



Mind the Gap... UK approach to LIBOR Tough Legacy

David Bunting
3 June 2021



Choreography of Libor wind-down

Steps up to June 2021

- September 2012 – Wheatley review heralds potential synthetic Libor
- July 2017 – FCA begins saying Libor cannot continue past 2021
- May 2020 – FCA’s Tough Legacy Taskforce paper published
- 21 October 2020 – Financial Services Bill introduced to UK Parliament proposing to amend the UK Benchmarks Regulation, to empower FCA to wind down critical benchmarks
- November 2020- FCA consults about use of its proposed new powers under Articles 23A and 23D of UK BMR to designate a benchmark unrepresentative and require changes to its methodology, creating ‘synthetic LIBOR’.
- 4 December 2020 – IBA consults on its intention to cease publishing Libor
- March 2021 – FCA publishes statements of policy concerning the designation of benchmarks under Article 23A UK BMR and the exercise of powers under Article 23D UK BMR
- 5 March 2021 – FCA announcement about Libor’s future cessation and loss of representativeness
- 26 March 2021 – FCA issues “Dear CEO” letter setting out milestones for ceasing Libor use.
- 29 April 2021 – Financial Services Act 2021 is passed into UK law.
- May 2021 – FCA consults about its new powers under Article 23C UK BMR to permit continued use of Libor in synthetic form

Future steps

- 17 June 2021– closing date for responses to consultation on FCA powers to limit use of synthetic Libor
- Summer 2021 – expected publication of FCA statement of policy on exemptions to the ban on use of synthetic Libor under Article 23C UK BMR
- 31 December 2021 – last publication of GBP, CHF, EUR, JPY and some USD LIBOR tenors based on panel bank submissions
- 1 January 2022 – expected commencement of synthetic Libor for limited GBP and -JPY fixings. These rates will not be representative and their representativeness will not be restored
- 30 December 2022 – expected final publication of synthetic JPY LIBOR
- 30 June 2023 - last publication of remaining USD LIBOR tenors based on panel bank submissions
- 1 July 2023 – potential commencement of publication of synthetic USD LIBOR for limited tenors. These rates will not be representative and their representativeness will not be restored



UK Benchmarks Regulation – new powers

The EU Benchmarks Regulation became UK retained law following the end of the Brexit transition period (after 31 December 2020). The Financial Services Act 2021 adds new articles to the UK Benchmarks Regulation. These powers to wind-down Libor are complemented by exercise of softer power such as issuing the Dear CEO letter.

New UK BMR benchmark production powers:

- 22A power to require an administrator to provide an assessment of the representativeness of a benchmark
- 22B FCA's own power to assess representativeness
- Broader powers to compel contribution to a benchmark where doing so would maintain or restore its representativeness
- Power to designate a benchmark an Article 23A benchmark where it has become unrepresentative and is unlikely to regain representativeness – other powers flow from making this designation.
- 23D powers to bring about orderly cessation of a benchmark; requiring changes in a methodology and code of conduct

New UK BMR powers over legacy and new use:

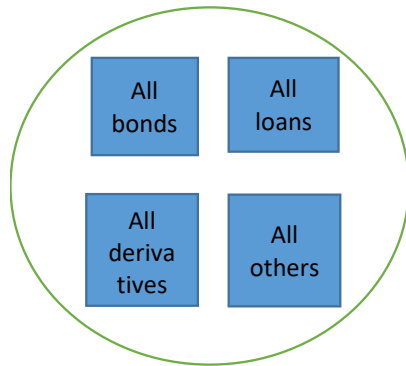
- 23B prohibition on using a benchmark which has been declared unrepresentative under 23A
- 21A power to ban new use of benchmarks which an administrator intends to discontinue but are not yet unrepresentative (read: USD Libor)
- 23C FCA may grant exceptions to the prohibition, in respect of some or all legacy trades
- Scope of powers is limited to (i) UK supervised entities and (ii) instruments covered by UK BMR, such as derivatives, securities and consumer loans.

Dear CEO Letter:

- Sent to UK supervised entities 26 March 2021
- Expectation of adherence to Sterling RFR WG and other international RFR WG milestones
- From 1 April, no new Libor loan, bond, securitisation, linear derivative unless permitted
- No new GBP futures or non-linear derivatives after Q2 2021, unless permitted
- Transition or amend legacy contracts by end Q3 2021 wherever possible
- Links to Senior Manager Regime obligations and general obligation to manage risk appropriately



Mind the Gap...



Tough legacy products will not all fall within the perimeter of legislative solutions, as optimistically illustrated on the left.

In reality, there is a complex and currently uncertain venn diagram of solutions, with inconsistencies and gaps.

Example: potential outcomes for a legacy USD Libor swap.

Governing law	UK supervised	Maturity date	Outcome
English or New York law	No	Prior to 2023	Continues to apply panel bank derived USD Libor
English or New York law	Yes	Prior to 2023	Unknown - dependent on FCA exercise of power
New York law	No	After 2023	Transition to RFR pursuant to NY law
New York law	Yes	After 2023	Transition to RFR pursuant to NY law
English law	No	After 2023	Automatically applies synthetic USD Libor, if published
English law	Yes	After 2023	Unknown - dependent on FCA exercise of power
...further permutations if EC solution applies, or if US Federal solution applies.....			