

Bank of England PRA

Appendices to CP16/24 Remuneration Reforms

Consultation paper | CP16/24

November 2024

Draft for consultation



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Draft for consultation

1: Draft amendments to the Remuneration Part of the PRA Rulebook

PRA RULEBOOK: REMUNERATION INSTRUMENT 2024

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137G (The PRA’s general rules);
 - (2) section 137H (General rules about remuneration);
 - (3) section 137T (General supplementary powers);
 - (4) section 138C (Evidential provisions); and
 - (5) section 192XA (Rules applying to holding companies).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

PRA Rulebook: Remuneration Instrument 2024

- C. The PRA makes the rules in the Annex to this instrument.

Commencement

- D. This instrument comes into force on [DATE]

Citation

- E. This instrument may be cited as the PRA Rulebook: Remuneration Instrument 2024.

By order of the Prudential Regulation Committee

[DATE]

Annex

Amendments to the Remuneration Part

In this Annex new text is underlined and deleted text is struck through.

1 Application and Definitions

...

1.3 (1) In this Part, the following definitions shall apply:

...

higher paid material risk taker

means a *material risk taker*:

(a) whose annual variable ~~remuneration~~ exceeds 33% of their total ~~remuneration~~, or

(b) whose total ~~remuneration~~ exceeds £500,000.

...

significant firm

means a *firm* which is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities.

...

2 Application Dates and Transitional Provisions

...

2.7 Subject to 2.8, for ~~remuneration~~ awarded in respect of a performance year starting on or after 29 December 2020 a *firm* must apply this Part in accordance with the definition of *higher paid material risk taker* in 1.3. ~~[Deleted]~~

2.8 For ~~remuneration~~ awarded in respect of the first performance year starting on or after 29 December 2020, and where:

(1) the ~~remuneration~~ has been paid or vested before 23 July 2021, or

(2) the *firm* has before 23 July 2021 created an obligation to pay or vest the ~~remuneration~~ before 23 July 2024

a *firm* may instead apply this Part to that ~~remuneration~~ on the basis of the definition of *higher paid material risk taker* which was set out in 1.3 on the earlier of:

(a) the date the ~~remuneration~~ was paid or vested; or

(b) the date the *firm* has created the obligation to pay the ~~remuneration~~ or for the ~~remuneration~~ to vest. ~~[Deleted]~~

...

2.10 A *firm* must apply this Part as it applied on [Day before revised rules are in force] to ~~remuneration~~ awarded in respect of a performance year starting before [Date revised rules are in force]

...

3 MATERIAL RISK TAKERS

...

- 3.1 A *firm* must, save where otherwise stated, apply the requirements of this Part in relation to a *person* (a “material risk taker”) who is:
- (1) an *employee* of a *CRR firm* whose professional activities have a material impact on the *firm’s* risk profile, including:
 - (a) all members of the *management body* and *senior management*;
 - (b) *employees* with *managerial responsibility* over the *firm’s* control functions or *material business units*;
 - (c) ~~*employees* entitled to significant total remuneration in the preceding financial year, where:~~
 - (i) ~~that total remuneration was equal to or greater than £440,000 and equal to or greater than the average remuneration awarded to the members of the *firm’s* management body and senior management referred to in (a); and~~
 - (ii) ~~the *employee* performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the risk profile of a material business unit;~~~~[Deleted]~~
 - (d) *employees* whose professional activities are deemed to have a material impact on the *firm’s* risk profile under 3.2A and 3.3A; or
 - (2) an *employee* of a *third country CRR firm* who would fall within 3.1(1) if it had applied in relation to him or her.
- 3.1A For the purposes of 3.1(1)(c) and (d), a *firm* must calculate all amounts of variable and fixed remuneration on a gross and full-time equivalent basis.
- 3.1B For the purposes of 3.1(1)(c)(i):
- (1) ~~a *firm* must calculate the average total remuneration of all members of the *firm’s* management body and senior management by taking into account the total of the fixed and variable remuneration of all members of the *firm’s* management body in its management function and supervisory function as well as all members of senior management; and~~
 - (2) ~~a *firm* must value variable remuneration that has been awarded but has not yet been paid as at the date of the award without taking into account reductions in pay-outs through clawback, malus or otherwise.~~~~[Deleted]~~
- 3.1C For the purposes of 3.1(1)(c)(ii), in determining whether the professional activity of an *employee* has a significant impact on the risk profile of a *material business unit* a *firm* must apply all of the following criteria within its remuneration policies, practices and procedures:
- (1) the risk profile of the *material business unit*;
 - (2) the distribution of internal capital to cover the nature and level of the risks, as referred to in Internal Capital Adequacy Assessment 3.1(1);
 - (3) the risk limits of the *material business unit*;
 - (4) the risk and performance indicators used by the *firm* to identify, manage and monitor risks of the *material business unit* in accordance with General Organisational Requirements 2.1;
 - (5) the relevant performance criteria set by the *firm* in accordance with 15.4 and 15.6; and

