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# The failure of the Presbyterian Mutual Society:

Government response to the Committee's  
Sixth Report of Session 2009-10



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Mutual Society:  
Government response  
to the Committee's Sixth Report of  
Session 2009-10

Presented to Parliament by  
the Financial Secretary to HM Treasury  
by Command of Her Majesty

October 2010

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This publication is also available on <http://www.official-documents.gov.uk/>

ISBN: 9780101795920  
PU1070

Printed in the UK by The Stationery Office Limited on behalf of the Controller of Her Majesty's Stationery Office

Printed on paper containing 75% recycled fibre content minimum

# Contents

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	Page
Chapter 1      Government response to the Committee's Sixth Report of Session 2009-10	3

# 1

## Government response to the Committee's Sixth Report of Session 2009-10

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**1.1** The Government is most grateful to the Treasury Committee for its clear and comprehensive Report on issues surrounding the failure of the Presbyterian Mutual Society (PMS). The Government particularly appreciates the Committee's commitment to its investigation of the issues by visiting Belfast to take evidence directly from Northern Ireland Executive Ministers, MLAs, officials and, notably, certain PMS members who had been hardest hit by the Society's collapse. The findings of the Committee have contributed importantly to the outcome set out here in the Government's response to the Report.

**1.2** In those areas for which it has responsibility the Government agrees with the Report's conclusions and recommendations. Certain issues raised in the Report are devolved matters and are therefore for the Northern Ireland Executive [NIE].

**1.3** The Government inherited responsibility for resolving this matter from its predecessor. Since coming to office in May 2010 the Government has sought urgently to bring about a just and fair resolution of the matter in a way which balances the interests of PMS members and taxpayers.

**1.4** In seeking resolution the Government has at all times had regard to what action might be taken to mitigate members' losses, particularly those hardest hit by the collapse of the Society. The Government has taken full account of the legislative regime within which the Society operated, the work of the Administrator, wider financial services policy, together with considerations of fairness, propriety and value for money.

### The Ministerial Working Group

**1.5** The Government has considered the matter in a Ministerial Working Group under the chairmanship of the Secretary of State for Northern Ireland. Members of the Group included the First and deputy First Ministers, the Financial Secretary to the Treasury, the Minister of Finance and Personnel, the Minister for Trade, Enterprise and Investment and the Minister of State, Northern Ireland Office.

**1.6** The Ministerial Working Group has considered a range of issues but in particular has focussed on proposals made by the Northern Ireland Executive. These proposals would:

- establish a Mutual Access Fund to provide payments to mitigate the impact on members, especially those who have lost investments up to £20,000; and
- facilitate a managed sale of PMS's assets over 10 years

In the Spending Review on 20<sup>th</sup> October 2010 the Chancellor of the Exchequer announced the Government's agreement to these proposals.

Under these proposals, Government will:

- contribute £25 million together with a contribution of £25 million from the NIE to the Mutual Access Fund. Given its responsibilities, as identified in the Report, it is hoped that the Presbyterian Church in Ireland will also contribute to the Fund.

- agree to increase the Northern Ireland Executive's existing facility under the Reinvestment and Reform Initiative, allowing the NIE additional headroom elsewhere in its capital budget and thus facilitating a loan to PMS of £175 million from within NIE's budget.

1.7 The Group has sought at all times to satisfy itself that its conclusions are sound and that the measures set out above meet established criteria for propriety, affordability and value for money.

## The Government response

1.8 The Government offers the following observations on those aspects of Report's conclusions and recommendations (*in italics*) for which it holds responsibility.

## Roles and responsibilities

*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 the Department of Enterprise, Trade and Investment [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)*

### The Government agrees.

*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)*

### The Government agrees.

*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).*

**The Government agrees that it was for the Society's Directors and officers, where necessary taking professional advice, to consider whether its activities required the authorisation of the Financial Services Authority within the terms of the Financial Services and Markets Act (2000)**

*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)*

### This is a matter for DETINI.

*The growth of the Society should have been accompanied by a review of its governance. (Paragraph 39)*

## **This is a matter for the Society's Board and its professional advisers.**

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).*

The Government hopes that dialogue between the Northern Ireland Executive and the Presbyterian Church in Ireland will result in the Church finding means to offer financial support to members of the Presbyterian Mutual Society, particularly those who were hardest hit by its collapse.

## **Should members of the Society have known?**

7. *If the Chairman of the Northern Ireland 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)*

### **The Government takes note.**

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)*

### **The Government takes note.**

## **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 Government takes note.**

## **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)*

The Government is considering introducing an insolvency regime for industrial and provident societies in Great Britain using the power in Section 225 of the Enterprise Act 2002. Insolvency law for industrial and provident societies is devolved to the Northern Ireland Executive. The Banking Act 2009 has changed how insolvency law applies to building societies and the Government has the power to introduce a similar regime for credit unions.

The Government is also committed to applying the provisions of the Company Directors Disqualification Act 1996 to directors of societies in Great Britain.

## 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 Government has sought at all times to ensure that the tax liabilities of PMS members are treated consistently, sympathetically and fairly.**

## 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)*

**The Government has urgently sought to bring this very complex matter to resolution. It is now for the Northern Ireland Executive to take forward in light of the Chancellor's announcement in the Spending Review in response to the Executive's proposals.**

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)*

## The Government agrees.

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)*

**The Government has been committed throughout to finding a just and fair resolution to the issues surrounding the collapse of the PMS .**

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)*

## The Government takes note.

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)*

**All members of the Ministerial Working Group agree that a commercial solution (that is, acquisition of the Society's liabilities and assets by a financial institution) would be the most desirable option. Strenuous efforts continue to be made to identify such an outcome. However in the absence so far of such a solution the Government has wished to expedite ways of mitigating the plight of members at the earliest opportunity.**

*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)*

**The Government agrees and, together with the FSA and DETINI, aims to bring about the transfer of regulation of Northern Ireland credit unions to the FSA at the earliest opportunity.**

*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)*

**The Government has accepted a request from the Minister for Enterprise, Trade and Investment that the registration function also be transferred to the FSA. However, as this function is a devolved matter, its transfer will require primary legislation in the Northern Ireland Assembly, or in Parliament, with a Legislative Consent Motion. For this reason it is unlikely to transfer at the same time as the transfer of regulation is effected but subsequently.**



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ISBN 978-0-10-179592-0



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