

CITY OF LONDON LAW SOCIETY (CLLS)

COMMERCIAL LAW COMMITTEE

Minutes of the committee meeting held at 13:00 on 26 June 2025 at the offices of Addleshaw Goddard at Milton Gate, 60 Chiswell Street, London EC1Y 4AG, hosted by Jonathan Davey

Present:

Oliver Bray, RPC (**OB**) (Chairman)

Rohan Massey, Ropes & Gray (**RBM**) (Secretary)

Stephen Sidkin, Fox Williams (**SS**) (Vice Chair)

Anthony Woolich, Blake Morgan (**AW**)

Jonathan Davey, Addleshaw Goddard (**JD**)

Richard Brown, Travers Smith (**RB**)

Richard Marke, Bates Wells (**RM**)

Present via Microsoft Teams:

Jeremy Sivyer, Bishop & Sewell (**JS**)

In attendance:

Cameron Grabowski, Ropes & Gray (minutes)

Apologies:

Caroline Young, Charles Russell Speechlys (**CY**)

Jane Finlayson-Brown, A&O Shearman (**JFB**)

Jo Farmer, Lewis Silkin (**JF**)

Julia Hemmings, Baker McKenzie (**JH**)

Kevin Hart, CLLS (**KH**)

Mark Dewar, DLA Piper (**MD**)

Richard Shaw, BCLP (**RS**)

Salome Coker, CLLS (**SC**)

1. Welcome from the Chair (OB)

OB gave a short introduction and welcome to the committee members.

2. Minutes of last committee meeting (OB)

OB asked whether members had any comments they wished to make on the minutes from the committee's last meeting. JD confirmed that he would provide written comments on the minutes relating to the committee's discussion of case law. OB asked SS whether he wished to provide any comments. SS confirmed he had no comments.

3. Apologies (RBM)

RBM confirmed that apologies have been received from the individuals listed above.

4. Discussion on committee membership (OB)

OB introduced a discussion on committee membership. OB indicated that he had not received a draft advertisement for new committee members from KH and confirmed that he would follow up on this matter. AW indicated that an advert is a good idea and shared that new members to the committee were previously introduced following nomination from an existing member.

OB expressed that it would be beneficial to hold a discussion on how to maintain the strength of the committee, also expressing concern that on (an individual level) the pressures of the day job means he cannot always be as proactive as he would like to be. OB also iterated that RBM similarly has lots of demands on his time and that the committee may be best served by finding ways to introduce new blood, with the addition of new junior commercial partners.

OB suggested that Simon Edwards, practicing at Trowers Hamilins, is interested in joining the committee and, having worked with him previously, that he would be a good addition. OB also noted that MD appears to have retired since the committee's last meeting and suggested that the profession "will have lost one" if this is the case. JD asked OB whether he intended to contact MD to confirm that he has indeed retired from the profession and the committee. OB confirmed he planned to do so. JD also asked whether appointment to the committee is on an individual basis or dependent on nomination by a firm. RBM confirmed that membership is linked to the member's firm and that each member must be practicing with a firm that is a member of the City of London Law Society.

RM suggested that committee members should each nominate an alternate to attend committee meetings on their behalf when they are unavailable and that this might introduce some younger and more diverse individuals to the committee. RBM added that it may be suggested that committee members who are unable to attend meetings and fail to nominate an alternate should be asked to consider their roles on the committee. RB and OB expressed support for this idea. OB suggested that each committee member submit a substitute member and be advised that the committee will look for replacement members if they fail to do so.

RM asked whether a nominated alternate needs to be a partner. RBM acknowledged that in the past, counsels have been members of the committee and that the key is to have members with experience of commercial work, meaning membership could extend to experienced senior associates. JD added that the committee has also previously featured professional support lawyers ("PSLs"). OB expressed interest in this and noted that his own firm has recently expanded the remit and use of its PSLs, whom he considers to be excellent. OB suggested that a PSL would be well-positioned to attend committee meetings, engage with complex legal concepts or issues and then prepare a first draft of an opinion piece or prepare analysis of a particular issue. OB also expressed concern that the number of attendees at committee meetings appears to be decreasing and asked the committee at large to encourage strong candidates to respond to the advertisement, once it has been published.

