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(HANSARD)

HOUSE OF LORDS

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Abbreviation	**Party/Group**
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Wednesday, 11 November 2015.

11 am

The House observed two minutes' silence to mark Armistice Day.

Prayers—read by the Lord Bishop of Southwark.

Prisoners: Imprisonment for Public Protection Sentences

Question

11.07 am

Asked by ***Lord Brown of Eaton-under-Heywood***

To ask Her Majesty's Government how many of those still serving Imprisonment for Public Protection sentences have now been imprisoned for more than five times their tariff sentences, and whether their imprisonment will continue indefinitely unless and until the Parole Board is satisfied that it is no longer necessary for the protection of the public that they should be confined.

Baroness Evans of Bowes Park (Con): Of those prisoners serving sentences of imprisonment for public protection at the end of September 2015, 392 had served more than five times their tariff. IPP prisoners will continue to be detained until the independent Parole Board is satisfied that the risks they pose to the public are safely manageable in the community.

Lord Brown of Eaton-under-Heywood (CB): I am grateful to the Minister for that Answer. She confirms that there are in our overcrowded and expensive prison system already several hundred prisoners serving well beyond the appropriate term representing punishment for their offending. Some 392 have done more than five times their tariff term, and many hundreds more have also served well beyond their term. This is of course a form of preventive detention—internment—entirely alien to our traditional criminal justice approach.

In 2012, that whole system was finally abolished and power was given to the Lord Chancellor to amend the test to ensure that those people previously sentenced could finally secure their release. The previous Lord Chancellor failed in that regard. When will this Lord Chancellor finally decide to bring this terrible scourge to an end?

Baroness Evans of Bowes Park: I thank the noble and learned Lord for his question. Of course, I am well aware that noble Lords across the House have raised this issue on numerous occasions. We are taking measures to attempt to address the situation. One positive thing I hope that noble Lords will accept is that the Parole Board is tackling the backlog in oral hearings, which has been reduced by 18% since January. The noble and learned Lord is absolutely right that the Secretary of State has the power to amend the release test. He is extremely mindful of the concerns expressed and of his powers, but there are no plans to use those powers at present.

Lord Wigley (PC): My Lords, the Minister will recall the passion that our colleague the noble and learned Lord, Lord Lloyd, brought to this issue. Since he retired in March there has been a change of Government and of Minister. Could we please have a change of policy, too?

Baroness Evans of Bowes Park: Along with the noble Lord, I pay tribute to the much missed noble and learned Lord, Lord Lloyd. I hope that the noble Lord sees that we take this extremely seriously. As I mentioned, we have started to tackle the unacceptable backlog—but more needs to be done. Through the indeterminate sentences prisoner co-ordination group, we have also looked at improving processes. Waiting times for transferring IPP offenders to open prisons has fallen from around nine months to six to eight weeks. We are prioritising places on offender behaviour programmes and interventions. We are encouraging offender managers to draw up sentence plans that consider a variety of interventions. NOMS has also undertaken a series of reviews which we are looking to implement, particularly for prisoners who have had four or five post-tariff reviews and still failed to progress. I understand the concerns raised by noble Lords but we are taking action.

Lord Beecham (Lab): My Lords, on 3 December 2014, I asked the noble Lord, Lord Faulks, what courses to promote rehabilitation were available for IPP prisoners other than those sex offenders for whom he had confirmed that,

"the Government have increased the number of commissioned completions of courses".—[*Official Report*, 3/12/14; col. 1317.]

With his customary deftness and elegance, the noble Lord avoided answering the specific question. I ask the Minister the same question: what is the position in relation to the provision of these essential courses for other IPP offenders?

Baroness Evans of Bowes Park: The noble Lord will be aware that it is not mandatory for IPP prisoners to complete specific courses and programmes before they can be considered for parole. In fact, the sentencing planning guidance reinforces the Parole Board's general obligation to consider the offender's risk level, so that it can also look at broader evidence such as training and education, specialist support and demonstrating a sustained period of stable behaviour.

Lord Dholakia (LD): My Lords, one of the successes of the coalition Government was the abolition of the IPP, which applies to current and future offenders but not to those already in the system. Will the Minister confirm that there are serious delays in the assessment process, including delays at parole hearings, resulting in inmates remaining in our prisons often years after their release dates? What steps are being taken to end this injustice? Surely, if the Secretary of State is serious about reducing the prison population, he should deal with the anomaly that the abolition of IPP sentences has created for those in custody now.

Baroness Evans of Bowes Park: As I said, we have taken steps to improve the efficiency of the Parole Board, and we allocated an additional £1.2 million of funding to help it deal with the backlog, which is improving: since January, there has been an 18% reduction. But we accept that there is more to be done, and we will focus our energy to make sure that the backlog continues to decrease.

Lord Cormack (Con): My Lords, given the widespread concern on this issue, and given that the protection of the public is something we must also take closely into account, will my noble friend and her friends in the department arrange for a confidential briefing for Members of this House on why some of these people are serving such very long sentences?

Baroness Evans of Bowes Park: I am certainly happy to speak to my noble friend Lord Faulks about that when he returns. I am sure he would be happy to do that.

Lord Morris of Aberavon (Lab): Does the Minister agree that the delay in considering cases is reprehensible, but the safety of the public must always be paramount?

Baroness Evans of Bowes Park: I thank the noble and learned Lord for that comment. He is absolutely right—the Parole Board can ensure that these prisoners are released only when it determines that the risk has been reduced and they can be safely managed in the community. These are extremely complex cases, and we have to be mindful of ensuring that prisoners feel they are progressing, but, equally, that the public are kept safe.

Lord Ramsbotham (CB): My Lords, can the Minister tell the House how recent the risk assessments are to which she referred? In my experience, some are very old and the prisoners have changed in the time since that assessment was made.

Baroness Evans of Bowes Park: The detailed analysis of the prisoners who fail to progress to open conditions post four or five tariff reviews happened very recently. That analysis has just finished, and the central team that undertook it is now passing on recommended actions and plans to the staff working with those prisoners. Progress will be kept under review. The next stage of the central team's work is to review the larger group of IPPs who have had three negative post-tariff parole reviews. So this is ongoing work.

All-Party Parliamentary Groups
Question

11.15 am

Tabled by ***Lord Empey***

To ask the Chairman of Committees when, why, and by whom, the decision was taken to prohibit Members of the House of Lords from serving as chairpersons of All-Party Parliamentary Groups.

Lord Rogan (UUP): I wish to ask the Question standing in the name of the noble Lord, Lord Empey, on the Order Paper.

The Chairman of Committees (Lord Laming) (Non-Afl): My Lords, Members of this House attach great importance to the work of APPGs. Recently, there have been two extensive reviews into the rules on all-party groups; following the second review in May 2014, the House of Commons resolved that each group must have an MP who is the chair and registered contact. That MP is responsible for ensuring compliance with the rules. Members of this House may of course be co-chair of a group and may chair meetings, but that does not affect the accountability of the registered MP.

Lord Rogan: I thank the Chairman of Committees for that reply. However, given that this House has a reputation for its Members having considerable expertise in a wide range of pursuits and disciplines, what is the rationale for prohibiting your Lordships from chairing non-statutory lobby interest groups? Surely, the Chairman of Committees would agree that this sends a somewhat negative signal to the wider community and places us in a somewhat second-class position, regardless of the qualifications that we may have for the position.

The Chairman of Committees: My Lords, I am grateful to the noble Lord for his question. Members will know that the first resolution on APPGs was in 1985 in the Commons, and the Commons has always been in the lead. There have been concerns about the growth of APPGs, their funding and a number of other matters with which Members are familiar. Suffice it to say, it was decided that it was very important to have a clear line of accountability to the House of Commons Commissioner for Standards. Therefore, MPs are required to be registered with the Commons registrar. There was nothing malevolent about that; it in no way minimises the contribution that Members of this House make to APPGs.

Lord Campbell-Savours (Lab): My Lords, is there not some concern, expressed by some Members in the Commons, that the rules of advocacy are more rigorously enforced in the House of Commons than they are in the House of Lords? Some Members in the Commons feel that if Peers were to be chairmen of APPGs, there might be occasions when elected Members might be embarrassed.

The Chairman of Committees: My Lords, I am not really qualified to reply to the noble Lord in detail. Suffice it to say, the review that was recently undertaken set out very clearly not only the responsibilities of the MPs who are registered for chairing and accountable for the APPGs, it also gave them opportunities to book rooms, and gave them preference in those matters. It is a balanced approach that was established at that time.

Baroness Greengross (CB): My Lords, would the Chairman of Committees not agree that a simple adjustment to what has been decided would be much fairer, because a lot of people from this House do a great deal of work on these committees? The simple adjustment would be to have two co-chairs, one from the House of Commons and one from the House of Lords, but with the one from the Commons being the accounting officer. That would solve the problem, so that the Commissioner for Parliamentary Standards would always be satisfied about standards. I have this role on several international bodies registered with the United Nations and other international regulatory bodies, and it is accepted.

The Chairman of Committees: My Lords, the position, as I understand it, is simply being quite clear about the accountability that goes with these groups. A number of concerns have been raised about them. Although it may seem that this House is in some way disadvantaged, that is not the intention. The intention is to make absolutely clear where the accountability rests for the compliance that is necessary to make sure that these groups operate well within the rules of Parliament and do not bring either House into disrepute. I understand that at present there is no appetite in any way to undermine that accountability.

Lord Naseby (Con): Is my noble friend aware that when I founded the All-Party Parliamentary Group on Sri Lanka in 1975, it was the convention that the chairman should always be in the Commons? However, the disappointment for those of us who take an interest in these different groups—I confess I take an interest in a number—is that there was no consultation with your Lordships' House when this review was undertaken. It was suddenly announced out of the blue. Can one hope that the noble Lord the Chairman of Committees will ensure that, in future, there is proper consultation through the normal channels and that the rest of us can be part of that conversation?

The Chairman of Committees: My Lords, there have been a number of reviews. The earlier review was set up jointly by the Speaker of the House of Commons and the Lord Speaker, with Members of this House on the review. The most recent review, to which I have referred, was set up in response to some very serious and real concerns. We ought not to minimise the reality of those concerns, but let us be sure that the two Houses continue to work together as much as we can.

Baroness McIntosh of Hudnall (Lab): My Lords, returning to the question asked by the noble Baroness, Lady Greengross, is it not right that the arrangements she described are pretty much exactly those that obtain to all-party groups; that it is possible for Members of the House of Lords to be co-chairs, as the noble Lord mentioned in his original Answer; and that, in practice, a number of all-party groups are effectively chaired by Members of your Lordships' House?

The Chairman of Committees: My Lords, there is a distinction between chairing the meeting of the day and being recognised as a co-chair, and being the responsible person who has to comply with the rules. I urge a little caution before we in any way try to minimise the importance of those rules.

Rugby World Cup 2015
Question

11.23 am

Asked by ***Lord Lee of Trafford***

To ask Her Majesty's Government what is their assessment of the tourism benefits to the United Kingdom of hosting the Rugby World Cup.

Lord Lee of Trafford (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and in doing so declare an interest as chairman of the Association of Leading Visitor Attractions.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, consultants Ernst & Young forecast that the event would attract more than 460,000 international visitors to England and Wales, the highest ever for a world cup, spending almost £1 billion and generating up to £2.2 billion output for the economy. Provisional figures on the economic benefits will be available in February with final data in May.

Lord Lee of Trafford: My Lords, while sporting events such as the Rugby World Cup, Wimbledon and the Tour de France are a welcoming tourism bonus, the cornucopia of our built heritage—our museums and galleries—generates core tourism. Last year, more people visited the V&A, the Natural History Museum and the Science Museum combined than visited Venice; more people visited the British Museum and the National Gallery combined than visited Barcelona; and more visited the Southbank Centre, Tate Modern and Tate Britain combined than visited Hong Kong. More people visit heritage properties every weekend than attend soccer matches. Do not these statistics and the renovation situation we now face here in Parliament emphasise how vital it is for the Treasury fully to maintain spending on our rich tapestry of national heritage?

Baroness Neville-Rolfe: My Lords, I agree about the cornucopia that the noble Lord described. We actually have a very good system through a number of bodies, such as Historic England and English Heritage, and of course the private sector, including the National Trust and the Historic Houses Association, which do a superb job in repairing our buildings. Obviously we at DCMS will play our part in this challenging spending review, but the cornucopia remains.

Baroness Liddell of Coatdyke (Lab): My Lords, would the Minister remind the Chancellor, when she has discussions with him, that for every £1 that VisitBritain spends in promoting tourism in the United Kingdom, £21 is earned from international visitors? Between 2009 and 2013, according to the Office for National

[BARONESS LIDDELL OF COATDYKE]
Statistics, employment in tourism grew by 5.4% when it grew by only 2.8% in other sectors of the economy. We in this House know how concerned the Chancellor is to ensure good opportunities for hard-working people. Will the Minister encourage him to back a winner in this case and continue the investment in VisitBritain and British tourism?

Baroness Neville-Rolfe: My Lords, we are well aware of the strong role that tourism plays in our country and our economy. This is a factor that will be taken into account. Employment is also much higher than the rate in the non-tourist sector. It is a huge employer, which is incredibly important.

Lord Addington (LD): My Lords, does the Minister agree that these big sporting events are an excellent hook that gets people in and allows other things to be developed, and should be seen in that light? Will she also give an undertaking that her department will make every effort to ensure that these are all drug-free in future, and not lose sight of the fact that we might be throwing the baby out with the bath water if we do not get involved in backing international efforts to make sure that all big sporting events are clean in future?

Baroness Neville-Rolfe: My Lords, as the noble Lord well knows, we have the Gold Event Series, launched in November 2012. We invest £50 million of lottery money in bidding for future events, and have had some success. Clearly, the news that we have had this week is a deplorable state of affairs; the WADA report has shocked us all. It is completely right that we should build on the record of the Olympics in having strong anti-doping policies.

Lord Grocott (Lab): My Lords—

Lord Cormack (Con): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I am so sorry to intervene. It is actually the turn of the Conservative Benches, which we have not heard from. While I am on my feet, I remind noble Lords that we are now starting to get very lengthy in the questions that we are asking. I would pay particular attention to some of the original supplementaries that are being asked.

Lord Cormack: My Lords, does my noble friend agree that a little goes a very long way in the field of heritage? To a cathedral needing maintenance, £250,000 means a vast amount; it is a tiny drop in the ocean. Would she convey that message to the Chancellor before the spending round is announced?

Baroness Neville-Rolfe: My Lords, my noble friend makes a very strong point. We had the £20 million First World War Centenary Cathedrals Fund, of course; I was in Norwich this very weekend looking at some of the brilliant repair work that has been done. I think that we in this country are great at looking after historic buildings. We should be telling people overseas and they should be learning from our skills in conservation and architecture.

Lord Grocott: Does the Minister agree that one of the key factors, maybe even the key factor, which made the Rugby World Cup such a celebration and a success was that it was available for virtually everyone in the country to view on what we still occasionally call the terrestrial channels, which are free to air? Is the evidence not crystal clear that with major sports longer available on free-to-air television—notably cricket and, increasingly, golf, not to mention Premier League football—the capacity of the country as a whole to celebrate these events inexorably diminishes?

Baroness Neville-Rolfe: To be brief, I agree that the television coverage of the Rugby World Cup was amazing. We all watched a lot of games, even though the home countries did not do as well as they should have done. Good television coverage is very important.

Baroness Walmsley (LD): My Lords—

Lord West of Spithead (Lab): My Lords—

Lord Berkeley of Knighton (CB): My Lords—

Baroness Stowell of Beeston: My Lords, it is the turn of the Cross-Benchers. We have not heard from them yet.

Lord Berkeley of Knighton: Does the noble Baroness accept that in order to safeguard for the future this cornucopia of heritage of which we are all so proud, we must invest more heavily in the arts and sciences in our schools?

Baroness Neville-Rolfe: The arts, the creative arts and all the things that the noble Lord mentions are incredibly important in the school curriculum, and there has been a lot of investment. Of course, the whole cornucopia that has been described helps with the education process, with visits to national institutions, artistic institutions and theatres. The Arts Council does a wonderful job and will continue to do so.

Lord Collins of Highbury (Lab): My Lords, the noble Baroness mentioned the Ernst & Young report on the potential for a sporting legacy. Does she think that the Government can learn anything from it in relation to the Olympics legacy? Also, in order to stop schoolchildren being put off rugby, could she stop Boris Johnson going on the pitch again?

Baroness Neville-Rolfe: I have no power over Boris Johnson but I believe that the Olympics and the Rugby World Cup have been brilliant in encouraging grass-roots sports, including rugby, for both boys and girls. Of course, the Paralympics have come through as an enormous British strength. This is an area to celebrate.

Higher Education: Part-Time Students
Question

11.31 am

Asked by ***Baroness Sharp of Guildford***

To ask Her Majesty's Government why the Green Paper on higher education published on 5 November made no mention of part-time students.

Baroness Evans of Bowes Park (Con): My Lords, the Government's Green Paper on higher education will ensure that all students, including those studying part-time, benefit from high-quality teaching and the prospect of a good graduate job. The decline in part-time and mature study is concerning, which is why in the last Parliament we took a number of steps to address it. We remain committed to supporting part-time study in this Parliament.

Baroness Sharp of Guildford (LD): I thank the Minister for that reply but I point out to her, as I am sure she knows, that in 2010 there were 267,000 part-time students. Today, there are only 116,000—a drop of 140,000 people in part-time education. Many of them come from the more disadvantaged groups of society and many are mature students who are making good the failings of their earlier education. Given that we have this desperate skill shortage and that we desperately need to get these older people taking the chance to upgrade their skills and improve their education, can the Minister explain why this Government have been so blind to these opportunities? I take on board what she says about the quality of teaching, but the Government have been consulting for six months on what to do about part-time education and there is nothing in this Green Paper about the crisis that has arisen.

Baroness Evans of Bowes Park: My Lords, we have taken measures to continue to encourage part-time students. We have introduced loans for tuition fees and, compared with the year before, double the number of part-time undergraduates now have a student loan. We have enabled second-degree student funding support for specific subjects, and of course we have higher and degree apprenticeships, which are the fastest-growing part of the apprenticeship programme. We take these concerns seriously and are taking action.

Lord Davies of Oldham (Lab): My Lords, the Minister must know that there has been a drop of 55% in the number of part-time undergraduates in our universities. That is a very worrying figure, and even more damage is being done to part-time education in our further education colleges, a third of which this Government look bent on closing. Would the Minister care to comment on those two points?

Baroness Evans of Bowes Park: As I said, we accept that the fall in part-time student numbers is concerning and that is why we are taking a range of measures. I will not repeat them because I know that noble Lords want me to be brief. However, we understand the concerns and are taking action. We consider the FE sector to be extremely important.

Lord Quirk (CB): Is the Minister aware that, this very week, the vice-chancellor of the Open University has called for the restoration of module courses to qualify for loans for part-time students? He says that module courses are the best and most effective way of upskilling people, for the benefit not merely of the individual but of industry itself.

Baroness Evans of Bowes Park: We have decided as a Government that we want to focus the resources that we have in a time when money is tight. We believe that it is best value for money to focus resources on those people undertaking and gaining a qualification. That is where our priority and funding have been.

Baroness Hussein-Ece (LD): I am sure the Minister is aware that 60% of part-time students are female, and they could be disproportionately impacted by any of these changes. How will the Government prevent that and ensure that women will not bear the brunt of any changes, or lack of support, in provision to higher education?

Baroness Evans of Bowes Park: As I said, we are taking a series of measures to try to encourage people who want to undertake part-time courses. Of course we encourage anybody who wishes to undertake upskilling to be able to do so. As I said, we have seen a 43% increase in the number of higher and degree apprenticeships compared to 2013. We have got them in various industries already and another 11 have been approved for development, so we are looking at other ways in which we can encourage people into part-time study.

Baroness Royall of Blaisdon (Lab): My Lords, the Minister says that the Government believe that further education colleges are important. Can she therefore give us an assurance that there will be no closure of FE colleges as a result of the spending review?

Baroness Evans of Bowes Park: I am sure the noble Baroness quite understands that I cannot pre-empt the outcome of the spending review.

Lord Clark of Windermere (Lab): Can the Minister give us some indication of how many students are currently undertaking the highest level of apprenticeship —are actually on a course?

Baroness Evans of Bowes Park: I am afraid that I do not have those exact figures to hand, but I am happy to write to the noble Lord.

Baroness Manzoor (LD): Will the Minister join me in congratulating the record number of ethnic-minority students going into higher education, particularly from the Afro-Caribbean community? This was highlighted in the IFS report yesterday.

Baroness Evans of Bowes Park: I am delighted to join in the congratulations of the noble Baroness. This is something that we are very committed to. The Prime Minister wants to ensure that we increase the number of BME students by 20% by 2020, which is why the Green Paper proposes a new social mobility advisory group to help outline the plans for how we will achieve that.

Lord Campbell-Savours (Lab): A simple question: what is the reason part-time student numbers have fallen by half?

Baroness Evans of Bowes Park: The answer to that is very complex and very long, and I am happy to talk to the noble Lord offline. There are a number of reasons: as I said, we have more people going into apprenticeships, so they are taking different routes; we have more people with an initial qualification, who will not necessarily want to take a second qualification; and we have a growing economy in which people are in stable jobs and able to advance by that route. There are a range of issues.

Trade Union Bill
First Reading

11.38 am

The Bill was brought from the Commons, read a first time and ordered to be printed.

European Union Referendum Bill
Order of Consideration Motion

11.39 am

Moved by ***The Earl of Courtown***

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 3, Schedules 1 to 3, Clause 4, Clauses 6 to 12, Clause 5, Title.

Motion agreed.

Bank of England and Financial Services Bill [HL]
Committee (2nd Day)

11.39 am

Relevant document: 11th and 12th Reports from the Delegated Powers Committee

Amendment 19

Moved by ***Lord Sharkey***

19: After Clause 11, insert the following new Clause—

"Composition of the Board of the PRA

In Schedule 1ZB to the Financial Services and Markets Act 2000, after paragraph 9(b), insert ", and

(c) the chief executive of the FCA.""

Lord Sharkey (LD): My Lords, the amendment does for the PRA what Amendment 7 did for the FPC. I can be very brief—perhaps even audible. The amendment relates to the PRA in its current form, which we will try to maintain by opposing Clause 12. The Treasury briefing note sets out the current composition of the PRA as the governor, the CEO of the PRA, the deputy governor for financial stability and appointments by the court with the agreement of the Treasury, so as to ensure a majority on the board of external members. The Bank website says that five members of the board are Bank officials; that the board has a majority of independent external members, including the CEO of the FCA and five others.

The requirement that the PRA board has a majority of external members is an important provision. Its purpose is clear: it is to protect against and counter overwhelming influence by the Bank. Unfortunately, whether there is really a majority of independent board members is open to significant doubt. It depends on whether or not, as the Bank asserts, the CEO of the FCA can properly be described as either external or independent. As I said on Monday when discussing the status of her membership of the FPC, the CEO of the FCA has, at best, a qualified independence, not to be compared with the true independence of the truly external members. She depends for her job on the confidence of the Chancellor and of the governor. Her organisation is, in many respects, controlled—or can be controlled—or constrained by the Bank or its organs. The summary sacking of her predecessor, Martin Wheatley, by the Chancellor, with, no doubt, at least the agreement of the governor, is a clear and dramatic illustration of just how much independence the CEO of the FCA has when it comes down to it.

When I raised the same point in the context of the FPC, the Minister disagreed. He asserted simply that the FCA was a completely independent body. The evidence for this is pretty thin, as others have noticed. As recently as August, the Adviser Lounge ran an article headlined:

"Financial advice review shows FCA is not independent".

It concluded that the regulator can be pushed, both formally and informally, into enacting the Minister's will. It quoted an historical example. It noted that the former Housing Minister, Grant Shapps, intervened directly in the FCA's mortgage market review consultation in December 2010—and Grant Shapps was not even a Treasury Minister.

We need to make absolutely certain that the PRA as currently constructed has a majority of truly external members. These members are the equivalent to non-executive directors; their externality is equivalent to independence. The CEO of the FCA, on the contrary, is not by any reasonable test entirely independent of the Bank. The amendment does not remove her from the board of the PRA but simply defines her as external. This means that, in order to ensure the board has a majority of external members, one more genuinely external member will have to be appointed. This is a perfectly simple, reasonable and precautionary measure. I beg to move.

11.45 am

Lord Tunnicliffe (Lab): My Lords, I thank the noble Lord, Lord Sharkey, for filling my morning, because it took me a little time to work out what this amendment meant. It brought home once again the value of professionals in producing the consolidated version of the various Acts. Unfortunately, they did not produce a consolidated version of FSMA 2000, as amended, and it took me some time to find it on the website. It is worth doing because although this Bill intends to delete the appropriate provisions in favour of the Prudential Regulation Committee, what it does is bring out the essence of the point being made by the noble Lord, Lord Sharkey. Reference is made to paragraph 9(b), but first you have to read paragraph 8 of Schedule 1ZB, which states:

"The Bank must secure that a majority of the members of the governing body of the PRA are non-executive members".

I stress that, because when one turns to the proposed replacement for this schedule to FSMA 2000, which is now Part 3A of what will be the Act as amended by this Bill, no equivalent reference is made to paragraph 8 about there being a majority of non-executive members. As the noble Lord, Lord Sharkey, alluded, it goes on to state:

"For the purposes of paragraph 8 and for the purposes of",

the principles to which Section 3C requires the PRA to have, none of the following can be non-executive members:

"(a) the members referred to in paragraph 3(a), (b) and c), and

(b) a member who is an employee of the PRA or of the Bank",

to which the noble Lord proposes to add proposed new sub-paragraph (c),

"the chief executive of the FCA".

I want to bring out two points. First, I agree entirely that in no way can the chief executive of the FCA be seen as a fully independent non-executive. The Minister was at a very fine point the other day when he said that Martin Wheatley was not sacked. My understanding is that his term was to run until March 2016 but I believe that he departed in September, presumably on gardening leave. He did not exactly leave quietly. When addressing a meeting at the Queen Elizabeth II conference centre in London, he said:

"I am disappointed to be moving on",

and that he was doing so,

"with a sense of unfinished business".

He later listed the ongoing work as being to clean up markets through the Fair and Effective Markets review and the implementation of the Senior Managers Regime, which is intended to hold top bosses to account when things go wrong. The article reporting his speech added that the clean-up was prompted by the LIBOR rigging scandal.

Martin Wheatley had many critics and I am sure that he is not a card-carrying member of the Labour Party; I doubt whether he has ever voted Labour, but he was to many citizens who took an interest a man of the people. He took the banks on in a pretty robust way, and I think that an awful lot of people in society felt that the banks needed to be taken on in a robust way. I am sure that he was first leaned on and then eventually fired. It is interesting to note that if you look up the CV of his successor, she is listed as only an "acting" chief executive. In no way can this person be considered to be independent. I assume that when the noble Lord accepts the amendment, he will tidy it up and make a reference to the Prudential Regulation Committee which is to take over the responsibilities presently listed in FSMA 2000. That would introduce a new subsection to what is presently Section 30A of FSMA, which requires there to be a sufficient number of non-executives to outnumber the executives of the Bank plus the chief executive of the Financial Conduct Authority. I think that that is the intent of the amendment even if it is not what it actually says, and I support that.

The whole of the debate on this Bill has been about influence and independence. We will be moving on to the Prudential Regulation Authority or the Prudential Regulation Committee in the clause stand part debate, but I think that not making it clear that there should be a majority of NEDs on the committee is a retrograde step. It almost implies, through the wording of this subsection, that the chief executive of the Financial Conduct Authority is independent.

I have had the privilege of working for Her Majesty's Government, not as a civil servant but in the public sector. I know about being leaned on and I have to recognise that it is very effective. The one thing you cannot say at the end of the exercise is that you are independent.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, I thank the noble Lord, Lord Sharkey, for provoking this debate. Unlike the noble Lord, Lord Tunnicliffe, I have not had the enjoyment of spending my morning looking at FSMA consolidated Acts, but I have been looking into this matter. I do not want to go on at length and repeat ad nauseam what I was saying on Monday. As the noble Lord, Lord Tunnicliffe, said, this comes down to a matter of independence. He is absolutely right to pinpoint that. Despite hearing the cases that he and the noble Lord, Lord Sharkey, mentioned, I remain in no doubt that the FCA CEO should be counted as an external member. She is not an executive of the Bank and the FCA is an independent body entirely separate from the Bank.

Noble Lords should also be aware that the legislation further reinforces external representation on the new Prudential Regulation Committee, as compared with the PRA. The majority of external members, as has been said, is increased compared with the PRA board with at least seven external members, at least six appointed by the Chancellor in addition to the FCA CEO, compared with only five internal members: four officers of the Bank and one appointed by the governor. So, for the PRC, external members will be in the majority by at least two. This compares with a requirement for a majority of one on the PRA board.

It could be argued that if you use the power to add an extra deputy governor to the PRC, that majority of externals is lost. I would argue that the power to add an extra deputy governor to court and to the committee requires secondary legislation, so Parliament will have its say. Furthermore, Clause 1 provides that if secondary legislation is used to add a deputy governor to the PRC,

[LORD BRIDGES OF HEADLEY]

it may also provide for an equal increase in the minimum number of members appointed by the Chancellor of the Exchequer to ensure a continued balance of internal and external members.

I shall leave it at that. I hope that the explanation I have provided satisfies the noble Lord and that he will withdraw his amendment.

Lord Sharkey: I start by thanking the noble Lord, Lord Tunnicliffe, for his support, and for reminding us that if the Government get their way in Clause 12, we will need to revisit the provisions governing the number and the definition of external directors of the new arrangements. I remain unconvinced that the CEO of the FCA can in any reasonable way be described as independent. The Government seem to be relying on the force of simple assertion rather than evidence, but I am sure we will come back to this on Report. In the mean time I beg leave to withdraw the amendment.

Amendment 19 withdrawn.

