



## Supervisory Statement | SS2/17

# Remuneration

February 2023

(updating December 2021)

Superseded



Superseded



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY

Supervisory Statement | SS2/17

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Superseded

## 1 Introduction

1.1 This supervisory statement (SS) is relevant to all firms regulated by the Prudential Regulation Authority (PRA) which fall within the scope of the Remuneration Part of the PRA Rulebook. The purpose of this SS is to set out the PRA's expectations on how firms should comply with the requirements of the Remuneration Part, enabling firms to make judgements which advance the objectives of the PRA. This SS replaces the following remuneration policy documents and letters to firms:

- Legacy Supervisory Statement (LSS) 8/13 'Remuneration standards: the application of proportionality';<sup>1</sup>
- SS2/13 'PRA expectations regarding the application of malus to variable remuneration';<sup>2</sup> and
- SS27/15 'Remuneration';<sup>3</sup>
- 'Remuneration – PRA expectations', 8 December 2014;<sup>4</sup> and
- 'Procedure to increase the permitted ratio of fixed to variable remuneration', 8 April 2014.<sup>5</sup>

1.2 This SS is intended to be read together with the rules contained in the Remuneration Part. This version of this SS applies to remuneration awarded in respect of a performance year starting on or after Tuesday 29 December 2020. The April 2017 version of this SS continues to apply to remuneration awarded in respect of a performance year starting before Tuesday 29 December 2020. Chapter 3 of this version of the SS applies to the identification of material risk takers in relation to performance years starting on or after Thursday 30 December 2021.

1.3 The Remuneration Part ensures that firms adopt remuneration policies that are consistent with and promote sound risk management, eliminating incentives towards excessive risk-taking, and aligning employee incentives with the longer-term interests of the business, while taking account of the timeframe over which financial risks crystallise. It covers all aspects of remuneration that could have a bearing on effective risk management including salaries, bonuses, long-term incentive plans, options, hiring bonuses, buy-outs, severance packages and pension arrangements. References to 'remuneration' include remuneration paid, provided or awarded by any person to the extent that it is paid, provided or awarded in connection with employment by a firm.

1.4 This SS sets out the expectations of firms in relation to:

- proportionality;
- material risk takers (MRTs);
- application of malus and clawback to variable remuneration;

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<sup>1</sup> June 2015: [www.bankofengland.co.uk/pru/Pages/publications/ss/2015/lss813update.aspx](http://www.bankofengland.co.uk/pru/Pages/publications/ss/2015/lss813update.aspx).

<sup>2</sup> June 2015: [www.bankofengland.co.uk/pru/Pages/publications/ss/2015/ss213update.aspx](http://www.bankofengland.co.uk/pru/Pages/publications/ss/2015/ss213update.aspx).

<sup>3</sup> June 2015: [www.bankofengland.co.uk/pru/Pages/publications/ss/2015/ss2715.aspx](http://www.bankofengland.co.uk/pru/Pages/publications/ss/2015/ss2715.aspx).

<sup>4</sup> [www.bankofengland.co.uk/pru/Documents/remuneration/remunerationpraexpectations.pdf](http://www.bankofengland.co.uk/pru/Documents/remuneration/remunerationpraexpectations.pdf).

<sup>5</sup> [www.bankofengland.co.uk/pru/Documents/supervision/remuneration/proceduretoincreasethepermittedratiooffixedtovariable remuneration.pdf](http://www.bankofengland.co.uk/pru/Documents/supervision/remuneration/proceduretoincreasethepermittedratiooffixedtovariable remuneration.pdf).

- governing body/remuneration committees;
- risk management and control functions;
- remuneration and capital;
- risk adjustment (including long-term incentive plans);
- personal investment strategies;
- remuneration structures (including guaranteed variable remuneration, buy-outs and retention awards);
- deferral; and
- breaches of the remuneration rules.

## European Banking Authority (EBA) Guidelines

1.5 [deleted]

1.6 The European Banking Authority (EBA) published Guidelines on Sound Remuneration Policies (the EBA Guidelines)<sup>6</sup> under Articles 74(3) and 75(2) of Directive (EU) 2013/36 and disclosures under Article 450 of the Capital Requirements Regulation (CRR) on 21 December 2015.

1.7 [deleted]

1.8 [deleted]

1.9 Save where the Remuneration Part mandates a different approach, the PRA expects all firms to continue to make every effort to comply with all aspects of the EBA's 2015 Guidelines, and all existing domestic requirements. The EBA has published new Guidelines under CRD V and the PRA will consider whether to update its expectations in light of the new EBA Guidelines in due course.<sup>7</sup> In the following chapters, the PRA provides additional clarification of its expectations regarding a number of specific remuneration requirements.<sup>8</sup>

## 2 Proportionality

2.1 This chapter provides guidance on how firms should apply proportionality for the matters set out in paragraph 2.3. Firms should apply the expectations set out in this version of the SS to

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<sup>6</sup> Firms will need to read these Guidelines in light of the UK's withdrawal from the EU as set out in the Bank Statement of Policy on EU Guidelines and Recommendations: <https://www.bankofengland.co.uk/paper/2019/interpretation-of-eu-guidelines-and-recommendations-boe-and-pra-approach-sop>.

<sup>7</sup> The EBA launched a consultation on revised Guidelines on 29 October 2020. As the outcome of that consultation occurred after the end of the transition period, the revised Guidelines will not apply in the UK. <https://eba.europa.eu/regulation-and-policy/remuneration/guidelines-on-sound-remuneration-policies-second-revision>

<sup>8</sup> Following the end of the transition period in line with its Statement of Policy on the Interpretation of EU Guidelines and Recommendations after the UK's withdrawal from the EU, the PRA expects firms to continue to make every effort to comply with EU Guidelines and Recommendations to the extent that they remain relevant when the UK leaves the EU. April 2019: <https://www.bankofengland.co.uk/paper/2019/interpretation-of-eu-guidelines-and-recommendations-boe-and-pra-approach-sop>.

remuneration awarded in relation to a performance year starting on or after 29 December 2020.<sup>9</sup> In respect of disclosure, more specific guidance is provided in paragraph 2.25A.

2.2 [deleted]

**Table A: Glossary of terms defined in this statement**

| Defined expression          | Definition   |
|-----------------------------|--|
| Conditions 1, 2             | The conditions set out in the definitions of 'small CRR firm' or 'small third country CRR firm' in Remuneration 1.3  |
| Group                       | The meaning given in section 421 of FSMA.  |
| Proportionality level       | The division of firms into three categories based on relevant total assets as set out in Table B under paragraph 2.4: proportionality level one; proportionality level two; and proportionality level three. |
| Average total assets        | The meaning given in Remuneration 1.3.   |
| Relevant date               | For CRR firms: an accounting reference date; and<br>For third country CRR firms: 31 December.  |
| Remuneration Part solo firm | A CRR firm which is not part of a group containing one or more further firms subject to the Remuneration Part.   |

### Dividing firms into proportionality levels

2.3 Remuneration 1.1 provides that the Remuneration Part applies to a CRR firm and a third country CRR firm (in the case of a third country CRR firm, in relation to the activities carried on from an establishment in the United Kingdom). The guidance set out below applies to those Remuneration Part solo firms in relation to:

- (i) Remuneration disclosure under Article 450 of Chapter 4 of the Disclosure (CRR) Part of the PRA Rulebook;
- (ii) Expectations regarding regulatory reporting as set out in paragraph 3.5;
- (iii) Expectations regarding remuneration committees as set out in paragraphs 2.22 and 2.23.

2.3A This SS no longer provides guidance on when firms may disapply the remuneration requirements set out in Chapter 15 of the Remuneration Part.<sup>10</sup> Conditions for when certain requirements may be disapplied are now set out in the Remuneration Part, in particular in Chapters 12 and 15.

2.3B The PRA considers that firms that award remuneration in currencies other than sterling may use, for the purposes of thresholds set out in sterling, **either** the exchange rate used internally for

<sup>9</sup> As explained in paragraph 1.2 above, the April 2017 version of this SS continues to apply to remuneration awarded in respect of a performance year starting before Tuesday 29 December 2020.

<sup>10</sup> Firms are reminded that, as explained in paragraph 1.2 above, the April 2017 version of this SS continues to apply to remuneration awarded in respect of a performance year starting before Tuesday 29 December 2020, and this includes guidance on disapplication of remuneration requirements.

accounting purposes, or the average of daily spot rates over the performance year, based on the daily spot rates provided on the Bank of England’s website.

