

Banking Liaison Panel (BLP)

Subgroup on building society insolvency and special administration

Advice to HM Treasury

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Background

1. The remit of the subgroup is to provide advice to HM Treasury on behalf of the Banking Liaison Panel under section 10 of the Banking Act 2009. The advice concerns the Treasury's proposals for secondary legislation under sections 130 and 158 of the Banking Act 2009, to apply Parts 2 and 3 of the Act to building societies, creating the building society insolvency procedure (BSIP), and the building society special administration procedure (BSSAP), and the insolvency rules for those procedures.
2. This advice covers:
 - a. principles, application of the Insolvency Rules 1986 to building societies, and insolvency set-off;
 - b. the building society special administration procedure (BSSAP); and
 - c. the building society insolvency procedure (BSIP).
3. The Treasury has provided a note to the subgroup setting out further information, which is included in the Annex.

Advice to HM Treasury

Principles, general issues and insolvency set off

4. The Insolvency Rules 1986 do not apply to building societies. The Building Societies Act 1986 provides that rules may be made under the Insolvency Act 1986 “for the purpose of giving effect, in relation to building societies, to the provisions of the applicable winding up legislation”; however, no such rules have been made.
5. This is therefore the first time that there have been insolvency rules for building societies. The subgroup agrees with the principles outlined in the consultation document, but emphasises that the Government must ensure equal treatment of banks and building societies in insolvency and special administration.
6. The Financial Markets Law Committee (FMLC) noted in 2007 that a particular issue arising from the lack of insolvency rules for building societies is the absence of a statutory provision for set off. FMLC expressed concern about legal uncertainty that this creates for market participants attempting to analyse their credit risk when dealing with building society counterparties.¹
7. The draft BSIP rules make mandatory provision for set off in relation to building society insolvency, which is welcome. However we note that normal insolvency proceedings are still available in respect of building societies, and that these do not provide for set off. We accept that it is important that ordinary creditors should retain the ability to petition for a winding up, and it is therefore necessary that standard insolvency procedures should still be available. We accept that that in practice it will always be the BSIP that is used to wind up a building society. However for the purposes of providing sufficient legal comfort to counterparties it would be advantageous if provision for set off were made in standard building society insolvency rules (which may be made under the Building Societies Act 1986 – to date no rules have been made).
8. The draft BSIP rules also provide that sums owed to building society members are carved out from the set off provisions. This is because building society members are technically shareholders rather than creditors, and rank below creditors in insolvency. For the reasons set

¹ Financial Markets Law Committee, *Issue 118 – Building society and incorporated friendly society set-off: Proposal for a Mandatory Insolvency Set-Off Rule applicable to Building Societies and Incorporated Friendly Societies* (December 2007), available from <http://www.fmlc.org/papers/Issue118report.pdf>.

out in the consultation document, under these circumstances it is not appropriate to apply set off in respect of sums owed to building society members. These provisions are consistent with the legal structure of building societies. However, we note that implementation of section 2 of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 ("the Butterfill Act") will put members on an equal ranking with creditors, and that when section 2 is implemented this position may need to be re-examined.

- 9. On this basis, we agree that the set off provisions in the draft rules are appropriate, and we recommend that Treasury should look further at applying set off in normal building society insolvency rules.**

The building society special administration procedure (BSSAP)

Changing the name of the residual society in the BSSAP

10. A building society may change its name by special resolution, and must notify the FSA when it does so (there is a procedure set out in the Building Societies Act, schedule 2, paragraph 9). In an administration, the administrator has various powers, which are set out in Schedule 1 to the Insolvency Act 1986. They include the power to carry on the business of the company/society, power to change the situation of the company's registered office, and power to do things incidental to exercise of other powers. However, there is no specific power to change the name. These powers apply in BSSAP as they do in normal administration.
11. It may be worth making express provision in the Order or the Rules to allow the administrator to apply to the FSA to change the name of the residual society. This may be useful for the purposes of changing the name because in a BSSAP, some or all of the society's members (shareholding and borrowing members) have been transferred to another society, so there may be practical difficulties in obtaining a special resolution (which must be approved by at least three quarters of members voting on the resolution).
12. A society in special administration might want to change its name in order to distinguish itself from any transferred business of the society, which may be continuing under the same name. This is currently the situation in the administration of the residual company of Dunfermline. In the case of banks (which are companies), Companies House takes the view that the administrator can change the name of a company and so will register changes made by the administrator. However, the position may be different in respect of a building society because the FSA is the registrar of building societies.
13. **It is important that the building society special administrator should have the ability to change the name of the residual society, and that the FSA should have the ability to register such a**

change of name. We recommend that the Treasury should clarify whether this is currently possible, and make appropriate provision in the BSSAP if necessary.

