Banking and regulation post-crisis: the significance of "culture" in the UK and experiences from Australia

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This article looks at current interest in banking culture, using the FCA*'s controversial decision to shelve its Thematic Review in this sphere to chart how regulators' interest in culture specifically became fashioned from a more generalised concern about misconduct in the wake of the global financial crisis. In insisting banking culture should remain prominent in UK regulatory approaches, the article introduces research undertaken on Australian regulators' engagement with culture.*

This article examines the nature of current interest in reforming banking regulation and culture, almost a decade on from the onset of the global financial crisis in 2007. As part of a longer-term and extensive analysis of likely future orientation, the article joins together a series of narrative threads emerging post-crisis which would become fashioned into a regulatory interest in "banking culture". Centrally, this comprises considering early post-crisis scepticism concerning the feasibility of achieving far-reaching reform and doubting the necessary political and industry "will" for such a transformative agenda to emerge together with regulators' insistence that such a path was a high priority. It also engages with subsequent references made directly to "banking culture" in the era defined by the endeavours leading to the Financial Services (Banking Reform) Act 2013 (the 2013 Act) and announcement of the FCA's comprehensive review of "banking culture" in the wake of this, as well as with questions arising from the widely publicised abandonment of this in December 2015. This provides the article's starting point, and whilst constraints in space do not permit extensive engagement with the meaning and import of "culture", the article considers how these key reference points might—individually and collectively—speak to the significance currently being attached to "banking culture" in the UK regulatory sphere. In suggesting that culture should remain a prominent feature of reforms in banking regulation, it explores what might be gleaned about this from analysing the panacea qualities of the 2013 Act which flow from an underpinning mission on "changing banking for good". Here, particular attention is paid to the new Senior Managers and Certification Regimes in the light of initial intendment and more recent events. This article also examines current emphases of the domestic regime from the viewpoint of the manifest importance being attached to culture in Australia. In turn, the significance accorded to Australia flows both from longer-standing perspectives that this regime embodies a "twin peaks" approach which is the "envy of the world", and more recent attention being paid to conduct-oriented enforcement undertaken by its Securities and Investments Commission; and where, for the latter, emphasis on culture appears set to increase.

Background and context: identifying interest in "banking culture" as a current regulatory touchstone

The FCA's *Business Plan 2015/16* included an extensive review of "banking culture" pursued through the auspices of its "Thematic Review" programme.[1] This followed on from new "banking reform" legislation pursuant to the 2013 Act, and a wave of emerging identifiable interest in "banking culture" more broadly traceable through formal reactions in the UK to the global financial crisis. The FCA's Thematic Review was put in place by then Chief Executive Martin Wheatley whose views on "rottenness" in banking's culture were often expressed, highly profiled and also uncompromising.[2] Following the departure of Martin Wheatley in July 2015 in the light of Chancellor George Osborne's insistence that "different leadership"[3] is needed as the conduct regulator moves into the next phase of the new body's development,[4] in December 2015 it was announced that the FCA would be "shelving" the banking culture Review. This news has attracted a great deal of reaction, including accusations of "outside" interference from the Bank of England and the Treasury,[5] and called for Chancellor George Osborne to "explain" the decision,[6] from which followed swift insistence from the Treasury that this decision was taken independently by the FCA.[7]

There also followed quick and robust reaction from the FCA confirming that the decision was taken by it alone, with this channelled through direct commentary from Acting CEO Tracey McDermott,[8] and publicised responses to Freedom of Information (FoI) requests received by the Authority in the light of its announcement to discontinue the Review.[9] The Authority has insisted that delivering cultural change remains a priority, and explained that focussing this on working with individual firms rather than the sector at large will be more effective in achieving this objective.[10] Beyond this, this decision has attracted reactions of a different nature, and interestingly so from those whose involvement in Parliamentary scrutiny of banking in the aftermath of the financial crisis has been instrumental in crystallising a very public profile for banking. Expressions of "surprise",[11] "disappointment"[12] and "missed opportunity"[13] are from those who have been central in delivering messages of "changing banking for good",[14] and who through their endeavours serving on the House of Commons Treasury Committee and the Parliamentary Commission on Banking Standards have helped to fashion a public profile for banking which is distinctively one emphasising "banking *culture*".

The shelved Review quickly generated speculation that the FCA would be called to the Treasury Committee to explain its decision,[15] and on 20 January 2016, FCA Chairman John Griffith-Jones and Acting Chief Executive Tracey McDermott were questioned about this. Ms McDermott explained that the business plan was a signal of intentions at any given time and includes a number of pieces of work, rather than being a set agenda:

"[C]ircumstances will change and the executive makes the operational decisions about whether we should be taking forward things or not, or doing them in a different way, bearing in mind our obligations to try to use our resources in an effective and efficient way." [16]

But beyond this procedural angle, Mr Griffith-Jones was keen to clarify that differences subsisted in the scope of the Review as configured by the Authority following its identification in the Business Plan from representations of it in the press.[17] Here it was important for it to be understood that once the Review had been "scoped" it was not, as had been represented in some quarters, "a grand inquiry into culture in banks".[18] Instead it had been funnelled into a "review of middle management and the freedom to speak up in the banks" on account that these were at the time regarded as being good indicators of overall culture.[19] And after commencing work on this project it had become apparent to those involved that this was not going to lead to the best way of making progress on culture.[20]

