

Financial Markets Law Committee (“FMLC”)

Insurance Scoping Forum

Date: Thursday 7 September 2017

Time: 10.00am to 11.30am

Location: Bank of England, Threadneedle Street, London, EC2R 8AH



In Attendance:

Chris Newby (Chair)	AIG Europe Limited
Beth Dobson	Slaughter and May
Richard Farnhill	Allen & Overy LLP
Reid Feldman (dial in)	Kramer Levin Naftalis & Frankel LLP
David Kendall	Cooley (UK) LLP
Adam Levitt	Ashurst LLP
Alison Matthews	Herbert Smith Freehills LLP
George Scott	Pacific Life Re Limited
James Scoville	Debevoise & Plimpton LLP
James Smethurst	Freshfields Bruckhaus Deringer LLP
Michael Wainwright	Dentons UKMEA LLP
Graham White	Marine Aviation & General (London) Ltd
Kees van der Klugt	Lloyd's Market Association
Venessa Parekh	FMLC
Thomas Willett	FMLC

Regrets:

Theresa Chew	Hymans Robertson LLP
George Belcher	Skadden, Arps, Meagher & Flom LLP
Nigel Brook	Clyde & Co LLP
Jennifer Donohue	Ince & Co
Matthew Griffith	RPC
Charlotte Heiss	Royal & Sun Alliance Insurance Group plc
Benjamin Lyon	Debevoise & Plimpton LLP
Steven McEwan	Hogan Lovells International LLP
Sean McGovern	XL Catlin
Chris Sage	Transatlantic Reinsurance Company

Registered Charity Number: 1164902.

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Victoria Sander
Manreet Sher
Martin Thomas

Linklaters LLP
Lloyd's Market Association
Altima Partners LLP

Minutes:

1. Introduction.

- 1.1. Chris Newby opened the meeting and delivered a brief introduction.

2. Administration

a. short presentation on key FMLC statistics (Venessa Parekh);¹

- 2.1. Venessa Parekh presented to the Forum members a selection of FMLC statistics about the range of legal uncertainties analysed by the FMLC since 2003, recent publications and events, the international connections the FMLC have forged, and a glance at funding and expenditure. Information on how to get involved in the FMLC's work was included on the last slide.

b. present the draft 2018 Forward Schedule;²

- 2.2. The draft 2018 Forward Schedule was presented to Forum members. These dates will be recirculated for comment and confirmed at the next Forum meeting on 7 December 2017.³

c. suggestions for the 2018 Forward Agenda.⁴

- 2.3. Some participants suggested that discussions on Brexit in relation to the insurance industry should be put on the agenda for the next Forum meeting in December and, depending on developments in U.K.-E.U. negotiations, for the 2018 meetings. Another

¹ Please see Appendix I below.

² *Ibid.*, slide 10.

³ In the meanwhile, if you have any suggestions or queries regarding the draft 2018 Forward Schedule, please contact Thomas Willett at forums@fmlc.org.

⁴ If you have any suggestions for the 2018 Forward Agenda, please contact Thomas Willett at forums@fmlc.org.

topic raised by participants was the legal uncertainties arising from insurance business transfer schemes under Part VII of the Financial Services and Markets Act 2000.⁵

2.4. Forum members also mentioned insurance-related issues in connection with smart contracts.

2.5. Forum members resolved to send any agenda topics for the December meeting, including those concerning Brexit, to the Secretariat by end of October.⁶

3. Second round consultation on the Insurance Distribution Directive (“IDD”).

3.1. Further to the discussion on the IDD at the Q2 Forum meeting in June,⁷ the Forum members considered the second round consultation from the Financial Conduct Authority (“FCA”).

3.2. Participants agreed that legal uncertainties were not raised by this Consultation—or indeed the IDD. The issues were rather more practical.

3.3. One participant, however, suggested that Article 16 of the IDD, on the restriction on the use of intermediaries, could present complexities in the context of Brexit, especially for E.U. insurers dealing with U.K. intermediaries for whom outsourcing back into the U.K. could raise issues.

4. Update on the General Data Protection Regulation (“GDPR”) (Kees van der Klugt).

4.1. In a follow-up to the discussion held at the previous meeting of the Insurance Scoping Forum, on the GDPR,⁸ Kees van der Klugt updated the Forum members on the potential legal uncertainty which may be faced by insurers in relation to the consent guidance under the GDPR.