Voting in the second stage of the BSSAP

14. The Building Societies Association highlighted the fact that members cannot vote in the second stage of the BSSAP, and raised concerns about the impact on members' rights. Having considered the Government's reasoning for this provision as set out in the additional information given to the subgroup, we agree that it may be appropriate that members (as shareholders) should not have the right to vote, as this would enable shareholders to block a proposal that could be in creditors' best interests.
15. **On that basis, we are content that it is appropriate that members should not be able to vote in the second stage of building society special administration.**

The building society insolvency procedure

Availability of 'Ground B'

16. The BSA highlighted in their consultation response that that it is not possible to apply for the winding up of a building society 'in the public interest' ('Ground B'), and questioned whether this position is consistent with the general principle that banks and building societies should receive similar treatment.
17. The Treasury has supplied additional information (in Annex A) setting out their view that not applying Ground B to building societies reflects the legal differences between banks and building societies, and that grounds A and C are sufficient.
18. **We are content that it is not necessary to make Ground B available to the FSA in respect of building societies.**

Additional rights that should be available to the FSCS

19. We note the question raised in the consultation document about what additional rights might be needed by the FSCS, given that it will not be a creditor in the insolvency in respect of the monies it has paid out to shareholding members. Having considered the points raised by the Treasury (in Annex 1), we agree that the following rights should be given to the FSCS:
 - the right of creditors that are owed at least 25% of the total in value to apply to the court claiming that liquidator's remuneration is excessive. Further to the note supplied by the Treasury, it is worth clarifying that the right of the FSCS

to do this should not be dependent on the extent to which they are a creditor (or on the value of members' claims subrogated);

- the right of a creditor who is a member of the liquidation committee to call a meeting of the liquidation committee; and
- the right of a creditor who is a member of the liquidation committee to stop a resolution by post.

20. Regarding treatment of the members after their rights to claim have been transferred to the FSCS, we would emphasise the importance of ensuring that members' rights are not expropriated, and the importance of avoiding interference with the property rights in contravention of a Convention right. It is therefore important that the rights should revert to the members after the FSCS has exited from the insolvency process. It is also important that members should be kept informed about the progress of the insolvency, in keeping with their residual interest. However this should be done in such a way that does not impose significant additional costs on the insolvency (for example, such information could be made available electronically, or via a website as a means of providing information at low cost).
21. Finally, in light of the subrogation of members' rights referred to above, where members' claims are transferred to the FSCS it will also be important to ensure that there is no 'double counting' of rights: in particular, it will be important to ensure that where voting rights are transferred to the FSCS, these do not also remain with the member.

Annex 1

Papers supplied by HM Treasury to the group



HM TREASURY

Note to the BLP subgroup on building society insolvency

1. This note sets out information relating to the key points made in response to the public consultation Special resolution regime: **The Building Societies (Insolvency and Special Administration) Order 2009 and related insolvency rules, and financial assistance to building societies** (published 21 July),² and seeks the views of the BLP subgroup on building society insolvency. The issues for further discussion:

- **Principles and general issues** (application of the Insolvency Rules 1986 to building societies, and insolvency set-off; and respective roles of the Secretary of State and the FSA and equal treatment of banks and building societies)
- **The Building Societies (Insolvency and Special Administration) Order 2009** (application for the winding up of a building society 'in the public interest'; and shareholders' voting rights in the BSSAP)
- **Building society insolvency procedure (BSIP) Rules** (appointment of the Provisional liquidator; distribution of surplus on a winding up; rights available to creditors in an insolvency that would not be available to the FSCS; and minor and technical rule changes)
- **Building society special administration procedure (BSSAP) Rules** (minor and technical rule change)

