

Minutes

Meeting:	FCA Board	
Date of Meeting:	12 & 13 December 2018	
Venue:	12 Endeavour Square, London, E20 1JN	
Present:	Charles Randell (Chair)	
	Andrew Bailey	Ruth Kelly
	Catherine Bradley	Christopher Woolard
	Amelia Fletcher	Jane Platt
	Nick Stace	
	Sarah Hogg	
In attendance:	Set out in Annex A	
Apologies:	Sam Woods	

1 Quorum and declarations of interest

- 1.1 The meeting noted there was a quorum present and proceeded to business.
- 1.2 None of the Board members present declared an interest in the matters to be considered at the meeting.

2 Board Strategy Day – next steps

- 2.1 The Board discussed and approved the next steps arising from its Strategy Day and the actions, proposed timings and business owners.
- 2.2 In particular, the Board considered the need to periodically receive a briefing on the FCA's preparedness for crisis situations, including consideration of the triggers and how those triggers might change in the future. The Board was keen to understand the impact of a severe economic downturn on the sectors regulated by the FCA and the FCA's preparedness to respond to this.

3 EU Withdrawal Update - Monthly Update and EU Policy Statement

- 3.1 The Board received an update on developments in relation to EU negotiations, the situation in the UK and a summary dashboard of the key issues that could impact each sector of the industry in the event the UK were to leave the EU next March without an implementation period and/or other elements of a deal.
- 3.2 The Board also discussed the development of the communications strategy.
- 3.3 The Board was informed of the work underway to map the consumer journey through the information available from different sources and to develop consumer content. A joint

communication working group with representatives from the Financial Ombudsman Service (FOS), the Financial Services Compensation Scheme (FSCS) and the Money Advice Service (MAS) had been established to share upcoming activity and plans. Engagement with other consumer organisations and trade associations was also taking place.

3.4 The Board noted that a communication plan for firms was also in place and Supervision was working with firms.

3.5 The Board discussed the risks associated with the continued uncertainty in the dates of publication of Statutory Instruments.

- **agreed** that for Handbook and Binding Technical Standards (BTS) amendments proposed post-November 2018, consultations should be limited rather than issuing a full public consultation
- The Board **agreed** in principle that there should be an expedited governance process for finalising the Brexit Policy Statement which may include extraordinary committee meetings and, in some limited instances, delegation of authority to accountable executives.
- **noted** the consent and consultation processes for BTS that were shared with the Bank of England (Bank)/Prudential Regulation Authority (PRA)

4 Minutes of the FCA Board meeting

4.1 The Board **approved** the minutes of the FCA Board meeting held on the 12 and 13 December 2018.

5 Matters arising

5.1 The Board **noted** the progress with the matters arising from previous meetings.

6 Draft Minutes

6.1 The Board noted the draft minutes of the Audit Committee meeting held on the 29 November 2018.

7 Updates

7.1 The respective Chairs gave an update from the following meetings:

- External Risk & Strategy Committee meeting held on the 29 November 2018.
- Oversight Committee meeting with the Financial Ombudsman Service (FOS) held on the 20 November 2018.
- Oversight Committee meeting with the Money Advice Service (MAS) held on the 20 November 2018.
- Oversight Committee meeting with the Financial Services Compensation Scheme (FSCS) held on the 20 November 2018.
- Payment Systems Regulator Board meeting held on the 22 November 2018.
- Remuneration Committee meeting held on 12 December 2018.

(Jonathan Davidson joined the meeting and Mark Steward left)

8 Report from the Chief Executive

8.1 The Board discussed Mr Bailey's report on developments since the last meeting, including:

- Defined Benefit Pension Transfers - the latest phase of work looking at advice given to consumers in transferring out of defined benefit pension schemes had started. As per the commitment in the 2018-19 Business Plan, data would be gathered from advisory firms with the defined benefit pension transfer permission.
- Enforcement Insider Trading Case - the Board was updated on the outcome of the insider trading case, where the jury failed to reach a majority verdict in the case against a former UBS compliance officer and associate accused of making profits using confidential deal information.
- The Board discussed the progress on the publication of the fuller account of the investigation into RBS GRG, including the approach and timescales for Maxwellisation.

