



CRANSTON RE-REVIEW PANEL RECOMMENDATIONS

April 2020

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EXECUTIVE SUMMARY

This is my second report about the Customer Review established in 2017 by the Lloyd's Banking Group (which I refer to as 'the Bank') to compensate the victims of the fraud committed at the HBOS Impaired Assets unit based at Reading and Bishopsgate.

My first report was published in December 2019 ('the Cranston Report'). It found that the Customer Review did not achieve the purpose of delivering fair and reasonable offers of compensation for victims of the fraud.

This report arises out of one of the recommendations I made in the Cranston Report. That was that the Bank should set up an independent body ('the Panel') to reassess the direct and consequential losses suffered by victims. In Appendix 2 to the Cranston Report, I set out a number of proposals for the structure of that reassessment process. Those proposals were the result of careful consideration by me and my team of what we had learned as a result of our assessment of the Customer Review and our detailed work on the sample cases.

Following the publication of the Cranston Report, the Bank asked me to assist with establishing a framework for the reassessment process and the Panel, which I agreed to do.

The main focus of my work has been on gathering and considering the views of customers, the stakeholder groups and the Bank on the proposals set out in Appendix 2 to the Cranston Report. I have received helpful comments from a large number of people for which I am very grateful. My team and I have given careful thought to how their concerns might be addressed by amendments to the proposals set out in Appendix 2 for the reassessment process.

As I explain in this report, I have made some significant and important changes as a result:

- First, I have introduced a two-stage decision-making process. Some customers and the stakeholder groups expressed the view that customers should have an opportunity to respond to or challenge the Panel's decision on their case, particularly in circumstances where the Panel will be reaching its decision on the basis of documents not seen by the customers. I have therefore recommended that the Panel should in the first instance publish a preliminary decision on each customer's case (which I refer to as a 'minded to' decision), which the customer will have the opportunity to respond to and challenge. The Bank will be able to comment as well. Once the Panel has taken into consideration any new information and submissions provided by the customer or the Bank, it will then publish its final decision. The Panel's decision will be made in the generous, fair and common sense manner described in the report.
- Secondly, I have taken on board the concern expressed by many customers and the stakeholder groups that customers should have the opportunity to engage with the Panel and provide it with further information. I have therefore recommended that customers should have an opportunity to do this at the beginning of the reassessment process, in a meeting with the Panel, and (as I have explained above) towards the end of the process, when customers will have the opportunity to respond to or challenge the Panel's 'minded to' decision.

- Thirdly, I have listened to the many requests from customers and stakeholders for disclosure of the Bank's files. In order to ensure that customers have available to them all of the information they might need to properly challenge the Panel's 'minded to' decision, I have recommended that when it publishes its 'minded to' decision, the Panel should disclose all of the documents it relied on in making that decision.
- Finally, in light of the introduction of the two-stage decision-making process, I now consider it necessary for customers to have reasonable access to legal advice, funded by the Bank. I have recommended that customers should have access to that advice for the purposes of preparing their response to the Panel's 'minded to' decision.

These are the most significant changes I have made to Appendix 2 to the Cranston Report, but there are other variations to the proposals as well. These are explained in this report, in which I set out in more detail how all aspects of the new reassessment process will work.

I also spell out in greater detail than Appendix 2 how the Panel will be constituted.

There is a comparison between the original and new proposals in the Table at the end of this report.

SECTION 1

INTRODUCTION

Background

1. The Bank established the Customer Review in February 2017 to compensate the victims of the fraud committed at the HBOS Impaired Assets unit based at Reading and Bishopsgate.
2. In mid-April 2019, I agreed to undertake a review of the Customer Review (the 'Cranston Review'), and my team and I began work in early May. We spent seven months assessing whether the Customer Review achieved the purpose of delivering fair and reasonable offers of compensation for victims of the fraud.
3. The Cranston Report was published in December 2019. In summary, the key findings were that:
 - a. The Bank was to be commended for several aspects of the Customer Review, including its payments for legal assistance, interim payments and ex gratia payments; its policy on writing off outstanding customer debts; the idea of appointing an independent reviewer; and the awards paid by the Bank under the heading of 'distress and inconvenience' (D&I).
 - b. However, there were serious shortcomings to the Customer Review. These included the way in which the process was structured, which undermined the appearance of independence of the independent reviewer; the Bank's assessment of individuals' claims to be eligible for the Customer Review as de facto directors; the Bank's refusal to disclose documentation to customers; the Bank's refusal to fund financial advice for several customers where it was needed; the undue emphasis on contemporaneous documents at the expense of customer submissions; the inconsistency of its policy on writing off customer debts; and the general failure to communicate with customers in a clear and transparent way.
 - c. The most serious shortcoming concerned the Bank's approach to the assessment of direct and consequential loss caused by the fraud. The Bank took an overly adversarial approach in its assessment of claims for direct and consequential (or 'D&C') loss, and no award was made. The result was that the structure and implementation of its methodology was neither fair nor reasonable.

Recommendations of the Cranston Report for D&C: the Panel

4. In Chapter 15 of the Cranston Report, I made a number of recommendations as to how the shortcomings of the Customer Review might be addressed. In light of my conclusion that the Bank's approach to the assessment of D&C loss was flawed, I recommended that:

"...the Bank must arrange for the reassessment of D&C losses by an independent body, on an opt-in basis, after agreeing the arrangements with key stakeholders."

5. In Appendix 2 to the Cranston Report, I set out some proposals for the structure of a revised D&C assessment process (which I shall refer to as the 'Re-review Process') and the panel which would undertake that assessment (which I shall refer to as the 'Panel').
6. However, I made it clear that the detail of the Re-review Process would need to be carefully thought through, and the result of a collaborative discussion with relevant stakeholders.

The Re-review

7. The Bank asked me if I would oversee the establishment of the Panel, and assist with establishing a framework for the Re-review Process. I had meetings with the Bank's chief executive and communications with the chief executive officer of the Financial Conduct Authority. On 17 January 2020 I informed the Bank that I would undertake the limited task of assisting the Bank and key stakeholders to agree the arrangements for the Panel and the Re-review Process. I would act independently as previously. The Bank also agreed to implement my recommendations.
8. I was then fortunate to obtain the agreement of some of the members of the Cranston Review team to assist me with this new task, namely Rory Phillips QC and Kate Holderness of 3 Verulam Buildings from the legal team, and Joseph Hesketh, Michael Rose and Frederick Thiede-Merlo from Project Associates, who agreed to continue to assist me with the media and with stakeholder and customer engagement.
9. My team and I immediately began contacting customers and stakeholders for their views on the proposals set out in Appendix 2.

