

# Preface

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The Treasury established the Banking Liaison Panel in accordance with section 10 of the Banking Act 2009. The Panel's function is to provide advice to the Treasury about the effect of the special resolution regime (SRR) on banks, persons who do business with banks, and on financial markets. The Panel's function includes 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 meetings, Annual Reports, and the Panel's formal advice to the Government are available from the gov.uk website:

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

The 2013-14 and 2014-15 annual reports are published as a single combined report.



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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. The Financial Services Act 2012 revised this remit from April 2013, to reflect changes to the UK regulatory structures.

1.2 The statutory remit of the Panel is set out in Annex A.

## Terms of reference

1.3 The Panel's Terms of Reference, as agreed in July 2013, are included as Annex A.

## Membership

1.4 The statutory requirements for membership of the Panel are set out in the Banking Act 2009 (see Annex A). A full list of appointed members for the period of this report can be found in Annex C. Lists of attendees at meetings can be found in the summary minutes available on the gov.uk website at [www.gov.uk/government/publications/banking-liaison-panel](http://www.gov.uk/government/publications/banking-liaison-panel)



# Summary of the Panel's work during 2013-14

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### Meetings

**2.1** During 2013-14, the Panel met 4 times:

- 7 May 2013
- 30 July 2013
- 5 November 2013
- 27 March 2014

**2.2** Summary minutes of the Panel's meetings, including attendees, are available on the gov.uk website at [www.gov.uk/government/publications/banking-liaison-panel](http://www.gov.uk/government/publications/banking-liaison-panel)

### Special Administration Regime for Investment Firms

**2.3** In May 2013, Peter Bloxham introduced his report on the first phase of the review of the Special Administration Regime for Investment firms, which was published on 23 April 2013. He emphasised that it was a review of how well the SAR was meeting the objectives set out in the Banking Act 2009, rather than a review of those objectives.

**2.4** Panel members agreed with the view that a SAR was still needed to fill a gap in the insolvency regime, and expressed concerns about introducing depositor preference rules if the client assets regime was sufficiently robust. Firms' record keeping standards were often a problem, with a lack of clarity between client assets and client deposits. The Panel noted that any change to depositor preference would require changes to primary legislation (Banking Act 2009) and other insolvency law.

**2.5** Peter Bloxham highlighted issues around the Bar Date rules, often leading to the need for a double reconciliation of records. Greater information sharing could be a solution, but market infrastructure providers had expressed concerns about the costs involved.

**2.6** Panel members suggested seeking clarity about clients' rights to interest and income during the SAR process.

**2.7** In July, Panel members were invited to get in touch with Peter Bloxham if they wanted to contribute to the second phase of work on the Review of the Special Administration Regime for Investment Firms.

**2.8** In March 2014, the Treasury gave an overview of the 72 recommendations in Peter Bloxham's final report, published January 2014. The next steps will be to work closely with the regulators to produce a draft regulation for each recommendation, and consult further on the implementation of those recommendations which fell to HM Treasury later in the year. Panel members suggested aligning this with the FCA's anticipated consultation on insolvency.

## **SAR for Payment and Settlement Systems**

**2.9** The Treasury introduced the Consultation Document, which had been published on 25 April 2013, proposing a Special Administration Regime for Payment and Settlement systems. Panel members were generally in agreement with the approach proposed. Issues would arise where a key contractor for one of these systems was located in another jurisdiction, and where an entity which entered administration could be subject to multiple insolvency regimes at the same time.

**2.10** The power to make regulations on a Special Administration Regime for Payment and Settlement Systems was introduced through the Financial Services (Banking Reform) Act 2013.

## **Non-Bank Resolution**

**2.11** In July, the Panel considered papers on secondary legislation for the non-bank resolution regime, including a draft of the partial Property Transfer Order, and a draft statutory instrument on loss allocation rules for CCPs.

**2.12** In November, the Panel considered a consultation paper on the draft secondary legislation.

**2.13** In March, the Panel discussed responses to the consultation, and Government plans to revise the Code of Practice. Panel members requested clarification on issues including the scope of the powers. Treasury clarified its position, and agreed to consider making the scope clearer in the Code of Practice.