Clause 12: Bank to act as Prudential Regulation Authority

Debate on whether Clause 12 should stand part of the Bill.

Lord Sharkey: My Lords, Clause 12 abolishes the existing PRA. It defines the Bank as the new PRA, exercising its function through the PRC. The key questions here are why, and what is the benefit? I asked these questions at Second Reading. The Minister, in his letter to me, received last Thursday, answered by saying:

"Bringing micro-prudential regulation more fully into the Bank will support the Bank's aim of installing a unified culture and flexible and co-ordinated working across its twin aims, aims of monetary and financial stability".

That is very nearly weapons-grade corporate speak.

I invited the Minister at Second Reading to say what that means in plain English and to give concrete examples of how it would operate. I again invite him to do exactly that. I also invite him, having explained what it means, to say why it is better than what we now have. Andrew Tyrie asked the governor a similar question on 20 October at the Treasury Select Committee. He made the point that the PRA had been successful and asked why this change was needed if the PRA was not "broke"—if it wasn't broke, why change it? The governor said that no one had made that point to him but he agreed that the PRA had been successful.

Clause 12 brings about a significant change. It brings the PRA directly into the close embrace of the Bank. Despite unevidenced assertions to the contrary, it must reduce the practical and cultural independence of the PRA, and this is absolutely not desirable. Doing all this without a convincing or even intelligible reason is surely the wrong thing to do.

The Treasury briefing paper for the Bill hints at another reason for absorbing the PRA into the Bank—that is, to conform with the governor's "One Bank" strategy aimed at breaking down barriers within the Bank,

"that could stand in the way of a unified culture and impede flexible and coordinated working across the Bank".

There are two worrying things about that statement. The first is the "One Bank" strategy itself. As my noble friend Lady Kramer said at Second Reading, the Parliamentary Commission on Banking Standards had many conversations about the importance of ensuring that,

"the Bank was not one single monolith and that there should be an opportunity for real challenge rather than groupthink".—[*Official Report*, 26/10/15; col. 1073.]

The "One Bank" strategy appears to be in danger of doing exactly that—moving the Bank back to monolith status, suppressing opportunities for real challenge and recreating the conditions for groupthink.

The second worrying thing about the Treasury briefing note statement is the reference to breaking down,

"barriers that could stand in the way of a unified culture and impede flexible and coordinated working across the Bank".

Leaving aside the question of whether a unified culture is always desirable, one has to ask, "What are these barriers?". What barriers have been identified in the workings of the Bank with the PRA?

The position on Clause 12 is that the Government have simply not put forward any compelling reasons for the changes that it produces. We have seen no strong, or even fairly strong, or evidenced argument that either the current situation is unsatisfactory or that the proposed changes would be better. Absorbing the PRA into the Bank is an important and radical step. It should not be taken without strongly evidenced arguments. In the absence of such arguments, we are left with only weakening of the independence of a vital organisation, with no assurance of any real benefit. Like my noble friend Lady Kramer and my former noble friend Lord Flight, I would prefer to see the PRA more independent rather than less. However, if we cannot have a more independent prudential regulator, we can at least try to stop it becoming a less independent prudential regulator.

Lord Carrington of Fulham (Con): My Lords, I refer noble Lords to my interests as declared in the register of interests. It seems to me that these clauses come to the nub of bank regulation in the Bill. The real question that we are looking at is whether it is better to have a stand-alone regulator or one which is integrated into the Bank of England, albeit with Chinese walls, a separate committee structure, independent directors and so on. To answer that question we have to consider why the FSA failed. The FSA was set up very much as a stand-alone organisation with its own rulebook, structures and independence from both the Treasury and the Bank of England, yet it completely failed to identify the problems that were building up in the banking system prior to 2008 and was unable to take action if it did identify those problems. However, there is increasing evidence that it was not even aware that problems were being created.

The noble Lord, Lord Sharkey, suggested that there are no problems with the PRA. That may well be true. Certainly, the PRA has operated well since it was created. I have had personal experience of dealing with people of excellent quality in the PRA and, indeed, of better quality than people in the equivalent posts in the FSA. However, I warn that the PRA has not been tested in the way that the FSA was. There has not been a major financial crisis since 2008. The PRA has not had to face the same problems. Frankly, we do not know whether the PRA would be able to cope with a crisis of the magnitude of 2008 or whether indeed it would suffer from the same problems that the FSA suffered from.

Noon

Answering the question of why the FSA failed, my answer would be, as I suggested at Second Reading—at greater length than I am proposing to this morning—that the FSA failed because it had a lack of market intelligence, not because it did not know what was happening in the Bank's structures or in terms of individual regulated people inside banks. What it did not know was what the banks were actually doing or, more importantly, planning to do. It did not know this in London or the UK's financial services, but it certainly did not know it globally. The problems in 2008 were very largely created by global problems, not UK problems.

Integrating the PRA into the Bank of England will enable—I hope—the market intelligence to be passed informally to the PRA so that it will be able to react to market conditions and the ideas that are being generated in financial services, and to understand what is coming down the pipeline. I believe that that will enable the PRA or the PRC to be much more effective in anticipating future problems.

I have one question for my noble friend the Minister. It is unclear in all the briefing documents whether the Bank of England—indeed, it ought to be the Treasury as well—will operate with this informal connection of the sharing of intelligence and the sharing of understanding of what is going on in the domestic and global financial markets, in order to enable the new PRC to be able to operate in a way which anticipates the future and does not just react to the past.

Baroness Kramer (LD): My Lords, in response to the noble Lord, Lord Carrington, of course the FSA failed in its task as the problem developed over the several years leading up to the financial crisis of 2007-08. But I think it is very wrong to claim that the Bank of England did not also fail during this period, despite its access, as he reasonably said, to very extensive market intelligence. One of the frustrations of this House was that although the FSA recognised its failure, I am not sure that even up to this day the Bank of England has ever accepted that it played its role in an inadequate way during that period. Indeed, that has been part of the problem in putting remedies in place because, as many have said, a change in culture is an essential part of that process.

Lord Carrington of Fulham: The noble Baroness is failing to understand that there was a strict separation between the role of the Bank of England and the FSA, and there was no communication between them at the level which ought to have allowed that information to be passed. That was part of the problem. There was a great separation between the two. If the Bank of England understood what was going on, it did not see it as its job. If the FSA knew there was a problem but did not have the information, it could not communicate with the Bank of England. Bringing the two together—bringing the regulator together with the central bank and, I emphasise, with the Treasury as well—will find a solution.

Baroness Kramer: My Lords, I find it extraordinary that there is an argument that the Bank of England knew what was going wrong but sullenly kept its mouth shut because the constraints gave the key responsibilities to the FSA. We have to break away from that sort of cultural notion that one observes only the very narrowest interpretation of responsibility when we are talking about an organisation such as the Bank of England. I agree that that culture tends to continue. That is one of the frustrations and concerns that we have, particularly with the removal of the oversight committee, which is the one challenge to that ongoing attitude. Let us set that aside for the moment, although I find it a constant frustration not to recognise that the Bank of England did not act when it certainly had an opportunity to lay on the table the many problems it now says it saw with such clarity.

I go back to the underlying issue, which is that the PRA has been a success. The PRA has been absolutely key in establishing the kinds of regulations that have made the Bank safer for the future, setting standards for regulatory capital being an important part of that. In addition, in the period before we had the PRA, it was virtually impossible to get a new bank licensed in this country. We have had Metro Bank but essentially no new bank for 150 years. People had to find an existing banking licence, buy it and go for some sort of change of purpose. The PRA was a leader in changing that whole culture and recognising the importance of bringing in challengers and new players. Had it stayed tightly within the existing Bank family, which had resisted that approach over and over again, I very much doubt that we would have seen that kind of change. So the experience we have had since setting up a PRA which has some distance from the Bank—a small distance, I fully acknowledge, but separate responsibilities governed under company law—has been that it has brought forward change in a way that is not part of the history of the Bank. I am very concerned at the potential for losing that.

The noble Lord, Lord Carrington, also suggested that if we changed the existing structure it would not allow a proper flow of information from the Bank of England to the PRA. But look at the membership of the PRA: we have crossovers in deputy governors, and I believe that the Governor of the Bank of England is the formal chair of the PRA. If these individuals are unable to remember the meetings that they were exposed to and the memos that they read when they wore one hat, and bring that information into the meetings they have when they play their role within the PRA, I frankly find that extraordinary. As far as I understand it, there is no problem of information flow—and if there is, we would very much like to hear from the Minister what the instances are, where there has been that kind of breakdown, and why an individual involved in discussions in one particular part of his or her job has been unable to remember those discussions when participating in another part of it. Those are quite serious allegations. I would like to hear from the

[BARONESS KRAMER]
Minister where this communication has so badly broken down when it is quite frequently the same individuals who are involved.

Lord Tunnicliffe: My Lords, again, I support the noble Lord, Lord Sharkey, on his general thrust in this debate. I come at it from a slightly different direction, although I think that the fundamental proposition is, "If it's not broken, why are we trying to fix it?". In fact, the supporting paperwork says that it is working well. We need to go behind that—back to the 2012 Act, the FiSMA 2000, as amended, and all that sort of stuff—to look at how the Bank is now going to work.

I think the Bank will move its emphasis from the Monetary Policy Committee towards the FPC. Regarding the control of interest rates and the Government's injections of cash, depending on which textbook you read, it was the actions of banks in creating credit that formed the bubbles that caused the crisis of 2008-09. I believe that is the technical reason and that we are seeing many bubbles emerging again. As to the process of the FPC, by reading through the consolidated Act we see that its many powers—to make recommendations about new tools, for example—and all the things it is able to do to control the creation of credit, among other things, are absolutely fundamental to how efficiently the money system supports the economy, and hence are fundamental to the economy.

Now, what is the thing that keeps this clean? The thing that keeps it clean is the fact that the PRA is a subsidiary—an independent company, as mentioned, governed by company law—and, therefore, there has to be an arm's-length relationship between it and the FPC. Under the various terms of the Act, the FPC can create various macroeconomic tools, which it then hands down to the PRA. It hands those down not through some side-channels or influence but, because of that independent legal status, in a very formal way to its subsidiary, and I think that is healthy. I do not believe that in effect moving the PRA closer to the Bank—and, by definition, closer to the FPC—is a good thing. The present separation is working, and I think we should continue it.

The reform included in the Bill ends this subsidiary status. The PRA board will be replaced by the Prudential Regulation Committee and, as I said, that must have the right balance. The Government so far, frankly, have not come up with a good reason for this change. The noble Baroness, Lady Kramer, made the point that mechanisms for information transfer are there, and therefore that is not at risk. The whole purpose of being in a subsidiary company—I headed a subsidiary company of a large organisation—is to get focus on its business, so that there are very clear responsibilities. I think that the move in the Bill away from its being a subsidiary is a bad thing, and I hope that the Government will reconsider the inclusion of this clause.

Lord Bridges of Headley: My Lords, once again I thank the noble Lord, Lord Sharkey, for provoking a very interesting debate and for the thoughtful contributions that he, the noble Baroness, Lady Kramer, the noble Lord, Lord Tunnicliffe, and my noble friend Lord Carrington of Fulham have made.

The noble Lords, Lord Tunnicliffe and Lord Sharkey, absolutely got to the nub of the matter here. We are seeking a PRA that is effective and independent, and getting the balance right between those two aims, and making sure that we achieve both, is absolutely crucial. I would argue that the proposed changes will increase the PRA's effectiveness—making it better still, to address the point made by the noble Lord, Lord Tunnicliffe—but do not undermine its independence.

Let me first address the issue of increasing effectiveness, and I will try here to steer clear of management-speak. The governor has explained the links—I have crossed out the word "interdependencies" that was in my brief—between monetary and financial stability and why, therefore, it is right that both these macroeconomic policy responsibilities should rest with the central bank. The Bank is also committed to implement a set of changes to its internal organisation, aiming to ensure that different parts of the Bank work even better in pursuit of its twin aims of monetary and financial stability. The Bill builds on and reinforces these organisational reforms.

Ending the subsidiary status of the PRA will reinforce the Bank's efforts to strengthen its capacity to work effectively across its responsibilities. At Second Reading, it was suggested that ending the PRA's subsidiary status and creating the Prudential Regulation Committee might represent a downgrade of the prudential regulation function—a point that has been alluded to. I entirely disagree with that. I would argue that this change will have the precise opposite effect. Placing the Prudential Regulation Committee on the same footing as the MPC—and, with our changes, the FPC—means elevating the microprudential role to the same level as monetary policy and macroprudential policy.

This is, I would argue, an upgrade that reinforces not just to the Bank staff but to the wider public, to whom the Bank must be transparent and accountable, that the Bank is not simply an organisation dedicated to setting interest rates but one with equally important macro and microprudential responsibilities.

The Bank has told us that closer integration has increased the feeling among PRA staff that they are an integral part of the Bank's mission and have broader opportunities for progression across the whole Bank. This can only assist recruitment of the best people to the supervisor, which I am sure is something that all your Lordships will support.

12.15 pm

A second benefit from ending the PRA's subsidiary status is enabling the members of the new committee to devote more time to microprudential policy and operations—the noble Lord, Lord Tunnicliffe, spoke about the need for focus.

The governor explained to the Treasury Select Committee that the change will,

"liberate … a portion of the time of the members of the PRA Board that is spent duly exercising their responsibilities as directors of a company",

while noting the important responsibility that PRC members will continue to have for ensuring that the prudential regulation functions are adequately resourced —a point I will come on to shortly. The governor concluded that, "time is freed up to do their core job—what they are there for—which is to provide guidance on judgment-led supervision".

For example, the PRC will no longer have to spend so much time discussing IT provision, as this will be a concern for the Bank at large and ultimately its governing body, the court. Equally, whereas the PRA board had to be involved in discussions on staff terms and conditions and recruitment, the new committee will be able to leave these important concerns to the wider organisation and focus on its role in supervision.

A third benefit of the changes is increased clarity of governance. As the Parliamentary Commission on Banking Standards noted in discussing the existing regime:

"The accountability arrangements of the new structures are more complex than those of the previous regulatory regime".

Ending the subsidiary status of the PRA and establishing the PRC, MPC and FPC on the same basis simplify and clarify Bank governance. We are clear that these benefits must not come at the expense of undermining the PRA's strong brand or the operational independence of the PRA's supervisory decisions, and that transparency around the use of the levy that will continue to fund the PRA's activities must be maintained.

Let me address the second point, on independence. It is worth explaining what "independence of the PRA" actually means. As I am sure your Lordships will know, the Basel core principles on banking supervision suggest that legal safeguards should ensure that a regulator has,

"operational independence, transparent processes, sound governance, budgetary processes that do not undermine autonomy and adequate resources".

The Bill provides for all these important safeguards. For a start, Clause 12(2) is very important: it provides that the Bank's PRA functions may be exercised only through the new Prudential Regulation Committee. The Bank may not exercise its prudential regulation role in any other way.

As we discussed in relation to the previous amendment, the committee will have a clear majority of external members, with at least seven externals compared with five internal members. It is important to note that this is an increase in the weight of external members on the existing PRA board, where only a majority of one is required.

Next, the Basel core principles call for transparent processes and sound governance. Schedule 1 to the Bill sets out clear processes for the new committee's decision-making. The core principles also stress "adequate resources". Every year, the committee will report directly to the Chancellor on the adequacy of its resources as well as on the independence of its operations.

Next in the list of protections is a requirement for the Bank to ensure separation between resolution and supervisory functions. This makes sure that the UK remains compatible with relevant European Union directives that insist on such a separation.

Finally, the Bill grants a strong statutory role to the PRA's chief executive. He will be responsible for the day-to-day management of the PRA and implementation of the prudential regulation strategy. This includes responsibility for how resources are allocated among different teams, managing policy development and overseeing supervisory decisions that do not reach the level of the committee.

The current chief executive, Andrew Bailey, gave his view of the protections for the PRA's continued operational independence at the Treasury Select Committee in the other place on 20 October. He said:

"I think the Bill has in it sufficient protection of the independence of the PRA. It is very clear in the Bill that the PRA continues to exist as the prudential supervisory authority for banks and insurers … The independence protections are maintained, and that, I can assure you, has been and will continue to be a very strong focus of mine. Desubsidiarisation simplifies the Bank of England's governance".

Therefore, the Bill provides important safeguards to protect against the dangers of groupthink. With those reassurances, I commend Clause 12.

Clause 12 agreed.

Clause 13 agreed.

Schedule 1 agreed.

Clauses 14 and 15 agreed.

Amendment 20

Moved by ***Baroness Kramer***

20: After Clause 15, insert the following new Clause—

"PRA: Green Investment Bank

(1) The PRA must carry out its functions in a way that it considers will secure the provision of a "Green Investment Bank" service in the United Kingdom.

(2) The PRA shall by rules specify the purposes that it considers should be supported in the United Kingdom by the provision of a "Green Investment Bank" service.

(3) Rules under subsection (2) shall include the following purposes—

(a) the reduction of greenhouse gas emissions;

(b) the advancement of efficiency in the use of natural resources;

(c) the protection or enhancement of the natural environment;

(d) the protection or enhancement of biodiversity; and

(e) the promotion of environmental sustainability.

(4) In subsection (3)(a), "greenhouse gas" has the meaning given by section 92(l) of the Climate Change Act 2008."

Baroness Kramer: My Lords, I realise that some of your Lordships will be surprised that we have introduced an amendment with a clause referring to the Green Investment Bank into a discussion of a Bank of England Bill. Your Lordships will be aware that the Green Investment Bank has been one of the great successes of the coalition era. It filled a gap left by a market failure which had resulted in any green project requiring long-term, patient investment having great difficulty in accessing that kind of financing. The Government put something in the range of £3 billion into the Green Investment Bank, which has been so successful that it has since leveraged an additional £6 billion from the private sector. It is universally regarded as one of the most successful creations for enhancing our long-term investment in green infrastructure.

[BARONESS KRAMER]

This Government have made the decision that they wish to privatise the Green Investment Bank. Discussions around that should and must take place in the context of the Enterprise Bill, but it is clear from the discussion so far that privatisation presents a problem. In order to completely remove the Green Investment Bank from their books, as the Government intend, they cannot continue to exercise any control over the bank after it has been privatised. They cannot require that the mission of the bank continues to be green investment; new owners could convert the bank to any other purpose at will after privatisation. Indeed, the Government cannot even require that the bank continue as a going concern. It would be quite possible for a new owner to absorb the existing assets into other parts of its business and make the decision that, as those assets were paid down, it would invest in a whole variety of other activities; it need not continue to provide a green investment bank at all. The Government, as I understand it, believe that they are helpless to provide for that requirement post privatisation. I do not think that is the wish either of the Government or, frankly, of Parliament.

As I say, this has been a successful bank. There are real concerns that private investors might turn the bank to another purpose—not because it is not successful but because there will be other ways to make money once the assets begin to return cash. Indeed, as I said, the reason why the bank was created in the first place was that the market showed very little interest in providing financing for these kinds of projects. Hopefully, attitudes have changed because the Green Investment Bank has established a very positive track record, but there is absolutely no guarantee. The future of the Green Investment Bank once it is in private hands is in question.

We faced a very similar problem when the system was set up to enable Royal Mail to be privatised. That privatisation is now going ahead. The Royal Mail, as your Lordships will be aware, was and is the vehicle through which a universal postal service is provided, under which every area of the country is covered by a postal service at a single, identical rate, which applies no matter where in the country anyone is. So my question became: if the Government could find a mechanism through which Royal Mail continued to have that set of obligations, could a similar mechanism provide for the Green Investment Bank to continue to have its existing obligations? The mechanism used for Royal Mail was that of the regulator, Ofcom.

I do not pretend that there is any quality in the drafting, but I have pulled together provisions from the Postal Services Act 2011 and the Enterprise and Regulatory Reform Act to try to establish a similar framework for the Green Investment Bank. The regulator in this case would appear to be the PRA, because that is the role it plays in relation to the banking industry.

I understand that the Government are willing to listen if we can find ways to keep the purpose for which the Green Investment Bank was created. I very much hope that moving the new clause creates an opportunity for the Government—for the Treasury—to become engaged. One problem that we often suffer from within government is that actions get siloed to one particular area. Frankly, the Green Investment Bank has ended up getting siloed over to BIS. But it is an issue that could impact equally well on the Treasury, because the Treasury has the relationship with the banking regulator which I propose to use in this case. It is on that basis that I move the amendment, and I hope that the Government will seriously look to see whether this route offers everyone a mechanism to get to the solution that most wish for.

Lord Teverson (LD): My Lords, the Green Investment Bank has been one of the great successes of the coalition Government. To quote the words— which I fully endorse—of the Conservative manifesto of 2010,

"we will create Britain's first Green Investment Bank—which will draw together money currently divided across existing government initiatives, leveraging private sector capital to finance new green technology start-ups".

Absolutely. It was also in the Liberal Democrat manifesto and, I think, the Labour manifesto. After the Wigley commission, set up by the Conservatives, we all felt that this was an excellent way forward and one that would be successful. The management team at the Green Investment Bank has delivered that well over its first three years.

We on these Benches would prefer that privatisation did not take place quite so quickly. We do not feel that the Government will get its full value at the moment, but we accept that that is the Government's policy. If the bank does not have proper access to additional private funding, in reality, it will be starved of sufficient future investment by the Treasury. Hence, we want to co-operate strongly with the Government to find a way to ensure that we do not just remove the legislative requirements in the Act, but keep those principles of the bank's operation not just in its constitution but in the way that it can operate.

We are not happy about the fact that the five principles currently in statute will be put into the mem and arts of the company, because clearly those can be changed by a special resolution of 75% of the shareholders. As my noble friend Lady Kramer said so well, we have no guarantee that the bank will not be purchased just to run it down, make the most of its income stream and use it as an investment for future cash flow. That would be a tragedy for everybody. I am sure that that is not the Government's intent but at the moment we have no guarantee through legislation that it would not be the case.

12.30 pm

When my noble friend Lord Stoneham and I brought up this matter in Committee on the Enterprise Bill, we were very pleased by the reaction of the Minister's colleague, the noble Baroness, Lady Neville-Rolfe. She said:

"The heart of the problem is that if we could keep the legislation without prejudicing the bank's status we would, but the advice we are working on is that we cannot do that".

That is because of the European standards of 2010 but those standards are vague. Having gone through them and having spoken to the ONS as much as I could, I suspect the Government are being conservative in terms of their operation. Here, my noble friend

Lady Kramer and I want to find a way around this. As she said so well, there is a precedent in terms of the Royal Mail.

Again, the Minister's colleague, the noble Baroness, Lady Neville-Rolfe, in answer to a question about keeping the newly privatised bank off the public sector balance sheet, said:

"The simple answer on the Royal Mail is that it is regulated because it is designated as a universal service provided by Ofcom; it is not itself controlled by legislation".—[*Official Report*, 4/11/15; cols. GC 329-30.]

In our amendment, we found a way to mirror that exactly to take on the noble Baroness's challenge and provide the same legislative framework as for Royal Mail to make sure that privatisation can take place, as the Government wish it to, but at the same time to keep the organisation off the public accounts so it can borrow. It can then continue its success in the private sector in future but operating on the same principles as at the moment.

An example I have often thought of here is 3i, which was set up by the Bank of England as the Industrial and Commercial Finance Corporation in, I think, the late 1940s or early 1950s. It involved private money from the clearing banks at the time but was very much under the Board of Trade. Its constraints were got rid of in 1983 and since then 3i, as it became known, has moved away from SME investment almost entirely. It now deals primarily with mid-cap companies. I do not think its investors would get out of bed for anything less than a deal of £50 million or £100 million. Indeed, its major businesses and expansion are overseas rather than in the UK. I do not criticise that in any way but it gives a good illustration of how, once the shackles are removed from organisations like that, they can be very successful but their mission creep through shareholders inevitably moves further and further away from the original objectives with which they were set up by the Government. Of course, in that instance the Government have had to set up all sorts of other schemes to allow private—and some public—investment into SMEs.

This is an excellent method by which the Government's aims can be achieved and the House and Parliament can be assured that the green objectives of the bank will continue to be fulfilled in the very successful way that the team at the Green Investment Bank has done over the last three years.

Lord Swinfen (Con): My Lords, the idea behind the amendment is estimable but purely to do with the environment. The Bank of England is purely to do with finance and I do not think that the two would make happy bedfellows. We should be able to find a better home for the Green Investment Bank than the Bank of England.

Lord Davies of Oldham (Lab): My Lords, the Minister is faced with a rather challenging task here. First, he operates against a background where the Government's record in recent months has caused great anxiety among all those concerned with improving the environment and reducing the threats of climate change. Here he faces a fairly significant issue—the Green Investment Bank. Of course, the additional complexity is that the bank is itself subject to other legislation under consideration. Irrespective of the merits of the amendment, I could understand if the Minister felt that this were really quite a challenging situation. I will try to find a way out for him as well, as the Liberal Democrat noble Lords emphasised their solutions.

We are not averse to privatising the bank but we are not very appreciative of the urgency of doing it at this time. Crucially, the question that emerged during the debates on the Enterprise Bill and have been identified again today is how the Government intend to maintain the bank's mission. Of course, it is easy to privatise if one disregards the fundamental objectives of the foundation of the bank. We need to know how the Government intend to guarantee that the bank does not morph in private hands into a different sort of institution and bank. What is the Government's answer to that? They may not be totally enamoured of the Royal Mail example. Of course, that is buttressed by regulatory standards that we have not so far seen adduced as far as the green bank is concerned.

It is obvious that the Minister must make some progress on this, otherwise the proposal the Government are putting forward elsewhere will occasion increased opposition from this side of the House. I am always in favour of helping Ministers, particularly when it involves them rather than the Opposition doing the work. I suggest that the Minister consults his colleagues in the business department concerned with the process on the green bank and, after those consultations, comes back on Report with a much clearer identification of the progress of the Government's thoughts on the bank. At present, in the debates on either the Enterprise Bill or this one we have certainly not yet heard anything remotely convincing from the Government to give the assurances we need that if this bank, which has proven to be a successful initiative and is respected for its work, goes into the private sector it will not all too readily be led down paths that depart from its much-valued objectives.

Lord Teverson: As we are in Committee, I will briefly come back to the noble Lord opposite about whether the Bank of England or the PRA is the right organisation for this. The Green Investment Bank is the Green Investment—I emphasise—Bank, so it seems to me appropriate. I want to make clear that we are open to other suggestions to solve this, if the Government and Minister do not believe this is the best way.

For instance, I am involved in an organisation called Regen SW, which used to be a wholly owned subsidiary of the South-West of England Development Agency. It was privatised and is very successful. I am one of three trustees who look after it. If there were a hostile takeover by a non-green organisation, there are three of us who can exert power to make sure that the original aims of Regen SW are maintained. If something creative can be done in that way, I would be absolutely delighted and we would like to hear it.

Lord Bridges of Headley: My Lords, I thank the noble Baroness, Lady Kramer, and the noble Lord, Lord Teverson, for their extremely constructive remarks—and, indeed, the noble Lord, Lord Davies, who on

[Lord Bridges of Headley]
Monday offered me sympathy for my position and today offered to be very constructive. Where do we go next? It is going to be very interesting.

Lord Davies of Oldham: My Lords, I would be prepared to exchange sides, if the Minister can arrange that.

Lord Bridges of Headley: The noble Lord can come and join us. I fully understand the intentions behind the amendment. Indeed, I have read the debate that took place last week with my noble friend Lady Neville-Rolfe on the Enterprise Bill, in which the noble Lord, Lord Teverson, set out his party's position eloquently. I believe that all parties are agreed, as the noble Lord, Lord Teverson, and the noble Baroness, Lady Kramer, said, that the Green Investment Bank has been a real success story, and we need to build on that success. That is why the Government want to allow the Green Investment Bank to continue to go from strength to strength by moving it into private ownership. As part of our work to achieve this, it has become apparent that the existing legislation which governs the bank, the Enterprise and Regulatory Reform Act 2013, would very likely constitute government control over the bank and result in its remaining classified to the public sector. That is why, as the noble Lord and the noble Baroness said, the Government intend to repeal that legislation through an amendment to the Enterprise Bill, which will remove control and ensure that a privatised Green Investment Bank will have the freedom to borrow and raise capital without affecting public sector net debt.

I note, as my noble friend Lady Neville-Rolfe noted, the concern that the repeal would remove the Green Investment Bank's statutory lock over its green mission, and that is where these amendments come in. The noble Baroness, Lady Kramer, eloquently drew a parallel with the privatisation of Royal Mail and its regulation by Ofcom, and whether the Government might replicate that kind of arrangement for the Green Investment Bank. First, there is a difference between regulating a company such as Royal Mail, which provides a public postal service and is a utility, much like energy or water, and the Green Investment Bank. As a country, we regulate mails as an industry, and the regulator for postal services, Ofcom, has designated Royal Mail to provide a universal postal service for the whole of United Kingdom, as set down by Parliament under statutory obligation. That means that, regardless of the nature of its ownership, for as long as Royal Mail holds the role of universal service provider, it must comply with specific regulatory conditions imposed upon its operations for the purpose of providing a universal postal service throughout the United Kingdom, as well as other regulatory conditions which apply to all postal operators in the market. If Royal Mail was not the designated universal service provider, its operations in the postal market would be subject only to those general market regulations that apply to all other postal operators.

The parallel here would be for the PRA to regulate the green investment market, could such a thing be defined. Not only would this amendment increase regulation at a time when the Government are trying to reduce it, but increasing regulatory costs in the sector would be likely to reduce overall green investment. I am sure that is not something that the noble Baroness, Lady Kramer, would wish. I must reiterate that the Government are implementing the repeal of legislation only as a necessary measure in allowing private capital into Green Investment Bank, reflecting advice from the Office for National Statistics. As I have said, to be classified to the private sector, an organisation cannot be subject to significant government control, and that includes control through excessive regulation. The decision on whether an organisation is classified to the public or private sector is made by the ONS on the basis of EU-wide rules. The ONS looks at all factors of control when deciding whether a corporation can be declassified from the public sector. If the Green Investment Bank was not free to change its articles because of public sector control, it would very likely remain classified to the public sector. Similarly, if the bank as a single entity were to be regulated in this way, it would still be likely to be considered as under public sector control, so this would not provide the solution that noble Lords are seeking.

