

**Minutes of Meeting of the  
City of London Law Society Regulatory Law Committee (the "Committee")**

Held on Tuesday 9 July 2019 at 12.30pm  
at Herbert Smith Freehills LLP, Exchange House, 12 Primrose Street, London, EC2A 2EG

**ATTENDEES**

<b>Present</b>	<b>Firm Represented</b>
Karen Anderson (Chair)	Herbert Smith Freehills LLP
Richard Everett	Travers Smith LLP
William Garner	Charles Russell Speechlys LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Anthony Ma	Grant Thornton UK LLP
Brian McDonnell	Addleshaw Goddard LLP
Hannah Meakin	Norton Rose Fulbright LLP
Stuart Willey	White & Case LLP

**1. MINUTES OF PREVIOUS MEETING**

The minutes of the meeting of the Committee held on 11 June 2019 were approved.

**2. FCA CONSULTATION PAPER ON MORTGAGE CUSTOMERS: PROPOSED CHANGES TO RESPONSIBLE LENDING RULES AND GUIDANCE**

The member who was due to lead the discussion could not be present. It was agreed that the member would be invited to provide their comments at the next meeting. It was noted that although the Committee would not submit a response to the paper, there was still merit in discussing some of the proposals set out for consultation.

**3. FCA GUIDANCE CONSULTATION PAPER ON THE GI DISTRIBUTION CHAIN: PROPOSED GUIDANCE FOR INSURANCE PRODUCT MANUFACTURERS AND DISTRIBUTORS**

The Committee discussed the proposals in the guidance consultation, and noted in particular the increased focus on the concept of "value" and pricing.

The Committee noted that while the guidance seemed to address the regulator's concerns in respect of highly commoditised products (such as standard warranties), it was not clear whether more tailored, bespoke products were also in scope. It was possible that large numbers of firms' business models could be impacted.

A member highlighted that throughout the paper the concept of "value" was not well defined. In particular, it was unclear whether the concept of "value" was really a question of suitability for the particular client.

It was agreed that a member would circulate a draft response setting out the Committee's concerns for the members to review.

#### 4. **PRA CONSULTATION PAPER ON ENFORCEMENT – CHANGES TO THE PRA'S SETTLEMENT POLICY**

The Committee discussed the proposals in the paper. The main points discussed were that the paper did not address how the PRA and FCA proposed to operate in tandem where parallel proceedings were on-going, nor how the proposals operated where the PRA was pursuing action against both a firm and an individual.

It was noted that while both these scenarios could give rise to a range of challenges for the subjects of such investigations, these were not new issues raised by this consultation .

It was agreed that the Committee would not submit a response.

#### 5. **FCA CONSULTATION PAPER ON ASSESSING ADEQUATE FINANCIAL RESOURCES**

The Committee discussed the proposals in the paper.

A member gave a brief overview of the paper, noting that it was a statement of principles rather than a proposal of granular rules.

One key concern discussed by the members was the uncertainty around the scope of the paper. If it was the case that the guidance proposed was intended to apply to all regulated entities, there were certain requirements which represented a significant step up in compliance burden for smaller firms.

The members noted that there was no clear link in the paper to the relevant underlying applicable prudential rules. It was also unclear whether some of the requirements in relation to adequate financial resources were in addition to the base capital requirements firms are already subject to.

The members also considered that in the absence of closer supervision by the regulators, in particular for smaller firms which had historically been subject to a lighter touch regime, it was not clear how firms would successfully implement all the requirements. The Committee was of the view that if it was the FCA's intention to change the rules, such significant changes should not be included in a framework document of this nature.

It was agreed that a member would prepare an initial draft response setting out the various concerns of the Committee for comment and discussion at the next meeting.

#### 6. **FCA HIGH-COST CREDIT REVIEW: OVERDRAFTS POLICY STATEMENT**

The Committee briefly discussed the policy statement. It was noted while the paper raised some interesting points, these were issues of policy rather than legal uncertainty.

It was decided that the Committee would not submit any comments on the policy statement.

#### 7. **OTHER CONSULTATIONS TO WHICH THE COMMITTEE MAY WISH TO RESPOND**

The Committee discussed other papers currently open for consultation. It was decided that all members would review the **FCA consultation paper on prohibiting the sale to retail clients of investment products that reference cryptoassets** to consider whether the Committee should submit a response.

It was also decided that the Chair would contact the Chair of the Insurance CLLS sub-committee in respect of the **EIOPA consultation on the proposal for Guidelines on outsourcing to cloud service providers** to determine whether this paper was being considered by that committee.

#### 8. **AOB**

##### 8.1 **Law Commission Call for Evidence on intermediated securities**

Members were requested to contact the Chair if they were interested in taking part in an informal discussion with the Law Commission on a possible study on intermediated securities.

##### 8.2 **Nominations for the CLLS Lifetime Achievement Award**

The Chair noted that the members were invited to submit nominations for the CLLS Lifetime Achievement Award. Nominations could be made individually, or collectively by the Committee. The deadline for submitting nominations is Friday 13 September.



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**Karen Anderson**

Chair, CLLS Regulatory Law Committee