# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# FINANCIAL SERVICES (BANKING REFORM) BILL

*Seventh Sitting*

*Tuesday 16 April 2013*

*(Morning)*

CONTENTS




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**Saturday 20 April 2013**

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 Peter Bone, Mr Jim Hood, †Dr William McCrea, Mr Andrew Turner

† Ashworth, Jonathan *(Leicester South)* (Lab)
† Clark, Greg *(Financial Secretary to the Treasury)*
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Durkan, Mark *(Foyle)* (SDLP)
† Evans, Graham *(Weaver Vale)* (Con)
† Hands, Greg *(Chelsea and Fulham)* (Con)
† Jamieson, Cathy *(Kilmarnock and Loudoun)* (Lab/Co-op)
† Leslie, Chris *(Nottingham East)* (Lab/Co-op)
† Mills, Nigel *(Amber Valley)* (Con)
† Morris, James *(Halesowen and Rowley Regis)* (Con)
† Mowat, David *(Warrington South)* (Con)
† Qureshi, Yasmin *(Bolton South East)* (Lab)
† Rees-Mogg, Jacob *(North East Somerset)* (Con)
† Sharma, Alok *(Reading West)* (Con)
† Smith, Nick *(Blaenau Gwent)* (Lab)
† Stevenson, John *(Carlisle)* (Con)
† Thornton, Mike *(Eastleigh)* (LD)
† Williams, Stephen *(Bristol West)* (LD)
† Wright, David *(Telford)* (Lab)

Neil Caulfield, *Committee Clerk*

**† attended the Committee**

# Public Bill Committee

*Tuesday 16 April 2013*

[Dr William McCrea *in the Chair*]

## Financial Services (Banking Reform) Bill

## Written evidence to be reported to the House

FS 01 The Law Society of England and Wales

FS 02 Neil Jeffares

### New Clause 2

FSCS review of company savings schemes

'(1) The Chief Executive of the Financial Services Compensation Scheme shall, within six months of Royal Assent of this Act, publish a review of the protections necessary for customers who make payments to any bodies corporate on the understanding that such payments are deposits in a saving scheme.

(2) The review in subsection (1) shall include consideration of any consequential reform to creditor preference arrangements so that any payments made in advance as part of a contract for the receipt of goods or services (such as gift vouchers, certificates or other forms of pre-payment) in expectation that those sums would be redeemable in a future exchange for such goods or services might be considered as preferential debts in the event of insolvency.'.—*(Cathy Jamieson.)*

*Brought up, and read the First time.*

9.10 am

**Cathy Jamieson** (Kilmarnock and Loudoun) (Lab/Co-op): I beg to move, That the clause be read a Second time.

**The Chair:** With this it will be convenient to discuss the following:

New clause 16—*Review into extending the Financial Services Compensation Scheme to cover Small and Medium enterprises*—

'(1) The Treasury shall arrange for a review of the impact of extending the Financial Services Compensation Scheme to cover deposits of private non-financial corporations with an annual revenue of less than £20 million.

(2) The review must consider in particular—

(a) the impact on the Financial Services Compensation Scheme in the event of a bank's insolvency,

(b) the impact on the British economy of extending the scheme,

(c) the impact of protecting different percentages of private non-financial corporations' deposits.

(3) The review must be completed during the period of six months beginning with the date on which this Act comes into force.

(4) The review must result in a report to the Treasury.

(5) The Treasury shall lay a copy of the report before Parliament.

(6) If the review recommends further reviews the Treasury may arrange for the further reviews.'.

New clause 21—*Financial services compensation scheme extension*—

'(1) Section 213 of FSMA 2000 (The compensation scheme) is amended as follows.

(2) In subsection (1A)—

(a) omit the "and" following paragraph (a),

(b) after paragraph (b) insert—

"and

(c) that where a relevant person operates under more than one brand, the compensation scheme applies to each brand as if each was a separate authorised person.".

(3) In subsection 3—

(a) omit the "and" following paragraph (a),

(b) after that paragraph insert—

"(aa) to extend the limit of any compensation payable to persons making a claim in appropriate circumstances where the loss exceeds the limit that would otherwise apply as a result of a temporary high deposit, and".'.

**Cathy Jamieson:** It is a pleasure to be back here in Committee after Easter. I look forward to further consideration of the Bill today, and I am sure that we will make good progress.

The group of new clauses deals with some issues on which we feel we need further action to ensure that customers and consumers are protected. New clause 2 deals with protections for customers who buy vouchers. New clause 16 seeks a review into whether the Financial Services Compensation Scheme should do more to prop up small and medium-sized enterprises. New clause 21 deals with extending deposit insurance to cover accounts, the balances of which temporarily exceed £85,000. There are also issues regarding different banks having different brands in the banking family and ensuring that consumers receive more protection.

I will start with new clause 2. We know that the collapse of the Farepak scheme caused huge problems for many individuals and families. Many consumers believed that they were in a savings scheme and never questioned whether the funds that they put in were at risk. The money proved to be at risk and that caused real difficulty for people.

The reforms announced last year to enable the FSCS to protect Christmas clubs and other funds in some circumstances are helpful, particularly in cases where the financial institution holding the money fails, but the Christmas club provider continues to operate. All customer cash will now be kept in Financial Services Authority-authorised bank accounts. The reforms have taken place following talks with the Christmas Prepayment Association, the trade body that looks after that particular issue, and mean that up to £85,000 of an individual's money will be protected by the FSCS if the bank or building society fails.

However, the reforms in themselves would not have saved the cash in Farepak, and they will not save cash held in another Christmas club should it fail in future. The new clause would require the head of the FSCS to publish a review of the current protections, to look at them right across the board, and potentially to consider reforms that would assist people who pay into customer savings schemes. We want the review to consider whether such payments should be regarded as preferential debts if a firm became insolvent.

I know that there are different views on that issue. Particularly, there have been concerns about whether, by making customers who pay into those schemes preferential creditors, a firm might not be able to make redundancy payments or deal with staff. I understand the concerns about that, but the new clause does not specify what ought to happen; it seeks a review and some work on such issues. It states that there ought to be a review to look at the matter in more detail.

The need for the new clause arises from the difficulties caused by several high-profile collapses in the aftermath of Farepak. We saw the situation with HMV, where gift cards and vouchers worth millions of pounds were initially declared worthless when the chain collapsed earlier this year. That caused a real problem, because it appeared that HMV had continued to sell gift tokens and cards after warning investors last December that it had a problem. The issue was raised by Richard Lloyd, the executive director of Which?, who described the situation as "outrageous", and said:

> "We want the rules on gift vouchers and insolvency to be reviewed to ensure consumers are adequately protected in cases like this."

There was a lot of public pressure at the time, as a result of which the company ultimately decided to honour the vouchers.

9.15 am

I have already mentioned Farepak and I do not want to go into all the details, but it is worth recalling that its collapse left more than 100,000 people with total losses of some £57 million. In an inquiry into the Farepak case, a High Court judge criticised HBOS, which is now part of Lloyds, for taking a "hardball" attitude in dealing with the company. Of course, Lloyds ultimately contributed £8 million to the Farepak compensation fund, but I know from my constituents—many hon. Members will know this—that the compensation paid to people who were affected, many of whom were on low incomes, went nowhere near the losses that they suffered.

Sadly, several major high street names, including Comet, Jessops, HMV, Blockbuster and Habitat, have had problems or collapsed during the past two years. Which? looked into the situation, and I recall reading a post on its website by someone who had received Habitat vouchers as a wedding gift and was unable to redeem them. Such problems affect a wide range of customers: not only those who have paid into savings schemes, but those who have received gift vouchers, and both buyers and recipients of vouchers are left out of pocket. Those firms got into difficulties for different reasons, but the fact that the firms failed underlines the uncertainty faced by customers, who expect to be able to redeem the value of gift cards or savings schemes.

Many people involved in savings schemes were trying to do the right thing. They were trying to save in advance for Christmas or for other events rather than taking on debt and paying it off afterwards. We must take care to ensure that customers in similar situations can recover their money if businesses go bust and cannot honour their commitments. Such customers should not be left at the end of the queue if a firm goes under. Many individuals and families who were affected by Farepak and similar schemes felt that everyone was ahead of them in the queue to get some sort of justice, which is why we have tabled the new clause. We have chosen our language carefully to address the concerns that have been expressed. We are not being prescriptive or specifying exactly what should happen, but we are saying that the Government should consider treating people in such circumstances as preferred creditors. The new clause gives the Government the opportunity to take the matter away and look at it in more detail.

New clause 16 would require the Treasury to publish a review considering whether to extend depositor protection across all small and medium-sized enterprises. Under the current rules, the Financial Services Compensation Scheme generally protects the deposits and investment accounts of very small firms, although there is a cap on eligibility. A smaller company must meet two of the criteria set out in the Companies Act 2006, namely that the turnover must be

> "not more than £6.5 million",

the balance sheet total must be

> "not more than £3.26 million"

and the total number of employees must be not more than 50. Anybody who has experience or awareness of the SME sector will know that those criteria are quite restrictive, and they render many SMEs ineligible.

We are trying to emphasise the need to protect the people who have been trying to do the right thing. The owner of a medium-sized business could lose the proceeds of a life's work in the event of a collapse of an institution that held their assets. People who have worked for years in the small business sector are the backbone of many local communities and, indeed, our economy. It is of concern to us that if SMEs lose confidence in the ability of the bank to hold their money, that not only has a knock-on effect on their circumstances, but could cause further instability.

When the Prime Minister launched the Conservative small business plan in 2008, before he was Prime Minister, he made the point that he wanted to ensure that the Government would be completely on the side of small businesses, and not kick them when they were down. In the Conservative manifesto, before the 2010 general election, he stated:

> "small businesses are especially important to the UK's economic recovery and to tackling unemployment."

