



# Summary of consultation responses to sanctions for the directors of failed banks

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**D.1** The consultation document *Sanctions for the directors of failed banks*<sup>1</sup> sought comments on:

- a proposal to introduce a “rebuttable presumption” that a director of a failed bank is not suitable to be approved by the regulator to hold a position as a senior executive in another bank; and
- the possible introduction of criminal sanctions for serious misconduct in the management of a bank.

## Rebuttable presumption

**D.2** There were two questions on the “rebuttable presumption” proposal:

- on the proposal itself; and
- on possible supporting measures aimed at clarifying management responsibilities and regulatory duties of bank directors.

**D.3** More respondents who commented on this proposal were opposed or sceptical than supportive. Many respondents were concerned that it would not be consistent with the “presumption of innocence” or would be unfair to the individuals concerned – for example, because they might not have access to the information to demonstrate that they were not responsible for a bank failure. Some respondents took the view that the proposal was unnecessary as the Financial Services Markets Act 2000 (FSMA) Approved Persons Regime already required regulators to give their approval before a candidate took up a senior executive position. Some respondents were concerned that the measure might deter individuals from taking up board appointments in banks, especially in banks which were having problems and looking to recruit new directors to lead rescue efforts. One respondent was concerned that the proposal would add to the difficulties in recruiting directors for building societies.

**D.4** Some of the respondents who supported the proposal shared some of these concerns. Other respondents felt the proposal did not go far enough and there should be an automatic bar on directors of failed banks holding new board appointments, or that the threshold to rebut the presumption should be set at very high level.

**D.5** Fewer respondents commented on possible supporting measures and responses were mixed. While some respondents felt that greater clarity about management responsibilities would be helpful, there were concerns about introducing unhelpful rigidities in the specification of management responsibilities or a “tick-box” approach to clarifying individual responsibilities.

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<sup>1</sup> *Sanctions for the directors of failed banks*, HM Treasury, July 2012 – [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/81565/consult\\_sanctions\\_directors\\_banks.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/81565/consult_sanctions_directors_banks.pdf)

There were also concerns that additional regulatory duties would lack clarity or add little to existing requirements.

## **Criminal sanctions**

**D.6** There were two questions on possible criminal sanctions:

- the general question on criminal sanctions; and
- a request for views on possible formulations of the offence – the consultation document indicated that the Government considered recklessness to be the appropriate basis for a new criminal offence.

**D.7** A clear majority of the respondents who commented on this proposal were opposed to the introduction of criminal sanctions.

**D.8** There were concerns that the introduction of criminal sanctions would deter people from becoming bank directors. There were also concerns that it would add little to existing regulatory powers over approved persons, existing criminal offences and company law requirements, especially in the view of the costs and duration of investigations and criminal prosecutions. One respondent suggested amending the Company Directors Disqualification Act 1986 as an alternative to a new criminal offence.

**D.9** Those respondents who commented on the formulation of the offence generally favoured using recklessness as the basis for a new criminal offence.