9 High Cost Credit Programme - Other High Cost Credit Products and Alternatives Project

9.1 The Board considered the proposals to address harms in the home-collected credit, catalogue credit, store cards and retail finance markets as part of the High-cost Credit Review Programme. The Board also considered the conclusions in relation to further analysis undertaken on persistent debt among customers of home-collected credit, proposals to consult on a package of remedies on Buy Now Pay Later (BNPL) and the intention to finalise non-Handbook guidance on credit broking for registered social landlords (RSLs).

9.2 The Board focused on the supervisory approach to the measures and noted that as part of the supervision operating model, the firms impacted by the proposals were all supervised as part of a portfolio.

9.3 The Board also discussed the proposal to finalise guidance to encourage RSLs to help their tenants source essential household goods and less expensive forms of credit. The Board noted that the aim was to clarify that referring tenants to credit providers, credit brokers and providers of goods on hire was likely to constitute the regulated activity of credit broking, and therefore require FCA authorisation. The Board said it would be helpful for the feedback statement on the finalised guidance to clarify that private landlords were subject to the same requirement to be authorised for credit broking as social landlords.

9.4 The Board **approved**:

- final rules and guidance - FCA(18)209: Consumer Credit (High-Cost Credit) Instrument 2018
- further consultation proposals on Buy Now Pay Later and a further update on alternatives to high-cost credit

The Board also **noted**:

- conclusions in relation to the further analysis undertaken on persistent debt among customers of home-collected credit
- finalised non-Handbook guidance for registered social landlords ('RSLs') would be published as part of the CP/feedback statement.

10 Claims Management Policy – Post Consultation

- 10.1 The Board was presented with proposals to:
- a) make various general conduct of business rules and other Handbook Rules to Claims Management Companies (CMCs) to reflect the current rules applicable to CMCs and address concerns with CMCs' conduct.
 - b) make fees rules for CMCs; and
 - c) publish a Policy Statement (PS) on CMCs.
- 10.2 The proposed provisions in the CMC instrument contained guidance on the GDPR. The presenting team recommended that some further guidance should be added to the Board instrument to make clear that the FCA would normally expect firms to obtain consent before processing personal data and would only expect firms to be able to rely on the legitimate interests condition (under the GDPR) very occasionally. The presenting team explained that the ICO had agreed the approach. The Board agreed that recommendation.
- 10.3 The Board also discussed the structure of application and periodic fees for CMCs.
- 10.4 Following consideration, the Board **approved**:
- the publication of the Policy Statement (PS);
 - the making of the following instruments containing final rules and guidance on CMCs and fees for CMCs:
 - Claims Management Instrument 2018; and
 - Fees (Claims Management Companies) Instrument 2018.

(Mark Steward returned to the meeting)

11 Authorised push payment fraud – extending the jurisdiction of the Financial Ombudsman Service (FOS)

- 11.1 The Board considered the proposals to require receiving payment service providers (PSPs) to handle authorised push payments (APP) fraud complaints in line with the FCA complaints handling rules in the Dispute Resolution: Complaints sourcebook (DISP) and to extend the jurisdiction of the Financial Ombudsman Service (FOS) to allow it to adjudicate APP fraud complaints made to receiving PSPs.
- 11.2 Following consideration, the Board **agreed**:
- To extend the FOS's compulsory jurisdiction to allow eligible complainants to refer these complaints to the FOS in the normal way.
 - The changes to the Dispute Resolution: Complaints sourcebook (DISP) and the Glossary, reflecting the policies, as final.
 - the application of the rules were also mirrored in the voluntary jurisdiction overseen by the FOS

12 Financial Ombudsman Service (FOS) Budget 2019/20

- 12.1 The Board was presented with the proposed budget for 2019/20. The Board noted that the key issues regarding the budget were the assumption made on future case volumes, an increase in short term lending cases, and the implications of these for resourcing and operational efficiency.