2.4 For the purposes of this SS, and for the purposes set out in paragraph 2.3, firms to which the Remuneration Part applies are divided into three categories based on their average total assets and on whether Conditions 1 and 2 (as set out in Remuneration 1.3 definitions of ‘small CRR firm’ and ‘small third country CRR firm’) are satisfied:

- (i) proportionality level one;
- (ii) proportionality level two; and
- (iii) proportionality level three.

As set out in table B below, proportionality level one is the highest level and proportionality level three is the lowest.

**Table B: Proportionality levels – Remuneration Part solo firms**

| Proportionality level       | [deleted] | Average total assets on relevant date of firm (where applicable) and other criteria   |
|-----------------------------|-----------|---|
| Proportionality level one   |           | Either:<br>(a) Average total assets on relevant date of firm exceeding £50 billion; or<br>(b) Firm is part of a group and its proportionality level is raised in accordance with paragraphs 2.8–2.10 of this SS.  |
| Proportionality level two   |           | Either:<br>(a) Average total assets on relevant date of firm exceeding £13 billion but not exceeding £50 billion; or<br>(b) Average total assets on relevant date of firm exceeding £4 billion but not exceeding £13 billion and firm does not meet Condition 1 or 2. |
| Proportionality level three |           | Either:<br>(a) Average total assets on relevant date of firm not exceeding £13 billion and satisfies Conditions 1 and 2; or<br>(b) Average total assets on relevant date of firm not exceeding £4bn.  |

2.5 [deleted]

Process for dividing firms into proportionality levels



2.6 In order to determine the proportionality level into which a firm falls, a firm must establish whether it is part of a group which contains one or more other firms subject to the Remuneration Part or a Remuneration Part solo firm.

2.7 A firm may choose to apply for individual guidance to vary the proportionality level of a firm within a group. The definitions and thresholds provided in this section therefore do not provide an immutable classification. The next section provides further detail about individual guidance.

#### Groups with more than one firm subject to the Remuneration Part

2.8 If the firm is part of a group containing one or more other firms also subject to the Remuneration Part then each firm within the group should determine the proportionality level on the assumption that it was a Remuneration Part solo firm.

2.9 Where each firm falls into the same proportionality level, each firm will remain within that proportionality level.

2.10 Where firms fall into different proportionality levels, all firms in the group are reallocated to the highest proportionality level into which a firm in the same group falls. This means all firms within the group are subject to the same remuneration rules as those applicable to the highest proportionality level firm.

2.11 [deleted]

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Table C: Groups with more than one firm subject to the Remuneration Part, Remuneration Code SYSC19A, or Remuneration Code SYSC19D of the FCA Handbook [this table was deleted in its entirety]

2.12 The limit confining relevant total assets to those that cover the activities of the branch operation in the United Kingdom is taken from Regulatory Reporting 2.4 which relates to a reporting requirement in relation to non-UK banks (among others). The PRA considers that firms calculating average total assets should comply with the requirements of CRR in respect of valuation of those assets.

2.13 [deleted]

2.14 [deleted]

2.15 [deleted]

2.16 [deleted]

2.17 [deleted]

2.18 [deleted]

2.19 [deleted]

2.20 [deleted]

2.21 [deleted]

#### Remuneration committees

2.22 Remuneration 7.4 (Governance) states that a firm (a CRR firm and a third-country CRR firm) that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities must establish a remuneration committee.

2.23 The following table provides guidance on when the PRA considers it would be appropriate for a remuneration committee to be established under Remuneration 7.4, based on the proportionality level into which the firm falls. Chapter 5 contains additional guidance on remuneration committees.

**Table C: Guidance on whether a remuneration committee is required**

| Proportionality level       | Remuneration committee requirement   |
|-----------------------------|--|
| Proportionality level one   | A remuneration committee should be established.  |
| Proportionality level two   | A remuneration committee should be established.  |
| Proportionality level three | It would be desirable for such a remuneration committee to be established, and the PRA would normally expect larger proportionality level three firms to do so.<br><br>The PRA accepts that it may be appropriate for the governing body of the firm to act as the remuneration committee. |

### Remuneration disclosures (under Article 450 of Chapter 4 of the Disclosure (CRR) Part)

#### Requirement to make remuneration disclosures

2.24 Article 450 of Chapter 4 of the Disclosure (CRR) Part requires certain firms that are subject to the Remuneration Part to disclose a series of qualitative and quantitative information relating to remuneration. Table D on the following page sets out these requirements.

2.25 Article 450 of Chapter 4 of the Disclosure (CRR) Part only applies to CRR firms directly.

#### Remuneration disclosures and proportionality

2.25A In respect of disclosure, firms should apply the expectations on proportionality in this SS to the remuneration disclosure produced following the end of the first performance year starting on or after 29 December 2020. For earlier disclosures, firms should continue to follow the guidance in the version of this SS as published on Wednesday 12 April 2017.

2.26 Two proportionality tests apply in relation to the requirement to make disclosures under Article 450 of Chapter 4 of the Disclosure (CRR) Part in relation to remuneration:

- (i) Under Article 450 of Chapter 4 of the Disclosure (CRR) Part, CRR firms subject to the Remuneration Part that are significant in terms of their size, internal organisation and the nature, scope and the complexity of their activities must also disclose the quantitative information referred to in Article 450 of Chapter 4 of the Disclosure (CRR) Part at the level of their management body.
- (ii) Under Article 450 of Chapter 4 of the Disclosure (CRR) Part, CRR firms subject to the Remuneration Part must comply with the requirements set out in Article 450 of Chapter 4 of the Disclosure (CRR) Part in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities.

2.27 The PRA considers it appropriate to give guidance on these proportionality tests by reference to the proportionality levels determined in accordance with paragraph 2.4, and 2.8-2.10 of this chapter.

2.28 [deleted]

2.29 In relation to the proportionality test referred to in paragraph 2.26(i), the PRA considers that a firm should be regarded as ‘significant’ if it falls into proportionality level one.

2.30 In relation to the proportionality test referred to in paragraph 2.26(ii), the following table sets out the categories of information that the PRA considers firms in different proportionality levels should disclose.

**Table D: Disclosure requirements<sup>11</sup> by proportionality level<sup>12</sup>**

|   | Proportionality level |     |       |
|---|-----------------------|-----|-------|
|   | One                   | Two | Three |
| Art. 450(1)(a) CRR ('information concerning the decision-making process used for determining the remuneration policy, including if applicable, information about the composition and the mandate of a remuneration committee, the external consultant whose services have been used for the determination of the remuneration policy and the role of the relevant stakeholders'). | ✓                     | ✓   | ✓     |
| Art. 450(1)(b) CRR ('information on link between pay and performance').   | ✓                     | ✓   | ✓     |
| Art. 450(1)(c) CRR ('the most important design characteristics of the remuneration system, including, information on the criteria used for performance measurement and risk adjustment, deferral policy and vesting criteria').   | ✓                     | ✓   | X     |
| Art. 450(1)(d) CRR ('the ratios between fixed and variable remuneration set in accordance with Article 94(1)(g) of the CRD').   | ✓                     | ✓   | X     |
| Art. 450(1)(e) CRR ('information on the performance criteria on which the entitlement to shares, options or variable components of remuneration is based').   | ✓                     | X   | X     |
| Art. 450(1)(f) CRR ('the main parameters and rationale for any variable component scheme and any other non-cash benefits').   | ✓                     | X   | X     |
| Art. 450(1)(g) CRR ('aggregate quantitative information on remuneration, broken down by business area').  | ✓                     | ✓   | ✓     |
| Art. 450(1)(h) CRR ('aggregate quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the risk profile of the firm...').   | ✓                     | ✓   | ✓     |
| ...indicating the following:  |                       |     |       |
| Art. 450 (1)(h)(i) CRR ('the amounts of remuneration for the financial year, split into fixed and variable remuneration, and the number of beneficiaries').   | ✓                     | ✓   | X     |
| Art. 450 (1)(h)(ii) CRR ('the amounts and forms of variable remuneration, split into cash, shares and share-linked instruments and other types').   | ✓                     | X   | X     |
| Art. 450 (1)(h)(iii) CRR ('the amounts of outstanding deferred remuneration, split into vested and unvested portions').   | ✓                     | X   | X     |
| Art. 450 (1)(h)(iv) CRR ('the amounts of deferred remuneration awarded during the financial year, paid out and reduced through performance adjustments').   | ✓                     | X   | X     |
| Art. 450 (1)(h)(v) CRR ('new sign-on and severance payments made during the financial year, and the number of beneficiaries of such payments').   | ✓                     | X   | X     |

<sup>11</sup> As written in Article 450 of Chapter 4 of the Disclosure (CRR) Part.

