

C/M/S/ Cameron McKenna

Banking Reform - Financial Stability and Depositor Protection: Response to Tripartite Consultations¹

1. Introduction

1.1 Following the publication of the Bank of England, HM Treasury and Financial Services Authority Joint Consultations on Financial Stability and Depositor Protection¹ (the “Consultation Papers”), CMS Cameron McKenna engaged in a period of discussion with our clients, which included holding a discussion seminar, with the intention of stimulating a debate on the issues raised in the consultation paper.

1.2 This response does not represent the views of any one of our clients. It is intended to highlight those areas of the consultation that are a concern to the industry and also those areas where we feel the proposals require further consideration.

Outline

2. Broad observations

2.1 **More time is needed to develop many of the proposed reforms; key aspects of the new SRR regime need to be developed further and to be looked at in the broader context of the banking reforms including deposit protection.**

2.2 **There is a need for more realistic scenario and stress testing of the entire system for dealing with failing banks (including depositor protection and liquidity support).**

2.2.1 One of the themes from the Treasury Committee (“TC”) report² is the lack of testing (and planning) of the system for dealing with a failing bank.

2.2.2 Many aspects of the regime, such as it was, had **not been thought through or tested**; the whole question of **depositor protection was a somewhat shadowy area, which everyone, including the authorities, seemed reluctant to explore or expose to scrutiny.**

(a) The UK had an entirely **inappropriate regime of limiting deposit protection through so-called ‘co-insurance’**. This increased the likelihood of a run on a bank. This feature of the UK regime had been much trumpeted and was entirely logical for ‘moral hazard’ reasons in normal circumstances but why was it not apparent that it was a serious policy error in the context of a failing bank?

(b) When the crunch came, there was **widespread confusion about the deposit protection system**

(c) There was a **lack of stress/scenario testing** (and crisis planning) as to how the system as a whole (with all the different elements and authorities involved) would perform when faced with a significant bank failure.

¹ Tripartite Consultation Paper (Cm 7459), “Financial stability and depositor protection: special resolution regime”, July 2008 and Tripartite Consultation Paper (Cm 7436), “Financial stability and depositor protection: further consultation”, July 2008

² House of Commons Treasury Committee, “The run on the Rock”, Fifth Report of Session 2007–08, 24 January 2008, see also House of Commons Treasury Committee “The run on the Rock: Government Response to the Committee’s Fifth Report of Session 2007–08” Eleventh Special Report of Session 2007–08, 2 July 2008

C/M/S/ Cameron McKenna

- 2.2.3 To date the Consultation Papers have not been able to give any real indication of how the reformed system might be expected to work in practice and it has only been possible to scratch the surface of many important issues, often with simplistic analysis of complex issues. Consultation Papers have to strike a balance between maintaining confidence and exposing the issues, but the Consultation Papers and TC papers³ to date have been superficial and sketchy in some areas. In short, whilst very good progress has been made, there is much more to be done before informed decisions can be made.
- 2.2.4 For example, there is a stark contrast between FSA's last consultation on FSCS reform⁴, which assumed that compensation above the annual capacity of the merged schemes (slightly over £4 billion) would be met by the state and the current statements that appear to suggest that, in future:
- No bank is too big to fail⁵ and the state will not step in, at the tax payer's expense, to rescue any bank, however large and whatever the systemic risks may be
 - Whatever the scale of the crisis, and however large the bank or banks involved, there must be industry financed schemes in place capable of maintaining all protected deposits
- 2.2.5 There is a danger that simplistic analysis will mean that:
- the regime will fail (again) at the next crisis and
 - that UK banks may be prejudiced without realising the hoped for benefits for the system as a whole and for consumers, in particular.
- 2.2.6 Much of this analysis is quite difficult because it involves planning for catastrophes. This is always difficult because of a lack of experience to go on. Other markets – like the US – are very different. It is helpful that the BBA has started the process, in its latest response⁶, by providing some high level scenarios of how a run on a small, medium or large bank could be expected to play out. FSA is presumably best placed to quantify the risks of these scenarios occurring and the quantum of loss involved. This might assist in developing a realistic policy for depositor protection and other reforms.

