



House of Commons  
Treasury Committee

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# The failure of the Presbyterian Mutual Society

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**Sixth Report of Session 2009–10**

*Report, together with formal minutes, oral and  
written evidence*

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### Contacts

All correspondence should be addressed to the Clerks of the Treasury Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5769; the Committee's email address is [treascom@parliament.uk](mailto:treascom@parliament.uk).

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## Summary

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The Presbyterian Mutual Society (PMS), a Northern Ireland Industrial and Provident Society (IPS), was subjected to a run on its deposits in October 2008, which resulted in its entering administration. The estimated realisation value of its assets is significantly less than its liabilities. There is some prospect of recovering members' money if the administration is allowed to run for a long time, but that would continue to mean that members of the Society, who might have pressing needs, would not have access to their funds. Moreover, there is legal uncertainty as to whether shareholding members of the Society are entitled to the return of any of their funds until those who have made loans to the Society are repaid.

The PMS was not regulated by the FSA, nor was it part of the Financial Services Compensation Scheme. Its members have no legal entitlement to reimbursement. In future we want a system where, in cases like this, it would be crystal clear that deposits were made at the depositors' own risk, and there was no question of government assistance. It should be clear that it is the directors, not the government, or the regulator, who have ultimate responsibility for such an institution's management. We do not believe that, as a general rule, the taxpayer should stand behind financial institutions.

The banking sector in Northern Ireland is regulated by the FSA, just as it is in Great Britain. There were no clear indications that the regulatory system for IPSs differed between Northern Ireland and Great Britain. There was a regulatory gap which was neither publicised nor filled. It is possible that a society which was mutual in life will prove to be far from mutual in death, and that small savers will lose out most heavily.

If these savers are to be assisted, the United Kingdom Government and Northern Ireland Executive must act together to ensure that individual PMS members do not suffer unduly. We are not dogmatic about what approach is best; we are however clear that a remedy must be found.

On a related matter there have been calls for the FSA to regulate credit unions in Northern Ireland. We support such a proposal, but consider that if regulation is transferred in this way while responsibility for registration remains with the Department of Enterprise, Trade and Investment Northern Ireland there should be provisions to ensure close cooperation between the Registrar and the FSA to ensure that no regulatory gaps arise.

# 1 Introduction

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## The Presbyterian Mutual Society in Northern Ireland

1. The Presbyterian Mutual Society is an industrial and provident society (IPS) with some 10,000 members. Its aims are:

- to promote thrift among its members by the accumulation of their savings;
- to use and manage such savings for the mutual benefit of members;
- to create a source of credit for the benefit of its members at a fair and reasonable rate of interest;
- to procure or provide legal, accountancy, consultancy or secretarial services and advice to members towards assisting them in the establishment, improvement or expansion of their business or financial affairs and generally to undertake all or anything expedient for the accomplishing or incident or conducive to or consequential upon the attainment of all or any of the objects including the acquisition of property and any rights or interest therein.<sup>1</sup>

Membership of the Society was obtained by the purchase of shares (in minimum parcels of £100). The maximum shareholding was £20,000, but members who wanted to place more money with the Society could do so by making loans. A dividend was paid on shares, and those who made loans received interest. In this report we use the term “member” to refer both to those who only held shares and those who had also made loans to the Society. The Society grew very rapidly from 2002, its assets rising by more than 12 times from £24 million in 2002 to £309 million in 2008. It made significant advances for buy to let properties and development and agricultural land.

2. The Society’s Annual Report for the year ended 31 March 2008 reveals that at the fiscal year end the total members’ interests it held were over £309 million. Figures subsequently provided by the Department of Finance and Personnel, Northern Ireland suggest that some two thirds of this was loans, and the remaining third withdrawable share capital.<sup>2</sup> On the asset side, some £175 million was held in mortgages, £131 million in fixed and other assets, and nearly £6 million in current assets. The Society kept some money on deposit in conventional banks, but also advanced money to members on security and had a commercial property portfolio.

3. As a result of the collapse of the Icelandic banks, the Government effectively guaranteed all deposits in conventional banks. While this largely had a stabilising effect on the wider financial system, it prompted many PMS members to move their money from the Society.

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1 Rules of the Presbyterian Mutual Society Ltd

2 Ev 20

During the first three weeks of October 2008, the PMS responded to many members' requests for withdrawal which reduced the balance of the PMS's current account from £25 million to just £4 million. On 25 October, the Board met and decided that no further payments should be made to members until the Board was professionally advised with relation to the current illiquidity of the Society. By the time it met at a subsequent meeting on 6 November a further £50 million of requests had been made and three members had announced their intention to commence legal proceedings for the recovery of their investment. Faced with this problem, the priority of the board became asset protection and it was resolved to place the Society into administration to achieve this.

4. As the PMS was registered under the Industrial and Provident Societies Act (Northern Ireland) 1969, the Northern Ireland Department of Enterprise, Trade and Investment (DEINI) was required to make an Order under Article 10(2) of the Insolvency (Northern Ireland) Order 2005 to apply company administration rules to it. This Order, which was made on 14th November, applied Part III of the Insolvency (Northern Ireland) Order 1989 to PMS. Accordingly, the Society entered administration on 17 November 2008.

### The non-bank sector in Northern Ireland

5. As in the rest of the United Kingdom, banking services in Northern Ireland are regulated by the FSA. However, financial services are also commonly provided by two legal entities which are not banks: industrial and provident societies, and credit unions. Industrial and provident societies carry on various forms of business, but their uniting feature is cooperation. Societies can be agricultural cooperatives, which trade for the benefit of their members, housing associations, or, as in the case of the PMS, a mutual society. Credit unions provide co-operative banking to their members, who both own and control them. Many credit unions are founded by members of one community and their objects are usually to promote thrift and provide loans to their members at a beneficial rate.

6. Credit unions hold a more prominent position in Northern Ireland than in Great Britain. A significant portion of basic financial services to middle and lower income groups are provided by the credit unions and IPSs—almost a quarter of the adult population is a member of such a body.<sup>3</sup> While credit unions have their own deposit protection scheme, there is no such scheme for industrial and provident societies.

7. As PMS was not regulated by the FSA it had not been contributing to the Financial Services Compensation Scheme, which is a requirement for those bodies that are governed by the Financial Services and Markets Act 2000 (FSMA). This meant that its members were not entitled to take advantage of the protection offered.

8. The reason for the run on the Society was that members realised that there was no protection for their money, and were moving it to safer institutions. Although the summary financial statements for the year ended 31<sup>st</sup> March 2008 showed that assets more than covered liabilities, the plunge in commercial property values meant that in January

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3 Report on the Committee's Inquiry into the Role and Potential of Credit Unions in Northern Ireland, Northern Ireland Assembly Committee for Enterprise, Trade and Investment (05/08/09)

2009 the Administrator found a £100 million shortfall. Currently the Society remains in administration, and members have no access to their money.

9. The Treasury Committee has been aware of the difficulties the collapse of PMS has caused to its members for some time. We have received regular and extensive correspondence. The Chairman raised the matter in Northern Ireland Questions on 3 June.<sup>4</sup> When we visited Belfast in early 2009 we heard first-hand from those directly affected. Many people cannot gain access to the money that they need to pay their taxes, fund their retirements, or simply meet the daily necessities of life. A significant number of those affected are elderly or disabled.

10. In recognition of the plight of the PMS members a Working Group was set up by the UK Government in June 2009 to consider potential assistance for the Society and its members. The Working Group comprises the Chief Secretary to the Treasury, the Economic Secretary to the Treasury, the Secretary of State for Northern Ireland, the Northern Ireland Minister for Finance and Personnel, the Northern Ireland Minister for Enterprise, Trade and Investment, and the First Minister and Deputy First Minister of Northern Ireland. We decided not to recommend early action on PMS because we hoped that the Working Group would find a resolution. However, the Working Group has not reported, and the Pre-Budget Report, which might have announced measures to help PMS members, contained no such proposals. Accordingly, we decided to conduct a brief inquiry “to find out how the problems happened, the impact this has had and whether UK law needs to be changed to stop something like this happening again.”

11. Members of the Treasury Committee travelled to Stormont to take evidence. We heard from Sammy Wilson MP MLA, Minister of Finance, Mike Brennan, Head of Strategic Policy Division, DFP, Peter Jakobsen, Strategic Policy Division, DFP, Arlene Foster MLA, Minister of Enterprise, Trade and Investment, Sandy Williamson, Northern Ireland Registrar of Industrial and Provident Societies, Mike Bohill, Head of DETINI's Business Regulation Division, Alban Macginnis MLA, Chairperson, Paul Butler MLA, Deputy Chairperson, Mark Durkan MP MLA, former Chairperson, David Simpson MP MLA, Leslie Cree MBE MLA and Séan Neeson MLA. We also put questions to some members of the Presbyterian Mutual Society and representatives of the PMS lobby group: Mr Derek Lynn, Mr Don McClay, Mrs Gwyn Smyth, Mr Robin Manson and Mrs Hazel Russell. The Chairmen met privately with representatives of the Presbyterian Church in Ireland; Mr Arthur Boyd, the Administrator of PMS and some members of the Society who wished to give private information about their circumstances. We are grateful to all those who gave evidence. In particular, we are grateful to the members of the Presbyterian Mutual Society who gave us evidence about the impact of the failure, even though to do so meant revealing intensely personal circumstances.

## Legal background

12. Credit unions and industrial and provident societies (IPS) are regulated in Northern Ireland (NI) by the Industrial and Provident Societies Act (Northern Ireland) 1969 (the Act) and its dependent statutory instruments. For an IPS to register under this act it must carry on a business, industry or trade and satisfy the Department for Enterprise, Trade and Investment (DETI) registrar that it is either a bona fide co-operative society, or that it carries on business for the benefit of the community and there are special reasons why it should be registered under the 1969 Act rather than as a company under the Companies (Northern Ireland) Order 1986. Rules 3 (a) and (b) of the Presbyterian Mutual Society (PMS) provide that it was formed to ‘promote thrift amongst its members by the accumulation of their savings’ and ‘to use and manage such savings for the mutual benefit of members’. Further to this it should be non-profit making and control of the society must be vested in the members equally. This last is provided for by Rule 41(6). Section 1(3) of the Act excludes from the definition of co-operative society one which ‘carries on... business with the object of making profits mainly for the payment of interest, dividends or bonuses’.

13. Both credit unions and IPSs registered under the Act are limited in the financial services they may carry out. They may only provide basic savings and loan services by virtue of Article 24 of the Credit Unions (Order) 1985 and section 7 of the Act respectively, both of which prohibit ‘the business of banking’. (The “business of banking” has no statutory definition; as a matter of common law it entails running current accounts for customers and providing access to cheques or the equivalent).<sup>5</sup> Further restrictions on the size of deposits apply. Rule 8 of the PMS rules states that “no member shall have or claim any interest in the shares of the Society exceeding that permitted from time to time by or under [...] the Act”. The Credit Unions (Limit on Shares) Order (Northern Ireland) 2006 set the limit for credit unions at the greater of £15,000 and 1.5% of the total shareholding.

14. There are differences in the regulatory framework for IPSs and credit unions between Great Britain and Northern Ireland. With the advent in 2002 of the Financial Services and Markets Act 2000, all activities of credit unions in Great Britain have been regulated by the FSA. Section 19 of the Financial Services and Markets Act 2000 (FSMA), which came into force on 1 December 2001, stipulates that no person may carry on a regulated activity in the UK, or purport to do so, unless they are authorised or exempt. However it was accompanied by the Financial Services and Markets Act 2000 (Exemption) Order 2001 which provides for industrial and provident societies—defined in section 417 FSMA as one registered or deemed to be registered under the Acts—as well as credit unions within the meaning of the Credit Unions (Northern Ireland) Order 1985, to be exempt from regulation in respect of accepting deposits, provided that these are in the form of withdrawable share capital. We note that only one third of the money held by PMS appears to be in this form.

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5 United Dominions Trust v Kirkwood [1966] 2QB 431

15. This exemption follows from registration under statutes which themselves stipulate the conditions a credit union or industrial and provident society must fulfil in order to be registered. A violation of any of those conditions would result in the exemption no longer applying. Hence any society registered under the Acts which subsequently decided to carry on business with the object of making profit for the purpose of paying interest and dividends would not only need to be regulated in the areas into which it expanded, in accordance with the general prohibition of section 19 FSMA, but would also lose the right to exemption with respect to its deposit taking activity.

16. After its collapse, the FSA investigated the PMS. Although it does not normally confirm or deny its investigations, it published the results of this investigation on its website:

We have concluded our investigation and have decided that it [PMS] was conducting regulated activities without the necessary authorisation or exemption. However, on the basis of the information currently available to us, and applying the criteria in the Code for Crown Prosecutors, we have decided that it would not be right for us to take a case against any of those involved in running the PMS. However, we remain in touch with the administrator and, if further information comes to light relating to the issues we have investigated, we will look into it.<sup>6</sup>

In written evidence to us the FSA set out the legal position in far more detail than in the published statement, concluding “a society which used the capital raised by way of deposits for the purpose of lending would need to be regulated as a credit institution.”<sup>7</sup>

### Approach taken in the report

17. One cannot clearly distinguish between reserved and devolved matters in this case. The registration of PMS was a devolved matter, but the Society was undertaking activities which should have been regulated by the FSA, a United Kingdom body. Our inquiry has been conducted when other processes related to the collapse of the PMS are also happening. We understand that the administrator has submitted a report on the activities of the directors of the PMS to DETINI, and that is still under consideration. There is a possibility that proceedings may be brought seeking to disqualify the board of PMS as company directors. The auditors of PMS are also subject to an investigation by their disciplinary body. Although the Administrator paused in his work to see if the Ministerial Working Group could produce a sensible outcome for PMS members, he has now gone to court to ask for directions on the distributions he is allowed to make. We do not wish to trespass on other bodies’ responsibility. In an ideal world, we could have delayed our inquiry until these matters were settled. However, the members of the Presbyterian Mutual Society cannot wait that long. They need some certainty about the likely outcome, and we believe that reporting now is in their interests.

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6 FSA website, 9 April 2009

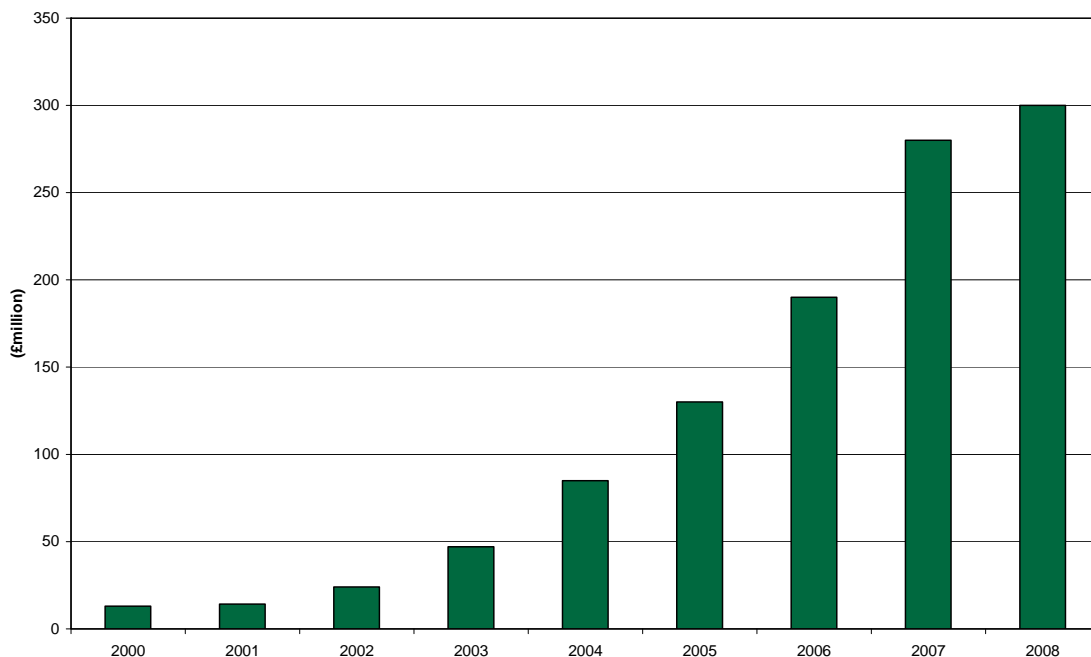
7 Ev 25

## 2 Roles and responsibilities

### The activities of the Society

18. The annual returns filed by the PMS were prefixed by a statement of registration under the Industrial and Provident Societies (Northern Ireland) Act 1969. However, no mention was made of any regulation that applied to the Society and the activities that it carried out. The activities of PMS underwent a significant change in nature over the 5 years running up to its administration. In 2002 an information leaflet produced by PMS proclaimed that the directors did not speculate with members' funds entrusted to their care. In contrast, in a buoyant Chairman's review in 2005, Rev. Sidlow McFarland reported the purchase of 3 properties in the UK at a cost of £27 million to add to the Society's fledgling commercial portfolio.<sup>8</sup> Members of the PMS were informed that this course of action was necessary "in order to maintain the high level of dividend paid to members" but were reassured that the Loans Committee was always "very careful about lending your money" and there was "always ample money" to support any members that were in need.<sup>9</sup> A further addition was made to the property portfolio in 2006, bringing the number of commercial properties to 10, then worth £106 million.<sup>10</sup> The Society also continued to make mortgage advances.

