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Bank of England, Prudential Regulation Authority consultation on Clawback: CP6/14.

Response from the Employment Lawyers Association

13 May 2014

Bank of England, Prudential Regulation Authority consultation on Clawback

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INTRODUCTION

1) The Employment Lawyers Association ("ELA") is a non-political group of specialists in the field of employment law and includes those who represent claimants and respondents in courts and employment tribunals. It is not ELA's role to comment on the political or policy merits or otherwise of proposed legislation, rather it is to make observations from a legal standpoint. Accordingly in this consultation we do not address such issues. ELA's Legislative and Policy Committee is made up of both barristers and solicitors who meet regularly for a number of purposes including to consider and respond to proposed new legislation.

2) The Legislative and Policy Committee of ELA set up a sub-committee under the co-chairmanship of Caroline Stroud of Freshfields Bruckhaus Deringer LLP and Stephen Levinson of Keystone Law to consider and comment on the consultation paper from the Bank of England, Prudential Regulation Authority on Clawback published in March 2014. Its report is set out below. A list of the members of the sub-committee is annexed to the report.

3) Our comments are addressed to seven relevant issues which include the two specific areas set out in the consultation paper.

Executive Summary

A. The grounds for malus and clawback should not be the same. The grounds for clawback should be restricted to circumstances of personal culpability.

B. Enforcement may well prove difficult in the case of departed employees.

C. The potential difficulties of amending contracts and scheme rules in a number of circumstances have been underestimated.

D. Because of the practical difficulties of enforcement (and not any policy issues) clawback should be a last resort. Firms should be given a degree of flexibility in deciding the degree of clawback to be recovered. This would avoid conflict with the Civil Procedure Rules (CPR) that apply to litigation in England & Wales. In particular, (i) a firm should be free to adopt a proportionate approach to litigation (ii) it should only be required to recover the after-tax value of the remuneration; and (iii) it should be able to balance specific factual circumstances in determining the appropriate valuation of non-cash instruments.

E. Also for Remuneration Code Staff based outside the UK a firm should not be obliged to adopt clawback arrangements which are contrary to the laws of the jurisdictions in which the individuals are based outside the UK. This issue is not addressed in the consultation paper but could create considerable difficulties.

F. In our view requiring clawback to apply to variable remuneration awarded before 1 January 2015 but remaining unvested as of that date will clearly result in the employer being put to a disproportionate expense and level of work for something that may not be legally possible or will not affect all those individuals that the award applies to e.g. those who are no longer in employment.

G. Clawback provisions could constitute an unenforceable penalty, but this risk can be minimised with careful drafting.

H. Consideration should be given to the impact of Directors & Officers (D&O) insurance policies on the policy objectives of these proposals.

Issue 1

What is the definition of the conduct or circumstances that should justify clawback ('sufficient malfeasance')

4) The new text that is proposed at section 19A.3.51 of the Senior Management Arrangements, Systems and Controls rules (SYSC) of the UK Financial Services Authority states that a firm must ensure that "any variable remuneration is subject to clawback, such that it is not awarded save where it, or an amount corresponding to it, can be recovered from the individual by the firm in the 6 years following the date on which the remuneration is paid or vests, where the recovery is justified on the basis of the performance of the firm, the business unit and the individual concerned".

5) The new text at SYSC 19A.3.52 (1a) states that: "A firm should recover vested variable remuneration or an amount corresponding to it, where, as a minimum, any of the circumstances described in (1)(a), (b) or (c) arise within 6 years following the date on which the remuneration vested".

6) Paragraphs (1)(a),(b) and (c) provide as follows:

   (a) there is reasonable evidence of employee misbehaviour or material error; or
   (b) the firm or the relevant business unit suffers a material downturn in financial performance; or
   (c) the firm or the relevant business unit suffers a material failure of risk management.

7) At 19A.3.51R a firm must:

   (a) Set specific criteria for the application of malus and clawback; and
   (b) Ensure that the criteria for the application of malus and clawback in particular cover situations where the employee:

      (i) Participated in or was responsible for conduct which resulted in significant losses to the firm; or
      (ii) Failed to meet appropriate standards of fitness and propriety.

8) The proposal is that the grounds for applying clawback should be as wide as the grounds for malus.