## **Bail-in**

**2.14** In November, The Panel considered the bail-in option that was included in the Financial Services (Banking Reform) Bill during Lords Committee Stage in October 2013.

**2.15** Panel members noted issues with aligning the scope of the bail-in powers with requirements of the EU Bank Recovery and Resolution Directive (BRRD), with excluded liabilities, central counterparties, and with interaction with schemes such as the FSCS.

**2.16** Panel members discussed the legal challenges of bailing-in derivatives.



# 3 Summary of the Panel's work during 2014-15

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## Meetings

3.1 During 2014-15, the Panel met twice:

- 9 September 2014
- 8 January 2015

3.2 Summary minutes of the Panel's meetings, including attendees, are available on the gov.uk website at [www.gov.uk/government/publications/banking-liaison-panel](http://www.gov.uk/government/publications/banking-liaison-panel)

## SAR for investment firms

3.3 Panel members advised on the importance of revisions to the Code of Practice in setting out how changes to the SAR would work in practice, in particular in relation to property rights.

3.4 Panel members also advised on the impact of different issues on a failed investment firm, in particular on the impact of uncertainty around valuations. It was thought desirable to have more certainty about traders' positions on unsettled trades with brokers at the point of failure.

## Transposition of the EU Bank Recovery and Resolution Directive

3.5 In September, Panel members discussed its consultation on transposition of the EU Bank Recovery and Resolution Directive (BRRD). Panel members expressed concerns about a number of proposed measures in the draft legislation, including:

- Safeguards for corporate bank account deposits;
- Operating across international borders, and the implementation of Article 34(2) of BRRD;
- The limitations of the exclusions from bail-in;
- The approach to resolution of branches;
- Arbitration or dispute resolution on valuations, without recourse to the courts.

3.6 HM Treasury invited Panel members to submit written responses on the detailed technical points, and offered bilateral meetings to discuss issues in more detail. Final draft orders were laid in Parliament in November.

## Special Resolution Regime Code of Practice

3.7 In January, the Panel considered proposed revisions to the code of practice for the special resolution regime, updated to take account of legislative changes to the resolution regime.

3.8 Panel members asked for clarification of:

- The need for consistency in the wording of resolution objectives between the Code and the BRRD;
- The treatment of UK-regulated institutions operating in other jurisdictions;

- How measures resulting from the current consultation on EBA rules would interact with the Code;
- Detail of valuation methods, including 'No Creditor Worse Off' valuation and the use of a going-concern comparator;
- The interaction between bail-in and the mandatory write-down of capital instruments.

**3.9** HM Treasury noted that, there was more work to be done on operationalising the new measures.

**3.10** HM Treasury published the revised code of practice in March 2015, taking into consideration comments from Panel members on the earlier draft.

## **Non-Bank Resolution**

**3.11** In January, Panel members were updated on work on an EU-wide non-bank resolution regime. Panel members advised that it would not be possible simply to adopt the bank resolution tools for non-banks, where different factors would need to be considered, including the scale of daily transaction flows in some of them.

# A Statutory remit

## Box 3.A: Statutory remit of the Banking Liaison Panel

*Banking Act 2009 Section 10 is amended by Financial Services Act 2012 Section 100, Section 101 and Schedule 17, with the following effects:*

### 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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## Remit

### Purpose

- 1.1 The Banking Liaison Panel ('the Panel') has been established by the Treasury, in accordance with section 10 of the Banking Act 2009 ('the Act'), as amended by Financial Services Act 2012. The statutory remit of the Panel is set out in **Annex A**.
- 1.2 Section 10(1) of the Act requires that 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 they do business, and
  - (c) the financial markets.
- 1.3 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 Treasury, the Bank of England, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) – will act to resolve failing banking institutions, where it is in the public interest to do so.
- 1.4 The 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.
- 1.5 The main purpose of the Panel is, therefore, to provide advice to the 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

- 1.6 The specific functions of the Panel, as set out in Section 10(2) of the Act, are that it may advise the Treasury about:
  - (a) the exercise of powers to make statutory instruments under or by virtue of Part 1, 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.
- 1.7 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.
- 1.8 In addition, it is the Treasury's intention to refer matters relating to the resolution regime for clearing houses to the Panel.

