

**CITY OF LONDON LAW SOCIETY REGULATORY LAW COMMITTEE
MINUTES**

Thursday 15 February 2024 at 12:30 pm
Conference call

ATTENDEES

Present	Firm represented
Hannah Meakin (Chair) Anita Edwards (solicitor non-member) Alexandre Paturel (trainee non-member)	Norton Rose Fulbright
Kevin Hart	CLLS
Brian McDonnell	McDonnell Ellis
Samuel Brewer (standing in for Richard Everett)	Travers Smith
Diego Ballon Ossio	Clifford Chance
Becky Critchley (standing in for Rob Moulton)	Latham & Watkins
Clive Cunningham	Herbert Smith Freehills
Anthony Ma	Grant Thornton UK
Simon Morris	CMS

A. DISCUSSION OF MATTERS

A.1 Approval of minutes of January meeting

No objections to the minutes of the Committee meeting held on 11 January 2024 were raised.

A.2 HMT and FCA joint DP23/5: Advice Guidance Boundary Review – proposals for closing the advice gap

Members discussed their views on the joint FCA and HMT proposals in DP23/5. Responses are due by 28 February 2024.

The first point discussed by Members was the proposal to further clarify the regulatory guidance on boundaries, and in particular on what constitutes informational support versus regulated advice. It was noted that any new/additional guidance should not cut across the existing position, which many firms are already relying on.

Secondly, Members discussed the proposals around continuum of support and agreed that HMT/the FCA should be asked to clarify in rules the difference between regulated support and non-advice support. It was also discussed that regulated firms often find it difficult to isolate what they already know about a customer

in order to be able to provide targeted financial advice or support, and Members agreed clearer guidance on how this should apply would make it easier for firms to ensure they comply with the Consumer Duty.

Thirdly, Members also discussed whether the proposed approach would deliver on the aim of trying to encourage firms to close the advice gap, or whether addressing the topic in the Regulated Activities Order or other prescriptive rules would be a better approach. Members supported the idea that there should be some prescriptive requirements around disclosure in particular.

Finally, Members highlighted that the proposals in respect of fees and charges had the potential to cut across the Retail Distribution Review, specifically as they allow cross-subsidisation. Members agreed that it needs to be very clear in the regulators' rules/guidance that no further management is required in respect of this conflict, and that there should be no reversing of this position in the future.

Members agreed that the draft response prepared ahead of the meeting would be updated and circulated to the Committee.

A.3 PRA CP25/23 / FCA CP23/23 – Prudential assessment of acquisitions and increases in control

Members also discussed their views on the joint PRA and FCA proposals to replace the EU guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector. Responses are due by 23 February 2024.

The first key point discussed by Members was the PRA's guidance on significant influence. Members queried the link between a determination in respect of "significant influence" and "the existence of material and regular transactions between a person and the PRA-authorized firm", and agreed that it would be useful to understand if the regulators have particular concerns around this.

Members then discussed the PRA's guidance on notices of proposed acquisitions and increases in control. Specifically, Members noted that further clarity would be helpful as to whether the PRA will require information to be provided upfront or only upon request. It was also agreed that the proposal to enable the FCA to request more information in relation to an application would cause uncertainty around whether an application is deemed complete or not. On a general note, Members also highlighted a lack of clarity regarding how the proposals would be incorporated into the application process itself.

Finally, in respect of the PRA's and FCA's reference to "taking into account the UK regulatory history of the controller", the Members discussed whether it would be useful for the regulators to clarify what this entails and also to take a longer-term view of controllers so as to prevent the same controllers being reviewed regularly. Members also agreed on the importance of guidance as to what information will be required by the regulators and when.

In respect of the FCA proposals, Members drew attention to a point in SUP 11 that does not appear to match with EU guidance, and agreed that it would be helpful to ask whether the regulators are now going to replace the SUP 11 guidance.

Members agreed that the draft response prepared ahead of the meeting would be updated and circulated to the Committee.

A.4 FCA CP23/27 – Reforming the commodity derivatives regulatory framework

Members discussed their views on the FCA CP23/27. Responses are due by 16 February 2024. Members agreed that the Committee would focus its response on the questions pertaining to the ancillary activity exemption, including asking the FCA to clarify how the factors for determining whether the exemption applies should fit together. Members also noted that the proposals do not work as well for spot and derivative emission allowances as they do for other derivatives.

B. POSSIBLE MATTERS FOR DISCUSSION AT THIS OR SUBSEQUENT MEETINGS

B.1 [CP23/32 – Improving transparency for bond and derivatives markets](#) – response due by 6 March 2024.

B.2 [HMT consultation – Enhancing the Special Resolution Regime](#) – response due by 7 March 2024.

B.3 [UK Emissions Trading Scheme consultation: future markets policy](#) – response due by 11 March 2024.

B.4 [UK Emissions Trading Scheme consultation: free allocation review](#) – response due by 11 March 2024.

B.5 [FCA CP23/24 – Capital deduction for redress: personal investment firms](#) – response due by 20 March 2024.

A member volunteered to draft this response.

B.6 [BoE consultation on its approach to statutory notice decisions for use of its requirements powers](#) – response due by 21 March 2024.

B.7 [PRA CP27/23 – The PRA's approach to policy](#) – response due by 8 April 2024.

Following the meeting, a member volunteered to draft this response.

B.8 [PRA CP28/23 – Leverage ratio treatment of omnibus account reserves and minor amendments to the leverage ratio framework](#) – response due by 8 April 2024.

B.9 [PRA CP3/24 – The PRA's approach to rule permissions and waivers](#) – responses due by 30 April 2024.

Following the meeting, a member volunteered to draft this response.

B.10 BoE discussion papers on RTGS [operating hours](#) and [access policies](#) – responses due by 30 April 2024.

C. ANY OTHER BUSINESS

C.1 Update on meeting with Kevin Hart of CLLS.

C.2 Members discussed the CLLS's LinkedIn page, and the proposal to roll out a specialist page for the Committee.

C.3 Potential new members

Discussion on this point is to be carried over to the next meeting.

C.4 Shadows

Members discussed the positive development of individuals shadowing the Committee and agreed that this would continue on an ad hoc, informal basis going forward.

C.5 Potential future event to be hosted by the Committee

Discussion on this point is to be carried over to the next meeting.

C.6 Upcoming annual CLLS Dinner for the Specialist Committees

The Chair agreed to circulate the invitation and details once available.

C.7 Any other business

No other business.