

INFORMATION SUPPORTING THE BANK'S RESPONSE AS OPERATOR OF RTGS AND CHAPS TO THE FSB SURVEY ON CONTINUITY OF ACCESS TO FMIS FOR FIRMS IN RESOLUTION

This document, and the accompanying Bank of England (the Bank) response to the FSB Survey on Continuity of Access to FMIs for Firms in Resolution published alongside it,¹ comprise the Bank of England's response to the FSB Survey.² The Bank is responding to this survey as operator of CHAPS (sterling same-day system used to settle high-value wholesale payments) and RTGS (the Real Time Gross Settlement infrastructure that underpins settlement of sterling payments). RTGS is not a payment system itself.

1. The Bank's response as RTGS/CHAPS operator in the event of a failing RTGS account holder /CHAPS Direct Account holder in the context of wider Bank responsibilities for that failing firm

	The Bank's response as RTGS/CHAPS operator in the event of a failing RTGS account holder /CHAPS Direct Account holder (DP)³
General response	<p>Transfers within the RTGS and CHAPS systems are made in real time and no credit exposures arise between account holders or between CHAPS Direct Account holders (DPs)/RTGS account holders and the Bank as a result of settlement. As a result so no credit risk exists to be managed. As such RTGS/CHAPS risk mitigation actions in the event of a failing account holder/DP are predominantly suspension or termination of RTGS Accounts and – where applicable – direct access to CHAPS. This action is unlikely in a resolution situation with an intended outcome of a going-concern as long as the relevant access criteria continue to be met and funds are available for settlement. The Bank's likely responses to a resolution situation are set out in section 2.</p> <p>The provisions of the RTGS Terms and Conditions, the CHAPS Reference Manual, and other relevant documents allow the Bank to exercise judgement/discretion in taking decisions. An emphasis is given to financial stability concerns, and threats to RTGS and CHAPS in taking those decisions. The Bank's function as RTGS/CHAPS operator would engage as appropriate with other relevant areas of the Bank, UK and overseas financial authorities, and other stakeholders (see further text below).</p> <p>To inform its decisions, the Bank, as CHAPS/RTGS operator, has access³ to data in its own systems such as account balances in RTGS and CHAPS payment flows/liquidity analysis. It also has access to additional information – including that provided by RTGS account holders, CHAPS DPs, and FMI - which it may draw upon with more frequency in the event of a failing firm. For example, detailed information on account holder throughput, liquidity,</p>

¹ <https://www.bankofengland.co.uk/-/media/boe/files/payments/continuity-of-access-rtgs-chaps.pdf>

² <https://www.fsb.org/2020/08/fsb-publishes-questionnaire-on-continuity-of-access-to-fmis-for-firms-in-resolution/>

³ (At the time of publication) RTGS Account holders (of which CHAPS Direct Account holders is a subset) were limited to: Firms that include PRA- authorised/regulated UK incorporated, and UK subsidiaries or branches of non-UK incorporated, banks, building societies and investment firms (designated by the PRA for prudential supervision); FCA-authorized non-bank payment service providers; CCPs operating in UK markets which are authorised or recognised under EMIR and other systemically important FMIs (as judged by the Bank). Subject to meeting the eligibility criteria published in the Bank's Sterling Monetary Framework Terms and Conditions (for reserve accounts), Settlement Account Policy (for settlement accounts), and CHAPS Reference Manual (for direct access to CHAPS).