I do not often find myself agreeing with the Prime Minister. It is perhaps a dangerous precedent, even at this point, to say that I agree with him, but it is absolutely the case that—

**Chris Leslie** (Nottingham East) (Lab/Co-op): Not everyone in the Cabinet agrees with him.

**Cathy Jamieson:** My hon. Friend says that not everyone in the Cabinet agrees with him, but I would say that small businesses are especially important to the UK's economic recovery, as the Prime Minister has said, and therefore we ought to do whatever we can to try to support small businesses and ensure that they are given the protection that they need. We have tabled the new clause because we want an improved deposit protection system that will help them. I look forward to hearing what the Minister has to say about that.

There are serious issues within the clauses that will need unpicking. I will briefly set them out. New clause 21 covers savings brands. Under the current rules, if someone has more than one deposit account, which may include a current account, a savings account, a cash ISA or a

*[Cathy Jamieson]*

savings bond with the same authorised bank or building society, a total of £85,000 is protected under the Financial Services Compensation Scheme. If several brands share a deposit-taking licence, a consumer gets a total of only £85,000 of FSCS protection, even if they have savings with more than one of them.

Many customers taking out such products might not stop to consider which particular banks are all part of the same family. Indeed, I am grateful for the work done by Which?, because it has highlighted the dangers. It produced a very interesting graphic that showed the different brands that were linked to one another. There is a little quiz as well, so if people have not had the opportunity to test their knowledge of which brand belongs where, they can do that if they look on the Which? website. I think it is still there.

The new clause would extend the Financial Services Compensation Scheme limit to £85,000 for each brand, rather than for each bank. In the aftermath of the financial crisis, there are fewer banking groups and they are made up of a greater number of brands. Without going to that graphic on the Which? website, people will perhaps not be aware that the Bank of Scotland holds the banking licence for AA Financial Services, Aviva, Bank of Scotland, Birmingham Midshires, Halifax, Intelligent Finance, and Saga. Those pieces of information have been provided to us by Which?.

Consumers would be advised to spread their money across different financial services groups, but not all consumers will have thought it through or have had time to research who ultimately holds all the different banking licences for their account providers. Essentially, the new clause would provide more protection for consumers who hold several accounts across a banking group. We believe that that would boost consumer confidence and could help, in difficult circumstances, to prevent another run on a bank. Incidentally, research by Which? suggests that just 12% of people know how much of their money would be protected if their bank went under, so perhaps there is an educational issue and we should try to get more information out to consumers.

The new clause also deals with temporary high deposits. That is related to protecting SME accounts, but not exclusively so. The second part of the new clause seeks to address the risk posed to people who temporarily deposit a large amount of money in an account for transitional reasons. In our discussions in Committee, we have heard of scenarios in which that might happen, for example, on the day of house sale and purchase, or the sale of a private company. At that particular point, there may be an unusually high amount of deposit in an account.

The concern is that the high value of the account on one particular day could give a distorted impression of someone's wealth. Because they would immediately be using that money to make a major purchase, such as a house, the money is not deposited there for the long term, and it would be extremely unfair if a lifetime of saving and investment in a house or business—we are talking about people who are trying to do the right thing: look after their finances and do as much as they possibly can to look after themselves and their families—was wiped out and a high balance lost because it happened to be held temporarily in an account on the day of a bank collapse.

We do not look for banks to collapse—far from it. We want to ensure that the financial sector is stable, which is why we tabled several other amendments, but this new clause would give some comfort to consumers. The change could work in the form of an agreement between the bank customer and bank manager; the customer could normally give notice of a large sum of money due to enter their account, particularly in circumstances such as a house purchase. Indeed, Paul Tucker, the Bank of England's deputy governor who deals with financial stability, said:

"Of course, retail deposits—up to £85,000 in this country—will continue to be insured."

This is his crucial point:

"And we probably also need measures—possibly segregated accounts—that can protect the temporary high balances that arise when, for example, a person sells a house or receives a legacy."

He said that in February 2012.

I realise that there are several issues with this measure, some of which will require further work and a look at the technicalities of how it can be taken forward. However, we are trying to stress the important principle of protecting consumers. We want to ensure that those people who are trying to do the right thing by saving and managing their finances appropriately, or businesses that are trying to contribute to the country's economy and growth, or people who, for whatever reason, have a high amount of money in their accounts on a temporary basis—for only a day or a couple of days—get the maximum protection.

I hope that the Minister will give us some assurance that he is prepared to hear what we say on the principles of this measure. He may have issues about how the new clauses are drafted and he may wish to consider them further, but I look forward to hearing what he has to say.

**The Financial Secretary to the Treasury (Greg Clark):** It is very nice to be back in Committee. It has been an eventful Easter recess, not least for my hon. Friend the Member for Carlisle, who got married. I am sure that the Committee will want to congratulate him on that.

**Chris Leslie:** What a honeymoon!

**Greg Clark:** Indeed, I hope that this does not qualify as his honeymoon, and that he enjoyed a more companionable honeymoon with his wife.

It is a pleasure to respond to the new clauses tabled by the hon. Member for Kilmarnock and Loudoun. They concern an important part of the confidence that we all want to see in the financial services sector, which is underlined by the Financial Services Compensation Scheme. The events in Cyprus in recent weeks show the great importance of confidence. When confidence in savers' protection is knocked, the consequential worry and the leakage of confidence in the whole system are great.

9.30 am

Let me deal with new clause 2 first. I have a great deal of sympathy with the motivation behind it. The hon. Lady is well known in this House as a powerful advocate of the interests of the victims of Farepak. Many of those victims are her constituents, but she has gone beyond that. As she said, the new clause is also relevant to consumers holding gift vouchers, especially in funds that have gone into receivership, and other schemes into which people paid money in advance.

Several measures, which I will talk about later, can be adopted. However, there is a particular difficulty with the new clause. It refers to the Financial Services Compensation Scheme, which is within the scope of the Bill. The difficulty is that pre-payment schemes and gift voucher schemes are not legally financial services, and are not regulated by the Financial Conduct Authority. They are, in effect, advance payments for goods and services. They are different from deposits, and are part of the framework of company law and the transactions associated with that. That fact is relevant for a number of reasons, most particularly because the FSCS can by law deal only with financial services that are regulated by the FCA and the Prudential Regulation Authority. Indeed, it would be against the law for it to deal with payments on account.

The relevant piece of law is section 213 of FSMA, which gives the FSCS jurisdiction over "relevant persons", who are defined later in the section as "authorised persons" under the FSMA framework, or "appointed representatives". That is the difficulty with the new clause, but I am sure that the hon. Lady anticipated that the drafting is less important than the point she seeks to get across. Given that it is in everyone's interest to provide greater protection for people who, reasonably and in good faith, think that they are doing the right thing—as the hon. Lady said—by putting money aside for future expenditure that they expect to incur, it seems to us that they should enjoy a degree of confidence in those arrangements.

The new clause would cause the FSCS to instigate a review. I can tell her that the Government have instigated such a review through the Department for Business, Innovation and Skills Business, which is responsible for the non-financial services that savings schemes fall into. Discussions are taking place, as part of the review, with industry and consumer groups on establishing a code of practice, mutual industry support schemes and other initiatives. I am sure that my ministerial colleagues in BIS will be happy to report to the hon. Lady on the progress of that review, and there will be occasions elsewhere in the House for her to probe it further. I want to reassure her and make sure that she is aware that we are alive to this important matter. If the Bill is not quite the right vehicle for it, there are others that we will consider.

Let me move on to new clause 16. The rules governing deposit protection at the EU level are set out in the deposit guarantee scheme directive. That is why this country's £85,000 limit for the Financial Services Compensation Scheme is the approximate equivalent of the €100,000 limit that applies in the directive. The definition of small and medium-sized enterprises that the hon. Lady referred to, which provides that SMEs should be treated as ordinary, personal depositors, mirrors the EU definition, just as the £85,000 domestic limit reflects the €100,000 limit, so there is consistency, which is required under the directive.

However, all the points that the hon. Lady makes are quite right and well made. Given her admiration for the Prime Minister's determination to help small businesses, which is a delight to hear, I am sure that she will be pleased to learn that we expect to be able to go further than is currently possible in the FSCS. The EU directive is being renegotiated, and there is a proposal, supported by the UK, to extend to all non-financial businesses, regardless of their size, the protections of the deposit insurance scheme, up to the limit of £85,000. The process is well in train, and we are enthusiastically supportive of it, so I hope that the hon. Lady will draw comfort from that and find yet another reason to join in the praise of the Prime Minister's sagacity and far-sightedness.

Turning to new clause 21, as I have just said, all member states' deposit guarantee schemes must comply with the provisions set out at EU level in the deposit guarantee schemes directive. That sets out a maximum harmonised provision, which, as my hon. Friend the Member for North East Somerset will know through his experience of the European Scrutiny Committee, is a particular feature of European legislation. It means that we cannot go beyond that level—the £85,000 equivalent is the maximum that can be provided in the UK.

I have just said that the directive is being renegotiated. It is indeed contemplated in the text that is currently being negotiated that some aspects will be relaxed in future. The hon. Member for Kilmarnock and Loudoun quite rightly made two points about consumers who have deposits in different brands, albeit under the same banking licence. It should not be necessary for them to have to root through the small print to discover whether one particular brand of retail deposit taker is related to another. That should not be the responsibility of consumers. It is contemplated that in future the limit will be by brand. Indeed, on the point made by Paul Tucker about temporary large balances, again, it is contemplated that cover will be given.

**Cathy Jamieson:** It is helpful to hear the Minister's points. Will he give us an indication of the time scale on which it is likely that these matters will be dealt with?

**Greg Clark:** As ever with European debates and issues, it is difficult to give an exact timetable, but there seems to be fairly strong consensus around the provisions. Having been at the ECOFIN meeting in Dublin this weekend, I know that the Irish presidency is particularly keen to conclude many of these outstanding dossiers, especially where there is broad agreement. Although I cannot give the hon. Lady an exact time, there is certainly some momentum.

