

CP20/23 and CP23/18: D&I in Financial Services

BSA Response

18 December 2023

 **Building Societies**
Association

Introduction

The BSA represents all 42 building societies, as well as 7 larger credit unions. Building societies serve almost 26 million consumers across the UK and have total assets of over £507 billion. Together with their subsidiaries, they have helped over 3.5 million families and individuals to buy a home with mortgages totalling over £375 billion, representing 23% of total mortgage balances outstanding in the UK. They are also helping over 23 million people build their financial resilience, holding over £370 billion of retail savings, accounting for 19% of all cash savings in the UK. With all of their headquarters outside London, building societies employ around 51,500 full and part-time staff. In addition to digital services they operate approximately 1,300 branches, holding a 38% share of branches across the UK.

The BSA recognises the many benefits that having more diverse and inclusive firms can have, both from a business and consumer perspective, and welcome the PRA and FCA consultations on these important topics. We ourselves are a Living Wage employer, subscribe to the Women in Finance Charter and are supporters of Progress Together.

While many firms are at different stages in their approach to D&I, it will be helpful for firms to have a clearer view of regulatory expectations, and also (for smaller firms in particular) what future developments/requirements could look like as focus on this area continues and evolves over time.

We responded to the joint consultation DP21/2 in 2021, our main points being:

1. **Driving Change:** We encouraged the regulators to fully consider how their proposals would ultimately fit into wider government and social initiatives to encourage and achieve greater diversity and inclusion. We still believe that there will need to be coherent effort, not just from FS firms, but from educators and the government to encourage people with more diverse characteristics into the industry.
2. **Diversity of Thought:** We said that in establishing cognitive diversity it is important to consider not just individual “thinking styles”, but also people’s background and life experience, and are pleased to see this strongly reflected in the consultations.
3. **Accountability:** We agreed that board accountability for promoting diversity and inclusion would be critical to successfully achieving a more diverse and inclusive sector. Again, we are pleased to see this reflected in the consultations, although see some of our later comments in relation to the interaction of the proposals with existing employment and other legislation.
4. **Proportionality:** We urged a proportionate approach general and in particular in relation to data collection and publication, and are very pleased to see that such an approach is at the core of these proposals.

We view the proposals on which the regulators are currently consulting positively, and in particular applaud the proportionate approach that the regulators have adopted. Alongside that positivity sits an edge of caution around:

1. The potential for wider application of the proposals in the future,
2. Ensuring that the burden of reporting is not too onerous (see Section 3 of this response), and
3. Why the regulators have not taken this opportunity to go further and to mandate, at least for larger firms, the collection of socio-economic data.

For ease, we have opted to combine our responses to the FCA's CP23/20: Diversity & Inclusion in the Financial Sector and the PRA's CP18/23: Diversity & Inclusion in PRA Authorised Firms. We draw out some specific points on the following areas, the first of which includes some questions for the regulators:

Section 1: High Level Proposals and Questions

Section 2: Diversity & Inclusion Strategies

Section 3: Targets

Section 4: Data & Reporting

Section 5: Individual Accountability

Answers to the specific questions raised by the FCA are contained in the Appendix.

1. High Level Proposals & Questions for the FCA and PRA

Timescales

We support the proposal that the new rules should come into force 12 months after publication of Policy Statements/final rules and that data should be reported as at that reference date. The proposed 3 month reporting window is practical.

Overarching Framework & Scope of Application

We welcome the stated aim of both regulators to encourage greater D&I for all firms in a proportionate manner, avoiding rules that would not be effective or appropriate for smaller firms.

We agree that it is appropriate to:

- Apply a minimum standard to all firms with Part 4A permission.
- Impose additional requirements for firms with 251 or more employees in certain areas (but see our comments later in this response in relation to the specific requirements).
- From a PRA perspective, bring all dual regulated CRR and Solvency II firms within scope of the proposals on D&I strategies.
- Dis-apply the additional requirements to Limited Scope SM&CR firms regardless of size.
- Require all firms with Part 4A permission to report employee numbers annually on RegData.
- To amend the Handbook and supervisory statements etc to reflect proposals.

Setting the large firm threshold at 251 or more employees not only serves to support a proportionate approach, but also helps address the situation that in smaller firms it becomes harder to protect individuals from being identifiable. We welcome that, and at the same time would welcome the regulators’ views on the risk of firms choosing to “game” that threshold.