The Bank's response as RTGS/CHAPS operator in the event of a failing RTGS account holder /CHAPS Direct Account holder (DP)³			
outages, and any extensions occurring. In addition, CHAPS DPs and other RTGS account holders are required to notify the Bank in becoming aware of possible liquidation (themselves or an indirect account holder) or other similar indicators (CRM Sections 3.6 and 3.7, RTGS T&Cs Sections 5.1(d) 8.3).			
Subject to the UK's Resolution Regime			
Subject to supervision by the Bank/PRA		Other	
Grouping of RTGS account holders/ CHAPS DPs according to the Bank's responsibilities.	<ul style="list-style-type: none"> UK incorporated/PRA-authorized banks, building societies, certain investment firms⁴ and CCPs. UK subsidiaries of non-UK incorporated banks, building societies and investment firms. 	<ul style="list-style-type: none"> UK branches of non-UK incorporated banks, building societies and investment firms (powers to resolve branches of non-EEA firms under certain circumstances). Bank supervised FMIs.⁵ 	<ul style="list-style-type: none"> Non-bank Payment Service Providers (PSPs) -authorized electronic money institutions or authorised payment institutions- are supervised by the FCA. Other FMIs (both UK incorporated and non-UK incorporated).
Variation in the Bank's response, as RTGS/CHAPS operator.	<p>Where the failing firm is subject to the UK's Resolution Regime, the Bank as operator of RTGS/CHAPS will take its lead from the actions of the Bank as supervisor and resolution authority. A key review point would be the assessment that the firm meets the Conditions for Resolution (as set out in the Banking Act 2009). As such, escalation and decision-making would be taken at a senior level within the Bank, coordinating a number of decisions across a number of functions and statutory and contractual frameworks.</p> <p>Internal Bank guidance and processes facilitate the sharing of supervisory judgments and</p>	<p>Where the failing firm is supervised by the Bank, but not subject to the UK's Resolution Regime, the Bank as operator of RTGS/CHAPS will take its lead from the actions of the Bank as supervisor, alongside appropriate engagement and coordination with the home resolution authority and supervisors where relevant, via existing engagement channels.</p> <p>As in all situations of a failing account holder/DP (whether UK or non-UK incorporated) the Bank would be guided by UK financial stability concerns, and threats to RTGS and CHAPS. In pursuit of that, the Bank may support exceptional solutions in coordination with the relevant authorities.</p>	<p>The FCA is the competent authority in the UK for non-bank payment service providers (non-bank PSPs).</p> <p>Where the failing firm is a non-bank PSP, the Bank as operator of RTGS and CHAPS would engage, and coordinate its actions with the FCA. (As was the case with the mid-week suspension of ipagoo LLP in July 2019 when the FCA imposed a requirement on the firm to cease undertaking regulated activities, including the provision of payment services. Ipagoo LLP went subsequently into administration.)</p> <p>The FCA would share relevant information with the Bank including any decision to revoke authorisation.</p>

4. Only investment firms prudentially regulated by the PRA are eligible for RTGS Accounts/to become a CHAPS DP. The scope of the UK Resolution Regime also includes certain investment firms regulated by the FCA which are not eligible for RTGS Accounts/to be a CHAPS DP.

5 Subject to the FMI Special Administration Regime but not the UK Resolution Regime.

The Bank's response as RTGS/CHAPS operator in the event of a failing RTGS account holder /CHAPS Direct Account holder (DP) ³		
	<p>information with other areas of the Bank as necessary.</p>	<p>Where the Bank is coordinating with other authorities the information sharing and assurance required to inform decisions may take more time and engagement than where coordination is largely within the Bank itself. Firms, and authorities should continue to work ex ante to smooth this coordination.</p> <p>The relationship between the Bank and FCA in respect of non-bank PSPs is codified in a framework.</p> <p>Where the failing firm is an FMI not supervised by the Bank or subject to the UK's Resolution Regime, the Bank as operator of RTGS/CHAPS will engage and coordinate with the home resolution authority and supervisors, via existing engagement channels.</p> <p>Where the Bank is coordinating with other authorities the information sharing and assurance required to inform decisions may take more time and engagement than where coordination is largely within the Bank itself. Firms, and authorities should continue to work ex ante to smooth this coordination.</p>

UK strategies for managing a failing firm and likely Bank actions as RTGS/CHAPS operator