<sup>12</sup> All references to Article 450 CRR are now Article 450 of Chapter 4 of the Disclosure (CRR) Part.

|   |   |   |   |
|---|---|---|---|
| Art. 450 (1)(h)(vi) CRR ('the amounts of severance payments awarded during the financial year, number of beneficiaries, and highest such award to a single person').  | ✓ | X | X |
| Art. 450 (1)(i) CRR ('the number of individuals being remunerated €1 million or more per financial year, for remuneration') between €1 million and €5 million broken down into pay bands of €500 000 and for remuneration of €5 million and above broken down into pay bands of €1 million'). | ✓ | X | X |

### 3 Material risk takers (MRTS)

#### 3.1 [deleted]

3.2 All firms are required to identify MRTs in accordance with Chapter 3 of the Remuneration Part, regardless of their size or whether they are required to apply certain rules in line with the provisions in the Remuneration Part of the PRA Rulebook. This includes UK-headquartered firms, subsidiaries and branches of non-UK firms.

3.3 Chapter 3 of the Remuneration Part identifies the criteria for determining who is an MRT.

3.4 Individuals in firms not subject to the Remuneration Part should be included as MRTs if they pose risk to the CRR consolidation group or directly to a CRR firm. The requirements of the remuneration rules apply to MRTs identified on a solo and/or consolidated basis or sub-consolidated basis. Firms will need to assess at solo as well as consolidated and sub-consolidated levels (if applicable) whether certain requirements (such as deferral or payment instruments) must be complied with.

3.5 The PRA expects remuneration proportionality level one firms to provide a list of MRTs on an annual basis to the PRA. Proportionality level two and three firms are expected to keep a list of current MRTs and provide that list to the PRA if requested.

3.6 Where a CRR firm or third-country CRR firm wishes to deem an employee who earns more than the quantitative thresholds set out in Remuneration 3.3A but does not have a material impact on the firm's risk profile not to be an MRT, the firm should apply for a waiver of the remuneration rules in respect of that person under section 138A of the Financial Services and Markets Act 2000 (FSMA). A rule modification by consent is available for these purposes and has been published on the PRA website.

#### Types of roles identified

3.7 Chapter 3 of the Remuneration Part sets out minimum criteria for the identification of MRTs. The PRA takes the view that all staff members carrying out activities which enable them to expose the firm to a material level of risk should be identified as MRTs, even where these staff members do not fall within any of the mandatory criteria established under Chapter 3 of the Remuneration Part.

3.8 The PRA expects all firms to apply Chapter 3 of the Remuneration Part as a minimum standard and firms should exercise discretion to identify all relevant staff as MRTs where necessary. The PRA considers it would be appropriate for firms to assess risks that individuals may pose to the risk profile of the firm beyond those set out under the Remuneration Part. As such, PRA expectations of the types of roles that should be identified as MRTs may evolve over time.

### Part-year material risk takers (MRT)

3.9 This section provides supplementary guidance on how certain rules on remuneration structures might normally be applied to an MRT who has, in relation to a given performance year, been an MRT for only part of the year.

3.10 In providing this guidance, the PRA has taken account of Remuneration 5.1.

3.11 For individuals who have been an MRT for a period of less than twelve months in a given performance year, it may be appropriate to apply the rules below to only a proportion of the individual's variable remuneration. The rules are:

- (i) guaranteed variable remuneration (Remuneration 15.7);
- (ii) retained shares or other instruments (Remuneration 15.15);
- (iii) deferral (Remuneration 15.17); and
- (iv) performance adjustment (Remuneration 15.20-15.23).

3.12 When an individual moves from a role without MRT status to an MRT role during the performance period, the amount of variable remuneration awarded to the individual in that performance period is subject to the approach set out in paragraph 3.11. The amounts of fixed and variable remuneration awarded should also be apportioned accordingly to reflect the period of time held in the MRT role and the rules applied to that apportioned amount.

3.13 When a new hire is recruited into an MRT role during the performance period, all of the variable remuneration awarded to the individual in that performance period is subject to the rules above in paragraph 3.11.

3.14 The PRA does not consider it necessary for the rules specified in sub-paragraphs 3.11(ii) and (iii) to be applied when the variable remuneration of the MRT does not exceed £44,000 (Condition A) and does not represent more than one third of the employee's total annual remuneration (Condition B).<sup>13</sup> When applying those conditions to part-year MRTs, the PRA considers that firms do not need to pro-rata those thresholds.

3.15 Table E provides some examples of how paragraphs 3.12 and 3.13 should be applied.

**Table E: Part-year material risk-takers – examples**

| Example |  |  |
|---------|--|--|
| 1       | Existing employee - mid-year move to an MRT role | <p>(1) Individual A is an employee of the firm and moves to an MRT role with effect from 1 September, 122 days out of 365 are spent in an MRT role.</p> <p>(2) Individual A receives fixed remuneration of £150,000 from 1 January to 31 August increasing to £250,000 from 1 September.</p> <p>(3) During the performance year, Individual A is awarded variable remuneration of £200,000.</p> <p>(4) The proportion of fixed remuneration which should be used for calculating whether Individual A meets the criteria in Conditions A and B is £83,560 (£250,000 multiplied by 122/365)</p> <p>(5) The portion of variable remuneration which should be used for calculating whether Individual A meets Conditions A and B is £66,849 (£200,000 multiplied by 122/365).</p> |

<sup>13</sup> Per Remuneration 15.1(3).

| Example |                           |   |
|---------|---------------------------|---|
|         |                           | <p>(6) The total remuneration for the period of time spent in an MRT role is £150,409 (£66,849 plus £83,560).</p> <p>(7) Condition B states that the individual's variable remuneration is no more than a third of their total remuneration. In this example Individual A's variable remuneration is greater than a third of the total remuneration so this condition is not met.</p> <p>(8) Condition A is that an individual's variable remuneration does not exceed £44,000. This condition is not met.</p> <p>(9) As conditions A and B have not been met, all the rules referred to in paragraph 3.11 must be applied to the variable remuneration of £66,849 for the period of time spent in an MRT role during the performance year.</p>   |
| 2       | New hire into an MRT role | <p>(1) Individual B joins the firm as an MRT with effect from 1 July, 184 days out of 365 are spent in an MRT role.</p> <p>(2) Individual B receives annual fixed remuneration of £450,000.</p> <p>(3) For the period of time spent in role during the performance year, Individual B is awarded variable remuneration of £50,000.</p> <p>(4) The portion of fixed remuneration which should be used for calculating whether Individual B meets the Conditions A and B is £226,850 (£450,000 multiplied by 184/365).</p> <p>(5) The full amount of variable remuneration (£50,000) should be used for calculating whether Individual B meets Conditions A and B.</p> <p>(6) The total remuneration for the period of time spent in an MRT role is £276,850 (£226,850 plus £50,000).</p> <p>(7) Condition B states that the individual's variable remuneration is no more than a third of their total remuneration. In this example Individual B's variable remuneration is less than a third of the total remuneration so this condition is met.</p> <p>(8) The calculation for determining whether condition A is met is that an individual's variable remuneration does not exceed £44,000. This condition is not met.</p> <p>(9) As condition A has not been met, all the rules in paragraph 3.11 must be applied to the variable remuneration of £50,000 for the period of time spent in an MRT role during the performance year.</p> |

### Determining the fixed component of total remuneration for the fixed to variable ratio

3.16 The PRA expects firms to calculate the fixed component of remuneration with reference to the actual amount of fixed remuneration the employee is awarded in a given performance period. In the case of MRTs who join a firm part-way through the performance year, the fixed component may be determined by an annualised rate which treats the amount of fixed remuneration awarded at the end of the year as having been awarded across the entire performance period. This approach may also be applied to MRTs joining a firm part-way through the performance year who receive a guaranteed variable remuneration award, provided the guaranteed variable remuneration award is included within the variable remuneration component of the fixed to variable ratio for the performance period in which it is awarded.

