
STATUTORY INSTRUMENTS

2009 No. 1810

BANKS AND BANKING

The Dunfermline Building Society
Independent Valuer Order 2009

<i>Made</i>	- - - -	<i>7th July 2009</i>
<i>Laid before Parliament</i>		<i>8th July 2009</i>
<i>Coming into force</i>	- -	<i>30th July 2009</i>

The Treasury make this Order in exercise of the powers conferred by section 55(2), (3), (5) and (6), section 56(1), (2) and (3) and section 259(1) of the Banking Act 2009⁽¹⁾.

PART 1

General

Citation and commencement

1. This Order may be cited as the Dunfermline Building Society Independent Valuer Order 2009 and shall come into force on 30th July 2009.

Interpretation

2. In this Order—

“the Act” means the Banking Act 2009;

“the Dunfermline Compensation Order” means the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009⁽²⁾;

“independent valuer” means the person appointed in accordance with article 5(2) of the Dunfermline Compensation Order;

“the monitor” has the meaning given in article 3(2);

“the Tribunal” means the Financial Services and Markets Tribunal established under section 132 of the Financial Services and Markets Act 2000⁽³⁾.

(1) 2009 c.1.
(2) S.I. 2009/***.
(3) 2000 c.8.

PART 2

Remuneration, staff, records and accounts

Remuneration of the independent valuer

3.—(1) The Treasury must pay such remuneration and allowances as they must determine to the independent valuer.

(2) The Treasury must appoint a person to monitor the operation of the arrangements for the remuneration of, and payment of allowances to, the independent valuer (“the monitor”).

Remuneration of the Appointment Panel and the monitor

4. The Treasury may make provision for—

- (a) the members of the panel appointed under article 5(1)(b) of the Dunfermline Compensation Order; and
- (b) the monitor,

to be paid such remuneration and allowances as the Treasury may determine.

Staff

5.—(1) The independent valuer must determine the remuneration, allowances and other conditions of service of any staff appointed by the independent valuer under section 55(4) of the Act.

(2) The independent valuer may pay such pensions, allowances or gratuities to or in respect of any staff appointed by the independent valuer under section 55(4) of the Act as he or she may determine.

(3) The references in paragraph (2) to pensions, allowances or gratuities to or in respect of any staff appointed by the independent valuer under section 55(4) of the Act include reference to pensions, allowances or gratuities by way of compensation in respect of any staff who suffer loss of employment.

(4) Any determination under paragraph (1) or (2) shall require the approval of the Treasury.

Records and accounts

6.—(1) The independent valuer must maintain reasonable arrangements for—

- (a) recording decisions made in exercise of his or her functions referred to in article 4 of the Dunfermline Compensation Order; and
- (b) the safe-keeping of those records.

(2) The independent valuer must—

- (a) keep proper accounts and proper records in relation to the accounts, and
- (b) prepare in respect of each financial year a statement of accounts to be provided to the monitor.

PART 3

Procedure and information

Interpretation

7. In this Part—

“court” means the High Court or, in Scotland, the Court of Session;

“specified information” means any information obtained by the independent valuer for the purpose of conducting the functions referred to in article 4(a) or (c) of the Dunfermline Compensation Order.

Procedure

8.—(1) The independent valuer may make such rules as to the procedure to be applied in conducting his or her functions referred to in article 4 of the Dunfermline Compensation Order as the independent valuer considers appropriate.

(2) The independent valuer may make such rules as to the procedure for the reconsideration of any determination relating to the assessment of compensation under article 12 as the independent valuer considers appropriate.

(3) Rules made under paragraphs (1) and (2) may make different provision for different cases and circumstances.

Application to the court for information

9.—(1) The court may, on an application by the independent valuer, make an order requiring a person to provide information that is reasonably required by the independent valuer for the purpose of conducting the functions referred to in article 4(a) or (c) of the Dunfermline Compensation Order.

(2) A person required to provide information pursuant to an order under paragraph (1) shall not be required to provide information—

- (a) in respect of which a claim to legal professional privilege (or in Scotland, to confidentiality of communications) could be maintained in legal proceedings;
- (b) if such provision by the person holding it would be prohibited by or under any enactment;
- (c) if it is held by a government department and provision of such information would be contrary to the public interest.

(3) In relation to information recorded otherwise than in legible form, the power to require information to be provided includes a power to require it to be provided in a form from which it can be readily produced in visible and legible form.

Confidence

10. A person who provides information to the independent valuer for the purpose of the independent valuer’s functions referred to in article 4(a) or (c) of the Dunfermline Compensation Order is not, by reason only of the provision of such information, liable in any proceedings relating to a breach of an obligation of confidence.

