

## Minutes

Meeting:	FCA Board	
Date of Meeting:	25 July 2013	
Venue:	25 The North Colonnade, Canary Wharf, London E14 5HS	
Present:	Clive Adamson	Mick McAteer
	Andrew Bailey	Tracey McDermott
	Amanda Davidson†	Jane Platt
	Amelia Fletcher	Sir Brian Pomeroy
	David Harker	Lesley Titcomb
	John Griffith-Jones (Chair)	Martin Wheatley
In attendance:	Set out in Annex A	
Apologies:	N/A	

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### Quorum and Conflicts

The Chairman reported that Mr Bailey, Ms Davidson and Mr Pomeroy would join the meeting later. The Board noted there was a quorum present and proceeded to business.

Directors were asked to declare conflicts of interest at the start of any relevant items.

### 1 Minutes

#### 1.1 Minutes of the FCA Board meeting

The minutes of the FCA Board meeting held on 27 June were approved, subject to some minor changes which would be circulated to the Board.

#### 1.2 Matters arising

The Board noted the matters arising from previous meetings and actions being taken to address them.

### 2 Report from Committees and Independent Panels

#### 2.1 Update on the Oversight Committee meeting held on 24 July 2013

The Board received an oral update from John Griffith-Jones on the issues discussed at the Oversight Committee which included:

- a report from the National Audit Office on its initial findings in the Value for Money review of the Money Advice Service;

- the plans for debt advice provision;
- the allocation of MAS fees, which had been discussed with stakeholders and would be covered in the FCA's consultation on fees in October; and
- the statistics that MAS had collected relating to people in financial difficulty.

The Board noted that Lesley Titcomb would be stepping down from the Committee and agreed to appoint Chris Woolard as a member of the Oversight Committee with immediate effect.

## 2.2 Update on the NED visit to HMT on 8 July 2013

The Board received an oral update from Amelia Fletcher on a meeting between representatives of HM Treasury (HMT) and the new Non-Executive Directors. The meeting was an introductory session in which a number of issues relevant to HMT and the FCA were discussed.

## 2.3 Monthly reports from the Independent Panels

The Board noted the reports from the Independent Panels and noted in particular the following issue:

- Ms McDermott reported she would be meeting the Practitioner Panel to discuss one of its strategic priorities around the strategic impact of regulation, particularly the controlled use of enforcement and s166 reports.

# 3 Specific items of business

## 3.1 Financial inclusion and the FCA approach to access

The Board noted the report and discussed the following key points:

- the FCA had some discretion to interpret the access clause and the Board agreed that the FCA should take regulatory action within the consumer protection objective to address access issues; and
- Board members suggested that a lack of basic services where a substantial group of consumers were excluded from the market was, on the face of it, evidence that there was a lack of competition and that markets were not working well, unless the industry could prove that there was a social policy issue to be addressed.

Sir Brian Pomeroy joined the meeting at 10:50am

- the Board suggested options for regulatory action to encourage inclusion and encouraged the executive to embed access and inclusion into the work of the FCA and use it as a measure of success to show markets were working well;
- the Executive explained it would be taking certain action as a matter of course to assist in improving access; and
- the Board agreed that the need to have regard to ease of access should be a factor taken into account when looking at supervision and development of policy.

The Board agreed that the issue of access should be discussed again at a strategic level at the awayday.

## 3.2 Competition in specific sectors

The Board noted the presentation which described the way the Executive had used behavioural, competition and other economic analysis to identify possible priority markets

for study and the reasoning for those. In particular it praised the analysis as presented in the market mapping exercise and the method of prioritisation. The Board suggested that where there were areas that would be compatible with other organisations' objectives the analysis should be passed to them (e.g. OFT or DG Comp).

The Board agreed the use of the Market Heat Map as a tool for FCA prioritisation and the decision to potentially launch market studies in the following areas over the course of the next 18 months:

- Cash savings;
- Annuities dependent on the results of the current thematic work looking at whether individuals are disadvantaged by not exercising the option to look around; and
- A further wholesale focused issue in asset management / investment banking to be scoped and determined over the next few months

### 3.3 PCBS

The Board received the report and noted and discussed the following key points:

- the Board welcomed the opportunity to look at the approach and the philosophy of regulation of senior individuals; and
- the history of the approved persons functions which had built up over time.

The Board agreed:

- the direction of travel set out in the presentation;
- the identified key benefits, risks and issues emerging from PCBS; and
- that the FCA should commit to holding the FCA costs to the equivalent FSA costs for 2013/14.

Ms Davidson joined the meeting at 12.15pm

### 3.4 Performance Report

The Board noted the report and found the new format helpful. The Board discussed a number of the measures in the report including the following:

- queries regarding the service standards for authorisations and whether there had been any response to feedback received, which would be dealt with outside of the meeting;
- the measures around supervision, which would be reviewed in the discussion on Supervision in September;
- the variance in the budget to date and the likely outlook for the remainder of the year;
- the existing "people" measures in the report did not show trends; any hotspots in these areas, including turnover, would be highlighted in the CEO's report;
- the level of freedom of information requests;
- in regard to the outcome against objectives section of the pack, the Board said it might be of use to have an overview of all the sectors in each report, with a "detailed inspection" into one or two each quarter. The Board asked for an additional sector to be added on wholesale markets; and

- ExCo would be reviewing the performance report each quarter and in future Mr Wheatley would provide an overview to the report which set out his view of progress against objectives and significant risks to those.