While supportive of the proposals, and particularly the proportionate approach to what is being consulted on, the BSA does have some questions for each of the regulators on a number of aspects of their high level proposals/objectives. These are set out in the following table.

DESIRED/HOPED FOR OUTCOMES	
What the FCA says	BSA’s response/questions
<p>Chapter 1 of the FCA’s consultation refers to specific outcomes it is hoping to achieve, namely:</p> <ul style="list-style-type: none"> • Healthier firm cultures • Reduced groupthink • New talent unlocked • Greater understanding of, and provision for, diverse consumer needs 	<p>In relation to these outcomes, how does the FCA intend to measure success?</p> <p>Does the FCA have a view of what today’s baseline at individual firm level/sector level looks like, and/or does it expect firms to baseline where they are now against these outcomes, and be able to demonstrate progress (in the context of their own strategies)?</p> <p>If so, more specificity and potentially also guidance on this will be necessary, given the challenges that there are likely to be in measuring the first two of those desired outcomes in particular.</p>
STRATEGY	
What the PRA says	BSA’s response/questions
<p>The strategy should be used to form the basis of the firm’s D&I action plan.</p>	<p>Is the PRA expecting firms to produce a separate action plan?</p> <p>If so, what is their expectation around Board oversight of that versus the overarching strategy?</p>
SUPERVISION	
What the FCA says	BSA’s response/questions
<p>It has developed new materials to help supervisors assess firms’ strategies and approaches to D&I.</p> <p>It will assess the drivers of behaviour that can create cultures likely to cause harm.</p> <p>It encourages firms that are able to meaningfully apply more elements of the regime than required to do so where they consider it may be beneficial.</p> <p>The FCA sets out a number of inclusion questions on which it will require firms to report.</p>	<p>When will the FCA share/provide more information on the new materials?</p> <p>We encourage the FCA to be more specific about the drivers of behaviour it considers likely to cause harm.</p> <p>“Encouraging” firms to meaningfully apply more aspects of the regime risks creating an expectation that they will do it, and that they might feel that they should/be expected to explain why they are not. We would not expect that to form part of supervisory work/expectations for small firms, and suggest the FCA confirms whether or not that is the case.</p> <p>How does the FCA intend to supervise how firms act on the findings of this reporting, both at firm and individual person level,</p>

	<p>given some of the requirements relate to management.</p> <p>In relation to supervision generally, how do the PRA and FCA intend to ensure that their own approaches to supervision and approval of candidates for roles, especially at senior level, supports greater diversity and inclusion?</p>
<p>Throughout its consultation, the PRA refers to:</p> <ul style="list-style-type: none"> • requirements, • its expectations of firms, and • things that firms might choose to do 	<p>Clearly, the requirements must be in place. However, from a supervisory perspective, will the PRA take a proportionate approach in relation to its expectations and the things that firms might choose to do?</p> <p>Alternatively, if these are likely to create a “comply or explain” scenario, it would be helpful to be specific about that.</p>
TARGETS	
What the FCA says	BSA’s response/questions
<p>The CP suggests that targets could be informed by the proposed data collection and any relevant wider data.</p>	<p>Is there a standard data set that the regulators would expect to see firms using in order to set targets?</p> <p>Does the FCA have a view on what sort of wider data might be used?</p>
DATA REPORTING	
What the FCA says	BSA’s response/questions
<p>During the first year the requirements are in place, firms will be required to report such data as is reasonably practicable, and explain the reasons for any gaps and how they will be closed</p>	<p>The FCA should clarify that this will also be the case where a firm currently falling under the definition of a smaller firm comes into scope by virtue of growing to 251 or more employees.</p>
<p>It expects to see increasing numbers reporting on the voluntary metrics, and may consider moving towards them being mandatory at a later date.</p>	<p>We urge the FCA and PRA:</p> <ul style="list-style-type: none"> • To continue to be proportionate in mandating metrics, • To confirm that they would consult on any proposals to widen the number and scope of those, and • That any such proposals would be afforded a similar lead in time for firms to achieve compliance to those contained in this consultation.

