



British
Insurance
Law
Association

WELCOME

British Insurance Law Association



British
Insurance
Law
Association

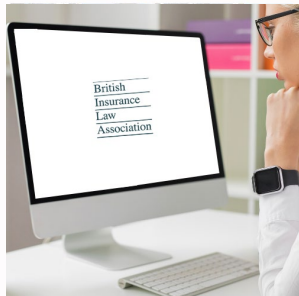
Please note

Upon entry please note that all delegates will be put on mute.

Please send all questions by chat message as these will be answered at the end.

A recording will be made available to all BILA members so by participating, delegates are agreeing to be recorded.

A survey will be sent by email to all delegates. Your response would be very much appreciated.



British
Insurance
Law
Association

Forthcoming Lectures

22nd April 2021 Martin Moore QC – Prudential and Rothesay Life

**4th May 2021 Manoj Vaghela – Always look on the bright side of life
– an overview of the life insurance sector**

**12th May 2021 - Colin Edelman QC and Andrew Burns QC – Law of
Reinsurance – New Edition**

**29th April 2021 – BILA Young Professionals – Speed Networking
Event**

June 2021 Queen Mary University of London/BILA – Joint Event



**Law
Commission**
Reforming the law

Smart contracts

Professor Sarah Green

Commissioner for Commercial and Common Law

[@Law_Commission](https://twitter.com/Law_Commission)

www.lawcom.gov.uk



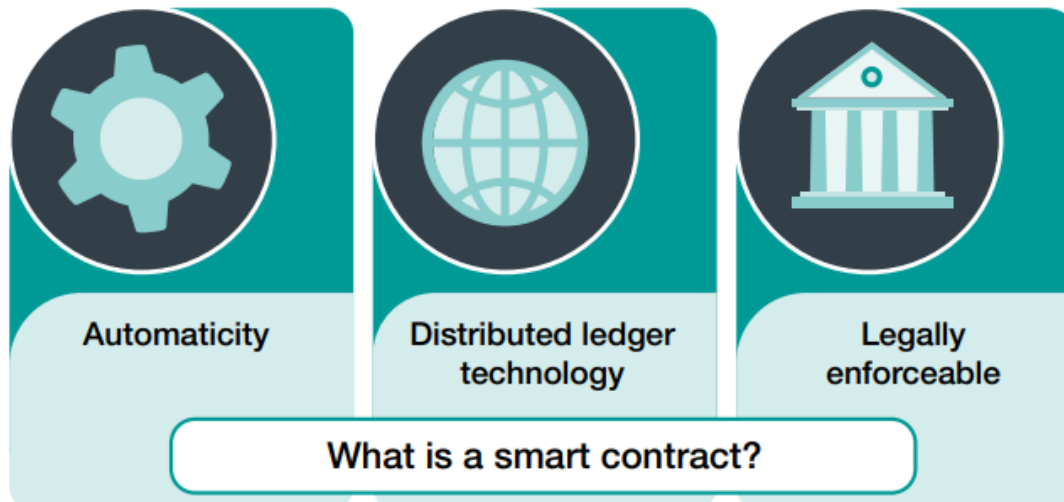
The project

- We are undertaking a scoping study on smart contracts.
- Our aim is to analyse the current law as it applies to smart contracts and identify areas in which further work or reform may be required.
- We published a call for evidence in December 2020, which closes on 31 March 2021 (tomorrow!).
- After reviewing all responses to the call for evidence, we will publish the scoping study in late 2021.



What is a smart contract?

