

The Diversity Project Senior Executive Forum: Communique on Leadership Accountability in respect of CP23/20

I. Introduction

The Diversity Project hosted an event on 23rd May 2024 inviting Senior Executives from across the asset management industry to discuss the FCA's CP23/20. The event was a business-driven discussion on the impact of the FCA's proposals identifying key practical implications for asset management businesses and their leadership.

Facilitated discussions took place in respect of the business implications for the following areas: culture; governance and accountability; data; risk and compliance; and HR and legal.

This communique sets out core messages that came out of the facilitated discussions, with an emphasis on what was deemed as 'new' or 'additional' perspectives, taking into account that the FCA has already received over 250 responses to CP23/20.

We thank EY for co-hosting and sponsoring this event and supporting this crucial discussion.

The Diversity Project welcomes a further discussion with the FCA to discuss the communique and share in more depth the sentiment and practical experiences shared at this Senior Executive Forum.

With many thanks to all who have contributed to these discussions.

Helena Morrissey, Chair, Diversity Project CIC

Monica Gogna, Partner and Head of Financial Institutions Law Group, EY LLP

II. Core Messages

A. Risk & Compliance

1. For firms headquartered outside of the UK, it was noted that there can be significant cross-border differences between regulatory approach, which can cause practical challenges when implementing FCA requirements, including adherence to privacy rules.

Firms seek further clarification as to the FCA's expectations on navigating cross-border differences.

2. Firms noted that they already produced documentation and reporting to the regulator on conduct and senior accountability issues. Firms seek further clarification with regards to the FCA's expectations on the submission of reports to the regulator. For example, practically speaking, Firms noted that they already report certain non-financial misconduct breaches via ICARA – would this be a sufficient vehicle for reporting to the FCA or will the FCA be seeking an additional reporting obligation/ vehicle specific to DEI? Firms highlighted the existing obligations to review documentation in compliance with SMCR and sought guidance as to whether this would be an appropriate and sufficient mechanism in which to record DEI considerations.

Firms stated that it would be valuable if the FCA provided a 'good and poor' practices guideline on compliance with the FCA's expectations, outlining how existing reporting structures may or may not be utilised by firms.

B. Data

1. Many firms were focused on improving the rates of responsiveness for data requests (a global consideration, not just within the UK). It was noted that firms appeared to have more success when they could provide staff with concrete examples of why sharing of data could create a positive impact – for example by leading to a more diverse pipeline of talent as more data was collected. It was widely felt that the FCA should monitor 'would rather not say' and similar responses from employees to data requests as that might suggest a lack of psychological safety.

Firms were keen to ensure that the FCA understood the practical challenge with this collation of data at present, despite best efforts by firms to encourage openness. Some firms noted that a practical positive point to collate DEI data is often when candidates are selected for a job and the completion of the usual talent onboarding documentation.

2. There was a general consensus that firms did not yet fully understand how the FCA intends to use data collated to take action. Further clarity was sought as to the possible actions that the FCA may take in this respect.

C. HR & Legal

1. It was noted that, in many instances, the HR function is not sufficiently defined to clarify its role with respect to DEI initiatives and its role vis a vis the firm and its employees. A clear practical example of this dilemma is during investigative processes where HR teams are often placed in conflict between acting in the best interest of the firm (and protecting the firm from potential litigation risk) and ensuring that employees felt 'safe' to be open in an investigation. In particular, specific feedback provided is that often persons with an ethnic minority background felt less confident that they would be heard (or protected) by HR in an investigation. One idea was to encourage the appointment of one HR representative as a designated advisor/counsellor for employees, with a separate reporting line eg to the Chair of the Board. This counsellor would be acting on behalf of employees, and not be conflicted.

Firms suggested that a good practice could involve nominating a senior executive DEI champion who would participate in such investigations to ensure a fair process. Though noting that this role should be rotated to ensure that a wider range of senior executives obtained exposure to the challenges that can be faced by DEI talent. The DEI champion should report to the Chair of the Board to avoid a conflict with executives. It was also noted that managers are often out of their depth when trying to deal with a complex behavioural complaint, and needed more expert support.

