



**Association for Payment Clearing Services**

Mercury House, Triton Court  
14 Finsbury Square  
London  
EC2A 1LQ

*Telephone* 020 7711 6200

*Facsimile* 020 7256 5527

[www.apacs.org.uk](http://www.apacs.org.uk)

*Direct line* 020 7711 6278

*Direct facsimile* 020 7628 1985

*Email* [Paul.Rider@apacs.org.uk](mailto:Paul.Rider@apacs.org.uk)

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**H M TREASURY GREEN PAPER: APACS RESPONSE**

**1. INTRODUCTION**

This note discusses the issues raised by the Green Paper, and it includes views expressed in discussions with clearing companies, APACS members who have contacted us directly, the BBA, LIBA and LINK. We understand that the latter organisations are responding separately. We have collated answers by question in Annex 1. Individual responses from the Clearing Companies are given in Annexes 2-5.

**2. GOVERNMENT POWERS TODAY**

2.1 APACS understands that the government has today broad powers to pass new legislation in an emergency, and also has specific powers notably under the Emergency Powers Acts (1920, as amended in 1964) and the Banking and Financial Dealings Act 1971.

**2.2 Broad power to pass legislation:**

- The Queen in Parliament is said to be sovereign. The sovereign's powers are extremely broad the effect being that government can actually do whatever it wants whenever it wants with respect to the passing of legislation and responding to a state of emergency. This was demonstrated in the government's response to the Omagh bombings in Northern Ireland when the anti terrorist bill was passed within a day. Obviously, in order to take such action the government would need to gain the support of at least one of the houses of parliament.
- The courts recognise no limit to Parliament's legislative power (save where legislation is incompatible with European Community law) and will not seriously entertain any attack on the validity of a public or private Act.

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**MEMBER CIRCULATION**

### **2.3 The Emergency Powers Act 1920 (as amended by the Emergency Powers Act 1964):**

- This Act gives Her Majesty the power to proclaim that a state of emergency exists and in response to such proclamation make regulations for the securing the essentials of life to the community. Regulations may confer or impose on the secretary of state or other government department or any other persons such powers and duties as Her Majesty may deem necessary “for the preservation of peace, for securing and regulating the supply and distribution of food, water, fuel, light and other necessities, for maintaining the means of transport and for other purposes essential to the public safety and life of the community”.
- This broad definition would in theory allow for emergency regulations to be passed dealing with aspects of the financial system however commentary surrounding to the act infers that the act is really concerned with public services, food and water. The act is amended in parts by the 1964 act, which refers to the passing of regulations to enable the temporary employment of the armed forces in agricultural work or other work being deemed to be urgent work of national importance.

### **2.4 Banking and Financial Dealings Act 1971:**

- Section 1 of this act confers powers to suspend financial and other dealings on bank holidays and to proclaim bank holidays.
- Section 2 confers powers to suspend certain financial dealings if it appears to the Treasury necessary to do so in the interests of the nation. However, the act does not go beyond proclaiming the power to suspend in certain circumstances for example it does not really deal with the effect any such suspensions may have on financial institutions.

## **3. DOES THE LEGISLATION NEED REVISION?**

3.1 The basic objective of introducing legislation which simplifies, clarifies and better prepares the UK in the event of a major operational disruption is pertinent and welcome. However the situation is potentially very complex, and how it should best be addressed would depend on the nature of the disruption event. There is real danger that pre-planned one-size-fits-all remedies might have unintended consequences which would be counter-productive.

3.2 However, the current legal arrangements are very broad in scope and also lack clarity. They may also be too slow as government agreement might be needed to act at very short notice. A legal framework which specifies more tightly just what the government might do in what circumstances, and the process by which it would exercise its powers, would give greater legal certainty, and this would assist financial stability.

3.3 The Financial Markets Law Committee, which is attended by a number of financial associations, agreed at their 31 March meeting that while at first sight the Treasury paper had much to commend it, on closer examination the situation is far more complex. The

Committee suggests that a number of fact-finding workstreams should be considered, including:

- a gap analysis in respect of existing UK legislation
- a similar analysis in respect of powers in a small number of important foreign jurisdictions, principally New York, Tokyo, Frankfurt, Brussels and Luxembourg (the latter two for Euroclear and Clearstream)
- market standard documentation
- definition of business day
- force majeure including market disruption and settlement disruption clauses
- anti-abuse type guidance in a crisis.

The Committee emphasised the complexity of the issue and the need for proper analysis be undertaken before any legislation is implemented. The Committee recommended that such analysis should be co-ordinated by the Bank of England, assisted by the FSA.

3.4 We understand that the City of London Law Society Banking Law Sub-Committee is also considering the issues and is actively seeking a meeting with HMT to discuss the legal aspects of the Green Paper. It is composed of representatives, principally partners, of the major law firms in London. It is also understood that this group share similar concerns as to the complexity of many of the issues involved and that they recognise a need to progress the issue carefully across a number of complex and interdependent workstreams.

3.5 One key constraint is the international interdependency of transactions performed in London, through systems such as CLS, TARGET and CREST/Euroclear. Many transactions may carry obligations and liabilities under contracts subject to other countries' jurisdictions; to what extent could, or should, UK government action take precedence over these? There is also concern that if the UK legal regime is seen to be onerous, then participants will consider adopting jurisdictions which are less onerous - and this would defeat the objective.

3.6 In summary, a quick legal remedy as part of a new Civil Contingencies Bill looks unrealistic and potentially counterproductive. The topic needs careful scrutiny, jointly between the government and the financial services industry.

#### **4. SETTING PRIORITIES IN A CRISIS**

4.1 Each potential major disruption event has unique features, and therefore its own unique priorities. There are some general rules of thumb, however, which this section addresses.

4.2 Securities markets exchange promises, whereas settlement systems exchange value. Therefore settlement issues generally have higher priority - they directly affect ownership of assets and liquidity of the participants, whereas markets issues can be postponed without generating those impacts.

4.3 Where delivery and payment reside within the same system, as typically they do for securities settlement, the impact (and thus the priority) is mitigated. Participants could incur market risk or interest risk, but not normally a principal risk as occurs with payment systems, which settle just the payment element.

4.4 The importance of high value payment systems such as CHAPS in a major disruption is that:

- it directly impacts systems in other countries, through TARGET and CLS, so has international implications
- transaction values are large enough to create potential liquidity and systemic risks for its participants

4.5 By contrast the low-value payment systems - BACS, Cheque & Credit, cash, cards - are used largely for domestic transactions, and values are typically not large enough to create liquidity or systemic risk. Their social impact is potentially high, however. If there were major operational disruption, the prospect (for instance) of many people not receiving their salaries, or being unable to withdraw cash from ATMs, or unable to use payment cards would gain intense media attention and fuel a flood of queries to banks, and would damage the economy if the problem was protracted.

4.6 Transaction volumes are significantly greater in BACS, cheques, cash and payment cards than they are through CHAPS. For example, based on 2002 figures it is estimated that over 70% of all payments (in terms of volume) are made by cash. This represents approximately 27 billion payments per year (74 million payments per day). Half of all cash (value) is acquired via ATMs. In contrast, payments made by CHAPS Sterling represent less than 0.1% of all transactions (by volume). This means that recourse to manual methods in a contingency is not practical for more than a tiny proportion of transactions. Increasing reliance on automation, for instance in the cheque clearing, means that without critical electronic communications there are no longer sufficient people with the necessary skills and encoding equipment to process from paper alone. Sorting out large numbers of queries, disputes and account updates retrospectively could take many weeks or months.

4.7 Therefore in a major operational disruption the low-value systems have a high priority. Every effort should be made to ensure that settlement of these systems is not interrupted, avoiding the risk that with settlement failure hundreds of thousands of transactions might need to be unwound.

4.8 Each clearing company is strengthening and clarifying rules, responsibilities and liabilities for its members and other affected parties in the event of major operational disruption. For example, BACS and Cheque & Credit Clearing are implementing settlement risk agreements which give strong legal underpinning and reduce member exposure to potential settlement failure of one or two members. One further area APACS and the Clearing Companies are exploring is the extent to which each payment system can act as a contingency for a failed system. This requires identifying the types of payment which would need to take priority, and codifying the procedures which would give effect to the priorities.

## 5. ACTIONS THE GOVERNMENT COULD TAKE

5.1 There are different views within the financial community about whether, and if so in what way, government intervention during a major operational disruption would be productive. There are a number of possible areas where the government might intervene, as follows.

- declaration of a Major Operational Disruption situation (MOD).
- protection against litigation
- prioritisation of resource such as power, transport and telecommunications
- suspension powers (section 6 of the Treasury paper)
- direction powers (section 7 of the Treasury paper)

5.2 **Declaration of MOD.** Exceptional government powers should only be enabled in extreme circumstances. Less extreme events, such as operational failure of a major participant or a key payment system, have in depth contingency arrangements built and tested to cater for them. Therefore MOD which would need government action might be those where at least two key participants in a number of payment systems, or at least two payment system infrastructures, were operationally unavailable for a potentially extended period (at least 24 hours). In particular, if the telecoms infrastructure were to experience a major outage, all clearings could potentially be stricken.

A tighter definition than this would be unhelpful, because each potential MOD is unique. It would be the responsibility of government, after consulting the key institutions impacted within the financial industry, to declare a MOD when the circumstances warrant it. We suggest that some comparison of different potential MOD scenarios might allow an illustration of the circumstances under which the Government should declare a MOD.

