

# Annual Report

2019/20

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FCA

Smaller Business  
Practitioner Panel

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# Chair's foreword

As the Chair of the Smaller Business Practitioner Panel writing during the current coronavirus crisis, there is a sharp contrast between the events of the past year, the world in which we are currently operating, and the future to which we will have to adapt. There has been a change in leadership of the FCA, and I would like to express the Panel's sincere thanks to Andrew Bailey for consistently and keenly engaging with us during his time as Chief Executive. I would also like to thank Chris Woolard for taking on the role of interim Chief Executive, leading an organisation faced with an exceptional situation and steering it through the critically early stages of the coronavirus crisis. This was not an easy task, but he has ensured, with the rest of the FCA, that we are in good shape to face the challenges ahead.

I would like to thank my predecessor as Panel Chair, Craig Errington, for his many years of service to the Panel and wish him well for his retirement. In his last annual report he observed that the previous year had been a challenging one for the industry and the regulator – this year has seen an acceleration of change the extent of which no one had anticipated and which will create both extreme challenges and opportunities.

Addressing first the issue of the coronavirus response there will be particular challenges for smaller businesses as the crisis moves from the initial phase into a recovery phase. The impacts of government and regulatory actions have, in some instances, still to be felt. Many firms

have gone to extraordinary lengths to continue serving their customers and will have learned new ways of working, but sadly there are likely to be those which do not survive. The Panel will continue to discuss with the FCA how to support the resilience of smaller firms in the most effective way. Inevitably some firms will fail, and the FCA will need to gear up to deal with this, including competition and pricing concerns as the shape of the industry changes.

Consumers too have been affected in different ways. This applies both in their financial situations, with some facing real hardship, and in rapid changes in behaviour in the ways they access financial and other services. These changes are likely to remain. Increasing digitisation creates both challenges and opportunities for those who can utilise technology and those who may be left behind.

In the initial stages of the crisis the FCA has stepped up to help both consumers and businesses and the Panel would like to acknowledge both the pace and willingness to innovate during this period. Communication with consumers and the industry generally was excellent during the period and the Panel was able to share both experiences and concerns at the highest level in order to support the regulator's response.

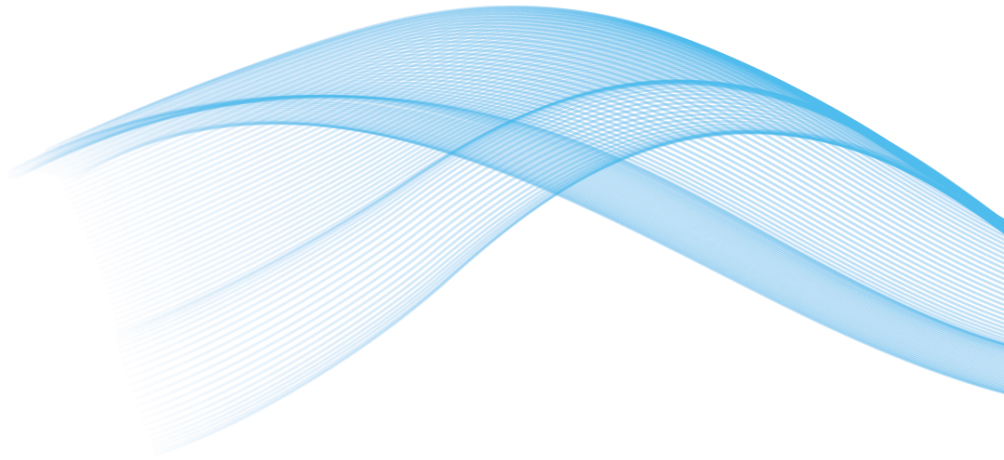
Looking ahead beyond the crisis and towards the new regulatory environment as a Panel we are looking forward to being a critical friend as the future of regulation changes. Innovation is a given which the FCA and the industry will need to embrace, but within a

structured framework of regulation. Culture and governance will never be more important as financial services evolve post the coronavirus crisis and new entrants will need to have culture and governance at the forefront. The Panel supports an approach from the FCA which focuses on ensuring fair outcomes for consumers.

I would like to thank all my colleagues on the Panel, past and present, and look forward to a year of challenges and opportunities in supporting the FCA ahead.

