

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

MINUTES of the Committee meeting held by video and telephone at 9:00 am on 30 September 2021

Present:

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

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

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

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

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

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

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

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

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

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

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

Apologies:

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

Ms Jane Finlayson-Brown, Allen & Overy ("**JFB**")

1. Welcome from the Chair (OB)

OB gave a short introduction and welcome.

2. Minutes of last full meeting (RM)

It was reported that the minutes of the last meeting had been prepared and approved.

3. Apologies

Apologies from the individuals identified above had been received.

4. **NQ vacancies**

OB noting the Committee's NQ initiative, initially launched by SS. A discussion followed on whether (a) any of the firms present had vacancies available for NQs or (b) whether they had trainees who were not being offered places who are available. OB stressing the importance of this initiative and requesting that everyone considers whether they had vacancies or candidates available.

5. **Re-cap on Law Commission Reform Proposals (led by Sub-Committees)**

OB noting the excellent work completed by the Sub-Committee on product liability and giving particular thanks to the firms involved, namely A&O, DLA Piper and RPC. Special thanks were given to EK and MD for helping lead/coordinate this work. The Committee appreciated this important work into the impact of artificial intelligence and how well the law is keeping up with these developments.

6. **OneNDA** (See <https://onenda.org/>)

OB notified the Committee that he had been contacted by Elektra Japonas, who is leading an initiative into having the industry adopt 'OneNDA', an open-source, standard-form NDA. The aim is to design, and have adopted, one single NDA, in order to reduce legal work, increase transparency and speed up business dealings.

RS saying that, having reviewed it quickly, it struck him as being very simple and that his firm would only tend to deal with NDA's where there are significant issues. OB explaining that OneNDA may be particularly useful for start-ups.

AC explaining that he understood that there was a Financial Law Panel paper on NDA's and their the conclusion was that NDAs were getting more and more 'engineered' and that there may be appetite for a move back to a more basic agreement, which may signal part of a trend.

7. **Legal 500: Commercial Contracts**

OB said that he was delighted that the Legal 500 has recently reinstated the Commercial Contract section. He thanked in particular MP and Tom Purton for their support in helping make this happen. JH echoed that it's a brilliant step and important for the practice of Commercial Law. OB added that it was important that the industry – and especially young lawyers – recognise the standalone nature of commercial law. It is a critical part of the part of the legal industry

8. **Update on Commercial Law Committee Seminar 2021**

RM explained that he had left the proposal for a seminar on the agenda as it had been under discussion for some time. He wondered what the appetite of the Committee was in running this next year? He thought this timing might be better as we could hold the seminar in person, and we are running out of time this year. KH said that next year would be much more attractive, not least as the construction law training program is taking place over three Fridays in November

OB explained that he thought we could be forgiven for letting this bubble along. As with the Legal 500, he said that putting a spotlight on commercial law is important, especially for the next generation of young lawyers. The seminar should be an effective way of helping achieve this.

RM recalled that one of the more attractive suggestions originally proposed was for an interactive discussion between a panel of 3 or 4 Committee members. OB suggested it would be important to get the spread of in-house experience too. RM suggested ex Committee member Andrew Schindler, who is now GC at Friend MTS Limited.

OB said fixing a date is important and, after discussion, the Committee landed on Thursday February 10th.

JD and MP offered to speak, depending on the topics. This led to a discussion over topics, with OB reminding the Committee that 'lessons learned' and 'top tips' had been a previous suggestion. This might appeal to an audience of junior lawyers and trainees who are thinking about commercial law. KH mentioned that the training program arranged by the Construction Law Committee is focussed on NQ's and trainees who have decided to go into construction, but they are looking at whether we go out to universities and others who are considering starting a legal career. MP said that it appealed to her to look at inspiring young people before they have moved into the profession. JH agreed and said she would be keen to help. All agreeing that it is important that those kicking off their careers get an understanding of commercial law, and how interesting and cutting edge it can be. JD said that, on reflection, after putting his hand up, he wondered whether younger partners might connect better. He mentioned Dave Berry, a younger partner at Addleshaws.

On the topic itself, by 'top tips' OB said he was referring to tips on the profession, rather than another talk on a commercial law topic – hopefully thereby keeping the discussion fresh and inspiring for those on their legal journey. RM suggested the heading of: '**Commercial Law: What, why and war stories?**'

A discussion followed on other potential participants – eg the Right Hon Andy Burrows QC of the Supreme Court or Lady Hale who had previously spoken at Addleshaws. The Committee agreeing this was for another event, not this one where a younger and more diverse panel seemed more appropriate for the intended audience. MP mentioned she would prefer the more junior end of the scale and that younger generations of lawyers care more about purpose – so maybe approaching someone who has a different route into law might be helpful. OB agreeing that this lens offers a much healthier perspective. MP suggested one of her clients who is very interested in the social dynamic and the different routes into law. RM said

In terms of moving this along, OB suggested a sub-committee meet before the next meeting. MP, RM and AC all offered support.

9. **Interesting cases and/or practice points**

OB kicked off the discussion with reference to the impact of the new SCCs. A discussion followed on the new SCCs and different approaches around putting in place contractual protections.

JD mentioned the following cases:

- *Digital Capital v Genesis Mining Iceland*: The inter-relationship between contractual rights of termination and repudiatory breach, and the circumstances in which a contractual code can affect common law rights to terminate;
- *London Trocadero v Picturehouse Cinemas*: The insufficiency of Covid provisions in relation to commercial rent liabilities.

SS brought to the Committee's attention the decision in September of the CJEU in The Software Incubator Limited v Computer Associates UK Ltd: For the purposes of the Agents Directive 86/653/EEC the CJEU decided that (i) computer software whether supplied electronically or by other means was goods and (ii) where the licence granted for the use of computer software was perpetual that amounted to a sale. The critical point is that both the Directive and The Commercial Agents (Council Directive) Regulations 1993 define a commercial agent by reference to the "sale of goods".

AC mentioned the report by Alison Levitt QC into the breakdown in governance in the RICS.

The next Committee meeting will be held in person on 25 November at Fox Williams at 5pm.