

The City of London Law Society: Litigation Sub Committee

Minutes of the meeting held at 13:00 on 04 December 2023 virtually and at Macfarlanes LLP, 20 Cursitor Street, EC4A 1LT.

ATTENDANCE

Present

Andrew Denny (Allen & Overy LLP);
Daniel Spendlove (Signature Litigation);
Ed Crosse (Simmons & Simmons);
Geraldine Elliot (RPC LLP);
Julian Copeman (Herbert Smith Freehills LLP);
Lois Horne (Macfarlanes LLP);
Mark Lim (Lewis Silkin LLP);
Nicola Boulton (PCB Byrne LLP);
Patrick Swain (Debevoise & Plimpton LLP);
Richard Dickman (Pinsent Masons LLP);
Patrick Boylan (Simmons & Simmons);
Richard Jeens (Slaughter and May)

Apologies

Angela Dimsdale-Gill (Hogan Lovells LLP);
Daniel Hayward (Fieldfisher LLP);
Kevin Hart (City of London Law Society);
James Levy (Ashurst LLP);
Jan-Jaap Baer (Travers Smith LLP);
Jeremy Kosky (Clifford Chance LLP);
Samantha Trevan (Freshfields Bruckhaus Deringer LLP);
Hardeep Nahal (DWF)

MATTERS ARISING

- 1 *Approval of previous minutes*
- 1.1 Lois Horne introduced the need to minute the meetings and that minutes should be uploaded to the website. Minutes should be uploaded regularly, as this has not taken place since 2020.

2 *New Committee members and bridges*

- 2.1 Lois Horne introduced Nicola Boulton and Ed Crosse.
- 2.2 Lois Horne explained that Nicola Boulton will be joining as a member of the CLLS Litigation Sub Committee.
- 2.3 Lois Horne explained that Ed Crosse is on the CLLS Main Committee and will act as the bridge to this committee. Ed explained his role will be to pass information back to the Main Committee and to determine if there is anything that the Litigation Sub Committee can be involved with and to share the work of the Litigation Sub Committee.
- 2.4 Lois Horne explained that at previous meetings the make-up of the Litigation Sub Committee had been discussed, a there is capacity for new members to join. Lois Horne explained that there is a desire to improve diversity amongst members.
- 2.5 The agenda item on new members is to be held over until the next meeting as Kevin Hart will need to circulate the advert for membership positions as it is necessary to go through this formal process of appointing new members.

3 *CLLS Shadows*

- 3.1 Lois Horne introduced the concept of CLLS Shadows who would be non-partners who would attend CLLS Litigation meetings to see the format and with the hope that Shadows will then become Committee members upon becoming partners. Questions regarding how many Shadows there would be, how to identify them and how the role would work in practice remain to be determined.
- 3.2 Lois Horne explained that the Shadows should not be intended to act as proxy members for those on the CLSS who could not attend meetings. Mark Lim also suggested that using Shadows for succession planning from a firm perspective may not be appropriate, as membership is on an individual, rather than firm basis.
- 3.3 Richard Jeens suggested that Shadows could assist with particular projects on an ad hoc basis. Ed Crosse followed up by noting this may be a good suggestion, as the Main Committee is looking to encourage junior members to see how the CLLS functions.
- 3.4 It was agreed that further clarification on the objective underpinning having Shadows is required and practical information as to how the role would function.

4 *AI Committee and liaison*

- 4.1 Lois Horne explained that there is a new AI Committee and raised the question of whether any Litigation Sub Committee Member would like to be a liaison with the AI Committee as there is likely to be crossover in issues.
- 4.2 Richard Jeens questioned if there would be a liaison for each new Committee. Patrick Boylan's colleague is part of the AI Committee and offered to reach out to discuss if having a liaison would be helpful. Patrick Boylan confirmed that the AI Committee would like a member to join and report back to the Litigation Sub Committee.

5 *COMBAR /CLLS Terms*

- 5.1 Lois Horne explained that she and Mark Lim had met with the COMBAR team to discuss the amendments which had been made to the previous terms. Lois explained that subsequent changes have now been separately discussed on the GDPR terms by the Law Society and members of the Bar, which have not involved the Litigation Sub Committee's amendments.
- 5.2 Lois Horne explained that she has asked to be put in contact with the COMBAR team to discuss the additional GDPR amendments. It is unlikely that these amendments will be finalised before the end of 2023.

5.3 Lois Horne will circulate an updated version once the COMBAR team provides the updated amendments.

6 *Sub-committee updates*

6.1 Lois Horne explained that at the previous meeting it was discussed that the Litigation Sub Committee should consider whether there are sub-committees that are required, whether each member is satisfied with the sub-committee that they are part of and whether the committees are functioning, or if changes are required for 2024.

6.2 Geraldine Elliot suggested that it might be appropriate to appoint Chairs to each committee.

6.3 Lois Horne explained that there are some committees which are overarching, such as the sub-committee for diversity and inclusion. Richard Jeens suggested that it would be preferable to have sub-committees reporting back on specific topics which arise, so having committees as and when required, rather than standing sub-committees which then have more limited scope. Andrew Denny, Daniel Spendlove and Geraldine Elliot supported the idea of ad hoc committees.

6.4 Lois Horne proposed to review the different committees and implement the suggestion of ad hoc committees with overarching committees, such as diversity and inclusion, to remain.

7 *New website*

7.1 Lois Horne explained that Kevin Hart had sent his apologies and could not join, however, the new website appeared to be live. However, Kevin will role this out at the next meeting.

AOB

8 *CLLS updates*

8.1 Lois Horne explained that she had received no responses on the consultation regarding the County Court's costs process. As a result, the Litigation Sub Committee will not be feeding into this consultation.

8.2 Lois Horne updated the Litigation Sub Committee that there are no other on-going consultations to be fed into at present.

8.3 Geraldine Elliot raised an opportunity to assist with a litigation funding review consultation following the PACCAR decision in the summer.

8.4 Geraldine Elliot explained that there is a proposal to add a new clause 8 into the Digital Markets Bill which is on its second reading in the House of Lords at present. The proposal of this new clause is designed to ensure that damage-based agreements ("**DBAs**") can be heard before the Competition Appeals Tribunal. However, this will not cure the wider issue that Litigation Funding Agreements may now be construed more broadly as DBAs, which was not the original intention of such agreements. Geraldine Elliot explained that the Association of Litigation Funders are trying to lobby the House of Lords to persuade them that there needs to be a wider base amendment to the Bill, or a new solution is required, to ensure that Litigation Funding Agreements can continue to be considered as separate agreements to DBAs.

8.5 Daniel Spendlove explained that he had had a conversation with the Ministry of Justice (the "MOJ") in October 2023 and presented views that were widely held by the legal community, that the PACCAR decision would create uncertainty on a variety of levels. Daniel Spendlove explained that he was joined in this discussion by Matthew Saunders (Ashurst) from the Arbitration Sub Committee, which was even more concerned about the PACCAR decision due to uncertainty over how this would impact on arbitral proceedings, for example for LCIA proceedings seated in London.

- 8.6 Andrew Denny raised that it also poses an access to justice issue more broadly, with many NGOs discussing this with the MOJ.
- 8.7 Lois Horne asked Daniel Spendlove if there would be an opportunity for a further conversation with the MOJ on this topic and Daniel Spendlove confirmed that this would be the case and that he would email the MOJ to confirm if they would like to have a further conversation. Geraldine Elliot would send notes from the Litigation Funding Association to Daniel Spendlove to provide further information to assist with any future conversation.

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