

Memorandum of Understanding between the National Audit Office and the Bank of England

1. Purpose of the memorandum of understanding

This memorandum of understanding between the Bank of England ('the Bank') and the Comptroller and Auditor General ('the Comptroller'):

- is prepared and published in accordance with the requirements of s.7E of the Bank of England Act 1998¹ ('the Act')²;
- supplements the statutory basis for the Comptroller's examinations into the economy, efficiency and effectiveness with which the Bank has used its resources in discharging its functions ("examinations");
- recognises both the need to protect the Bank's policy independence and the importance of the Comptroller having discretion to determine which examinations should be carried out;
- has the overall aim of ensuring the efficient and effective delivery of both the Bank's and Comptroller's functions; and
- describes how the Bank and the Comptroller expect to work together to ensure an effective exchange of information and to minimise practical impediments to examinations by the Comptroller.

In this Memorandum, wherever appropriate, references to the Comptroller include the National Audit Office ("NAO") and its officials.

This Memorandum does not create contractual obligations.

2. The Court of the Bank and governance within the Bank

The Bank's affairs are managed by its court of directors 'Court'. Court determines the Bank's objectives (including for its financial management) and strategy, subject to the Bank's statutory objectives and strategies.

The Bank has various committees and bodies through which policy decisions are taken. Some policy decisions are taken in respect of statutory functions, others are taken in respect of non-statutory functions.

The Bank's policy decision-making committees and bodies include the statutory committees of the Bank (the Financial Policy Committee, the Monetary Policy Committee and the

¹ The provisions concerning the Comptroller and the Bank were inserted into the 1998 Act by the Bank of England and Financial Services [Act 2016].

² These are that this memorandum in particular includes provision-

- (a) as to functions of the Bank in respect of which the Comptroller will not usually consider it appropriate to carry out an examination;
- (b) identifying the committees or other bodies with the Bank having responsibilities for the supervision of financial market infrastructure or for the exercise of the Bank's resolution functions
- (c) establishing a procedure for resolving in a timely way any dispute between the Bank and the Comptroller as to whether a matter is one with which an examination is not to be concerned
- (d) for the publication of the views of the Bank and the Comptroller as to whether a matter is such a matter, in cases where a dispute between them cannot be resolved

Prudential Regulation Committee); the committees and bodies exercising statutory functions in relation to financial market infrastructure and resolution; and other committees and bodies exercising a variety of statutory and non-statutory functions.

With the exception of the statutory committees, all other committees and bodies in the Bank exercise functions by virtue of authority ultimately delegated from Court.

Court has responsibility for the Bank's use of its resources and keeps under review the performance of the Bank, including by the exercise of its oversight functions. The Bank has an Independent Evaluation Office, which prepares reports for Court, and an Internal Audit Division. Adapted as appropriate to a central bank, the Bank follows the principles of best corporate practice and the core principles of the senior managers' regime. The Bank and the PRA publish Annual Reports, which are laid before Parliament, and the Bank's accounts are audited externally. Members of Court may be asked to appear before Parliamentary committees.

3. The Comptroller and Auditor General and the National Audit Office

The Comptroller and Auditor General, as head of the NAO, helps Parliament to hold to account those responsible for the use of public resources. In order to perform this function effectively, the Comptroller has wide-ranging powers within a statutory framework that enshrines his independence and ability to exercise discretion in the choice and conduct of his work.

The role of the Comptroller in respect of the Bank is set out in sections 7ZA and 7B to 7H of the Act. The subject of this Memorandum of Understanding is examinations by the Comptroller pursuant to section 7D of the Act into the economy, efficiency and effectiveness with which the Bank has used its resources in discharging its functions. The Comptroller's functions also include being consulted about and having access to the Bank's external audit process, and audits and reviews in respect of Treasury-indemnified activities carried out by the Bank or a subsidiary of the Bank.

4. The Comptroller's examination power

Section 7D of the Act provides that the Comptroller may carry out examinations into the economy, efficiency and effectiveness with which the Bank has used its resources in discharging its functions. This may be limited to such functions (however described) of the Bank as the Comptroller considers appropriate.

The Comptroller will consult with and take account of the Bank's views on the scope, timing and planning of examinations, including through the consultation process described below and required by section 7D of the Act. The Comptroller retains discretion in carrying out his functions within the legislation, including in determining whether to carry out an examination and as to the manner in which any such examination is carried out.

The Comptroller's examinations are intended to provide timely assurance to Parliament. Examinations by the Comptroller typically take between six and nine months from initial consultation to publication. The Bank and the Comptroller will work towards achieving such a timeframe for examinations of the Bank's functions. In limited circumstances, the Comptroller may decide to carry out an expedited examination within a shorter timescale. In such circumstances, as far as reasonably practicable, the Bank and the Comptroller agree to work towards achieving such a timeframe.

