

Minutes

Meeting:	FCA Board	
Date of Meeting:	27 June 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	

Quorum and Conflicts

The Meeting noted there was a quorum present and proceeded to business.

Members 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 3 June were approved.

1.2 Matters arising

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

The Board noted the two documents circulated, being the schedule of competition powers available to the FCA and the more detailed summary of free-form comments in the Practitioner Panel Survey. The Board noted that Mr Wheatley had reviewed all the free-form comments and was considering how to deal with some common themes.

The Board noted the correspondence with a former employee of a regulated firm who had raised certain allegations about the sales practices of that firm. The Supervision Division was looking into his allegations and Mr Griffith-Jones asked the Executive to arrange for

there to be a “four-eyes” review of the conclusion reached on the case at the appropriate Executive governance level and that this be reported to the Board.

The Board noted that there would be a round table discussion with relevant stakeholders in September as part of the FCA’s work on whistleblowing.

2 Report from Committees and Independent Panels

2.1 Update on the Risk Committee meeting held on 20 June 2013

The Board received an oral update from Mick McAteer on the issues discussed at the Risk Committee which included:

- an update on the risk architecture of the FCA;
- a meeting with the Markets Director to cover the key risks in that area;
- a presentation from the Chair of the Regulatory Decisions Committee regarding the operation of the Committee; and
- the quarterly risk report.

2.2 Monthly reports from the Independent Panels

The Board noted the reports from the Independent Panels which covered a number of issues on the agenda, such as the expectations gap, mobile phone insurance and Section 1K guidance. The Board noted that the Markets Practitioner Panel was now operational but there was some uncertainty on the markets it considered within its remit. The Board requested that this be clarified.

3 Specific items of business

3.1 RDR – state of the nation

Mr Bailey joined the meeting at 10.40am

The Board noted the report and presentation on the developments in the retail investment market and discussed the positive aspects of the policy implementation for consumers, such as increased qualification and professionalism and greater transparency of fees. It also discussed some of the key issues, including the following points:

- the need for a clear distinction between advised and non-advised sales, particularly those non-advised models that could be misconstrued by customers as advice (such as decision trees);
- the need for clarity over the cash value of adviser charges and the optionality for customers of paying for an ongoing service;
- whether it was possible to further analyse the calculations underpinning the estimated cost of distribution for the banks/insurers that had recently withdrawn from providing mass-market advice;
- whether the continuation of commission payments for non-advised retail investment sales created potential risks;
- it was not yet clear whether there was an advice gap or how big this was and so there was a need for continued monitoring of developments in this area;
- whether the lack of end-date for the payment of trail commission on pre-RDR business might lead firms to act in ways that risked poor consumer outcomes; and

- there was some concern that firms using contingent charging models had an increased risk of 'churn' given the need to sell products to generate income.

The Executive explained that there would be a post-implementation review in 2014 when the RDR had been in place for an appropriate period. Success measures for the policy had been published and these would be reviewed to ensure they were appropriate. The Executive would design and undertake thematic reviews to cover some of the issues highlighted and return to the Board in Q1 2014.

3.2 Expectations Gap

The Board noted the presentation setting out the potential expectations gap between the FCA and regulated firms and in the ensuing discussion considered the following points:

- it was recognised that under the more principle-based approach of the FCA, it would not always be possible to provide absolute certainty to regulated firms. The Board considered the application of principles, rules and guidance; it noted that consideration was being given to the information provided to firms;
- further work was needed concerning the approach to regulation, including the strategic alignment of policy development and thematic work;
- there were some concerns expressed that FCA regulation was sometimes retrospective, although clear examples had not yet been forthcoming and the FCA would welcome feedback on this issue; and
- it was important that firms understood the outcomes that the FCA was trying to achieve and that firms undertook to determine what that meant for their own businesses.

The Board accepted the initial findings and analysis and agreed that further work should be done to: improve clarity and consistency (in particular in relation to communication, policy implementation and supervision); review the sales processes for simple products to clarify the FCA's expectations; and communicate to firms the ways in which FCA was aiming to close the expectations gap.