4.2. Mr van der Klugt provided a short overview of the new guidance published in draft by the Information Commissioner’s Office (“ICO”) in March 2017 for processing special categories of personal data (sensitive personal data) by insurers. Under this guidance, the only practical ground for processing data in the arranging and underwriting of insurance,

⁵ Financial Services and Markets Act 2000 available at: http://www.legislation.gov.uk/ukpga/2000/8/pdfs/ukpga_20000008_en.pdf

⁶ Please send any agenda topic suggestions for the Q4 meeting in December to Thomas Willett at forums@fmlc.org.

⁷ Minutes from the Q2 Forum meeting in June 2017 are available at: http://www.fmlc.org/uploads/2/6/5/8/26584807/fmlc_up_11689218_v_1_minutes_8_june_2017_insurance_scoping_forum.pdf

⁸ *Ibid.*

and paying claims, is the consent of customers. This presents practical and legal problems and the Lloyd's Market Association (with other associations) had been in contact with the ICO and the Department of Culture, Media and Sport (“**DCMS**”) to request a derogation under the GDPR to provide a new practical ground for the processing of such data by insurers.

- 4.3. The ICO's guidance also states that the customer must be able to withdraw consent. Such withdrawal would potentially frustrate a contract of insurance, where continuing consent is necessary for administration and claims settlement. The ICO has outlined in its guidance that “conditional consent” is not appropriate (i.e. agreeing to underwrite a contract of insurance on the basis that consent will run with the contract).
- 4.4. Mr van der Klugt highlighted the legal uncertainties arising from this situation, for example in relation to group policies, where a beneficiary could withdraw consent; or in relation to mandatory insurance, e.g. motor and employer's liability. Members formed a consensus that the issues were largely practical. A legal risk may arise if consent were to be withdrawn but this seems unlikely.
- 4.5. Forum members raised questions about how this issue was being dealt with by other Member States. .

5. Insurance: innovative forms of coverage (Graham White).

- 5.1. Graham White identified cyber and security-related challenges as one of the biggest preoccupations of the insurance industry. Mr White highlighted that getting the wording of cyber policies correct was critical to the development of the industry and to the mitigation of risks.
- 5.2. Mr White referred briefly to kidnap and ransom insurance and how the factors used to determine such policies were being considered in relation to insuring cyber risks.
- 5.3. Mr White concluded by observing that the challenges arising from innovation will raise new and as yet unknown legal uncertainties. Establishing a legal framework will be crucial to negotiating legal risk.
- 5.4. In the discussion following Mr White's remarks, Forum members expressed an interest in discussing, at a future meeting, micro-insurance as utilised after natural disasters.

6. Any other business.

- 6.1. No other business was raised.

Did you know ..?

A quick glance at some FMLC numbers



Venessa Parekh, Acting Project Manager

Registered Charity Number: 1164902.

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Addressing legal uncertainty



Since 2003, the FMLC has analysed and made recommendations to resolve legal uncertainties in 212 disparate topics.

Solvency II
Brexit
E.U. Data Protection Reform
Market Abuse Regulation
EMIR
Emissions Allowances
Benchmarks Reform
Capital Markets Union
Sovereign Debt Collective Action Clauses
Bail-in
Rome I
Bank Reform (Ring Fencing)
International Coordination of Law and Regulation
Regulation of Credit Rating Agencies
MiFID II
Bank Recovery and Resolution
Financial Market Infrastructures
Virtual Currencies

FMLC research is conducted through:

7

Scoping Forums

- Banking
- Brexit
- Buy-side
- Infrastructure
- Insurance
- Fintech
- Sovereign Debt

27

Working Groups

... were established since the beginning of 2016:

- 7 Working Groups are still active;
- 5 deal with matters related to Brexit; and
- 9 have published and are anticipating further work.

FMLC Publications

22

publications were produced in 2016

69

pages in our longest paper

5

publications were on the topic of benchmarks reform

2016-Present FMLC Events



10

formal events were held

45

guest speakers across all events

4

events examined legal uncertainties arising from Brexit

176

guests attended the 2016 Spring Colloquium on the anticipated U.K. referendum. This was the FMLC's most successful event in the past 3 years

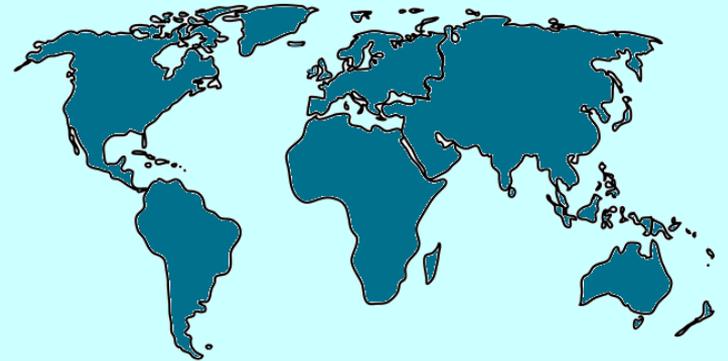
International connections

18 speeches were given by the FMLC CEO in 5 different countries

4 calls are held every year with the Financial Markets Lawyers Group ("FMLG") (New York)

