical. I thought he might have a bit more to say. I am sure, however, that we will return to the subject during the course of our consideration of the Bill and no doubt he will have the opportunity on Report or beyond, if not to speak for hours, to speak for slightly longer. I heard his helpful comments on reporting, and I do not propose to oppose the schedule.

Question put and agreed to.

Schedule 7 accordingly agreed to.

Clause 28

RECOGNITION REQUIREMENTS: POWER OF FCA AND BANK TO MAKE RULES

Question proposed, That the clause stand part of the Bill.

Cathy Jamieson: I shall be brief. Again, I have a couple of questions. Will the Minister explain what mechanisms will be in place to ensure scrutiny of the rules made by regulators? What accountability will the regulators have to report to the Treasury on the rules on recognition requirements? Again, those questions follow a theme that we have consistently pursued throughout our consideration of the Bill. When rules are made, who has absolute oversight? What is the Treasury's role? And at what point will the Treasury call for a report or intervene? What power will the Treasury have to rescind rules with which it disagrees? What consultation procedures have been established ahead of any rule changes?

Mr Hoban: All regulators have to go through quite an elaborate process to consult on rule changes, thereby ensuring that people are aware of and may discuss those rules. Clearly, in that public consultation, if any important issues are raised, they will come to the attention of not only the regulators but the Treasury. So I am confident that, in exercising these rules, as with rules under every other clause, the regulator will follow the proper process.

We are setting up independent regulators. The Bank, the FCA and the PRA are independent regulators in this area, and it would breach that independence if the Government interfered in their rules. I hope that reassures the hon. Lady that the right procedures are in place on consultation and that the independence of the regulators is respected.

Cathy Jamieson: The Opposition understand what the Bill intends to do to set up the independent regulators, but I emphasise that many of our concerns are about the interaction between those regulators. We want to establish who would have the responsibility of sorting out any disagreement or problems that emerge between the regulators, which is why we have tabled a number of probing amendments and consistently raised that issue during the debates. I have heard what the Minister said, and there is not enough of a problem for us to object to the clause, but we will return to the matter.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Clause 29

RECOGNISED BODIES: PROCEDURE FOR GIVING DIRECTIONS UNDER S.296 ETC

Question proposed, That the clause stand part of the Bill.

Cathy Jamieson: We agree in principle with the intention to simplify powers but, as I have indicated, the Bill is not necessarily an example of such simplification. We do not agree with the so-called simplification in clause 29, as a result of which the Bank and the FCA will no longer need to bring to the attention of members of the recognised body, or of any other persons they consider likely to be affected, their proposal to issue a direction or revoke a recognition order.

Other organisations such as the Solicitors Regulation Authority at least recognise the possible need to notify interested third parties. On its website, the SRA states

that it may revoke the recognition of a recognised body in specified circumstances. It explains how people would be given 28 days' written notice, with reasons, of the decision, and that the revocation would take effect on the expiry of that notice. Importantly, the SRA highlights the fact that if it considers it to be in the public interest to do so, it may notify specified third parties of its decision. The SRA sets out the third parties who may be notified of such a decision.

Will the Minister explain why it would be beneficial to the financial system for a regulator to give a direction under section 296, or to make a revocation order under section 297(2) or (2A), only through written notice of its intention to do so to the recognised body concerned? Why do the Government believe that a reduced level of publicity around such a direction or revocation would be beneficial? Does the Minister not accept that the regulator should have to ensure that relevant third parties be made aware of its proposal to issue a direction or make a revocation order? It seems counterintuitive to suggest that notification of third parties would not be in the public interest and would not support the achievement of the regulatory objectives.

We agree with the premise that the appropriate regulator can prescribe a shorter period than is currently the case under FSMA if the Bank or the FCA needs to act urgently in the interests of addressing a potential threat to financial stability. Should there not be a point of procedure, however, under which the regulator must at least notify the FPC? The FPC is ultimately responsible for financial stability and—as outlined in proposed new section 9C(2) and (3), in clause 3—has a responsibility to identify, monitor and take action to remove or reduce systemic risks

"with a view to protecting and enhancing the resilience of the UK financial system."

Those include

"systemic risks attributable to structural features of financial markets, such as connections between financial institutions".

