

Minutes

Meeting:	FCA Board
Date of Meeting:	26 May 2022
Start time:	10:30
Venue:	Hybrid meeting via Microsoft Teams

Members Present:	Charles Randell (Chair) Richard Lloyd Liam Coleman Bernadette Conroy Sam Woods (attending from 13:40)	Alice Maynard Nikhil Rathi Jeannette Lichner Tommaso Valletti
In attendance:	Set out in Annex A	
Presenters:	Set out in Annex A	
Apologies:	None	

1 Declarations of interest

- 1.1 The meeting noted there was a quorum present and proceeded to business.
- 1.2 No interests were declared in the items to be discussed. Tommaso Valletti recused himself from the decision relating to his reappointment to the PSR Board.

2 Report from the Chief Executive

- 2.1 Mr Rathi briefed the Board on a number of topical issues, including:
 - i. **Executive Finance and Delivery Committee (EFDC)** – the Board were briefed on the progress of the EFDC which had met each week since its inception and had notably increased accountability for decisions on finance and delivery. The Committee ensured the Executive had a clearer understanding of capital and operational expenditure and was considering spend against three-year forecast projections. As the Committee was still relatively new, the Board noted aspirations for it to evolve into a strategic body

considering the portfolio of change across the FCA and how interdependencies would impact procurement and resources.

- ii. ***New Consumer Duty*** – The Board were given assurance that feedback from external stakeholders on the proposed rules and timescales was being addressed and associated risks mitigated. It was noted that consultation responses had been reviewed in detail and the rules were being developed to address concerns raised with supporting guidance. Although the rules would come into effect in July, there would be a phased implementation period (the specifics of which were to be discussed and agreed at ERPC) which would allow firms to embed and deliver against the new requirements. A suite of communication would also follow, including at sectoral level and small firm engagement, through supervisory work, live and local events, webinars and guidance on the website. The team were continuing close working with FOS to ensure alignment and understanding between members of the regulatory family. The Board highlighted the potential reputational risk that the duty would not come into force during the height of the cost-of-living pressures, where consumers would need additional protections the most. Options to mitigate this risk were discussed, including placing an obligation on, or signalling to sectors most impacted by the cost-of-living pressures.
- iii. ***High-cost credit regulatory strategy*** – The Board were updated on the work to develop a high-cost credit strategy which would seek to address consumers who were at risk of or experiencing financial difficulties or vulnerable. Market trends identified included those sectors who had de-risked their books so were no longer providing products due to increased regulation and price capping interventions, contracted supply as a result of direct activity from CMCs to FOS in particular on unaffordable lending, and the wider impact of the economic and external events (including the Russia/Ukraine crisis and the pandemic) causing firms to go out of business or have restricted capacity in the market. Together with rising inflation this was likely to cause a number of pinch points where consumers will need access to money quickly and options would be limited. The high-cost credit strategy and cost of living work was looking at data analysis through four consumer archetypes to assess which types of consumers would be impacted over what time period, which would then inform the strategy. Part of this work would also be ensuring firms have the adequate systems and controls to manage issues for people accessing credit and appropriate forbearance options for those in difficulty. Additionally, there had been an increased focus on fraud and scams and the FCA had sent Dear CEO letters to over 30,000 firms cautioning the way they advertise to borrowers. The Board noted two key risks for the FCA; firstly the mismatch between the urgency of the problem and the speed of the FCA's response, and secondly, the potential failure of consumers to understand the FCA's role.
- iv. ***Freedom of Information Act and Subject Access Request cases*** – the Board noted the operational challenges and were assured that these were being mitigated through increased skilled resource and improved management information to better understand the caseload.

3 Russian/Ukraine Crisis Update and Impact on Harms of Reprioritisation

- 3.1 The Board discussed the FCA's approach to de/re-prioritisation of work and resources as a result of the Russian invasion of Ukraine. It was noted that the majority of work was now being absorbed into business as usual and that of the ongoing work, including on sanctions, the focus had shifted to assessing firm compliance. The risk of a cyber attack was still present and the FCA was working with partners and industry groups to help ensure appropriate
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controls were in place and firms were responding to the NCSC's alerts. It was confirmed that there had been no impact on the delivery of the FCA's public commitments.

- 3.2 The Board encouraged more consistent planning for rapid re-prioritisation for similar incidents and to fully understand the impact of doing so across the organisation. It noted further work was needed in order to fully address the potential second order impact of the crisis, including risks in wholesale markets and on market volatility to ensure potential gaps in or risks to liquidity were being monitored. The Board welcomed further insight on the long-term impact of the Russia/Ukraine crisis on the evolving cost-of-living pressures.