The Board noted that the Practitioner Panel was undertaking some research regarding the potential expectations gap between firms and consumers and it looked forward to seeing the results of that work.

3.3 PCBS Report overview and preliminary reactions

The Board noted the recently-published report and discussed its initial reaction to the recommendations of the PCBS. The Board noted the report and acknowledged that the implications of implementing each recommendation would need to be carefully considered. The Board noted the Executive was working through each of the recommendations thoroughly.

The Board noted the timeframe for providing an initial response to HMT in relation to the report and agreed to delegate the responsibility for this to the Executive Committee, with a further discussion at the Board in July. It asked the Executive to take account of the high level principles covered in the discussion in considering a response.

Mr Wheatley left the meeting at 12.50pm.

3.4 Professional Standards of the FCA

The Board noted the paper which reviewed the recommendations of the Complaints Commissioner following a complaint made against the FSA (reference number GE-L01481). The Board discussed the issues and noted that the work being done by the FCA to define

and embed the cultural characteristics were in line with the theme of the Committee on Standards in Public Life report to which the Commissioner had referred.

The Board agreed that it should be made aware as and when the Complaints Commissioner upheld a complaint and be provided with the statistics relating to decisions made at stage one or two, either in the performance report or otherwise.

Mr Wheatley re-joined the meeting at 1.05pm.

3.5 Report of Independent Complaints Commissioner

The Board noted and discussed the report from the Complaints Commissioner. The Commissioner noted the slight increase in complaints he had upheld during the year but did not consider that this was indicative of an upward trend.

3.6 Approval of Guidance on the FCA approach to advancing its objectives

The Board noted the report and queried some of the information in the guidance. The Board, whilst noting that the FCA was not required to consult, discussed the intention to publish the guidance as a consultation at the end of July in order to receive any further input on furthering its objectives, particularly in respect of competition.

The Board asked the Executive to consider including a reference to cyber crime in the appropriate section. The Board agreed the draft s1K guidance (including the proposed approach to competition) and gave authority to the Executive to finalise this for consultation, asking that it be informed of any major changes.

4 Decisions reserved to the Board

4.1 Rules & Guidance to be determined:

Alternative Investment Fund Manager Directive (AIFMD): The Board noted the report and the background to the EU legislative process resulting in the AIFMD.

Periodic Fees (2013/2014) and Other Fees Instrument 2013 (FCA 2013/49): The Board noted the reformulation of the fees proposals relating to incoming EEA firms.

The Board agreed the instruments, which are set out in Annex B.

4.2 Matters requiring a decision of the Board

The Board approved:

- the provision of written consent to the proposed amendments to Clause 4 (now Clause 10) of the Memorandum and Articles of Association of Financial Ombudsman Service Limited (FOS), before they were made by way of a special resolution at a general meeting of the FOS, subject to ascertaining the balance of executive and non-executive attendees should there be a reduction in the minimum number of Directors in place (subsequent conversations clarified this);
- the constitution of a Guidance Committee; the delegation of the issuing of guidance to the Guidance Committee; the approval of the terms of reference of the Guidance Committee and the ratification of any guidance issued by the FCA's Executive Committee (ExCo) since legal cutover; and
- the appointment of Antonio Simoes (Head of UK Bank, Deputy Chief Executive, HSBC Bank plc and Head of Retail Banking and Wealth Management, Europe) as a member of the FCA Practitioner Panel for a three-year term from 1 July 2013 until 30 June 2016.

Mr Bailey left the meeting at 3.00 pm.