If a matter regarding a clearing house or an investment exchange was so urgent that the period of two months previously prescribed under FSMA was not enough time to make a representation, it would seem clear that some of the fabric of the structural features of the financial markets was under threat and that the FPC should be notified. If the matter was so urgent that the appropriate regulator—if, as amended section 298(7) of FSMA will state, it "reasonably considers it necessary"—could give a direction without following the procedure set out in section 298, we would consider it even more crucial to let the FPC know. Will the Minister explain the procedures for regulatory co-ordination—we are back to that whole issue—under those circumstances? Will he describe a situation in which he believes that the need to give a direction or to revoke a recognition order to a clearing house or an investment exchange would not be of major concern to the financial system? Will he explain why, if a case is so urgent that the proper procedure does not need to be followed, it need not be an issue of a possible regulatory failure? We believe that, if the case is urgent, the regulator must carry out an investigation into the events and circumstances, and report back its results to the Treasury, as is set out in part 5 of the Bill.

3.45 pm

Mr Hoban: On the first issue, about the omission of provisions in section 298 of FSMA, the original vision harks back to a day when people had to be members of a stock exchange, for example, to trade. A stock exchange or a multilateral trading facility is now just a platform on which people can trade, so there is no need for the requirement to notify those who trade on such a body, as if they were members of it. The provision brings the legislation up to date because, as it reflects the current trading practice, such a requirement is no longer necessary.

On notification of the FPC, the reality is that, if we think of a world with several different trading platforms for shares, in which one platform represents 1% of the turnover, the FCA might decide that the problems of that exchange are so fundamental that it has to act immediately, but that will probably not impact on financial stability, because the platform deals with only 1% of the trade. The regulator—whether it is the FCA for an exchange, or the Bank of England for a clearing house—needs to think through whether there is a real threat, and if the regulator acts urgently, it does not necessarily follow that there is a threat. In the same way, if the FCA decided overnight to prevent a product from being sold, we would not expect that to create a threat to financial stability that had to be referred to the FPC. A proportionality test has to be applied.

I hope the hon. Lady will allow us to move on to the next clause.

Cathy Jamieson: I shall be brief. I hear what the Minister is saying, but I am not entirely persuaded that, for something so urgent that the normal procedures do not have to be used or can be suspended, other people would not want to be made aware of it. On the proportionality test, I again comment that there are many requirements for co-ordination—for people to discuss things with one another—in making decisions, but ultimately the public want to be reassured about who makes the decision, how that decision is conveyed and that those matters are done correctly. That theme runs through the whole Bill, but I do not want to oppose the clause.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clause 30

Power to take disciplinary measures against recognised bodies

Mark Durkan: I beg to move amendment 131, in clause 30, page 117, line 37, at end insert—

'(2) If a statement is published and further investigation does not result in a penalty the regulator must publish this outcome in a manner the regulator believes is most suitable to bring this to the attention of the public.'.

The Chair: With this it will be convenient to discuss the following: amendment 159, in schedule 9, page 230, line 39, leave out from '(c)' to 'the' in line 40.

Amendment 130, in schedule 9, page 233, line 15, at end insert

'and the Regulatory Decisions Committee'.

Mark Durkan: I assure the Whip that I am conscious of my own flight risk, so I will not dwell too long on the amendments, although that is not to minimise their importance. I have tabled amendments 131 and 130, the first of which relates to the publication of statements.

If a statement is published and a further investigation takes place, the various interpretations of the published statement—by the media, others in the market or people in this House and elsewhere—might be overtaken by the results of an investigation. That investigation might show that there is no case for a penalty or that the issue raised was not a matter for regulatory concern. The amendment would ensure that, in that instance, the fact of an investigation and inferences drawn from any particular previous statement would at least be mitigated by an effort at exoneration, with the regulator at least publishing a statement to the effect that the matter was not going anywhere and had no need to go anywhere, and that there was some commensurate exoneration. Otherwise, there is a danger that reputational damage will be incurred and unduly suffered. Such damage could be exaggerated by competitors—either direct competitors to a business or people in other sectors—because facts could be used not just to create reputational damage against a business, but against particular classes of business in that way. We have to be concerned about that.

There has been much concern in the past few years about the financial services sector. Many people have said, "Let's be careful about tarring everyone with one brush. Let's be careful about putting a cloud over an entire sector and everybody in it." The amendment was tabled in an effort to make good a difficulty that people have seen. People, not least independent financial advisers, feel there is an environment in which, rightly, significant attention will be paid if anything goes to investigation, but little attention will be paid whenever a matter is clearly resolved.

In another context, hon. Members have been jumping up and down about the media over the past few years, saying, "There should be clear, commensurate statements of correction in relation to anything wrong that is said against anyone." If we insist on that in relation to the media and other wide-ranging issues, when legislating to protect consumer and other competitive interests we do not want to cause free injury to the reputation of those practising in the sector, without any regard to remedy or redress. In this instance, there would not even be complete remedy or redress; the amendment would just mean the FCA, as it sees fit, seeking to publish the exonerating conclusions of its investigation in a manner best fitted to bringing it to the public interest. We are not detailing how it would do that, how many advertisements it would take our or where those would be placed, or anything else—that is a matter for the FCA's judgment.