5.3 **Protection against litigation.** Following a major operational disruption the Boards and the Executive of payment systems such as CHAPS, BACS and Cheque & Credit Clearing might be faced, in unprecedented circumstances and with incomplete information, with taking urgent and critical decisions which may have serious consequences for some participants and their customers. There is serious concern that this may leave the individuals vulnerable to subsequent litigation from aggrieved parties. The private sector can consider additional safeguards here by tightening payment scheme rules, and contracts with customers and with suppliers. However, the government should also consider whether when the government declares a MOD it could also set aside some of the normal legal obligations and liabilities which apply to payment system participants, in relation to:

- other payment system participants
- customers, who may suffer from payment delays
- employees, who may be working under emergency conditions which do not fully meet health and safety or working hours regulations
- regulators, in terms of capital adequacy, money laundering and reporting requirements.

A particular example is the settlement risk agreements being implemented by BACS and Cheque & Credit Clearing, as discussed in section 4.8 above. They embody as much legal certainty as can be achieved by expert legal advice, but they have not been tested in court. The government could remove any residual uncertainty by declaring that, in the event that a MOD is declared, these agreements will be upheld by the government. Cheque and Credit are also reviewing the cheque returns agreements to ensure that returns are not used as a “work around” should settlement agreements be invoked.

It is important to note however that there is a balance to strike between protecting against litigation and retaining responsibility and accountability. The industry needs to be careful about seeking to protect the directors or the payment systems in a way that might mean future directors do not exercise the expected due care (e.g. in trying to obtain information) or put in place adequate contingency arrangements.

**5.4 Prioritisation of resource.** Since payment systems are part of the Critical National Infrastructure, it is in the national interest that their requirements are given a high priority during MOD. The government would presumably take control of allocating certain key and potentially scarce resources including:

- data communications, where the capacity of the telecomms networks may be constrained, could be crucial for the payments computer centres and more generally for e-mail communication
- voice communications, both for mobile networks and fixed lines and for media broadcasts
- electric power, which may be crucial to the operation of payment systems and their key members
- transport, enabling key individuals to meet or to reach their offices.

There should be smooth, legally agreed means of defining priorities and assigning these resources. Although much of this can be, and is being, coordinated within the private sector and the supervisory bodies such as the Bank of England and the FSA, ultimately only the government can arbitrate the needs of the financial industry against those of other industries and services.

**5.5 Suspension powers.** This is a complex issue with no ready, generic answers. For any normal contingency the payment system Board can choose whether to

- (a) keep running (in primary or at contingency sites) with any participants who are willing and able to send and receive transactions; or
- (b) to implement controlled closure of the payment system until (at least) the following working day.

The normal preference is for (a), so that a localised problem does not escalate to affect areas and participants which are operating normally. However, the larger the disruption event the easier it is to devise examples where (b) might be less damaging. For instance, if a multi-banked customer finds that the banks it uses mostly for incoming payments are not functioning whereas the banks it uses for making payments operate as normal, it might incur cash-flow difficulties or ultimately breach credit limits. Similarly banks themselves could find that major distortions in liquidity or credit positions could

accumulate. Since this depends on the exact nature of the disruption event, we suggest that criteria be defined for the enablement of suspension powers by the government, along the following lines.

Government suspension powers should be exercised if (and only if):

- the government has declared a MOD
- the governing body of a financial infrastructure (eg CHAPS Board, BACS Board) has requested the government to suspend that infrastructure
- the suspension process allows for actions, including the clearing of certain payments, which would enable the infrastructure to achieve a controlled shutdown to enable orderly opening on a subsequent day.

**5.6 Direction powers.** It is difficult to see how direction powers might work usefully in practice. Taking in turn the examples given in Box 7.1 (page 40) of the Treasury paper:

- *Fear of legal claims and liabilities.* This is addressed in 5.3 above, as one of the implications of the government declaring MOD. APACS suggests that protection against litigation should be considered separately from and prior to potential suspension or direction by the government. (The example quoted here appears to relate to suspension rather than direction.)
- *Differing views within the industry.* Accepting that it is the private sector which is best equipped to understand the consequences of these emergency decisions, it is possible that views around a Board table may differ - particularly if some members have a sharp conflict of interest. In these circumstances a powerful and knowledgeable arbitrator could broker a decision - perhaps from the Bank of England, or the FSA, or the government. The power of direction, though, is unlikely to add further value and brings the danger of moral hazard, where a Board might be tempted to shift the responsibility on to less expert, and therefore less suitable, government shoulders.
- *Computer virus in banks' systems causing salary payment delays.* For many salary payments direct entry into BACS, bypassing the paying bank's system, is a viable option. Employees who bank elsewhere could therefore be paid (though the payment system banks would need to deal with potential settlement risks). Suspension of direct debits is both too blunt an instrument (since it would impact all banks, and start to generate large backlogs and potential financial problems for the direct debit recipients) and too narrow an instrument (since other account outflows, such as cash, debit cards and standing orders would still remain).
- *Wider effects of specific decisions.* The financial sector is likelier than the government to understand the wider effects within its own industry, and the declaration of MOD as suggested above would limit the potential liabilities. There may be potential effects outside the financial industry which the government should highlight, but Direction looks to be too blunt an instrument for identifying specific actions. Once again it would raise concerns about moral hazard and about unintended consequences.

On balance, APACS view is that the government should not seek new Direction powers.

## **6. CONCLUSION**

Questions raised in the Green Paper are important and complex. We believe therefore that this should be progressed by the Government in close consultation with the financial industry and with other country's governments. The risk of unintended consequences means that this is a process that cannot be rushed.

APACS and the Clearing Companies would be very willing to participate in further consideration of the issues. In the meantime, we are looking to see how the private sector arrangements can be strengthened.

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**COLLATED RESPONSES BY QUESTION**

	<p><b>GENERAL</b></p>
	<p><b>Abbey National</b></p> <p>These represent our initial views in relation to the implications for payments, as our internal discussions regarding the wider implications are ongoing.</p> <ul style="list-style-type: none"> <li>• Abbey National believes that the financial sector should be responsible for managing itself in a disaster situation with support from the financial regulatory authorities.</li> <li>• There is a requirement for urgent, clear and unambiguous communication and decision- making processes, particularly in the confusion likely to follow some disaster scenarios we are now considering. Flexibility is key following such an event.</li> <li>• Contingency plans should already exist in the financial sector for many of the scenarios outlined in the Green Paper. However, planning scenarios have changed significantly since 9/11. New threats have emerged e.g. large-scale terrorism and biological attacks, that require the industry both collectively and individually, to reassess their risks and ensure that contingency plans are robust enough to cope with these situations.</li> <li>• Legislation is not the immediate priority, as the industry must first assess what other measures it could take. This is such a complex area to address and will require further analysis of dependencies and the interlinking networks to ensure that issues are fully understood and potential solutions considered. However, some legislation e.g. to provide powers of suspension, may be required once the industry has carried out a full assessment of its risks and identified what support it needs for its plans. At this stage in the industry risk assessment process it is too early to tell what is needed and a knee-jerk reaction may create unintended consequences.</li> <li>• We believe that as far as possible the financial sector should be self-regulating. There is a need for a clear, consistent response to be triggered. Potentially we believe this could be achieved by developing an overarching Accord that all banks would sign up to. The creation of such an Accord, and commitment to it, would define the rules that would apply in each disaster scenario. Trigger points would be set to determine the point at which the Accord would be invoked in each disaster scenario. The financial regulatory authorities would oversee the Accord and would be responsible for monitoring the trigger points and communicating across the industry and other interested parties.</li> </ul> <p><b>Considerations for APACS/Clearings</b></p> <ul style="list-style-type: none"> <li>• Whilst contingency plans already exist within the payments industry for many of the scenarios outlined in the paper e.g. major flood, more action is required by the financial sector to strengthen its ability to respond to major operational disruption due to a sudden catastrophic event, such as a 9/11 or dirty bomb scenario.</li> <li>• The industry needs to consider what further measures are necessary to mitigate new risks such as concentration risk e.g. the concentration of facilities in London and increasingly in Northampton and Milton Keynes, or the mobility</li> </ul>

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	<p>of staff in a disaster situation. It could be very costly to mitigate these new risks effectively and may not be considered commercially viable to some organisations, however, some innovative thinking is required within the industry to develop workable solutions. Some minimum levels of contingency will need to be agreed.</p> <ul style="list-style-type: none"> <li>• Some order of priority will need to be agreed across the clearings for getting systems up and running.</li> <li>• What implications does this have for the new Settlement Risk Agreements? How would these operate in a major disaster situation rather than a financial crisis? We need to ensure that there are no unintended effects.</li> <li>• Is there a need for a more formal pan-clearing company contingency plan? What would happen if all clearings were knocked out of action at the same time?</li> <li>• Clearing Company scheme rules and customer agreements will need to be reviewed for impacts. Consideration needs to be given to the implications and protection required for customers, for example if direct debits cannot be paid or salaries processed.</li> <li>• The impact of a disaster scenario on supplier contracts needs to be considered e.g. telecoms, electric, Water, IT etc.</li> <li>• The different roles played by the Bank of England need to be clear in these scenarios i.e. oversight/regulator, operational processor or clearing member.</li> <li>• What will happen in a scenario that creates a disaster situation for some organisations more than others?             <ul style="list-style-type: none"> <li>▪ Alternative contingency arrangements may become available to the payments industry if the UK enters the Euro. These should be reflected in the APACS/BBA's UK Banking Industry Outline Euro Entry Blueprint.</li> </ul> </li> </ul>
	<p><b>BACS (See also Annex 2)</b></p> <p>We have reviewed the Green Paper and carried out some scenario planning within BACS to help to formulate our response. I outline our views in the attachment (incorporated into Annex 2), which responds to the key broad questions addressed in the document as outlined in Box 1.1, on page 6 of the Green Paper.</p> <p>Our understanding of the current position, post the events of September 11th 2001, is that the Government is undertaking a review of the existing civil contingency provisions and in particular the resilience of the UK's financial services industry. Specifically, the Green Paper introduces the possibility of new legislation in the form of the proposed 'Civil Contingencies Bill' to replace the current framework, which was primarily designed to cater for the threats brought about as a result of the 'Cold War'.</p> <p>Whilst we would agree that there may be a need to over-haul the existing emergency powers available to Government it is felt that a degree of caution should be exercised, not least because of the nature of the sector in which operate. Legislation can have a tendency to be inflexible especially when confronted with fast moving technological environments. In this regard the existing forms of co-operation between ourselves and our customers / suppliers that are in place to deal with emergency situations should already provide sufficient protection, albeit we accept that these could be reviewed and then may</p>