OB recommended that the committee review the Legal 500 and Chambers Guide for strong partners and 'associates to watch' in order to identify potential members. In response, SS suggested that it might be more appropriate to consider material published by partners and associates on firm websites, including that which is then scraped for publication on Lexology or

other similar sites or forums. SS posited that a partner whose name is attached to a piece of writing would presumably have an interest in the topic in question, even if they were not responsible for the substantive drafting of that piece, which they could carry into their work on the committee. SS questioned whether this would necessarily be the case for lawyers who are listed in the Legal 500.

In response to the issue of falling attendance rates at committee meetings, SS suggested that holding meetings in the late afternoon (as opposed to at lunchtime) might help to resolve this issue. JD acknowledged that the committee had discussed this previously. OB indicated that he would be less likely to attend meetings held later in the day due to work commitments. RBM suggested meetings could be held at breakfast time. OB concurred and SS suggested this be implemented on a trial basis. JD advised that members responsible for taking children to school in the morning would be unable to make early morning meetings and AW indicated similar concerns for those with long commutes.

SS suggested that an alternative would need to be found if numbers continue to drop. OB expressed doubt that the time at which meetings are held is the sole reason for poor attendance and reminded SS that he had previously suggested circulating a poll to the committee's members, asking for expressions of preference as to when meetings are held. RBM volunteered to take responsibility for arranging the circulation of a poll or survey. OB thanked RBM for offering to do so and suggested that RBM should ask any committee member who no longer wishes to sit on the committee to respond to the email separately to clarify this.

Returning to the suggestion of alternate members, RB expressed his support for this idea on the basis that the committee would still be able to function even if committee members were not always able to be present. JD agreed with this and indicated that a quorum is important but also advised that a cycle of different attendees from one meeting to the next might preclude the committee from operating effectively.

Returning to the committee's advertisement, AW asked where this would be posted. OB indicated that the CLLS would post it via its LinkedIn page and AW suggested that it could be published in the Law Society Gazette. SS recommended that all committee members repost the advertisement once it has been posted on the CLLS's LinkedIn page. This was met with general agreement. AW also suggested that the advertisement could be posted in the Financial Times, noting that this may be too costly. SS expressed support for this idea and suggested that it might be possible to circumvent the cost of publishing an advertisement if OB was to give a wide-ranging interview to the FT, in which he referred to the search for new committee members. RBM expressed some concern that the FT would be too broad a publication in which to advertise, given the committee is not open to all solicitors. JD expressed similar concerns, suggesting advertisement in the FT might constitute a scattergun approach.

5. Promotion of English Law abroad (OB)

OB reminded the committee that it had previously discussed producing a podcast in promotion of English law abroad and that JD had agreed to make the necessary arrangements. On the same topic, OB suggested that the paper prepared by Colin Passmore was too long and too in-depth and that a one-page overview that could be transformed into a set of infographics might be more appropriate. JD concurred and echoed OB's suggestions that the committee would require preparation time before recording the podcast. JD advised against using scripts and recommended that the committee meet for an hour and a half to record the podcast, in order to use ten or fifteen minutes beforehand to prepare. OB asked the committee members present to indicate whether they would agree to participate in recording the podcast. Various members of the committee raised their hands to indicate agreement. AW and RBM suggested they would be willing to do so if required.

Turning to other matters, OB explained that he has received a request for comments on Articles 3 and 8 of the European Convention on Human Rights. OB suggested that the committee would not be best placed to provide these comments, which was met with general agreement from the other committee members. OB also advised the committee that the Lord Mayor of London has asked the City of London Solicitors' Company to highlight essential challenges facing City of London solicitors; strengths of the City of London legal sector; opportunities and room for growth; risks to growth; and key asks to maximise opportunities for and remove threats to City of London solicitors. Before

opening discussion to the room, OB suggested that the committee should focus on producing something that effectively promotes English law abroad.

