



HM Treasury

# **Banking Liaison Panel:**

## **annual report 2012-13**

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July 2013





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# Preface

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HM Treasury has established the Banking Liaison Panel in accordance with section 10 of the Banking Act 2009. The panel's function is to provide advice to HM 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 HM 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 HM Treasury facilitates its work.

The panel met for the first time on 7 April 2009. Summary minutes of the panel's meetings, of this and previous Annual Reports, and of the panel's formal advice to the government, are available from the government website at [www.gov.uk/government/publications/banking-liaison-panel](http://www.gov.uk/government/publications/banking-liaison-panel).



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# 1

## Terms of reference and membership

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### Remit

**1.1** Section 10 of the Banking Act 2009 sets out the statutory remit of the Banking Liaison Panel. Financial Services Act 2012 revises this remit from April 2013 to reflect changes to the UK regulatory structures, and to include the resolution regimes for banking group companies and investment firms established in that Act.

**1.2 Annex A** sets out the statutory remit of the panel as it applied during 2012-13, and changes made from April 2013.

### Terms of reference

**1.3** In accordance with this remit, the panel's Terms of Reference, as revised in July 2011, are set out in **Annex B**.

**1.4** These Terms of Reference will be revised from April 2014 to reflect the panel's revised statutory remit and to make other administrative changes. HM Treasury has also indicated its intention to refer matters relating to the resolution regime for clearing houses to the panel.

### Membership

**1.5** The statutory requirements for membership of the panel are set out in its remit in Banking Act 2009 (see **Annex A**). A full list of industry and government members, as at 31 March 2013, can be found in **Annex C**. Other members who served during the year, and those who attended as alternates, are shown in the summary minutes of meetings which can be found on the government website.<sup>1</sup>

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<sup>1</sup> [www.gov.uk/government/publications/banking-liaison-panel](http://www.gov.uk/government/publications/banking-liaison-panel)



# 2

## Summary of the panel's work during 2012-13

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### Meetings of the panel in 2012-13

2.1 During 2012-13 the panel met on 4 occasions:

- 25 April 2012;
- 17 July 2012;
- 4 September 2012; and
- 5 February 2013.

2.2 The meeting in April 2012 was reported on in the panel's previous Annual Report for 2011-12.

2.3 Summary minutes of the panel's meetings, of this and previous Annual Reports, and of the panel's formal advice to the government, are available from the government website.<sup>1</sup>

### A. Non-bank resolution regimes

2.4 In September HM Treasury reported on publication of a consultation document in August 2012 in relation to broadening resolution options for the financial sector, focussing on non-bank institutions with the objective to enhance the mechanisms available to the government to preserve financial stability when dealing with the failure of systemically important non-banks. HM Treasury invited panel members to provide feedback on the consultation.

2.5 In February HM Treasury had begun preparing secondary legislation to determine the resolution regime for non-banks. A paper was presented to the panel outlining the 5 statutory instruments for the resolution regime, expected to be introduced in summer 2013.

2.6 The panel was asked to consider two substantive areas:

- 1 a power to exclude small investment firms – the panel's views were sought on the intention to adopt the €730,000 limit from the Capital Requirements Directive to exclude small firms, and a proportionality test; and
- 2 the specification/exclusion of financial institutions relevant to group powers – HM Treasury proposed to specify the conditions that a company is in the same group if it is, or is a subsidiary of, a parent company whose business (or that of its subsidiaries) is wholly or mainly in financial services; and that the lowest qualifying parent company be taken for this purpose. Panel members stressed the importance of clarity on this for the markets.

2.7 The panel's consideration of specific elements of the proposed non-bank resolution regime is summarised below. The panel will continue to consider work on the non-bank resolution regime during 2013-14.

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<sup>1</sup> [www.gov.uk/government/publications/banking-liaison-panel](http://www.gov.uk/government/publications/banking-liaison-panel)

## **Central counterparties (CCPs)**

**2.8** In considering proposals for the resolution of CCPs, the panel highlighted an issue of uncapped liabilities of owners and members of clearing houses, and suggested that loss allocation rules already set out by CCPs may provide efficient means of absorbing losses.