**Figure 1:** Total assets of the Presbyterian Mutual Society



Source: PMS Annual Returns, 2000–2008

8 Chairman's Review, PMS Annual Report and Accounts for the year ended 31<sup>st</sup> March 2005

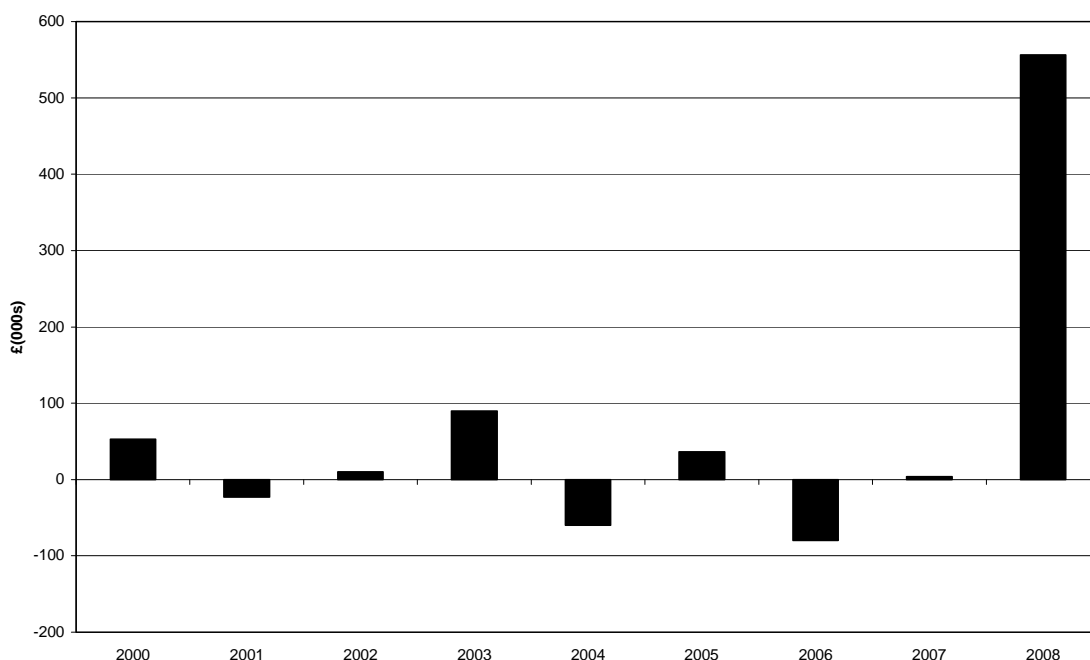
9 *Ibid.*

10 Financial Review: Property, PMS Annual Report and Accounts for the year ended 31<sup>st</sup> March 2006

### The year of administration

19. By March 2008, the picture had changed somewhat. In June 2008 the annual report for the year ended 31 March was issued for the first time not with a full set of accounts but a summary financial statement. This change of format was attributed to “the common practice of financial institutions”.<sup>11</sup> As a reflection of the brewing subprime mortgage crisis and unrest in the financial sector the outlook appeared to be more subdued, with the Chairman’s Report admitting that the “challenge” of the economic climate had “obviously gained strength”.<sup>12</sup> It was necessary, he said, to approach the situation with “calmness, patience and confidence”.<sup>13</sup> The value of the property portfolio had fallen and no further purchases were made. The provision for bad and doubtful debts increased, to cover the “very substantial” size of the loan book which was then valued at £175 million.<sup>14</sup>

Figure 2: Bad debt provision



Source: PMS Annual Returns, 2000–2008

20. At the time of its administration, the PMS’s commercial property portfolio comprised thirteen office and retail units, of which twelve were in Great Britain. These were let out to a variety of banking and retail tenants. A valuation commissioned in December 2008 advised that this portfolio was valued at around £92 million, however in December 2009 it was revalued at £97 million. This still reflects a 26% decrease from the purchase cost.<sup>15</sup>

11 Financial Review, PMS Annual Report & Summary Financial Statement for the year ended 31<sup>st</sup> March 2008

12 Chairman’s Review, PMS Annual Report & Summary Financial Statement for the year ended 31<sup>st</sup> March 2008

13 *Ibid.*

14 Financial Review, PMS Annual Report & Summary Financial Statement for the year ended 31<sup>st</sup> March 2008

15 Paragraph 6.7, Administrator’s Six Monthly Progress Report, 15 December 2009

21. Unfortunately, the economy in Northern Ireland had begun to suffer in much the same way as in Great Britain, reeling from the cessation of a boom in property prices and supply of credit. The PMS was not the only organisation to be caught by the fall in commercial property prices, and the effect of the recession on its tenants. As a result many of the Society's commercial and residential mortgagors were unable to fulfil their obligations and fell into arrears, exacerbating the problems that the PMS began to face. The PMS also entered into a small number of "regulated mortgage contracts".<sup>16</sup>

### The directors of PMS

22. The immediate cause of PMS's failure was lack of liquidity. The PMS itself had identified the potential loss of liquidity as a future risk. In the directors' report for 2008 it is stated that "the directors have conducted a review of the major risks to which the Society is exposed".<sup>17</sup> One of the risks identified was liquidity risk, and the directors' management policy was stipulated to be carried out by "ensuring sufficient liquidity is available to meet foreseeable needs."<sup>18</sup>

23. Sammy Wilson MP MLA, the Northern Ireland Minister for Finance told us that if the run on the Society had been avoided it was not a foregone conclusion that insolvency would have been a future problem as "the PMS had been operating since 1982 and it always had the on-call or on-demand facility available to its members and there had not been any trouble up to that particular time" and "the evidence is that for a long period there was stability there."<sup>19</sup>

24. The immediate cause of the Society entering administration was the run on its funds, and that run was prompted by the realisation that funds in conventional banks were safer than funds in an IPS. However, currently the Society has a deficit of £123 million.<sup>20</sup> **The assets of the PMS were badly affected by the general financial crisis and by its non-residential lending strategy. The Administrator has submitted a confidential report on the Board's conduct to DETINI, which now has to decide whether to start disqualification proceedings. It is early to judge the degree to which the directors were culpable rather than unlucky, but nothing we say later in this Report should detract from the fact that it is the duty of directors to ensure their companies are properly run.**

### UK Government

25. Sammy Wilson told us that:

there is some anecdotal evidence to indicate that some of the local banks were making this [the UK Government's implicit guarantee of all bank deposits and that the monies in PMS were not protected] known to customers and indicating that

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16 Article 61(3), FSMA 2000 (Regulated Activities) Order 2001

17 Annual Return, year ending 31 March 2008

18 *Ibid.*

19 Q3

20 Estimated to realise value, Administrator's statement of affairs, 12 January 2009

money would be safer with the local banks rather than with the PMS, that started the run.<sup>21</sup>

It has been suggested that the actions of the UK government in creating a preferred class of financial institutions to the detriment of others<sup>22</sup> were blameworthy. **The Government guarantee of bank deposits may have alerted members of the Presbyterian Mutual Society to the risks they faced, but it did not create those risks. Moreover, although it is theoretically possible that the Society might have survived the run and continued to prosper, it is more likely that the gap between its assets and its liabilities would have emerged in due course. Members would have been exposed to even greater losses.**

### Should anyone have identified the danger?

26. In the United Kingdom, as we have seen, credit unions are regulated by the FSA. Industrial and provident societies are not so regulated, but they too have to be registered. The FSA is responsible both for the registration function and the regulation function. This co-location of responsibility means that the registrar is well placed to draw the attention of the regulator to registered bodies which appear to be straying into regulated business.

27. In Northern Ireland, industrial and providential societies are registered by the Registry of Credit Unions and Industrial and Provident Societies (the Registry), which is a function retained by the Department of Enterprise, Trade and Investment (DETINI).<sup>23</sup> The Registrar has some regulatory functions for credit unions (which are much more restricted in what they can offer in Northern Ireland), but has none for industrial and provident societies. The function of the Registry is to hold a register of the 180 IPSs operating in Northern Ireland, and to make sure their annual returns are filed.

28. The FSA told us:

Under both I&P Acts [Industrial & Provident Societies Act 1965, the Act which applies in Great Britain and the Industrial & Provident Societies Act (Northern Ireland) 1969], the registering authority (DETI or FSA) must be satisfied that a society meets one of the specified conditions for registration set out in section 1(2) of the respective Acts and that it continues to do so throughout the period during which it is registered.<sup>24</sup>

The Act under which industrial and provident societies are registered in Northern Ireland provides for them either be registered as a 'bona fide co-operative' or a 'community benefit society'. The rules of the PMS indicate that it was registered as the former. The FSA told us:

The Acts do not define a 'bona fide co-operative', so it is a matter for DETI (and the FSA in Great Britain) to determine the characteristics which an applicant society must exhibit in order to qualify for registration. [...] In addition, and while there is no

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21 Q2

22 Ev 16

23 <http://www.detini.gov.uk/deti-registry-index.htm>

24 Ev 22

obligation on us to do so, we take account of the regulatory consequences of registration under the I&P Act, which include exemptions from the protections provided by FSMA. So if, for example, we consider that a society's activities would be better suited to an alternative model, such as a building society or a credit union, we would advise the applicants of this.<sup>25</sup>

29. The witnesses from the Northern Ireland Executive stressed the limitation of the Registrar's powers in relation to IPSs. Mr Mike Bohill, Head of Business Regulation Division, DETINI, told us:

the Registrar's function is essentially around ensuring the efficient operation of a registry, making that available to the general public and then also dealing with any complaints that might be made against, for example, an IPS by a member or a member of the public or a member of the professions. During the course of the PMS itself we received no complaints about the PMS from any member at all. It is a registration function.<sup>26</sup>

30. However, this limitation might not have been apparent to an ordinary member of the public before the collapse. DETINI's Corporate Plan 2002-2005 and Operating Plan 2002-2003 stated that "DETINI is responsible for regulating Credit Unions and Industrial and Provident Societies in Northern Ireland" and set out one of its priorities for community enterprise policy development as seeking to "build on this role with a view to maximising the contribution such organisations might make to the Social Economy."<sup>27</sup> An equality impact assessment on this policy carried out in 2003 reminded the reader that key functions of the Registry are "the exercise of prudential supervision over the affairs of credit unions and limited monitoring of other societies" and "provision of a legal framework for the proper regulation of [...] industrial and provident societies to keep pace with EU and GB developments, and brief Ministers, officials, companies, societies and professional bodies on policy and legislation."<sup>28</sup>

31. It was the opinion of ministers at the DETINI that there was no 'gap' in the function of the Registry. Ms Arlene Foster MLA told us that "Essentially, it is up to those IPSs. If they are carrying out activities that need to be regulated by the FSA, they need to alert the FSA to that and then become regulated by the FSA."<sup>29</sup>

### ***The Financial Services Authority***

32. The FSA states on its website that "A[n industrial and provident] Society is responsible for considering whether any of its activities are regulated activities" and if this is the case, "the Society must [...] apply for authorisation from the FSA for the conduct of such

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25 Ev 22

26 Q 22

27 Para 4.24, DETINI Corporate Plan 2002-2005 & Operating Plan 2002-2003

28 Para 1.7, Equality Impact Assessment on DETINI's policy, [http://www.detini.gov.uk/corporate\\_regulation.pdf](http://www.detini.gov.uk/corporate_regulation.pdf)

29 Q 15

activities.”<sup>30</sup> The system is ‘opt in’ rather than ‘opt out’. However, the FSA also told us that it took steps to mitigate the risk that registered societies were engaging in activity which should be regulated:

Our mutuals registration team examines each society’s rule book both at the time of first registration and when applications to register subsequent alterations to rules are received. This is because, as mentioned above, the FSA has to be satisfied that a society qualifies for registration; the rules under which it will operate are fundamental to this consideration. If it is evident from examination of the rules that a society wishes to carry on an activity for which authorisation under FSMA might be required, we advise it to consider whether it should apply for authorisation, although there is no statutory obligation on us in our capacity as registering authority to do so.<sup>31</sup>

33. In contrast, Ms Arlene Foster MLA was adamant that “it is not our [the Department of Enterprise, Trade and Investment’s] function” to review the activities or even notify any industrial and provident societies that they were required to carry out such a process themselves, since if that was done for IPSs, “it would have do be done for everybody.”<sup>32</sup>

34. Ms Foster was clear: “If the FSA decide that they may need to do more work around alerting people that they need to be regulated, that is a matter for the FSA.”<sup>33</sup> We consider the extent to which there should be publicity about the level of regulation offered later in this Report. Here we note that there is a limit to the activities that a Regulator can undertake. If it is unreasonable to expect DETINI to alert individual bodies to the possibility they may need to be regulated by the FSA, it is still more unreasonable to expect the FSA to be able to identify and alert all bodies which may be carrying out activities which require authorisation. **Companies which are carrying out activities which should be regulated by the FSA have the primary responsibility for identifying that fact, and seeking the necessary authorisation.**

### *Filling the regulatory gap*

35. Even if the Registrar’s functions are limited and primary responsibility for seeking authorisation for regulated business must rest with the companies concerned, that does not mean there is no government responsibility for the regulatory framework.

36. The PMS grew rapidly in the six years prior to its administration. Between 2002 and 2007, the average yearly increase in value of the assets was 58%. A set of accounts was filed with the Registry each year. It is the Registrar’s duty then to submit an annual report to DETINI. The annual report filed by the Registrar before the collapse of the PMS clearly states:

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30 [http://www.fsa.gov.uk/Pages/Doing/small\\_firms/MSR/Societies/index.shtml](http://www.fsa.gov.uk/Pages/Doing/small_firms/MSR/Societies/index.shtml)

31 Ev 23

32 Q20

33 Q15

The main priorities of the Registry of Credit Unions and Industrial and Provident Societies are:

- i. the effective prudential supervision of credit unions;
- ii. the efficient administration and, where appropriate, enforcement of society law and codes of conduct; and
- iii. the provision of an effective public search facility.

The Registry does not exercise any prudential supervisory role in relation to industrial and provident societies.<sup>34</sup>

37. Had DETINI been more alert it might have spotted a potential problem. When we asked whether problems might arise in relation to other IPSs we were told:

When the difficulties were apparent with the PMS we undertook a desk exercise reviewing all the business activities of the other roughly 180 industrial provident societies in Northern Ireland and none of them was offering a business model similar to the PMS.<sup>35</sup>

Clearly it was possible for the Department to take action to assess the risks, once the risks were apparent, whatever the legal position. It should have been possible to take such action earlier.

**38. We understand that the Registrar had no regulatory functions in relation to industrial and provident societies, and could take no action. But we do not believe that the Department of Enterprise, Trade and Investment NI was so circumscribed. We note DETINI's opinion that it was not their legal responsibility to regulate the PMS or manoeuvre them into regulation. We are dismayed, however, that the Department had access to all the relevant information and yet this did not result in any preventative action or further examination being undertaken. We are surprised that DETINI did not consider whether the regulatory gap needed to be filled. This might well have entailed action in London as well as in Belfast, but as the department closest to the problem, DETINI should have taken a lead in identifying the problem, and in seeking a solution.**

## The role of the church

39. The Society was, as its name suggests, linked to the Presbyterian Church in Ireland although it is a separate legal entity. Its membership was limited to members of the church. Six of its directors were current or former ministers. It appears that for some members the affiliation was so close as to warrant no distinction. This association also encouraged people to become members. Mrs Smyth, a member of the PMS, told us that by nature the members of the PMS were extremely cautious, especially in the arena of financial decision

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<sup>34</sup> Registry of Credit Unions and Industrial and Provident Societies Annual Report, 2007/08

<sup>35</sup> Q 21

making. They “took comfort, [...] from the fact that the literature did say that the organisation was being run by experienced laymen and clergymen and also that it did not speculate.”<sup>36</sup> She also told us that “at the General Assembly [of the Presbyterian Church] each year there was an endorsement, [...] and there was also a pulpit call during the summer of 2008 for people to place their savings within the PMS.”<sup>37</sup> **The growth of the Society should have been accompanied by a review of its governance.**

40. The Church has been described as “very effective marketing representative” for the PMS and “money was given to the Presbyterian Mutual Society because of the encouragement from the Presbyterian Church.”<sup>38</sup> Ministers regularly gave assurances that “PMS money was as safe as the Rock of Gibraltar.”<sup>39</sup>

41. The Presbyterian Church has also suffered from the Society’s collapse. Some churches invested their money in the PMS. David Simpson MP MLA, member of the DETINI Committee, told us that “a lot of the churches were caught in the middle of building programmes [...] and then everything went askew and they were left trying to go to their congregations to try and find the resources in order to finish those building programmes.”<sup>40</sup>

**42. The congregations of Presbyterian Church in Ireland have suffered as a result of the PMS collapse, both as individuals, and collectively. Legally, it appears that the Church has no liability. However, the Society was linked to the Church, its role was advertised at the General Assembly, it was the subject of pulpit calls and it enthusiastically endorsed by many of its ministers. We consider that the Church cannot evade responsibility for what happened, and should consider whether it can help in any way.**

### Should members of the Society have known?

43. We pressed the members of the Society as to why they had considered their investments were safe, particularly when the Society’s accounts were showing such a rapid expansion and such a change in its business. Firstly, they assumed that the church would only recommend a safe investment. Secondly, having assumed their money was safe, there was little in the information produced by the Society to warn them that this was not the case. As Mr Lynn, who was not a member of the Society, but assisted their lobby group, explained:

a lot of the people who were savers were lay persons who would not have looked in any detail at the accounts, relying on the assurances they were given by various elements of the Presbyterian culture, and therefore I do not think that those accounts were examined. On none of the accounts of the last two or three years was any comment made by the auditors that there were concerns about the financial

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36 Q92

37 *Ibid.*

38 Q98

39 *Ibid.*

40 Q72

structure, whereas if one did have a trained eye on those accounts, there was evidence that the liquidity position was weakening as it moved forward.<sup>41</sup>

44. The marketing material produced by the Society contained assurances that investments were safe. An undated information leaflet contained the following:

Facts for Investors

Q Is my investment safe?

A The Directors give a categorical assurance that they do not under any circumstances speculate with investors' monies entrusted to their care, but use such funds specifically for the purpose of advancing loans to those shareholders who wish to borrow from the Society. Monies that are not out on loan at any given time are invested on the best terms available within the established clearing Banks in Northern Ireland.

On 12 November 2008, the Belfast News Letter reported:

...On its website the society gives an assurance that it does not speculate with its shareholders' funds.

It declares: "The directors give a categorical assurance that they do not under any circumstances speculate with investors' funds entrusted to their care, but use such funds specially for the purpose of advancing loans to those shareholders who wish to borrow from the society.

"The society uses surplus funds to purchase commercial property from which it derives a rental income and retains a percentage of the total capital in cash that is invested in established banks in Northern Ireland."<sup>42</sup>

45. In our view, a more accurate answer to the question "is my money safe" would have been along the following lines:

The directors use the funds deposited principally for the purpose of advancing loans to those shareholders who wish to borrow from the society.

The society uses surplus funds to purchase commercial property from which it derives a rental income and retains a percentage of the total capital in cash that is invested in established banks in Northern Ireland.

However, it is possible that not all loans will be repaid. Commercial property is a risky investment whose value may go down as well as up. The Society is a registered IPS but it is not regulated by the FSA and its members do not have access to the Financial Services Compensation Scheme.

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41 Q 98

42 News Letter *Presbyterian Mutual Society hit by credit crunch*, Published Date: 12 November 2008

46. After the financial crisis it is likely that members would have asked questions about an institution which was not clearly regulated by the FSA. Before the crisis, such matters were not uppermost in ordinary people's minds. Moreover, in Northern Ireland, credit unions are far more prominent than in Great Britain. They have a (voluntary) deposit protection scheme and are subject to some regulation. The Presbyterian Mutual Society would have appeared a far less unusual place to put money than it would in Great Britain. As Mr Durkan told us:

Essentially people believed that the Presbyterian Mutual Society, like other industrial and provident societies, was being regulated. In many ways many of us in the conduct of exchanges of business would have referred to officials in the Department of Enterprise, Trade and Investment as the Regulator. Of course, it was when the committee had those officials in front of us after this situation that they were clarifying that such a regulatory role as they had was merely a registration role...<sup>43</sup>

**If the Chairman of the Northern Island Assembly Committee on Enterprise, Trade and Investment believed the PMS was regulated, it is no surprise that ordinary people made the same assumption.**

47. It was clear from our evidence that many people objected to the description of members of the Society as investors, though they received annual reports showing the extent of PMS' commercial lending. The use of the term 'investors' was taken to imply that they should have been aware of the unregulated nature of the Society and have accepted that their shareholdings were at the same risk as other shares. **We note that PMS shares were withdrawable on demand, and fixed in value: it is understandable that PMS members considered them as analogous to deposits in a building society.**

48. **In our Report on Northern Rock we noted that depositor protection schemes should be simple and well advertised. The case of the Presbyterian Mutual Society has demonstrated, once again, how little information was available to ordinary people about the organisations to which they entrusted their money. We consider that in future there has to be far clearer information given to those who make savings and investments about the way in which organisations are regulated, and the extent of any guarantee provided.**

## 3 Events since the Society entered administration

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49. At the time of the last annual return filed in March 2008, the Society had 10,503 members. Assets held by the Society totalled £309m. The book value of the mortgages and investment property held by the Society at that time totalled £304m. In his report of 12 January 2009, the Administrator estimated the value of realisation of the same to be £178m. There is a funding gap of some £100 million. However, the assets of the Society are high-quality, and already recovering some value. Last year they produced an income of £20 million, and they can be expected to generate £10 million a year in future.

50. At the time this Report is being written, the Administrator has proposed that the administration be extended for five years, to enable the assets to be wound down in a way which would maximise the returns to members. While increasing returns in this way would be welcome, for some members delay would be disastrous. Our correspondence and private meetings with savers have demonstrated that many are elderly, or in ill-health, and need the money now, for their daily life.

### Shareholders or creditors?

51. Now that the Society is in administration, the Administrator has a duty to determine when and how a distribution of funds is made to the members. All members of the PMS have equal control over the Society, pursuant to its Rule 41(6), and there is no separate insolvency regime for mutual societies: they are subject to normal insolvency rules which stipulate that holders of loan capital have priority over the holders of share capital. This means that the withdrawable shares of up to £20,000 should be paid only after the larger loan holdings have been repaid. Figures provided by the Northern Ireland Executive suggest that roughly £100 million is held in withdrawable shares, whereas £204 million is in loans. Given the funding gap identified above, normal insolvency rules would wipe out the withdrawable shares, if the Society were liquidated immediately.