2. There was support for the continued use of settlement agreements. Many firms noted that settlement agreements were often used by the vulnerable as a practical legal method in which to protect their position in an effective manner. Nonetheless, firms recognised the need to spot trends where a particular prevalence of settlement agreements were being used by a specific business area or particular manager, which should lead to additional questions being asked by senior leadership.

Firms suggested that a good practice may be for senior leadership and Boards to receive a regular report on the volume of settlement agreements issued broken down by divisions, from which questions could be asked as required to spot any specific cultural challenges.

3. Firms recognised that a power imbalance could exist between how cases may be treated where complaints were raised against senior members of a business. Whilst many firms have instilled ethic hotlines there was a recognition that this did not have their intended positive impact.

Firms suggested that a good practice may be to instil a 'safe space' led by the senior DEI champion in which issues could be raised in a protected fashion.

D. Governance & Accountability

1. It was highlighted that often the Board's attention on DEI could be varied and that there were instances where the Board members are not as engaged on DEI questions as one may expect, often viewing DEI discussions as a 'side of the desk' activity for interested parties. There was an impression that this could have a detrimental effect on the culture of a firm where it was known that the Board did not see this a real focus.

Firms suggested that a good practice could entail additional criteria added to Board packs with a specific focus on DEI, including talent pipeline tied to business generation and reports on overall numbers of settlement agreements as stated above. This could then be tied into how firms seek to implement SMCR obligations.

2. It was recognised that too often both at Board level and senior executive ranks, under-represented people - for example persons from ethnic minorities - who spoke up on DEI issues were viewed as a 'lone voice', this could have the knock-on effect of a feeling of deflation of being the only one. The practical effect of this is that the burden was placed largely on the minority of senior leaders as opposed to carried by all.

Firms suggested that a pragmatic way to mitigate the 'lone voice' was for a rotation at both a Board level and senior executive leadership team to act as a DEI champion. Noting how such a role was being modelled already through the Consumer Duty Board Champion.

3. Firms highlighted the nuances between risk management and fulfilling general board obligations and how these lines were, at times, blurred. There was an emphasis on a more holistic approach by senior executives and Board members to utilise a combination skillset across HR, legal, compliance, risk, and front lines of business (as applicable) when seeking to review DEI and/ or culture.

For example, firms suggested that a framework for escalation could be established having representatives from across a blend of skillsets, allowing for a practical way for any suspected trends and bad behaviours by individuals and/or teams to be discussed in a more holistic manner. This could be something which was reflected in existing SMCR plans.

E. Culture

1. Firms emphasised the importance of harnessing psychological safety and for this to be applied across all levels of employees from the most senior to the most junior levels of staff. The forum discussed and shared the lived experience of persons from minority ethnic backgrounds within the financial services industry recognising that this lived experience was often different than the majority. Yet, still the confidence to speak up of any negative impact was seen as a barrier to progression within the firm or even within the wider industry itself.

A practical good example highlighted by firms was the importance of initiating and supporting “courageous conversations” amongst all levels of staff that was sponsored by the senior executive. Firms emphasised the importance of ensuring that generating a courageous conversation was seen as something to commend an individual and encourage.

2. Firms reiterated that a poor culture had a direct impact on the financial position of a firm.

Yet, firms sought further clarity and guidance on what was meant by ‘particularly serious’ poor behaviour. For example, firms wondered whether this should be measured by senior executives and Boards through data and trends as opposed to an over-reliance on headline grabbing instances of poor conduct.

3. There was a recognition that to in order to emphasise the importance of culture, financial metrics could be an example of a good practice used by firms, for example by asking for qualitative feedback on senior individuals in annual assessments on how they have a practical example of encouraging better DEI initiatives and delivering a stronger outcome within their firm (this would go beyond mere attendance at a one-off DEI focused event).

There was a recognition that a powerful tool would be for firms to increase visibility of how supporting a better culture, and specifically DEI initiatives and demonstrating this via senior DEI champions.