2.3 The European dimension.

- 2.3.1 There are many issues arising relating to Europe and the EU. In broad terms, it seems that EU law represents a constraint on UK reform and on the exercise of current and proposed powers by the UK authorities. It also represents an opportunity for harmonisation and for a European approach consistent with the single market and the extensive cross-border operations of European banks.
- 2.3.2 In the medium term, it would seem desirable to explore the possibility of a more harmonised approach to regimes, such as SRR and deposit protection, for failing

³ Ibid together with House of Commons Treasury Committee, "Financial Stability and Transparency", Sixth Report of Session 2007–08, 26 February 2008

⁴ Para 5.7-5.10 of FSA Consultation Paper CP07/5, "FSCS Funding Review", March 2007 which was followed by FSA Policy Statement PS07/19, "FSCS Funding Review: Feedback on CP07/5 and made text", November 2007

⁵ See in particular "Recent market events and the FSA's response", speech by Hector Sants to IMA AGM Dinner, 20 May 2008

⁶ Memorandum submitted by the British Bankers' Association, "Treasury Committee Inquiry Into Banking Reform", 30 July 2008

C/M/S/ Cameron McKenna

banks across the EU. The existing EU legislation in this area⁷ is old and does not provide any form of EU level solution to the problems of the present crisis. Indeed, in some respects it may impede domestic reform. As with other EU and international reforms, the difficulties of getting the necessary consensus are not to be underestimated but there is a strong logic for eventually dealing with these issues at an EU level.

- 2.3.3 Existing EU legislation in various areas may impact the proposed reforms particularly in relation to SRR and deposit protection. This includes EU legislation on state aid and merger control, various directives such as the Financial Collateral Arrangements Directive⁸ and the disclosure provisions of the Market Abuse Directive⁹, Human Rights etc. There needs to be greater analysis and clarity about the limitations deriving from current EU law than is given in the current consultation; at present the emphasis is on broad based provisions to deal with conflicts with international obligations rather than working through the issues themselves. Hopefully, as part of the discussions with the European Commission, urgent consideration is being given to any changes to EU law. For example, in the context of the disclosure of liquidity support, the analysis in FSA Consultation Paper 08/13 “Disclosure of Liquidity Support” does not appear to offer a satisfactory solution to the problem.

2.4 The architecture and oversight of the financial system – responsibility for systemic issues and macro-regulation

- 2.4.1 Recent events have exposed a potential gap in the domestic and international regimes for dealing with systemic regulation and the architecture of the financial system. There are various reforms in this area including the roles of the Bank of England and FSA in relation to payment systems, the regulation of credit rating agencies, improved infrastructure for the OTC derivative market, the respective responsibilities of the authorities, central bank liquidity support and so on.
- 2.4.2 These measures all have a somewhat piecemeal and ad hoc feel to them. It is also striking that there were extensive warnings, well before the current problems, about the CDO market and also about the huge growth in the size of exposures in the credit derivative market. There is a certain flavour that we are now trying to close the stable door after the horse has bolted; why didn't the warnings lead to earlier regulatory action to deal with these systemic risks? Which body was charged with analysing these macro-regulatory issues and risks, rather than individual firm level issues, and putting in place the mechanisms to deal with those risks? It appears that responsibility for these systemic issues did not clearly fall on a single authority at a UK level and perhaps, internationally there was also a lack of clarity as to the roles of different institutions and forums.
- 2.4.3 Under the FSMA, the FSA has a market confidence objective; this is defined briefly as maintaining confidence in the financial system which specifically includes financial markets and exchanges (which seems to emphasise market confidence in terms of the FSA's role as a regulator of investment exchanges and investment markets, and not a priority for stability in the financial markets as a whole). This does not seem to have provided a very clear basis for ensuring financial stability, certainly not as a priority. In retrospect, there appears to have been much greater emphasis and resources devoted to non-prudential regulation than to, what may be regarded as the more critical, issue

⁷ See in particular “Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes” (as amended by Directive 2005/1/EC), and “Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions”

⁸ Directive 2002/47/EC

⁹ Directive 2003/6/EC

C/M/S/ Cameron McKenna

of the systemic risks in the international and domestic banking and financial system and the relationship to the regime for prudential regulation of individual firms.

- 2.4.4 It is not clear that the new legislation and the new statutory basis for the role of the Bank of England for the oversight of payment systems is an answer. Should financial stability and systemic issues not be given priority in terms of the objectives for both the FSA as well as the relevant functions of the Bank of England?
- 2.4.5 We think there needs to absolute clarity as to the overall objective and to the respective roles and responsibilities of the relevant authorities. It is relevant to consider one potential disadvantage of the single regulator structure under FSMA as contrasted with regimes which have a central bank with responsibility both for the prudential regulation of banks and for liquidity and the broader systemic issues in the financial sector.
- 2.4.6 One key issue is the resources, quality of expertise and priority devoted to the more difficult areas of regulation such as systemic issues across markets and bank liquidity (when contrasted to easier areas such as regulating firms' conduct of business). In the particular area of bank liquidity, the FSA's proposals on supervisory enhancement do not yet fully address these concerns.