- 12.2 The Board noted that the total expenditure was forecasted at £332.2m with a £36m deficit. The FOS proposed to fund the deficit by drawing from its reserves to fund PPI activity. The budget for 2019/20 would be funded from case fees, group fees, the levy and reserves. The FOS was proposing to increase the levy to cover their increased jurisdiction to include larger SMEs, the introduction of the CMC regime and an under recovery from the insurance tariff block. The Board noted that the proposals had been discussed with key stakeholders, who were broadly supportive, although it was anticipated that a small group would remain dissatisfied.
- 12.3 The Board asked Caroline Wayman for assurance of FOS's preparedness for the anticipated significant changes in jurisdiction in the coming months. Caroline Wayman explained the actions being taken and the assurance being provided; the organisation was heavily investing in increasing its capabilities and the programme was on track. Recruitment had commenced for the additional expertise necessary. The Board emphasised of continuing to track key milestones and the importance of providing robust assurance of the programme.
- 12.4 The Board **approved** the FOS Budget for consultation.

13 Suspicious Activity Reporting (SARs) reform and the Bank Account Register (BAR)

- 13.1 The Board discussed proposals in relation to SARs reform and the BAR.

14 Fairness of variation terms in financial services consumer contracts under the Consumer Rights Act 2015

- 14.1 The Board was presented with key changes to the Finalised Guidance. The Board noted that the consultation guidance had set out the FCA's understanding of how the law on unfair terms operates in the context of variation terms in financial services contracts and set out factors that firms may wish to consider when drafting unilateral variation terms that were likely to contribute to terms meeting the requirements of the unfair terms legislation. The Board was informed that all the consultation responses had been considered, as well as the expected impact of the guidance, which had now been finalised.
- 14.2 The Board **approved** the:
- Finalised Guidance on the Fairness of variation terms in financial services consumer contracts under the Consumer Rights Act 2015;
 - publication of the Finalised Guidance and accompanying Summary of Feedback.

15 Monthly reports from the Independent Panels

The Board reviewed and discussed the reports from the Financial Services Consumer Panel (FSCP), FCA Smaller Business Practitioner Panel (SBPP) and Markets Practitioner Panel (MPP). Topics covered at the meetings included MiFID post-implementation review and Brexit communications with smaller firms.

16 Rules and Guidance to be determined

- 16.1 The Board **passed** the resolution set out in Annex B.

17 Decisions of the Board

- 17.1 The Board **approved** the:
- Competition Decisions Committee (CDC)

- appointment of Simon Polito, Lesley Ainsworth, Tim Tutton, David Thomas and Alasdair Smith for an initial three year term;
- reappointment of Stuart McIntosh for a further term to 30 June 2019 as member of the FCA CDC.
- Finance Policy
 - the changes to the Investment section (3) of the FCA Finance Policy as a result of ring-fencing legislation impacting FCA investment counterparties used for treasury purposes;
 - updates to the Funding section of the Finance Policy, to remove Premium Credit Limited as the FCA smaller fee-payers no longer use the facilities offered by Premium Credit Limited and include 'HM Treasury (Illegal Money Lending Levy)' to the list of related parties on whose behalf the FCA collects fees;
 - additional guidelines for staff awaydays and events as part of the FCA Travel and Expense Policy.
- Money Advice Service (MAS)
 - The changes to the MAS Articles of Association as set out in the paper presented to the meeting.

