

Parliamentary Commission on Banking Standards pre-legislative scrutiny of the draft Banking Reform Bill

Submission by the Law Society of England and Wales

Introductory Remarks

1. The Law Society of England and Wales (“The Society”) is the professional body for the solicitors’ profession in England and Wales, representing over 160,000 registered legal practitioners. The Society represents the profession to parliament, government and the regulatory bodies and has a public interest in the reform of the law.
2. The Law Society responds to this White Paper as a body whose 11,000 member firms are predominantly small or medium-sized businesses whose banking arrangements, funding and investment options would be directly affected by the proposals.
3. We also respond as a body whose member’s have extensive experience in advising banks and other institutions on banking, finance and regulation, as well as businesses of all shapes and sizes and consumers. The working group represents some of the many members of the profession who advise in these areas and want to see effective and workable laws and ensure that important principles such as the rule of law are upheld. A key element of the latter is legal certainty, which enables business and financial decisions to be made with confidence. The need for legal predictability is of particular importance in the financial sector, because of the very large sums of money involved and the need for certainty as to the legal basis on which equity and debt are provided to banks.
4. In addition, we are proud of the success of English law, with its high standards and long record of legal certainty and reputation for fairness in dispute resolution. It is the international legal system of choice for many foreign businesses. The English and Welsh jurisdiction is a valuable economic asset, generating significant income for the UK. The final motivation for our response therefore, is to ensure that the UK maintains this competitive asset. It appears to us an unintended consequence of these proposals that risks arise in this area.
5. While the recent crisis has demonstrated a need for review and reform with the aim of making the banking system more stable and robust in the face of future shocks, there is also a need to ensure the banking system delivers good value for customers through competitive markets. The Law Society therefore fully supports the need to increase the robustness of the regulatory framework. It is against this background that we submit the following views to the Committee.

General points

6. The reforms must be practically workable if they are to achieve their objective. In this respect, it is imperative that banks are still able to function efficiently and effectively in order to provide their customers with the services they need. The Law Society is concerned that the reforms as proposed do not achieve this end.

7. We are concerned the rules may in fact inhibit banks' ability to operate, meaning they are more likely to require resolution, albeit that such resolution may be achieved more efficiently. There are also concerns that the proposals as currently framed may prohibit access to vital banking services, particularly for SMEs.
8. While supporting the objectives of the ICB report, it should also be recognised that circumstances have changed since the investigation was carried out and its findings published. In particular, the publication of the Liikanen report indicate that UK policy may be superseded by EU policy. The Law Society is considers it inadvisable to "front-run" EU legislation. To do so could lead to confusion and complication as to regulatory requirements, not least because Liikanen suggests drawing its ring-fence in a different place to that put forward in the UK proposals. This could mean, in effect, that banking institutions subject to both UK and EU legislation could be required to effect a three-way split to comply with two different sets of rules.
9. Legal certainty is an important end in itself and a key plank of a thriving economic system. Banks need to know what supervisory requirements they are obliged to comply with. Adapting to any regulatory overhaul is both costly and time-consuming. Establishing a UK regime that must then be altered to take account of EU obligations a short while later imposes additional expense and disruption for banks.
10. Both uncertainty as to the future development of the supervisory regime and concerns about the workability of the requirements themselves may put UK regulated banks at a competitive disadvantage relative to those operating via the EU passporting system. In a worst case scenario it may even result in UK banks re-organising so as to place their UK business in a bank which is regulated elsewhere in the EU and/or move their main centre of operations outside the UK, leaving only very limited activities subject to UK supervision. . This would not only negate the potential benefits of UK legislation but might also have negative effects on the UK in the longer term.
11. The reliance in the draft Bill on substantial amounts of secondary legislation increases legal uncertainty, in our view. Although, we acknowledge that some flexibility in the system is desirable, in order that the UK regime can be adapted to any EU and international measures which may be introduced.

Questions

1. Does the draft Bill successfully give effect to the objectives set out in paragraph 1.3 of *Sound banking: delivering reform* and is it the most efficient and effective means of delivering those objectives? The objectives are:

- making banks better able to absorb losses;
- making it easier and less costly to sort out banks that still get into trouble; and
- curbing incentives for excessive risk taking.

1. The Law Society has reservations about the extent to which the proposed reforms will deliver the objective of enabling banks to better absorb losses.
2. Unless the rules around large exposures¹ are altered, they may act to prevent banking groups pulling together in the face of problems, potentially leaving those entities experiencing difficulties more exposed, to either sink or swim on their own.
3. The proposed ring-fencing, in combination with measures such as bail-in and depositor preference, is likely to leave ring fenced banks with a high cost base and may leave some banks with an unstable economic model.
4. The attempted compartmentalisation of risk could bring a greater likelihood of failure of one of the compartments, because diversification benefits will have been lost and flows of capital and liquidity around the group will have been constrained. The extent to which the risk of failure is increased will depend on the extent of the measures required to implement the separation. With the skeletal nature of the draft Bill, this is hard to judge at this stage. However, for example, we note that any restrictions of capital or liquidity transfers² will deprive the non-retail part of the group of the stable funding base provided by the deposits available to the retail part. The requirement to enter into separate master netting agreements³ will mean that each part of the bank is exposed to loss even where the other part of the bank would have a countervailing position which could otherwise be offset⁴. These effects have to be balanced against the benefits expected to be gained by protecting basic banking services from exposure to more risky trading. We are concerned that the draft Bill enables a move away from balance with reinforced restrictions and is losing sight of the need of the ring-fenced banks to meet the ordinary banking needs of business customers – something the ICB fully recognised, as does the Liikanen report.
5. As the rules for splitting the business are currently proposed in the draft Bill (and more fully in the recent White Paper) it is our view that it will not necessarily be easier and less costly to sort out banks or banking groups in trouble. Indeed they may make the failure of ring-fenced banks, and the related knock to economic confidence, more likely in future.

¹ The current large exposures regime requires that no single exposure should be permitted to exceed 25% of the bank's capital. This rule applies in any event to separate legal entities within a banking group in relation to exposures to parties which are part of the bank's own group (subject to some exemptions). Exposures to other members of the bank's own group have to be aggregated into a single exposure where the other entities meet the rules of being "closely connected" to the bank. Source: Law Society (2012). *Banking reform: delivering stability and supporting a sustainable economy: Law Society response to the HM Treasury White Paper*, pub: LSEW: London, pg 8.

² As suggested in paragraphs 9 and 10 of the Annex of the ICB Interim report.

