

ANNEX 2

PROTOCOL

For the conduct of the independent investigation into the events and circumstances surrounding the failure and placing into administration of London Capital & Finance Plc ("LC&F") pursuant to the Direction from HM Treasury to the Financial Conduct Authority ("FCA") on 23rd May 2019

A. Introduction

1. Dame Elizabeth Gloster (hereafter "you") has been appointed by the FCA, to carry out an independent investigation into the events and circumstances surrounding the failure and placing into administration of LC&F.
2. The scope of the investigation is set out in the Direction issued to the FCA on 23rd May 2019 by Her Majesty's Treasury ("HMT") pursuant to section 77 of the Financial Services Act 2012 ("the Direction"). The Direction therefore stands as the Terms of Reference for the investigation. It also reflects the statutory requirement that at the conclusion of the investigation the FCA must make a written report to HMT.
3. This Protocol sets out the procedures under which the investigation is to be carried out, reflecting the requirement for this investigation to be, and to be seen to be, independent.

B. Administrative Matters

4. You will be given specific individual contacts at the FCA, including the Accountable Executive ('AE') to whom the Sub-Committee of the Board has delegated responsibility for oversight of this investigation.
5. The AE will be supported in his/her role by a Project Review Board which will provide advice to the AE when he/she requests it but which will not have any delegated decision-making powers.
6. To facilitate you in conducting the investigation, particularly in relation to requesting and obtaining relevant documents and information, a dedicated email inbox for communications relating to the investigation has been set up. You should send communications relating to the investigation to this inbox as this will ensure that they are logged and actioned efficiently.

C. Documents, other information and meeting

Documents: requests and production

7. You will send all requests for the production of relevant documents held by the FCA (to include, for the purposes of this Protocol, documents, information and communications in hard copy and in electronic form) to the email address referred to in paragraph 6 above. Such requests will set out the documents or class of documents requested for production.
8. Provided that the documents requested for production are within the FCA's power, custody or possession, they will be provided to you either in hard copy or in electronic form (via a secure IT route) as soon as possible. No such documents will be withheld from you.
9. Where documents are not within the FCA's power, custody or possession you may either contact the relevant organisation directly or send a request to the FCA via the email address referred to in paragraph 6 above, who will contact the relevant organisation and request the documents on your behalf.

General information requests and general explanations

10. In the event that you require other information and/or explanations from the FCA as to how it carries out its regulatory activities, and falling within the scope of the Direction, you will send a request to the email address referred to in paragraph 6 above.
11. The FCA will respond as soon as possible to any such request.
12. In the event that you require other information and/or explanations relating to the activities of another organisation, falling within the scope of the Direction, you may either contact the relevant organisation directly or send a request to the FCA via the email address referred to in paragraph 6 above, who will contact the relevant organisation to request its assistance and obtain the relevant information and/or explanations for you.

Meetings with individuals

13. In the event that you wish to meet with any individual currently or formerly employed by the FCA, you will notify the FCA of the individuals whom you wish to meet (using the email address referred to in paragraph 6 above, attaching a letter from you to the individual for the FCA to pass on to the individual).

14. The FCA will endeavour to secure the attendance at a meeting of any identified individuals who are current or former employees of the FCA. It should be noted, however, that attendance by an individual at a meeting with you is not compulsory under statutory powers.
15. Any meetings with individuals not within paragraphs 13 and 14 will be arranged by your team (the Independent Reviewer's team).
16. Meetings will, to the extent possible, be arranged at a mutually convenient time for yourself and the individual. For individuals who are current or former employees of the FCA, you will provide to the FCA, a reasonable time in advance of the meeting (i) a broad outline of the topics you wish to cover during the meeting and (ii) a list of the principal documents you may wish to reference during the meeting (together the "meeting information"). The FCA will pass the meeting information to each individual as soon as possible after receipt and in advance of the meeting between that individual and yourself. Meetings will be recorded by your professional services team and a transcript provided to the individual¹. The information obtained by reason of the interviews may be relied upon by you in preparing your report.
17. If you require it, the FCA will make available for any meeting a suitable room at its premises at 12 Endeavour Square, Stratford.