The Government want to work constructively with noble Lords across the House to secure the future of the Green Investment Bank. I totally agree with the noble Baroness, Lady Kramer, that we need to work across government as a whole, and I shall make sure that all parts of the Treasury are aware of her remarks and see the debate. However, I hope that the noble Baroness, Lady Kramer, the noble Lord, Lord Teverson, and, should he so wish, the noble Lord, Lord Davies, will meet my noble friend Lady Neville-Rolfe at BIS to discuss this matter further. I hope that the noble Baroness will agree to withdraw the amendment.

12.45 pm

Lord Teverson: I am that sure my question is as much of a concern to the Minister as it is to me. The purchasers of this bank could just buy it as an asset to wind down—just to buy the cash flow into the future—which none of us would want. But if there was a public sale, it could indeed happen. That is separate from the ongoing green credentials. Do the Government have an approach to how that might be solved or prevented?

Lord Bridges of Headley: The noble Lord makes an extremely good point, and one that the CEO, Shaun Kingsbury, was asked directly. I am not going to prejudice what my noble friend the Minister in BIS is working on, but that is clearly something that we need to look at. I note that Mr Kingsbury himself said that he believed that the purchasers of or investors in the Green Investment Bank would look expressly to ensure that the specialisms that the bank currently has would continue, and we would want to make sure that that specialism and focus are the core of their investment. That said, I heed entirely what the noble Lord says and will draw it to my noble friend's attention.

Baroness Kramer: My Lords, I was actually quite heartened by the Minister's reply, although I suspect not in the way that he intended. He suggested that there were very few obstacles to using the PRA as an appropriate regulator in this case—so perhaps there is an avenue there to be explored. Can the Government look seriously at this issue? I know from having been in government very briefly that to direct the lawyers to look at a way to achieve rather than stop something is a very significant challenge. I hope that now the energies of the Treasury will be focused on this, as well as the energies of BIS. Frankly, if we lose the Green Investment Bank in the role that it plays, we will all be losers. It would be very frustrating to think that that was unnecessary and had only required some significant legal effort to avoid it. I beg leave to withdraw the amendment.

Amendment 20 withdrawn.

Clause 16 agreed.

Schedule 2 agreed.

Clause 17 agreed.

Schedule 3 agreed.

Clause 18: Extension of relevant authorised persons regime to all authorised persons

Amendment 21

Moved by **Lord Sharkey**

21: Clause 18, page 15, line 19, at end insert—

"(2) The terms of the extension under subsection (1) shall not apply to those persons who fall within the definition of "relevant authorised person" in section 33 of the Financial Services (Banking Reform) Act 2013."

Lord Sharkey: My Lords, last night at 6.39 pm, the detailed impact assessment for the senior managers and certification regime that is part of the Bill appeared in my inbox. At 6.41, it was withdrawn and, at 6.42, it or some version of it was sent again. This was all a bit confusing. But the real problem is timing. It is simply not acceptable to send us an important impact assessment the night before we debate the matter. I have not been able to give this impact assessment anything but the briefest of glances. We need more time to review and think about the contents, but we can now do that only on Report. When we agree the SM&CR issue on Report, could the discussion be held under Committee stages rules? Perhaps the Minister could nod agreement or write to me nodding agreement with that proposal.

Part 2 introduces two very significant changes. It scraps the reverse burden of proof regime for relevant authorised persons, which are defined in the Treasury briefing note as banks, building societies, credit unions and PRA-regulated investment firms. The Bill replaces the reverse burden of proof with a test requiring the regulator to prove misconduct, which is the position we were in before, during and for five years after the crash. In this period, and under that test, no senior manager was jailed and financial misconduct did not cease. The Bill extends this new regulatory regime to all sectors of the financial services industry.

The sections of the Bill that deal with these matters are very complex. I am sure the Minister will say that this amendment has technical defects, and I am certain that he would be right about that. However, we are in Committee and this is a probing amendment. I hope that the intention of the amendment is clear. It does not challenge the extension of a new, less onerous SM&C regime to the wider financial services industry. It seeks to preserve the existing SM&C regime for those currently classified as relevant authorised persons. That is, it seeks to preserve the reverse burden of proof regime for banks, building societies and PRA-regulated investment firms. This would create a two-tier regulatory system. It would allow the regulatory regimes to be proportionate to the risks involved. Those institutions that did, and still can, threaten our financial system would be subject to a tougher regime, but those who cannot or are on the balance of probability unlikely to would be subject to the new lighter regime proposed in the Bill.

In an article in the *Evening Standard* on 15 October, the highly respected City journalist Anthony Hilton made the case for such a two-tier system, writing that,

"all banks, insurers and securities houses are not all equal in the damage they can do; some are much more equal than others. By extension, rules and regulations designed to impose mild restraint on the giants of the industry can amount to damaging overkill when applied to the typical smaller firm. The answer is a two-tier system of prudential regulation whereby those firms with the potential to put the system at risk are subject to much more intrusive supervision … Guy Jubb, global head of Governance and Stewardship at Standard Life Investments, has suggested something similar for his world".

A two-tier system is what this amendment seeks to create.

There was considerable anxiety at Second Reading about the Bill's abolition of the reverse burden of proof regime. In his reply and in subsequent correspondence, the Minister set out the reasons for this reversal. The first is that since the Government propose to extend the regime to all financial services, in the interests of fairness and regulatory coherence it would be vital that the regime be rolled out consistently across the industry. He said:

"it would clearly not be proportionate to apply the reverse burden of proof across the financial sector, including to the small organisations that will now make up the majority of firms which will come under the regime, and which pose more limited risks to market integrity and consumer outcomes".—[*Official Report*, 26/10/15; col. 1081.]

The Minister singled out credit unions as an example of the kind of small firm that would suffer disproportionately under the reverse burden of proof regime, which I remind the Committee has not yet come into force. Here, I entirely agree with the Minister. Credit unions should never have been in the category of relevant authorised persons in the first place and should be removed. However, I disagree with all the other aspects of the Minister's argument. It entirely ignores the different risk potentials of the major institutions and the about-to-be newly regulated firms, except to say that it would not be fair to impose the stricter regime on the whole sector. It would not be fair, but the stricter regime for relevant authorised persons was made law for all the good and necessary reasons advanced by the Parliamentary Commission on Banking

[LORD SHARKEY]

Standards and accepted by Parliament and the Government. These good and necessary reasons, well rehearsed at Second Reading, are still entirely valid. The facts have not changed. The reverse burden of proof is still needed.

In evidence to the Parliamentary Commission on Banking Standards in January 2013, Tracey McDermott, then director of enforcement and financial crime and now acting CEO of the FCA, stated that the inability to impose sanctions on senior executives was first and foremost due to the evidential standard required to prove their liability. She said that,

"the test for taking enforcement action is that we have to be able to establish personal culpability on the part of the individual, which means falling below the standard of reasonableness for someone in their position".

That regime produced no convictions or charges against senior managers, and that is exactly where we will be again if we scrap the reverse burden of proof for senior managers in banks, building societies and PRA-regulated investment firms. The extension of the regulatory regime to less risky firms requires a lighter touch, but this does not imply that this same lighter touch should apply to much riskier organisations currently subject to the reverse burden of proof regime.

The Minister advanced two other reasons for removing the reverse burden of proof. The first is that, as Andrew Bailey asserted, it is leading to individuals and their advisers spending more time and resources on mitigating the risk of being held personally liable for breaches on their watch than on running their firms in a manner consistent with regulator's objectives. This does not seem to fit with the details of last night's impact assessment. It assesses the maximum cost benefit to large firms as 10% of current costs and as more likely to be 5%. This does not sound as though the lighter-touch regime will free much time or resources. In any case, Parliament's intention was precisely that these people should spend more time and resources ensuring compliance with the rules. We know what happened when they did not do that. Mr Bailey went on to say that he sees the reverse burden of proof giving rise to a box-ticking mentality. Perhaps it may, but required behaviour often precedes and leads to cultural change.

Another point was raised by Mr Bailey. He said there has been noise around the reverse burden of proof that has been distracting future senior managers from complying with the spirit of other important aspects of the regime. He does not say how he knows he is not being gamed on both these points. I assume he would not deny that financial institutions attempt to game regulators and that he has been told of these things by bankers and others subject to the reverse burden of proof regime. How has he tested what he has been told? How does he guard against and discount obvious special pleading? Without this information, his arguments can have little force.

There is one other argument I have heard made, entirely understandably, about the reverse burden of proof: it runs counter to our strong legal tradition of "innocent before proved guilty". There is ample precedent for this in law. The reverse burden of proof has been used in the Road Traffic Act 1988, the Health and Safety at Work etc. Act 1974, the Terrorism Act, the Misuse of Drugs Act 1971, the Trade Marks Act 1994, the Criminal Justice Act 1988 and the Official Secrets Act. The House of Lords, sitting as the Law Lords, dealt with the issue in Sheldrake 2004, UKHL43. It made plain that each statutory provision must be considered on a statute-by-statute basis. The decisive factor before the courts is whether the reverse burden is necessary to ensure that the offences remain workable. Without it, these offences were not workable. That is precisely why we need, and is the justification for, the reverse burden of proof. That has been said and is the case here. This argument has not been advanced in our discussions so far, perhaps because the Minister is familiar with the current status in law of other examples of the reverse burden of proof. As noble Lords will know, the *Telegraph* reported on August 29 that Sir Eric Pickles is considering using the reverse burden of proof in his unexplained wealth orders, which I assume are a precursor to undeserved wealth orders.

The fact is that none of the Minister's reasons for abandoning the reverse burden of proof stands up to scrutiny. We need the reverse burden of proof regime for systemically risky organisations for the reasons advanced by the PCBS and others. Life has not got better, financial misconduct has continued and no senior managers have been punished. The regime that makes punishment not happen is the regime, effectively, that the Bill wants to restore to banks, building societies and PRA-regulated investment firms. Our amendment is aimed at preventing that. The amendment does not interfere with the extension of the regulatory regime. It tries to retain the already approved and enacted regime for riskier, systemically dangerous firms and allow the lighter regime for those firms that are less risky and not systemically dangerous.

We need to be able to hold senior managers personally and directly accountable. As Senator Warren said:

"If large financial institutions can break the law and accumulate millions in profits and, if they get caught, settle by paying out of those profits, they do not have much incentive to follow the law".

I beg to move.

1 pm

The Lord Bishop of Southwark: My Lords, I shall speak against Amendment 21. I confess that my expertise does not rival that of the most reverend Primate the Archbishop of Canterbury, who justly won plaudits for the seriousness and skill with which he served on the Parliamentary Commission on Banking Standards. Regrettably, he cannot be in his place today, but I am at one with him in supporting the Government's intentions on the reverse burden of proof.

One of the important functions of the parliamentary commission was to consider the change of culture of banks and the standards of conduct of those working in them, particularly its senior managers. Anger, disbelief and misery was felt by so many following the crisis that engulfed the British economy in 2007-08, much of it directed at the banking industry. That anger and disbelief were compounded when those best remunerated within the banks seemed to demonstrate little or no accountability for their actions. Rather, the burden was borne by society as a whole and it was the poorest who suffered most and, arguably, continue to do so. The ability of well-funded senior managers in the banking sector to evade responsibility was considerable. My assessment is that the commission saw sufficient evidence that there was a balance to be redressed. Small wonder that the commission sought to protect the public, including the taxpayer, with a robust regulatory regime and suitable civil and criminal penalties. This included several provisions with a reverse burden of proof.

A reverse burden of proof would mean that senior managers would have individual responsibility for proving that they had fulfilled their regulatory obligations, rather than regulators having to prove that they had not. This goes against the ancient common-law principle of "innocent until proven guilty". The proposed reverse burden of proof seems to require senior managers in the sector to do something required in no other sphere of work, and that, from a philosophical perspective, causes concern. It is absolutely right that the individual is obligated to ensure that they take reasonable steps to prevent regulatory breaches in their financial institution but, as with other parts of society, it is right that the burden of proof should sit with the regulator to prove such breaches beyond reasonable doubt.

Secondly, I want to express my anxiety at the creation of a two-tier system of regulation in which deposit-taking institutions, including credit unions and building societies, are obligated to operate under the reverse burden of proof but other financial institutions are not. The need to ensure financial stability in the sector is vital, particularly among the largest institutions, but there seems to be a certain arbitrariness regarding who would be covered by the reverse burden of proof. I fear that a two-tier system would risk confusion or a loss of focus both within the banks and other financial institutions, and on the part of the regulators.

Well-funded individuals and corporations are capable of all manner of misdemeanours across our society, in all sectors of the economy. To introduce a reverse burden of proof only for senior managers in the financial services sector would set a grave precedent. What of those accused of pollution, negligence or failure to care? Where would it be extended next, further eroding the fundamental rights upon which our society is properly based? For the sake of all, not least those without the backing of considerable funds, we should continue to insist that the burden of proof must fall on regulators, prosecutors and those in authority who affirm that wrong is done. Better, as in the published Bill, to have a provision that contains a presumption to act reasonably and for regulators to prove that an individual has done otherwise. In view of these concerns, I humbly urge your Lordships' House to reject the amendment.

Lord Garel-Jones (Con): My Lords, I draw the House's attention to my declaration of interests. Before coming to the reasons why I believe that the removal of the reverse burden of proof is a wise move in both practical and administrative terms, I want to say that its removal restores the principle of natural fairness—a fundamental principle of British law to which the right reverend Prelate has just referred, and, if I may be so bold, one to which even bankers are entitled. Also, as again the right reverend Prelate has said, the creation of a two-tier system would not be a very helpful situation to move towards.

The importance of the City of London to the British economy will be a given among your Lordships. If that position is to be retained, bearing in mind some of the abuses we have seen in recent years, it needs to be underpinned by a strict and proper regulatory framework. Under these proposals for senior management conduct, which are supported by the PRA, senior managers remain responsible for taking reasonable steps to oversee the areas for which they are responsible.

The revised disciplinary provisions in the Bill provide that regulators will be able to take action against senior managers on three grounds: first, a breach by the senior manager of the conduct rules; secondly, the senior manager being knowingly concerned in a breach by the firm of its regulatory obligations; thirdly, where there is a breach by the firm of its regulatory obligations in relation to the area for which the senior manager is responsible, a failure by that senior manager to take such steps as a person in his or her position could reasonably be expected to take to avoid a breach occurring or continuing.

The first of those two grounds would also be grounds for action against any other employee or director of the firm, while the third ground in effect replaces the reverse burden of proof. In all three cases the burden of proof now rests with the regulators. Importantly, the FCA's reaction to these changes makes it clear that the regulators,

"remain committed to holding individuals to account where they fail to meet our standards".

I therefore believe that the Government are right in claiming that senior managers will remain subject to the same tough underlying conditions. The statutory duty, together with the statement of responsibility, means that senior managers will no longer be able to plead ignorance in these matters.

I make one final point, which to many noble Lords may seem a mere footnote to the bigger issues we are discussing. One of the great attractions of London is that it is truly the most international city in the world. Not surprisingly, therefore, many of the most senior positions in the City are held by non-British citizens. If you are running a global business, in many instances you can just as easily manage that with your team from New York or some other financial centre. I am advised that, had the reverse burden of proof remained on the statute book, many senior managers may well have declined to be posted to London, and that some now here would have moved as soon as a suitable opportunity arose. I believe that we have here a rigorous regulatory framework of the type we need, which no longer carries within it what might well have proved to be a strong disincentive to senior non-British bankers to base themselves in London.

Lord McFall of Alcluith (Lab): My Lords, I support the amendment of the noble Lord, Lord Sharkey. I bring to the attention of the Committee my position as deputy chairman of the Banking Standards Board, but I speak here in a personal capacity.

This measure abandons a key element of the recommendation of the Parliamentary Commission on Banking Standards—a decision that was unanimous among its members, including the most reverend

[LORD MCFALL OF ALCLUITH]
Primate the Archbishop of Canterbury. We all signed up to the recommendation to hold senior bankers to account. The essence of the recommendation is that, if misconduct or prudential failings take place, in order to avoid sanction senior managers have to demonstrate that they did all they could to prevent them happening.

I remind the Committee why we came to that decision. We sat for two years and asked 10,000 questions. We questioned senior executives of banks, whose response when anything went wrong was, "No see, no tell. Nothing to do with me". In fact, senior executives were content to come across as incompetent rather than culpable, no doubt advised to do so by their lawyers. We covered examples such as PPI, which went on for 20 years. I questioned the former chief executive of Lloyds. I asked him, "What about PPI? It's cost you about £12 billion". He replied, "Oh, we were on the side of the angels as far as PPI was concerned". This is a group of people divorced from the reality of the situation in society, and that is why the parliamentary commission unanimously made this recommendation.

I shall give your Lordships another example. We had four UBS executives lined up before us. We were told informally that their salary was probably £100 million a year. One of their star traders had lost more than $2 billion in Hong Kong, so naturally we asked, "Did you know?", to which the answer was "No". We said, "You didn't know what your star trader was doing? Fine. So when did you find out?". The answer was, "Oh, we found out on the Bloomberg wires". In other words, it took someone outwith the company to tell the most senior managers that one of their star traders had lost $2 billion.

The director of corporate affairs, Tracey McDermott, came before one of the sub-committees in relation to this issue. She is a very competent and professional person. We asked her, "What happened with the UBS situation?". She said, "We examined it but the trail went cold. In other words, we couldn't pinpoint anyone in the organisation who was culpable because there wasn't a sufficient organisational chart". Her evidence indicated that at that time—this was mentioned by the noble Lord, Lord Sharkey—the FCA was unable to impose sanctions on senior executives, first and foremost due to the evidential standard required to prove their liability. She added:

> "The test for taking enforcement action is that we have to be able to establish personal culpability on the part of the individual, which means falling below the standard of reasonableness for someone in their position".

That entails showing that senior executives failed to reach a reasonable conclusion and, as the Bill stands, that will remain the evidential standard for proving culpability. So we are back to the future here—a future that has failed time and again. That is why the Parliamentary Commission on Banking Standards was very frustrated at the situation and said that something had to be done in civil law. However, the new standard in the Bill will not effect the change that it is supposed to bring about because the evidential standards remains the same and, as a result, we are going back to an old regime.

I remind the Committee of the long list of recent failures, not least IPOs, LIBOR and forex. Those are what are called the three lodestars of the market, and they were all rigged. It was a corrupt market, and the Parliamentary Commission on Banking Standards was very clear, from the evidence it received, that it was a corrupt market. We had evidence from HBOS, UBS and RBS. PPI mis-selling went on for 20 years and cost £40 billion. What does £40 billion mean? It is about 2% of the country's GDP, so, paradoxically, the PPI fines helped economic growth. I do not want to live in a country with standards like that.

1.15 pm

What did we get from the government response? The noble Lord, Lord Sharkey, met the Minister, Harriet Baldwin, who said that reversing the burden of proof would drive talented people here abroad. That is a canard we have heard for 20 years in the financial services industry, and it is a mentality we have to change. It is quite clear that the Government included the reverse burden of proof because of the unanimous recommendation of the Parliamentary Commission on Banking Standards. They have now taken it out of the legislation because of sustained bank lobbying. Purely and simply, that is the reason. If the Government were honest about that, we would know the direction they were following.

There is a societal dimension to this. I have come from a meeting this morning with people in the City, at which we were talking about this issue. The societal dimension is that, first, no one has ever gone to jail; secondly, no one has ever been held personally culpable, except for one person who got a £500,000 fine; thirdly, the mis-selling scandal, costing more than £40 billion in the UK and more than $200 billion globally, is seen by the financial services industry as a way of doing business because the fines levied do not come out of individuals' pockets. Until the Government try to change that, public opinion will certainly be against them.

The view has been put forward that taking such action would not be legally sound, and the noble Lord, Lord Sharkey, referred to that. I remind noble Lords of the Sale of Goods Act. If a consumer asks for a product to be repaired or replaced within six months of sale, the retailer has to prove that the goods conformed to the contract in disputed cases. Why cannot the same provisions apply to the financial services industry?

The Lord Bishop of Southwark: My Lords, I do not wish to interrupt the noble Lord in full flight but I should like to put on the record that the most reverend Primate the Archbishop of Canterbury signed up to the reverse burden of proof, having lost the argument in the PCBS that the reverse burden of proof was unjustifiable. I think that slightly puts in context the phraseology he used.

Lord McFall of Alcluith: The commission valued enormously the contribution of the most reverend Primate the Archbishop of Canterbury. However, if we feel strongly about something, it can be a matter of record. I take the point about the unanimity of the commission, and will come to an area where I disagreed with it. I did not get my way, but signed up to it. So it is a case of tit for tat and one for one with the most reverend Primate.

This measure sends out the wrong signal—that Parliament is unfairly on the side of the banks rather than on the side of the public. The Parliamentary Commission on Banking Standards was very clear on enforcement action. We described it as being,

"as rare as hens' teeth".

The public want effective reforms. They want senior managers to be personally culpable. They want fines on individuals, not companies, because when the fines are on companies it is the shareholders—ordinary members of the public—who pay them. So the public are being denied and punished twice. The public—I include the noble Lord, Lord Sharkey, and others—want a fair market where risk is rewarded but where failure is punished. That has not happened.

The point was made about the most reverend Primate the Archbishop of Canterbury. I pushed the concept of duty of care in the Parliamentary Commission on Banking Standards. It did not accept it as a recommendation, although it was in the report. If the Government were serious about this, they would adopt a duty of care, which would transform the financial services industry. My good friend John Kay, who has just written a book on that, *Other People's Money*, agrees with me on this issue.

In the absence of the Government doing anything, when we come back to this on Report they will really have to think about how they can make senior executives personally responsible. Otherwise, the value of the Bill and the reforms, the expenditure and the time we have spent on the Parliamentary Commission on Banking Standards will count for naught. It is time for a reassessment by the Government between now and Report. I hope the Minister takes that seriously.

Lord Gold (Con): My Lords, I oppose this amendment. I have listened to the noble Lord, Lord McFall, and I fully agree—I suspect we all agree—that the examples he has mentioned of culpable things that have gone wrong cannot be acceptable. However, hearing his comments on the demands of public opinion makes me even more certain that we should oppose this amendment, because the rule of law must be upheld and we must allow the innocent to remain innocent until proved guilty.

Regulation is terribly important and we must give appropriate powers to the regulators to enable them to undertake their work effectively, including the ability to search out evidence in order to ascertain what went wrong and who was responsible. They must be able to break down any firewall that the institutions might have erected. Employees in financial institutions must fear the consequences of acting badly and know that if they break the rules the consequences could be very severe, including heavy fines and maybe a prison sentence.

If we have failed to achieve these things, however, the answer is not to shift the burden of proof so that the defendant has to prove his innocence. That would be tantamount to giving up the challenge. Instead, we must tighten up the regulator's powers and create an appropriate and effective regulatory regime, one that can achieve what all of us want, which is to protect those dealing with the financial institutions and punish those who fail in their duties.

In this Bill, the Government are aiming to do just that by extending the regulatory regime to all financial services firms and giving power to the regulator to make and enforce rules of conduct. This materially strengthens the regulator's position. In so doing, it rightly reverses the burden of proof so as no longer to presume guilt, requiring the defendant to prove innocence, and we should not now allow that to continue.

I welcome the Government's proposals for several reasons. First, I believe it is right to extend the regulatory regime across the whole financial services industry and thereby strengthen regulation. It is also right that we should not change a fundamental tenet of English law, which is that a person is innocent until proved guilty. As I have indicated, to reverse the burden of proof in this way is an excuse for failing to create an effective regulatory regime. Indeed, it is a lazy way of dealing with a problem and should not be countenanced. The provision that it is now proposed should be reversed, frankly, should never have been enacted. I am pleased that the Government have now recognised this.

In proposing this change, the Government seek to treat all financial institutions in the same way. Surely that must be right and fair. Why should there be one rule for large institutions and another for smaller ones? If a financial institution or someone working there breaks the rules then there should be a consequence, and everyone should be treated equally. Any suggestion that there should be a two-tier system so that the present law presuming guilt applies only to certain institutions, but the burden of proof shifts for those institutions that now come within this regulatory regime, is unfair. We should not discriminate between institutions. This could lead to unfair competition and could prejudice the very people we wish to protect—the consumers and customers.

The effectiveness of these new rules, once in force, should be carefully monitored and scrutinised. If, despite the extension of the regulatory regime now proposed, more is required, the Government must not shy away from a further extension of regulatory powers. However, in so doing, they should not then restore the short cut of shifting the burden of proof.

Baroness Kramer: My Lords, I cannot in any way better the speeches of my noble friend Lord Sharkey and the noble Lord, Lord McFall, but maybe I could make a few additional comments.

First, there is the argument in favour of a two-tier system. The regulator is already managing the banks and the financial services industry as a two-tier system. There are different rules for systemically important institutions and for the much smaller institutions whose behaviour cannot disturb the financial stability of the country. If the principle is that the banking industry and the financial services industry should be regulated only under a single tier, the Government are, in a sense, demanding that a great deal of regulation be rolled back, which, they are currently arguing, makes

[BARONESS KRAMER]

us more secure. We have a two-tier system; we are arguing that that two-tier system should encompass this kind of liability.

I want to also talk about the difficulties in pursuing senior managers when their institutions have been involved in outrageous and illegal behaviour. These are not victimless crimes, although they are often treated as though they are. The collapse of the banking system had a huge impact on people up and down the country: people lost their jobs, had to live through a period of suppressed wages and have seen public services cut. The experiences of ordinary people over the last five years have been wretched, and the trigger for that crisis was a financial crisis created by systemic financial institutions—so many people suffered as a consequence of that.

If I look at the misbehaviour inside the banks, I see that those were not victimless crimes. The families that paid for PPI that they did not need and could not use were often families without large resources—the cost mattered. Small businesses were persuaded to enter into interest rate swaps that were completely inappropriate for them, and some went under as a consequence of the problems generated by those swaps. Money laundering, which was on an industrial scale across many of our institutions, supported the drugs trade, prostitution and people trafficking, all of which did extensive damage to our communities. LIBOR mis-selling and mispriced mortgages and loans for individuals over a long period of time came at a significant cost to them, as well as, frankly, bringing the City of London into disrepute and, for a time, putting it at risk as a financial centre. We know that the United States seriously considered whether or not London could continue to be a major player if it could so poorly regulate its financial institutions as to allow manipulation of a core measure such as LIBOR.

1.30 pm

There are serious victims of the various behaviours that we have seen in banking institutions. This requires action to ensure that we do not experience it in future. The Committee might be interested in the reaction of the banking community to the proposal that the reversal of the burden of proof is abandoned. I received a briefing provided by Simon Lewis, OBE, chief executive of the Association for Financial Markets in Europe. He, of course, is in favour of the removal of the reversal of the burden of proof. However, this is the argument he makes:

"The reversal of the burden of proof creates a conflict of interest between the senior manager and the firm of which he/she is a senior manager. Senior managers will be concerned to protect their own positions and less disposed to participate in the collective decisions of their boards and management committees",

and also, he insists, to listen to challenges to independent control functions. I repeat:

"Senior managers will be concerned to protect their own position and less disposed to participate in the collective decisions of their boards and management committees".

Is that not exactly what we want? We want each individual manager to examine their conscience, to look at the issues, to identify risk—and not to set them aside because the group collectively makes a decision to overlook the underlying issue and the violation. This is exactly why we must try to break that constant groupthink that has infected bank after bank, particularly those led by charismatic and aggressive chief executives who are able to enforce their personalities on their institutions.

The reverse burden of proof forces on chief executives the strategy of bringing on to their boards individuals who will challenge them; of setting up systems that will challenge; of making sure that compliance and other kinds of risk management processes within their organisations are aggressive, report up and expose. We have said that culture matters, and the reverse burden of proof finally puts on chief executives an imperative to behave in such a way that they de-risk the culture of their own institutions and make sure that wrongdoing is brought to attention rapidly and dealt with.

This was not the culture that prevailed within our banking institutions prior to the banking crisis. The Parliamentary Commission on Banking Standards was shocked that the crisis did not change the culture. It was only as we were taking evidence and the LIBOR scandal was exposed, more money laundering was exposed and the interest rate swap scandal was exposed that banks began to respond and finally, because there was so much light and attention, began to rethink how they should manage their own organisations.

I know from sitting on the sub-committee which took evidence from below the board management that there was still a culture of what was identified as collective responsibility. No one took responsibility individually for the behaviour that happened in their institutions; everyone took cover from the collective. That allowed so much of the misbehaviour that took place.

To give the Committee some further understanding of where the thinking of the banks is going, I would like to quote from an article that was forwarded to me today. It is entitled "Culture and culpability, are we finished with banker bashing?" by Ashley Kovas of Regulatory Intelligence. He captures what I recognise as broadly the thinking within the industry. He says that,

"it is by no means clear to what extent people should be punished for actions done in accordance with their prevailing culture".

That is very much the message we received from banking institutions. As part of their employment role, they absorbed and reflected the culture that was established by senior management. For that reason we have no history of whistleblowing in this industry; there is very little evidence that individuals resist and, if they do, that they manage to remain within the organisations of which they are part. The noble Lord, Lord McFall, and I took evidence from a number of people who, within their own companies, identified various issues around risk and compliance and, essentially, lost their opportunities for promotion or were fired and replaced by more amenable individuals. Changing that culture is not easy.

So, as the noble Lord, Lord McFall, said, we turn to the regulator. The noble Lord, Lord Gold, argued that the regulator needs to be rigorous. Our regulators are highly capable individuals and the fact that they could not in any single instance penetrate through not only one institution but every institution that had been involved in misbehaviour makes it clear how impossible it is for the regulator to act. Senior managers within these organisations are well advised and supported by great legal expertise—and that legal expertise makes sure that there are firewalls in every possible place and that information does not flow up.