Limitations of my role

10. As I have just explained the role which my team and I undertook was the limited one of establishing the independent body to undertake the D&C assessments recommended in Chapter 15 and Appendix 2 of the Cranston Report.

11. A small number of customers and stakeholders have asked that the Panel should consider wrongdoing outside of Reading and Bishopsgate, and by individuals other than those convicted of the fraud. I have concluded that this would not be appropriate. The Customer Review was confined to the fraud which was the subject of the criminal trial in 2016-2017 because as a result of the jury's decisions findings of fact emerged. Neither the Customer Review nor the Panel were or are in a position to investigate and make factual findings regarding other matters. In the Cranston Report I referred to Dame Linda Dobbs' review (see paras. 2.41-2.45). It may be that as a result of her inquiries further findings of fact will be available.
12. I have also been asked about how the Panel process applies to customers who exited the Customer Review (see paras 3.71-3.72 of the Cranston Report). In the Cranston Report I explained in paragraph 11.33 that the way in which the Bank dealt with customers who chose to leave the Customer Review (which includes those who rejected the Bank's outcome offer) was not within the scope of my inquiries. I therefore took the view that I should not express an opinion now on how the Bank should deal with those customers unless invited by the Bank to do so. I asked the Bank whether this was a matter where I should give advice. It took the view that the issues were not for me. Accordingly, I am unable to express an opinion on the matter.

Outline of this report and the way forward

13. I set out in Section 2 in more detail the communications I had with customers and stakeholders about Appendix 2 of the Cranston Report. I am most grateful for their valuable contributions. Considering the way forward has meant further delay for them, for which I can only apologise. However, it has been necessary to take time to ensure that the Panel starts on the right foot for what will be a challenging task.
14. In Section 3, I set out my revised proposals for the Re-review Process. Aspects of the proposals made in Appendix 2 to the Cranston Report remain unchanged, but there are significant changes to some of my original proposals. I have made these in light of the constructive feedback I have had from customers and stakeholders. The Bank has committed itself to the changes I am proposing. I commend them for doing this and for their constructive engagement – along with customers and stakeholders – in my current endeavour. I also welcome the commitment made by the Group CEO and his senior team to support the Panel in its work on what must, in the CEO's words, be a "fair and generous process".
15. In section 4 I set out my proposals for the Panel.
16. Finally, in section 5 I outline the next steps which will in due course lead to the commencement of the Re-review Process.

SECTION 2

VIEWS OF CUSTOMERS AND STAKEHOLDER GROUPS

Introduction

17. In my view it has been vital that the Panel should be up and running as soon as possible. Consequently, for the purposes of preparing this report my engagement with customers and stakeholders had to take place in a relatively short timescale. The fact is that customers have waited far too long for a proper resolution of their complaints. The events which the Customer Review was intended to compensate took place many years ago (beginning in 2003). It was not until early 2017, after the trial and conviction of the criminal bankers and their co-conspirators, that the Customer Review was set up. The Customer Review itself took more than 2 years (drawing to a close in May 2019). That in turn led to the Cranston Review in 2019, which we managed to complete in 7 months.
18. Following the publication of the Cranston Report in December 2019, it was my hope that the next phase (i.e. the Re-review Process) would be underway within months. As a result, as soon as my appointment and that of my team had been confirmed, we began contacting customers and stakeholders for their views.
19. On 11 February 2020, I sent an email to all customers who participated in the Customer Review, and asked for their comments on the proposals set out in Appendix 2 to the Cranston Report.

Customer responses

20. Over the next few weeks, I received responses from 71 customers (in some cases, via their legal representatives). Not all customers had substantive comments on the proposals set out in Appendix 2, but a large number of them made some very helpful suggestions:

- a. First, a significant number of customers and lawyers requested that they should have the opportunity to make further submissions and provide further information to the Panel. As one lawyer put it,

“a customer who lived through the events in question may well be able to provide invaluable additional assistance to the panel in putting documents in context; building up an accurate chronology of events; and in relation to spotting fake or inaccurate documents.”

- b. Secondly, and as a related point, a number of customers asked that they should have an opportunity to submit claims for D&C losses which had not been made in the Customer Review. One customer explained to me that

“Having been told that no assessment of D&C claims was being made; and our lawyer advising us that it was a “take it or leave it” offer we did not follow up with making a better submission for D&C claims.”

Another submission, made on behalf of two customers, pointed out that

"...we have always complained about the lack of transparency with regard to the methodology used in the Customer Review and, as we had no idea as to what they were reviewing, we had not originally submitted what we believe are detailed claims for D&C losses."

c. Thirdly, a significant number of customers requested disclosure of the Bank's files. Some customers requested disclosure of the entirety of the Bank's files, others requested disclosure of only the documents relied on by the Panel. For all of these customers, the overriding concern was that they should be afforded the opportunity to challenge and/or supplement the Bank's documentary records. One lawyer formulated the request in the following terms:

"... to deal with the dangers of false or partial information being relied on by the Panel the claimants should be entitled to (1) have sight of any information on which the Panel is relying/ influenced by but which has not been seen by the claimants; and (ii) make representations once they have understood the basis upon which the Panel has evaluated the amount of D&C loss (if any). This will give the claimants confidence in the process as well as the ability to correct conclusions drawn by the Panel that are clearly wrong."

Along similar lines, another customer suggested that:

"Victims should be provided with a full account of all evidence available and invited to add any and all further evidence they feel is relevant to the claim, under oversight of the review panel. If they are denied this opportunity, then the re-review risks being received as just the most recent in a series of efforts by the Bank to hide from scrutiny."

d. Fourthly, several customers requested the opportunity to respond to or challenge the decision of the Panel. This was put in various ways: one customer asked for the opportunity to correct any misunderstandings, another wanted the opportunity to challenge the Panel's decision, and one lawyer proposed that the decision of the Panel "should be capable of appeal in the event of manifest error."

e. Fifthly, several customers emphasised the importance of the Re-review Process operating swiftly so as to bring closure to customers as soon as possible. A submission on behalf of two customers put it as follows:

"It is some 14 years since our company was taken from us as a direct result of the bank's actions, and over 3 years since we entered the Customer Review. Whilst we very much appreciate your direct involvement in exposing significant flaws in the original Customer Review; we would not want the new process to drag on for any significant amount of time as I am sure you will appreciate."

f. Finally, a number of customers requested that they be permitted to continue to instruct their lawyers to assist them with the Re-review Process. However, opinion was divided on this: other customers were adamant that lawyers should be kept well away from the process, and some customers expressed their gratitude for the recommendation that the Re-review Process should not be a legal process.