52. The Administrator has gone to court to seek a ruling as to whether or not he can treat all members equally, regardless of their status as shareholders or borrowers. Some of those with large loan holdings have opposed his application. Mr Clay explained the dilemma:

on the one hand you have the lobby of the churches, shall we say, wanting to say withdrawal of shares should be treated in exactly the same way as creditors. Then, in the context of a private individual, with respect, at the present moment the PMS in administration is the custodian of a very large sum of money belonging to a young person who suffers daily from catastrophic injuries received as a result of an accident in which neither that individual nor any family member was an at-fault party. You are involved therefore in a Solomon's choice scenario. You want to benefit or keep faith with your share capital holders of less than £20,000, and you also want to keep faith with someone who trusted the PMS with big money, and it is repugnant

therefore to get into this dialogue about whether one should benefit somebody with £700 and not extend the same benefit to somebody with £2 million.<sup>44</sup>

For this reason, he supported the proposition that the court should decide what was fair.

53. In evidence the Treasury told us:

The Banking Act 2009 provides special resolution and insolvency arrangements for all types of UK institution which have a Financial Services and Markets Act (FSMA) permission to accept deposits.

The Act includes provisions for extending the Special Resolution Regime (SRR) stabilisation tools to building societies, and adapting them to reflect the different legal framework of building societies. The Act also includes a power to extend the resolution and insolvency arrangements to credit unions in the future, should this be considered appropriate.<sup>45</sup>

The Banking Act 2009 applies to all institutions which have permission under Part IV of FSMA to carry on the regulated activity of accepting deposits. Industrial and provident societies are exempt from the requirement to apply for permission (if their deposit taking activities are only in the form of withdrawable share capital). We note that the Treasury has not indicated whether it has powers to extend the Special Resolution Regime to IPSs if it wishes.

**54. It is for the courts to determine the relative rights of shareholders and lenders under current law. We recommend that for the future the Treasury should introduce a distinct form of insolvency regime for mutual societies. Many of those who have only shareholdings in such an organisation may have urgent need for that money, and may not realise that their claims will be subordinate to those of lenders.**

## HMRC

55. Some members placed funds in the PMS specifically to meet expected tax bills. Now that their money is frozen, they are unable to pay those bills. Arlene Foster told us that she had been able to intercede successfully with HMRC in at least one such case, but from our private correspondence we are aware of cases in which HMRC is imposing penalties and charges on those who cannot access their money. In written evidence, HM Treasury told us:

There is clearly considerable complexity in the position of those involved in PMS, deriving from the nature of the society's status, the manner in which insolvency legislation works and differences between compensation arrangements in NI and the UK. However, their standing with regard to their tax liabilities is the same as for

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44 Q 110

45 Ev 21

anyone in temporary financial difficulties, which is that HMRC is committed to working with those who contact them about problems in making tax payments.<sup>46</sup>

This is very far from an assurance that there will be consistent treatment of PMS members.

**56. The Government should not worsen the situations of PMS members. We recommend that HMRC takes a consistent approach to those who are unable to meet their tax liabilities simply because money is locked up in PMS.**

### Takeover by a bank

57. At several times since the Society went into administration there have been rumours or suggestions that it should be taken over by a bank which would be able to hold the assets for long enough to bridge the funding gap, while allowing PMS members access to their savings. In addition the bank would gain access to 10,000 accounts. Mr Macginnis, current Chair of the Northern Ireland Enterprise, Trade and Industry Committee told us “the committee’s view is that the assets and liabilities could be absorbed by a financial institution in an enhancement fund, and that should be the target”.<sup>47</sup> Mr Durkan agreed:

I know from meetings I had when I was Chair of the committee with the Administrator that he certainly would favour moving to an enhancement fund-type solution, which would mean then that all the money would not be withdrawn because people would know their money was guaranteed and they could still leave it there for the purpose for which it was there, but he cannot achieve that on his own just by negotiating with banks. Any of the banks involved need to know that there is real political will and weight behind it.<sup>48</sup>

### Government action

58. As we noted in the introduction, on 17 July 2009, HM Treasury announced:

The Prime Minister recently announced that a working group of Ministers would be formed to look specifically at problems at the Presbyterian Mutual Society. The working group had its first meeting on 16 July and is scheduled to report back to the Prime Minister in the autumn.

59. However, no draft report was submitted to the Prime Minister at the end of September as scheduled. The position of the Government on these matters has still not been made clear.

60. Indeed, the only tangible result of the Ministerial Working Group may have been to delay the Administrator’s work: the Administrator reported in September 2009 that he would slow progress, as he did not “believe it would be in your [creditors/members]

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46 Ev 21

47 Q68

48 Q 70

interests to proceed with a formal arrangement until the Government position as to assistance is made clear.”<sup>49</sup>

61. There appears to have been a period in which the working group was waiting for the Administrator, and the Administrator waiting for the outcome of the group. Sammy Wilson told us that “whilst he [the Administrator] is seeking that [commercial] resolution with other financial institutions, the report cannot be completed”.<sup>50</sup> When pressed as to what assistance was being given to the Administrator in his seeking of a commercial resolution, Sammy Wilson admitted that “there has been no request made for any financial support or input from the Northern Ireland Executive in those discussions, but Treasury officials have been working with the Administrator.”<sup>51</sup> Arlene Foster outlined the role of the Northern Ireland Executive as “standing ready right from the time that the order was made allowing the Administrator to be appointed”,<sup>52</sup> in order to “help in whatever way we can”.<sup>53</sup> In response to this, we heard from Mark Durkan MP MLA, former Chair of the Northern Ireland Enterprise, Trade and Investment Committee, who stated that “we [the Committee] would maybe have more confidence in believing that [the Ministers were doing as much as they possibly could] if we saw things being a bit more productive.”<sup>54</sup> We note with concern that the Northern Ireland Executive considered their passive approach to assisting the Administrator to be satisfactory.

62. We accept that the Administrator felt it prudent to wait for the outcome of the Ministerial Working Group prior to a decision whether to proceed with an orderly wind down. **We consider it unacceptable and farcical that both the UK Government and the Northern Ireland Executive appear to have suggested some responsibility for solutions but have failed to act. The Administrator has understandably hesitated, awaiting possible assistance. Members of the Presbyterian Mutual Society face severe hardship: there will not be a solution until a political lead is given.**

### Government support for PMS members

63. **As a matter of law, members of the Presbyterian Mutual Society are not eligible for any compensation or support. We would like to move to a system in which there is no need for such restitution in cases like this, because it is crystal clear that deposits are made at the depositor’s own risk. We do not believe that, as a general rule, the taxpayer should stand behind any financial institution.**

64. **Nonetheless, this case is different. People in Northern Ireland could not be expected to understand that their savings were subject to a very different regime from that which applied in Great Britain. There appear to have been no attempts to publicise this, or to fill the regulatory gap. It is possible that a society which was mutual in life will prove to**

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49 Letter from Administrator to members, 15 December 2009

50 Q26

51 Q27

52 Q38

53 Q35

54 Q77

be far from mutual in death, and that small savers will lose out most heavily. The United Kingdom Government and Northern Ireland Executive have already set up a Ministerial Working Group. It must report swiftly to ensure that individual PMS members do not suffer unduly.

65. This is not a case where recourse to the funds of the Financial Services Compensation Scheme is appropriate. The PMS was not a bank or building society; it was not regulated and paid no levy while it was operating normally; the FSCS should not be expected to support it after its administration.

66. As we noted above, there have been suggestions that PMS could be taken over by a bank, possibly with some government guarantee or support. It is possible some other support could be offered. Any acceptable solution must ensure that PMS members get swift access to their money. A solution must be found, and must be found quickly.

## 4 Never again?

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67. During our inquiry the role of, and framework surrounding, credit unions were also brought to our attention, as they play a prominent role in the provision of Northern Ireland's financial services and are also governed by the Registry.

68. In Northern Ireland, credit unions are governed by devolved legislation. The subject matter of the Credit Unions (Northern Ireland) Order 1985 is specifically excluded from the financial activity that is reserved to Westminster.<sup>55</sup> This legislation also provides for specific restrictions in activities that can be carried out. Article 24 of the Order prohibits the 'business of banking'. Credit unions are actively supervised by the Registry to ensure that there are no contraventions.

69. In Great Britain the FSA provides both the registration and regulation function for credit unions. A credit union may not be registered if it has not applied to the FSA for permission under FSMA to accept deposits. A credit union in Great Britain can offer a far wider range of services than can credit unions in Northern Ireland.

70. A recent report by the Enterprise, Trade and Investment Committee of the Northern Ireland Assembly recommended that credit unions in Northern Ireland should be regulated by the FSA. A subsequent Treasury review concluded:

that the Government together with the Assembly should consult on bringing NI credit unions within the scope of Financial Services Authority (FSA) regulation, while leaving the legislative and registration functions with the Northern Ireland Assembly and the Department of Enterprise, Trade and Investment Northern Ireland (DEINI). This would bring certainty on compensation arrangements to NI credit unions members, while giving the NI Assembly continuing freedom to respond to the distinctive nature of credit unions in NI.

This action has the support of the unions themselves, who wish to provide more than basic financial services to their members.

71. In the course of our inquiry we asked whether there was a danger that a credit union might expand its activities beyond those permitted. The dangers are less than those of an unauthorised IPS expansion. Not only are credit unions subject to some regulation, two voluntary schemes have been set up to aid credit unions which find themselves in a similar situation to the PMS. The Irish League of Credit Unions and the Ulster League of Credit Unions, whose membership includes 90% of credit unions in Northern Ireland, operate in a similar way, guaranteeing members their savings as a last resort although they can provide stabilisation funding to assist ailing unions. Nonetheless, the Northern Ireland Executive and the Assembly Committee considered that the FSA should be given power to regulate credit unions in Northern Ireland, and that this should not be delayed.

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55 Northern Ireland Act 1998 Schedule 3 paragraph 23

72. On Monday 25 January Mr Durkan put forward an amendment to the Financial Services Bill. This Bill has been introduced primarily to manage systemic risk and protect financial stability. New Clause 10 proposed the removal from the Financial Services and Markets Act 2000 (Exemption) Order 2001 of the exemption which applies to credit unions. His intention was to allow credit unions to expand their services into activities which would more normally be regulated, and to make the FSA responsible for their regulation. The credit unions however have expressed a wish for the registration function to remain with the devolved Department of Enterprise, Trade and Investment. This would ensure that links with the Northern Ireland Executive remained strong. The Economic Secretary, Ian Pearson MP, indicated that the amendment would not work as intended for technical reasons, and that the transfer of regulatory functions to the FSA would be complex, requiring changes to legislation in the United Kingdom and in Northern Ireland and revision of the FSA's rule book. However, the Minister suggested that it was possible that the Bill might be amended in the Lords:

If the Government were to receive a formal notification from the Northern Ireland Executive, clearly backed by the Assembly, to the effect that it did not feel there was a need to consult, and if agreement could be reached with the FSA on the level of detail needed to enable the change to be made with confidence that the other elements could be accommodated, by all means let us have a look at it. We do not have a lot of time left, but if my hon. Friend the Member for Foyle can get those messages from the Northern Ireland Executive and Assembly back to us as a Government, we will of course try and look at them and do what we can.<sup>56</sup>

73. Since then HM Treasury has told us:

The Treasury is therefore currently investigating urgently with both Northern Ireland and with the FSA how the changes that all parties regard as urgent and essential can most effectively be brought about. However, this course may present its own legal challenges, as well as operational difficulties for the FSA, if full and proper consideration is not focussed on the timing of implementation of appropriate legislation.<sup>57</sup>

**74. We support the principle of FSA regulation of credit unions in Northern Ireland. Credit unions are prominent in the society of Northern Ireland and it would benefit their many members if they were able to offer some of the services provided by their counterparts in Great Britain. Moreover, there is a regulatory gap which needs to be filled. Allowing credit unions in Northern Ireland to be regulated by the FSA would fill that gap.**

**75. However, we note that the registration function is to be retained by the Northern Ireland Department of Enterprise, Trade and Investment. While we understand the**

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<sup>56</sup> Official Report, 25 January 2010, c 615

<sup>57</sup> Ev 22

**rationale for this, we recommend that the Department and the FSA be given powers to exchange information and work together to ensure that no future regulatory gaps arise.**

# Conclusions and recommendations

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## Roles and responsibilities

1. The assets of the PMS were badly affected by the general financial crisis and by its non-residential lending strategy. The Administrator has submitted a confidential report on the Board's conduct to DETINI, which now has to decide whether to start disqualification proceedings. It is early to judge the degree to which the directors were culpable rather than unlucky, but nothing we say later in this Report should detract from the fact that it is the duty of directors to ensure their companies are properly run. (Paragraph 24)
2. The Government guarantee of bank deposits may have alerted members of the Presbyterian Mutual Society to the risks they faced, but it did not create those risks. Moreover, although it is theoretically possible that the Society might have survived the run and continued to prosper, it is more likely that the gap between its assets and its liabilities would have emerged in due course. Members would have been exposed to even greater losses. (Paragraph 25)
3. Companies which are carrying out activities which should be regulated by the FSA have the primary responsibility for identifying that fact, and seeking the necessary authorisation. (Paragraph 34)
4. We understand that the Registrar had no regulatory functions in relation to industrial and provident societies, and could take no action. But we do not believe that the Department of Enterprise, Trade and Investment NI was so circumscribed. We note DETINI's opinion that it was not their legal responsibility to regulate the PMS or manoeuvre them into regulation. We are dismayed, however, that the Department had access to all the relevant information and yet this did not result in any preventative action or further examination being undertaken. We are surprised that DETINI did not consider whether the regulatory gap needed to be filled. This might well have entailed action in London as well as in Belfast, but as the department closest to the problem, DETINI should have taken a lead in identifying the problem, and in seeking a solution. (Paragraph 38)
5. The growth of the Society should have been accompanied by a review of its governance. (Paragraph 39)
6. The congregations of Presbyterian Church in Ireland have suffered as a result of the PMS collapse, both as individuals, and collectively. Legally, it appears that the Church has no liability. However, the Society was linked to the Church, its role was advertised at the General Assembly, it was the subject of pulpit calls and it enthusiastically endorsed by many of its ministers. We consider that the Church cannot evade responsibility for what happened, and should consider whether it can help in any way. (Paragraph 42)

### Should members of the Society have known?

7. If the Chairman of the Northern Island Assembly Committee on Enterprise, Trade and Investment believed the PMS was regulated, it is no surprise that ordinary people made the same assumption. (Paragraph 46)
8. We note that PMS shares were withdrawable on demand, and fixed in value: it is understandable that PMS members considered them as analogous to deposits in a building society. (Paragraph 47)

### Investor information

9. In our Report on Northern Rock we noted that depositor protection schemes should be simple and well advertised. The case of the Presbyterian Mutual Society has demonstrated, once again, how little information was available to ordinary people about the organisations to which they entrusted their money. We consider that in future there has to be far clearer information given to those who make savings and investments about the way in which organisations are regulated, and the extent of any guarantee provided. (Paragraph 48)

### The insolvency regime for mutual societies

10. It is for the courts to determine the relative rights of shareholders and lenders under current law. We recommend that for the future the Treasury should introduce a distinct form of insolvency regime for mutual societies. Many of those who have only shareholdings in such an organisation may have urgent need for that money, and may not realise that their claims will be subordinate to those of lenders. (Paragraph 54)

### Tax liabilities

11. The Government should not worsen the situations of PMS members. We recommend that HMRC takes a consistent approach to those who are unable to meet their tax liabilities simply because money is locked up in PMS. (Paragraph 56)

### The way forward

12. We consider it unacceptable and farcical that both the UK Government and the Northern Ireland Executive appear to have suggested some responsibility for solutions but have failed to act. The Administrator has understandably hesitated, awaiting possible assistance. Members of the Presbyterian Mutual Society face severe hardship: there will not be a solution until a political lead is given. (Paragraph 62)
13. As a matter of law, members of the Presbyterian Mutual Society are not eligible for any compensation or support. We would like to move to a system in which there is no need for such restitution in cases like this, because it is crystal clear that deposits are made at the depositor's own risk. We do not believe that, as a general rule, the taxpayer should stand behind any financial institution. (Paragraph 63)

14. Nonetheless, this case is different. People in Northern Ireland could not be expected to understand that their savings were subject to a very different regime from that which applied in Great Britain. There appear to have been no attempts to publicise this, or to fill the regulatory gap. It is possible that a society which was mutual in life will prove to be far from mutual in death, and that small savers will lose out most heavily. The United Kingdom Government and Northern Ireland Executive have already set up a Ministerial Working Group. It must report swiftly to ensure that individual PMS members do not suffer unduly. (Paragraph 64)
15. This is not a case where recourse to the funds of the Financial Services Compensation Scheme is appropriate. The PMS was not a bank or building society; it was not regulated and paid no levy while it was operating normally; the FSCS should not be expected to support it after its administration. (Paragraph 65)
16. As we noted above, there have been suggestions that PMS could be taken over by a bank, possibly with some government guarantee or support. It is possible some other support could be offered. Any acceptable solution must ensure that PMS members get swift access to their money. A solution must be found, and must be found quickly. (Paragraph 66)
17. We support the principle of FSA regulation of credit unions in Northern Ireland. Credit unions are prominent in the society of Northern Ireland and it would benefit their many members if they were able to offer some of the services provided by their counterparts in Great Britain. Moreover, there is a regulatory gap which needs to be filled. Allowing credit unions in Northern Ireland to be regulated by the FSA would fill that gap. (Paragraph 74)
18. However, we note that the registration function is to be retained by the Northern Ireland Department of Enterprise, Trade and Investment. While we understand the rationale for this, we recommend that the Department and the FSA be given powers to exchange information and work together to ensure that no future regulatory gaps arise. (Paragraph 75)

# Formal Minutes

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**Tuesday 9 February 2010**

**Afternoon sitting**

Members present:

John McFall, in the Chair

Nick Ainger

Mark Todd

John Thurso

Mr Andrew Tyrie

## **The failure of the Presbyterian Mutual Society**

Draft Report (*The failure of the Presbyterian Mutual Society*) proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 75 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Sixth Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134 (Select committees (reports)).

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Monday 22 February at 3.45 pm]

## Witnesses

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### Monday 18 January 2010

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**Sammy Wilson, MP MLA**, Minister of Finance, **Mike Brennan**, Head of Strategic Policy Division, **Peter Jakobsen**, Strategic Policy Division, Department of Finance and Personnel, **Arlene Foster MLA**, Minister of Enterprise, Trade and Investment, **Sandy Williamson**, Northern Ireland Registrar of Industrial and Provident Societies, and **Mike Bohill**, Head of Business Regulation Division, Department of Enterprise, Trade and Investment

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**Alban Macginnis MLA**, Chairperson, **Paul Butler MLA**, Deputy Chairperson, **Mark Durkan MP MLA**, former Chairperson, **David Simpson MP MLA**, **Leslie Cree MLA**, and **Sean Neeson MLA**, Enterprise, Trade and Investment Committee

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**Derek Lynn**, **Don McClay**, **Gwen Smyth**, **Robin Manson** and **Hazel Russell**, Members of the Presbyterian Mutual Society and their representatives

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# Oral Evidence

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## Taken before the Treasury Committee on Monday 18 January 2010

Members present

John McFall, in the Chair

Nick Ainger  
Mr Michael Fallon

Mr Andrew Love

*Witnesses:* **Sammy Wilson**, MP MLA, Minister of Finance, **Mr Mike Brennan**, Head of Strategic Policy Division, **Mr Peter Jakobsen**, Strategic Policy Division, Department of Finance and Personnel, **Ms Arlene Foster**, MLA, Minister of Enterprise, Trade and Investment, **Mr Sandy Williamson**, Northern Ireland Registrar of Industrial and Provident Societies, and **Mr Mike Bohill**, Head of Business Regulation Division, Department of Enterprise, Trade and Investment, gave evidence.

**Q1 Chairman:** Ministers, welcome to this inquiry we are having into the Presbyterian Mutual Society. In your new post, Arlene, we are very pleased that, given the pressures on you, you have taken the time to come and meet us this morning. For the sake of the shorthand writer with us could you introduce yourself and your colleagues formally, please?

**Ms Foster:** Thank you very much, Chairman, and welcome to Parliament Buildings. We are very pleased that you have been able to come over to us. I am Arlene Foster, Minister of Enterprise, Trade and Investment, with colleagues from the Enterprise, Trade and Investment Department, Mike Bohill and Sandy Williamson. I will let Sammy introduce his position.