3 sister organisations (associated with the Federal Reserve, the ECB and the Bank of Japan) participate in an annual conference with the FMLC

7 jurisdictions (E.U., Hong Kong, Japan, Switzerland, Singapore, U.K. and U.S.) hold a biannual information-exchange video conference



People and the FMLC

39 patron organisations

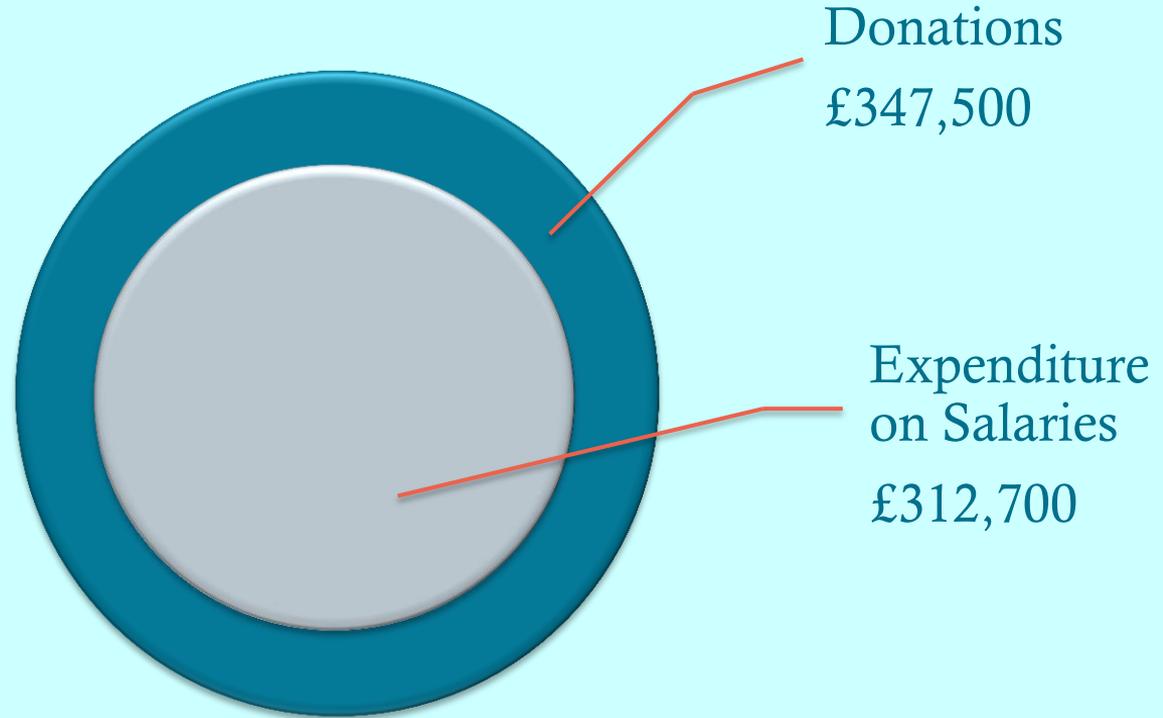
35 average members per Scoping Forum

26 Committee Members

15 average members per Working Group

11 staff at the FMLC Secretariat (plus one volunteer!)

Looking under the hood ...



89% of the FMLC's charitable income is spent on Secretariat salaries

You can get involved in the FMLC's work by becoming a:



- **patron**—for a sample Patrons' Newsletter, a copy of the FMLC donation pack and any other enquiries, please contact: Barbara Martin (patrons@fmlc.org);
- **stakeholder**—for a sample Stakeholders' Newsletter and any other enquiries, please contact: Rachel Toon (executivesupport@fmlc.org);
or
- **recipient to our general mailing list**—should you wish to receive regular notifications about new FMLC publications, please contact: Amy Shaw (secretarial@fmlc.org).

2018 Forward Schedule



Tuesday 20 February

2.00pm to 3.30pm (U.K.)

Tuesday 22 May

2.00pm to 3.30pm (U.K.)

Tuesday 4 September

2.00pm to 3.30pm (U.K.)

Tuesday 20 November

2.00pm to 3.30pm (U.K.)

Conclusion / The End



Financial Markets Law Committee

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