## **Financial Market Infrastructure (FMI) – non-CCPs**

**2.9** The panel considers the question of whether a full resolution regime was needed for financial market infrastructure bodies other than central counter-parties; and if so, in what form. The panel considered that it may not be appropriate for an administrator to be appointed in order to continue to operate the financial infrastructure in question, as they would not engender the confidence of market participants to be able to ensure the continuity of the service. This could lead to a dysfunctional system and administrators may be reluctant to take the risk involved.

**2.10** Members questioned the assumption that the failure of an FMI would be related to financial issues as opposed to operational issues. It was suggested that focus should be placed on developing recovery and business continuity plans to mitigate against operational failures rather than concentrating on resolution plans.

**2.11** Members were conscious of the additional impact of introducing wide ranging powers for authorities on the cost of doing business for firms that could be covered by a new resolution regime.

## **Investment firms**

**2.12** The panel raised concerns around the scope and broad definition of ‘investment firms’ in the legislation, and proposed that this should be narrower to ensure that non-systemic firms have certainty of not being affected.

**2.13** Members expressed concern that additional resolution powers granted to the government in Financial Services Act 2012 would raise regulatory costs for all investment firms and increase their overall cost of capital; and that UK firms may be disadvantaged by having this burden in addition to a multiplicity of legislation currently proposed in forthcoming European directives.

**2.14** The objectives set out in the consultation document regarding protection of ‘client assets’ raised wider issues around the definition of ‘client assets’. Panel members proposed that a pass/fail test would be required to overcome the difficulty in establishing which assets are client owned, but that this would require improvements in record keeping of designated assets.

**2.15** The application of powers to a parent holding company was also discussed, in particular where the parent company is not a financial institution. An intermediate financial holding company that would separate the bank and non-bank elements of a corporate group was proposed as a solution, provided there could be clarity in the legislation.

## **Insurance firms**

**2.16** The panel considered proposals to introduce a resolution regime for insurers, with objectives to protect policy holders and maintain financial stability. Panel members agreed with these objectives but made the point that insurance firms and banks were quite different for resolution purposes.

**2.17** There was discussion of the merits of existing techniques to deal with distressed insurers, notably run-off. Members raised concerns around the issue of time subordination that was noted in the consultation document.

## B. EU legislation

**2.18** The panel discussed progress on the development of two EU legislative developments during the year: the *Recovery and Resolution Directive*, and proposals for a euro-area banking union.

### Recovery and Resolution Directive

**2.19** HM Treasury presented an overview on proposals by the European Commission for this Directive. The panel noted there is large overlap between the RRD proposal and Banking Union issues (see below).

**2.20** The panel engaged in discussions around requirements for banks to hold minimum levels of bail-in-able debt, the exemptions of specific liabilities from bail-in, as well as the minimum thresholds required for the resolution authorities to be able to use a bail-in tool. Panel suggested that the drafting of the proposed RRD required improvement to remove ambiguity around these proposals.

**2.21** Also discussed were the differences between the safeguards provided by RRD and the safeguards currently provided for under the UK's own Special Resolution Regime. It was clarified that while the RRD would be enacted by each member state, each state would be free to implement in its own way, within the constraints set by the directive.

**2.22** The powers in Article 63 of the directive to suspend payment or delivery obligations, restrict the enforcement of security interests and impose a short stay on termination rights all raised questions and the panel agreed that the drafting of these articles required improvement to remove ambiguities. The asset separation tool's purpose and viability was discussed and the panel agreed that the tools could be useful in stabilising specific markets.

**2.23** Other concerns raised around proposals to mutualise resolution financing arrangements between member states in a group resolution, and to oblige lending and borrowing between these arrangements.

### Banking union

**2.24** The UK government supports proposals for a euro area banking union and has an important contribution to make. However the UK will not be part of this banking union.

**2.25** Questions to the panel included the scope of a banking union as well as the regulatory authority to hold responsibility. Main concern was the need to protect the unity and integrity of the single market while implementing a euro area banking union.

**2.26** HM Treasury will continue to discuss these issues with the panel as EU proposals develop.



# 3

## Forward look for 2013-14

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**3.1** The panel will continue to meet quarterly in 2013-14. Ongoing workstrands noted in Chapter 2 will continue to form the core of its agenda, including:

- Non-bank resolution regimes, including:
  - secondary legislation following the implementation of Financial Services Act 2012, and
  - consequent updates to the Code of Practice;
- EU legislative proposals on RRD and the euro area banking union.