Third party assistance

18. You may contact third parties directly for assistance in relation to the investigation and the FCA will, to the extent that it is able to do so, facilitate such assistance, if requested by you (for the avoidance of doubt this is not in relation to your professional services team).

Escalation

19. The FCA is committed to providing you with assistance to facilitate your conduct of the investigation. However, in the event that you consider that the FCA is not providing you with the co-operation or information that you reasonably require to fulfil your responsibilities, please escalate matters promptly to the Chairman of the FCA or the Senior Responsible Officer at HMT.

¹ For the avoidance of doubt, the transcripts will not be made available to the FCA. The transcripts, however, will be retained by the FCA after the review has been completed in a secure electronic area, in accordance with the FCA's Records Management Policies and Standards

D. Legal privilege and confidentiality

Privilege

20. It may be necessary for the FCA to provide you with information that is subject to the FCA's legal privilege. The FCA will not withhold documents from you on the grounds of legal privilege but, for the avoidance of doubt, the provision of such material to you does not constitute a more general waiver of legal privilege.
21. You may refer to privileged documents in your report but the FCA will decide, after consulting you, whether to redact parts of the material provided to persons as part of the representations process referred to in paragraphs 25 and 26 below or of the final report before its submission to HMT on the basis that this is necessary to protect and preserve privilege. If the FCA considers that redaction is necessary, it will include in the report to be submitted to HMT reasons for the redaction.

Confidentiality

22. It may be necessary for the FCA to provide you with information that is deemed to be confidential within the meaning of section 348 of the Financial Services and Markets Act 2000 ("FSMA").
23. You may refer to such confidential information in your report. If required it will be the responsibility of the FCA, for the purposes of such references, to obtain the consent of the person from whom the information was obtained by the FCA and, if different, the consent of the person to whom it relates. If such consent is not obtained, you may nevertheless refer to such confidential information in your final report and the FCA will decide whether to suggest redactions when submitting the report to HMT on the basis of the restrictions in section 348 of FSMA. If the FCA suggests such redactions, it will include in the report to be submitted to HMT reasons for suggesting them.

Naming personnel

24. It is the policy of the FCA that employees at Director and above should be publicly accountable for the FCA's performance, so that employees below that level have a legitimate expectation that they will not be publicly identified in an investigation of this kind. If you consider that there are exceptional circumstances requiring the FCA to take action in respect of any employee below the level of Director, you will raise the matter with and identify such personnel to the Chairman of the FCA.

E. Representations Process

25. Insofar as you intend in your report to criticise individuals, groups of individuals whose members are identifiable or organisations, including the

FCA (both in its own right and/or as the successor of the FSA for actions pre-April 2013), you will (i) identify those individuals, groups or organisations (ii) provide them with a reasonable opportunity to make representations in relation to your proposed criticism and (iii) consider those representations before finalising your report.

26. The contacts referred to in paragraph 4 above will (i) assist you, if so requested, in deciding which individuals, groups or organisations should be given the opportunity to make representations and (ii) provide you with such administrative assistance as you may reasonably require for the purposes of conducting the representations process.

F. Governance and reporting

27. You will keep the AE informed in relation to the logistical progress of the investigation, but not in relation to matters of substance.
28. You should raise directly with the AE any matter which you consider to be so urgent or important that it needs to be disclosed to him/her.
29. You will provide a copy of the final draft of your report to the AE for information only, unless in your discretion you consider it inappropriate to do so. The AE may at his/her discretion share, and discuss, the draft with the Project Review Board, Board Sub-Committee and subject matter experts.
30. To the extent that you consider it necessary for the FCA to address issues relating to factual accuracy, or confidential information pursuant to section 348 of FSMA or legal privilege, you may provide copies of the relevant sections of your draft report to the contacts referred to at paragraph 4 above. These contacts will, with your specific and express permission, be entitled to share these sections with appropriate individuals at the FCA for the purposes of assisting you and finalising the draft report.

G. Publication

31. The FCA will arrange for your final report to be submitted to HMT which will consider whether to publish it in full or whether part(s) of it should be withheld from publication (in accordance with section 82 of the Financial Services Act 2012).

H. Interim Report

32. If you produce an interim report, that report will be subject to all aspects of this Protocol.