Given that the Bill has some way to go in this House and the other place before it receives Royal Assent, and that some of its provisions come in later than that, even if it were possible for the Bill to go beyond that level, which it is not, for the reasons I have said, I do not believe that that would offer any timing advantages over what is being pursued in Europe. However, as soon as we have authorisation under the deposit guarantee schemes directive, we will implement the provisions relating to the Prudential Regulation Authority, and we will certainly look to use any flexibility there. I hope I have been able to reassure the hon. Lady on those points, and that she will withdraw her new clause.

**Yasmin Qureshi** (Bolton South East) (Lab): It is a pleasure to serve under your chairmanship, Dr McCrea. I support this group of new clauses; in fact, I had

*[Yasmin Qureshi]*

prepared a long speech on the subject—I exaggerate—but in light of what the Minister has said, I will keep my comments brief. I welcome his comments and the intention that has been stated.

With regard to new clause 2, I want to emphasise the issue of vouchers; it is great that there is so much consensus on that issue, but it is important to emphasise that the consumers affected are ordinary people for whom £100, £200 or £300 is a lot of money. It would be great to see those people being protected, so I urge the Minister to make sure that, in whichever way possible, they become preferred creditors and are compensated; they should be at the front of the queue, not the back, when it comes to compensation.

On small and medium-sized enterprises, I would emphasise that, as everybody on the Committee knows, small businesses are the backbone of our economy. They employ about 14 million people, and it would be great if the European directive that is being renegotiated was changed so that many more firms could be protected. At the end of the day, although that would cost some extra money, it would save very many jobs and keep the economy going, and it would therefore be a good measure to have in place.

On new clause 21, it is important to remember that a lot of ordinary people do not realise the differences between brands. They may amass £10,000 in their current account and £15,000 in their individual savings account and so on, but at the end of the day, they will find that they will be compensated only for sums up to £85,000. We are talking about hard-earned money they have saved over many years. A lot of people do not quite appreciate the differences between brands and would find that they were not properly compensated. It is important that the provisions try to deal with the needs of ordinary consumers and small businesses with limited incomes. I urge that strong negotiations are carried out as soon as possible, so that the £85,000 is per brand, as opposed to the total amount that people can be compensated for.

**Greg Clark:** I am grateful for the hon. Lady's points, which reinforce arguments that have been made very well this morning. In our deliberations, we ought to have small depositors particularly in mind; they have—often with some difficulty—scrimped together savings for the future, and do not have a buffer to fall back on if savings are lost. It is important that the arrangements we put in place pay particular heed to their needs. In terms of the pre-payment schemes, we will do that through the corporate legislation and the arrangements that can be entered into with companies. I strongly agree with her description of small businesses as the backbone of the economy; again, that is a phrase that my right hon. Friend the Prime Minister could use, and probably has done. We certainly have that issue in mind. On brands, small depositors ought to feel that arrangements that are put in place merit their confidence; there should be no messing around with those arrangements. The situation in Cyprus teaches us the very clear lesson that the spirit of commitments proposed and entered into should be honoured, as well as the letter.

The hon. Member for Kilmarnock and Loudoun asked about the publicity surrounding the protections that are available to try to make consumers aware of the £85,000 protection limit. The FSCS has a marketing campaign planned throughout the year, with branding in each bank branch, and on publications that banks issue, to reinforce this. In the light of what has been said in Committee about the importance of that, I am sure that FSCS staff, who I am certain will read this debate, will pay particular attention to the need to communicate that information.

9.45 am

**Cathy Jamieson:** I thank the Minister and my hon. Friend the Member for Bolton South East for their contributions. People who read the *Official Report* will be interested to see exactly what is being supported here, and the arguments that we are trying to advance. The Minister said that he was in sympathy with the intent of new clause 2. In my opening contribution I recognised the technical issues around the clause, which is why, notwithstanding my instinctive desire to push things like this to a vote, I will not do so this morning. However, people out there in the real world, who are perhaps not au fait with the fine detail of the workings of the FSCS or why it is not the right body to do this, just want something to happen to ensure that the protection is there in future and that we avoid a repeat of past scenarios.

I am grateful to the Minister for highlighting that work is under way on this, that discussions are taking place with the industry, that there is talk about establishing a code of practice, and that we can receive further reports on progress in relation to that. If more detail were to emerge as the Bill progressed, that would be extremely helpful. People will not necessarily be thinking in advance of the technicalities—about whether something is a pre-purchase, advance payment or savings scheme. More information is needed in relation to that. They simply need to have confidence that whomever they trust with their money will be held to account if something goes wrong, and that they will not lose out when they put their money into schemes. I hear what the Minister says on that issue. Tempted though I am to show the strength of feeling that there is on the subject, I will not press the new clause to a Division.

I was interested to hear the Minister's comments on new clause 16. He talked about the work done at EU level; it was fascinating to hear his enthusiastic support for that institution taking forward some of the protections that are needed.

**Jacob Rees-Mogg** (North East Somerset) (Con): I do not think that indicates enthusiastic support for that institution. Many people would prefer that we made the decisions in this House; then we might be able to make them today, rather than waiting for our European friends.

**Cathy Jamieson:** I am glad I gave way to the hon. Gentleman. I could see him, earlier, itching to find a point to come in on. He makes a point, which is why I raised the issue of the time scale in which we can expect something to happen. It is important that the work that is under way does not disappear into the long grass. I am sure the Minister would not wish that to happen, either. I do not know whether he was enthusiastically supporting the institution or the work.

**Greg Clark:** May I clarify the point? What I said, perhaps with undue modesty, is that our proposal in the EU discussions is that the provisions be taken forward. It looks like the EU is seeing the light and following the UK's suggestion. I am praising our contribution, rather than that of the institution.

**Cathy Jamieson:** I thank the Minister for that clarity. I am sure that in future discussions and negotiations on the issue in that institution, the Minister will be keen to take the support of the Committee forward. We do not need to press the new clause to a vote for that. The view is that this action ought to be taken. I hope the Minister will do all he can to ensure that the matter is taken forward on a time scale that gives the maximum protections to those who need and deserve them.

On new clause 21, the Minister talked of the work going on at EU level. I was pleased to hear him say that individual consumers should not have to root through the small print to work out which banks are linked to which brand, and that it should be ensured that the bodies organise that level of detail. I also take on board what the Minister said about a marketing campaign for the FSCS about its responsibilities. It is important to stress that those protections need to be put in place quickly. I hope this will not disappear into the long grass. I am sure the Minister would not wish that, and will do all he can to ensure that the correct protections are put in place.

We will have further opportunities during the passage of the Bill to get updates on progress. If we do not feel that progress is quick enough, we can press the Minister on that point at various stages.

**Mark Durkan** (Foyle) (SDLP): The point that my hon. Friend just made is particularly important in the context of supermarkets advertising and selling their services as banks in their own name. However, they are fronting for other banks. That is why these points need to be clarified, so that people know where they stand in relation to the deposits they are paying, and what the direction is.

**Cathy Jamieson:** My hon. Friend makes a valuable point. As he said, more supermarkets and other organisations are offering ranges of financial products. People may not go through the fine print to discover which bank is linked to which supermarket or combination of organisations. It is important that the issue does not drift, and that there is continued pressure to ensure that consumers are given the protection they need. I hope the Minister will continue to press on that. With those assurances from the Minister, and assurances that there will be the opportunity to raise the issues later, if necessary, I beg to ask to leave to withdraw the motion.

*Clause, by leave, withdrawn.*

### New Clause 3

PROFESSIONAL STANDARDS

'After section 65 of FSMA 2000 insert—

"SECTION 65A

*Professional Standards*

(1) The regulator will raise standards of professionalism in financial services by mandating a licensing regime based on training and competence. This must—

(a) apply to all approved persons exercising controlled functions, regardless of financial sector;

(b) specify minimum thresholds of competence including integrity, professional qualifications, continuous professional development and adherence to a recognised code of conduct;

(c) make provisions in connection with—

(i) the granting of a licence;

(ii) the refusal of a licence;

(iii) the withdrawal of a licence; and

(iv) the revalidation of a licensed person of a prescribed description whenever the appropriate regulator sees fit, either as a condition of the person's continuing to hold a licence or of the person's licence being restored.

(d) be evidenced by individuals holding an annual validation of competence.

(2) In the Financial Services and Markets Act 2000, section 59, remove "authorised" and insert "licensed" throughout the section.'. —*(Cathy Jamieson.)*

*Brought up, and read the First time.*

**Cathy Jamieson:** I beg to move, That the clause be read a Second time.

**The Chair:** With this it will be convenient to discuss new clause 4—*Code of conduct*—

'After section 64(6) of FSMA 2000 insert—

"(6A) A code issued under subsection (2) shall—

(a) apply to all approved persons exercising controlled functions in the financial sector;

(b) specify a framework of certain permitted and prohibited actions with which approved persons must agree in writing to comply;

(c) mandate individual financial penalties, and the terms of temporary and permanent suspension of persons' licence to operate, which can be issued by the appropriate regulator if it determines that an approved person has broken the code;

(d) specify the training, including both practical and ethical, which approved persons must undergo before practising controlled functions; and

(e) specify the additional training to be provided by institutions for their staff and set out the system by which institutions will monitor and enforce such a code.".'.

**Cathy Jamieson:** We are making good progress this morning. We again want to raise important points of principle with these two new clauses. New clause 3 would introduce a licensing regime for all approved persons exercising control functions, to ensure that such persons have the adequate standards of competence and integrity. It is important for people in the real world to understand that we are trying to make reforms that complement the attempts to change the culture of the banking sector, to ensure that such problems are much less likely in the future, and that we are trying to do everything possible to prevent future banking malpractice of the type that sadly has been uncovered in recent years—whether it is LIBOR fixing or the banks' mis-selling of financial products.

Essentially, the new clause is intended to ensure that a new licensing regime is put in place that would help to restore confidence in the banking system, not only for consumers but on a wider international level.