5. Matters an examination is not to be concerned with

The Act also sets out matters that an examination is not to be concerned with, namely:

- the merits of the Bank's policy objectives,
- the merits of policy decisions taken by:
 - the Financial Policy Committee,
 - the Monetary Policy Committee,
 - the Prudential Regulation Committee,
 - the Bank's committees or bodies exercising financial market infrastructure³ supervision responsibilities, so far as the decisions relate to that supervision: namely the FMI Executive Committee, the FMI Board and (on occasion) the Governor's Committee,
 - the Bank's committees or bodies exercising resolution responsibilities, so far as the decisions relate to those functions: namely, the Resolution Advisory Committee, the Resolution Committee and (on occasion) the Governor's Committee. This is subject to a statutory exception provided for in section 7D(6) that applies where the Bank has exercised relevant resolution functions in relation to a financial institution.

The non-statutory committees of the Bank include committees where the decision is taken by an individual in the committee on advice from the committee.

While the Comptroller will not examine the merits of policy objectives or the merits of policy decisions of the relevant committees (including advice on which decisions on individual cases are based), the Comptroller may examine the efficiency and effectiveness with which the Bank uses its resources to discharge its functions including whether the capability maintained by the Bank to support those policy processes is appropriate.

6. Where the Comptroller will not usually consider it appropriate to carry out an examination

The Comptroller does not expect to second-guess expert decisions by Bank officials.

The Comptroller will not usually consider it appropriate to carry out an examination into the merits of:

- individual supervisory decisions,
- individual resolution decisions not to exercise resolution functions in relation to a financial institution (save for where the Bank has exercised relevant resolution functions in relation to the institution, in which case the statutory exceptions apply)
- banknote security features,

³ Payment systems, settlement systems and clearing houses

- dealings with foreign central banks, governments and international agencies (including deposits, swap-lines and correspondent banking arrangements),
- the risk appetites expressed in the Bank's Risk Tolerance Statements, as approved by Court (although the Comptroller may consider whether these statements have been complied with), and
- decisions of the Monetary Policy Committee in relation to the operation of the sterling monetary framework, and of the Financial Policy Committee in relation to the provision of central bank money, including the terms on which facilities should be granted and rules on access, eligibility and collateral.

This does not restrict the scope of information requests that the Comptroller may decide to make in respect of any examinations that the Comptroller considers it appropriate to carry out (see section 10 below).

7. Interaction with the Bank's IEO and Internal Audit

The Comptroller will take account of the current and proposed work plans, reviews and reports of the Bank's Independent Evaluation Office and Internal Audit Division, with the aim of avoiding unnecessary duplication.

The Bank works closely with the Centre for the Protection of National Infrastructure on matters such as infrastructure resilience and cyber security. The Comptroller does not expect to duplicate such work.

8. Relationship management

The Bank's Chief Operating Officer (COO) and Executive Director of Finance (ED-F) will have responsibility in the Bank for helping to ensure that practical impediments to the examination process are minimised as far as possible.

The COO and ED-F will meet at least annually with the Comptroller to discuss the effectiveness of the examination process.

For each examination, the Court will appoint a "responsible individual" at the consultation stage, who will normally be a Deputy Governor of the Bank or the COO. The responsible individual will also identify a relationship manager who will manage day-to-day progress of an examination.

9. Consultation and dispute resolution

Before carrying out an examination, the Comptroller must consult the Court. The Comptroller will produce and share with Court a draft scope document for the proposed examination to facilitate consultation. The draft scope document will be provided to the Secretary of the Bank with sufficient notice in advance of Court meetings. The Comptroller will provide sufficient detail for the Court to consider and to respond. To help him to formulate a proposed examination, the Comptroller will typically hold discussions with Bank officials before producing the draft scope document. Consultation with the Court may be performed by correspondence if waiting for a meeting of the Court would be likely to prevent the timely conduct of an examination.

While consultation is ongoing, the Bank and the Comptroller may consider it appropriate for the Comptroller to carry out preliminary work such as holding discussions with relevant Bank officials and making limited data requests.

Following consultation, the Comptroller will finalise the scope document and provide a copy to the Bank.

Once an examination is underway, the Comptroller may change the focus of his work within the overarching scope of the examination, for instance because of information received during the early stages of the examination. If the Comptroller proposes to change the scope of an examination, it may be necessary for Court to be re-consulted - depending on the extent of the original consultation and the materiality of the change to scope. The Comptroller will inform the Bank of the proposed change to scope and discuss with the COO and ED-F, who will determine whether it may be sufficiently fundamental as to necessitate Court being re-consulted.

If the Court believes that the examination, or any part of it, may be concerned with matters precluded by Section 7D of the Act, it will arrange for discussions between the Bank and the Comptroller to resolve any potential disagreement.

Promptly following such discussions, if Court still considers that the proposed examination is precluded by Section 7D, it will notify the Comptroller in writing, giving reasons.

