

## Minutes

Meeting:	FCA Board	
Date of Meeting:	16 & 17 March 2016	
Venue:	25 The North Colonnade, Canary Wharf, London E14 5HS	
Present:	Andrew Bailey	Tracey McDermott
	Catherine Bradley	Jane Platt
	Amanda Davidson	Sir Brian Pomeroy
	Amelia Fletcher	Christopher Woolard
	John Griffith-Jones (Chair)	
In attendance:	Set out in Annex A	

### Quorum and Conflicts

The meeting noted that Mr Bailey had given apologies for the second part of the meeting which took place on Thursday 17 March. The meeting noted there was a quorum present and proceeded to business.

### 1 Specific items of business

#### 1.1 HMT Enforcement Review and Green Report

The Board received the paper which proposed establishing a new process for partly-contested cases that would give the option for the FCA and subjects under investigation to agree various elements of a case and have the RDC determine the contested elements.

The Board noted the following points:

- The proposal would enable the FCA to respond to concerns raised about the present settlement regime, such as lack of transparency in decision making;
- The proposal would mean final decisions may carry more weight as decisions which follow a contest tend to be more detailed, and the FCA would be better able to respond to firms and individuals who complain that the present settlement process was unfair;
- The proposal would allow the FCA, and subjects under investigation, to obtain the benefits of reaching agreement, namely a more expedited outcome and resource savings, by narrowing the disputed issues and avoiding a fully contested hearing on all issues. The process would be governed by an issue-focused settlement agreement;

- It was possible that there may be an increase in cases against individuals in the future, following the introduction of the Senior Managers and Certification Regime, which together with the proposal may increase the workload of the RDC. The Chair of the RDC confirmed that he currently expected the RDC to be able to cope with any such increase in workload; and
- It was intended to consult on the proposal within the forthcoming Consultation Paper on the proposed implementation of recommendations of the HM Treasury Enforcement Review and the Report by Andrew Green QC on the FSA's enforcement actions following the failure of HBOS plc;

The Board considered the following options:

- Option 1 - allow firms or individuals to agree facts and liability with the Settlement Decision Makers (SDMs) and for the RDC to decide on the appropriate penalty;
- Option 2- allow firms or individuals to agree all the relevant facts and contest liability and penalty before the RDC; or
- Option 3 - allow firms or individuals to agree a combination of facts and liability which substantially narrows the issues with the SDMs, but leaving the RDC to decide on the remaining contested issues.

After discussion, the Board agreed to consult on option 1 but agreed that options 2 and 3 should be referred to in the consultation as possible alternatives. The Board also delegated authority to Ms McDermott to finalise the drafting of the Consultation Paper.

## **2 Report from the Chief Executive**

a) The Board received the report from Ms McDermott and noted the following points:

- The Chancellor's announcement that regulation of Claims Management Companies (CMCs) would become the responsibility of the FCA. Ms McDermott noted that the timetable was yet to be confirmed but a working group would be established to consider the arrangements for future regulation of CMCs;
- The findings of the thematic review into the treatment of long-standing customers in the life insurance sector had been published;
- The Chancellor's announcement regarding its plans to restructure the delivery of public financial guidance and replace the Money Advice Service. The FCA would work with MAS and the Treasury to ensure a smooth handover; and
- In March the FCA would publish final rules on the future regulatory treatment of consumer credit act first charge mortgages, the Innovative Finance ISA and regulated activity of advising on peer-to-peer agreements and smarter consumer communications.

b) Financial Advice Market Review Final Report

The Board received the report from Ms McDermott and accepted the Financial Advice Market Review (FAMR) recommendations directed to the FCA.

## **3 Report from the PRA**

The Board received an oral update from Mr Bailey and noted and discussed the following key points:

- The successful launch of the new Senior Managers Regime, which had commenced on the 7 March 2016; and
- Discussions were being held with firms in relation to potential implications of the outcome of the European Referendum.

