

**CITY OF LONDON LAW SOCIETY COMMERCIAL LAW COMMITTEE  
(THE “COMMITTEE”)**

**MINUTES** of the Committee meeting held by telephone at 1pm on 26 March 2020

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- Present:**
- Mr Oliver Bray, RPC (Chairman) (“**OB**”)
  - Mr Kevin Hart, City of London Law Society (“**KH**”)
  - Mr Rohan Massey, Ropes & Gray (Secretary) (“**RM**”)
  - Mr Andrew Crawford, Devonshires (“**AC**”)
  - Ms Emma Keeling, Allen & Overy (for Jane Finlayson-Brown) (“**EK**”)
  - Ms Megan Paul, CRS (“**MP**”)
  - Mr Tom Purton, Travers Smith (“**TP**”)
  - Mr Richard Shaw, Bryan Cave Leighton Paisner (“**RS**”)
  - Mr Andrew Shindler, Locke Lord (“**AS**”)
  - Mr Stephen Sidkin, Fox Williams (“**SS**”)
  - Mr Jonathan Davey, Addleshaw Goddard (“**JD**”)
  - Mr Mark Dewar, DLA Piper (“**MD**”)
  - Mr Richard Marke, Bates Wells (“**RXM**”)
  - Mr Jeremy Sivyver, Bishop & Sewell (“**JS**”)
- Apologies:**
- Mr Anthony Woolich, HFW
  - Ms Julia Hemmings, Baker & McKenzie
  - Ms Helen Brown, Baker & McKenzie
  - Ms Jo Farmer, Lewis Silkin
  - Ms Jane Finlayson-Brown, Allen & Overy
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## 1. **Introduction of New Members**

The Chair gave a short personal statement noting that the meeting was being conducted by telephone due to the Government's restrictions on movement in place in response to the COVID-19. If these remain in place until the next meeting we will consider holding by video conference.

## 2. **Minutes of last meeting**

It was reported that the minutes of the last meeting had been prepared and revised following comments. The minutes were then approved.

## 3. **Apologies**

Apologies from the individuals identified above had been received.

## 4. **COVID-19**

4.1 There was a discussion of the impact of COVID-19 and the commercial issues that are arising. KH noted that information on the impact is actively being sought by BEIS and other departments within HM Government so that legislation can be put through Parliament or administrative steps taken under existing legislation to assist in addressing issues arising.

4.2 The key issues identified by the Committee were:

- (a) *Force Majeure* – Contractual force majeure provisions are not standardised and so focus must be given on a case-by-case basis to interpret and apply contractual wording. JD noted whether it was now time to consider statutory codification of force majeure provisions, as is found in many other jurisdictions.
- (b) *Customer Refunds* – There is no standard practice for customer refunds in response to non-performance. TP noted that even within industry sectors there is wide difference, in the travel sector for example rail and airlines are being treated differently by the government in its proposals on contractual and financial relief, which has a knock on effect to refunds being offered to consumers. TP also noted that within the airline industry IATA and ABTA are taking different approaches. This may be determined by liquidity.
- (c) *Public Procurement* – JD noted that the Cabinet office had published Procurement Policy Note 01/20: Responding to COVID-19, which provides some guidance on the measures that may be put in place to address issues relating to both the procurement process and performance of contracts with public authorities during the COVID-19 response period. The guidance is helpful but it was noted that it would be more helpful to have greater detail on the criteria for: 1) the exemptions under which a contract may be extended at this time, noting that running a competitive procurement process at this time may be difficult for both the public body and the provider; and 2) when a competitive process for a new contract may be waived, noting that both the turnover tests and the evidence of completion of similar contracts required for many contract competitions may be difficult for parties to evidence at this time as performance of such other contracts may also be impacted by COVID-19.