Mr Griffith-Jones continued that it was from this realisation that the decision was made to "put the work on culture back into individual firms' supervision",21 and that this was in his view "probably an excellent idea, but certainly a reasonable one".22 But even in this setting Mr Griffith-Jones insisted that it was right and proper only ever to regard the Review as a "means to an end", insisting that its discontinuance was not tantamount to abandonment by the Authority, and he stated *twice* that it remained "absolutely still obsessed with culture".23 More will be said in due course about the FCA's current vision of culture, and continued focus on it, even in the light of the abandoned Review. For present purposes, reference to it helps to identify a trajectory of reaction to the global financial crisis which crystallised into regulatory interest in banking culture, and where the FCA Review can be regarded as a pinnacle for this. From this outline arguments will be presented concerning which aspects that can be identified with "banking culture" should continue to receive attention, notwithstanding the abandoned Review.

Identifying "banking culture" and the origins of current interest from the global financial crisis and its aftermath

In his recent appearance before the Treasury Committee, FCA Chairman John Griffith-Jones insisted that distinction could be drawn between the Authority's purported abandonment of a systematic review of banking culture, and "'abandoning' culture as a top priority", where there was absolutely no question of the latter.24 Leaving aside for now that accusations of abandonment of the latter type have occurred, reference to the significance attached by the FCA to "middle management and the freedom to speak up in the banks" helps to scope the article and its direction, in providing a brief consideration of why banking culture should be a regulatory priority for post-crisis reform. This article outlines what it considers an emerging trajectory of interest in "culture", evident from the onset of the crisis prior to this being crystallised into the rhetoric of culture explicitly. This is an important component for a much fuller exploration of culture being conducted elsewhere.25 Accordingly, this article's consideration of culture is primarily functional rather than offering extended critique, and seeks to illuminate that whilst concern about banking culture has emerged from "headline" statements on what is wrong with banking and what must change, the more nebulous qualities of culture ensure it is a difficult concept to "pin down". As John Griffith-Jones' evidence suggests, "culture" is often considered by reference to proxy, even in a context in which "banking culture" has been blamed for the onset of the crisis, its intensity and longevity, and the continuing stream of revelations of pre- and post-crisis infractions.

This is particularly evident in non-academic discourse, from where a significant proportion of criticism of "culture of banking" has emanated.26 Whilst the FCA's continuing "obsession" with culture is likely to continue to attract scepticism and cynicism, this declaration can also be a statement of culture's importance, and one which entreats intellectual engagement with "culture" by academics for the purposes of applying this to "banking culture" specifically. Here it is highly significant that it would take some time following the crisis for perceived failings in banking to be identified with culture explicitly, and also that academic analysis in this sphere is only starting to develop in earnest. Both might be seen as interesting, if not actually surprising, given that there is a very extensive literature on culture, and one which is long-established to be found within social science. This is particularly the case within sociology, where analysing culture involves associating it with behaviours and beliefs which characterise particular social or economic groupings and how these are embedded and transmitted within these groupings and in wider societal understanding.27 From this it is clear how and why the FCA regards "middle management" and "freedom to speak up" as proxies for culture.

This allusion to the importance *of* middle management and of a setting of organisational openness *for* banking now assists in explaining how the negative publicity received by banks from the earliest stages of the crisis helped to consolidate concern about "toxic" banking culture.28 Indeed, almost a decade on from the onset of the global financial crisis, the associations made between the crisis and shortcomings on the part of banks need little if any introduction. From a generalised concern expressed from the crisis' earliest appearance that regulatory reform must ensure that the financial system underpinning the economy is more resilient in future, and less prone to "shocks" which threaten systemic stability, it quickly became apparent that much of this zeal would be targeting the banking sector specifically. It was from this that an identifiable focus on "banker blame" for the crisis would emerge, and it is argued that this phenomenon of banker blame provided one of the key building blocks of what would become concern about the culture of banking.

It is well known that the global financial crisis arose from wide-spread recourse to debt finance within the banking sector, which became exposed initially by the US subprime mortgage crisis, and equally well known that its arrival in Britain was marked by the announcement of Northern Rock's request for emergency Bank of England support on Friday 14 September 2007.29 This resulted almost instantaneously in the long queues formed outside its branches, commencing the "run on the Rock"30 as anxious depositors sought to withdraw their funds, with these images proving to be amongst the most enduring and even iconic images of the crisis. The role of Northern Rock in marking the arrival of the crisis in the UK would also mark the beginning of a narrative of the crisis which has also endured, and has itself arguably become iconic. This flows from how the affairs of Northern Rock would become a reference point for precipitating a rebalancing of the UK economy through manoeuvring away from "debt finance" and the implementation of a programme of austerity, and for attention being paid in the domestic sphere for the need for "fundamental reform of the financial system" and the re-evaluation of "the underlying structure of the international financial and monetary system".31

