

City of London Law Society – Corporate Crime and Corruption Committee

Minutes of a meeting of the Corporate Crime and Corruption Committee held at 8.30am on Monday 9 May 2016 at Reed Smith, The Broadgate Tower, 20 Primrose Street, London, EC2A 2RS

Present:

Eoin O'Shea: *Reed Smith* (Chair)

Marcus Thompson: *Ropes & Gray*

Sarah Wallace: *Irwin Mitchell*

Simon Joyston-Bechal: *Turnstone Law*

Barry Donnelly: *Macfarlanes*

Chris Roberts: *Mayer Brown* (in attendance for Alistair Graham)

Stephen Gentle: *Simmons & Simmons* (in attendance for Nick Benwell)

Roger Best: *Clifford Chance*

Barry Vitou: *Pinsent Masons*

Louise Delahunty: *Cooley*

In attendance:

David Hobart: *CLLS*

Laura-May Scott: *Reed Smith*

Apologies:

Rodney Warren: *Rodney Warren*

Nick Benwell: *Simmons & Simmons*

Alistair Graham: *Mayer Brown*

Andrew Keltie: *Baker & McKenzie*

Arnono Chakrabarti: *Allen & Overy*

Caroline Wojtylak: *Skadden, Arps, Slate, Meagher & Flom*

Ryan Junck: *Skadden, Arps, Slate, Meagher & Flom*

Daren Allen: *Berwin Leighton Paisner*

Jo Rickards: *Kingsley Napley*

Jonathan Pickworth: *White & Case*

Luke Tolaini: *Clifford Chance*

Omar Qureshi: *CMS Cameron McKenna*

Raj Parker: *Freshfields*

Sam Eastwood: *Norton Rose*

Satinder Dogra: *Linklaters*

Satnam Tumani: *Kirkland & Ellis*

Tony Woodcock: *Stephenson Harwood*

1. Minutes of the last meeting

The Minutes of the last meeting on 25 February 2016, as drafted by Marcus Thompson, were agreed.

2. Chair email of 12 April 2016

There was a discussion of the Chair's email of 12 April 2016.

The Chair said he saw his role as a facilitator of discussion. There was a detailed discussion in particular of the objectives of the Committee. There was broad agreement that the Committee had a wide remit and would consider the public interest in its work, in particular as regards to contributing to consultations or public debate.

Discussion was had as to the pros and cons of a change to the Committee name. It was agreed that the Committee name should remain as it is.

3. Early Guilty Plea Consultation

The Chair thanked Louise Delahunty for her contribution to the Early Guilty Plea Consultation which was sent to the Sentencing Council on 5 May 2016. The Chair also thanked Simon Joyston-Bechal who was preparing a response from the Health & Safety Lawyers Association and provided his suggested amendments.

4. Anti-Corruption Summit, Statement of Support

The Anti-Corruption Summit, Statement of Support had been circulated last week. Roger Best provided some background to the statement, explaining that the government was convening an Anti-Corruption Summit on 12 May 2016 and representatives of the professional services sector had been asked to make public statements broadly supportive of the goals of the Summit and the broad cause of anti-corruption.

Discussion turned to the events this week in the build-up to the Summit, such as the Commonwealth Conference on Anti-Corruption. The Committee also discussed the press reports on the Panama Papers and the corporate offence of "failing to prevent fraud or money laundering" which appeared to be a Government priority again. The Chair commented that the Committee should contribute to the consultation / discussion on the proposed corporate offence of "failing to prevent fraud or money laundering" in due course.

5. Anti-Money Laundering (AML)

David Hobart mentioned the Home Office Action Plan for AML and counter-terrorist finance. The City of London Law Society Professional Rules and Regulation Committee, chaired by Sarah de Gay, was dealing with this topic. Marcus Thompson also mentioned that the Law Society Money Laundering Task Force was also involved in preparing a response to the proposal.

After discussion, this Committee could comment on the draft being prepared by the Law Society Money Laundering Task Force, should the Law Society agree. David Hobart offered to send an email to Robert Bourns of TLT, to offer assistance.

Discussion was had as to the consent regime. Roger Best discussed how the government proposes to remove what it calls the 'inefficient' consent regime.

Concerns about the consent regime being eradicated and the potentially unfair consequences that could arise (whereby even if someone were to have a rumour of suspicious activity raised against them, they may be prevented from conducting a transaction) were discussed.

6. External speakers

The Chair confirmed that he had requested that David Green CB QC attend a Committee meeting in the Autumn. The Chair said that one or two external speakers per year from different authorities/agencies would be desirable and he encouraged the Committee to make suggestions. Sarah Pritchard, Deputy Director of the NCA, was suggested. Mark Steward, Head of Enforcement at the FCA was also suggested. The Chair will look into both of those options.

7. Privilege and investigation materials – position paper

The Chair said privilege in investigatory materials was a complex topic and there were differing opinions expressed by individuals at the SFO. The Committee may contribute to the topic (by way of informal comment rather than formal consultation) by preparing a short position paper.

Discussion was had as to the *Mckenzie* decision ([2016] EWHC 102 (Admin)).

The use of Deferred Prosecution Agreements (DPA) by the SFO to attempt to extract privileged materials was also discussed and the *Standard Bank* case (Case No: U20150854), the SFO's first application for a DPA, was mentioned.

It was agreed that a small sub-group would be formed. That sub-group would discuss the SFO, DPAs, cooperation, privilege, and other issues and ultimately prepare a short position paper outlining the views of the Committee. The Chair asked people to confirm if they wanted to be part of the sub-group either in person or by email after the meeting. Contact would be made with external subject matter experts.

8. AOB

A brief discussion was had as to new members joining the Committee. It was agreed that new member suggestions should be sent to the Chair and David Hobart for approval.