**Marlene Shiels**

Chair, FCA Smaller Business Practitioner Panel



# 1



## Introduction

The Smaller Business Practitioner Panel (SBPP) is one of four statutory Panels for the FCA, working alongside the Practitioner Panel, Markets Practitioner Panel and the Financial Services Consumer Panel. The SBPP aims to apply its experience and knowledge to improve UK financial services regulation through representing to the FCA the views, interests and concerns of smaller regulated firms.

Each year the Panel identifies its key areas of focus and priorities and communicates these to the FCA. During the year the Panel meets regularly with FCA senior staff and representatives of other bodies to engage with the regulatory process and provide advice and feedback. Over the year the Panel addressed the impact of regulation on smaller firms, focusing on proportionality and cost-effectiveness of regulation, volume and pacing of regulatory measures, communications and engagement and clarity of regulation. Its specific priorities for the year were:

- Future of regulation
- Innovation and new entrants
- Culture and governance
- Fair outcomes for consumers

# 2

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## Future of regulation



## 2.1 The future regime

*In its Business Plan for 2019/20 the FCA stated that following its Mission and 'Approach to' documents, and as the UK leaves the EU, it believes that it was time to review how it regulates to ensure it keeps pace.*

The Panel strongly believes any future regulatory regime must be proportionate to the potential harm to the end customer. A regime which is designed for larger firms will not be well adapted for smaller firms which pose a relatively low risk of harm. Careful consideration should be given to what level of regulation should be applied to different types and sizes of firm, depending on their risk profile.

The Panel supports an approach from the FCA which prevents bad behaviour in the industry rather than clearing up afterwards, and encourages the regulator to use its existing supervision and enforcement tools before considering the introduction of new rules and regulations.

## 2.2 Small firm regulation

*In its approach to firm supervision the FCA divides the system into sectors and monitors and regularly analyses the trends. It also divides each sector into a series of portfolios, with each portfolio comprising firms with similar business models.*

The Panel has provided feedback on the FCA's portfolio approach to supervising the majority of firms. The Panel

believes this is a positive approach, but recommends that more could be done to promote this as a 'good news' story as the process is not yet widely understood by firms – in particular, some firms are not clear to which portfolio they have been assigned. In addition, the FCA's shift to focusing on closer scrutiny of small firms could be more clearly articulated. The development of a single page on the FCA website for all portfolio letters is a good start, as firms may wish to refer to the communications sent to other portfolios relevant to their business.

## 2.3 Reviewing costs and benefits of regulation for small firms

*One of the FCA's cross-sectoral priorities was to review the costs and benefits of regulation for small firms.*

The Panel has raised serious concerns about the substantial increases in the Financial Services Compensation Scheme (FSCS) levy this year, and particularly the short timescales for paying the increased fees, for certain sectors such as financial advice. Combined with the possible impact of a private right of action for breaches of FCA Principles on the cost of professional indemnity insurance, the Panel believes this has the potential to price many firms out of the advice market. It has urged the FCA to consider this impact within the context of outcomes-based regulation, if the desired outcome is to retain an adequate supply of advice over the longer term.

## 2.4 Small firm communication

Over the year the Panel has discussed small firm communication with the FCA and made a number of suggestions, including the publication of all 'Dear CEO' portfolio letters, so that firms can see the risks identified for all sectors. Its view is that use of clear and concise communication is helped by using a variety of channels, and that the FCA should not be reluctant to use digital communication such as webcasts or social media where appropriate.

## 2.5 Brexit

*The UK left the EU on 31 January 2020 with a Withdrawal Agreement and has entered a transition period which is due to operate until 31 December 2020. The FCA will be working to ensure that it and the UK financial services sector are prepared for the end of the transition period. This includes continuing to engage with the UK government and other UK regulators. It will also continue to work with the European Supervisory Authorities, national authorities in member states and all European policymakers on shared issues and priorities.*

Although there are many outstanding questions to be resolved for smaller firms, the Panel understands that the FCA is doing as much as it reasonably can to help the industry prepare. During the year the Panel actively encouraged the FCA to increase the amount of communication on the Brexit process to smaller firms, and this was reflected in a number of publications and an increased

profile for Brexit information in the FCA's Regulation RoundUp. It appreciated that many of the uncertainties surrounding Brexit-related regulation are not within the FCA's control, but continued communication with smaller firms was welcome. It was particularly helpful that the FCA explicitly encouraged smaller firms to be aware of relevant EEA transitional regimes and any deadlines, and provided information on contacting other jurisdictions.