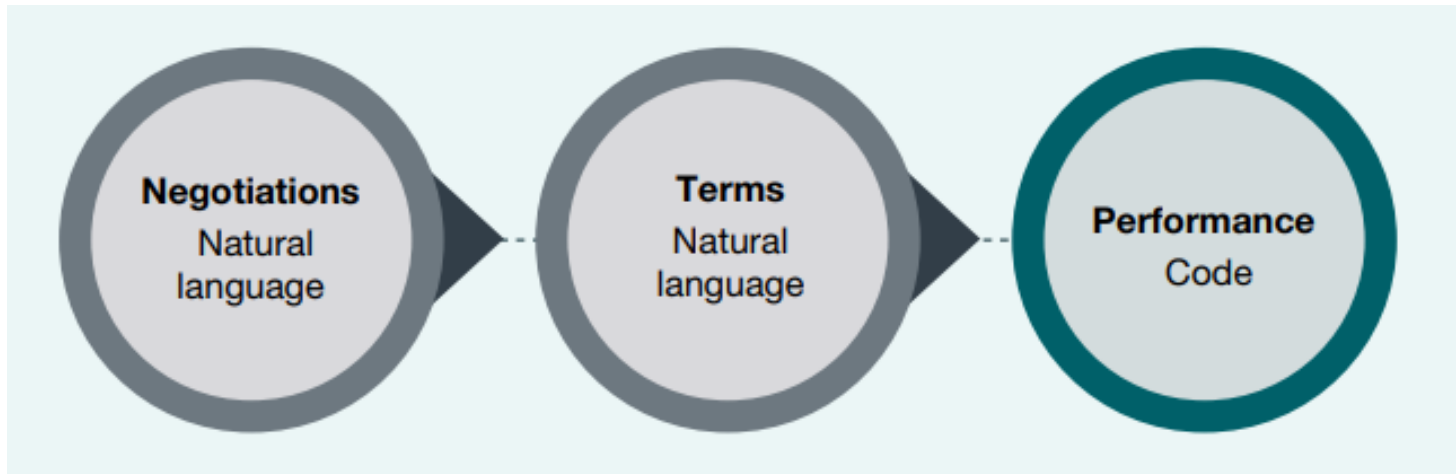
- *“A legally binding contract in which some or all of the contractual obligations are recorded in or performed automatically by a computer program deployed on a distributed ledger”* (Call for evidence, p ix).





Three forms of smart contract

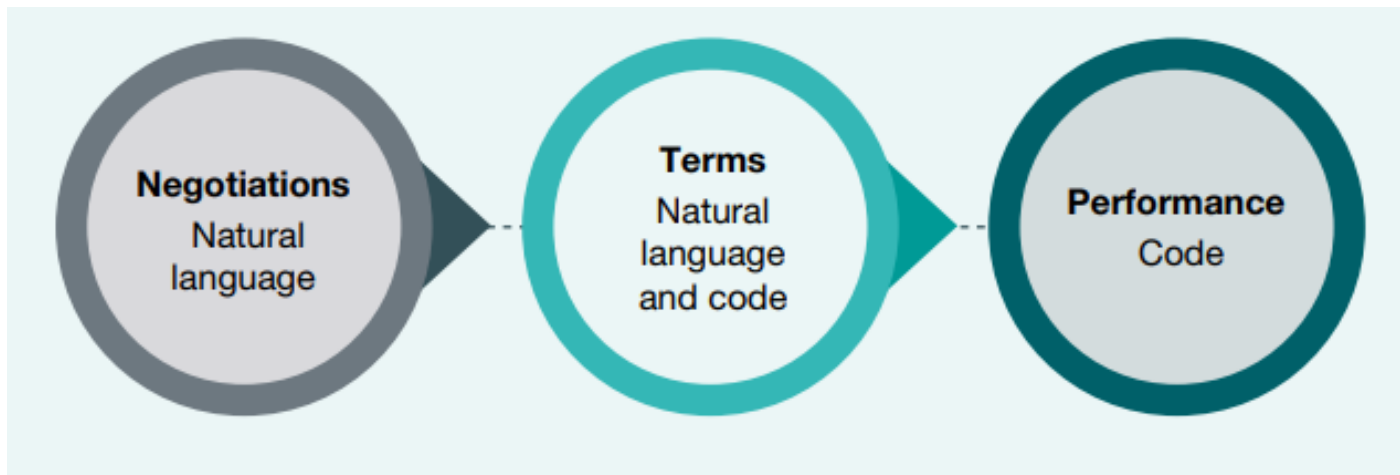
1. Natural language contract with automated performance





