

**CITY OF LONDON LAW SOCIETY**

**LITIGATION COMMITTEE**

**MINUTES OF MEETING**

**Date:** 10 September 2019, at 4pm

**Location:** 4 Coleman Street, London EC2

**Present:**

|                       |   |
|-----------------------|---|
| Simon James (Chair)   | Clifford Chance LLP                     |
| Mark Lim (Vice Chair) | Lewis Silkin LLP                        |
| Jan-Jaap Baer         | Travers Smith LLP                       |
| Patrick Boylan        | Simmons & Simmons LLP                   |
| Richard Dickman       | Pinsent Masons LLP                      |
| Angela Dimsdale Gill  | Hogan Lovells International LLP         |
| Geraldine Elliott     | Reynolds Porter Chamberlain LLP         |
| Gavin Foggo           | Fox Williams LLP                        |
| Richard Foss          | Kingsley Napley LLP                     |
| Tim Hardy             | CMS Cameron McKenna Nabarro Olswang LLP |
| Jonathan Isaacs       | DWF LLP                                 |

**In attendance:** Kevin Hart (CLLS)

**Apologies:** Duncan Black, Jonathan Cotton, Andrew Denny, Iain Mackie, Michael Madden, Gary Milner-Moore, Hardeep Nahal and Patrick Swain.

*Minutes of previous meeting*

1. The minutes of the previous meeting, held on 14 May 2019, were approved.

*Matters arising*

2. The Chair said that the Committee's response on fixed recoverable costs had been sent to the Ministry of Justice, and could be found on the Society's website.
3. The Committee also noted that the Commercial Court group considering witness statements had yet to report, but was expected to do so in the Autumn.

*Higher Rights of Audience*

4. The Committee considered the SRA's consultation paper entitled *Assuring advocacy standards: consultation*, and decided to respond to it. Kevin Hart said that he would check whether any of the Society's other Committees were intending to respond to this paper and thus whether there should be a joint response on behalf of the Society.

5. The Committee was unpersuaded by the arguments for reform in a civil context. The evidence supporting the suggestion that there were issues with solicitor advocacy in civil cases was anecdotal at best, as the SRA conceded. If the SRA was concerned about standards of advocacy, it might be expected that the SRA would conduct research to find out whether those concerns were justified before proposing reform.
6. The Committee was particularly concerned about the proposal that there should be a single body that would conduct all higher rights assessments (the same model as for the proposed new Solicitors Qualifying Examination). This would reduce choice and, potentially, make it more time-consuming and more expensive for solicitors to obtain a higher rights qualification. There was no evidence that existing suppliers were reducing standards in order to ensure that applicants passed or to win business.
7. The Committee also observed that the standards required of solicitors should not be higher than those required of barristers.

#### *Code of Conduct*

8. The Chair noted that the new SRA Code of Conduct will come into force on 25 November 2019. The parts of the Code directly relevant to litigation had, like the rest of the Code, been cut back and made more general ("shorter and more targeted"). This is intended to leave greater scope for professional judgement, but the lack of specificity also left greater scope for ex post facto criticism of that judgement. The reduced ability to point to specific rules that might require solicitors to do other than what their clients would like could also prove unhelpful.
9. The SRA is producing "a suite of guidance and support materials, designed to help [solicitors] better understand any areas of significant change compared to our existing rules, or areas of new opportunities".

#### *Membership*

10. Tim Hardy said that the time had come for him to resign as a member of Committee. The Committee thanked Tim for his work on the Committee over the last decade or so.

#### *Other business*

11. The Chair noted that the Civil Justice Council has produced a consultation paper on dealing with vulnerable witnesses. This is unlikely to be an issue in the commercial litigation with which the Committee is primarily concerned.
12. The Chair noted the signing in August of the (Singapore) United Nations Convention on International Settlement Agreements Resulting from Mediation, which provides for the enforcement by courts of settlement agreements entered into as a result of commercial mediation. Time Hardy observed that he had been told by JAMS (a US mediation organisation) that only 0.062% of settlements achieved through their mediations ended up in court. The EU has not so far signed the Mediation Convention because it has yet to be decided whether the Convention falls within the exclusive competence of the EU or the joint competence of the EU and its member states.

13. The Chair also noted that the Hague Conference's Convention on Jurisdiction and the Enforcement of Judgments in Civil or Commercial Matters opened for signature in July. So far, only Uruguay has signed.
14. The Chair pointed to the court statistics that had been published on the Ministry of Justice's website. These statistics showed, for example, that 841 cases had been started in the Commercial Court in 2018, an increase from 805 in 2017 and 831 in 2016. The Ministry had also produced a single page "infographic" regarding cases in the Business and Property Courts, but the figures in that infographic appeared to be incorrect. For example: it was hard to see how 8% of cases in the Business List could be "international" (201 out of 2759) but 17% "entirely international" (supposedly 36 out of 2759, or 1.3%); and it was also hard to see how the 336 "entirely international" cases started in the Commercial Court in 2018 constituted 53% of the total of 841 cases (on those figures, it should be 40%).
15. Kevin Hart said that the Society was asking for nominations for its Lifetime Achievement Award. He would send the Chairman the criteria for forwarding to the Committee. Nominations closed on Friday, 13 September 2019.
16. Kevin Hart reported that the City of London Solicitors' Company had recently awarded its Distinguished Service Award to the Chair for his lengthy tenure as Chair of the Committee.

#### *Election of a new Chair*

17. The Chair reminded the Committee that he was resigning as the Chair and as a Committee member, and said that Gavin Foggo was the only candidate to replace him. The Committee unanimously (including proxies given to the Chair) elected Gavin as its Chair Designate, and thanked him for taking on the role. Gavin's appointment requires ratification by the Society's (main) Committee, which is due to meet on 18 September 2019.
18. The Chair Designate thanked the (outgoing) Chair for his stewardship of the Committee since late 2009, and for his outstanding contribution to the Committee, both as Chair and as a member before that since 1998.
19. The next meeting of the Committee will take place on a date to be fixed.