3. Special Resolution Regime ("SRR")

3.1 It seems highly desirable that the current emergency legislation should be replaced with a more balanced SRR regime with less draconian powers

3.1.1 But it may be preferable to maintain the current legislation (or parts of it) beyond the current sun-set date until:

- **The current crisis has passed**
- **The new SRR proposals can be fully developed, tested and explained**
- **Hopefully, the market can then conclude that the current fears about the potential adverse impact on UK banks are misplaced.**

3.1.2 The Banking (Special Provisions) Act 2008 was adopted in the wake of the Northern Rock crisis; it will sunset in February 2009. This existing emergency legislation contains very wide broad and draconian powers; some commentators may not appreciate just how far these powers go in terms of the ability to over-ride the contractual and other rights of shareholders, counterparties and other stakeholders including the power to re-write, as well as over-riding, contract terms; other commentators may believe (probably mistakenly) that the new legislation will follow the existing legislation closely, thereby perpetuating the draconian powers indefinitely.

3.1.3 Some may feel that in the light of developments in the US this weekend and the continuing uncertainties, it would be wise to maintain this legislation for a little longer and not to rush to replace it with a permanent SRR solution which will have to strike a finer balance between SRR powers and the rights of stakeholders.

3.2 More time and work may be required

3.2.1 To ensure that the correct balance is achieved between, on the one hand,

C/M/S/ Cameron McKenna

- **The powers available when SRR is triggered; and**
- **On the other hand, the permanent erosion - caused by the existence of those powers (even if they are never triggered or used) - of the rights of counterparties (and other stakeholders) of UK banks.**

3.2.2 **So that UK banks do not suffer an unintended adverse impact on their standing as counterparties.**

- (a) There are widespread concerns in the industry and amongst lawyers about this danger. The main problem seems to be a lack of clarity about the proposals and uncertainty as to the detail of the final regime (which is to be established through primary legislation and then by secondary legislation and, potentially, by other means such as the code of conduct).
- (b) The general policy behind the proposals is clearly to establish much more restricted SRR powers than those that currently apply under the emergency legislation. It is worth acknowledging this; clearly this policy is to be welcomed.
- (c) The problem is that in many key respects the proposals published in July (although more developed than the original ideas in the January consultation¹⁰) are still being worked out and lack clarity and detail. It is impossible to reach firm conclusions based on the draft clauses and the consultation text (where the text might be read as considering widening the powers in the draft clauses); indeed, it is clear that the proposals are still being developed, so there are bound to be concerns at this stage. We believe that at least in the key areas, further consultation is required, and that this should be based on more complete and developed draft legislation (including all the draft secondary and other elements with the draft primary legislation) and more thorough analysis of how the regime will operate.
- (d) **The need for legal certainty.** The structure of the SRR legislation has a strong regulatory flavour with objectives (with some objectives of equal importance and others given primary and secondary status) and the suggestion of a code of conduct for the authorities to follow. Whilst some aspects of this approach may be appropriate, we share the widespread concerns about relying upon codes of conduct of this kind to protect third party rights. It is vital that the final form of the SRR regime does not create unnecessary legal uncertainty. The legislation should avoid ‘fudging’ and confusing the extent of legal powers and the benign intentions, in codes of practice or otherwise, which appear to restrict how these powers will be used. The authorities should concentrate on achieving clarity and legal certainty in relation to SRR powers and third party rights; the correct balance should be by reference to the legal powers available not by relying on how the authorities envisage the powers would be used.
- (e) **Compensation.** This is clearly important in the context of shareholder rights and mechanisms are envisaged to repatriate value to the rump bank and its shareholders (after a partial transfer to a bridge bank). We are less clear how compensation would work in the context of other third parties such as contractual counterparties and creditors. In principle, the possibility of

¹⁰ Tripartite Consultation Paper (Cm 7308), “Financial stability and depositor protection: strengthening the framework”, January 2008

compensation, on some basis or another, should not be taken as an adequate protection for those third parties. It is not clear how the legislation will address these issues, when the authorities envisage compensation being due to such third parties or on what basis as to entitlement or quantum.