³ As suggested in paragraph 9 of the Annex 1n the ICB interim report

⁴ Law Society (2011). *Independent Commission on Banking: Interim Report Consultation on Reform Options – response by the Law Society*, pub: LSEW: London. Pg 22.

6. It is likely that the European Commission will take forward the reforms suggested in the Liikanen report and they may become binding on the UK. This could create a complex overlapping of sets of rules, depending on how the Government choose to react. We attach a table (in annex 1) comparing the approach of HMG and the Liikanen Expert Group. We believe that Liikanen has greater regard for the needs of businesses to grow and to trade in the global economy. It is also very close in approach to the US Volcker Rule. The UK is attempting to place the ring-fence in a different place, with the banking needs of business potentially falling on either side of the divide.
7. If the EU adopts the Liikanen approach, which subject to negotiations may become binding in the UK⁵, UK banks could face having to comply with a number of different ring-fencing systems. The result may be that UK regulated bank groups risk being divided into three or, at least, put at a competitive disadvantage to groups arrange according to the Liikanen split.
8. There should be an assurance in the Bill that subsidiary measures would leave both ring-fenced and non-ring fenced banks on a level competitive playing-field with other EU banks and not place them at a competitive disadvantage in serving customers with a need for international banking facilities, and that subsidiary legislation will endeavour to be consistent with this principle.
9. We do not consider that this legislation in itself will curb excessive risk-taking; however, the proposals may leave both ring-fenced and non-ring-fenced banks risk-averse in relation to retail customers and less willing to assist growing businesses. Growing businesses may be forced, if they use a UK regulated bank, to deal with two banks, one of which is either non-UK regulated or is outside the ring-fence rules⁶.
10. Unless reforms under Liikanen intervene to prevent it, it seems that a lot of ordinary business banking activity is set to be operated along with the riskier own account trading and market making activities of UK regulated groups.
11. As we have previously argued, restrictions on the retail product offering may have the effect of, ‘...[e]ncouraging attempts to use alternative avenues to access the market...that might be more systematically dangerous and offer less protections for consumers because they are lightly regulated and have no compensation scheme in the event of failure...’⁷.
12. Furthermore, we note that aspects of the proposals could cause a significant amount of unintended damage to other related sectors, including the legal services sector. We outline our specific concerns in answer to subsequent questions.
13. In the longer-term, with the freedom of banks to utilise EU ‘passporting’ rules and HQ themselves outside the UK, it is difficult to say what will remain UK regulated. This Bill may offer perverse incentives for customers to avoid UK regulated banks and for banking groups to minimise activities which are subject to UK regulation. A mismatch with the EU regulatory regime (even if the two can be operated simultaneously – e.g. by splitting UK regulated groups into three divisions) carries a severe risk of placing the UK at a competitive disadvantage and of making its businesses more reliant on banks regulated elsewhere. This would tend to undermine any benefits of resilience brought by the legislation.

⁵ In our previous response to the ICB Interim report we noted that in recent years the regulatory philosophy of the EU had moved towards greater use of directly applicable Regulations and to rely less on Directives.

⁶ Non-UK regulated banks may still offer a single service.

⁷ Law Society (2012). ‘Banking reform: delivering stability and supporting a sustainable economy: Law Society response to the HM Treasury White Paper’, pub: LSEW: London.

14. For a number of reasons the risk in the system may in fact increase, for example:
 - 14.1. The implementation of the proposals creates scope for regulatory arbitrage, [namely] allowing financial institutions which are subject to more lax regulation to win market share from rivals which are subject to costly or onerous regulation. This arbitrage can be to the "shadow" banking system (i.e. non-depository banks and other financial entities such as investment banks, hedge funds, and money market funds) and to non-UK regulated depository banks⁸.
 - 14.2. The impact of a reduced share of banking being provided by UK regulated depository banks may not be viewed as of paramount importance in the short term. However, in the long term it has to be recognised that the UK economy could become more vulnerable to a future downturn: foreign regulated banks could withdraw from the UK economy and their home regulator (as has been the case in Iceland) may decline to support the failing firm to the extent anticipated. This could lead to a far worse economic outcome in the event of a later financial crisis, with far less control for the UK. Such regulatory arbitrage would both distort competition and compromise regulatory measures aimed at reducing the risk and severity of future banking crises⁹.
15. The second key reason for fostering a robust UK-headquartered banking sector relates to regulatory oversight. Whether a foreign-headquartered banking group chooses to do business in the United Kingdom through a branch or through a subsidiary, the UK regulatory oversight of the banking group's activity is likely to be less complete than in the case of a UK-headquartered banking group. Indeed, in the case of EEA institutions operating in the UK under the European banking passport, the powers of the UK regulatory authorities are severely limited. A policy which gives a competitive advantage to entities operating in the UK in this way, to the disadvantage of the UK-headquartered banking sector, will therefore lead to reduced regulatory oversight by the UK authorities. The Landsbanki and Lehman cases have both demonstrated the risks of relying on foreign regulators in times of crisis
- 2. Do any of the recommendations of the Independent Commission on Banking (ICB), which the draft Bill seeks to implement, need revision as a consequence of developments since the ICB's report?**

15. The policy environment has moved on somewhat since the publication of the ICB report in September 2011.
16. The EU has published the Liikanen report. It covers much of the same ground, but reaches different conclusions on the nature of the ring-fence required..
17. In our 2011 response to the ICB and to the HM Treasury White Paper earlier this year, we raised concerns over the UK 'front running' EU and international policy measures, which:
 - 17.1. the UK may be subject to, further down the line; and
 - 17.2. take a fundamentally different approach from that which the UK is seeking to adopt¹⁰.
16. This could cause two problems:

⁸ We note also that UK regulated banks can choose to restructure so as to relocate to other EU jurisdictions

⁹ Law Society (2011). *'Independent Commission on Banking: Interim Report Consultation on Reform Options – response by the Law Society'*, pub: LSEW: London.

¹⁰ Please see Annex 1 for a table, setting out the essential components of the Liikanen proposals and comparing them to the UK ring-fence proposals.