**Alok Sharma** (Reading West) (Con): The reason why we had severe problems in parts of the banking sector was not necessarily because of training, but because of a breakdown of culture and ethics. Under the former FSA people, there were approved persons. We could argue, of course, that the number of individuals involved should have been extended, but is the hon. Lady suggesting that we should have a large body that regulates every single individual who works in banking and the financial services sector?

**Cathy Jamieson:** To be fair, the hon. Gentleman makes a valid point. Many people at the front line—I have spoken about this a number of times in discussions on the Financial Services Act 2012 and in the Chamber—were often the ones who were carrying out instructions and were put under pressure to do certain things to meet targets. We may discuss that further when we come to fiduciary duty and so on. However, the new clause is particularly about approved persons. It is not intended that everyone in the sector would be involved. We believe that that is important, because there are similar—not exactly the same, but similar—scenarios with other professionals who have responsibility, whether they are teachers, lawyers or medical health professionals. Such protections are in place because of the damage that may result without them, which is obvious. The problem is that the consequence of regulatory failure in the banking sector can be equally serious, not only for the health of the banks themselves but for the wider economy, and it can cause damage and problems for individuals.

It is true that controlled functions can now be carried out only by approved persons, and that a fit and proper test must be passed. However, given some scenarios that we have seen, I would argue that that has not been enough in itself. There is an argument that it is about culture and ethics, and that is important, but the protections that have been in place have not been enough to prevent the banks from being run like casinos in some instances.

**Alok Sharma:** The hon. Lady rightly makes the point that high-level principles have been in place. The FSA's principles—I assume that those are effectively being taken over by the FCA now—include "Integrity", "Skill, care and diligence", "Management and control" and "Financial prudence". All those were already in place. What specifically is she suggesting should change in how approved persons are regulated? That goes back to the point about culture—perhaps we should be thinking about a bottom-up approach, with much more focus within firms, rather than an overarching solution such as she is proposing.

**Cathy Jamieson:** We are seeking to link the issue to the culture change that is necessary, but sometimes, in order to create a culture change in an institution or organisation, catalysts are required and checks and balances have to be put in place to ensure that behaviour changes and that people are not simply talking a good game. We have tabled the new clause because in 2012, the total paid out by the big five banks in compensation for mis-selling and regulatory fines was £19.8 billion, which illustrates the failings that have been allowed to happen under the existing approved persons scheme.

I applaud the banks that are attempting to change how they operate and their culture. There is, however, a concern, which is reflected in public opinion and the feeling that banks have not yet done enough to change the culture, that further problems could arise unless action is taken to ensure that those who are doing the right thing are supported and that their efforts are backed up. It would be better to take preventive action than to have to mop up after banks and reprimand them once the damage is done.

10 am

That is why we propose a more detailed licensing regime, setting standards that must be reached and with better enforcement using ongoing evaluation instead of relying on individuals to update relevant information. That would go some way towards rectifying the problem. The new clause represents an important step in the direction of better banking practice and regulation. It would be a licensing regime that would help to boost customer confidence as well as strengthen the regulatory framework, so that banking malpractice would be less likely in future.

**Mark Durkan:** Does my hon. Friend believe that creating the sort of environment that the new clause proposes may also be more conducive to whistleblowing by staff of financial service institutions who are conscious of dubious practices and products?

**Cathy Jamieson:** Again, my hon. Friend makes an important point and I hope that we will be able to discuss whistleblowing more generally at a later point. Anything that can create a culture where people are able to see what is the right thing to do in protecting consumers' money—banks have the moral and ethical responsibility to do that, and not simply to look at what is in their own narrow, short-term interests—would give some support and help to individuals looking to speak out if they felt that they were being asked to do things that put individuals, groups of customers or wider groups at risk.

**Alok Sharma:** The hon. Lady is being generous with her time. Will she clarify something for me? She mentioned approved persons, but several of the individuals involved in the LIBOR manipulations were not approved persons. How far is she suggesting extending the definition?

**Cathy Jamieson:** I thank the hon. Gentleman for that intervention. If he looks at the specifics of the new clause, he will see the changes that we seek to make to FSMA 2000 and the professional standards that must be met. I was about to discuss new clause 4, which complements new clause 3 and relates to the code of conduct requirement. It is important, because it would add to the requirements of the code of conduct that are already published under section 64(2) of FSMA. Those codes have to be issued when regulators have made statements of principle. Currently, the only requirement is that codes of conduct

"must be published…in the way…best calculated to bring it to the attention of the public."

With new clause 4, we seek additional requirements aimed at ensuring that the codes of practice have the widest possible application and specify clearly what is required for compliance and the consequences of failure. Those detailed codes of conduct would be easier to comply with, because approved persons would know precisely what was required of them.

To return to the hon. Gentleman's point, we are not seeking to extend the definition of "approved person" unnecessarily, but rather to provide added clout to ensure that people are clear about what is expected of them, that the code of conduct is understood externally, that breaches are easier to spot so that enforcement by regulators is improved, and that there are clear penalties for breaches of the code. All that should incentivise compliance.

A code of conduct was recommended by the Future of Banking Commission, which compiled its report in early 2010 and published it later. The commission had some illustrious members, and its report was clear when it stated:

"The Commission recommends the development of a 'Good Financial Practice Code'. This code should have a similar status amongst the banking profession as similar codes of conduct have in the medical and other professions."

The report went on to state:

"In addition to the development of a Good Financial Practice Code, the Commission recommends that bankers receive compulsory formal training"—

that links back to the comments of the hon. Member for Reading West—

"before they are able to fully practice in their profession. This should include training in the ethical behaviour expected of the members of their profession, including how to resolve conflicts of interest.

The Commission recommends that this Code should be devised and enforced by a new professional standards body along the lines of the General Medical Council, or the Legal Services Board."

New clauses 3 and 4 represent an important pressure to raise regulatory standards and restore consumer confidence in our banking sector. I hope that the Minister, in the spirit in which he has dealt with things today, will listen to what we have said this morning and respond to our points. If he does not accept that the reforms are necessary, perhaps he could give us some information on an alternative way to deal with those points that would act as the catalyst necessary for further change.

**Greg Clark:** We have had many discussions to date in which the hon. Lady has been the agent, if we can think of it in those terms, of the Parliamentary Commission on Banking Standards by putting forward its recommendations to the Committee. In this case, she is trying to steal a march on the Parliamentary Commission, which is still inquiring into these things. We expect it to report next month, and I think all of us look forward with great interest to hear what it has to say.

It is fair to reflect that professional standards are by no means an incidental matter to the Parliamentary Commission. In fact, its terms of reference specifically state:

"The Commission was established by both houses of Parliament to consider and report on the professional standards and culture of the UK banking sector."

Professional standards are absolutely core to its work, so the new clauses, which deal with that, are by no means inappropriate to the Bill, but the time for them is after we are informed by the august and considered views of the Parliamentary Commission, which was established to look into precisely these matters. We expect its report to be published before Report. That will give us all an opportunity to consider its recommendations and how to implement them through amendments to the Bill. My suspicion is that, based on its previous form, the Parliamentary Commission will leave us in no doubt as to how it would like us to reflect its recommendations. It would not surprise me if we saw suggested amendments later in the course of the Bill.

Among the recommendations that the Parliamentary Commission may make—I have no insight into its thinking—are a proposed code of conduct and a requirement to comply with it, along the lines of what is described in the new clauses. The British Bankers Association proposed in evidence to the Parliamentary Commission that there should be an industry-wide code of conduct more or less along those lines. The Parliamentary Commission will also address whether the problems that we have experienced in the financial services industry were principally about a failure to use the currently available powers—or their half-hearted use—and whether new powers are needed.

Although we will have plenty of opportunity to debate these matters in great detail within a few weeks, it is worth saying something about the current regime, to inform the Committee, as I am sure its members will wish to contribute to future debates. The current arrangement under FSMA is that individuals who perform controlled functions in a financial services firm require the regulator's prior approval before taking up their appointment. That is quite an interesting and perhaps under-appreciated feature of the regime at the moment. The controlled functions relate both to positions of significant influence in financial services firms and to consumer dealing functions, for example the provision of advice.

A firm proposing to appoint a person to a controlled function has to submit in advance an application to the regulator. In some ways, interestingly, the powers currently provided are tighter than in professions where, typically, if people enjoy the approval of a professional body, they are free to practise anywhere, in any firm and in any role. That is not the case under FSMA. FSMA approval is for a specific appointment, individual, function and firm. The powers are quite well designed for what they purport to do. The question arises why they were not used more effectively, and no doubt the Parliamentary Commission is looking at that.

The regulator may not agree to approve a person unless it is satisfied that the individual is a fit and proper person to perform the function to which the application relates. The question of whether a person is fit and proper covers both their competence and integrity. FSMA specifically allows regulators to make rules providing for specific demonstrated training and competence requirements, which are reflected in the new clauses, and to require that any approved person must satisfy those conditions. So far, that requirement been mostly used for customer dealing functions. Hon. Members will know that in the retail distribution review, for example, there is a requirement on independent financial advisers to have gone through training before they can advise their clients. That relates to the current powers on training.

FSMA also allows regulators to issue statements of principle covering the conduct expected of approved persons. It is envisaged that the PRA and FCA will continue to do so. In fact, there are already statements of principles concerning the required standards of integrity

*[Greg Clark]*

that approved persons by the PRA or FCA will need to conform to. Those are binding on approved persons, not optional.

FSMA also provides for codes of practice to be established. They are non-binding and are meant to be descriptions of conduct that would or would not comply with the mandatory statements of principle. From 1 April, following amendments made in the Financial Services Act 2012, the regulators' statements of principle can apply to the conduct of approved persons in any function that they undertake, rather than to the controlled function. A person needs to be licensed to perform a particular controlled function, but the requirements on their conduct and integrity can apply to all aspects of their work, whether or not they relate to the particular matter that is approved.