4.3 Authorisations & INTACT Programme

The Board received the report and provided challenge to the team on various aspects of the proposed programme's business case. The challenge focused particularly on the estimated costs of the identified solutions, timing of implementation of the different stages, external and internal testing of the proposed systems, the risks to delivery and the contingencies that were in place. As part of the dialogue the Board discussed and noted the following points:

- there was a clear need for a new technology system, given the issues with the current systems and lack of interaction between them;
- the Intact system proposed as the solution would both support existing processes and allow the organisation to deal with the increasing volume of applications and ongoing work due to taking on the responsibility for consumer credit;
- there had been some testing of the software to be used. The external resources used had undergone a rigorous procurement exercise involving independent expert consultants and there was a strong IS and delivery team in place in authorisations; and
- the Board supported the project as a whole.

The Board approved the requested external spend and delegated authority to the COO or her designate to sign a contract with the preferred supplier

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:

- an update on the PPI project, noting that total redress payments have now exceeded £10 billion;
- the tendering process overseen by the Hogg Tendering Advisory Committee for a replacement organisation to administer LIBOR was nearly complete;
- the DEFRA consultation on securing availability and affordability of flood insurance and the government's intention to seek powers to regulate the industry should FloodRe prove unworkable;
- an update on the thematic review mobile phone insurance which highlighted poor product design, unclear terms and inadequate claims and complaints handling; and
- an update on enforcement and tribunal cases.

Mr Bailey re-joined the meeting at 4.05pm

5.2 PRA Update

The Board received an oral report and noted the following key points:

- the action taken in relation to the FPC recommendations in relation to low interest rates, cyber-attacks and individual capital requirements; and
- an update on the management of RBS.

6 Any other business

There was none.

7 Papers for noting:

The Board noted:

- the Minutes of the ExCo meeting held on 14 May & 6 June 2013;
- the Minutes of the AuditCo meeting held on 23 May 2013; and
- the Forward Agenda.

The meeting closed at 4.30pm

Claire Strong

Deputy Company Secretary

ANNEX A: Attendees

Sean Martin	Acting General Counsel
Simon Pearce	Company Secretary
Claire Strong	Deputy Company Secretary
James Anderson	IS Head of Chief Technology (for item 4.3)
Barbara Buettner	Secondee, Investments Distribution & Disclosure (for item 3.2)
Linda Blackwell	Manager, Mortgage Policy (for item 3.6)
David Geale	Head of Investments Policy (for item 3.2)
Clive Gordon	Head of Investment Advisors & Platforms (for item 3.1)
Sir Anthony Holland	Independent Complaints Commissioner (for item 3.5)
Neil Marshall	Chief Economist's Department (for item 3.6)
Graeme McLean	Head of Approved Persons, Passporting & Mutuals (for item 3.3)
Zitah McMillan	Director of Communications & International (for item 3.3)
Richard Monks	Manager, Public Affairs (for item 3.3)
Nick Poyntz-Wright	Director of Long Term Savings & Pensions (for item 3.1)
Victoria Raffe	Director of Authorisations (for item 3.3 and 4.3)
Richard Taylor	Manager Investments Distribution & Disclosure (for item 3.1)
Mario Theodosiou	Manager, Enforcement Strategy & Operations (for item 3.3)
Esther Wandel	Manager, Investment Funds Team (for item 4.1)
Dermot Whelan	Manager, Professionalism & Standards Team (for item 3.3)
Chris Woolard	Director, Policy Risk & Research Division (for item 3.2, 3.3 3.6 and 4.1)

Relevant Technical Specialists and Associates attended for items 3.1, 3.2, 3.6 and 4.1

ANNEX B: Resolution

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

Handbook Administration (No 30) Instrument 2013 (FCA 2013/48)

Periodic Fees (2013/2014) and Other Fees Instrument 2013 (FCA 2013/49)

Authorised Contractual Schemes (Handbook Amendments) Instrument 2013 (FCA 2013/50)

Alternative Investment Fund Managers Directive Instrument 2013 (FCA 2013/51)

Dispute Resolution: Complaints (Amendment No 6) Instrument 2013 (FOS 2013/4)

Dispute Resolution: Complaints (Alternative Investment Fund Managers Directive) Instrument 2013 (FCA 2013/52; FOS 2013/5)