- 16.1. The UK banking sector may face competition from banks with cost bases unaffected by a ring-fencing requirement and able to offer a broader range of services. This possibility of lost market share for UK banks should be more thoroughly taken into account in the Impact Assessment.
- 16.2. Once further EU and international measures are implemented a very complex regulatory environment could be created. There will effectively be three different regimes overlapping with each other. We are concerned that little thought appears to have been given as to how they might be able to sensibly exist alongside one another with minimal friction. For example, if the EU threshold is simply that proprietary trading and market making must be separated from deposit taking and retail banking and the UK threshold contemplates some deposit taking and some or all non-UK retail banking being outside the ring-fence then UK banking groups could end up operating in three parts. The commercial knock-on effects of this possibility could be significant, with UK retail and deposit taking elements at a commercial disadvantage compared to other EEA banks.
17. If the desired goal is an effective law that is relatively straight forward to comply with, we believe there is a good case for either waiting and seeing what finally emerges from the EU and how it might apply to UK banks or at least ensuring the UK proposals contain enough flexibility to ensure that UK regulated groups will have the option of having all their internal operations worldwide within the economic ring-fence if a banking group so wishes and EU legislation permits this. If this is not to be done then we believe the Committee should ask the Government to undertake not to implement measures which would require UK regulated banking groups to have more than one ring fence and if required amend the draft Bill accordingly. We would be happy to discuss further with the Committee our views on the possible impacts of multiple structural reforms on request, either orally or in writing.
18. We consider that the ICB did not very fully consider the needs of business customers, but did recognise their need to access trade finance. Indeed the recent White paper proposed further restrictions on the activities of ring-fenced banks without analysing the impact of the changes on this key group. We consider that the impact on corporate lending, trade finance and the availability of foreign exchange hedging (all vital for businesses engaging in international trade) needs to be more fully explored.
19. There needs to be greater examination of the proposals for the use of bail-in. We have raised a number of serious concerns about bail-in in our response to the ICB, to the HMT White Paper and to the EU Commission¹¹. We consider this a good opportunity to utilise the discussion in the Liikanen report, which recognises that universal bail-in carries risk of contagion spreading from a bank failure to the wider economy.
20. We believe there needs to be further analysis of the aggregate effects of depositor preference, bail-in and capital requirements on the ability of banks to lend, in the context of competition from other non-UK banks, who are not subject to the same rules. The impact assessment recognises this is a difficult subject and that its analysis contains lots of question marks. This does not offer reassurance that the legislation has a sound economic underpinning.
- 3. Do the powers in the draft Bill and the Government's stated intentions for their use give effect to the ICB's recommendations? Are any deviations justified?**

¹¹ Law Society letter to the European Commission, please see Annex 4 for a copy.

21. The paper accompanying the draft Bill¹² and the Bill's provisions suggest that the ICB's recommendations will be followed in a number of important respects. We argued at the time that the idea of depositor preference has a number of flaws.
 22. There is a danger that depositor preference creates some perverse incentives. It reduces the need for a depositor to be interested in whether their bank behaves prudently or not (because their deposit is additionally protected by depositor preference. The existence of preferred depositors (and those who stand in their shoes) could also create a conflict of interest among economic actors such as the FSCS and those responsible for its finances (financial services and prudential regulators).
 23. Other creditors are either incentivised not to deal with a bank or charge a premium for the additional risk of dealing with a bank whose depositors have got a preferential position. In addition the effect of the preference is to make it unlikely that other banks and financial service operators will have to pay out in the event of a bank failure and this reduces their incentive to police the market. This is profoundly unfair to other creditors and makes dealing with a bank subject to this insolvency rule more risky than dealing with any other type of business. The fact that regulators in some other countries have imposed the same rule in their own interests is no reason for the UK to depart from important notions of fairness for all unsecured creditors, as has existed under insolvency rules for a long time.
 24. It did not appear to be the original intention of HMG to adopt depositor preference, and we would strongly urge that this inroad into the current insolvency regime is removed. If included we would urge the Committee to recommend that it should be subject to separate commencement and repeal powers and also to review, depending on its effects in practice.
- 4. What should be the timetable for implementation of these measures, and should it be set out more clearly?**
25. The timetable is complicated by the parallel changes likely to be occurring at the EU level, following the Liikanen report (see Annex 1 for greater detail on the Liikanen ring-fence proposals).
 26. 'Front running' changes, which may then not fit with what the UK becomes bound to do under EU law would add both to uncertainty and cost for UK regulated banks and in turn detract from their ability to support economic growth.
 27. If the Government 'front run' EU and international developments then implementation should be gradual, there should be a lengthy transition period and the flexibility of implementation (which is very wide in the draft Bill) should be limited by a firm commitment not to place UK regulated banks at a competitive disadvantage to those regulated elsewhere in the EU and to limit implementation accordingly.
 28. Ensuring a robust and consistent legal framework that avoids creating unintended problems will take time. In particular, the transition to the new regime needs to take full account of EU and other steps, which could be binding on the UK. This should be clearly recognised in ministerial statements.
 29. Further, we believe the Government should set out:
 - 29.1. a clear timetable for transition;
 - 29.2. key staging posts highlighted;

¹² HMT (2012). 'Sound banking: delivering reform', pub: SO: London.

- 29.3. extensive commitment to detailed consultation with key stakeholders, over the forthcoming secondary legislation, to ensure smooth implementation of the ring-fencing system.
30. The Bill in its present form lacks any duties which constrain the way in which implementation takes place.
31. As we have noted in previous submissions, banks and their customers will have to adapt to a range of EU and UK regulatory measures, still in the process of evolution, as well as international measures, such as Basel III¹³. Accordingly, there would be merit in there being a coordinated and phased programme of change, including transitional provisions and a frequent review of the interaction between different measures. UK only measures may need reconsideration in the light of other developments, but the risks of unintended consequences would be much reduced if the Commission's recommendations [and HMT proposals] addressed how their proposals would fit within the other initiatives and, where these remain uncertain as to their final form, whether their conclusions would be affected by the course taken by other measures.

5. The draft Bill proposes continuity objectives on the PRA and FCA. Are these appropriate and compatible with their other objectives?

32. The continuity objectives are to safeguard the provision of core services in the UK. Core services are facilities for the accepting of depositors and payments, facilities for withdrawing money or making payments and overdraft. Liabilities, all in the context of a banking account. Presumably this is supposed to relate to banking activities, rather than underlying services, such as clearing (which are not mentioned). We consider it important that the current language used in the draft Bill be clarified, in order to maximise effective compliance by banks. It is currently rather obscure as to what activities comprise a core service.
33. The continuity objectives would seem only to be relevant to banks with a large share of core services – such that capacity to provide these services would be impacted – this would be compatible with competition and EU law and to apply at the appropriate level.

