

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

Held on Tuesday 11 January 2022 at 12.30pm  
via conference call

**ATTENDEES**

<b>Present</b>	<b>Firm Represented</b>
Karen Anderson	Herbert Smith Freehills LLP
Peter Bevan	Linklaters LLP
Simon Crown	Clifford Chance LLP
Richard Everett	Travers Smith LLP
Angela Hayes	DAC Beachcroft LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Anthony Ma	Deloitte
Brian McDonnell	McDonnell Ellis LLP
Hannah Meakin	Norton Rose Fulbright LLP
Rob Moulton	Latham & Watkins LLP
Julia Smithers Excell	White & Case LLP

**1. MINUTES OF PREVIOUS MEETINGS**

The minutes of the meetings of the Committee held on 14 December 2021 were approved.

**2. HMT: CONSULTATION ON FUTURE REGULATORY FRAMEWORK REVIEW**

A member gave a brief summary of the Committee's draft response to the proposals in the HMT's consultation paper on the future regulatory framework review. The Committee discussed its proposed response to certain proposals contained in the HMT's consultation, including the Committee's support of some level of further independent oversight.

It was noted that the draft response also addressed the proposals contained in the consultation regarding designated activities. The Committee discussed certain concerns in regard to the operation of the proposed regime, in particular, in regard to which activities would fall within the regime.

It was agreed that a member would reflect the comments of the Committee in the draft response and re-circulate for further comment, ahead of the deadline for response which was 9 February 2022.

**3. FCA: CONSULTATION ON A NEW CUSTOMER DUTY**

A member gave a brief summary of the proposals set out in the FCA's consultation paper on a new Consumer Duty. It was noted that although the revised proposals did reflect certain of the points made by the Committee in response to the previous consultation on the same, the Committee agreed that it would likely be helpful to repeat certain points where necessary.

The Committee discussed that it is not clear how the proposed duty is to apply to existing products and services and the Committee agreed that making the required amendments to existing products

is likely to be a significant task for firms. It was noted that while individual firms would likely respond to elements of the proposals themselves, there were some legal aspects of the proposals to which the Committee might consider responding.

In addition, the Committee discussed how the new Consumer Duty would interplay with Principles 6 and 7 of the FCA Handbook and agreed that it was their understanding that the new Principle 12 would not affect the existing Principles for firms operating outside the regime of Principle 12. A member noted that the definition of "*retail customer*" under Principle 12 could potentially make the application of Principle 12 more complicated and that a single, readily identifiable test, with reference to product types, would likely be more beneficial.

Although the Committee acknowledged that the proposals did contain a general rule reflecting the concept of reasonableness, reflecting the reasonableness element in the wording of Principle 12 would be give greater clarity for consumers.

A member agreed to draft a proposed response to the consultation, incorporating the Committee's comments, and circulate prior to the next meeting on 8 February 2022.

#### **4. PRA: CONSULTATION ON OPERATIONAL RESILIENCE AND OPERATIONAL CONTINUITY IN RESOLUTION**

A member gave a brief summary of the proposals contained in the PRA's consultation on operational resilience and operational continuity in resolution. The likely application of the proposals was noted; however, it was agreed that there did not appear to be a need for the Committee to draft a formal response to the consultation at this time.

#### **5. LAW SOCIETY'S REGULATORY WORKING GROUP'S RESPONSE TO THE FCA'S DISCUSSION PAPER ON THE SUSTAINABILITY DISCLOSURE REQUIREMENTS AND INVESTMENT LABELS**

A member explained that the Law Society's regulatory working group had submitted a response to the FCA's discussion paper on the sustainability disclosure requirements and investment labels. It was suggested that the Committee might write to the FCA confirming its support for the Law Society's response.

Certain members indicated support for this suggestion and members of the Committee would review the final response of the Law Society's regulatory working group and confirm whether they supported such follow up.

#### **6. FCA: CONSULTATION PAPER ON IMPROVING THE APPOINTED REPRESENTATIVES REGIME AND HMT: CALL FOR EVIDENCE TO GATHER INFORMATION ON HOW MARKET PARTICIPANTS USE THE APPOINTED REPRESENTATIVES REGIME**

A member gave a brief summary of the proposals contained in the FCA's consultation on improving the appointed representative regime, noting that the key proposals related to oversight of the regime. It was noted that the certain of the proposed requirements, including the requirement to notify the FCA 60 days prior to the appointment of an appointed representative, were more prescriptive and could result in a less flexible, more costly regime.

A member went on to summarise the HMT's call for evidence, noting that the HM's comments in regard to the appointed representative regime tended to be more positive than those made by the FCA. It was noted that the HMT's call for evidence made reference to various potential legislative reforms, including the imposition of certain size limits in regard to an appointed representative and additional obligations on the representatives themselves.

The Committee agreed that it would respond to both papers together and would reiterate its support for the HMT's explanation of the regime in its response. Two members agreed to draft the Committee's response and circulate for comment prior to the Committee's next meeting.

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

A member referred to the draft Online Safety Bill and the Joint Committee report on the same and gave a brief overview on the proposals contained in the draft legislation. It was noted that the Joint Committee report drew an analogy to the FCA's new Consumer Duty proposals, and therefore, it was agreed that the member drafting the Committee's response to the FCA's consultation on the new Consumer Duty would consider the relevant proposals in the draft Online Safety Bill in parallel.

The Committee noted that it may consider the draft legislation at a later meeting, or once the related rules and regulations had been further progressed.

8. **AOB**

8.1 **Applications received to the Committee**

The Chair noted that in addition to the CV of one interested candidate that had been circulated to the Committee for consideration, a further application had been submitted to the Committee.

The Committee discussed the additional application and the Chair requested further comments from the Committee in regard to both applications by Friday 14 January 2022.

8.2 **FCA's feedback statement on accessing and using wholesale data**

A member noted that the FCA's feedback statement on accessing and using wholesale data had been recently published. It was noted that the feedback statement did not contain any detailed proposals and therefore, the Committee might consider any more detailed proposals in due course.



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**Karen Anderson**

Chair, CLLS Regulatory Law Committee