**3.2** In addition, the following issues are expected to come before the panel in the coming year:

- Peter Bloxham completed Phase 1 of the statutory review of the Special Administration Regime for Investment Banks in February 2013, and is expecting to complete Phase 2 in the summer. He will discuss his findings with the panel as the second phase of his review progresses; and
- a sub-group of the panel was formed in 2012 to consider the Small Companies and the Safeguards Order. Their work is expected to conclude in 2013.





# A

## Statutory remit

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**A.1** The statutory remit for the Banking Liaison Panel, as set out in Section 10 of the Banking Act 2009 is set out in Box 3.A below.

**A.2** This remit was revised in Financial Services Act 2012. The revised remit, which applies from April 2013, is set out in Box 3.B.

### **Box 3.A: Section 10, Banking Act 2009**

#### **Banking Liaison Panel**

- (1) The Treasury shall make arrangements for a panel to advise the Treasury about the effect of the special resolution regime on—
  - (a) banks,
  - (b) persons with whom banks do business, and
  - (c) the financial markets.
- (2) In particular, the panel may advise the Treasury about—
  - (a) the exercise of powers to make statutory instruments under or by virtue of this Part, Part 2 or Part 3 (excluding the stabilisation powers, compensation scheme orders, resolution fund orders, third party compensation orders and orders under section 75(2)(b) and (c)),
  - (b) the code of practice under section 5, and
  - (c) anything else referred to the panel by the Treasury.
- (3) The Treasury shall ensure that the panel includes—
  - (a) a member appointed by the Treasury,
  - (b) a member appointed by the Bank of England,
  - (c) a member appointed by the FSA,
  - (d) a member appointed by the scheme manager of the Financial Services Compensation Scheme,
  - (e) one or more persons who in the Treasury's opinion represent the interests of banks,
  - (f) one or more persons who in the Treasury's opinion have expertise in law relating to the financial systems of the United Kingdom, and
  - (g) one or more persons who in the Treasury's opinion have expertise in insolvency law and practice.

**Box 3.B: Section 10, Banking Act 2009 – as amended by Financial Services Act 2012**

**10 Banking Liaison Panel**

- (1) The Treasury shall make arrangements for a panel to advise the Treasury about the effect of the special resolution regime on—
  - (a) banks, banking group companies and investment firms,
  - (b) persons with whom banks, banking group companies and investment firms do business, and
  - (c) the financial markets.
- (2) In particular, the panel may advise the Treasury about—
  - (a) the exercise of powers to make statutory instruments under or by virtue of this Part, Part 2 or Part 3 (excluding the stabilisation powers, compensation scheme orders, resolution fund orders, third party compensation orders and orders under section 75(2)(b) and (c)),
  - (b) the code of practice under section 5, and
  - (c) anything else referred to the panel by the Treasury.
- (3) The Treasury shall ensure that the panel includes—
  - (a) a member appointed by the Treasury,
  - (b) a member appointed by the Bank of England,
  - (c) a member appointed by the PRA,
  - (ca) a member appointed by the FCA
  - (d) a member appointed by the scheme manager of the Financial Services Compensation Scheme,
  - (e) 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 represent the interests of investment firms,
  - (f) one or more persons who in the Treasury's opinion have expertise in law relating to the financial systems of the United Kingdom, and
  - (g) one or more persons who in the Treasury's opinion have expertise in insolvency law and practice.

# B

## Terms of reference

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### 1. Remit

#### Purpose

**B.1** The Banking Liaison Panel ('the panel') has been established by HM Treasury, in accordance with section 10 of the Banking Act 2009 ('the Act').

**B.2** Section 10(1) of the Act states that:

- 3 HM Treasury shall make arrangements for a panel to advise HM Treasury about the effect of the special resolution regime on:
  - a Banks;
  - b persons with whom banks do business; and
  - c the financial markets.

**B.3** The special resolution regime (SRR) is provided for by parts 1-3 of the Act, and provides the framework and tools by which the UK Authorities – the Financial Services Authority (FSA), the Bank of England, and HM Treasury – will act to resolve failing banking institutions, where it is in the public interest to do so.