Disclosure

11.—(1) Specified information shall not be disclosed by the independent valuer without the consent of the person from whom the independent valuer obtained the specified information and, if different, the person to whom it relates.

(2) The prohibition in paragraph (1) of the disclosure of specified information is subject to the following exceptions—

- (a) the independent valuer may, for the purpose of conducting the functions referred to in article 4 of the Dunfermline Compensation Order, disclose specified information to any staff appointed by the independent valuer under section 55(4) of the Act or to any person providing advice or assistance to the independent valuer;
- (b) the independent valuer may disclose specified information if and to the extent that he or she considers it necessary to do so for the purpose of conducting the functions referred to in article 4(a) or (c) of the Dunfermline Compensation Order.

(3) The independent valuer must, before disclosing any specified information in accordance with paragraph (2), have regard to the need to exclude from disclosure (so far as practicable)—

- (a) commercial information the disclosure of which might significantly harm the legitimate business interests of the person to whom it relates,
- (b) information relating to the private affairs of an individual, the disclosure of which might significantly harm the individual's interests, or
- (c) any information the disclosure of which would be contrary to the public interest.

(4) The independent valuer may disclose specified information in accordance with this article subject to such conditions as the independent valuer thinks appropriate.

(5) Specified information shall not be disclosed by any person to whom the independent valuer has disclosed such information without the consent of the person from whom the independent valuer obtained the specified information and, if different, the person to whom it relates.

PART 4

Reconsideration by the independent valuer

Reconsideration of assessment notice

12.—(1) If—

- (a) the Treasury, or
- (b) any person who is affected by the determination of the amount of any compensation payable in accordance with Schedule 2 to the Dunfermline Compensation Order,

are dissatisfied with an assessment notice issued by the independent valuer under paragraph 4 or 10 of Schedule 2 to the Dunfermline Compensation Order, the Treasury or any such person may require the independent valuer to reconsider his or her determination.

(2) Where the independent valuer is required to reconsider his or her determination in accordance with paragraph (1) he or she must issue a revised assessment notice.

(3) A revised assessment notice must contain the following information—

- (a) the date on which the revised assessment notice is issued;
- (b) either—
 - (i) notification that the independent valuer has upheld the determination specified in the assessment notice; or
 - (ii) notification that the independent valuer has varied the determination specified in the assessment notice;
- (c) the amount of any compensation determined by the independent valuer as being payable; and

- (d) the reasons for the independent valuer's decision.
- (4) The independent valuer must send a copy of the revised assessment notice to the Treasury.

PART 5

References to the Tribunal

Right to refer to the Tribunal

13. If —

- (a) the Treasury, or
- (b) any person who is affected by the determination set out in a revised assessment notice of the amount of compensation payable,

are dissatisfied with the revised assessment notice, the Treasury or any such person may refer the matter to the Tribunal.

Application of the Financial Services and Markets Act 2000

14.—(1) The provisions of—

- (a) Part 9 (hearing and appeals) of, and Schedule 13 (the Financial Services and Markets Tribunal) to, the Financial Services and Markets Act 2000(4); and
- (b) the Financial Services and Markets Tribunal Rules 2001(5);

shall apply in respect of any reference made under article 13, subject to the modifications set out in this Part.

Modification of the Financial Services and Markets Act 2000

15. Part 9 of, and Schedule 13 to, the Financial Services and Markets Act 2000 are modified as follows.

16. In section 133 (proceedings: general provision) and Schedule 13, for “the Authority” in each place where it occurs substitute “the independent valuer appointed in accordance with article 5(2) of the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009”.

17. In section 133—

- (i) in subsection (1)(a) for “the decision notice or supervisory notice in question”, substitute “the revised assessment notice issued by the independent valuer under article 12(2) of the Dunfermline Building Society Independent Valuer Order 2009”;
- (ii) for subsection (4) substitute—

“(4) Where the Tribunal is satisfied that the decision as to the amount of compensation shown in the revised assessment notice was not a reasonable decision the Tribunal must remit the matter to the independent valuer for reconsideration in accordance with such directions (if any) as it considers appropriate.”;

(4) Paragraphs 4 and 8 of Schedule 13 to FSMA 2000 were amended by the Constitutional Reform Act 2005 (c. 4), section 15(1) and Schedule 4, paragraph 286. Section 137 of FSMA is to be amended by the Constitutional Reform Act 2005, section 40 and Schedule 9, paragraph 70 from a date to be appointed. Schedule 13 to FSMA was amended by the Tribunal Courts and Enforcement Act 2007, section 50 and Schedule 10, paragraph 34.

