

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

MINUTES of the Committee meeting held in person at Fox Williams LLP, 10 Finsbury Square, London EC2A
1AF at 17:00 pm on 25 November 2021

Present:

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

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

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

Mr Jeremy Sivyver, Bishop & Sewell ("**JS**")

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

Mr Richard Shaw, Bryan Cave Leighton Paisner ("**RS**")

Ms Megan Paul, CRS ("**MP**")

Mr Stephen Sidkin, Fox Williams ("**SS**")

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

Mr David Hobart, City of London Law Society ("**DH**")

Mr Kevin Hart, City of London Law Society ("**KH**")

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

Ms Emma Keeling, Allen & Overy ("**EK**")

Mr Andrew Crawford, Devonshires ("**AC**")

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

Ms Helen Brown, Baker McKenzie ("**HB**")

Apologies:

Ms Julia Hemmings, Baker & McKenzie ("**JH**")

Mr Anthony Woolich, HFW ("**AW**")

Mr Ed Sparrow, City of London Law Society ("**ES**")

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1. **Welcome from the Chair (OB)**
OB gave a short introduction and welcome.
 2. **Minutes of last full meeting (RM)**

It was reported that other than one change to the description of *The Software Incubator Limited v Computer Associates UK Ltd*, proposed by SS, the minutes of the last meeting were approved.

3. **Apologies**

Apologies from the individuals identified above had been received.

4. **CLLS Update**

DH led on the topic of CLLS membership and noted that most of the large English law firms in London were members as were a growing number of the London offices of large US firms. The CLLS remains very active in support of City Solicitors and is continually seeking ways to improve engagement across firms and all peer groups within firms.

4.1 **Economic Crime Levy**

As a point of interest for the CLLS at present, DH raised to the Committee the imminent introduction of the Economic Crime Levy, a public-private partnership between the government and the financial services sector to bear down on crime corruption. The amount of the annual levy would be dependent on an entity's UK earnings: if earnings are under £10 million, there is no levy; if earnings are between £10 million and £36 million, the levy is £10,000; if earnings are between £36 million and £1 billion, the levy is £36,000; and if earnings are above £1 billion, the levy is £250,000. The Economic Crime Levy will be funded by the conveyancing sector, gambling sector, all the banks and large asset managers.

4.2 **UK Accession to the Lugano Treaty**

DH noted that the UK's accession to the Lugano Treaty was being met with resistance from Europe, particularly France, who interprets it as a way for the UK to protect the English legal system. DH explained that ultimately, if the accession is blocked, European consumers will suffer as a result of the inability to use courts in their own jurisdictions.

There was discussion of how issues may be addressed and DH noted that it was challenging as the Paris Bar is the closest equivalent to the CLLS but has far greater financial clout.

4.3 **Social Welfare Lawyers**

DH noted the CLLS is considering a scheme whereby firms fund the training and exams required under the new SQE for a limited number of social welfare lawyers. Although there is an uncertainty around the employment opportunities post-qualification for all candidates, the CLLS sees the urgency of the situation in this area of the law as the basis for running of the scheme.

Through the scheme, law firms can reach the appropriate candidates in other firms or clients that may have been squeezed out of the profession for want of financial support, as there is very little in the way of public monies support.

DH added that the pilot scheme would commence in a few weeks with the first cohort going through next year, and that involvement from City law firms might be beneficial due to the importance of the provision of social welfare law.

RBM raised a question regarding any diversity criteria that may be applied to candidates other than financial need. DH confirmed that there are, and that these will be detailed as needed.

4.4 **Social Mobility Pledge**

DH commented on The Social Mobility Pledge - originated by Justine Greening (former Secretary of State) and Seema Kennedy (former lawyer at Slaughter and May) – the purpose of which is to group the law firms with the vice chancellors of the Russell Group Universities so that collectively firms can recognise talent through this system. DH added that all the CLLS firms have been invited to join, with 15 firms currently members.

4.5 The SQE

DH noted that the new SQE process was almost upon us for those joining the profession. Although the SQE will be a stringent process, the CLLS is concerned that there is an extraordinary absence of focus on contract and tort in the exams. In fact, the current position is such that a candidate could pass the exam even if they fail to answer any of the contract and tort law questions. It was noted that many City Firms are looking for providers that will focus on these areas of the law in their syllabus.