Mark Garnier: The hon. Gentleman makes a good point. Does he not agree, however, concerning exoneration, that part of the problem may be that the FCA could publish a disciplinary notice on its website and a retraction later, but the national media would make great hay out of a scandal with no follow-up in the same manner? Therefore the national press, rather than the FCA, would be at fault.

Mark Durkan: I accept the hon. Gentleman's point. Once the matter gets out into the financial and other press, including even the popular press, as will happen from time to time, the damage will be compounded. Obviously, we cannot legislate for the financial or other press, but we can in respect of the regulator. We cannot leave it so that the regulator just shrugs its shoulders and says, "But we're not responsible for what anybody else prints." The regulator should at least be tasked with taking such steps as it can to ensure that an exoneration is published, and in a way that brings it as strongly to the public's attention as it judges it can. That is not too much of a requirement to put on the regulator.

Mr Hoban: I reassure the hon. Gentleman that section 289 of the Financial Services and Markets Act 2000 does just that. It allows for the publication of notice of discontinuance to deal with that matter.

Mark Durkan: Again, it allows for that. We are trying include an added assurance that—

Mr Hoban: It is in there.

Mark Durkan: Many people do not believe that it is. I hope they take that clear assurance from the Minister and can rely on it, because they do not feel confident at the minute. We might need to return to this matter on Report to ensure that the assurances are there.

Amendment 130 refers to the Regulatory Decisions Committee, which was created by the FSA in light of a previous review. It was tasked with ensuring that there was due process and that investigations were not taken to be an act of enforcement or judgment. The due process involved ensuring that the people involved in an investigation were not the only ones making the judgment as to its outcome—whether that be its findings or any penalty imposed as a result. People in the sector say that they would like the Regulatory Decisions Committee to be at least given a statutory footing, and it is not enough to say that it will continue despite not being provided for in statute.

Before the Minister says that it is incomplete, the amendment is an inadequate provision. Just one reference to the Regulatory Decisions Committee would not be enough, because it does not properly source it, guarantee anything about its style or make-up, or state that it would include both practitioners and non-practitioners, which it does at present. The amendment is simply a pointer for the Government that highlights an omission in the Bill in that due process should be better reflected in the processes by which such decisions are made. A more extensive provision relating to the Regulatory Decisions Committee or some new entity of that type would perhaps be a way of doing that.

Cathy Jamieson: I shall speak to amendment 159. I will try to be brief, but I want to press the amendment to a vote at the appropriate time. The issue here is around consultation before the disclosing of a warning notice. The PLS Joint Committee has recommended that the need to consult be removed from the Bill. Paragraph 258 of its report states:

"Requiring the FCA to consult could seriously undermine the effectiveness of this new power. The fact that the FCA will not be publishing the warning notice itself, but only the fact that it has issued one, and the fact that it will need to take into account a number of considerations in deciding what to publish should provide sufficient safeguards."

Recognising the potential for reputational damage, the Joint Committee has recommended that the FCA publish guidance on how it will exercise its discretion in issuing early warning notices. My understanding is that the Government have chosen not to go down that route and not to take up that recommendation. The Minister therefore believes that the Government are striking the right balance between making the power usable and providing appropriate safeguards.

However, we still have concerns about the proposal, because, although many players in the financial services sector will be relieved that the recommendation was not followed, we have to ensure that we get the balance right between business and consumer interest. My main worry is that if someone is consulted about having a warning notice issued against them—perhaps the Minister can help us with this—they could simply take out an injunction to stop publication of the notice, which would effectively mean that no warning notice was issued. I hope that the Minister will explain how not publishing a warning notice will be in the best interests of consumers. If the appropriate safeguards are in place and the regulator believes that there is a valid case for warning, why do the Government not agree that the warning notice should be in the public domain?

A number of people are opposed to the warning notices. I will again quote the FSA figures obtained by *MoneyMarketing*, which reveal that nearly a third of enforcement cases in 2009-10 did not result in disciplinary action. I can understand partly where those people are coming from, but turning that figure round the other way shows that two thirds of enforcement cases did result in disciplinary action. Even on a Committee such as this, I would have thought that two thirds was a fairly decent majority. The FSA was right two thirds of the time, and if someone was going to purchase a financial product or, indeed, any kind of product, would it not be better that they received a warning about trusting the seller. That is important. Given the safeguards that would be in place that statistic could rise significantly.

