

**CITY OF LONDON LAW SOCIETY
LITIGATION COMMITTEE**

MINUTES OF MEETING

Date: 8 September 2015, at 4pm

Location: 10 Upper Bank Street, London E14

Present:

Simon James (Chairman)	Clifford Chance LLP
Jan-Jaap Baer	Travers Smith LLP
Tom Coates	Lewis Silkin LLP
Jonathan Cotton	Slaughter & May LLP
Andrew Denny	Allen & Overy LLP
Geraldine Elliott	Reynolds Porter Chamberlain LLP
Lindsey Davies (for Tim Hardy)	CMS Cameron McKenna LLP
Hardeep Nahal	McGuireWoods London LLP
Stefan Paciorek	DWF LLP
Patrick Swain	Freshfields Bruckhaus Deringer LLP

In attendance: Kevin Hart (CLLS)

Apologies: Duncan Black, Patrick Boylan, Richard Dickman, Angela Dimsdale Gill, Gavin Foggo, Richard Foss, Iain Mackie, Michael Madden, Gary Milner-Moore and Kevin Perry.

Minutes of previous meeting

1. The minutes of the previous meeting, held on 19 May 2015, were approved.

Matters arising

2. With regard to barristers' fees, the Chairman said that he had passed to the Chairman of the Bar Council's Ethics Committee and the Chairman of the Chancery Bar Association the Committee's conclusion set out in paragraph 3 of the minutes of the last meeting. He had heard nothing further.
3. The Committee had responded to the consultations relating to the Financial List and the Shorter and Earlier Trials Initiative.

Financial List launch event

4. The Chairman said that on 27 July 2015 he and Alasdair Douglas (Chairman of the Society) had, with others (eg Combar, Chancery Bar Association and the LSLA) attended a meeting hosted by Mr Justice Blair and Mr Justice Knowles regarding a launch event being planned for the Financial List. The event was to be at the Rolls

Building on 20 October 2015, and would be addressed by the Lord Chief Justice and, perhaps, others.

5. The meeting had discussed possible invitees, Governmental involvement, the press and other issues. The Society had, however, heard nothing further about the proposed event since the meeting. The Chairman commented that the meeting had illustrated that at least some members of the judiciary acknowledged that they had a significant role in promoting the English courts internationally.

Court fees

6. The Committee considered the Ministry of Justice's Consultation Paper dated July 2015 entitled *Court and Tribunal Fees*, which proposed (amongst other matters) raising maximum court issue fees to at least £20,000. The Paper also raised the possibility of removing the cap on fees altogether with the result that fees would be 5% of the sum claimed.
7. The Committee decided to respond to the Paper, adopting the same general approach as it had to previous consultation papers proposing increases in court fees, ie that the Committee saw no need for any increase in fees since the civil courts are already self-financing (indeed, they now generate a surplus).
8. Points made regarding the paper included:
 - (a) If a claimant was unable to specify the amount of a claim, the claimant paid the maximum fee regardless of the value at stake.
 - (b) Increasing issue fees resulted in greater front-loading of costs, which might in some circumstances act as a disincentive to settlement.
 - (c) Greater front-loading of costs moved further away from the idea of paying for the service received. Fees in arbitrations were invariably tied to the work that arbitrators had actually done.
 - (d) The Financial List is to have a lower value limit of £50 million for certain claims, which at 5% would generate a fee of £2.5 million. A fee at that level would inevitably discourage use of the List.
 - (e) The Consultation Paper argued that there was no evidence that increases in fees would undermine London's position as an international centre for dispute resolution. However, there could be no evidence of this until increased fees were introduced but, if increased fees did then undermine London's position, the damage would already have been done.
 - (f) The Ministry's repeated proposals for increased fees had gone beyond the thin end of the wedge.
 - (g) The Ministry's proposals to close numerous courts (see below) would produce savings that might render further fee increases unnecessary.

Judicial review

9. The Committee considered the Ministry of Justice's Consultation Paper entitled *Reform of Judicial Review - Proposals for the provision and use of financial*

information dated July 2015. This Paper contained proposals to implement sections 85 to 89 of the Criminal Justice and Courts Act 2015 regarding financial information to be provided by applicants for judicial review.

10. The Committee was concerned about the Government's general hostility to judicial review, which was a vital safeguard for the rule of law. However, the Committee also accepted that some commercial parties caught up in a judicial review might be interested to receive information about how the judicial review was being funded; similarly, commercial enterprises that did not themselves wish to bring judicial review proceedings but were prepared to fund others to do so might be concerned to maintain anonymity.

11. The Committee would consider further whether to respond to the Consultation Paper *Closure of courts*

12. The Committee noted the Ministry of Justice's Consultation Paper entitled *Proposals on the provision of court and tribunal estate in England and Wales* dated 16 July 2015, which proposed the widespread closure of court buildings. The Committee decided not to respond to the Paper.

Damages-Based Agreements

13. Hardeep Nahal reported that he had served on a Working Group of the Civil Justice Council that had considered draft new regulations proposed by the Ministry of Justice for damages-based agreements. The Group had considered technical issues arising in relation to the proposed regulations, and had issued a report in August 2015 (*The Damages-Based Agreements Reform Project - Drafting and Policy Issues*).

14. The Group had also gone on to consider some policy issues in relation to DBAs, including in particular whether hybrid DBAs should be permitted. The Ministry of Justice was currently opposed to hybrid DBAs. The Working Group consisted of a wide-range of interest groups, including personal injury and commercial litigators, which made reaching agreement difficult. As a result, the Report (at chapter 21) noted that some members of the Group considered that the case for hybrid DBAs "had not been proven". The Report went on to observe that whether to allow hybrid DBAs was a policy decision for the Government, and encouraged the Government to evaluate the arguments in favour of hybrid DBAs. The Report had noted, for example, that Lord Justice Jackson was in favour of hybrid DBAs and that the Government appeared to have no objection to the schemes put forward by third party funders that were intended to get round the inability of lawyers to offer their clients hybrid DBAs.

15. The Committee decided to write to the Ministry of Justice expressing its support for the introduction of hybrid DBAs. Points made included the desirability of promoting flexible fee arrangements in order to enhance the attractiveness of the London legal market, and the possibility of a ratchet on the cap on DBAs (ie that if a lawyer was receiving some fees as the case went along, the cap on the proportion of damages the lawyer could receive would be reduced below 50%).

Any other business

16. Kevin Hart reported that the Society used Project Associates as a communications consultancy in order to assist the Society in securing publicity for its work. If the

Committee wanted to obtain any press coverage for its work, advance warning of what it was proposing would be helpful rather than seeking to do so after the event.

17. The Chairman reported that each year the Society presented a Lifetime Achievement Award to an individual who had made an outstanding contribution to the legal profession during his or her career. Nominations were currently being solicited.
18. The Chairman noted that, as part of the Jackson reforms, a new form of bill of costs was being introduced, which required the use of standard phases for litigation ("J-Codes"), as well as standard activities. Those present at the meeting commented that their firms had or were currently considering how best to implement these codes within time-recording and billing systems.
19. The next meeting of the Committee will take place on a date to be fixed.