



1 Churchill Place  
London  
E14 5HP

28 October 2009

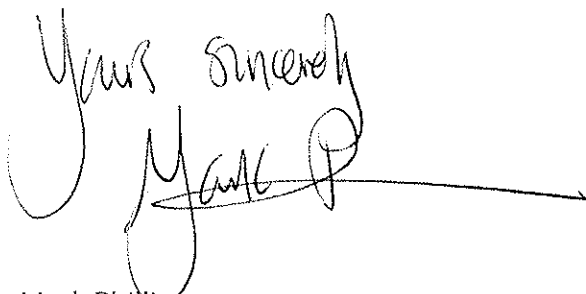
Mr Luke McInerney  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Dear Mr McInerney

Special Resolution Regime (SRR) – contributions to the cost of the SRR regime

Please find enclosed Barclays response to the HM Treasury consultation on the secondary legislation for the SRR. In particular we would like to highlight our concerns that there are currently no incentives within the regime for the authorities to ensure expenditure in pursuit of the SRR objectives is delivered in a cost efficient way. We would like to see guarantees from the Tripartite authorities that measures will be taken to ensure that any action taken under the SRR is subject to effective cost controls. As FSCS levy payers, we want to ensure that the levies we contribute to the FSCS are spent in a cost efficient manner.

As you will see from our response we have not answered all of the questions but we have provided some additional general points on how the regime should operate.

Yours sincerely  


Mark Phillips  
Head of Public Affairs

Also sent by email to: [luke.mcinerney@hm-treasury.gov.uk](mailto:luke.mcinerney@hm-treasury.gov.uk)

## Barclays response to HMT consultation on Special Resolution Regime (SRR) – contributions to the cost of the SRR regime

Barclays Bank PLC ('Barclays') is a major global financial services provider engaged in retail and commercial banking, credit cards, investment banking, wealth management and investment management services, with an extensive international presence in Europe, the Americas, Africa and Asia.

We were founded more than 300 years ago. Barclays operates in over 50 countries and employs approximately 145,000 people. Barclays moves, lends, invests and protects money for more than 49 million customers and clients worldwide.

### **1. What are your views on the costs to which the FSCS can be required to contribute?**

We agree with the Government decision that the Financial Services Compensation Scheme (FSCS) should be required to contribute to some of the costs of the Special Resolution Regime (SRR). However, there are two issues that need to be considered:

- Any move to pre-funding of depositor protection (p14, HMT White Paper on Reforming Financial Markets) may require a review of this policy.
- Changes to the Depositor Guarantee Directive could change both the scope and funding mechanisms for depositor compensation which in turn would require a review of these provisions, especially if the scope is to be broadened.

We would like to see greater cost controls and audit processes built into the SRR and assurance that HMT/FSCS/Bank of England (BoE) will ensure cost containment of the costs for running the SRR. We would expect such a requirement to apply both to the operation of the SRR and any provision of services to the authorities in relation to the SRR. We think that an industry representative should be able to represent the views of levy payers. Whilst the maximum costs would not be any higher than a compensation payout, there should be drivers to ensure effective cost containment including disclosure of relevant costs at least to an industry representative. HMT/BoE/FSCS should have both a responsibility to ensure cost effective use of FSCS funds used in pursuit of the SRR and the FSCS should have the powers to require disclosure of costs. The auditing process should be described in detail before levy payers contribute to the resolution.

### **2. What are your views on whether the “information and assumptions” required to be given to the FSCS should be set out in more detail?**

We would expect the approximate costs for levy payers to be conveyed as soon as possible as this is required for annual accounting purposes.

**4. What are your views on whether there should be greater clarity about the purpose of the independent verification process?**

In the absence of better value and cost containment we would expect this process to ensure cost-effective spending.

**5. What are your views on replacing the High Court or Court of Session with the Financial Services and Markets Tribunal as the forum for review of the independent valuer's decisions?**

No reasons for changing the appeals process to the Financial Services and Markets Tribunal (FSMT) are provided. We would like to understand the rationale for this change and whether appeals could be taken by the Court of Appeal as with the FSMT.

**Additional general points**

Given the significant costs involved for some levy payers, the information flow on the costs of the SRR and any liability of the FSCS needs to be conveyed to levy payers in a timely manner to allow for appropriate provisioning and investor disclosure. This is especially true where amounts are material in terms of the annual accounts and financial statements – as firms have disclosure requirements and possibly need to hedge against any significant interest costs they are like to incur. We would expect therefore—subject to constraints on disclosure caused by financial stability—that the FSCS pass the key information provided in regulation 4 to levy payers.

We would like the authorities to provide greater clarity on the application of regulation 5 in particular on how the authorities would be able to calculate any recoveries given the complexity of calculating such sums. As a levy payer we would like an assurance that recoveries are not being depressed as this would reduce any reduction levy payers are likely to receive under regulation 5 (5). We think an industry representative should be able to challenge the assumptions about the level of recoveries that are likely to emerge as it is not clear that the FSCS will be acting in the interests of levy payers.

With regard to regulation 5 (2) which states that Amount B will be considered with regard to qualifying claimants “immediately before the relevant time.” Given the powers the FSA has to change FSCS compensation levels without consultation and notice we would like assurances from the authorities that any change shortly before the application of regulation 5 (2) would not be considered. The effect otherwise would be to increase the amount levy payers have to cover without consulting with relevant stakeholders.

The FSA is also currently considering the development of a regime for temporary high balances. We note that such a regime would add considerably to the liability of the FSCS in the event of a default by a large retail bank. We would have concerns if Amount B were to include these new increased limits as this would significantly increase the liabilities of levy payers.

In the same way if there are to be any further increases at a UK or EU level on the levels of depositor protection afforded to eligible claimants we would expect the authorities to consider the impact this will have on levy payers, in particular on the calculation of Amount B.

On regulation 6 (8) we would expect any interest incurred to be at a market rate in order to ensure that there are incentives not to over-estimate the SRR costs.

Where HMT refunds a payment to the FSCS as set out in regulation 6 (7) and the refund leaves the FSCS with a surplus, we would expect the FSCS to refund the monies to levy payers in a timely manner. We would not expect the FSCS to hold onto any large refunded payments (subject of course to a pre-funded scheme not existing).

We are aware that the European Commission is currently considering the development of pan-European resolution regimes. We would hope that such moves are designed to effectively dovetail with the existing regimes in member states and that HMT is working closely with the Commission on these issues. We note the significant issues that were raised on netting and set-off during the passage of the Banking Act 2009 which were eventually addressed by close co-operation between the authorities and the industry.