

## THE CITY OF LONDON LAW SOCIETY

Minutes of a meeting of the ESG Committee (the “Committee”) held in person

at 18:30 on 23 May 2023

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### 1. Welcome and apologies

*In attendance:* Roger Leese (Chair) (Clifford Chance), Anna-Marie Slot (Ashurst), Greg Norman (Skadden), Kevin Hart (CLLS), Naomi Roper (Trowers & Hamblins), Sonali Siriwardena (Simmons & Simmons), Mindy Hauman (White & Case), Stephen Sykes (Capital Law), Harry Hecht (Slaughter and May), Michelle Bradfield (Jones Day), Sung-Hyui Park (Bates Wells), Simon Witney (Travers Smith), Sophie Kemp (Kinsley Napley), Emma Giddings (Norton Rose Fulbright), George Kyrke-Smith (Project Associates), George Murray (Slaughter and May).

*Apologies:* Peter Wickham (Slaughter and May), Rebecca Perlman (Herbert Smith Freehills), Matthew Townsend (Allen & Overy), Kerry Stares (Charles Russell Speechlys).

### 2. Approval of minutes and refresh of main procedural points

- 2.1 Minutes of the inaugural 3 March 2023 meeting were circulated for comment, to be taken as approved if no comments received by the end of the week.
- 2.2 Members were reminded of the intention to hold full committee meetings quarterly, to set strategy and direction and approve working group reports as needed. Invites are to follow.
- 2.3 Working groups (“WGs”) would be formed to do much of the substantive work, and could meet more regularly. Noting that the Committee’s remit will have significant cross-over with other CLLS committees and ESG initiatives generally, where appropriate, WGs should consider who else to bring in. For example, subject-matter experts and external advisors to supplement Committee members (legal and non-legal).

### 3. Terms of Reference (“ToR”)

- 3.1 As discussed at the inaugural meeting, the Committee’s remit will be very broad and incorporate a wide range of ESG-related activities, and the ToR should allow for and expect this.
- 3.2 Could include, for example:
  - (a) Commenting on consultations and draft legislation
  - (b) Outreach
  - (c) Education and training

(d) Collaboration with other actors in the ESG field

- 3.3 It was noted that the diversity of the Committee’s member firms will help it to be broad in its outlook and able to pursue a range of activities, especially those aimed at filling in the gaps not already filled by others.
- 3.4 It is envisaged that a number of WGs could exist at the same time and operate in parallel, drawing from Committee members and those they bring in to assist.
- 3.5 The Committee reflected on its role in relation to the Law Society and Solicitors Regulation Authority (“SRA”), with whom the CLLS works closely, for example, feeding into its guidance on climate conscious lawyering. It was noted that the Law Society and SRA take a national perspective, whereas the CLLS is London-focused but brings a global perspective reflecting the global reach of City of London-based firms.
- 3.6 This brings up the related issue of London-based firms being responsive to local pressures which may or may not apply to clients based overseas, so there is a role for the CLLS to reflect this tension.
- 3.7 A key question to ask in terms of considering whether to take on a project / initiative will be “Is this for the CLLS, and what can the CLLS add specifically?”.
- 3.8 It was further noted that care would need to be taken to effectively navigate what can be a politically charged field, and noting that the Committee’s existence reflects a pro-ESG position in the sense that it is relevant to our clients and law firms themselves; it is not likely to go away; and it presents a number of challenges and opportunities with which we as law firms need to engage.
- 3.9 As part of this, it was recognised that there are now a wider range of variables business need to think about compared to 10 years ago, creating a need to understand new opportunities and risks or which did not apply before but now do.
- 3.10 For the Committee, this presents an opportunity to focus on how to integrate these considerations into how firms operate and give advice. In doing so, it will be important to talk in the language of “this is a growing risk/opportunity” cf. “businesses shall/must do x or y”, and to reflect the range of likely client engagement with ESG issues. The breadth of experience within the Committee should help it be well placed to do this.
- 3.11 The intersection of hard and soft law was discussed. It was noted that many members were hearing from clients that they want a level playing field when it comes to ESG issues. Clear legislation for everybody would be beneficial to this end – which is something the Committee may promote. However, much of ESG comes in the form of soft law / guidance, so that would also need to be included in scope of the Committee’s remit.
- 3.12 Taken in combination, this suggests a role for the Committee in reviewing hard law proposals for consistency with soft law conventions and expectations, and a challenge function as to whether the law should diverge from soft law standards where widely adopted.