Meeting the stakeholder groups and briefing officials

21. I also sought submissions on the proposals in Appendix 2 of the Cranston Report from (i) the Bank; (ii) the SME Alliance; and (iii) the All-Party Parliamentary Group on Fair Business Banking (which I refer to as the 'APPG'), including its co-chair, Kevin Hollinrake MP. I met with each of them on two occasions to discuss their views, and also received written submissions from them. I later had contact with them about their submissions.
22. I also met with John Glen MP, Economic Secretary to the Treasury and have had regular contact with Andrew Bailey, when he was CEO of the Financial Conduct Authority.

Round table

23. My engagement with the stakeholder groups led to a 'round table' meeting at 3 Verulam Buildings on 10 March 2020, attended by:
 - a. Kevin Hollinrake MP, co-chair (by telephone) and Heather Buchanan, director of policy (in person), for the APPG;
 - b. Nikki and Paul Turner, who have delegated authority from the SME Alliance for the purposes of the Re-review;
 - c. Antonio Horta-Osorio, the Group Chief Executive and Executive Board Member, Jennifer Tippin, a member of the Group Executive Committee, and Jo Harris, an Executive, for the Bank; and
 - d. my team and me.
24. At the round table meeting, I had a constructive discussion with the stakeholders about my proposals for the Re-review Process. By that time, I had had the opportunity to consider the submissions I had received from customers and stakeholders, and had already come up with and informed the stakeholders of some important revisions to my original proposals for the Re-review Process. We discussed these at length, and the stakeholders were broadly supportive of my revised proposals. By the end of the meeting, there remained a few points on which there was disagreement. I agreed to give these further thought.

Meetings with BBRS

25. Prior to the round table meeting, the APPG suggested that the Business Banking Resolution Service (the 'BBRS') would be an appropriate body to conduct or be involved with the Re-review.

26. During the course of the Cranston Review, I had considered the possibility of the Re-review Process being conducted by the BBRs. At that time, the BBRs was still being established and it was not clear whether customers who had been through the Customer Review would satisfy their eligibility criteria (which, in any event, were still evolving). I had therefore decided against including the BBRs in any of my recommendations.
27. By early 2020, it seemed more likely that the BBRs would be up and running and in a position to assist with the Re-review Process. Given the APPG's interest in the BBRs's involvement, I therefore asked to meet with the BBRs to discuss how the BBRs might become involved.
28. My team and I met the BBRs on 4 occasions to explore the possibility of the BBRs being involved in or overseeing the work of the Panel. The discussions were very productive, and I am grateful for the spirit in which the BBRs conducted them. We explored a number of options, both in the meetings and in subsequent correspondence, including the possibility of the BBRs overseeing the work of the Panel; the BBRs acting as an appeals body against decisions of the Panel, and the BBRs acting as an alternative to the Re-review Process.
29. Ultimately, the BBRs concluded that, whilst their involvement in the Re-review Process would clearly fit with their purpose and ambition, in the immediate future they would need to prioritise finalising the live operation of their existing mandate. They therefore were not in a position to take on additional mandates, such as overseeing the work of the Panel or acting as an appeals body.
30. As to the possibility of the BBRs acting as an alternative to the Re-review Process, if customers satisfy the BBRs's eligibility criteria, it may be that they could opt to use the BBRs's service. There are, however, two reasons why this is unlikely to happen in practice. First, the BBRs are unlikely to open their doors to new cases until August 2020 at the earliest. This is some months after the Panel will be up and running. Secondly, certain features of the BBRs scheme will be less attractive to customers than the Re-review Process. For instance, awards by the BBRs will be subject to a binding limit (of £350,000 for complaints arising before 1 April 2019); and the BBRs's consequential loss policy is likely to apply a higher evidential standard than that proposed for the Re-review Process.
31. For the reasons given above, my priority has been to establish the Panel as soon as possible so that it can commence work promptly. In light of my exchanges with the BBRs, I concluded that it would be inappropriate to design any part of the Re-review Process on the assumption that they might become involved in the Re-review Process or offer an alternative route to dispute resolution for customers.
32. The BBRs is an exciting new institution, which promises to provide an effective banking dispute resolution service for businesses. It became apparent to me in our discussions that their approach to such disputes has been very carefully thought through, and I have no doubt that it will serve businesses well. I was therefore disappointed that the BBRs was unable to take on a role in relation to the Re-review Process.

Further discussions

33. In the weeks following the Round Table, there were further communications with the stakeholders about their remaining concerns. I had 2 further discussions with the SME Alliance over the telephone, and 1 with the APPG (also by telephone), and I continued my email correspondence with all stakeholders regarding their concerns.
34. Some of these concerns I took on board, and further refined my thinking on the Re-review Process. Other suggestions made by the APPG and SME Alliance were, in my view, not compatible with the scope or nature of the Re-review Process. Where I have been unable to achieve a consensus among the stakeholders on particular issues, I have taken a decision as to the best way forward and this is reflected in my proposals.

SECTION 3

**THE RE-REVIEW
PROCESS**

Introduction

35. As I have explained in Section 2 of this report, customers and the stakeholder groups who provided comments on Appendix 2 were content with many of my proposals for the Re-review Process. Having carefully considered what customers had said to me, I felt that there were aspects of my proposals which could be improved. In this section, I set out my revised proposals for the Re-review Process. Some of these represent significant changes.
36. There is one point I wish to emphasise. The recommendations I made in the Cranston Report and the revised proposals which I set out below follow on from the work of the Cranston Review. My team and I spent 7 months meeting with customers, reviewing their submissions, analysing sample cases, and requesting and considering additional information from the Bank. As a result, we have a clear understanding of the Customer Review, and of the impact of the fraud on customers. We listened to the concerns of customers, and had the opportunity to assess how the Bank's processes hampered their ability to make adequate submissions to the Customer Review. We were also able to assess the Bank's approach to document collation and information provision as a result of the detailed work on the sample cases. Our approach was inquisitorial, and that enabled us to make our own decisions about what information might be relevant, and, where we thought there were gaps in the information the Bank provided to us, to take steps to obtain that information.
37. All of this has informed the following recommendations, which in summary are as follows:
 - a. The Panel will comprise a person of suitable seniority and experience, who will be the Chair; an independent forensic accountant; and an independent person who also has SME experience and who can bring an understanding of the customer's perspective.
 - b. The Panel will publish its methodology before it begins work on individual cases so that customers are able to understand its approach to the Re-review Process.
 - c. The Re-review Process is to be inquisitorial.
 - d. The work undertaken for the Customer Review will be utilised by the Panel and will form the basis for its assessment of each customer's case.
 - e. Customers will have the opportunity to meet with the Panel during the initial stages of the Re-review process, to put in their own words the financial losses they have suffered as a result of the fraud on them, and to draw the Panel's attention to any matters which they feel were overlooked or not dealt with adequately during the Customer Review.
 - f. The Panel will have a discretion to request further information and documents from customers and the Bank.
 - g. The Panel should draw whatever inferences it considers appropriate in light of the fraudsters' involvement in particular cases.