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	<p>need to be more formalised to meet the Governments objectives.</p> <p>Notwithstanding the above, our preliminary view of the Green Paper is that it appears to indicate a resolve on the Government's part to initiate some form of change through the mechanism of the proposed 'Civil Contingencies Bill'. If this is to be then we would accept that some form of over-arching legislative provision may be helpful if only to strengthen our position by giving priority to the UK's critical financial infrastructures.</p> <p>Dealing specifically with some of the issues raised by the Green Paper we consider that the suggested powers of suspension and / or direction of financial services may provide some clarity and assistance to the industry although much work will need to be done concerning how, when and by whom such decisions can be taken. What we would be keen to avoid is any possibility of confusion in interpreting the rules, which may have an adverse effect on the delivery of our service. One further area of criticality from BACS' perspective is telecommunications and other fundamental external services. We understand that the Government can already direct telecommunications by way of a condition contained in the granting of telecommunications operator licences. However, the extent of this power could perhaps be clarified and even similarly extended to other service providers (ie utilities companies) for the benefit of guaranteeing our ability to continue to operate in times of uncertainty.</p> <p>I am happy to take part in, or to provide experts from BACS for further debate.</p>
	<b>Bank of Scotland</b> <p>We are content with the draft responses to the questions answered. The subject is indeed complex and we agree with what is being said in relation to this issue.</p> <p>If possible, the definition of what represents a crisis would be useful both in terms of the impact on financial systems and the geographic extent/location of an unthinkable event that could cause major disruption to the financial systems (the very essence of business) - in London, globally and elsewhere in the UK. Perhaps some form of categorisation that defines the level of crisis, the required escalation and the resultant scope of the powers that would need to be invoked would bring clarity.</p>
	<b>Cheque &amp; Credit (extract, full response in Annex 4)</b> <p>The recent agreement by the Members to execute the first of the Settlement Agreement documents could well prove to be a watershed in improving the resilience of all the delayed settlement systems as well as reducing the potential exposure of Members where one participant is unable to fund its commitments. The massive reduction in settlement risk for the delayed settlement clearings from approximately £35Bn to £2Bn does rely, however, on the opinion of Mark Hapgood QC's interpretation of the 'Single Amount' principle.</p> <p>The Government's green paper entitled 'The Financial System and Major Operational Disruption' invites System Operators to offer suggestions as to how HM Treasury might be able to improve resilience, possibly through legislation to support situations such as those referred to above, where the Nation's communications infrastructure is critically damaged. If the 'Single Amount' principle were to become enshrined in Law then the doubts, which have been expressed by some about Mr Hapgood's opinion, could be assuaged. Further, the concerns that many are expressing about the potential efficacy of the proposed 'Returns Agreement' might also be addressed.</p>

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	<b>Dresdner Bank</b> Kindly note that we agree in general to your statements and the draft responses to the questions raised in the Green Paper. Although we do not have a deep knowledge of the London/UK market place and the UK legislation, we feel a more detailed analysis would be of utmost importance in view of far-reaching consequences a new legislation might result in.
	<b>HSBC</b> <b><i>In the event of a major disruption to markets and/or settlement systems the Banks/Financial Institutions and the authorities need to take whatever action is agreed as necessary for the situation in hand. No two situations are likely to be the same and we fear that legislation could restrict the freedom to act in what is considered the most appropriate way. The private sector may feel constrained from acting until it knows what action Government is going to take. Any additional legislation should focus on protecting institutions from claims for damages as a result of non-settlement and then only if the cause was reasonably beyond their control.</i></b>  <i>We believe that the issues and responses should reflect the need to balance improving legal certainty in times of severe disruption, (and this could be particularly important if it becomes impossible to complete a contract on the due date), and the need to avoid knock on effects into other centres, (it is well recognised that London is tightly linked into all major global financial centres).</i>  We suggest the inclusion of a recommendation to undertake some scenario analysis to consider how changed legislation might operate and what the knock on effects might be. This would take time and must involve consideration of the knock on effects into other markets.  We also wonder whether there should be reference to the increasing amount of payment legislation where a pan European approach/interpretation is being encouraged (e.g. on the FATF proposals) – a co-ordinated pan European contingency legal framework would perhaps avoid some of the pitfalls, which might occur if the UK went alone in passing such a bill.  The world has moved on a pace since the ‘Storm of 1987’. Then settlement was largely a manual affair with paper being exchanged across the ‘Town Clearing’. CHAPS was of much lower volume, settled net at the end of the day and did not start processing payments so early as it does now. Today, once payments start to flow, settlement banks are faced with a funding requirement. CREST for instance receives its' initial injection of liquidity automatically once the Bank of England has completed the intra day liquidity repo just prior to the opening of CHAPS at 06.00. It will the carry on settling trades until the liquidity runs out or all trades are settled. In CLS, if GBP trades are not settled the impact will be felt in the other 6, soon to be 10, currencies settled by the system. <b>It is not so easy just to call a non-settlement day as we did in 1987.</b>  <b><u>Improved legal certainty would therefore be welcomed, but operational interference would not, and could be detrimental to attracting business to the UK.</u></b>  From a retail bank perspective the UK ATM network has been categorised as part of the critical UK infrastructure. This would be the area of earliest pain and most likely negative PR were there to be a "serious" incident. During the preparations for Y2K all banks gave significant focus on cash management etc.

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	<p><b>Liquidity Managers Group (see also Annex 5)</b></p> <p>APACS Liquidity Managers Group (“LMG”) represents the interests of the providers of liquidity in the sterling and euro real time settlement systems in London, (CHAPS, CREST and CLS). As such they are responsible for ensuring a supply of liquidity sufficient for the payment needs of their own institutions and their customers for each payment or group of payments throughout the operational day, many of which can involve sums of money measured in billions. This is done by using their own assets as collateral against their obligations. In this respect these systems have different requirements from the higher volume but lower value systems (such as BACS) which settle net payments once a day. So the response of the liquidity providers in the real time high value settlement systems reflects this attitude.</p> <p>It is relevant that we are dealing here with settlement, not trading. Deals done on exchanges (or over the counter) are promises to trade and are not completed until actual settlement has taken place. This may be the same day but usually (for instance in the equities or FX markets) settlement takes place two or three days after trading. Clearing (as in London Clearing House, for example) shifts the risks to be faced between trading and settlement onto other risk-takers and reduces them but they still exist until settlement has been completed. So these comments are made from the point of view of settlement systems liquidity providers.</p> <p>In general terms LMG would make the following points:</p> <ul style="list-style-type: none"><li>▪ Increasingly settlement of trades involves a linked and/or a cross-border element. That is, settlement in one country of one leg is accompanied by settlement of another leg in another country. So non-settlement of one leg may impose penalties on parties abroad. Therefore it is essential that what is decided in the UK in response to major operational disruption is accepted abroad.</li><li>▪ What is required is clarity. Service providers want to know whether the systems are open or shut and whether the terms of their contracts apply or not. In practical terms this may mean establishing an international understanding or definition of Force Majeure. Clarity also means that if a settlement system shuts down it needs to be able to do so such that all members can be told what their position is at the time of shutting. When the system re-opens it should do so from the shut-down point (with necessary adjustments expressed in terms of interest to account for any time delay).</li><li>▪ Broadly, we agree that private sector organisations are responsible for their own decisions. So liquidity managers will respond to decisions made by settlement systems in response to circumstances (as happens nowadays when systems are disrupted). What is needed is knowledge that these decisions taken in extreme circumstances will be supported by the authorities so that organisations that make consequential decisions will be safe from subsequent legal attack.</li><li>▪ There is scope for considerable discussion about the advantages of allowing settlement to continue between counterparties if they so wish (NB clearly this can only happen if the relevant settlement system is open.) On balance, considering the level of control over inflows and outflows that liquidity managers would in practice be able to exert in extremely stressful scenarios and the amounts of money involved, LMG is of the opinion that settlement systems should be open for all or shut for all. Ultimately, however, this is a matter for the systems concerned (in consultation as necessary at the time</li></ul>

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	with the authorities).
	<b>Nationwide</b> We are broadly happy with the (APACS) paper. Our main concerns with Government involvement are the opportunity for paralysis awaiting declaration of an extraordinary solution and the opportunity for unqualified people to be looked to for decisions. Your paper covers the latter to an extent, but not the former.