## Statutory instruments

- 1.9 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.
- 1.10 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.
- 1.11 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).
- 1.12 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

- 1.13 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.
- 1.14 The Treasury will consult the Panel on any changes to the Code of Practice.

## Advice on other matters

- 1.15 The Panel may, when requested to do so by the Treasury, provide advice on any other issue related to its purpose.

## Membership

- 1.16 The Treasury shall appoint the members of the Panel (other than those appointed by the Bank of England, the PRA, the FCA and the Financial Services Compensation Scheme). Subsection 10(3) of the Act (see **Annex A**) requires the Treasury to ensure that, as a minimum, the Panel membership 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,

- (f) one or more persons who in the Treasury's opinion represent the interests of investment firms,
  - (g) one or more persons who in the Treasury's opinion have expertise in law relating to the financial systems of the United Kingdom, and
  - (h) one or more persons who in the Treasury's opinion have expertise in insolvency law and practice.
- 1.17 The Treasury will appoint one person to be the Chair of the Panel, and include as members for each meeting such additional persons as it deems necessary to represent it on the agenda items to be discussed at that meeting.
- 1.18 In respect of its obligations under (e), (f) and (g), the Treasury will appoint as corporate members of the Panel relevant financial services trade associations and professional organisations. A list of corporate members currently appointed is included at **Annex C**.
- 1.19 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.

## Process

### Meetings

- 1.20 The Panel shall meet quarterly or at any other frequency decided by the Panel. Where necessary, the Treasury may call additional meetings.
- 1.21 The Treasury will act as Chair of the Panel during its meetings, and will also provide its Secretariat. Attendance by the Bank of England, PRA and FCA is required for a meeting to be quorate. Panel members may make suggestions for the agenda, to which the Treasury shall have regard.

### Attendance

- 1.22 Members of the Panel have the right to attend meetings and contribute to the official advice given by the Panel to the Treasury.
- 1.23 Corporate members may provide any one person from among their members as they see fit to attend any meeting as their representative, or to represent them on any sub-group.
- 1.24 The chair may agree to allow a member to bring one technical expert with them to a meeting who 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

- 1.25 The Panel shall provide the Treasury with formal advice and the Treasury shall have regard to the Panel's recommendations.
- 1.26 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 of England, PRA and FCA 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.

- 1.27 Sub-groups will be not be chaired by the Treasury, Bank of England, PRA, FCA or FSCS. 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 sub-group 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.
- 1.28 The secretariat may take a role in facilitating the work of the sub-group (including provision of papers and drafting of advice) if required.
- 1.29 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 sub-group Chair, who takes a facilitating role.
- 1.30 Members of the Panel may communicate with the Treasury between meetings, to raise issues of concern falling within the remit of the Panel.
- 1.31 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**

- 1.32 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;
  - acting as a point of contact for Panel members between meetings.

### **Reporting**

- 1.33 Summaries of the proceedings of meetings of the Banking Liaison Panel will be published, subject to considerations of commercial and market confidentiality.
- 1.34 Advice given by the Panel to the Treasury may be published, subject to considerations of commercial and market sensitivity.
- 1.35 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**

- 1.36 These terms of reference will be reviewed periodically, as agreed by the Panel.



# C Membership

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In 2013-14 and 2014-15, the following financial services trade associations and professional organisations were appointed by the Treasury as corporate members of the Banking Liaison Panel:

- Association of British Insurers
- Association of Business Recovery Professionals
- Association of Financial Markets in Europe
- British Bankers Association
- Building Societies Association
- City of London Law Society
- Financial Markets Law Committee
- Insolvency Service
- International Swaps and Derivatives Association
- Investment Management Association
- European Association of CCP Clearing Houses