

CITY OF LONDON LAW SOCIETY (CLLS)

COMMERCIAL LAW COMMITTEE

Minutes of the Committee Meeting held at 13:00 on 27 March 2025 at the offices of RPC, Tower Bridge House, St Katharine's Way, London E1W 1AA, hosted by Oliver Bray

Present:

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

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

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

Kevin Hart, CLLS (**KH**)

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

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

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

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

Present via Microsoft Teams: Jeremy Sivy, Bishop & Sewell (**JS**)

In attendance:

Eleanor Harley, RPC (**EH**)

Dom Barnes, RPC (minutes)

Apologies:

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

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

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

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

Richard Shaw, BCLP (**RS**)

Salome Coker, CLLS (**SC**)

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

1. Welcome from the Chair (OB)

OB gave a short introduction and welcome.

2. Apologies (OB)

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

3. Discussion on Committee Membership (OB)

OB raised the question of additional senior commercial lawyers joining the Committee in order to increase numbers. OB noted that it would be preferable to have at least between 10 and 12 members joining each Committee meeting.

OB commented that an advert for new Committee members was discussed previously with KH and that Simon Edwards, a partner at Trowers & Hamlin would like to join the Committee. KH confirmed that he is working on preparing an advert.

OB raised that he has held the role of Chair for some time and expressed that if anyone is interested in taking on a Committee role then they should please come forward.

Returning to the issue of Committee Meeting attendance, JD questioned whether perhaps Thursday is not the most suitable day for the meeting given that this is a popular in-office day for meetings and lunches. JD suggested that Tuesdays or Wednesdays may be more suitable.

KH flagged that there are a number of CLLS committee meetings that already take place on Tuesdays and Wednesdays so changing the date to a Monday or Friday may actually be better.

SS suggested that it may be valuable to circulate a doodle poll to Committee members as a way of ascertaining members' preferences for midweek or start / end of week days. This may be a way of improving attendance. OB agreed.

JH noted that if Committee Meetings took place on Fridays then attendance was likely to be virtual as Friday is a popular work from home day. The Committee agreed that in-person meetings are more productive and forthcoming meetings should be attended in person where possible.

OB suggested that perhaps two or three additional lawyers should be invited to join the Committee and asked the Committee for their views. JD agreed. OB also noted that the Committee has traditionally not been strict on following up with members who regularly do not attend and suggested contacting JFB to see if she still wants to be a member. KH commented that it is fine if current members are too busy to commit to Committee membership as this opens up an opportunity for someone else.

MD suggested that the use of alternates could be a way of improving attendance. KH confirmed that alternates are permitted as long as they do not attend every Committee meeting. OB agreed that this may be a good way of increasing attendance.

OB thanked the Committee for their contribution.

4. Promotion of English Law abroad (OB)

OB confirmed that a final paper on the English legal profession, prepared by Charles Clark at Linklaters and with a contribution from the Committee, was produced. OB noted that he would circulate the paper with the Committee following the meeting. From the point of view of the Committee, OB raised whether it would be suitable to incorporate this into a wider thought piece for City lawyers generally regarding spreading the message about the good of English law.

KH confirmed that the paper was circulated to diplomats and government officials. JD noted that it would be useful to know whether the paper has actually been used. If so, there would be more encouragement to take this further.

Regarding the paper, OB noted that "less is more" which is why a series of bullet points were put together and included in the paper. Even so, OB commented that the paper is still eight pages long so there may be room for something more bitesize, and asked the Committee whether there would be an appetite to produce something under the CLLS umbrella that can be used in the wider world, perhaps linked to an infographic. RM and MD agreed that this was a good idea.

MD raised the idea of producing a podcast or a vlog on the subject which was well received by the Committee. MD suggested a format for the podcast with each Committee member taking one point each from the paper, with OB being the compare.

JH asked whether the podcast would need an international element given that she is often asked by international clients, particularly in the Middle East, to advise on the merits of English law. OB agreed that this is the target audience. MD noted that if the podcast is being aired on LinkedIn then this will facilitate an international audience.

SS raised a concern that the Committee opining on this topic seems to be supply led rather than demand driven. He suggested that it is fine for the Committee to be speaking on this subject but it must be aware that it is not looking at the subject from the perspective of an overseas purchaser of English legal services. SS also noted that this should not be a "fire and forget" exercise and should be followed-up periodically going forwards. Another concern raised by SS was that overseas clients are not always amenable to the notion that English law is superior.

OB commented that this depends on the target audience the Committee is trying to reach. For example, Praveeta Thayalan, the RPC knowledge lawyer who helped put together the paper felt that it had inspired her to be part of the English legal system. OB noted that one audience is the young legal community, in addition to government, UK businesses and overseas businesses.

SS agreed but noted that the exercise was done with the purpose of providing diplomats and dignitaries with a document they can keep in their bag. It is these people who are in contact with businesses around the world which is a benefit to everyone around this table.

