

**CITY OF LONDON LAW SOCIETY COMMERCIAL LAW COMMITTEE
(THE "COMMITTEE")**

MINUTES of the Committee meeting held by videoconference at 1:00 pm on 23 June 2022

- Present:**
- Mr Oliver Bray, RPC ("**OB**") (Chairman)
 - Mr Rohan Massey, Ropes & Gray (Secretary) ("**RBM***")
 - Mr Richard Brown, Travers Smith ("**RB**")
 - Mr Jonathan Davey, Addleshaw Goddard ("**JD**")
 - Mr Mark Dewar, DLA Piper ("**MD**")
 - Mr Kevin Hart, City of London Law Society ("**KH**")
 - Ms Emma Keeling, Allen & Overy ("**EK**")
 - Ms Megan Paul, CRS ("**MP**")
 - Mr Richard Shaw, Bryan Cave Leighton Paisner ("**RS**")
 - Mr Stephen Sidkin, Fox Williams ("**SS**")
 - Mr Anthony Woolich, HFW ("**AW**")
- In attendance:**
- Mr George Kyrke-Smith, Project Associates ("**GKS**")
- Apologies:**
- Ms Helen Brown, Baker McKenzie ("**HB**")
 - Mr Andrew Crawford, Devonshires ("**AC**")
 - Ms Jo Farmer, Lewis Silkin ("**JF**")
 - Ms Jane Finlayson-Brown, Allen & Overy ("**JFB**")
 - Ms Julia Hemmings, Baker & McKenzie ("**JH**")
 - Mr Richard Marke, Bates Wells ("**RM**")
 - Mr Matthew Rous, City of London Law Society ("**MR**")
 - Mr Jeremy Sivyler, Bishop & Sewell ("**JS**")

1. Welcome from the Chair (OB)

OB gave a short introduction and welcome.

2. Minutes of last full meeting

There were no comments on the minutes of the last meeting.

3. Apologies

Apologies from the individuals identified above had been received.

4. **CLLS update**

KH noted that the Chair of the CLLS, Ed Sparrow, will be stepping down at the end of the year. A new chair will be in place by January 2023. If anyone is interested in the role, KH can provide further information.

5. **LinkedIn Page**

OB noted that GKS from Project Associates had joined the meeting to provide advice on the CLLS LinkedIn page discussed in the previous meeting. GKS explained that the CLLS training committee has a dedicated LinkedIn showcase page, which is a sub-page of the CLLS page, on which it posts news and information. This follows a monthly content plan, with the aim of one post per week focusing on events, articles and discussion prompts.

GKS asked for views about the purpose of the CLLS page and its target audience.

OB noted that not many people know about specialist committees and that it would be useful to spread awareness particularly amongst junior lawyers. The use of existing commercial law articles from law firms could create a stream of content.

RB suggested two flows of content: (i) content produced by firms (which would be co-ordinated to avoid duplication) and (ii) items which were raised in meetings.

JD questioned why a user should go to the Committee's page rather than Lexology or another publisher. GKS responded that the page's value would arise from the value of the Committee as a collaborative exercise. Not all content need come through Project Associates ie Committee members could post directly, allowing them to be reactive. MP asked whether the page could be used as a discussion forum to facilitate sharing of the Committee's thoughts. The discussion of experienced commercial practitioners might provide more value than an article from one firm.

OB noted that there is baseline value in highlighting the existence and makeup of the Committee through LinkedIn.

MP asked whether a link to a news item can be posted so that the content is not reliant on commercial cases. MD noted that it would be valuable to be a "*leading landing point of commercial law know-how*" and assist the protection of the supremacy of English law and jurisdiction in commerce.

GKS outlined three steps to follow the meeting: (i) the Committee should draft a mission statement for the page; (ii) the Committee should determine who should have the right to post content; and (iii) the Committee should source a foundation of six or seven pieces of content so that new users don't come to an empty page. It was agreed that RB, with OB in support, would pull together a mission statement and produce a pro forma for one-line biography for Committee members to follow.

