

APPOINTMENT: INDEPENDENT VALUER FOR THE DUNFERMLINE BUILDING SOCIETY COMPENSATION ARRANGEMENTS

1. This document sets out the basis upon which applications are invited for the office of the independent valuer under the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009 (“the Compensation Order”).¹
2. Applications should be sent to valuer.enquiries@hm-treasury.gov.uk and must be received no later than 14 October 2009.

A. Background information

Statutory framework

3. On 30 March 2009 the Bank of England exercised its powers under the Banking Act 2009 (“the Act”) to transfer some of the property, rights and liabilities (“business”) of Dunfermline Building Society (“Dunfermline”) (a) to Nationwide Building Society and (b) to a bridge bank (wholly owned and controlled by the Bank of England). This action was taken in the interests of financial stability and the transfers were effected by virtue of the Dunfermline Building Society Property Transfer Instrument (“the Transfer Instrument”).² Following these transfers Dunfermline was placed into building society special administration.
4. The Banking Act 2009 requires the Treasury to make:
 - (a) a compensation scheme order where a transfer has been made to a private sector purchaser (in this case Nationwide) (section 50(2) of the Act);
 - (b) a resolution fund order where a transfer has been made to a bridge bank (section 52(2)); and
 - (c) a third party compensation order where there has been a partial property transfer (i.e. a transfer of some, not all, of a failing bank or building society’s business) (sections 50(4) and 52(4)).
5. In accordance with these obligations the Treasury has made the Compensation Order, which provides for the appointment of an independent valuer to perform the functions referred to in article 4 of that Order. Detailed provision for the independent valuer is made in the Dunfermline Building Society Independent Valuer Order 2009 (“the Independent Valuer Order”).³

¹ S.I. 2009/1800.

² The Bank of England's press release is available at the following address:
<http://www.bankofengland.co.uk/publications/news/2009/030.htm>.

³ S.I. 2009/1810.

Remit

6. The person appointed as independent valuer will be required to discharge the functions referred to in article 4 of the Compensation Order (for an overview of these functions, see Annex 1).
7. In summary, the independent valuer will be required to:
 - assess whether any costs to be deducted from the Dunfermline Resolution Account were properly and reasonably incurred;
 - determine the amount the Financial Services Compensation Scheme would have recovered had Dunfermline been in default immediately before the transfers were made and had the scheme manager paid out the amount of compensation that qualifying claimants would have been entitled to have received; and
 - determine the amount of any compensation payable by the Treasury to third parties and communicate the determinations by means of “assessment notices” (see paragraphs 4 and 10 of Schedule 2 to the Compensation Order (as appropriate)).
8. Should the Treasury or any person affected by a determination set out in an assessment notice be dissatisfied with the determination, they may require the independent valuer to reconsider his or her determination in accordance with article 12 of the Independent Valuer Order. Should the independent valuer be required to reconsider his or her determination he or she will be required to issue a revised assessment notice setting out the information specified in article 12(3) of the Independent Valuer Order.
9. Should the Treasury or any person affected by a determination of the amount of any compensation which is contained in a revised assessment notice be dissatisfied with the revised assessment notice, they may refer the matter to the Financial Services and Markets Tribunal (“the Tribunal”) (article 13 of the Independent Valuer Order). The independent valuer would then act as a respondent in the Tribunal proceedings.
10. In the event that the Tribunal were to conclude that the independent valuer’s decision set out in the revised assessment notice was not a reasonable decision, the Tribunal must remit the matter to the independent valuer for reconsideration in accordance with such directions (if any) as the Tribunal considers appropriate. In such circumstances, the independent valuer must reconsider his or her determination in accordance with any such directions.

Staff

11. The independent valuer must be an individual. The valuer will be accountable for his or her assessments, for example, in the event of an appeal to the Tribunal. However, in order to be able to carry out the functions referred to in article 4 of the Compensation Order, he or she may need to have access to the professional and administrative

resources of his or her firm and to other sources of professional advice, in addition to any staff that he or she may choose to employ directly for the purposes of performing the functions referred to in article 4 of the Compensation Order.

