

City of London Law Society – Corporate Crime and Corruption Committee

Minutes of a meeting of the 3 March 2020 at Reed Smith, The Broadgate Tower, 20 Primrose Street, London, EC2A 2RS
8:30 – 10:00

Present:

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

Eve Giles: *Allen & Overy*

Michelle de Kluyver: *Addleshaw Goddard*

Judith Seddon: *Ropes & Gray*

Nick Benwell: *Simmons & Simmons*

Tony Woodcock: *Stephenson Harwood*

Elly Proudlock: *Linklaters*

Tom Epps: *Cooley*

Sacha Harber-Kelly: *Gibson Dunn*

Omar Qureshi: *CMS*

Andrew Katzen: *Hickman & Rose*

Sarah Wallace: *Constantine Law*

Simon Joyston-Bechal: *Turnstone Law (on the phone)*

Roger Best: *Clifford Chance (on the phone)*

Hannah Laming: *Peters & Peters (on the phone)*

Rodney Warren: *Warren's Law and Advocacy (on the phone)*

In attendance:

David Hobart: *CLLS*

Emma Shafton: *Reed Smith LLP*

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 (28 January 2020) 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. Pre-Interview Disclosure & Interview Practices

The Chair advised the Committee that these issues remain on the agenda. The Chair had previously been liaising with Camilla de Silva of the Serious Fraud Office (SFO) who had recently moved into private practice so the Chair will follow up with the SFO to find a suitable alternative to progress discussions with.

4. Practice/Legal Updates

The Committee discussed the outcome of the *Serious Fraud Office v Barclays* in which all individuals and the Bank were acquitted at some length. All judgments are now available online (including the decision of Jay J in May 2019). Among other issues, the Committee discussed the identification principle and the difficulty of analysing bribery out of context with other behaviours.

The committee discussed whether there is an argument for extending the Deferred Prosecution Agreement (DPA) regime for individuals in suitable cases. It was noted that in the financial services sector, the FCA is well equipped to deal with individuals – but elsewhere – individual DPAs might plug the gap.

The *Airbus* DPA was discussed at length, in particular the concurrent approach to calculation of the penalties (which was also the approach adopted in *Rolls Royce*). The issue of the size of discounts was discussed, with differing positions being advanced by parties such as Transparency International and former SFO officials.

5. Law Society, Criminal Law Committee Liaison

The LS Committee recently contacted the Chair and asked if the CLLS would say something in support of the Law Society's position in relation to reforms of criminal legal aid. Their position is that under-funding of criminal legal aid is now critical and that this is bad for the justice system as a whole.

The Committee discussed a letter to newspaper editors or a comment piece where the City make the point that funding criminal defence is central to the rule of law and is important to all parts of legal practice, including commercial practitioners.

6. Upcoming Legislation and Consultations

A major upgrade of the SARS system is due. The Committee discussed whether a financial crime levy on city law firms (and other user of the SARS system such as Banks) would be implemented to fund this. It was discussed whether the SARS regime could start self-funding

as a result of the National Crime Agency's high value proceeds from Account Freezing and Forfeiture Orders.

The Committee discussed the US-UK Bilateral Data Sharing Agreement which was due to be ratified in Congress in the Spring. Committee members noted that this was a very live issue and understood that there were also negotiations with other countries across Europe to enter into similar arrangements.

It was noted that there was currently no guidance as to how the new regime will work in practice. Committee members discussed whether there was scope for the Committee to have input into any forthcoming guidance.

7. External Guest Speakers

The Chair has invited Lisa Osofsky of the SFO and Sir Nick Green of the Law Commission to speak to the Committee. Members suggested inviting the new Attorney General, a representative from the Office of Financial Sanctions ("OFSI") or the Information Commissioner's Office ("ICO").

Committee members are welcome to suggest other speakers.

8. AOB

None

3 March 2020