~~(6) the duties and authorities of *employees* or categories of *employee* in the *material business unit* concerned. [Deleted]~~

3.2A In addition to *employees* identified under the criteria set out in 3.1(1)(a) and ~~(b) to (e)~~, a *firm* must deem an *employee* to have a material impact on a *firm's* risk profile where one or more of the following qualitative criteria are met:

...

3.3A ~~In addition to *employees* identified under the criteria set out in 3.1(1)(a) and (b), a *firm* must deem an *employee* to have a material impact on a *firm's* risk profile where either of the following quantitative criteria are met:~~

~~(1) the *employee*, including an *employee* referred to in 3.1(1)(c), has been awarded in or for the preceding performance year a total *remuneration* that is equal to or greater than £660,000; or~~

~~(2) where the *firm* has over 1,000 *employees*, the *employee* is within the 0.3% of *employees* within the *firm* (which is to be calculated on an individual entity basis only and rounded to the next higher integral figure) who have been awarded the highest total *remuneration* in or for the preceding performance year. [Deleted]~~

...

7 Governance

...

7.3 A *firm* must ensure that the implementation of the *remuneration* policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for *remuneration* adopted by the *management body* in its *supervisory function*.

7.3A A *firm* must ensure that the methodology for identifying *material risk takers* and the implementation of that methodology is, at least annually, subject to review by *employees* having responsibility for overall management of the risk controls of the *firm*.

...

11 Risk Adjustment

...

11.4

...

11.4A A *firm* must:

(1) set specific criteria for the application of an ex-ante adjustment or an ex-post adjustment;

(2) ensure that the criteria for the application of an adjustment in (1) in particular cover situations where, by virtue of their role or seniority, it is reasonable for a *material risk taker* to be held responsible:

(a) for the intrinsic risk or risk event (as the case may be); or

(b) for weaknesses or failings relevant to the intrinsic risk or risk event; and

(3) consider making an ex-ante adjustment or an ex-post adjustment where the criteria are met.

...

11.7 A *firm* must ensure that any measurement of performance used to calculate variable remuneration for *senior management* takes into account the member of *senior management's* performance in their areas of responsibility.

12 Pension Policy

...

12.2 A firm that is not a *small CRR firm* or a *small third country CRR firm* must ensure that:

- (1) when an *employee* leaves the *firm* before retirement, any discretionary pension benefits are held by the *firm* for a period of five years in the form of instruments referred to in 15.15; and
- (2) when an *employee* reaches retirement, discretionary pension benefits are paid to the *employee* in the form of instruments referred to in 15.15 and subject to a five-year retention period₁,

unless the ~~annual variable remuneration of the employee:~~

- (A) ~~total annual remuneration of the employee does not exceed~~ is no more than ~~£44,000~~ £660,000; and
- (B) ~~the annual variable remuneration of the employee does not represent~~ is no more than ~~one third~~ 33% of the *employee's* total annual remuneration.

...

15 Remuneration Structures

General Requirement

15.A1 In this Chapter:

- (1) All the requirements of this Chapter apply to a *firm* that is neither a *small CRR firm* nor a *small third country CRR firm*.
- (2) 15.1 to 15.14 and 15.20(1) apply to a *small CRR firm* or a *small third country CRR firm*.
- (3) A *firm* is not required to comply with 15.15 to 15.19, 15.20A, 15.22 and 15.23 in respect of ~~an employee whose annual variable remuneration:~~ in relation to a *material risk taker* (X) in respect of whom both of the following conditions are satisfied:
 - (a) ~~does not exceed £44,000; and~~ [Deleted]
 - (b) ~~does not represent more than one third of the employee's total annual remuneration.~~ [Deleted]
 - (c) Condition 1 is that X's variable remuneration is no more than 33% of total remuneration; and
 - (d) Condition 2 is that X's total remuneration is no more than £660,000.