Procedure

12. The independent valuer may make such procedural rules to be applied in conducting the functions referred to in article 4 of the Compensation Order as he or she considers appropriate (article 8 of the Independent Valuer Order). The procedure followed by the independent valuer must be fair. The procedural rules will be a matter for the independent valuer but might cover such matters as communications between the independent valuer and interested parties, the handling of information and deadlines for the submission of information.

Information

13. To ensure that the independent valuer has the powers necessary to obtain all information reasonably required to conduct the functions referred to in article 4 of the Compensation Order, the independent valuer has the power to apply to the court for an order requiring information reasonably required for those purposes to be supplied to the independent valuer (article 9 of the Independent Valuer Order).

Records and Accounts

14. The independent valuer is required to maintain reasonable arrangements for recording decisions made in exercise of the functions referred to in article 4 of the Compensation Order and for the safekeeping of those records and must also keep proper accounts and records in relation to those accounts (article 6 of the Independent Valuer Order).

B. Remuneration

Basis for remuneration

15. Article 3 of the Independent Valuer Order provides that the independent valuer will be paid such remuneration and reimbursed for such expenses as the Treasury may determine.
16. The Treasury will pay the independent valuer a fixed amount (the "assessment amount"). This amount will be comprised of:
 - remuneration for work done; and
 - reimbursement of expenses incurred (including the remuneration of any staff of the independent valuer and any professional advisers' fees),

from the date of his or her appointment up to the completion of all the functions referred to in article 4 of the Compensation Order. (In the case of the function referred to in article 4(a), "completion" means the issue of the last assessment notice to be issued under paragraph 4 or 10 of Schedule 2 to the Compensation Order (whichever is the later)).

17. The Treasury is prepared to consider proposals for making staged payments of the assessment amount on the basis of a maximum of 75% of the assessment amount being paid during the assessment period, with the final 25% being paid within 30 days of issue of the independent valuer's last assessment notice issued in accordance with paragraph 4 or 10 of Schedule 2 to the Compensation Order (whichever is the later).
18. The Treasury will not make payments in advance of work done or expenses incurred.
19. Remuneration in respect of any work the independent valuer is required to do, and reimbursement of any expenses incurred, after the issue of his or her last assessment notice under paragraph 4 or 10 of Schedule 2 to the Compensation Order (whichever is the later), including any work in issuing revised assessment notices under article 12 of the Independent Valuer Order and acting as a respondent before the Tribunal, will be paid or reimbursed monthly in arrears.
20. In the case of such further remuneration, payment will be made on the basis of agreed hourly or daily rates. These rates will be agreed with the independent valuer at the time of his or her appointment.
21. In the case of reimbursement of such further expenses, payment will be made against appropriate evidence that the expenses have been reasonably incurred in discharge of the independent valuer's duties.

Independent monitor

22. The Treasury will appoint an independent third party ("the monitor") to monitor the operation of the arrangements for the remuneration of, and payment of allowances to, the independent valuer (article 3(2) of the Independent Valuer Order).

Cost and timing assumptions

23. Applicants for appointment are required to provide an indicative timetable for the performance of the independent valuer's functions referred to in article 4 of the Compensation Order and a quotation for the assessment amount. The indicative timetable and quotation should be provided on the basis of the assumption that the independent valuer will have timely access to relevant financial and other business information reasonably requested from Dunfermline and its administrators for the purpose of

conducting the functions specified in article 9(3) of the Compensation Order.

24. If the assumption is not met, or other facts or matters become apparent or events occur which could not have been reasonably foreseen at the time the assessment amount is agreed, and additional work is undertaken and/or expenses are incurred as a consequence, additional:
- remuneration in respect of such work reasonably undertaken; and/or
 - reimbursement of such expenses reasonably incurred, will be payable.
25. As noted at paragraph 22 above, the Treasury will appoint a monitor to scrutinise the arrangements for the remuneration of, and payment of allowances to, the independent valuer including to assess whether:
- any work undertaken or expenses incurred pursuant to paragraph 19 have been reasonably undertaken or incurred in the discharge of the valuer's duties and the amount of any remuneration or reimbursement;
 - any additional remuneration or expenses pursuant to paragraph 24 are payable and the amount of any such payment.
26. For the avoidance of doubt, the Treasury regards any application for judicial review of a decision of the Treasury as an unforeseeable circumstance for these purposes. Remuneration for work done and expenses incurred by the independent valuer in connection with any judicial review (whether the work is done or expenses incurred during or after the assessment period) will be subject to assessment by the monitor.