2. Diversity & Inclusion Strategies

The BSA supports the proposal that firms should develop evidence based strategies, and agrees that this approach should help drive progress and act as a tool to enable better scrutiny of firms’ performance. When we asked our members whether they considered that the proposals could go further, one member pointed out the risk of more prescription tying firms to a “best practice” template. They, and we, believe that firms are best placed to identify and adopt their own strategy that best fits the firm’s characteristics given the differences in size,

locality, workforce culture, customer base and products on offer, to name just a few areas of potential wide ranging differences between firms.

We agree that as a minimum it must contain:

- The firm's D&I objectives and goals
- A plan for meeting them and measuring progress
- A summary of arrangements in place to identify and manage any obstacles to meeting them, and
- Ways to ensure adequate knowledge of the D&I Strategy among staff

The PRA states that it expects that in addition to these, the strategy should include the firm's core values, the culture it is trying to create and its commitment to diversity and inclusion. We agree with this, and also with their expectation that it should cover the role of the firm and staff in fostering an open and inclusive environment, including empowering colleagues to speak up and express their views. Some of our members have asked whether the regulators intend to provide more guidance around what is meant by "objectives" in this context, and particularly for smaller firms.

It is appropriate for the Board to be responsible for maintenance and oversight of the strategy, and that it should review the strategy to make sure it remains appropriate and effective. We think it proportionate for the regulators not to mandate when and how that review should take place.

It is helpful that under the proposals firms would have flexibility around a number of aspects, especially the scope to:

- Either combine board and firm-wide strategies, or choose to keep them separate
- Publish a separate D&I policy, or include it in a D&I annual report

One of our members has suggested that it would be beneficial for the regulators to clarify whether the D&I Strategy needs to be an entirely separate document, or whether it could be incorporated into, for example, an ESG or other strategic document. Clarification on this point would be helpful.

3. Targets

We welcome the proposals requiring firms to set targets to address under-representation in the firm and agree that these should be publicly disclosed. However, the PRA would require targets to be set for women and ethnicity where under-representation has been identified and we support this proposal, while noting that the FCA does not propose to mandate what demographic characteristics should be targeted.

We believe that it would be much clearer were the PRA and FCA to adopt an aligned position on gender and ethnicity. If the situation remains with one regulator being specific and the other not, then there is potential for different approaches to be taken, and for firms to be misaligned on key areas of focus.

It is proportionate:

- To allow firms to choose to set inclusion targets on a voluntary basis in addition to the diversity targets. This is particularly the case given the regional demographics across the UK and the desire of many firms to recruit from within their local communities.
- Not to mandate:
 - What the targets should be. This is to give firms the flexibility to target characteristics that would enable them to make progress in their areas of greatest under representation.
 - How frequently firms should update their targets.

The FCA says that firms need to review and update their targets regularly, to ensure that they remain “stretching but realistic”. Our members would appreciate more guidance on what this might mean. The regulators should also recognize that there may come a point where firms reach what they consider to be an appropriate position in relation to a particular demographic and the impact that that would have on targets/strategy.

4. Data & Reporting

We consider that, other than socio-economic diversity (see below), the split between mandated and voluntary metrics is appropriate, that it has been sensitively derived and is workable. Further, we agree that it is sensible to differentiate from the requirements of the Equality Act 2010 by:

- Excluding the protected characteristics of pregnancy and maternity or marriage and civil partnership, and
- Collecting data on gender identity instead of the protected characteristic of gender reassignment.

Reporting data in the three categories that have been proposed should support firms in identifying where there may be a need to adopt a different approach to ensure that their strategy is being implemented and driven forward as planned.

The BSA’s members have expressed no concern at the proposal that the collection and reporting of data on the range of demographic characteristics, inclusion metrics and targets should be reported annually via a regulatory return.

We think the regulators should be clear about the status and how they will supervise what they refer to as their “expectations” of firms. For example, the PRA sets out a number of expectations in relation to reporting, including:

- That firms develop “process” metrics, to help identify potential challenges in employee-management processes such as performance measurement, recruitment, promotions, attrition, disciplinary proceedings and dismissals.
- Firms assuring themselves that in collecting and reporting data, they are doing so in accordance with privacy legislation
- That firms tell employees how their data will be used and who will have access to it
- That where (demographic) information is liable to change over time, it should be collected annually

Are these to be viewed as requirements? Are they “nice to have’s”? Clarity on this point would be appreciated and will inform how firms implement the policy once it is in place.