Would the Government not find it reasonable to follow the recommendations of the Association of Independent Financial Advisers in its February memorandum to the FSA board committee that if for some reason a warning notice does not lead to disciplinary action, the FCA should introduce a fair process that would make it explicit that firms are exonerated when it is concluded that no wrongdoing has taken place? Again the Treasury Committee made recommendations on this issue. Could the Minister explain why, given that the FSA is right on some issues around recommendations in relation to publication, that he does not believe that the regulators in this instance should be held to the same account?

4 pm

I will not go through all the information relating to Second Reading but the Financial Services Consumer Panel agrees with us and it felt that there would be strong industry pressure to bury bad news, as it described it, and delay publication, keeping consumers in the dark. It referred to the widespread public belief that the current regulatory system has been weak and ineffective at protecting consumers. I ask the Minister for his response to that, particularly in relation to the comments from the PLS Committee and the Treasury Committee. I will want to press the amendment when the time comes.

Mr Hoban: I have dealt already in my intervention with the first amendment tabled by the hon. Member for Foyle. I do not think it is necessary. It is covered in section 389 of FSMA. The same safeguard would apply when a disciplinary action is not followed through. There will have to be a notification of discontinuation there as well.

The RDC is a non-statutory body. It is composed of FSA executives. There is an appeal mechanism to the tribunal for firms to follow. Where regulatory decisions are taken with the FCA or the PRA, there needs to be a robust decision-making process, with the people who have not been involved in gathering the evidence against also taking part, so that a range of executives at the senior level is involved. I am keen to ensure that people at a senior level on both the FCA and the PRA are engaged in these processes to add their judgment to it. I do not think the RDC needs to be put on a statutory basis but the hon. Gentleman is absolutely right that there should be a proper process within the regulators to ensure that a robust decision is taken on disciplinary action.

On consultation, this is not about seeking consent. There are two arguments here. One group of people in the industry say that we should not have this at all and that we should not publish warning notices. I think we should. It is vital that if disciplinary action is to be taken it should be made known and the warning notice point is the right stage to do it. My concern is that without telling somebody that this will happen, we risk seeing emergency injunctions. People will criticise and say that there is a lack of due process. We need to get the balance right here so that there is adequate protection in places where saying that that has been done is not appropriate.

The clear drive here is to ensure that these notices are published and that situations where they cannot be published and should not be published are narrowly prescribed. That gets the balance right. I have thought carefully about the PLS recommendation. We are in danger of getting in an even bigger mess around human rights and the question whether it is a breach of proper administrative process. Telling firms that this will happen risks the odd injunction but it also avoids the bigger problem of this power being used to get enmeshed in legal debate and argument. The consultation, which is not consent, gets the power in a place where it can be used effectively. I hope that hon. Members will not feel obliged to push their amendments.

Mark Durkan: On the basis of the Minister's earlier intervention, I said that I might want to come back and test the reliability on Report. On that basis, I do not seek to test the Committee on either of my amendments.

I want to make an additional point to the Minister. I do not disagree with his rationale for warning notices. We want to prevent unintended or disproportionate consequences not only for people in the sector, but for consumers who might end up scared about all sorts of matters. The proposal would ensure that the regulator made a clear statement of exoneration in a manner it thought fit. It would be obliged to publish the statement; it would not be a permissive measure. The proposal would also help to expedite consideration of cases. Many people in the sector are worried that warning notices will be issued and procedures might take a long

[Mark Durkan]

time. They believe that a duty on regulators not only to reach but to publish a conclusion would be an encouragement to speed up the process.

The amendment has more than one purpose. The Minister argued against the RDC being on a statutory footing, but in doing so, he essentially confirmed exactly what I said was the risk. He would say that because the committee exists anyway, it does not need to exist in statute. However, because it exists, people want to see it in statute when they see all this other change. It was created, through necessity, by the FSA after a previous non-legislative review. People believe that this is an opportunity for Parliament to give the RDC a statutory footing. Giving it such a footing in its procedures might be the best way of mitigating the risk of people opting to judicial review in response to warning notices.

Cathy Jamieson: I do not wish to detain the Committee unnecessarily, but I shall make one more point in relation to the Minister's comments. Part of the issue is what is understood by the word "consulting", which implies to an ordinary member of the public that the regulator is asking for a view rather than simply notifying people that something will happen. I draw his attention to what the Financial Services Consumer Panel said in contrasting the FSA with its namesake, as it describes it, the Food Standards Agency, which can publish such information as it thinks fit under the Food Standards Act 1999, subject to a narrow list of exceptions. The panel did not believe that the reputational damage caused by a warning notice would be any different from that experienced by anyone else who was subject to that form of prosecution and was subsequently acquitted. However, I do wish to press the amendment.

Mark Durkan: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 30 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.—*(Greg Hands.)*

4.8 pm

Adjourned till Thursday 15March at half-past Nine o'clock.