Promptly following such notice, the Comptroller must notify the Court in writing whether, or the extent to which, he agrees or disagrees with Court's opinion, giving reasons. The Comptroller retains discretion about whether to go ahead with an examination.

The Bank and the Comptroller may each publish the exchange of letters. A report published by the Comptroller following the examination to which exchange of letters relates will include the exchange of letters if the Bank so requests or if the Comptroller so decides.

Nothing in this section precludes the Bank and the Comptroller from sharing draft notices with each other before giving formal notice.

10. Access to information

The Act gives the Comptroller when he conducts an examination under section 7D a right of access at any reasonable time to any document, in the custody or under the control of the Bank or its auditor appointed by the Bank under section 7(5) of the Act that he may reasonably require for the purpose of his examination. The Comptroller may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.

Where the Comptroller requests information from the Bank, he will ensure the request is specific and will explain the purpose of the request. The Bank will consider the request promptly, including pro-actively considering whether it has additional information relating to the request that it could also helpfully share.

At an early stage of an examination, information requests should be sent by the Comptroller to the COO, ED-F and the Bank's nominated relationship manager for that examination. Other lead contacts for data requests may be established for the duration of the review but the relationship manager should be kept informed of subsequent requests.

Information held by the Bank may be subject to legal restrictions on onward disclosure e.g. customer confidentiality or supervisory information relating to an individual institution. Legal

restrictions may apply as a matter of EU law and/or domestic law. The Bank cannot disclose information in breach of legal restrictions.

Where the Bank considers that it is prohibited from disclosing information by virtue of legal restrictions, it will explain the basis for non-disclosure and will consider the extent to which these restrictions apply in specific cases and the extent to which the Bank may be able to share at least some information. The Bank will consider whether there are alternatives, such as providing information in anonymised or redacted form, or in the form of a summary or collection so framed that it is not possible to ascertain from it information relating to any particular person. The Comptroller may request further discussions with the Bank about the nature of any restrictions and the feasibility of alternative ways of providing information.

Where the Bank considers that the legal restrictions do not prohibit disclosure to the Comptroller, but restrictions apply with regard to onward disclosure or publication, the Bank will identify the basis for such restrictions.

Where the Bank is legally restricted from sharing information with the Comptroller, or the Comptroller is restricted from disclosing information, the Comptroller may refer to this limitation in his report.

Information held by the Bank may be highly market sensitive and the inadvertent disclosure of such information could be very damaging to the mission of the Bank and the Bank's reputation. Information about the Bank's forthcoming policy decisions is often highly market-sensitive.

Legal advice held by the Bank is subject to legal professional privilege that may be lost by onward disclosure, therefore, this will not ordinarily be disclosed.

In appropriate cases, the Bank may agree with the Comptroller that he can be given access to the information solely on the premises of the Bank.

The Bank is able to specify in appropriate circumstances that information it discloses to the Comptroller is 'specially protected' under section 353A of the Financial Services and Markets Act 2000 (see s.7H of the Act). Where it considers that it cannot otherwise reasonably disclose information to the Comptroller, the Bank will consider whether it may make disclosure under this provision.

Where any information about individuals or subject to confidential information restrictions is shared between the Comptroller and the Bank, each will act in accordance with relevant legal obligations.

The Comptroller and the Bank will endeavour to resolve any disagreements about the provision of information in a timely fashion, including by escalation within their respective organisations, as appropriate.

11. Preparing the report for publication and publishing

The Comptroller will follow a clearance process for ensuring the accuracy of any report. The clearance process is intended to focus on the factual accuracy of the report, but the Bank may also provide comments on the presentation of findings.

The Bank may highlight any sensitivities; for example, whether information is market-sensitive, or if its publication could adversely affect the Bank's commercial position, the security of the Bank and its systems or the security of banknotes. The Comptroller will

consider these sensitivities together with any other relevant public interest matters relevant to the question of disclosure. He will take legal advice where necessary.

Clearance will typically involve an 'emerging findings' meeting between the NAO and the Bank, the review of an initial draft report by the Bank's ED-F and a review of the near-final draft report by the responsible individual.

The Comptroller has final discretion over the report's content. The Comptroller has the discretion to issue a report with which the Bank disagrees. In such circumstances the Comptroller will set out the nature of the disagreement within his report.

The Comptroller has discretion as to the timing of any report it makes to the House of Commons as a result of an examination.

The Comptroller will notify the Bank at the earliest opportunity of the date on which it proposes to make a report, giving the Bank the opportunity to make representations about the timing of publication, in particular as to any difficulties that could arise with publishing the report on that date (for example, by virtue of significant Bank publications being scheduled at that time).

Where practicable, the Comptroller will accommodate any concerns raised by the Bank about the date of publication.

The Bank and the Comptroller will each share in draft any press notices intended for publication at the same time as the report.

Except with the consent of those concerned, a report will not name any employee or officer of the Bank below Director level.

12. Review

This Memorandum may be amended at any time by agreement between the Bank and the Comptroller.