It is from this systems-focussed concern that the narrative of "banker blame" emerged, and has been able to engender concern about banking which is now identifiable as concern about culture. This can be seen as an underpinning "common factor" for key directions within the 2013 Act, which are focussed in quite different ways. It can be seen at the heart of system-focussed reforms designed to increase overall resilience of the UK financial system to future shocks and instability, as much as it can be seen in initiatives designed to strengthen the liability of individual actors operating within the overall financial system, where there is also an acknowledged importance of individual institutional soundness for promoting systemic resilience and appropriate levels of individual accountability. The alignment of concerns about the "unacceptable costs on the rest of society"32 of a financial "services" industry which had served "nothing but itself"33 with banking can be seen in accusations post-dating 2007 that banking had helped to "tear" social fabric by starving other sectors within the domestic economy of human and fiscal resources.34 And in a setting of accusation that in a tide of rising inequality bankers had become "first among unequals",35 banker blame quickly became transformed into perceived "banker bashing".36

The phenomenon of "banker bashing" became so strongly perceived that in 2011, Bob Diamond, then CEO of Barclays, insisted in evidence before the Treasury Committee that following a period of "remorse and apology" from the sector, a culture of blame and punishment of bankers for the crisis must cease,37 and shortly afterwards spoke of how bankers were determined to be better citizens but that this required a cession of public hostility.38 This very public insistence on societal forgiveness, together with emphasis on the vital role played by banks in securing economic recovery,39 is perhaps what made the Libor-fixing revelations in June 2012 particularly damaging for banking. A sense of continuing hostility towards banking following the Libor-fixing revelations can be seen in how Andy Haldane—then Bank of England Executive Director for Financial Stability (and currently that for Monetary Analysis and Statistics and Chief Economist)—perceptively conceded that there might be many calls for "heads on sticks".40 In insisting that such an approach would not alone deliver reforms to the banking sector which revelations from the crisis demanded, Mr Haldane made a deliberate play on former FSA Chairman Lord Adair's lexicon of "socially useless" banking41 in insisting that banking must once again become "socially useful".42 Interestingly for this article, Mr Haldane proposed that at the heart of such a reorientation lay "five 'c's", with these comprising: capital; compensation; credit; competition; and "first and … foremost", *culture*.43

The origins of the Financial Services (Banking Reform) Act 2013: Charting the emergence of an identifiable focus on "culture"

A broad pattern emerging over a long post-crisis timeframe which is associated with the nomenclature of "culture" and intellectual understandings of it is readily apparent in Mr Haldane's insistence that skeletons had been accumulating "in the closet for the better part of two decades".44 In applying broad ideas on how culture is associated with the embedding and transmission of behaviours and beliefs which characterise particular social or economic groupings both within these groups and beyond into wider societal understanding45 to banking specifically, what follows now is consideration of how allusions to culture can be identified in the early post-crisis period even prior to "banking culture" becoming rhetorically recognised and extensively utilised. From this, the discussion will consider legal reforms which have been rhetorically aligned with addressing failures in culture to assess the likely continuing importance of culture for addressing how banking is considered capable of "imposing unacceptable costs on the rest of society".46

Within the early crisis commentary, whilst there is no reference to culture specifically by the Treasury Committee in its Report on the failure of Northern Rock, criticisms of the institution's business model and the behaviour of its senior executives culminating in the need for emergency assistance were in substance very much ones associated with transmissions of behaviours and beliefs within an organisational grouping. The Report was unshrinking in asserting that the troubled bank's directors were the "principal authors of the difficulties that the company has faced since August 2007"47 on account of extending mortgage credit which required extensive engagement in securitisation and borrowing from its wholesale business.48 Criticism which could be levied at the institution itself49 flowed from the pursuit of its internally generated "high-risk, reckless business strategy" which left it "absolutely unable to finance … wholly illiquid assets" once the markets for mortgage-based securities closed,50 rather than this being a sound strategy which had fallen victim to the onset of the external global "credit crunch".51

Such an assessment helps to clarify how the aftermath of the US-originated subprime mortgage crisis arguably set in motion in the UK the regulatory scrutiny of approaches to business which had been concealed "in the closet for the better part of two decades",52 and which are now identified with perceived failings in "banking culture". The landmark moment for this crystallisation of impropriety into failings in culture explicitly does appear to be the Libor-fixing revelations from June 2012, on which more is said shortly. However, many allusions to what can persuasively be aligned with the importance of culture for banking can also be identified after Northern Rock, and prior to June 2012. Amongst these can be found seminal references from then FSA Chairman Lord Turner to institutions which had become too swollen and too focussed on profit-making through the creation of "complex products of no real use to humanity" to be beneficial for society, or even for the "real economy",53 and where his reference to conduct which bankers should "voluntarily walk away from"54 can properly be regarded as castigating the setting in which this had occurred as much if not more so than the institutions concerned.

For regulators, bankers' status as "first amongst unequals" had arisen within a setting which permitted banks to starve other sectors of the economy of resource. Criticism of what can properly be regarded as "culture" pre-dating the Libor-fixing scandal is also implicit in commentary from 2009 when then Deputy Governor of the Bank of England Paul Tucker insisted that the global financial crisis would require redrawing of the banking "social contract"—the longstanding permission given to banks to profit from risk-taking which is inherent in providing liquidity and vital monetary and credit services to the economy.55 Strong predisposition to link "banker blame" and failings in banking which were systemic and embedded in culture was thus already in place—in formal discourses and in more popularist ones—by the time the Libor-fixing scandal broke in June 2012. However, this was also likely to have been influenced by the attention paid to the affairs of the Royal Bank of Scotland (RBS), which—following its audacious takeover of ABN AMRO—had required tax payer assistance in order to avoid failure. In December 2011, the FSA Board Report pointed to a number of concerns about the institution and manifest failings in domestic and global regulation56 which mirrored earlier observations on Northern Rock, and also made direct reference to failings in "Management, Governance and Culture".