We heard about the UBS example and it was extraordinary that senior management, who had received huge bonuses as a consequence of the mispricing of LIBOR, then argued that they did not notice what was happening in their institutions and recognised it only when it was brought to their attention by the media. These firewalls are tough and tight. It is sensible that we should recognise in Parliament that institutions with the kinds of resources that banks have are pretty much impossible to ever penetrate. That was the argument that led the commission to the reverse burden of proof. Given the misbehaviour that was evident, for example, on the trading floor or in the retail bank that was selling PPI, if we had thought there was any mechanism—any reasonable way to proceed upwards through the chain—that would enable us to follow up through to the key decision-makers of the institution, we would have opted for that route. However, no one could present to us a way in which a bank could be required to be structured to enable that trail to be followed.

The noble Lord, Lord McFall, and I were at an event at which John Kay made a remark about senior management which I think was right—"You take the bonus, you take the rap". That is a fundamental principle which cannot be achieved unless we have a tool such as the reverse burden of proof. These institutions have made sure that they are impenetrable and the regulators in the UK have never found a way of penetrating through.

Lord Hunt of Wirral (Con): My Lords, I declare my interests as set out in the register but particularly as a practising solicitor for nearly 50 years.

I heard the noble Baroness talk about fundamental principles. For me, no principle is more fundamental than the presumption of innocence, as one sees in the way that that has been set so deeply within justice systems, particularly in this country. In contributing to this debate, I come at it in a different way: I do not like the reverse burden of proof in any event. However, I have to recognise the extent of the problems that people have set out so clearly, so that would accompany my welcome of the Government's decision to have what in effect will be the same statutory duty of responsibility right across the financial services industry. I hope there will be a clear message to the industry that, although we recognise that regulation has to be proportionate, there is no way that we can allow to continue the lapses in conduct and responsibility that have taken place.

I think it was the noble Lord, Lord Sharkey, who quoted Tracey McDermott. I too refer to what she said, because I strongly agree with her. She said this at the Mansion House:

> "My firm belief is that if the financial services industry is to restore the trust and confidence of those it is here to serve firms should not just aspire to meet our rules. They should aspire to be better than that".

I have always strongly believed in self-regulation. As a solicitor, what I call super rule No. 1 guides us so that, all right, the rule of law has to be observed, but our code of ethics and professional standards should govern everything we do. I just hope that the message will go from this House to the financial services industry that it should follow the example of the professions that set the highest possible professional standards.

Lord McFall of Alcluith: I welcome the noble Lord's comments, in particular that senior managers have to perform way beyond the call of duty. Will he therefore support my call for a duty of care on the industry, thereby avoiding the reverse burden of proof?

Lord Hunt of Wirral: There is a duty of care. It depends on how much you enact to support the duty of care. As far as I am concerned, the customer, the consumer and the client matter most of all. With that there is an associated duty of care; there has to be.

I hate to quote Socrates to the noble Lord, but I seem to recall that it was he who said that good men do not need laws while bad men will always find a way around them. So the more you set out rules and regulations and duties, the more you enable people to find ways around them. My argument to the noble Lord is this: can we get away from trying to set down in legislation, rules and regulations everything you can do and everything you cannot do? Can we not return to that essence of your own principles, namely your duty of care and responsibility?

Lord McFall of Alcluith: The noble Lord has mentioned Socrates. I well remember that Socrates consulted the wise men and came away appalled by the level of their ignorance.

Lord Hunt of Wirral: I hope that the noble Lord will not mind if I try to avoid following him down that route. I hope that noble Lords will understand that my objection is that I dislike in any event the reverse burden of proof. I welcome the fact that it is to be abolished, but I want to send a message that the financial services industry should be composed of people who put the customer, the consumer and the client first and observe the highest possible principles both professionally and in the standards they seek to maintain.

Baroness Kramer: My Lords, I do not mean to be in any way offensive to the noble Lord, but we cannot afford to be naive. We were naive for decades and in that period significant abuse took place. I am not talking just about a failure to make proper credit decisions. If we look at RBS, we can see that it lost money the old-fashioned way. It made very foolish loans and abandoned appropriate credit standards. You could call that incompetence rather than venality. But what of money laundering, LIBOR mis-selling and PPI mis-selling? These were not failures of competence; they were quite deliberate abuses of the customer on an industrial scale, year after year after year. The assumption that all the people engaged in those activities have either changed who they are or have left the industry is, may I suggest to him, naive?

[BARONESS KRAMER]

Part of the underlying problem is that so much money is at stake here. For senior people who turn their eyes away from abuse, there are very substantial financial rewards. As we have seen, even when there are some penalties such as clawback, they are only a small proportion of extraordinary rewards. We are in a situation where the risk is high if abuse continues. I understand the noble Lord's concerns over the reverse burden of proof, and I do not support it lightly, but as my noble friend Lord Sharkey said, we have on the statute book at least 10 or 11 other Acts, frequently supported by Members of this House, which have decided that the reverse burden of proof is necessary because it is the only way for the law to be effective.

Lord Hunt of Wirral: I am not sure that I am supposed to try to answer the noble Baroness. Perhaps I may just say that if she examines her basic beliefs, she will agree with me that the presumption of innocence is a fundamental human right. I suppose we disagree because the noble Baroness would like to see a two-tier system. I find that very difficult to justify.

I revert back to my view that complementary self-regulation is the way forward. If the trust and confidence that the public had in the financial services industry is to be restored, the message has to go out to the industry that, rather than be subjected to even tougher statutory rules and regulations, the time has come for it to take the lead and determine how its businesses are to be run in the interests of the customer. I hope that that will be the message that goes out from this debate.

1.45 pm

Lord Carrington of Fulham: My Lords, I had not intended to intervene on this amendment, and before I speak, perhaps I had better remind the Committee of my interests as set out in the register. I think that everything has been said about the natural justice and injustice of the reverse burden of proof, particularly on this side by the right reverend Prelate the Bishop of Southwark. I do not want to take that line because the argument is clear; rather, I want to add two practical thoughts. The first is that if there has been wrongdoing in a financial institution, I do not think that anyone in this House would support the guilty parties getting away with it, however senior they are in the organisation. The question is not whether they should get away with it but whether the powers exist to enable the regulators, and then the proper prosecuting authorities, to take appropriate action. I remind the Committee that the PRA has very extensive powers. If the authority considers that there has been malfeasance in a financial institution, it is able to go in and trawl through the records of that institution in great detail, to the extent of looking at email trails.

Baroness Kramer: I believe that the noble Lord, Lord Carrington, is referring to the FCA, but regardless of that, he has mentioned email trails. Is he aware that the absence of email trails was a fundamental part of the regulator's decision that it was not able to pursue a single case to senior management level? There was an absence not only of email trails but of any other record which would enable pursuit of a trail from the bottom upwards. The evidence for that is very clear in the transcripts of the Parliamentary Commission on Banking Standards.

Lord Carrington of Fulham: I have not read those transcripts, but I have some experience of both the PRA and the FCA, and I can tell the noble Baroness that those powers exist for both bodies. If they do not, or if they need enhancing, I would be the first to say that that should happen

Baroness Kramer: I am sorry to keep bobbing up and down, but the point that was made was that those in charge are very careful that there is no email trail and no written trail. That is one of the points about the reverse burden of proof: in effect it requires senior managers to allow an email trail to exist, or indeed some sort of audit trail, because they would be in a position where they would be required to demonstrate that they had taken reasonable steps. When the burden shifts back to the regulator, the regulator is completely stymied at the point where all conversations and exchanges take place in an environment where there are no minutes, no emails, no memos and no existing trail.

Lord Carrington of Fulham: I will come on to that in a moment; that is the second point I wish to make. The first point is that the power does exist for the PRA—and, indeed, the FCA—to be able to go and investigate what has happened inside a financial institution in very great depth and in very great detail.

The consequence of the reverse burden of proof would be to make the situation to which the noble Baroness referred even worse. An organisation which knows that there is individual liability where they have to prove that they did no wrong will have lawyers crawling all over them to make certain that at every move, nothing is recorded, nothing is said and nothing is minuted which would put them in a position where they could do anything other than deny all culpability. That is what would happen—and to some extent does happen. But I can reassure the House that destroying email trails is extraordinarily difficult. In most institutions, email trails survive through even the greatest attempts to wipe the hard drives clean. I can assure the noble Baroness that if the PRA wishes to find evidence and has the resources, the determination and the suspicion, it will find the evidence to bring the prosecutions it needs.

Lord Davies of Oldham: My Lords, this has been an excellent debate and the Minister has a great deal to which he needs to respond. It is little surprise that we have been exercised with these amendments, because they go to the very heart of people's trust and confidence in the financial services industry.

I would suggest that perhaps one reason why this change has been effected by the Government is because of the lack of transparency in the government proceedings. That is why the controversy has arisen. None of us has been privy to the process whereby the Government produced this significant change to the senior managers and certification regime. Clearly, decisions have been taken behind the scenes and without consultation. I do not think that there is much of an email trail on either of those factors.

The fact is that the Government did not even consider that this might be much of a problem, and today's debate identifies just why that is. I hope, therefore, that the Minister will be able to demonstrate the thought processes behind these changes. The age-old argument that it is not working in practice scarcely holds, because the SM&CR never had a chance to work in practice—so the Government will have to come out with a better argument than that. What advice did they get that convinced them that these changes were the best approach? Did an event occasion the change? Are the meetings that the Minister had on such a significant issue as these proposed changes on the public record?

We also need to consider the role of the regulators and how we can ensure that they are bold enough to spot when misconduct takes place. Has their job not been made harder by the fact that there will no longer be a duty on firms if they suspect wrongdoing? Can the Minister please go into some detail about how the Government propose to ensure that the regulators will be able to rule out ineffective management? We have had a refresher course today in just what ineffective management—and, indeed, corrupt management—has done in terms of damage to so many people's lives. We ought not to forget that.

I hope that the Minister will be able to address these points in some detail. Of course, he has to take into context just what this debate has demonstrated: how difficult the issue is, but how fundamental it is to the welfare of our society. I expect the Minister to give a detailed response.

Lord Bridges of Headley: My Lords, it has been a very good debate and I thank all noble Lords who have spoken eloquently, and powerfully at times.

I start by taking a step back. As was mentioned by the noble Baroness, Lady Kramer, and many others, the financial crisis obviously exposed deep flaws in the functioning of parts of the financial services industry, with enormous consequences, as we all know, for the economy and people's living standards. Since then we have also seen cases of malpractice and, at times, criminality—for example, attempts to manipulate benchmarks for personal gain. That is why, as the Chancellor said, the Government are entirely committed to ensuring that the UK financial services sector is the best regulated in the world with markets of unquestioned integrity and the highest standards of conduct. To that end the Government have made far-reaching reforms to financial regulation—reforms that form the backcloth of today's debate and reforms that your Lordships know all too well.

I shall remind your Lordships of just a few. The Government have introduced a criminal offence of misconduct in the management of a bank. This means that senior managers who recklessly cause their institutions to fail may face a seven-year prison sentence. The UK's regime for regulating the remuneration of senior staff who can pose risks to financial stability is now the toughest of any major financial centre. PRA-approved senior managers in banks will face deferral of a significant proportion of their remuneration for seven years, and possible clawback to their pay for up to 10 years where there is a material failure of risk management in their business.

These measures apply to exactly the individuals targeted by the amendment of the noble Lord, Lord Sharkey, and encourage the responsible management that he and of course we all wish senior staff in banks to display. To be clear, I am in complete sympathy with the outcomes that the amendment seeks to deliver. Before I turn to the senior managers regime in more detail, I make another point, which my noble friend Lord Hunt of Wirral made. To restore trust in financial services, strengthened regulation needs to be supported by industry action. That is why I welcome and wholeheartedly support the efforts by the financial sector to strengthen the culture and ethics of all staff. In particular, the Banking Standards Board, formed of the largest banks and building societies, is doing vital work. The fair and effective markets review established by the Chancellor is also prompting change. The review concluded that,

> "markets require stronger collective processes for identifying and agreeing effective standards of good market practice".

As a result, more than 30 firms from a broad cross-section of financial markets have combined to achieve these aims.

The extension of the senior managers and certification regime across the financial sector will support and reinforce all these initiatives to improve individual accountability and raise standards. As Andrew Bailey said,

> "it creates the framework to establish effective responsibility within firms, while maintaining the role of the public authorities, the PRA and FCA, for supervising and enforcing the public interest".

Under the current approved persons regime, the regulators can take action only against those individuals whom they pre-approve if they breach one of the statements of principle set out by the regulators—enforceable standards of conduct that apply on an individual level—or if they are knowingly concerned in activity that causes the firm to breach regulations. The range of approved persons covers significant influence functions, such as the chief executive and directors, and customer-dealing functions, such as sales staff. The new SM&CR focuses pre-approval activity much more closely on those at the top of the firm with enhanced powers for the regulators to impose conditions and time limits on these approvals. This is supported by an ongoing requirement for the firm to assess senior managers' fitness and propriety annually. The regime requires these individuals to have statements of responsibilities to give absolute clarity about who is responsible for which parts of the firm. It will not be as impenetrable as the noble Baroness, Lady Kramer, said. Beneath the senior managers layer is the certification regime. This puts a statutory responsibility for ensuring the fitness and propriety of key staff below senior managers clearly on the firm both at the point of hiring and annually thereafter.

The new regime also enables the regulators to apply enforceable rules of conduct to all employees if the regulators judge that this will advance their objectives. For senior managers, this includes a rule on effective and responsible delegation, which addresses the "nothing

[LORD BRIDGES OF HEADLEY]

to do with me" argument that the noble Lord, Lord McFall, eloquently talked about and the noble Lord, Lord Tunnicliffe, mentioned. The rule states:

"You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively",

as well as requiring them to ensure that the area of the firm for which they are responsible can be controlled effectively.

2 pm

Overall, this creates an enhanced regime where accountability is stronger and clearer, where firms must take responsibility for ensuring the ongoing fitness and propriety of senior managers and other key staff, and where the regulators are able to hold relevant individuals at all levels to account if they do not uphold proper standards of conduct. Therefore, I reject the allegation that that is going back to an old regime. It is in this context that I ask the House to consider the role of the Government's proposed duty of responsibility. I have mentioned that currently the regulators can take action against an approved person if they break one of the statements of principle or are knowingly concerned in a breach of regulations. The combination of the statutory duty and the statements of responsibilities I have described adds a significant third limb to the regulators' existing enforcement powers with regard to senior managers.

Under the duty of responsibility proposed by the Government, senior managers will be required to take reasonable steps to prevent regulatory breaches in their areas of responsibility. This means that the regulators will be able to hold senior managers in any authorised financial services firm to account for failings occurring on their watch. Senior managers will not be able to avoid this either by claiming ignorance of the circumstances leading up to the failings or by denying that they were accountable for the relevant area of the firm's business in the first place. This is a serious obligation, with serious consequences if it is not met. A senior manager breaching the statutory duty can be subject to an unlimited fine and/or prohibition. Therefore, the extension of the senior managers and certification regime will significantly strengthen individual accountability across the financial services sector.

I turn to the noble Lord's amendment and the question of reverse burden of proof. The Government are committed to introducing regulation that is robust but it must also be proportionate and, as far as possible, create a level playing field to support competition. These characteristics are vital for putting downwards pressure on costs to consumers and supporting innovation to help maintain a vibrant, creative, globally competitive industry. The extension of the regime changes the parameters of the debate around the appropriateness of the reverse burden of proof. I shall explain why. As we have discussed previously, the reverse burden of proof is causing banking sector firms and their senior managers to focus on ways of limiting their personal liability should things go wrong.

As Andrew Bailey has testified to the Treasury Select Committee, a tick-box form of compliance is emerging which fundamentally undermines the judgment-led, responsible management that the senior managers regime is designed to support. As well as being an undesirable outcome of itself, these efforts could blunt the effectiveness of the reverse burden of proof as an enforcement tool in relation to the largest, best-resourced firms. By contrast, the vast majority of firms that will now fall within the SM&CR will be small ones. These firms are less likely to have legal resources to devote to protecting their senior executives. There is, therefore, a significant risk that smaller firms could struggle to fill their senior management posts—an issue that has been raised by representatives of some of these small firms. For example, Robin Fieth, chief executive of the Building Societies Association, said last December:

"A continued supply of high quality people is what financial services needs, but I can foresee recruitment issues resulting from the Senior Managers and Certification regimes. It's a real risk that the pool of high quality individuals willing to take on a Senior Management Function role (SMF) in particular will drop. This will be particularly acute for smaller firms where the penalties are the same but the rewards substantially less".

This could in turn undermine the Government's aim to deliver a level playing field wherever possible and adversely affect competition in the industry. The ability of small firms to enter the market is key to driving innovation and putting downward pressure on costs.

Some noble Lords, including the right reverend Prelate the Bishop of Southwark, have expressed concerns about the fairness of reversing the principle that a person is innocent until proven guilty. While there are cases, as the assiduous noble Lord, Lord Sharkey, pointed out, it is unusual in English law. However, even setting these arguments to one side, there remain questions of fairness around the effect on small firms. Perversely, individuals in those firms, where regulatory breaches can cause the least damage, could end up being most exposed to personal liability. The noble Lord accepts this and his amendment would not apply the reverse burden of proof beyond the current population of firms covered by the SM&CR, but it would seek to keep it in place for deposit takers and PRA-regulated investment firms. This also raises issues of fairness. The reverse burden of proof the noble Lord wishes to preserve applies to all deposit-taking institutions, including credit unions and small building societies. If it remained in place for small deposit-taking firms, it would be hard to justify applying the reverse burden on these small firms but not on small firms in other sectors.

Furthermore, the arguments put forward by noble Lords who support a two-tier system are focused on financial stability and the risk that deposit takers and the large investment firms pose to it. However, the reverse burden of proof cannot discriminate between regulatory breaches that threaten financial stability and others. Therefore, its application to deposit takers and not to other firms is arbitrary and would pose serious risks to fair competition within the industry. The risks again would fall mainly on small firms. How easy would it be for a small deposit taker to attract high-quality senior staff in competition with a large insurer or FCA-regulated investment firm where, as well as being able to offer a higher salary, the reverse burden of proof would not apply?

The question the noble Lord's amendment begs is: where should the line be drawn between those firms to which the reverse burden of proof would apply and those to which it would not apply? This is an extremely difficult question to answer in any way that would deliver a consistent and proportionate regime. As the right reverend Prelate said, it may well be arbitrary. Furthermore, how would enforcement action tackle activity that straddled a period when the firm moved above or below the threshold?

The intent behind this amendment is one we all share—to create a financial services sector in which people are held accountable for their actions. Much has already been done to achieve that. This Bill, as it stands, will improve transparency and accountability still further. This amendment, however, would add confusion and bureaucracy for no benefit. I therefore ask the noble Lord to withdraw his amendment.

Lord Sharkey: I thank all noble Lords who have spoken in this debate. It has been a very good one. It is clear that there is a strong division of opinion on both the desirability of a two-tier system and the reverse burden of proof regime. As the Minister said, these issues are both absolutely central to the regulation of our financial services industry.

It still seems to me that Parliament was right the first time. After a thorough and comprehensive investigation, it was right to put the reverse burden of proof regime into law. It was right to conclude that, if we did not do that, we would remain unable to hold senior managers effectively to account.

We have two categories of financial service organisations—those that constitute, or may pose, a threat to our financial stability and those who cannot pose such a threat. I agree with the Minister that we need a proportionate regulation and that what is proportionate for one of these categories is not proportionate for the other. I accept the difficulty in drawing the line. However, I remind the Minister that we have already drawn the line. The previous Act drew a very clear line. I do not think that we have resolved anything today but it was good to have the arguments in play. I look forward to discussing this issue further on Report under, of course, Committee stage rules. I beg leave to withdraw the amendment.

Amendment 21 withdrawn.

Clause 18 agreed.

Schedule 4 agreed.

Clause 19 agreed.

House resumed. Committee to begin again not before 3.10 pm.

Bilateral Trade: United Kingdom and Africa

Question for Short Debate

2.10 pm

Asked by ***Lord Sheikh***

To ask Her Majesty's Government what plans they have to encourage more bilateral trade between the United Kingdom and African countries.

The Earl of Courtown (Con): My Lords, I take this opportunity to remind the House that this is strictly a 60-minute debate and apart from my noble friend Lord Sheikh, who will have 10 minutes, and my noble friend Lord Maude of Horsham, who will have 12 minutes, noble Lords are restricted to four minutes per speech. Once the counter is on four, noble Lords have had their time.

Lord Sheikh (Con): My Lords, I am grateful for the opportunity to bring this important subject before your Lordships' House, and thank all noble Lords who are taking part in this debate.

The African continent holds a very special place in my heart. I was born in Kenya and spent my formative years in Uganda. During my lifetime I have travelled to many African countries in both a personal and a professional context. I have spoken to many African politicians and businessmen, and attended meetings and conferences. I enjoy good relationships with several African ambassadors and high commissioners. I have learnt much about what Africa has to offer.

I have spoken previously in your Lordships' House about the need to promote more business between the United Kingdom and overseas countries—an issue that is indeed very relevant to African countries. We must focus on fast-growing emerging economies and those that have yet to be tapped. This is important, not least at a time when we are still finishing the job of rebuilding our own economy.

My involvement with Africa stretches beyond your Lordships' House. Recently I spoke at an event for the Southern African Development Community, and hosted and spoke at an event for the Economic Community of West African States. I also recently made a keynote speech at a major conference on trade with Uganda. More personally, I have met businessmen who are seeking to further trade between the UK and Ghana, including the King of the Ashanti region in Ghana. I was also given a lifetime achievement award by the Association for African Owned Enterprises for my involvement in trade with Africa. Later on today I am hosting and chairing a conference on trade with countries in the Central African Economic and Monetary Community. About four weeks ago, I spent several days in Ethiopia investigating business and investment opportunities in that country.

My engagements continue to reinforce what I have always known. As a continent, Africa is thriving, and its outlook is extremely impressive. Its GDP is expected to grow by 4.5% this year and 5% next year. It is widely predicted that Africa could account for 7% of the global economy by 2040. However, as impressive as this is, we must not fall into the trap of looking at Africa as merely a bloc. It is in fact a rich and diverse region of 54 countries, offering a variety of cultures, languages and histories. From a trading point of view, this means a whole host of varying economies, businesses and Governments with which we can engage. Many different African states are currently or have recently been members of the much-admired "7% club". Last year, Ethiopia, the Democratic Republic of Congo, Ivory Coast, Mozambique, Chad, Mali, Tanzania and Rwanda all achieved growth of 7% or more.

[Lord Sheikh]

I believe that the tendency to view Africa as an "all-in-one" model is a major challenge that businesses must look to overcome. There are many specific opportunities in different parts of the continent. I will cite examples from my recent trip to Ethiopia. Ethiopia's economy has grown by 10.9% per year, on average, over the past decade. I was told of investment opportunities in a number of industries, including agriculture, fishing, mining and, perhaps most notably, infrastructure and construction projects.

There are opportunities in various sectors in different parts of Africa. We should be doing all we can to help our businesses identify and take advantage of these openings. I am aware of the high-value opportunities programme offered by UKTI, which seeks to provide assistance in this respect. Many projects and contracts are very large, and wide in scope; it is important that businesses be able to find specific areas to which their operations are suited. Can the Minister clarify what success this programme has had regarding opportunities in African countries, and whether it provides specialist support for smaller businesses?

We must not underestimate the market for Islamic financial products in many African countries. The UK has the largest Islamic finance industry outside the Muslim world. I am heavily involved in the maintenance and promotion of Islamic finance. I have co-chaired the All-Party Parliamentary Group on Islamic Finance, which is now being re-formed. I also serve as a patron of the Islamic Finance Council. The council recently held an international conference on Islamic finance in Edinburgh, during which I shared a platform with the Emir of Kano in Nigeria. The council has delivered key projects in Nigeria and Kenya. Ethiopia has shown an interest in Islamic finance, which we are pursuing.

On finance for business services, I am pleased that London is a major centre for the provision of funds for overseas investments. This includes British and foreign banks based here. The World Bank lists Benin, Togo, Ivory Coast, Senegal and the DRC as among the most improved economies for ease of doing business.

Much progress has also been made in relation to democracy in the continent. Approximately half the African nations have ratified the African Charter on Democracy, Governance and Elections. Similarly, approximately half have also ratified the African Charter on Human and Peoples' Rights. These countries are changing, and there should not be the same stigma attached to doing business with them as there once was.

I believe that we can play our part in making it easier to do business by smoothing out our visa regime. I am told that there have been some problems, but I hope the Government will undertake to make our visa regime more accommodating towards building business relationships. Perhaps my noble friend the Minister would like to comment on the question of visas.

Ultimately, we should look to increase the frequency of delegations and trade missions. We must maximise the potential of deploying experienced trade envoys to seek out new opportunities. The main business meeting I had in Ethiopia involved the British Council and DfID, as well as the person dealing with commercial matters at the embassy. Such a cross-party approach was refreshing and very useful. I would like to see and experience more of this type of joined-up thinking in all our embassies and high commissions. Is this indeed the culture at embassies and high commissions overseas, as well as at departments in London? It is desirable to have collaboration between the Foreign Office, DfID and, of course, UKTI. Does the Minister envisage more of our own Ministers visiting Africa and attending trade missions and conferences in London? In addition, will he look at the potential to increase the frequency of missions and the opportunities for businesses to get involved?

I believe that aid and trade go hand in hand. Those in countries such as Nigeria, Kenya and Tanzania receive significant amounts of aid from DfID. This support is very welcome, but only through increased trade will we help communities and economies to flourish in the longer term. We must concentrate on trade as well as aid.

2.20 pm

Baroness Scotland of Asthal (Lab): My Lords, I thank the noble Lord, Lord Sheikh, for instituting this very important debate. Perhaps I may take this opportunity to welcome the maiden speech of the noble Lord, Lord Oates, who I am sure will intrigue us with his strategic delivery, in the same way as he led the Liberal Democrats so well. I also take this opportunity to declare my interests as both the Prime Minister's trade envoy to South Africa and Dominica's candidate to be the next Secretary-General of the Commonwealth.

The African diaspora are of critical importance here in the United Kingdom but the way the United Kingdom has engaged in Africa is of enormous importance to us in relation to trade. Noble Lords will know that the Commonwealth has 18 members of the African Union among its members. The Commonwealth itself is responsible for 33% of the global population and has 15% of the world's GDP, so it is responsible for $3 trillion in annual trade.

I want to take a moment or two to say a few things about South Africa, which has a total stock of United Kingdom investment of around £72 billion. The UK is the largest single foreign investor in South Africa and more than 600 South African companies invest here in the United Kingdom. The annual trade in goods and services alone is worth approximately £10 billion. This market is of enormous importance to us. We all know, too, that the Commonwealth Games will be held in Durban in 2022. It is the first time that Africa will be hosting the Games, and here in the United Kingdom we have real expertise to share with them, which will give us huge trade opportunities. They greatly welcome this opportunity to receive our help and assistance.

As trade envoy, since November 2012 I have been on at least six trade visits to South Africa, each of which created warmth and appreciation for the trade we have enjoyed with them. That has significantly improved our key relationship, and people in South Africa have told me that the trade envoy role is particularly valued because of its consistency and continuity. I am very glad to see my noble friend Lord Risby—and I do see him as a friend—sitting behind the Minister, because he and I are among the six from this House who have been made trade envoys. We have formed a cross-party union to support British trade overseas.

A Minister in the Presidency in South Africa, Jeff Radebe, as well as Rob Davies, the Minister for Trade and Industry, and John Jeffery, the Deputy Minister for Justice, have told me specifically how important they see this relationship, together with the opportunity to build strong relations with the South African high commissioner here in London. We have had a number of successful visits from the Lord Mayor of London, two of which have created real opportunities for trade. The northern powerhouse mission will go early next year and we have been involved in a number of bilateral events. Do the Government intend to remain committed to the trade envoys and the efforts they have been making to enhance trade? What efforts does the Minister intend to make to ensure that the work of the trade envoys is better supported, so that we get real value out of the pro bono commitment that each and every trade envoy gives to the betterment of British trade?

2.24 pm

Lord Chidgey (LD): My Lords, first, how intriguing it was to hear the comments from the noble and learned Baroness. I had not realised her connection with Dominica—a beautiful country which I once visited, and which I think is famous for its ecological tourism. Thank you for that information.

I congratulate the noble Lord, Lord Sheikh, on bringing this issue to us today. Speaking as the co-chair of the All-Party Africa Parliamentary Group, I think his speech told us an awful lot about Africa's potential. Perhaps I may say how much I, too, look forward to the maiden speech from my colleague and noble friend Lord Oates, who I understand accompanied the noble Lord, Lord Sheikh, to Ethiopia. My noble friend brings to your Lordships' House a wealth of experience in local and national government, having served as the deputy leader of Kingston-upon-Thames Council and, latterly, as the chief of staff of the Deputy Prime Minister in the last Parliament.

In encouraging bilateral trade between the UK and Africa, a good point of reference is the importance of good governance to investors in creating stable and reliable markets. Accountability, transparency and probity are the new watchwords in the international aid and development world, coupled with an overarching demand to gain value for money for taxpayers in results-based aid and development programmes. So far, so good, but what about encouraging UK bilateral trade at the sharp end by getting into the marketplace ready to negotiate, keen to trade and to set up joint ventures and win business? Questioning one ambassador in Africa on how UK business development was going in his country generated an interesting response. Apparently, a major UK oil company had just secured a multi-billion pound project with the possibility of subcontracts then trickling down to UK firms. In other words, the box for expanding UK trade was well and truly ticked.

In reality, of course, multinational organisations are well equipped to do their own business development and are unlikely to need embassy support, unless they are in diplomatic or political trouble. What we need to know is—I hope that the Minister can start to answer this in his reply—what guidance is given to embassy and high commission staff on assisting small to medium-size enterprises? The SMEs are the companies with the flexibility and the ideas for developing world-beating products. They are critical to our economic growth, but often without the financial resources to pursue African markets, develop products and support their customer base. Can the Minister tell me what training FCO and DfID staff are given in market assessment and business development, for example, and in establishing protocols within which they can assist private sector companies fairly and evenly?

