Thursday 14 June 2018
Jumeirah Carlton Tower
On Cadogan Place, Knightsbridge
London SW1
United Kingdom

Post-Event Report

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Agility is the law of tomorrow

The rules of business and society have changed. Flexible working may sound unproductive to some, but could add £8.1bn to the economy. How will you embrace the opportunities?

Discover what you can do with the law of tomorrow, today at mishcon.com
‘Less basic content than a lot of conferences, which is to be applauded. Spoke to a more senior lawyer and this showed in the attendees. A high quality conference’

‘The attendance by so many senior in-house counsel and senior private practice partners is what distinguished this event’

‘What was so good was the number of speakers from in-house who can share their views and experiences. I don’t need to be told what the law is, I want to learn what clients and potential clients are experiencing and how I can best help them’

‘It was very refreshing to see so many female panellists and speakers - at senior positions across industry and the bar. Well done!’

‘I thought the panel debates worked particularly well - it was interesting to hear from both an in-house and private practice perspective’

‘Excellent event with much better content and quality of discussion than other events’

‘Overall good insight into the current issues facing the market’

‘Well chosen speakers who had in depth and relevant knowledge and were able to present that information in an interesting and engaging way’

‘Informative and useful’
On 13 January 2017 the Ministry of Justice announced that the UK Government was examining the case for reform of the law on criminal liability for economic crime – offences such as fraud, false accounting and money laundering when committed on behalf of or in the name of a company. The announcement was accompanied by “an open call for evidence”.

There have been calls for reform for many years, necessitated (it is said) by the limitations and inadequacies of the present law as a tool for deterring and punishing the commission of such crimes by companies, especially large ones with complex internal structures and layers of management.

The criticisms focus on the “identification doctrine”, by which in general the actions or state of mind of a human employee of the company will not be treated as those of the company unless the employee in question can be characterised as the “directing mind and will” of the company in the transaction or activity for which the company is being prosecuted. This means that for a successful prosecution, evidence that a very senior person in the company (usually a board director) was complicit in the fraud or other crime being alleged will generally be required. Creative judicial thinking has brought some flexibility to the law (most obviously by Lord Hoffmann in Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500), but satisfaction of the identification principle remains the dominant requirement for corporate criminal liability.

The problem is that in large multinational organisations the real business of the company may be undertaken at levels well below that of the Board, that the current law can act as an incentive for the board to turn a blind eye to the activities of more junior management and staff, and that there is a disincentive to put in place monitoring and reporting procedures by which suspected illegal activity will be reported to the board. Equally, smaller companies (in which the senior management are often closer to the day-to-day conduct of the company’s business) are - unfairly – easier targets for prosecutors.

It is known that the call for evidence generated a good deal of interest and a significant number of responses: some, as an online search reveals, are published on the internet. At the 2017 Cambridge Symposium on Economic Crime, David Green QC (the now former Director of the Serious Fraud Office) highlighted the Government’s call for evidence – the result of which, as he said, the SFO awaited with interest. He drew particular attention to the possibility of the creation of a new offence of a company failing to prevent acts of economic crime by persons associated with it – the effect of which would be to sidestep the identification principle and the difficulties in applying it.

Corporate offences of failure to prevent bribery (under the Bribery Act 2010) and the facilitation of tax evasion (Criminal Finance Act 2017) are now on the statute book. Otherwise the consultation process appears to have stalled. In March 2018 the Solicitor General Robert Buckland MP was reported in The Independent as calling for the proposed reform to be brought forward, but there has been no evident progress since and there is no known prospect of future progress. If reform comes, it may fairly be regarded as a revolutionary development in criminal law.
On behalf of Legal Week I would like to thank all of those that attended the Banking Litigation and Regulation Forum 2018 at the Jumeirah Carlton Tower Hotel, London. Borne out of our Commercial Litigation and Arbitration Forum 4 years ago, this forum stands on its own as the leading litigation and regulation-focused forum for the UK financial services sector.