3.17 [deleted]

3.18 [deleted]

### Credit and trading risk

3.19 Any staff member with the ability to take, approve, or veto credit proposals or trading book transactions above the thresholds under Remuneration 3.2A (3), (4) and (5) on behalf of the institution should be identified as an MRT. This requirement is not affected by the geographical location of the staff member.

3.20 [deleted]

3.21 The PRA expects firms to identify those staff members who have the authority to sanction any transaction specified under Remuneration 3.2A (3), (4) and (5).

3.22 The PRA expects firms to identify all staff members in a trading capacity with the ability to materially affect the risk profile of the institution, even where these staff members do not meet the limits specified under Remuneration 3.2A (4), or the quantitative remuneration criteria under Remuneration 3.3A. For example, certain roles such as foreign exchange traders may not operate under a value-at-risk limit but should be identified given their potential to affect the risk profile of the institution.

3.23 Where the total remuneration of staff members in the trading function exceeds the quantitative thresholds under Chapter 3 of the Remuneration Part, the PRA expects firms to provide more detailed evidence as compared to other categories of staff if a firm wishes to exclude this employee by applying for a modification by consent as described below (paragraph 3.29).

### **PRA approach to MRT exclusion applications for asset management roles**

3.24 The PRA will review applications for a rule waiver or modification to exclude staff members employed by asset management entities within the consolidation, or sub-consolidation, group of a PRA-authorised person following the same process for staff employed by deposit-takers and investment banks. The PRA will do this by assessing the materiality of the impact of the professional activities of the staff member's role on the risk profile of the firm on a consolidated basis. Working in an asset management role is not in itself a basis for determining that the staff member meets one of the considerations mentioned in paragraph 3.31.

3.25 In determining whether asset management staff members are MRTs, the PRA expects the factors below should be considered alongside Remuneration 3.1. These factors include, but are not limited to, the following:

- the seniority of the role in the context of reporting lines and managerial responsibility;
- the size of the desk assets under management (AUM) as a portion of the total firm/group AUM and the size of the AUM for which the individual has overall responsibility as a portion of desk AUM;
- the extent to which the fund relates to retail clients;
- the strength of investment risk controls in place to ensure the individual adheres to the agreed fund risk profile, strategy and client expectations; and
- wider safeguards in place for liquidity, operational and product risk and independent risk monitoring.

3.26 [deleted]

### **Definition of material business units**

3.27 Firms are required to identify material business units (MBUs) in accordance with Remuneration 1.3. Business units are defined in Remuneration 1.3 as 'any separate organisational or legal entities, business lines, or geographical locations'. Where firms do not use internal capital allocation, they may use risk weighted assets (RWAs) as a proxy when defining material business units.



3.28 The identification of MBUs for third-country CRR firms that cannot rely on either internal capital or RWAs should be based on the definition of a business unit under CRR. The materiality of specific business lines should then be identified according to the structure of the firm.

### The exclusion process

3.29 Remuneration 3.3A establishes a presumption that individuals meeting the specified quantitative threshold are to be identified as MRTs. This presumption can only be rebutted by firms providing sufficient evidence that the relevant role does not have a material impact on the firm's risk profile. A firm may apply to the PRA for a modification by consent (published on the PRA's website) to exclude such individuals from the list of MRTs when the individuals are deemed to not have a material impact on the firm's risk profile. Any applications for waivers or modifications in relation to other remuneration rules that require the identification of individuals as MRTs must be submitted to the PRA in line with the process described on the PRA's website<sup>14</sup>.

3.30 [deleted]

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**Table F: MRT Identification and exclusion criteria** [this table was deleted in its entirety]

3.31 Applications to exclude staff members identified solely by reference to the criteria set out in Remuneration 3.3A should be submitted to the PRA annually in line with the modification by consent process. The PRA will decide whether to grant the modification by consent on the basis of the statutory test set out in section 138A of FSMA ((1) compliance by a firm with the unmodified rules would be unduly burdensome or would not achieve the purpose for which the rules were made and (2) the direction would not adversely affect the advancement of any of the PRA's objectives). In assessing this, the PRA will take into account in particular whether the professional activities of an employee identified solely by the criteria laid down in Remuneration 3.3A do not have a material impact on the firm's risk profile on the basis that either: (a) the employee only carries out professional activities and has authorities in a business unit that is not a 'material business unit'; or (b) the professional activities of the employee have no significant impact on the risk profile of a 'material business unit'.

3.32 In determining whether to seek to exclude staff members from identification by applying for a modification by consent, the PRA also expects other factors to be considered alongside Remuneration 3.1 which include, but are not limited to, the:

- direct reporting lines of the staff member in question, and the number of MRTs identified above them in the management chain;
- independence of the staff member to commit the balance sheet of the CRR firm without further authorisation;
- risk management controls in place to detect unauthorised trades; and
- management of maximum desk limits and the disciplinary policy in place for breaching these limits.

3.33 For exclusions regarding those staff members earning over £880,000, the PRA expects firms to provide additional explanatory reasoning, in particular concerning the individual role and impact on the risk profile of the institution.

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<sup>14</sup> <https://www.bankofengland.co.uk/prudential-regulation/authorisations/waivers-and-modifications-of-rules>.



## Templates

3.34 The PRA has designed a template for firms to use to submit as part of their exclusion requests. The template is available on the Bank of England's website for firms to download and submit.<sup>15</sup> The template represents the expectation of the level of detail which should be included when submitting exclusions for approval. However, use of this template is voluntary, and firms may choose to document their request in a different manner.

3.35 [deleted]

## 4 Application of malus and clawback to variable remuneration

4.1 The purpose of this chapter is to clarify the PRA's expectations of the way in which firms should comply with the rules on performance adjustment in Remuneration 15.20–15.23.

4.2 Performance adjustment refers to the downward adjustment of variable remuneration, which includes the use of malus and clawback. The terms 'malus' and 'clawback' are often used interchangeably but do in fact constitute distinct forms of performance adjustment. Malus is defined in the EBA Guidelines as '... an arrangement that permits the institution to reduce the value of all or part of deferred variable remuneration based on ex-post risk adjustments before it has vested'. Clawback means 'an arrangement under which the staff member has to return ownership of an amount of variable remuneration paid in the past or which has already vested to the institution under certain conditions'.

4.3 The effective and meaningful use of performance adjustment is necessary to align risk and remuneration policy. Performance adjustment allows firms to adjust remuneration to take account of risks that have subsequently crystallised. This includes instances of employee misbehaviour or material error, material downturn in performance, or a material failure of risk management. All variable remuneration is included within the scope of performance adjustment including awards made under long-term incentive plans (LTIPs) and buy-outs.

4.4 Alongside malus and clawback, the PRA considers that reductions to in-year variable remuneration awards should also be considered by firms in applying 15.20(1) of the Remuneration Part.

### Contracts and policies

4.5 Firms' remuneration policies and employment contracts should clarify that:

- (i) variable remuneration awards are conditional, discretionary and contingent upon a sustainable and risk-adjusted performance, in excess of that required to fulfil the employee's job description as part of the terms of employment. Such awards may therefore be subject to forfeiture or reduction at the employer's discretion;
- (ii) variable remuneration including a deferred portion is paid or vests only if it is sustainable according to the financial situation of the firm as a whole and justified on the basis of the performance of the firm, the business unit and the individual concerned; and

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<sup>15</sup> [www.bankofengland.co.uk/pru/Pages/supervision/activities/remuneration.aspx](https://www.bankofengland.co.uk/pru/Pages/supervision/activities/remuneration.aspx).

- (iii) variable remuneration awards should be reduced or clawed back according to specific criteria set by the firm under Remuneration 15.21(1) which should, as a minimum, cover each of the relevant scenarios outlined in Remuneration 15.22–15.23.

4.6 In accordance with Remuneration 6.5 firms should take adequate steps to identify and document all remuneration awards which may be subject to reduction or forfeiture and inform the relevant employees of the contingent nature of these portions of their remuneration.