Time and expenses recording systems

27. Applications should include details of the systems which would be operated for recording time spent on this matter (both of the independent valuer and any staff appointed by the valuer) and for verifying that any expenses additional to those included in the assessment amount are properly and reasonably incurred in the discharge of the duties as independent valuer.

C. Criteria for appointment

28. The following criteria must be satisfied in order for an applicant to be considered for appointment to the office of independent valuer:
- (a). **Demonstrable independence** of the applicant from Government and interested parties.

- (b). **Freedom from conflicts of interest:** given the number of organisations that have been involved in advising parties in relation to Dunfermline, some potential candidates may be ruled out because of actual or potential conflicts of interest.

29. In considering which person to appoint, the following additional criteria will be relevant:

- (a). **Professional skills and experience:** the applicant must have extensive professional financial company valuation skills. The successful applicant is likely to need to draw on a range of professional expertise, notably accountancy, investment banking and legal. We would expect the successful applicant to have high standing and credibility in their profession.
- (b). **Experience and ability to carry out a high profile public process:** in addition to being able to carry out the professional task of assessing any compensation payable, the successful applicant will need to have the capacity, resources, personal bearing and robustness to -
 - (i) manage a high-profile, potentially multi-stage, public process in a timely and efficient manner; and
 - (ii) explain his or her assessment to a range of different audiences (from individuals to potentially the Tribunal) in writing, in person and through professional intermediaries such as lawyers if necessary.
- (c). **Track record of timely delivery:** applicants will need to demonstrate by reference to an existing track record that they will be adequately resourced and capable of discharging the functions of independent valuer in a timely and efficient manner in the absence of conventional contract performance management by a client.

30. Overall **value for money** is also an important criterion against which applications will be judged.

D. Information required to be provided by applicants

31. The following section sets out the information and confirmations which should be included in applications for appointment as the independent valuer in order to enable the applications to be assessed.

Evidence in respect of criteria for appointment

32. Section C sets out criteria which will be considered in making the appointment. Applications for appointment should include evidence of satisfaction of the criteria including evidence of qualifications, experience

and examples of previous engagements where relevant qualifications and skills have been utilised.

Conflicts of interest

33. Applications for appointment as independent valuer must also include confirmation that the applicant:
- (a). has no actual or potential conflict between any personal or business interests and the functions as valuer that could influence, or be reasonably perceived to influence, the applicant's judgement in performing the functions as valuer;
 - (b). will not engage any staff who, to the best of his or her knowledge (having made reasonable enquiries), have any such actual or potential conflict of interests;
 - (c). will take appropriate steps to ensure that, if appointed, neither he or she nor any staff are placed in a position where there is any actual or potential conflict between any personal or business interests and the functions to be performed in connection with the functions referred to in paragraph 4 of the Compensation Order that could influence, or be reasonably perceived to influence, the judgements of the applicant and his or her staff in performing those functions; and
 - (d). will disclose to the Treasury and other interested parties full particulars of any such actual or potential conflict of interest that may arise.
34. Applications should include information about any involvement which the applicant or, if applicable, their firm had in Dunfermline and set out in detail the measures applicants will adopt, if successful, to ensure that the applicant, and staff who will be concerned in the performance of the valuer's functions referred to in article 4 of the Compensation Order, have no contact with individuals or data connected to that involvement.
35. Applicants from firms that might expect to do business with some of persons whose rights have been affected by the Transfer Instrument must include an explanation as to how they plan to avoid conflicts of interest.

Timetable

36. It is in the interests of persons affected by the Transfer Instrument that any compensation payable is determined as quickly as is reasonably practicable. The successful applicant will therefore be expected to conduct his or her functions referred to in article 4 of the Compensation Order in a timely manner.