Principles and general issues

2. **The consultation responses highlighted the fact that the 1986 insolvency rules have never been applied to building societies, and that the matter of set-off has not previously been addressed.** Our view is that the making of insolvency rules for the BSIP and BSSAP means that it is not necessary at this stage to apply the 1986 rules to building societies. However, as with other special insolvency regimes, the BSIP and BSSAP exist alongside standard insolvency processes. This is to ensure that, in principle, creditors can use normal insolvency procedures to wind up a bank or building society or put it into administration. Consultation respondents agreed with the Government's approach to set-off outlined in paragraphs 5.3 – 5.5 of the consultation document.

3. **The BSA has asked for general reassurance that the FSA's role in the BSIP and BSSAP (which it has because it is registrar of building societies) will not lead to any difference in treatment between the two sectors in insolvency.** Our view is that the criteria for placing a building society into insolvency are set out clearly in the Banking Act 2009 (section 7 and sections 94-97). Any decision to place a building society into the SRR (whether the BSIP or the stabilisation options) will only take place after intensive consultation between the authorities. Sections 96 of the Banking Act (which is applied by the Order) set out the authorities' statutory duties to consult with each other when deciding whether to apply for building society insolvency. The decision to apply to place a building society into insolvency will be based on the specific circumstances of the building society. At every stage (in considering use of the SRR tools and in using them), the authorities are required to balance the special resolution objectives, and will publicly account for how they have been balanced in each case.

² www.hm-treasury.gov.uk/d/consult_srr_buildingsocs_order2009_pu819.pdf

The Building Societies (Insolvency and Special Administration) Order 2009

4. **The consultation highlighted the fact that it is not possible to apply for the winding up of a building society 'in the public interest' ('Ground B').** Our proposal is that not applying Ground B to building societies reflects the legal differences between banks and building societies, and that grounds A and C (see section 96) are sufficient. Provision for winding up in the public interest is established by section 124A of the Insolvency Act 1986 (IA86).³ The public interest winding up provisions are part of a wider regulatory framework that covers Companies Act companies (which includes banks, but not building societies). The bank insolvency procedure (BIP) replicates this provision through the inclusion of 'Ground B', which is available to the Secretary of State (SoS).⁴ Historically it has not been possible to wind up a building society in the public interest. However, Ground B could in theory be made available either to the Secretary of State (SoS) or to the Financial Services Authority (FSA).

5. Our view is that it would be impractical to make Ground B available to the Secretary of State. The Secretary of State has some powers of investigation under the Financial Services and Markets Act 2000 (FSMA) in respect of building societies, but the FSA is the registrar and regulator of building societies. However, it would be unusual to give the FSA power to apply for winding up on public interest grounds. The FSA does have this power in relation to credit unions, but this is a "catch-all" provision predating both IA86 and FSMA.⁵ It has never been thought necessary to give the FSA power to wind up a building society in the public interest. Our view is that making Ground B available to the FSA in respect of building societies would not add anything substantive to Grounds A and C.

6. **The consultation highlighted the fact that members cannot vote in the second stage of the BSSAP.** Our view is that this remains appropriate. The BSSAP is used to wind down the residual society when there has been partial transfer of a building societies' property. There is no precedent for the treatment of voting rights in the administration of a building society. However, in a company administration, there is a requirement to summon a creditors' meeting, but shareholders do not have a right to attend or vote at that meeting. This is because ordinary creditors take precedence over ordinary shareholders. Giving equal status in terms of voting rights would enable shareholders to block a proposal that could be in creditors' best interests. The Government believes that this principle applies in a building society administration in the same way as in a company administration, and that therefore members (as shareholders) should not have the right to vote. This view is given additional force by the fact that in almost all conceivable circumstances in the which the BSSAP would be used, the members would have been transferred to another entity (through transfer of the deposit book).