RBM advised that the CLLS data law committee would be well-placed to provide comments on Article 8 of the European Convention on Human Rights. OB agreed and suggested it was likely to have done so, as comments were requested from all committee chairs. AW noted that the UK Government's Modern Industrial Strategy was published on 23 June 2025 and expressed support for the prioritisation of growth in the professional services sector. In response, SS suggested that KH or another representative of the CLLS should be in contact with the Department for Business and Trade, which had published the paper, to provide advice on how growth can be achieved in the legal sector. JD suggested that the committee could reflect on the Modern Industrial Strategy in its podcast.

The discussion then turned back to arrangements for the podcast. The committee agreed that the podcast could be recorded remotely over Zoom, in a manner similar to a pre-recorded webinar, and that this could be done at some stage in July. Following expressions of some concern that the overall effect of recording the podcast remotely could be disappointing, JD suggested the committee could re-record the podcast at its next meeting, if required. RBM confirmed that the next meeting is due to be hosted at the offices of Ropes & Gray on 16 October 2025 and that he would be able to arrange the provision of recording equipment if necessary.

6. LinkedIn account (OB)

OB advised that due to time constraints and the lack of posts by the committee on LinkedIn in recent months, this item should be addressed at a future meeting. OB also noted that the associate in his team, who has most recently taken responsibility for producing these posts will be on maternity leave and would therefore need to be replaced. RB concurred and suggested he would take the lead on progressing this.

7. Seminar (OB)

JD confirmed that the committee is planning to host a seminar and asked AW whether he has been in communication with any potential speakers, including Paul Johnson, director at the Institute for Fiscal Studies ("IFS"). AW confirmed that he has considered possible candidates and that he would suggest contacting Meredith Crowley ("MC"), a professor in economics at the University of Cambridge. AW explained that MC recently gave the annual lecture before the IFS, entitled Trade Wars and the Future of Globalisation, and suggested she would be an ideal candidate to speak at a seminar hosted by the committee.

Following discussion with the other committee members, AW confirmed that he would contact MC with a view to arranging the seminar for some time during November, subject to MC's availability. The committee members expressed unanimous support for hosting the seminar in person and AW agreed that he would enquire about the use of a room at the offices of Blake Morgan.

8. Interesting cases and/or practice points (JD / All)

JD provided details of the following key cases and practice points:

Disclosure and Barring Service v Tata Consultancy Services Ltd. [2025] EWCA Civ 380

The Court of Appeal held that it was not appropriate to articulate an exhaustive checklist of factors to be considered in any investigation into whether a particular contractual clause is a condition precedent. However, the Court did identify some general principles deriving from the authorities. In a contract concerning a digital modernisation project, a clause which required a party to issue a non-conformance report was a condition precedent to an entitlement to delay payments.

Veranova Bidco LP v Johnson Matthey Plc [2025] EWHC 707 (Comm)

It was not appropriate to grant the defendants summary judgment or strike out a claim of fraudulent misrepresentation based on information in a draft disclosure letter provided by the defendants as sellers before execution of a share purchase agreement. No legal principle justified a summary

dismissal of the misrepresentation claim on the basis that the draft disclosure letter could not give rise to actionable representations. The fact that the primary contractual function of the disclosure letter was to qualify the content of the sellers' warranties did not mean that it could not have a dual purpose, or secondary effect, of containing factual information that could be relied on as an actionable representation.

HNW Lending Ltd v Lawrence [2025] EWHC 908 (Ch)

HNW claimed possession of property and repayment of £1.5 million under a loan agreement. Lawrence argued HNW lacked standing because it was not a party to the agreement. The High Court held that Clause 26.7 of the loan agreement, which referred to the Contracts (Rights of Third Parties) Act 1999, expressly allowed HNW to enforce the agreement's terms, granting it equivalent rights to the lender and enabling enforcement of obligations under the contract.