Whilst the RBS Report, unlike that on Northern Rock, *does* reference "culture", the nature of this is highly significant. The vast majority of such references—made in highlighting the significance of the RBS failure in consolidating the crisis and its responsibility for public losses including £45.5 billion of Government assistance, but also extending to "unemployment for many, losses of income and wealth for many more—were part of the rhetorical package of 'Management, Governance and Culture'".57 What is notable about the post-Libor references to culture is its emergence as a distinctive phenomenon. However, what is readily apparent from this Report from December 2011 is just how difficult it is to isolate culture from its operating context of management, governance and (later) interest in professional standards. For the RBS Report there were clear parallels with Northern Rock, on account of decisions made by RBS being "without appropriate heed to the risks involved and with inadequate due diligence", and originating in over-reliance on risky short-term wholesale funding and leading to uncertainties about underlying asset quality.58 Whilst such impropriety *would* increasingly become associated with failings in culture, the Report explained that discussions of "Management, Governance and Culture" didn't include a separate focus on culture, and that this was partly because it would be "extremely difficult … accurately to assess" RBS's culture. 59

The Parliamentary Commission on Banking Standards (PCBS): a new era focus on banking culture?

This remark was focussed on RBS specifically, but it helps to highlight problems which are encountered in "pinning down" culture from the wider setting in which decision-making occurs. This is evident in suggestions that identifying culture is difficult, and also if not more so in the RBS Report's attempts to define culture. It was suggested that culture "may be defined as a set of attitudes, values, goals and practices which together determine how a firm behaves, both towards its stakeholders and internally".60 Significantly, for tracking a trajectory of an identifiable focus on culture, six months prior to the Libor-fixing exposures of 2012, the RBS Report posited that "[a] particular culture can have a significant influence on the decision-making of a firm, pre-disposing it to either insufficient or excessive risk tolerance".61 With such an antecedence of concern increasingly identified with the embedding and transmissions of behaviour and beliefs combined with popular perceptions of banker blame and banker insistence of remorse, the speed with which then Governor of the Bank of England Sir Mervyn King issued his scathing attack on the "culture of banking" was perhaps not surprising in June 2012.62

This quickly became a seminal statement on connecting the need to rethink fundamentally what bankers do, and what they should be permitted to do, and actually for the need to scrutinise culture specifically. Governor King's explicit attack on "banking culture" in 2012 was widely regarded as a watershed moment for the continuing pursuit of regulatory reform, also setting the rhetorical tone for the agenda for change. The Libor-fixing revelations were followed quickly by the appointment of a Parliamentary Commission on Banking Standards in July 2012. As the Commission's publicity noted, it was appointed by both Houses of Parliament to consider and report on:

"Professional standards and culture of the UK banking sector, taking account of regulatory and competition investigations into the LIBOR rate-setting process; lessons to be learned about corporate governance, transparency and conflicts of interest, and their implications for regulation and for Government policy; and to make recommendations for legislative and other action."63

The principal fruits of this work lie in recommendations made to the Government leading to the 2013 Act, and some attention will shortly be paid to the legislative changes, particularly to ones embodied in new Senior Managers and Certification Regimes now in force for bankers since 7 March 2016. Ahead of this, attention is paid to the PCBS's decision to scrutinise the affairs of Halifax Bank of Scotland (HBOS) contemporaneously and also separately from the broader remit of its enquires into making improvements to banking's professional standards and culture.

The PCBS's reflection on the "failure of HBOS" as an "… accident waiting to happen" shows an intensification of emphasis on culture specifically in identifying shortcomings within banking. The PCBS framed its interest around the important revelatory qualities that scrutinising HBOS was likely to have for understanding standards and also *culture* in UK banking, noting that this institution unlike the other two "large domestic bank failures of the banking crisis in the UK"64 had not attracted a great deal of public scrutiny: this notwithstanding that HBOS had, on 1 October 2008, approached the Bank of England for

Emergency Liquidity Assistance on account of being close to being unable to meet its liabilities.[65] The Report told the story of how two well-established organisations (Bank of Scotland and Halifax Building Society) were brought together in 2001 with a combined market capitalisation of around £30 billion, and that just seven years later all that value had been destroyed.[66] It also explained how its leadership had preferred to see the institution as a victim of external circumstances rather than acknowledge the extent to which HBOS contributed to its own demise.[67] It was asserted that this "catastrophe" extended beyond even the "… total of £20.5 billion provided by the taxpayer to both groups … channelled into HBOS", evident in its diminished ability to lend to retail customers and small and medium-sized companies (SMEs), and in the reduction of diversity in the banking market.[68]

The PCBS did not hold back in its criticism of HBOS's management and business model, and many references were made to a retail and commercial bank which had been brought down by ill-judged lending, poor risk control, inadequate liquidity, and by a fundamentally flawed strategy.[69] Links made between the failure of HBOS, a manifestly flawed business strategy, and "colossal failure of senior management and the Board"[70] are both readily apparent and also evidence an intensifying policy interest in banking culture specifically. A specific focus on culture in this assessment of downfall emerges from assertion that a "strategy for aggressive, asset-led growth across divisions over a sustained period" had "involved accepting more risk across all divisions of the Group".[71] This had itself become fashioned from an evident new organisational culture: whilst many of the strengths of the two brands had persisted at branch level, in the "higher echelons", a new institutional culture was taking shape.[72] The latter was "brash" and "underpinned by a belief that its growing market share was due to a special set of skills which HBOS possessed and which its competitors lacked".[73] The effects of this new culture would be exacerbated on account of "lack of corporate self-knowledge" amongst executives, encouraging persistence in belief—even to this day—"that HBOS was a conservative institution when in fact it was the very opposite".[74]