9) It is our view there should be a distinction between the grounds for malus and for clawback and that it should be made express that malus is expected to be applied first. This reflects the fact that where an employee has left the employer he is likely to have spent the remuneration received and several years will have passed since the conduct now being examined. The practical impact of the time lag will mean that there is more difficulty in establishing evidence as to whether the employee should fall within any of the grounds for clawback and secondly, the employee may not have the money anymore and therefore the negative financial impact on them is far greater.

10) Further, in circumstances where an employee has long left the employer, applying clawback where the business unit suffers a financial downturn and this is not linked to personal conduct appears unreasonably harsh if the employee has had no control over how the employer has been managed subsequently to their departure.

11) We therefore suggest that there should be an express personal culpability to the grounds for clawback in all cases before clawback is applied. This is particularly so in relation to ground 1(b) – material downturn in financial performance.

Issue 2

What are the principles on which the Remuneration Committee decides a senior person's responsibility?

12) It is suggested in the consultation paper that clawback should also be applied where there is no direct failure in relation to a case under 1 (c) involving a material failure of risk management or misconduct where the employee : (a) could have been reasonably expected to be aware of the failure or misconduct at the time but failed to take adequate steps to promptly identify, assess, report, escalate or address it; or (b) by virtue of their role or seniority could be deemed indirectly responsible or accountable for the failure or misconduct, including senior staff in charge of setting the firm's culture and strategy.

13) The principles to be applied in relation to determining a senior person's responsibility for a material failure of risk are not defined. It is suggested that a similar approach should be taken to that set out for malus in Supervisory Statement ss2/13. It will be essential in view of the likelihood that clawback may be considered many years after the events in question have occurred that firms have accurate role descriptions, reporting lines and organisation charts so that determining responsibility for reporting, escalating and deciding on issues in relation to risk is possible. The definition of roles and responsibilities for the most senior roles will link with the senior person's regime which is going to be consulted upon in summer 2014.

14) In addition, as for malus, a clear process for determining culpability, responsibility or accountability should be put into place by firm's including allowing an individual to make representations. Where clawback is being considered, in view of the significant evidential difficulties due to time having elapsed, and the increased practical impact on an individual where the money has been long spent, this is critical. Firm's will need to adapt any process for ex-employees in terms of giving extra time for representations and allowing representations to be made in writing to accommodate the difficulties of communicating with an ex-employee.

15) We view clawback, due to the practical difficulties of enforcement (rather than any policy issue), to be a last resort. Increasing vesting periods against which malus could be applied should be the preferred route for firm's seeking to reclaim remuneration and clawback should be applied in a period measured from the date of the award rather than vesting.

Issue 3

Application of clawback outside the UK

16) Firms are required to apply the Remuneration Code on a group wide basis. Most international firms have Remuneration Code Staff based outside the UK. The contracts of employment of those non UK Code Staff will be subject to local law, and would need to be enforced in the courts of the local

jurisdiction. We are aware that in certain jurisdictions (such as France and Germany) a clawback provision of the type proposed in the consultation paper will not be enforceable. We consider that firms should not be required to include a clawback provision in any contractual arrangement with an employee (or to enforce such an arrangement) where such a provision would be contrary to the law of the jurisdiction in which the individual is based.

Issue 4

In what manner should contracts be amended, particularly for existing but as yet unvested awards?

17) The consultation paper mentions amending employment contracts, we suggest that rules applicable to variable compensation are generally included in stock plan rules (Plan Rules) and therefore, it will be these Plan Rules rather than employment contracts that will need to be amended. In particular, amending employment contracts is not straightforward and something that employers will want to avoid. In particular amending employment contracts will only apply to current employees and not former employees in relation to existing but unvested variable compensation. In addition, where an employment contract has been breached by the employer, an employee may argue that the claw back provision is not enforceable going forward.

<u>Awards granted after 1 January 2015</u>

18) In relation to awards of bonuses going forward, (i.e. awarded 1 January 2015 onwards) including clawback provisions in agreements should be straight forward. When making an incentive award, a condition of payment of such an award should be that the employee agrees to the application of clawback in relation to the award – this will be particularly relevant for the upfront cash element of an award. Such wording could be included in the document outlining the level of the variable compensation e.g. a compensation statement.

19) In relation to the stock element of awards going forward, (i.e. awarded 1 January 2015 onwards) the Plan Rules relevant to the stock element of awards should be amended to include clawback language. As Plan Rules are generally introduced each year for new awards, this amendment can be made unilaterally and be a term of granting the award.

