
STATUTORY INSTRUMENTS

2008 No. 2546

The Bradford & Bingley plc Transfer of
Securities and Property etc. Order 2008

PART 6

FINANCIAL SERVICES COMPENSATION SCHEME

Sums to be paid to Abbey following the second transfer

28.—(1) The following liabilities arise on the occurrence of the second transfer—

- (a) the FSCS is liable to pay, as soon as practicable, to Abbey an amount equal to the amount that qualifying claimants would, immediately before the first transfer time, have been entitled to claim from the FSCS in respect of claims against Bradford & Bingley for protected deposits; and
- (b) the Treasury are liable to pay, as soon as practicable, to Abbey an amount equal to the aggregate amount of the liabilities transferred to Abbey under article 16(1)(a) less the amount specified in sub-paragraph (a) and less £612 000 000,

and the Treasury shall subsequently make the necessary adjustments such that Bradford & Bingley obtains the benefit of the reduction of £612 000 000 referred to in sub-paragraph (b).

(2) For the purposes of paragraph (1)(a), if the quantification date for a claim would have been a date other than the date on which Bradford & Bingley was determined to be in default for the purposes of section 6.3 of the COMP Sourcebook, the amount that a qualifying claimant would have been entitled to claim from the FSCS is the lesser of—

- (a) the amount which the FSCS quantifies as being the value of that claim as at immediately before the first transfer time; and
- (b) the amount that would have been payable at the quantification date, if different, for that claim.

(3) In paragraph (2), “quantification date” has the meaning given in rule 12.3.1 of the COMP Sourcebook.

(4) Immediately after the second transfer time—

- (a) Bradford & Bingley shall estimate the aggregate amount of the liabilities transferred to Abbey under article 16(1)(a);
- (b) the FSCS shall pay to Abbey the amount it is liable to pay under paragraph (1)(a) as estimated by the Authority; and
- (c) the Treasury shall pay to Abbey an amount equal to the amount estimated by Bradford & Bingley in accordance with sub-paragraph (a) less the amount estimated by the Authority in accordance with sub-paragraph (b) and less £612 000 000.

(5) From time to time—

- (a) the FSCS may revise the estimate of its liability under paragraph (1)(a); and

(b) Bradford & Bingley may revise the estimate of the aggregate amount of the liabilities transferred to Abbey under article 16(1)(a), and the FSCS, the Treasury and Abbey shall make such corresponding payments to each other as are necessary to ensure that the FSCS and the Treasury have each paid to Abbey the amount required to meet their liability under paragraph (1) (and no more than such amount).

(6) The liability referred to in paragraph (1)(a) shall be assessed by the FSCS and, in doing so, the FSCS may calculate, by any methodology or approach it considers appropriate, the total amounts of compensation that would have been paid to all qualifying claimants, if (and to the extent that) it considers that the costs of ascertaining the entitlement to and amount of compensation by reference to each qualifying claimant would exceed or be disproportionate to the benefit of doing so.

Payment to Abbey to constitute payment of compensation for the purposes of the Financial Services Compensation Scheme

29. For the purposes of Part 15 (the financial services compensation scheme) of the 2000 Act, the COMP Sourcebook and the FEES 6 Chapter (including, without limitation, the power of the FSCS to impose levies)—

- (a) all payments by the FSCS to Abbey under article 28 shall constitute the payment of compensation to each qualifying claimant under the Financial Services Compensation Scheme in accordance with their respective entitlements in respect of claims against Bradford & Bingley for protected deposits;
- (b) each qualifying claimant—
 - (i) is deemed to have made an application for compensation for the purposes of rule 3.2.1(1) of the COMP Sourcebook; and
 - (ii) is deemed to have accepted an offer of compensation made by the FSCS and to have received payment of such compensation for the purposes of rule 11.2.1 of the COMP Sourcebook,

and, accordingly, a qualifying claimant has no right to claim, and the FSCS has no obligation to pay, for a protected deposit any further compensation under the Financial Services Compensation Scheme in respect of the default of Bradford & Bingley determined by the Authority under section 6.3 of the COMP Sourcebook.

Liability of Bradford & Bingley to the FSCS and the Treasury

30.—(1) Bradford & Bingley is liable to the FSCS in respect of an amount equal to the aggregate of—

- (a) the amount which the FSCS is liable to pay under article 28(1)(a); and
- (b) the amount which the Treasury are liable to pay under article 28(1)(b).

(2) Bradford & Bingley, the FSCS and the Treasury shall agree terms on which, subject to paragraph (6), the amount of Bradford & Bingley's liability to the FSCS under paragraph (1) is to be reduced out of excess cash flow and other proceeds.

(3) The FSCS shall determine the proportion of any amount which it receives or recovers from Bradford & Bingley which is properly attributable to each type of liability described below and shall promptly on receipt account to the Treasury as follows—

- (a) in full, where the liability is a liability which has been transferred under article 16(1)(a) and the person to whom such transferred liability is owed would not have been entitled to make a claim for compensation from the FSCS immediately before the first transfer time; and
- (b) up to the amount of the excess, where the liability is a liability owed by Bradford & Bingley to a qualifying claimant and the amount of such liability exceeds the maximum

compensation that the qualifying claimant would have been entitled to claim from the FSCS immediately before the first transfer time, and, where the liability is a liability owed by Bradford and Bingley to a qualifying claimant and the amount of such liability is equal to or less than the maximum compensation that the qualifying claimant would have been entitled to claim from the FSCS immediately before the first transfer time, that amount shall be for the account of the FSCS.

(4) Once all the assets of Bradford & Bingley have been realised and distributed, if the claim of the FSCS against Bradford & Bingley has not been satisfied in full, Bradford & Bingley's liability for the shortfall shall be extinguished, without prejudice to any claim the FSCS may have against any other party.

(5) The FSCS shall not take or join in any corporate action or other steps or legal proceedings for the winding-up, dissolution or re-organisation or for the appointment of an administrator, liquidator or similar appointment in respect of Bradford & Bingley, or any analogous step or proceeding in any other jurisdiction.

(6) Nothing in this Part shall have the effect that the FSCS recovers less than it would have recovered if this Order had not been made and Bradford and Bingley had gone into liquidation following the declaration of default by the Authority in relation to Bradford and Bingley for the purposes of section 6.3 of the COMP Sourcebook.

Co-operation with the FSCS

31.—(1) Bradford & Bingley and Abbey must each—

- (a) comply with any request of the FSCS for the provision of information; and
- (b) provide the FSCS with any other information which Bradford & Bingley or Abbey, as the case may be, considers may be useful for the purpose of co-operating in the fulfilment of the FSCS's functions under the COMP Sourcebook and the FEES 6 Chapter.

(2) Nothing in this article affects the power of the FSCS to require information under section 219 of the 2000 Act (scheme manager's power to require information).

Statutory immunity

32. For the purposes of section 222 (statutory immunity) of the 2000 Act the scheme manager's functions shall include any acts or omissions carried out by the FSCS pursuant to or in connection with this Order.