

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

Held on Tuesday 9 October 2018 at 12.30pm  
at Herbert Smith Freehills LLP, Exchange House, 12 Primrose Street, London, EC2A 2EG

**ATTENDEES**

<b>Present</b>	<b>Firm Represented</b>
Karen Anderson	Herbert Smith Freehills LLP
Peter Bevan	Linklaters LLP
Simon Crown	Clifford Chance LLP
Richard Everett	Travers Smith LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Brian McDonnell	Addleshaw Goddard LLP
Simon Morris	CMS Cameron McKenna Nabarro Olswang LLP
Stuart Willey	White & Case LLP
Kevin Hart	City of London Law Society

**1. MINUTES OF PREVIOUS MEETING**

The minutes of the meeting of the Committee held on 11 September 2018 were approved.

**2. FCA DISCUSSION PAPER ON A DUTY OF CARE AND POTENTIAL ALTERNATIVE APPROACHES**

The Committee was updated on what had been discussed at a recent FCA roundtable to discuss the proposed duty of care.

The concerns of various consumer groups present at the roundtable were summarised, including issues around the effectiveness of Treating Customers Fairly, the culture at financial services firms and fair treatment of customers post-sale. While FCA Thematic Reviews were recognised by some at the roundtable as a helpful existing tool available to the FCA, they were perceived as slow.

The Committee considered that the FCA was already aware of most of the specific areas of concern raised by participants at the round table, and where necessary addressing them with bespoke, focused solutions. It was considered that the case for a further generic duty of care was not made out. In particular, it was not clear what the regulatory "gap" was which would be addressed by the creation of this duty.

It was suggested that instead of imposing the proposed duty of care, it may be more productive for the FCA to engage in more direct communication with firms at an earlier stage (for example, by providing Q&As or examples of good and bad practice in respect of select services or products), especially with smaller firms which may not have much direct contact with the regulator in the

ordinary course. Trade associations may also help play a helpful role in encouraging firms to engage with regulatory communications.

It was also noted that the new SMCR, which will impose greater individual accountability, may help address some of the concerns raised.

It was decided that a member would prepare an initial draft response for member comment and review.

### **3. OTHER PAPERS DISCUSSED AT THE MEETING**

The Committee briefly discussed the following papers currently open for consultation and it was decided that the Committee would not submit a response:

#### **3.1 FCA consultation paper on claims management companies: proposals on application of the SM&CR**

#### **3.2 PRA consultation paper on regulatory transactions: changes to notification and application forms**

### **4. AOB**

#### **4.1 CLLS membership**

The Committee considered potential members following receipt of their applications.

It was decided that the Chair would contact one applicant to confirm that they still held a current practising certificate. If they did, the applicant would be invited to join. It was also decided that the Chair would circulate the CV of another applicant to the members for consideration.

#### **4.2 CLLS review of Brexit SIs**

Following a request from the members at the previous meeting, the Chair fed back the work currently being done by the CLLS on the draft Brexit SIs (it had also been a key topic of discussion at the recent CLLS Chairs meeting).

The central Brexit CLLS committee has had the most productive engagement with the DoJ and BEIS, although there has been some discussion with HMT. The main work of reviewing the regulatory SIs was being co-ordinated through a trade association working with a select panel of law firms assisting in the review (outside the direct remit of the CLLS).

The Chair agreed to find out whether it was possible to share the list of forthcoming draft SIs (and the law firm tentatively allocated to each to review). It was noted that it was not possible to share the pre-publication drafts of the SIs themselves. It was decided that if any member saw something of significance in the draft SIs once published, the Committee could respond to HMT at that point.

Separately, a member noted an issue relating to the potentially broad scope of the ambulatory provisions of the Withdrawal Act on the interpretation of references to EU legislation, and in particular the potentially unintended impact on private contracts. It was decided that the member would draft an interpretation guidance note for the members to review, with the intention of publishing the note on how the provision in question should be read.

#### **4.3 Feedback from the CLLS Chairs meeting**

The Chair and the CLLS representative provided feedback from the CLLS Chairs meeting. The key discussion point (in addition to Brexit) related to improving communication of the work being done by the various committees to those outside the CLLS.

Suggestions of how this might be done included revisiting how effective the CLLS website and social media channels are, offering training sessions to junior lawyers, or opening up meetings to guest speakers or teams to discuss the work being done.

It was recognised that the feedback provided by the various committees was very helpful to the bodies receiving it. Membership of each committee was to be seen as a badge of excellence.

Diversity of committees was also being kept under review.

It was also noted that Ed Sparrow hoped to attend a future meeting of the Committee.

A handwritten signature in black ink, appearing to read 'Karen Anderson', followed by a comma.

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**Karen Anderson**

Chair, CLLS Regulatory Law Committee