<b>3A</b>	<b>Do you have any general comments about types of market-based approaches to promoting order in the financial system during major operational disruption?</b>
	<p><b>CHAPS (see also Annex 3)</b></p> <p>Generally we have a high level of understanding on the underlying contingency measures available to the clearings and a communications structure which supports existing scenarios.</p> <p><b>Communications in Extreme Scenarios</b></p> <p>There is a need for clarity in the communications structure in extreme scenarios. Whilst “internal” communication lines are strong there is a need to know, understand and be part the supra-national communications set up.</p> <p>Whilst we are aware of the Tri-partite Group comprising HMT, Bank of England and FSA it is not clear how information and advice would cascade upwards and perhaps guidance pass downwards.</p>
	<p><b>Wachovia na</b></p> <p>HMT, Bank of England and FSA should clearly document what legal powers each organization has in the event of operational disruption via new legislation. (Certainly the legislation should be flexible enough to meet various scenarios.) This includes a power to declare a bank holiday, suspend trading and settlement activities at the exchange house, payment activities by the payment systems and etc. Although we believe that the power each organization has may be clearly documented somewhere else, it would be very helpful to review it and document it especially because the world we live in now is an uncertain one. For example, during the 9/11 event, it was not clear as to who has the authority to suspend activities by DTC which is now being reviewed.</p> <p>HMT, Bank of England and FSA as one group should publish the guidelines on best practice regarding disaster recovery measures and testing as well as business resumption. All segments of the financial system including financial institutions, payment systems, exchange houses, clearing house and etc should have the same level of contingency preparedness. We believe that this is very important as a market disruption in one segment of the financial system would impact the entire system’s liquidity and all other transaction flows, since each segment of the financial system is very interdependent.</p> <p>Since Euro is one of the major currencies which UK has been involved in very actively, we would like to see HMT, FSA and Bank of England clearly document their roles and legal powers regarding Euro vis – a – vis their counterparts in Euroland. Given the role of Euro, an operational disruption in Germany would have a large negative impact on Euro liquidity in the UK and everywhere else. For example, a decision made by the German authorities to close their exchange house would have a major impact on Euro liquidity in Europe including the UK. In this case what role and powers would HMT, FSA and Bank of England have in mitigating liquidity risks and operational impact?</p>

<b>3B</b>	<b>Is there more that could usefully be done by the private sector to strengthen the contingency provisions in contracts and other legal instruments? Is there a role for the authorities in assisting with this?</b>
	<b>BACS</b> Clearly all organisations should look to ensure that any of their critical supplier contracts make provision for an emergency situation, although they could not insist on any specific inclusion especially where the contract is ongoing. The Green Paper talks about the use of “force majeure” clauses - these are only of assistance in giving a right to suspend the service and would not help in its continuance.
	<b>CHAPS</b> We have a contract and an MoU with our two key suppliers. I am not sure how legislation could be used to facilitate greater strength in these arrangements.
	<b>LMG</b> The private sector needs to continue to strengthen contingency provisions in the face of continuing changes in the risks that are faced. In particular common understandings of terms such as Force Majeure would be useful. The authorities could help by encouraging an international dimension to this work.

<b>3C</b>	<b>Is there more that could usefully be done by the private sector to strengthen market co-operation? Is there a role for the authorities in assisting with this?</b>
	<b>BACS</b> We would advocate regular testing of end-to-end contingency plans. Each organisation will have its own programme of testing but this may not cover all the links between and extend into critical suppliers. There could be an advisory role for a Government agency, e.g. National Infrastructure Security Co-ordination Centre, in setting standards. BACS is part of the Critical National Infrastructure.
	<b>CHAPS</b> There may be a role here to analyse and provide an understanding of the interdependencies across all markets and infrastructure providers. The outcome of such an analysis could provide sufficient clarity to undertake some “war-gaming” exercises to test different extreme scenarios.
	<b>LMG</b> The private sector should continue to strengthen market co-operation (including clearing and settlement co-operation). There should be continuing dialogue between the trading and settlement systems to understand the impacts of disruption in one system on the others. The authorities can assist by providing background information on how they would co-ordinate the work of the infrastructure (telecoms, police, fire service etc).
	<b>Wachovia Bank na</b> We believe that more could be done by the private sector in promoting order in the financial system. Each group (payment systems, exchange house, clearing house, financial institutions and etc) could better coordinate disaster recovery measures and testing

<b>4A</b>	<b>In principle, would it be useful to have new legislation to help promote order in the financial system in the face of major operational disruption?</b>
	<b>BACS</b> Our analysis suggests that from BACS' perspective some legislation could possibly be helpful to deliver clarity and provide respite in very extreme circumstances and with the support of the markets. However, work would need to be done to simulate effects under various scenarios as to how legislation would operate.
	<b>CHAPS</b> Legislation combined with a clear understanding of the communications structure in place to support the financial system may help to provide a legal basis to stop and think and consolidate information. It may also provide the necessary protection to officers and directors in the event of third party dissatisfaction to decisions made.
	<b>HSBC</b> Legislation could be restrictive and may not cover all scenarios. There may be a need to go outside its scope.
	<b>LMG</b> New legislation is the most difficult area not least because of the multiplicity of different scenarios envisageable. In our view new legislation should be restricted to the highest levels and should aim to support the decisions of individual trade associations and business bodies concerned (in consultation as necessary with the authorities in the light of the circumstances). This will mean that the authorities (in consultation with business associations) can agree that an emergency exists. This will not in itself require individual systems to decide to close or otherwise alter normal working but will provide them with an overall picture against which they can make their decisions.

<b>4B</b>	<b>Have you any comments on: how new legislation might address risks; the possible disadvantages and limitations of new legislation; and the general constraints on the use of new legislation?</b>
	<b>BACS</b> Whilst legislation could help to provide a breathing space for recovery after a major and widespread failure, it would need to be at very high level to allow flexibility for different circumstances and to cater for changing technologies.
	<b>CHAPS</b> Immunity to prosecution in the event of taking extreme decisions may help but until all the interdependencies, both domestic and global in nature, are understood it is difficult to quantify limitations and constraints.
	<b>LMG</b> See response for 4a.

<b>4C</b>	<b>If new legislation were to be sought, are the suspension and direction powers the right choices? Are there any other types of legislation that might be useful to help promote order in the financial system?</b>
	<b>BACS</b> We feel that there should be investigation into possible legislation to give priority for services to key workers in critical financial services. This would cover things like access, premises, transportation, fuel, voice and data services (including, e.g. cell phone networks), and key hardware / software support. This could mean that they formed part of a second tier of 'essential services' after primary services such as hospitals, police and fire fighters.
	<b>CHAPS</b> Need to define direction. It could be argued that "direction" from a government body on how to operate the clearings is not the best way forward. The infrastructure managers and owners are best qualified and should advise appropriately. Rather than direction fundamental support on agreed ways forward may be more suitable. The approach must ultimately have a high degree of flexibility. Prioritisation is important if major utilities are to be restored effectively. For example it would be useful to establish government databases for: <ul style="list-style-type: none"><li>• Telecom routing configurations, overlaid by financial network traffic</li><li>• Locations of members / clearing companies / other relevant organisations primary and contingency sites, thereby identifying clusters and hot-spots.</li><li>• Priorities for key expertise areas, in terms of travel passes / restoration of telecomms / contention for other resources e.g rented contingency space.</li></ul>
	<b>HSBC</b> We would agree that the approach must have a high degree of flexibility.
	<b>LMG</b> See response for 4a.

<b>5A</b>	<b>Have you any comments on the possible approaches to making secondary legislation/administrative directions, including who should exercise this function, the attractiveness of potential fallback routes for making the secondary legislation/administrative directions, accountability to Parliament and modification of secondary legislation/administrative directions?</b>
	<b>HSBC</b> Any future implementation of legislation should only be after careful consideration between HMT/BoE and FSA.

<b>5B</b>	<b>Should primary legislation include further conditions for use of its powers (beyond the basis for use being major operational disruption and not a purely financial crisis)? If so, what?</b>
	<b>HSBC</b> Use of powers beyond MOD would be highly controversial and could lead to a diminution of the standing of the City amongst global financial markets. This should be resisted.

<b>5C</b>	<b>Would you support specification in the primary legislation of a maximum time period for the duration of powers? If so, how, and for what period?</b>
	<b>CHAPS</b> The duration would have to last as long as the crisis.
	<b>HSBC</b> It is pointless having a maximum period set in terms of time. Powers should continue until certain circumstances have been resumed: these would need to be defined in the same way that conditions for invoking the powers are defined. Once enacted it needs to be reviewed/renewed daily. There is no wish to be in a position of being able to resume activities and yet being prevented from doing so because of temporary emergency powers.

<b>5D</b>	<b>If the powers were adopted, do you agree they should affect actions in the UK (rather than actions governed by UK law)?</b>
	<b>CHAPS</b> The scope should include all business within the UK, irrespective of the governing jurisdiction of the relative contracts.
	<b>HSBC</b> Unless a pan-European approach is adopted, we would agree with limiting the impact to actions in the UK rather than all actions governed by UK law.

