

Annual report of the Banking Liaison Panel, 2011-2012

19 June 2012

The Treasury established the Banking Liaison Panel in accordance with section 10 of the Banking Act 2009 ("the Act"). The Panel's function is to provide advice to the Treasury about the effect of the special resolution regime (SRR) established by the Act, on banks, persons who do business with banks and financial markets, including giving advice to the Treasury on secondary legislation made under the Act and the SRR Code of Practice. The Panel's advice represents the views of non-government stakeholders, and the Treasury facilitates its work.

The Panel met for the first time on 7 April 2009. Summary minutes of its meetings are available to download from the HM Treasury website.

During 2011-2012 the Panel met on 21 July 2011, 20 October 2011 and 25 April 2012.

Panel members

Under section 10 of the Act, the Panel must include a member appointed by the Treasury, a member appointed by the Bank of England, a member appointed by the Financial Services Authority (FSA), a member appointed by the scheme manager of the Financial Services Compensation Scheme (FSCS), one or more persons who in the Treasury's opinion represent the interests of banks, one or more persons who in the Treasury's opinion have expertise in law relating to the financial systems of the United Kingdom, and one or more persons who in the Treasury's opinion have expertise in insolvency law and practice.

Industry members:

- Peter Beales, Association for Financial Markets in Europe (AFME)
- Roger Brown, British Bankers Association (BBA)
- Richard Heis, Association of Business Recovery Professionals (R3)
- Catherine Burton, R3 alternate
- Jeremy Palmer, Building Societies Association (BSA)
- Adrian Coles, BSA alternate
- Dorothy Livingston, City of London Law Society (CLLS)
- Michael McKersie, Association of British Insurers (ABI)
- Ed Murray, International Swaps and Derivatives Association (ISDA)
- Guy Sears, Investment Management Association (IMA)
- Joanna Perkins, Financial Markets Law Committee (FMLC)

Government members:

- David Lunn, HM Treasury
- Paul Brione, HM Treasury alternate
- Peter Brierley, Bank of England
- Alex Kuczynski, FSCS
- James Darbyshire, FSCS alternate
- Stephen Drayson, FSA
- Paul Mayo, The Insolvency Service

The Panel's work during 2011-2012

The Panel has given advice to the Treasury on a number of issues, and continues to operate subgroups mandated by the Panel to consider various issues. The Panel has also given the Treasury advice on matters recorded in the published minutes and summarised below.

Small companies carve-out from partial property transfer safeguard

1. The Panel discussed the Small Companies and the Safeguards Order at the meeting of 21 July 2011, and 25 April 2012. A long-standing concern among the Panel was that the exception to the protections in The Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (as amended) (the "Safeguards Order") for "retail deposits" and "retail liabilities" could disadvantage small companies in relation to their set-off and netting arrangements, and increase the difficulties that they would experience in the event of the failure of their bank.

2. The Working Group concluded that the work banks were doing pursuant to the Compensation Handbook and in relation to "living wills" could enable them to identify all the accounts of particular customers or corporate groups more easily and therefore eligible claimants could be identified quicker. The Working Group had reservations that this is adequate in itself to address legal uncertainties and will consider this further. They will report again to the full Panel at a future meeting.

Bail-in tools and depositor preference

3. The Treasury sought views from the Panel regarding contractual and statutory bail-in tools, and depositor preference during bank insolvency, which might be included within the European Commission's forthcoming proposals.

4. On depositor preference, the Panel noted that the policy may have a significant impact on senior creditors by placing them lower in the creditor hierarchy, which may ultimately lead to higher borrowing costs for banks. The Panel also discussed the implications for the Financial Services Compensation Scheme's (FSCS) involvement during depositor payout.

5. The Panel heard views that retrospectively including existing financial instruments could increase the cost for firms securing funding, as well as damage its core business with its existing customers. It was suggested to specify certain liabilities as bail-in-able as opposed to including all liabilities and listing exceptions. It was also opined that providing exceptions for short term liabilities of 12 months or less could push firms into more short term funding, which could increase instability concerns.

Resolution tools for investment firms and financial holding companies

6. The Panel considered how best resolution tools for investment firms and financial holding companies could be implemented if they were required by the European Commission.

7. The Panel discussed the legal and practical implications of applying resolution powers designed for deposit takers to investment firms and noted that the complexities of the international regulatory framework potentially posed challenges in the application of resolution tools.

Independent Commission on Banking

8. The Treasury sought the Panel's views on the recommendations of the Independent Commission on Banking (ICB), and in particular on the cost-benefit analysis contained in the report, ahead of the Chancellor's formal response. Points raised in the discussion included:

- Panel members suggested that the cost-benefit analysis in the report seemed more thorough on the ring-fencing proposals than for the depositor preference and bail-in proposals. It was noted that any additional uncertainty for creditors could create significant costs and volatility and that extra costs of longer-term borrowing needed to be taken into account;
- The Panel suggested that there was a need to consider fully the impact on alternative sources of funding for small and medium-sized enterprises. It was noted that not all businesses could borrow abroad as the report seemed to suggest. While it could be argued that credit was too cheap and widely available prior to the crisis, the proposals could lead to a higher risk of procyclical premia on lending.

Amendments to the Special Resolution Regime

9. The Treasury described the consequential amendments to the Special Resolution Regime (SRR) and the bank insolvency procedure established by the Banking Act 2009 arising from the establishment of the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). The PRA was to be a subsidiary of the Bank of England but would be operationally independent.

10. As a result, the decision to trigger entry into the SRR would be a regulatory decision. The PRA (rather than the Bank) would be legally responsible for making this determination.

11. The Panel noted that this was a potentially significant change, and that the model of the PRA as a subsidiary of the Bank of England was untested. However, it was recognised that the PRA should have the appropriate knowledge to make any decision to trigger the SRR, on the same basis as the FSA currently has.

Financial Stability Board: Proposed Resolution Framework

12. The Bank of England outlined the timetable for the Financial Stability Board's (FSB's) proposals on the key attributes of resolution regimes. Following consultation over the summer 2011, the FSB had revised their paper and would be submitting the final version for consideration by G20 leaders at their summit on 3-4 November.

13. Issues raised in the following discussion by the Panel included:

- Some of the proposals in the FSB's consultation document went beyond those proposed by the European Commission in their public consultation, and it would be important to assess the cost and benefits of these measures;
- Whether any agreement on the Key Attributes would constitute a commitment by the G20 to legislate for those powers or would operate more as a statement of best practice would depend on the nature of the language used in the Summit's conclusions.

Contact

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