4 Regulatory Diversity & Inclusion framework

- 4.1 The Board were briefed on the proposed new diversity and inclusion (D&I) framework that would be subject to public consultation. It recognised that the financial services sector still needed to make significant progress on D&I with large gender and ethnicity pay gaps and parts of the industry lacking diversity at senior levels. The proposals aimed to further the FCA's three operational objectives by, for example, putting D&I at the core of a firm's culture and practices and ensuring inclusion of diverse viewpoints arising from different knowledge and experiences are represented. The package of measures proposed included guidance to clarify and make explicit D&I considerations, build on existing rules, and in some areas new requirements and new guidance.
- 4.2 The proposals were welcomed and the Board emphasised the importance of driving change in the right way, ensuring cultural change was embedded and any new measures weren't open to manipulation, treated as 'tick-boxing' exercises or would cause significant unintended consequences. The Board agreed that the main aim was to have consistent standards across the industry, aligned with the new consumer duty, and have appropriate data and evidence to show the impact and give insight into where firms needed to do more to embed D&I. The importance of proportionality was also noted. In terms of the proposed data collection, the Board noted the importance of this to facilitate change and provide a framework for conversations with firms tailored to where they were in their D&I journey. The Board discussed the approach to data collection and disclosure by firms, noting that if a disclosure would lead to an individual being identified data would not be disclosed, and were keen that the PRA and FCA were aligned on their respective approaches. They encouraged continued close working between the teams on this issue.
- 4.3 The Board welcomed further sight of the proposals as the policy was refined and reflecting the cost-benefit analysis, ahead of the consultation being published.

5 Report from the PRA

- 5.1 Mr Woods briefed the Board on the business of the PRA that was of relevance to the FCA including the predicted rise to the rate of inflation and the impact that might have on the market, and recent communications around hybrid working.

6 Rules and Guidance and Technical Standards to be determined

- 6.1 The Board **resolved** to make the following instruments:
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- i. Perimeter Guidance (Commodity Derivatives Exemption) Instrument 2022
- ii. Technical Standards (Markets in Financial Instruments) (Ancillary Exemption) Instrument 2022
- iii. Listing Rules and Prospectus Regulation Rules (Prospectus Guidance and Guidelines) Instrument 2022
- iv. Investment Firms Prudential Regime (Amendment) Instrument 2022
- v. Training and Competence Sourcebook (Amendment No 10) Instrument 2022
- vi. Conduct of Business Sourcebook (MiFID Org Regulation Amendment) Instrument 2022
- vii. Conduct of Business Sourcebook (Amendment) Instrument 2022
- viii. Listing Rules (Open-Ended Investment Companies) (Amendment) Instrument 2022