4.7 All variable remuneration should be subject to clawback for periods of time determined in Remuneration 15.20 or, for 'higher paid Material Risk Takers',<sup>16</sup> 15.20A (subject to the provisions in Remuneration 15.A). Firms should maintain adequate records documenting all remuneration awards made to both current and former employees, should recovery of vested remuneration be required in future.

### Scope

4.8 The use of performance adjustment should not be limited to employees directly culpable of malfeasance. For example, in cases involving a material failure of risk management or misconduct, the PRA expects firms to consider applying performance adjustment to those employees who:

- (i) were aware, or could have been reasonably expected to be aware, of the failure or misconduct at the time but failed to take adequate steps to promptly identify, assess, report, escalate or address it;
- (ii) by virtue of their role or seniority could be deemed indirectly responsible or accountable for the failure or misconduct, including senior staff in charge of setting the firm's culture and strategy; and
- (iii) by virtue of their role or seniority within control functions could be considered to be responsible for weaknesses and failings in control functions relevant to the failure or misconduct.

4.9 Where a failure of risk management was collective or pervasive, firms should apply performance adjustment to individuals or groups of employees as appropriate. This may take the form of a reduction to the in-year bonus pool firm-wide, at the relevant business units, and/or may also include an adjustment at an individual level.

4.10 The PRA generally expects all firms to have a firm-wide policy on performance adjustment (and group-wide policy, where appropriate).

### Timing of the relevant failure or misbehaviour

4.11 Risk management failures and misconduct can take years to come to light. This should not prevent firms from applying performance adjustment to the extent that the relevant individuals have variable remuneration capable of reduction, even where this does not relate to performance in the year in which the misconduct or risk management failure occurred or came to light.

4.12 In the event of a risk management failure, employee misbehaviour or material error coming to light after employment has ceased, firms should take into account all relevant factors in deciding whether, and to what extent, it is reasonable to seek recovery of any or all of an employee's vested variable remuneration during the period in which clawback can be applied.

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<sup>16</sup> This term is defined in Remuneration 1.3.

### Procedure for considering performance adjustment

4.13 The PRA expects firms to develop and maintain an adequate procedure for deciding cases that could result in reductions to in-year variable remuneration or in the use of malus and clawback either as part of, or alongside regular internal disciplinary proceedings. This procedure should:

- (i) promote consistency, fairness and robustness in the application of performance adjustment;
- (ii) set specific criteria on the kinds of cases that may trigger the use of performance adjustment. These criteria should be indicative and non-exhaustive. Remuneration committees should retain full discretion to introduce additional criteria where appropriate;
- (iii) indicate which roles, departments, functions and committees are responsible for reporting, escalating and deciding cases that may trigger the use of performance adjustment;
- (iv) ensure that control functions including Internal Audit, Compliance, Finance, Human Resources, Legal, Reward and Risk provide relevant information and contribute to discussions as required; and
- (v) set out a clear process for determining culpability, responsibility or accountability, including allowing individuals under investigation to make representations.

4.14 Where reductions are made to in-year variable remuneration awards, there should be a clear process for determining the amount of variable remuneration which would have been awarded prior to the adjustment being made. This amount and the reasons for the reduction should be clearly documented.

4.15 Firms should freeze the vesting of all awards made to individuals undergoing internal or external investigation that could result in performance adjustment until such an investigation has concluded and the firm has made a decision and communicated it to the relevant employee. The outcome of such investigations and the communication to employees should, where possible, be made at the time the investigation concludes rather than the end of the performance year. This does not preclude the vesting of some or all variable remuneration in relation to particular individuals once the firm has established with certainty that ex-post risk adjustment of these amounts is not required.

4.16 Firms should ensure that the value of, and reasons for, individual or collective performance adjustments are clearly communicated in writing to affected individuals.

### Calculating reductions

4.17 All variable remuneration should, in principle, be capable of forfeiture or reduction through performance adjustment.

4.18 Adjustments should be applied robustly but fairly. Paragraphs 4.8, 4.9 and 4.11 do not prevent firms from taking into account culpability or proximity to an incident when deciding the value of individual reductions.

4.19 When deciding the amounts to be adjusted, the PRA expects firms to take into account all relevant criteria, including:

- (i) the cost of fines and other regulatory actions (eg section 166 reviews);
- (ii) direct and indirect financial losses attributable to the relevant failure;

- (iii) reputational damage;
- (iv) the impact of the failure on the firm’s relationships with its stakeholders including shareholders, customers, employees, creditors, the taxpayer, counterparties, and regulators;
- (v) the impact on profitability from the event (eg profit before tax) – actual/accounting and provisioned;
- (vi) the timeframe during which the event occurred and whether losses/costs are still accumulating;
- (vii) the extent of customer detriment (eg number and value of mis-sold policies); and
- (viii) redress costs.

4.20 Firms should ensure that their risk adjustment framework for determining bonus pools is clear and transparent, in order to enable them to clearly quantify and articulate the impact of any performance adjustments they might make prior to the adjustment being approved.

4.21 The methodology used to calculate performance adjustments and the value of the adjustments made at individual, business unit and firm levels should be clearly recorded so that it is possible to determine the value of each adjustment per incident and at the individual employee level. The PRA expects firms to be able to provide this information if required.

4.22 Where performance adjustments are made to in-year or prior year awards before the full impact of the risk management failures or misconduct is known, subsequent consideration and, where appropriate, adjustments should be made to ensure the final value of the adjustment fully reflects the impact of the incident. Should further information come to light, adjustments already made for the event should be considered prior to subsequent performance adjustment.

4.23 The PRA rules set out the minimum requirements for clawback, and firms may choose to go beyond these. When drafting clawback policies applicable to MRTs that are not higher paid MRTs, firms may either apply the minimum clawback periods set out in Remuneration 15.20 or the longer periods set out in Remuneration 15.20A. If a firm chooses to apply 15.20A instead of 15.20, the PRA expects the firm to clearly document its decision and communicate it to the PRA.

4.24 Table G below presents a summary of the minimum deferral and clawback requirements across MRT categories. It should be noted that more than one MRT category may apply to an individual in which case, as per Chapter 15, the highest minimum deferral or clawback must be applied by firms.

**Table G: Minimum deferral and clawback rules applicable to MRTs**

| Firm category                              | MRT category                             | Higher paid MRT<br>(Total rem >£500,000 or variable rem >33% of total rem, Rule 1.3) |                          | Non-higher paid MRT<br>(Total rem ≤£500,000 and variable rem ≤33% of total rem, Rule 1.3) |                          | MRT below proportionality threshold<br>(Variable rem ≤£44,000 and variable rem ≤one third of total rem, Rule 15.A1(3)) |                          |
|--|--|--|--------------------------|---|--------------------------|--|--------------------------|
|  |  | Minimum Deferral (years)   | Minimum Clawback (years) | Minimum Deferral (years)  | Minimum Clawback (years) | Minimum Deferral (years)   | Minimum Clawback (years) |
| Significant firms (as defined in Rule 1.3) | MRT who performs a PRA senior management | 7  | 7 <sup>1</sup>           | 5   | 1, 6 <sup>2</sup>        | 0  | 1, 6 <sup>2</sup>        |