At the time of the PCBS's appointment, and outside its auspices, a Treasury Consultation published in July 2012 can also be identified with an emerging trajectory of interest in banking culture specifically. *Sanctions for directors of failed banks*,[75] which set out Government proposals on different mechanisms for "shifting the balance between risk and reward for bank directors",[76] had been inspired by RBS and particularly by how, notwithstanding the "extremely risky" conduct of its executives,[77] the FSA Report had doubted whether any legal action could be brought under law as it stood at the time.[78] Possible responses set out by this Consultation gravitated around enhanced regulation of, and responsibilities for, senior post-holders, and also new criminal liability for "serious misconduct in the management of a bank".[79] Both strands of reform would be taken up by the PCBS, and would shape the 2013 Act, which might help to explain why there was not a single reference to "culture" in the Treasury Consultation, which *was* published very shortly after the Libor-fixing revelations.

The PCBS Report on HBOS noted that unlike the failures of RBS and Northern Rock, HBOS had attracted little public scrutiny or even attention, and if the PCBS were looking to remedy this and raise the profile of the HBOS "catastrophe", then its endeavours have arguably been highly successful. This can be seen both in publicising this third major bank failure and also in highlighting its role in an intensifying scrutiny of culture specifically. The PCBS stated at the outset of the HBOS Report that formal investigation of the affairs of

HBOS would ensure that "a full picture of the UK bank failures in the financial crisis" was available, as it was a key "case study" of banking failure for identifying "lessons for our wider work on banking standards and culture".80 The lasting significance of the PCBS investigation is evident from how a subsequent FCA and PRA Report on HBOS's failure regarded its affairs as extremely important for the Commission's consideration of banking standards and culture, and concluded that HBOS was a "case study" which

"amply illustrates the rationale for the Senior Managers and Certification Regime proposed by the Parliamentary Commission on Banking Standards (and legislated for in the Banking Reform Act)".81

Beyond the PCBS: a (different) continuing trajectory for culture?

Clearly, all centrepiece reforms of the 2013 Act can be related to culture as it is currently understood by regulators: as "a set of attitudes, values, goals and practices which together determine how a firm behaves …"82; and also by academic scholars: as the subsistence and transmission of behaviours and beliefs which characterise particular social or economic groupings within and beyond these groupings.83 Whilst ring-fencing requirements and new criminal liability designed to discourage "extremely risky" decision-making could be equally valid focal points for this article, it follows the lead of the PRA and FCA Report and focusses on the Senior Managers and Certification Regimes. It does so particularly because of how changes already made to what was "legislated for" in 2013 might be regarded if considered alongside the FCA's recent retreat from an industry-wide review of culture. Taken together these occurrences might point to a different trajectory of regulatory concern with culture—one signalling *de*-intensification of interest.

The implementation of the Senior Managers and Certification Regimes—the replacement for the Approved Persons Regime for deposit holders and investment banks—was always set to be 7 March 2016, and their import for a new era of banking regulation is set out highly effectively in FCA Acting CEO Tracey McDermott's speech on Personal Accountability from December 2015. In ways which speak directly to this consideration of a trajectory of importance of culture, Ms McDermott noted that the Senior Managers Regime (SMR) was created "against the backdrop of a clear—and shared—understanding that culture needed to change and a culture of personal responsibility had to be embedded".84 Ms McDermott explained how the allocation of specific responsibilities to senior persons within an institution through the preparation of "statements of responsibility" was a signature feature of the SMR and where understanding who is responsible for what within a firm should be uncontentious85; with Certification building on this, by formalising firms' understanding and mindfulness of those who are senior staff, or others who occupy positions where impropriety could harm the firm or its customers.86 On this occasion, Ms McDermott did not address how new legislation announced in October 2015—the Bank of England and Financial Services Bill 2015–16—might alter what was originally envisioned. It is well known that presumed responsibility for breaches occurring within a senior manager's area of responsibility was considered a way of delivering a culture of enhanced personal responsibility,87 and that this has now been replaced with a duty of responsibility requiring a breach to be proved, albeit that a senior manager is required to show they took all reasonable steps to avoid the alleged breach.88

Ms McDermott did, at this time, assert that the presumption of responsibility was never regarded as a panacea by regulators,[89] and thereby aligning her views with PRA Chief Executive Andrew Bailey’s insistence that the substitution would make very little difference to the substance of the regime.[90] And indeed, in some quarters the new Regime is considered amongst the strictest frameworks for personal accountability in the world,[91] so much so that it is being talked of in terms which are instantly recognisable in the sentiment expressed by Lord Hoffmann, whereby the "extension of liability is not sufficiently accompanied by thought for the defensive measures likely to be taken to avoid it".[92] However, this retreat from the principle of presumed responsibility is likely to be configured differently by those already concerned about the FCA’s abandonment of the industry wide review of culture, and could strengthen views that banking culture "hasn’t changed—that is very clear to people. Lessons haven’t been learnt".[93]