37. Given the opportunity for affected parties or the Treasury to request the independent valuer to reconsider his or her determinations set out in assessment notices issued under paragraph 4 or 10 of Schedule 2 to the Compensation Order and for dissatisfied parties to refer revised assessment notices to the Tribunal, it is not possible for applicants to say with certainty how long it will take for the process for determining the compensation, if any, payable to third parties to be completed.
38. However applicants are required to submit an indicative planning timetable for their conduct of the function set out in article 4(a) of the Compensation Order if appointed, through to the issue of the last revised assessment notice on the basis of the assumption set out in paragraph 23, along the following lines:

<i>Activity</i>	<i>Duration</i>	<i>Comments</i>
Valuer establishes and communicates procedures		
Valuer makes determinations under Part 5 of the Compensation Order and issues assessment notices		
The valuer reconsiders his or her determinations, if those affected require the valuer to do so, and produces revised assessment notices		
Total duration:		

Staff and resources

39. Applicants must provide details of any resources, which may include investment banking, legal and administrative resources, which are available to the applicant and which could assist in the conduct of the functions referred to in article 4 of the Compensation Order.
40. If the applicant is a member of a firm, it should be identified in the application whether resources will come from within the firm and whether it will be necessary to seek external advice, for instance if those services are not available or, because of a perceived conflict of interest, are not proposed to be utilised.
41. Article 5 of the Independent Valuer Order provides that the independent valuer may appoint such staff as he or she may determine. The Order also provides that the valuer shall determine the remuneration and other conditions of service of the staff so appointed and pay such pensions, allowances or gratuities to or in respect of staff as he or she may determine. The determination of remuneration and other conditions of service of, and the payment of pensions, allowances and gratuities to, staff appointed by the valuer requires the approval of the Treasury. Accordingly, applications should include information about any staff which the applicant, if appointed as valuer, would appoint and their

remuneration, other conditions of service and any pensions, allowances and gratuities which he or she would propose to pay to such staff.

42. For the avoidance of doubt, for these purposes “staff” means staff appointed as employees of the independent valuer, whether on a temporary or permanent basis. If the valuer is a member of a firm, it will not include the use of staff or other resources within that firm. Any charges incurred for the use of such resources will be considered to form part of the valuer’s expenses.

Remuneration and expenses

43. Applications should include a quotation, on the basis of the assumption contained in Section B, for the assessment amount. A breakdown of the total amount should be provided split between the independent valuer’s own remuneration and expenses. Estimated expenses should be shown under broad headings, such as estimated remuneration of any staff employed by the valuer, legal costs, costs of other professional advisers, travel and accommodation costs, and any contingency risk reserve. The estimated expenses in respect of costs of professional staff not directly employed by the independent valuer should preferably be shown by level of staff member, chargeable rate per staff level, and category of work to be undertaken.

44. An applicant who wishes interim payments of the assessment amount to be made should indicate the proposed phasing on the basis of a maximum of 75% of the assessment amount being paid during the assessment period, with the final 25% being paid within 30 days of issue of the independent valuer’s last assessment notice under paragraph 4 or 10 of Schedule 2 to the Compensation Order (whichever is the later).

45. Applications should also include a schedule setting out:

- (a) the rates at which time would be billed for work by the independent valuer not included in the assessment amount; and
- (b) intended charging rates for proposed staff and other expenses for work not included in the assessment amount, and estimates of any reasonably foreseeable expenses for which a specific charging rate is not proposed.

Communications with interested parties, the media and the public

46. In discharging the functions of the independent valuer it will be necessary to communicate with the creditors of Dunfermline and other parties. This may include general communications as to the way in which the independent valuer’s functions are to be managed, regular progress reports and responding to individual queries. The independent valuer will need to judge how to use different modes of communication (eg, mass

mailings, web site, phone hot line, written or TV media) to discharge his or her functions effectively.

47. Necessary communications will also include the publication of assessment notices (and, if relevant, revised assessment notices) in accordance with paragraphs 4 and 10 of Schedule 2 to the Compensation Order.

- (a). Applications for appointment should include an explanation of the way in which it is proposed to manage communications, including any proposals for setting up a dedicated website for the purpose of such communications.