- 3.13 ESG discussions can sometimes be quite defensive in tone, but the Committee was reminded that it is also exciting and dynamic as an area, driven especially by young people who are worried and also excited about what can be done.
- 3.14 It was further noted that firms are increasingly seeing requests from clients for details of our ESG policies, including the extent to which firms and clients are Paris-aligned in terms of the work they do and the matters they take on, which can in turn have implications for climate litigation risks.
- 3.15 ESG concerns are also of increasing relevance to matter allocation and career development for junior lawyers, who in some cases express their desire not to work for certain clients or do certain types of work because of ESG-related considerations. This may involve engaging with staff to talk through the nuances and their concerns, and otherwise allowing them to recuse themselves (noting that this is less of an issue for larger firms who are likely to have other lawyers to step in, but may cause bigger problems for smaller teams and brings in questions of fairness).
- 3.16 The Law Society’s climate guidance specifically addresses this point, framed through the lens of an employee’s ‘philosophical belief’ around climate being a protected characteristic. It was further noted that firms are not subject to the cab rank rule and are able to turn down work as they wish, including on the basis it may affect existing client relationships.
- 3.17 The Committee agreed there would be a good role for the CLLS to consider the intersection of legal work with ethics/moral questions, in order to help offer firms a compass to navigate more challenging areas. A WG could be formed in the future to consider this and potentially offer guidance if needed.

#### **4. Discussion of some initial proposals for Committee work, and considering what, if any, sub-groups should be created to cover different aspects of ESG**

##### *4.1 Law Society Climate Guidance*

- (a) The Law Society issued guidance on the [impact of climate change on solicitors](#) on 19 April 2023, with sector specific guidance expected to follow.
- (b) The guidance suggests, inter alia, that there is a duty of care to advise clients beyond a firm’s instructions where relevant, for example, where a client has climate exposure but not the relevant expertise (on which much of the cited case law focusses).
- (c) It was discussed how the guidance is presented as a summary of the current law in England & Wales. The Committee considered that this warrants further consideration, as:
- (i) many firms claim expertise in the area of climate change and at the same time parts of those firms may see themselves as not being affected by climate change considerations – which can create risk for firms.
  - (ii) there is a question of whether the summary of the law as presented is accurate / complete; and to the extent that it is, what risk this and the guidance itself presents for law firms and how to respond to this.

- (d) More generally, the Committee considered that there could be a role for them in clarifying and educating others around what the guidance requires in practice.
- (e) There may be scope for the Committee to work with the Law Society, SRA and law schools on how to help educate the next generation of lawyers on what will be expected of them, noting the potential to liaise with the CLLS learning committee.
- (f) The Committee resolved to create a WG to monitor how the guidance is being received, and how the sector-specific guidance is developing.

#### 4.2 *ESG rating consultation*

- (a) The UK government has launched [a consultation](#) on whether ESG ratings should be regulated, closing 30 June 2023.
- (b) It was noted that this was part of a broader question of whether to also rate ESG data providers, on which the FCA is running a separate working group to develop a code of conduct.
- (c) The Committee has already had a request from the CLLS Regulatory Law Committee to collaborate.
- (d) The Committee resolved to create a WG to formulate a reply to the consultation.

#### 4.3 *Able to Excel*

- (a) The 2019 [Able to Excel](#) discussion paper reflects on the experiences of disabled graduates in the UK, and how barriers like using public transport and finding accessible housing, can prevent disabled graduates from equally participating in the workforce.
- (b) Momentum behind the report was lost in part due to COVID lockdowns, and the Committee discussed what elements it should consider. These could include:
  - (i) Asking the author Lord Shinkwin for an update on the current status of his 10 recommendations, and what further steps he might want and how can we help take this forward,
  - (ii) If he wants it, sponsor a follow-up report with publication date of July 2024. The Committee could link in with Demos if necessary. It was noted that 2024 would be the Paris Paralympics and 2025 would be 30 years since Disability Discrimination Act became law, so key dates to link up.
  - (iii) Access - COVID and increased working from home. Has this been a factor in increasing representation in the workplace? Pluses and minuses of working virtually, which can include increased isolation.
  - (iv) Generation of disability stats from firms – is this broken down by seniority within firms for example?

- (v) Disability commitments in firms - what are they?
  - (vi) Can the CLLS commit to change, and collaborate between construction, land, and employment law committees?
  - (vii) If we pick this up, what will be our targets?
- 4.4 It was suggested that the Committee could look at what external guidance/legislation could look like, and also practical advice on how to do more.
- 4.5 The Committee resolved to create a WG, part of whose function would be to shadow HMG's disability unit in its work, look at the Able to Excel report to see where the WG could get involved, and to report to the ESG Committee and the CLLS.

## **5. Publicity**

- 5.1 The Committee heard from the CLLS' publicity team. At the point at which the Committee has concrete proposals to share, the publicity team could help promote these, for example in the Law Society Gazette, via a letter to the Times etc.
- 5.2 The Committee would be approached periodically to see what publicity is required, and can also put forward proposals on an ad hoc basis. A dedicated LinkedIn page for the Committee was also offered.
- 5.3 Publications would usually go out in the name of the Chair.

## **6. Engagement**

- 6.1 The working group model would serve to heighten engagement as it can draw from non-Committee members (including non-lawyers), and it was agreed that inclusion of junior lawyers should be encouraged.
- 6.2 The Committee could, for example, look to engage with Legal Voices for the Future, the Global Alliance of Impact Lawyers (GAIL) etc.

## **7. AOB**

- 7.1 None.