**Sammy Wilson:** I am Sammy Wilson, Minister for the Department of Finance and Personnel, along with officials from my department, Mike Brennan and Peter Jakobsen.

**Q2 Chairman:** What caused the run on the Presbyterian Mutual Society? Was it a liquidity problem or was it a solvency one?

**Sammy Wilson:** I think that first of all, once the banking crisis started and the Financial Guarantee Scheme was put in place for the commercial banks here in Northern Ireland and it was discovered that there was not the same cover for the PMS, and indeed there is some anecdotal evidence to indicate that some of the local banks were making this known to customers and indicating that money would be safer with the local banks rather than with the PMS, that started the run. Within three weeks £21 million was poached, I suppose is the word I would use, from the PMS to local banks. Of course, once that uncertainty was there, and there was a kind of unequal playing field, one set of financial institutions having a guarantee, another financial institution not having a guarantee and that difference being exploited, then, as with all financial situations like this, once that run started it gathered momentum.

**Q3 Chairman:** Although the bank representatives have denied that the banks were involved in contacting customers. I think, Arlene, you made that point and the banks have refuted that, but,

given that it is clear that there were not enough assets to pay for the liabilities in the PMS, would this problem not have arisen at a later date anyway?

**Sammy Wilson:** We could probably speculate on whether that would be the case or not, but do not forget that the PMS had been operating since 1982 and it always had the on-call or on-demand facility available to its members and there had not been any trouble up to that particular time. We can speculate as to whether or not, as part of the uncertainty caused by the global financial markets, there may have been a run anyhow, but the evidence is that for a long period there was stability there.

**Q4 Chairman:** Yes, but I notice it started in 1982 with £30,000 and ended up as a £300 million institution by 2008. Did the problems come as a surprise to you?

**Ms Foster:** I think it goes further back than that because there was a trust set up in, I think, 1925 and that trust was then converted into an industrial and provident society in 1982, and you are right: it started out with a lot less money than it ended up with. One of the issues is whether the management evolved at the same rate as the growth which happened to the Presbyterian Mutual Society.

**Q5 Nick Ainger:** Could you help us with some basic information. We are told that there are about 9,500 shareholders. That is right, is it?

**Ms Foster:** It is about 10,000.

**Q6 Nick Ainger:** How many of those are below the £20,000 threshold which means that they do not have a loan to the society; they are just shareholders?

**Sammy Wilson:** I think it is about 80%, but certainly a higher proportion is below the £20,000 than above.

**Ms Foster:** I have the specific numbers. In terms of the shares and loans up to £20,000, the number of accounts is 6,676.

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**Q7 Nick Ainger:** Out of 10,000?

*Ms Foster:* Yes.

**Q8 Nick Ainger:** Of those that are above the £20,000 threshold, is there a breakdown of those that maybe have got up to £30,000, £40,000, £100,000? How many are there that are certainly over the £50,000 total?

*Ms Foster:* I do not have that evidence to hand but the Administrator should be able to provide that to the Committee, I would imagine.<sup>1</sup>

**Q9 Nick Ainger:** The figures that we have got off the society's balance sheet only go as far as March 2008 and the valuation of the property portfolio then was £129.5 million. Has the Administrator done a revaluation and do you know what the figure is at the moment?

*Ms Foster:* Can I ask Mike to give you an answer in relation to that issue?

*Mr Bohill:* The latest figures, by the way, are in the Administrator's report which was issued on 15 December. From memory, there was some revaluation downwards but not as much as the Administrator had originally feared would happen.

**Q10 Nick Ainger:** But it has fallen below the £129.5 million?

*Mr Bohill:* From memory, yes.

**Q11 Nick Ainger:** Again, on the March 2008 balance sheet the mortgages totalled £178 million. Are any of these sub-prime or are they all relatively high loan-to-value? Have there been any real defaults, bearing in mind what has happened to the economy in Northern Ireland and the property market here? Is it a good book of £178 million or is it like some of the sub-prime ones, it is a risky book? What is the balance?

*Sammy Wilson:* I cannot say for certain whether or not any of the properties have gone to the point where they are worthless but the indications are that it is a good book. If one looks at the situation since the Administrator took over, there have been earnings from the assets which are held of over £20 million and that would indicate that not only do you have an asset portfolio which is sound but an asset portfolio which is capable of generating income on a regular basis. That is one of the things, I suppose, which gives some comfort in the current situation.

**Q12 Nick Ainger:** The Administrator has suggested that his role should be extended to 2015. Given what you have just said, Sammy, presumably your view is that in the long term these assets will cover all the society's liabilities.

*Sammy Wilson:* The irony of the current situation as far as I am concerned is that we are not really looking for a way of dealing with assets which are bad assets; we are looking for time here, time for the property market to climb back again. While it may never climb back to what it was before, nevertheless there

are assets there which are saleable, assets which are income-generating. It is because of the current deficit, the uncertainty and the danger that if we were simply to close operations at present we could not cover all of the loans which have been made, that the secret is to find a solution which allows time for the assets to recover and give certainty so that people do not want to withdraw all of their money immediately.

**Q13 Nick Ainger:** Could we move on then to the regulatory framework, because obviously this has been part of the problem and may be the main cause of it. What is the role of the Registrar for the society, credit unions, industrial provident organisations? What does the Registrar actually do?

*Ms Foster:* Essentially, the Registrar maintains a register of the 180 IPSs in Northern Ireland. Sandy is the Registrar. It is essentially an administrative task and really one that needs to be distinguished, for the benefit of the Committee and indeed those present today, from regulation, which is, of course, the function of the FSA. Therein lies a lot of confusion which has been around in Northern Ireland over the past two years.

**Q14 Nick Ainger:** But at the moment, as I understand it, the FSA does not regulate.

*Ms Foster:* They do. They do not regulate the Presbyterian Mutual Society; that is correct.

**Q15 Nick Ainger:** And other industrial and provident societies?

*Ms Foster:* Essentially, it is up to those IPSs. If they are carrying out activities that need to be regulated by the FSA, they need to alert the FSA to that and then become regulated by the FSA.

**Q16 Nick Ainger:** The onus is on the different credit unions and societies to draw the FSA's attention to the fact that they are now taking part in activities which should be regulated by the FSA?

*Ms Foster:* That is correct.

**Q17 Nick Ainger:** And, in terms of the Registrar, it is just the initiation? The first act is the role of the Registrar and then they take no further part in any administration or bureaucracy or anything, but are regular checks made?

*Ms Foster:* Yes. Every year we receive a report on the IPSs and that report is signed off by an auditor, and the auditor will sign as to whether they are within the various rules and regulations, so if there had been anything that was untoward, that should have been drawn to the attention of the Registrar.

**Q18 Nick Ainger:** What I am unclear about is who polices this. Basically, the system seems to be dependent upon the individual organisations putting their hands up and saying, "We need to be regulated".

*Ms Foster:* That is correct. It is an opt-in, if you like, as opposed to an opt-out.

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**Q19 Nick Ainger:** We have obviously seen the problems that have emerged here. Have you concerns about other industrial and provident societies that may not be opting in when they should be opting in?

**Ms Foster:** Certainly most of the IPSs in Northern Ireland are not carrying out this sort of activity at all. In fact, most of them are co-operatives, perhaps for agricultural co-operatives and what have you. The PMS was a rather unique IPS, if I can say that to you, in what they were carrying out, but I do accept that it was an opt-in system. At the time of the FSA, as a former solicitor, I very much remember the amount of publicity that was carried on, alerting people to the fact that it was not really what society or what body you were; it was the functions that you were carrying out that needed to be regulated. I do recall there was quite a lot of publicity at that time, at the time of the FSA, but maybe there is a need for more publicity now.

**Q20 Nick Ainger:** Bearing in mind what has happened, is the department now asking all these currently non-regulated independent industrial and provident societies to look again at what they are doing? Again, where is the policing on this?

**Ms Foster:** Could I say that if we did that with IPSs, we would have to do that with everybody. It is not our function. If the FSA decide that they may need to do more work around alerting people that they need to be regulated, that is a matter for the FSA.

**Q21 Chairman:** The reason we are asking, Arlene, is that in their report the FSA concluded that the society was conducting regulated activities without the necessary authorisation or exemption, so there is obviously a gap here, and, given that the department was responsible for registering, should someone not have spotted this loophole?

**Ms Foster:** I would like to bring Mike in here about the role of the Registrar because I think it is important that we say what, under current legislation, the role of the Registrar is.

**Mr Bohill:** Just to turn back to the other IPSs in Northern Ireland, there are about 180 industrial and provident societies in Northern Ireland. When the difficulties were apparent with the PMS we undertook a desk exercise reviewing all the business activities of the other roughly 180 industrial provident societies in Northern Ireland and none of them was offering a business model similar to the PMS.

**Q22 Chairman:** In terms of size, the PMS was much different from the rest of them?

**Mr Bohill:** Yes, and was also undertaking a particular business activity. No other industrial and provident society was assessed as being in any similar type of risk. Turning then to the registration function, the Registrar's function is essentially around ensuring the efficient operation of a registry, making that available to the general public and then also dealing with any complaints that might be made against, for example, an IPS by a member or a

member of the public or a member of the professions. During the course of the PMS itself we received no complaints about the PMS from any member at all. It is a registration function. As the Minister has said, the main point is that it is incumbent on the officers of a society to consider the activities that they are undertaking and where it does require permission from the FSA it is incumbent upon the officers to make an application to be authorised and regulated by the FSA for those activities.

**Q23 Mr Love:** Could I be absolutely clear about this. One situation in relation to the extension of its activities beyond that of an industrial and provident society is where it should have indicated that and that would then be taken up by the FSA, but there is a second and important discussion here about who should regulate industrial and provident societies which undertake the activities of an industrial and provident society. I think what you are saying to us is that, as far as the legislation that is throwing up this concern goes, that does not stipulate that the Registrar should regulate. Is that what you are saying?

**Mr Bohill:** That is exactly what I am saying, any more than the Registrar should regulate limited companies. Industrial and provident societies are limited companies which are either co-operatives or for the benefit of the community.

**Q24 Chairman:** Why do you think this gap—which is a gap—was not acted on?

**Mr Bohill:** I am not sure that there is a gap per se. There is UK-wide legislation requiring all businesses seeking to undertake regulated activities to seek to be authorised and regulated by the FSA.

**Q25 Chairman:** If you are a saver with the Presbyterian Mutual Society, and I have met them this morning and previously, they would say there is a gap. They put their money in thinking that they were savers like everyone else in the United Kingdom and, lo and behold, when this crisis arises they are not savers; they are not regulated by the FSA because the Presbyterian Mutual was not contributing to the Financial Services Compensation Scheme. Ordinary savers who are going through this hardship at the moment say, "There was a real gap there and we were not aware of it".

**Ms Foster:** The gap is that the FSA should have been alerted to the fact that they were carrying out activities that should have been regulated by the FSA and I think that is why Mike is saying there is no gap in so far as the PMS should have opted in and that is what the Financial Services Report has said as well, that they should have been regulated.

**Chairman:** I do not think we are totally convinced, Arlene, but do not worry. We are not totally convinced of that. We think there is a gap.

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**Q26 Mr Love:** A number of you are members of the Ministerial Working Group. Could we have an update on where you think the Ministerial Working Group is at. It was meant to report in September. That was then put back and it still has not reported. There are indications that it will report very soon but can you elaborate on where you think the Working Group is?

**Sammy Wilson:** You are quite right: it was hoped that the Ministerial Working Group would report in the autumn, September or October. The group is working with officials from my department and also working closely with the Administrator. The role of the Administrator liaising with the Working Group is to put in place a commercial resolution to the winding-up of the PMS at present. Currently the Administrator is still engaged with commercial organisations seeking to find a resolution. I suppose the reason for the delay in the report is that, whilst he is seeking that resolution with other financial institutions, the report cannot be completed and until that work is done it would be premature to have a report.

**Q27 Mr Love:** Let me press you on that. When you say it is a commercial solution that the Administrator is looking for, he is doing that within the bounds of the activities of an administrator? There is no involvement of either the Northern Ireland Executive or the Treasury in relation to any support that they might give towards finding a solution?

**Sammy Wilson:** There has been some support from the Treasury. At present there has been no request made for any financial support or input from the Northern Ireland Executive in those discussions, but Treasury officials have been working with the Administrator.

**Q28 Mr Love:** Could I press you just a little further in relation to that commercial negotiation that is going on with the Administrator. I assume that you had an updated report at your last meeting. You did indicate in answers to earlier questions in relation to valuations that the valuations had not declined significantly and, therefore, one must assume, as according to the latest annual report of the PMS, that their assets roughly equal their liabilities. There is a whole timing issue about that, but can you give us just a little idea about why the commercial negotiations are so bogged down if, roughly speaking, the assets, as best we can measure it, are equal to the liabilities?

**Sammy Wilson:** First of all, there is a deficit and I think the deficit is about £100 million at the present. Of course, as I said earlier, that deficit is probably one which, given time, because of the nature of the assets and the fact that we do have assets which are earning assets—

**Q29 Mr Love:** I am not clear about this. Maybe we have talked about just mortgages. Are you suggesting that it is the commercial property where the decline in valuation has occurred? Could you just describe to us where that deficit arises from?

**Sammy Wilson:** There is a £34 million deficit on the property and then it is spread across a range of other assets.

**Q30 Mr Love:** It is a significant deficit?

**Sammy Wilson:** Yes.

**Q31 Mr Love:** That rather explains why the commercial negotiations may be—

**Sammy Wilson:** And that is why the commercial negotiations, I suppose, are prolonged at the present time.

**Q32 Chairman:** I think on 20 October you met the delegation from the Presbyterian Church and you said that there were many complex issues in this, but if there is a political will, there is a way. Where is the political will in this?

**Sammy Wilson:** I think the political will has been, first of all, from the administration here in Northern Ireland.

**Q33 Chairman:** Yes, but Shaun Woodward said in September that the report was getting finalised and would be in the Prime Minister's hands in a few weeks. The reason I am pressing you on that is that it is not just commercial. There is a £100 million gap here, so should there be political will between Westminster and yourselves to try and fill this gap to give reassurance to banks or those that come in and get this over with rather than what some people would say is a "pass the parcel" exercise at the moment?

**Sammy Wilson:** I do not think there has been any attempt to pass the parcel. There is a role for a number of players in this. The chief role, of course, is for the Administrator because he has to deal on a day-to-day basis with those who may express a commercial interest and then be prepared to take over the PMS. There is a role for the administration here in Northern Ireland in a number of ways. First of all, we have sought to engage with the Treasury, because there is a need to engage with the Treasury, and with the politicians who would be in charge at the Treasury, as with the Secretary of State. That has been done. There has also been a need for the administration here to work with local financial institutions and seek to lobby them to show an interest in the PMS and at least to look and see what part they can play in the commercial resolution. That has been done. I suppose the direction from ministers here to officials, the contact by ministers here with officials and with ministers at Westminster and the ongoing work between departments here and the Administrator are all part of where the political involvement is, Chairman.

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**Q34 Chairman:** Yes, I understand. Maybe I could push you and say when will this Ministerial Working Group report be published?

**Sammy Wilson:** That will depend upon when the work of the Administrator is—

**Q35 Chairman:** I will stop you on that because I have had a meeting with the Administrator; I have had a meeting with others. I do not get the impression that everything is dependent on the Administrator, that the Administrator is the gatekeeper. There is a political will, as you say, and if Westminster and yourselves can work together, that can be of help, so I do not think it is helpful for the message to get out that it is solely down to the Administrator here. There is political progress that is required here.

**Ms Foster:** Can I say I do not think it is just down to the Administrator, but I think, as Sammy says, we are acknowledging that there is a role that the Administrator has which goes right back to the time when we passed legislation to appoint the Administrator to make sure that there was not a fire sale at that particular point in time. There is no point in us having a Ministerial Working Group coming back and reporting that we need further time or whatever. We do need further time, or rather the Administrator needs further time, to conclude these commercial dealings that are going on at the present moment in time. I have to say, and I want to say very clearly, that if the Administrator comes to the Northern Ireland Executive, we do stand ready to help in whatever way we can.

**Q36 Chairman:** I think it is very important that the Ministerial Working Group gets information out on the public record to help people because there is a feeling from people that they have been forgotten about and this matter has been going on for months and months, and the comments that are on the record do not help when they say that this report will be out in the autumn and nothing is happening. I think there really is a need within that Ministerial Working Group to give a push.

**Sammy Wilson:** It is a case of not wanting to pre-empt what the Administrator comes up with. I suppose the role which we can play is in at least trying to assuage some of the fears here in Northern Ireland, and I know that Arlene and myself, and indeed the First Minister, have sought to have—and have—granted regular meetings with the various groups in order to do that. I accept what you are saying, Chairman, that sometimes when you set a date and that date is not met then people begin to read into it things which they should not read into it. We have sought to try and fill that gap by at least giving assurances and meeting with people to try and give them assurances on progress, though I think that you will understand that, given the sensitivities around this and the importance of keeping a balance here, we do not want to say or do anything which makes it harder to reach a commercial resolution. It is that balance between giving people assurances and yet at the same time not pre-empting work which needs to be done.

**Q37 Mr Love:** I just want to get clear in my mind about the short-term and longer-term pressures. Clearly, you want to hold on, as the Administrator has suggested, and extend it to 2015, in order for the market to recover, but there are also pressures and we can see from people here in the chamber today that there are very small savers who are very badly affected because they are not allowed to get their money. When did those pressures show themselves for the activities of the working party?

**Sammy Wilson:** As far as the working party is concerned, I get regular letters, and I am sure Arlene does, from people who are at the end of their tether and they are finding that because they cannot get access to their money they are running up huge debts themselves, and it is one of the reasons why there is a time pressure there. I know that in his last report the Administrator did talk about whether or not it was legally possible to use some of the money which has been generated, and, as I say, there has been considerable income generated over the last year from the assets, to make some interim payments to alleviate some of that hardship. There are difficulties around that as well, as the Administrator has said.

**Q38 Mr Love:** As I understand it, that is before the court at the present time and he will report on it. Could I turn to Arlene. You indicated earlier on that the Northern Ireland Executive would “stand ready”, I think were the words you used, to help in whatever way you can. You must have been thinking about this in case that eventuality occurs.

**Ms Foster:** Yes, and we have been standing ready right from the time that the order was made allowing the Administrator to be appointed, and indeed specific cases that have been brought to us, for example, in relation to difficulties people are facing with HMRC we have taken up for them. I think it is a case of us interacting with the different parts of government to say to them, “There must be a way of dealing with this in the short to medium term. Can we deal with it in a proactive way so that you are not levying fines on people when they do not have access to their money?” I have cases where people have put money in the PMS to pay off tax bills and then were not able to pay them because they did not have access to the money, so that is a very specific issue, but I think that those are specific issues that we can help to facilitate.

**Q39 Chairman:** Has the Inland Revenue been helpful in these cases?

**Ms Foster:** In that particular case they were, yes.

**Q40 Mr Fallon:** My apologies to everybody for my late arrival; I was on a different flight. This point may have been covered before, but could I just ask Arlene Foster, was your department aware of the scale of the society’s commercial property portfolio?

**Ms Foster:** As I explained before you arrived, Michael, our primary objective was as a registrar and not as a regulator.

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**Q41 Mr Fallon:** I understand that, but was your department aware of the scale of it?

**Ms Foster:** Yes, we were because the auditor signed off on it every year to say that there were no difficulties arising.

**Q42 Mr Fallon:** And who did you think was regulating it at that point?

**Ms Foster:** It is not our function.

**Q43 Mr Fallon:** I know that, but who did you think was regulating them?

**Ms Foster:** Yes, but it is not our function to ask if it is being regulated, as it were. It is a function of the people who are carrying out the activities to register with the Regulator, which is the FSA. The Chairman mentioned that he was not convinced that there was not a gap, but it is actually the same in the rest of GB as it is in Northern Ireland: registration and regulation are two separate functions and if you are carrying out activities, you register with the FSA.