7 Decisions of the Board/Board committee

- 7.1 The Board **approved** the minutes of the meeting held on 28 April 2022
- 7.2 The Board noted the action log and **approved** closures of complete actions.
- 7.3 The Board **ratified** the following decisions taken by written procedure:
- i. Approve the Part 4A Permission (Own-Initiative Variation and Cancellation) Instrument 2022.
- 7.4 The Board **approved** the voluntary publication of the Modern Slavery and Human Trafficking Statement for the financial year ending 31 March 2022, alongside the Annual Report & Accounts in July 2022, subject to an amendment in the statement that explains more clearly the importance of addressing modern slavery and human trafficking and what the impact of this could be on the FCA itself, should it not address it in the way that had been outlined in the statement.
- 7.5 The Board reviewed the 2021/22 financial statements, financial overview and the overdraft Facility renewal and made the following decisions:
- i. **Approved** the Going Concern Paper and related disclosure, to be included in the 2021/22 FCA Group Operational Overview.
 - ii. **Approved** the renewal of a £100m unsecured overdraft facility with Lloyds Banking Group from 1 July 2022 to 30 June 2023
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- iii. **Approved** the increase to the Reserves threshold maintained from 10% to 15% for 12 months to 31 March 2024 and related disclosure to be included in the Group Operational Overview of the FCA's 31 March 2022 Annual Report and Accounts
 - iv. **Noted** the FCA Pension Plan (the Plan) surplus was £18.9m at 31 March 2021: £38.1m the Plan deficit) a change of £57.0m from 2021 due to net actuarial gains of £28.6m from the changes in assumptions in respect of discount rate, future inflation and mortality and contributions of £28.4m
 - v. **Noted** the Chair and Non-Executive and Executive Directors' Expenses for the year ended 31 March 2022
 - vi. **Noted** the progress of the 2021/22 ARA preparation and status of the NAO's audit
- 7.6 The Board noted the FCA's proposed approach for complaints handling relating to the FSA/FCA's supervisory intervention on Interest Rate Hedging Products and **approved** the following recommendations:
- i. The FCA should not seek to proactively revisit closed complaints/allegations.
 - ii. Any open or new complaints should be determined consistently with the findings in the Swift Report and (where different or additional) the FCA's public response. With a commitment, to SMEs who are/may be sophisticated, to pro-actively revisit their complaint pro-actively revisit their complaint in light of the decision of the Court in the ongoing judicial review proceedings, if appropriate.
 - iii. The FCA's guidelines for its general approach would be that it would not expect to pay compensation for financial loss for upheld complaints, but would review each complaint with an open mind and consider the issues on individual merits.
 - iv. For the purposes of the Complaints Scheme time bar, it is reasonable to assume that the twelve-month period begins on the date of the publication of the Swift report – 14 December 2021.
- 7.7 The Board noted the long-term approach to the composition and recruitment of the decision-making committees and **resolved** to make the following decisions:
- i. To **approve** the extended terms of individual members as set out below:
 - To reappoint Anne Heal, Peter Jones, Stephen Mount, Tanya Castell, and Noël Harwerth, due to step down in June 2022, for a second term (to 30 June 2025).
 - To extend Sidney Myers and Julie Hepworth, due to step down in July 2023, by 2 years to 31 July 2025.
 - That the terms of any individual members due to step down may be extended, where any of their cases continue beyond those end dates. In such circumstances the members conclude the relevant cases but are not appointed to any new matters.
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- 7.8 The Board reviewed the end-user computing programme retender, noting that Board members had raised a number of queries prior to the meeting which had been separately circulated to the Board ahead of the decision being requested. The Board made the following decisions:
- i. **Agreed** to proceed with the EUC Retender programme with the proposed approach
 - ii. **Approved** budget and multi-year forecast for the programme including implementation costs of £23m to £26m
 - iii. **Approved** to engage Computacenter to negotiate and agree extension terms
- 7.9 The Board **approved** the following Panel appointments:
- i. Reappoint Hannah Meakin as a member of the FCA Markets Practitioner Panel from 1 June 2022 to 31 May 2025
 - ii. Reappoint Phillipe D’Orgeval as a member of the FCA Markets Practitioner Panel from 1 June 2022 to 31 May 2025
 - iii. Reappoint Aileen Taylor as a member of the FCA Listing Authority Advisory Panel from 1 June 2022 to 31 May 2025
 - iv. Reappoint Amanda Thomas as a member of the FCA Listing Authority Advisory Panel from 1 June 2022 to 31 May 2025.
 - v. Appoint Stuart Tragheim as a member of the FCA Smaller Business Practitioner Panel from 1 June 2022 to 31 May 2025
- 7.10 The Board **approved** the reappointment of Tommaso Valletti and Simon Ricketts to the PSR Board.

8 Independent Panels Monthly Reports

- 8.1 The Board noted the reports from the Independent panels:
- i. Financial Services Consumer Panel
 - ii. Markets Practitioner Panel
 - iii. Practitioner Panel
 - iv. Smaller Business Practitioner Panel
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9 Reports from the Chairs of Board Committees

- 9.1 The Board noted the report from the Chair of the Remuneration Committee meeting held on 27 April 2022.
- 9.2 The Board noted the report from the Chair of the Nominations Committee of their meeting held on 10 May 2022

10 Any other business

- 10.1 The Board thanked Charles Randell for his service to the FCA and the PSR noting this was the last Board meeting he would attend before down as Chair of the FCA and PSR on 31 May 2022.

There being no further business the meeting closed.

Annex A: Attendees, presenters and observers

In attendance:

Sheree Howard – Executive Director, Risk and Compliance Oversight
 Sheldon Mills – Executive Director, Consumers and Competition
 Jessica Rusu – Executive Director, Chief Data, Information and Intelligence Officer
 Emily Shepperd – Executive Director, Authorisations and Chief Operating Officer
 Mark Steward – Executive Director, Enforcement and Market Oversight
 Miles Bake – Director, Company Secretary
 Stephen Braviner Roman – General Counsel
 Graeme McLean – Head of Department, Chief Executive’s Office
 Andrea Bowe – Director, Chief Executive’s Office

Presenters and observers:

Item 1 - Declarations of interest	No attendees
Item 2 - Report from the Chief Executive	New Consumer Duty Nisha Arora - Director Ian Searle - Manager Rob Gruppetta – Head of Department Richard Wilson - Manager
Item 3 - Russian/Ukraine Crisis Update and Impact on Harms of Reprioritisation	Emad Aladhal – Director Robin Jones – Head of department
Item 4 - Regulatory Diversity & Inclusion framework	Georgina Philippou – Senior Advisor Sacha Sadan – Director Alexander Smith – Head of Department Peter Curtis-Valino - Manager
Item 5 - Report from the PRA	No attendees
Item 6 - Rules and Guidance and Technical Standards to be determined	No attendees
Item 7 – Decisions of the Board	No attendees
Item 8 - Monthly Reports from the Independent Panels	No attendees
Item 9 – Reports from the Chairs of Board committees	No attendees
Item 10 - AOB	No attendees