BSIP Rules

7. **Consultation responses questioned the legal and practical feasibility of the proposals for the swift appointment of a provisional liquidator.** Our view is that section 135 of the Insolvency Act 1986, which provides that "the court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally", allows the appointment of a provisional liquidator after the application for BSIP has been made. We consider it should be possible to make an application for a provisional liquidator outside Court office hours if it necessary. The Court can take action over the weekend in other situations, for example where there are applications for injunctions. However any such arrangement would have to be on a case-by-case basis. We are

³ Section 124A was inserted by the Companies Act 1989 and amended by the Companies (Audit, Investigations and Community Enterprise) Act 2004.

⁴ Currently, this is the Secretary of State for the Department of Business, Innovation and Skills although any Secretary of State can perform this role.

⁵ Under section 20 of the Credit Unions Act 1979, 'the Authority' (i.e. the FSA) has a general power to petition for the winding up of a credit union in the public interest.

therefore of the view that there is benefit in retaining the flexibility to do this through the existing drafting of the rules.

8. **Consultation responses also raised the question of whether additional provision should be made in the rules for the distribution of surplus on a winding up.** Our view is that the provisions for distribution of the surplus on a winding up are sufficient. Building societies have registers of members in the same way as companies,⁶ so identification of those to whom distribution should be made shouldn't be a problem and therefore ought not to require claims to be made (such as those made by creditors).

9. **Consultation responses noted that various rights are available to creditors in a normal insolvency, and that these would not be available to the FSCS even though it would be owed substantial sums of money from the failed building society.** A list of creditors rights in insolvency is included in the Annex. Our view at this stage is that the FSCS does not need further rights as a creditor (with one possible exception), but the Treasury is open to further views. The FSCS's interests in the liquidation are protected by the fact that it can remain a member of the liquidation committee for as long as it wishes. There may therefore be value in giving the FSCS the additional ability to call a meeting of the liquidation committee (provided by rule 4.156 and 4.167 of the Insolvency Rules 1986, applied by BSIP rules 119 and 131 respectively).

10. **There are a number of minor and technical issues to be addressed by in the next draft of the rules, some of which were raised in the consultation, which the Treasury will consider when reissuing the rules:**

- Rule 17 in the BSIP rules) deals with the advertisement of the dismissal of the application for insolvency. However, because the application for insolvency is not advertised (to avoid the risk of a retail run on the building society), we propose that the dismissal of the order should also not be advertised. We are therefore planning to remove rule 17 from the draft.
- In respect of Rule 98(4), it may be beneficial to the smooth administration of a BSIP if the building society liquidator could have a discretionary power to advertise notice under 98(4) by any other method he/she saw fit.

BSSAP rules

11. **In respect of the Rule 37(2), there may need to be some right for a creditor or shareholding member to ask the special administrator for a physical copy in these circumstances, as otherwise those that have no internet access will not be able to receive the information.** We propose to make a minor amendment to address this in the next draft of the rules.

⁶ Building Societies Act 1986, Schedule 2, paragraph 13

Rights available to the Financial Services Compensation Scheme (FSCS) in the building society insolvency procedure (BSIP)

When a building society goes into the building society insolvency procedure (BSIP), the Financial Service Compensation Scheme (FSCS) will pay compensation to building society customers who are eligible for compensation under FSCS rules.⁷ As in a bank insolvency, when the FSCS pays out to eligible claimants it takes over their right to reclaim monies from the insolvency.

However, in building society insolvency, the FSCS will take over two types of claims. This arises because building society customers can hold their account in two ways: as members of the society (in which case they are members, not creditors); or as non-members such as current account holders (in which case they are creditors). The FSCS will therefore be a creditor in respect of the monies it has paid out to non-members; and it will hold rights equivalent to a building society member in respect of monies that it has paid out to building society members.

Consequently, despite the fact that it may be owed substantial sums from the insolvency, the FSCS will be a smaller creditor in the insolvency than might be expected, and will not be a creditor at all if it has not paid out to any creditors (such as current account holders).

Under the current draft BSIP rules, the FSCS has rights as a member of liquidation committee, and will also have rights as a fully paid up contributory.

This paper considers whether these rights are sufficient, and concludes that there are three additional rights, that would normally only be available to creditors, which could be usefully given to the FSCS in the BSIP:

- the right of creditors that are owed at least 25% of the total in value to apply to the court claiming that liquidator's remuneration is excessive;
- the right of a creditor who is a member of the liquidation committee to call a meeting of the liquidation committee; and
- the right of a creditor who is a member of the liquidation committee to stop a resolution by post.