The meeting adjourned at 7.00pm.

The meeting re-convened at 10.00am on Thursday 17 March.

#### **4 Minutes and meetings**

##### **4.1 Minutes of the FCA Board meeting**

The Board approved the minutes of the FCA Board meetings held on 24 and 25 February 2016 and 1 March 2016.

##### **4.2 Draft minutes of the Oversight Committee**

The Board noted the draft minutes of the Oversight Committee meetings held on 18 and 24 February 2016

##### **4.3 Update on the Audit Committee meeting**

Sir Brian Pomeroy provided an oral update of the meeting on 14 March and highlighted the following:

- The internal audit findings of recent reviews;
- The Three Year Internal Audit Plan had been approved by the Audit Committee. The Plan would ensure a broad reach across the organisation;
- The NAO's interim progress report on the 2015-16 financial statement audits had been received;
- the FCA Pension Plan Final Salary Section Investment Strategy had been discussed;
- MIFID II/MAR and Sourcing Programme related contracts had been reviewed;
- The Committee received an update on completion of actions from the Davis Review; and
- The Committee noted the operational risk report and, in particular, the desirability of changing behaviour rather than introducing new processes where issues were identified.

##### **4.4 Update on the PSR Board meeting**

Mr Griffith-Jones provided an oral update of the meeting on 9 March 2016 and highlighted that the two recent market reviews on market infrastructure and indirect market access had been published and had received largely factual press coverage and a positive initial reception. The PSR Board also received the PSR Panel effectiveness report, agreed final guidance on certain provisions of the interchange fee regulation and discussed governance and operational arrangements of the PSR.

##### **4.5 Matters arising**

The Board noted the progress with the matters arising.

#### 4.6 Monthly reports from the Independent Panels

The Board noted the Panel reports and in particular the following points were discussed:

- The concerns of the Consumer Panel regarding the Panel's external communications. John Griffith Jones agreed to discuss further with the Consumer Panel Chair;
- The Practitioner Panel was encouraged by the FCA's thought leadership in the area of big data;
- The value of the Panels in the House View development and the appropriate timing of engaging with the Panels;
- The concerns raised by the Consumer Panel about the proliferation of unauthorised websites providing services that look and feel like regulated advice but which do not offer consumers the same protections. The Board noted that the FCA was looking into this; and
- The concerns also raised by the Consumer Panel in relation to the lack of information on the FCA Register about passported firms which could potentially mislead consumers. The Board noted that there was no central repository for this information but work was being done at an IOSCO level to determine what could be done internationally. Ms McDermott reported that the executive was looking further at this although it was also noted that the work being done via MIFID II could potentially help.

### 5 Specific items of business (cont'd)

#### 5.1 House View – Retail Lending

The Board received the paper and noted the following points:

- The Retail Lending House View covered borrowing and related needs for retail consumers and small-medium sized enterprises (SME) with less than £25m turnover and focused on five subsectors including mortgages and consumer credit;
- In developing the House Views it had been identified that there was a need to articulate an FCA vision for the sector and to describe what a well-functioning sector should look like and what it would be in five years;
- Social and economic external factors driving change and projected trends in the sector include ageing population and more indebted households, government policy and regulation. It was also noted that technology had been a significant factor and would continue to impact the sector in the future;
- It was noted that competition issues were captured in the House View lens assessments, although themes were not specifically identified as either competition or regulatory issues as the focus was on overall risks to the FCA's objectives rather than the potential tools to resolve them. Risks and interventions would be prioritised at the next stage and this would look further at competition; and
- Discussions were being held about how the information underpinning the House Views could be used more in external publications.

5.2 The Board noted and agreed the content of the House View. The Board acknowledged the Retail Lending House View vision would be worked up further by the team and brought back to the Board, along with the visions for the other House Views, as part of the next stage of House view development.