...

Deferral

- 15.17 (1) ~~Unless a longer deferral period is required under (2), a firm must not award, pay or provide a variable remuneration component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:~~
- (a) ~~in the case of a material risk taker who is not subject to (b), four years, vesting no faster than on a pro-rata basis;~~
 - (b) ~~in the case of a material risk taker who is a member of the management body or senior management of a significant firm, five years, vesting no faster than on a pro-rata basis.~~ [Deleted]

- (2) A *firm* must not award, pay or provide a variable *remuneration* component to a ~~higher paid~~ relevant material risk taker unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:
- (a) in the case of a ~~higher paid~~ material risk taker who does not perform a *PRA senior management function*, ~~but:~~
- (i) ~~who meets the criteria in 3.1(1)(a) or (b); or~~
- (ii) ~~whose professional activities meet the qualitative criteria set out in 3.2A(1), 3.2A(2) or 3.2A(5)~~ five ~~four~~ years vesting no faster than on a pro-rata basis; or
- (b) in the case of a ~~higher paid~~ material risk taker who performs a *PRA senior management function*, ~~seven~~ five years, ~~and with no vesting to take place until three years after award, and vesting no faster than on a pro-rata basis thereafter.~~

15.18 In the case of a variable *remuneration* component:

- (1) of ~~£500,000~~ £660,000 or more; or
- (2) payable to a *director* of a *firm* that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities;

at least 60% of the amount must be deferred on the basis set out in 15.17.

...

Performance adjustment

15.20 A *firm* must ensure that:

- (1) any 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; but in the case of a *small CRR firm* or a *small third country CRR firm*, this does not require a *firm* to impose malus or clawback;
- (2) any variable *remuneration* is subject to clawback, such that it is only awarded if an amount corresponding to it can be recovered from the individual by the *firm* if the recovery is justified on the basis of the circumstances described in 15.21(2) or in respect of a ~~higher paid~~ relevant material risk taker, 15.23; and
- (3A) ~~Where 15.20A does not apply unless 15.20A applies,~~ any variable *remuneration* is subject to a clawback period from the date on which the variable *remuneration* is awarded, in the case of:
- (a) ~~the deferred portion of variable remuneration of a material risk taker who is a member of the management body or senior management of a significant firm, of at least six years. [Deleted]~~
- (b) ~~the~~ any deferred portion of variable *remuneration* of a ~~material risk taker who is not subject to~~ (a), of at least five years.
- (c) an undeferred portion of variable *remuneration*, of at least one year.

15.20A In respect of a ~~higher paid~~ relevant material risk taker, a *firm* must ensure that:

- (1) any variable *remuneration* is subject to a clawback period from the date on which the variable *remuneration* is awarded of at least 7 years from the date on which the variable *remuneration* is awarded;

- (2) in the case of a ~~higher-paid~~ relevant *material risk taker* who performs a *PRA senior management function*, the *firm* can, by notice to the *employee* to be given no later than 7 years after the variable *remuneration* was awarded, extend the period during which variable *remuneration* is subject to clawback to at least 10 years from the date on which the variable *remuneration* is awarded, where:
- (a) the *firm* has commenced an investigation into facts or events which it considers could potentially lead to the application of clawback were it not for the expiry of the clawback period; or
 - (b) the *firm* has been notified by a regulatory authority (including an overseas regulatory authority) that an investigation has been commenced into facts or events which the *firm* considers could potentially lead to the application of clawback by the *firm* were it not for the expiry of the clawback period; and
- (3) it considers on an ongoing basis whether to use the power in (2).

...

15.22 In respect of a ~~higher-paid~~ relevant *material risk taker*:

- (1) A *firm* should reduce unvested deferred variable *remuneration* when, as a minimum:
 - (a) there is reasonable evidence of *employee* misbehaviour or material error;
 - (b) the *firm* or the relevant business unit suffers a material downturn in its financial performance; or
 - (c) the *firm* or the relevant business unit suffers a material failure of risk management.
- (2) For performance adjustment purposes, awards of deferred variable *remuneration* made in *shares* or other non-cash instruments should provide the ability for a *firm* to reduce the number of *shares* or other non-cash instruments.
- (3) Contravention of any of (1) or (2) may be relied on as tending to establish contravention of 15.20(1). Contravention of (1) or (2) does not give rise to any of the consequences provided for by provisions of *FSMA* other than section 138C.