(5) [S.I. 2001/2476](#).

(iii) ignore subsections (5) to (9) and (12).

18. Ignore sections 134 to 136.

Modification of Financial Services and Markets Tribunal Rules 2001

19. The Financial Services and Markets Tribunal Rules 2001 are modified as follows.

20. In each place where it occurs (other than in rule 2)—

- (a) for “Authority” substitute “respondent”;
- (b) for “Authority notice” substitute “revised assessment notice”;
- (c) for “statement of case” substitute “response document”.

21. In rule 2 (interpretation)—

- (a) ignore the definitions for “the Authority”, “Authority notice”, “further material”, “protected item”, “reply” and “statement of case”;
- (b) in the definition of “party”, for “Authority”, in both places where it occurs, substitute “respondent”;
- (c) in the definition of “referred action” for “the act (or proposed act) on the part of the Authority” substitute “the revised assessment notice”;
- (d) for the definition of “response document” substitute

““response document” means a statement filed by the respondent under rule 5(1);”;

(e) in the appropriate places insert—

““respondent” means the independent valuer appointed in accordance with article 5(2) of the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009”;

“revised assessment notice” means the revised assessment notice issued by the respondent under article 12(2) of the Dunfermline Building Society Independent Valuer Order 2009.”.

22. In rule 4(6) (reference notice) ignore “, a direction under rule 10(1)(e) (suspension of Authority’s action) or”.

23. In rule 5 (Authority’s statement of case)—

(a) for paragraphs (1) and (2) substitute—

“(1) The respondent shall file a written statement (“a response document”) dealing with any issues arising out of the reference notice that the respondent wishes the Tribunal to consider so that it is received by the Tribunal no later than 28 days after the day on which the respondent received the information sent by the Secretary in accordance with rule 4(9)(b).

(2) At the same time as it files the response document, the respondent shall send a copy to the applicant.”;

(b) ignore paragraphs (3) and (4).

24. Ignore rules 6 (applicant’s reply), 7 (secondary disclosure by the Authority), 8 (exceptions to disclosure), 11 (filing of subsequent notices in relation to the referred action), 12(2) (summoning of witnesses), 14(3)(c) (withdrawal of reference and unopposed references), 15 (references by third parties) and 23(4) (application for permission to appeal).

25. In rule 10 (particular types of directions) ignore paragraphs (1)(e), (2)(a), (6) and (8).

26. After rule 10 (particular types of directions) insert—

“Same issues proceedings

10A.—(1) The President may, of his own motion or on application by a party, direct that a reference is heard as a lead case where—

- (a) two or more references under article 13 of the Dunfermline Building Society Independent Valuer Order 2009 have been made, but have not yet been determined by the Tribunal; and
- (b) it appears to the President that those references give rise to common or related issues of fact or law (“same issues proceedings”).

(2) The President may—

- (a) make such further directions as he or she considers appropriate for determination of the lead case; and
- (b) direct that pending determination of the lead case all other same issues proceedings before the Tribunal shall be stayed.

(3) All parties in same issue proceedings must be allowed to make representations prior to the President making a direction under paragraph (1) or (2).

(4) Without prejudice generally to the parties’ rights of appeal and to paragraphs (5) to (7), the Tribunal’s determination of the same issues in the lead case shall be binding on the parties to each of the same issues proceedings unless the Tribunal or the President directs otherwise.

(5) Any party to any of the same issues proceedings may apply to the President for a direction that the determination of the same issues in the lead case does not apply to that party’s case.

(6) An application under paragraph (5) must be made not later than 21 days after the date on which that party received notice of the determination of the same issues in the lead case.

(7) Within 28 days beginning with the date of determination of the same issues in the lead case the President may make further directions in relation to—

- (a) the lead case and each of the same issues proceedings stayed pending the determination of the same issues in the lead case;
- (b) the extent to which the determination of the same issues in the lead case is binding on any subsequent proceedings; and
- (c) any further directions required as a result of an application under paragraph (5), including a direction as to any further hearing required in relation to those proceedings.

(8) Where a direction has been made for any proceedings to be heard as a lead case and those proceedings are withdrawn or discontinued either before or during the hearing, the President may direct—

- (a) that one of the remaining same issues proceedings be substituted as the lead case; and
- (b) the extent to which any directions made prior to substitution shall be binding in relation to the substituted proceedings.

(9) The Secretary must send notice of the directions to be made under paragraphs (1) and (2), a copy of the directions made under paragraphs (1), (2), (4), (5), (7) and (8) and the determination of the same issues in the lead case to all the parties to the same issues proceedings.