- h. In making its decisions the Panel will adopt a generous and fair approach to decision-making, and a common sense approach to proof of causation and loss.
- i. Once the Panel has considered all of the relevant documents and evidence, the Panel will publish a 'minded to' decision, i.e. a decision which gives an indication of what the Panel is minded to conclude.
- j. The Panel will disclose to customers and the Bank the documents on which it relied in reaching its 'minded to' decision.
- k. Customers and the Bank will have the opportunity to challenge or respond to the 'minded to' decision.
- l. In the event that a customer chooses to challenge or respond to the 'minded to' decision, the Bank will fund the costs of reasonable legal representation for customers.
- m. In cases where the Panel considers such advice to be necessary, the Bank will fund the costs of reasonable financial advice for customers.
- n. The Panel will publish its final decision, which will be binding on both the Bank and the customer.
- o. There will be a presumption of set-off against any Panel award of sums the Bank paid customers in the Customer Review other than (i) the original Customer Review outcome offer and; (ii) the two ex gratia payments made by the Bank.
- p. The scope of the Re-review will be limited to claims for fraudulent loss caused by the fraud.

38. Let me explain each of these aspects of the Re-review Process in more detail.

1. The Re-review Panel will publish its methodology

- 39. In this report, I seek to establish a broad framework for the Re-review Process. However, I think it is right that the Panel should be allowed a discretion to work out the finer details of its approach. That is because it is likely to encounter issues which no one can foresee at this stage.
- 40. In order to ensure that the Re-review Process is conducted in a transparent manner, it is important that the Panel should communicate its approach to customers prior to commencing any work on its re-assessment of customers' cases. It is important for customers that they should understand from the outset:
 - a. The Panel's approach to the categories of D&C losses it will consider;
 - b. The types of information which the Panel might consider helpful;
 - c. How it will go about gathering further information from customers (and, if necessary, the Bank);
 - d. How it will implement its generous and fair approach to decision-making, and its common sense approach to proof of causation and loss;

- e. How it will present its decisions in an easily understandable format.

41. The Panel must ensure that all this is published in clear, simple language which customers can understand without professional assistance. It is vital that customers should be able to understand what further information they have in their possession which might assist the Panel, and how that information should be communicated to it.

2. The Re-review Process is to be inquisitorial

- 42. This was an essential part of the recommendations in the Cranston Report. It means that the Panel will be responsible for gathering relevant information and documents, assessing that evidence, reaching conclusions on the basis of that evidence and making a decision. There is no onus of proof on the customer, given that this will be an inquisitorial process where the Panel does the work.
- 43. It also means that lawyers need not be involved in the information-gathering stage of the Panel's work. (As I explain further below, I do envisage some customers requiring legal assistance in the later stages of the Re-review Process.) Of course, if customers want their lawyers to assist them at this stage, the Panel cannot prevent it. However, the process is designed so that lawyers are not essential at this point.
- 44. Perhaps I should explain this further. An inquisitorial process is very different to an adversarial process. In an inquisitorial process, as I have said, the onus is on the decision-maker to investigate and identify the relevant facts, whereas in an adversarial process the parties are required to put forward their competing versions of events and the decision-maker is restricted to making a decision on the evidence presented to it. We have a long history of entrusting the investigation of nationally important problems, scandals or disasters to public inquiries. These, without exception, are conducted on inquisitorial lines. Current examples include the Independent Inquiry on Child Sexual Abuse and the Grenfell Tower Inquiry.
- 45. I believe the Re-review Process would benefit from an inquisitorial approach. That is because there is a significant imbalance between the Bank and the customers in terms of the documents and information available to them, and their financial resources. Inquiries, such as the examples I have given above, use the inquisitorial process to address the imbalance between the parties being investigated (typically, Government departments) and the parties who have been affected by their conduct. If an adversarial approach were to be adopted, both the Bank and customers would have to be given the opportunity to present their cases to the Re-review Panel. However, the Bank would be able to employ whichever lawyers it wished. Moreover, to achieve "equality of arms" there would have to be a process of disclosure, further rounds of submissions from both parties, the opportunity for both parties to respond to one another's cases, and much more. All of this would be expensive, time-consuming and would waste the work that was undertaken in the Customer Review. Many customers

have made it very clear to me that they do not want to get embroiled in such a drawn out process. An adversarial process can only work fairly if both parties are willing and able to engage to the same extent. An inquisitorial approach, by contrast, will permit the Panel to get on with the job of investigating each case and reaching its decision promptly and efficiently. This is the approach that my team and I adopted in the Cranston Review, and it worked well.

3. The work undertaken for the Customer Review will be utilised

46. In light of our work on the sample cases for the Cranston Review, I take the view that in the majority of cases the current material and customer submissions should be sufficient for the Panel to identify all potentially relevant documents, to assess the customers' claims for D&C losses, and to reach a preliminary decision on those claims. In other words, as I recommended in Appendix 2 to the Cranston Report, the structure of the Re-review Process should be built around the work undertaken for the Customer Review, in particular the Bank's file build (i.e. the documents collated by the Bank in relation to each customer file) and, importantly, the submissions of customers.
47. However, as I explain further below, the Panel must give customers the opportunity to meet with them to discuss their cases during the initial stages of its assessment, and it should be able to request further information or documents from customers and the Bank as it sees fit.

4. Customers will have the opportunity to meet with the Panel

48. During the initial stages of the Re-review Process, customers should have the opportunity to meet with the Panel to explain in their own words the financial impact of the fraud on them, and to draw the Panel's attention to any matters which they feel were overlooked or not dealt with adequately during the Customer Review. If they wish, customers may be accompanied to the meeting by a customer advocate. The Panel will have a discretion as to how best to structure its meetings and interactions with customers, and as to the timeframes for each stage of the process.
49. As I have explained in Section 2 of this report, a number of customers have expressed their concern that they did not properly present their claims for D&C losses to the Customer Review, and that their existing submissions will not be sufficient for the Panel to assess their claims. I recognise that, due to the unclear way in which the Bank communicated its approach to D&C losses to customers in the Customer Review, the existing submissions may not adequately set out their claims to D&C losses. By having the opportunity to meet with the Panel at an early stage in the Re-review Process, these customers will be able to draw these matters to the attention of the Panel. As I explained above, the Panel will publish details of how it will go about its task and the types of information it would find helpful for customers to provide.

50. I do not consider that it is necessary for the Bank to meet with the Panel. The Bank is already at a significant advantage in that it has had ample opportunity to review its files, to assess customers' submissions against those files, and to record its conclusions on the customers' submissions. The Bank's working papers from the Customer Review will be available to the Panel, and therefore the Panel will have a good understanding of the Bank's position on each case.