<u>Existing but unvested awards</u>

20) The consultation paper proposes that awards granted before 1 January 2015 that remain unvested as of I January 2015 should be subject to clawback. Generally Plan Rules relevant to stock awards will not be included in employment contracts – only references to the Plan Rules are included. Therefore, it is unlikely that there will be a need to amend employment contracts for existing but unvested awards.

<u>Amending employment contracts</u>

21) However, where employment contracts do contain language relating to the stock element of an award, an employer is required under SYSC TP 3 7(1) to amend the contract where they are "entitled to" amend. It is not clear whether ‘entitled’ means it is just where an employer can unilaterally amend a contract or in other circumstances as well e.g. where employee consent is required. If it is the latter, changes that require consent or are deemed to be detrimental to an employee are likely to be problematic to an employer as it may result in a situation where some

employees consent to the change and others do not. Where this occurred, the employer would need to consider whether to include the clawback provisions in the contract of those employees who consented or try to enforce against all employees. Further it may result in the employer looking to dismiss and rehire the employees on the new terms that include a clawback provision (which may result in collective consultation) such an option will be strongly resisted by employers who would argue that they are 'not entitled' to amend the employment contract where such steps have to be taken. (Note: this paragraph 21 assessment may also be applicable where an organisation does not issue compensation statements (as referenced in paragraph 18 above) and therefore is required to amend the employment contract in relation to including clawback provisions for variable incentives awarded from 1 January 2015 onwards to an employee who has an existing employment contract that does not include clawback language.

22) Amending employment contracts will only affect those individuals who remain in employment with the employer who made the award before 1 January 2015 i.e. the awarded but unvested variable compensation of those that have left the organisation will not be subject to claw back.

Amending Plan Rules:

23) If Plan Rules allow for the rules to be unilaterally amended (e.g. where the regulatory environment changes), then it will be possible to amend to take account of clawback. However, it is likely to be difficult to inform all beneficiaries under the Plan Rules as a number of them will be former employees. Where individuals have not been informed of the change and the organisation tries to rely on a purported change, there is a risk of estoppel arguments being raised.

24) Further, if consent is required, it will be almost impossible to obtain each person's consent. It is more likely that only those currently in employment will give their consent. The above two scenarios clearly impact more harshly on those individuals who have remained in employment against those whose employment has terminated.

25) SYSC TP 3 7(2) states that where it is not possible to amend an agreement, an organisation "must adopt specific and effective arrangements, processes and mechanisms to manage the risks raised by the inability of the firm to apply clawback…" It is not clear what such arrangements etc. would be, however, if it relates to amending the Plan Rules or employment contract, the same issues as outlined above will apply.

Conclusion

26) On the basis of the above, whilst we note the view of the PRA in paragraph 3.4 of the consultation paper, in our view requiring clawback to apply to variable remuneration awarded before 1 January 2015 but remaining unvested as of that date will clearly result the employer being put to a disproportionate expense and level of work for something that may not be legally possible or will not affect all those individuals that the award applies to e.g. those who are no longer in employment. Our view is that the PRA should focus on clawback applying to awards of variable compensation made on or after 1 January 2015 only.

Issue 5

Does sufficient malfeasance (the conduct or circumstances justifying clawback) include breach of a restrictive covenant? If so, are there any restraint of trade issues?

27) The proposed wording of SYSC 19A.3.51 (2) states that:

"A firm must ensure that:

(2) any variable remuneration is subject to clawback, such that it is not awarded save where it, or any amount corresponding to it, can be recovered from the individual by the firm in the 6 years following the date on which the remuneration is paid or vests, where the recovery is justified on the basis of the performance of the firm, the business unit and the individual concerned."

28) The wording of SYSC 19A.3.51A (2) and (3) states that:

"A firm must:

(2) set specific criteria for the application of malus and clawback; and

(3) ensure that the criteria for the application of malus and clawback in particular cover situations where the employee:

(a) participated in or was responsible for conduct which resulted in significant losses to the firm; or

(b) failed to meet appropriate standards of fitness and propriety."

29) The proposed wording of SYSC 19A.3.52 (1a) states that:

"(1a) A firm should recover vested variable remuneration, or an amount corresponding to it, where, as a minimum, any of the circumstances described in (1)(a), (b) or (c) arise within 6 years following the date on which the remuneration vested."