<b>5E</b>	<b>If the Government seeks new legislation, should it allow the use of powers following major operational disruption affecting a non-UK major financial centre?</b>
	<p><b>CHAPS</b></p> <p>Comments against Q 3c are relevant here: “There may be a role here to analyse and provide an understanding of the interdependencies across all markets and infrastructure providers. The outcome of such an analysis could provide sufficient clarity to undertake some “war-gaming” exercises to test different extreme scenarios”.</p>
	<p><b>HSBC</b></p> <p>Countries should have procedures in place to prevent cross infection so it should not be necessary to enact emergency powers in the event of problems in a non-UK centre. It might be worth commissioning research to make sure that this is the case.</p>

<b>6A</b>	<b>Which wholesale market obligations should be included in a suspension power 's maximum scope? Please draw attention to any particular issues that might arise (e.g. regarding proprietary rights).</b>
	<p><b>CHAPS</b></p> <p>From the clearings perspective it may be worth considering what industry self-discipline and collaboration could be expected and what principles or guidelines could be adopted to underpin that collaboration. For example:</p> <p>Prioritise payments and securities transactions for settlement;</p> <ul style="list-style-type: none"> <li>• Systemic/critical impact settlement first</li> <li>• Settlements before trading</li> <li>• Release today's value date only</li> <li>• By message type e.g. Treasury</li> <li>• Critical amount transactions (&gt;£/€ NN Million)</li> </ul>
	<p><b>HSBC</b></p> <p>Q's 6a &amp; 6c are interlinked. It will be difficult to prioritise transactions over any lengthy period, as some may have a low period over a day or two, but may be come urgent if left longer. This is a question which will face SWIFT when they are considering only proposing to handle 25/50% of messages in the first few hours/days if both operating centres are taken out of action. For example, it is clear that liquidity transactions should have the highest priority, but how do you choose between an FX deal, a securities trade or a significant commercial trade?</p> <p>To some extent we would agree with CHAPS comments, but sight must not be lost of the inter-system dependencies and individual bank's funding needs. Payments out via CREST could well be funded by CHAPS payments and vice-versa.</p>

<b>6B</b>	<b>Should retail obligations be included in a suspension power 's maximum scope?</b>
	<p><b>CHAPS</b></p> <p>Depends upon the scale of disruption, it may be more advantageous to effect a “controlled” closedown to the business day and ensure that FI’s are able to start on the next business day with a reasonable assumption of stability.</p> <p>We do not believe that it is possible to draw a clear distinction between wholesale and retail. Settlement of retail payments creates wholesale funding/investment needs in wholesale.</p>
	<p><b>HSBC</b></p> <p>We do not believe that it is possible to draw a clear distinction between wholesale and retail. Settlement of retail payments creates wholesale funding/investment needs in wholesale.</p>

<b>6C</b>	<b>If a distinction should be made between retail and wholesale obligations, how should the line be drawn?</b>
	<p><b>CHAPS</b></p> <p>See response to 6a.</p>
	<p><b>HSBC</b></p> <p>See response to 6a.</p>

<b>6D</b>	<b>Which insurance contracts, if any, should be included in a suspension power 's maximum scope?</b>

<b>6E</b>	<b>Are there any other types of obligations suitable for inclusion in a suspension power 's maximum scope?</b>

<b>6F</b>	<b>Should obligations governed by foreign law, but falling to be performed in the UK, be subject to the suspension power? How important is this? How might such an effect be achieved?</b>
	<p><b>CHAPS</b></p> <p>Reference Q5 d</p> <p>The scope should include all business within the UK, irrespective of the governing jurisdiction of the relative contracts.</p>

<b>6G</b>	<b>Should a suspension order only be able to apply to all the obligations arising from a contract? Or are there cases for which it could be preferable to suspend some obligations arising from a contract, but not others?</b>

<b>6H</b>	<b>Should a suspension power only be able to affect obligations which could not be fulfilled as a result of the disruption?</b>

<b>6H</b>	<b>Should a suspension power only be able to affect obligations which could not be fulfilled as a result of the disruption?</b>
	<b>CHAPS</b> To do so may simply muddy the waters.
<b>6I</b>	<b>Are there any other restrictions that should apply to how a suspension power could be used?</b>
<b>6J</b>	<b>Have you any comments about consequential effects of a suspension power?</b>
	<b>CHAPS</b> Consequential loss is not normally included in such circumstances.
	<b>HSBC</b> Consequential loss is not normally included in such circumstances.
<b>6K</b>	<b>After a suspension period should obligations return immediately, as soon as practically possible, or is some other approach preferable?</b>

<p><b>6L</b></p>	<p><b>Do you support the idea of a suspension power, subject to the constraints of paragraph 6.28?</b></p> <p><b>“The Government believes that a suspension power might be useful in some circumstances, but would be grateful for views. The Government believes that any suspension power should be limited – it should never be used in a purely financial crisis; should only be used in extreme circumstances, and only with the support of the markets (ascertaining this support would, of course, be subject to the practical limitations on consultation that may arise in the circumstances of major operational disruption).</b></p> <p><b>The Government would only use a suspension power if the overall benefits of doing so outweighed the costs. In using the power, the Government would in particular, have to consider any costs and benefits of use for retail financial services customers.</b></p>
	<p><b>BACS</b></p> <p>This could be of use in very extreme conditions as outlined in paragraph 6.28. Our view at this stage is that suspension of settlement should not apply to the day on which the emergency occurred, but for subsequent day(s). This is because BACS payments would be at different stages and suspension could cause further confusion, whereas suspension for a limited time following the disruption would allow time for restoration. Once systems were fully restarted, the inbuilt processes would unravel individual payment problems through, e.g. the unpaid Direct Debits and unapplied credits processes.</p>
	<p><b>CHAPS</b></p> <p>Suspension is the extreme measure. As implied in the response to Q 6b on the day that the crisis arises it is probably critically important to effect a “controlled” closedown ensuring that infrastructures and markets are able to effect closure with the objective of opening for business safely on the next available business day.</p> <p>Temporary suspension on the day the crisis arises for think time, advice and guidance information cascades may be more appropriate.</p>
	<p><b>LMG</b></p> <p>LMG would support the idea of a suspension power subject to the constraints of paragraph 6.28. We can support the concept that settlement of contracts can be frozen to be revived later but should not be cancelled. Notably, the Bank of England has recently agreed with the market a strategy for dealing with the consequences of an enforced delay to settlement (an example of market co-operation to cope with disruption).</p>

<p><b>7A</b></p>	<p><b>Should recognised bodies be within the maximum scope of a direction power?</b></p>

<b>7B</b>	<b>Should payment systems be within the maximum scope of the direction power? If so, which?</b>
	<b>CHAPS</b> Payment systems provide the last link in the value chain of the underlying transaction. All major payment systems and networks should be included.
	<b>HSBC</b> It depends on what the direction powers are whether payment systems should be included. HMT also needs to recognise that there are major differences in the way the payment systems work and it may well be a case of 'one size does not fit all'!

<b>7C</b>	<b>Should functions of institutions that are similar to the functions of recognised bodies and payment systems be within the maximum scope of a direction power?</b>
	<b>CHAPS</b> This implies "on-account" transfers. If an institution can function then this functionality could aid the process of affecting a controlled closedown. Suggest that this is outwith the scope.

<b>7D</b>	<b>What actions should directions to infrastructure be able to order? Should directions themselves effect changes, where appropriate, or only be able to require infrastructure to take actions?</b>
	<b>CHAPS</b> On the basis of previous comments the directions would be based on the advice cascaded upwards to some supra-national committee or body.

<b>7E</b>	<b>Have you any comments about consequential effects of a direction power?</b>

**BACS RESPONSE TO COLLECTED QUESTIONS**  
**(ANNEX C OF THE GREEN PAPER)**

- 3b. Is there more that could usefully be done by the private sector to strengthen the contingency provisions in contracts and other legal instruments? Is there a role for the authorities in assisting with this?**

Clearly all organisations should look to ensure that any of their critical supplier contracts make provision for an emergency situation, although they could not insist on any specific inclusion especially where the contract is ongoing. The Green Paper talks about the use of “force majeure” clauses - these are only of assistance in giving a right to suspend the service and would not help in its continuance.

- 3c. Is there more that could usefully be done by the private sector to strengthen market co-operation? Is there a role for the authorities in assisting with this?**

We would advocate regular testing of end-to-end contingency plans. Each organisation will have its own programme of testing but this may not cover all the links between and extend into critical suppliers. There could be an advisory role for a Government agency, e.g. National Infrastructure Security Co-ordination Centre, in setting standards. BACS is part of the Critical National Infrastructure.

- 4a. In principle, would it be useful to have new legislation to help promote order in the financial system in the face of major operational disruption?**

Our analysis suggests that from BACS’ perspective some legislation could possibly be helpful to deliver clarity and provide respite in very extreme circumstances and with the support of the markets. However, work would need to be done to simulate effects under various scenarios as to how legislation would operate.

- 4b. Have you any comments on: how new legislation might address risks; the possible disadvantages and limitations of new legislation; and the general constraints on the use of new legislation?**

Whilst legislation could help to provide a breathing space for recovery after a major and widespread failure, it would need to be at very high level to allow flexibility for different circumstances and to cater for changing technologies.

- 4c. If new legislation were to be sought, are the suspension and direction powers the right choices? Are there any other types of legislation that might be useful to help promote order in the financial system?**

We feel that there should be investigation into possible legislation to give priority for services to key workers in critical financial services. This would cover things like access, premises, transportation, fuel, voice and data services (including, e.g.

cell phone networks), and key hardware / software support. This could mean that they formed part of a second tier of 'essential services' after primary services such as hospitals, police and fire fighters.

**6i. Do you support the idea of a suspension power, subject to the constraints of paragraph 6.28?**

This could be of use in very extreme conditions as outlined in paragraph 6.28. Our view at this stage is that suspension of settlement should not apply to the day on which the emergency occurred, but for subsequent day(s). This is because BACS payments would be at different stages and suspension could cause further confusion, whereas suspension for a limited time following the disruption would allow time for restoration. Once systems were fully restarted, the inbuilt processes would unravel individual payment problems through, e.g. the unpaid Direct Debits and unapplied credits processes.

**7f. Do you support the idea of a direction power, subject to the constraints of paragraph 7.29?**

We have not identified a circumstance where we see a direction power as beneficial to BACS' payments in the event of an emergency. Payments come directly to BACS from c.50,000 organisations (with many more organisations using it through bureau services). They also come differentially across the month. Although there are peak days for payroll and for Direct Debits, they only represent a proportion of payments. A direction power to suspend Direct Debits would be too blunt an instrument. A more appropriate approach would be for financial institutions to suspend any charges resulting from an emergency. This has happened in the past when problems have occurred with individual BACS payroll submissions.