| Firm category | MRT category  | Higher paid MRT<br>(Total rem >£500,000 or variable rem >33% of total rem, Rule 1.3) |                          | Non-higher paid MRT<br>(Total rem ≤£500,000 and variable rem ≤33% of total rem, Rule 1.3) |                          | MRT below proportionality threshold<br>(Variable rem ≤£44,000 and variable rem ≤one third of total rem, Rule 15.A1(3)) |                          |
|---------------|---|--|--------------------------|---|--------------------------|--|--------------------------|
|               |   | Minimum Deferral (years)   | Minimum Clawback (years) | Minimum Deferral (years)  | Minimum Clawback (years) | Minimum Deferral (years)   | Minimum Clawback (years) |
|               | function (SMF)  |  |                          |   |                          |  |                          |
|               | Non-SMF members of the management body and senior management  | 5  | 7                        | 5   | 1, 6 <sup>2</sup>        | 0  | 1, 6 <sup>2</sup>        |
|               | MRTs:<br>(i) who meets the criteria in Remuneration Rule 3.1(1)(b); or<br>(ii) whose professional activities meet the qualitative criteria set out in 3.2A (1), 3.2A (2) or 3.2A (5)  | 5  | 7                        | 4   | 1, 5 <sup>2</sup>        | 0  | 1, 5 <sup>2</sup>        |
|               | Other MRTs  | 4  | 7                        | 4   | 1, 5 <sup>2</sup>        | 0  | 1, 5 <sup>2</sup>        |
| Other firms   | MRT who performs a PRA SMF  | 7  | 7 <sup>1</sup>           | 4   | 1, 5 <sup>2</sup>        | 0  | 1, 5 <sup>2</sup>        |
|               | Non-SMF members of the management body and senior management  | 5  | 7                        | 4   | 1, 5 <sup>2</sup>        | 0  | 1, 5 <sup>2</sup>        |
|               | MRTs:<br>(i) who meets the criteria in Remuneration Rule 3.1(1) (b); or<br>(ii) whose professional activities meet the qualitative criteria set out in 3.2A (1), 3.2A (2) or 3.2A (5) | 5  | 7                        | 4   | 1, 5 <sup>2</sup>        | 0  | 1, 5 <sup>2</sup>        |
|               | Other MRTs  | 4  | 7                        | 4   | 1, 5 <sup>2</sup>        | 0  | 1, 5 <sup>2</sup>        |
|               | <sup>1</sup> Extendable to 10 years in line with Rule 15.20A (2).   |  |                          |   |                          |  |                          |
|               | <sup>2</sup> Minimum clawback of 1 year if the variable remuneration is not deferred.   |  |                          |   |                          |  |                          |

#### 4A Material Risk Takers, conversion of unvested instruments and public appointments

4A.1 The PRA’s rules require that a firm must ensure that a substantial portion (at least 50%) of any variable remuneration payable to a MRT consists of an appropriate balance of:

- (i) shares or, subject to the legal structure of the firm concerned, equivalent ownership interests; or subject to the legal structure of the firm concerned, share-linked instruments or equivalent non-cash instruments; and
- (ii) where possible, other instruments which are eligible as Additional Tier 1 instruments or are eligible as Tier 2 instruments or other instruments that can be fully converted to Common Equity Tier 1 instruments or written down, that in each case adequately reflect the credit quality of the firm as a going concern and are appropriate for use as variable remuneration.<sup>17</sup>

4A.2 Additionally, there is a requirement that a firm must not award variable remuneration unless a substantial portion of it (at least 40%) is deferred, for a period varying between at least four and seven years, depending on factors such as whether the relevant MRT is a higher-paid MRT, on the management body and/or performing a Senior Management Function.<sup>18</sup>

4A.3 Firms therefore have a degree of choice when they initially determine which instruments comprise that part of a MRT's variable remuneration that must be awarded in instruments. Thereafter, the PRA expects that following an award, changes to the instruments that comprise that award should not ordinarily occur in order to ensure a consistent alignment of the long-term interests of firms and MRTs.

4A.4 There may, however, be exceptional circumstances in which such a conversion is appropriate and consistent with the long-term alignment of the interests of firms and their MRTs. A particular case could arise where a MRT or former MRT seeks a senior public sector appointment linked to financial policy or financial services regulation (a 'public sector appointment').<sup>19</sup> A firm may consider seeking the PRA's non-objection or waiver or modification to converting instruments that comprise unvested, deferred pay where necessary to address a potential conflict of interest. Such conflicts of interest could exist where a former MRT continues to have a contingent claim on the equity of a firm while working for a public body exercising functions relating to financial policy or financial services regulation.

4A.5 It is the responsibility of a potential public sector body looking to employ a MRT to consider what mechanisms may be available to it under its own code of conduct to address any conflict of interest (eg declarations, recusal) arising from such unvested remuneration. However, where a firm that has previously awarded unvested, deferred pay wishes to help facilitate a public sector appointment, the PRA expects that the firm should seek the PRA's non-objection prior to changing the instruments that comprise the awards (eg from equity to other instruments).<sup>20</sup> In considering whether its non-objection is appropriate, the PRA will be guided by whether:

- (i) the conversion is consistent with the aims of the remuneration requirements;
- (ii) the role relates to financial services regulation or financial policy, such that a conflict of interest could arise if the MRT is appointed; and
- (iii) it would be appropriate or sufficient for a potential conflict to be avoided or mitigated through other means.

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<sup>17</sup> See Rule 15.15 in the Remuneration Part.

<sup>18</sup> See Rules 15.17 and 15.18.

<sup>19</sup> There may be other circumstances in which a conversion may be appropriate and consistent with maintaining the alignment between the long-term interests of a MRT and a firm. In such exceptional cases, firms should approach their supervisory contacts.

<sup>20</sup> While the terms 'equity' and 'other instruments' are used for convenience, the same principles would apply to conversion of any instrument falling under section 15.15(1)(a) to one in 15.15(1)(b) of the Remuneration Part (or vice versa).

4A.6 Where an unvested, deferred sum is converted from equity to other instruments, the same retention period should apply.

4A.7 The PRA (along with the FCA) has a statutory power under s138A FSMA to waive or modify its rules in circumstances where it is satisfied that compliance with the unmodified rules would be unduly burdensome, or would not meet the purpose for which the rule was made, and where the waiver or modification would not adversely affect advancement of its objectives, including promoting the safety and soundness of PRA-authorized persons.

4A.8 On the question of addressing potential conflicts of interest arising in public sector appointments, a firm may additionally consider requesting a waiver or modification of the remuneration rules to allow an unvested, deferred claim in equity or other instruments to convert to a cash claim, where this would otherwise be prevented by the PRA's rules. Each waiver or modification decision will be considered on the basis of the facts of the individual case. However, the PRA considers that in wholly exceptional cases, a request by a firm to convert an unvested, deferred claim on equity or other instruments to a claim on cash would be more likely to meet the FSMA test where:

- (i) individuals are due to join a public sector employer in a senior capacity, and where their financial services experience is directly relevant to the role;
- (ii) the PRA is satisfied that it would not be appropriate or sufficient for a potential conflict to be addressed through other means (including conversion from an equity claim to one based on other instruments);
- (iii) any cash claim would replicate the deferral, malus, and clawback provisions that applied to the original claim, and no early payment takes place;
- (iv) contractual terms are adopted that replicate the relevant features of other instruments, including: (a) write-down at the relevant Common Equity Tier 1 (CET1) trigger, and (b) a pro-rata reduction where distribution restrictions are triggered under Chapter 4 of the Capital Buffers Part of the PRA Rulebook or equivalent s.55M requirement;<sup>21</sup> and
- (v) a firm demonstrates how contractually the alignment of interests between firm and MRT that arises from the relevant retention period for equity or other instruments could be replicated (eg by extending the vesting period).

4A.9 The PRA's expectation is that where a public sector employer's conflict of interest policy can address a potential conflict of interest without need for any alteration of variable remuneration, this route should be pursued. Therefore, in considering either a request for non-objection or a request for a waiver or modification, the PRA would expect to be provided with a reasoned case outlining why conversion, together with other measures as appropriate, would reasonably address the conflict of interest identified, including why such conflict cannot otherwise be sufficiently addressed by internal conflicts policies and, in the case of a waiver or modification request, conversion to other instruments. If an adjustment to claims that comprise a variable pay award, along with other measures, is not effective in addressing the conflict, it is unlikely that the PRA would grant an application for waiver or modification.

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<sup>21</sup> See Chapter 4 of the Capital Buffers Part of the PRA Rulebook, and Section 55M of the Financial Services and Markets Act 2000 (FSMA).

4A.10 The PRA's expectation applies to all unvested, deferred sums, and does not exclude amounts above any regulatory minima. Where firms, for example, make initial awards weighted towards equity on the basis that this best achieves a better alignment of interests between the firm and the MRT, any proposed changes should be notified to the PRA and its non-objection sought.

4A.11 The PRA's expectations in respect of the retention of instruments vested as a result of a variable pay claim remain unchanged, other than as outlined above.

Superseded



## 5 Other elements of remuneration

### Governing body and remuneration committee

5.1 Firms are expected to demonstrate that their decisions are consistent with an accurate assessment of their financial condition and future prospects. In particular, practices by which remuneration is paid for with potential future revenues whose timing and likelihood remain uncertain should be evaluated carefully. The governing body or remuneration committee, or both, should work closely with the risk function in evaluating the incentives created by the remuneration policies of the firm.

