

**CITY OF LONDON LAW SOCIETY (CLLS)
COMMERCIAL LAW COMMITTEE**

Minutes of the Committee Meeting held virtually at 13:00 on 23 April 2026, hosted by Oliver Bray

Present via Microsoft Teams: Oliver Bray, RPC (**OB**) (Chairman)
Stephen Sidkin, Fox Williams (**SS**) (Vice Chair)
Antony Woolich, Blake Morgan (**AW**)
Richard Marke, Bates Wells (**RM**)
Jonathan Davey, Addleshaw Goddard (**JD**)
Richard Shaw, BCLP (**RS**)
Julia Hemmings, Baker Mckenzie (**JH**)
Kevin Hart, CLLS (**KH**)
Rohan Massey, Ropes & Gray (**RM**)
Emma Keeling, Allen Overy Shearman (**EK**)
Helen Brown, Baker Mckenzie (**HB**)
Jane Finlayson-Brown, Allen Overy Shearman (**JFB**)
Jo Farmer, Lewis Silkin (**JF**)
Megan Paul, Charles Russell Speechley (**MP**)

In attendance: Karl Hendricks, RPC (minutes)
Lauren Aurelius

Apologies: Richard Brown, Travers Smith (**RB**)
Jo Farmer, Lewis Silkin (**JF**)

1. Welcome from the Chair (OB / RM)

OB gave a short introduction and passed his and the Committee's thanks to RM for organising the meeting online.

RM gave a brief welcome to Emma Keeling who newly joins the committee.

2. Minutes of last full meeting (20 November 2025)

AW noted that in the minutes from the November 2025 meeting, the word 'complaint' was used where the appropriate word to be used was 'compliant'. OB made note that this will be corrected before publication.

3. Discussion of Committee roles (OB / KH)

OB explained that, ahead of his departure from the role of Committee Chair, he would be looking to select a Committee Secretary to replace RM. OB nominated RB who had agreed to his appointment should the Committee approve. KH proposed a vote by a simple majority through a show of hands.

Following the count, KH confirmed the passing of the vote in favour of RB.

OB and KH formally thanked RM for his time as secretary and acknowledged the success he has had in his duties as Secretary.

OB informally stated his intention to retire from the role of Chair and inquired with KH the process for appointing a new Chair.

KH confirmed that a Chair must be appointed by the CLLS Board; the candidate presented to the Board will be whoever is elected by the Committee. The process for voting for a candidate is as follows:

1. The current Chair provides a formal date at which they would like to step down. This triggers the election process. The position is then open to any member of the committee, with a few restrictions. The Chair must be a partner or practitioner of an equivalent level, and they must be a member of CLLS.
2. Interested members will then inform KH and OB who will provide a period for interested members to submit their nominations. OB and KH will inform the Committee of this date. Interested members should submit a few lines highlighting how their vision and outlook for the Committee.
3. Members will place their votes on a ballot which will be collected confidentially for selection. KH will then count the votes from the ballots. In the event of a tie, OB will place the casting vote. The name of this member will be placed before the CLLS Board for a vote.

KH mentioned that, though it is unlikely, the CLLS Board are entitled to state that they will not cast that member as Chair. Once the new Chair has been recognised by the board, the previous Chair's resignation is formal.

KH went on to explain that if the Chair would like a hiatus between their provision of notice and the formal resignation, this is fine. The Vice Chair will manage the Committee in the period between the Chair stepping down and the new Chair being formally appointed. A Vice Chair can name themselves if they wish to stand as Chair.

KH encouraged anyone with interest in the role to contact him or OB for further information.

KH announced that subject to any questions, the timetable – if deciding to begin the process as of today (23 April 2026) – is as follows:

1. The election begins on the day of this meeting, 23 April 2026;
2. The return date for nominations is to be Thursday 21, May 2026;

3. The names of the nominated candidates will be circulated on Friday, 22 May 2026;
4. Candidate outlook statements should be returned to KH by 10 June 2026;
5. The election itself will be held on 17 June.

