

# CITY OF LONDON LAW SOCIETY

## LITIGATION COMMITTEE

### MINUTES OF MEETING

**Date:** 27 January 2020, at 4.00pm

**Location:** 10 Finsbury Square, London EC2A 1AF

**Present:**

Gavin Foggo (Chair)	Fox Williams LLP
Mark Lim (Vice Chair)	Lewis Silkin LLP
Jan-Jaap Baer	Travers Smith LLP
Duncan Black	Fieldfisher LLP
Andrew Denny	Allen & Overy LLP
Richard Dickman	Pinsent Masons LLP
Angela Dimsdale Gill	Hogan Lovells International LLP
Geraldine Elliott	Reynolds Porter Chamberlain LLP
Richard Foss	Kingsley Napley LLP
Gary Milner-Moore	Herbert Smith Freehills LLP
Hardeep Nahal	McGuireWoods London LLP
Patrick Swain	Freshfields Bruckhaus Deringer LLP

**In attendance:** Kevin Hart (CLLS), Evie Meleagros (Fox Williams LLP)

**Apologies:** Patrick Boylan (Simmons & Simmons LLP), Jonathan Isaacs (DWF Law LLP)

*Minutes of previous meetings*

1. The minutes of the meeting held on 10 September 2019 were approved.
2. The minutes of the meeting held on 27 November 2019 were approved with the correction that Kevin Hart was not present.
3. The Chair introduced Evie Meleagros, a senior associate at Fox Williams, who has kindly agreed to attend meetings and take minutes.

*Litigation Committee*

*Purpose*

4. The Committee considered the purpose of the group, what it has done historically and whether it should be doing anything else.
5. Traditionally, the Committee has focused on providing high quality responses to consultation papers from Government departments, the Judiciary, the SRA, the Law

Society and other groups. It has been largely reactive in this regard. It has undertaken specific projects occasionally, perhaps the most notable of which was the production of the CLLS / Combar standard terms for working with barristers, which has become an industry standard. The Committee has from time to time had external speakers to its meetings. It has very occasionally held / jointly organised educational events on new developments in the law. The Committee has met socially only very rarely.

6. The Committee wanted to retain its work responding to consultation papers, but considered how it could be more proactive. It was discussed whether the Committee members should be giving thought to themes that arise in their work that require reform or adjustment. The concern with only becoming involved at the consultation stage is that, by that point, the Government or relevant regulatory body has often already largely made a decision on the relevant subject. The Committee discussed the value and practical possibility in becoming part of an external working group (such as the Jackson Committee and the recent Disclosure Working Group on which Richard Dickman was a member). A desire was expressed for the Committee to put itself on the front foot in respect of key issues that affect City litigators.
7. Consideration was given as to whether there was value in having sub-committee groups, focusing on certain themes and topics. These might include legal topics such as:
  - (a) Disclosure;
  - (b) Witness statements;
  - (c) DBAs and litigation funding;
  - (d) Innovations to court procedures;
  - (e) Court reform and the role of the lower courts;
  - (f) Impact of the Briggs report.
8. It was also discussed whether the Committee ought to focus on issues of wider application to the profession, but which impacted upon litigation solicitors in the City. Support was expressed for topics:
  - (a) Technology, including its use by lawyers, artificial intelligence, and how the role of technology will change in the next 5 to 10 years;
  - (b) Mental health;
  - (c) Diversity and inclusion;
  - (d) Pro Bono work, including McKenzie Friends.
9. It was also suggested that the Committee approaches Bar groups such as COMBAR and the Chancery Bar Association, to consider a collaborative effort on particular topics, which could assist in adding weight to the Committee's voice.

10. It was proposed that Kevin Hart speak to Ed Sparrow on the main committee to discuss the scope and appetite for sub-committees and different work streams / topics to push forward for reform.
11. The Chair agreed to contact Simon Davis (current President of the Law Society) and David Greene (current Vice President of the Law Society), and get their views on these issues and particularly closer co-ordination with the Law Society and membership of working groups.
12. The Committee considered whether it should also host social and educational events, in addition to its focus on reviews of consultation papers. It was agreed that the Committee members would each give thought to topical themes and submit their ideas to the Chair by Friday **28 February 2020**.

*Size of the Committee and use of alternates*

13. The Chair noted that there are currently 15 members on the Committee, following 5 recent resignations. There is no maximum, the smallest committee is 12 and the largest is 30.
14. It was suggested that the Committee have a membership of at least 20. The possibility of alternates was discussed, with it being suggested that it only works when the alternate has enough time to prepare for the meeting in advance. There was also a concern that it gives members an excuse not to come to a meeting.
15. It was decided that the Committee would permit alternates, but that they should only be used in circumstances whereby the Committee member had given the alternate sufficient time to read the documentation for the meeting and be able to make a meaningful contribution to the discussion.