Although the UK has now left the EU the Panel has encouraged the FCA to continue communicating with smaller firms in particular to emphasise the work that needs to be done to ensure they are able to function effectively at the end of the transition period. The Panel has concerns that many firms may be unaware that they will not be able to carry out 'business as usual' at the end of the period and that preparations must still continue.

## 2.6 Perimeter and FSCS

*The FCA published its first annual perimeter report in June 2019, clarifying what challenges the perimeter presents, the actions the FCA is taking to overcome them and whether there are any issues with the perimeter which might require legislative or other changes.*

Considering what happens when things go wrong, the Panel has discussed the issue of the regulatory perimeter, and encouraged much clearer signposting of what products are and are not covered by the Financial Services Compensation

Scheme (FSCS), especially if they are marketed by regulated firms. It continues to be concerned about the likely failure of more firms operating at the edge of the FCA's perimeter, and consumer understanding about the extent of FSCS cover in these cases.

## 2.7 New consumer duty

*The FCA published a feedback statement in April 2019 on work looking at a new duty of care and possible alternative approaches. The regulator has been considering whether the right balance is currently being achieved between firm and consumer responsibility. A further consultation on joint principles and a new consumer duty is due to be published in the second half of 2020.*

The Panel has actively engaged, alongside the Practitioner Panel and the Financial Services Consumer Panel, in the FCA's work to explore the need for, and potential form of, a new consumer duty or duty of care. It has raised a concern about the potential for 'switching on' a private right of action in this area on the grounds that firms which want to do the right thing are compelled to adopt an overly legalistic approach which will not lead to good outcomes either for firms or consumers.

## 2.8 Non-workplace pensions

*The FCA's focus on regulation in the pension sector included work on non-workplace pensions, where it identified a lack of competitive pressure in the market.*

In the non-workplace pensions market the Panel cautioned against focussing too sharply on the issue of costs without considering the broader concept of value. Consequently, although it supported increased transparency, it cautioned there is a risk that any sunlight remedy which focuses only on charges will cause consumers to make decisions based on price alone, which may result in inappropriate choices and consumers foregoing important benefits and features.

## 2.9 LIBOR

*The interest rate benchmark LIBOR is expected to cease after end 2021. Firms must transition to alternative rates before this date.*

In discussing the proposed replacements for LIBOR the Panel emphasised that many smaller firms will not be aware that this affects them at all, and will not be conscious of how many contracts include references to LIBOR. It encouraged the FCA to develop a communications strategy including a list of the kind of contracts which may be affected, and to work with industry, trade bodies and organisations such as Responsible Finance who work with organisations which may be affected by this change.

## 2.10 Sustainable finance

*The FCA has worked on a number of initiatives related to sustainable finance and in October 2019 published a Feedback Statement summarising the responses received from stakeholders to the Discussion Paper on Climate Change and Green Finance published in October 2018, setting out actions and next steps.*

The Panel supports the prominence sustainable finance has been receiving amongst the regulatory community, especially the drive towards consistent standards. It was encouraged that the FCA is taking a cross-functional approach to Economic, Social and Governance (ESG) regulation. It has cautioned against taking an approach which adds an extra layer of disclosure to customer communications and has encouraged the FCA to aim instead for simplification.

## 2.11 General insurance pricing practices

*The FCA launched a market study to understand whether pricing practices in home and motor insurance support effective competition and lead to good consumer outcomes. It published an interim report in October 2019 with a range of proposed remedies. The outcomes of the interim report were due to be published in early 2020 but have been delayed by the coronavirus crisis.*

The Panel considered this an important piece of work and welcomed the fact that it addressed predatory pricing practices. It agreed that the objective of the work should not be to mandate that all customers are offered the same price, but emphasised that value of non-price factors, including the customer claims experience, must be taken into account in determining value to the customer.