KH confirmed that if there is only one candidate, he will ask that a confirmatory vote take place to confirm the candidate before placing them before the board.

JD asked whether OB would continue to remain on the Committee despite stepping down from the role of Chair. OB shared his intention to remain on the Committee after stepping down from the role of Chair.

OB then provided his formal intention to step down from his role as Chair.

KH asked whether RM would also like to continue to remain on the Committee despite stepping down from his role as Committee Secretary. He acknowledged the benefit to the Committee's continuity for the Chairman and Secretary to remain part of the committee following their resignation from the roles. RM shared his intention to remain on the Committee after stepping down from the role of committee Secretary.

KH acknowledged OB's formal intention to step down from the role of Committee Chairman and declared the beginning of the election process. He indicated that he would send OB a draft email regarding the transition for OB to review before sending to the Committee.

KH confirmed that that the election date will be 17 June 2026.

4. The King's Speech: Points to note (All)

OB opened the floor to SS to discuss points that he noticed may be of interest to the Committee in the upcoming King's Speech.

SS stated that the King's Speech is likely to be on 13th May 2026. Two items of particular interest relates to speculation concerning:

- a 'Late Payments' Bill, that will create fines for companies who pay after 60 days of the payment due date. SS's explained that this is of obvious interest to contract specialists.
- a proposed EU Bill allowing for 'expedient absorption of EU law and regulations into UK law'.

KH mentioned that the CLLS will be encouraging all specialist committees to monitor and comment on relevant developments flowing from the King's Speech.

OB agreed with SS that both points these are of interest to the Committee and highlighted that, should they be announced in the King's Speech, they should be placed on the committee's 'watch list' for discussion in a future meeting.

JD seconded OB's proposal to monitor the King's Speech developments SS has identified. He additionally proposed that the Committee keep a general 'watch on pieces of emerging legislation of interest'. OB seconded this proposal and suggested a standing item of 'horizon-watching' to the Committee agenda. He asked the Committee whether anyone would interested in taking on the role of leading this in the agenda. MP suggested that this be a task for the 'next-gen team' (the Shadow Associate Committee).

OB seconded MP's recommendation, citing it as an opportunity for direction and a good purpose for the Shadow Committee and its agenda. OB proposed contacting the Shadow Committee to move this forward.

EK agreed with MP's recommendation as well, and offered her expertise as a knowledge lawyer to support the Shadow Committee where helpful. OB thanked EK for this offer.

5. Shadow Committee

OB proposes discussing the Shadow Committee and how the CLLS Committee might support their development. OB proposed revising the membership of the Shadow Committee and suggested that Niki Asprou from RPC also become involved.

OB stated that he would write to the Shadow Committee, mentioning the social event as well as the CLLS' request for a regular 'horizon scanning' report.

JD noted that he had not had a chance to contact Lucy Bailey (the Shadow Committee member from his firm); he queried whether the Shadow Committee is still doing case law summaries.

OB said that he believed the Shadow Committee case summaries are not being published and that this also needs revisiting. JD proposed reviving the case law summary exercise and explaining to the Shadow Committee that the case law summaries will be fed into the CLLS Committee's discussions.

6. Promotion of English law abroad

OB asked KH where discussions were left with the CLLS marketing agency and the 'thought piece' previously shared on the promotion of English law abroad. KH confirmed that "it went live" and that four of the Chairs had the opportunity to visit Downing Street. OB requested that these types of invitations be shared with the CLLS Commercial Committee in the future.

KH shared with the group details for upcoming CLLS events:

7. CLLS conference

KH mentioned a full day conference that the CLLS intends to host at Guildhall where the aim is to have David Lammy and other key guests to speak, including the Lord Chancellor speak. KH will confirm details of the event and circulate for people to enter into their diaries, but noted that at present this event is scheduled for 15th September 2026.

OB asked whether there was a rough agenda and KH confirmed that one was coming into view but he would need to speak with Patrick McCann to confirm whether what he can circulate at this stage to the Committees and their Chairs.

8. Committee Seminar

OB raised the question of the Committee seminar which has been in gestation for some time.