- (d) *Landlord and Tenant* – Issues are arising for the performance of tenancy agreements with buildings being closed and or individuals being prevented from travel to their place of work. Questions are being asked whether agreements can be suspended or terminated under contractual force majeure or frustration of contract. Landlords are also looking to see the extent of insurance cover that is in place. Members of the Committee raised concerns that HM Government may not have the ability to cover all losses arising from the impact on commercial property agreements. This led to a further discussion on the ability of the insurance companies to meet their obligations under issued policies. The concern is that insurers will not be able to meet all obligations on their books and will be exposed because of this, as such some firms of solicitors are not taking on new matters for insurers for fear of non-payment.
- (e) *Contractual Signatures* – The issue was raised of the requirement for wet signatures, namely in relation to land contracts, and the use of broad powers of attorney to facilitate these when individuals are not allowed to travel. Other issues were discussed including the witnessing of certain documents, including wills, which cannot be done remotely (see *Man Ching Yuen v Landy*, First Tier Tribunal (Property Chamber), 2020 (ref 2016/1089)), but becomes very difficult when only households are allowed to be together. The Committee also discussed the issue of signatures in commercial contracts more broadly and agreed that the position that electronic signatures, including attachment to an email, being binding and noted that many firms are using systems like DocuSign to assist in evidencing electronic signatures.

## 5. **Legal 500: Commercial Contracts Rankings**

- 5.1 TP noted that in a recent article the head of KPMG had stated that commercial contracts lawyers and employment lawyers were most in demand in response to the issues caused by COVID-19.
- 5.2 OB reported that he would be contacting Legal 500 to seek a meeting, as agreed at the January meeting.
- 5.3 KH reported that Ed Sparrow was supportive of this approach and, if helpful would attend a meeting to show support.
- 5.4 The Committee agreed that it would be better to have a smaller group of representatives to meet Legal 500, which was agreed to be OB, MP and TP.
- 5.5 It was discussed and agreed that at this time no action was needed in relation to Chambers, and the Committee would discuss again next meeting.

## 6. **Seminar 2020 event**

- 6.1 KH noted that that the event last year with Adidas had been noted as a real success and highlight of the year at the CLLS Committee Chairs Meeting,
- 6.2 The Committee discussed the impact of COVID-19 and it was agreed this event would be much better live than as a webinar. The Committee agreed to defer this event and to plan for it to be held live in Q3 or 4, if possible.
- 6.3 OB updated that his contacts at Facebook and Google had been lukewarm in partaking in an event, so the Committee is asked to consider other options.

Action point:

*Committee Members are asked to consider if they have contacts that may like to be involved as speakers.*

## 7. **CLLS Update**

- 7.1 KH reported that the All Chairs Meeting was a success and that thanks was extended by the Chairman of the CLLS and the CEO, on behalf of many appreciative HM Government departments.
- 7.2 The Commercial Law Committee was mentioned for its hosting of the successful Seminar with Adidas.

## 8. **LinkedIn page / Recruitment Portal**

- 8.1 KH reported back that the CLLS was not minded to proceed with a recruitment portal at this stage, as there are a number of logistical challenges that cannot be overcome at present.
- 8.2 On the LinkedIn pages, the CLLS proposal is to leave as it for now and monitor engagement on the single CLLS page. This will be subject to a review in 6 months to assess if engagement is at a level at which individual committee specific pages may be justified.
- 8.3 It was noted that for engagement to increase the LinkedIn page needs dynamic content, so all Committee Members should consider submitting relevant content.

Action Point:

*All Committee Members should consider submitting relevant content for the CLLS LinkedIn page.*

## 9. **Update on Brexit Matters and Brexit Sub-Committee Meeting**

- 9.1 SS reported that COVID-19 had put a hiatus on Brexit and that the 30 June 2020 date for HM Government to have “made significant progress” on the terms of withdrawal will be challenging, as will the 31 December 2020 date for withdrawal to be complete. It is likely that these deadlines will be extended. The sub-committee will be called to order once there is greater clarity and there is a need to meet.

Action Point:

*SS to monitor and update as needed.*

## 10. **Interesting cases and/or practice points**

- 10.1 Time did not allow for the discussion of practice points.

## 11. **AOB**

- 11.1 There was no other business raised to the Committee.

The next Committee meeting will be held at **1pm** on 25 June 2020 at the offices of Devonshires Solicitors LLP, 30 Finsbury Circus, London EC2M 7DT - hosted by Andrew Crawford – subject to confirmation relating to COVID-19 restrictions.