5.2 The governing body and remuneration committee are responsible for ensuring that the remuneration policy of the firm complies with the rules on remuneration, and where relevant, should take into account guidance such as that issued by the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS) the International Organization of Securities Commissions (IOSCO) and the EBA.

5.3 In applying the remuneration rules, a firm should have regard to applicable good practice on remuneration and corporate governance, such as, where appropriate, guidelines on contracts and severance contained in the Principles of Remuneration 2016 produced by the Investment Association.<sup>22</sup> In considering the risks arising from its remuneration policies, a firm will also need to take into account its statutory duties in relation to equal pay and non-discrimination.

5.4 As with other aspects of a firm's systems and controls, in accordance with Rule 2.2 of the General Organisational Requirements Part of the PRA Rulebook, remuneration policies, procedures and practices must be comprehensive and proportionate to the nature, scale and complexity of the firm's activities. The actions taken by a firm in order to comply with the Remuneration Part will therefore vary.

5.5 The periodic review of the implementation of the remuneration policy should assess compliance with the Remuneration Part. The PRA may also request remuneration committees to provide the PRA with evidence of the compliance of any remuneration policies against the rules under the Remuneration Part, together with plans for improvement where there is a shortfall.

5.6 The Remuneration Part is principally concerned with the risks created by the way remuneration arrangements are structured, not with the absolute quantum of remuneration, which is generally a matter for remuneration committees to determine.

5.7 The PRA expects these committees to continue to fulfil the roles and functions required under Remuneration 7.4 and the EBA Guidelines. However, within this framework remuneration committees may consider group-wide decisions and policies.

### Risk management and control functions

5.8 The PRA expects firms to ensure that the total remuneration package offered to employees in risk management and compliance functions is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions.

5.9 The method of determining the remuneration of relevant persons involved in the compliance function should not compromise the objectivity of firms or be likely to do so.

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<sup>22</sup> [www.ivis.co.uk/media/11101/Principles-of-Remuneration-2015-Final.pdf](http://www.ivis.co.uk/media/11101/Principles-of-Remuneration-2015-Final.pdf).

5.10 The PRA expects firms to ensure that their risk management and compliance functions are involved in determining the remuneration policy for other business areas. This includes significant input into the setting of individual remuneration awards where those functions have concerns about the behaviour of the individuals concerned or the level of risk undertaken. A lack of involvement from the control function may be relied on as tending to establish contravention of Remuneration 8.1 requiring employees engaged in control functions to have appropriate authority.

5.11 Remuneration 8.1 is designed to avoid potential conflicts of interest which might arise if other business areas had undue influence over the remuneration of employees within control functions. Where such conflicts could arise they should be managed by having in place independent roles for control functions (including, notably, risk management and compliance) and human resources. The PRA considers it good practice to seek input from the human resources function when a firm is setting remuneration for other business areas.

5.12 The need to avoid undue influence is particularly important where employees from the control functions are embedded in other business areas. Remuneration 8.1 does not prevent the views of other business areas being sought as an appropriate part of the assessment process.

### **Remuneration and capital**

5.13 The variable remuneration arrangements at a firm should be sufficiently flexible to allow necessary resources to be directed towards capital building.

5.14 The PRA also expects relevant firms to use the remuneration rules in assessing their exposure to risks arising from their remuneration policies, as part of the internal capital adequacy assessment process (ICAAP).

### **Risk adjustment**

5.15 The governing body or, where appropriate, the remuneration committee, should approve policies for incorporating risk-adjusted performance into calculating the bonus pool and individual awards, including the triggers under which adjustments would take place. The PRA may request firms to provide a copy of their policies and expects firms to make adequate records of material decisions to operate the adjustments.

### **Risk adjustment frameworks**

5.16 The PRA expects firms to adopt a risk adjustment framework that provides a clear and verifiable mechanism for measuring performance, and which leads to quantifiable risk adjustments being made in a clear and transparent manner. Firms will be expected to justify how they have adjusted remuneration decisions to account for risk.

5.17 The PRA expects firms to choose the most appropriate risk adjustment technique according to their circumstances. Firms are expected to provide a quantitative reference or starting point that explicitly includes risk-adjusted metrics, before the application of more discretionary factors. The full range of future risks should be covered and firms should be able to provide the PRA with details of all adjustments made, whether through application of formulae or the exercise of discretion. Where discretion has been applied, the firm should be able to provide a clear explanation and quantification of such adjustments.

### **Accounting for profit for remuneration purposes**

5.18 In order to ensure that incentives are better aligned with the long-term sustainable financial performance of the firm, the PRA expects variable awards to reflect the long-term

ex-ante risks associated with employee activities and to reduce the sensitivity of financial performance measures to short-term profit.

5.19 Profits for the purpose of determining the initial size of the pre-risk adjusted bonus pool should be calculated by adjusting any profit figure taken from a fair valuation accounting model with the incremental movement in the prudent valuation adjustment (PVA) figure at the end-Q4 prudent valuation return in current year and previous year. All UK dual-regulated firms (including UK subsidiaries of international firms) excluding branches, are required to file quarterly prudent valuation returns with the PRA.

5.20 For UK subsidiaries of international firms that do not have a specific UK bonus pool and where the bonus pool is determined and allocated by the parent company, the PRA, as part of the annual supervisory remuneration review, will require the firm to evidence that the incremental change in the PVA for the UK subsidiary has been applied to the UK-regulated entity's profits that feed into the global bonus pool.

5.21 The PRA expects prudent valuation adjustments to be determined using the Simplified Approach or Core Approach set out in Chapter 4 of the Trading Book (CRR) Part.

5.22 As branches of overseas firms are not required to submit prudent valuation returns, they will be out of scope of this requirement. However, the PRA will expect those firms to apply an appropriate adjustment to profit based on comparable principles to the extent it is achievable in the jurisdiction in which the global pool is determined.

#### Use of metrics

5.23 Aligning variable remuneration awards to sustainable financial performance requires firms to make appropriate ex-ante adjustments to take account of the potential for future unexpected losses. Performance measures commonly used such as earnings per share (EPS), total shareholder return (TSR), and return on equity (RoE) are not suitably adjusted for long-term risk factors, and may incentivise highly-leveraged activities. The PRA expects these earnings-based metrics to form part of the risk adjustment process only if it can be demonstrated that they are used as part of a balanced scorecard of financial and non-financial metrics which gives credible weight to non-profit based measures.

#### Long-term incentive plans (LTIPs)

5.24 LTIPs are a type of variable remuneration and are measured against forward-looking performance metrics to align the interests of individuals with the long-term interests of a firm.

5.25 The PRA expects firms to use a balance of both financial and non-financial metrics to drive appropriate behaviours. Firms should justify how non-financial measures in the quantitative component of LTIP frameworks are appropriate for the business model and strategy of the firm, and should ensure the measurement process of such non-financial measures is transparent and robust.

5.26 Quantitative criteria should be appropriately risk-adjusted and short-term metrics should only be used as part of a balanced and risk adjusted scorecard of metrics. The quantitative criteria should include economic efficiency measures such as risk-adjusted return on capital, return on risk-adjusted capital, economic profit and internal economic risk capital or any equivalent type metric.

5.27 Quantitative risk metrics may not capture all risk components, some of which can be better captured by discretionary approaches. However, if relied on solely, discretionary approaches may weaken the risk-based incentive effect of performance-based incentive frameworks. The PRA

expects that such approaches are applied with appropriate controls and in a well-documented and transparent process.

### **Personal investment strategies**

5.28 Remuneration 13.1 states that a firm must ensure that its employees undertake not to use personal hedging strategies to undermine the risk alignment effects embedded in their remuneration arrangements. The circumstances that the PRA considers constitute a prohibited personal hedging strategy include, but are not limited to, entering into an arrangement with a third party under which the third party will make payments, directly or indirectly, to a person that are linked to or commensurate with the amounts by which the person's remuneration is subject to reductions.

### **Remuneration structures**

5.29 The non-financial criteria in Remuneration 15.4(2) should include the extent of the employee's adherence to effective risk management, and compliance with the regulatory system and relevant overseas regulatory requirements.

#### **Specific award structures: guaranteed variable remuneration, buy-outs and retention awards**

##### *Guaranteed variable remuneration*

5.30 Guaranteed variable remuneration is often known as a 'golden hello' or 'sign-on bonus' (which are different to buy-outs, see paragraph 5.35 below). Often these awards are made in cases where an individual will lose the opportunity to receive a bonus entitlement for the current performance year by leaving their employer part-way through the year, and to persuade them to move, the individual is compensated for this 'lost opportunity'.