5. The Panel will have a discretion to request further information and documents

51. The Panel must have a discretion to request further information and/or documents from the Bank and/or customers (as it sees fit) in the event that it identifies gaps in the files during the initial stages of its assessment. Such requests for further information should be formulated in a way that customers can respond without professional assistance. The requests should be for factual information, and formulated in clear, simple language. Customers should be given a reasonable opportunity to provide this information, but in order to ensure that the Re-review Process moves swiftly the Panel should make clear the timeframes within which such information should be provided.
52. In the Cranston Report, I noted that there were some gaps in the Bank's documentary records in relation to two sample cases, and I had asked the Bank to undertake further searches of its electronic database in relation to these cases. The fact that there were gaps in the Bank's files was unsurprising given the passage of time since the fraud was perpetrated. In the event, no new documents came to light during the course of my review which would have materially altered the assessment of those sample cases. However, I cannot rule out the possibility of further gaps in the Bank's documentary records in relation to other customer cases. That is why I have made this recommendation.

6. The Panel should draw whatever inferences it considers appropriate in light of the fraudsters' involvement in particular cases

53. Some customers have expressed concerns about the reliability of the Bank's records. In Appendix 2 to the Cranston Report, I proposed that allowance should be made for the potential unreliability of the documentary record as a result of the fraud. It might be helpful if I give an example as to how this might work.
54. If in a particular case there is an obvious inconsistency between the customer's version of events and a document in the Bank's file, I would expect the Panel to assess the reliability of the document in the light of the entirety of the evidence available to it (including the fact that certain individuals who worked for the Bank were convicted of fraud). If the Panel considers that the customer or the Bank might be able to assist it with further information and documents, as I have explained above, it would request further information and documents. However, it will also be open to the Panel to draw whatever inferences it considers appropriate in

light of the fraudsters' involvement in particular cases. For example, if the only document which contradicts the customer's version of events is a file note prepared by or under the direction of a fraudster, the Panel might infer that the file note is not reflective of the true state of affairs and should therefore be given less weight than the customer's version of events.

55. In Appendix 2 to the Cranston Report, I also proposed that:
- a. Customer submissions should be given due evidential weight; and
 - b. It would not be appropriate for the Panel to reject submissions solely because they do not accord with the documentary record.
56. The approach to such evidential matters set out in Appendix 2 should be followed by the Panel. This is necessary to ensure that customers are not disadvantaged by the significant passage of time since the fraud was perpetrated, or by the fact that they have not had access to contemporaneous documents which they might otherwise have used to refresh their memories. It also recognises the fact that the fraudsters are unlikely to have documented their own fraudulent actions.

7. The Panel will adopt a generous, fair and common sense approach

57. Consistently with the Bank's commitment for the Re-review process, the Panel will adopt a generous and fair approach in making decisions.
58. In particular the Cranston Report concluded that the Panel must adopt a common sense approach to proof of causation and loss. This follows from a generous and fair approach, and because the Panel will not involve legal processes.

8. The Panel will publish a 'minded to' decision

59. The 'minded to' procedure is something new, and an important change to the recommendations in Appendix 2 to the Cranston Report.
60. Once the Panel has identified the pool of relevant documents and considered the customer's submissions, the Panel will then make a reasoned decision by reference to these and provide its decision to the customer and the Bank, along with the documents behind it. The decision should be expressed in clear, simple language, and set out the evidence on which the Panel relied in reaching its conclusions.
61. The reasoned decision would not be final and binding at that stage, but would give an indication of what the Panel is minded to conclude (i.e. a 'minded to' decision).
62. I make this recommendation because, as I explain below, it will give customers the opportunity to challenge the 'minded to' decision of the Panel, with legal help if necessary, if they do not accept how the Panel proposes to decide a case.

63. I should add that the stakeholder groups had asked me to consider building the option of mediation into the Re-review Process, perhaps at the point where customers have received their 'minded to' decision but prior to the Panel's final decision. I have given this careful thought, but have come to the conclusion that it would not be appropriate. This is for one very important reason: it would undermine the integrity of the Re-review Process.
64. Let me explain. One of the big criticisms of the Customer Review was that customers who left the Customer Review and entered into direct negotiations with the Bank were perceived to have got much bigger payouts than those who stuck with the Customer Review, i.e. those who shouted loudest got the most. This left a large number of victims feeling let down by the Customer Review. If we were to permit mediation or direct negotiation between customers and the Bank in the Re-review Process, there would be the risk of the same thing happening again. That is unacceptable. It is fundamental that the Re-review Process should ensure consistency of treatment of customers, and that it should be seen to be doing so.

9. The Panel will disclose the documents on which it relied

65. When the Panel provides the customer and the Bank with its 'minded to' decision, it should also provide the customer and the Bank with the documents on which it relied in reaching its decision. This is an important variation to the process proposed in Appendix 2 to the Cranston Report.
66. As I have explained in Section 2 above, a number of customers have asked for disclosure of the Bank's files. These files are extensive. It became apparent to me and my team during our review that many of the documents in these files are not relevant. For example, many documents are duplicative of or do not materially add to other documents in the file. If customers were to be provided with disclosure of the entirety of the Bank's files, they would be inundated with irrelevant documents. This would take them weeks if not months to review, and this would significantly delay the Panel's work on their cases. I consider that it would be far more efficient for the Panel (which will be adequately resourced and assisted by a team of advisors) to review in an independent manner the Bank's files and determine the pool of relevant documents.
67. However, I have taken on board the concerns expressed by customers and stakeholders alike that customers should have the opportunity to review the documents relied on by the Panel. My recommendation is that they should have the opportunity to do so once the Panel has provided its 'minded to' decision. At that stage, they will have the opportunity to challenge the documentary record with the benefit of the Panel's analysis of those documents – for example, by highlighting any gaps or inconsistencies they identify, by correcting the Panel's misunderstanding of any contemporaneous documents, or by supplementing the record with additional documents or information.