Fitness for appointment

48. Applications should also include confirmation that:

- (a). the applicant has no criminal convictions;
- (b). the applicant has not been made bankrupt and does not have any outstanding County Court Judgements against him or her;
- (c). the applicant has fully complied with all applicable tax laws and regulations and has no outstanding tax liabilities in the United Kingdom or in any other jurisdiction;
- (d). no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the applicant's knowledge and belief, is pending or threatened against the applicant which will or might have a material adverse effect on their ability to perform the functions of independent valuer;
- (e). the applicant has no reason to suppose that he or she will be unable to complete the appointment (for example due to health or proposed retirement);
- (f). the applicant has no reason to suppose that personal connections or other personal information might be misconstrued so as to undermine his or her ability to discharge the functions of independent valuer.

Relevant professional memberships

49. Although membership of a particular professional body is not an essential requirement, applications should include information about the applicant's membership of any professional body which may be relevant to the appointment and confirmation that if appointed the applicant will act in accordance with any relevant rules of conduct or code of ethics issued by any such professional body.

Insurance

50. Applications for appointment should include confirmation that the applicant has, or will obtain, a level of professional indemnity insurance to carry out the appointment that the Treasury considers to be appropriate, in particular, having regard to the nature of the independent valuer's functions referred to in article 4 of the Compensation Order.

Additional powers

51. Should the applicant identify in the application any additional powers that he or she believes would assist in ensuring a fair and effective procedure, the Treasury will consider these additional powers.

E. Selection process

52. Applicants for appointment as independent valuer are required to send to HM Treasury (valuer.enquiries@hm-treasury.gov.uk) an application containing the information set out in Section D, and any other information which may be relevant to the consideration of the application for appointment, no later than 14 October 2009.
53. A panel, which will be chaired by the Chief Executive of the Institute of Chartered Accountants of England and Wales, will produce a shortlist from the applications.
54. Shortlisted applicants will be invited to present their case, in person, to the panel, including how they meet the criteria in Section C.
55. The panel will make the final decision as to the appointment.

F. Additional information**Terms of appointment**

56. Draft terms of appointment of the independent valuer are attached at Annex 2 and the draft provisions setting out the arrangements for the remuneration of, and payment of expenses to, the independent valuer are set out at Annex 3.
57. It is intended that this invitation and the independent valuer's terms of appointment will be published on the Treasury's and the valuer's website.

Freedom of information

58. The Treasury may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the "Code"), be obliged under the FOIA to disclose information concerning the terms of appointment:

- (a) in certain circumstances without consulting the independent valuer, or
- (b) following consultation with the independent valuer and having taken any representations into account,

provided always that where sub-paragraph (a) applies the Treasury shall, in accordance with the recommendations of the Code, draw this to the independent valuer's attention prior to any disclosure.

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Requests for further information

59. Any questions seeking clarification of any aspects of this invitation to apply should be emailed to valuer.enquiries@hm-treasury.gov.uk by no later than 6 October 2009. Any such information provided, or a summary of this information, will be published on the Treasury website, for the benefit of other potential applicants.

16 September 2009

Annex 1 Overview of the Functions of the Independent Valuer

Third Party Compensation

1. Article 9 of, and Schedule 2 to, the Compensation Order make provision for the third party compensation scheme.

Persons affected by the application of section 38(6) of the Banking Act 2009

2. The independent valuer is required to determine the compensation, if any, payable to persons affected by the application of section 38(6) of the Act (which specifies that the Transfer Instrument is to be disregarded in determining whether a default event provision applies) (article 9(2) of, and Part 2 of Schedule 2 to, the Compensation Order).
3. Where the independent valuer makes a determination as to the compensation, if any, payable the independent valuer must issue an assessment notice in accordance with paragraph 4 of Schedule 2 to the Compensation Order.