3.2.3 Many of the concerns about SRR relate to

- (a) **Any powers to over-ride contractual rights and terms**
- (b) **Cherry picking in the context of a partial transfer (e.g. to a bridge bank) with some creditors being left behind in the ‘rump bank’ and concerns that exercise of the powers may effectively result in a priority against creditors of the ‘rump’ bank**
- (c) **The position of creditors and counterparties – in particular secured creditors, counterparties under master netting agreements and other complex financial arrangements such as structured finance and contractual rights of set-off**

There are in particular concerns, in the context of master netting agreements, that there will be cherry-picking (for the benefit of the bridge bank or other transferee) of transactions which are “in the money”, while leaving behind (in the rump bank) transactions which are “out of the money”.

3.2.4 Security interests.

The principle appears to be that security interests should not be prejudiced¹¹, for example, by transferring assets to a bridge bank, or other transferee, free from security existing over such assets at the time of transfer. The problem of a bank executing a floating charge over all its assets (as raised in the consultation commentary¹²) may be more theoretical than real. The draft clauses do not appear to give powers to over-ride security. We wonder whether there is any need to extend the powers in the way that some have feared although clearly any such extension would be a cause of concern.

3.2.5 Derivative contracts and netting.

Again we wonder whether, if one looks at the draft clause¹³, the cherry-picking concerns would be justified. The nature of a master netting agreement (which includes a “unity provision” making all transactions stand or fall together) may, in any event, make it difficult to cherry pick some transactions and to leave others behind on a partial transfer. But in any case it should be possible to protect counterparties, whether through the “Qualifying Financial Contracts” definition as is proposed or by simpler provisions.

3.2.6 Variation of contractual terms

- (a) We understand that the intention is to have only limited powers to vary or override contractual terms, certainly nothing like the powers in the current emergency legislation appears to be envisaged. This change is to be welcomed.

¹¹ Tripartite Consultation Paper (Cm 7459), “Financial stability and depositor protection: special resolution regime”, July 2008, paras 3.77-3.79

¹² Ibid, para 3.79

¹³ Tripartite Consultation Paper (Cm 7459), “Financial stability and depositor protection: special resolution regime”, July 2008, paras 3.67-3.76

C/M/S/ Cameron McKenna

- (b) However, it is very important that the extent of any such powers are precisely defined. It appears that the powers may be required only to override (and not to rewrite) change of control provisions (or negative pledges) which would impede a transfer of the granting of security in favour of the bridge bank or other transferee.

3.2.7 Termination rights

These arise in various contexts, particularly clauses which give the ability to call a default and exercise close out provisions. According to draft clause 19¹⁴, these would be threatened by SRR powers only to the extent that the counterparty sought to rely on the triggering of SRR as a ground for calling a default. This does not seem objectionable in itself. It is important to establish that this is the limit of the powers, i.e. that it would not prevent a counterparty from calling a default based on non-payment or other such triggers, including triggers indirectly linked to the SRR, such as credit-rating downgrades; indeed these triggers may well have occurred before SRR.

3.2.8 Set off

There are also issues to be considered, other than netting in the context of derivatives, relating to rights of set-off. Greater clarity is required; although we do not believe that set-off rights should be at risk under the present draft clauses, the principle is so important that it would be desirable for this to be stated explicitly.

3.2.9 Cherry picking and the special bank administration procedure.

There are concerns that the partial transfer powers and the ability to cherry pick what is and is not transferred to the bridge bank and the proposed primacy, for the administration of the rump bank, of the objective to support the bridge bank will impact adversely on the interests of non-transferring creditors in the rump bank. These issues need to be addressed, if the policy of not giving a preference is to be fully respected.

4. Depositor protection and the funding of bank rescues.

4.1 Recent experience has raised fundamental issues about deposit protection as it currently operates in the UK and in other countries; further work is required to address these difficult issues.

- 4.1.1 It is therefore open to debate whether it is better to press ahead with some domestic reforms at this stage or whether to wait until these more fundamental issues have been resolved.

4.2 There is a need for much greater clarity and reliable information about the scope of protection of deposits and the ways in which depositors can enhance protection.

- 4.2.1 We agree with FSA that the coverage and workings of the FSCS are not well understood¹⁵. There is no authoritative guidance generally available – indeed the recent consultation has prompted requests from financial institutions for legal advice and opinions on what is and what is not covered and to what extent. These have conflicted and we have seen guidance circulated by an IFA, which is incorrect.