Joining of parties to proceedings

10B. If it appears to the President or the Chairman, whether on the application of a party or otherwise, that it is desirable that any person other than the respondent be made a party to any proceedings, he or she may direct that such person be joined as a party in the proceedings and may make such further directions for giving effect to, or in connection with, the direction as he or she thinks fit.”

27. In rule 19(3) (procedure at hearings) ignore “when taking the referred action”.

Tony Cunningham

Bob Blizzard

Two of the Lords Commissioners of Her
Majesty’s Treasury

7th July 2009

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Banking Act 2009 (c. 1) (“the Act”).

This Order makes provision in relation to the independent valuer appointed in accordance with article 5(2) of the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009 (S.I. 2009/1800) (“the Dunfermline Compensation Order”).

The Dunfermline Compensation Order requires the independent valuer to assess the compensation, if any, payable to third parties affected by the application of section 38(6) of the Act(6) (by virtue of paragraph 6 of the Dunfermline Building Society Property Transfer Instrument 2009(7)), and to pre-transfer creditors of Dunfermline Building Society(8). The Dunfermline Compensation Order also requires the independent valuer to make assessments in relation to the Dunfermline Resolution Account(9) (established in accordance with article 6 of that Order) and the Financial Services Compensation Scheme(10).

This Order makes various provisions in connection with the independent valuer.

Articles 3 and 4 make provision for the remuneration of, and payment of allowances to, the panel appointed in accordance with article 5(1)(b) of the Dunfermline Compensation Order, the independent valuer, and the person appointed in accordance with article 3(2) of this Order to monitor the operation of the arrangements for the remuneration and payment of allowances to the independent valuer.

Article 5 makes provision for the arrangements for the remuneration of, and payment of allowances to, any staff appointed by the independent valuer in exercise of the power conferred by section 55(4) of the Act.

Article 6 makes provision for the independent valuer’s records and accounts.

Article 8 makes provision for the making of rules as to the procedure to be adopted by the independent valuer.

Article 9 provides that the independent valuer may apply to the court to require a person to supply information relevant to the independent valuer’s functions under article 4(a) or (c) of the Dunfermline Compensation Order.

Article 10 provides that a person who supplies information to an independent valuer is not, by reason only of the provision of information to the independent valuer, liable in any proceedings relating to breach of an obligation of confidence.

Article 11 makes provision for the disclosure of information by the independent valuer.

(6) Section 38 of the Act deals with default events.

(7) The Transfer Instrument was made by the Bank of England in exercise of the powers conferred on it by sections 11(2)(b) and 12(2) of the Act. The Transfer Instrument is available on the Bank of England’s website: www.bankofengland.co.uk.

(8) “Pre-transfer creditor” is defined in section 60(3)(b) of the Act.

(9) Paragraph 7 of Schedule 1 to the Dunfermline Compensation Order requires the independent valuer to certify whether any costs of the Bank of England or the Treasury to be deducted from the Dunfermline Resolution Account have been reasonably and properly incurred for the purposes specified in paragraph 5(1)(a) of that Schedule.

(10) Article 11 of the Dunfermline Compensation Order requires the independent valuer to perform the function in regulation 8(1) of the Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009 (S.I. 2009/807) to assess the amount the Financial Services Compensation Scheme would have recovered from the insolvency estate of Dunfermline Building Society had it entered into insolvency immediately before the transfers were made by the Bank of England.

Article 12 provides that a person affected by the determination of the independent valuer set out in an assessment notice issued under paragraph 4 or 10 of Schedule 2 to the Dunfermline Compensation Order may require the independent valuer to reconsider his or her determination and to produce a revised assessment notice.

Article 13 provides that a person affected by the determination of the independent valuer set out in a revised assessment notice may refer the matter to the Financial Services and Markets Tribunal (“the Tribunal”)(**11**).

Articles 14 to 27 provide that Part 9 of, and Schedule 13 to, the Financial Services and Markets Act 2000 (c. 8) and the Financial Services and Markets Tribunal Rules 2001 (S.I. 2001/2476) apply to a reference to the Tribunal made under article 13, subject to the modifications set out in those articles. In particular, new functions are conferred on the President of the Tribunal (appointed from one of the members of chairman in accordance with paragraph 2(1) of Schedule 13 to the Financial Services and Markets Act 2000).

(11) The Financial Services and Markets Tribunal is an independent body established under section 132 of the Financial Services and Markets Act 2000. The Tribunal’s website is available at the following address: <http://www.tribunals.gov.uk/Finance/FinancialServicesMarkets.htm>.