John Sisk and Son Ltd v Capital & Centric (Rose) Ltd. [2025] EWHC 594 (TCC)

The parties entered into a Joint Contracts Tribunal Design and Build Contract, with bespoke amendments, for a redevelopment project. The High Court held that the defendant employer bore contractual liability for the suitability of existing structures, as clarified under item two of the Contract Clarifications. Pre-contractual negotiations were deemed inadmissible for interpreting the agreement, being relevant only in cases of rectification or estoppel. Accordingly, the High Court held that the claimant was entitled to additional payment and time for costs or delays arising from issues with existing structures.

KSY Juice Blends UK Ltd. v Citrosuco GmbH [2025] EWCA Civ 760

KSY Juice Blends and Citrosuco entered into an agreement for the sale of orange juice pulp wash, in which they had agreed a price for the supply of 400 metric tonnes but had left the remaining quantity to be supplied at an "open price to be fixed". The Court of Appeal held that it was appropriate to imply a term, in the absence of an express agreement, that the price was to be fixed at a reasonable or market price.

King Crude Carriers SA v Ridgebury November LLC [2024] EWCA Civ 719

A dispute arose between the parties in relation to three contracts for the sale of oil tankers, which required the buyers to pay a 10% deposit into specified accounts. As the buyers failed to provide documentation necessary to open the relevant accounts, these deposits were not paid. As such, the sellers terminated the contracts and sought to recover the deposits as a debt, arguing the buyers' breach prevented fulfilment of a condition precedent. The arbitral tribunal ruled in favour of the sellers. On appeal, the High Court held that English law does not recognise a doctrine of 'deemed fulfilment' of a condition precedent and held that the seller's claim did not lie in debt but in damages. The Court of Appeal subsequently allowed the sellers' appeal, holding that the principle in *Mackay v Dick* means a party cannot rely on its own breach to avoid a debt obligation. Where a buyer's breach prevents fulfilment of a condition precedent, the seller may claim the deposit as a debt, not damages.

SS drew the attention of the committee to the following decision and upcoming litigation:

Court of Rome, Sez. Lavoro, 04/03/2024 no. 2615

The Court of Rome ruled that an influencer promoting a company's products online under a stable and continuous agreement qualifies as a commercial agent. The decision followed an ENASARCO inspection, which led to a dispute over social security contributions. The Court found that the influencer's contractual obligations, namely promoting sales, receiving commissions and maintaining an ongoing relationship, met the legal criteria for commercial agency, regardless of direct personal interaction with followers. SS explained that he understood this decision applies to platforms such as Air BnB.

Upcoming litigation: APK Communications Ltd & Others v Vodafone Ltd.

Vodafone franchisees allege that Vodafone acted unfairly by unilaterally cutting commissions, reclaiming COVID relief, imposing fines and terminating contracts, seeking damages in excess of £100 million. Assuming the matter is not resolved by way of settlement, the courts are expected to

consider when a duty of good faith is implied into a franchise agreement and how far the *Braganza* duty limits a company's ability to exercise discretion in commercial relationships.

9. AOB (OB)

OB asked the committee members present if they wished to raise or discuss any other matters.

SS asked whether other committee members were aware that Simpson Thatcher & Bartlett have recently been issued with a fine by the SRA for non-compliance with sanctions on Russia. Several other committee members acknowledged that they were aware of this. SS raised concerns that law firms are not necessarily giving due consideration to, or taking steps to meet, their obligations to comply with sanctions imposed following the Russian invasion of Ukraine in 2022 and suggested that the committee could issue some sort of statement on this matter. AW suggested that SS's concerns were possibly ill-founded and indicated this is still an issue of great concern for all law firms with which he has had dealings in recent months. The committee engaged in a final, brief discussion about acting for clients based in Russia in the current geopolitical reality and the various restrictions on transactions with a Russian nexus.

OB thanked all attendees for their contributions at the meeting.

Next meeting:

- Thursday 16 October 2025 (1pm), hosted by RBM at the offices of Ropes & Gray.