**CHAPS RESPONSE**

Section Ref.	Question	CHAPS Response
General		<p><b>Bank of Scotland</b></p> <p>We are content with the draft responses to the questions answered. The subject is indeed complex and we agree with what is being said in relation to this issue.</p> <p>If possible, the definition of what represents a crisis would be useful both in terms of the impact on financial systems and the geographic extent/location of an unthinkable event that could cause major disruption to the financial systems (the very essence of business) - in London, globally and elsewhere in the UK. Perhaps some form of categorisation that defines the level of crisis, the required escalation and the resultant scope of the powers that would need to be invoked would bring clarity.</p> <p><b>Dresdner Bank</b></p> <p>Kindly note that we agree in general to your statements and the draft responses to the questions raised in the Green Paper. Although we do not have a deep knowledge of the London/UK market place and the UK legislation, we feel a more detailed analysis would be of utmost importance in view of far-reaching consequences a new legislation might result in.</p> <p><b>HSBC</b></p> <p>We are disappointed that BBA and APACS are not submitting a joint response on behalf of the payments industry, although we accept that this may give an opportunity to emphasise different aspects of the HMT paper.</p> <p>The world has moved on a pace since the 'Storm of 1987'. Then settlement was largely a manual affair with paper being exchanged across the 'Town Clearing'. CHAPS was of much lower volume,</p>

Section Ref.	Question	CHAPS Response
		<p>settled net at the end of the day and did not start processing payments so early as it does now. Today, once payments start to flow, settlement banks are faced with a funding requirement. CREST for instance receives its' initial injection of liquidity automatically once the Bank of England has completed the intra day liquidity repo just prior to the opening of CHAPS at 06.00. It will the carry on settling trades until the liquidity runs out or all trades are settled. In CLS, if GBP trades are not settled the impact will be felt in the other 6, soon to be 10, currencies settled by the system. <b>It is not so easy just to call a non-settlement day as we did in 1987.</b></p>

Section Ref.	Question	CHAPS Response
Q 3a	Do you have any general comments about types of market-based approaches to promoting order in the financial system during major operational disruption?	<p>Generally we have a high level of understanding on the underlying contingency measures available to the clearings and a communications structure which supports existing scenarios.</p> <p><b>Communications in Extreme Scenarios</b></p> <p>There is a need for clarity in the communications structure in extreme scenarios. Whilst “internal” communication lines are strong there is a need to know, understand and be part the supra-national communications set up.</p> <p>Whilst we are aware of the Tri-partite Group comprising HMT, Bank of England and FSA it is not clear how information and advice would cascade upwards and perhaps guidance pass downwards.</p> <p><b>HSBC</b></p> <p><b>In the event of a major disruption to markets and/or settlement systems the Banks/Financial Institutions and the authorities need to take whatever action is agreed as necessary for the situation in hand.</b> No two situations are likely to be the same and we fear that legislation could restrict the freedom to act in what is considered the most appropriate way. <b>The private sector may feel constrained from acting until it knows what action Government is going to take.</b> Any additional legislation should focus on protecting institutions from claims for damages as a result of non-settlement and then only if the cause was reasonably beyond their control.</p> <p><i>We believe that the issues and responses should reflect the need to balance improving legal certainty in times of severe disruption, (and this could be particularly important if it becomes impossible to complete a contract on the due date), and the need to avoid knock on effects into other centres, (it is well recognised that London is tightly linked into all major global financial centres).</i></p> <p>We suggest the inclusion of a recommendation to undertake some scenario analysis to consider how changed legislation might operate and what the knock on effects might be. This would take</p>

Section Ref.	Question	CHAPS Response
		<p>time and must involve consideration of the knock on effects into other markets.</p> <p>We also wonder whether there should be reference to the increasing amount of payment legislation where a pan European approach/interpretation is being encouraged (e.g. on the FATF proposals) – a co-ordinated pan European contingency legal framework would perhaps avoid some of the pitfalls, which might occur if the UK went alone in passing such a bill.</p> <p><b><u>Improved legal certainty would therefore be welcomed, but operational interference would not, and could be detrimental to attracting business to the UK.</u></b></p> <p><i>From a retail bank perspective the UK ATM network has been categorised as part of the critical UK infrastructure and the response appears somewhat light in terms of the ATM environment. This would be the area of earliest pain and most likely negative PR were there to be a "serious" incident. During the preparations for Y2K all banks gave significant focus on cash management etc.</i></p> <p><b>Wachovia na</b></p> <p>HMT, Bank of England and FSA should clearly document what legal powers each organization has in the event of operational disruption via new legislation. (Certainly the legislation should be flexible enough to meet various scenarios.) This includes a power to declare a bank holiday, suspend trading and settlement activities at the exchange house, payment activities by the payment systems and etc. Although we believe that the power each organization has may be clearly documented somewhere else, it would be very helpful to review it and document it especially because the world we live in now is an uncertain one. For example, during the 9/11 event, it was not clear as to who has the authority to suspend activities by DTC which is now being reviewed.</p> <p>HMT, Bank of England and FSA as one group should publish the guidelines on best practice regarding disaster recovery measures and testing as well as business resumption. All segments of the</p>

Section Ref.	Question	CHAPS Response
		<p>financial system including financial institutions, payment systems, exchange houses, clearing house and etc should have the same level of contingency preparedness. We believe that this is very important as a market disruption in one segment of the financial system would impact the entire system's liquidity and all other transaction flows, since each segment of the financial system is very interdependent.</p> <p>Since Euro is one of the major currencies which UK has been involved in very actively, we would like to see HMT, FSA and Bank of England clearly document their roles and legal powers regarding Euro vis – a – vis their counterparts in Euroland. Given the role of Euro, an operational disruption in Germany would have a large negative impact on Euro liquidity in the UK and everywhere else. For example, a decision made by the German authorities to close their exchange house would have a major impact on Euro liquidity in Europe including the UK. In this case what role and powers would HMT, FSA and Bank of England have in mitigating liquidity risks and operational impact?</p>

Section Ref.	Question	CHAPS Response
Q 3b	Is there more that could usefully be done by the private sector to strengthen the contingency provisions in contracts and other legal instruments? Is there a role for the authorities in assisting with this?	We have a contract and an MoU with our two key suppliers. I am not sure how legislation could be used to facilitate greater strength in these arrangements.
Q 3c	Is there more that could usefully be done by the private sector to strengthen market co-operation? Is there a role for the authorities in assisting with this?	<p>There may be a role here to analyse and provide an understanding of the interdependencies across all markets and infrastructure providers. The outcome of such an analysis could provide sufficient clarity to undertake some “war-gaming” exercises to test different extreme scenarios.</p> <p><b>Wachovia Bank na</b></p> <p>We believe that more could be done by the private sector in promoting order in the financial system. Each group (payment systems, exchange house, clearing house, financial institutions and etc) could better coordinate disaster recovery measures and testing</p>
Q 4a	In principle, would it be useful to have new legislation to help promote order in the financial system in the face of major operational disruption?	<p>Legislation combined with a clear understanding of the communications structure in place to support the financial system may help to provide a legal basis to stop and think and consolidate information. It may also provide the necessary protection to officers and directors in the event of third party dissatisfaction to decisions made.</p> <p><b>HSBC</b></p> <p>Legislation could be restrictive and may not cover all scenarios. There may be a need to go outside its scope.</p>
Q 4b	<p>Have you any comments on:</p> <ol style="list-style-type: none"> <li>1. how new legislation might address risks; the possible disadvantages and limitations of new legislation;</li> <li>2. and the general constraints on the use of new legislation?</li> </ol>	Immunity to prosecution in the event of taking extreme decisions may help but until all the interdependencies, both domestic and global in nature, are understood it is difficult to quantify limitations and constraints.

Section Ref.	Question	CHAPS Response
Q 4c	If new legislation were to be sought, are the suspension and direction powers the right choices? Are there any other types of legislation that might be useful to help promote order in the financial system?	<p>Need to define direction. It could be argued that “direction” from a government body on how to operate the clearings is not the best way forward. The infrastructure managers and owners are best qualified and should advise appropriately. Rather than direction fundamental support on agreed ways forward may be more suitable.</p> <p>The approach must ultimately have a high degree of flexibility.</p> <p>Prioritisation is important if major utilities are to be restored effectively. For example it would be useful to establish government databases for:</p> <ul style="list-style-type: none"> <li>• Telecom routing configurations, overlaid by financial network traffic</li> <li>• Locations of members / clearing companies / other relevant organisations primary and contingency sites, thereby identifying clusters and hot-spots.</li> <li>• Priorities for key expertise areas, in terms of travel passes / restoration of telecomms / contention for other resources e.g rented contingency space.</li> </ul> <p><b>HSBC</b></p> <p>We would agree that the approach must have a high degree of flexibility.</p>
Q 5a	Have you any comments on the possible approaches to making secondary legislation/administrative directions, including who should exercise this function, the attractiveness of potential fallback routes for making the secondary legislation/administrative directions, accountability to Parliament and modification of secondary legislation/administrative directions?	<p><b>HSBC</b></p> <p>Any future implementation of legislation should only be after careful consideration between HMT/BoE and FSA.</p>