Three forms of smart contract

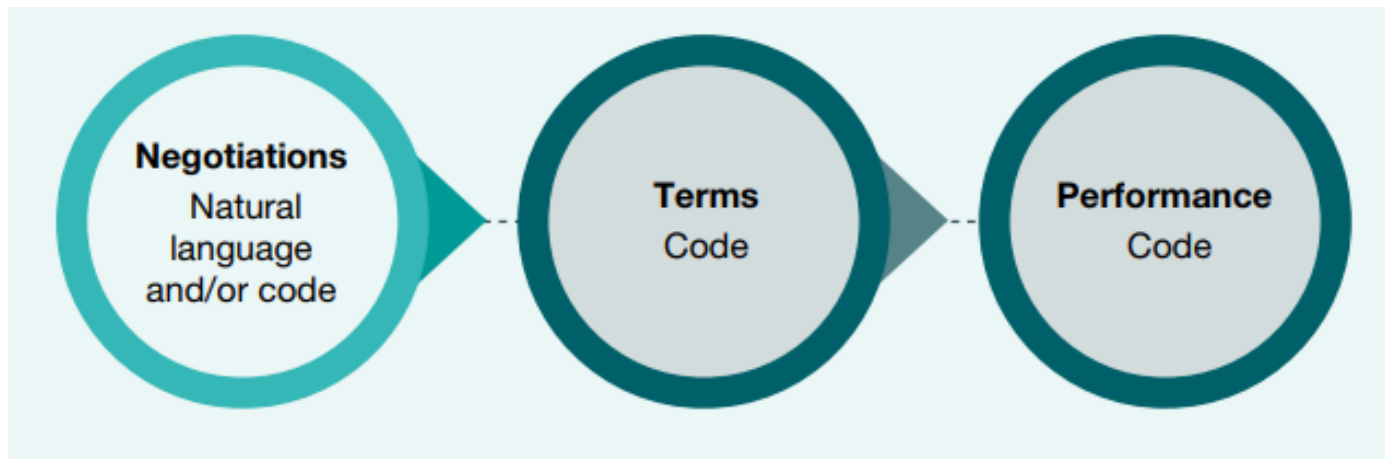
2. Hybrid smart contract





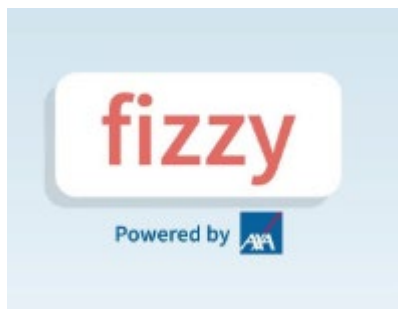
Three forms of smart contract

3. Solely code contract





Use cases?



OpenBazaar



The legal issues

- Formation
- Interpretation
- Remedies
- Consumer protection
- Jurisdiction



Formation

- Can a legal agreement be reached solely “on chain”? How do concepts of offer and acceptance apply in this context?
- Can we presume that parties who are transacting on a DLT system intend to create legal relations?
- Can agreements recorded solely in code satisfy formality requirements, such as a requirement that the contract be “in writing” and/or “signed”?



Interpretation

- How are coded contractual terms to be interpreted?
- Does the code mean what a reasonable person with knowledge of the code thinks it means, or simply what the computer does in response to the coded instructions?
- Should evidence of prior negotiations be admissible in the interpretation of a smart contracts, at least where the parties are not code literate?



Remedies

- How can the terms of a smart contract be rectified if they are immutably recorded on a distributed ledger?
- How might principles of mistake apply where the code does not execute as the parties intended?
- What remedies could the court award to unwind the performance of a smart contract that is void or has been set aside?



Consumer protection

- Are smart contracts being used in the B2C context? How might they be used?
- Would terms written in code be at risk of breaching transparency and fairness requirements?
- Do current consumer protection laws provide adequate protection to consumers who enter into smart contracts?



Jurisdiction

- There are a number of “connecting factors” which the courts of England and Wales apply to determine if they have jurisdiction to hear a contractual dispute.
- How might these connecting factors apply in the context of smart contracts?
- Might there be difficulties in identifying, for example, the place of formation or performance of a smart contract?



Other issues we should consider?





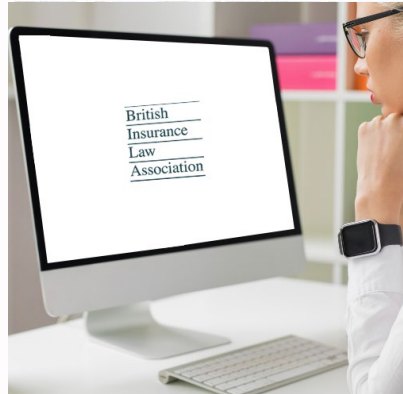
What happens next?

- The call for evidence closes tomorrow, on 31 March 2021.
- After reviewing all responses, we will produce a scoping study.
- The scoping study will explain how we consider the current law applies to smart contracts, and identify any areas in which further work, or possibly law reform, may be required.
- We will also publish a summary of the responses received to the call for evidence.



Further information

- Project page (including links to the full text of the call for evidence and a summary): <https://www.lawcom.gov.uk/project/smart-contracts/>
- Video introduction to the project: <https://youtu.be/N5JKnaoMa8c>
- Project email address: smart-contracts@lawcommission.gov.uk
- Online response form: https://consult.justice.gov.uk/law-commission/smart-contracts/manage_respondents



British
Insurance
Law
Association

Questions and Answers