



BANKING STAKEHOLDER GROUP

CONSULTATION ON EBA/CP/2015/29 ON
“DRAFT GUIDELINES ON REMUNERATION POLICIES AND PRACTICES
RELATED TO THE SALE AND PROVISION OF RETAIL BANKING
PRODUCTS AND SERVICES”

General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

London, 22nd March, 2016

Foreword

The EBA Banking Stakeholder Group (BSG) welcomes the opportunity to comment on the Consultation Paper EBA/CP/2015/29.

As in the past, the BSG supports an initiative that aims at harmonizing supervisory rules and practices across Europe, in order to ensure fair conditions of competition between institutions and more efficiency for cross-border groups. The BSG also expects these initiatives to facilitate data sharing between European supervisors and avoid reporting duplications for banks. However, the BSG identifies a number of issues which, unless properly addressed, could lead to unintended results.

This response outlines some general comments by the BSG, as well as our detailed answers to some questions indicated in the CP.

General comments

The European Banking Authority (EBA) has launched a consultation on its draft guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services. The background to the Consultation Paper is that the EBA has identified poor remuneration policies and practices as a key driver of mis-selling of financial products and services to the detriment of consumers. The Guidelines are designed to protect consumers and reduce conduct costs of firms.

The draft Guidelines apply to remuneration of staff employed by credit institutions, creditors, credit intermediaries, payment institutions and electronic money institutions, when providing deposits, payment accounts, payment services, electronic money, mortgages, and other forms of credit to consumers.

The Guidelines are designed to provide a framework for financial institutions to implement remuneration policies and practices that will improve links between incentives and the fair treatment of consumers, thus reducing the risk of mis-selling and related conduct costs for firms. They do so by (1) proposing that the management body is responsible for the design and monitoring of remuneration policies and practices, which should take into account the rights and interests of consumers; (2) preventing conflicts of interests; (3) using quantitative and qualitative criteria for determining the level of variable remuneration, and (4) retaining documents for auditing purposes.

The BSG welcomes this consultation on the Draft Guidelines for the remuneration of sales staff. It is important that the design and governance of remuneration policies and practices are aimed at ensuring fair treatment of consumers. There must also be appropriate risk management and controls implemented to monitor any risks which might arise to

consumers from remuneration policies and practices. Where risks are identified, changes should be made to the design of remuneration policies and practices to mitigate them. To ensure that the Guidelines tackle all risks associated with remuneration policies and practices they should apply to both financial and non-financial remuneration schemes including performance management schemes.

Research produced by Consumers International identified that both financial and non-financial sales incentive schemes were an important root cause of mis-selling and contributed to financial instability.¹ In the EU the research found that inappropriate incentive schemes had led to mis-selling of Payment Protection Insurance in the UK and hybrid securities in Spain. They also contributed to the failure of DSB bank in the Netherlands, HBOS in the UK and Banco Espirito Santo in Portugal.

Remuneration and Incentive schemes for staff impact directly on their behaviour and are also an important driver of the ‘culture’ within a bank. Inappropriate sales incentives schemes create unfair pressure on retail staff, who may be trying to avoid disciplinary action and safe guard their job or who may rely on bonuses to earn a decent wage. The schemes may also conflict with their duty and desire to do their best by customers.

The BSG represents different types of stakeholders who have different views on this highly sensitive topic. From a civil society point of view, going back to remuneration policies in the banking sector which make it more compatible with public interest is highly desirable. In this respect, erasing all variable pay linked to sales which is not part of a collective agreement (in terms of profit sharing) could be seen as a good thing. Others take a different view and place a greater emphasis on ensuring that the right for collective bargaining is preserved, as well as the employers’ freedom to manage their staff.

Comments on definitions

The definition of remuneration should be expanded to also cover performance management systems such as those covering disciplinary action, enhanced monitoring and dismissal. This is because these performance management systems are capable of having a similar detrimental effect on customers and staff as financial remuneration schemes. Indeed, negative effects can be greater with performance management systems where the threat of losing their job can place banking staff under significant pressure to disregard their customers’ interests to meet targets. In some countries, banks have taken action to reform financial incentive schemes but staff in some banks still feel under pressure to sell products. For example, as part of the Consumers International research, Unions from Ireland reported that previously, delivering certain targets could result in opportunities for pay increases or bonuses. However, since the banking crisis, this has generally not been the case at any level. Instead sales pressure continues and failure to deliver sales targets can, in

¹ Consumers International, Risky Business,

some cases, result in disciplinary action up to, and including, dismissal. This shows that risks to consumer protection and financial stability can remain even after financial remuneration schemes have been reformed.

In the UK, the Financial Conduct Authority found that “the changes to reward structures may not have been accompanied by a genuine shift away from a sales-focused culture. Instead, there are indications that in some cases the progress made on financial incentives may have led to an increase in pressure being placed on staff through other means, to achieve sales.” It concluded that “inappropriate performance management can sometimes lead to an excessive emphasis on sales results. This type of undue pressure may be hidden, which means there is a risk that the reality of daily life for some sales staff can be very different from the tone set at the top by senior staff or Boards.”²

Consumers International identified the following rewards and punishments given to staff as part of financial and non-financial sales incentives schemes. It is important that the application of each of these rewards and punishments is covered by the Guidelines.