“No creditor worse off safeguard”

4. The independent valuer is required to determine the compensation, if any, payable to the pre-transfer creditors of Dunfermline (defined in section 60(3)(b) of the Act) (article 9(3) of, and Part 3 of Schedule 2 to, the Compensation Order). This requires the independent valuer to assess the treatment the pre-transfer creditors would have received had Dunfermline entered into insolvency immediately before the Transfer Instrument was made (“the insolvency treatment”) and to compare this with the treatment the creditors have received (e.g. on being transferred to Nationwide or to the bridge bank, or in special administration of Dunfermline) (“the actual treatment”).
5. In making the assessment of the insolvency treatment, the independent valuer must apply the valuation principles set out in paragraph 9 of Schedule 2 to the Compensation Order, and the principle which applies by virtue of section 57(3) of the Act.
6. To the extent that there is a difference between the insolvency treatment and the actual treatment, the independent valuer must assess the compensation payable by reference to the difference between the insolvency treatment and the actual treatment and on the basis of the fair and equitable value of that difference in treatment.
7. Where the independent valuer makes a determination as to the compensation, if any, payable the independent valuer must issue an assessment notice in accordance with paragraph 10 of Schedule 2 to the Compensation Order.

8. The independent valuer also has a discretion to determine that the Treasury must make interim payments to pre-transfer creditors before the determination of the actual treatment of the pre-transfer creditors has been made (paragraph 11 of Schedule 2 to the Compensation Order).
9. Where the independent valuer has determined that the Treasury must make interim payments, the independent valuer must determine what, if any, balancing payments are required to be paid to ensure that the pre-transfer creditors receive the relevant amount of compensation, if any, assessed to be payable under the “no creditor worse off” arrangements (paragraph 12 of Schedule 2 to the Compensation Order).

Financial Services Compensation Scheme

10. The independent valuer is required, in accordance with article 11 of the Compensation Order, to assess the amount the Financial Services Compensation Scheme would have been likely to have recovered from Dunfermline if, immediately before the Transfer Instrument was made, Dunfermline was in default, had entered into insolvency and the scheme manager had paid the amount of compensation that qualifying claimants would have been entitled to have received. This is relevant to the assessment of the amount the FSCS may be required to contribute towards the costs of the resolution of Dunfermline.

Dunfermline Resolution Account- Costs of Resolution

11. Part 4 of the Compensation Order makes provision for a resolution fund (“the Dunfermline Resolution Account” (“the Account”)) to be established (see articles 6 to 8 of, and Schedule 1 to, that Order) and held at the Bank of England.
12. The Bank of England must pay into the Account any consideration received from the sale of shares in the bridge bank or any distributions made by the bridge bank, for example following the sale of the business of the bridge bank or by a liquidator appointed to wind up the bridge bank. The ultimate beneficiary of the Account is Dunfermline.⁴ However, the Bank of England and the Treasury (“the authorities”) may be reimbursed from the Account for various costs incurred in relation to the operation of the bridge bank (see paragraphs 4 and 5 of Schedule 1 to the Compensation Order).
13. The Treasury has discretion as to whether costs of resolution may be deducted from the Account. However, before any amounts may be deducted to reimburse the authorities for their costs of resolution, these

⁴ As Dunfermline is now in building society special administration, any proceeds paid from the Account to Dunfermline will be distributed to its creditors in accordance with normal insolvency priorities.

costs must be certified by the independent valuer to have been properly and reasonably incurred.

14. The independent valuer is required to consider any invoices supplied by the Treasury in respect of costs incurred by the Bank of England and the Treasury, and inform the Treasury whether he or she considers the costs to have been reasonably and properly incurred.

Annex 2 Draft terms of appointment

[Date]

Dear [Sir]/[Madam],

The Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009 (S.I. 2009/1800) (“the Compensation Order”): Appointment as independent valuer

1. I refer to your application for appointment as independent valuer pursuant to the invitation to potential candidates dated [*] (the “Invitation”). This letter adopts the definitions used in the Invitation.
2. I am pleased to inform you that your application has been successful and that you are hereby appointed as independent valuer pursuant to article 5 of the Compensation Order.

Basis of appointment

3. Save where the contrary appears in this letter, your appointment as independent valuer is made on the basis of the Invitation.

Duties

4. You are required to discharge the functions and role of independent valuer referred to in article 4 of the Compensation Order and the provisions of Part 9 of the Financial Services and Markets Act 2000 and the Financial Services and Markets Tribunal Rules 2001 (both as modified in the Dunfermline Building Society Independent Valuer Order 2009 (S.I. 2009/1810) (“the Independent Valuer Order”). You will be expected at all times to act impartially, independently and fairly in the discharge of your functions as independent valuer.