¹³ Law Society (2011). 'Independent Commission on Banking: Interim Report Consultation on Reform Options – response by the Law Society', pub: LSEW: London. Pg2

Banking standards and competition

6. What will be the impact of the proposed changes in the draft Bill on banking standards in the UK more widely?

34. The ring-fencing proposals are unlikely to have a transformative effect on banking standards. These are more likely to be influenced by other factors such as:
 - 34.1. Regulatory rules on conduct of business and product standards;
 - 34.2. the wider criminal and civil law; and
 - 34.3. culture.
35. In particular, limiting the range of activities a ring-fenced bank can undertake, may reduce the ability of the bank to be caught acting in a way which falls short of the highest professional standards. It does nothing in itself to promote adherence to those standards.
36. One possibility might be that the UK's standards become those of the EU regulators. Although the likelihood of this, at this stage, would be very hard to predict.
37. We think that current and anticipated future regulatory requirements are more likely than the proposals in this draft Bill to have a transformative effect on banking standards in the UK.
38. Relevant regulatory requirements include the Principles for Businesses (PRIN) and Statement of Principles and Code of Conduct for Approved Persons (APER) of the FSA, the former applying at the level of FSA authorised firms and the latter applying to individuals performing "approved person" roles within these firms. Both PRIN and APER are expected to be adopted as integral parts of the rulebooks of the FSA's successor regulators, the Prudential Regulation Authority and the Financial Conduct Authority (FCA). We would make the following points regarding PRIN and APER:
 - 38.1. some of the requirements of PRIN and APER have a clear ethical basis, notably the duty to act with integrity applicable to FSA authorised firms (under Principle 1) and their approved persons (under Statement of Principle 1);
 - 38.2. principle 6 of PRIN (the obligation of firms to pay due regard to their customers' interests and to treat them fairly) was used by the FSA as the basis of its Treating Customers Fairly initiative, which involved the introduction of improved business standards across a wide range of retail financial products and services;
 - 38.3. the FSA's "credible deterrence" strategy has resulted in it bringing more enforcement cases against authorised firms and their approved persons in recent years. Many of these enforcement cases have involved alleged infringement of one or more requirements of PRIN and APER and (where serious rule breaches are found to have occurred) have resulted in more stringent civil penalties than was previously the case.
39. It seems to us that the abolition of the FSA and the arrival of a new regulator with a clear conduct focus (in the form of the FCA) presents a timely opportunity to revisit the existing PRIN and APER framework, with a view to it becoming a powerful catalyst of improved business standards across the retail banking and financial services sector.

7. What will be the impact of the separation of retail and wholesale banking on the culture prevailing within each?

- 40. We are concerned that, unlike the Liikanen proposals, the UK measures may not in fact isolate the 'casino' activities of banks but allow them to be mixed up with business banking and non-EU retail and business banking. As business banking activities are vital to the development of the UK companies, large and small, who take banking services from UK regulated banking groups, we believe that such an outcome would run counter to the intention behind the ring-fencing proposals.
- 41. In light of such 'mixing' of activities, the proposals could not be expected to have any effect on attitudes in any banking group outside of the ring-fenced bank. As we have stated above, regulatory measures under other legislation may be more effective than this legislation in changing attitudes within ring-fenced banks, but the narrow range of activities open to them may simply limit opportunities to demonstrate any change of culture and deny opportunities to actually achieve change. We would be happy to elaborate further on these points at the request of the Committee.

8. What will be the impact of the ring-fence on competition, both in retail and investment banking, and in other areas of financial services?

- 42. The type of ring-fence proposed by the Government could have negative consequences for competition in retail banking.
- 43. The costs of capital are likely to rise on the back of the ring-fencing model proposed. In particular depositor preference and bail-in measures may result in capital shortages for ring-fenced banks and high prices for that they capital they are able to raise.
- 44. In our view the impact assessments are not adequate and need to urgently consider a range of additional impacts on the sector, including:
 - 44.1. the adverse effect on the incentives to enter the retail banking market;
 - 44.2. the exposure restrictions which might encourage some groups to consider exiting retail banking in the UK or lead some to merge with other ring-fenced banks, or to consider restructuring to transfer business to subsidiaries regulated elsewhere in the EU
 - 44.3. the activity restrictions which could impact negatively on product innovation and product availability, especially for smaller businesses;
 - 44.4. cost pressures which could mean job losses and branch closures.
- 45. There may also be entry from EEA regulated banks that have less onerous ring-fencing requirements. Such moves would expose customers to non-UK depositor protection. Recent experience with Iceland, an EEA country, suggests that there could be serious problems and costs associated with this.
- 46. Further, UK regulated banks could set up new EEA banking subsidiaries to take advantage of these possibilities.
- 47. We make a number of further points on competition in Annex 3. We would be happy to discuss issues such as the impact of the ring-fence on competition, especially in the context of EU Single market rules, at the request of the Committee.

Delegated powers and accountability

9. The draft Bill grants a large number of delegated powers to the Government. Are the principles under which delegated powers are to be exercised sufficiently clear?

48. The delegated powers approach has both strengths and weaknesses. For example, the significant number of delegated powers¹⁴ makes for significant legal uncertainty. However, in the context of 'front running' EU proposals, it does give the UK the flexibility to adapt the ring-fence in light of what emerges from the EU.
49. The high level of uncertainty associated with delegated powers will make Parliamentary scrutiny of what is actually brought into force difficult. No doubt Parliament will consider whether this form of legislation gives sufficient accountability on such an important subject.
50. Law firms advising clients on implementation will find it hard to give clear advice if the rules are going to emerge piecemeal and are liable to change at short notice. This is particularly concerning as legal certainty is a key element in the attractiveness of English law to international business and finance. We believe that Government should strive to uphold this principle when it legislates and should delay legislating if it cannot reasonably provide such certainty.
51. Further, we consider that this way of legislating runs a risk of unintended consequences. Without significant scrutiny some of these could be very significant indeed. We note that in the White Paper some of the proposals on restrictions on use of non-EEA law could damage the competitiveness of English law. The Bill appears to still allow the Treasury or FSA to forbid contracts governed by non-EEA law, with serious knock-on effects for access to certain suppliers of services and for the English legal market. The Law Society continues to seek a clearer statement that a protectionist measure of this sort will not be introduced. In Annex 2 we set out in more detail our views on the danger to the English and Welsh jurisdiction of such proposals and would be happy to provide further comment on these at the request of the Committee.