Reward	Punishment
Financial	
<ul style="list-style-type: none"> • Annual/Quarterly/Monthly bonuses • Increases in salary • Spot awards • Collective bonuses for teams/branches 	<ul style="list-style-type: none"> • Loss of bonuses • Decreases in salary
Non-Financial	
<ul style="list-style-type: none"> • Competitions and Prizes (either for staff who meet specific targets or top %) • Gifts - Cinema/Restaurant/Sporting tickets/vouchers • League tables • Promotion • Leaving early / Extra holiday 	<ul style="list-style-type: none"> • Performance management • Performance Improvement Plans • Enhanced monitoring • Loss of status • Humiliation / Peer Pressure • Extended working hours • Demotion • Dismissal / Redundancy

² FCA, Risks to customers from performance management at firms, Finalised Guidance, page 3

Replies to Questions

Question 1: Do you agree with Guideline 1 on design?

Section 1 - Design

We broadly support the Guidelines under section 1 but believe they should be enhanced by including the following issues:

- As part of the design of remuneration policies and practices, institutions need to consider mechanisms for risk management and controls to monitor any risks which might arise from their policies and practices relating to consumer protection. These should include sales quality monitoring to determine whether regulatory requirements are being met and root cause analysis to assess the patterns of and reasons for complaints made by consumers.
- Where necessary, institutions should change the design of their remuneration policies and practices so as to mitigate any risks of consumer detriment identified during their monitoring assessments or to address any actual detriment experienced by consumers.
- Where institutions move away from quantitative targets to entirely discretionary³ remuneration policies and practices they should ensure that the reasons for awarding discretionary bonuses are documented clearly and that discretionary remuneration is not being used to indirectly reward sales or to put excessive pressure on staff to sell products.

Question 2: Do you agree with Guideline 2 on documentation?

Section 2 – Documentation, notification and accessibility

Institutions should be required to disclose the risks they have considered which arise from their remuneration policies and practices alongside the action they have taken to mitigate them, including how they have complied with these Guidelines. This should be included in the operational risk disclosures of their annual report.

The documentation referred to under paragraph 2.1 should also include:

- Any concerns about bias or excessive pressure to sell placed on staff to sell products caused by the institution's remuneration policies and practices which have been raised by staff through whistleblowing or other monitoring procedures. This should include how these concerns were investigated and whether any changes to policies and practices were made as a result.

³ Policies and practices where the remuneration is based almost entirely on qualitative factors and the amounts are almost entirely at the discretion of the relevant manager

Question 3: Do you agree with Guideline 3 on approval and monitoring?

Section 3 – Approval and monitoring

The Guidelines should be enhanced by including the following issues:

- The institution should gather appropriate Management Information (MI) to be able to identify and manage risks from their remuneration policies and practices. A summary of this information should be provided to the management body responsible for approving the remuneration policies and practices.
- Those responsible for sales quality monitoring, operating other controls and assessing compliance with these guidelines should be sufficiently independent to avoid influence from sales staff or sales managers.
- The institution should establish effective procedures to gather feedback from frontline staff about the operation of remuneration policies and practices. This should include effective whistleblowing or other monitoring procedures enabling staff to raise concerns about excessive pressure or bias caused by these policies and practices. It is important that those responsible for collecting and assessing this information and related data are not directly related to the sales of the products covered by it. A summary of feedback, including any concerns raised and how they were investigated should be provided to the management body.

Under paragraph 3.7, we do not agree that institutions should only be required to check annually whether any of the residual risks are crystallising and causing detriment to consumers. Instead, the Guidelines should require that “appropriate monitoring and controls are put in place to check on a continuous basis whether any of these residual risks are crystallising and causing detriment to consumers”. The institution should also be required to record what action is taken in response to any detriment caused to consumers and make changes to the remuneration policies and practices to reduce the risk of consumer detriment arising in the future.

Question 4: Do you see a need for any additional requirements?

Please see our responses to questions 1-3.

Question 5: Do you have any other comments?

We believe that the EBA should add the following undesirable remuneration practices to the list which the EBA is seeking to use the Guidelines to prevent:

Cliff edges: The EBA should aim to prevent practices associated with occasions where relevant persons receive high rewards for thresholds and cliff-edges for which the reward for making additional sales increases dramatically. This can occur if staff are required to meet a specific sales threshold, such as 50 sales per quarter in order to receive any bonus or are required to meet a specific target in order to receive a large bonus. For example, in

the UK the FCA found an occasion where the first 21 staff to meet a specific sales target received a special bonus of up to £10,000.

Performance management: Managers use disciplinary action, extra monitoring or threats of dismissal to solely encourage staff to meet targets for the volume of banking products by disregarding the best interests of their customers.

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Submitted on behalf of the EBA Banking Stakeholder Group

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