The approved persons regime includes disciplinary arrangements that are well known to the Committee. They include financial penalties, public censure and ultimately the withdrawal of approval, if a person is no longer considered fit and proper. Those sanctions are available for conduct that is in breach of a statement of principle, including in parts of the job that are not in a controlled function. We have in place a regime that is in effect a licensing system for individuals. It covers standards as well as technical aspects, with extensive sanctions that are potentially more intrusive than those in many professional bodies. For example, an accountant can practise anywhere without further authorisation for a proposed job.

10.15 am

The question that arises is: why did that not work? Why did the regime not work in the past? It may have exposed the need to make greater use of such powers, to be clearer about the standards expected, and to be more active in removing authorisation and imposing sanctions, which, I hope, is an area that the Parliamentary Commission will advise on. Indeed, it may be that more powers are needed. That is what the Tyrie Commission is considering in depth and extensively. When the Chancellor appeared before the Commission, he gave an undertaking to include in the Bill any recommendations needed to take forward what is required to improve culture and standards. We will therefore have an extended ability to consider such proposals.

I hope that the hon. Member for Kilmarnock and Loudoun will feel inclined to withdraw the new clause, in anticipation of a lot more debate to come on such matters.

**Nick Smith** (Blaenau Gwent) (Lab): The incoming Governor of the Bank of England, Mark Carney, has said that regulation alone cannot be sufficient, because "virtue cannot be regulated". Five years since the beginning of the banking crisis, that statement feels all too true.

Two weeks ago, the Salz review blasted Barclays' culture of greed, saying that bankers

"seemed to lose a sense of proportion and humility"

in the pursuit of bonuses. Just two days later, HBOS was slated by the Parliamentary Commission on Banking Standards for its

"incompetent and reckless board strategy"

and "toxic" mistakes. Meanwhile, Barclays announced £39.5 million of bonuses on Budget day but 3,700 job losses just four weeks ago.

For far too long, morality has been a relative term in an industry that gives vast rewards to the few at the expense of the many, whether that be the local teller who lost their job in the latest round of cuts, or the man on the street whose savings were put at risk in 2007. If Labour's amendments to the Bill are taken seriously, there may finally be the chance to bring a little morality back into banking to protect the ordinary customer from the cowboy banker.

In 2012, the respected Professor John Kay produced an independent report on the need to change the culture of investment, which was endorsed by the Business Secretary. He called for a minimum standard of behaviour based on stewardship to ensure that investors act in the long-term and best interests of clients. Saying that the absence of trust in the current system was a

"product of the prevailing culture",

Professor Kay wrote:

> "This erosion is not a result of misplaced public perception, which can be addressed by a public relations campaign; it is based on observation of what has happened."

Labour's new clauses would help to shift power back to where it belongs, and begin to build the bridges broken by decades of the excess we have seen just a few miles up the road from here. Through new clauses 3 and 4—and 6 and 7, which we shall consider later—a bankers' code of conduct could lead to bankers being struck off in the way that doctors are struck off; boards would be answerable to their everyday employees when bonuses are handed out; and shareholders would be able to judge whether executives deserve big pay-outs for poor performances. All those measures and more would go some way to restoring the confidence of the public in the institutions that take their money. Public confidence in Blaenau Gwent is at a very low ebb.

The Parliamentary Commission on Banking Standards concluded that there is a culture of culpable greed not far from here that is far removed from the interests of customers. The new clauses are a helpful way to ensure that banks are accountable to the people they serve.

**Mark Durkan:** Like other Members I want to say that it is a pleasure to serve under your chairmanship, Dr McCrea.

I have considerable sympathy with the motivation behind both new clauses, but I am concerned that they may be disproportionate in the context of some financial sectors. New clause 3 would apply to all "regardless of financial sector" and new clause 4 says that the code would

"apply to all approved persons exercising controlled functions in the financial sector".

The hon. Member for Kilmarnock and Loudoun referred to the Banking Commission, but it applies specifically to the banking industry. When we talk about everyone in the financial sector, we go beyond the banking industry as people understand it.

Dr McCrea, from your constituency experience you will have been familiar with the twilight zone that opened up in relation to the Presbyterian Mutual Society. Any regime introduced by the regulator that is designed to raise standards and ensure there is training, competence and understanding, should also ensure that professionals—the approved persons—have a clear understanding of the regulatory framework and standards. What was revealed in the context of the Presbyterian Mutual Society was that many people were operating under the misapprehension that what they were doing was entirely proper and was under proper regulatory oversight when it clearly was not. There was a failure on the part of the FSA not to intervene in relation to products that were under its regulatory remit. The Presbyterian Mutual Society was deemed not to be under its remit but many of the products that that institution misadventured into were.

Everyone pleaded ignorance afterwards, including the Northern Ireland Department that was assumed to be providing the regulatory oversight. The FSA did not know. The Presbyterian Mutual Society did not know. The Church did not know or understand. Clearly there is a real case for ensuring that when we say that there are standards that have to be upheld and met, we learn the lessons of previous failures. That can apply across financial sectors.

I notice that new clause 4 refers to a code—singular—and not codes. The Minister made the point that FSMA as it stands allows for codes. They do not necessarily have statutory weight themselves, but differential codes are permitted in the context of different parts of financial sectors.

An area that is close to my heart is the credit union movement. We have had problems because the credit union movement in Northern Ireland was not under FSA regulation. Thankfully, now it has been brought under it, not because there was any malpractice or problems in relation to the credit union movement in Northern Ireland, which is very strong and healthy and has a big membership and big savings base, but because by being outwith FSA regulation, credit union members were denied access to the FSCS. They were covered by their own bonds and arrangements through the Irish League of Credit Unions and other measures. Nevertheless, that created a difference that members would have been uncomfortable with.

However, as you will know, Dr McCrea, the credit union movement in Northern Ireland has been somewhat disconcerted by the fact that the FSA is applying standards that were developed in relation to the credit union movement in Britain, which is at a much lower base than in Northern Ireland. The movement is therefore somewhat uncomfortable because many strong, big and healthy credit unions in Northern Ireland will continue to invest in the sensible and responsible way that they do only if they become version 2 credit unions. Many credit unions in Northern Ireland are not particularly comfortable with the requirements—the regulatory hurdles and standards that they would face—of becoming version 2 bodies.

I would not want new clause 4 to end up making that process even more exacting. It would be disproportionate were a credit union, whether version 1 or version 2, to face a regime that was as exacting as and fully equivalent to what a bank has to face. That would be insensitive and counter-productive to encouraging the development of credit unions anywhere in the UK. I worry that a singular reference to a code and the mandatory aspects referred to in the various subsections of new clause 4 would create a situation that was not only more exacting for version 2 credit unions but equally exacting for version 1 credit unions, which would be disproportionate.

I am worried about the possible unintended consequences, because what motivated the FSA's creation of the version 1 and version 2 regimes in Britain was the fact that it wanted to ensure that credit unions in Great Britain did not make investments until they reached a level of maturity and a certain level of savings and did not get involved with dubious or risky products. The credit union movement in Northern Ireland is mature and sizeable and has made sensible investments in several areas and wants to continue to do so in the interest of its members. A sensible way of allowing that would be to control the products that credit unions can invest in, rather than saying that they have to contort themselves into becoming version 2 bodies before they can do such things. Only allowing them to invest in certain approved products would be sensible, but the FSA, and now the FCA and PRA, have been unable to take up that sensible and practical point. I am a bit worried that were I to support new clause 4, I would be inviting more of that undiscriminating attitude from regulators.

**Jacob Rees-Mogg:** May I say, Dr McCrea, what a pleasure it is to have you back in the Chair? We missed you at the last of the previous sittings of the Committee.

I speak only to remind hon. Members of my declaration of interest, as I am an authorised person under the FSA and now the FCA. As we may come to a vote, I felt that I should put that on the record.

**Cathy Jamieson:** I start by thanking the hon. Gentleman for putting his declaration of interest on the record, because I do indeed want to test the Committee's views on new clause 3 and I will briefly explain why.

The Minister suggested that some amendments were somehow stealing a march on the Parliamentary Commission on Banking Standards rather than following on from it. He did, however, acknowledge that the issue at hand is by no means an incidental matter. He suggested that it would be best to await the outcome of further deliberations of the Banking Commission before deciding on how to proceed. I do not want to go back over previous parts of the debate—you would not allow me to do so in any event, Dr McCrea—other than to say that there were some expressions of concern at the outset of the proceedings in Committee that we were being asked to debate and discuss what was essentially the skeleton of the Bill, without a lot of the final detail that would arise as a result of the work of the Banking Commission.

10.30 am

In one way, I understand what the Minister is saying, but equally the timing of this Committee means that we have what we have in front of us and we have a responsibility to consider what we think should be in the Bill to improve it. That is notwithstanding some of the arguments that were made in support of earlier work by the Banking Commission, which has not yet found a lot of favour from the Government in votes.

I do not want to question the Minister's intent on this issue. I am sure that he is doing what he is with the best of intentions—to ensure that due consideration will be given to the work of the Banking Commission. He mentioned that he was sure that the Banking Commission would leave us in no doubt as to what its views were, and I too am sure that that will be the case.

The Minister went on to give some technical detail, for which I am sure Committee members will be grateful; I am referring to hon. Members who perhaps have not followed all the technical detail in the way in which the Minister has. He described how the system works at the moment, but he went on to pose questions as to why it has not worked, and he talked about the possible need for greater use of powers, the possible need to be more active and whether further standards and powers were needed. I was grateful to him for the recognition that perhaps more needs to be done.

My hon. Friend the Member for Blaenau Gwent made a passionate contribution that reflected the concerns of his constituents, who once again are not yet persuaded—indeed, many people across the country are not yet persuaded—that the lessons have been learned from what went wrong in the banking sector and its culture, which did not put the interests of the consumers at the heart of the system. As the public see it, certain people at the top of the banking tree looked after their own interests before they looked after the interests of their customers, and they want something done about that.