10. Does the scope of the delegated powers in the draft Bill represent an appropriate balance between flexibility for the Government to respond to changing conditions and accountability to Parliament and the public?

52. Flexibility in the ring-fence is a good thing.
53. There is merit in tailoring the implementation of the ring-fence to individual institutions to some extent, in order to minimise the damage sweeping general rules could have on a particular bank.
54. The framework should be a body of purposive rules framing the arrangements the regulator comes to with each bank.
55. This balances the certainty of a clear framework with the flexibility required for such a complex measure as ring-fencing.

11. Is there sufficient clarity about the Government's intended use of delegated powers, both to enable public understanding and to enable affected banks to prepare for the proposed changes?

¹⁴ Set out in clauses XX of the draft bill.

56. No. There is insufficient clarity in the delegated powers in the draft bill.
57. Inevitably, when there is little detail on what the secondary legislation will contain (and EU legislation proposed which could bind UK regulated banks to another structure) there will be uncertainty. Not only does this mean banks may waste money preparing for one model and find they have another, but the situation undermines the giving of accurate legal advice, on which banks can base their plans. This prospect of confusion could raise costs even further.
58. The wide ranging use of delegated powers appears to be a function of the fact the Government is pushing this Bill through quickly, leaving little room for the detailed scrutiny that is required for such a complicated new set of laws.

12. The draft Bill provides for review of the ring-fencing rules by the PRA every five years. Does the proposed review mechanism provide sufficient accountability?

59. It is sensible for there to be periodic reviews of the ring-fence. We would support this being extended to depositor preference if introduced.
60. Once a review is published by the PRA we believe that it should be debated by Parliament and scrutinised by the Treasury Select Committee. We believe the Committee should consider suggesting that the Bill should contain a sunset clause, which would coincide with the PRA reviews. Such a clause would then force legislators to actively evaluate the benefits or otherwise of the ring-fence model. We believe that suggestions along these lines will significantly increase accountability and further ensure that if the ring-fence is not working or is not cost effective, there is the opportunity to repeal or alter it.

The ring-fence

13. Is the power to be able to exempt certain categories of deposit-taking firms from having to establish a ring-fenced bank appropriate, and on what basis should the conditions for exemption be set?

61. This type of exemption would be appropriate to avoid unnecessary difficulties for banks and appears consistent with Liikanen. It may have the further effect of making it easier for the UK proposals fit with the emerging EU measures. However, the competition impact of allowing some institutions to be exempted and others not has to be managed carefully.

14. Is the range of core and excluded activities defined in the draft Bill appropriate and sufficiently broad? Are the Government's stated intentions for using powers to define further core and excluded activities appropriate?

62. With so much left for secondary legislation it is difficult to know the final extent of the ring-fence and thus difficult to make a final judgement.
63. However, it is our view that many of the suggested product restrictions in the White Paper appear not to be aimed at ensuring the integrity of the ring-fence or otherwise furthering the prudential regulation of ring-fenced banks, but at consumer protection.
64. It is important to avoid the ring-fence being driven by conduct of business/consumer protection concerns. The sole motivation for deciding where to draw the ring-fence should be what is the most credible method of ring-fencing which works for bank customers and thus the competitiveness of the UK banking sector. As we have previously noted it is vital that due account is taken of proposed product intervention powers included in the Financial Services Bill and the revised form of MiFID. Cutting across these other initiatives will increase compliance costs, and result in unnecessary overlap. In Annex 2 we set out some examples, where we consider that it could be damaging if the proposed split between 'core' and 'excluded' activities cut across important activities carried out by banks for their customers.
65. We have argued in previous responses that if a purposive approach is adopted to defining the ring-fence and what should be included and excluded, then the need for complex exemptions for example, should be reduced. We fear a complex lists of dos and don'ts will create regulatory complexity, increase compliance costs, reduce room for innovation and lead to a 'check-list' rather than a responsible approach.

15. Which categories, if any, of customer should be permitted to deposit with a non ring-fenced bank?

66. We consider that trying to restrict the customer is unlikely to work and may raise legal concerns, in relation to EU law. We believe that the restriction may work better if it falls on the UK regulated non-ring-fenced bank, not the customer. We note that if Liikanen were implemented this restriction should not be necessary or would be very narrow as the separated out proprietary trading activities of a bank would not include ordinary deposit taking.
67. We note that customers will be free to place their deposits with non-UK banks regulated in other EEA Member States. These banks are and will continue to be able to exercise their passport rights to provide retail banking services to customers in the UK (either from abroad or through UK branches) regardless of structure.
68. If the White Paper proposals are fully implemented through secondary legislation those customers who bank with ring-fenced banks could suffer a considerable diminution in

the services their UK regulated banks can offer them, ranging from foreign exchange and overseas banking management to levels of return, the exact extent of which is currently unclear because of the wide range of restrictions being canvassed.

69. We also believe there are important issues in relation to adjunctive retail banking and insurance products, which we would be happy to discuss further at the Committee's request.

16. The Government is considering whether to allow ring-fenced banks to offer simple derivatives to their customers. Should they be allowed to? If so, what safeguards would be necessary?

70. Businesses need a wide range of banking services, especially exporting business. The latter often require hedging products, particularly to manage exchange rate risk and, also from time to time to manage interest rate risk. There is a danger that, if a ring-fence is drawn badly, access to the full range of business banking services by some companies could be badly affected.
71. The law can be a blunt instrument. It is important to ensure that sweeping divisions between what can be offered from within the ring-fence and what cannot do not lead to unintended negative consequences further down the line for UK businesses. These need to be considered carefully. It is our view that the various impact assessments undertaken by the ICB and HM Treasury have not adequately addressed the impact of the reforms from the customer perspective.
72. We acknowledge that the rules in relation to ring-fencing need to straddle an often tricky divide between clarity and certainty on one side and flexibility and minimising damaging consequences on the other. We do not believe that this balancing act can be adequately carried out until there is greater clarity as to what may or may not be enacted at the EU level.

17. Are the proposed corporate governance arrangements between the ring-fenced bank and the wider group sufficient to ensure the independence of the ring-fenced bank? Are these arrangements compatible with directors' duties and principles of accountability?

72. We consider that the corporate governance proposals in the White Paper would be sufficient to guarantee independence. However, in our response to the Treasury's White Paper we note that while the independence of a ring-fenced bank needs to be underpinned by strong governance, the proposals probably went further than was needed. For example the proposals in the White Paper appeared not to take into account the myriad rules that the law currently places on Directors and the governance of companies.