Section Ref.	Question	CHAPS Response
Q 5b	<p>Should primary legislation include further conditions for use of its powers (beyond the basis for use being major operational disruption and not a purely financial crisis)?</p> <p>If so, what?</p>	<p><b>HSBC</b></p> <p>Use of powers beyond MOD would be highly controversial and could lead to a diminution of the standing of the City amongst global financial markets. This should be resisted.</p>
Q 5c	<p>Would you support specification in the primary legislation of a maximum time period for the duration of powers?</p> <p>If so, how, and for what period?</p>	<p>The duration would have to last as long as the crisis.</p> <p><b>HSBC</b></p> <p>It is pointless having a maximum period set in terms of time. Powers should continue until certain circumstances have been resumed: these would need to be defined in the same way that conditions for invoking the powers are defined. Once enacted it needs to be reviewed/renewed daily. There is no wish to be in a position of being able to resume activities and yet being prevented from doing so because of temporary emergency powers.</p>
Q 5d	<p>If the powers were adopted, do you agree they should affect actions in the UK (rather than actions governed by UK law)?</p>	<p>The scope should include all business within the UK, irrespective of the governing jurisdiction of the relative contracts.</p> <p><b>HSBC</b></p> <p>Unless a pan-European approach is adopted, we would agree with limiting the impact to actions in the UK rather than all actions governed by UK law.</p>
Q 5e	<p>If the Government seeks new legislation, should it allow the use of powers following major operational disruption affecting a non-UK major financial centre?</p>	<p>Comments against Q 3c are relevant here:</p> <p>“There may be a role here to analyse and provide an understanding of the interdependencies across all markets and infrastructure providers. The outcome of such an analysis could provide sufficient clarity to undertake some “war-gaming” exercises to test different extreme scenarios”.</p> <p><b>HSBC</b></p> <p>Countries should have procedures in place to prevent cross infection so it should not be necessary to enact emergency powers in the event of problems in a non-UK centre. It might be worth commissioning research to make sure that this is the case.</p>

Section Ref.	Question	CHAPS Response
Q 6a	Which wholesale market obligations should be included in a suspension power 's maximum scope? Please draw attention to any particular issues that might arise (e.g. regarding proprietary rights).	<p>From the clearings perspective it may be worth considering what industry self-discipline and collaboration could be expected and what principles or guidelines could be adopted to underpin that collaboration. For example:</p> <p>Prioritise payments and securities transactions for settlement;</p> <ul style="list-style-type: none"> <li>• Systemic/critical impact settlement first</li> <li>• Settlements before trading</li> <li>• Release today's value date only</li> <li>• By message type e.g. Treasury</li> <li>• Critical amount transactions (&gt;£/€ NN Million)</li> </ul> <p><b>HSBC</b></p> <p>Q's 6a &amp; 6c are interlinked. It will be difficult to prioritise transactions over any lengthy period, as some may have a low period over a day or two, but may be come urgent if left longer. This is a question which will face SWIFT when they are considering only proposing to handle 25/50% of messages in the first few hours/days if both operating centres are taken out of action. For example, it is clear that liquidity transactions should have the highest priority, but how do you choose between an FX deal, a securities trade or a significant commercial trade?</p> <p>To some extent we would agree with CHAPS comments, but sight must not be lost of the inter-system dependencies and individual bank's funding needs. Payments out via CREST could well be funded by CHAPS payments and vice-a-versa.</p>
Q 6b	Should retail obligations be included in a suspension power 's maximum scope?	<p>Depends upon the scale of disruption, it may be more advantageous to effect a "controlled" closedown to the business day and ensure that FI's are able to start on the next business day with a reasonable assumption of stability.</p> <p>We do not believe that it is possible to draw a clear distinction between wholesale and retail. Settlement of retail payments creates wholesale funding/investment needs in wholesale.</p>

Section Ref.	Question	CHAPS Response
Q 6c	If a distinction should be made between retail and wholesale obligations, how should the line be drawn?	See response to 6a.
Q 6d	Which insurance contracts, if any, should be included in a suspension power 's maximum scope?	
Q 6e	Are there any other types of obligations suitable for inclusion in a suspension power 's maximum scope?	
Q 6f	Should obligations governed by foreign law, but falling to be performed in the UK, be subject to the suspension power? How important is this? How might such an effect be achieved?	Reference Q5 d The scope should include all business within the UK, irrespective of the governing jurisdiction of the relative contracts.
Q 6g	Should a suspension order only be able to apply to all the obligations arising from a contract? Or are there cases for which it could be preferable to suspend some obligations arising from a contract, but not others?	
Q 6h	Should a suspension power only be able to affect obligations which could not be fulfilled as a result of the disruption?	To do so may simply muddy the waters.
Q 6i	Are there any other restrictions that should apply to how a suspension power could be used?	
Q 6k	Have you any comments about consequential effects of a suspension power?	Consequential loss is not normally included in such circumstances.

Section Ref.	Question	CHAPS Response
Q 6l	<p>Do you support the idea of a suspension power, subject to the constraints of paragraph 6.28?</p> <p>“The Government believes that a suspension power might be useful in some circumstances, but would be grateful for views. The Government believes that any suspension power should be limited – it should never be used in a purely financial crisis; should only be used in extreme circumstances, and only with the support of the markets (ascertaining this support would, of course, be subject to the practical limitations on consultation that may arise in the circumstances of major operational disruption).</p> <p>The Government would only use a suspension power if the overall benefits of doing so outweighed the costs. In using the power, the Government would in particular, have to consider any costs and benefits of use for retail financial services customers.</p>	<p>Suspension is the extreme measure. As implied in the response to Q 6b on the day that the crisis arises it is probably critically important to effect a “controlled” closedown ensuring that infrastructures and markets are able to effect closure with the objective of opening for business safely on the next available business day.</p> <p>Temporary suspension on the day the crisis arises for think time, advice and guidance information cascades may be more appropriate.</p>
Q 7a	Should recognised bodies be within the maximum scope of a direction power?	
Q 7b	Should payment systems be within the maximum scope of the direction power? If so, which?	Payment systems provide the last link in the value chain of the underlying transaction. All major payment systems and networks should be included.
Q 7c	Should functions of institutions that are similar to the functions of recognised bodies and payment systems be within the maximum scope of a direction power?	<p>This implies “on-account” transfers. If an institution can function then this functionality could aid the process of affecting a controlled closedown.</p> <p>Suggest that this is outwith the scope.</p>
Q 7d	What actions should directions to infrastructure be able to order? Should directions themselves effect changes, where appropriate, or only be able to require infrastructure to take actions?	On the basis of previous comments the directions would be based on the advice cascaded upwards to some supra-national committee or body.
Q 7e	Have you any comments about consequential effects of a direction power?	

Section Ref.	Question	CHAPS Response
Q 7f	Do you support the idea of direction power, subject to the constraints of para 7.29?	<p>Yes but the scope must be wide enough to consider crises external to the UK. Also it may be the case that not all of the financial infrastructure in the UK is affected to the same extent. In such circumstances the directive powers and guidance may require to be selective.</p> <p><b>HSBC</b></p> <p>It depends on what the direction powers are whether payment systems should be included. HMT also needs to recognise that there are major differences in the way the payment systems work and it may well be a case of 'one size does not fit all'!</p>
Q Aa	Have you any comments about the usefulness of the Banking and Financial Dealings Act 1971 powers in responding to major operational disruption?	
Q Ba	Have you any comments on this draft Regulatory Impact Assessment?	
	Other comments would also be welcome.	

## CONTINGENCY AND RESILIENCE FOR THE PAPER CLEARINGS AGAINST MAJOR OPERATIONAL DISRUPTION

### Introduction.

The impact of the terrorist attack in New York on 11<sup>th</sup> September 2001 has drawn to attention the fact that, as Art Sutton Vice President and Manager of the Bank of New York said at the UK Cheque Forum in December 2002, 'The contingency you plan for is not the one you get'.

The nightmare scenario for the UK has less to do with a central facility being taken out, because data capture arrangements are mostly quite widely dispersed and there are credible contingency arrangements which can cover that possibility, but more to do with loss of electronic communications and there being insufficient expertise and skilled operators to sustain the daily functions of transmitting payment messages and settling for them.

### Communications

The advent of the Interbank Data Exchange (IBDE) in 1996 enhanced the Industry's resilience because it then became possible to complete the cheque clearing without the need to transport the paper items to the paying bank. The disaster in New York identified paper delivery as the more difficult process to recover as electronic communications were restored on 12<sup>th</sup> September whilst paper deliveries took several more days to be resumed. In fact, failure to deliver the paper in the UK will cause inconvenience until the new clearing platforms are fully in place (probably early 2005) and there remains the likelihood of some losses through fraud where paying banks do not scrutinise high value items. However, as only 0.5% of the volume of cheques presented are returned unpaid, and this includes any fraudulent items, the potential for loss should be manageable in an emergency situation. It remains true that if the communications networks provided by BT fail then it is certain that the comfort which IBDE provides will be lost.

The Company has 'physical media' contingency to provide resilience for the BT Switched Multi-Megabit Data Stream (SMDS) System which supports IBDE but this would also be negated if internal bank and supplier communications systems were 'knocked out'. The fact that the majority of cheques are no longer encoded with amounts by collecting institutions means that it would now be impossible for an in-clearing Member to process from paper alone because there is insufficient encoding capability and thus the Industry cannot rely solely on cheque paper to maintain a credible clearing system unless critical electronic communications are in place.

This being so, the Financial Services Industry might consider suggesting to Government that, in the event that BT SMDS / ISDN and other telecommunications systems are crippled, then it may be better to close the clearings. Inevitably, BACS, Link, CHAPS and the MVE card clearing systems would also be disrupted.

### Settlement

The recent agreement by the Members to execute the first of the Settlement Agreement documents could well prove to be a watershed in improving the resilience of all the delayed settlement systems as well as reducing the potential exposure of Members where one participant is unable to fund its commitments. The massive reduction in settlement

risk for the delayed settlement clearings from approximately £35Bn to £2Bn does rely, however, on the opinion of Mark Hapgood QC's interpretation of the 'Single Amount' principle.

The Government's green paper entitled 'The Financial System and Major Operational Disruption' invites System Operators to offer suggestions as to how HM Treasury might be able to improve resilience, possibly through legislation to support situations such as those referred to above, where the Nation's communications infrastructure is critically damaged. If the 'Single Amount' principle were to become enshrined in Law then the doubts, which have been expressed by some about Mr Hapgood's opinion, could be assuaged. Further, the concerns that many are expressing about the potential efficacy of the proposed 'Returns Agreement' might also be addressed.