**B.4** HM Treasury recognises that, despite the safeguards on the face of the Act and in secondary legislation, the existence of the new legal powers in the SRR may lead to legal uncertainty in the operation of certain types of financial instruments and markets; and that this uncertainty may exist even if the powers are not used.

**B.5** The main purpose of the panel is, therefore, to provide advice to HM Treasury on the impact of the regime as a whole on financial markets – not only specific effects (those which arise in relation to particular financial products or instruments as a result of specific provision in the regime), but also the wider issues relating to the position of the UK as a leading international centre for financial services.

#### Specific functions

**B.6** The panel will have specific functions. Section 10(2) of the Act states that:

- 4 In particular, the panel may advise the Treasury about:
  - a the exercise of powers to make statutory instruments under or by virtue of this Part, Part 2 or Part 3 (excluding the stabilisation powers, compensation scheme orders, resolution fund orders, third party compensation orders and orders under section 75(2)(b) and (c));
  - b the code of practice under section 5, and
  - c anything else referred to the panel by the Treasury.

**B.7** In line with the purpose provided in section 10(1) and the provision made in subsection (2), the panel will have specific functions with regard to statutory instruments, the code of practice and other related matters.

### **Statutory instruments**

**B.8** The panel shall monitor and give advice to the Treasury on the effect on the market of standing secondary legislation under the special resolution regime. In particular, the panel will consider those statutory instruments made under Part 1 of the Act related to safeguards for partial property transfers.

**B.9** The Treasury shall consult with the panel regarding the making of new standing statutory instruments, or changes to existing standing statutory instruments under Part 1 of the Act, except where the instruments are being made on an emergency basis.

**B.10** The panel may make recommendations to the Treasury for changes to standing instruments (as the making of statutory instruments includes the power to make statutory instruments which amend existing statutory instruments).

**B.11** The panel's remit will exclude non-standing statutory instruments, i.e. those made in relation to a particular exercise of the stabilisation powers, including compensation scheme orders, resolution fund orders, third party compensation orders and orders made under section 75(2)(b) and (c) of the Act (Power to change law).

### **Code of practice**

**B.12** The panel may advise the Treasury on the Code of practice (section 10(2)(b) of the Act). The code provides guidance on the use of the SRR, to which the Authorities must have regard.

**B.13** The Treasury will consult the panel on any changes to the code of practice.

### **Advice on other matters**

**B.14** The panel shall, when requested to do so by the Treasury, provide advice on any other issue related to its purpose.

## **2. Membership**

**B.15** The Treasury shall appoint the members of the panel (other than those appointed by the Bank of England, the FSA and the Financial Services Compensation Scheme). Subsection 10(3) of the Act sets out the minimum membership requirements for the panel.

- 5 The Treasury shall ensure that the panel includes:
  - a a member appointed by the Treasury;
  - b a member appointed by the Bank of England;
  - c a member appointed by the FSA;
  - d a member appointed by the scheme manager of the Financial Services Compensation Scheme;
  - e one or more persons who in the Treasury's opinion represent the interests of banks;
  - f one or more persons who in the Treasury's opinion have expertise in law relating to the financial systems of the United Kingdom, and

- g one or more persons who in the Treasury's opinion have expertise in insolvency law and practice.

**B.16** The Treasury will appoint members for an initial period of 1 year, and review the panel's membership on an annual basis or as it decides is appropriate.

**B.17** The Treasury will appoint members to the panel drawn from the relevant financial services trade associations and professional organisations.

**B.18** All members may nominate alternates who can attend in their place should they be unable to attend (see paragraphs 3.3-3.6)

**B.19** The panel may co-opt additional members who have expertise in particular subjects to assist with the formulation of advice on specific matters. This process will typically be via the creation of a specific sub-group to advise the panel.

## 3. Process

### Meetings

**B.20** The panel shall meet quarterly in its first year and, thereafter, at a frequency decided annually. Where necessary, the Treasury may call additional meetings.

**B.21** The Treasury will act as Chair of the panel during its meetings, and will also provide its Secretariat. Attendance by the Bank and FSA is required for a meeting to be quorate. Panel members may make suggestions for the agenda, to which the Treasury shall have regard.