**Q44 Mr Fallon:** You and all your officials assumed that somebody else was regulating the commercial investment side?

**Ms Foster:** It was not our function to assume or not to assume.

**Chairman:** In the annual report there is £120 million of commercial property.

**Q45 Mr Fallon:** That is just what I want to be clear about. Did it not occur to anybody to ask who was regulating that kind of commercial activity?

**Ms Foster:** We do not have a prudential supervisory role in the department.

**Q46 Mr Fallon:** I know it was not you; I understand you did not have the responsibility. What I am asking is, is it really conceivable that, given the scale of this, none of you, no official in your department, ever asked who was regulating it?

**Mr Bohill:** The PMS was required to submit an annual report and annual accounts, and clearly the annual accounts showed the scale of the business in terms of turnover, for example, that the PMS was doing. What it did not show or provide any evidence about was the nature of that business, just in the same way as annual accounts for any company do not indicate the type of business that is being undertaken. As well as the accounts being signed off every year by accountants, the annual report included a statement by the directors of the company then that the society was not, I think the term is, "accepting deposits", and finally the annual accounts were also not showing that high activity. There was no indication from the auditors of any matters of concern about the accounts. I think it is also on the record that the FSA's investigation concluded that it was incumbent upon the officers of the society to apply to the FSA seeking authority to be regulated by them in terms of the activities that they were undertaking.

**Q47 Mr Fallon:** Did you know how much of the portfolio was actually commercial rather than domestic?

**Mr Bohill:** That information will not have been available from the accounts.

**Sammy Wilson:** I do not know if it is helpful, but the person who—

**Q48 Chairman:** If you do not mind, Sammy, maybe we could articulate the gap that we are seeing here. The FSA in Great Britain is also the Registrar but in Northern Ireland you have a Registrar and a Regulator, and to us it seems that there was a wall of silence between them, saying, "We did not need to ask questions", and that is where the gap has occurred here.

**Ms Foster:** Perhaps I can say, Chairman, in respect of that, yes, the FSA in GB carries out both of those functions but they do not interlink; they are separate functions, so the Registrar and the FSA will not say, "Hold on a wee second; that should be regulated". That is not the way it works.

**Q49 Chairman:** I have been involved with credit unions for years and I have got the Registrar coming up and talking to them and the Regulator, and I know that there is noise between the Registrar and the Regulator, so I do not think that is the case, Arlene. It just seems to us that there was a gap here and nobody seemed to pick it up, and that is what Michael is probing.

**Sammy Wilson:** As I understand it, the gap is filled by the auditor who clearly would have known when signing off the accounts the amount of commercial property, et cetera. If the auditor was not happy that, given the amount of commercial property and what-not there, there was no regulation, then he could have qualified the accounts and I do not think that happened.

**Q50 Mr Fallon:** Sure, but the accounts were filed with you for a purpose, not just to be put into a box. You were running the business department here. It must have occurred to you, looking at these accounts, that the society was involved in an awful lot of investment activity.

**Ms Foster:** They were filed with us for a purpose and that purpose is that we have to keep a registry. That is the purpose of the file, which is open then to the public and which people can come in and see. We have already covered the fact that if someone from the public had made a complaint about the workings of the PMS, then we would have alerted the FSA to that. Nobody did that. We were not alerted by the solicitor, we were not alerted by the accounts, we were not alerted by the auditor, and therefore there were no alarm bells ringing. I have to say that very clearly to you. I do want to put on record, however, that the Treasury have conducted a review of the legislative framework for credit unions—

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**Q51 Chairman:** We are going to come on to that.

**Ms Foster:** --- but also for IPSs, and they have very clearly said that the IPS legislation in Northern Ireland is very similar to GB's and, therefore, if we are saying there is a gap here in Northern Ireland, then perhaps there is a gap throughout the UK.

**Q52 Mr Fallon:** But the accounts show that for the year ended 31 March there was investment property to the extent of £130 million. That was commercial property, not domestic property. You had those accounts and not one of you asked who was regulating all this.

**Ms Foster:** Because we did not have a prudential supervisory role.

**Q53 Mr Fallon:** But you did not ask who did.

**Ms Foster:** But that is not our role to ask who did.

**Q54 Mr Fallon:** But you are running the business department here. This is a huge business.

**Ms Foster:** Which is why the FSA regulates businesses that are carrying out those sorts of activities.

**Chairman:** There was a Chinese wall and people were quite happy with it.

**Mr Love:** Could we press you a little on credit unions because, of course, they are much more prevalent here in Northern Ireland than they are in the United Kingdom. Can you just describe for us, as you see it, the regulatory framework for credit unions because we are concerned that there may be the same problem in relation to them that has now appeared in relation to the industrial and provident societies?

**Q55 Chairman:** Given the FSA does not recognise them, is this another accident waiting to happen and, if it is, do we take that information back so that we can give some people a kick on it?

**Ms Foster:** You are absolutely right, the FSA does not regulate credit unions, and in fact the committee here in the Assembly have carried out a very useful piece of work in relation to all of that, and hopefully the Committee will have access to that piece of work. Credit unions in Northern Ireland operate within prescribed financial and, indeed, other limits set out within the Credit Union Order 1985. The basic business model operated by all credit unions in

Northern Ireland is homogeneous which makes the prudential supervision of such companies possible, so we do provide that role in relation to credit unions. In fact, it means that some of the credit unions here in Northern Ireland cannot conduct at the moment FSA-regulated activity, which they want to do, and therefore there is a need to look at how we will be able to move to a situation where the FSA will regulate credit unions moving on into the future.

**Q56 Mr Love:** Basically you are secure about the regulation that currently exists but you would like the activities of credit unions to be extended and the only way you can see that is for the FSA to regulate them?

**Ms Foster:** Yes.

**Q57 Chairman:** Or do you see the fact that they are not regulated by the FSA as another accident waiting to happen and you want all credit unions in Northern Ireland regulated by the FSA? Is that the message we take back today?

**Ms Foster:** We do want credit unions in the future to be FSA regulated, whether it be for either of those reasons, but we do believe that credit unions provide a very good service to people in Northern Ireland.

**Sammy Wilson:** And, Chairman, you will be aware that there is legislation which is currently going through the House of Commons and an amendment to that, which I understand will be put down, that should enable that regulation to be extended to credit unions and I am sure it will be accepted.

**Chairman:** We are conscious of that and that they want to get that report out. Could I thank you very much for your evidence session this morning. I was used in the past, Sammy, to you coming and seeing me petitioning me as to why I could not do something. It was nice to have it on the other foot today. Thank you.

**Q58 Nick Ainger:** Chairman, could we just ask for a breakdown, and if you or the Administrator cannot provide it, perhaps your department can provide it—

**Ms Foster:** Of the different levels of shareholders?

**Q59 Nick Ainger:** Yes.

**Ms Foster:** Yes, we should be able to do that.

**Chairman:** That is fine. Thank you very much.

*Witnesses:* **Mr Alban Macginnis** MLA, Chairperson, **Mr Paul Butler** MLA, Deputy Chairperson, **Mark Durkan** MP MLA, former Chairperson, **David Simpson** MP MLA, **Mr Leslie Cree** MLA, and **Mr Sean Neeson** MLA, Enterprise, Trade and Investment Committee, gave evidence.

**Q60 Chairman:** Welcome to this evidence session. Starting with Leslie on the left-hand side, can you identify yourselves for the shorthand writer, please?

**Mr Cree:** Certainly. Leslie Cree, Member of the Ulster Unionist Party, Member of the Enterprise, Trade and Investment Committee.

**Mark Durkan:** Mark Durkan, formerly Chair of the Enterprise, Trade and Investment Committee.

**Mr Butler:** Paul Butler, Deputy Chair of the DETI committee.

**Mr Macginnis:** Alban Macginnis, Chair of the DETI committee.

**David Simpson:** David Simpson MP, Member of the DETI committee.

**Mr Neeson:** Sean Neeson, Member of the DETI committee.

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**Q61 Chairman:** The Presbyterian Mutual Society was carrying out activities which should have been regulated by the FSA but which the FSA had no obvious means of picking up. What should have happened in this case, because I know you are very much involved with the regulatory framework, so give us your views?

**Mr Macginnis:** Perhaps I could start just to give a view. I think there was a gap in terms of the regulation; I think that is clear. On reflection, and hindsight is a great thing, I think there should have been some sort of regulation put in place. The Treasury says in its report into IPSs—and this has been referred to by the Minister today—that the legislation was more or less the same as in Great Britain, but nonetheless it is evident that there should have been regulation, and that regulation possibly could have been under the FSA. It is not sufficient for societies such as these to be self-policing and to expect them to say to the FSA, “Oh, by the way, we are doing this or that”, and then the FSA comes in and has a look at what they are doing, so I do think there was a gap.

**Q62 Chairman:** Mark, you were Chair of the committee previously.

**Mark Durkan:** Yes, Chairman. Essentially people believed that the Presbyterian Mutual Society, like other industrial and provident societies, was being regulated. In many ways many of us in the conduct of exchanges of business would have referred to officials in the Department of Enterprise, Trade and Investment as the Regulator. Of course, it was when the committee had those officials in front of us after this situation that they were clarifying that such a regulatory role as they had was merely a registration role and that, as you have already heard today, they simply received the annual submissions from the IPSs and in this instance from the PMS. That was simply all they could do, receive those reports. They could not frisk them, test them or probe them in any way. In many ways they were, to borrow a phrase, behind the pillar.

**Q63 Chairman:** But you do not believe they were just left there to gather dust? Government is supposed to be active. For goodness’ sake, it is something the department looks at and, as Michael says, it looks at the business model. Surely to goodness there was somebody in that department with responsibility?

**Mark Durkan:** That is what everybody thought and assumed and, as I understand it, whenever the committee took evidence something like that would happen in relation to the regulatory function that applies at the minute in relation to credit unions, but the regulatory function in law in respect of industrial and provident societies was not the same. Officials explained to us that they could only raise any queries if they were asked by a director of that industrial and provident society or by ten members, and, of course, they were not asked by a director or by ten members. We were told that even if they thought something was wrong, even if they smelt something funny, they were not allowed to put their head around that pillar

that they were stuck behind, and clearly that is very wrong. Call it a gap, call it a twilight zone or whatever, but everybody assumed that there was active regulation.

**Chairman:** This is getting less credible.

**Q64 Mr Fallon:** But this happened, Mark Durkan, well over a year after the financial crisis began. Did it never occur to your committee to ask about the scale of this commercial investment portfolio?

**Mark Durkan:** Not in relation to the Presbyterian Mutual Society. None of the specific industrial and provident societies has been brought to the attention of the MLAs or the committee or, as you have heard from the Minister, the departments, so nothing.

**Q65 Mr Fallon:** Let us stick to the committee for the moment. Did it not occur to the committee to ask which institution in Northern Ireland was vulnerable a year and five months into this crisis? Why did you not ask?

**Mark Durkan:** Where the committee was focused was on the one area of concern that had been brought to the attention of committee members, which was in respect of the position of credit unions. No issue of concern had been raised with the committee in relation to industrial and provident societies.

**Q66 Mr Fallon:** So you wait for people to bring you concerns? You do not ask questions yourself, like, “This is a very large mutual society that seems to be heavily extended into commercial property. There has been a problem across the water on the mainland. Might there not be a problem here?”? It did not occur to you to ask that?

**Mark Durkan:** First of all, many of us would not necessarily have had cause to ask questions about specific industrial and provident societies. Many of us were unaware of just how sizeable the PMS had become. It grew in size, it grew very quickly, and we asked questions as to why the department was not aware of that and was not noting that change and asking questions as a result of the fact that its investments were obviously rising at a very fast rate and that must have meant that there was a significant change in its business model.

**Q67 Nick Ainger:** So far what has been the impact on the general economy of this problem? Obviously, we have seen copies of letters. The Chairman has received many letters and so on from individual constituents. What has been the impact both on the general economy and also on individual constituents?

**David Simpson:** Chairman, I speak as one who represents a constituency that has a very strong Presbyterian background—churches, individuals, whatever—and I cannot emphasise strongly enough the impact that this is having not only on the churches themselves but on individuals, whether they be senior citizens who have put up to £10,000 or £12,000, into the society to maybe pay for funerals or grandchildren’s education, and parents have done

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the same. I had one family who came to me four weeks before everything blew up. They had put £60,000 into it from a small business that they did not need for the cash flow. It is causing major difficulties right across the whole of Northern Ireland. I think it was the Chairman who made the point earlier on in relation to political will and we need to make it a priority. I am not saying it has not been high up on the agenda, but I believe that we are coming to the stage now with this whole sad saga when there needs to be a re-focus within the Assembly, but also a re-focus within Westminster, because ultimately, Chairman, as you will know, that is where the decision will be taken in order to try and alleviate the difficulties. That we try and get some kind of resolution is an essential part of this. I accept, Chairman, that, yes, there should have been maybe a closer eye kept on this. I am not blaming anyone or any particular circumstances, but it is a vital issue that we learn from the past and perhaps governments can try and get their heads together, whether it is through banks or whatever, to try and resolve this, but I cannot emphasise enough—and I am sure all the members of the committee will emphasise that—the heartache that this is causing through individual families really is horrific.

**Q68 Chairman:** I had savers come to see me this morning and I have had hundreds of letters and emails, and some of you have kindly spoken to me in Westminster about this issue. I understand the devastation it is causing to some people's lives and the mental problems that are resulting from that. We want to get it on the record in terms of regulation because it is important to understand where we came from, but I really do want to prosecute this area of political will today. I think that we can do something and it is not just down to the Administrator. As I mentioned, I have met the Administrator, who is doing a good job on that. There are other things we can do to provide momentum to it. That is the essence of our visit today, how we do it, so if you have any advice for us on that it would be very helpful.

**Mr Macginnis:** Could I just make one point. We have met with representatives of the Presbyterian Church who are particularly concerned, obviously. Many of their people and congregations are involved and it is causing tremendous strain in congregations, quite apart from individual members, so it is an important point to remember. What they are anxious to do, obviously, is to get a resolution. There has not been a report from the ministerial grouping. There has not been effective court action because there are problems there. What they want is a timely resolution of this problem and the committee's view is that the assets and liabilities could be absorbed by a financial institution in an enhancement fund, and that should be the target, the objective. We do not see this being addressed in a timely fashion. Of course it is being addressed, but not in a timely fashion because time is running out for a great number of members and great strain is thereby caused, so what we are saying as a committee is that we want

maximum political pressure to bring this to a closure because it is no longer a sustainable situation for many people.

**Q69 Chairman:** I agree. In fact, this morning I also met Dr Carson and his colleagues from the Presbyterian Church and they have sent a memorandum to us and have been very helpful to us, but when I talk about political will, if we want a financial institution to take over, then that financial institution has to have some comfort. Given you have the Northern Ireland Executive here, Westminster and the Treasury, there could be some comfort given there and that is what I am wanting to push. Does that make sense to yourselves?

**Mr Macginnis:** Yes.

**Q70 Chairman:** Mark?

**Mark Durkan:** Yes, Chairman, it absolutely does, and that is why the visit by the Committee and yourself today is very important and very valuable, because it helps to bring that sort of focus to things. This whole situation has been a sort of Homer Simpson nightmare for the people who have been involved in it. Every time you think it is coming to some end there is then some new turn and the thing just keeps kicking on. There have been reports due from the Administrator that were then held up, for good reason or whatever. Then there were deadlines and indicative dates given by the Ministerial Working Group, and again it all kicks in, and so, as far as the members of the PMS are concerned, the public policy system, of which, as politicians and ministers, we are part, just keeps kicking this can in front of it and not giving them a solution, and they see solutions happening very quickly in relation to Dunfermline and others. Alban mentioned an enhancement fund and essentially that is what was done there and people are at a loss to understand why can that not be done here. What we get from the Treasury is, "It cannot be done here because these people are investors, not savers", and that is one of the big things. There is a real issue of political will that is needed. Treasury ministers need to get it into their heads that these people are *bona fide* savers. Everything they had from the Presbyterian Mutual Society referred to savings and savers, so that is how they understood themselves, especially those people who had to withdraw their shares under £20,000. As a matter of political will, if the Government could move to recognise and accept that and that, therefore, people have to be treated the same as other savers who were exposed to risk, that can help. You are right to say this should not depend on the Administrator. I know from meetings I had when I was Chair of the committee with the Administrator that he certainly would favour moving to an enhancement fund-type solution, which would mean then that all the money would not be withdrawn because people would know their money was guaranteed and they could still leave it there for the purpose for which it was there, but he cannot achieve that on his own just by negotiating with banks. Any of the banks involved need to know that there is real

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political will and weight behind it. It is the political weight that attaches to the will which is hugely important and that is why I think your own comments were very helpful.

**Q71 Mr Fallon:** I want to ask David Simpson—I think you have connections with the church—what responsibility you think the church itself has, given it shared a website and email address with the Society and given that it urged its members to use the services of the Society. What kind of moral, or indeed financial, responsibility do you think the church itself has for contributing towards a solution, which I accept has to be built from everybody?

**David Simpson:** Yes, I agree with that. I think from a moral perspective—and I do not claim to speak for the church because I recognise the Moderator is sitting too close behind me for me to make any such comment—the church itself feels that it has a moral obligation to try and get this problem resolved.

**Q72 Mr Fallon:** But not a financial one?

**David Simpson:** It depends. I am not aware, and I have to say this, Chairman, of the financial standing of the Presbyterian Church in relation to what funds are available or what funds are not available. I know that a lot of the churches were caught in the middle of building programmes where individual churches had started building programmes and then everything went askew and they were left trying to go to their congregations to try and find the resources in order to finish those building programmes.

**Q73 Chairman:** And a number of those people in the congregations have been hit by the problem, and that is the issue as well, and that came over graphically to me.

**David Simpson:** Correct.

**Q74 Mr Fallon:** But if there were central assets do you not think the church should make some contribution from them to solving this problem?

**David Simpson:** Again, I have to emphasise I cannot speak for the church in this.

**Q75 Mr Fallon:** No, but what is your view?

**David Simpson:** If there were some financial assets there, if there was some money available, then maybe the church should look at it, but I cannot answer for the church.

**Q76 Chairman:** I have spoken to the church and I do not want us to go back over old ground here, but when I talk about the political will I see the biggest contributor has obviously been the Treasury and yourselves as an Assembly, so we will get some action there as well if the two of us come together on that because the hardship that has been experienced by people in the churches means that they are not in as good a position to contribute.

**David Simpson:** Could I just add to what I said earlier on when I talked about the moral issue. I know that there are a lot of ministers within the churches who feel—“let down” may be too strong a

phrase—hurt because they encouraged individuals from the Presbyterian background to invest in the credit union in order to help the church at a future stage. They feel let down by this as well, so I think it needs to be put on the record.

**Chairman:** It does.

**Q77 Mr Love:** Could I ask, because we touched upon it with the last group that were before us, about the role of the Northern Ireland Executive in this. Does it just have an enabling role in getting the message across to central government or should it be playing a much more active part in finding a solution?

**Mark Durkan:** Ministers are saying that they feel they are doing as much as they possibly can. I think we would maybe have more confidence in believing that if we saw things being a bit more productive. Certainly, part of the role has to be in trying to lobby and influence Treasury ministers to see this differently, and I know from engaging with Treasury ministers right from when this problem began that they have taken a distant view of it. At the start it was a case of, “We cannot do anything for anybody after a collapse”, even though the Icelandic banks were covered with guarantees after they had collapsed in fact. Then it was a case of, “If we do something here, we do not know what else is out there. We could create a very bad precedent”. The fact is the picture is now much better known so there are not going to be all sorts of other runs that will expose them to all sorts of repeat intervention. In so far as it has been able to do anything in the Ministerial Working Group, the Executive has just been able to reflect back the sort of limited information and expectation that we heard today. It might be that the Executive has to show a bit more weight in this in terms of willingness to contribute to the outcome by way of assisting in some way in terms of guarantees that might be needed to assist the clinch of a commercial solution here.

**Q78 Mr Love:** Let me press you on that because you mentioned about setting up this fund. Clearly, the issue would be some sort of guarantee.