Such sentiments do appear to be at odds with the FCA’s insistence to the Treasury Committee only in January 2016 that channelling improved regulation through culture specifically remains a priority. Further suggestion against a de-intensification of regulators’ concern with culture can be seen more recently still in reiteration of the importance of "understanding and nurturing of culture" for banking.[94] And it is the case, moreover, that the FCA has explained its decision not to engage with a system-wide review of banking as lying in part with its assessment that working with individual firms is more likely to deliver the kind of cultural change which is necessary on account of how, since the "run" on Northern Rock, banks have been "in the headlines for all the wrong reasons".[95] Given that the FCA also stresses that regulators can only ever go "so far" to achieving necessary change, and that change must come from within firms themselves, focussing on how individual firms "build a strong culture from the top down"[96] might well be, in the words of its Chairman, a reasonable approach, if not an excellent one.[97] That the FCA had apparently always regarded any such review as a "means to an end" of improving culture appears to be particularly plausible in the light of its stated commitment to "support the increasing number of initiatives" being undertaken outside the FCA.[98]

Indeed, a further reason given by the FCA for abandoning the Thematic Review was to avoid duplication with the work being undertaken by the Banking Standards Board focussing on similar issues. The Banking Standards Board advertises itself as a body established to "promote high standards of behaviour and competence across UK banks and building societies", whilst acknowledging the need to rebuild the damaged reputation of the sector and the trust lost in it.[99] It commenced work in 2015 as a body which will provide "challenge, support and scrutiny for firms committed to rebuilding the sector’s reputation" providing "impartial and objective assessments of the industry’s progress".[100] And notwithstanding that it is "neither a regulator nor a trade association" and operates without statutory powers,[101] this mission statement of rebuilding trust and reputation through critical friendship is compatible with how culture is regarded by regulators and by the wider community. Whilst this might point to the suitability of the Banking Standards Board to undertake a "wholesale" review of banking culture, other aspects of its status might suggest the need for caution in concluding this: here the Board’s insistence that it will not "speak for" or "lobby" Government on behalf of the industry arises from how it is actually a private sector body which is funded by membership subscriptions and where membership is open to all banks and building societies operating in the UK.[102]

Constraints of space do not permit an extensive exploration of the merits and drawbacks of a government review, and this one conducted by an industry internally, albeit here through the auspices of critical friendship. But it is easy to see how this is likely to generate accusations of "marking one's own homework" and to intensify observations already made that the FCA's abandonment of industry-wide scrutiny is a "missed opportunity" for achieving far-reaching reform. Here the earlier appointment by the Barclays Board of an independent review of the bank's "values, principles and standards of operation—the historical culture—and to make recommendations for change" might prove instructive.[103] This review was commissioned in July 2012 in the wake of the Libor scandal; when clearly bruised from its implication in this scandal—which had cost the jobs of Chief Executive Bob Diamond and Chairman Marcus Agius—Barclays had requested "an insightful, rigorous, and, crucially, independent view of how Barclays could improve". For Chairman Sir David Walker the review published by Anthony Salz was "uncomfortable reading" but he also spoke of a determination to learn from the findings.[104] The Salz Review had concluded that "cultural shortcomings" at the bank were intrinsic to problems that led to the Libor-rigging scandal,[105] and Barclays insisted that an era of transformation would follow under the leadership of new Chief Executive Antony Jenkins. Notwithstanding Mr Jenkins' swift insistence that Barclays' staff must "change or go",[106] three years on from Salz, transformations at Barclays are not readily apparent and Mr Jenkins was sacked in 2015 following disagreement with the Barclays Board.

Mr Jenkins' departure was publicised as following "differences" over what was regarded as "strategy".[107] In the light of what has been said through public scrutiny of Northern Rock, RBS and HBOS, Mr Jenkins' concerns about plans for overall downsizing and an increased investment focus might also properly be regarded as matters relating to culture. Perhaps the Barclays–Salz experience can help to point to the importance of public scrutiny for business which is so manifestly public in nature. The aftermath of the global financial crisis has provided numerous reminders of the public importance of banking, including of course the tax-payer "bailouts" which are much referenced in subsequent public scrutiny of the "three failures". In 2009, the Bank of England remarked that "[r]educing risks to the financial system as a whole—systemic risk—has emerged as a public policy priority",[108] whilst Lord Turner posited the importance of recognising that banks are different from ordinary commercial companies precisely because of their central role in the economy, and where failure of a bank is not simply a concern for shareholders but actually "of public concern".[109] These perspectives speak persuasively to global awareness of the importance of "public policy" for banks "in the public interest"[110]: for states where banks act as principal depositories of financial savings and primary allocators of credit, alongside their role in the management of a nation's payment systems, banking sector regulation looks to control money supply and prevent systemic instability.[111]

Concluding thoughts—and introducing Australian approaches to banking culture

The above perspectives from the World Bank, and pre-dating the 2007–08 crisis by almost three decades, also arguably anticipated current attention being paid to culture. Here, regard for strong management of individual institutions as a cornerstone of a strong and stable banking sector[112] is identifiable with transmissions of behaviours and beliefs within an organisational grouping, and beyond this into wider society. There is thus evidence from the recent past as well as from the present suggesting that review of culture within the banking industry should be conducted publicly. It remains to be seen how replacement of the rebuttable presumption with the duty of responsibility in the Senior Managers and

Certification Regimes might impact on regulators' mission to strengthen the culture of individual banks, but in taking at face value regulators' insistence that they haven't "abandoned" their focus on culture, the PRA and FCA do not appear to have engaged with the risks which might arise for this through privatising the industry-wide review of practices either. Four years after Mervyn King's scathing attack on the "deceitful culture" of UK banks, which Prime Minister David Cameron endorsed,113 this is what the UK now looks set to do. As we consider the ***J.I.B.L.R. 394*** wisdom of this for a Government which insisted that it knew what had "gone wrong" with UK banks and vowed to put things right,114 what is happening in Australia might be worthy of note.