My hon. Friend mentioned in particular HBOS and Barclays and the very real issue of bonuses. I do not want to continue the notion that this is all about bashing the banks, but we must ensure that the lessons that have to be learned lead to a change in culture. He made the point about the many ordinary front-line staff who lost their jobs as a result of decisions that were taken. It is important to remember that.

I understand the considerable expertise that my hon. Friend the Member for Foyle has in this whole area, particularly in relation to the credit union movement, and the work that he has done in that regard. I listened to him carefully, because I respect his views and opinions on these matters, having seen how he has contributed to previous Bills and his work in the Chamber on these issues. I assure him that, being involved with the credit union movement myself, I would not want to do anything that would put it at risk. I believe that support for the credit union movement is one way in which we can ensure that people have ownership of their financial institutions, whether that is at a localised level or on a larger scale, as in the case that he is aware of from his own area.

My hon. Friend raised real concerns about the situation that he and others have described over the years in relation to the Presbyterian Mutual Society and the problems that arose in that regard. Again, it is important that lessons are learned from that.

I said at the outset that I would want to test the opinion of the Committee on the new clause. I do not for a minute believe that Opposition Members will win the vote, but I think that it is important to test the principle behind the new clause, which is that we want to see as much as possible done to ensure that the people who carry out the controlled functions are fit and proper people. I do not believe that the existing system has worked in the way it should. We hope that pressing the new clause to a vote will send a message to those considering the work of the Banking Commission that we feel that further action is needed.

*Question put,* That the clause be read a Second time.

*The Committee divided:* Ayes 7, Noes 10.

**Division No. 8]**

**AYES**

Ashworth, Jonathan
Doughty, Stephen
Durkan, Mark
Jamieson, Cathy
Qureshi, Yasmin
Smith, Nick
Wright, David

**NOES**

Clark, rh Greg
Evans, Graham
Hands, Greg
Mills, Nigel
Morris, James
Mowat, David
Rees-Mogg, Jacob
Stevenson, John
Thornton, Mike
Williams, Stephen

*Question accordingly negatived.*

**New Clause 5**

Duty of care

'At all times when carrying out core activities a ring-fenced body shall—

(a) be subject to a fiduciary duty towards its customers in the operation of core services; and

(b) be subject to a duty of care towards its customers across the financial services sector.'.—*(Cathy Jamieson.)*

*Brought up, and read the First time.*

**Cathy Jamieson:** I beg to move, That the clause be read a Second time.

I hope that we can continue the good progress that we have made this morning. New clause 5 would introduce duties of care for ring-fenced bodies: a fiduciary duty in the carrying out of core services and a more general duty of care across the financial services sector. A fiduciary duty is characterised as a requirement to serve loyally in trust and in good faith.

As a bit of background to the new clause, a Which? survey in March suggested that banks' safeguarding of customer interests remains inadequate. It found that banks are failing to give the right advice regarding, for example, transferring and managing cash ISAs. Which? placed around 180 calls to 15 leading banks and building societies to assess the quality of advice provided concerning the transfer of cash ISA savings, and it found that HSBC, Yorkshire Bank, RBS, First Direct and Barclays failed to give correct answers to three simple cash ISA questions in more than 50% of the calls.

In addition, according to a YouGov poll for *The Sunday Times* last year, almost two thirds of banking customers no longer trust their lender to look after their money. We have spoken this morning about public perceptions of the banking industry and its culture and the changes that need to be made. Of particular concern in the YouGov poll was the fact that almost half the respondents believed that some of the high street banks were dishonest, and 45% described them as incompetent. We do not want that situation to continue. Only 1% of respondents believed that senior executives of the biggest banks had improved their behaviour since the financial crisis began. It would be interesting to repeat that poll in future and see whether perceptions have changed.

New clause 5 would insert into the law a concept that we believe would go a long way towards ensuring that consumers could have full confidence that their best interests were being served and that those selling financial services products were acting in both a prudent and ethical manner. We have discussed this morning whether that can be regulated and legislated for and how much of it is down to individuals acting in an ethical fashion. The new clause would require a ring-fenced body not to act in a way contrary to the customer's interest while carrying out its core activities.

It can be argued that banks and financial institutions ought not to be acting contrary to their customers' best interests, but when we look at what has actually happened and some of the inquiries undertaken, it is clear that, in some circumstances, the banks were doing that when carrying out their activities.

If such a duty were to be applied to banks generally, it could create problems in areas where banks have competing interests, or their customers have competing interests. However, we believe that, in the context of carrying out core services, it is right that customers should be able to rely on the banks to look after their best interests. The new clause would improve customer protection and boost consumer confidence in the banks.

The more general duty of care amounts to a duty to act reasonably when dealing with the customer, or in matters relating to its customers. People may argue, and hon. Members may suggest, that both of those represent a principle that is hard to disagree with: banks should treat customers fairly. They may also argue that similar duties already exist in common law.

I suggest, however, that those duties have developed in a piecemeal way, and creating a general duty would get rid of any uncertainty over whether a duty will be found to exist by a court. There would then not be the scenario where the customer always has to go to court for clarification. Giving the duties some statutory basis would bring them within the remit of the regulators who cannot oversee the common law duties of care that currently apply to banks.

When a similar amendment was debated in the Financial Services Bill in 2012, the hon. Member for Solihull (Lorely Burt) commented that the duties should not be made too specific or people might be able to circumvent them. However, the duties imposed by this new clause would allow all relevant considerations to be taken into account by a court, while assuring customers that the banks had the legal obligation to act fairly.

Many Members and media commentators have expressed concerns about the mortgage and remortgage markets, where safer safeguards need to be pursued, particularly in relation to the best interests of clients. For example, mortgage customers on standard variable rates might be persuaded that remortgaging is their only option, but they could end up accruing significant costs such as surveying, legal fees and so on. Because those costs are added to the mortgage in many cases, the customer does not necessarily feel that they are being made to pay for a remortgaging product, yet it will hit them at some stage.

**Mike Thornton** (Eastleigh) (LD): I am not sure whether the hon. Lady is aware that the regulations currently mean that any kind of advice given for a remortgage must take concern of the difference between the existing product and the product being taken out.

My experience when I was an adviser was there were many people who I or my colleagues advised not to change their mortgages because, first, we were ethical—I think we were ethical. Secondly, the less ethical ones who would be tempted to do this—I accept that there are many of them—are unable to do so because the compliance regime would immediately reject that advice, the firm would be fined and, in my experience, the person giving that advice would be delicensed. Therefore, there are already adequate safeguards within the current legislation.

**Cathy Jamieson:** I thank the hon. Gentleman for giving us the benefit of his experience. I used that one example that was brought to us. I am trying to ensure that there would be a wider fiduciary duty that would also ensure that the forest of paperwork that is sometimes supplied to consumers would be balanced by the need for clear and consistent information. I am sure that the hon. Gentleman would accept that in some instances it can be difficult for people to wade their way through all the paperwork and small print and make a decision about what is in their best interests.

10.45 am

Hon. Members will be aware that in July 2010 the US Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010, giving the Securities and Exchange Commission the authority to impose a fiduciary duty on brokers who give investment advice. A stronger duty of care would ensure that the industry had to take customers' interests into account when designing products, and had to provide advice throughout the product life-cycle. That takes us back to my earlier point that this issue is not simply about selling products, but about the many stages during which people are advised about what is in their best interests.

We believe that several benefits would arise from placing such duties on ring-fenced bodies. Doing so would increase consumer protection and help to restore confidence in our banks. To return to another earlier point, it would raise standards of conduct in banks if they knew that they would be responsible for acting according to those duties. If the Minister does not feel that a fiduciary duty towards customers in the operation of core services and a duty of care towards customers across the financial services sector ought to be put in place, I would be interested to hear why; if he believes that legislation is not needed, I would be interested to hear what proposals he might have to ensure that those principles would be upheld.

**Greg Clark:** I am pleased to respond to the debate. I say to the hon. Lady that it is not that legislation is not needed on these matters; it is, however, important that when we legislate we are clear about the consequences of that legislation.

Let me deal with new clause 5. Proposed subsection (a) refers, as the hon. Lady said, to a fiduciary duty towards customers in the operation of core services. A fiduciary duty is a duty of trust in circumstances where one person is, in effect, acting on behalf of another—or, at least, in the other's interests—and so needs to make sure that they follow faithfully the best interests of the party to whom they have a duty of care; in economics, we know the situation as the "principal-agent problem".

*[Greg Clark]*

An example would be a director acting on behalf of shareholders: directors, in effect, are the trustees for the interests of shareholders, and hence, quite properly, have a fiduciary duty to keep that always in mind and not pursue their own private interests as directors over the interests of the shareholders whose interests they represent.

When it comes to deposits in a bank, however, the relationship is rather different. The bank is not acting on behalf of depositors; instead, the relationship is contractual. For example, in determining the interest paid on sums deposited in an account, if a bank were acting under a fiduciary duty to depositors—that is to say, it were to have in mind the interests only of the depositors—it would be constrained to pay them, as a fiduciary duty, the maximum available. That would be the bank's responsibility. Instead, as it is engaged in a commercial transaction and is a competitive business that operates within a competitive environment, it pays the interest rate that allows it to have a competitive position in the market.

Although, on the face of it, the small change in the new clause seems rather innocuous, it would fundamentally confuse the basis on which banks operate. Of course we need to make sure that insured deposits, in particular, would be safely held, and this morning we have been debating the arrangements for that. The whole purpose of the Bill, in terms of ring-fencing arrangements, is to put in place particular requirements to ensure that deposits are safe and that the behaviour of the bank is sound. Such regulatory requirements are different from the fiduciary requirement that would oblige the bank to act, as it were, as a trustee for its customers.

Proposed subsection (b) refers in a different way to ring-fenced bodies having

"a duty of care towards its customers across the financial services sector."