This paper concludes that it is not necessary or desirable for the BSIP rules to explicitly give the FSCS any other rights available that are normally only available to creditors.

⁷ See the COMP section of the FSA handbook, which sets out the rules governing eligibility under, and levies for, the FSCS <http://fsahandbook.info/FSA/html/handbook/COMP>

The FSCS's subrogation of rights under COMP 15

Treasury expects that FSCS will assume the ability to reclaim monies from the insolvency in respect of those members that it has paid out relying on COMP 15, which provides for accelerated compensation for depositors.

We would not expect FSCS to do this under COMP 7, which concerns assignment of rights, because the Building Societies Act 1986 would arguably not permit the detachment of the "depositor" rights from the other rights attaching to the shares; and the Insolvency Act 1986 (see section 127) does not permit assignment of the entirety of a shareholder's rights without Court approval after commencement of the winding up.

COMP 15 allows the FSCS to determine that payment of compensation shall have the effect of the FSCS being "immediately and automatically subrogated, subject to such conditions as the FSCS determines are appropriate, to all or any part... of the rights and claims... of the claimant against the relevant person".

Treasury expects that this provision will be employed to ensure that the FSCS subrogates the right to receive payment from the society in respect of shares held by members. The effect of subrogation is that the FSCS will step into members' shoes in respect of whatever rights were subrogated. At a minimum, FSCS will subrogate the members' rights:

- o to claim monies in the insolvency – in effect this is a right to participate in the distribution of the surplus after the distribution to ordinary creditors. Their claim on the insolvency therefore ranks below the rights of all creditors; and
- o as a contributory in the insolvency – this will enable the FSCS to attend meetings of contributories and perform certain other functions. In this sense the FSCS will be equivalent to a fully paid-up contributory (like most shareholders in a building society insolvency).

Additional rights that it may be necessary or desirable for the FSCS to have

The FSCS will be represented on the BSIP liquidation committee, and the Rules provide for the liquidation committee to continue to function for as long as the FSCS remains a member of the committee (Rule 135).

However, for the reasons outlined, the FSCS may have limited voting rights as a creditor and at a meeting of creditors; and it may not be a creditor at all, or able to participate in the meetings of creditors at all if it has not made payouts to current account holders. The creditors and meetings of creditors perform certain functions that the FSCS may wish to be able to share (including challenging the remuneration of the liquidator and calling meetings of the liquidation committee). A full list of rights that creditors and contributories enjoy in insolvency is set out in the annex.

It may be possible to draft the Rules such that the FSCS will be treated as a creditor for all purposes. However, having considered this approach, we are concerned that there may be a range of unintended and arbitrary effects in applying the full range of creditors rights across the board. For example there is no sensible mechanism by which it would be appropriate to require the FSCS to prove debts. A true creditor would "prove" its debts in the liquidation under the chapter 9 of the 1986 insolvency rules (rules 4.73-4.94). However, where FSCS subrogates in respect of members' rights, it will be entitled to an appropriate share of the surplus where all creditors have been paid out in full, but will not "prove" its claim as if it were a creditor. On balance, it would not be sensible to treat the

FSCS as a creditor in respect of the monies it has paid out to shareholders, as to do so would diverge from the provisions of 'standard' insolvency, which Treasury is keen to follow closely, and could lead to arbitrary effects.

In considering what creditors' rights it is appropriate to give to the FSCS, it is important that the rules should not impact on the creditor hierarchy or result in a situation that would make it more difficult to the liquidator to make distribution appropriate to the creditor hierarchy. The FSCS already has substantial influence through its position on the liquidation committee. However, it will not be a creditor in respect of its payouts to members (which are likely to constitute the majority if its payouts) and we need to make sure that the FSCS is not able to override the wishes of the creditors. Therefore:

- the position of FSCS is comparable to the position of a fully paid up contributory. The FSCS therefore receives most of the rights it requires by virtue of being treated as a contributory;
- where a creditors' right is not dependent on the amount of monies owed to them (for example, rights to receive reports), if it would be beneficial to the FSCS to have the right, we should give it to them. In practice in such cases the FSCS would enjoy the rights anyway as it would almost certainly be a creditor following payouts to current account holders; and
- where the liquidation committee has the ability to perform a particular function, or has access to certain information, it is not necessary to specify that the FSCS has these rights.