*Appointment of new members, diversity and inclusion*

16. The Chair explained that, in the past, retirees would propose successors from their own firms. It was noted that only two of the current Committee are female and only one is non-white. It was recognised that the past practice was not appropriate in the context of diversity and inclusion considerations. It was agreed that, in line with the CLLS's current policy, the vacant positions would be advertised on the CLLS website and those interested invited to submit their CVs for consideration by the Committee.
17. The Chair reported that Lois Horne of Macfarlanes had been proposed by Iain Mackie and Richard Jeens of Slaughter and May had been proposed by Jonathan Cotton. The Chair would write to each of these potential candidates and ask them to apply via the website.
18. The Committee also considered whether it should widen its membership to try to attract other litigators, not just commercial litigators, such as arbitration and/ or specialist litigators such as shipping or insolvency lawyers. It was considered that arbitration specialists probably ought not to be considered as this was viewed as a different field. The Committee were invited to give further consideration as to whether any specialist fields ought to be sought and, if so, which ones, and notify the Chair by Friday 28 February 2020.

19. It was confirmed that there can only be one person from each firm. Job share members can in theory join but it can only be one vote per firm.

#### *Membership of committee*

20. The Committee considered whether there was merit in having junior fee earner involvement. However, it was confirmed that all other committees are partner only, as the CLLS's focus for its committees is having experienced practitioners.
21. The Committee also considered whether the membership should be widened outside of law firms, to include in-house lawyers. It was noted that if in-house lawyers were invited, there would need to be a fair representation of them, say 5 or 6, as opposed to 1 or 2. It was agreed there was merit in investigating whether there would be interest at in-house level, but they would need to be litigators.
22. There was a concern that the inclusion of in-house lawyers might create tension or conflict, which would inhibit the frank conversations at the Committee meetings. It was suggested that in-house lawyers could be by invitation only, at least initially. The possibility of a sub-committee of an in-house panel was also discussed. The Committee would give further consideration to this topic in due course.
23. The Committee considered whether there should be formal Terms of Reference. It was noted that, at the moment, no committee does have them, but that it has now been raised in a few groups so it might be worth considering the matter further.

#### *Times, frequency and place of meetings*

24. The time of day at which the meetings should be held was discussed. Usual practice has been to have them at 4.00pm at the offices of the Committee's Chair. The Committee was content with this, so long as they are booked into the calendar well in advance.
25. It was agreed that the Committee should be scheduled to meet four times a year, with the provision that if something urgent arises, another meeting can be held if need be. The Chair would circulate proposed dates for 2020 shortly.

#### *Representation on other working groups / committees*

26. The Committee has a space on the LSLA Committee to ensure cross-representation on both groups. Historically, this position was occupied by Tony Marks and the Chair inherited it from him. However, the Chair is already on the LSLA Committee as Honorary Secretary. There is therefore an opportunity for another member to represent this Committee within the LSLA.
27. Richard Foss is already on the LSLA Committee and is considering stepping down. Angela Dimsdale Gill and Hardeep Nahal are on the Court of Appeal Users Group. The Committee has a place on the Commercial Court Users Group, which was previously taken by Simon James. Following Simon stepping down from the Committee, Mark Lim attended the last meeting of that User Group, and expressed willingness to attend in future. It was agreed that he would be the Committee's representative.

28. The Chair would explore whether there are places on the Chancery Users Committee and the CPR Rules Committee.

*Legal developments and responses to consultation papers*

29. The Chair reported that the Committee had responded to the Disclosure Pilot Questionnaire on 29 November 2019, and thanked the Committee for providing input as such short notice, and particularly Angela Dimsdale Gill, who had prepared the initial draft.
30. The Report of the Witness Evidence Working Group of 6 December 2019 was noted. It appeared from the Report that the Working Group would be implementing its recommendations and no further input was requested.
31. The Chair drew the Committee's attention to the Damages Based Agreements Reform Project. It appeared that input had been sought in respect of the draft Regulations and Explanatory Note (the Law Society had responded in November 2019). The Chair would write to Professor Rachael Mulheron and Nicholas Bacon QC to check whether they would welcome further input, or whether they had already prepared revised documents. The Committee would check whether others at their firms had additional information.
32. It was not considered that the issue of Brexit warranted input from the Committee at this time, although that might change during the year.
33. The next meeting of the Committee will take place on a date to be fixed.