18. How appropriate are the proposed restrictions on exposures and operational dependencies between the ring-fenced bank and the rest of the group? Will these result in a sufficient degree of independence and resilience?

73. We believe that it is unlikely that the ring-fence the Government proposes will achieve the significant improvement in retail bank resilience which the Government intends. Indeed the restrictions between the ring-fenced bank and the rest of the group, as proposed, may reduce resilience.
74. While the introduction to the draft Bill offers some reassurance, the proposed ring-fence could still potentially have an artificially limiting effect on international services needed by the customers of a ring-fenced bank, so forcing affected customers to deal with two banks or seek out a less restricted bank.

75. However, when deciding on the restrictions on exposures and operational dependencies it is worth bearing in mind that total separation between the retail and wholesale sides of a banking group and the break-up of a single legal entity would mean that the large exposure rules will apply. These would significantly limit the flexibility of the group to move capital between the retail and the wholesale parts of the banking group. This in turn would probably require a bank to look beyond its group for funding – increasing its overall cost of funding and, in general, having a substantial impact on its capital requirements and its cost of capital.
76. In the event that, despite the large exposure limits, further restrictions are proposed, then we believe there needs to be clarity as to whether the regulator would set limits on the proportion of its funding that a ring-fenced bank receives from the rest of its group. Furthermore, we consider that the terms of that funding should be regulated on a case-by case basis or a formulaic approach in order to ensure the economic independence of the ring-fenced bank. Each has merits and potentially adverse consequences. Whatever is decided upon needs to be costed, together with the costs of complying with the large exposure rules.
77. We have a number of other concerns in relation to restrictions on exposures and operational dependencies, which we would be happy to discuss in more detail or provide further perspective on at the request of the Committee. A brief outline of them is set out in Annex 4.

19. Will it be possible to effectively monitor and police the ring-fence, given the degree of regulatory discretion the draft Bill proposes?

78. In practice the ring-fence would be easier to police, if it was placed where there was a more logical division between activities.
79. We note that the Liikanen review proposes a ring-fence in a place that is likelier to be easier to sustain and with less negative side effects.
80. Wherever the ring-fence is placed it will be important to ensure that the parameters are properly policed.
81. The key will be good regulatory oversight and effective auditing of the ring-fence. The regulators need to be clear with the banks on what they require the banks to do and the regulator needs to have the right monitoring measures in place.
82. Within such a context some discretion should make things easier, as it will allow some element of tailoring to the particular circumstances of the bank.
83. A purposive approach would help ensure this could be done as effectively as possible.

20. How effective will the provisions on corporate governance for ring-fenced banks be in promoting a wider improvement of standards? Should other measures also be considered?

84. As we have stated previously we consider that other regulatory tools will be of greater importance in promoting a wider improvement in standards in banking e.g. the FSA/ FCA approach to authorising individuals.

Depositor preference

21. Is the proposal to prefer insured deposits in the event of a bank insolvency justified? Is there a case for broadening the scope of deposits which benefit from this protection?

85. We believe that the existence of the FSCS negates the need for deposit preference measures. The UK scheme also extends to certain small companies and may extend to all companies if EU law so requires. We note that in Dunfermline, the Bridge Bank was able to arrange transfer on commercial terms to Nationwide Building Society of the entire relationship with a number of customers outside the initially protected class.
86. Further, it is our concern that in a non-cash-rich insolvency such preferences could be very damaging to recovery by other creditors, including unprotected depositors. It may create perverse incentives, by encouraging banks to borrow on a secured (collateralised) basis. Currently unsecured lenders can be expected to exert some financial discipline but if they were to become secured lenders they would lose the incentive to provide this.
87. In addition, the costs of bank funding would be increased if this type of statutory priority was to be put in place. This may be for a number of reasons, including the fact that it would make it difficult to conduct a reliable credit analysis and this would be likely to raise borrowing costs for relevant banks and their customers.
88. It is our view this fundamental attack on the rights of ordinary creditors is not justified merely because it might ease the carrying cost for the FSCS. FSCS is a guarantee scheme for a class of unsecured liabilities intended to be funded ultimately by the banking industry as a whole. We have seen little evidence for the case that other creditors of a particular failed bank should bear the whole burden of the guarantee being called.
89. It is important that ordinary creditors of banks are treated in the same way as ordinary creditors of other businesses which may fail: for example, there appears to be no justification for the unpaid supplier of goods and services to a financial institution being subordinated to depositors, when they would not be put below (for example) parties who had paid in whole or in part for goods not yet delivered on the failure of a manufacturing company.
90. We believe strongly in the fundamental principle of UK insolvency law that '...In principle all unsecured creditors should have the same rights in the insolvency, even if they have collateral protections (such as a deposit guarantee/insurance scheme, which is ultimately separately funded)'.

Capital levels

22. Does the draft Bill adequately implement the ICB's recommendations on loss absorbency requirements?

91. As set out at paragraph 3 of the explanatory document these are being addressed largely through alternative means, not this Bill. Nevertheless we have some concerns about relying on bail-in as an important element in the proposed Primary Loss Absorbing Capacity.

23. The draft Bill gives the Government power to direct the way in which the regulators can implement loss-absorbency requirements. How appropriate and well-designed is this power?

92. It is better for the regulator to decide how to implement loss-absorbency requirements, subject to clear rules and principles. Once the rules are set it should not be a matter for political intervention.
93. Leaving significant discretion with the Government is likely to undermine certainty and clarity in the system. It also raises questions about the possibility of interference in cases where the decision is best made by the regulator as it is closest to the institutions in questions.
94. It should also be noted that the EU regulator may overrule the UK and therefore the discretion of the Government is limited.
95. A margin of discretion for the parties concerned is key when it comes to how banks meet their reserve requirements, and their ability to absorb losses in general.
96. While regulators should set the minimum requirements in respect of banks' loss absorbing capacity, it should be up to the banks themselves to decide what mixture of tools is most appropriate for them (including potentially voluntary bail-in which would be agreed with those providing the bank debt in question).

24. Is the Government's stated intention for the design of loss-absorbency requirements workable? Will it provide a sufficiently well-capitalised banking system? In particular, how justified is the intention to allow an exemption for assets held in overseas operations?

97. The Government should further review the loss-absorbency requirements as a number of questions remain outstanding in this respect. A thorough impact analysis needs to be undertaken.

25. Is the Government justified in its decision not to implement the ICB recommendation for a higher leverage ratio than is required by Basel III?