OB noted that the content should focus on commercial law commentary so as not to stray into territory of other committees (e.g. data). RS noted that content on commercial, consumer and digital cases would not exceed the Committee's remit. KH noted that following the trial it's likely that the Data Committee would also have its own page.

RB questioned whether the target audience would be private practitioners or in-house lawyers. OB felt the page would have a broad cross-section appeal – both to private practice associates as well as in-house and (hopefully) even the student community. KH agreed.

GKS left the meeting.

6. **Commercial Committee Event Q4 2022**

JD suggested replicating a previous event which had a representative from Adidas. An event with ex-lawyer speakers, noting an example of a contact that had been in the law then joined the armed forces, would provide a different perspective on commercial law.

MP asked whether this could be combined with speakers who had moved out of commercial law into other careers and noted that junior lawyers may expect to have portfolio careers moving in and out of law. EK asked whether it would be more helpful to have someone with in-house experience along with a representative from private practice. MD suggested that OB could contribute perspective, given his Senior Partner role.

KH proposed a date in November to maintain momentum. The IAPP Europe Data Protection Congress (16-17 September) and the FIFA World Cup may affect scheduling. The event should aim for an audience of around 100.

7. **September Qualifiers**

OB opened the floor to anyone with unplaced September qualifiers or spaces for NQs. He suggested we all continue to look out for those who might not have secured a qualification place.

8. **Interesting cases and/or practice points**

JD mentioned the following cases:

- *Soteria v IBM* – an exclusion of loss of profits will not generally exclude a claim for wasted expenditure.
- *European Professional Club Rugby v RDA* – RDA was entitled to rely on the force majeure clause in relation to interference of COVID in rugby broadcasting schedule.
- *Yoo Design Services v ILIV Realty* – reconfirms the eight principles to be considered in considering whether to imply a term; courts will not intervene even though it may result in a more just outcome.
- *Dodika v United Luck* – ‘reasonable detail’ required under notice provision should take into account a recipient’s knowledge of facts and circumstances. The full trial is still to be heard.
- *B A Kitchen Components v Jowat* – limited of supplier limited to replacement or refund at supplier’s option held to be unreasonable based on availability of insurance and absence of alternative. UCTA cases are highly fact-dependent.
- *Mott Macdonald v Trant* – held that there was no reason why a cap and exclusion of liability should not apply when a party was ‘fundamentally, deliberately and wilfully’ in breach, normal principles of contractual construction should apply.
- *Black Lion Law LLP v Amira Nature Foods* – held that a law firm is entitled to a fee when the fee agreed was ‘subject to completion of the matter by [date]’ (preferring *Glas Trust* to *Chartbrook v Persimmon*)
- *Pretoria Energy v Blankney Estates* – heads of terms were held not to be binding.
- *DD Classics v Chen* – held that termination rights were lost before the innocent party purported to exercise them 13 days after the expiry of the 5-business day timeframe for payment.
- *Gama v MWWMM* – held that a right to terminate for convenience did not prevent an informal novation (despite considering *Rock Advertising*)
- *Ivy Technology v Martin* - a shareholder who was not a party to an SPA was nevertheless liable in deceit to a purchaser via agency principles, even though the court accepted he was not liable via agency principles under the SPA. A restrictive covenant was also struck down on the basis of both duration and scope.

JD also mentioned the following wider developments:

- The retained EU law dashboard was published. This is a work-in-progress but notably omits the Commercial Agents Regulations.
- Procurement Bill is at the committee stage in the House of Lords.
- The European Council has reached agreement on an instrument designed to ensure fair access for EU companies to overseas markets.

9. **AOB**

No other business was raised.

The next Committee meeting will be held in person on 22 September at Addleshaw Goddard.

Dates for 2022:

- Thursday 22 September – Committee Meeting – Addleshaw Goddard
- **Wednesday** 23 November – Committee Meeting & Annual Drinks – Fox Williams
- **30 November** *Provisional date for the next CLLS Commercial Law Seminar -*