5.31 Guaranteed variable remuneration awards should not be expected as the norm and should be limited to rare, infrequent occurrences and can only occur where the firm has a sound and strong capital base in accordance with Remuneration 15.7.

5.32 Under paragraph 140-141 of the EBA Guidelines, firms are permitted to exclude guaranteed variable remuneration such as sign-on bonuses from the calculation of the ratio between fixed and variable remuneration, where this is awarded in the context of hiring new staff. These provisions also permit firms to disapply malus, clawback, and deferral rules from such awards.

5.33 The PRA, however, considers that all guaranteed variable remuneration (including 'lost opportunity' awards) continue to be subject to the general rules for variable remuneration awarded by the firm including deferral, malus and clawback. These awards should also be included in the variable component of the fixed to variable ratio for the relevant performance period in which the award is made. The guidance in paragraph 3.16 can be used to calculate the fixed to variable ratio when a 'lost opportunity' award is given to an MRT joining part way through the year.

5.34 All guaranteed variable remuneration awards should be documented and included in a firm's annual remuneration policy statement. Notification of guaranteed variable remuneration is not required.

##### *Buy-out awards*

5.35 Buy-out awards differ from guaranteed variable remuneration and represent a practice whereby firms buy-out outstanding deferred bonus awards for staff that have been cancelled by

their previous employer. The PRA expects firms to structure buy-outs so that they vest no faster than the awards they replace.

5.36 As part of the process for the previous firm deciding whether to apply malus or clawback to the buy-out, the 'determination' under rule 15A.9 refers to the final determination by the approving body or committee of the previous firm.

5.37 The new employer should act solely as an executor in relation to the determination made by the previous employer. As such, the PRA considers that, while all waiver applications will be considered on the basis of the facts of the individual case, in most cases the statutory tests for the modification or waiver of rules set out under section 138A(4) of FSMA are unlikely to be met.

### *Retention awards*

5.38 Retention awards differ from guaranteed variable remuneration and represent awards which are contingent on an individual remaining in employment with the firm for a period of time.

5.39 Retention awards shall form part of variable remuneration for the purpose of the ratio between fixed and variable components of total remuneration under Remuneration 15.10. Firms should notify the PRA and provide justification when a retention award is offered to an MRT. In such cases, the PRA will consider whether the award is appropriate.

### **Procedure to increase permitted ratio between fixed and variable components of total remuneration**

5.40 In circumstances where firms choose to increase the permitted ratio of fixed to variable remuneration, the PRA considers all percentage thresholds referred to in Remuneration 15.11(5) should be calculated by reference to the shares or other ownership rights in the firm. This, in turn, should be taken to mean the voting rights capable of being cast on the relevant resolution, and which attach to the shares or ownership rights.

5.41 The 75% threshold which applies when fewer than 50% of shares are represented in the vote, and the 66% threshold which applies when at least 50% of shares are represented, are percentages of the share or ownership voting rights represented, and not of the firm's whole issued share capital or ownership rights.

5.42 The concept of shares or ownership rights being 'represented' is not clearly defined for these purposes in UK law and may depend on the legal nature of the firm in question.

- (i) In order to be clear what proportion of the share/ownership rights is 'represented' as required by Remuneration 15.11(5), the PRA expects a poll vote to take place at the relevant shareholder meeting, even if the outcome of such a vote may appear obvious from a show of hands and/or any proxies received.
- (ii) The PRA has not ascribed a specific meaning to the word 'represented'. The PRA expects firms to consider what will constitute being represented for the purpose of this vote, within the range of meanings that the word 'represented' could reasonably carry.
- (iii) The PRA expects firms to make clear to shareholders how each voting decision (voting for or against, sending a proxy, abstaining, attending but not voting etc.) will be treated for the purpose of being represented.

- (iv) It is prudent to proceed on the basis that the meaning of being ‘represented’ is the same for the threshold test (ie the 50% test) as for the majority test (ie the 66% or 75% test), even if other interpretations are possible.

5.43 In line with Remuneration 15.11(4), staff who are directly concerned by the higher maximum levels of variable remuneration are not permitted to exercise any voting rights they may have. Accordingly, their voting rights should be disregarded when calculating the percentages.

### **Deferral**

5.44 The PRA expects firms to have a firm-wide policy (and group-wide policy, where appropriate) on deferral. The proportion of variable remuneration deferred should generally rise with the ratio of variable remuneration to fixed remuneration, and with the quantum of variable remuneration awarded. In line with the specific requirements of Remuneration 15.18, the PRA further expects that where any employee’s variable remuneration component is £500,000 or more, at least 60% of the total variable award should be deferred. However, firms should also consider whether this deferral ratio should be applied in cases of variable remuneration awarded below £500,000.

5.44A When drafting deferral policies applicable to non-higher paid MRTs, firms may either apply the minimum deferral periods set out in Remuneration 15.17(1) or the longer periods set out in Remuneration 15.17(2). If a firm chooses to apply Rule 15.17(2) instead of 15.17(1), it should clearly document its decision and communicate it to the PRA.

### **Breaches of the remuneration rules**

5.45 In line with the Fundamental Rules, the PRA expects any breach of a rule referred to in Remuneration 16.1 to be notified to the PRA. Such a notification should include information on the steps which a firm or other person has taken or intends to take to recover payments or property in accordance with Remuneration 16.14.

5.46 Remuneration 16.14(2) applies in the context of a secondment. Where a group member seconds an individual to a firm and continues to be responsible for the individual’s remuneration in respect of services provided to the firm, the PRA expects the firm to take reasonable steps to ensure that the group member recovers from the secondee any remuneration paid in pursuance of a contravening provision.

### **Firm-wide application**

5.47 The PRA expects firms to apply at least the following Remuneration Part rules on a firm wide basis:

- remuneration policies;
- governance;
- risk adjustment;
- pension policy;
- personal investment strategies; and
- payments related to early termination.

## Annex – SS2/17 updates

This annex details the changes that have been made to this SS following its initial publication in April 2017:

### 2023

#### February 2023

Following publication of PS1/23 – ‘Remuneration: Unvested pay, Material Risk Takers and public appointments’,<sup>23</sup> this SS was updated to address situations where firms seek to make conversions to unvested pay in equity or other instruments to assist in addressing a conflict of interest linked to specific public appointments. The update takes the form of a new section 4A.

### 2021

#### December 2021

Following publication of PS28/21 ‘Remuneration: Identification of material risk takers’ this SS was updated to reflect changes in relation to the identification of Material Risk Takers and the exclusion process.<sup>24</sup> The changes are in paragraphs 1.2, 1.9, 2.24, 3.1–3.2, 3.4–3.8, 3.19, 3.21–3.27, 3.29–3.35, and Table G.

#### July 2021

Following publication of PS18/21 ‘Remuneration: Correction to the definition of ‘higher paid material risk taker’’,<sup>25</sup> this SS was updated to align with the correction to the definition of higher paid material risk taker. This is shown in the heading to column 3 in Table G.

This policy is effective from Friday 24 July 2021.

#### December 2020

This SS was updated following publication of PS26/20 ‘Capital Regulation Directive V (CRD V)<sup>26</sup> which contained the amended new PRA Rules transposing CRD V. These required amendments to the PRA’s expectations with regards to the application of proportionality to firms and individuals in Chapter 2 and Chapter 3 of this SS. Chapter 3 was amended to reflect changes in the area of MRT identification. Chapter 4 and Chapter 5 were amended to reflect the PRA expectations with regards to application of the amended deferral and clawback rules. Table G in Chapter 4 was added to improve readability and add clarity on the application of deferral and clawback rules.

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23 February 2023: <https://www.bankofengland.co.uk/prudential-regulation/publication/2023/february/remuneration-unvested-pay-material-risk-takers-and-public-appointments>.

24 December 2021: <https://www.bankofengland.co.uk/prudential-regulation/publication/2021/september/remuneration-identification-material-risk-takers>.

25 July 2021: <https://www.bankofengland.co.uk/prudential-regulation/publication/2021/april/remuneration-correction-to-the-definition-of-higher-paid-material-risk-taker>.

26 December 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/capital-requirements-directive-v-further-implementation>.