

# CITY OF LONDON LAW SOCIETY

## LITIGATION COMMITTEE

### MINUTES OF MEETING

**Date:** 27 November 2019, at 4.00pm

**Location:** 10 Finsbury Square, London EC2

**Present:**

Gavin Foggo (Chair)

Mark Lim (Vice Chair)

Richard Dickman

Angela Dimsdale Gill

Gary Milner-Moore

Fox Williams LLP

Lewis Silkin LLP

Pinsent Masons LLP

Hogan Lovells International LLP

Herbert Smith Freehills LLP

**In attendance:**

**Apologies:** Jan-Jaap Baer, Duncan Black, Patrick Boylan, Andrew Denny, Geraldine Elliott, Richard Foss, Jonathan Isaacs, Gary Milner-Moore, Hardeep Nahal and Patrick Swain.

*Disclosure Pilot*

1. The sole purpose of the meeting was to consider a response to the Questionnaire circulated by Professor Rachael Mulheron, Official Monitor of the Disclosure Pilot in the Business and Property Courts in October 2019. The key points discussed were:
  - (a) It is still early in the life of the Pilot, so it is only possible to provide initial observations;
  - (b) The requirement to notify former employees in particular in relation to the preservation of documents is seen as disproportionately burdensome. It is suggested that there be some limitation or exemption in the case of larger employers;
  - (c) The new requirements placed on advisers in relation to extended disclosure to prepare the List of Issues and to agree which disclosure Model applies to them has placed a greater costs burden on litigants before the CMC. Some consider that being able to agree standard disclosure without preparing lists of issues (for Model C) and the very detailed Disclosure Review Document in certain medium sized cases would lead to a similar result (Model D / standard disclosure) more quickly and at appreciably lower cost;
  - (d) The imposition of a 30 minute cap on Disclosure Guidance hearings is not realistic; in many cases, the issues will require significantly more time to resolve;

(e) Overall, for smaller cases, the new scheme may bring advantages by reducing the scope of disclosure. For the larger cases, it is as yet unclear whether the new system will genuinely bring any more benefit than the current one under CPR 31. In terms of promoting more reasonable behaviour and proportionate case management, there are helpful "cultural" statements in the new provisions, but it is too early to say whether they will have the desired effect. There has not in our view been a "culture change" to date.

ADG kindly offered to prepare a first draft for circulation to the Committee, so that a response could be submitted by the 29 November 2019 deadline.

2. The next meeting of the Committee will take place on a date to be fixed.