

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

Held on Tuesday 11 December 2018 at 12.30pm
at Herbert Smith Freehills LLP, Exchange House, 12 Primrose Street, London, EC2A 2EG

ATTENDEES

Present	Firm Represented
Karen Anderson	Herbert Smith Freehills LLP
Simon Crown	Clifford Chance LLP
Richard Everett	Travers Smith LLP
Angela Hayes	King & Spalding International LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Anthony Ma	Grant Thornton UK LLP
Brian McDonnell	Addleshaw Goddard LLP

1. MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 13 November 2018 were approved.

2. FCA CONSULTATION PAPER ON THE TEMPORARY PERMISSIONS REGIME

The Committee discussed the proposals contained in the consultation paper, in particular the proposal to accept substituted compliance with home state requirements relating to safeguarding client assets and client money, rather than impose FCA CASS requirements directly on incoming firms in the Temporary Permissions Regime (TPR). As discussed at the Committee's previous meeting, there were concerns that this issue warranted more detailed consideration.

In the absence of applicable EU insolvency legislation, under insolvency proceedings post-Brexit, assets held in the UK by the UK branch of a firm in the TPR would ordinarily fall to be considered under UK property laws. The Committee considered that if TPR firms complied solely with client asset protections implemented in their EEA home jurisdiction, there could be a serious risk that those protections would be found to be ineffective in relation to assets held by the UK branch in the UK should the protections be challenged by the general creditors of the branch.

The Committee considered whether it would be possible to amend the TPR such that incoming EEA branches would be treated in the same way as incoming third country branches are now (i.e. subject to the provisions in CASS). However, although this would address the risk identified, the Committee recognised that taking this approach could give rise to some practical challenges for affected firms.

The draft paper would be amended to reflect the Committee's discussions before being submitted.

3. FCA DISCUSSION PAPER ON FAIR PRICE PRACTICES IN FINANCIAL SERVICES

The Committee briefly discussed the discussion paper, and in particular the paper's focus on price discrimination.

Some concerns about the potential implications of imposing fairness requirements around pricing were considered. It was noted that there are sometimes objectively justifiable reasons for price

discrimination, and it could be difficult for firms to distinguish between these cases and others where it might not be.

It was also noted that in the case of egregious discriminatory behaviour, the FCA already has the ability to intervene in respect of breaches of Principle 6 of the FCA's Principles for Businesses.

The Committee concluded that as this Discussion Paper addressed policy issues rather than specific legal issues, the Committee would not submit a response.

4. **OTHER PAPERS TO WHICH THE COMMITTEE MAY WISH TO RESPOND**

The Committee briefly discussed other papers currently open for consultation to decide whether or not it may wish to respond. It was decided that a member would review the following papers with a view to submitting a response:

4.1 **FCA consultation paper on limiting CFDs and other similar products**

4.2 **FCA consultation paper on reducing harm to retail investors in open-ended funds that hold illiquid assets**

5. **AOB**

5.1 **CLLS membership**

Further to the Chair's email asking members' views on inviting a new member to join the Committee, all members who responded did so positively. It was therefore decided that the Chair would formally invite the new member to join.

5.2 **Upcoming CLLS events**

The Chair drew the members' attention to the following upcoming CLLS events in 2019:

5.2.1 **Annual CLLS/CLSC Committees' Dinner** - Monday 21 January at Cutlers' Hall, 4 Warwick Lane, London EC4M 7BR

5.2.2 **CLLS/CLSC Annual Service** – Monday 13 May 6.30 pm at H.M. Tower of London (followed by Reception/Supper at Trinity House)

5.2.3 **Annual General Meeting of CLLS and reception** – Monday 17 June 6.00 pm at Tallow Chandlers' Hall, 4 Dowgate Hill, London EC4R 2SH

5.3 **Chair of CLLS – visit to February 2019 meeting**

The Chair confirmed that the Chair of the CLLS, Ed Sparrow, would be attending the Committee meeting on 12 February. In order to accommodate Mr Sparrow, it was agreed that the February meeting would start 15 minutes earlier at 12.15pm, rather than the usual 12.30pm.

5.4 **Date of January 2019 meeting**

Due to the way in which the dates fell after the holiday period, it was decided that the January meeting would take place on the third Tuesday of the month (15 January), rather than the second Tuesday (8 January) to ensure as many members would be able to attend. The regular meeting slot would be reinstated in February.



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Karen Anderson

Chair, CLLS Regulatory Law Committee