**Mark Durkan:** Yes, and it is up to the Executive. For instance, here it is the Northern Ireland Executive that has to decide what happens with the dormant accounts’ money, the whole issue of dormant accounts in Northern Ireland, and clearly one possible use of money in dormant accounts would be to help here.

**Q79 Mr Love:** Do we have an estimate of what sort of money is available in dormant accounts?

**Mark Durkan:** No.

**Chairman:** We need to get on that dormant accounts issue as well.

**Q80 Mr Love:** Are you saying that in your view there is a mechanism by which the Northern Ireland Executive could play a more active role and through their willingness they should be able to persuade the

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Treasury that something along the lines of guarantees towards this fund that would be set up in order to find a commercial solution?

**Mark Durkan:** Yes. I think if people want to be creative and helpful they can be. The problem here is that we have a situation where everybody is standing back, just like the regulation situation, just as it was unclear who was responsible for the financial institutions. Just as you had that twilight zone, there seems to be a bit of a twilight zone now about who should actually take the lead in the same way, "Here is what we are definitely going to contribute to a solution", rather than just call for it.

**Mr Butler:** One of the issues for the Presbyterian Mutual Society members or savers is that the British Government was able to act quite quickly in saving the financial institutions, both in Britain and here, yet the Presbyterian Mutual Society were left high and dry and there were no financial guarantees on their savings in the same way as other institutions.

**Q81 Chairman:** We have got to be precise as a committee. The big difference is that the Presbyterian Mutual Society was not regulated with the FSA. They were not in the Financial Services Compensation Scheme, they never contributed anything to that, and that is the core issue, what this stems from.

**Mark Durkan:** But they were conducting activity that should have been regulated by the FSA.

**Q82 Chairman:** Exactly, and we are again back to the gap here.

**Mark Durkan:** And what are the FSA doing? Are the FSA telling all the industrial and provident societies and have they ever since 2000 been saying, "If you move your business into these areas you have to be regulated by us"?

**Q83 Chairman:** And we have got the problem with credit unions, and you and I have spoken about that, so there is a gap there at the moment and we really need to fix that and that is why there were questions previously on that. You would agree, for the public record?

**Mark Durkan:** Perhaps you will allow me a moment then to advertise the fact that I have tabled an amendment to the Financial Services Bill. It is new clause 8 and it is a very simple amendment which would mean in effect that the FSA could regulate Northern Ireland credit unions and others.

**Q84 Chairman:** You write to the Chief Secretary to the Treasury or Alistair Darling and tell him we have been across here. It strikes me he is pretty sensible, okay, so if you do that, again that helps.

**Mark Durkan:** If anything, it will help me stay awake, so any assistance the Committee can give us in that regard, and all the parties in Northern Ireland would support that amendment.

**Nick Ainger:** It does seem there is general consensus that needs to be done and needs to be done quickly. Coming back to what the Chairman refers to as the political will, obviously, Bradford & Bingley is an

example of another small building society that got into difficulties and was not bailed out but very quickly was taken over by a white knight, a larger organisation. Santander picked up a number of high street names in this way. From your appreciation of the detail of what has been going on, is it your understanding that the Administrator is taking so long because he cannot find someone who is willing to stand as a white knight for financial reasons, because we have been told that in the long term the assets will certainly cover the liabilities, or is it because this is a peculiar legal position and they cannot move in quickly to take over a mutual society? Do you know why it is taking so long?

**Q85 Chairman:** I think the issue is that there is a complex legal issue here and there are investors and savers and the Administrator has to deal with issues like that. In fact, he has petitioned the High Court for directions on issues such as that, so there is quite a legal minefield here.

**Mr Macginnis:** He is awaiting direction from the High Court in relation to that.

**Q86 Nick Ainger:** Yes, I understand about paying out the difference between the shareholder and those that made loans. What I am concerned about is the nature of the society itself. Because it is not a building society, because it is an industrial and provident society, it is not easy for either a bank or another building society to take it over and absorb it. Is that part of his problem?

**Mark Durkan:** I think that is part of the Administrator's problem, but also I believe that the Administrator sometimes may have been delayed in producing some of the reports that he had been hoping to produce because he was awaiting other developments and he believed with things like the establishment of the Ministerial Working Group or whatever that some path might be found to give a Dunfermline-style solution and so he was waiting for that to develop.

**Q87 Nick Ainger:** But we were told earlier that the Working Group is saying, "We are waiting for the Administrator to report to us". Somebody needs to drive through this and say, "What are the problems? Why can't a white knight be found? If there is no white knight, you have got to look at another alternative", and the worry that I have is that we keep going on and on and, as you say, kicking the can ahead of us and nobody is getting to grips with it.

**Mark Durkan:** In terms of political will, an obvious white knight would have been a bank that is essentially publicly owned.

**Q88 Chairman:** I want to dispel the notion that the Administrator is a gatekeeper here, because he is not, as other activities can go on, and I think you all agree with me on that.

**Mark Durkan:** Yes, and certainly from the conversations that we have had with the Administrator I believe that he certainly had

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thought that, given what appeared to be the political will that was evidencing itself with the formation of the ministerial sub-committee, he believed that there was a prospect that, as I say, a publicly owned bank would have been positioned to take over the liabilities and the assets in an enhancement fund, as had happened elsewhere, and people still do not know why that never happened.

**Mr Neeson:** Chairman, I represent East Antrim where quite a large number of people put money into the PMS, and one of their frustrations is that they feel that they are being kept in the dark about what is happening, the very fact that there is the proposal to extend the role of the Administrator to 2015, but the other thing that frustrates them is that they see an upturn in the property market, albeit slight, and they are frustrated that they do not see any real proposals going forward at the present time.

**Q89 Chairman:** Yes, I understand. I think we have covered the ground we wanted to. Is there anything else you would like to say? I think we have made progress today in the sense that we all realise there is a gap there, that we realise political will is necessary so that we add pressure on to that. In the future, if there are any bear traps with credit unions, we will try and get that sorted out. I am pleased with the discourse we have had on that issue.

**Mark Durkan:** Certainly I believe that would all be very helpful. I know what none of us wants to do today is create false hopes and expectations on the part of people who have already suffered and been through an awful lot of stress. People have practically suffocated with frustration over this and we all talk jargon and gobbledegook to people, but

this is people's life savings. One woman was telling me on Saturday, and she was crying, that she feels guilty because she is not able to access her savings to make a donation to the Haiti disaster appeal. She really feels guilty that she is not able to do that because there has been so much said about investors or whose fault it was as though she was somehow speculative or greedy in doing what she was doing. This was just an honest-to-goodness Presbyterian who thought that the Presbyterian Mutual Society was doing what she thought it said on the tin, and she has been left now in a dire situation, feeling guilty and stressed like that. As other colleagues have said, people see solutions that have been found elsewhere, yet these people feel that they have been left in forgotten-hood and some sort of limbo, so anything that the Committee can do to encourage the Treasury to think anew and act urgently on this would be greatly appreciated.

**Mr Macginnis:** One understands there are legal difficulties involved in all of this, but in a sense you are talking about a fairly attractive proposition for any financial institution. What needs to get it over the line is some government underpinning, and if you can get government underpinning then I think we are home.

**Chairman:** It has 9,500 savers so that is an attraction for companies. I think we have looked through the complexities today and realised exactly what the issues facing us are and the fact that we will continue to work together on this would be very helpful to all. Could I thank you for the evidence you provided previously and for your testimony here, and we look forward to continuing working with you on this issue.

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*Witnesses: Mr Derek Lynn, Mr Don McClay, Mrs Gwen Smyth, Mr Robin Manson, and Mrs Hazel Russell, Members of the Presbyterian Mutual Society and Representatives, gave evidence.*

**Q90 Chairman:** Good afternoon. Welcome to this evidence session on the Presbyterian Mutual Society. Can you identify yourselves and your organisations, if you have one, for the shorthand writer, please?

**Mrs Russell:** I am Hazel Russell.

**Q91 Chairman:** You represent yourself?

**Mrs Russell:** I represent myself, yes.

**Mr Lynn:** My name is Derek Lynn. I am not a saver, but I am retained by members of the PMS Group to advise upon financial and regulatory issues.

**Mr McClay:** My name is Don McClay. I am a Presbyterian elder. I am a PMS member.

**Mr Manson:** I am Robin Manson. I am retired. I am a saver with the PMS and the church to which I belong borrowed a substantial sum of money which they had just been able to repay before this crisis happened.

**Mrs Smyth:** My name is Gwen Smyth. My family are savers in the PMS and I represent myself.

**Q92 Chairman:** Welcome to the session this afternoon. Nothing in the literature put out by the Presbyterian Mutual Society indicated that the organisation was regulated or backed by a deposit protection scheme. Why did people think it was safe to put their money there then?

**Mrs Smyth:** I suppose, like all Presbyterians whose lives revolved around the Presbyterian Church, we used the Presbyterian Mutual Society because of the brand "Presbyterian". We were very cautious, we are very cautious, and especially when it came to financial decisions we were more than cautious. We took comfort, however, from the fact that the literature did say that the organisation was being run by experienced laymen and clergymen and also that it did not speculate. That gave us a great deal of comfort. It also was very comforting that at the General Assembly each year there was an endorsement, and especially so in June 2008, and there was also a pulpit call during the summer of 2008 for people to place their savings within the PMS. What better mechanism could anyone select than the PMS to place their savings in? Those are my personal reasons for doing so.

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**Q93 Mr Fallon:** But you were sent each year their accounts, were you not?

**Mrs Smyth:** Yes, that is correct.

**Q94 Mr Fallon:** It would have been obvious to you in March 2006 that the society was speculating twice as much in commercial property as it was lending in mortgages. Those are the figures, are they not?

**Mrs Smyth:** I suppose from the fact of being a general person with limited knowledge I was placing trust in the directors and the officers of the society who, as I saw it, were custodians of my money, and once again were Presbyterians, and an organisation which I had placed my life's faith in, and that is the reason why.

**Q95 Mr Fallon:** Could I ask any of the other people on this panel to help us here. Given that the leaflet says that the directors give a categorical assurance that they do not speculate with investors' funds, why did any of the other four of you not wonder what they were doing with a £140 million commercial property portfolio in a booming property market?

**Mr McClay:** Of course we wondered.

**Q96 Mr Fallon:** But how did you reconcile that safeguard in the leaflet with what they were doing?

**Mr McClay:** Let us just say that at various times since the PMS went into administration I have been consulted by PMS members whose individual monies with the PMS would have ranged from a total family input of £700 to perhaps as much as £2 million, and whose ages would range from 16 to 96, and whose reasons for putting money into the PMS would range from wanting to save up for a car or, as with a 96-year-old, to have money to pay for her carers so that she would not go into hospitalisation or require state aid. There are also horrendous family situations where relocations of home, simply by way of retirement or simple relocation, have all been placed on hold, causing them distress. Distress and devastation are common bonds for PMS members whether the monies given to PMS totalled £700 or £2 million. I am also associated with monies placed with PMS as trust fund monies, ranging in separate trusts from £16,000 to almost £1 million, set up to assist people with medical and other problems here in Ireland, Romania and Uganda. Indeed, on the point that you make, one beneficiary, distraught at not receiving his quarterly payment, would suggest that I have been negligent in putting money with the PMS. Now, maybe it is slightly away, if you do not mind, from the point that you make about looking at—

**Q97 Mr Fallon:** I was asking a question; I was not trying to make a point. I was asking why all these people thought it was safe, given the scale of the commercial property investment, which had to be speculation.

**Mr McClay:** We never looked at them because we trusted them.

**Q98 Chairman:** Therefore, the church and the PMS were synonymous?

**Mr McClay:** Absolutely. The Presbyterian Church was a very effective marketing representative for the Presbyterian Mutual Society, as Gwen has said. Money was given to the Presbyterian Mutual Society because of the encouragement from the Presbyterian Church, not least through the medium of ordained ministers of that church who had issued assurances that PMS money was as safe as the Rock of Gibraltar.

**Mr Lynn:** The point I was making was that I am not a saver in the PMS but I think a lot of the people who were savers were lay persons who would not have looked in any detail at the accounts, relying on the assurances they were given by various elements of the Presbyterian culture, and therefore I do not think that those accounts were examined. On none of the accounts of the last two or three years was any comment made by the auditors that there were concerns about the financial structure, whereas if one did have a trained eye on those accounts, there was evidence that the liquidity position was weakening as it moved forward, and the events of October 2008 around the financial crisis just toppled the society over into administration, partly because it was not a member of the FSCS scheme and, therefore, was not covered by the guarantee.

**Q99 Mr Love:** In relation to that, you are all telling us that the reason you were safe with the PMS was because you trusted the brand. I think that was the word you used.

**Mr Lynn:** I am not a saver but that is my perception.

**Q100 Mr Love:** Yet, when the crunch hit, people took their money out. They were obviously concerned about it in October 2008. Why did they not have a similar concern as to why they were not covered by an insurance scheme at an earlier date? Your trust seemed to evaporate overnight in terms of 2008.

**Mrs Smyth:** I would like to make a point, that I contacted the society on 14 October 2008. We have been left in a desperate situation where we had saved all of our lives and put our money into Presbyterian Mutual and had sold our property and had just built our new home and we are waiting for the bill imminently from the builder. I phoned on 14 October. I spoke to the secretary of the society, whom I held in the same regard as a bank manager, and he advised me that everything was fine. Because at this particular time the £50,000 guarantee was being initiated across the banking sector I asked the gentleman, "Look; is my money safe, because if it is not I really must lift some money out at this point in time to meet my obligations?", to which he laughed and said, "Everything is fine. You have absolutely nothing to worry about", and less than a month later my money was frozen. It is not that people were not proactive. It is that people were not being given accurate information at that time, and you are right: people did withdraw substantial amounts of money and I have to make the point; that certainly does not register as mutuality.

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**Q101 Nick Ainger:** Could I ask you about what happened, say, between the year 2000 and the year 2008 in terms of the marketing of PMS. We have a pamphlet, which I think was probably printed in 2003, which refers to the assets of the society of £24 million. We have also the balance sheet which takes us up to March 2008, which shows the assets going from £24 million to £300 million in the space of six years. Was there any additional marketing taking place, because there must have been an awful lot more money coming into the society between 2002 and 2008? Did you experience anything like that?

**Mr McClay:** That was because the Government created an unfair playing field in the sense that one of the principal reasons, with respect, for the collapse of the Presbyterian Mutual Society is that there has been an abject failure by the legislatures in not having in place good regulatory governance in fiscal and monetary matters generally. Locally we have two building societies: one was the City of Derry Building Society, which played by the Queensberry Rules; and one was the Progressive Building Society, which played by the Queensberry Rules. The PMS should have played by the Queensberry Rules but there were no rules.

**Q102 Nick Ainger:** What was the difference in terms of the two local building societies you mentioned? Obviously, there must have been aggressive marketing taking place to see assets go from £24 million in 2002 up to £300 million in 2008.

**Mr McClay:** It was very simple. The unfair playing field created by the Government indicated that the building society became a member and was regulated by the FSA. Therefore, both building societies had to pay a levy and a premium to the Financial Services Authority. For whatever reason the PMS did not.

**Q103 Nick Ainger:** The actual levy is not a huge sum. We are talking about £23,000; my understanding is that is what the actual levy would be on the PMS. What I am trying to get at is there must have been aggressive marketing. We found when we had an inquiry into Northern Rock that in the year before they went bust over 25% of all new mortgages were issued by Northern Rock. They were very aggressive. For the PMS to go from a society with assets of only £24 million in 2002 to £300 million in 2008 there must have been some package that they were putting out which was attracting an awful lot of investment. What was happening? Do you know?

**Mrs Smyth:** I suppose possibly the *Presbyterian Herald* placing these advertisements in their magazine for the Presbyterian Church and also word of mouth. I am responsible for at least two other savers having their money in the Presbyterian Mutual Society, hence my desire to bring a successful resolution to this because I have an obligation to them. I think it was the fact that this was attached to Presbyterianism and people could see that it was being advertised and it was being endorsed by the General Assembly, as I have already said, and people took comfort in the fact that they had trust in experienced people that were running the society.

**Q104 Chairman:** Are you saying that the PMS offered a better rate of return than the building societies?

**Mr McClay:** Absolutely.

**Mrs Smyth:** It did.

**Q105 Nick Ainger:** What was the difference? Do you know?

**Mr McClay:** It could be as low as 1%, but if you take the average person with £10,000 going to the City of Derry Building Society and being told that they would get 3.5%, and if they ring up the Presbyterian Mutual and were told they would get 4.5%, or even 4.0%, the Ulster mentality or the Presbyterian mentality says, "I will go with the 4.0%, particularly when I feel I can trust these people to abide by the Queensberry Rules".

**Q106 Nick Ainger:** You have explained this excellent marketing medium, which was the church itself and which everyone trusted. At the same time there was a very clear commercial and financial incentive as well. Put those two together and you can see why it went from £24 million in assets in 2002 to £300 million in 2008.

**Mr McClay:** Then, when you add to that, with respect, the greed and self-serving impulses endemic in the banking fraternity, they latched on to the reality that the PMS were not properly regulated. They played on that, on the Presbyterian psyche, and they ensured the collapse of the PMS, just as, with an absence of effective regulatory authority in combination with reality, there is at least a *prime facie* case for saying that the conduct of the directors and officers of the society fell below that which was required of them in the law. Those three constituent parts, almost like a Presbyterian sermon, caused the collapse of the PMS.

**Q107 Nick Ainger:** Have they apologised?

**Mr McClay:** No.

**Q108 Mr Love:** The Administrator is asking to extend his remit to 2015 but there is a lot of concern that, while that might help in terms of the assets having more value as the market begins to flourish again, there are a lot of small savers who will be very adversely affected. How do you all feel about the extension to 2015?

**Mrs Russell:** My husband has suffered very badly from bad health since the collapse of the PMS. He is a retired minister from Castlerock. We came back from Cyprus the day that the PMS went into administration. He took a stroke and a brain bleed. That was in November, and on 22 July this year he took another heart attack and he has just got out of the nursing home which I have been paying £575 a week for, which I can ill afford, since July until November last year. If it has to go on for another five years, I do not think he will live to see his money. His grandchildren will never see it.

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**Mr Love:** But the acid question is, you will probably end up getting less if you do it quickly and more if you do it slowly. I know it is an invidious choice. Which choice would the ordinary saver, which I think you all represent, make?

**Chairman:** I think I can answer that because I have met a lot of them and some of them just cannot wait, and we know that. That is really one of the reasons that we are here today.

**Q109 Mr Fallon:** Could I just ask about the consequence, Mr Lynn, of putting the society into administration, that those with large amounts, the loan capital holders, may well end up with different rights from the very small savers that we have heard about. Should different groups have different rights in principle?

**Mr McClay:** With respect, I am also a trustee of a charitable trust which advocated to the Administrator months ago that he should secure the directions of the court on the very point that you are alluding to.

**Q110 Mr Fallon:** But what is your view on it? Should different groups have different rights?

**Mr McClay:** That will be adjudicated on by the Chancery Court on 27 January, and I say that is a correct process because on the one hand you have the lobby of the churches, shall we say, wanting to say withdrawal of shares should be treated in exactly the same way as creditors. Then, in the context of a private individual, with respect, at the present moment the PMS in administration is the custodian of a very large sum of money belonging to a young person who suffers daily from catastrophic injuries received as a result of an accident in which neither that individual nor any family member was an at-fault party. You are involved therefore in a Solomon's choice scenario. You want to benefit or keep faith with your share capital holders of less than £20,000, and you also want to keep faith with someone who trusted the PMS with big money, and it is repugnant therefore to get into this dialogue about whether one should benefit somebody with

£700 and not extend the same benefit to somebody with £2 million. For the very reason why I wanted the court to give the direction, that direction is at the request of a charitable trust which is not subject to the influences of either the big one or the small one but to play by the Queensberry Rules.

**Q111 Chairman:** Any other comments from colleagues? Maybe I will ask a question. What outcome do you think would be fair?

**Mrs Smyth:** Personally, I think that all savers in the society would be happy with 100% guarantee of their savings. Personally I do need a considerable amount of money soon in order to be able to pay our outstanding debts, and I know that there are other people like me, but I am also very aware that there are a number of people who do not instantly need to access their money and therefore I see the best way to deal with this is, as has already been discussed earlier today, that an institution takes this over with some form of an incentive and that they can guarantee the savings at 100% for everyone.