10. Customers and the Bank will have the opportunity to challenge or respond to the 'minded to' decision

68. As well as having the opportunity to challenge the documents relied on by the Panel, customers and the Bank will also have the opportunity to challenge the 'minded to' decision itself. This is another important variation to the process I had proposed in Appendix 2 to the Cranston Report.
69. As I have explained in Section 2 above, a number of customers and stakeholders were concerned that customers should have an opportunity to respond to the Panel's decision, in particular in the event that the Panel had overlooked important evidence or made an obvious error.
70. During the course of discussions with the SME Alliance and the APPG they suggested that customers should be able to appeal the decision of the Panel. Very few of the customers who responded to us mentioned this.
71. I consider that the concerns of customers and stakeholders can be addressed by providing customers with the opportunity to challenge the Panel's 'minded to' decision. The benefits of this approach are twofold:
- a. First, it gives customers an opportunity to engage in a meaningful way with the Panel's decision-making process. This is important because many customers felt that this sort of engagement was not possible in the Customer Review, and that as a result their legitimate concerns were ignored by the Bank.
 - b. Second, it ensures the finality of the Re-review Process. As I have set out in Section 2 above, in their submissions to me customers have emphasised the importance of the Re-review Process operating swiftly so as to bring closure to customers as soon as possible.
72. In order to ensure fairness, it is only right that the Bank should also have the opportunity to challenge or respond to the Panel's 'minded to' decision.
73. Customers and the Bank should be given a reasonable opportunity to challenge or respond to the Panel's 'minded to' decision, but in order to ensure that the Re-review Process moves swiftly the Panel should make clear the timeframes within which such challenge or response should be provided.
74. I have given careful thought to the suggestion that there should be some further avenue open to customers if they disagree with the decision of the Panel (for example, taking the Bank to court). However, I believe that this would not be in the interests of customers, for the following reasons:
- a. First, if customers were to take the Bank to court, the process would be expensive, time consuming and drawn out. The Bank would inevitably wish to be represented by its choice of lawyers, and it is unlikely that customers would be able to afford equivalent legal representation.

- b. Second, in order for customers to be able to go to court, their settlement agreements with the Bank would have to be set aside. This would involve customers having to repay the sums received from the Bank pursuant to their settlement agreement, notably their D&I and debt relief payments. This would further hamper their ability to afford adequate legal representation.
 - c. Third, this would not ensure finality. Even if a customer were to succeed at trial, it would be open to the Bank to appeal the decision (and vice versa). Litigation could drag on for a number of years.
 - d. Overall, as I explained in paragraph 15.61 of the Cranston Report, litigation was the very option that most customers had rejected, in my view sensibly, because they had neither the resources nor emotional energy to undertake legal proceedings. It is not surprising that no customers mentioned the possibility of an appeal to the court in their responses when we asked them for their views on Appendix 2 of the Cranston Review for the purposes of the Re-review (as explained above, a small number did request the opportunity to challenge the Panel's decision, but not in court).
75. In short, if customers were to take the Bank to court, they would have none of the advantages offered by the Re-review Process (which has been designed to provide customers with a risk-free way in which to find out if they are entitled to further compensation from the Bank), and no guarantee of a better (or even a comparable) outcome than that offered by the Panel.
76. It is also important that the Re-review Process is designed in such a way that it does not undermine the credibility of the Panel. If the Panel's decisions were to be subject to possible appeals, it would inevitably be viewed by some customers as simply a step in the process towards having their complaint resolved.
- ## 11. The Bank will fund the costs of reasonable legal representation for customers
77. Again, this is a change from Appendix 2 of the Cranston Report in light of the submissions we received from customers and the stakeholder groups.
78. The Cranston Report proposed that there should be "no need for legal representation in the Panel process" (Appendix 2, Proposition 5.3). This reflected the fact that, at that stage, I did not envisage customers making further submissions to the Panel.
79. However, in light of the changes to the Re-review Process which I have outlined above, and the submissions, I now consider that customers may need reasonable legal assistance in order to properly challenge or respond to the Panel's 'minded to' decision.
80. The Bank will meet the reasonable costs of this assistance. Any such costs will be met where they have been agreed in advance with the Bank and are reasonable. If there is any dispute about the level of costs, the Panel will determine whether the costs

claimed are reasonable. This is the process I agreed with the Bank during the course of my review, and it worked well (see paragraphs 10.44-10.47 of the Cranston Report.)

81. Only costs incurred by qualified, practising lawyers will be met. The Re-review Process is not an adversarial process. If customers need professional support, it will be legal advice that they require.

12. In cases where the Panel considers such advice necessary, the Bank will fund the costs of reasonable financial advice for customers

82. In Appendix 2 to the Cranston Report, I proposed that the Panel should have access to financial advice (whether that be in the form of advice from a financial advisor or a forensic accountant). This proposal has been received positively by many customers and stakeholders, and no one has raised any objections to this proposal.
83. Further, as a result of submissions by the SME Alliance I agree that there should also be a forensic accountant as a member of the Panel.
84. However, a few customers have also requested that the Bank should fund forensic accountancy advice for customers to enable them to present their claims for D&C losses to the Panel.
85. It seems to me that the Panel will be best placed to determine whether particular customers require such assistance in the event that they choose to challenge the Panel's 'minded to' decision. If the Panel considers that such assistance or advice is necessary, the Bank will fund the reasonable costs of such advice. As with legal costs, costs in respect of financial or forensic accountancy advice will only be met where they have been agreed in advance with the Bank and are reasonable. If there is any dispute about the level of costs, the Panel will determine whether the costs claimed are reasonable.

13. The Panel will publish its final decision

86. Once customers and the Bank have been allowed a reasonable period of time to challenge or respond to the 'minded to' decision, the Panel will then review any further material and submissions received and produce its final decision, having taken all the material and submissions into account.
87. The final decision should be in clear, simple language and set out any additional evidence on which the Panel relied in reaching its conclusions. The Panel might decide whether it presents its decision in writing only, or whether it offers customers the opportunity to attend a meeting to discuss the outcome.
88. The final decision will be binding on both the Bank and the customer. As I explained in the Cranston Report, for customers the after-effects of the fraud have gone on long enough, and there must be finality for them. Likewise, the Bank cannot be expected to continue

funding risk-free assessment procedures for customers without some assurance of finality.

89. Customers who wish to opt into the Re-review Process will need to sign a suitably drafted "opt-in" agreement. That agreement would need to record the customer's and the Bank's agreement to be bound by the outcome, and to address the impact of participation in the Re-review Process upon the customer's existing settlement agreement entered into as part of the Customer Review.

14. There will be a discretion in the Panel to set-off against any award it makes sums the Bank paid customers in the Customer Review other than (i) the original Customer Review outcome offer and; (ii) the two ex gratia payments made by the Bank.