UK-Africa bilateral aid is increasingly influenced by EU trade agreements, particularly the contentious economic partnership agreements, or EPAs. African countries are placing renewed emphasis on developing their food processing industries, creating more employment and adding greater value to their agro-food exports, often in partnership with UK and EU-based companies. A reality is emerging, however, in that in a number of agro-food sectors the rise in imports of these products is generating a disconnect between expanding urban demand and the rural African hinterlands. By removing tariff and non-tariff barriers, the EPAs have led to a massive increase in the value of EU agro-food exports to sub-Saharan Africa. Local African farmers and producers are being severely damaged by EU exports, which now account for nearly 50% of the poultry meat sector, for example, and are closing off their market opportunities. Similarly, expanding EU milk powder exports are substituting for local milk production, to the detriment of local farmers. Far greater scrutiny is needed of how trade and agricultural policies impact on the efforts of African countries and regions to promote the development of agricultural sectors.

In conclusion, will the Government pledge to recognise fully the development needs of African countries in the agro-food sector and that, within the UK's compass, no sub-Saharan African Government will be obliged to implement trade policy measures that undermine their national agro-food sector strategies?

2.28 pm

The Lord Bishop of Southwark: My Lords, I am grateful to the noble Lord, Lord Sheikh, for a debate so pertinent to the times in which we live. I, too, look forward to the maiden speech of the noble Lord, Lord Oates. Although my knowledge of Africa at large is somewhat limited, I am a regular visitor to Zimbabwe, with my diocese having close links to four of its five Anglican dioceses: those of Central Zimbabwe, Manicaland, Matabeleland and Masvingo. The bishops, clergy and people of those places share a good deal of the reality of their lives and faith with me, and demonstrate remarkable resilience and strong hope in the face of adversity.

Zimbabwe has achieved a fragile economic stability through the abandonment of its currency in favour of internationally traded currencies—principally, the US dollar. This is undoubtedly of great significance for commerce and trade and there are goods in the shops, but most of the population are shut out from any prosperity springing from state and private investment. Unemployment is estimated to be well over 80% of the

[The Lord Bishop of Southwark]

working-age population. Most people, in consequence, have few or no choices beyond the bartering of goods and subsistence farming—in other words, working directly to consume.

Thus, when referring to an entire continent and its welfare, a good deal is to be said for the place of particularity, politics and aid, on which Her Majesty's Government have an impressive record. Much is changing, but in many places issues around governance, rule of law and infrastructure are key to any future improvement. The wisdom of a focus on trade is telling, but even then one should ask, "On what terms?". Economic relationships are not always equally balanced.

I will cite one example: the tax treaty between Senegal and the United Kingdom. In the ActionAid briefing in September, the charity highlighted what it believed were the unfair provisions on Senegal that, it claims, are not typical of such tax treaties. We are told that the treaty provides that,

"activities associated with a building site in Senegal conducted by a British firm will not be taxable in Senegal".

Similarly, ActionAid claims that,

"royalties paid to the UK for radio and TV programmes broadcast in Senegal",

are not taxable. There are other examples. In many such scenarios, one should therefore ask: who benefits?

One might ask a further question: who lobbies? Who lobbies on such tax treaties that have a bearing on trade? So I ask the Minister: is it not time for the Department for International Development to work more proactively to discourage large UK companies from avoiding tax in developing African countries? This would accord to our international trading partners the same dignity and scrutiny that Her Majesty's Government are promoting within our own national boundaries.

2.32 pm

Lord Risby (Con): My Lords, I congratulate my noble friend Lord Sheikh on introducing this debate. I have read his report on Ethiopia—a country that has had a difficult past but has certainly made enormous progress—with great interest, and I very much look forward to the maiden speech of the noble Lord, Lord Oates.

Looking back particularly over the past decade or so, we have seen a huge number of African success stories—I pay tribute to the noble and learned Baroness, Lady Scotland, who is trade envoy to South Africa, where such progress has been made, and my role as the Prime Minister's trade envoy to Algeria is one that I absolutely cherish and enjoy—but the truth is that there are some difficulties on the horizon, in which I believe we can play a role in helping. Many of the economies in Africa have been based on rising commodity prices, but we are now seeing some weakness and there is some concern, and of course the question is how long this will go on for.

A number of African countries have sought to look at diversification, and here we have a unique capability. In the reform of their capital markets and their banking systems—of course, without that their growth would be inhibited—we have a unique offer. We have an outreach programme by the Stock Exchange that interfaces with other countries. We have in this country unique support systems involving lawyers, accountants and insurance specialists, and I have seen all of this on offer to our friends in Algeria. Indeed, I praise the work of the Lord Mayor, who has recently been to Africa, and the previous Lord Mayor, whom I had the privilege of being with in north Africa during her visit.

The second point that I would like to make is that many African countries have a demographic challenge of young people, and we in this country have been quite successful latterly in embracing technological change. We have seen a record start-up rate in this country by international standards, including the establishment of Tech City, and we have set about abolishing some of the red tape, regulation and overprotective employment laws that were inhibiting start-up activity. These are things that, in my role, I have been trying to point out to Algerian friends as very important, and in these aspects of our life we want to share our experience with other African countries, which I believe will welcome what we have done. As my noble friend the Minister contemplates improving business links with Africa, of course there are millions of young Africans who are extremely well educated and motivated and eager to deploy modern technology to start up their own businesses—this is something that I hear everywhere. However, as we look to commodity-rich Africa and help it to grapple with the challenge of diversification, I would just point out that, in a country such as Algeria, which is energy-dependent, it has become very necessary to improve the financial infrastructure—and, again, this is an area where we have an unparalleled advantage.

I would also mention the importance of the expansion of the British Council in a number of African countries. English has become the dominant language of modernity, telecommunications and technology, and in many African countries English is well spoken and can be a key part of our offer. I hope that this aspect, one of the key underpinnings of our relationship, can continue to be offered and expanded.

As my noble friend, who is spearheading so effectively our export effort, contemplates how we can improve our bilateral relationships with a number of African countries, I hope that all these things can be offered to supplement the dynamism and energy that exists in African countries but also to help with the challenge of diversification, which at this juncture is for many of them an important issue that they have to face.

2.37 pm

Lord Oates (LD) (Maiden speech): My Lords, it is an honour to make my maiden speech, albeit necessarily briefly, in this debate. I want first to thank everybody who made my introduction to your Lordships' House so easy—in particular, Black Rod and his staff, the doorkeepers, attendants and police officers, who have been an unfailing source of directions, advice and, above all, patience. I also want to thank my two supporters, my noble friends Lady Parminter and Lady Suttie, who have been great friends to me over many years.

I have taken the geographic part of my title, Denby Grange, in tribute to my late uncle Lawrence, who was a miner at Denby Grange colliery in West Yorkshire all his life. My title is not only a tribute to him; it is a wider acknowledgement that my good fortune is built on the shoulders of my grandparents and parents, uncles and aunts. They all faced much tougher challenges than I ever have and, through the sacrifices they made, they opened up a whole world of opportunities to their children and grandchildren that they never had themselves.

I am pleased to have the opportunity to speak in this important debate introduced by the noble Lord, Lord Sheikh, whom I first had the pleasure of meeting when we both took part in a delegation to Ethiopia this September. That was not my first visit to Ethiopia. Thirty-one years ago, aged 14, I sat in front of a television set and watched Michael Buerk's harrowing BBC news report from northern Ethiopia exposing the horrific human tragedy that was unfolding. That broadcast ignited an enormous sense of anger in me. Much of the disaster was manmade. In the West, we sat on millions of tonnes of intervention stocks—the legendary grain mountains and wine lakes—as hundreds of thousands of people starved to death.

I decided that something had to be done and, with the self-righteous certainty of a by-now 15 year-old, I felt that I was obviously the person to do it. So I ran away from home, to Ethiopia, determined to change the world—the full story is actually a little more complicated than that but, given the time constraints, I hope that noble Lords will forgive this rather concise summary. Once in Ethiopia, I rapidly discovered that the demand for unskilled 15 year-old English boys was not huge, and that Colonel Mengistu's Ethiopia was a particularly terrifying and dangerous place. I was rescued from it by an Anglican clergyman, to whom I owe my life. He told me bluntly that I needed to go home and learn some skills, but he also told me that it would not be long before the TV cameras forgot Africa again. He asked me not to do the same. I never have.

Over the past two decades, I have had the opportunity of living and working in Zimbabwe and later South Africa, where I have learned many important lessons and been nurtured by deep and enduring friendships.

Ethiopia today is a very different place from the Ethiopia of 30 years ago although it remains hugely vulnerable to drought, as Clive Myrie's BBC news report on Monday underlined. The Ethiopian Government have achieved impressive development successes over the past decade with the help of UK development aid. I was proud to work in the coalition Government when we met the 0.7% target for development aid and when Mike Moore in another place and my noble friend Lord Purvis of Tweed enshrined that in law. But if Ethiopia's successes are to be sustained, the Ethiopian economy needs to continue to grow sufficiently to support development from its own resources. Trade could and should play an increasing role in that. Expansion of UK-Africa trade offers huge and mutually beneficial opportunities for African economies and British companies. With the right policies, we have a real opportunity to lead the world in a growing trading relationship with Africa.

The Government have rightly put much store by expanding trade with China and India, but we are well behind the pack there. In Africa, we still have the chance to lead. I hope that we will take it.

2.41 pm

Lord Alton of Liverpool (CB): My Lords, the noble Lord, Lord Oates, has chosen a good debate in which to break the ice with his maiden speech and he has acquitted himself with distinction.

The noble Lord referred to his father, who was the one-time rector of St Bride's in Fleet Street. The noble Lord brings considerable experience to your Lordships' House, having trod the well-worn and honourable route from local government into national politics. As we heard from the noble Lord, Lord Chidgey, he is a former councillor and deputy leader in the Royal Borough of Kingston upon Thames. He served as director of policy and communications for his party and, from 2010 to 2015, was chief of staff to the right honourable Nick Clegg. His friends describe him as calm and principled, and we saw that in his speech today. Outside politics, his working life has encompassed a number of political, communications and public affairs roles with, among others, Westminster Strategy, Bolland & Associates and Bell Pottinger public affairs. He also served as policy and communications co-ordinator for the Youth Justice Board.

As we have heard today, the noble Lord has considerable international experience, not least knowledge of Ethiopia, which, as he rightly said, is topical again today for sad reasons. While working for the Westminster Foundation for Democracy, he advised the Inkatha Freedom Party in the South African Parliament, working with the Home Affairs Minister, Mangosuthu Buthelezi, and the Reverend Musa Zondi. These rich and diverse experiences will make the noble Lord's a voice which we will always look forward to hearing, and the whole House will want to congratulate him on his excellent maiden speech.

Today's short debate focuses on bilateral trade in Africa, but trade cannot be detached from questions of conflict, corruption and governance. I am particularly indebted to the work of Saana Consulting, which works as an external secretariat of the All-Party Group on Trade out of Poverty, for the updates on trade figures which it has provided.

Sub-Saharan Africa, which, with a per capita income of around $1.25 per day, is the least successful region of the world in reducing poverty, should give us all pause for thought. Despite the spectre of war and instability, total trade between the UK and sub-Saharan Africa has increased by nearly 25% from pre-global financial crisis levels up to 2014. However, the UK's share of the region's trade with the world has remained unchanged at 3% since pre-crisis levels. Meanwhile, China's share of the region's trade increased from 12% to 18% in the same period. We can learn a great deal from the way in which China goes about developing its trade relationships in Africa. A new UK strategy is needed better to understand the way in which China, India and Brazil have increased their trade and investment footprint in Africa in recent years. I think that they have better understood than us the importance of

[Lord Alton of Liverpool]

infrastructure projects—for example, the construction of roads and power stations—working with African Governments. I hope that this will be a part of our own strategy. A new UK strategy should also have clearly measurable outcomes and track key indicators year on year, such as the value of new UK business investments and the number of jobs created. We should also expand the UK Prime Minister's trade envoy programme, referred to by the noble and learned Baroness, Lady Scotland, to more key trade partners in sub-Saharan Africa. We might also establish an annual UK-Africa CEO and heads of state summit on boosting UK-Africa trade and investment.

An African friend summarised the approach which we should take as follows: first, the trade opportunities must offer value; secondly, the approach should be underpinned by a proper understanding of the diverse nature of Africa; thirdly, we should identify and develop new partners and new channels; fourthly, we should be seen to be genuinely looking out for the interests of Africa; fifthly, trade should be genuinely bilateral and not a one-way street, and bilateral trade should offer primary socioeconomic development of Africa in rural communities and agriculture; and, finally, we should eliminate proxies, with too much bilateral trade being done by proxies rather than through direct contact with the true stakeholders involved. These seem to be admirably sensible suggestions and would fulfil the need to listen to African voices and not just to our own.

2.46 pm

Lord Popat (Con): My Lords, I, too, thank my noble friend Lord Sheikh for instigating this important and timely debate. We have a shared love for Africa and a passion to see Anglo-African relations given a greater standing by both the Government and the private sector. I also echo the words of the noble Lord, Lord Alton, in commending the noble Lord, Lord Oates, who made an excellent maiden speech and recalled his experiences in Ethiopia.

On Friday, the Office for National Statistics gave us some good news: our trade deficit fell from £10.8 billion in August to £9.4 billion in September. Our inability to export more than we import has become a largely unchallenged part of the economic make-up of our country. Not since 1998 have we run a trade surplus, and that was only for a short period.

Our leading politicians and business figures fret about our membership of the European Union despite its obvious economic and demographic issues, and many have realised that we have to build stronger relations with India, China and other emerging countries to balance out our continental problems. Yet the incredible rise of Africa—the obvious potential of this brilliant continent—has been ignored by far too many.

Africa is waiting for us to acknowledge that the prism of aid, conflict and corruption that we continue to see the continent through is almost entirely out of date. The recent responses in Burkina Faso and Burundi were a wonderful demonstration of how far Africa has come: two military coups that not only failed but saw organisations such as the African Union and ECOWAS play leading roles in resolving matters peacefully. We need our politicians to acknowledge the tremendous progress that Africa has made and the potential it has. We need to acknowledge that Africa is our partner, not a charity.

The former President of Nigeria correctly said that Africa is the last great frontier of emerging markets. The United States has seen the potential: President Obama held a hugely successful African summit last year. Last month, Prime Minister Modi and the Indian Government held their own African summit, with my good friend Anil Agarwal helping to bring it together. The UK has been behind the curve too many times, allowing others to build trade, economic and strategic relations first and then constantly trying to catch up. Let us not make the same mistake again.

The positive signs are all there: Africa is home to the fastest-growing middle class in the world. Six out of the world's 10 fastest growing economies are in Africa, and economic growth is averaging around 5% across the continent. Democracy is now winning the long-standing battle in Africa. Whereas before, power was transferred with bullets, increasingly it now relies on the ballot box. In Commonwealth countries, the rule of law and constitutional set-up is largely based on the British system, and as we know, most trade in Africa relies on the English language. As the noble Lord, Lord Alton, said, we must wake up to Africa's serious economic potential and make improving trade relations with Africa a foreign policy priority.

Perhaps most important is the continuing issue of the trade deficit, particularly in respect of goods. We need to find new markets for British goods and to encourage firms that do not currently export to do so. We need a strategic and targeted approach. If the Government encourage the FCO, UKTI, the British Chambers of Commerce and other organisations to work together, we can reintroduce and rebrand Africa for the British business community.

2.50 pm

The Earl of Sandwich (CB): My Lords, the noble Lord, Lord Sheikh, has raised a fascinating subject, on which I congratulate him. I also congratulate the noble Lord, Lord Oates, on his excellent maiden speech and welcome the Minister to the House and the Front Bench.

As someone with an NGO background, I am interested in the relationship between trade and aid. With the Government's renewed emphasis on trade support through DfID, and with the increased aid budget, there will be more pressure to find private sector projects. I personally favour using aid for trade, but it must not be tied aid. DfID must develop its own trade expertise, poverty reduction must remain the focus and partnerships with organisations such as SMEs and NGOs must not be exploited, as the noble Lord, Lord Chidgey, and the right reverend Prelate pointed out.

The Minister will know that DfID's ventures into trade have not been entirely successful. ICAI, the aid watchdog which reports to the Commons International Development Committee, has been keeping a close eye on DfID's business ventures. In 2013, it showed that TradeMark Southern Africa, promoting a free trade area between Durban and Dar es Salaam, had failed to meet its targets. TMSA was then closed down by DfID, and the Permanent Secretary even had to apologise to the Select Committee.

ICAI also said DfID needed to improve its financial oversight of programmes, and the NAO echoed these findings. DfID has promised to do better, but does the Minister know whether there has been progress, especially in relation to TMSA's sister programmes, the MRGP—the Mozambique Regional Gateway Programme, which links the north-south corridor to ports in Mozambique—and the older TMEA programme in east Africa? The Commonwealth Development Corporation is being given additional funds to boost private sector investment in such projects as hotels and shopping centres. Does the Minister consider that the revamped CDC is a suitable channel for DfID funds, which are legally required to reduce poverty? DfID will need to develop its expertise in these larger regional programmes because aid money has been, and is being, wasted. I remember some successful large Africa projects in the past, notably customs and excise reform through the Crown Agents in Mozambique.

Of course, the UK must operate through development banks and multilateral agencies, but there is a problem of mounting debt to the IFIs. The investments of the wealthy do not necessarily, as we all know, trickle down to the poor and may accentuate the poverty gap. Why not invest in the poor themselves? NGOs have long put their money into income generation and microcredit in the poorest communities. Trade at the village level was originally pioneered by the Grameen Bank in Bangladesh, and multiplied many times in Africa. Savings and credit schemes can be the most efficient method of starting up small local businesses and stimulating the informal economy. Loan repayment rates among the very poor are the fastest and most efficient you can find.

Finally, another government initiative is the UKTI and FCO's overseas business risk programme, which with Morocco now covers 16 African countries. Naturally, many of these are conflict states and it is to UKTI's credit, and thanks to some of DfID's efforts, that the UK has been successful in attracting investment even to the remoter and more dangerous regions of those countries. Taking Kenya as an example, the presence of terrorism on two of its borders has not been a sufficient deterrent to business, with the Nairobi Securities Exchange up with the leaders in the world and with investment at record levels. As other noble Lords have said, African business has been, for once, a good news story and we all hope it will remain so.

2.54 pm

Lord Mendelsohn (Lab): My Lords, I draw attention to my interests in the register. I congratulate the noble Lord, Lord Sheikh, on introducing this debate, which has been an extremely interesting one with some quite impressive contributions. The noble Lord, Lord Sheikh, has frequently raised the question of Africa in this House, and vividly illustrated in his comments not just his expertise but the huge business opportunities there. We owe him a great debt for raising this topic today. I also congratulate the noble Lord, Lord Oates, on a quite outstanding maiden speech. Through colleagues in the House, I am aware that he did considerable work in South Africa some 15 years ago in helping to improve the processes and training for people's contributions to the parliament there. Fifteen years later, we are going to be privileged with quite a few improvements and quite a few distinguished contributions. We wish him well in the House.

I will make some very simple points and raise a few questions for the Minister, who has started his task with great aplomb. First, it is always very clear that in a UK context, our priorities have not placed Africa very high up the pecking order. That is to be understood to some extent, given the short-term priorities, but it would be a mistake not to give it the right level of attention. It is also the case that our performance in Africa has declined. Our top export destinations are the US, Germany, France and the like, but five African countries feature in the list of the top 50 markets for the UK: South Africa is 22nd and Nigeria is 34th. So there is not an immediate priority, but the long-term interests are there and our relative performance is starting to decline. France has taken a very strong approach: it has a mission to double trade; it has held a summit with 50 African leaders; it has doubled its aid; it has looked at expanding its soft power through schools, businesses and education; and it is looking to enhance the 5,000 French businesses investing in Africa through access to finance and the establishment of a wide variety of bilateral trade and investment councils. It is a long-term play, and perhaps we should have more focus on those sorts of ideas.

It is certainly true as well that Africa is developing and coming on in leaps and bounds. The population is sure to rise: in the next 25 years, Africa's working-age population will more than double to more than 1 billion, surpassing both China and India. Africa has also developed quite well in relation to regulation and performance, which is to be encouraged. That leaves us with the dilemma of how best to use these assets and our opportunity to make a difference at this stage.

I would like to ask the Minister about some ideas. We have heard about the trade envoys—I pay tribute to the great work of the noble and learned Baroness, Lady Scotland, and wish her well on hopefully becoming Secretary-General of the Commonwealth, as well as to that of the noble Lord, Lord Risby, and the noble Lord, Lord Hollick, who I know has a role with Kenya and Tanzania, about which I have spoken with him in other places. But are we giving them the right level of support? What is the next phase of using trade envoys more effectively? UKTI has limited resources and a skills base that is based around civil servants. Given the limited resources, and the use that some countries make of their aid budgets, do we have the right skills inside UKTI to leverage them? Are there people inside DfID who have had more experience of how that is done who we should transfer?

Finally, I will make one simple point about entrepreneurs. Africa is going through an explosion of entrepreneurship: a number of people have come over to the West and will go back and establish businesses. Also, the gender parity is quite extraordinary. Are we using the best resources that we have with our industries here to be able to maximise that opportunity as well?

2.59 pm

The Minister of State, Department for Business, Innovation and Skills & Foreign and Commonwealth Office (Lord Maude of Horsham) (Con): My Lords, this has been an excellent debate. It gives me great personal pleasure to congratulate the noble Lord, Lord Oates, on a terrific maiden speech—if I can say so from all the veteran status of having been here six months longer than he has. It was charming, humorous, thoughtful and serious. He and I cohabited in the Cabinet Office for the past five years, both physically and politically, and it was always a pleasure working with him. We were very rarely in conflict with each other, despite the occasional tensions of coalition; we were more often in unity to try to get stuff done, which, as we both know, was often the challenge in a system that did not always relish change. It is a great pleasure to see him here, and I thank him for his terrific contribution to this important debate.

I also congratulate my noble friend Lord Sheikh on having sought and achieved this debate; it is incredibly important. He and others made the point that, although there are enormous attractions in increasing our business in China and India, the big growing markets, we should not let that detract from the importance of Africa. There is no one better qualified in this House, with his background in business and his African heritage, to have introduced this debate, as he did in an incredibly knowledgeable and serious way—unless, of course, it might be my noble friend Lord Popat, who also spoke with great knowledge and thoughtfulness on this important subject.

First, I praise the work of a number of noble Lords who have taken on pro bono—unpaid—the work of representing British businesses abroad as the Prime Minister's trade envoys. We already have my noble friend Lord Risby and the noble and learned Baroness, Lady Scotland, who courteously told me that she had to leave for an important engagement—at Marlborough House, I think she said. I cannot think what that is related to, but we wish her very well in her quest to be the next Secretary-General of the Commonwealth. The noble Lord, Lord Hollick, was here earlier. All of them have done amazing work in Africa: my noble friend Lord Risby in Algeria, the noble and learned Baroness, Lady Scotland, in South Africa, and the noble Lord, Lord Hollick, in Kenya and Tanzania.

There are of course enormous opportunities. My noble friend Lord Sheikh talked about Ethiopia, as did the noble Lord, Lord Oates. It is astonishing: it is the ninth fastest growing economy in the world; it is the second most populous country in Africa; its GDP has increased fivefold since 2000—just in the past 15 years. It is of course just one of many countries in Africa which are replete with opportunity. The scope of opportunities across the continent is wide and varied. In Algeria, as my noble friend Lord Risby said, there are opportunities right across the board in infrastructure, healthcare, education, agriculture, retail and the defence and security sectors. Algeria now has domestic reserves of nearly $160 billion, and it continues to press ahead with its impressive development plan, in which it will be spending $262 billion, so it is replete with opportunity.

My view is that, over the next 25 to 30 years, it is very likely that most of Africa will take off and light up. There will be a huge amount of growth. The truth is that we do not and cannot know precisely in which parts and when that will happen. Given that our resources in terms of government support for trade are necessarily limited, we need to be prepared to support development wherever it is. We must accept, as the noble Lord, Lord Mendelsohn, did, in his typically thoughtful and constructive contribution, that we need to be prepared for the long term, and not be left behind, not to look opportunistic, late to the fair, when opportunities open up. We need to have built the relationships beforehand.

One of the ways we will do that is by appointing more trade envoys to cover much more of Africa. Envoys are a really good way to build long-term relationships with continuity and longevity. Last week, during the visit of President Sisi of Egypt, I was delighted to announce that Jeffrey Donaldson, a Member of the other place, has agreed to become the trade envoy for Egypt.

How do we do that? We need to mobilise the whole of government. As I said in my maiden speech in this House, it struck me when I took on this role that too much of the burden of supporting business and exports from government was falling on UKTI alone. That cannot be right: we need to mobilise the whole of government behind that effort. Abroad, in our posts overseas, the substantial network of the Foreign Office and the Department for International Development is, rightly, increasingly being used to support British businesses in Africa under the joint Africa framework.

UKTI, DfID and the FCO work together as one to push for improvements to the business environment, which are beneficial in themselves to promote development in those markets, and to bring opportunities to the attention of business. This is relevant to the point made by the noble Earl, Lord Sandwich, in his important contribution. It is important to stress that there is no conflict between the role of DfID in promoting home-grown, private sector-led growth in those less well developed countries, with a relentless focus on reducing poverty, and our broader aim of increasing trade and investment in countries that we support with unprecedentedly generous levels of development aid. I am grateful to the right reverend Prelate the Bishop of Southwark for his generous acknowledgement of the scale of that aid. The Conservative Party was committed in its manifesto in 2010 to be the most significant country to meet its UN commitment to spend 0.7% of GDP on aid, and the coalition Government implemented it, at a time of great financial stringency, as he will recall. We should also accept that that brings a great deal of good will in its train.

There is much we can do: lobbying in Ghana for greater transparency in the oil and gas sector; in Mauritius, helping to influence the Government to lift a travel ban; and enabling Nigerian students to come to Middlesex University. This is just the start of what we can achieve on behalf of British businesses. DfID's support to help the east African skills base has helped to make the oil and gas projects there more competitive in what is a highly competitive world market for hydrocarbons.

As several noble Lords said, the key to economic success is to have stable and secure markets, which is why the whole-of-government approach to supporting our businesses makes such sense. African markets can access a number of UKTI programmes which can help. The High Value Opportunities programme, which several noble Lords mentioned, provides industry-specialist support to help root out opportunity overseas and communicate market entry routes. I stress that it is available to SMEs, as well as big businesses. It is very important that when we support businesses to bid for those opportunities, we do whatever we can to encourage them to bring supply chain from the UK in their train. That is an important part of building our exports.

UKTI's aid-funded business team works closely with agencies such as the World Bank and the ADB to make sure that British businesses know about and can access the opportunities from the programmes which emerge from those bodies. A recent mission to Uganda and Tanzania focused on that.

My noble friend Lord Sheikh and others asked about ministerial support for outward and inward trade missions. We should do more of this. Trade envoys can play a very important part, especially in those markets which, in the nature of things, will not receive many ministerial visits. However, it should not just be Ministers such as myself. Sector Ministers and FCO geographic Ministers should be taking business delegations with them, and there is no reason why Ministers in DfID, when they visit countries that we are supporting, should not do so. We should be doing more of that, with more focused support. I want to ensure that, as we reconfigure the headquarters of UKTI, we strengthen the support for all that outward activity.

Much is being done and much more can and should be done. UK Export Finance plays an important role here. It offers some degree of cover in most countries across Africa, but we need to do more to raise awareness of what is on offer. We do not always do enough on that.

Trade policy is important to open up opportunities. I shall attend the World Trade Organization meeting in Nairobi in December. We hope to conclude the Doha development round. We are not optimistic that there will be a huge breakthrough, but we acknowledge the concerns raised by the noble Lord, Lord Chidgey. Much more can be done. The noble Lord, Lord Alton, referred to the involvement of China. We can work alongside China on some of those opportunities. I do not wholly sign up to everything that China has done in Africa but there are lessons for us there for the future.

On the Commonwealth, again I wish the noble and learned Baroness, Lady Scotland, well in her endeavour to be the next Secretary-General. We underestimate the strength of the Commonwealth as a network for business. With the advantages we have in this country of the language and time zone we should make more of it.

On visas, we take the points made by my noble friend Lord Sheikh very seriously. There will always be a tension there but we need to make this work better to increase the ease of travel in the ways to which he referred.

Finally, at the beginning of this week we launched our Exporting is GREAT campaign, which encourages particularly SMEs to get stuck in to export. It is not as difficult as they are sometimes made to feel and we can give them much more support, not just from government but by developing interesting, innovative and practical programmes of support to enable them to get over those hurdles. I am grateful to all noble Lords for the seriousness with which they approached this important debate. We will take on board the concerns, ideas and suggestions made.

Bank of England and Financial Services Bill [HL]

Committee (2nd Day) (Continued)

3.11 pm

Clause 20: Administration of senior managers regime

Amendment 22

Tabled by ***Lord Bridges of Headley***

22: Clause 20, page 17, line 18, leave out paragraph (d)

Lord Ashton of Hyde (Con): My Lords, Clause 20 makes a number of technical amendments to the provisions governing the administration of the senior managers regime, including those relating to the provision of updated statements of responsibilities.

On government Amendments 22 and 23, Clause 20(3)(f) imposes a restriction that prevents firms using an application to vary a condition or time limit as a device to appeal against enforcement action taken by the regulators. This is appropriate because the regulators can take enforcement action only after following the procedure laid down in the Financial Services and Markets Act 2000. That procedure naturally includes proper provision for appeals. It would not be right to allow a further quasi-appeal route by means of application to vary conditions or time limits when those had been imposed as part of enforcement action.

However, Clause 20 goes a bit further than we intended. Subsection (4)(d) would impose a similar restriction preventing the regulators from varying conditions or time limits imposed as a result of enforcement action on their own initiative. That would clearly be unnecessary and could prevent regulators from responding appropriately when circumstances have genuinely changed. Government Amendment 22 corrects this oversight.

