

City of London Law Society – Corporate Crime and Corruption Committee

Minutes of a meeting of the 29 October 2019 at Reed Smith, The Broadgate Tower, 20
Primrose Street, London, EC2A 2RS
8:30 – 9:30

Present:

Eoin O’Shea (Chair): *Reed Smith LLP*

Sacha Harber-Kelly: *Gibson Dunn & Crutcher LLP*

Susannah Cogman: *Herbert Smith Freehills LLP*

Barry Vitou: *Greenberg Traurig LLP*

Louise Hodges: *Kingsley Napley*

Daren Allen: *Dentons*

David Corker: *Corker Binning*

Jonathan Pickworth: *White & Case LLP*

Nick Benwell: *Simmons & Simmons LLP*

Sam Eastwood: *Mayer Brown LLP*

Roger Best: *Clifford Chance (by telephone)*

Michelle de Kluyver: *Addleshaw Goddard LLP (by telephone)*

In attendance:

Emma Shafton: *Reed Smith LLP*

Kevin Hart: *CLLS*

Apologies:

1. Apologies for absence

The Chair mentioned apologies received for non-attendance from several members.

2. Minutes of last meeting

No amendments proposed to the minutes of the last meeting (10 September 2019) by those in attendance. The Chair directed that the approved minutes be filed on the CLLS website 24 hours after the meeting, subject to Committee members sending any final comments on the draft.

3. S2 Interview Practices and SFO discussions

The Chair indicated that he was not aware of any further progress made by the SFO on this matter. The Chair will keep pressing the SFO.

There was a wide-ranging discussion. The general consensus was that while the lack of progress was frustrating, the matter continued to be worth pursuing. One issue seems to be coordination with the Fraud Lawyers Association (FLA) and a disconnect between the defence bar and the SFO.

A committee member indicated that there was a FLA meeting on 14 November 2019 to specifically discuss this topic. The general consensus was that it might be productive to work with the FLA including sharing notes with the FLA.

Members discussed (anonymised) cases where persons served with S2 Notices did not enjoy the experience of being interviewed and therefore declined to assist the SFO further. An attempt was made by the SFO to serve a subsequent S2 Notice and require a second interview at which a statement based on the first interview would be put to the witness. Other cases included situations where the SFO had refused to provide pre-interview disclosure of S2 interview transcripts prior to a PACE interview. Some solicitors may feel inhibited from producing their own note by the terms of undertakings given.

4. Practice/Legal updates

The recent Dutch case on privilege was mentioned in which it was held that neither in-house lawyers working for Shell in the Netherlands nor in-house lawyers working abroad were covered by legal professional privilege.

Members expect that a CA judgment as regards corporate personality can be expected in the reasonably near future.

The committee discussed the growth in private prosecutions, in particular the growing trend of private prosecutions being pursued in place of commercial litigation. The committee agreed that the favourable costs regime was the most likely a reason, and if this changes, there may be a reduction.

The Committee discussed whether its membership should be broadened to include a practitioner that specialises in private prosecutions.

5. Upcoming consultations/legislation

The recent Transparency International paper was discussed. It suggested that criminal defence can be a conduit of money laundering.

The theme of professionals as enablers of money laundering was discussed. The Law Society this week has stated “not enough” SARs are submitted by law firms (1% of overall SARs).

The committee noted that many law firms are small businesses that have no resources for AML compliance.

The new regulator OPBAS was mentioned – there is likely to be more enforcement against law firms for AML breaches.

The UK-US Bilateral Data Access Agreement which was signed on 3 October 2019 was mentioned. Clients are interested. It will take approximately 6 months until ratified. A committee member will circulate the agreement.

The likely date for the KBR Supreme Court appeal is towards summer of 2020. *Jiminez* (re HMRC powers) is also being appealed.

6. External Guest Speakers

Debbie Price of NECC is keen to speak to the Committee re the SARS regime. It is a question of when. The Chair will invite her to the next meeting on 10 December 2019. She may also invite Graham Bigger the Director General of the NCA.

The political situation is such that few senior officials or politicians will speak at present, it should improve in the new year.

7. Membership

Membership is reviewed and opened once a year via the approved CLLS procedure (advertised on website and CVs submitted). The Chair requested that an advertisement be published in the usual media and stated that the application window commences from that point until the end of the year. The committee will consider any applications at future meetings. Committee members can make recommendations. The Chair noted that candidates must be suitably experienced and well-known to have a strong practice in corporate crime and corruption.

Now is the time to recommend new members. The Chair requested nominations/ CVs by next meeting.

Particular names were recommended.

8. CLLS Lifetime Achievement Award

This will be announced at a dinner at the end of November.

9. AOB

None.

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