**Q112 Chairman:** Does everyone agree with that?

**Mrs Russell:** Yes.

**Mr McClay:** Absolutely.

**Q113 Chairman:** Could I thank you very much for your evidence. I have received hundreds of letters and emails and I understand what the situation is for people on the ground at the moment and the fact that some people cannot wait; they find themselves in an extremely difficult situation. I think it has been very helpful for us today to get it on the record from the different constituencies and I have spoken informally to quite a number of other groups today in addition to that. I would like to think we will take this back and reflect on it and then come out with a quick report to give added momentum to the situation and re-focus the interests of everyone in getting a solution to this, so thank you very much for your time.

**Mr McClay:** We appreciate your invitation. Thank you.

# Written evidence

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## **Letter from Mark Durkan MP MLA, Chairperson, Committee for Enterprise, Trade & Investment, to John McFall, Chairman, Treasury Committee**

### **Re: Letter to Ian Pearson MP regarding the Presbyterian Mutual Society**

The Enterprise, Trade and Investment Committee members recently wrote to Ian Pearson MP on the subject of the savers of the Presbyterian Mutual Society, urging immediate action to help these individuals and institutions.

I attach this correspondence for your attention.

## **Letter from Mark Durkan MP MLA, Chairperson, Committee for Enterprise, Trade & Investment, to Ian Pearson MP, HM Treasury**

The Committee for Enterprise, Trade & Investment has been closely following developments in relation to the Presbyterian Mutual Society since the problems faced by the Society first came to light late last year. The Committee is concerned with the time being taken to resolve the situation and with the lack of progress at Westminster in providing an outcome which would provide much needed relief to PMS members. Many of the members who are most in need are those smaller savers who entered into the Society in the belief that they were merely saving their money in a secure environment and, at the same time, supporting a worthy mutual society.

Committee members noted with concern some of the remarks made by the Secretary of State for Northern Ireland in relation to the PMS and its members at Northern Ireland Questions on 3rd June. The Secretary of State referred to the Society as being “registered” not “regulated”. He intimated that, as the PMS was not under FSA regulation, it was not a Treasury responsibility as it should have been under regulation here in Northern Ireland but that this regulation was insufficient. The Committee’s concern at these remarks stems from the fact that regulation as it stood was adhered to and that the form of regulation that existed was established prior to devolution. The Department for Enterprise, Trade & Investment (DETI) had no authority to regulate the PMS in any other way.

Under relevant Northern Ireland legislation there is no reference to regulation nor is there reference to regulation in any of the literature produced by DETI’s Registrar. It is therefore clear to the Committee that, if further regulation of the PMS was required, it should have been provided by the FSA and therefore any activities undertaken by the PMS which required regulation were clearly a Treasury responsibility. You will know from your time as Minister that DETI has no legal authority in the area of regulation as defined by the FSA which gets its authority from the Financial Services and Markets Act 2000. The Committee’s second point of concern is in relation to the regular referral by the Secretary of State to the members of the PMS as investors rather than savers with the implication that they had invested in the Society on a speculative basis. This was very different from the intentions of those who were saving. At a recent meeting with the PMS Administrator, he informed me that PMS members held “withdrawable shares” in the form of savings which could be withdrawn by members at any time and not therefore the normal type of share capital which investors hold. It is clear to the Committee that PMS members, especially those with less than £20,000 of savings, saw themselves as savers and should be referred to and treated as such. These people were totally unaware of the risks associated with their savings. Currently, the PMS members who have no prospect of a return are those with less than £20,000 saved as they are considered shareholders. These are the smaller savers and they are left with nothing. They are the people who were acting least like investors. Some of the PMS “creditors” may have been considered investors as they saved large amounts of money in the hope of gaining a better than average return. These people will get some return on their investments over time under the scenario which the Administrator has been able to offer. However, the Committee believes that morally, a solution which provides a return for everybody except the smaller savers, who are often those in most need, is totally unacceptable. As demonstrated by the assistance provided to members of the Dunfermline Building Society under similar circumstances, Government has a responsibility to these small PMS savers.

The Committee is not suggesting that Government was completely to blame for the problems faced by the PMS, however, it is widely recognised that the run on the PMS would not have occurred had Government not intervened with the banks in providing £50,000 deposit guarantees to savers. Also, given the guarantees provided to UK customers of failing Icelandic banks by both the FSA and HM Treasury under similar circumstances in October last year, the Committee firmly believes that a precedent has been set, and that this precedent should be extended to include members of the PMS as it was to include members of the Dunfermline Building Society.

In the case of the Dunfermline Building Society, Government used a largely nationalised bank to admit the failing assets of the Dunfermline to an enhancement fund in recognition of the fact that those assets will be properly managed and will recover in time. It was also recognised that this move would restore the confidence of members. The Committee can see no reason why a similar approach cannot be taken by

Government in relation to the PMS. By moving PMS assets into an enhancement fund in one of the local banks, assets would be properly managed, would recover in time and, given the guarantees associated with such a move, the confidence of PMS members would be restored.

The Committee urges HM Treasury to adopt such an approach and to do so at the earliest opportunity. In order to assist in providing a solution to meet the needs of PMS members and to draw a close to this matter as quickly as possible, the Committee is happy to meet with you to discuss possible ways forward. We feel this would help to resolve the matter and end the hardship and heartache currently being endured by so many members of the PMS. The Committee is also aware that the Treasury review into credit unions and industrial and provident societies in Northern Ireland is due to report in the near future and should put regulation of these institutions on a new footing in the future. The Committee feels it would be inappropriate to take these steps without firstly resolving the predicament of the PMS and its savers.

*16 June 2009*

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**Letter from Derek Lynn on behalf of members of the PMS Savers Lobby Group Northern Ireland to the  
Chairman, PMS Officials Working Group**

**INTRODUCTION**

I have been working closely with the PMS Savers Lobby Group, Northern Ireland in their efforts to secure a solution to the plight of PMS savers who have been so drastically impacted by the circumstances surrounding the demise of the PMS. I am therefore writing to you to as Chairman of the PMS Officials Working Group to impress upon you the crucial importance of the Working Group in bringing forward positive proposals for assisting PMS Savers.

The Lobby Group understands that the Working Group, which was set up in July 2009, is scheduled to make a draft recommendation to the Prime Minister later this month and we would therefore like to ensure that you have been made fully aware of all the salient issues which need to be taken into account in reaching a solution which will compensate PMS Members for the significant financial hardship which many of them are facing.

**WORKING GROUP TERMS OF REFERENCE**

We welcome the establishment of the Working Group with such a wide ranging remit as set out in the attached Terms of Reference which were advised to our Lobby group by HM Treasury in August 2009. Additionally we are encouraged by the support of the Prime Minister in his initiative in setting up the Working Group to try to find a way forward which will alleviate the distress in which PMS savers—through no fault of their own—now find themselves. We also have the benefit of precedent by the UK Government in providing rescue support for companies and banks both pre and post devolution, particularly during the current credit crunch.

We therefore believe that the Working Group has an unique opportunity to bring forward innovative and positive proposals which will recognise the abject failure of the UK regulatory regime to protect PMS savers—in vivid contrast to the action taken by the UK Government to rescue the banks at considerable cost to the UK taxpayer—and which will provide the basis for a just, fair and equitable compensation package for PMS savers.

While the Lobby Group have been told by HM Treasury that the Working Group has held a number of meetings over the summer with various parties, including the Administrator, it is not clear at all how the actual process of consultation has worked—in particular how consultation with PMS savers and stakeholders outside the governmental regulatory framework has been operating. As those people most affected by this whole debacle, it is absolutely imperative that their views are fully taken into account in any recommendation to the PM. It is also important that independent professional advice has been taken from external advisors as part of the review process to avoid the perception “policemen” are investigating the “police”. The process needs to be wholly transparent and clearly seen to be so.

**KEY ISSUES FOR CONSIDERATION**

Within the above context we would therefore like to emphasise the key issues which the Lobby Group believes need to be given proper consideration by the Working Group before it can properly reach any viable conclusions.

Firstly, it is abundantly clear that the whole UK Regulatory System has failed utterly to provide effective or proper governance over the affairs of the PMS. The Society was custodian of investment funds of some £350 million and how it was allowed to operate for many years without any proper governance or oversight is a complete mystery. Both the Financial Services Authority (FSA) and the Department of Enterprise, Trade and Investment in Northern Ireland (DETI) have distanced themselves from any responsibility for ensuring that the PMS was registered with the FSA.

As far as the FSA is concerned, its stated position is (and I quote) that it was for the Society to establish—and not for the FSA to advise—whether it was involved in regulated activities and needed to apply for registration—but that if any society is involved in regulated activities and remains unregistered it is liable

for financial penalties. The FSA's subsequent investigation into the affairs of the PMS concluded in April 2009 that the PMS was conducting regulated activities without the necessary authorisation or exemption. However, on the basis of the information currently available to them and applying the criteria in the Code for Crown Prosecutors, the FSA has decided that "it would not be right for them to take a case against any of those involved in running the Society". We have asked the FSA to explain their decision but they have thus far failed to do so. Their position only serves to underline the toothless nature of the regulatory process and the absolute lack of any deterrent to misconduct against those involved in running financial institutions.

It is also quite clear that there has been total confusion within the UK regulatory process itself about the status of the PMS as to whether it should have been registered with the FSA. In March 2009 Ian Pearson MP (Treasury Minister) in correspondence with a local MLA advised that organisations such as the PMS are exempt from regulation by the FSA under the Financial Services and Markets Act (FSMA) and that consequently the firm and its members do not contribute to and are not protected by, the Financial Services Compensation Scheme (FSCS). Yet less than a month later as noted above, the FSA concluded quite differently. Right hand, left hand comes to mind!

As regards DETI, it has repeatedly made clear that it has no regulatory remit in supervising industrial and mutual societies such as the PMS, beyond ensuring that they were registered in accordance with the Industrial and Provident Societies Acts and complied with their registration and legislative requirements. In the words of the DETI Minister, it had no "prudential supervisory role" in relation to the PMS—yet DETI's published strategy documentation and website specifically refer to its "business regulation" role which is clearly misleading and gives a false impression to investors that somehow registration with DETI provides some sort of "comfort" that their funds are protected. If this simple administrative process and legislative role—as opposed to a corporate governance and financial integrity process—is all that DETI provides then it is totally inadequate and simply leaves it as acting as little more than a useless "post box" providing no protection for investors/savers in local financial institutions. We had hoped that the recent HM Treasury Review chaired by Ian Pearson would have produced some urgent recommendations as to DETI's future role but it has totally failed to address these issues.

So far as the activities of the PMS itself are concerned it is interesting and indeed most significant in our view, that its own Rulebook (Rule 29) states that "The Society shall not receive money on deposit."—so it is quite evident that the Society (and therefore its directors) believed that by including this statement in its operating rules it took it outside the definition of banking and therefore exempted it from registering with the FSA. It therefore begs the question as to what is meant by "receiving deposits", what criteria the PMS directors had applying in arriving at their assessment and what advice (if any) they had taken in articulating Rule 29. Since the Society's rules had to comply with the requirements of the Industrial and Provident Society Acts and had to be lodged with DETI it seems surreal that while DETI's role may well have been one of simple process oversight, a so called professional business organisation such as DETI would not have seen fit to at least have suggested to the PMS directors (most of whom appear to have been laypersons with limited commercial expertise) if they had properly satisfied themselves that the Society did not need to be registered with the FSA. It is astonishing that the inclusion of Rule 29 would not have triggered at least some questions in the mind of a government department charged with business regulatory responsibilities even if it says it did not have any direct role in monitoring the affairs of the PMS. We have raised this point with the DETI Minister but she has declined to comment.

There can of course be no confidence that registration with the FSA would in itself have necessarily prevented the plight which ultimately befell the PMS given the "Light touch" approach which its current Chairman, Lord Turner has implied was encouraged by the UK Government during the recent boom years when the banks were acting virtually with impunity and running up huge and toxic debts for which the taxpayer is now having to foot the bill. It wasn't that monitoring procedures were not in place within the FSA, but rather that these were not being applied effectively for whatever reason. Nonetheless, formal registration and oversight of the PMS by the FSA would clearly have provided a more effective basis for monitoring its affairs and ensuring that the Government could not seek to escape its responsibility for protecting the Society's savers through extension of the deposit guarantee arrangements enjoyed by the UK banks.

All of the above questions and a number of other significant issues relating to the operation of the PMS need to be answered. These include the conduct of the directors (for example—when did the Society cease to take deposits from savers in the period leading up to administration?), the deafening silence in the 2008 accounts and in successive Chairman's/Directors' and auditors' reports about the weakening liquidity position and the adequacy or otherwise of internal controls and risk assessment procedures even before the fatal run on the Society's funds during October 2008. Indeed the PMS Chairman's report in June 2008 on the Society's 2008 accounts commented—with seeming pride—on its favourable returns and dividend policy compared with competitors and on the "broad and generous terms" offered by the Society in terms of savers being "freely able to withdraw their money at will and without penalty." Famous last words indeed! So there was nothing whatsoever in the information sent to PMS members, which we have seen, which would have alerted them to any signs of trouble ahead. Indeed the impression was clearly left of the Society continuing to be a safe haven for savers.

The Administrator submitted his report in July 2009 to DETI on the management of the PMS and as yet no response has been forthcoming. We also understand that the Accountancy and Actuarial Discipline Board (AADB) has launched an investigation under its scheme for the accountancy profession into the conduct of the Institute of Chartered Accountants and Moore Stephens as auditors to the PMS in connection with events leading up to the Society being placed into administration. It is imperative that the auditors' role in this sorry tale is fully investigated.

#### CONCLUSION

All of the above demonstrates in the Lobby Group's view, that right from start to finish there were deep rooted flaws in the whole regulatory regime and that had those organisations charged with regulatory responsibilities had applied effective diligence and ensured proper registration and regulation of the PMS's affairs, then PMS savers would have benefitted from the FSCS arrangements and thus avoided the run on the Society's funds which led to it being put into administration in October 2008.

It is clear that the handling of this case by government officials involved in the regulatory process has fallen significantly short of the standards expected of those charged with the very importance task of regulating the financial services sector and has contributed to the losses currently faced by PMS savers and severely undermined the confidence of savers generally.

We would therefore request the Working Group to note these serious issues, which in summary, provide compelling evidence of significant Government (both UK and NI) responsibility for the distressful situation in which PMS savers find themselves in—and therefore recommends that proposals be agreed which will make available fair and equitable financial compensation to PMS savers.

3 September 2009

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#### Written evidence submitted by representatives of the Presbyterian Church in Ireland

1. The representatives of the Presbyterian Church in Ireland welcome the opportunity to meet the Treasury Committee. While the Presbyterian Mutual Society (PMS) was not part of the Presbyterian Church, the Church is obviously very concerned about the consequences for many congregations and individual Presbyterians of the way in which the collapse of the PMS has been handled.

2. The case for the PMS savers is very simple. They are the only savers in a distressed financial institution in the UK who, during the worst post World War II recession, have been denied access to their savings for nearly 15 months. It has been the Government's proud boast that "throughout this whole crisis, everyone that has been saving in a UK institution has been protected whenever there has been a difficulty in that institution". That has been so regardless of the culpability attaching to the institution for its failure.

3. If the other distressed institutions which the Government has bailed out, with their millions of savers, had been dealt with as the PMS has been, the country would simply have been ungovernable and the economy would have collapsed. It is a monstrous injustice that a small group of savers (some 10,000) in this part of the UK should be treated differently from the great mass of their peers.

4. For six months the Government took no interest in the matter. Under pressure, it conceded in June that a Working Group should be set up, to report to the Prime Minister in September. Seven months on, it has still not reported. The tardiness of the process is wholly unacceptable. PMS savers have displayed remarkable patience.

5. The delay also creates difficulties for the Administrator, who has recently made application to the courts for advice on various matters, including the basis on which he should make the initial distribution which he now proposes. This brings to the fore the issue of the status of loans and shares. Throughout the existence of the PMS, members' loan capital and share capital were treated equally, with no priority between them when the Society made distributions. A (presumably unintended) consequence of Administration under insolvency law was to introduce a hitherto unknown and artificial distinction between them. Any interim distribution or, still worse, any ultimate resolution of the PMS's difficulties which reversed the founding principle of mutuality and discriminated against the smaller savers would not only be a grossly unfair but also a hugely divisive outcome for Presbyterian congregations. The Church has made clear throughout to the Government the need for urgent resolution in order to pre-empt these problems. The Government appears not to take this seriously.

6. The only solution which can produce (at least cost to Government) the same outcome as was achieved for other savers in the UK (and, indeed, the Republic of Ireland), is for the assets and liabilities of the PMS to be absorbed by a substantial existing financial institution. The Church made a proposal to this effect to the Working Group early in August.

7. The Government was extremely dilatory in adopting the proposal and then in pursuing it, bearing in mind the remarkable expedition with which it rescued the UK's biggest financial institutions. We would have expected Government to call in the Heads of appropriate financial institutions, to indicate to them Government's unequivocal desire to put PMS savers into the same position as their peers elsewhere in the UK, and to seek a partnership with one or more of the institutions for that purpose. Instead, the Working Group has instituted a process with the financial sector which has dragged on for months in a manner wholly

out of keeping with the urgency of the situation. We have drawn our acute concerns about this to the attention of the Secretary of State in a letter just before Christmas. Anything the Committee can do to induce the Government to conclude with the utmost urgency an arrangement with a financial institution which achieves the outcome set out at 6. above would be greatly appreciated.

Rev Dr Donald Watts, Clerk of the General Assembly

Right Rev Dr Stafford Carson, Moderator of the General Assembly

12 January 2010

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**Supplementary written evidence submitted by the Department of Finance and Personnel, Northern Ireland**

At this morning's evidence session we agreed to provide a detailed breakdown of PMS Shareholders/Creditors. This information is below.

**PMS SHAREHOLDERS AND CREDITORS**

	<i>Number of Accounts</i>	<i>Withdrawal shares £m</i>	<i>Loans £m</i>
Shares up to £20k	1976	16.4	
Loans up to £20k	539		1.0
Shares and loans up to £20k	4161	21.0	4.3
<b>TOTAL</b>	<b>6676</b>	<b>37.4</b>	<b>5.3</b>
Shares/Loans from £20k - £50k	1909	36.4	23.8
Shares/loans from £50k - £100k	801	15.5	42.3
Shares/loans over £100k	646	12.2	132.9
<b>TOTAL</b>	<b>10,032</b>	<b>101.5</b>	<b>204.3</b>

18 January 2010

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**Supplementary written evidence submitted by Derek Lynn on behalf of members of the PMS Savers Lobby Group Northern Ireland**

I am writing to you on behalf of members of the PMS savers Lobby Group to thank you and your Committee once again for the Public Hearing at Stormont on 18 January 2010. PMS savers are most appreciative of your interest in the plight of the PMS and fervently hope that your report, following the Hearing, will provide much needed impetus in the efforts to find a satisfactory solution for savers.

Like you, PMS savers believe that there has been a total lack of political will and urgency on the part of both the UK and NI administrations thus far in seeking to resolve the PMS crisis and that there has been an abject failure in the regulatory framework which has contributed significantly to the situation in which savers find themselves.

We were encouraged however to hear Arlene Foster go on record both at the Public Hearing and in subsequent press interviews that she stood ready to do all she could to help and that she, along with Finance Minister, Sammy Wilson remain totally committed to seeking a successful outcome for PMS members. While I have no reason to doubt the sincerity of Ms Foster's statements I am not convinced—based on the position she has often articulated publically absolving DETI for any official oversight of the Society and on the evidence of my post—Hearing conversations with senior DETI officials that they still do not accept that there was any regulatory “gap”—that her Department has the propensity, ingenuity or expertise to negotiate a satisfactory solution for PMS members. It is also not clear specifically who is in the lead with potential banks and the Administrator in seeking to find a solution. While a cross-departmental approach is important, the present arrangements lack transparency, accountability and focus, as has been amply demonstrated by the ineffectiveness of the Ministerial Working Group whose report after nearly seven months of deliberations is—and still remains—long overdue with no final delivery date attaching to it.