### 3.5 Enforcement – detailed inspection

The Board noted the presentation from Ms McDermott and the specific measures pertaining to the Enforcement Division in the performance report. As part of the discussion and questioning that followed, the Board covered the following points:

- Ms McDermott was confident in the judgement of the Enforcement teams; she noted the internal independent legal review process and explained that external counsel was normally only used early in the process for criminal cases. In other cases they tended to be used later, e.g. as cases are heard at the Tribunal;
- the use of a strategy and operations team was assisting in resourcing early intervention work and supporting supervisors, as well as reviewing Management Information and managing projects;
- the Board noted the benefit of publicity for early intervention, which would be important to indicate potential consumer detriment and action that had been taken;
- if there is a trend of rising fines then there may be some pressure from the PRA with regards to the impact on capital and liquidity;
- the way in which the Enforcement team prioritised cases of consumer detriment; the Board encouraged the Executive to ensure this continued as an important factor; and
- the need to look at the overall strategy in line with supervision, particularly with regards to the focus on behaviours versus controls.

The Board reiterated its support for the Enforcement function and the approach that it was taking in relation to consumer detriment, recognising the restrictions on the Division's capacity were primarily limited by resources.

### 3.6 Briefing on the Financial Ombudsman Service Annual Review

The Board noted the presentation from Ms Ceeney, Chief Ombudsman and Chief Executive of the Financial Ombudsman Service. The Board noted the following key points:

- the number and nature of complaints, which were dominated by Payment Protection Insurance (PPI), had increased in all areas, it was believed this was because of an increase in awareness of the ability to complain and as a result of decreasing trust and harder economic conditions for both consumers and firms;
- the major sources of complaints were the largest banks, even if PPI was excluded;
- use of Claims management companies was declining and far less common outside of the "mass detriment" markets; the outcome of cases was similar whether a claims management company had been used or not;
- the Ombudsman Service had developed its service during the year, including increasing knowledge and expertise, improving training; looking at ways in which to improve efficiency; and increasing awareness and access;
- the uphold rates of complaints by the Ombudsman Service was seen as unacceptable and could be a sign that firms were not dealing properly with their complaints handling duties; the information on uphold rates by firm and sector was published by the Ombudsman Service on its website; and

- ways in which the FCA and the Ombudsman Service could work together to assist in changing behaviours of firms.

### 3.7 Consumer credit – fee and interim permission rules

The Board noted the report and that the Statutory Instruments to make the initial rules were not complete, however if these progressed through the legislative process, the Board would be asked to make the rules outside of the meeting cycle by correspondence.

The Board noted the issue arising as a result of the way the current regulator, the Office of Fair Trading (OFT) currently charged fees, which was a fee for an operational licence every five years. Firms had suggested that when FCA regulation began (and firms were subject to the new fees regime), they should receive a prorated refund of the five year fee - FCA and OFT were beginning to receive many complaints about this. The FCA believed this was a question for the OFT and had discussed this issue with it and HMT.

The FCA had agreed that it would administer a scheme for these refunds if funding was made available and would ensure that there is no associated net liability included in the Transfer Scheme.

The Board agreed that key issues to be addressed in the consultation paper due to be published at the end of September should be discussed at a special Board meeting early in September to ensure the Board had time to provide comment in time before the document is finalised.

## **4 Decisions reserved to the Board**

### 4.1 Rules & Guidance to be determined:

The Board made the six instruments set out in Annex B.

### 4.2 Matters requiring a decision of the Board

The Board discussed and approved:

- the revisions to the relevant sections of the Articles of Association of The Money Advice Service;
- the appointment of Andy Briscoe as a Director and as Chair of the Money Advice Service for a three-year term from 27 September 2013 until 26 September 2016 at £74,000 salary for at least 2 days a week commitment;
- the work that was proposed in response to the Financial Policy Committee's recommendations;
- the revisions to the relevant sections of the Articles of Association of the Financial Services Compensation Scheme Limited;
- the appointment of:
  - Stephen Jones as a member of the FCA Practitioner Panel from 1 August 2013 until 31 July 2016; and
  - Anne Richards as a member of the FCA Practitioner Panel from 1 November 2013 until 31 October 2016;
- the appointment of the Chair, Deputy Chair and three new members to the Regulatory Decisions Committee ("RDC") as follows:
  - Andrew Long as Chair of the RDC with effect from 1 September 2013 until 30 September 2014, or until such time prior to that date that a new Chair is

appointed, at his current salary £180,000 for 3 days a week commitment, pro-rated for a reduction in days worked per week;

- Peter Hinchliffe as a Deputy Chair (with additional operational and administrative duties) with effect from 1 September 2013 until 30 September 2014, at a fee of £94,000 for a 2 day a week commitment (and pro rata for an initial reduced commitment); and
- the appointment of Iraj Amiri, Richard Berliand and John Callender as members of the RDC with effect from 1 August 2013 until 31 December 2016.

