

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

Held on Tuesday 19 January 2021 at 12.30pm  
via conference call

**ATTENDEES**

<b>Present</b>	<b>Firm Represented</b>
Karen Anderson	Herbert Smith Freehills LLP
Peter Bevan	Linklaters LLP
Chris Borg	Reed Smith LLP
Richard Everett	Travers Smith LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Anthony Ma	Grant Thornton UK LLP
Brian McDonnell	McDonnell Ellis LLP
Hannah Meakin	Norton Rose Fulbright LLP
Simon Morris	CMS Cameron McKenna Nabarro Olswang LLP
Rob Moulton	Latham & Watkins LLP
Kevin Hart	City of London Law Society

**1. MINUTES OF PREVIOUS MEETING**

The minutes of the meeting of the Committee held on 8 December 2020 were approved.

**2. HMT PHASE II CONSULTATION ON THE REGULATORY FRAMEWORK REVIEW**

The members discussed a draft response to the consultation which had been circulated in advance of the meeting.

The members considered that the current FSMA model had worked well. There was discussion on the merits of consolidating all regulatory regimes into FSMA (for example payment services regulation), but also acknowledgment that there may be good reasons to maintain separate legislation in certain cases.

The members also agreed that Parliament and HM Treasury should set overall policy direction, and considered that the regulators' rule making powers should be directed by clearly sign-posted policy objectives in legislation.

The members also discussed the proposal to introduce sectoral principles. While not unsupportive of the approach, members considered that such principles may be better suited to secondary legislation as they could then be more granular and therefore indicate legislative intent more clearly.

The members also considered the role of Parliament in scrutinising financial services policy. Whilst acknowledging that Parliamentary committees, such as the Treasury Select Committee, can be effective in scrutinising on an ex-post basis, the members had concerns that it would be unrealistic for non-specialist Parliamentary committees to be able to carry out detailed ex ante reviews of new rules, and it would be more challenging to guard against the politicisation of rule-making. Rather, the

members considered that an independent review function and/or greater transparency over the operation of statutory panels could be more effective.

It was agreed that an updated draft reflecting the discussions held in the meeting would be circulated to members for review.

### 3. **FCA GUIDANCE CONSULTATION FOR INSOLVENCY PRACTITIONERS OF HOW TO APPROACH REGULATED FIRMS**

The members discussed a draft response to the guidance consultation which had been circulated in advance of the meeting.

It was noted that insolvency practitioners needed to balance duties owed to other parties (such as creditors) as well as regulated firms, and that insolvency law also imposed additional duties. It was agreed that this should be more explicitly acknowledged by the FCA.

It was also noted that it would be helpful for further clarity on the extent to which insolvency practitioners should identify “any issues with compliance”. For example, while it would be key to identify any CASS issues, other issues such as historic late filings of RMAR returns were likely to be of less significance.

There were also some concern about the suggestion that the FCA would take into consideration the insolvency practitioner’s “past conduct” (if they had taken previous appointments over regulated firms) in approving future appointments and the members agreed that it would be helpful to have a better understanding of what was being proposed and the factors that the FCA intended to take into account.

It was agreed that members would provide final comments on the draft response by the end of the week to that it could be finalised and submitted.

### 4. **FCA CONSULTATION ON PROPOSED POLICY WITH RESPECT TO THE DESIGNATION OF BENCHMARKS**

The members briefly discussed the paper. It was noted that the paper set out mainly points of policy (for example determining when a benchmark was no longer representative), rather than legal issues on which it would be appropriate for the Committee to comment.

Therefore, it was agreed that the Committee would not submit a response.

### 5. **FCA QUARTERLY CONSULTATION**

A member briefly discussed the proposals set out in the paper. It was noted the FCA had chosen not to exercise certain discretions which were available to it as part of its implementation of Article 1(16) BRRD II. In so doing, the FCA had effectively imposed a prohibition on (certain) retail investors from investing in subordinated eligible liabilities, without invoking the formal prohibition process.

While it was agreed this raised an interesting question in respect of regulator accountability, it was agreed that the Committee would not submit a response to this paper.

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

The Committee discussed other papers currently open for consultation. It was decided that members would review the **PRA evaluation of the Senior Managers and Certification Regime** and the **HMT consultation and call for evidence on UK regulatory approach to cryptoassets and stablecoins** to consider whether the Committee should submit a response.

### 7. **AOB**

#### 7.1 **Committee membership**

The Chair confirmed that she would follow up with the applicant who had expressed an interest to join the Committee.

#### 7.2 **CLLS matters**

The members were invited to a virtual meeting with the Master of the CLSC and Chair of the CLLS on 28 January, as an alternative to the annual dinner.

Separately, the members were requested to pass on any points to the Chair that they would to be discussed at the forthcoming Chairs meeting with the CEO and Chair of the CLLS.

A handwritten signature in black ink, appearing to read "Karen Anderson", with a period at the end.

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**Karen Anderson**  
Chair, CLLS Regulatory Law Committee