A full list of rights that it may be necessary or desirable for the FSCS to have in the insolvency is included in Annex A.

The rights that it may be appropriate to give the to the FSCS, in accordance with the principles outlined above, are:

- BSIP rule 106 (rule 4.131 in the 1986 rules), which provides that creditors (that are owed at least 25% of the total in value) can apply to the court claiming that liquidator's remuneration is excessive;
- BSIP rule 121 (rule 4.156 in the 1986 rules), which provides that a creditor member of the liquidation committee to call a meeting of the committee; and
- BSIP rule 131 (rule 4.167 in the 1986 rules), which provides that creditor members of the liquidation committee have rights to stop a resolution by post.

Annex

		necessary	desirable	immaterial	undesirable	Notes
Rule						
1	Rule 4.45 IR 86 (BSIP 37) The liquidator to send a report to creditors and contributories.			×		FSCS will subrogate the ability to be treated as a contributory. It will therefore not be necessary to apply rights 1 – 4.
2	Rule 4.46 IR 86 (BSIP 38) If the report by the liquidator is dispensed with, liquidator to send summary of affairs to creditors and contributories.			×		
3	Rule 4.47 IR 86 (BSIP 39) The court to take account of the interest of creditors and contributories in deciding applications to relieve the liquidator of his duties			×		
4	Rule 4.48 IR 86 (BSIP 40) Provides that court, if it orders a stay of the insolvency, may order that the stay be brought to the attention of creditors and contributories			×		
5	BSIP 42 and 43 These rules provide for the first meetings of creditors and contributories. The first creditors meeting At the first creditors meeting, FSCS shall state whether or not it is resigning from the liquidation committee. Creditors may then pass resolutions: <ul style="list-style-type: none"> to elect new members on to the liquidation committee to replace the Bank, the FSA (and the FSCS if it has resigned from the committee). where the court has directed (on application of the creditors) that the creditors may remove the liquidator, the creditors may pass a resolution to remove the building society, and pass a resolution to appoint a new liquidator or joint liquidators; if no individuals have been elected to form a liquidation committee under paragraph the creditors may pass a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter; where two or more persons are appointed jointly to act as building society liquidator, a resolution specifying which acts are to be done by both of them, all of them or by only one; a resolution to adjourn the meeting for not more than 3 weeks; and any other resolutions which the chair thinks it right to allow for special reasons. <p>Rule 42 specifies that the FSCS is entitled to be represented and to vote at the first meeting of creditors, but FSCS voting rights at this meeting are based upon the rights that the FSCS takes over upon payment of the creditors.</p>			×		The rules already provide that the FSCS will automatically be a member of any liquidation committee that is formed. Creditors have rights these rules to remove the liquidator where the court has directed that a meeting may be summoned for this purpose. The FSCS will be a member of the liquidation committee, which can make an application to court to ask the court to remove the liquidator, but it is appropriate that the final resolution to remove the liquidator should remain with the creditors.
6	Rule 4.54 IR 86 (BSIP 44) General power to call meetings of creditors and			×		This is unnecessary, as the FSCS will be on the liquidation committee.

