



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Lord Moylan
House of Lords
London
SW1A 0PW

21 August 2024

Dear Lord Moylan,

Thank you for your contribution to the Second Reading debate on the Bank Resolution (Recapitalisation) Bill on 30 July 2024. In that debate, you raised a number of questions which I sought to answer in my closing speech. However, on the question of whether the costs of litigation would be in scope of Financial Services Compensation Scheme (FSCS) levies under the new mechanism delivered by the Bill, I said I would write to you. I am copying this letter to those who spoke in the debate and a copy will be deposited in the Library of the House.

In relation to the new mechanism delivered by the Bill, there are several litigation scenarios that may arise. Litigation could be brought against: the authorities themselves for taking the resolution action; the firm in resolution for activities that took place prior to its failure; the firm in resolution for activities that took place whilst it is in a Bridge Bank owned by the Bank of England; and the firm in resolution for activities that took place after it has been sold to a third party.

With regards to costs that arise once a firm has been sold, the government expects any litigation costs arising from activities after the sale would rest with the buyer and would not be recovered through FSCS levies under the new mechanism.

As for the other scenarios in which costs may arise from litigation against the firm in resolution, the government notes that such costs arising from litigation could materialise whilst a bank is in a Bridge Bank. Whilst in the Bridge, the bank may need to be recapitalised to cover any shortfall in funds, including to meet any costs arising from litigation. These costs would count as recapitalisation costs and would therefore fall within scope of the new mechanism. The government considers this an appropriate policy outcome, as it will reduce the risk to public funds which would otherwise be used to cover these costs. However, any decision to use funds provided by the FSCS to cover litigation costs would be a judgement to be taken at the time, noting that the alternative could be to use public funds instead.

Finally, in relation to litigation brought against the authorities themselves, the Bill allows the Bank of England to request that funds from the FSCS cover expenses that have been incurred

by it or another person in connection with the recapitalisation or the use of the stabilisation power. This may include litigation costs arising from the recapitalisation or use of the stabilisation power such as, for example, from challenges to decisions made by the authorities. However, any decision to request FSCS funds for these purposes would be a decision for the Bank of England to take. In making this decision, the Bank of England would consider all relevant factors, including the fact that the alternative may be to use public funds.

I trust I have answered your questions thoroughly although please feel free to write to me if there are related matters I have not addressed. I look forward to your continued engagement on the Bill.

Yours,

A handwritten signature in black ink, appearing to be 'S. M. Livermore', written in a cursive style.

Lord Livermore
FINANCIAL SECRETARY TO THE TREASURY