90. In Appendix 2 of the Cranston Report I recommended that customers should never be worse off as a result of applying to the Panel, but that to avoid double recovery there should be a set-off of certain amounts received by customers in the Customer Review (see para 12 of Appendix 2).
91. In light of what the stakeholder groups and some customers have told me, in my view those recommendations must be modified in two important respects:
 - a. First, the Bank made a further ex gratia payment of £35,000 to customers following the publication of the Cranston Report. Customers should be entitled to keep this regardless of the outcome of the Re-review Process, and so this would not be set off against any amounts awarded by the Panel;
 - b. Secondly, in cases where customers were awarded an 'uplift' to their original Customer Review outcome offer, the Panel should have a discretion as to whether that should be set off against any amounts awarded by the Panel. In the Cranston Report, I concluded that the Bank sometimes used uplifts to 'distress and inconvenience' (D&I) awards as a vehicle to compensate for D&C losses, and it was on that basis that I recommended that such uplifts should be set off. However, I recognise that this may not have always been the case. For that reason, I consider that the Panel should be left to determine in individual cases whether or not such uplifts should be set off.
92. For the avoidance of doubt, the following sums must be set off against any Panel award:
 - a. Any payments made by the Bank to customers in respect of QCS fees;
 - b. Any payments made by the Bank to customers under its debt relief policy (as explained in paragraphs 3.100 to 3.102 in the Cranston Report) and pursuant to my recommendations on debt relief (as set out in paragraphs 15.40 to 15.47 of the Cranston Report); and

- c. Any uplifts to 'distress and inconvenience' awards which the Panel considers were used as a vehicle to compensate for D&C losses.

15. The scope of the Re-review will be limited to claims for fraudulent loss caused by the fraud

- 93. In Appendix 2 to the Cranston Report I said that the Panel should make awards for cases of fraudulent loss from the HBOS Reading fraud. This is because the Panel will be concerned with remedying the shortcomings of the Customer Review, and the purpose of the Customer Review was to compensate for the fraud committed at the HBOS Impaired Assets unit based at Reading and Bishopsgate, and which was the subject of the criminal trial in 2016 and 2017.
- 94. It will be for the Panel to determine in each case whether or not a customer suffered loss as a result of the fraud, and whether their claim in respect of D&C losses will be considered. In other words, the Panel will determine who is 'in' and who is 'out' of the Re-review Process. As I have explained above, the Panel should adopt a common sense approach to the question of causation, i.e. whether any customer suffered loss as a result of the fraud.

SECTION 4

THE PANEL

95. In Appendix 2 to the Cranston Report, it is suggested that "a panel may be more appropriate than an individual adjudicator" because a number of different areas of expertise can be combined in one panel (Proposition 1). None of the stakeholders or customers have disagreed with this proposal.
96. As to the composition of the Panel, this is something that I have considered and discussed with the stakeholder groups.
97. As a basic principle, it is vital that all panel members should be (a) independent from the Bank and all parties involved in the Customer Review, and (b) free of any actual or perceived conflicts of interest. Although a small number of customers have proposed that the Panel should include an individual with direct experience of the HBOS fraud, I have concluded that this would not be appropriate. There will inevitably be concerns about their impartiality and independence (and already such concerns have been raised by a few customers).
98. In order to ensure that the Panel garners the respect and trust of customers and stakeholders, it must be chaired by an individual of sufficient seniority, experience and standing. A former senior judge would be appropriate. The chair should have a casting vote on any decisions on which the other Panel members are unable to agree.
99. As to the Panel's expertise, there appears to be near universal support for the Panel to include, or be advised by, an independent forensic accountant. I recommend that someone with such financial expertise should sit on the Panel.
100. As a result of discussions with the stakeholder groups, I also recommend that there should be another member of the Panel who will ensure that the unique position of customers affected by fraud is properly understood by the Panel. For the reasons I have given above, this individual must be independent and must have had no personal involvement with the issues before the Panel.
101. The Panel should be assisted in its work by a team of financial advisors. It should also be assisted in its work by a team of lawyers.
102. As to the team which will support the Panel in its work, the scale of the task before the Panel should not be underestimated: it will need significant resources in order to properly assess customers' cases. During the Cranston Review, I was assisted in my work by a team of lawyers and financial advisors, and their input was vital to my work. The Panel will be undertaking assessments of a much larger number of cases, and in much greater depth, and it will need to be supported by teams with appropriate expertise.
103. I also envisage the Panel being assisted in its work by ongoing engagement with stakeholder groups and customers as a whole. This might take the form of periodic reports on progress of the assessment process. I appreciate that the stakeholder groups do not speak for all customers, but they have a wealth of experience and knowledge of the fraud and of customers' experiences. They have also been instrumental in bringing about the Cranston Review, and thus the Re-review Process.

SECTION 5

NEXT STEPS

104. The first step will need to be the formal appointment of the Chair of the Panel, and of the other Panel members. Once the Panel is constituted, it will need to identify those who have the requisite skills and experience to form its team of advisors. As the Panel and its advisors will be remunerated by the Bank, they will need to enter into formal agreements with the Bank. Those agreements must make clear that the Panel and its advisors are independent of the Bank, and that their work and decisions will not in any way be influenced by the Bank.
105. The Panel will then need to establish and publish its methodology. I have explained in Section 3 above the importance of the methodology being informative for customers and expressed in clear, simple language.
106. Once the Panel has published its methodology, it should contact all customers who entered into settlement agreements with the Bank in the Customer Review and invite them to participate in the Re-review Process. As I have explained in Section 3 above, customers who wish to participate in the Re-review Process will need to enter into a suitably drafted 'opt-in' agreement. Once customers have entered into 'opt-in' agreements with the Bank, the Bank will provide the customers' files to the Panel and the Panel can commence work on its assessment of the cases.

APPENDIX

The table below summarises the principal changes I have made to the proposals set out in Appendix 2 to the Cranston Report. The changes are highlighted. This must be read together with Sections 3 and 4 of this report, which explain more fully my revised proposals and the reasons for them.

Appendix 2 Proposals	Revised Recommendations
1. The Panel is to have legal and financial expertise.	<p>The Panel will comprise a person of suitable seniority and experience, who will be the Chair; an independent forensic accountant; and an independent person whose experience gives him an understanding of the customer’s perspective.</p> <p>See paragraphs 97 to 100 of the report.</p>
2. The Panel process is to be inquisitorial.	<p>It is still my recommendation that the process should be inquisitorial.</p> <p>See paragraphs 42 to 45 of the report.</p> <p>The Panel should communicate its approach (i.e. its methodology) to customers prior to commencing any work on its re-assessment of customers’ cases.</p> <p>See paragraphs 39 to 41 of the report.</p> <p>As part of the inquisitorial process the Panel should offer customers the opportunity to meet with them, to explain in their own words the financial impact of the fraud on them, and to draw the Panel’s attention to any matters which they feel were overlooked or not dealt with adequately during the Customer Review. If they wish, customers may be accompanied by a customer advocate.</p> <p>See paragraphs 48 to 50 of the report.</p>
3. Aspects of work already undertaken should be utilised.	<p>It is still my recommendation that the work undertaken for the Customer Review should be utilised.</p> <p>In addition, the Panel will have a discretion to ask customers and the Bank for further information, including for information about any D&C losses.</p> <p>See paragraphs 46 to 47, and 51 to 52 of the report.</p>
4.1. Customer submissions should be given due evidential weight.	<p>This remains my recommendation.</p> <p>See paragraphs 55 to 56 of the report.</p>
4.2. It would not be appropriate for the Panel to reject submissions solely because they do not accord with the documentary record.	<p>This remains my recommendation.</p> <p>See paragraphs 55 to 56 of the report.</p>