¹⁴ Annex A, Tripartite Consultation Paper (Cm 7459), “Financial stability and depositor protection: special resolution regime”, July 2008

¹⁵ FSA, “Feedback on tripartite consultation document: operation of the Financial Services Compensation Scheme (FSCS) for deposit protection”, June 2008

C/M/S/ Cameron McKenna

- 4.2.2 Indeed we anticipate that most people believe that the coverage is broader than it is and many may assume that the FSCS has unlimited capacity to meet the stipulated coverage or that that coverage is effectively guaranteed by the state
- 4.2.3 We anticipate much greater demand for legal advice from a wide range of firms, trustees and others about deposit protection in relation to a wide variety of bank accounts and related arrangements and their duties as trustees and officers to maximise protection. There appears to be greater clarity in the US and greater emphases on banking arrangements, which ensure that deposits remain within FDIC protection (see below re sweeper accounts and multi-bank arrangements).
- 4.2.4 There is a need for greater clarity in the deposit protection rules and for more honest and detailed information for consumers, businesses and trustees/officers on
- (a) **Who is and is not covered by the scheme**
 - (b) **The limits of coverage** and the position in relation to larger deposits including loss sharing
 - (c) **which deposits and accounts are covered** and to what extent bearing in mind the **multiple banking relationships** (at different banks or within the same bank and potentially across different bank brands which the consumer may perceive to be separate banks) which any one person may have, their **direct accounts and potential indirect interests as clients in client and trust accounts** (and the relationship between direct and indirect interests in accounts (e.g. if they are at the same bank) and the **multiple roles** in which they may hold accounts and indirect interest.
 - (d) **The ways in which coverage can be maximised** for those with funds which exceed the limit. For example by joint accounts, splitting funds and placing deposits at several banks etc
 - (e) **The capacity of the fund to pay for protected deposits, the risks of that capacity being exceeded and what happens if that occurs.**
 - (f) The equivalent information from regulators in **other EEA states** about the protection of deposits at banks incorporated in their country and how any UK top operates, bearing in mind the **complexity of the above parameters.**
- 4.2.5 This would ensure that depositors make decisions on an informed basis and provide the best environment for the development and provision of any market –led solutions for further protection (see below). It is likely that there will, at least for a time, be much greater interest in protection for deposits, partly as a result of the run on Northern Rock and the subsequent debate, and partly because FSA will be putting a new emphasis on the risks of unprotected deposits.

4.3 Reform of the FSCS deposit protection scheme – coverage

- 4.3.1 A number of changes have been proposed and FSA will be consulting further next month. We hope this will cover all of the above issues – both in terms of the status quo and the proposed reforms. Many of the issues relating current coverage were not covered in FSA’s June paper¹³ on the present system which seemed to focus on loss sharing issues.

4.4 Larger balances and client accounts

C/M/S/ Cameron McKenna

- 4.4.1 In the US, there appears to be greater transparency and greater emphasis on depositing funds in a way, which maximises FDIC protection for larger amounts. This includes arrangements for deposits spread across multiple banks and associated sweeper systems. FSA should consider the extent to which such arrangements could work in the UK in relation to a reformed deposit protection scheme. Larger balances may be held in a variety of situations where coverage may be available through similar services/mechanisms.
- 4.4.2 There will, however, be complications where funds are held in client accounts of regulated firms or in other trust or similar accounts such as solicitors' client accounts. These need to be considered. Some of these funds will themselves exceed the limit; these could be spread to increase coverage for an individual client but would the account holding firm need to take into account the banks at which the individual client already had direct accounts?
- 4.4.3 The alternative might be to recognise that this could involve costly complexity and consider extending the coverage. If not, additional protection might be taken out by the firm commercially (i.e. what the consultation refers to as a 'market-led solution' from an insurer) for the benefit of all its clients (or those who wished to pay for the coverage) but there is uncertainty as to how much protection will be available.

4.5 Should deposit protection continue to be a sub-scheme within the broader merged FSCS scheme which also covers the protection of policyholders when insurers fail and the customers of investment firms when those firms fail?