MP questioned whether those looking at the alternatives routes to the profession provided by the SQE route should tie in with current relationships that firms have with universities and/or the Social Mobility Pledge. DH explained that it is unlikely given that there is technically no requirement for a degree as a criteria for SQE qualification.

DH warned that he foresaw challenges to the UK profession from a global perspective, if the professional requirements of the solicitor were no longer based on a graduate entry requirement. DH thought that the removal of this foundation may be favourable to the US as it would seek to leverage a position in which all Bar members were graduates. Over time such a position could impact recruitment to the UK profession.

4.6 Pro Bono

KH noted the excellent work completed by CLLS members with regards to pro bono. Various committee members described their firm's commitment to pro bono and the hours recognition given to those working on pro bono matters. Most saw this as an important part of associate development and engagement.

KH added that the CLLS was working on ways to deliver this information to ministers and organisations to demonstrate the benefit of the work done.

DH stated that the reason why firms are cautious is that ministers will demand more than firms can offer.

4.7 Involvement of Young Lawyers

DH explained that there is difficulty in seating young lawyers on the CLLS Committees due to the experience required to discuss such significant issues and peer-respect that is needed to maintain the reputation of the CLLS.

JD asked if the CLLS had a specific non-Partner group. DH confirmed that the CCLS has an Associates Forum but adding that, unless there is an issue bespoke to young lawyers, there is no cause célèbre young lawyers can contribute to. JD mentioned that the junior involvement in an organisation he is involved in has been very successful.

JD also asked whether the CLLS was planning to organise different sub-committee events, that would be collectively publicised, to foster participation from junior lawyers.

KH explained that (a) certain sub-committee events were on the roadmap, such as the Construction Law bi-annual training, and (b) the CLLS was actively contemplating different methods to stimulate interest and maintain the momentum for young lawyer involvement.

5. Update on Commercial Law Committee Seminar 2022 (OB)

OB noted that the CLLS Commercial Law Committee Seminar would be held on Thursday, 10 February 2022. RBM, MP and KH volunteered to be on the Working Group.

A discussion followed on potential speakers – the Right Hon Andy Burrows QC of the Supreme Court or Lady Hale who had previously spoken at Addleshaw Goddard. The Committee agreed that it was important to engage the younger audience and have a more diverse panel.

OB added that the easiest way to fill the room is to get the associates to link with peers, and that he was confident that there would not be a shortage in numbers.

It was agreed that a sub-committee would be set up to progress the organisation of the seminar. KH, OB, RBM, JF and MP agreed to take this on.

6. Interesting cases and/or practice points

JD mentioned the following cases:

- *Brooke Homes v Portfolio Property Partners [2021]*: In this particular case, “all reasonable endeavours” meant an “active endeavour” by the party obliged which may require some subordination of such party’s own commercial interest.
- *CBPE v Taranissi [2021]*: The variation of interest rates on loans and the application of the doctrine of mistake to ensure the wording of the variation matched the parties’ intentions in terms of the variation that was expected.
- *TRW v Panasonic [2021]*: The creation of an overarching ‘master’ agreement trumped the terms put forward subsequently by the other party.
- *Equitix v Fox [2021]*: The obligation to take all reasonable action to mitigate losses would not require more than the common law standard.
- *Blu-Sky v BE Caring [2021]*: Additional measures should be taken to attract attention to onerous terms in a contract, even with commercial counterparties – this was despite the fact that the claimant had clicked the link to agree to the terms and conditions.

SS mentioned one case going to the EFTA court as opposed to CJEU, building on the earlier *Trendsetteuse* case on the concept of agency.

7. AOB

SS noted that, in relation to minute 4 of the minutes dated 30 September 2021, firms with March qualifiers without vacancies in their commercial team for their March qualifiers may wish to notify other Committee members of the opportunities that they have. RBM noted that he would be happy to be the point of contact for such communications.

KH noted that there was resistance to each sub-Committee having their own LinkedIn page and confirmed that there would only be the main CLLS LinkedIn page.

The next Committee meeting will be held in person on 24 March at RPC at 1pm.

Dates for 2022:

17 March – Seminar - RPC

24 March – Committee Meeting – RPC

23 June – Committee Meeting – Ropes & Gray

22 September – Committee Meeting – Addleshaw Goddard

24 November – Committee Meeting & Annual Drinks – Fox Williams