5.3 Final sign off of the FCA Business Plan

The Board discussed the final draft of the Business Plan and noted the following points:

- Since the last consideration by the Board, the Plan had been updated to include references to FAMR, CMCs and macroeconomic changes such as the EU Referendum and Enterprise Bill. The Plan would also reflect the recent announcement in relation to the Money Advice Service;
- Final work streams to be agreed by the Executive for inclusion in the Plan;
- The Plan should also highlight risks resulting from regulation;
- The near final draft would be shared with the Treasury; and
- The Board acknowledged the efficient prioritisation process from which the Plan had been developed.

The Board approved the Business Plan for publication, subject to final editorial changes.

#### 5.4 2016/17 Consumer Credit fee-rates and 2015/16 FCA underspend treatment

The Board received the paper which set out the basis of calculating the fee-rates for Consumer Credit firms. The Board noted the following points:

- £37.7m would be allocated across the two Consumer Credit fee-blocks reflecting the type of consumer credit business firms were permitted to undertake;
- There was a requirement to change the basis of allocating fee-rates from those consulted on in March 2014 as these had been based on assumptions that had not proved to be borne out in practice. In particular, the number of firms with limited permission has been much higher, and the number of firms with full permission much lower, than estimated. As a consequence, the original fee rates would result in a significant under-recovery of the required annual funding requirement (AFR); and
- The proposal would not change minimum fees for limited permission and full permission firms. It would also not change the variable fee for limited permission firms but would increase the full permission variable fee by 68%.

The Board also noted the proposal to retain the 2015/16 forecast underspend of £12.6m and considered alternatives, including returning the sum to industry or reducing the pension deficit. After discussion, and taking account of future expenditure such as the move to Stratford and the forthcoming tri-annual pension fund valuation, the Board concluded that it was appropriate to retain the sum at this time.

The Board approved:

- for consultation the basis for calculating 2016/17 Consumer Credit fees; and
- retaining the £12.6m underspend to improve the balance sheet deficit on the understanding that the reserve could be used to cover expenditure related to the move to Stratford or to reduce the pension deficit following the valuation.

#### 5.5 Sourcing Programme Application Development & Test Contract Approval

The Board received the paper and noted the following points:

- As part of the Sourcing Programme, the procurement process was underway for Application Development (for making changes to key existing applications) and Test Services (for testing all applications for both operational run services and for project

and programme delivery). The programme will select a preferred bidder(s) in April. The total value of the services is approximately £20m;

- Two procurement processes were running in parallel for these services which may result in one supplier providing both services or different suppliers for each. The risks associated with each of these outcomes and the ways of managing these risks were discussed;
- The key terms and structure of the draft contract; and
- A collaboration contract was being developed to align the working relationship of all suppliers for the Sourcing Programme.

The Board agreed the key terms of the new contract and agreed that a paper outlining the details of the approved final supplier, the final contract, if changed, and the collaboration contract should be submitted to the Board for approval.

## 5.6 MiFID II & MAR Programme Outline Business Case

The Board considered the outline business case and was provided with an update on the Market Abuse Regulation (MAR), Markets in Financial Instruments Regulation (MiFIR) and Markets in Financial Instruments Directive II (MiFID II) programme and the implementation timelines. The Board discussed a number of areas and noted the following points:

- The programme was currently forecasting to spend £28M on external implementation costs;
- The total costs of the programme were estimated to be in the range of £47.8M (target) to £60.6M (upper);
- The preferred bidder had been identified and preferred supplier negotiations were expected to conclude by mid-March;
- The programme would deliver a series of capabilities with a mixture of new and updated processes, data and technology changes. The MDP project would completely replace the Zen system, and there would be requisite changes to our major IS systems including TARDIS, INTACT, Chrysalis, Gabriel and BI;
- In replacing Zen, the FCA would create a large amount of intellectual property in the MDP system's business processing rules. Within the contract, the programme had created the provision to benefit from the use of this intellectual property, should the system be re-sold to other National Competent Authorities (NCAs) or third parties, via a license fee payment;
- The legal, reputational and operational risks associated with the commercial exploitation of the MDP intellectual property; and
- The Board requested that discussions are held with the preferred supplier to ensure that involvement of the FCA in the commercial exploitation of the MDP intellectual property was clearly limited to provision of factual information, having regard to reputational risk.

