

[BNPP answers to the FCA public consultations on article 23-D of the FSB](#)

Q1: Do you have any view in how best to consult in respect of our prospective decisions to exercise our Article 23D(2) power in respect of LIBOR?

Yes, the consultation process must be conducted and completed, and its results published as early as practically possible, to give certainty to market participants, and leave them time to communicate and organize.

The consultation should also provide as much detail as possible on the FCA's proposed approach to the use of its new powers granted by Article 23D.

Q2 'How should we evaluate the practicality of transition and the scale of tough Legacy?'

Regarding the usage of synthetic LIBOR in 'tough legacy' contracts, and the practicality of transitioning some,

We agree with the proposed approach, and note that the transition of tough legacy should allow fitting the payment conventions already in place in tough legacy contracts (as those conventions may differ from one product to the next).

We also wish to explain why in our view the following contracts *at least* should logically be considered 'tough legacy' as those cannot practically be converted to reference alternative benchmarks through sufficiently timely action or agreement by parties to those contracts:

- Bonds / Floating Rate Notes— owing to the difficulty of identifying bondholders, calling an AGM, and reaching the quorum required to modify the rate in each AGM
- Retail loans, for which it is not realistic to seek and obtain the consent of individuals or micro/small companies
- All loans in default or in restructuring or standstill or pre-restructuring (which cannot practically be renegotiated)
- Undrawn LIBOR multicurrency facilities for which the principal/expected currency of drawing is USD or EUR but which also include GBP as a secondary currency and which mature prior to 30 June 2023 (the proposed cessation date of USD LIBOR),
- Also by extension of previous point all LIBOR undrawn multicurrency Loans for which are expected to be drawn in USD or EUR, even if they mature after 30 June 2023.

In our view, this a matter of practicality / what is practically feasible, as the number of parties and contracts involved considerable, and in the first case renegotiating undrawn facilities that are unlikely to ever be drawn in GBP is not useful, while in the second case renegotiating each facility twice (e.g. by 31 Dec 2021, then again by 30 June 2023) is not realistically feasible.

Q3 – Tough legacy - Should the scale of tough legacy be significant to justify intervention?

‘Likelihood of parties to reach a fair outcome in the absence of a FCA Intervention’ is not scale related, but less problematic if it is for a very limited number of contracts, so ‘Yes, in theory’.

However, in practice, we expect the scale is unlikely to be very small, as there are a large number of issued Bonds, Retail contracts and specific Syndicated Loans to consider (in the UK and overseas – e.g. for overseas: Loans to small corporates and Private Banking clients outside of the UK jurisdiction but still to be included).

Q4 – Under what circumstances might orderly transition be achieved without the use of Article 23D powers?

We do not think this is possible within the currently contemplated timelines.

Q5 – Views on how we intend to consider intervention is desirable?

Decision to intervene should be based on the outcome of assessments as set out in points 2.9.1, 2.9.2, and 2.9.3 of this consultation paper.

Intervention would help protect consumers, and market integrity, by providing certainty on outcomes, especially for tough legacy contracts.

In other words, the certainty of the fact that powers will be exercised, and their exercise, with known and uniform effects on all ‘tough legacy’ contracts, will protect consumers and market integrity.

Then the FCA could consider whether that intervention and the declaration of what this intervention will be are desirable only once the Financial Services Bill to has been fully approved.

While using the powers for all LIBORs at the same time (including USD LIBOR) would have been ideal, it will likely not be feasible, and if it is not, particular attention should be paid to LIBOR multi-currency contracts when exercising the powers granted by Article 23d.

Q6 – Elements of the proposed policy – are all relevant factors identified ?

We believe so, and generally, we agree with the proposal to use of a ‘**forward looking term SONIA + ISDA spread**’ for the synthetic LIBOR as it best represents the rates parties to the contract had an agreement on prior to the cessation of LIBOR (better than a backward looking rate) and this matters:

- For the least sophisticated users who need to know the rate in advance and/or can only manage fixing upfront rates in their systems or processes ;
- For bondholders who bought products with interests known in advance, and will not be consulted (apart from those who will answer to this consultation) on the rate change.

Economic reality and fair approximation considerations are totally needed –

Also, Industry working groups and ISDA have worked on this topic and consulted on it, and much can be drawn from this existing work.

Fair approximation shall be further comforted by similarity with existing benchmark settings at the point of switch (explain re fixing upfront + closest possible in the absence of any dynamic spread)

This ties up with least disturbance and disadvantage to affected parties: again relying on and building upon existing studies would be useful.

The visibility and availability of data to market participants is totally achievable through the publication of a forward looking term SONIA + adjusted spread for each tenor, possibly by a chosen Benchmark administrator.

This must comply with IOSCO principles and BMR, of course, at the same time our understanding is that Term rates proposed by administrators are expected to meet IOSCO and BMR requirements.

A process for assessing administrators and choosing one to publish the synthetic LIBOR should also be proposed, to provide certainty on where the fixing of the forward looking rate should come from.

Leaving discretion based on backtesting and reporting.

Q7 – Further issues to be considered

Likely effect outside the UK – It is key to ensure that interventions will have an extra territorial / be valid in other jurisdictions. This will require regulatory coordination across jurisdictions.