

**Minutes of Meeting of the  
City of London Law Society Regulatory Law Committee (the "Committee")**

Held on Tuesday 14 May 2019 at 12.30pm  
at Herbert Smith Freehills LLP, Exchange House, 12 Primrose Street, London, EC2A 2EG

**ATTENDEES**

<b>Present</b>	<b>Firm Represented</b>
Matthew Baker	Bryan Cave Leighton Paisner LLP
Chris Borg	Reed Smith LLP
Simon Crown	Clifford Chance LLP
Clive Cunningham (alternate)	Herbert Smith Freehills LLP
Richard Everett	Travers Smith LLP
William Garner	Charles Russell Speechlys LLP
Mark Kalderon (acting Chair)	Freshfields Bruckhaus Deringer LLP
Anthony Ma	Grant Thornton UK LLP
Brian McDonnell	Addleshaw Goddard LLP
Stuart Willey	White & Case LLP

**1. MINUTES OF PREVIOUS MEETING**

The minutes of the meeting of the Committee held on 9 April 2019 were approved.

**2. FCA CONSULTATION PAPER ON INVESTMENT PLATFORMS MARKET STUDY REMEDIES**

It was noted that the Committee had briefly considered this paper and the two key proposals (relating to making transfers between platforms easier, and a possible ban on exit fees) at the last meeting. Members had been invited to consider further whether there were any particular issues which the Committee should raise.

It was decided that as no issues had been identified on further review, the Committee would not submit a response.

**3. BEIS CONSULTATION ON NEW AUDIT, CORPORATE REPORTING AND CORPORATE GOVERNANCE REGULATOR**

The member who was due to lead the discussion could not be present. It was decided that the member would be asked to circulate any comments on the paper in advance of the next meeting.

**4. FCA CONSULTATION PAPER ON MORTGAGE CUSTOMERS: PROPOSED CHANGES TO RESPONSIBLE LENDING RULES AND GUIDANCE**

The member who was due to lead the discussion could not be present. It was decided that the member would be asked to circulate any comments on the paper in advance of the next meeting.

## **5. PRA CONSULTATION PAPER ON ENFORCEMENT – CHANGES TO THE PRA'S SETTLEMENT POLICY**

The Committee discussed the PRA's proposal to simplify the PRA settlement discount scheme.

It was noted that the paper did not explicitly deal with parallel proceedings and how the proposed change to the PRA enforcement policy would work in such cases.

The members also considered that it would be worth checking that these changes do not result in individuals in enforcement cases being prejudiced should firms involved in the same enforcement proceedings settle early.

A member also raised a query as to why the FCA and PRA's enforcement policies were not aligned.

It was agreed that a member would consider the issues raised in the meeting further and circulate their comments to the Committee in advance of the next meeting.

## **6. HMT CONSULTATION ON TRANSPOSITION OF THE FIFTH MONEY LAUNDERING DIRECTIVE**

The Committee discussed two of the proposals in HMT's consultation paper.

The first related to the proposed 'gold-plating' in relation to the application of money laundering requirements to providers of certain services relating to cryptoassets. HMT proposes to not only apply AML/CTF regulation to fiat-crypto exchange services, and providers of custodial wallets for cryptoassets but also to providers of various other services relating to cryptoassets, such as providers involved with the issuance of new cryptoassets and publication of cryptoasset related open-source software.

One member raised a query as to why only the more transparent open-source coding was in scope, but closed-source coding was not. It was also noted that practically, it is very difficult, if not impossible, to be able to know or control users of open-source code.

The members also discussed whether that the broad definition of "cryptoasset" referred to in the paper could bring in certain contractual rights which would not ordinarily be in scope of AML requirements purely because they were in digital representation using some type of distributed ledger technology.

It was noted that the Fifth Money Laundering Directive was due to be implemented before the specific UK legislation relating to the regulation of cryptoassets had been finalised. The members considered that there could be a risk of legal confusion if the paper's proposal of imposing such a wide scope (which may subsequently need to be amended with later legislation) was applied.

It was also noted that all cryptoassets had been grouped together as if they presented the same level of AML risk, even though that was unlikely to be the case. The Committee considered whether the proposals would therefore effectively tackle the AML risks posed or whether the extended scope could have a chilling effect on this sector.

The second key issue discussed by the Committee was the proposed new requirement for trustees or agents of trustees of all UK and some non-EU express trusts to register such trusts with HMRC's Trust Registration Service whether or not the trust incurs a UK tax consequence.

The Committee raised several concerns around the potentially wide range of express trusts which may be in scope. One example discussed was whether any firm holding client money needed to be included on the register (as an express statutory trust).

The Committee also considered whether the wide scope of this requirement and the potential for penalties could deter individuals or entities becoming trustees.

A member raised a query as to whether, in cases where there had been a failure to register an express trust, it was intended that the trust assets would become proceeds of crime.

It was decided that two members would draft a response on the issues raised at the meeting on both these points and circulate it for the Committee to review.

## **7. OTHER CONSULTATIONS TO WHICH THE COMMITTEE MAY WISH TO RESPOND**

The Committee discussed other papers currently open for consultation and it was decided that there were none open to which it wished to respond.

A handwritten signature in black ink, appearing to read "Karen Anderson", with a period at the end.

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**Karen Anderson**

Chair, CLLS Regulatory Law Committee