The Board:

- noted the total costs of the programme of £47.8M (target) to £60.6M (upper);
- approved the external spend of £28M for the programme;

- approved continued discussions around commercial exploitation of the MDP intellectual property; and
- subject to a satisfactory outcome to these discussions, delegated financial authority to the COO, Georgina Philippou to sign the MDP (Market Data Processing) Supplier Contract with the preferred supplier, for a current value of £34.1M (which includes implementation and running costs over six years).

After discussion, the Board agreed that key criteria for major procurement activities should be considered by the Audit Committee as the nature of procurement regulations limited the scope for contract negotiations at later stages without requiring the contract to be re-tendered.

## 5.7 Stakeholder Relationships

The Board considered a paper which proposed a model of stakeholder engagement for the Chairman and the Board which complemented the CEO and Executive Committee stakeholder engagement strategy and brought together different strands of stakeholder engagement at the FCA. The Board noted the following points:

- The strategy had been developed based on the recommendations from the 2014 FCA strategic review, the 2015/16 communication strategy and the 2015 board effectiveness review;
- The strategy proposed a stakeholder engagement model for the Board which aimed to make the most of Board members' existing stakeholder networks;
- To support consistent stakeholder engagement, the Communications division would provide and facilitate support to the Chair and the Board; and
- The requirement for a mechanism to capture the intelligence gathered by the Chairman and the Board through their engagement with stakeholders.

The Board supported the proposed model of engagement for the Chairman and the Board.

## 5.8 Governance of the PSR

John Griffith Jones updated the Board on recent discussions at the PSR Board on governance and the operational interaction between the FCA and PSR.

# 6 Decisions reserved to the Board

## 6.1 Rules & Guidance to be determined

The Board passed the resolutions set out in Annex B.

## 6.2 Decisions of the Board

The Board agreed:

- to appoint Bradley Fried as a Non-executive Director of the Payment Systems Regulator Limited (PSR) for a period of three years from 1 April 2016 until 31 March 2019;
- to appoint Baroness Hogg as an Employer Nominated Director and Chair of the FCA Pension Plan Trustee Company for a period of three years from 1 April 2016 until 31 March 2019;
- the Financial Ombudsman Service's final plan and budget for 2016/17;

- to re-appoint James Palmer as a member of the FCA Markets Practitioner Panel for three years from 1 April 2016 to 31 March 2019;
- to re-appoint David Bellamy as a member of the FCA Practitioner Panel and to appoint him as Deputy Chair of the Panel for three years from 1 April 2016 to 31 March 2019; and
- The Money Advice Service's (MAS) final budget for 2016/17. A meeting of the Oversight Committee would be convened to consider the revised Annual Plan MAS should adopt in light of the Chancellor's announcement that the organisation is to be wound down.

## **7 Papers for noting**

### **7.1 Minutes of the Executive Committee meetings**

The Board noted the minutes of the Executive Committee meetings held on 26 January and 9 February 2016

### **7.2 Forward agenda**

The Board noted the forward agenda.

## **8 Any other business**

There was none.