Strategies for managing a failing firm	Definition ⁶	Likely Bank action as operator of RTGS and CHAPS
Normal insolvency procedure for companies.	Where the firm holds neither protected deposits nor client assets, it will be likely to be placed into the normal insolvency procedure for companies.	The Bank would be likely to suspend or terminate/exclude from access to RTGS or CHAPS in the event of an account holder/DP entering normal insolvency procedures for companies, bank (or building society) insolvency procedures, or special administration regime (i.e. the three rows in the left-hand side of this table)
Bank (or building society) insolvency procedure (BIP or BSIP)	A failed firm may be placed into a form of modified insolvency if the public interest test for use of resolution powers is not met and where the firm holds protected deposits or client assets. This allows for the rapid payout of deposits protected by the Financial Services Compensation Scheme (FSCS) or the transfer of the FSCS-protected deposits to a viable firm. After that the firm would be wound up in a normal insolvency process.	i.e. a gone-concern. Section 9.2 of the RTGS Terms and Conditions ⁷ defines circumstances in which the Bank may suspend or terminate an RTGS Account (i.e. decline to act on payment instructions, decline to accept payments on the account holder's behalf, or close the account). These circumstances include a wide range of scenarios that constitute an Event of Default or Potential Event of Default (Section 8), including where certain permissions are removed, the court makes a winding up order or an administrator or liquidator is appointed. Note, suspension or termination of an RTGS account would have a knock-on impact on the account holder's settlement in the FMIs it used its RTGS account to settle with.
Special Administration Regime (SAR)	An insolvency process to address the failure of investment firms which hold client assets or money and whose failure does not trigger the public interest test for use of resolution powers.	The Bank may suspend or exclude a CHAPS DP in a number of circumstances including if, it is likely the account holder will become insolvent/enter liquidation, (Section 6.8 CRM ⁸). The Bank's internal procedures codify and sequence the steps the Bank would take to effect termination/suspension from RTGS/CHAPS. In practice suspension from CHAPS will mean the Bank declining to act on CHAPS payment instructions by or on behalf of the firm, or disablement of the RTGS Account (which would impact other RTGS settlements including those for FMI obligations). Termination would mean the removal of that DP/account holder from CHAPS or RTGS.

⁶ The Bank of England Framework for resolution (<https://www.bankofengland.co.uk/-/media/boe/files/news/2017/october/the-bank-of-england-approach-to-resolution.pdf>)

⁷ <https://www.bankofengland.co.uk/-/media/boe/files/payments/rtgs-mandate-and-annexes.zip>

⁸ <https://www.bankofengland.co.uk/-/media/boe/files/payments/chaps/chaps-reference-manual.pdf>

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		The Bank has developed contingency arrangements, as the operator of RTGS/CHAPS, to maintain a connection to the failed firm's infrastructure where it is required to support the ability to make payments and the transfer of deposits.
FMI Special Administration Regime (SAR)	The FMI administration regime is established in Part 6 of the Financial Services (Banking Reform) Act 2013. It is a form of special administration that may apply to all recognised UK payment systems (other than recognised CCPs) and all recognised UK CSDs operating securities settlement systems. HMT may also designate certain service providers of recognised payment systems and CSDs as eligible for the SAR. The special administration regime is a modified insolvency regime that provides an administrator appointed by the Bank with special objectives, such as the continuity of critical services that take priority over the objectives in a normal administration.	<p>The Bank is unlikely to take action against a failing RTGS account holder/CHAPS DP as long as the relevant RTGS/CHAPS access criteria continue to be met and funds are available to support payment obligations.</p> <p>The Bank as operator of RTGS/CHAPS will take its lead from the actions of the Bank as supervisor of the recognised FMI or service provider. Internal Bank guidance and processes facilitate the sharing of supervisory judgments and information with other areas of the Bank as necessary. Escalation and decision-making would be taken at a senior level within the Bank, coordinating a number of decisions across a number of functions and statutory and contractual frameworks.</p>
Resolution tools⁹		
Bail in	Write-down of the claims of the firm's unsecured creditors (including holders of capital instruments) and conversion of those claims into equity as necessary to restore solvency to the bank.	<p>The Bank as operator of RTGS/CHAPS is unlikely to take action against a failing RTGS account holder/CHAPS DP as long as the relevant RTGS/CHAPS access criteria continue to be met and funds are available to support settlement. The use of the bail in tool is designed to facilitate this.</p> <p>In particular circumstances where the failing firm is unable to meet certain requirements, the Bank would be guided by UK financial stability concerns, and threats to RTGS and CHAPS. In pursuit of that, the Bank would be prepared to be flexible and proportionate in its approach.</p>

⁹ The same resolution powers are available for CCPs as for banks in the UK regime, with the exception of the bail-in tool and the asset management vehicle tool. The Bank also has the power to transfer ownership of the CCP to any person.