15.23 In respect of a ~~higher-paid~~ relevant *material risk taker*, a *firm* must make all reasonable efforts to recover an appropriate amount corresponding to some or all vested variable *remuneration* where either of the following circumstances arise during the period in which clawback applies (including any part of such period occurring after the relevant employment has ceased):

- (1) there is reasonable evidence of *employee* misbehaviour or material error; or
- (2) the *firm* or the relevant business unit suffers a material failure of risk management.

A *firm* must take into account all relevant factors (including, where the circumstances described in (2) arise, the proximity of the *employee* to the failure of risk management in question and the *employee*'s level of responsibility) in deciding whether and to what extent it is reasonable to seek recovery of any or all of their vested variable *remuneration*.

...

16 Breach of the Remuneration Rules

...

16.7 The voiding provisions in 16.9 to 16.13 do not apply in relation to a *material risk taker* (X) in respect of whom both the following conditions are satisfied:

- (1) Condition 1 is that X's variable *remuneration* is no more than 33% of total *remuneration*; and
- (2) Condition 2 is that X's total *remuneration* is no more than ~~£500,000~~ £660,000.

...

16.11 A contravening provision that, at the time a *rule* to which this *rule* applies was first made (including any corresponding *rules* specified in ~~SYSC 19A.3.54R~~SYSC 19D.2A.13R of the ~~PRA Handbook~~FCA Handbook), is contained in an agreement made before that time is not rendered void by 16.9 unless it is subsequently amended so as to contravene such a *rule*.

Draft for consultation

2: Draft amendments to supervisory statement 2/17 – Remuneration

In this appendix, new text is underlines and deleted text is struck through.

...

European Banking Authority (EBA) Guidelines

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.⁷ In the following chapters, the PRA provides additional clarification of its expectations regarding a number of specific remuneration requirements. In cases of incompatibility between this SS and the EBA's 2015 Guidelines, the PRA expects firms to comply with this SS.⁸

1.9A With regards to retention periods, firms must comply with Remuneration 15.15(2) which requires that instruments used as variable remuneration must be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the firm. The PRA considers that firms are not expected to set a retention period for deferred instruments. For instruments awarded upfront the PRA would expect a meaningful retention period (e.g. 1 year) to apply.

1.9B Firms may pay interest or dividends on deferred instruments.

...

3 Material risk takers (MRTS)

3.3 Chapter 3 of the Remuneration Part identifies the criteria for determining who is an MRT. In addition, the PRA expects a firm to consider whether any employee whose total remuneration is within the 0.3% of employees within the firm (calculated on an individual entity basis only and rounded to the next higher integral figure) who have been awarded the highest total remuneration in or for the preceding performance year and who is not already captured by any Chapter 3 criteria could be deemed to have a material impact on the firm's risk profile. The PRA expects that decisions about whether these individuals are MRTs will be considered by an individual who has responsibility for the overall management of the risk controls of the firm, which in many cases will be the Senior Management Function 4 (the Chief Risk function).

~~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~~

7 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>

8 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: www.bankofengland.co.uk/paper/2019/interpretation-of-eu-guidelines-and-recommendations-boe-and-pra-approach-sop.

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. ~~[deleted]~~

Types of roles identified

3.7 Chapter 3 of the Remuneration Part, and paragraph 3.3 of this SS, 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.

Part-year material risk takers (MRT)

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 is no more than 33% of the employee's total remuneration does not exceed £44,000 (Condition 1A) and total remuneration does not represent is no more than £660,000 one third of the employee's total annual remuneration (Condition 2B)¹¹. When applying these 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> <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 33% of their total remuneration. In this example Individual A's variable remuneration is greater than a third 33% of the total remuneration so this condition is not met.</p> <p>(8) Condition A is that an individual's variable total remuneration does not exceed £44660,000. This condition is not met.</p> <p>(9) As only conditions A and B have not has 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> <p><u>(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.</u></p> <p><u>(2) Individual A receives fixed remuneration of £150,000 from 1 January to 31 August increasing to £250,000 from 1 September.</u></p> <p><u>(3) During the performance year, Individual A is awarded variable remuneration of £130,000.</u></p> <p><u>(4) The proportion of fixed remuneration which should be used for calculating whether Individual A meets the criteria in Condition 2 is £83,562 (£250,000 multiplied by 122/365)</u></p>