That is, at best, opaque, and, at worst, worryingly vague. First, it is not clear what a duty of care, especially to customers across the financial services sector, means. Can a bank be said to have customers across the financial services sector, presumably in other, competitor institutions? Since it refers to the financial services sector, does it mean that a bank has a duty of care not only towards its competitors' customers, but to the customers of insurance companies?

It is important to be clear about what is required. The new clauses would make unclear many of the provisions that we are seeking to introduce. We can clarify existing contractual obligations, as we are through the insured deposits. We can clarify regulatory requirements, and the new ring-fencing requirements do precisely that.

A ring-fenced body must always be in a position to repay deposits when they fall due, but that is a contractual requirement. It must meet its obligations on ring-fencing and on conduct, so it is hard to see what a duty of care can add to that. All financial services businesses have contractual obligations to customers. Some of them already have fiduciary duties—for example, when acting as a trustee, an executor or an asset manager. Fiduciary duties are established for financial services institutions that operate in that way.

All financial services businesses, and indeed persons, including my hon. Friend the Member for North East Somerset, are subject to obligations under the regulatory regime that we have for the FCA. My colleagues in the Committee that considered the Financial Services Bill took great pains to specify, with some precision and in some detail, the purpose and the remit of the Financial Conduct Authority to advance consumer protection, integrity and competition. The PRA is to promote the safety and soundness of PRA-authorised persons.

The Bill would add to the specific objectives a continuity objective to require the regulators to make ring-fenced rules and for ring-fenced bodies to comply with them. Those are specific and focused requirements that are much better than general concepts that do not relate to the objectives of the regulatory bodies. The hon. Member for Kilmarnock and Loudoun said that such matters would be brought within the scope of the regulators, but they would not. The regulators have a strict scope to discharge the remit laid down in the Financial Services Act 2012, which will be amended by this Bill in terms of the continuity objective.

Imposing a duty of care to customers in other financial services bodies or a fiduciary duty for institutions that do not actually have fiduciary responsibilities would not give firms a clear view of what conduct is expected of them or provide any means of holding firms to account. Since the regulators are responsible for governing conduct, it would confuse matters and ultimately that would be to the disbenefit of consumers, rather than to their benefit.

**Mark Durkan:** The Minister's arguments differ from the previous Minister's arguments on the Financial Services Bill when we were in Committee and in the Chamber. Whenever many of us tabled amendments to the Financial Services Bill on the fiduciary duty and duty of care, the two arguments from the Government were: first, it does not need to be in the Bill because it is a common law requirement and is binding anyway, so we would not achieve anything extra and it would be otiose; and, secondly, in the context of a Bill that provided for the new regulatory framework, we were providing a fiduciary duty that would almost be a giant, stalking duty affecting everybody in every section of financial services, so it would be an impossible duty to meet and would not be focused and measured in the way needed.

Proposed new clause 5 provides for the fiduciary duty to centre on ring-fenced bodies. The Minister has argued against other Opposition amendments on the basis that they widen the scope of the Bill beyond the guarantees and protections that people want in the concept of ring-fencing. The proposed new clause is focused in a way with which the Government should be comfortable. It applies the concept of a fiduciary duty in these new circumstances.

When we debated the Financial Services Bill in Committee, we did not know the revelations about the LIBOR scandal and other things. Many Members said that not only was the fiduciary duty in common law, but it was regularly and competently observed in the banks. The only problems were what happened on the speculative side, which were the result of Government policy and so on, but the conduct of banks and bankers showed that they had a healthy, daily regard to their duty of care to customers. We all know differently now, and we should all know differently now.

People expect a different duty of care from us as legislators in respect of such matters, so we need something like proposed new clause 5. I accept the Minister's point about proposed new subsection (b) being somewhat unclear. It would need qualification in certain directions and specification. He asked who the customers across the financial services sector would be. As with my previous point, credit unions are often customers of banks and there will be others in the financial services sector, such as industrial and provident societies. It would not be inappropriate to say that there should be a duty of care to such customers.

I recognise the Minister's statement that once we get down to insurance companies, agents and so on, there may be greater difficulties, so I accept his slight point about the measure of proposed new subsection (b), but I thoroughly disagree with his argument. It runs contrary to the arguments on the fiduciary duty made by the Government last year.

People want the Bill to be about Parliament setting clear standards and sending a clear signal in light of all that we know and all that has happened. Parliament refusing to put a fiduciary duty front and centre in relation to ring-fenced bodies sends seriously confused signals.

**The Chair:** Does the Minister want to respond before I call Cathy Jamieson?

**Greg Clark:** Thank you, Dr McCrea. I am happy to respond.

On the first point, I hope that the Committee can see that I take all the proposed clauses seriously. I think about them very clearly, and I hope rigorously, and come to a view, advised by my officials. I have given thought to the proposal and had discussions about it. My considered view is that such a change would confuse the situation. However well intentioned, it is imprecise. There is nothing between us at all on this—of course, we want consumers protected and ordinary people's deposits, savings and access to finance guaranteed, as far as they can be. We are doing that, and must do it, by being precise and clear and by putting in place provisions that can be enforced, while being clear who can enforce them and the institutions responsible.

11 am

The two parts of the proposed new clause differ. First, there is a problem in placing a fiduciary duty on organisations that strictly do not do what a fiduciary duty means, which is to exercise on behalf of their depositors a kind of in loco parentis role, as described elsewhere. Secondly, there is the duty of care. The Bill will establish a ring-fencing system, establish proper standards of professional conduct, create measures to ensure that creditors other than depositors are bailed in to resolve failing banks, and clarify the regime through which failing banks are resolved without recourse to depositors' or taxpayers' funding. Those measures all express, in practical terms, the thought behind what is described in the new clause as a

"duty of care towards…customers across the financial services sector."

The purport of the Bill is to do that. To distil the whole Bill down to a subsection that talks about a

"duty of care towards…customers across the financial services sector",

in an attempt to simplify the Bill, would make it simplistic, and would be to the detriment of the objectives that we all have.

**Mark Durkan:** The Minister will know that I have some difficulty in accepting the perfection of new clause 5(b). I return to the example of the Presbyterian Mutual Society in Northern Ireland. One thing that came out in evidence when the Treasury Committee and others examined that situation was that some banks, which were in a position to know something about the business of the Presbyterian Mutual Society, started to say to some of their customers, "You should be taking your money out of the Presbyterian Mutual Society and putting it into us, because it is not protected; and there are other things going on." The banks used their intelligence and insight to create, in effect, a run on the Presbyterian Mutual Society. That was not to the benefit of the financial services sector in Northern Ireland, and it ended up costing the public purse money as well.

**Greg Clark:** I accept that we need to address circumstances like that. However, the hon. Gentleman will know that some of the changes we have made, such as the UK Financial Services Compensation Scheme, will address such situations in the future. However, such things are best addressed by the consideration of the regulators, using powers that follow from a clear remit. We should not leave it to obscure litigation which, if there were a duty of care or a fiduciary duty, could provide a get-out from the enforcement powers that are clearly vested in the institutions that enforce these matters.

I do not want to be, as a consequence of the passage of the Bill, there to be a degree of opacity in the regulators' powers, so that they can be challenged by people who do not have our constituents' best interests at heart. I do not want those people to be able to stay the hand of the regulators by getting them bogged down in the interpretation of something that is not absolutely clear. That is my point, and I advise the Committee to oppose the new clause.

I am not saying that the protection of consumers' interests should not always be borne in mind, but the best way to secure that objective is to be clear about what our objectives are, to vest them in the regulatory authorities and to put in place measures that require regulators to implement the powers they have been given. That is better than introducing what has been imperfectly drafted here, which could provide a get-out from the regulatory arrangements that we are debating.

**Cathy Jamieson:** We have had an interesting series of exchanges on this issue. My hon. Friend the Member for Foyle is absolutely correct in his description of part of the debate that took place in a previous Committee on the Financial Services Bill. I think that at that time there was a slightly more sympathetic view on the issue of a fiduciary duty.

I was quite surprised to hear the Minister coming at things from a different angle. Although we have gone into some of the technical detail, the real issue for members of the public—the ordinary customers of the banks—is that they want to believe that banks are going to be acting in the best interests of customers. They want to have that confidence and to know that a regulatory

*[Cathy Jamieson]*

regime is in place that will protect them. However, they also want some signal from the financial services sector and the banks themselves that things have changed. Without going back over previous debates, the protections that were in place were not enough. We have had a lot of discussion on that, but none the less, people's view is that the culture has not yet moved far enough in the correct direction.

The Minister talked about potential conflicts between the interests of the shareholders and the interests of the customers, and the possibility of the new clause changing that contractual relationship. Again, to emphasise the point from the consumer's perspective, when someone goes to the bank and enters into that contractual relationship, they do so in the hope and belief that the banks will also play their part in looking after their interests. With the various scandals and other things that have been referred to, somewhere along the line that part of the contractual relationship was forgotten or lost in the process. With the new clause, we were seeking to ensure that that whole issue was back on the agenda and that people could see that it was important. If the banks themselves will not willingly come to the table and make the necessary changes—I hope that they will—there has to be some way of ensuring in legislation that the consumer interest is looked after.

I hear and understand what both the Minister and my hon. Friend the Member for Foyle said in relation to the wording of the new clause. The Minister will be well aware that it is sometimes quite difficult to get the technicalities of these things correct, but I have no intention of trying to put in place something that would cause unintended consequences or lack of clarity. However, I hope that the Minister would accept that the new clause was tabled because of the principle of ensuring that customers are looked after and that the banks are clear about their responsibilities and remember the part of the contractual relationship with customers that is about looking after their money. That was where many people felt that they were particularly let down.