<p>4.3. Allowance should be made for any incompleteness of the file build and for the potential unreliability of the documentary record as a result of the fraud.</p>	<p>This remains my recommendation.</p> <p>In addition, in cases where it appears that the file build is incomplete, the Panel will have a discretion to ask the Bank and/or the customer for further documents.</p> <p>As to the reliability of the Bank's files, it will be open to the Panel to draw whatever inferences it considers appropriate in light of the fraudsters' involvement in particular cases.</p> <p>See paragraphs 51 to 54 of the report.</p>
<p>4.4. A common-sense approach should be applied to proof of causation and loss.</p>	<p>In addition, the Panel must adopt a generous and fair approach.</p> <p>The Panel should explain in its methodology how it intends to approach such matters.</p> <p>See paragraphs 40 and 57 to 58 of the report.</p>
<p>4.5. The Panel should apply a sensible approach to what it is fair to expect customers to have produced by way of evidence.</p>	<p>This remains my recommendation.</p> <p>The Panel should explain in its methodology how it intends to approach such matters.</p> <p>See paragraph 40 of the report.</p>
<p>5.1. The Panel process should avoid the need for significant (if any) further customer input.</p>	<p>Customers will have the opportunity to meet with the Panel during the initial stages of the Re-review Process, to explain in their own words the financial impact of the fraud on them, and to draw the Panel's attention to any matters which they feel were overlooked or not dealt with adequately during the Customer Review.</p> <p>See paragraphs 48 to 50 of the report.</p> <p>Customers will have a further opportunity to provide input once the Panel has published its preliminary, 'minded to' decision. This is an important variation to my proposal in Appendix 2 to the Cranston Report. I now recommend that the Panel adopt a two-stage decision-making process, as follows:</p> <p>(a) Once the Panel has identified the pool of relevant documents and considered the customer's submissions, it should then make a reasoned decision by reference to these and provide its decision to the customer and the Bank. This decision would not be final and binding at that stage, but would give an indication of what the Panel is minded to conclude (i.e. a 'minded to' decision).</p> <p>(b) When the Panel provides the customer and the Bank with its 'minded to' decision, it should also provide the customer and the Bank with the documents on which it relied in reaching its decision.</p> <p>(c) Customers and the Bank will then have the opportunity to respond to or challenge the 'minded to' decision.</p> <p>(d) Once customers and the Bank have been allowed a reasonable period of time to challenge or respond to the 'minded to' decision, the Panel will then review any further material and submissions received and produce its final decision, having taken all the material and submissions into account.</p> <p>See paragraphs 59 to 76, and 86 to 89 of the report.</p>

<p>5.2. The Panel should formulate requests for further customer input in a manner not requiring professional assistance.</p>	<p>At the initial stage of the Re-review Process, requests by the Panel for further information will be formulated in a way that customers can respond without professional assistance. The requests should be for factual information, and formulated in clear, simple language.</p> <p>See paragraphs 51 to 52 of the report.</p> <p>Some legal assistance may be required in the event that a customer chooses to challenge a "minded to" decision. The Bank will fund the costs of reasonable legal assistance in relation to such challenges.</p> <p>See paragraphs 77 to 81 of the report.</p> <p>In some cases, the Panel may consider that the customers require financial advice when challenging the "minded to" decision. If the Panel considers that such advice is necessary, the Bank will fund the reasonable costs of such advice.</p> <p>See paragraphs 82 to 85 of the report.</p>
<p>5.3. There should be no need for input from lawyers on either side.</p>	<p>As explained above, some legal assistance may be required in the event that a customer chooses to challenge a "minded to" decision. The Bank will fund the costs of reasonable legal assistance in relation to such challenges.</p> <p>See paragraphs 77 to 81 of the report.</p>
<p>6. The Bank is not required to undertake further document collation.</p>	<p>As explained above, in cases where it appears that the file build is incomplete, the Panel will have a discretion to ask the Bank for further documents.</p> <p>See paragraphs 51 to 52 of the report.</p>
<p>7. Disclosure at the same level as in litigation is unnecessary.</p>	<p>This remains my recommendation.</p> <p>As explained above, customers and the Bank will be provided with disclosure of documents relied on by the Panel in reaching its 'minded to' decision.</p> <p>See paragraphs 65 to 67 of the report.</p>
<p>8. Financial expert analysis should be available to the Panel.</p>	<p>This remains my recommendation.</p> <p>As explained above, the Panel will include an independent forensic accountant.</p> <p>In addition, the Panel will be assisted by a team, which should include financial advisors.</p> <p>See paragraphs 101 to 102 of the report.</p>
<p>9. The Panel should publish a reasoned decision to the parties.</p>	<p>This remains my recommendation.</p> <p>As explained above, in the first instance, the Panel will publish a fully reasoned 'minded to' decision. Its final, reasoned decision will be published once the customer and the Bank have had the opportunity to challenge the 'minded to' decision.</p> <p>See paragraphs 86 to 89 of the report.</p>
<p>10. The Panel should make awards for cases of fraudulent loss only.</p>	<p>This remains my recommendation.</p> <p>See paragraphs 93 to 94 of the report.</p>

<p>11. There should be no appeal from a Panel award.</p>	<p>This remains my recommendation.</p> <p>However, as explained above, if a customer or the Bank is dissatisfied with the 'minded to' decision of the Panel, they will have the opportunity to respond to or challenge that decision.</p> <p>See paragraphs 68 to 76 of the report.</p>
<p>12. There should be a set-off against any Panel award of sums the Bank paid customers in the Customer Review other than (i) the original Customer Review outcome offer and; (ii) the £35,000 ex gratia payment.</p>	<p>I recommend two modifications to my original proposal:</p> <p>(a) The Bank made a further ex gratia payment of £35,000 to customers following the publication of the Cranston Report. Customers should be entitled to keep this regardless of the outcome of the Re-review Process, and so this should not be set off against any amounts awarded by the Panel.</p> <p>(b) In cases where customers were awarded an 'uplift' to their original Customer Review outcome offer, the Panel should have a discretion as to whether that should be set off against any amounts awarded by the Panel.</p> <p>See paragraphs 90 to 92 of the report.</p>
<p>13. Customers choosing a Panel assessment must abide by its decision, as must the Bank.</p>	<p>This remains my recommendation.</p> <p>See paragraphs 88 to 89 of the report.</p>