### **Operations of Settlement Members**

The greatest concern for the paper clearings is that, with the failure of one Member, liquidators/receivers would be bound to attempt to 'unwind' transactions involving customers of that failed Member. The 'Single Amount' arrangement will protect the settlement and allow the system to continue but it will not, without a robust Returns Agreement, prevent chaos involving the remaining Members and their customers who have undertaken transactions with those customers. Legislation to ensure that, where there is major operational disruption to the financial system, the interception/refusal of payments by liquidators and others would be forbidden, could prove to be the difference between the system being able to 'cope' and collapsing entirely.

The electronic capture of payment information from cheques passing through IBDE is well dispersed and occurs either at individual branches or at regional processing centres prior to the paper items being transported to the centre. Presently, exchange occurs at Goodman's Fields in London but from October it will take place at Tilbrook in Milton Keynes where the paying Institution collects the items for return to specialist cheque payment centres for scrutiny and storage or dispatch to customers. It is at this point that the 'pay/no pay' decision is made. It is possible that these decisions could be made solely by comparing the received IBDE data with the bank's main file of customer balances, and any electronic customer profiling systems installed, without reference to the paper even if this does potentially increase the risk of loss through fraud.

The out-clearing capture sites for iPSL, who now manage clearings for Barclays, Lloyds/TSB, HSBC, Clydesdale, Co-operative, Girobank and HBoS, are either individual branches or one of seven regional processing centres all of which can provide contingency for the remainder in the event of disruption. There are central fall back sites at Wigan, Bootle and Peterborough in addition and it is these sites that would process in-clearing if Northampton, the main hub, was unusable assuming sufficient trained personnel were available.

EDS also have seven dispersed voucher processing centres (ex National Westminster) and branch capture at heritage RBS branches. The main in-clearing site is Goodman's Fields but, from October, this will be located at Kiln Farm in Milton Keynes which presently provides fallback. A new fallback site at Java Park, Milton Keynes is being developed. Suggestions have been made to both iPSL and EDS that it might be prudent to enter into bilateral negotiations with a view to providing mutual contingency between Northampton and Milton Keynes but it is not known whether such discussions have taken place.

Abbey National, which processes for Bank of England, undertakes capture at branches and a central site in Prescott Street, London with a mirror fallback site in Harlow, Essex.

Nationwide, which processes its own work, captures out clearing at branches and Pipers Way, Swindon with in-clearing being processed at the latter. There is a 'mirror' fallback site at Swindon Technical Centre.

As indicated earlier, because of the dispersed nature of out-clearing capture, each Member has the capability, if not necessarily the capacity, to provide contingency for other Members. Because the UK has a credit clearing system, it would be possible to direct depositing customers to other financial institutions in order to allow for transactions to be completed.

### **Credits and Non-Standard Paper Including Euro Cheques**

None of these items are currently processed via IBDE and rely solely on amount encoding by the out-clearer in order to allow processing both by that out-clearer and, subsequently, by the in-clearing institution. Again, the recent signing of Settlement Agreements has assisted the position by changing the basis of settlement to out-clearers' figures even if it remains necessary to transport the paper items between the financial institutions involved. This will not be necessary where 'on-we' processing is possible, as is the case with those banks whose items are processed by iPSL on joint clearing platforms or where other Members have mutually agreed to truncate at collecting bank. These scenarios, however, are unlikely to be widespread before early 2005.

The Company has, to date, declined to install IBDE for credits although there is a project plan available for that innovation if required. It ought to be possible to use BACS for inter-bank transfer of credit data if that is a preferred approach. The majority of credit paper is not required by the receiving bank for scrutiny although there is a proportion required by customers for account reconciliation. It has often been suggested that such paper could be forwarded, as non-value items, subsequent to the transfer of the electronic data that would transfer value. The alternative is to transmit images of required paper in parallel.

### **Image transfer and Fraud Control**

It is true that the transfer of images could address many of the concerns surrounding cheque fraud as the recipient bank could then check both signatures and technical data before making pay/no pay decisions. The only element of fraud then remaining is counterfeit and fraudulent alteration that, currently, accounts for much lower percentages of loss than do signature forgery and other fraudulent cheque activity. There are systems available for attachment to high, medium or low speed out-clearing processes which could identify counterfeit and fraudulently altered cheques earlier in the cheque processing life cycle if Members identified a business case for installing this technology.

### **Conclusion**

The industry now relies on IBDE for its processing although not all cheques and credits are processed electronically by it. Where IBDE is used, the only critical point of failure is likely to be BT connectivity. So long as the Members retain dispersed out-clearing capture arrangements then the system should be able to operate almost automatically in much the same way as does BACS but it is necessary to consider how the remaining non-IBDE transactions, mostly credits, will be processed if transportation and in-clearing processing sites are disrupted. All Members are obliged to self-certify their ability to continue to process credits received in the event of prime site failure and these arrangements are required to be tested regularly.

The BT SMDS system supporting IBDE is 'self healing' and there are assurances that there are no single points of failure within it. The inter-bank settlement system is supported by BT ISDN lines with fallback arrangements at the APACS contingency site in Aldgate. Manual settlement is possible using fax messages in extreme emergency.

Thus there are credible contingency arrangements set, provided there are sufficient skilled personnel to undertake critical duties and electronic communications are available.

**Major Operational Disruption: Liquidity Managers Group response to HMT**

1. APACS Liquidity Managers Group (“LMG”) represents the interests of the providers of liquidity in the sterling and euro real time settlement systems in London, (CHAPS, CREST and CLS). As such they are responsible for ensuring a supply of liquidity sufficient for the payment needs of their own institutions and their customers for each payment or group of payments throughout the operational day, many of which can involve sums of money measured in billions. This is done by using their own assets as collateral against their obligations. In this respect these systems have different requirements from the higher volume but lower value systems (such as BACS) which settle net payments once a day. So the response of the liquidity providers in the real time high value settlement systems reflects this attitude.
2. It is relevant that we are dealing here with settlement, not trading. Deals done on exchanges (or over the counter) are promises to trade and are not completed until actual settlement has taken place. This may be the same day but usually (for instance in the equities or FX markets) settlement takes place two or three days after trading. Clearing (as in London Clearing House, for example) shifts the risks to be faced between trading and settlement onto other risk-takers and reduces them but they still exist until settlement has been completed. So these comments are made from the point of view of settlement systems liquidity providers.
3. In general terms LMG would make the following points:
  - 3.1. Increasingly settlement of trades involves a linked and/or a cross-border element. That is, settlement in one country of one leg is accompanied by settlement of another leg in another country. So non-settlement of one leg may impose penalties on parties abroad. Therefore it is essential that what is decided in the UK in response to major operational disruption is accepted abroad.
  - 3.2. What is required is clarity. Service providers want to know whether the systems are open or shut and whether the terms of their contracts apply or not. In practical terms this may mean establishing an international understanding or definition of Force Majeure. Clarity also means that if a settlement system shuts down it needs to be able to do so such that all members can be told what their position is at the time of shutting. When the system re-opens it should do so from the shut-down point (with necessary adjustments expressed in terms of interest to account for any time delay).

- 3.3. Broadly, we agree that private sector organisations are responsible for their own decisions. So liquidity managers will respond to decisions made by settlement systems in response to circumstances (as happens nowadays when systems are disrupted). What is needed is knowledge that these decisions taken in extreme circumstances will be supported by the authorities so that organisations that make consequential decisions will be safe from subsequent legal attack.
  - 3.4. There is scope for considerable discussion about the advantages of allowing settlement to continue between counterparties if they so wish (NB clearly this can only happen if the relevant settlement system is open.) On balance, considering the level of control over inflows and outflows that liquidity managers would in practice be able to exert in extremely stressful scenarios and the amounts of money involved, LMG is of the opinion that settlement systems should be open for all or shut for all. Ultimately, however, this is a matter for the systems concerned (in consultation as necessary at the time with the authorities).
4. From the above it can be seen that LMG's response to the core questions are:
- 4.1. (3b) The private sector needs to continue to strengthen contingency provisions in the face of continuing changes in the risks that are faced. In particular common understandings of terms such as Force Majeure would be useful. The authorities could help by encouraging an international dimension to this work
  - 4.2. (3c) The private sector should continue to strengthen market co-operation (including clearing and settlement co-operation). There should be continuing dialogue between the trading and settlement systems to understand the impacts of disruption in one system on the others. The authorities can assist by providing background information on how they would co-ordinate the work of the infrastructure (telecoms, police, fire service etc).
  - 4.3. (4 a,b,c) New legislation. This is the most difficult area not least because of the multiplicity of different scenarios envisageable. In our view new legislation should be restricted to the highest levels and should aim to support the decisions of individual trade associations and business bodies concerned (in consultation as necessary with the authorities in the light of the circumstances). This will mean that the authorities (in consultation with business associations) can agree that an emergency exists. This will not in itself require individual systems to decide to close or otherwise alter normal working but will provide them with an overall picture against which they can make their decisions.

- 4.4. LMG would support the idea of a suspension power subject to the constraints of paragraph 6.28. We can support the concept that settlement of contracts can be frozen to be revived later but should not be cancelled. Notably, the Bank of England has recently agreed with the market a strategy for dealing with the consequences of an enforced delay to settlement (an example of market co-operation to cope with disruption).
- 4.5. LMG would not rule out the idea of a limited direction power subject to the constraints of paragraph 7.29, but would urge considerable caution. It is not sufficient for example simply to direct an RTGS settlement system to remain open; it is also necessary to ensure that the settlement members continue to provide adequate liquidity for settlement to take place.

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