We have **three further points of concern and which we feel need further consideration** by the regulators in relation to data collection and reporting:

Firstly, our primary concern is the comment from the FCA that it expects to see increasing numbers reporting on the voluntary metrics, and may consider moving towards them being mandatory at a later date. If this is on the basis of the current differentiated treatment of small versus larger firms, we agree with this direction of travel. If not, then we would urge the regulators:

- To continue to be proportionate in mandating metrics,
- To confirm that they would consult on any proposals to widen the number and scope of those, and
- That any such proposals would be afforded a similar lead in time for firms to achieve compliance to those contained in this consultation.

Secondly, firms are already required to report different data in different formats to various other parties/initiatives to further diversity, equity and inclusion in financial services. We urge the regulators to consider whether there is potential to create a single approach and mechanism to reporting. This would have benefits in terms of consistency, allow better comparison of firms and mean that the whole process is more streamlined and cost effective.

Thirdly, we think that the regulators should reconsider whether collection and reporting of socio-economic data ought to be mandated, at least for larger firms. While one of our members is not of the same view, at least for now, the majority who commented on our response were supportive of a re-think on this. The consultations refer to a number of resources, and we draw attention in particular to two of those - Progress Together's "[Shaping our Economy](#)" report from September this year. That report, the largest study into socio-economic diversity and progression in the world, surveying just under 150,000 people, found that **socio-economic diversity is more likely to impact a person's route to success in financial services that gender or ethnicity**. It includes recommendations for businesses to help improve socio-economic diversity at senior levels. We believe that in order to achieve real change, the regulators should also be focussing on ensuring that firms are motivated to focus on this aspect of diversity, and that collection and reporting of data alongside a strategy that properly addresses this aspect of diversity would support positive change in this and other aspects.

We also acknowledge that some stakeholders may assert that socio-economic data may be too difficult to measure. We would refer those stakeholders to the Social Mobility Commission's work on metrics to counter this:

<https://socialmobilityworks.org/toolkit/financial-and-professional-measurement/>

5. Individual Accountability

We are broadly supportive of the proposals around individual accountability and the consequential changes to the SM&CR.

We note, however, that the PRA proposals say that SMF holders would not be held to account for failure to meet diversity targets, but that they would be expected to understand and discuss the reasons for certain targets being set and, if they are not going to be met, why.

While appreciating that this statement means accountability from a regulatory perspective, we believe that firms will in fact be in a position of being required to hold individuals to account, and perhaps that is the intent.

For example, the new prescribed responsibility for PRH includes ensuring all business areas understand the role they play in implementation. D&I responsibilities should be reflected in performance objectives and remuneration scorecard, and performance reflected via risk adjustments (where applicable). This does create responsibility and accountability, and we do not agree that there would be no holding to account for failure to meet diversity targets. If that is the intent, so be it, but we find it misleading to suggest that there would be no holding to account in relation to meeting targets. There is, of course, another school of thought that the regulators allocating SMF responsibility for some and not all risks could give the impression that some of the other risks run and managed by firms are less important.

While matters relating to a person's private life can be excluded as far as COCON is concerned, they will clearly impact an assessment of fitness and propriety. This raises a number of issues and potential conflict in relation to employment law, including:

- A firm's ability to investigate and gather information on an employee's conduct outside work, and
- What level of investigation into non-work matters is to be expected of firms.

We consider it important that the regulators issue draft guidance on non-financial misconduct as soon as possible to allow firms adequate time to put any necessary changes in place.

APPENDIX – RESPONSES TO FCA QUESTIONS

Q1: To what extent do you agree that our proposals should apply on a solo entity basis?

We agree that it would allow for progress to be more evidently made at individual entity level.

It could be helpful were the FCA to comment on any impact on supervision if there were different outcomes for the firm or for its customers that are part of the same group.

Q2: To what extent do you agree with our proposed proportionality framework?

We agree that overall it seems proportionate, subject to any issues or concerns raised in our other comments in this response.

Q3: Are there any divergences between our proposed regulatory framework and that of the PRA that would create practical challenges in implementation?

We have not identified any divergences that would create challenges for practical implementation.

Q4: To what extent do you agree with our definitions of the terms specified?

The definitions appear appropriate.

Q5: To what extent do you agree with our proposals to expand the coverage of non-financial misconduct in FIT, COCON and COND?

We are supportive of the proposals, subject to clarification/more guidance from the regulators on the points raised in the table on the next page.