# 3

Innovation and  
new entrants

### 3.1 Open finance

*Following the introduction of Open Banking – where consumers and small businesses can give access to their payment account data to third party providers to get new services - the FCA issued a call for input on Open Finance in December 2019. Open Finance would extend open banking principles to give consumers and businesses more control over a wider range of their financial data, such as savings, insurance, mortgages, investments, pensions and consumer credit.*

The Panel has discussed the work on open finance with the FCA, noting that although it is still in its early stages it does touch quite quickly on fundamental regulatory issues such as the balance of responsibility between firms and customers. While there was acknowledgment of the potential benefits, there were even more fundamental issues around the risks and unintended consequences, for example for risk pooling and gaming the system as well as the ethics of using data for certain purposes. The Panel's view is that implementation by the industry, and take-up by customers, may be quite slow in some areas as existing firms decide what is a reasonable and cost-effective approach to implementation and put their systems in place.

### 3.2 Payments

*In its 2019-20 Business Plan the FCA stated its intention to extend the Principles for Businesses to payments services and e-money firms, ensure that business models are fit for purpose through its re-authorisation programme and engage with other regulators and industry to anticipate and shape the development of the banking and payments sector business models.*

The evidence the Panel had seen so far of innovation in the payments space suggests there is more focus on the technology aspects of the innovation than the value of the financial service to customers. The Panel was also concerned about a lack of regulatory and financial services awareness among new entrants. It has encouraged the FCA to keep a close watch on the sustainability of business models, and to be aware that customer familiarity with technology is not always associated with strong financial capability, or a good understanding of what protection is and is not in place.

# 4



## Culture and governance

## 4.1 Culture

*Following on from its previous work on culture, in which the Panel had participated, a key priority for the FCA during the year was working with firms to promote and embed healthy culture, focusing on four drivers of behaviour – purpose, leadership, reward and managing people, and governance. In March it published a collection of essays from industry leaders, professional bodies and culture experts exploring the role of purpose in driving a healthy, sustainable culture*

The Panel discussed firm culture with the FCA throughout the year and encouraged it to reflect this work in considering the future of regulation. The Panel contributed to the collection of essays on purpose, focusing on how smaller firms in particular will do better if they concentrate on ‘who they really are’, using a series of case studies to illustrate their point.

## 4.2 Senior Managers and Certification Regime (SM&CR)

*In December 2019 the FCA extended the regime to around 47,000 firms. The SM&CR already applied to the banking and insurance sectors and the December 2019 extension was seen as a key step to creating a culture across financial services where individuals step forward and take accountability for their own actions and competence.*

The approval processes for senior managers in the context of the SM&CR were of particular interest to the Panel, which discussed the ninety day time limit for applications, suggesting that the FCA could introduce more flexibility to its approach, to ensure the need for clear accountabilities is most appropriately assigned. This might include, for example, introducing a temporary approved person status in some cases – especially for those who had held similar positions elsewhere in the industry – or identifying a way of prioritising applications where there is limited capacity within a firm to provide interim cover for the positions. The Panel also raised the issue of whether appropriate processes were in place for authorisation and re-authorisation of senior managers in relation to parental leave, recommending the introduction of a combination of a temporary suspension of approval combined with an attestation process on return to work.





# 5

Fair outcomes  
for consumers

## 5.1 Vulnerability guidance

*In July 2019 the FCA launched a consultation on proposed guidance for firms on the fair treatment of vulnerable customers. Publication of the findings and research has been delayed until later in 2020 by the coronavirus crisis.*

The FCA's work in this area was considered to be both relevant and timely, and the Panel welcomed its thoughtful approach. It emphasised that to help consumers in vulnerable situations it is vital that any actions proposed by the FCA do not become a compliance-led tick-box exercise, but address the culture in firms to ensure that the right approach to vulnerability is embedded throughout the organisation. The Panel has also stressed that the level of vulnerability, both of consumers and smaller firms, is likely to greatly heightened by the coronavirus crisis.

## 5.2 Intergenerational differences

*During 2019 the FCA launched a discussion with industry, consumers and their representatives, regulators and academics to understand the changing financial needs across generations for UK financial services markets.*

The issue of intergenerational differences is an important topic, although the Panel's view is that it is a social policy issue which provides context for the FCA's regulatory policy agenda rather than one which it needs to address directly. It

supports the discussions and how they influence future policy work.