98. Yes. Given other policy measures currently under consideration and the current shortage of credit in the economy and of assets which may be used as collateral within banks, this seems sensible.

Resolvability

26. Will the UK authorities have the necessary tools and powers (as a result of this legislation and other initiatives) to be able to resolve a large failing ring-fenced or non-ring-fenced bank, while maintaining financial stability and minimising the risk to public funds?

99. If the reforms are put in place the authorities may have more chance of resolving a large failing bank, but paradoxically it seems to us that the chances of needing to do so have been substantially increased, at least as regards ring-fenced retail banks.
100. Their business model will be similar to the model of building societies, which have been forced to consolidate in the current climate and cannot offer vibrant competition. Former building societies with more aggressive competition models, but which did very little that would not be permitted within the proposed ring-fence, failed spectacularly. Retail banks could face similar cash-flow and profitability issues, exacerbated by their narrow business model.
101. It could reduce the implied public subsidy to some degree, but against that the cost and profitability issues of the proposed narrow retail banking model might mean that government subsidy (e.g. the proposed business bank) has to become a permanent feature. The costs of this and other incentives to encourage banks to lend to business have not been taken into account in the impact assessments we have seen.
102. With so many unanswered questions in the draft Bill it is hard to tell conclusively what the consequences are likely to be.
103. Alternative measures might be needed that will minimise systematic contagion – e.g. the wide form of bail-in that includes ordinary depositors above the guarantee limit is not consistent with all or part of a bank continuing as a going concern. The contagion of failure would thus be more widespread than in ordinary insolvencies, where customers and creditors of the sound parts of a failing business are protected from contagion by having their contracts ‘hived down’ to a business sold as a going concern. This would not be possible where such liabilities are converted into illiquid equity and therefore more customers and suppliers might suffer from contagion.

27. What is your assessment of the Government’s preferred design of “bail-in” powers needed to improve bank resolution? How likely is it that the Recovery and Resolution Directive will deliver effective bail-in powers?

104. Bail-in raises a number of concerns and we refer with approval to the comments in the Liikanen report which recognises that adoption of the wide form of bail-in proposed in the EU RRD is not wise.
105. A bail-in policy which is limited in nature, and which is clear on the liabilities to which it applies, is the most workable. The range of liabilities which can be ‘bail-inable’ should be defined clearly and limited to suitable classes of liability, where the value of the liabilities can be readily ascertained. Bail-in requires strict safeguards and protections, so that (i) investors and counterparties cannot be taken by surprise, (ii) funding is correctly priced and (iii) the rule of law is respected.
106. Ideally bail-in reforms need to be international, rather than confined to the UK or EU. A G20 agreement (or similar) would ensure as level an international ‘playing field’ as is practical.
107. In the absence of a G20 (or similar) agreement the RRD is likely to be the best vehicle for implementing a system of bail-in system, if the current RRD proposals are

altered and the Liikanen proposals followed. With the likely effect of bail-in risk on the cost and availability of capital for banks, we would caution against the UK introducing bail-in unilaterally. Such a move (affecting banks both within and outside the ring-fence) would be severely damaging to the competitiveness of UK regulated banks and would discourage banks from outside the EEA maintaining subsidiary banks in London. This would lead to a loss of inward investment and jobs.

Impact assessment

28. Is the impact assessment of the costs and benefits credible and balanced?

108. The Impact Assessment appears to analyse the cost of each element of the ring fence from a macro-economic perspective e.g. there is no micro-analysis of the impact of the ring-fence on key bank customer groups.
109. A thorough assessment should try to evaluate the impact of the ring-fence on the ability of a UK ring-fenced bank to meet the full range of their customer's needs, such as those who:
 - 109.1. trade in non-EEA currencies (particularly US\$);
 - 109.2. principally trade with partners who are outside the EEA in non-EEA currencies; or
 - 109.3. need to finance and operate a manufacturing or other business facility outside the EEA seamlessly with a principal UK business.
110. It should not be forgotten that entrepreneurial SMEs may do some or all of the above.
111. Further, we have previously noted '...the rise in various forms of "shadow banking" which seek to exploit a lack of funds from traditional banking sources. These businesses currently operate outside of the banking regulatory regime...They cannot therefore necessarily form an alternative. In any event with the growth of the sector, greater regulation would be inevitable to contain risk. We note, however, that neither the impact of currently available forms of 'shadow banking' nor of greater regulation of that sector are considered. This is another gap in the impact analysis'¹⁵.

29. Might there be any other unintended consequences which have not been considered?

112. We see two chief unintended consequences:
 - 112.1. negative impact on the legal services industry if the White Paper proposals on governing law of significant contracts is adopted; and
 - 112.2. wider detrimental consequences for businesses, including SMEs.
113. In 2011 legal services generated £25.5bn of income for the UK, almost 2% of GDP and including £3.6bn of export earnings.
114. Legal services are a vital enabling service for the banking sector and other parts of the financial services industry.
115. The general principle of limiting the exposure of ring-fenced banks to international banking services and more specifically of curtailing the ability of retail banks to contract major obligations under non-EEA laws could have an adverse effect on UK legal services.
116. These proposals could prevent ring-fenced banks from making major contracts under respected legal systems such as those of New York law or Switzerland.

¹⁵ Law Society (2012). 'Banking reform: delivering stability and supporting a sustainable economy: Law Society response to the HM Treasury White Paper', pub: LSEW: London, pg 7.