BSA queries on the proposals to expand the coverage of non-financial misconduct

What the FCA says	BSA's queries for members
It will amend the handbook to reflect that the FCA consider non-financial misconduct to be misconduct and not an additional principle. The aim is to give firms reassurance to take decisive and appropriate action against employees for non-financial misconduct.	Our members have concern about the potential for conflict between FCA requirements and employment law requirements. Will the regulators provide guidance on the approach a firm should take in the situation where there is conflict?
It will clarify that conduct that could damage public confidence will likely mean that the person is not fit and proper.	What if someone committed an offence years ago and are reformed? Are the regulators certain that they have fully considered the impact of, for example, rehabilitation of offenders legislation. Will the regulators provide guidance where there is potential that the requirements could lead to conflict with such legislation or to discrimination claims against firms?
It will expand the scope of COCON beyond regulated activities to make clear that it covers serious incidents of bullying, harassment and similar behaviour towards fellow employees, employees of group companies and contractors.	The regulators should make sure that the extended scope is defined in a sensible way. For example: <ul style="list-style-type: none"> • Could/ should suspected incidents be sufficient, or would they need to have been established or proved? • What happens if someone is under investigation for this sort of thing?
It will add guidance to the conduct rules including on what conduct is out of scope because it relates to an employee's personal or private life.	We think that the drafting of the guidance will be critical here. The regulators should publish draft guidance as early as possible.

Q6: To what extent do you agree with our proposals on data reporting for firms with 250 or fewer employees, excluding Limited Scope SM&CR firms?

We agree that these are sensible and proportionate. However, some of our members that are not (yet) of a size to fall into scope of the more extensive requirements have expressed concern as to potential scope creep in the future.

We urge regulators to continue to take a proportionate view in their expectations and demands of smaller firms.

Q7: To what extent do you agree with our proposals on D & I strategies?

We support the proposals.

Q8: To what extent do you agree on our proposals on targets?

See our comments at Section 3 of this response. The BSA is supportive of the fact that what these look like are not prescribed, and the nature of the targets to be reported in the regulatory return are appropriate.

Q9: To what extent do you agree with the date of first submission and reporting frequency?

Q10: To what extent do you agree with the list of demographic characteristics we propose to include in our regulatory return?

Q11: To what extent do you agree that reporting should be mandatory for some demographic characteristics and voluntary for others?

Q12: Do you think reporting should instead be mandatory for all demographic characteristics?

See our comments at Section 4 of our response.

Q13: To what extent do you agree with the list of inclusion questions we propose to include in our regulatory return?

We consider these appropriate, however see the comments below from two of our members.

Members' comments:

"We broadly agree with the proposed statements. However, there is a slight negative tone in the framing of the proposed statements. It would be good to get guidance and assurance from the regulators that these statements have been developed using expert opinions on language and inclusion."

"Whilst we are broadly supportive of the proposal to measure the inclusiveness of an organisation we do not agree with the BSA response in its entirety. Like so many others, we already conduct an employee satisfaction survey that measures inclusion and assess our improvements in this area. As a third party provides this it is not easy to "tweak" inclusion questions, as has been suggested.

As a result of the above we are concerned that mandating the inclusion questions in the Discussion Paper could lead to survey fatigue among employees, lead to minimal responses, and therefore provide insignificant data.

Would the regulator be prepared to accept responses from surveys that "best fit" the proposed questions?"

In addition, Section 5.64 of the CP lists 6 questions that it proposes firms report annually. A number of firms already ask questions on inclusion through a number of different surveys but the wording in the questions is different to those proposed. Clarification from the regulator on whether the listed questions are mandatory, or if different questions that achieve the same response to enable the reporting still to be completed can be used instead, would be helpful.

Q14: To what extent do you agree with our proposals on disclosure?

We agree with the proposals.

Q15: To what extent do you agree that disclosure should be mandatory for some demographic characteristics and voluntary for others?

We agree.

Q16: Do you think disclosure should instead be mandatory for all demographic characteristics?

No.

Q17: To what extent do you agree that a lack of D&I should be treated as a non-financial risk and addressed accordingly through a firm's governance structures?

Given the importance of having a diverse and inclusive workforce and culture to good consumer outcomes and to the safety and soundness of firms we agree, subject to our comments elsewhere in this response.

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The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £481 billion, and account for 23% of the UK mortgage market and 18% of the UK savings market.