### Attendance

**B.22** Members of the panel have the right to attend meetings and contribute to the official advice given by the panel to the Treasury (as outlined in paragraphs 3.7 – 3.13).

**B.23** Alternates may attend if the primary member is unable to be present. Alternates may contribute to the panel's formal advice.

**B.24** If neither primary member nor alternate is able to attend, they may send an observer to the meeting to take notes. Observers will not take part in proceedings, or contribute to the panel's formal advice.

**B.25** The chair may agree to allow a member to bring one technical expert with them to a meeting. Technical experts cannot be sent in place of a panel member. Technical experts may participate in proceedings. The panel may decide to take their comments into account when providing final advice, but it is not obliged to do so.

### The panel's advice to the Treasury

**B.26** The panel shall provide the Treasury with formal advice and the Treasury shall have regard to the panel's recommendations.

**B.27** The panel may form one or more sub-groups to work on specific issues for the purposes of giving advice to the Treasury. The Bank and FSA shall have the right to participate in a sub-group. Additional members may be appointed to such sub-groups by the Treasury, on the recommendation of members of the panel. Sub-groups will be not be chaired by the Treasury, Bank, FSA or FSCS.

**B.28** The panel will nominate the Chair of each sub-group and determine the sub-group's precise remit. Where advice-giving is delegated to a sub-group, a draft of the advice should be

circulated to the members of the panel (excluding the Treasury) for comment. The subgroup Chair will determine whether comments are incorporated into the final advice. The advice will be discussed at the next meeting of the full panel and comments recorded in the published minutes.

**B.29** The secretariat may take a role in facilitating the work of the subgroup (including provision of papers and drafting of advice) if necessary.

**B.30** Where possible, the advice given will represent the consensus view. If consensus is not possible, the panel will present all divergent views within its advice, and explain why consensus could not be reached. Advice given will not necessarily represent the view of the subgroup Chair, who takes a facilitating role.

**B.31** Members of the panel may communicate with the Treasury between meetings, to raise issues of concern related to the remit of the panel.

**B.32** If, following such communication a member wishes to call an additional meeting of the panel (for example, in order to give advice to the Treasury), a formal memorandum must be submitted to the Treasury, who will seek the views of other panel members.

## **Role of the chair**

**B.33** The chair will facilitate and coordinate meetings. The chair's role includes:

- ensuring that the panel is fulfilling its remit as set out in the terms of reference;
- leading meetings and facilitating discussion;
- ensuring that advice given by the panel reflects the views of all panel members; and
- acting as a point of contact for panel members between meetings.

## **Reporting**

**B.34** Summaries of the proceedings of meetings of the Banking Liaison Panel will be published, subject to considerations of commercial and market confidentiality.

**B.35** Advice given by the panel to the Treasury may be published, subject to considerations of commercial and market sensitivity.

**B.36** The panel will report formally, once a year, on its activities, including, if appropriate, a general assessment of the SRR on financial markets and the UK financial services industry.

## **Review**

**B.37** These terms of reference will be reviewed periodically, as agreed by the panel.



# List of members

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Banking Liaison Panel members, as at 31 March 2012, included:

## **Statutory members**

- David Lunn (Chair)
- Peter Brierley, Bank of England (BoE)
- Stephen Drayson, Financial Services Authority (FSA)
- Alex Kuczynski, Financial Services Compensation Scheme (FSCS)

## **Industry members**

- Michael McKersie, Association of British Insurers (ABI)
- Richard Heis, Association of Business Recovery Professionals (R3)
- Oliver Moullin, Association of Financial Markets in Europe (AFME)
- Roger Brown, British Bankers Association (BBA)
- Rob Beattie, British Bankers Association (BBA)
- Jeremy Palmer, Building Societies Association (BSA)
- Dorothy Livingston, City of London Law Society (CLLS)
- John Whelan, Financial Markets Law Committee (FMLC)
- Roland Susman, Financial Markets Law Committee (FMLC)
- Paul Mayo, Insolvency Service
- Peter Werner, International Swaps and Derivatives Association (ISDA)
- Guy Sears, Investment Management Association (IMA)





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