Government Amendment 23 makes some consequential changes to Section 204A of the Financial Services and Markets Act 2000. That section ensures that each regulator has the power to take enforcement action when regulatory obligations owed, in effect, to it are breached. This amendment simply makes sure that the section will work correctly where the regulators wish to take enforcement action in relation to breach of a requirement to provide a revised statement of responsibilities.

Lord Davies of Oldham (Lab): My Lords, we are in agreement with the Government.

Lord Ashton of Hyde: Then I beg to move.

Amendment 22 agreed.

Amendment 23

Moved by ***Lord Ashton of Hyde***

23: Clause 20, page 17, line 22, at end insert—

"( ) In section 204A (meaning of appropriate regulator)—

(a) in subsection (3)(d) for the words from "the authorised person" to the end substitute "the revised statement of responsibilities is to be provided to the PRA only;";

(b) in subsection (3A), after paragraph (b) insert—

"(ba) a requirement under section 62A(2) where the revised statement of responsibilities is to be provided to the FCA and the PRA;"."

Amendment 23 agreed.

Clause 20, as amended, agreed.

Clause 21: Rules of conduct

Amendment 24

Moved by ***Lord Sharkey***

24: Clause 21, page 17, line 45, leave out paragraph (c)

Lord Sharkey (LD): My Lords, this is essentially a probing amendment and I shall be brief. Clause 21(3)(c) amends Section 64B of FSMA 2000—the responsibilities of authorised persons in relation to rules of conduct—by omitting subsection (5). The subsection to be omitted says:

"If a relevant authorised person knows or suspects that a relevant person has failed to comply with any conduct rules, the authorised person must notify the regulator of that fact".

This seems a perfectly straightforward, reasonable and clear duty to impose on the relevant authorised persons. Who could imagine or want a regime in which misconduct was known or suspected and there was no obligation to report the fact?

I asked the Minister at Second Reading why this obligation to report to the regulator was being abolished, and I wondered, of course, whose interest was being served by its abolition. The impact assessment helps here, in that it notes that,

"the removal of the SM & CR obligation to report breaches of rules of conduct should result in savings (mainly for larger banks and building societies) … This cost reduction should mainly benefit larger firms because of the large numbers of staff they employ".

There is no mention of any other impact as to conduct or misconduct. The only impact listed is a financial benefit, mainly for larger banks and building societies. The Minister addressed the question in his letter to me of last week. He said that,

"the requirement for firms to report all suspected or confirmed breaches of the rules of conduct has proved to potentially be a very costly obligation for firms, especially the larger firms which employ large numbers of staff, as they have to put in place detailed systems and controls to ensure compliance …The regulators can ensure that they are notified of any information about employee misconduct in a more proportionate way in their rules".

This raises more questions than it answers. How does the Minister know that the obligation to report misconduct is, "proving potentially very costly"? Who has told him so? What evidence have they provided? How was this evidence assessed? How did he guard against the obvious danger of special pleading? What independent views were solicited? Critically, how did he assess the cost benefit of removal of the obligation to report misconduct against the cost of unreported misconduct? Can the Committee see the evidence base for all this?

I note that the Minister defends the removal of the obligation to report misconduct by saying that there are other non-statutory ways the regulators can assure they are notified of misconduct. Does he mean the FCA general notification rules, SUP 15.3.1(3)? Do not these rules impose a non-statutory burden equal to that imposed by the statutory obligation that the Bill removes? If they do not, does that not suggest they are weaker, or has the Minister in mind new rules?

What all this means is that we are being asked to repeal a statutory safeguard without knowing what its non-statutory replacement may be. That seems an unsatisfactory situation. In addition to answering the questions that I have just asked, could the Minister at least postpone activation of this measure until Parliament has had a chance to assess whether the current FCA rules are likely to be as effective as the current statutory obligation—or, if there are to be new rules, could he introduce them via statutory instrument to give Parliament a chance to scrutinise them? I beg to move.

Lord Davies of Oldham: My Lords, I shall also speak briefly and, largely, to endorse the arguments put forward by the noble Lord, Lord Sharkey. The impact assessment does not give a rationale for why the Government have made this decision, which we seek at this point. It would be useful to understand the reasons for the decision having been taken; without such information, we are not quite clear as to the advantages. Who was consulted on this, and what are the benefits to consumers and regulators? Surely it would put more pressure on the regulators to identify wrongdoing. Have the Government conducted investigations that take any of this into account? The Minister has a chance to reassure both of us who have spoken in this short debate on the reasons for the Government's position.

Baroness Kramer (LD): My Lords, I shall say a brief word. My noble friend Lord Sharkey and the noble Lord, Lord Davies of Oldham, have both been very calm on this issue, but I shall admit that, frankly, I am outraged. The obligations that exist for so many people in the public sector to report misconduct—on teachers, police officers and members of the NHS—are taken as absolute requirements. There is no question of whether they are costly; it is understood that the importance of propriety and integrity in all those activities is crucial. I suggest that, after the years that we have been through following the financial crisis, no one should doubt that integrity in this sector is absolutely vital.

When we sat on the Parliamentary Commission on Banking Standards, we discussed whistleblowing extensively. Every single institution that we talked to and everyone we could identify had in place mechanisms for whistleblowing; the problem is that none of them was effective. The kind of issues that were reported through whistleblowing systems were situations such as when someone had noticed someone sliding a £5 note out of a cashier's desk—they were on that kind of scale. So none of the major abuses, whether it was PPI, the LIBOR scandal, the mishandling of credit issues or money-laundering, came to the surface through any kind of whistleblowing system. This measure—the statutory requirement to report a breach when someone sees or recognises that it is happening—is one of the few mechanisms that we could conceive of to try to counter that particular set of problems. Without exception, everybody who gave evidence to the parliamentary commission talked about the importance of making whistleblowing much more effective. So far as I can see, there is no replacement to this requirement that is effective, that has been proposed—and, frankly, if there is a burden, surely any burden is significantly smaller than living with the consequences of sustained and ongoing abuse.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, I thank the noble Lord, Lord Sharkey, for provoking this short debate. I heed what the noble Baroness, Lady Kramer, and the noble Lord, Lord Davies, have said. I shall try to explain the Government's position. I need to examine the very insightful comments made by the noble Lord, Lord Sharkey, and may want to return to some of them in writing. If I do not address them here, I shall endeavour to do so in writing.

At first glance, this seems an obvious and straightforward requirement to impose on authorised persons. As the noble Lord will be aware, this requirement was introduced by the coalition Government through the Financial Services (Banking Reform) Act 2013. It is through that planned implementation of this provision that we have learnt that it is simply disproportionate.

Before I go into more detail, I reassure noble Lords that this does not mean that firms will be under no obligation to report wrongdoing to the regulators. First, a separate proviso in the 2013 Act will still apply: the requirement for firms to notify regulators that they have taken disciplinary action against an individual subject to the conduct rules, be it through dismissal, a reduction in pay or a written warning. Secondly, this requirement builds on the regulators' existing principle for business that firms must tell them of anything that may be of interest to them. If a significant issue arose with the conduct of a member of staff that for some reason did not lead to disciplinary action, the firm would still need to consider whether it would be appropriate to alert the regulators.

In this context, the Government believe that a blanket requirement to report all known or suspected breaches of the conduct rules is disproportionate. In particular, an obligation to report suspected breaches is potentially open-ended and wide ranging for it forces firms to work out the point at which possible indications of breaches of rules of conduct would amount to a genuine suspicion. Then the firm would have to train staff to spot and assess those indications, and finally firms would need systems—

Baroness Kramer: The argument the Minister has made suggests that he does not believe that whistleblowing is a justified process. Almost every whistleblower who raises a suspicion is very unlikely to be able to present a signed and sealed case. It is surely the responsibility of the organisation where the whistleblowing has taken place to explore that. In fact, they constantly guarantee that that is exactly what they will do. The Minister is now saying that that is far too onerous. I find that incredible.

Lord Bridges of Headley: I am not saying that. I am saying that the process as a whole is potentially too onerous. I heed what the noble Baroness says, and of course whistleblowing is important. I shall continue, and we can continue to have this debate.

Finally, firms would need systems to ensure that the information is captured and transmitted to regulators, but it does not stop there. Having been notified of a suspicion, the regulators would have to decide whether to investigate and then, if appropriate, to consider what action to take. No doubt there would be many cases where there was only suspicion and nothing more and no action would be taken, but all cases would have to be investigated to some extent, and it would be difficult for regulators to do nothing at all once they had been notified.

Noble Lords should also note that, although the Government believe that an inflexible requirement to report all known and suspected breaches of conduct rules by all employees subject to them is inappropriate, the regulators can impose more targeted proportionate rules in this area if it supports the pursuit of their objectives.

The noble Lord, Lord Sharkey, raised costs. The costs in the impact assessment are based on the detailed cost-benefit analysis published by the regulators when they set out how they would implement the regime. I understand it is available on the FCA website, but I will write to the noble Lord and all interested Peers on this point. On that basis, I ask the noble Lord to withdraw the amendment.

Lord Sharkey: I thank the Minister for that answer and those clarifications. I cannot help feeling that removing the statutory obligation and replacing it with something that is still not yet entirely clear is perhaps not the best way of proceeding. However, under the circumstances, I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Clause 21 agreed.

Amendment 25

Moved by ***Lord Sharkey***

25: After Clause 21, insert the following new Clause—

"Unsolicited marketing of debt management services

The Treasury shall require that the FCA amend the rules in its handbook governing unsolicited marketing so that they apply to debt management services."

Lord Sharkey: My Lords, I will be very brief. I know that the Committee is keen to move on to the simple and straightforward government amendments. This amendment is designed to do just one thing, which is to persuade the Government to ban cold calling in the service of debt management providers.

Cold calling lead generation and cold calling directly is banned for mortgages and has been for a long time. It was banned because it was felt that it generated high risk for consumers. Cold calling lead generation for debt management providers is a much higher risk for consumers. The FCA published its thematic review of debt management advice in June of this year. It makes extremely worrying reading.

The FCA acknowledged that debt management is one of the highest-risk activities in consumer credit. Its review found that: customers are not sufficiently made aware of the nature of the service being offered, including any fees they may be required to pay; customers are not being made aware, as is compulsory, that help in managing debt is available free of charge; the debt advice provided may not be in the customer's best interests and debt solutions that are not suitable, affordable or sustainable are offered; customers are recommended or sold additional products that may not be in their best interests; the nature and level of fees charged by some fee-charging debt management firms is such that they affect the customer's ability to make significant repayment towards their debt; and firms do not market themselves in a manner that is clear, fair and not misleading.

There is other stuff, too, about the lack of protection of client money. It is all extremely damning. I know that the Minister and the FCA are fully aware of this problem and of its scale. For example, StepChange, a free debt management advice company, had more than 500,000 people contacting it for advice in 2014 alone, which was a 56% increase on the number for 2012.

3.30 pm

Cold calling to generate leads for fee-charging debt management firms is a key aspect of the business. The FCA rules require cold callers to make customers aware of the existence of free debt management advice. The FCA found that information about the availability of free advice was either not provided, not sufficiently prominent or biased. Quite who regulates these cold callers is not entirely clear; there is a kind of regulatory Bermuda triangle, with the FCA, the ICO and Ofcom all having some responsibility. As a result, cold callers are not properly regulated at all. I know that the Minister and the FCA have this under review, but it will take a year or so for that review to appear and longer for anything to actually happen. In that year or longer, hundreds of thousands, perhaps even millions, will have been exposed to unscrupulous cold calling lead generators.

We know what the problem is. We banned cold calling for mortgages. Cold calling lead generation for debt management companies affects the most financially vulnerable people in our society. The people affected are much more vulnerable than people looking for a mortgage. Why delay? Why not apply right now the same rules to cold calling for debt management as to cold calling for mortgages? That is what the amendment proposes; I beg to move.

Lord Tunnicliffe (Lab): My Lords, I support the amendment from the noble Lord, Lord Sharkey. One of the main concerns of the Financial Services Consumer Panel has been the uneven playing field between paid-for and not-for-profit debt management services. People are being exposed to poor debt advice, as the noble Lord said, and this needs to be addressed both directly and in the round.

The central concern is this curse of our modern time: cold calling. Something could be done quickly. A Labour amendment was voted through in this House during the passage of the Consumer Rights Act on caller identification, but it has not yet been commenced. In response to my noble friend Lady Hayter, the noble Baroness, Lady Neville-Rolfe, stated that the Government were about to begin a consultation on caller ID. Can the Minister say now, or in writing at a later date, what the timetable is for this consultation? When can we expect to see some action on this issue?

Are the Government considering any other measures that could help tackle unsolicited market practices? They include the automated reporting of nuisance calls; the collation of nuisance calls—for example, more than 100 complaints and the calling number's owner could be automatically referred to Ofcom, the Information Commissioner's Office and perhaps the police; and appropriate victim redress for persistent cold calls from the same organisation.

The concern highlighted by the noble Lord, Lord Sharkey, is important in its own right, and so is the whole issue of cold calling. The two come together in this amendment, which we support.

Lord Ashton of Hyde: My Lords, the Government share the concern of the noble Lord, Lord Sharkey, about long-standing problems in the debt management market. Indeed, I have had the pleasure of answering questions from the noble Lord on this subject, and had a subsequent meeting with him and officials from the Treasury. We agree that it is imperative that vulnerable consumers in this market are treated fairly by firms and provided with the services that meet their needs.

As the Committee will be aware, responsibility for consumer credit regulation, including debt management firms, transferred from the Office of Fair Trading to the Financial Conduct Authority on 1 April 2014. The ensuing, more robust regime is dramatically improving consumer protections. The Government have ensured that the FCA has wide enforcement powers to take action where its rules are breached. There is no limit to the fines that it can levy and, crucially, it can force firms to provide redress to consumers.

Debt management firms are in the first group of firms to require full authorisation, with the FCA thoroughly scrutinising firms' business models and practices. Every debt management firm will have to demonstrate compliance with the FCA's rules and principles, including the requirement to treat customers fairly. Firms which do not meet the FCA's threshold conditions will not be able to continue in the market. Decisions on those authorisations are due to take place—the first ones by the end of this year.

The FCA has also introduced tough new rules to protect consumers in the debt management sector, and the FCA actively monitors that market. It has flexible rule-making powers and, if it finds further problems, it will not hesitate to take action. The FCA requires that all advertisements and other promotions must be clear, fair and not misleading, and it is able to impose tough sanctions where wrongdoing is found.

Regarding the noble Lord's specific points about unsolicited marketing, the financial promotions regime applies to those providing debt management services. The FCA requires that unsolicited marketing by phone, text or email makes clear both the identity of the firm and the purpose of the communication so that the consumer can decide whether to proceed. This was highlighted by the noble Lord, Lord Sharkey.

The FCA also requires regulated debt management firms that accept leads from lead generators to satisfy themselves that business has been procured fairly and in accordance with data protection and privacy in electronic communications law. More broadly, in 2014 the Department for Culture, Media and Sport published its *Nuisance Calls Action Plan*. This set out the actions being taken by government, regulators, consumer groups and industry to tackle nuisance calls.

Importantly, the FCA has already committed to undertake a review of unsolicited marketing calls, emails and text messages from consumer credit firms, which will begin early next year. The Government believe that requiring the FCA to take a particular course of action before this review has taken place would limit the FCA's ability to exercise its powers independently and would not necessarily achieve the desired result.

In answer to the question, "Why not act now?", asked by the noble Lord, Lord Tunnicliffe—and I think that the noble Lord, Lord Sharkey, implied that even if he did not say it directly—it is worth noting that, if additional requirements for debt management firms were introduced at present, those firms would be required to alter their internal processes. That would cause disruption to the FCA's ongoing authorisation process, which is due to begin producing results within the next couple of months.

I shall take advantage of the offer from the noble Lord, Lord Tunnicliffe, to write to him on the caller ID review timetable, because I do not have that to hand.

In summary, the authorisation process is well under way and will not take a year, and the FCA review of unsolicited marketing calls will begin early next year, so I submit that the noble Lord's amendment is not appropriate at this time. I therefore ask him to withdraw it, confident in the knowledge that he will continue to hold the Government to account on this subject.

Lord Sharkey: I thank the Minister for that answer, a lot of which was, as I knew it would be, very encouraging. There remains just one issue. This is going to take some time, during which a substantial number of people will be exposed to risk. I think that that is unnecessary. The mortgages example suggests that we can, without interfering with the FCA's processes, do something simple and quick now to stop this abuse. Having said that, I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Clause 22 agreed.

Amendment 26

Moved by ***Baroness Drake***

26: After Clause 22, insert the following new Clause—

"Extending a duty of care to the financial sector

In every contract to supply a service, traders who are ring-fenced bodies providing financial services as defined under section 142A of the Financial Services and Markets Act 2000 (ring-fenced body) shall be subject to—

(a) a fiduciary duty to their consumers and small businesses with respect to provision of—with reasonable care and skill, and

(i) the operation of care services, and

(ii) the management of any individual contract to provide services,

with reasonable care and skill, and

(b) a duty of care towards consumers and small businesses across the financial services sector."

Baroness Drake (Lab): My Lords, in this amendment I return to an argument that I have articulated in this House before. Culture and conduct in the banking sector were integral to the explanation for the financial crisis in 2008 and there is no compelling evidence that the culture has changed sufficiently. As the Financial Services Consumer Panel commented:

"The financial services industry has a long and ignoble history of poor treatment of consumers".

The recent foreign exchange riggings saw banks fined £4 billion for deliberately misleading customers. Fixing the market was still happening a full five years after the financial crisis. Now we read in the CMA report on the £16 billion current account markets that millions of customers who regularly use their overdraft get a poor deal. In effect, the law still does not protect customers sufficiently.

The purpose of this amendment is to ensure that providers must put the consumers' interests first and resolve conflicts of interest in the interest of the customer when providing core services and in the management of any contract to provide services. Profit should not be made at the expense of the customer through their lack of knowledge and consent.

A fiduciary duty of care, as contained in this amendment, is needed for two reasons: first, to force the pace of cultural change in the banking sector, and, secondly, because regulation still enshrines too weak a duty to the consumer. Massive fines are simply not delivering the desired behavioural change, but they add to the cost for consumers and raise concerns about sustainability. A regulatory focus on sufficient providers in the market and a reliance on the power of the disclosure of information are simply not delivering the required consumer outcomes.

[Baroness Drake]

The markets are becoming more complex. Governments will continue to react to rather than prevent problems unless a step change is taken in defining the duties expected of providers towards consumers.

The FCA's Treating Customers Fairly initiative enshrines a weaker duty to the consumer, arguably rendered weaker by the Financial Services and Markets Act, which requires the FCA to have regard to,

"the general principle that consumers should take responsibility for their decisions".

Indeed, the Financial Services Consumer Panel September 2015 briefing provides a well-argued presentation on that very point.

The complexity of many financial services, combined with weak standards of governance, conflicts of interest, inappropriate remuneration structures, asymmetries of information, knowledge and understanding between the provider and consumer, behavioural biases, and unequal power between consumers and providers, has resulted in an extremely unbalanced relationship. Given that imbalance of power, consumers can reasonably be expected to take responsibility for their decisions only where provider firms exercise a fiduciary duty of care. Regulation does not explicitly create a requirement for firms to act in their customers' interests or to eliminate conflicts of interest in the consumers' interests.

The need to balance consumers' responsibility with greater firm responsibility is not new. The Joint Committee on the draft Financial Services Bill commented in 2011 that,

"a statutory duty should be placed on firms to treat their customers 'honestly, fairly and professionally'",

allowing the FCA to ensure that,

"companies address conflicts of interest".

The then FCA said that it supported a general principle that a regulated firm should act honestly, fairly and professionally, in accordance with the best interests of the consumer.

The Financial Services and Markets Act as amended by the Financial Services Act 2012 requires the FCA to,

"have regard to … the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate".

The Government argued at the time that this provision would ensure fairness, honesty and professionalism. This intended effect is clearly not being achieved in many instances in practice.

Some argue that a fiduciary duty requiring providers to put customers first would impose an obligation to act in the best interests of customers to the exclusion of the firm and its shareholders' interests. My response to that is that no financial organisation or its shareholders should have the right to a profit where, integral to the design of a product or service and the manner of managing that product or service, is a disregard or neglect of the consumer's interest. Without this principle asserted as the bedrock to regulatory rules we continue to lock dysfunctionality into the financial and banking sector which will continue to manifest itself. That is not good for the UK when we have such a high dependency on the sector, providing as it does £65.6 billion, or 11% of total government receipts, and nearly £127 billion in gross value added to the UK economy.

3.45 pm

The duty in the amendment would also assist prudential concerns of sustainability, as the cultural shift will protect capital reserves from being depleted by future fines or compensation. Compensation for the PPI scandal now totals over £24 billion; penalties for foreign exchange rigging exceeds £6 billion; and small firms have received nearly £2 billion in compensation for mis-sold interest rate hedging products, to name but a few. The list is longer.

My argument is not that the Government are not addressing culture and conduct; rather that they are not addressing it sufficiently. Sometimes it is difficult to separate prudential and conduct issues or to understand if the sustainability of a financial organisation is placed ahead of fairness to the customer. If pursuing the customers' interests when they have been treated unfairly means that a financial organisation becomes unsustainable, then prudential considerations may trump that. On legacy issues that may be a reality in order not to create a bigger problem, but for a future long-term sustainability we cannot go on like that; we need a more fundamental amendment.

Some observers are concerned that 2008 is fading from memory. The reference to a new settlement in the Chancellor's 2015 Mansion House speech has been followed by changes to the bank levy; the non-retention of Martin Wheatley as chair of the FCA; the weakening of the ring-fence between retail and investment banking by relaxing restrictions on banks making loans and paying dividends from their retail to their investment arms; and the removal of the reverse burden of proof on executives who preside over misconduct, which was debated at some length on Amendment 21.

The senior managers and certification regime is being introduced, requiring that senior managers should be subject to a duty of responsibility to take reasonable steps to prevent a regulatory breach from occurring. Protecting financial system resilience is a mandate of the PRA which is often equated with enhancing banks' ability to absorb external shocks. However, that is inseparable from the need to reduce the banks' tendencies to generate those shocks in the first place—and that comes from the nature of the conduct and the culture in many instances.

At the heart of sustainability must be changing culture, conduct and responsibility to the customer. That requires that the duty of responsibility that senior managers bear under the senior managers and certification regime be underpinned by a judiciary duty of care.

To the public, debates about the banks appear dense and overtechnical. When I say to colleagues, "I am in the Bank of England debate today", they look as though I am some strange monster who is obsessed with technical details because, although the banking system is so important to them and the economy, it is so complex and ununderstandable that they feel that they cannot participate. But for ordinary people, the intent of this amendment is straightforward. It means that providers must answer two questions when selling and managing products and services: not only "Can you do it?", but also "Should you do it?" when looked at from the point of view of the interests of the consumer. I beg to move.

Baroness Kramer: My Lords, I do not think that I can improve on anything that has been said by the noble Baroness, Lady Drake, because she understands these issues with such clarity and works so extensively in this field. In a strange way, the noble Lord, Lord Hunt, made the argument for how a duty of care should be at the heart of everything that banking institutions and financial institutions do. I hope very much that the Government will take on board the importance of embedding these kinds of responsibilities deeply within the requirements for the financial services industry.

Lord Tunnicliffe: My Lords, what became evident both during and after the crash was that financial providers had failed to exercise any duty of care towards consumers across the sector that the industry is supposed to serve. The amendment before us was previously moved by my noble friend Lady Hayter, and I draw largely on her experiences as a member of the Financial Services Consumer Panel. The cases she worked on during her time at the FSCP were, among others, high loan-to-value mortgages and high loan-to-income mortgages. This was plainly about selling products to people who could not afford them with no consideration of their interests. This was done in spite of the fact that should circumstances change, those people would have no way of repaying their loans. As time went on and the number of loans increased, each one as reckless as the last, no account was taken of the hurt to individual borrowers or of the far wider group of consumers whose house prices fell in the subsequent crash, while future loans dried up and repayment terms became unsustainable.

The amendment would ensure that financial services had a duty of care to their consumers collectively as well as on a one-to-one basis with their clients. Case law provides for a duty of care across the financial services sector, but it is clear that that is not enough. Despite this, the Government have continued to resist writing it into legislation and have relied only on case law. The first part of the amendment would establish a fiduciary duty that would demand a higher standard of care for direct consumers, and the second part would extend that general duty to all consumers across the sector. This would fill a gap which currently exists in the financial services sector. If it were to be introduced alongside the new extended senior managers and certification regime, it could bring about a cultural change in the financial services sector that the Government, the Treasury Select Committee and the Bank of England have all said is necessary.

The experience of many of us of the financial sector has moved from a position where as a generality we expected that we could trust the industry with our money and for appropriate advice. The crash has completely destroyed that trust, so an amendment like this, if accepted, could help to bring it back. Confidence in the sector remains dangerously low and something has to be done to restore it. Perhaps this duty of care would provide a route back to public trust.

Lord Bridges of Headley: My Lords, I thank the noble Baroness, Lady Drake, for prompting this short debate and for her thoughtful and thorough speech on the subject. As she rightly says, we need to improve the way the financial services industry treats its customers. We all want to see better standards in the banking and financial services industries, and to ensure that the customer always comes first. The question before us, however, is whether this amendment would achieve that. I am sorry to say that I am not at all convinced that it would—and I am conscious that your Lordships have been around this issue before, not least in 2013. I read the *Hansard* report of that debate yesterday. None the less, let me clarify the Government's position.

The Government do not consider that introducing a fiduciary duty or a duty of care in legislation would help to drive up standards within ring-fenced banks because, as noble Lords know, banks are already subject to a wide range of legal duties. First, a bank is subject to obligations under the Financial Services and Markets Act 2000 and the regulators' rulebooks. Under the latter—the principles for business—a firm is required to act with due skill, care and diligence, and to pay due regard to the interests of its customers and treat them fairly The enforceable rules of conduct that will apply to banks under the SM&CR, to which the noble Baroness referred, will put the same requirements on the vast majority of bank employees, complementing the obligations on the firm, requiring them to give due regard to customers' interests and to treat them fairly.

In addition, ring-fenced banks are subject to obligations under their contracts with their customers. These include implied terms—under Section 13 of the Supply of Goods and Services Act 1982 or Section 49 of the Consumer Rights Act 2015, where the consumer is not an SME—that the ring-fenced body will perform the service with "reasonable care and skill". So, it is not clear that imposing a fiduciary obligation on a bank to its customers or small businesses would add any value. I would argue that a fiduciary obligation is not appropriate in the relationship that a bank has with the majority of its customers. It is a specific kind of obligation that a director owes to a company, or a trustee owes to a beneficiary under a trust.

It would be appropriate for a bank to have such an obligation when it was acting as a custodian, and such obligations can and do arise quite naturally in such circumstances. But, and this is the point, deposits with a bank are not property held on trust, so a fiduciary obligation simply would have no place in the contractual relationship between a bank and its customer—for instance, in a sales relationship. Clearly, it would be meaningless where the bank has lent the customer money.

Some time ago—noble Lords may not remember this, as it was in 1848—the case of Foley v Hill held that the relationship between a bank and its customer was that between a debtor and a creditor: a contractual, not a fiduciary, relationship. It was therefore not within the jurisdiction of the court of equity.

Furthermore, a fiduciary duty, even if it were to be imposed, could only deliver change if it was enforceable. Only the beneficiaries—the consumers and small businesses—could enforce it. This would obviously be

[LORD BRIDGES OF HEADLEY]

expensive, requiring court proceedings, and would only produce financial compensation. The Government firmly believe, therefore, that the amendment would not add anything to the duties that already apply to ring-fenced bodies. Rather, it would add confusion where there is clarity. Banks can comply more easily with specific requirements, and customers and regulators can more effectively hold the bank to account when they do not comply.

I declare an interest here. I spent much of the last few years trying to ensure that one of the country's largest high-street banks treats its customers fairly and earns their loyalty. In the light of that experience, I point out that the high level of competition and choice that now exists, and the increasing ease with which consumers can switch accounts, makes it even more imperative for banks to treat their customers not just fairly but personally and with real integrity.

This amendment would not improve on the regulations that already govern banks' relationships with their customers. It would not give banks or their senior managers a clear understanding of what is expected of them, or provide a viable and effective means of holding banks to account. I therefore ask the noble Baroness to withdraw it.

Baroness Drake: I thank the Minister for his reply, and I will not enter into iterative debate on a fiduciary duty, other than to say that I will persistently argue from these Benches that the UK's regulatory framework is inadequate for the consumer. Slowly but surely, in certain areas such as the introduction of independent governance committees in the insurance sector which embrace a fiduciary responsibility, there is a growing recognition that the current regulatory framework is not delivering the right response to behaviours in the banking and financial sector. Yet more layers of sedimentary rock in the regulatory system will not deliver that. None the less, I beg leave to withdraw my amendment.

Amendment 26 withdrawn.

Clause 23 agreed.

4 pm

Amendment 27

Moved by ***Lord Ashton of Hyde***

27: After Clause 23, insert the following new Clause—

"Enforceability of agreements relating to credit

(1) Section 26A of the Financial Services and Markets Act 2000 (agreements relating to credit) is amended as follows.

(2) In subsection (4)—

(a) the words from "has" to the end become paragraph (a);

(b) after that paragraph insert—

"(b) is an appointed representative in relation to that activity,

"(c) is an exempt person in relation to that activity, or

(d) is a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity."

(3) In subsection (5)—

(a) the words from "the agreement" (in the third place they occur) to the end become paragraph (a) (and the existing paragraphs (a) and (b) become sub-paragraphs (i) and (ii) of that paragraph);

(b) after that paragraph insert—

"(b) that person is an appointed representative in relation to that activity,

"(c) that person is an exempt person in relation to that activity, or

(d) that person is a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.""

