

CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE

Minutes of a meeting held on 23 May 2013 at Hogan Lovells, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG

In attendance	Jackie Newstead (Chair) Warren Gordon (Secretary) Nick Brent Jayne Elkins Martin Elliott Alison Gowman Laurie Heller Pranai Karia Nick Jones Anthony Judge Robert Leeder Jeanette Shellard Peter Taylor
Apologies	James Barnes William Boss Jeremy Brooks Jamie Chapman James Crookes Mike Edwards Alison Hardy Charles Horsfield Emma Kendall Daniel McKimm John Nevin Jon Pike Nicholas Vergette

1. MINUTES

The Minutes for the Committee meeting of 27 March 2013 were approved and are on the CLLS website.

2. **PROTOCOL FOR DISCHARGING MORTGAGES IN COMMERCIAL PROPERTY TRANSACTIONS**

There was a discussion about the draft Protocol for discharging mortgages of commercial property prepared by a sub-group of the Committee and incorporating input from the CLLS Financial Law Committee and the Association of Property Lenders.

A competition concern had been raised that the Protocol should not make absolute statements about the mechanics of where money is held. A small change will be made to the Protocol to address this.

Maureen Romeril at Clifford Chance has raised a couple of significant issues on the Protocol. The Protocol assumes that the seller's bank will send the DS1 to the seller's solicitor before completion. Her view is that it is common that the bank will not execute the DS1 until after completion, or it will refuse to send the DS1 until it has received the redemption money.

The Protocol also assumes that the seller's bank will unconditionally release the DS1 to the seller's bank's solicitor before it has received the redemption money. The seller's solicitors have before completion undertaken to the seller's bank's solicitor to transfer the agreed redemption figure to the seller's bank immediately after completion. Maureen considers that the Protocol's assumption does not reflect her experience that most seller's banks insist they have the redemption money before they will release the DS1. Yet buyer's banks will not release the redemption money unless the DS1 is released to the buyer's bank.

Maureen says that Clifford Chance and other banking firms use a "pay off letter", signed by the seller's bank and the buyer's bank, which provides that the seller's bank will, in consideration of being sent the agreed redemption money, send or release the DS1 within a prescribed number of days of receiving the money. This is the equivalent of solicitors' undertakings. The pay off letter is usually not used where the seller's bank is unrepresented.

Few on the Committee had come across the pay off letter. It should also be noted that the finance/banking lawyers represented on the Protocol sub-group did not mention the pay off letter and were happy with the approach adopted by the Protocol.

We would appreciate responses from the Committee on the following questions:

- **have you come across this type of pay off letter and would you advocate its use; or**
- **do you prefer the approach taken by the Protocol?**

3. **PRE-PACKS PROJECT**

The sub-group appointed to look at pre-packs has had initial discussions and considers that the purpose of the pre-packs project is for the Committee to advocate that a more

level playing field should be created between landlords and insolvency practitioners. The sub-group's conclusion is that unsecured landlords are adversely affected, to a disproportionate extent, by the pre-packs/company voluntary arrangement (CVA) process. To better inform possible solutions that the Committee may suggest to create a more level playing field, the sub-group suggests that a survey is produced, which can be circulated to landlords and investors. The survey will seek to elicit information about landlords' experiences with pre-packs and CVAs, whether they consider that they are unfairly treated and what they would like done about this.

Having seen some proposed survey questions, some committee members commented that more narrowly drawn questions (Yes/No) are more likely to elicit a response. However, the whole purpose of the survey is to obtain information and more open-ended questions are more likely to achieve this without having to carry out a further survey. It was agreed to separate the questions for pre-packs and CVAs because of their differences.

Robert Leeder highlighted that the Financial Law and Insolvency Law committees may have concerns about this project and Jackie Newstead agreed to discuss the project with the respective Chairs of those committees. Jackie will also talk to her colleague Matthew Ditchburn, who is a member of the BPF's Insolvency Working Party, to see what the BPF has done in this area, so as to avoid duplication.

If it is decided to proceed with the survey, consideration can be given to whether to use the CLLS's PR people to publicise the survey.

4. CERTIFICATE OF TITLE/REPORT ON TITLE

The meeting considered that it would be very useful to have an annex to the certificate of title for construction documentation (adopting the standard statements approach from the certificate). Jackie will discuss this with the Chair of the Construction Law committee.

There was less enthusiasm for a certificate of title for development situations.

The CLLS Report on title appears to have some popularity and could benefit from an update and a re-branding. Please let Warren Gordon know if you wish to join a sub-group to consider this.

5. LEASE INSURANCE CLAUSES PROJECT

One further meeting will be arranged to finalise the drafting of the CLLS lease insurance clauses. It was considered that some of the "blue sky" thinking reflected in the drafting makes it a useful document even though there is the new BPF lease.

6. RESPONDING TO LAW COMMISSION PAPER ON RIGHTS TO LIGHT

The response of the CLLS Land Law and Planning and Environmental Law committees to the Law Commission's consultation paper on rights to light has been added to the CLLS website and a press release has been sent to a number of major publications.

7. **DRAFTING FOR COMMUNITY INFRASTRUCTURE LEVY IN PROPERTY DOCUMENTATION**

Some drafting has been produced (also considering the situations when community infrastructure levy can arise) and is in the course of being considered by the sub-group.

8. **PROPOSALS TO AMEND ESTATE AGENTS ACT 1979**

Peter Taylor highlighted concerns about whether certain OFT guidance http://www.offt.gov.uk/shared_offt/estate-agents/OFT1364.pdf impacted on solicitors in property transactions. Anthony Judge's colleague has considered this area and Anthony will send material to Peter, who can then decide whether the Committee should take this further. The guidance is relevant both in the consumer and business context.

9. **SECURED TRANSACTIONS REFORM- PAPER FROM CLLS FINANCIAL LAW COMMITTEE**

The Committee awaits the Financial Law committee's further proposals in this area for consideration.

10. **LAW COMMISSION'S CONSULTATION ON CONSERVATION COVENANTS**

While an interesting consultation, the Committee decided that it was of insufficient relevance to the practices of the firms represented on the Committee to justify it responding. The Committee would also not be responding to DCLG's consultation on changes to the community infrastructure levy regime. The Planning and Environmental Law committee is interested in this, but it is uncertain whether they will respond.

11. **CPD- 1.5 hours** (CPD reference CRI/CLLS).

12. **Future Committee meetings** - 17 July, 18 September and 20 November at 12.30pm at Hogan Lovells LLP, Atlantic House, Holborn Viaduct, London EC1A 2FG.