11 Per Remuneration 15.A1(3).

Example	
	<p><u>(5) The proportion of variable remuneration which should be used for calculating whether Individual A meets the criteria in Condition 1 is £43,452 (£130,000 multiplied by 122/365).</u></p> <p><u>(6) The total remuneration for the period of time spent in an MRT role is £127,014. (£43,452 plus £83,562).</u></p> <p><u>(7) Condition 1 states that the individual's variable remuneration is no more than 33% of their total remuneration. In this example Individual A's variable remuneration is greater than 33% of the total remuneration so this condition is not met.</u></p> <p><u>(8) The calculation for determining whether Condition 2 is met is £660,000 multiplied by 122/365 equals £220,603. This condition is met.</u></p> <p><u>(9) As condition 1 has not been met, the rules in paragraph 3.11 must be applied to the variable remuneration of £43,452 for the period of time spent in an MRT role during the performance year.</u></p>

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Example		
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 £590,000.</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 (£590,000) 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 £276,850 316,850 (£226,850 plus £590,000).</p> <p>(7) Condition B states that the individual's variable remuneration is no more than a third 33% 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 total remuneration does not exceed £44660,000. This condition is not met.</p> <p>(9) As both conditions A and B has not been are met, the firm may disapply certain rules (per 15.A1 in the Remuneration Part) from Individual B's variable remuneration 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> <p><u>(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.</u></p> <p><u>(2) Individual B receives annual fixed remuneration of £550,000.</u></p> <p><u>(3) For the period of time spent in role during the performance year, Individual B is awarded variable remuneration of £80,000.</u></p> <p><u>(4) The proportion of fixed remuneration which should be used for calculating whether Individual B meets the criteria in Condition 2 is £277,260 (£550,000 multiplied by 184/365).</u></p> <p><u>(5) The full amount of variable remuneration (£80,000) should be used for calculating whether Individual B meets the criteria in condition 1.</u></p> <p><u>(6) The total remuneration for the period of time spent in an MRT role is £357,260. (£277,260 plus £80,000).</u></p> <p><u>(7) Condition 1 states that the individual's variable remuneration is no more than 33% of their total remuneration. In this example Individual B's variable remuneration is less than 33% of the total remuneration so this condition is met.</u></p> <p><u>(8) The calculation for determining whether Condition 2 is met is £660,000 multiplied by 184/365 equals £332,712. This condition is not met.</u></p> <p><u>(9) As condition 2 has not been met, the rules in paragraph 3.11 must be applied to the variable remuneration of £80,000 for the period of time spent in an MRT role during the performance year.</u></p>

...

Credit and trading risk

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 whereby firms are expected to consider whether the staff member should be an MRT under paragraph 3.3. of this SS 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) [deleted].~~

PRA approach to MRT exclusion applications Criteria regarding the identification of MRTs in for asset management roles

~~3.24 The PRA will review applications for a rule waiver or modification to exclude~~ Firms should consider whether staff members employed by asset management entities within the consolidation, or sub-consolidation, group of a PRA-~~authorised person~~ are MRTs following the same process for staff employed by deposit-takers and investment banks. ~~The PRA will~~ Firms should 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 3.40.

...

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 website⁴² [deleted]~~

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'. [deleted]~~

~~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: [deleted]~~

⁴² <https://www.bankofengland.co.uk/prudential-regulation/authorisations/waivers-and-modifications-of-rules>.

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

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. [deleted]~~

Templates [deleted]

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.¹³ 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. [deleted]~~

Governance of the MRT identification process

3.36 Chapter 7 of the Remuneration Part sets out the governance arrangements firms are required to implement. These arrangements aim to ensure there is a clear, transparent, and consistent organisational structure for the effective management of remuneration and risks.

3.37 The management body in its supervisory function has ultimate responsibility for the design and implementation of the MRT identification methodology as part of a firm's remuneration policy. The management body in its supervisory function should:

- be involved in the design of the methodology and process for considering whether an employee is an MRT;
- ensure that the methodology and process for considering whether an employee is an MRT is made in accordance with Chapter 3 of the Remuneration Part of the Rulebook, and the expectations outlined in this Supervisory Statement, ensuring sufficient oversight of a firm's review of the risk taking capabilities of employees meeting the criteria in paragraph 3.3; and
- oversee the implementation of the MRT identification process on an on-going basis.