Lord Ashton of Hyde: My Lords, government Amendments 27 and 28 make some minor and technical changes to the Financial Services and Markets Act 2000 in relation to the regulation of consumer credit. The Government fundamentally reformed consumer credit regulation, transferring responsibility from the Office of Fair Trading to the Financial Conduct Authority on 1 April 2014.

The FCA regime is already having a substantial positive impact and is helping to deliver the Government's vision for an effective and sustainable consumer credit market which is able to meet consumers' needs. The amendments considered today are, as I have already said, technical in nature. They concern the application of provisions relating to the enforceability of agreements.

Amendment 27 amends subsections (4) and (5) of Section 26A of the Financial Services and Markets Act 2000, which concern the enforcement of credit agreements by persons acting on behalf of the lender, either by administering the agreement or by collecting debts under the agreement. This amendment makes it clear that a consumer credit agreement may be enforced by anyone who is able to carry on a credit-related regulated activity lawfully under the Financial Services and Markets Act 2000. This includes firms that are exempt from the need to have FCA authorisation to carry out these activities either because the firm has an individual exemption or because it is entitled to an exemption as a member of a designated professional body. It also includes appointed representatives of authorised persons.

The current provision requires the person to have a relevant permission under the Act. The amendment clarifies that this is not limited to persons who are directly authorised by the FCA but also includes persons who are exempt from needing authorisation either by virtue of a specific exemption or because they are appointed representatives or members of a designated professional body. In such cases, the person does not need FCA authorisation, provided that, in the case of an appointed representative, another firm with the relevant debt collecting or debt administration permission takes responsibility, as principal, for their activities and compliance with FCA regulations. In the case of designated professional bodies, if the FCA has approved the professional body's rules under Part 20 of FISMA, and these cover debt collecting or debt administration, then members of the body can carry on those activities without needing direct authorisation from the FCA, provided that they do not engage in regulated activities which are outside the scope of the

Part 20 permission. It was always the Government's intention that subsections (4) and (5) of Section 26A should cover such persons, but the amendment puts this beyond doubt.

Government Amendment 28 amends Section 27 of FSMA, which deals with agreements made through unauthorised persons. Subsection (1) of Section 27 provides that an agreement made by an authorised person carrying on a regulated activity is unenforceable where it is made in consequence of something said or done by a third party in circumstances where that third party should have had, but did not have, permission. In the case of consumer credit and hire agreements, this could potentially cover any credit broker in what could be a long chain of multiple brokers, even if the provider is not aware of the particular third party or their involvement in the transaction.

This is in contrast to the position under the Consumer Credit Act 1974 prior to the transfer of regulation from the OFT to the FCA. Section 149 of that Act, which was repealed as part of the transfer, limited unenforceability to situations where the introducing broker was unlicensed and it was immaterial whether any other broker in the chain was unlicensed. The amendment would ensure that Section 27 is proportionate for consumer credit lenders and consumer hire providers in the context of the consumer credit market, where chains of credit brokers are often involved in bringing together the consumer and the lender.

Specifically, the amendment would ensure that this applies only if the provider knows—before the agreement is made—that the third party, such as a credit broker, had some involvement in the making of the agreement or in matters preparatory to its making. In such cases, if the broker is acting in breach of the general prohibition, the agreement will be unenforceable against the consumer, as is currently the case. However, if the provider is unaware of the broker's involvement, the fact that it did not have permission when it should have done would not in itself make the agreement unenforceable.

The Government believe that this strikes the right balance between protecting consumers and ensuring that burdens on firms are reasonable and proportionate. I beg to move.

Lord Davies of Oldham: My Lords, we consulted the Financial Services Consumer Panel on these amendments, and it confirmed that they were entirely technical. As I always take the panel's advice, I think they are technical and agree with the Minister.

Lord Ashton of Hyde: I am grateful to the noble Lord.

Amendment 27 agreed.

Amendment 28

Moved by ***Lord Ashton of Hyde***

28: After Clause 23, insert the following new Clause—

"Enforceability of credit agreements made through unauthorised persons

(1) Section 27 of the Financial Services and Markets Act 2000 (agreements made through unauthorised persons) is amended as follows.

(2) After subsection (1) insert—

"(1ZA) But this section does not apply to a regulated credit agreement or a regulated consumer hire agreement unless the provider knows before the agreement is made that the third party had some involvement in the making of the agreement or matters preparatory to its making."

(3) In subsection (1A) for "The agreement" substitute "An agreement to which this section applies".

(4) After subsection (4) insert—

"(5) For the purposes of subsection (1ZA)—

"regulated consumer hire agreement" has the meaning given by article 60N of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"regulated credit agreement" has the meaning given by article 60B of that Order.""

Amendment 28 agreed.

Amendment 29

Moved by ***Lord Ashton of Hyde***

29: After Clause 23, insert the following new Clause—

"Transformer vehicles

(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) After Part 17 insert—

"Part 17A

Transformer Vehicles

284A Transformer vehicles

(1) In this section "transformer vehicle" means an undertaking ("A") which—

(a) is established for the purposes of carrying on the activities mentioned in subsection (2), or

(b) carries on those activities.

(2) The activities referred to in subsection (1) are—

(a) assuming risk from another undertaking ("B"), and

(b) fully funding A's exposure to that risk by issuing investments where the repayment rights of the investors are subordinated to A's obligations to B in respect of the risk.

(3) The Treasury may by regulations make provision for facilitating, and provision for regulating—

(a) the establishment and operation of transformer vehicles;

(b) the activities mentioned in subsection (2);

(c) the trading of investments issued by transformer vehicles.

(4) Regulations under subsection (3) may (amongst other things) make provision—

(a) for the incorporation and registration in the United Kingdom of bodies corporate;

(b) for a body incorporated by virtue of the regulations to take such form and name as may be determined in accordance with the regulations;

(c) as to the purposes for which such a body may exist and the investments which it may issue;

(d) as to the constitution, ownership, management and operation of such a body;

(e) for such a body to comprise different parts;

(f) for such parts to have legal personality distinct from that of the body;

(g) as to the holding and management of the assets and liabilities of such a body, including provision for the segregation of assets and liabilities relating to different risks;

(h) as to the powers, duties, rights and liabilities of such a body and of other persons, including—

(i) its directors and other officers;

(ii) its shareholders, and persons who hold the beneficial title to shares in it without holding the legal title;

(iii) its auditor;

(iv) any persons holding assets for it;

(v) any persons who act or purport to act on its behalf;

(i) as to the merger of one or more such bodies and the division of such a body;

(j) for the appointment and removal of an auditor for such a body;

(k) as to the winding up and dissolution of such a body;

(l) enabling the FCA or the PRA to apply to a court for an order removing or replacing any director of, or person holding assets for, such a body;

(m) for the carrying out of investigations by persons appointed by the FCA or the PRA.

(5) If regulations under subsection (3) make the provision mentioned in subsection (4)(e) references in subsection (4) to a body include its constituent parts.

(6) Regulations under subsection (3) may—

(a) impose criminal liability;

(b) confer functions on the FCA or the PRA (including the functions of making rules and giving directions);

(c) authorise the FCA or the PRA to require the Council of Lloyd's to exercise functions on its behalf (including functions conferred otherwise than by the regulations);

(d) confer jurisdiction on any court or on the Tribunal;

(e) provide for fees to be charged by the FCA or the PRA in connection with the carrying out of any of their functions under the regulations (including fees payable on a periodical basis);

(f) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act);

(g) make consequential amendments, repeals and revocations of any such legislation;

(h) modify or exclude any rule of law.

(7) The provision that may be made by virtue of subsection (6)(f) includes provision extending or adapting any power to make subordinate legislation.

(8) Regulations under subsection (3) may provide that a reference in the regulations to, or to any provision of, legislation (including an EU instrument and legislation of a country or territory outside the United Kingdom), is to be construed as a reference to that legislation or that provision as amended from time to time.

(9) In this section—

"investment" includes any asset, right or interest;

"primary legislation" means an Act, an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales, or Northern Ireland legislation;

"subordinate legislation" means an instrument made under primary legislation.

(10) If a statutory instrument containing regulations under this section would, apart from this subsection, be treated as a hybrid instrument for the purposes of the Standing Orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument."

(3) In section 429(2) (regulations subject to the affirmative procedure), after "262," insert "284A,"."

Lord Ashton of Hyde: My Lords, Amendment 29 introduces a power into the Financial Services and Markets Act 2000 for the Treasury to make regulations relating to transformer vehicles. Transformer vehicles are used for risk-mitigation purposes, particularly in the insurance and reinsurance industry. The Government plan to use this power to implement a new framework for insurance-linked securities business.

In an insurance-linked securities transaction, an insurer contracts with an entity specifically established to take on insurance risk. These entities come within the definition of "transformer vehicles" in the amendment. The insurer transfers risk to the transformer vehicle and the vehicle raises collateral to cover that risk by issuing securities to capital market investors. The vehicles exist solely to transform risk into capital market instruments and to compensate the insurer should the insured event take place. Investors receive a return from the premiums paid by the insurer and the collateral is returned to investors if the insured event does not take place. Unlike conventional reinsurers, ILS transactions do not pool risk. The transformer vehicle takes on a specific risk and typically holds collateral that is at least equal to the risk transferred. This key safeguard will be a firm requirement in the UK framework. The framework will ensure that insurers can rely on the protection they arrange through ILS deals.

Insurance-linked securities are now an important and growing part of the global specialist reinsurance market. By enabling insurers to access the capital markets as an alternative way of reinsuring risk, this business has brought additional capacity to parts of the reinsurance market. But despite the importance of London as a global insurance hub, that growth has taken place elsewhere. In *London Matters*, a report by the London Market Group on the competitiveness of the London insurance market, the UK's out-of-date regulatory framework for insurance-linked securities was highlighted as inhibiting London's ability to compete as a reinsurance hub.

Therefore, the March 2015 Budget announced that the Treasury, the PRA and the FCA would work closely with the London market to develop a more effective framework for insurance-linked securities business. The London market established the insurance-linked securities task force, which is working with the Treasury and the financial regulators to design a fit-for-purpose regime. Work is ongoing, but it is clear that the Financial Services and Markets Act needs to be amended to provide for the introduction of detailed regulations which will implement the new framework. In particular, the Government intend to use the power to create a bespoke corporate structure for transformer vehicles which assume risk from insurers and reinsurers. This will ensure that these vehicles are robust and managed in a way so that they can meet their obligations to insurers and investors. Given that this is a rapidly evolving market, the power will enable the Treasury and financial regulators to keep the regulatory framework up to date.

The clause enables the regulatory arrangements of Lloyd's of London to be updated, should that be needed to facilitate the Lloyd's market adapting to ILS business or the use of transformer vehicles. If this requires amendments to the Lloyd's Acts then the regulations concerned will be dehybridised, so that the amendments are not delayed in Parliament by the hybrid procedure. I am grateful to the Delegated Powers Committee for its report on this clause, which recommends that the clause be amended to ensure that the consent of the council of Lloyd's is needed before the FCA or PRA can be enabled to require the council to carry out functions on their behalf. I fully understand that the committee would want to be reassured that those affected by the use of a dehybridising provision are afforded an alternative protection. The Government will therefore give careful consideration to the committee's report.

Although the Government's current plan is to introduce a framework focused on the insurance industry, it is possible that the use of transformer vehicles by non-insurance entities, for example a company seeking to mitigate the longevity risk associated with an employee pension scheme, may become more common in the future. The power provides the flexibility for regulation to keep pace with such market developments, should that be required.

Finally, I am pleased to say that the London Market Group, which represents London's insurers and reinsurers, has welcomed this first step in implementing a new framework for ILS business. I beg to move.

Lord Davies of Oldham: My Lords, it is third time unlucky for the Government because we do not consider these amendments to be entirely technical and they contain some aspects on which we seek clarification. The Minister has already recognised the significance of the report by the Delegated Powers and Regulatory Reform Committee, which I know will be studied with care. I make the assumption that the Government will come back before or on Report with a clear response to the committee's conclusions. If the Government do not act on them then I can assure the Minister that we will, as the committee was quite clear that it thought there should be an amendment to the legislation.

The noble Lord, Lord Ashton, has already indicated the extent to which the Government have looked at the issue in relation to the council of Lloyd's. I therefore hope that we will have clarity on this matter on Report. We will of course look at his remarks today with the greatest care. I give the obvious indication that while we will not object to these amendments at this stage, we will be coming back to this issue and, more accurately, we hope that the Government will be coming back to it as well.

Lord Ashton of Hyde: My Lords, I note what the noble Lord has said and, as I said before, we are considering this carefully. As I think I indicated, we accept what the Delegated Powers and Regulatory Reform Committee has said. We are looking carefully at this and a response will be forthcoming before Report.

Amendment 29 agreed.

4.15 pm

Amendment 29A

Moved by ***Lord McFall of Alcluith***

29A: After Clause 23, insert the following new Clause—

"Listings rules sustainability report

(1) Within one year of the coming into force of this Act, and annually thereafter, the Financial Conduct Authority shall prepare and publish an assessment of how listings rules contribute to the UK's sustainable economic growth.

(2) In this section, "listings rules" means rules deriving from Part 6 of the Financial Services and Markets Act 2000, and rules governing markets designated as recognised growth markets by HMRC."

Lord McFall of Alcluith (Lab): My Lords, I rise to move the amendment in the name of my noble friend Lady Worthington who, unfortunately, cannot be with us today. Amendments 29A and 29B seek to introduce two new clauses, "Listing rules sustainability report" and "Power to require long-term sustainability reporting".

In a Bill that deals with financial services, we would be remiss if we did not debate how we can best promote the long-term sustainability of an industry that contributed almost £127 billion of gross value added to the UK economy and supported 1.1 million jobs directly and indirectly in 2014.

Both these amendments are probing amendments. Amendment 29B would require the specification of accounting standards for the disclosure of exposure to the financial risks associated with climate change—an issue that Governor Carney has spoken about very recently. Amendment 29A sets out a requirement for the listings authorities to report on how the rules arrangements governing our financial markets relate to sustainable growth.

The need for the effective disclosure of the carbon intensity of assets is widely supported, and according to the Bank of England there are already 400 such schemes internationally. The problem is that each initiative varies in status, scope and ambition, and as Governor Carney has said recently,

> "The existing surfeit of schemes and fragmented disclosures means a risk of getting 'lost in the right direction'".

Amendment 29B calls for uniformity and clarity of reporting standards so that our financial services industry has the right information to make the right decisions when investing clients' money.

The UK is uniquely placed to lead on this issue, given the size and importance of our financial services industry. That is why it is important that we look at all means to ensure its long-term sustainability. Amendment 29A does this by asking the FCA to prepare a report into the effect of listings rules on sustainable growth. In particular, it would shine a light on to our "recognised growth markets", such as the Alternative Investment Market.

The AIM is designed to support new, high-growth and innovative enterprises which would otherwise struggle to meet the requirements to list on the main market, and it encourages investment with income tax, capital gains tax, stamp duty and inheritance tax reliefs. However, this market also allows well-established extractives to list their shares here, avoiding tougher regulation and allowing companies such as Coal of Africa—an Australian mining firm with a history of sacking striking workers—to list its securities on that market. In a time of austerity, we should be looking at the regulation of our financial services industry and markets to ensure that they are encouraging the sustainable growth that we need. I ask the Minister to consider these amendments.

Lord Deben (Con): My Lords, I hope that the Government will think carefully about these proposals. I declare an interest, and therefore perhaps some knowledge of this, in the sense that I am chairman of the Association of Independent Professional Financial Advisers, am on the board of Castle Trust and also look after the Association of Mortgage Intermediaries, so this is an area in which I have a particular interest.

First, I say to the Committee that proper reporting is a crucial part of ensuring that we get changes in the world in which we live. Transparency has been brought to us partially because of the internet—we now expect to know and to be able to judge on what we know. I hope that the Government recognise that this is not an additional burden, because any financial business ought to be thinking about these things. It is not acceptable that people should carry on business without asking themselves, "Is what I do sustainable?". If they do carry on business without thinking about that, it seems to me that it is not very good for the business. In other words, this is not a burden in the sense that we are asking business to do something that would not contribute to its own success; we are asking it to do something that is essential for its own success, and I am sorry that the industry itself has not come to the Government with its own scheme about how it should do that, because it is crucial for the future.

Secondly, when you talk to people in the financial world about these issues, they recognise them. Many of them are increasingly concerned that they should use their financial strength to promote and protect the future not only of their own businesses but of Britain, Europe and the whole globe. I think that there is a readiness to accept such a measure.

Thirdly, there is nothing that is as damaging in this area as a whole series of different ways of reporting different bits of information, so that people—sometimes without very good reason or sometimes with another agenda—can make false comparisons, because the comparisons are so difficult. It is in the interests of the industry that there should be some basic, simple and clear way of comparing one business with another.

The fourth thing that seems to me to be important is that we should recognise what a crucial role the financial services industries play in the promotion of sustainability. Choices that they make today will make a huge difference tomorrow; the choices that they make today will make an even bigger difference the day after tomorrow. We need thinking which is long term. I have been asked to speak at a whole series of meetings recently, put on not by those who are concerned with sustainable investment or socially responsible investment but by straightforward, ordinary investment businesses which believe that this is the route down which they have to go. We are not pushing people to do things that they do not want to do; we are making sure that what they do is comparable, usable and helpful. So this is an important measure for that purpose.

The last reason why I want to ask the Government to think seriously about this proposal is very simple: we need to think about these matters in every aspect of our lives. We cannot deal with the issues of climate change in particular or of environment more generally if we think that they are the perquisite of the Department of Energy and Climate Change, of Defra or even of the Department for Transport; this has to be part of what we do naturally, inevitably, all the time when we make decisions. We have to get into that mode and that mood. Therefore, I would hope that we were thinking of doing these things in a lot of other areas when we come to them.

However, we must make sure that people are not misled. I do not want to rub salt into the wounds, but the recent Volkswagen debacle reminds us how dangerous it is if we mismeasure. Measurement is a crucial part of making sure that people do things. If it is not measured, it is not done—we know that; if it is mismeasured, then it is done badly. We are trying here to suggest to the Government that ensuring that there is a sensible way of reporting what people are doing is a vital part of this legislation.

I commend to my noble friend the action of the Government on modern slavery. I do not think that there is any doubt that on all sides of the Chamber we have welcomed the Modern Slavery Act. What that Act does is tell people that they have to report what they have done to avoid modern slavery in their supply chain. That is very similar and parallel to what we are asking for here: to give the public, the campaigners and the people who care information which they deserve and ought to have.

I end by reminding my noble friend that a recent study done on behalf of the Navy discovered that there was very little difference in the way that people got information, and what they expected to get, between officers and men, men and women, and people based here in Britain and those based abroad. The one difference was between those under 30 and those over 30. Those who were under 30 expected to be able to know. This was done some years ago, so I suspect it is now those under 35, but the fact is that the internet generation does not understand why anybody does not understand that they want to know. If you ask people of that age, they do not understand why you—referring to me rather than my noble friend—do not expect information to be available. This is the world we live in.

I hope the Government will take these propositions very seriously. It may not be the right amendment and there are some bits of it that I think I would rewrite—all sorts of things might be improved, and the noble Lord who moved it on behalf of the noble Baroness would probably agree that we should settle for a different phraseology. However, we want to make sure that everybody making decisions in the financial services area recognises that they are making them in this context and reports them so that others can see that they have taken those decisions not lightly or for short-term reasons but in the context in which we all live—a world which is threatened by the most catastrophic danger that we have knowingly faced in our history.

Baroness Kramer: My Lords, I support the amendment in the name of the noble Baroness, Lady Worthington, and the comments of the noble Lords, Lord McFall and Lord Deben. The amendment addresses an issue which the Government now have to take seriously. The speech of the noble Lord, Lord Deben, reminded me of the old adage: "What you measure, you manage". By measuring and reporting, which surely is not beyond any corporation of any size, we change the whole culture of short-termism which dominates at the moment throughout the financial services industry, and create the potential for many more players to start to look at the longer term and at issues of sustainability. Surely, when we have been doing so much to try to ensure financial stability, which is a long-term issue, backing that up with the kind of tools that are proposed in this amendment makes a great deal of sense.

I am very much a believer that one of the greatest risks that we face, if not the greatest risk, is climate change. However, we are also looking at a time when new technologies are disrupting the whole established structure, and we have to take that on board in some way. We are also looking at great population changes—migration and demographic changes—and this amendment seems to me to be rather good at highlighting that all those big, disruptive changes need to be captured to some extent in this reporting system.

I hope that the Government will take this seriously. I agree that no one takes particular pride in authorship of the language on these occasions, but this is about getting the principle properly embedded so that the Bank and the regulators can carry out their tasks in a way that deals not just with immediate risk but with the long term and encourage the financial services industry to play over that long-term arena as well. We have financial services businesses which are recognising the importance of long-term sustainability and are doing it exceedingly well, but it is very hard for them to communicate with potential investors when differences in reporting strategies and language make that communication so confused. Providing a level playing field in terms of reporting means that those who focus on this can get their message out and that investors to whom this is important can then shape their decisions based on that comparable information.

4.30 pm

Lord Davies of Oldham (Lab): My Lords, I endorse the remarks of my noble friend Lord McFall in introducing the debate on the amendments. My remarks are necessarily cut short because the noble Lord, Lord Deben, provided a great deal of the supportive evidence and arguments the Government ought to take seriously; we hope that they will.

There was a time, not so very long ago, when we prided ourselves on the extent to which this country was to the fore in being aware of the problems of climate change and taking the necessary action to reduce the frightening possibility of the rise in temperatures and general climate change, which would make such great difficulty for the whole world. I know that my noble friend Lady Worthington, who is, unhappily, not with us today, is very concerned that the French this year have taken steps that are somewhat in advance of what we have made so far. They passed a law requiring listed companies to disclose in their annual reports how exposed they are to the financial risks related to the effects of climate change, and what measures have been adopted by the company to reduce those risks. The law also requires pension funds, insurance companies and other institutional investors in France to disclose how they are managing climate change risk. This law makes France the first country in the world to introduce a carbon-reporting obligation on financial institutions.

Amendment 29B gives an indication of the road we could tread. I therefore hope that the Minister will at least commit the Government to creating a standardised set of questions that financial services providers must ask to gather and present information on companies and asset owners. The aim would be to make it easier to compare and assess risks to which companies may be exposed because of the impact of climate change. That is not asking too much of the Minister, in his more constructive mood, and I hope I will establish that point very shortly.

Lord Bridges of Headley: I always try to be constructive with the noble Lord, Lord Davies. I thank the noble Lord, Lord McFall, for introducing this amendment. It is a shame that the noble Baroness, Lady Worthington, is not with us. What strikes me from this interesting and useful discussion is that at issue is not whether we disclose more but how we do it in a meaningful way that people can understand and that is consistent.

Just taking a step back, as I outlined in my response to the noble Baroness, Lady Worthington, on Monday, I fully recognise that climate change, as well as demographic change and technological change, which she referred to, are important structural issues that could have a significant impact on not just financial stability but society more broadly. As my noble friend Lord Deben, who has a lot of experience in this field, said, climate change cannot be put into a silo and seen as the responsibility of one government department, nor, in a business, one part of the business. It needs to be seen as a common endeavour to tackle.

It is right, therefore, that the UK's macroprudential authority should be alert to climate change as well as to the other long-term systemic risks that I mentioned and that it, and other parties, should have access to clear and sufficient information to make an educated assessment of those risks. As the noble Lord, Lord McFall, and others, are well aware, the Government have put in place legally binding, long-term commitments to reduce our greenhouse gas emissions in the Climate Change Act 2008, and we will be pushing strongly for an ambitious and global agreement on climate change at this December's United Nations conference of parties in Paris, involving commitment by all countries to act. The steps that will be taken to meet these commitments will involve a range of adjustments to production and consumption across the global economy, and the Government fully recognise the importance of ensuring that this transition is as orderly as possible.

As the noble Lord, Lord McFall, said, the Governor of the Bank, in his capacity as the chairman of the Financial Stability Board, has already highlighted the risks that climate change could pose to financial stability—and, more pertinently to the amendment, the role that consistent, clear and comparable disclosure at international level could play in responding to those risks. As your Lordships will know, the Financial Stability Board has been actively considering these issues and recently, at the end of September, convened

[Lord Bridges of Headley]

a workshop of public and private sector participants to consider how the financial sector should take account of climate-related issues.

Following that workshop, the FSB published for this month's G20 summit a proposal for an industry-led task force on climate-related risks. The G20 will then recommend principles for climate-related disclosure. I do not want to prejudice that discussion but agree with the noble Lord that obviously more could be done with disclosure practices. As he rightly said, so many disclosures—ironically and perversely in an age where we want more information—could add to confusion and not add clarity. We look for added clarity and consistency.

In the light of the need for comparable information across countries, I would argue that this issue is rightly considered at that international level. That said, one may well ask what the Government are doing at a UK level. I point your Lordships to what happened last week when the Treasury concluded a written consultation on reform to the UK's business energy efficiency tax landscape. This included questions related to greenhouse gas reporting, including a requirement under the Companies Act 2006 for quoted companies to report their greenhouse gas emissions as part of their annual directors' report. As I said, that is out for consultation.

Lord Deben: Could my noble friend explain the logic that says that Britain moves on modern slavery to set an example by enforcing it at home before we have international agreement, but refuses to move on this because there is to be a discussion about international agreement? Would it not be better for us just to move on it and set the example? That would help guide the discussions that might take place thereafter.

Lord Bridges of Headley: As always, my noble friend makes a perceptive point. As I said, I do not want to prejudice the outcome of the discussions that will likely take place. Obviously, my noble friend makes a good point. I simply make the point in return that, in the case of disclosure, we want to try to make sure that this is as internationally recognised as possible. I heed what he said and will no doubt make that point to those who will be present at that discussion.

On primary issuances, the relevant regime is the prospectus directive—which is currently under review. We are working closely with the European Commission and other European partners to achieve a positive outcome on that. We look forward to hearing any suggestions on how to improve this regime. I thank the noble Lord—and the noble Baroness who sadly is not with us—for this amendment. I hope what I said gives some reassurance that the Government take this issue seriously, but I ask the noble Lord to withdraw the amendment.

Lord McFall of Alcluith: My Lords, I beg leave to withdraw the amendment.

Amendment 29A withdrawn.

Amendment 29B not moved.

Clause 24 agreed.

Amendment 30

Moved by ***Lord McKenzie of Luton***

30: After Clause 24, insert the following new Clause—

"Pensions guidance: review

The Secretary of State shall, before any regulations under section 333A(2A) of the Financial Services and Markets Act 2000, as inserted by section 24(3) of this Act, come into force—

(a) undertake and publish a review of—

(i) the progress of provisions enabling a person to access a cash balance or other money purchase benefits, and

(ii) the extent to which pension guidance has in practice empowered consumers to make informed and confident choices about their pension arrangements;

(b) introduce arrangements for establishing a research programme to track consumer outcome with respect to the pensions guidance;

(c) review the adequacy of reporting requirements for pension providers;

(d) strengthen safeguards against pension scams through the provision of misleading guidance or advice;

(e) clarify the distinction between pensions guidance and pensions advice;

(f) identify—

(i) the specific risks which consumers may face in the secondary annuity market, and

(ii) any improvements, additional safeguards and resourcing which are required for an extended pensions guidance service to help individuals make decisions in connection with transferring or dealing with the right to payments under an annuity."

Lord McKenzie of Luton (Lab): My Lords, I should explain that this is a probing amendment at this stage. Indeed, it was prompted by Clause 24, which of course is an enabling provision to allow Pension Wise to be expanded in due course to cover guidance for a secondary annuity market. It also enables us to pursue issues that arise from the House of Commons Work and Pensions Committee report covering guidance and advice. This is not to revisit our support for the changes to the pension regime introduced from April 2015, although we previously expressed our concerns about the speed with which such a dramatic policy shift was introduced and the lack of consultation that would normally characterise such a change. I thank the Minister for his letter of 4 November that followed up on some matters raised at Second Reading and which, to an extent, overlaps with this amendment.

We welcome the announced delay to the introduction of the secondary annuity market until 2017, given the reported responses to the Treasury consultation, in particular because of expressed concerns about the potential costs of operating a scheme and the challenges of enabling an in-depth package of support for consumers making their decision—I will say more on this in a moment. The Bill makes reference to enabling guidance for "relevant interests" for "relevant annuities". Perhaps the Minister can give us news of what these terms may cover or, at least, when we might expect some news.

The House of Commons Select Committee raised a number of concerns about the current arrangements. A key concern was the lack of data and, indeed, a reticence to publish statistics, which inhibits proper scrutiny of how the reforms are progressing. It recommended that the Government should publish, or cause to be published on a quarterly basis, customer characteristics, including pension pot size and other sources of retirement income; take-up of each channel of guidance and advice; reasons for not taking up guidance and advice; subsequent decisions taken; and reasons given for those decisions. It will also be important to have a breakdown of the customer characteristic by gender and ethnicity so that there is a greater understanding of the differing impact of these changes.

The Minister's letter suggests that Government will make "core" Pension Wise data available on the government performance platform "this autumn". Can the Minister expand for us on what is to be covered by "core data" and whether they will satisfy the recommendations of the Select Committee that I have just outlined? The committee rightly concluded that the long-term effects of the new freedoms are uncertain and recommended that the Government initiate a rolling research programme to track the long-term consequences of consumer decisions. It is to be welcomed that research is to be undertaken on the immediate impact of a Pension Wise appointment on customers, but where does this leave the concept of a rolling research programme? Does the Minister agree that one is appropriate?

From what data there are, there seems to be a legitimate cause for concern about the take-up rates of the guaranteed guidance and suggestions that fewer than one in 10 individuals accessing their pension pot availed themselves of face-to-face or telephone advice. Given that the guidance guarantee was recognised as a fundamental component of the reforms and vital to help individuals make informed choices about their lifetime savings, is the Minister satisfied about the current state of play? Particular concern was recorded by Age UK and the Financial Services Consumer Panel about whether the system of pension providers giving risk warnings and signposting consumers to Pension Wise was operating as it should. There are suggestions that providers are following the letter rather than the spirit of their obligation—hence the recommendation that there should be a review of the obligations with a view to their being strengthened, particularly in the prominence given to communications. Will the Government encourage the FCA to strengthen its rules and guidance for pension providers concerning Pension Wise?