Period of appointment

5. Your appointment will commence on [date] and, subject to paragraphs 10 to 12 below, will continue until you have completed all the functions referred to in article 4 of the Compensation Order. (In the case of the function referred to in article 4(a) “completed” means you have issued the last assessment notice issued under paragraph 4 or 10 of Schedule 2 to the Compensation Order (whichever is the later)) and all challenges to the assessment notices, whether by the revised assessment notice procedure, or referral to the Tribunal under article 13 of the Independent Valuer Order have been finally disposed of, unconditionally withdrawn, or where the time limit for making any such challenges has expired, whichever is the later.

Remuneration and reimbursement of expenses

6. The arrangements for your remuneration and the payment of expenses are set out in a letter from the Treasury dated [date].

Professional standards, conflicts of interest and indemnity

7. In accepting this appointment you confirm that you will–
- a. act in accordance with any relevant rules of conduct or code of ethics issued by any professional body of which you are a member; and
 - b. maintain an appropriate level of professional indemnity insurance to carry out the appointment.

Conflicts of interest

8. In accepting this appointment you confirm that you will take such steps as are necessary to avoid any actual or potential conflict between any personal or business interests and your functions as valuer that could influence, or be reasonably perceived to influence, your judgement in performing your functions as valuer and, in particular you will -
- a. not appoint staff or obtain assistance from staff employed by your firm who, to the best of your knowledge having made reasonable enquiries, have any such actual or potential conflict;
 - b. take appropriate steps to ensure that you, your staff and staff assisting you employed by your firm are not placed in a position where there is any such actual or potential conflict; and
 - c. disclose to the Treasury and other interested parties full particulars of any such actual or potential conflict of interest that may arise.
9. You will not consult, instruct, or obtain assistance from any party or person who, to the best of your knowledge having made reasonable enquiries, has any actual or potential conflict which could influence or be reasonably perceived to influence their or your judgment in relation to the performance of your functions as valuer.

Termination and vacation of office

10. The Appointment Panel may terminate your appointment by notice in writing with immediate effect on the ground of incapacity or serious misbehaviour (article 5(5) of the Compensation Order).
11. If your appointment is terminated or vacated (howsoever arising) you must provide (free of charge) such assistance as may reasonably be requested by any person appointed to take your place as independent valuer under the Compensation Order to facilitate an effective and timely handover of all work then in progress.
12. If you vacate office other than in circumstances outside your control you will reimburse the Treasury such amount as is reasonably required to provide for any additional costs arising out of the change of valuer. For the avoidance of doubt, your moving to another firm, the identity of which, by reason of its involvement with Dunfermline Building Society or otherwise, prevents your continuing as valuer, will not be treated as circumstances outside your control.

Yours sincerely,

[Signed for and on behalf of the Appointment Panel]

Annex 3 Arrangements for the remuneration of, and payment of expenses to the independent valuer

The Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009 (S.I. 2009/1800) (“the Compensation Order”): Appointment as independent valuer

1. We refer to your appointment as independent valuer pursuant to the invitation to potential candidates dated [*] (the “Invitation”) and the letter of the Appointment Panel dated [*]. This letter adopts the definitions used in the Invitation.
2. This letter sets out the arrangements for the payment of your remuneration and the reimbursement of your expenses.

Assessment amount

3. We will pay you an amount of £[*] (including VAT) being the fixed fee for all work undertaken, and all expenses incurred, during the period from the date of your appointment until you have completed all the functions referred to in article 4 of the Compensation Order. (In the case of the function referred to in article 4(a) of the Compensation Order, “completed” means you have issued the last assessment notice to be issued under paragraph 4 and 10 of Schedule 2 to the Compensation Order (whichever is the later). In this letter this amount is referred to as the “assessment amount” and the period in question as the “assessment period”).
4. The assessment amount will be paid as set out in Annex 1 to this letter.
5. The assessment amount has been agreed on the basis of the assumption that you will have timely access to relevant financial and other business information reasonably requested from Dunfermline and its administrators for the purpose of conducting the functions specified in article 9(3) of the Compensation Order.
6. If this assumption is not met in practice, or other circumstances arise which could not have been reasonably foreseen by the date of this letter, then the assessment amount may be varied to take account of any resulting additional work reasonably undertaken by you or reasonable expenses incurred. The monitor appointed under article 3(2) of the Independent Valuer Order will assess whether a variation is justified and, if so, the amount of any further payment, calculated in accordance with the rates for remuneration and expenses set out at Annex 2 to this letter and in accordance with the provisions of paragraph 7 below.