At first glance, the statement in the Australian Securities and Investments Commission's (ASIC) *Enforcement Outcomes Report* for January–June 2015 that "tackling poor culture" would be an enforcement priority for the remainder of 2015,115 doesn't look very different from recent FCA insistence that culture remains a "top priority" for it.116 Similarly, both FCA and ASIC recognise culture as a strong "driver" of conduct within business.117 Differences start to emerge from ASIC's lengthy examination of the meaning of culture, and the costs imposed by business on wider society. This is a difference of visibility certainly, because it is not known how or even whether the FCA considered these matters in its partial and *unpublished* Thematic Review. It *is* known that the FCA "obsession" with culture is intended to be transmitted through working with individual institutions, which has parallels with ASIC's stated intention to deal directly with "entities".118 However, ASIC speaks of actually addressing "issues with" individual entities in response to failures in culture, indicating contrasts between the FCA approach looking to help firms strengthen their culture. This difference may be attributable to how, when Australian regulators consider the meaning and import of culture, this involves referencing how it is defined in *law*. This is particularly interesting as "culture" is part of the framework of Australian *criminal* law relating to business, and where it is defined as "an attitude, policy, rule, course of conduct or practice" within a corporation.119

Moreover, ASIC's stated intentions to "address issues with" businesses is part of its wider intention to "incorporate examinations of culture into" its remit as conduct regulator, in the pursuit of "promoting a positive culture within the financial services industry".120 Here ASIC's stated intentions also include incorporating culture into risk-based surveillance reviews and using these findings "to better understand how culture is driving conduct among our regulated population".121 This sounds a great deal like a "thematic" review of culture, albeit with a wider population reach. And whilst this might have the appearances of the FCA Thematic Review—in being a stated direction rather than a set agenda—ASIC looks unlikely to be abandoning it, after identifying it as a priority in August 2015. This also looks unlikely given that existing criminal law already allows ASIC to pursue "a company over [failings in its] culture",122 and that ASIC is actively pursuing "at least" one company through less utilised law—found in the Commonwealth Criminal Code—which allows accessory liability to arise for a company where an employee commits an unlawful act which the company's culture encouraged or tolerated.123 Abandonment of this "thematic review" of culture by ASIC looks even less likely given that it has moved for a review of existing laws calling for additional powers to pursue breaches attributable to culture—to allow civil enforcement for culture offending alongside criminal actions.124 The latter endeavour carries the intention of extending the reach of enforcement, and also implies an intention to increase the overall volume of enforcement generally. Moreover, ASIC's interest in banking, particularly within its regulated community for channelling "cultural improvement",125 is evident from its aggressive pursuit of "failings" in banking, including the very highly publicised action against ANZ Banking Group for alleged benchmark manipulation.126

A further dedicated consideration of Australian approaches to culture in banking will follow shortly, and this briefest of overviews ends with noting how Australian Treasury support for ASIC's aggressive pursuit of banking culture127 might be seen to contrast with accusations of "Machiavellian" involvement from the UK Treasury in the decision to shelve the FCA Thematic Review.128 Australia's position is of course more nuanced than this "first impression" account of it, and in anticipation of the further work on Australia, this article now closes with considering why those interested in UK financial regulation might regard Australia's approaches as interesting and potentially significant. Evidence of nascent but growing UK interest in Australia is apparent from the increasing presence of Australian regulation and enforcement in internationally-focussed professional disseminations.129 It is also evident from merely noting that ASIC is a "conduct regulator". This is because Australian financial regulation is conducted on a "twin peaks" model now evident in the UK regime under the Financial Services Act 2012. Moreover, Australia has an established reputation in its use of this model. This is clearly as "champion", in being the first to adopt a two-regulator regime.130 It has also been asserted that this regulatory design was instrumental in helping Australia avoid the worst of the global financial crisis and boosted resilience during the financial downturn, and that the regulatory regime is the "envy of the world".131 These latter propositions are of course contentious, providing this article with a fitting end through promising further engagement with Australian approaches to banking culture and its significance for the UK.

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4. Following its inception as part of the "twin peaks" regulatory regime, implementing the Financial Services Act 2012.

5. *"Osborne should face questions into shelved bank probe says MP", BBC News, 8 January 2016*; and *I. Allison, "Bank of England embroiled in FCA decision to drop review of UK banking culture", International Business Times, 13 January 2016*.

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9. See FCA Response to FOI Request FOI4350 (11 January 2016). Available at: http://www.fca.org.uk/your-fca/documents/foi/foi4350-information-provided [Accessed 12 April 2016].