It is therefore imperative that PMS members clearly know which NI Department (be it DFP or DETI) is leading the negotiations in order to ensure momentum, confidence and accountability in driving the process forward and that achievable timetables are set against which progress can be monitored and that this “pass the parcel” process is brought to an immediate conclusion.

PMS savers are also deeply concerned that given the enormous political pressures which the NI Assembly is currently facing, both in terms of dealing with the policing and justice debate and the tribulations in the First Minister's Office, the PMS issue will not be afforded the proper priority which it truly deserves. It is essential therefore that the NI Administration is adequately supported from Westminster in ensuring that the necessary expertise and drive needed to achieve a satisfactory outcome for PMS savers will be provided. I hope therefore that the Treasury Select Committee's report will recognize these important aspects and that this will be taken on board by both governments.

PMS savers look forward to your report and hope that it will at last be the catalyst for an early and satisfactory solution for PMS members.

23 January 2010

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**Written evidence submitted by HM Treasury**  
RESPONSE TO TREASURY COMMITTEE

*Does HMRC have a policy on how to treat taxpayers who cannot meet tax bills because of the administration of PMS?*

HMRC takes a sympathetic approach to both individuals and businesses having genuine short term difficulties in paying the tax they owe. This applies just as much to those difficulties which are associated with the administration of the Presbyterian Mutual Society as it does to those whose difficulties arise from any other cause.

There is clearly considerable complexity in the position of those involved in PMS, deriving from the nature of the society's status, the manner in which insolvency legislation works and differences between compensation arrangements in NI and the UK. However, their standing with regard to their tax liabilities is the same as for anyone in temporary financial difficulties, which is that HMRC is committed to working with those who contact them about problems in making tax payments

*Is Government considering the desirability of a resolution/insolvency regime which takes account of the principles on which mutual societies are based?*

The Banking Act 2009 provides special resolution and insolvency arrangements for all types of UK institution which have a Financial Services and Markets Act (FSMA) permission to accept deposits.

The Act includes provisions for extending the Special Resolution Regime (SRR) stabilisation tools to building societies, and adapting them to reflect the different legal framework of building societies. The Act also includes a power to extend the resolution and insolvency arrangements to credit unions in the future, should this be considered appropriate.

*When does the Treasury intend to bring forward legislation on credit unions in Northern Ireland?*

In advance of legislation to implement proposed changes to current policy, it is required that appropriate consultation must precede any legislative change. The Treasury and the Department of Enterprise, Trade and Investment (DETI) in Northern Ireland, are currently finalising a joint consultation document covering the relevant issues in relation to credit unions in Northern Ireland. It is intended that this will be published shortly.

However in the recent debate on amendments to the Financial Services Bill, the view was expressed that since all parties agreed that the proposed changes to the legislative framework are in the best interests of all, the anticipated consultation process appeared to be unnecessary. In response, the Economic Secretary to the Treasury indicated that the Government would consider bringing forward the legislative change were it to receive a formal notification from the Northern Ireland Executive, clearly backed by the Assembly, to the effect that it did not feel there was a need to consult and if agreement could be reached with the FSA on the level of detail needed to be able the change to be made with confidence that the other elements could be accommodated.

The Treasury is therefore currently investigating urgently with both Northern Ireland and with the FSA how the changes that all parties regard as urgent and essential can most effectively be brought about. However, this course may present its own legal challenges, as well as operational difficulties for the FSA, if full and proper consideration is not focused on the timing of implementation of appropriate legislation.

1 February 2010

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### Written evidence submitted by the Financial Services Authority

Thank you for your letter of 10 January arising from the evidence received by the Committee during its recent session on the Presbyterian Mutual Society (PMS). In this letter we deal with your questions in turn and provide some information: (i) on the FSA's approach to its function as the registering authority under the Industrial & Provident Societies Act 1965 (the Act which applies in Great Britain); and (ii) some background on the application of the Financial Services and Markets Act 2000 (FSMA) to Industrial & Provident (I&P) Societies generally.

#### *The Regulatory Gap*

You note in your letter that during the session a regulatory gap was exposed. As we explain below, in our view, the circumstances of the case were highly unusual and should not be used to justify a general conclusion. As you will be aware, PMS was registered by the Department of Enterprise Trade and Investment (Northern Ireland) (DETI) under the Industrial & Provident Societies Act (Northern Ireland) 1969 (1969 Act). We believe PMS represents an unusual use of the corporate vehicle for which provision is made in the I&P Acts, and the "gap" would be apparent only in circumstances such as those relating to the PMS.

Under both the I&P Acts, the registering authority (DETI or FSA) must be satisfied that a society meets one of the specified conditions for registration set out in section 1(2) of the respective Acts and that it continues to do so throughout the period during which it is registered. These conditions are that the society must be either a bona fide co-operative or a community benefit society (see Appendix A). PMS appears from its rules to have been registered as a co-operative society.

The Acts do not define a "bona fide co-operative" so it is a matter for DETI (and the FSA in Great Britain) to determine the characteristics which an applicant society must exhibit in order to qualify for registration. In determining these characteristics the FSA works closely with the co-operative movement as we see our role as that of a gatekeeper. In addition, and while there is no obligation on us to do so, we take account of the regulatory consequences of registration under the I&P Act, which include exemptions from the protections provided by FSMA. So if, for example, we consider that a society's activities would be better suited to an alternative mutual model, such as a building society or a credit union, we would advise the applicants of this. We believe that this approach is proportionate to the risk: it ensures that applicants are properly advised, but does not impose an increase in the regulatory burden on the overwhelming majority of co-operative societies for which the absence of regulation does not give rise to any consumer risk. Further information on the FSA's approach to registration is given later in this letter.

#### *The FSA's involvement in PMS*

The FSA had no knowledge of the PMS before HM Treasury told us in November 2008 that it was in difficulty. However, once we were aware of the situation, we requested PMS's rules and latest annual return and made our own enquiries as there was evidence in these documents that it might be carrying on regulated activities without appropriate authorisation under FSMA. Further more detailed investigations led us to conclude that this was in fact the case and we confirmed this in our statement on 9 April 2009—see Appendix B.

The FSA is not resourced to look proactively for evidence of unauthorised activity. However, if evidence comes to light, we look into it. We have a general duty under section 2(3)(a) of FSMA which requires us to use our resources in the most efficient and economic way and we consider that our targeted approach to the risks posed by unauthorised activity complies with this requirement. We have sought and received assurances from DETI that no other I&P societies registered by it are conducting a similar business to PMS.

#### *Consequences of Administration*

The procedures available in the case of an insolvent I&P society have been limited to winding up and in certain circumstances, to the appointment of a receiver. The Insolvency (Company Arrangement or Administration Provisions for an Industrial and Provident Society) Order (Northern Ireland) 2008, made by DETI, extended parts II and III of the Insolvency (Northern Ireland) Order 1969 and section 899 of the Companies Act 2006 specifically to the insolvency of the PMS.

The different treatment on insolvency of the two forms of investment in PMS arose as a consequence of the decision of the PMS Board to invite investment above the £20,000 permitted for its share capital by the 1969 Act. As the society could not lawfully accept more than £20,000 from each member as share capital, it chose to invite further investment in the form of loans, which made the holding members creditors of the society. This would appear to have been a device of the society to circumvent the statutory limit. This limit would have afforded some protection to members by restricting their investment and so exposure to loss.

We have no view on the desirability or otherwise of amending the insolvency law for I&P societies in Northern Ireland (which is a devolved matter), but we question whether the PMS provides a basis on which to recommend a different approach if similar legislation for Great Britain is contemplated in the future. Societies in Great Britain cannot currently enter into administration.

*The FSA's Approach to the Registration of Industrial Provident Societies*

I hope it may assist the Committee if I take this opportunity to outline how we mitigate the risk that a society registered by us might carry on a regulated activity without authorisation. Our mutual's registration team examines each society's rule book, both at the time of first registration and when applications to register subsequent alterations to rules are received. This is because, as mentioned above, the FSA has to be satisfied that a society qualifies for registration; the rules under which it will operate are fundamental to this consideration. If it is evident from examination of the rules that a society wishes to carry on an activity for which authorisation under FSMA might be required, we advise it to consider whether it should apply for authorisation, although there is no statutory obligation on us in our capacity as registering authority to do so. As I have already mentioned, in appropriate cases we also recommend the use of an alternative mutual model.

If our registration team has reason to suspect that a society is conducting a regulated activity without authorisation we refer the matter to relevant FSA colleagues for further consideration. That expectation applies across the FSA to all businesses which come to our attention—not just to I&P societies. In a notice on our website for mutual societies we have alerted societies to the need to consider whether or not they need to apply for authorisation see Appendix C.

The FSA works with trade associations such as Co-operatives UK to develop Codes of Practice which are designed to ensure that their member societies understand their obligations to their own members and that they provide them with all of the information they need to make an informed judgement on matters such as the risk attached to investment in a society's shares.

*The Governance of Co-operatives*

Co-operatives should be democratically controlled by their members—the FSA looks for evidence of this in a society's rules as part of the routine process of confirming that the society qualifies for registration. The concept of “member control” carries with it an expectation that the members will play a full role in the governance of the society and will elect a board in which it can have confidence. It is the responsibility of the Board to understand its obligations under the Act and the impact other legislation, such as FSMA, may have on the business of the society. In the absence of the necessary skills, we expect a Board to take steps to ensure that it has access to suitably qualified people who can advise it on these and other important matters.

*The Application of the Financial Services & Markets Act 2000 to Industrial & Provident Societies*

Appendix D provides a general overview of the application of the Financial Services & Markets Act 2000 to Industrial & Provident Societies.

1 February 2010

**Appendix A**

Conditions for Registration (extract from the Industrial & Provident Societies Act [Northern Ireland] 1969

**PART I**

**SOCIETIES WHICH MAY BE REGISTERED**

1 Societies which may be registered

(1) The societies which may be registered under this Act are—

(a) subject to sections 2(1), 7(1) and 78(4), a society for carrying on any industry, business or trade (including dealings of any description with land), whether wholesale or retail, if

(i) it is shown to the satisfaction of the registrar that one of the conditions specified in subsection (2) is fulfilled; and

(ii) the society's rules contain provisions in respect of the matters mentioned in Part 1 of Schedule 1; and

(iii) the place which under those rules is to be the society's registered office is situate in Northern Ireland;

*Para. (b) rep. with saving by 1985 NI 12*

(2) The conditions referred to in subsection (1)(a)(i) are—

(a) that the society is a bona fide co-operative society;

(b) that, the business of the society is being, or is intended to be, conducted for the benefit of the community.

(3) In this section, the expression co-operative society does not include a society which carries on, or intends to carry on, business with the object of making profits mainly for the payment of interest, dividends or bonuses on money invested or deposited with or lent to the society or any other person.

## Appendix B

### Public Statement on the FSA's Investigation of the Presbyterian Mutual Society

9 April 2009

#### PRESBYTERIAN MUTUAL SOCIETY INVESTIGATION

The FSA's normal practice is neither to confirm nor deny that we are investigating a particular firm or individual. However, in the light of the information already in the public domain about the FSA's involvement and the public interest in this case, the FSA can confirm that it has investigated the activities of Presbyterian Mutual Society (PMS), now in administration, to consider if it was conducting regulated activities without the necessary authorisation or exemption.

We have concluded our investigation and have decided that it was conducting regulated activities without the necessary authorisation or exemption. However, on the basis of the information currently available to us, and applying the criteria in the Code for Crown Prosecutors, we have decided that it would not be right for us to take a case against any of those involved in running the PMS. However, we remain in touch with the administrator and, if further information comes to light relating to the issues we have investigated, we will look into it.

## Appendix C

### Extract from the FSA's website for Mutual Societies

#### INDUSTRIAL & PROVIDENT SOCIETIES

An industrial and provident society is an organisation conducting an industry, business or trade, either as a cooperative or for the benefit of the community and is registered under the Industrial and Provident Societies Act 1965.

The FSA is the registering authority for societies which register under the Industrial and Provident Societies Act 1965 (I&P Act 1965). This registration function is separate from our role as regulator of the financial services industry in the UK, as provided by the Financial Services and Markets Act 2000 (FSMA) and the statutory instruments made under FSMA.

Most I&P Act 1965 societies are not regulated by the FSA under FSMA. Members of these societies will not have access to the Financial Ombudsman Service (FOS) or the Financial Services Compensation Scheme (FSCS). However, members of societies which are both registered under the I&P Act 1965 and regulated by the FSA—because they are authorised to conduct financial services business under FSMA will have access to FOS and the FSCS. In addition borrowers from societies which have Consumer Credit Licences will have access to FOS on issues relating to their loans.

A Society is responsible for considering whether any of its activities are regulated activities under section 19 of the Financial Services and Markets Act 2000. If any of its activities are regulated activities, the Society must either rely on exemptions<sup>1</sup> or apply for authorisation from the FSA for the conduct of such activities. The registration of a rule relating to a regulated activity does not provide the necessary authorisation - there is a separate application process for authorisation.

Co-operative societies are run for the mutual benefit of their members, with any surplus usually being ploughed back into the organisation to provide better services and facilities.

Societies run for the benefit of the community provide services for people other than their members. There need to be special reasons why the society should not be registered as a company.

## Appendix D

### Overview of the Application of the Financial Services & Markets Act 2000 to Industrial & Provident Societies

Under the Financial Services and Markets Act: 2000 ("FSMA") organisations of any kind which carry out regulated activities, as defined in the Act, anywhere in the UK need to be authorised by the FSA or otherwise legally exempt from authorisation.

The position with regard to authorisation and exemption is set out in FSMA and its subsidiary legislation .

Section 417 of FSMA provides that the term "industrial and provident society" means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965, or the Industrial and Provident Societies Act (Northern Ireland) 1969.

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<sup>1</sup> As, for example, set out in:  
—the "Financial Services and Markets Act 2000 (Regulated Activities) Order 2001"; and  
—the "Financial Services and Markets Act 2000 (Carrying on Regulated Activities By Way of Business) Order 2001".  
This is not an exhaustive list.

FSMA includes a general prohibition, in section 19, on any person (natural or legal) carrying on a 'regulated activity' unless that person has either been authorised to do so by the FSA, or exempted by the legislation from the need for authorisation.

Withdrawable share capital is a long established feature of co-operatives and industrial & provident societies generally. In common with shares issued by companies, it is normally issued "at risk" i.e. the holder may lose all or some of his investment if the society becomes insolvent. FSMA does not apply to withdrawable shares issued on such terms, so there is no obligation for the issuer to apply for authorisation to carry on the activity of raising funds in this way.

However, the definition of "accepting deposits" provided by article 5 of the FSMA: 2000 Regulated Activities) Order 2001 (SI 2001/544) would be wide enough to catch withdrawable shares issued as deposits and certain forms of loan capital issued or accepted by societies. The definition includes money paid on terms that it will be repaid on demand or in agreed circumstances and used by the recipient either to fund lending or to finance to a material extent any business activities.

Articles 4 and 24 of the FSMA 2000 (Exemption) Order 2001 (SI 2001/1201) exempt industrial & provident societies (other than credit unions) from the FSMA: 2000 general prohibition (and thus FSA regulation) in respect of accepting deposits in the form of withdrawable share capital.

Section 6 of the Industrial & Provident Societies Act (Northern Ireland) 1969 provides that except in certain specified circumstances, no member of a registered society shall have an interest in the shares of a society which exceeds £20,000. If therefore a society wants to raise more than £20,000 from a member, it will have to do so in another form and if that involves a loan that may require the society to be authorised to accept deposits.

Upon authorisation, the society would lose the benefit of the exemption mentioned above for all of its shares issued on those terms. This is because Section 38(2) of FSMA has the effect of removing the benefits of any exemptions from regulation of certain activities where a person is authorised for any purpose.

A society which used the capital raised by way of deposits for the purpose of lending would need to be regulated as a credit institution.

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**Letter from Ed Mayo, Secretary General, Co-operatives<sup>UK</sup>, to the Chairman of the Committee,  
dated 4 February 2010**

Following the recent Treasury Select Committee visit to Northern Ireland to hear oral evidence in relation to the Presbyterian Mutual Society, I feel it would be helpful for Co-operatives<sup>UK</sup> to contact you in this regard.

Co-operatives<sup>UK</sup> is the trade association for co-operatives, but we are a voluntary association and Presbyterian Mutual Society unusually was not a member. Our experience is that Presbyterian Mutual is in many ways an exceptional case and it does raise questions, but less about a gap in current regulation and more about the enforcement of existing rules that PM flouted and the encouragement of good practice, which Co-operatives<sup>UK</sup> exists to take forward.

Co-operatives are businesses and as such will fail from time to time. Our sense is that the failure rate is lower than for business more widely, but of course the wider ownership means that any such loss is regrettable and keenly felt. Whilst we should not expect a zero-failure regime for regulation, Presbyterian Mutual was acting outside of the existing rules and we believe that the best way to protect and promote the consumer interest is to insist on better enforcement and to encourage better standards rather than fall back on new regulation which could discourage new community and co-operative enterprises. In particular, we believe that the registration function has been neglected in NI and the UK more widely and we would urge the Committee to press the current regulators to act on this.

In relation to this case the role of the registrars in both Northern Ireland and Great Britain is to register societies. Both are at pains to point out that they do not regulate societies. This however is not quite that clear cut as there are some functions undertaken by the registrar which could be regarded as regulation.

Representing co-operative enterprise throughout the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man. The legislation for societies as compared to companies gives little direction as to how as a society should operate, placing a strong reliance on each individual society's rulebook. The registrar has a extremely important role regarding rulebooks in that a society cannot be registered unless the registrar is satisfied the rulebook meets the requirements of the legislation; likewise any amendments to that rulebook have to be checked and signed off by the registrar before they can be acted upon.

The first three objects in the rulebook of the Presbyterian Mutual Society are as follows:

- (a) to promote thrift amongst its members by the accumulation of their savings;
- (b) to use and the manage such savings for the mutual benefit of members; and
- (c) to create a source of credit for the benefit of its members at a fair and reasonable rate of interest.

Section 1.3 of the Industrial and Provident Societies Act (Northern Ireland) 1969 which refers to the type of societies that can be registered states:

*In this section, the expression “co-operative society” does not include a society which carries on, or intends to carry on, business with the object of making profits mainly for the payment of interest, dividends or bonuses on money invested or deposited with, or lent to, the society or any other person.*

As the registrar should have been mindful of the above when registering the society one has to question how much consideration was given to the society’s ability to be registered under the Act in the first place.

It also seems evident from the oral evidence of the members of the society there was a great deal of trust placed in the society and its officers by being part of the Presbyterian Church which led to a relatively unique perspective from members investing.

The co-operative movement through membership of Co-operatives<sup>UK</sup> has a long and reliable history of self regulation especially in regard to governance and financial monitoring.

In the 1980’s our Co-operative Performance Committee was established. Its role is to monitor and influence accounting legislation on behalf of our members and to promote and encourage best practice. In 1996 this Committee produced a recommendation that all co-operatives of a certain size in membership of Co-operatives<sup>UK</sup> should publish half year reports in the form of an interim financial report which is then proactively monitored by Co-operatives<sup>UK</sup>. In 1995 the first edition of its code of best practice on corporate governance was published, long before it became an issue in the wider corporate world. Compliance with this code by our members is monitored and reported on annually.

A code of best practice on the use and advertising of withdrawable share capital was first developed with HM Treasury in 2000 and subsequently updated in conjunction with the FSA in 2005.

We have been working on the modernisation of the legislation for a number of years; this work is resulting in ongoing legal reform covering a range of areas including the powers available to the registrar in relation to societies.

We are also mindful that the environment in which societies operate has previously been neglected. We have been proactive in gaining commitment from the FSA to put the register of societies on line so that it is easily searchable and accessible to the general public.

We would urge you as a committee to consider the considerable amount of self regulation undertaken by the sector, and its proactive engagement in legislation reform. We would further encourage you to engage with ourselves and the co-operative movement; whilst considering your findings in particular to ensure the current commitment to modernisation is continued.

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