The circumstances in 1(a), (b) and (c) are as follows:

"(a) there is reasonable evidence of employee misbehaviour or material error;

(b) the firm or relevant business unit suffers a material downturn in its financial performance; or
(c) the firm or the relevant business unit suffers a material failure of risk management."

30) Although the wording of the relevant provisions is broad enough to cover breach of a restrictive covenant, we consider that it should be a matter for each firm to determine what sorts of restrictive covenants are appropriate (for example depending on the firm's business interests and the ability of those working for the firm to damage those interests) and how it wants to try to enforce any such covenants. Further, we consider that breach of certain restrictive covenants (for example not to disclose or misuse confidential information) may be more relevant in assessing fitness and propriety than breach of other restrictive covenants (for example dealing with clients in breach of a non-deal restriction).

31) If a firm decides to include breach of a restrictive covenant in the specific criteria for the application of clawback (see SYSC 19A.3.51A (2)), the firm should be aware that if a restrictive covenant is unenforceable (for example because it is too broad in terms of duration or scope), it is probable that an English Court would not permit the firm to operate the clawback provision to recover variable remuneration on the grounds of an employee's breach of that restrictive covenant. ELA recommends that any such covenants should be carefully drafted and that the drafting should include

appropriate severability clauses so that if certain provisions are unenforceable they do not jeopardise the enforceability of other provisions.

Could the clawback be a penalty?

32) We consider there is a risk the English Courts could decide that a clawback provision is an unenforceable penalty if the trigger event for the clawback is a breach of contract and the amount clawed back is not a genuine pre-estimate of the loss arising from the breach. Given the circumstances in SYSC 19A.3.52 (1) (a) (reasonable evidence of employee misbehaviour or material error) and (c) (a material failure of risk management), the trigger event for the clawback could, in many situations, be a breach of contract. Further, if the requirement is to recover (claw back) all vested variable remuneration (as it seems to be under the proposed wording of SYSC 19A.3.52 (1a)), this may not be a genuine pre-estimate of loss arising from the breach. PRA should consider whether changes need to be made to the relevant provisions and whether guidance should be given to firms about this risk and how it can be minimised.

33) The basic position[1] is that a provision in a contract which requires party A to pay a sum to party B if party A is in breach of the contract will be an unenforceable penalty unless the sum is a genuine pre-estimate of the loss arising from the breach. Determining whether or not a provision is a penalty first involves assessing whether the trigger event is a breach of contract.

34) If the trigger event is not a breach of contract, the provision will not be a penalty[2]. If the trigger event is a breach of contract then determining whether or not the provision is a penalty involves assessing whether the payment is a genuine pre-estimate of the loss arising from the breach or whether the payment is in effect designed to deter a party from breaching the contract. If the payment is a genuine pre-estimate of loss, it should be enforced by the English Courts, but if it is designed to deter a party from breaching the contract it will be a penalty and it will not be enforced by the English Courts (although the injured party may still claim damages for breach of contract).

35) Although the case authority has developed since *Dunlop*, for example in *Murray* v *Leisureplay plc [2005] IRLR 946* and *Cavendish Square Holdings BV* v *Makdessi [2013] EWCA Civ 1539*, the basic position remains the same.

36) Depending on how a firm drafts clawback provisions in, for example, variable remuneration scheme rules, a provision requiring an individual to repay a bonus if he or she is in breach of the employment contract could be unenforceable as a penalty clause.

37) However, we consider that it should be possible to minimise the risk of clawback provisions being challenged by employees on the grounds of being unenforceable penalties by drafting the relevant provisions carefully, so that they are not triggered, for example, by an employee's breach of the employment contract. Award, payment, vesting and retention of variable remuneration could be conditional upon certain circumstances and factors, including (but not necessarily limited to) the specific criteria envisaged by SYSC 19A.3.51A (2). By way of example, the conditionality wording could include the employee in question not having participated in or been directly or indirectly responsible or accountable for conduct which resulted in significant losses to the firm and the employee upholding appropriate levels of fitness and propriety as well as the firm not suffering a significant downturn in performance in all cases at any time within the 6 years following the vesting or payment of the variable remuneration.

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[1] *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd [1915] AC79*.

[2] *Berg v Blackburn Rovers Football Club & Athletic plc [2013] EWHC 1070 (Ch)*.