Strategies for managing a failing firm	Definition ⁶	Likely Bank action as operator of RTGS and CHAPS
Transfer to a private sector purchaser	The transfer of all or part of a bank's business, which can include either its shares or its property (its assets and liabilities), to a willing and appropriately authorised private sector purchaser without need for consent of the failed bank, or its shareholders, customers or counterparties.	<p>Where assets and liabilities including the deposit book, technical infrastructure and contracts with the Bank is transferred to a private sector purchaser/bridge bank the CHAPS participation/RTGS Account is likely to move to the purchaser/bridge bank. Where partial transfer occurs the CHAPS participation/RTGS Account will move to the purchaser/bridge bank to ensure continuity of those critical operations.</p> <p>The Bank as operator of RTGS/CHAPS is unlikely to take action against a failing RTGS account holder/CHAPS DP as long as the relevant RTGS/CHAPS access criteria continue to be met and funds are available to support settlement (both of which are goals of these resolution strategies). In particular circumstances where the bridge bank/purchaser is unable to meet certain requirements, the Bank would be guided by UK financial stability concerns, and threats to RTGS and CHAPS. In pursuit of that, the Bank would be prepared to be flexible and proportionate in its approach where necessary and possible without bringing risks to RTGS/CHAPS.</p>
Bridge bank	The transfer of all or part of the bank's business to a temporary bank controlled by the Bank of England. The purpose is to maintain continuity of the failed bank's critical functions until the sale of the bridge bank (e.g. through an initial public offering or onward transfer of some or all of its business to a private sector purchaser).	<p>Legal changes would need to be quickly executed as part of the resolution. New contracts or contract novation between the Bank and the entity may be required. Most, if not all, technical changes would follow at a later date if necessary. As long as the BIC/SWIFT codes and operational arrangements remain the same, there are no changes required by other CHAPS DPs or FMIs settling through RTGS although – depending on the purchaser – they may choose to review their sign-off to the counterparty relationship.</p> <p>Where the purchaser is already a CHAPS DP/RTGS account holder or subject to technical capabilities in the given timeframe, the transfer may result in one legal entity spanning two operational account holders for a period of time.</p> <p>The Bank's internal procedures codify and sequence the steps the Bank would take to effect the transfer of an RTGS account/CHAPS participation to a purchaser/bridge bank. The transfer could occur at any time, but the Bank's preference, as RTGS/CHAPS operator, is for it to take place outside of RTGS/CHAPS operating hours i.e. overnight or at the weekend. Planning is undertaken in coordination with the broader resolution timetable.</p>
Bank (or building society)	The insolvency process by which the part of a failed firm not transferred to a private sector purchaser or bridge bank	The RTGS Account/CHAPS direct access would not be left in the BAP, but transferred to the private sector purchaser/bridge bank – contractually and/or through the property transfer.

Strategies for managing a failing firm	Definition ⁶	Likely Bank action as operator of RTGS and CHAPS
administration procedure (BAP)	is wound up. This part of the firm can be required to continue to provide any services (for example, technical infrastructure, or mortgage servicing) needed by the new owner of the transferred business until permanent arrangements for those services can be put in place, after which it is wound up.	The BAP would be required to provide services on which the bridge bank/private sector purchaser relies for CHAPS/RTGS participation unless the relevant technical infrastructure and staff were part of the transfer. The Bank as operator of RTGS/CHAPS will take its lead from, and in coordination with, the actions of the Bank as resolution authority.

3. Key reference documents referred to in the Bank's response to the FSB survey on Continuity of Access to FMI for firms in resolution

Document	Link
RTGS/CHAPS response to FSB survey on Continuity of Access to FMI for firms in resolution	https://www.bankofengland.co.uk/-/media/boe/files/payments/continuity-of-access-rtgs-chaps.pdf
RTGS/CHAPS 2020 PFMI Self-assessment	https://www.bankofengland.co.uk/-/media/boe/files/payments/rtgs-and-chaps-2020-pfmi-self-assessment.pdf
CHAPS Reference Manual (CRM)	https://www.bankofengland.co.uk/-/media/boe/files/payments/chaps/chaps-reference-manual.pdf
Sterling Monetary Framework (SMF) Terms and Conditions	https://www.bankofengland.co.uk/-/media/boe/files/markets/sterling-monetary-framework/terms-and-conditions.pdf
Settlement Account Policy	https://www.bankofengland.co.uk/-/media/boe/files/payments/boesettlementaccounts.pdf
RTGS Mandate	https://www.bankofengland.co.uk/-/media/boe/files/payments/rtgs-mandate-and-annexes.zip
The Bank of England Approach to Resolution	https://www.bankofengland.co.uk/-/media/boe/files/news/2017/october/the-bank-of-england-approach-to-resolution.pdf