## 5.3 Pension transfer advice

*The FCA has carried out work to address weaknesses across the defined benefit (DB) transfer advice market, including steps to reduce conflicts of interest by banning contingent charging, as well as help for advisers who want to do the right thing and provide good quality advice to their customers.*

The Panel engaged actively on the FCA's work in the pension transfer advice market. It initially cautioned against giving the impression that poor practice was widespread in the market unless there was concrete evidence that this was the case, in order to prevent lower take-up of advice where it is needed resulting in greater detriment in the longer term.

The Panel was opposed to a ban on contingent charging, on the grounds that the regulator had not established a link between such charging and poor advice, that it would fail to target those firms which gave such advice, and would make unsustainable the business models of many firms carrying out valuable work in this area. This would have the unintended consequence of trapping some consumers with pension pots of over £30,000 in schemes which they wish to leave, if they are unable to find a source of appropriately qualified advice. The Panel's view is that rather than regulating charging structures the FCA should be focusing more on its existing supervisory tools to prevent inappropriate business behaviour.

## 5.4 General insurance distribution chain guidance

*Following diagnostic work on general insurance distribution chains, which found a number of harms to customers from failures in product design, oversight and distribution, in November 2019 the FCA published guidance to provide clarity to firms about its expectations, in particular on the design and distribution of insurance products and the requirement to act in accordance with the customer's best interests.*

The Panel acknowledged that there was poor practice in some areas of this market and supported the FCA's work to address this based on the requirements of the Insurance Distribution Directive. It raised concerns, however, that the FCA should not use findings in some quite specific areas of the market to develop guidance for areas which were not within the review without clear evidence that they are appropriate, and urged it to avoid a simple one-size-fits-all approach.

## 5.5 Motor finance

*In October 2019 the FCA announced plans to ban a particular way in which some car retailers, and other brokers in the motor finance sector, receive commission. The FCA found that the widespread use of a model where the broker can set the interest rate that customers pay, linked to the level of commission they receive, created an incentive for brokers to act against customers' interests.*

The FCA's work on motor finance was very much welcomed by the Panel, addressing as it did the current poor practices in the market which it had highlighted as needing urgent attention. It supported the objectives and general direction of the work.

## 5.6 Changes to mortgage advice and selling standards

*The FCA issued final rules and guidance on mortgage advice and selling standards as part of a package of remedies arising from the earlier Mortgages Market Study. The remedies aimed to work together to support its objectives to ensure consumers have the information and support they need to make informed choices about how they buy a mortgage.*

The Panel expressed some concerns that the FCA's work on mortgages appeared to downplay the value of advice, which it considers to be necessary for the majority of consumers, taking into account the complexity of options and interaction with other financial needs. It also continued to highlight the need for mortgage protection cover.

## 5.7 Funeral plans

*Following concerns raised in the media and by consumer groups about the conduct and prudential soundness of some pre-paid funeral plan providers, HM Treasury consulted on bringing the sale and administration of pre-paid funeral plans into the FCA's regulatory perimeter, and as a result of the consultation intends to bring legislation into force to do so.*

The unusual features of the funeral plan market, in the Panel's view, require it to be approached differently to other sectors. It welcomed a regulatory approach which protects consumers by addressing gaps in regulation and in particular a level playing field for the regulation of trust funds. However, it has urged the FCA, in its regulation of the sector, to avoid taking any actions which have the unintended consequence of reducing the number of small funeral directors in the market, and that it should also take into account the non-financial services offered by such firms to consumers in a time of vulnerability.

## 5.8 Money and Pensions Service

*Following the creation of the Money and Pension Service (MAPS) from its predecessor bodies the Money Advice Service, The Pensions Advisory Service and Pension Wise, the Panel engaged with it for the first time during the year.*

The Panel provided input to the Money and Pensions Service listening exercise prior to publication of its national strategy on money and pensions. This included discussion of the options for measuring the economic benefit of the service. The Panel was pleased to hear that there is an intention to make use of partnerships with other bodies operating in the advice and guidance space in order to deliver its challenging objectives.

## 5.9 Financial Ombudsman Service

*The Panel has regular contact with the Ombudsman as part of its engagement with the wider regulatory family.*

The Financial Ombudsman Service presented their plans for the next year and their funding review. The Panel raised some issues on its approach to assessing individual claims, and in particular using guidelines developed for one sector in assessing claims for another. The Panel has provided evidence directly to the Ombudsman to provide input to its approach and continues to engage.