3.38 Where remuneration or risk committees are established, they should be actively involved in the MRT identification process. Where no remuneration or risk committees are established, the management body in its supervisory function, including non-executive directors, should be similarly involved.

3.39 Employees who have responsibility for the overall management of the risk controls of a firm are expected to be actively involved in the design of the MRT identification policy and its implementation. For many firms this responsibility is assigned to the Chief Risk Function (Senior Management Function 4). Such employees are also expected to:

- approve the MRT identification methodology and ensure that its implementation results in the identification of all relevant employees as MRTs; and
- ensure that other functions including, but not limited to, control functions, legal, human resources, and risk owners are involved in the identification of MRTs.

3.40 The PRA expects that in determining whether individuals meeting the criteria outlined in paragraph 3.3 are MRTs, consideration should be given to a wide variety of factors, which include but are not limited to:

- 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;
- management of maximum desk limits and the disciplinary policy in place for breaching these limits;
- responsibilities over models for which the staff member in question can make decisions that materially affect the risk profile of the firm;
- management of regulatory priorities or technology projects that materially affect the risk profile of the firm; and
- responsibilities over trade structuring or trade strategy (even if these individuals do not have a trading mandate) or roles that materially affect the income or revenue streams of relevant business lines.

3.41 Firms should also ensure that all relevant board committees and functions involved in the MRT identification process can exchange information effectively to ensure they can fulfil their roles in the process.

Documentation

3.42 The PRA expects firms to keep a record of the MRT identification methodology and process undertaken by relevant functions. These should be adequately documented and transparent. The PRA expects firms to capture all data relevant to the identification process, including relevant information about the individual, role description, rationale for determining that an individual is not an MRT, and the identity and positions of decision makers taking the decision that such individual is not an MRT. Firms should be able to provide to the PRA, on request, a copy of the information used in determining that an employee is not an MRT.

4 Application of adjustments, 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 11.4A, 11.7, and 15.20 –15.23. Rules setting out malus and clawback requirements do not apply to small CRR firms or small third country CRR firms in relation to performance years starting on or after 8 December 2023: these are the rules 15.20(2) and (3A), and 15.20A to 15.23 including if these firms choose to apply malus and clawback voluntarily. Rule 15.20(1) does not require a small CRR firm or small third country CRR firm to impose malus and clawback. The PRA's expectations on malus and clawback in relation to those rules do not apply to small firms in respect of remuneration awarded for performance years starting on or after 8 December 2023.

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 even when this does not result in losses for the firm. 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), 11.4A and 11.7 of the Remuneration Part.

Remuneration and Accountability

4.4A Remuneration 11.7 requires firms to ensure that the variable remuneration of senior management takes into account their performance in their areas of responsibilities. Consideration should be given to both financial and non-financial metrics used to assess an individual's performance. The methodology adopted should be adequately documented. The PRA expects firms to be able to provide this information if requested.

4.4B In accordance with SS 28/15 'strengthening accountability in banking'¹³ the PRA expects the breaking down of responsibilities of Senior Managers into key component tasks with these tasks to be reflected in relevant Statements of Responsibilities (SoRs). These tasks should also include material or urgent actions requested by the PRA to address a firm's key risks, included for example in a Periodic Summary Meeting (PSM) letter. In calculating variable remuneration under Remuneration 11.7, firms should consider responsibilities as they are set out in SoRs. The PRA expects firms, in making such calculations, to adequately consider the success or failure of SMFs against their responsibilities, including how they have addressed supervisory concerns expressed in PSM letters.

Contracts and policies

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',¹⁴ 15.20A (subject to the provisions in Remuneration 15.A1(3)). 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

4.8A Remuneration 11.4A requires firms to set criteria for the application of performance adjustments. These criteria could include, for example, managerial responsibility for risk events where the manager failed to take adequate steps to ensure effective risk management and conduct of one or more members of their team, appropriate controls and the promotion of a healthy and effective risk culture.

...