JD confirmed that the ex-director of food at Sainsbury could be a speaker and that Mark Dewar is looking to secure others.

JD pointed out that supply chain issues is still front of mind for many members of the Committee and OB agreed that supply chain issues could not be more topical at the moment.

JD said that he hoped meaningful progress on the seminar can be made by the time of the next meeting.

KH asked whether there is a prospective date for the seminar as he would like to organise for members of CLLS to attend as well as the PR team. JD confirmed that a date has not been selected as they are hoping to organise speakers and an agenda and physical arrangements before committing. He said he was still hoping this could happen in be in Autumn.

KH requested that it not be organised for 15 September 2016.

9. Interesting Cases (JD / All)

JD kindly provided details of the following key commercial cases:

***Zaha Hadid LTD v Zaha Hadid Foundation* [2026] EWCA Civ 192 (CA) (27.2.26)**

- Non-exclusive trade mark licence; high licence fee
- Company (licensee) wished to renegotiate; claimed it could terminate on reasonable notice
- If reasonable notice termination possible, it was common ground 12 months' notice sufficed
- HC decided no right to terminate for Company
- Argument run on grounds of construction rather than implication of a term
- Licence stated that it "*shall continue indefinitely*" and Licensor could terminate on 3mm notice, so parties had addressed their minds to duration/termination
- Admittedly "indefinite" and "perpetual" mean different things
- Not clear why court thought locking Company into a permanent non-exclusive licence was problematic, though there were promotional obligations
- Court accepted that its decision gave rise to "*a kind of implied term*" but seemed to sidestep the consequences of this
- This decision seems out of step with *M&S v BNP Paribas* and *Arnold v Britton* (both SC)
- For a recent detailed discussion of reasonable notice in context of distribution arrangements see now *Commonwealth Brewery v Anheuser Busch* [2026] UKPC 8 (Privy Council) (2.3.26).

Synthos SA v Ineos [2026] EWHC 83 (Comm) (23.1.26)

- Ineos sold a business to Synthos
- Issues arising out of unlawful buyer cartel activity involving target, not disclosed to Synthos
- Breach of warranty claim out of time unless fraud
- Also, notification obligation as regards any "event or development" between contract and completion: did this relate to continuing conduct? Important because limitations of liability did not apply to this obligation
- "Merely because an event is part of a pattern of undisclosed conduct occurring before that date does not lead to the conclusion that is not an event or development"
- Held Ineos was in breach of this obligation
- Warranty claims would not have been subject to the time bar because warranties were given fraudulently, ie "*without belief in the truth of that warranty or... reckless, not caring whether what it warranted was true or false*".

MS Amlin Marine v King Trader [2025] EWCA Civ 1387 (5.11.25)

- CA has confirmed and restated rule on incorporation of unusual and onerous terms
- In terms incorporated into a contract by reference, an unusual or onerous term is not incorporated unless it was fairly and reasonably brought to the attention of the party to be burdened by it (the so-called "red hand doctrine")
- Marine insurance policy contained a "pay first" clause: insolvency of claimant meant it hadn't paid and wouldn't pay
- Although a serious and significant limit on insurer's liability, CA said clause was neither unusual nor onerous (see in contrast *Blu Sky* in older cases below)
- CA stressed doctrine is about notice; threshold for showing a term is onerous is high and unlikely to be met by usual contract terms in a commercial contract between parties of equal bargaining power
- CA suggested test could never be met in a normal case where party to be burdened was represented by a professional insurance broker, whose duty it was to read the terms and explain them to its client. Obvious implications where legal advice involved
- The case also deals usefully with seeming contradictions between terms
- Appeal refused.

Cohen v Riverrock [2025] EWHC 845 (Comm) (4.4.25)

- Strike-out case: did a 6-page MoU create binding obligations?
- A £3m interim loan had been made based on an MoU and stated to be binding though generally the MoU was stated to be STC; further, fuller documentation expected, but this never happened
- Court considered no chance of success for a defence alleging that there was an obligation to make the £3M payment but no obligation to repay it
- Repayment terms were a sufficiently certain and free-standing code for repayment.