At the 2018 Banking Litigation & Regulation Forum we focused on risk and mitigation in the financial markets, and considered how the legal profession can pivot to these new risks. By combining perspectives from brand name clients, the judiciary, the Bar and leading private practitioners, the forum was well rounded and practical in the output of each session.

The tone for the day was quickly set by our opening keynote, Mark Steward of the FCA. Mr Steward provided a senior level regulator’s perspective on where we stand today regarding market conduct and enforcement, while expertly drawing comparisons back to the financial crisis 10 years ago. The Rt. Hon. Sir Geoffrey Vos, The Chancellor of the High Court addressed the audience after lunch by identifying what was working and not working with the English Courts. Finally, Richard Walker of King and Spalding (former general counsel, corporate and investment banking, Deutsche Bank and former director, United States Securities and Exchange Commission), gave his vision for the future.

Our speaker faculty covered a lot of ground this year, but some standout themes that emerged were regarding an examination of the delineation between the individual and the institution, the rise in criminalisation of activity once dealt with as a civil procedure and the general substantive evolution going on in our court system. A constant that ran throughout was our speaker’s ability to lean on recent practical experience in high profile cases to paint a very real perspective on the challenges and opportunities ahead.

The Legal Week team look forward to building this valuable community further in 2019 and hope you will be able to join us.

Contact Information

If you would like to receive more information about the Banking Litigation and Regulation Forum 2019 please do not hesitate to contact a member of the Legal Week team.

For delegate and speaker enquiries please contact Emma McGarthy - emcgarthy@alm.com

For sponsorship enquiries please contact James Woolf – jWoolf@alm.com
Misaddressed emails were the #1 data security incident reported in 2017

Information Commissioner’s Office

Tessian uses machine intelligence to prevent highly sensitive emails being sent to the wrong people.

Legal Week would like to thank the investment and dedication of our advisory board who took time out of their busy schedules to work with us on the 2018 agenda! They ensured that the specifically tailored Banking Litigation and Regulation Forum agenda reflected significant developments in the industry and was full of thought-provoking and engaging content.

Jonathan Kelly (Co-Chair)
Cleary Gottlieb Steen & Hamilton

Sonia Tolaney (Co-Chair)
One Essex Court

Christa Band
Linklaters

Peter Bibby
Brown Rudnick

Deborah Finkler
Slaughter & May

James Levy
Ashurst

Mahmood Lone
Allen & Overy

Sidney Myers
Bryan Cave Berwin Leighton Paisner

Masoud Zabeti
Mishcon de Reya
Commercial Litigation & Arbitration Forum taking place on the 6 November 2018 at The Waldorf Hilton London.

Discussing the most relevant topics and key issues the Commercial Litigation & Arbitration Forum offers the opportunity for delegates to engage in widening and valuable debates that will take place throughout the day and we actively encourage wider audience participation.

I look forward to welcoming you in November.

BOOK YOUR PLACE NOW

For more info or to register your place for the forum please contact Jen O’Neill at JOneill@alm.com

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Thank You to our Business Partners

BANKING LITIGATION & REGULATION FORUM AT A GLANCE

- 3 Hours of Networking
- 3 Keynotes
- 3 Roundtable Discussions
- 4 Panel Discussions
- 35 In-House Clients
- 23 Speakers
Economic Consulting
Financial Analyses
Expert Testimony

Clear, concise and robust assessments of finance and financial market issues arising in European and transatlantic disputes and transactions.
Attendee Breakdown

The full list of firms in attendance can be seen below:

3 Verulam Buildings | Addleshaw Goddard | Aldermore Bank | Allen & Overy | American Express | Ashurst | Bank of China
Bank of England | Barclays | BNP Paribas | Brown Rudnick | Bryan Cave Leighton Paisner | Burges Salmon | Citigroup
Cleary Gottlieb Steen & Hamilton | Clifford Chance | CMS Cameron McKenna Nabarro Olswang | Collyer Bristow | Consensus
Business Group | Cornerstone Research | FCA | Freshfields Bruckhaus Deringer | Global Financial Experts | Herbert Smith Freehills
Hermitage Capital Management | Hogan Lovells International | ICBC Standard Bank | Irwin Mitchell | Kession Capital | KLDiscove
ry Knovos | Latham & Watkins | Lloyds Banking Group | Mason Hayes & Curran | Mayer Brown | MeritKapital UK | Metro Bank
Mishcon de Reya | One Essex Court | Opentext Discovery | Penningtons Manches | Raphaels Bank | RBS | RBS Capital Resolutions
RBS Legal | RPC | Segelov Taylor Lawyers | Seilern Investment Management Limited | Sidley Austin | Slaughter and May | Special
Counsel | Tessian | The Payment Systems Regulator | TLT | TSB Bank | U.S. Bank Global Corporate Trust | UBS | White & Case
WilmerHale | Winston & Strawn | Womble Bond Dickinson
# Banking Litigation & Regulation Forum 2018

- Risk and Mitigation in the Financial Markets: Pivoting to New Risks -

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Speakers</th>
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<tbody>
<tr>
<td>08:00</td>
<td>REGISTRATION</td>
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<tr>
<td>09:00</td>
<td>Welcome from the co-chairs</td>
<td>Jonathan Kelly, partner, Cleary Gottlieb Steen &amp; Hamilton</td>
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<td>Sonia Tolaney QC, One Essex Court</td>
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<td>09:10</td>
<td>Opening Keynote: The Regulator’s perspective - an Overview of Enforcement and Market Conduct 10 years on from the financial crisis</td>
<td>Mark Steward, head of enforcement and market oversight, FCA</td>
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<td>09:45</td>
<td>Panel Debate: Individual and the Institution – challenges and conflicts</td>
<td>Laura Durrant, head of litigation &amp; investigations, RBS</td>
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<td>Arwen Handley, Head Governance, Reporting and Whistleblowing Management, Group Investigations, UBS</td>
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<td>Christa Band, partner, Linklaters</td>
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<td>Adam Epstein, partner, Mishcon de Reya</td>
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<td>Jamie Symington, partner, Brown Rudnick</td>
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<td>10:30</td>
<td>NETWORKING &amp; REFRESHMENT BREAK</td>
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<td>10:50</td>
<td>Panel debate: Criminalisation of activity in the financial sector</td>
<td>Lawrence Domingo, director &amp; litigation counsel, Citigroup</td>
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<td>Andrew Onslow QC, 3VB</td>
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<td>Stephen Pollard, partner, WilmerHale</td>
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<td>Matt Solomon, partner, Cleary Gottlieb Steen &amp; Hamilton (formerly SEC chief litigation counsel)</td>
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<td>11:35</td>
<td>Estimation of damages in competition cases</td>
<td>Dr Ronnie Barnes, principal, Cornerstone Research</td>
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<td>Dr Peter Davis, senior vice president, Cornerstone Research</td>
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- MasterCard case for damages estimation, while also questioning how prejudgment interest (often a significant element of a damages award) be assessed in the light of the recent Sainsbury’s case. 

- Dr Ronnie Barnes, principal, Cornerstone Research
- Dr Peter Davis, senior vice president, Cornerstone Research
### 12:15 BREAKOUT SESSIONS

Facilitated by our industry experts, the following roundtable discussions will run under the Chatham House Rule.