		necessary	desirable	immaterial	undesirable	Notes
	Rule					
	contributories by the liquidator "for the purposes of ascertaining their wishes".					
7	Rule 4.57 IR 86 (BSIP 47) Creditors and contributories can requisition meetings				×	FSCS is able to subrogate the ability to be treated as a contributory.
8	Rule 4.63 IR 86 (BSIP 53) The majorities provided for by this rule for resolutions of creditors and contributories do not include votes by the FSCS.			×		This is appropriate, as it would not be desirable for FSCS voting rights to be weighted in a manner that would enable it to override the wishes of the generality of creditors.
9	BSIP 85 Creditors can decide the remuneration of the liquidator in cases where the liquidation committee has ceased to exist and the committee has not been reformed at a meeting of creditors or contributories.			×		It is not necessary to apply this rule, as the liquidation committee can continue to function for as long as the FSCS is a member, so this circumstance would not arise.
10	BSIP 89 Creditors are notified of the resignation of the liquidator.			×		FSCS will be a member of the liquidation committee. Although there is no formal obligation for the liquidation committee to be notified, they will nonetheless be aware and it is not necessary to put in place a formal obligation.
11	BSIP 90 A creditors' meeting can decide not to give the liquidator his release			×		FSCS will be a member of the liquidation committee, who can do this under BSIP Rule 98(5).
12	4.113 IR 86 (BSIP 92) This rule concerns meetings of creditors that can remove the liquidator			×		FSCS will be a member of the liquidation committee, who can make an application to court to ask the court to remove the liquidator.
13	BSIP 98 This rule provides that the liquidator shall give notice to all creditors and contributories that his final report is available.			×		FSCS will be a member of the liquidation committee, who will have this information.
14	4.127 IS 86 (BSIP 100) The remuneration of the liquidators can be fixed by a meeting of creditors where the liquidation committee has ceased to exist			×		It is not necessary to apply this rule, as the liquidation committee can continue to function for as long as the FSCS is a member, so this circumstance would not arise.
15	Rule 4.128 IS 86 (BSIP 103) This rule refers to disputes between joint liquidators being referred to the liquidation committee or a meeting of creditors.			×		The 1986 rules refer to the decision being referred to the court, liquidation committee or the creditors. As the FSCS will always be on the committee for as long as it is needed, the creditors' rights here need not be expressly extended to the FSCS.
16	Rule 4.129 IS 86 (BSIP 104) The liquidator may ask for his remuneration to be increased by a resolution of the creditors, if s/he feels that it is insufficient,				×	If the majority of creditors judge it to be in their interests for the remuneration to be increased, it would be reasonable to allow this to happen. On balance, we should not apply this right specifically to the FSCS.
17	Rule 4.130 IS 86 (BSIP 105) Sub-paragraph (3) provides that if the liquidator makes an application to the court to increase his remuneration, the court may order the liquidator to notify one or more of the company's creditors of the application if there is no liquidation committee.			×		In all conceivable circumstances the liquidation committee will still be in existence.
18	4.131 IS 86 (BSIP 106) Any creditor can apply to the court claiming that		×			The first liquidation committee will set the basis on which the liquidator is to be

	necessary	desirable	immaterial	undesirable	Notes
<p>Rule liquidator's remuneration is excessive.</p>					<p>remunerated. However, it is possible that the FSCS may wish to subsequently challenge the remuneration of the liquidator, even though it was involved in setting the basis for the remuneration. For example, the FSCS and its fellow initial committee members may have agreed hourly rates for the liquidator and his or her staff thinking that 5,000 hours were required but, in the end, 15,000 were charged to the case. It may be that this was 'time properly given' but it is possible that FSCS might wish to apply to court to test that assumption.</p> <p>As previously noted, the FSCS may also be a creditor, but it would only be able to challenge remuneration, as a creditor if it had the support of 25% of the total creditors (noting that the FSCS will only be a creditor in respect of those monies that it has paid out to current account holders). It is therefore desirable to create an explicit right for the FSCS to apply to the court claiming that liquidator's remuneration is excessive.</p> <p>However, it is important to emphasise that we are creating an express right for the FSCS to challenge, with the policy objective of watching out for the considerable amounts paid out by the FSCS to depositing members, that would not otherwise be covered by the application of 4.131; and this does not mean that the FSCS are 'keeping an eye' on remuneration, for the benefit of all creditors.</p>
<p>19 Rule 4.156 IS 86 (BSIP 121) There is a right of the creditor members of the liquidation committee to call a meeting of the committee.</p>	×				<p>It makes sense to include the FSCS in the list of members who can call a meeting of the liquidation committee.</p>
<p>20 Rule 4.167 IS 86 (BSIP 131) In respect of resolutions by post, creditor members of the committee have rights to stop a resolution by post.</p>	×				<p>It makes senses to allow FSCS to do this.</p>