- 4.5.1 Until the recent reforms, deposit protection was operated as a self-contained scheme but it now forms part of the merged/all-sector FSCS. This increases the pool from which levies can be raised (after the maximum levy on deposit takers is reached, other firms such as insurers can be called on) but increases cross-sector impact/contagion and may reduce the pool if there are substantial failures in other sectors. The forthcoming consultation should consider whether this is appropriate in the light of recent experience and the likely reforms.
- 4.5.2 The recent reforms increased the fund capacity by removing the previous 'in perpetuity' limit on levies (which meant that deposit takers could only be levied up to a life time limit) and introducing an annual levy limit. The merged FSCS total capacity by annual levy limit is greater than the previous deposit protection capacity but this capacity is subject to the extended coverage indicated above. It is unclear to what extent this capacity could be extended in relation to a single default, by the use of increased borrowing powers and recovery from levies over more than one year.

4.6 Larger losses – capacity and pre-funding

- 4.6.1 The analysis and consideration to date has been simplistic. Further work is being undertaken by FSA in this area and the initial proposal to move to pre-funding has been dropped, although the necessary powers will be available under the new legislation. The suggestion of industry capacity to cover a substantial loss at a large bank (on the basis of a policy of 'no bank is too big to fail') seemed to imply a move from £4 billion to a very much bigger fund capacity; the suggestion of £13 billion seems to have been only a crude figure and with an implicit suggestion the real figure to meet the stated policy would be much higher.
- 4.6.2 As the BBA explains in their response, recent US experience shows that even if pre-funding could be established over a period and substantial reserves accumulated, this is unlikely to resolve the need for very substantial additional funds for a major loss.

C/M/S/ Cameron McKenna

4.6.3 A more sophisticated and realistic analysis of deposit protection is called for both in terms of the role of the state and the contribution from industry and how these are structured. The notion of simply pre-funding the FSCS, potentially to the tune of several tens of billions of pounds, looks naïve and an unnecessary and costly approach. A broader debate on deposit protection is required, however, before these issues can be resolved.

4.6.4 Whatever is the right level or limit on industry capacity for the scheme, there are, no doubt, more sophisticated and efficient ways of making this available at the time it is needed without simply locking up the assets for the full fund capacity in a separately managed fund. The existing FDIC regime in the US was established a very long time ago and more modern techniques are now available to achieve whatever level of risk spreading is determined to be appropriate and realistic.

4.7 Faster payments

4.7.1 The BBA has expressed its doubts about the feasibility of faster payments, within the proposed timescales, if these are to be made by the FSCS into new accounts opened by account holders of the failed bank at another bank¹⁶. We share these concerns and agree that the trick, as the BBA has proposed, seems to be to find a way of delivering compensation via the failed bank infrastructure possibly under the SRR.

4.7.2 These are important parts of the overall system and further work is clearly required.

4.8 FSCS payment of SRR costs and liabilities.

4.8.1 It is very difficult to consider how this suggestion is intended to operate, given the brief explanation in the consultation documents and the uncertainty about the other pieces of the jigsaw. The justification and logic given is not convincing and there are many issues to be considered; the idea that the FSCS would pay a market rate for guarantees given by the state may be attractive from a state aid perspective but it raises a host of issues. There is also a concern that industry liability for SRR will only increase the political pressure on FSA to trigger SRR earlier than it otherwise would.

4.9 Market led solutions for additional deposit protection

4.9.1 At the last FSCS reform consultation¹⁷, FSA concluded that there was no appetite from the insurance market to cover FSCS exposures. No single insurer would be likely to take this on and, whilst a broader spread across the insurance and reinsurance market could be structured, it would raise the question of whether the insurance market is really stronger than the banking sector itself.

4.9.2 Our impression is that there is likely to be a lack of insurance capacity available for a straight market insurance of FSCS exposure to deposit protection compensation or for insuring all deposits of a particular bank even for cover restricted to deposits outside, or those parts of deposits above, FSCS coverage.

4.9.3 We have found that although demand/provision had declined over the years, some commercial products are offered by insurers in the US to cover deposits outside FDIC protection. Depending on the outcome of the FSCS reforms, we believe that, in the light of recent events, there may well be a demand in the UK for additional commercial coverage offered via solicitors or authorised firms, particularly for larger

¹⁶ Memorandum submitted by the British Bankers' Association, "Treasury Committee Inquiry Into Banking Reform", 30 July 2008

¹⁷ FSA Policy Statement PS07/19, "FSCS Funding Review: Feedback on CP07/5 and made text", November 2007, pg 67

C/M/S/ Cameron McKenna

deposits such as short term coverage for one-off fund transfers on a house purchase and also, longer term, for cash forming part of pension arrangements such as a SIPP. We are still exploring with our insurer clients the appetite from their perspective but clearly, in current market conditions, there are concerns about the impact from an aggregation and cross-contagion perspective.