JD confirmed that he is happy to host the next Committee meeting and use this session to record the podcast.

JD also noted that it may be beneficial to re-circulate the paper with the diplomatic audience as many of those involved on these missions are on rotation. MD agreed and suggested sending another version of the paper, perhaps as an FAQ with a description of why buyers of English legal services may be interested in case that message didn't come across initially.

OB noted that the podcast should include a range of voices on the subject to ensure diverse representation. KH suggested that the podcast can feature others who are not members of the Committee and MD raised that he has been working closely with a partner based in Nairobi who may like to be involved in the podcast.

JD suggested that the "live" in-person elements of the podcast should be done in one go following the next Committee meeting and it was agreed that other contributors who cannot attend in person can contribute to the podcast remotely and be included in the edit. In terms of next steps, OB confirmed that he will circulate the paper with the Committee and ask for volunteers to take part in the podcast.

5. DEI and the US: quick update (OB / KH)

The discussion turned to recent events in the US, particularly relating to President Trump's attacks on DEI initiatives and how certain US law firms have become embroiled in this debate. OB noted that Colin Passmore at Simmons & Simmons circulated an email on the subject and remarked that the CLLS were hoping to mount a bit of a rearguard action against these attacks on DEI.

KH commented that the Law Society is hosting a round table on these policies emanating from the US which will be attended by Colin Passmore and Roger Leese of Clifford Chance. The round table is operating under Chatham House rules so KH will share the headline points from the round table with the Committee if possible. KH further commented that the Law Society is rightly leading the charge from a UK perspective and are liaising with other law societies across the UK to ensure alignment with their position. The CLLS is happy and willing to contribute where it can.

JD noted that this is a good opportunity for the CLLS as a collective as individual firms may not be willing to express their views alone.

KH provided more details on the round table. He noted that it is likely an invitation-only event and it is being attended by a number of senior partners. Regarding which firms are attending, KH confirmed that the US firms will be there and if their hiring policies in London come in scope then this may also be raised.

On this topic, OB commented that a number of firms have changed their stance on DEI, particularly on their websites, seemingly overnight in response to the Trump administration's position. He noted that this is a moment for UK firms to stand firm.

SS suggested that the Law Society round table could be aligned with the CLLS's piece on the promotion of UK law abroad. He noted that what is happening with regards to the Trump administration's use of executive orders and not being bound by the judiciary indicates a direction by which the people are increasingly ruled by law and not by the rule of law. This prompted a discussion about the use of executive orders and presidential immunity. KH noted that executive orders are still subject to the law.

AW remarked that, from a UK perspective, it should be acknowledged that the UK Government has previously tried to prorogue parliament. SS commented that this was rightly called-out and KH noted that the Government of the day were duly punished for it at the election.

OB commented that he would prefer to keep the two subjects – the promotion of UK law abroad and DEI – separate to ensure clean messaging. He also noted that a commitment to upholding the rule of law is included in the paper.

Returning to the podcast, MD questioned whether a discussion on the Trump administration's approach to DEI should be included. It was agreed that the podcast should reflect the positive impact of UK law but also that the CLLS should be firm in holding the line in respect of DEI.

6. LinkedIn page (OB)

OB issued a plea for more contributors to the Committee's LinkedIn page and introduced EH who has been running the page.

EH provided an update on the page. She noted that the page has featured repurposed content from member firms and Addleshaw Goddard, for example, have contributed. However, EH noted that there is a fairly limited pool of contributors from each member firm and she requested that each firm nominates a senior associate or knowledge lawyer to grow this pool.

MD commented that he has already nominated Kurt Davies and another from DLA Piper but he can provide a list of other contributors if needed.

EH suggested that it may be more beneficial to collate a longer list of associates from all member firms. JD added that we should list out all the firms who have nominated contributors and those who haven't so we can work out which names should be added to the list.

OB suggested that it may be beneficial to invite the contributors to a meeting or reception so that they can be briefed on the purpose of the LinkedIn page. EH agreed that this would be a good opportunity to meet peers.

KH advised that the Committee should work on obtaining a full list of names so that there are no blanks by the time of the next Committee meeting.

JD noted that the Committee should commit to turning up in person to this reception otherwise the benefit for associates will be dissipated.

OB confirmed that RPC are happy to host this event or alternatively JD suggested that it could take place after the next Committee meeting. OB suggested that the Committee meeting could begin at 15:00 so that associates are not required to give up their afternoons for the reception. RPC will work on finalising the list of contributors before the next meeting.

7. Seminar 2025 (All)

MD noted that a potential topic for the seminar could be supply chain disruption which could be linked to tariffs and tariff clauses, sustainability and also touching on AI. There are a number of regulatory and contractual issues which can be explored. MD confirmed that he has all the materials for this topic.