18 Minutes of ExCo meetings

18.1 The Minutes of ExCo meetings held on 18 September 2018 & 17 October 2018 were noted.

19 Minutes of the ERPC Meetings

19.1 Minutes of ERPC meetings held 24 September 2018, 4, 11 & 18 October 2018, 1 & 5 November 2018 were noted.

19.2 The Board noted the forward agenda.

20 Any other business

20.1 There being no further business, the meeting closed.

Charles Randell
Chairman

ANNEX A: Attendees

Attending all, or substantially all, of the meeting:

Megan Butler	Director, Supervision - Investment, Wholesale and Specialist
Alana Christopher	Deputy Company Secretary
Jonathan Davidson	Director, Supervision, Retail and Authorisations
Nausicaa Delfas	Director, International
Georgina Philippou	Chief Operating Officer
Sean Martin	General Counsel
Simon Pearce	Company Secretary

Attending for the following items:

2	Richard Monks	Head of Department – Strategy
3	Greg Sachrajda	Head of Department – International Delivery
	Lee Foulger	Head of Department – International
	Tim Rowe	Manager – Brexit Policy
	Martin Boffey	Manager – GCD EU Coordination Team
	Andrew Whyte	Director – Communications
	Richard Monks	Head of Department – Strategy
	Nick Jeffs	Manager - EU Withdrawal Communications Team
9	Graeme McLean	Head of Department – High Cost Credit Review
	Neil Marshall	Manager – High Cost Credit Review
10	Nisha Arora	Director – Consumer & Retail Policy
	Garry Hunter	Manager – CMC Team
	Samuel Duffett	Manager – GCS Banking, Credit and Competition
	Rob Muskett	Technical Specialist – CMC Policy
	Mark Hunnable	Manager – FIN-Revenue
11	Nisha Arora	Director – Consumer & Retail Policy
	Andrea Ferguson	Manager – CASS & Redress

	Philippe Marie	Technical Specialist – CASS & Redress
	Mark Threipland	Head of Department – GCD Investment, Insurance and Redress
12	Caroline Wayman	Chief Executive, Financial Ombudsman Service
	Julia Cavanagh	Chief Financial Officer, Financial Ombudsman Service
13	Alison Barker	Director – Specialist Supervision
	Andrea Bowe	Director – WUBI
	Jennifer Long	Head of Department – Specialist Supervision
14	Karina McTeague	Director – General Insurance
	Sarah Rose	Technical Specialist – Culture & Governance
	Frosoulla Kyriacou	Technical Specialist - GCD Investment, Insurance and Redress

Other relevant Associates also attended the meeting.

ANNEX B: Resolution

The Board of the Financial Conduct Authority resolves to make the following instruments:

Consumer Credit (High-Cost Credit) Instrument 2018 (FCA 2018/53)

Periodic Fees (2018/19) and Other Fees (No 2) Instrument 2018 (FCA 2018/55)

Claims Management Instrument 2018 (FCA 2018/56) (FOS 2018/6)

Payment Services (Amendment) Instrument 2018 (FCA 2018/57)

Securitisation Regulation Implementation Instrument 2018 (FCA 2018/58)

Fees (Claims Management Companies) Instrument 2018 (FCA 2018/59) (FOS 2018/8)

Dispute Resolution: Complaints (Authorised Push Payment Fraud) Instrument 2018 (FCA 2018/60) (FOS 2018/5)

Small Business (Eligible Complainant) Instrument 2018 (FCA 2018/61) (FOS 2018/7)

Personal Current Accounts and Overdrafts (Information and Tools for Customers) (Amendment) Instrument 2018 (FCA 2018/62)

The Board approved the making by the Board of the Financial Ombudsman Service Ltd of that part of the following instruments which falls within the responsibility of that organisation:

Claims Management Instrument 2018 (FCA 2018/56) (FOS 2018/6)

Fees (Claims Management Companies) Instrument 2018 (FCA 2018/59) (FOS 2018/8)

Small Business (Eligible Complainant) Instrument 2018 (FCA 2018/61) (FOS 2018/7)

Dispute Resolution: Complaints (Authorised Push Payment Fraud) Instrument 2018 (FCA 2018/60) (FOS 2018/5)

The Board approved the near final rules

Enforcement (EU Securitisation Regulation) Instrument 2019

Securitisation Regulation Implementation (Fees for Third Party Verifiers) Instrument 2019