The Minister will be aware of the ongoing debate around the adequacy of just one session with Pension Wise and whether it really is sufficient to support people through their retirement. The expectation is that those with complex needs should pay for advice. For others, it seems they could dip in and out of engagement with the specialist services of TPAS, the Money Advice Service and Citizens Advice. Is this viewed by Government as a sustainable model? Confusion abounds, seemingly not just among consumers, about the distinction between advice and guidance, and we are reminded that the FCA January 2015 guidance seeking to clarify the boundaries of advice runs to 47 pages. Evidence suggests that individuals are very reluctant to pay the typical sums required for a session with an independent financial adviser, hence the need and hope for some middle ground between regulated advice and guidance. Progress on this will presumably have to await the outcome of the Financial Advice Market Review.

It is hard to read a newspaper or indeed watch a consumer TV programme these days without some reference to the rise of pension scams. Whether there has been an actual increase is, according to the Select Committee, a matter of some uncertainty, although the ability to access the whole of one's pension pot has certainly created scope for the increase of such activity, given the ingenuity of unregulated businesses often based overseas.

4.45 pm

The Minister has written reassuringly about the focus of the Government and the regulators on this scourge, but the Select Committee recommended that a greater onus could be placed on providers when their customers are at the point of transferring funds away as well as on enhancing the publicity effort. Do the Government support this approach?

Finally, returning to annuities and the policy to enable those in receipt of them to sell the benefit in exchange for a cash sum or some income draw-down product, the consultation document issued in March highlighted a multiplicity of factors which need to be considered and why the Government, post the election, deferred its introduction. Issues for potential investors include the management of longevity risk, but for consumers there are also issues concerning the pricing of the annuity and the position of dependants, who will typically be women, and equality considerations.

There are also a host of practical issues concerning the administration of the policies and tracking the lives of annuitants, and the impact on benefits and social care arrangements of potentially swapping an income flow for a capital sum. The Bill enables the extension of Pension Wise so that guidance can be available, and we support that, but it will also be important to understand how advice will form part of the equation. All in all, given the ongoing challenges of managing the 2015 pension freedoms, not to mention the new state pension, we wonder why this should be such a priority, especially as, in the Government's judgment, for most people retaining their annuity is likely to be the best option. I beg to move.

Baroness Kramer: I shall make one relatively small point. This is an area where I do not pretend expertise. At Second Reading, I referred to the importance of both guidance and advice and the significance of distinguishing between the two. At the moment, many people who are retiring will have spent a large part of their careers accruing pension benefits through a defined benefits plan and a relatively small proportion of their career in defined contributions, so for many people now the discretionary pot is probably quite small and many of them may feel that they can therefore make decisions without advice. That picture will rapidly change as a generation comes forward for whom defined contributions have essentially been the framework within which they have provided for most of their pension.

[BARONESS KRAMER]
We are moving into a situation where advice will become more significant, so this problem needs resolution. I ask that any measure the Government take recognises that this is not a front-loaded problem but a back-loaded problem, so they need to be sure that they are constantly expanding the relevant resources.

Baroness Drake: My Lords, I shall speak to paragraph (f)(i) and (ii) in the amendment which refer to the secondary annuity market, and I draw the attention of the Committee to my registered interests, in particular my membership of the board of the Pensions Advisory Service, which is a delivery body for the current Pension Wise.

In the summer Budget Statement, the Chancellor confirmed that he wishes existing annuity owners to have the freedom to sell their annuity income but announced that plans for a secondary annuities market would be delayed until 2017 to ensure that there is an in-depth package to support consumers. The Pensions Minister, the noble Baroness, Lady Altmann, confirmed that the delay was to ensure consumer protection adding:

"We can't launch without safeguards".

It is important, as paragraph f(i) in the amendment provides, first to identify very clearly the risks in this market and the potential advantages and disadvantages to the consumer of converting an income for life into a cash sum before agreeing the regulations with regard to guidance to be provided to individuals considering trading their annuities. If the infrastructure of such a secondary annuity market were to be put in place, it is not yet clear who would be the buyers of the annuities. There are still lots of unknowns about how that market would operate. Until we understand more about how that secondary market will operate and what regulatory restrictions will be imposed, it will be difficult to assess whether customers are able to get a good deal. If an individual got a poor deal in the first place, selling the annuity on would not necessarily reverse that; indeed, it could make it worse. If, as the Chancellor argues, the pensioner freedom reforms were needed in part because the annuity market was not working in the best interests of all consumers for the simpler proposition of selling someone an annuity, why would it be expected that the reverse secondary market, where someone would resell an existing annuity, would work any better?

Some people will certainly be tempted to cash in their annuity for what looks like a large sum but their annuity may be bought at a heavily discounted price. Selling their guaranteed income could prove expensive because of the cost of individually underwriting each transaction. There will be costs to trading, complex pricing systems and consumer vulnerability to poor behaviour by some firms. So many pensioners may not be better off as a result, and it may be difficult to assess whether the lump sum that they have been offered is a fair swap for what they would be giving up. Actually, though, once they have given that up, the decision is irreversible.

The Bill refers to protecting the interests of those who have an interest in a particular annuity, and that certainly needs to be considered. What is the situation in a joint life annuity? What is the definition of those who have an interest? How will their interest be protected? What if a person is not named on a joint life annuity contract? These may seem irritating points of detail, but they will be matters of significant substance for some people who may be the beneficiaries of an income stream from an annuity.

The Government have also advised, as my noble friend Lord McKenzie said, that they want to consider how to explain the interaction between annuity income, capital and deprivation laws in the welfare, social care and council tax reduction system—something that we rather tripped over when implementing pension freedoms. In making that clear to people who are considering selling their annuity, the guidance would need to explain clearly the implications of that interaction.

In the secondary annuity market, the appropriate form of consumer protection has to be an integral part of any proposals to allow people to resell annuities, and therefore a clear identification and consideration of the safeguards and guidance that are appropriate is required before regulations come into force. It is important to be assured that they are actually fit for purpose. Creating a secondary annuity market is certainly not a simple proposition, which presumably is why the Chancellor has delayed his plans until 2017, although I accept that the proposed expansion of pension guidance to those considering selling their annuity is to be welcomed. However, it will be important for Parliament to understand what guidance will be delivered, and how, to people looking to trade in a secondary annuity market, because such a market will come with risk and complexity and that has to be reflected in the quality and comprehensiveness of the guidance provided. This is not going to be a proposition without problems. Some people have suggested introducing a requirement to take independent advice but even that is not a simple proposition, not least if a requirement to take advice significantly reduces the value of the transaction to the seller.

Lastly, the complexity of a secondary annuity market means it is essential that the pension guidance that is provided is of a high quality, delivered by people with the necessary skills and expertise. This is not going to be a straightforward set of guidance. Reflecting on experience to date, it is very important that those who bear responsibility for signposting to the guidance those who want to trade in the annuity market are not organisations with conflicts of interest in whether that guidance is followed. Sometimes, being better informed and better guided does not make people such good customers. Given that this is even more complex than the pension freedoms market, it is really important to get this proposition right.

Lord Bridges of Headley: My Lords, once again, I thank noble Lords for their very useful and constructive comments and speeches. I thank the noble Lord, Lord McKenzie, in particular.

As your Lordships know, the Government want to ensure that those who will be able to sell their annuities on the secondary market have access to high-quality information and guidance that enables them to make informed choices. That was endorsed by many responses to the recent consultation. We want to build on the success of the existing Pension Wise service, for which the satisfaction levels remain high. The Government are committed to using the lessons learned from the implementation of existing freedoms and the Pension Wise service to help consumers in both this market and the new secondary market for annuities.

I draw your Lordships' attention to the work that the Government are already doing—in both what is happening now and what is planned—through the prism of the amendment that the noble Lord, Lord McKenzie, has brought before the Committee. First, the amendment would commit the Government to undertake and publish a review of the new pension freedoms and pensions guidance. On this point, the Government have already set up a working group of representatives from industry, regulators and government to review the pension freedoms. This group will collect and analyse information on the choices that people are making when accessing the new pension freedoms and related guidance and advice. It will also identify key information gaps and seek to address them.

In addition, early information from HMRC and the regulators has been published, and key data from the Pension Wise service will soon be available on the Government's performance platform. Pension Wise is also in the early stages of procuring external research, which will cover the extent to which the pensions guidance has enabled customers to make informed and confident choices about their pension arrangements.

Secondly, the amendment would commit the Government to tracking consumer outcomes from pensions guidance. The Pension Wise research that I have just mentioned will aim to do just that. It will help the Government to understand what customers do following their Pension Wise appointment.

I am conscious that the noble Lord asked me some very specific questions about uptake. If he does not mind, I would like to write to him once I have the appropriate information on those points.

Thirdly, the amendment would require the Government to review pension providers' reporting requirements. In line with its remit to protect consumers and ensure that markets function in consumers' interests, the Financial Conduct Authority has specifically committed to monitor developments in the retirement income market and to take action where the market is not operating as intended. The first of these mandatory data requests was sent to firms in September. It includes information on both the stock and the flow of pensions savings held by firms, as well as on sales of retirement income products by providers and cash withdrawals.

The amendment also calls for safeguards against pension scams to be strengthened. A priority of this Government is to protect people from scams. A number of cross-cutting initiatives are already in place, but we will continue to look at ways to strengthen messages for consumers and to arm them with the information they need to protect themselves against scams. For example, the Government are already co-ordinating action to raise awareness of, and tackle, scams through Project Bloom, a National Crime Agency-led task force. It includes the regulators, anti-fraud groups, such as Action Fraud, and police forces. In addition, both the Financial Conduct Authority and the Pensions Regulator have their own pension scam awareness campaigns.

Finally, the Government have put a number of protections in place through the directly provided pensions guidance service, Pension Wise. Pension Wise alerts customers to the risks of scams in guidance sessions, and the website and output document contain warnings and guidance.

5 pm

The amendment would also require the Government to clarify the distinction between pensions guidance and pensions advice, which the noble Lord, Lord McKenzie, and the noble Baroness, Lady Kramer, echoed. The noble Baroness's point about how important that advice is for some pensioners was very valid and well made.

The Government are already conducting the financial advice market review. As your Lordships will know, this is exploring what more can be done to make sure that all consumers can access high-quality, affordable and tailored advice so they can make informed decisions with their hard-earned money. As part of this, the review is looking at what constitutes "advice" and "guidance" in both pensions and other markets, and will seek to clarify that distinction for consumers. As your Lordships know, this consultation is open until 22 December and the review will report by the Budget next year.

The amendment also asks that the Government identify specific risks for consumers in the secondary market for annuities and what additional safeguards are required for the extended pensions guidance service. The noble Baroness, Lady Drake, rightly made the point that it is a very complex area. The Government are committed to taking steps to build on the guidance service that is currently being delivered by Pension Wise to create an appropriate and high-quality service for the secondary market in annuities. The key consumer risks in the secondary market for annuities have already been considered and are outlined in the Government's consultation document, published in March. Some will be similar to those around the existing flexibilities, but we fully understand, as the noble Baroness rightly pointed out, that there will be additional challenges for consumers in this market. We will need to ensure that consumers are adequately equipped with the information, tools and protection they need to help them avoid scams and, more importantly, to make decisions that best suit their personal circumstances and risk appetite, which brings me back to the point made by the noble Baroness, Lady Kramer.

The Government are also conducting further analysis to identify the needs of those who will be accessing the expanded Pension Wise service. This will ensure that the content and service delivery are appropriate for those thinking of assigning their annuities on the secondary market.

Pension Wise will form a core part of the support package. However, next month, the Government will set out further their intentions for supporting consumers in their response to the consultation on creating a secondary market for annuities. Following that, we expect

[Lord Bridges of Headley]
the Financial Conduct Authority to consult in 2016 on the consumer protection measures it plans to place on regulated entities participating in the market.

Once again, I thank the noble Lord, Lord McKenzie, for raising these issues, and thank the noble Baronesses, Lady Drake and Lady Kramer, for their contributions. I take on board their concerns and reassure them that the Government are committed to taking action in the areas that have been highlighted in the proposed amendment.

In the light of this, the Government's view is that the amendment proposed is not necessary to achieve the desired results, and I ask the noble Lord to withdraw it.

Lord McKenzie of Luton: My Lords, I thank the Minister for a very comprehensive reply to the issues raised in the debate. I think there may be one or two specifics that he will follow up on in correspondence, and that would be helpful.

I think the Minister said that the response to the consultation on the secondary annuity market would be published next month—I hope I caught that correctly; if it is not next month, perhaps he might write to me and say when that will take place.

I thank my noble friend Lady Drake for her, as ever, wise words on pensions, focusing on the risks and complexity of the secondary market system. She made the telling point that if the problem with the annuity market was the creation of those annuities in the first place and whether people were getting value for money, the situation could be compounded by overlaying a secondary market. That is a key issue to address.

The noble Baroness, Lady Kramer, made the point about the growth of DC schemes and the lapse of DB schemes, and that is right. I think we are now in the position where there are more members of DC schemes than there are of DB schemes. Of course auto-enrolment and the benefits of that will accelerate that as well.

Having said all that, and given the hour—I have been here for only one amendment but am conscious that noble Lords have sat through a very busy day—I beg leave to withdraw the amendment.

Amendment 30 withdrawn.

Clause 25 agreed.

Amendment 31

Moved by ***Lord Naseby***

31: After Clause 25, insert the following new Clause—

"Duty on Financial Conduct Authority and Prudential Regulation Authority to consider ownership models and size of firms

(1) After section 1E(2)(e) of the Financial Services and Markets Act 2000, insert—

"(f) the importance to consumers of a diverse financial services sector that includes both firms of different ownership models (including mutual societies) and firms of different sizes."

(2) After section 2H(2) of the Financial Services and Markets Act 2000, insert—

"(3) In discharging its general functions, the PRA must also have regard to the importance to consumers of a diverse financial services sector that includes both firms of different ownership models (including mutual societies) and firms of different sizes.""

Lord Naseby (Con): My Lords, I thank my noble friend for taking seriously the issue of diversity as it affects the mutual movement. I also thank him for the good working session that we had last week when I was able to highlight in a little more depth the problems that have arisen for the mutual movement and how, I hope, the proposed new clause seeks to provide the answers. I shall not repeat what I said on Second Reading but merely highlight the depth of the problem. I remind your Lordships that we are talking about the mutual movement—in other words, building societies, mutual insurers, friendly societies and credit unions.

I acknowledge that the present Government have made a welcome and broad commitment to diversity, which is greatly welcomed across the nation. This is not a party-political issue. That is self-evident from the fact that the Official Opposition have generously attached their name to my amendment, as have the Liberal Democrats. Both parties have a rich history in mutuality.

The issue, basically, is whether it is sufficient for the Prudential Regulation Authority to make a commitment in its annual remit letter. I do not deny that that is clearly helpful but enshrining it in legislation makes it totally emphatic to the Bank of England, including the PRA and the FCA, to consider diversity of provider. As well as helping competition, if executed, that would deliver a lasting commitment to the benefit of both the consumer and the wider economy.

I suspect the question that my noble friend is wrestling with is: is it really necessary? I would say yes because life is full of good intentions. However, in my 40-plus years as a representative of the people—25 years in your Lordships' House—I like to see something in the Bill and not be dependent on good intentions. The reality is that the mutual financial institutions keep being forgotten about and left out. Frankly, that would not happen in Canada, Holland and certain other European countries where the mutual movement is that much stronger.

I gave two examples on Second Reading which helped to highlight the issue. I have now got three different examples. They are all short but at least they will re-emphasise the extent of the problem. Overall, there is still a problem in the mutual movement. The Building Societies Association commissioned a report on whether or not the movement was growing. Sectors of it are growing but other sectors are not. The report noted that one of the contributory factors for the areas that are not growing is the tendency for regulation to push for what I call uniformity and called at the time for a statutory corrective.

Both regulators can point out—I readily acknowledge this—that they have on occasions been proportionate and differentiated approaches in terms of need. However, there are also instances, which I will highlight in a minute, where this is not the case. It is important for regulators to get things right first time every time to support diversity.

In the past, a one-size-fits-all approach to regulation, often designed for large companies with a plc ownership model, has given rise to problems for both smaller and customer-owned financial institutions. The impact can be magnified for organisations which belong to both categories, and that is not an issue we have discussed before. These issues do not occur just in the UK; they arise when one is dealing with the EU. I submit that adopting this proposed new clause, requiring the PRA and FCA to consider the size and ownership model during policy formulation, would be a first step towards stopping the channelling towards uniformity and would help to prevent some of the problems encountered by financial mutuals in recent years.

I shall give three short examples. First, in 2015 during the summer that has just gone, the PRA implemented the bank recovery and resolution directive, as it was charged to do. In the directive it is permitted to reduce the reporting requirements and frequency for smaller institutions. In practice, this would have allowed smaller institutions not to submit annual updates, but instead to do so every other year, saving significant resources. But the PRA decided not to allow this, in spite of the fact that it was spelled out in plain words in the directive. I do not think that that was a sensible decision on its part or a sensible analysis of that sector of the mutual movement.

Secondly, let us look at the credit unions. Again, in June this year the PRA proposed to reform the prudential regime for credit unions, and once more it is absolutely right that it should do that. The PRA proposed a substantial increase, however, in the capital requirements for large credit unions, taking them to a leverage ratio of 10%. By contrast, the leverage ratios expected to be applicable to banks range from 3% to 5%, depending on their systemic impact. Frankly, I find it difficult to see the justification for a large, established credit union to hold more than twice as much capital in relation to its assets as a bank. I hope that this issue will be amended so that the big credit unions can be brought in line with the banks. But had the PRA paid attention to the size diversity across the board from the start, I do not think that we would be in this situation today.

Lastly, I turn to mortgages, which are an absolutely key dimension of our society at the moment and something on which the whole of Parliament is regularly focused. In 2014, there was speculation about interest rate rises, as a result sparking a significant increase in consumers' interest in taking out fixed-rate mortgages, which is sensible. Following the mortgage market review regulatory changes overseen by the FCA, the authority required lenders to provide full mortgage advice and test against affordability criteria. This involves stress testing against rising interest rates, with many consumers choosing a fixed-rate mortgage product.

The building societies themselves have a specialist sourcebook, issued by the PRA, which places restrictions on the proportion of fixed-rate mortgage lending that a number of societies can carry out. Some societies were close to reaching the limit of their permitted fixed-rate lending, meaning that they were likely to withdraw fixed-rate products from their portfolios. This combination of regulation by both the FCA and the PRA could still have a detrimental effect on the amount of lending that societies can advance. Building societies may need to advise customers to go elsewhere rather than expand their businesses, thereby concentrating consumer choice on fewer organisations, which will in fact reduce competition in the market. This is quite important when we think about who is providing mortgages today because, between 2012 and June this year, the building society movement provided £52 billion-worth of net new mortgage lending while the rest of the mortgage market produced a rather miserly £7 billion. Therefore, it can be seen how important it is that the building society movement is treated properly and with understanding.

To conclude, we are asking for an environment where all types of firms are able to operate on a fair basis, with regulations that are appropriate and proportionate to them, rather than one size fitting all. Enshrining this commitment in legislation will require regulators to give the diversity of financial provider due consideration, looking at the different business models and the sizes of the providers side by side. We believe that this will lead to a more appropriate and proportionate regulatory regime, which in turn will lead to a more competitive financial environment in the future. I beg to move.

5.15 pm

Baroness Kramer: First, I thank the noble Lord, Lord Naseby, for allowing me to put my name to his very fine amendment, and also for drafting it in such a way that I could arrange the conversation beyond just the matter of mutuals. I very much support his comments on mutuals. They are important to our past, our present and our future.

The noble Lord commented on the regulatory scope available to the PRA in dealing with the sector, which I believe is governed by CRD IV, the relevant European directive. He will know that there is a great deal of scope for flexibility under that directive precisely to recognise the various needs of mutual—and similar and smaller—institutions across quite a wide range of facets. It is a flexibility of which the PRA has essentially not availed itself. Since those flexibilities were largely negotiated by the UK with the domestic variety in mind, it seems a little extraordinary that we have not taken advantage of them. I recommend to the Government that they might want to have an appropriate conversation with my soon-to-be noble friend Lady Bowles, who will shortly be coming to this House. She was a member—in effect, chair—of ECON, the Committee on Economic and Monetary Affairs within the EU. She can provide some helpful advice and direction on this issue.

I have said many times in this House, and I shall repeat it again today, that in the UK we are missing a layer of banking. In Germany, regional government—the Länder and municipalities—are able to sponsor banking institutions. The financial institutions provide the backbone to Germany's small and medium-sized businesses, the Mittelstand. During times of recession that banking layer provided ongoing support to those companies because they understood them and their remit was such that they had to find their routes to profit from within that scope of geography and companies. It has been a very successful model and we have no equivalent here in the UK.

[BARONESS KRAMER]

In the United States, which we also very much recognise as a competitor, local community and regional banks also play a much more significant role in supporting both individuals and small businesses. The community development movement in the US, which is very much local, has something in excess of $30 billion of assets under management. It is highly significant. It comes out of the US history of local banking, strengthened by the Community Reinvestment Act which was introduced in the late 1970s, largely as a civil rights measure, to deal with the red lines that major banks had drawn around ethnic minority communities, as they were not lending into those communities. That has been balanced out by the Community Reinvestment Act. It provided the Obama Administration with a very significant route to channel funds to small businesses during the recession in the US and again played a very significant role in making sure that those small businesses could be resilient.

By contrast, following the financial crisis, the major mainstream banks in the UK largely withdrew from SME funding. The Government tried to support various programmes and schemes, including the growing but still small P2P industry, to fill something of that gap and vacuum. However, that does not overcome the fact that we still do not have the appropriate layer of banking to provide the community and local perspective which enables companies to rely on ongoing support from financial institutions in both good times and bad.

I think that if you spoke today to the Federation of Small Businesses, it would say that even though we are in recovery, most of the mainstream banks have not returned to lending to SMEs and, where they do, it is frequently property lending, or at least property is required to provide collateral for what should be cash-flow loans, and that the banks are still fairly slow to come to decisions. Having been on this House's sub-committee on SMEs and export finance, I know that it was evident that small businesses found it extremely difficult to source any kind of financing for exports. Even when they had a long history of exports and were well established, it was still very difficult and very expensive to find that kind of financing in the UK. Therefore, it is reasonably self-evident that we are missing a layer of banking. Frankly, the regulator has never addressed that issue but has always waited passively for the market to come forward rather than taking positive action itself.

A combined report from Newcastle and Coventry universities was recently published and states:

"In 2013, the unmet demand of individuals and businesses excluded from mainstream finance ('the finance gap') was estimated at around £6 billion per annum".

That is a huge figure and it seems to me that the regulator must begin to pay attention to it.

During the passage of the Financial Services Act 2012, the noble Lord, Lord Sharkey, and I proposed a measure to require the banks to disclose their lending practices in detail and by postcode. That led to a voluntary framework for the disclosure of bank lending which came into effect in December 2013 and was supported by HM Treasury and BIS. According to a recent letter sent to the Treasury from the Community Investment Coalition, it is starting to have a real impact. The letter states that in 2014,

"Coventry University and Newcastle University were commissioned by Big Society Capital, Citi, the Community Investment Coalition and Unity Trust Bank to analyse the data and assess its value in supporting increased market competition and interventions to overcome financial inclusion".

That is a very interesting report. It is supported by a sibling report, as it were, from the University of Sheffield, which looked at mortgages.

The only conclusions one can come to from reading those reports is that lending across the UK is incredibly haphazard. The data do not yet allow sufficient fineness of analysis, if you like. I hope very much that the Government will look at whether or not more measures are necessary to provide appropriate data to the degree required to enable proper analysis to take place. However, it is very clear that different parts of the country have very different experiences as regards access to lending. Strangely enough, in the London area, for example, access to lending for small businesses seems to be very much less than one would expect compared with other parts of the country. It will be very helpful when we finally have those data because they will expose where the system continues to fail. Regardless of that, I hope the Government will see that there is a role that must be played by the regulator as well as by the Government in ensuring that the patchiness and inadequacy of banking facilities for small businesses and individuals is countered. I ask the Government to look seriously at the amendment moved by the noble Lord, Lord Naseby, because it begins to tackle that particular set of issues.

Lord Davies of Oldham: My Lords, I congratulate the noble Lord, Lord Naseby, both on his amendment, for which he has secured widespread support, including from this Bench, and on the way in which he detailed the key arguments behind it, which I know the Government will take seriously. It is somewhat unnecessary for me to fill in any of the interstices that the noble Lord, Lord Naseby, may have left—which were not many—because the noble Baroness, Lady Kramer, has certainly emphasised the significant point, which is that British banking needs to be a good deal more diverse than it is at present.

After all, the Competition and Markets Authority disclosed its findings last month from its review of competition in the retail banking market and found—predictably—that the four largest banks had long dominated the British scene, stifling competition that would give consumers and businesses a better deal. We all know the limited success that has been obtained by the various reforms to make the switching of accounts easier. The British people, I am afraid, are somewhat inured to minor blandishments when it comes to their bank accounts, so there is a need for much more imaginary thought at the centre on how we can make our financial provision more diverse.

We have support from the Treasury Select Committee. The chair, Andrew Tyrie, has written to the CMA to ask it to report back before the Budget in March next year regarding the 8% surcharge on bank profits. He wants to know what impact that has had on the big four and what implications it has for the wider banking sector. It is clearly the case, he believes, that one size does not fit all. That phrase has obtained throughout this short debate and is one to which I entirely subscribe. The Minister will be all too well aware that the Building Societies Association has made it clear that the problems encountered by financial mutuals in recent years almost certainly would have been fewer if there had been greater diversity in the sector.

I think that the case for this amendment has been made strongly. No doubt the noble Lord will be withdrawing it on this occasion but the purpose of this debate is to give the Government the chance to show a constructive response to what we all recognise is a real issue with regard to British banking. The noble Baroness, Lady Kramer, cited the German position. Is it not somewhat extraordinary that even under the so-called northern powerhouse, our great cities do not have individual banks? They no longer have individual building societies, either. That says something about the structure of finance in this country, which surely the Government should address in the context of a Bill about the most significant banking structure of them all—the Bank of England.

Lord Ashton of Hyde: My Lords, I am grateful to noble Lords who contributed to the debate. I have listened carefully to the interesting points, particularly on banking diversity and availability, especially for SMEs, made by the noble Baroness, Lady Kramer, and the noble Lord, Lord Davies, but I will concentrate on the amendment in hand.

I am glad to say that noble Lords are pushing at an open door—or, at least, one that is slightly ajar. This amendment would add a duty to the PRA to consider diversity of ownership model and size alongside its competition objectives. For the FCA, the amendment would add diversity of ownership model and size to the list of factors to which it may have regard as part of its competition objective.

5.30 pm

I am grateful to my noble friend Lord Naseby for raising this issue, and particularly for waiting patiently for the last group of the entire Committee stage to move his amendment. I pay tribute to the work that he has undertaken in advancing the cause of mutuality, such as the Mutuals' Deferred Shares Act 2015. As I think my noble friend said, the Minister had a constructive meeting with him recently and the Government have been actively considering his proposal, which makes a number of excellent points. I reassure the Committee that the Government strongly support a diverse financial services sector and, as has been acknowledged, the regulators' objectives go some way to providing a mandate in this regard.

The regulators already have competition objectives: the FCA is required to,

"promote effective competition in the interests of consumers",

of regulated financial services, and the PRA is required to facilitate,

"effective competition in the markets for",

financial services provided by PRA-authorised firms. In advancing this objective, the regulators may take account of various factors, including barriers to entry for new providers of financial services, the needs of different consumers and the differences of businesses. I would expect their considerations around the intensity of competition to involve not just the number of competitors but diversity of approach, including corporate form.

The statute is also clear that the regulators should recognise the different features of a range of diverse business models when pursuing objectives. This is achieved by the principle of good regulation, whereby the regulators must have regard to,

"the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act".

Having said that, and taking on board my noble friend Lord Naseby's point about things that are in regulations, there could be more clarity on our expectations around regulatory regard for mutuals, which might help to avoid some of the problems that he raised.

My noble friend's amendment raises some interesting and useful points and, given this, we will actively consider how these proposals might clarify the existing competition objectives. We look forward to discussing this subject with my noble friend again before Report. I will of course take note as well of the suggestion of the noble Baroness, Lady Kramer, on consultation. In the light of that commitment, I would be grateful if my noble friend would withdraw his amendment this afternoon.

Lord Naseby: My Lords, I first give my sincere thanks, in particular to the noble Baroness for putting further emphasis on the European situation, about which she is much more knowledgeable than I am, and for the one or two other points that she made. I also thank the Official Opposition, where it is a great pleasure to see my noble friend opposite—I can say that, as he is quite good as my golf partner.

Leaving that aside, I am deeply appreciative of the way in which the whole ministerial team has listened carefully. As I understand it, the team in the department will now look in considerable detail at how the points I have raised, which my colleagues have agreed with, can be addressed. I hope very much that, when we come back on Report, we will have found a solution that will meet the requirements of this very important sector of the United Kingdom—certainly I am available at any hour to discuss this further. With that, I seek leave to withdraw the amendment.

Amendment 31 withdrawn.

Clauses 26 to 28 agreed.

Clause 29: Commencement

Amendments 32 and 33

Moved by ***Lord Bridges of Headley***

32: Clause 29, page 26, line 15, leave out "Sections 27 to 30" and insert "The following provisions"

33: Clause 29, page 26, line 15, at end insert—

"(a) section (Transformer vehicles);

(b) sections 27 to 30."

Amendments 32 and 33 agreed.

Clause 29, as amended, agreed.

Clause 30 agreed.

House resumed.

Bill reported with amendments.

House adjourned at 5.36 pm.

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