Work undertaken and expenses incurred additional to the assessment amount

7. Remuneration for work reasonably undertaken and reimbursement for reasonable expenses which are incurred additional to the work undertaken and expenses incurred during the assessment period, will be calculated in accordance with the rates set out at Annex 2 to this letter and made on the following basis.
- a. The monitor will confirm whether such work has been reasonably undertaken and expenses have been reasonably incurred in the discharge of your duties. Any invoice received from you will be sent to the monitor within 14 days of receipt. The monitor will notify you and us of his or her decision within a reasonable period of time, but in any event, not exceeding the later of 60 days from the date of receipt of a record of the hours/days worked or expenses incurred in the previous month or 28 days from the receipt by the third party of all further information requested by him or her from you.
 - b. Payment will be made within 30 days of the confirmation at (a) above that the remuneration and expenses have been reasonably incurred.
8. Subject to paragraph 9, remuneration for work reasonably done and reimbursement for expenses reasonably incurred by you (whether the work is done or expenses incurred during or after the assessment period) in connection with-
- c. any judicial review proceedings challenging any action, decision or opinion of yours or ours, or
 - d. any other legal proceedings brought against you,

which relate to the discharge of your functions as independent valuer, will be provided in accordance with the assessment of the monitor on the same basis as set out in paragraph 7. Reimbursement in respect of an award of damages or costs against you in such proceedings will be similarly provided.

9. There will be no entitlement to any payment in accordance with paragraph 8 where the alleged default or liability is admitted or otherwise accepted by you, or is determined by a Court to have been caused by your wrongful act or negligence. You will repay within 30 days of such admission or acceptance or determination any such amounts paid to you.

Appointment of staff

10. The Independent Valuer Order provides that the valuer may appoint such staff as the valuer may determine. The Independent Valuer Order also provides that the valuer shall determine the remuneration and other conditions of service of the staff so appointed and pay such pensions, allowances or gratuities to or in respect of staff so appointed as the valuer may determine.
11. The determination of remuneration and other conditions of service of, and the payment of pensions, allowances and gratuities to, staff appointed by the valuer requires the approval of the Treasury. If you wish to appoint staff you must notify [contact name and address].
12. For the avoidance of doubt, for these purposes "staff" means persons who are your employees, whether on a temporary or permanent basis and does not include staff employed by your firm. Any charges incurred for the use of staff employed by, or other resources within, your firm will be considered to form part of your expenses and, if incurred during the assessment period, are included (subject to paragraph 6) in the assessment amount.

Time and expenses recording systems

13. The systems for recording time spent (both your time and that of your staff), and for verifying that any expenses for which you may seek reimbursement additional to those included in the assessment amount are incurred in the discharge of your duties as valuer, are as described in Annex 3 to this letter.

Yours sincerely,

[Signed for and on behalf of the Treasury]

Annex 1 Phasing of payments of assessment amount

1. The assessment amount will comprise:

(a) that part which relates to the valuer's remuneration, being £x.

(b) that part which relates to expenses, being £x.

2. How is payment to be phased?

[A maximum of 75% of the total assessment amount may be paid during the assessment period. We would expect the phasing to reflect the [proposed timing set out in the application. The final 25% may be paid within 30 days of the issue of the last assessment notice under Article 11 of the Compensation Scheme Order.]

3. To whom should the amounts be paid?

[Please nominate a single recipient for the part which relates to the valuer's remuneration and for the part which relates to expenses.]

Annex 2 Valuer's and Expenses Rates [Confidential – Commercial]

The following daily rates are specified for the purposes of the valuer's remuneration and the reimbursement of costs for work which does not, in accordance with the terms of appointment, fall within the assessment amount:

Valuer

XXXX

Members of [the valuer's firm / staff]

Annex 3 Valuer's systems for recording time and expenses