Procedure for considering performance adjustment

4.13A In setting criteria for the application of an ex-ante adjustment or an ex-post adjustment, as required by Remuneration 11.4A, the PRA expects that following the crystallisation of a material risk, relevant information will be shared with the remuneration and risk committees. Relevant information could include (but is not limited to):

- accountability reviews - to identify who was responsible for the incident that occurred – both directly and by virtue of their seniority and/or their oversight role;
- root cause analysis - to identify the root causes of faults or problems; or

¹³ Paragraph 2.47E of SS 28/15 'strengthening accountability in banking'.

¹⁴ — This term is defined in Remuneration 1.3.

- findings from audits and independent opinions by risk and internal audit functions or committees, and other internal or external reviews.

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, 4.8A 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; and
- (ix) any non-financial impacts, including operational disruption to services.

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. This risk adjustment framework should be sufficiently clear and transparent so as to be understood by employees to incentivise the desired behaviours and risk taking.

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 below the~~ proportionality threshold, 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 (Total rem > £500,000 or variable rem > 33% of total rem, Rule 1.3)		Non higher paid MRT (Total rem ≤ £500,000 and variable rem ≤ 33% of total rem, Rule 1.3)		MRT below proportionality threshold (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 function (SMF)	7	7 ¹	5	1, 6 ²	0	1, 6 ²
	Non-SMF members of the management body and senior management	5	7	5	1, 6 ²	0	1, 6 ²
	MRTs: (i) who meets the criteria in Remuneration Rule 3.1(1)(b); or (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 ²	0	1, 5 ²
	Other MRTs	4	7	4	1, 5 ²	0	1, 5 ²
Other firms subject to malus and clawback	MRT who performs a PRA SMF	7	7 ¹	4	1, 5 ²	0	1, 5 ²
	Non-SMF members of the management body and senior management	5	7	4	1, 5 ²	0	1, 5 ²
	MRTs: (i) who meets the criteria in Remuneration Rule 3.1(1)(b); or (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 ²	0	1, 5 ²
	Other MRTs	4	7	4	1, 5 ²	0	1, 5 ²
¹ Extendable to 10 years in line with Rule 15.20A (2).							
² Minimum clawback of 1 year if the variable remuneration is not deferred.							

MRT category	MRT (Total rem >£660,000 or variable rem >33% of total rem, Rule 15.A1(3))		MRT below proportionality threshold (Total rem ≤£660,000 and variable rem ≤33% of total rem, Rule 15.A1(3))	
	Minimum Deferral (years)	Minimum Clawback (years)	Minimum Deferral (years)	Minimum Clawback (years)
MRT who performs a PRA senior management function (SMF)	5 (Rule 15.17(2)(b))	7 ¹ (Rule 15.20A(1) and (2))	N/A	5 ² (Rule 15.20(3A)(b))
Other MRTs	4 (Rule 15.17(2)(a))	7 (Rule 15.20A(1))	N/A	5 ² (Rule 15.20(3A)(b))
	¹ Extendable to 10 years in line with Rule 15.20A(2).			
	² Minimum clawback of 1 year if the variable remuneration is not deferred in line with Rule 15.20(3A)(c).			

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

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~~ five 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.~~¹⁶

...

Risk management and control functions

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. This should also take into account findings from internal or external reviews or investigations. A lack of involvement from the control function may ~~be relied on as tending to establish~~ indicate contravention of Remuneration 8.1 requiring employees engaged in control functions to have appropriate authority.

5.12A Paragraphs 3.36 – 3.42 also outline how the PRA expects risk management and control functions to engage in MRT identification. Employees who have responsibility for the overall management of the risk controls of a firm are expected to be actively involved in the design of the MRT identification policy and its implementation.

...

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

16 See Rules 15.17 and 15.18.

remuneration component is ~~£50~~£660,000 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 ~~£50~~£660,000.

~~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. [deleted]~~

Draft for consultation

3: Draft FCA Instrument: Senior Management Arrangements, Systems and Controls (Remuneration Codes and Consequential Amendments) (No 10) Instrument (202X)

Draft FCA Instrument: Senior Management Arrangements, Systems and Controls (Remuneration Codes and Consequential Amendments) (No 10) Instrument (2024)

Draft for consultation

4: Consequential changes to the FCA's non-Handbook Guidance: FG23/6: General guidance on the application of ex-post risk adjustment to variable remuneration

Consequential changes to the FCA's non-Handbook Guidance: FG23/6: General guidance on the application of ex-post risk adjustment to variable remuneration

Draft for consultation