<table>
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<th>A) Rise of group litigation and the impact on financial mis-selling</th>
<th>B) AI and the rise of data-driven dispute resolution</th>
<th>C) Impact of GDPR on the industry</th>
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<td>Group litigation is an increasingly preferred form of legal recourse for large scale claims, especially targeting banks and other financial institutions. Recent years have seen the Visa/Mastercard competition claims, the RBS rights issue litigation, the Lloyds/HBOS issues and various other mis-selling claims. This session will explore some of the reasons for the momentum in GLOs and other collective action mechanisms, the role of funding providers, as well as the various strategic challenges to group litigation facing claimants and defendants.</td>
<td>Data is the new oil of the business world and there are no shortages of opportunities for tomorrow’s dispute resolution landscape. High volumes of structured data which can easily be analysed and interrogated provides efficiencies in data discovery, but also enhance outcome prediction and case transparency for law firm, commercial courts and clients alike. With AI leading the data-driven charge, join this session and gain the latest practical insight into this disruptive wave of innovation.</td>
<td>GDPR has been a long time in the making, but now the regulation is enforceable we will be able to assess the impact. Less than one month after its implementation, this interactive update will take a first look at what our world looks like under this ground breaking new age of data protection.</td>
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<td>James Oldnall, partner, Mishcon de Reya</td>
<td>Guy Pendell, partner, CMS Cameron McKenna Nabarro Olswang</td>
<td>Morgane Zerath, head of financial services, Tessian</td>
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### 13:05 LUNCH AND NETWORKING BREAK

### 14:05 Keynote: What is working and not working in the English Courts?

Stress caused by government funding, technological enlightenment and a general rise in the length and complexity of cases reaching litigation, has placed stress on the UK judicial system. In a post-Brexit world, the English courts will need to be more operationally efficient and competitive than ever. Join our keynote speaker as they explore what is working and not working in the English Courts.

**The Rt. Hon. Sir Geoffrey Vos**, The Chancellor of the High Court

### 14:40 Substantive analysis

- New Disclosure Proposals
- Effect on law of private arbitration decisions
- Jurisdiction - Is England becoming inward or outward looking?
- Jurisdiction and disclaimers
- Latest implications of Brexit
- Approach to financial institutional claims: exploring the inconsistencies
- Funding and other accelerants for litigation against institutions (Lloyds, RBS, ATE, GLO)

**Octavia Knox Cartwright**, EME head of litigation, Barclays

**Alison Kellett**, head of group dispute resolution UK, Channel Islands and Nordics, BNP Paribas

**Deborah Finkler**, partner, Slaughter and May

**Kirsten Massey**, partner, Herbert Smith Freehills

**Sonia Tolaney QC**, One Essex Court

### 15:40 NETWORKING & REFRESHMENT BREAK

### 16:00 Closing Keynote: The future of financial services litigation and enforcement post financial crisis – a global perspective

Drawing on a career as former General Counsel of Deutsche Bank and former Director of Enforcement at the United States Securities and Exchange Commission, Richard will provide a 360 degree perspective of how today’s litigation and enforcement landscape is evolving post financial crisis in the U.S. and how that is impacting regulatory enforcement programs abroad.

**Richard H. Walker**, partner, King & Spalding

(Former general counsel, corporate and investment banking, Deutsche Bank and former director, United States Securities and Exchange Commission)

### 16:35 Top 10 Risks and concluding remarks

**Jonathan Kelly**, partner, Cleary Gottlieb Steen & Hamilton

**Sonia Tolaney QC**, One Essex Court

### 17:05 CONFERENCE CLOSE
Click here to find out how to reserve your place at Banking Litigation & Regulation Forum 2019

Gallery
Dates for your diary

Banking Litigation & Regulation Forum
Date: 13 June 2019
Location: Jumeirah Carlton Tower Hotel, London, UK

Commercial Litigation & Arbitration Forum
Date: 6 November 2018
Location: The Waldorf Hilton, London, UK

LegalWeek CONNECT
Date: 28-29 November 2018
Location: County Hall, London, SE1

Trusts & Estates Litigation Forum
Date: 7-9 March 2019
Location: Hotel Camiral, Spain
"There were some fantastic panel discussions and I thoroughly enjoyed the two days."

Janet McCarthy, Group General Counsel, Santa Fe Relocation