Providence v Hexagon [2026] UKSC 1 (15.1.26)

- JCT standard form contract interpretation issue has been heard by SC, overturning CA
- Clause said:
 - “8.9.3 If a specified default ...continues for 28 days from the receipt of notice under clause 8.9.1 or 8.9.2, the Contractor may on, or within 21 days from, the expiry of that 28 day period by a further notice to the Employer terminate ...
 - 8.9.4 If the Contractor for any reason does not give the further notice referred to in clause 8.9.3, but (whether previously repeated or not): 1 the Employer repeats a specified default; or .2 a specified suspension event is repeated for any period...then, upon or within 28 days after such repetition, the Contractor may by notice to the Employer terminate...”
- On the facts a notice had been served due to earlier non-payment, but payment was received within 28 days; a later instalment was then missed
- No further notice given under clause 8.9.3, but was E entitled to terminate under 8.9.4? SC said no; 8.9.4 parasitic on 8.9.3, so a right to terminate needed to have accrued on the first occasion
- Oddly, it was ‘common ground’ this was a “repeat” of the earlier default.
- Standard form contracts - different rules may apply: “an industry-wide standard-form contract should usually be interpreted consistently for all contracting parties using that form and, subject to bespoke amendments, that interpretation is unlikely to be contradicted by the objective intentions of the particular contracting parties.”

Orion v Great Asia Maritime [2025] EWCA Civ 1210 (2.10.25)

- Usually, exercise of an express contractual termination right in absence of repudiatory breach does not entitle the innocent party to damages for loss of bargain
- In this case, CA (overruling HC) said there was such a right, based on interpretation of contractual terms, which overrode that general rule
- O (seller) failed to give “notice of readiness” entitling GAM to terminate; GAM also entitled to “compensation for loss” if O’s failure was negligent
- Arbitrators found for GAM, but held no repudiation; HC reversed but CA has restored arbitral award
- CA held GAM could claim loss of bargain damages; natural and ordinary meaning of “loss” included loss of bargain; clear words not needed
- Appeal to be heard in June 2026

Latest on good faith: Ellis v JBL [2025] EWHC 2096 (KB) (6.8.25)

- Driving school franchise
- Onerous terms, long duration and inequality of bargaining power; franchisees not unlikely to fail and no independent advice
- While most franchise agreements are viewed as commercial agreements, on the facts these contracts had more in common with employment (though it was not held to be an employment relationship)

- Court said that a benevolent approach to implying a good faith term applied in the circumstances, though caution regarding use of the 'relational contract' tag as opposed to applying traditional tests for implication of a term; not all franchise agreements might merit implication of a term
- Bates and other cases quoted
- Good faith term implied, and JBL had broken it
- Attempt to pull good faith issue back to (mere) implication of a term in line with the principles from BNP Paribas v M&S
- Permission to appeal granted; appeal to be heard in December

"Directly consequential loss" - Sahara Energy v Sonara [2024] EWHC 3163 (Comm)

- What does the phrase: "*directly consequential loss*", stating that this loss would be recoverable, mean?
- Long line of cases holding that "*indirect*" and "*consequential*" loss generally refer to the second limb in Hadley v Baxendale, but the above phrase confuses the two limbs
- Arguably, "*directly*" can only qualify the word "*consequential*", so should this phrase not be taken to leave all First Limb loss untouched and permit some Second Limb loss?
- But Commercial Court has held that these words (on the facts of this case) could cover "*first limb*" losses, equating "*directly consequential*" with "*arising naturally from*"
- And this indemnity: "*The buyer shall indemnify and hold the seller harmless from all losses, damages, costs and expenses including legal fees that the seller would not have incurred but for the event of default and/or the exercise by the seller of any of its remedies hereunder*" was not an overriding indemnity but was held only to cover losses (etc.) arising from the exercise of remedies
- Recent appeal overturned elements of the HC judgement but not the above

10. AOB (OB)

OB thanked all attendees for their helpful contribution to the meeting.