38) Whether and, if so, to what extent clawback should be applied to an employee's variable remuneration will normally be a matter for a committee within the firm. We are of the view that those committees should always give careful consideration to any decision to apply clawback, including how to communicate and document that decision so as to minimise the risk of litigation from current and former employees and third parties.

Issue 6

What issues arise from the scope of the claw back obligation

The requirement to "recover" vested variable remuneration

39) The new proposed text at SYSC 19A.3.52 E (1a) states that: "*A firm should recover vested variable remuneration, or an amount corresponding to it, where, as a minimum, any of the circumstances described in (1)(a), (b) or (c) arise within 6 years following the date on which the remuneration vested*" (emphasis added).

40) We do not consider it appropriate to require a firm to recover vested variable remuneration: whether or not such recovery is possible may be outside the firm's control. There may be practical considerations (such as the individual no longer having the funds available to make the repayment) which mean a firm unable to recover vested variable remuneration in practice. Therefore we suggest that a firm's obligation should be limited to it taking reasonable steps to recover vested variable remuneration, taking account of the issues set out below.

The amount to be recovered

41) The new proposed text at SYSC 19A.3.52 E (1a) does not appear to leave any discretion for a firm to seek to recover some (but not all) of the vested variable remuneration in question. This gives rise to a number of issues. By contrast, under the evidential provision at SYSC 19A.3.52 E (1) of the existing Remuneration Code, firms are expected to "*reduce unvested deferred variable remuneration*" (emphasis added) in the equivalent circumstances. Therefore under the proposed drafting it appears that, if the circumstances described in SYSC 19A.3.52 E (1)(a), (b) or (c) arose, a firm would be expected to recover all of an individual's relevant *vested* variable remuneration, but would have discretion over the appropriate reduction to any *unvested* deferred variable remuneration.

42) The absolute nature of the obligation removes the ability of a firm to vary its approach depending on the particular circumstances in question. Under the current "malus" provision, a firm can determine the percentage reduction to be applied to unvested deferred variable remuneration depending on, for example, the degree of culpability of the individual or the level of the downturn in financial performance. We consider that this is a sensible approach, which should be extended to the new "clawback" provision.

43) We also suggest that in exercising its discretion to seek to exercise "clawback", a firm should be entitled to take account of (a) any reduction in the variable remuneration to be awarded to a current employee for the current performance year; and (b) any exercise of "malus" in respect of an individual's unvested deferred variable remuneration, in each case arising out of the same circumstance that would trigger the exercise of "clawback". As stated above we consider that it

would be appropriate for a firm to treat "clawback" as its recourse of last resort, to be exercised only in those situations where it is has already exercised discretion to reduce any variable remuneration award for the current performance year and/or to reduce unvested deferred variable remuneration under the "malus" provision.

44) Litigation. In bringing any enforcement proceedings in England and Wales, a firm would be bound to comply with the Civil Procedure Rules (CPR), including the "Overriding Objective" at Part 1. Under the CPR, parties are required to help the court to further the overriding objective, including to deal with the case in a way that is proportionate to issues including the amount of money involved and the financial position of each party (CPR 1.1(2)(c)). If only for the avoidance of doubt, we consider it should be recognised that the proposed amendments to the Remuneration Code do not require a firm to conduct any enforcement proceedings in a manner that is disproportionate or otherwise puts the firm in breach of its duties under the CPR (for example, if the amount of vested variable compensation is de minimis having regard to the cost of enforcement). A firm should be free to settle any litigation arising out of the enforcement of the Clawback provision (requiring them to recover all of the vested compensation would seemingly prevent the firm from reaching any compromise agreement with the employee).

45) We therefore suggest that firms should be expected to take reasonable steps to recover vested variable remuneration, and that in considering what steps are required firms should be permitted to take account of (a) the amount of variable vested remuneration in issue; (b) the likely costs of bringing enforcement proceedings; and (c) the prospects of success in any such proceedings. Further, we consider that firms should not be required to include a "clawback" provision in any contractual arrangement with an employee where such provision would not be enforceable under the law of the relevant jurisdiction.