As I said in my opening remarks, we tried to pin down the responsibilities of banks on their core activities or services. I understand the comments that have been made, particularly on proposed new subsection (b) and whether its definitions would cause more concern or particular problems. Given that, I will not seek to press the new clause to a vote at this stage, because I understand the technical issues involved. However, I certainly want to give advance notice that we feel quite strongly about the principle of the fiduciary duty and will want to return to it at some stage, hopefully with a draft in a slightly different format, so that we can put it to the test. On that basis, I beg to ask leave to withdraw the motion.

*Clause, by leave, withdrawn.*

## New Clause 6

### Remuneration consultants

'The Secretary of State will by regulations provide for a requirement that the remuneration consultants advising on remuneration policy shall be appointed by the shareholders of a relevant financial institution.'.—*(Cathy Jamieson.)*

*Brought up, and read the First time.*

**Cathy Jamieson:** I beg to move, That the clause be read a Second time.

**The Chair:** With this it will be convenient to discuss the following:

New clause 7—*Remuneration committee*—

'The Secretary of State will provide for a requirement that an employee representative should be a member of the remuneration committee of a relevant financial institution.'.

New clause 10—*Remuneration reform*—

'Within six months of Royal Assent of this Act the Chancellor of the Exchequer shall lay before Parliament proposals on reform of remuneration at UK financial institutions which shall include incentives to take account of the performance and stability of a UK financial institution over a five- to 10-year period.'.

**Cathy Jamieson:** I hope that we can make some progress on new clauses 6, 7 and 10. New clause 6 is about shareholder votes on the advisers to remuneration committees. It would allow bank shareholders to approve the appointment of the remuneration adviser. It is one of several new clauses that would take action on certain banks' excessively risky remuneration practices, which incentivised the overexposure to risk that ultimately fell on the shoulders of the taxpayer. We have had a lot of debate and discussion about that, and I do not think we need to rehearse the details.

We believe that it is necessary to ensure that an independent voice is heard when bank remuneration committees discuss executive pay. The general public are interested in that. It would be preferable if the rights of shareholders and the owners of companies were formally asserted to ensure that remuneration consultants knew they were being commissioned by stakeholders with an interest in ensuring a proportionate approach to remuneration policy. To take one example, would the pay package of senior executives at Barclays have been different if the remuneration advisers had been appointed by the shareholders? The Minister might want to think about that.

**Alok Sharma:** I understand what the hon. Lady is trying to achieve with the new clause, but I am not sure that it would achieve the results she wants if it came into place. She is suggesting that shareholders vote on a remuneration consultant at an annual general meeting, but she will be aware that many companies have a number of remuneration consultants taken on throughout the year for different purposes. How she is proposing that we get over that hurdle practically?

**Cathy Jamieson:** I thank the hon. Gentleman for that intervention, and I am glad to hear that he perhaps has some sympathy with what we are trying to achieve. As always, I would be more than receptive to Government amendments or new clauses to take forward these issues. In the absence of that, it has fallen to us to get them on the agenda, imperfect as our wording sometimes is. That wording may not entirely meet the approval of Ministers and others.

I will develop some of my arguments in response to the hon. Member for Reading West. If we look back at the Barclays situation, the former chair of the Barclays remuneration committee, Alison Carnwath, told the

PCBS that she alone had objected to the package of up to £20 million awarded to the then chief executive, Bob Diamond, for 2011. He described the bank's performance that year as "unacceptable", but had ultimately been overruled by the remainder of the board.

When questions were being asked on this subject in the PCBS, Lord Lawson said, on 30 January:

> "My knowledge of remuneration consultants, which is from a company not in the financial sphere, is that they are a profession that makes prostitution seem thoroughly respectable."

Those are strong words indeed. He continued:

> "When they are brought in, they know that if they recommend low pay they will not get a repeat performance, so in order to ply their trade, they pitch their recommendation as high as they possibly can."

I see some hon. Members smiling. Whether that is due to the wording, or whether it is because they know it to be true, I do not know. [HON. MEMBERS: "It is true."] Indeed, they acknowledge it to be true. Lord Lawson continued:

> "This is also convenient for the non-executives, who might otherwise feel awkward in awarding the executives these very high pay levels, because of the cover that it has been recommended by a remuneration consultant."

11.15 am

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 want to make recommendations that fall in line with the people commissioning them. It is therefore best to make fully transparent the appointment of remuneration advisers by allowing shareholders to vote on them. That is one of the proposals that we have made to try to concentrate the minds of advisers and the management team whose pay is under discussion.

The second issue in the new clauses relates to ordinary workers being on remuneration committees. People will be aware of the recommendation of the independent High Pay Commission, which wanted workers to be put on all remuneration committees. That was not taken forward by the Business Secretary, who said that

> "we are stressing employee participation in remuneration discussions."—[*Official Report*, 2 February 2012; Vol. 539, c. 982.]

That is quite different from having someone on the committee.

It is my understanding that back in September 2011, a Department for Business, Innovation and Skills discussion paper floated the idea that

> "independent members or employee representatives on remuneration committees would provide a helpful, fresh perspective and encourage greater challenge".

Those may be seen as wise words. We believe that one of the best ways to make more voices heard on pay is in votes, and despite the shareholder spring, the level of revolts remains pretty subdued. In 2011, the average level of dissent registered in all explicit votes on remuneration was 11.7%, which was up from 9.6% the previous year, but that was obviously well below the levels of 16% and 12.4% seen in 2002 and 2003 respectively. That is an interesting point.

In 2011, FTSE 100 chief executives were awarded average total remuneration of £4.8 million—a rise of 12%—representing just over 200 times the average total private sector pay of just under £24,000. That is based on Office for National Statistics income data figures. In Germany, worker representation on remuneration committees is common in large companies. By law, in companies with more than 500 employees, one third of supervisory board members must be worker representatives and in companies with more than 2,000 employees, half the supervisory board members must be worker representatives. I wonder whether we could learn from the success of Germany's economy and those practices, tying them into our values and how we want things to work. I do not believe that the City or our economy should have anything to fear from giving a voice to ordinary workers, on whom the success of a company ultimately depends, as they have to do the work and the job.

The third issue we wished to raise with the new clauses was about a report on reforming pay to reflect long-term performance. New clause 10 would mandate the Chancellor to bring forward proposals on reform of remuneration at banks so that they

> "take account of the performance and stability…over a five-to 10-year period."

In evidence to the Treasury Committee in January, Bank of England director, Andy Haldane, made points about reforming performance metrics against which salaries are based, suggesting that it was irresponsible to use metrics that failed to take account of risk. He also raised issues about the horizon over which performance is evaluated, suggesting that that needed to be reformed, and that clawback and deferral of three-to-five year periods was too short to capture a cycle in credit. It was suggested that that period needed to be longer.

Bankers can face clawback procedures on their bonuses. Last month, Lloyds Banking Group said that its remuneration committee had advised the board that it should claw back bonus awards made in 2010 to former executive directors, although it would be fair to say that the use of clawback procedures is still rare. Despite being accused by the US Senate of breaching safeguards that should have stopped the laundering of money from Mexico, Iran and Syria, HSBC actually clawed back less pay from senior staff during 2012 than in the previous year. It said it had retrieved $700,000 out of the $608 million of deferred pay still outstanding for 314 senior staff as of the end of December. That represented only 0.1%, and it was less than the $800,000 the bank clawed back in 2011.

The argument always appears to be that there need to be incentives if bankers are to do well, but they do not seem to have worked as incentives to avoid failure. I do not wish to suggest that I agree with everything the Under-Secretary of State for Skills, the hon. Member for West Suffolk (Matthew Hancock), said in his book "Masters of Nothing", but let me quote one thing he said:

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

I can see the Whip looking at me, and I am sure I am about to be called to account given the time, so let me make one last point. If banks were truly planning on a long-term basis, clawbacks would not be necessary. We should have a situation in which we can change not only the legal and regulatory structures but the culture.

Through the new clauses, we want to ensure that banks will think for themselves and consider how to make their performance sustainable.

**Greg Clark:** It is proving to be an enlightening morning, although it is about to end. We have discovered that the hon. Lady is an avid student of the Prime Minister's speeches from 2008, and we now understand that she has made a close study of the works of the Under-Secretary of State for Skills, my hon. Friend the Member for West Suffolk. It is good to hear what her reading matter is.

There is no doubt that the matters the hon. Lady raises regarding remuneration are important or that the problems and deficiencies of remuneration structures contributed to the financial crisis. The national lottery-style payouts that were made were too often made in response to short-term gains, and they were sometimes made before any actual gains were realised. Some of the bonuses were also awarded on the basis of one-way bets, the downside risk of which was covered by the taxpayer.

We should bear it in mind—the Committee has borne this in mind—that the source of all the money in the banking sector is ultimately ordinary working people: their pensions, their savings, their deposits, their loans, their mortgages and, sadly, in recent years, their taxes. We therefore have an interest in remuneration in the financial services sector, and it is important that it is carried out in a way that is consistent with, not injurious to, our constituents' interests.

In what ways should we address the question of remuneration? First, we should, as far as possible, be vigorous, as the Government are, in promoting international good practice. There is clearly a risk of arbitrage, with companies locating in the most lax jurisdiction. Through the global Financial Stability Board, we look to promote rules that will apply across the world, and particularly in the G20, to make pay safer, more transparent and, in particular, recoverable in the event of failure or misconduct that subsequently comes to light.

Given the situation we inherited, it was important to enhance the role of shareholders. In our previous discussion, we talked about directors' responsibilities, one of which is, of course, to shareholders. It is not clear that decision makers in banks have had it in mind that their responsibility is to their shareholders, including the pension funds that invest in them, which are the repositories of the future prosperity of ordinary working people.

Regulators must, of course, be constantly satisfied that the arrangements in place for remuneration pose no threat to the stability of the financial system. Remuneration must be in the company's long-term interests, and no bonus scheme should be constructed that is to the detriment of the consumer.

11.25 am

*The Chair adjourned the Committee without Question put (Standing Order No. 88).*

*Adjourned till this day at Two o'clock.*