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17. Treasury Committee Evidence, John Griffith-Jones responding to questioning (Q120) from the Chair (20 January 2016).

18. Treasury Committee Evidence (20 January 2016), response to Q120.

19. Treasury Committee Evidence (20 January 2016), response to Q120.

20. Treasury Committee Evidence (20 January 2016), response to Q120.

21. Treasury Committee Evidence (20 January 2016), response to Q120.

22. Treasury Committee Evidence (20 January 2016), response to Q120.

23. Treasury Committee Evidence (20 January 2016), responding to questions from the Chair (Q104 and Q119).

24. Treasury Committee Evidence (20 January 2016), responding to questioning from the Chair (Q104).

25. See *G. Wilson and S. Wilson, Banking and Society: New perspectives on mapping financial regulation and social justice for the 21st century (academic monograph) (Abingdon: Routledge (Law), 2017)*.

26. For example, *A. Haldane, "A leaf being turned: Occupy Economics, 'Socially useful banking'" (London: Friend's House, 29 October 2012)* and *J. Welby, "How do we fix this mess? Long-term solutions to the financial crisis" (Westminster, 22 April 2013)*: for academic commentary see also *J. Black and D. Kershaw, response to the PCBS, First Report of Session 2012–13, HL Paper 98, HC 848 (December 2012)*.

27. Drawing particularly on the work of Stuart Hall and Raymond Williams, and descending from this: e.g. *S. Hall and P. du Gay (eds), Questions of Cultural Identity (London: Sage, 1996)*; and *R. Williams, Culture and*

Society: 1780–1950 (London: Spokesman Books, 2013).

28. Per David Davis MP, reflecting on *A. Spicer et al., A Report on the Culture of British Retail Banking, Cass Business School New City Agenda Think Tank, published 26 November 2014, with Mr Davis speaking on BBC Radio 4 Today*, 27 November 2014.

29. See the Bank of England's news release (together with Tripartite partners): *"Liquidity Support Facility for Northern Rock Plc" (14 September 2007)*.

30. Also the title for the House of Commons Treasury Committee Report on these events: (HC 2007-8, 56-1), pp.1–181.

31. *Bank of England, "The Role of Macroprudential Policy: A Discussion Paper" (London, 2009), p.3*.

32. *Bank of England, "The Role of Macroprudential Policy" (2009)*.

33. *J. Welby, "Repair or Replace: Where do we start among the ruins?", Lecture for Finanzethikon (Zurich, 26 October 2012), see especially pp.2–3*.

34. *Haldane, "A leaf being turned: Occupy Economics, 'Socially useful banking'" (29 October 2012), p.2*.

35. *Haldane, "A leaf being turned: Occupy Economics, 'Socially useful banking'" (29 October 2012), p.4*.

36. *L. Armistead and H. Wilson, "Bob Diamond bites back at Treasury Select Committee", The Telegraph, 12 January 2011*.

37. Bob Diamond, evidence before the House of Commons Treasury Committee (published as HC 612-vi), responding to questioning by Mark Garnier MP (specifically question Q535) (11 January 2011).

38. *Bob Diamond, "Inaugural Today Business Lecture" (BBC House London, 3 November 2011)*.

39. *Bob Diamond, "Inaugural Today Business Lecture" (3 November 2011)*.

40. *Haldane, "A leaf being turned: Occupy Economics, 'Socially useful banking'" (29 October 2012), p.6*.

41. Lord Turner's Mansion House Speech (London, 22 September 2009) initially described institutions which had become too swollen and too focussed on profit-making to be beneficial for society, but he subsequently modified this phrase to "economically useless" banking; expressly contrasting it with banking rooted in banks delivering benefits for the real economy in his Cass Business School Speech (17 March 2010).

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43. *Haldane, "A leaf being turned: Occupy Economics, 'Socially useful banking'" (29 October 2012), p.6*.

44. *Haldane, "A leaf being turned: Occupy Economics, 'Socially useful banking'" (29 October 2012), p.6*.

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47. *House of Commons, Treasury Committee, "The run on the Rock", p.3*.

48. *House of Commons, Treasury Committee, "The run on the Rock", pp.11–13 paras 12–16*.

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50. *House of Commons, Treasury Committee, "The run on the Rock", p.18 para.29*.

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63. Available at: http://www.parliament.uk/bankingstandards [Accessed 12 April 2016].

64. *PCBS, "'An accident waiting to happen': The failure of HBOS", Fourth Report of Session 2012–13, HL Paper 144/HC Paper 705 p.3 para.3*: with p.3 para.1 explaining the title's origins in warnings given to the HBOS Board in 2004 that the FSA deemed its operations as such.

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66. *PCBS, "'An accident waiting to happen': The failure of HBOS", p.3 para.2*.

67. *PCBS, "'An accident waiting to happen': The failure of HBOS", p.36 para.110*.

68. *PCBS, "'An accident waiting to happen': The failure of HBOS", p.3 para.2*.

69. *PCBS, "'An accident waiting to happen': The failure of HBOS", p.39 para.123*.

70. *PCBS, "'An accident waiting to happen': The failure of HBOS", p.39 para.123*.

71. *PCBS, "'An accident waiting to happen': The failure of HBOS", Conclusions and Recommendations p.46 para.1*.

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73. *PCBS, "'An accident waiting to happen': The failure of HBOS", p.46 para.1*.

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