

our ref
your ref



from David Thomas
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3 September 2008

Dear Sirs,

Financial Stability and Depositor Protection: Special Resolution Regime

I am writing, in confidence, on behalf of the Financial Ombudsman Service in response to your joint consultation on the above subject.

As you are aware, the Financial Ombudsman Service is the UK's statutory body, established under the Financial Services and Markets Act 2000 (FSMA), for the resolution of disputes between consumers and financial businesses, including banks and building societies.

FSMA, and the rules in the FSA Handbook made under it, place obligations on financial businesses for the handling of consumer complaints and the referral of unresolved complaints to the Financial Ombudsman Service.

Where there is a transfer of business under the Special Resolution Regime, it is important that customers remain protected, not only in respect of their deposits, but also in respect of any right they may have to complain about any pre-transfer act or omission by the failing bank or building society.

So these obligations will usually need to be transferred from the failing bank or building society to the private sector purchaser or the publicly-owned bridge bank as appropriate, in a way that preserves the jurisdiction of the Financial Ombudsman Service – to achieve the same result as the FSA currently ensures when there is a transfer under Part VII of FSMA or under the Companies Acts.

Although we assume that this is the Government's policy intention, we have seen no statement to that effect (either in the consultation paper or elsewhere). For the avoidance of doubt, it would be helpful if you could confirm that the property transfer powers will include (and will usually be exercised to provide) a transfer of the existing complaint-handling obligations *and* (additionally) our jurisdiction over them.

With regard to the technical issues that arise in preserving our jurisdiction where there is a business transfer, we invite your attention to our exchanges with

HM Treasury from 2005-7. Sarah Kirkby (who has since moved elsewhere in the service) was in charge of this at the end, including a submission to the EST, but John Sparrow (who is still at HM Treasury) was also involved.

We would of course be happy to discuss the issues in greater detail if you wish.

Yours faithfully,

A handwritten signature in cursive script that reads "David Thomas". The signature is written in dark ink and has a long, horizontal flourish extending to the right.