#### 4.3 FSCS protection for deposits and investments for large unincorporated associations and partnerships

Ms Titcomb declared that she was one of the Executives responsible for implementing the EU Deposit Guarantee Schemes Directive (DGSD) and Investor Compensation Schemes Directive (ICSD) in 2001.

The Board received the report and discussed the issues arising from the way the FSA implemented the DGSD and ICSD.

## 5 Reports from Executive Directors and the PRA

### 5.1 CEO Report

The Board received the CEO's report and noted and discussed the following key points:

- the Executive was pursuing with HMT the extent to which there was an appetite to legislate to give FCA concurrent powers under competition law and would consider the process and practicalities;
- the FCA would need to take a view on the fairness of the recapitalisation of the Co-op at the same time the PRA was considering capital restructuring;
- the definition of "consumer" in relation to issues of unfair contract terms and one firms' notification of its intention to increase some interest rates on certain "tracker" mortgages;
- the Executive had met the National Audit Office to discuss the scoping of a value for money audit of the FCA. It was expected to be part of a landscape review of the wider financial regulatory framework and would include a review of whether the FCA had a good framework for assessing whether it was meeting its objectives. The findings would be reported to the FCA Board in due course;
- the Executive was close to the final stages of recruitment for the positions of Supervision Directors which would be circulated to the Board by written procedure; and
- the FCA would be given the responsibility of regulating payment systems and the government's intention was that this should be active by May 2015.

### 5.2 PRA Update

Mr Bailey gave an oral report and the Board noted the following issues:

- the interim results of Barclays would be published next week and would address how it intended to comply with its capital requirements;
- the PRA was continuing to implement the CRDIV. Particular concern was to assess how to implement the remuneration requirements;

- the Financial Stability Board has recently designated some insurers as systemically important firms and therefore the PRA was overseeing enhanced "group-wide" supervision and the development of resolution plans;
- the Prudential was splitting its with-profits insurance funds which would need to be done through the UK and Hong Kong courts; and
- Mr Bailey and Mr Wheatley had recently reviewed the co-operation between the PRA and the FCA which appeared to be effective.

## **6 Any other business**

Mr Adamson reported that Supervision was looking into the issues raised by a private individual who had copied some correspondence to Board members relating to a complaint she had made to a firm, and was preparing a response.

## **7 Papers for noting:**

7.1 Minutes of the ExCo meeting held on 9 July 2013

7.2 Executive Committees' Governance

The Board noted the change to the governance structure of the Executive Committees, which had been streamlined following a review three months after legal cutover. The Board noted the changed risk management function terms of reference and suggested that the Executive keep it under review.

7.3 Forward Agenda

The Board noted the papers.

The meeting closed at 4.30pm

Claire Strong

Deputy Company Secretary

## **ANNEX A: Attendees**

Simon Pearce	Company Secretary
Claire Strong	Deputy Company Secretary
Mark Threipland	Head of Department, GCD-Retail Conduct
Peter Andrews	Head of Chief Economist's Department (for item 3.2)
Natalie Ceeney	Chief Executive, Financial Ombudsman Service (for item 3.6)
Nausicaa Delfas	Head of Mortgages and Consumer Credit (for item 3.7)
David Godfrey	Director of Finance & Operations (for item 3.4)
Graeme Mclean	Head of Approved Persons, Passporting & Mutuals (for item 3.3)
Richard Monks	Manager, Comms & International – Public Affairs (for item 3.3)
Mark Nicol	Head of Business Unit Delivery (for item 3.7)
Jonathan Phelan	Head of Consumer & Markets Intelligence (for item 3.1)
Christopher Woolard	Director of Policy, Risk & Research (for item 3.1, 3.2, 3.3, 3.4, 3.7, 4.1, 4.2 and 4.3)
Dermot Whelan	Manager, Governance and Professionalism (for item 3.3)

Relevant Contractors, Technical Specialists and Associates attended for items 3.1, 3.2, 3.5, 4.2 and 4.3



## **ANNEX B: Resolution**

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

Collective Investment Schemes Sourcebook (Amendment No 8) Instrument 2013 (FCA 2013/57)

Alternative Investment Fund Managers Directive (No 2) Instrument 2013 (FCA 2013/54)

Alternative Investment Fund Managers Directive (Private Placement and Registration Fees and Miscellaneous Directions) Instrument 2013 (FCA 2013/55)

Alternative Investment Fund Managers Regulations (Enforcement Guidance) Instrument 2013 (FCA 2013/56)

Training and Competence Sourcebook (Qualifications Amendments No 9) Instrument 2013 (FCA 2013/53)

Listing Rules (Alternative Investment Fund Managers Directive) Instrument 2013 (FCA 2013/58)