46) Gross or net amount? The current state of the law in the United Kingdom is unclear as to whether an individual would be able to recover income tax and national insurance contributions paid on remuneration which the individual is subsequently required to repay pursuant to a contractual obligation. While the law may be clarified following the outcome of the appeal in *Martin* v *Commissioner for HMRC* (TC/2010/2791) there will continue to be situations both within the UK and in jurisdictions outside the UK where there will be uncertainty as to the ability to recover these sums. We consider that it would be unduly penal to require an individual to repay the pre-tax value of the remuneration in circumstances where the individual is unable to recover the tax amount from the revenue authorities. Consequently, ELA suggests that a firm's obligation to clawback vested variable remuneration should be limited to recovering the after tax value of the remuneration, unless the tax and any social security contributions payable on the remuneration are recoverable by the firm or the individual.

47) Recovery of variable remuneration delivered in shares. SYSC 19A.3.47 requires a substantial proportion of variable remuneration to consist of shares or other non-cash instruments. The value of such instruments is likely to fluctuate over time and it therefore raises the question of what is the appropriate method for determining the value of the remuneration in order to determine the value to be clawed back.

48) Putting to one side the question on whether the amounts are pre or post tax (see above), there are the following principal approaches:

(a) Value the instruments at vesting. However, this may not accurately reflect the value that the individual derived from the instruments. For example, if they were not sold immediately and have since increased in value, the individual may have in fact realised more value than is clawed

back, in which case the clawback may not have the penal impact it is presumably intended to. Conversely, they may not have been sold but may be worth materially less than they were originally, in which case this alternative might be considered unduly penal.

(b) Value the instruments at the date of the clawback. Again, this may not accurately reflect the value that the individual derived from the instruments. This might also encourage individuals to retain the instruments until the end of the clawback period. However, in those circumstances, reflecting the tax uncertainty outlined above, it may be preferable to hold the instruments subject to a deferral period so that they only vest at the end of the period (i.e. so that they are subject to malus rather than clawback). ELA also notes that even if an employee retains the instruments, he or she may not simply be able to hand them back to the firm to satisfy a clawback obligation as there may be corporate law issues which preclude the firm from receiving or holding those instruments.

(c) Clawback the value the individual received. Under this approach, a firm would be able to look at the value that an individual had derived from the instruments and determine the quantum accordingly. For example, if an employee had sold the shares he or she received on vesting, the clawback would be calculated by reference to the value received for the shares under the sale. If they had been retained then it would be calculated by reference to the value at the date of clawback. This route does pose some practical issues as a firm may not be able to ascertain the value for which shares have been sold by an individual.

49) We consider it likely that route (a) would encourage the immediate sale of the instruments (which, subject to any holding requirements, would undermine the purpose of a non-cash instrument) and (b) would encourage the retention of the instruments (and thereby prevent employees from being able to utilise the value of their pay). Accordingly, we would welcome guidance from the PRA which made clear that the firm would be obliged to seek to recover either (a) the shares themselves (if still held by the individual); or (b) the value actually received by the individual on sale of the shares (to avoid a situation in which the individual was being asked to replay more than they had received.

Issue 7

Directors & Officers Insurance

50) We suggest finally that consideration be given to the possible impact on the effectiveness of the policy underlying these proposals of the existing terms (and potential development of new terms) in Directors and Officers insurance policies both in the UK and elsewhere. This is a dynamic and expanding market and whilst regulatory terms exist that prevent the recovery by means of insurance of a financial penalty imposed by a regulator (FCA/GEN/6/1) it seems improbable that this could apply to an employer seeking to take action against a director for ‘employee misbehaviour or material error’.

51) If a market develops to provide cover expressly for such risks two possible consequences may occur. First it will mitigate against the culture these proposed regulations seek to inculcate and secondly the demand for such cover from senior executive is likely to become universal and given potential risk levels a considerable additional expense for businesses.

Offer of further assistance

52) It is apparent that these proposals raise a number of potentially complex and difficult issues. If we can assist further by meeting with officials from the PRA we are pleased to offer to do so. We

frequently do this in connection with proposed legislation and new regulations. If this is of interest contact should be made with Lindsey Woods our Head of Operations at lindseyw@elaweb.org.uk.

13 May 2014

APPENDIX

Members of the Sub-Committee

Caroline Stroud: Freshfields Bruckhaus Deringer LLP (Co-Chair)
Stephen Levinson: Keystone Law Limited (Co-Chair)
Alice Greenwell: Freshfields Bruckhaus Deringer LLP
Julie Morris Slater & Gordon (UK) LLP
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