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Ian Davison

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Our ref: IRU/9/426

10 June 2009

Dear Mr Davison,

FREEDOM OF INFORMATION ACT REQUEST: KAUPTHING, SINGER & FRIEDLANDER

Thank you for your emails of 11 and 28 May 2009 entitled "Basis of payment of Kaupthing S & F funds to Dave Whelan".

You requested the following information under the Freedom of Information (FOI) Act 2000.

- Whether there have been any exceptions to the defined published rules for release of funds/compensation, whether by release of funds by KSF UK, payouts through FSCS or compensation/advances by HMG to any company/individual due to their deposits with KSF UK;
- Have any special arrangements been made outside the scope of the defined published rules regarding release of funds, compensation or advances of funds to any company/individual that had deposits with KSF UK; and
- If there have been exceptions or special arrangements please detail fully the reasons and basis for the exception(s).

We do not hold information that answers the specific questions you have raised. As we have indicated before, the Financial Services Compensation Scheme (FSCS) is independent of HM Treasury (HMT) and has sole responsibility for determining whether a depositor meets the eligibility criteria set out in the compensation scheme rules. However in relation to your first question, we would confirm that the FSCS cannot make exceptions to the published rules. In particular the FSCS can only pay out according to the scheme rules (which are made by the Financial Services Authority (FSA)) and has no discretionary ability to pay compensation either to persons who are not entitled to compensation or in excess of the amounts to which eligible claimants are entitled.

The Treasury has announced that any depositors eligible to claim under the FSCS, whose accounts were not transferred to ING Direct (see below), are being paid out through the agency of the FSCS, with the Treasury financing reimbursement of the amounts, which exceed £50,000 (the compensation limit for deposits in the published rules), which are not covered by the FSCS. I attach a link to a press notice issued by HMT on 9 October of last year that provides further information:



www.hm-treasury.gov.uk/press_103_08.htm

For depositors who held Edge accounts with KSF, the Government made arrangements using its powers under the Banking (Special Provisions) Act 2008 to transfer those accounts to ING Direct. The relevant instrument is the Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2674) available on the OPSI website (www.opsi.gov.uk).

The FSCS was required to pay a contribution to the costs of this transfer equal to the compensation it would have paid to eligible depositors under the published rules of the scheme, had KSF been left to go into general insolvency without the transfer being made. S.I. 2008/2674 deemed this contribution to constitute the payment of compensation to the depositors concerned.

The Treasury also made a contribution to the costs of transferring deposits from KSF UK to ING. The Treasury's contribution was equal to the amount of KSF's liabilities to eligible depositors less the FSCS contribution and less £5 million. The basis for this payment was also S.I. 2008/2674. In effect this meant that the Treasury provided the funding for any funds held by Edge depositors in excess of the statutory maximum compensation for the FSCS.

Timeliness of this response

You wrote to us on 28 May pointing out that the Act requires responses to be sent 'promptly' and within a maximum of 20 working days, and asking for 'an honest and comprehensive response as soon as possible'.

We recognise that the Act requires as prompt a response as possible and that requests must be answered within 20 working days. We receive a large number of requests and deal with them in the order we receive them. We work hard to provide prompt responses within the statutory deadline and have a high degree of success in doing so. As you might appreciate, this policy area is particularly busy at present and has a number of competing priorities.

I can confirm that this response has been sent within the statutory time limit, given that the public holiday on 25 May is a non-working day for the purposes of this calculation.

I accept that you may be disappointed not to have received an earlier reply but hope that you will be satisfied with this response.

If you have any queries about this letter, please contact us at the email account given in the header to this letter. It would help us, if you could remember to quote the IRU reference number (also in the header) in any future communications.

Yours sincerely,

**Information Rights Unit
For HM Treasury**

Your Rights to Complain under the FOI Act

If you are not happy with this response, you may request a review by writing to HM Treasury, Information Rights Unit, 2/S2, 1 Horse Guards Road, London SW1A 2HQ. Email FOI.responses@hm-treasury.gov.uk

Any review request must be made within 2 months of the date of this letter.

It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

If you are not content with the outcome your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Treasury. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.