JD suggested that a panel format would work well as this is discussion-led rather than going through each section of the regulations line-by-line. JD also noted that he has hosted these type of panel events previously which have worked well with audience questions.

AW raised whether the panel event would be aimed at associates or a broader audience. JD suggested that it should be for a broad legal audience and there could be one tariff expert on the panel. MD agreed and noted that there is enough non-legal interest in tariffs given the current political climate. OB agreed and suggested that the core audience would be commercial lawyers.

Regarding the flyer for promoting the seminar, KH confirmed that the CLLS has a template which is easy to edit for a "save the date" so he will send this across to the Committee.

The discussion turned to whether the panel should include an external speaker. JD commented that he has used Richard Lim from Retail Economics as a speaker in the past however this subject may not be his area. JD also suggested that someone from the CBI may be good for the discussion. AW noted that Paul Johnson from the IFS could be good and AW can reach out to him via his contact at the IFS. It was agreed that Paul Johnson would be a suitable external panel member.

JD recommended having a panel of four in case one member of the panel drops out.

MD confirmed that he has bullet point notes on what the seminar will cover. OB suggested that MD circulates these with the Committee so that other members can have a think about connections who may be suitable for the panel.

In terms of a date for the seminar, JD commented that it would be good to host the seminar in June 2025 so that the subject remains topical. MD noted that the next Committee meeting is scheduled for 26 June 2025 which could be a suitable date for the seminar however JH remarked that she is on a team away day on that date which means none of her team will be able to attend.

It was agreed that the Committee would look at hosting the seminar in June 2025 (possibly 25 June) and OB confirmed he will speak to the RPC events team to see if it can be hosted at RPC. Alternatively, JD confirmed he will speak with the events team at Addleshaw Goddard regarding hosting the seminar.

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

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

Kompaktwerk v LivePerson

The case confirmed that time limited software-as-a-service (SaaS) licences are not goods for the purposes of the Commercial Agents (Council Directive) Regulations 1993.

DEFRA v PCS

The Supreme Court provided guidance on the rights of third parties under a contract pursuant to the Contracts (Rights of Third Parties) Act 1999. The case confirmed that contracts that purport to confer a benefit on a third party, but which are silent on the issue of third-party enforceability will likely be found to be enforceable by the third party.

Sata v Hi Fly

In this case the court was asked to review a novation agreement and to consider whether the agreement should be rectified due to mutual mistake by the parties. On the facts, the court ordered rectification on the basis of shared common intention but the court acknowledged that this was an unusual finding given the presumption that the contract accurately records the parties' agreement.

URE Energy v Notting Hill Genesis

The case confirmed that an energy supplier had not waived its contractual right to terminate a supply contract, despite having continued to perform the contract for six months. The key question was when the supplier became aware of its right to terminate which, the court held, was shortly before exercising the right to terminate.

Topalsson v Rolls-Royce

The case examined the application and interpretation of limitation of liability provisions in commercial contracts. It clarified that liability caps are intended to limit the total liability of each party independently, and that interest on late payments is typically treated as a separate remedy unless explicitly stated otherwise.

Costcutter v Vaish

The case also considered a limitation of liability clause and confirmed the distinction between a primary obligation to make payment for goods and/or services under contract and a secondary obligation to pay damages for breach of contract or otherwise.

South East Water v Elster

The cause considered the interaction between traditional damages claims and the operation of replacement remedies under a contract. The ruling underscored that replacement remedies cannot automatically be interpreted as limitations on the full spectrum of remedies available to the aggrieved party.

The Procurement Act 2023

JD confirmed that The Procurement Act 2023 is now in force such that new procurement is subject to new rules. However, JD noted that a number of issues and gaps in coverage have emerged.

Secret profits

JD noted that there have been a number of developments in relation to agency and secret / half-secret profits, including a case last week which concerned the question of accounting for profits as a fiduciary on a difference basis. JD commented that there is a substantial Supreme Court case on the horizon called Johnson v Firststrand which deals with this subject and could have substantial financial implications for lenders.

EE v Virgin Mobile

MD also raised the case of EE v Virgin Mobile which is a long and complex judgment concerning loss of profits and construction. MD recommended reading the judgment and compared it to Caparo v Dickman in terms of its lucidity.

9. CLLS update (KH)

KH confirmed that the main update from the CLLS concerned the response to the Trump administration's DEI stance which has been covered.

10. AOB (OB)

OB thanked all attendees for their contributions at the meeting.

Next meeting

- Wednesday 25 June 2025 (*time TBC*) – Supply chain and tariffs seminar – hosted either by OB at the offices of RPC or JD at the offices of Addleshaw Goddard.
- Thursday 26 June 2025 – 13:00 – Committee meeting and podcast – hosted by JD at the offices of Addleshaw Goddard
- CLLS LinkedIn contributors drinks reception – *date TBC*