117. This would prevent retail banks from making significant contracts under two of the three most important types of law for international business and financial activities.
118. The measure appears protectionist (even if this is not its motive) and invites retaliation.
119. It carries the prospect of a direct and negative impact on the volume of work for UK lawyers and legal firms.
120. In the long-run such a restriction may provoke a shift away from the UK both as a financial centre and as a centre for the resolution of international disputes, as more important international contracts would be written under other systems of law.
121. Restrictions on use of law would not reflect the UK's obligations to respect the law and jurisdiction of many non-EU countries (including Commonwealth countries) with whom the UK has entered into Treaties on the mutual enforcement of judgments.
122. They also ignore the general approach of international law to comity between nations, an area of international law in whose development the UK has played a leading part.
123. Restricting freedom of contract is a form of protectionism, when the success of the UK legal services sector depends on its openness. Such a state of affairs could lead to retaliatory action by other jurisdictions, damaging legal relations and in turn reducing the extent to which English law is used in international dispute resolution.
124. Such a restriction on use of law is unlikely to be consistent with the needs of the customers of ring-fenced banks. For example:
 - 124.1. to be able to arrange clearing services in New York to enable their customers to make US Dollar payments. Large sums will be involved but it is unlikely that New York clearing banks will be willing to contract other than under New York Law;
 - 124.2. to provide letter of credit and other international banking services ring-fenced banks will need relationship agreements with banks in a wide range of jurisdictions. It will not always be possible for these to be written under the law of some part of the EEA and local law will need to be used. Customers of ring-fenced banks will be at a real trading disadvantage if they cannot get comprehensive services for international business: many small UK businesses are significant exporters outside the EEA and others are in markets where the currency of account is not sterling or the euro, most commonly the US Dollar. They need to be able to access letters of credit, which are valuable instruments for international trade, including with developing countries, and to access foreign exchange services, including currency risk hedging;
 - 124.3. ring-fenced banks could be limited in their ability to serve their customers and get best value for money in their procurement if they cannot use foreign laws. This could disrupt both supplements to existing contracts e.g. for IT, governed by foreign law and new contracts. Ring-fenced banks could be prevented from getting the best technical solutions or best price if these came from suppliers who prefer to use their own law;
 - 124.4. when coupled with the restrictions on dealing with non-ring-fenced banks and operating outside the EEA UK retail banks may face difficulties in, for example, accessing US dollars to meet the needs of customers who deal in

products priced in that currency (e.g. oil and gas, grain etc.): no proper assessment has been carried out of potential problems in this area and none of the ICB (who do not appear to have considered this particular restriction at all) or the Treasury papers give much thought to this question.

125. A large corporate customer staying with the same group will have much of its relationship with the other side of the ring-fence, but will no longer be able to get a global netting agreement, since presumably netting across the ring-fence will not be allowed. The result of this is that the cost of its banking will be much increased and the both parts of the banking group are likely to need to hold greater capital as they cannot net off deposits and loans on opposite sides of the ring-fence. On the other hand, an international bank regulated elsewhere in the EEA will be able to offer them seamless services wherever it does business and full netting.
126. Because current account management and money transmission seems likely to be a province of the ring-fenced bank, the large corporate may not be able to get all his banking relationship onto the other side of the ring fence, so as to preserve netting advantages.
127. A smaller corporate customer may suffer in the same way – for example if it has a business and an account with a member of the banking group outside the EEA.
128. A customer also has the option of placing deposits with non-UK regulated banks. EEA passported banks, regardless of structure, are free to trade in the UK (whether on a cross-border basis or through the establishment of one or more branches in the UK) and only either EU law or their national regulator could enforce that they do so with a ring-fence structure or limit their customer base.

International issues

30. What will be the impact of the proposals on the international competitiveness of UK banks?

129. We believe that the impact of the proposals is likely to be a negative one. This is because of the substantially raised cost of doing businesses, together with a constrained business model that does not follow a natural split in types of business.
130. Following Liikanen, the proposed model seems likely to give an advantage to banks using EU passporting rules to enter or operate in the UK market.
131. The proposals will reduce the attractiveness of UK retail banks as service providers for international businesses because of the limits on the services they are able to offer as retail banks and the need for the customer to deal with two banks to obtain services currently supplied by one.
132. Rules on the free movement of capital and services and the right of establishment, mean that it would be a breach of the UK's treaty obligations to seek to prevent UK nationals or residents, UK SMEs, or UK branches of foreign registered SMEs (whether from within or outside the EEA) from dealing with less regulated passported banks, since it would effectively negate the passported banks' right of establishment in the UK under their own lead regulator to provide the full range of banking services.
133. Individuals needing accounts abroad are also likely to be affected. If a UK national is working outside the EEA (or in an EEA State where his ring-fenced bank does not have a branch) he or she might be forced to bank with a non-UK regulated bank. The branch or subsidiary of an international banking group headquartered in the UK which offers personal banking services e.g. in the United States, will necessarily, as the proposals are framed, be outside the ring-fence (and so will a subsidiary providing banking services within the EEA) and the fellow group member structure will subject it to a degree of UK regulation.
134. If subject to UK regulation the bank could not deal with most individuals unless exempted from the regulatory requirements.
135. If not regulated in the UK it may still – under powers in the draft Bill – be controlled in its dealings with the rest of the group. In any event the 'arms-length' exposure rules would discourage the offering of seamless service to 'significant individuals'.

31. Are the proposals consistent with existing and forthcoming international and EU regulatory initiatives, for example the recent Liikanen Report? To what extent are they likely to be superseded or generate conflicts?

136. The current proposals do not appear to place the ring-fence in some place as the Liikanen proposals and may give rise to complex overlaps and conflicts. However, without further detail on the content of secondary legislation (both UK and EU) it is difficult to tell what those specific conflicts might be.
137. Furthermore, the Liikanen proposals are themselves under consultation and will take time to be implemented. It is difficult to know what form they will take, but given the attachment of civil law countries to universal banking, they will be unlikely to follow the form of the UK proposals.
138. The complicated policy environment and the high level of uncertainty with regard to future developments support the argue against the UK running ahead of other

international development and legislating, at least until it is clear what is happening elsewhere and how it will impact the UK.

139. As we have previously noted, the plan to move forward with UK rules in this area needs to take into account the potential impact of the emerging regulatory philosophy at EU level, as evidenced in the banking context by the recent establishment of the EBA. This is likely to involve increasingly detailed European legislation, greater use of Council Regulations having direct legal effect in Member States and increased restrictions on the ability of Member States to adopt super-equivalent local measures which go above and beyond the standards outlined in European legislation. This will almost certainly make it more difficult for individual Member States to adopt local measures that deviate from agreed uniform European standards. The EBA (in common with the other European Supervisory Authorities) is expected to play a significant role in adopting binding technical standards relating to European legislation and ensuring that this legislation is correctly implemented, interpreted and applied by individual Member States. We therefore imagine that, over time, the ability of Member States to add to or deviate from agreed European standards and interpretations will be progressively eroded.

Other

32. What other matters should the Commission take into account?

140. The Commission should take account of the need to create a sustainable banking system that can concentrate on serving its customers at a reasonable cost and meet all its customers' needs in the global economy, without ongoing subsidies from the public purse. These goals seem to have been given insufficient weight in the design of the proposed reforms.
141. It should also consider the need to preserve the attractiveness of London as a financial centre and the ability of service industries which contribute to the economy, such as the legal profession, to develop their businesses both at home and abroad.