**Alana Christopher**  
**Assistant Company Secretary**

## **ANNEX A: Attendees**

Megan Butler	Director, Supervision, Investment, Wholesale & Specialists
Sarah Hogg	Non-Executive Director elect
Simon Pearce	Company Secretary
Alana Christopher	Assistant Company Secretary
Mark Threipland	Acting General Counsel
James Anderson	Head of Department, BTS - Head of Business Analysis & Architecture (for item 5.5)
Andrew Cotterell	Manager, EMO - S&D - Law, Policy & Internat'l - Policy (for item 1.1)
Jennifer Dalby	Manager, Business Planning & Prioritisation (for item 5.2)
Jonathan Davidson	Director, Supervision - Retail & Authorisations (for item 5.1)
Gina Gill	Manager, BTS Director's Office (for item 5.4)
Ruth Glazzard	Manager, Operations Team (for item 5.1)
Jo Hill	Director, markets Intel & Data Analysis (for item 5.1)
Mark Hunnable	Manager, Finance – Revenue (for item 5.3)
Brendan Joyce	Head of Department, Programme Management Group (for item 5.4)
Alex Nicoll	Manager, Financial Accounting/P2P (for item 5.7)
David Lawton	Director, Markets Policy & International (for item 5.5)
Graeme McLean	Head of Department, Banking, Lending & Distribution (for item 5.1)
Tim Parkes	Chair, Regulatory Decisions Committee (for item 1.1)
Georgina Philippou	Chief Operating Officer (for items 5.3, 5.4, 5.5 and 5.7)
Emma Roberts	Manager, Consumer Credit (for item 5.6)
Abigail Seal	Manager, Stakeholder Strategy (for item 5.6)
Philip Salter	Head of Department, Retail Lending (for item 5.1)
Mark Steward	Director, Enforcement & Market Oversight (for item 1.1)
Gavin Stewart	Head of Department, General Insurance & Protection (for item 5.5)
Emma Stranack	Head of Department, Business & Consumer Communications (for item 5.2)
Beverley Walker	Manager, Decision Making Committee Secretariat (for item 1.1)
Andrew Whyte	Director, Communications (for item 5.6)

Relevant associates and technical specialists also attended the meeting.

## **ANNEX B: Resolution**

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

Training and Competence Sourcebook (Qualifications Amendments No 14)  
Instrument 2016 (FCA 2016/16)

Small and Medium Sized Business (Credit Information) Instrument 2016 (FCA  
2016/17)

Small and Medium Sized Business Credit Information (Fees) Instrument 2016 (FCA  
2016/18)

Fees (Payment Systems Regulator) Instrument 2016 (FCA 2016/20)

Financial Services Compensation Scheme (Management Expenses Levy Limit  
2016/17) Instrument 2016 (FCA 2016/21)

Mortgage Contracts (Legacy CCA) Instrument 2016 (FCA 2016/22)

Mortgage Credit Directive (Amendment No 3) Instrument 2016 (FCA 2016/23)

Client Assets Sourcebook (Amendment No 9) Instrument 2016 (FCA 2016/24)

Peer-to-Peer Lending Instrument 2016 (FCA 2016/25)

Supervision Manual (Reporting) Instrument 2016 (FCA 2016/26)

Prospectus Rules Sourcebook (Omnibus 2 Directive Regulatory Technical Standards)  
Instrument 2016 (FCA 2016/27)

The Board resolves the making by the Board of the Financial Ombudsman Service Ltd of the following instrument:

Fees Manual (Financial Ombudsman Service Case Fees 2016/2017) Instrument 2016  
(FOS 2016/3)

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

Small and Medium Sized Business (Credit Information) Instrument 2016 (FOS  
2016/1)

Small and Medium Sized Business Credit Information (Fees) Instrument 2016 (FOS  
2016/2)

Mortgage Contracts (Legacy CCA) (FOS 2016/4)

Mortgage Credit Directive (Amendment No 3) Instrument 2016 (FOS 2016/5)

Peer-to-Peer Lending Instrument 2016 (FOS 2016/6)

The Board resolves to approve in principle the making of the following instrument and agreed that it would be made at a future date:

Banking: Conduct of Business Sourcebook (Disclosure by Non Ring-Fenced Bodies)  
(Amendment) Instrument 2016

The Board resolves to issue the Finalised Guidance entitled "Guidance on Small and Medium Sized Business (Credit Information) Regulations"