## 5.10 Claims management companies

*The FCA began regulating the claims management industry from April 2019. All claims management companies (CMCs) in England, Scotland and Wales now have to demonstrate they meet and maintain minimum standards set by the FCA. More than 900 CMCs registered for temporary permission to continue operating while they go through the FCA authorisation process.*

The Panel discussed the behaviour of claims management companies with the FCA and the Financial Ombudsman Service. While acknowledging that they can provide a role in facilitating genuine claims, Panel members have seen evidence of spurious claims being submitted on behalf of consumers who, it subsequently turned out, did not have a loan or did not intend for this action to be taken on their behalf. It continues to discuss further and has encouraged the FCA and the Ombudsman to work together to publicise that consumers do not need to use claims management firms if they wish to raise a complaint.

## 5.11 Individual Voluntary Arrangements (IVAs)

The Panel has alerted the FCA to a significant increase of the numbers of IVAs over the last year and a corresponding increase in the volume of complaints and reports of poor practices in setting them up. It has encouraged the FCA to continue working closely with the Insolvency Service to monitor this area as the increase in consumer distress has an impact on the regulated sector and Credit Unions in particular are disproportionately affected by customers entering into IVAs which may not be the most appropriate option for their situation.

# Members of FCA Smaller Business Practitioner Panel

## Marlene Shiels

Panel Chair  
Chief Executive Officer,  
Capital Credit Union

## Craig Errington

Former Panel Chair  
Group Chief Executive, Wesleyan  
Assurance Society  
Until 31.07.19

## Paul Beasley

Chief Executive Officer,  
Richmond House Wealth Management

## Andy Chapman

Chief Executive Officer, The Exeter

## Nicholas Coghill

Chief Executive Officer,  
City Asset Management

## Gerald Grimes

Panel Deputy Chair  
Group CEO Designate, Together Money

## Richard Haas

Former Panel Deputy Chair  
Chief Executive, CapeView Capital LLP  
Until 31.03.20

## Gemma Harle

Managing Director, Mortgage and  
Financial Planning Network,  
Quilter Financial Planning

## Robin Keyte

Director, Keyte Ltd  
Until 31.12.19

## David Marlow

Chief Executive,  
Nottingham Building Society

## Julian Parrott

Partner, Ethical Futures  
From 01.05.20

## Ashley Rogoff

Founder and Managing Director, Ashley  
Page Insurance Brokers Ltd  
Until 31.07.20

## Sue Round

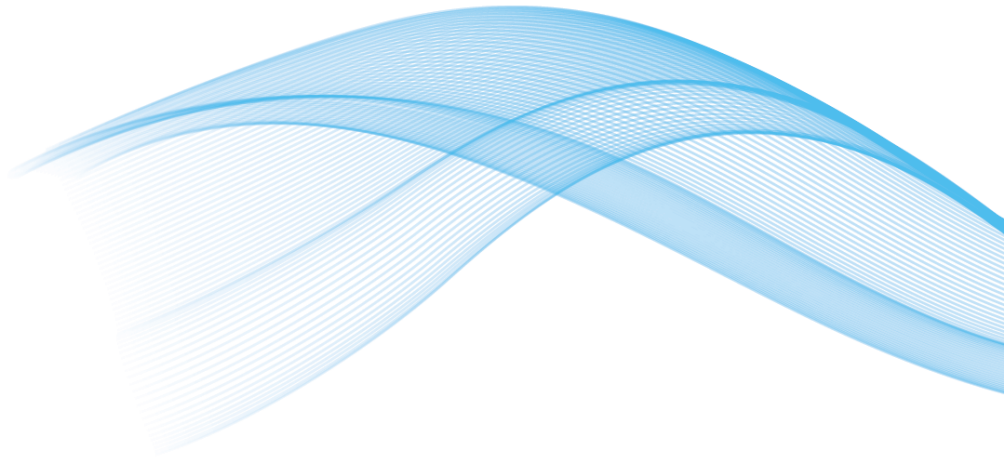
CEO, EdenTree Investment Management

## Paul Smith

Chief Executive Officer, Morses Club PLC  
From 01.05.19

## Lee Streets

Chief Executive Officer,  
Evolution Funding Ltd  
From 01.10.19



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