

**CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE**

**Minutes of a meeting held on 24 January 2018 at Hogan Lovells, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG**

<b>In attendance</b>	<b>Jackie Newstead (Chair)</b> <b>Warren Gordon (Secretary)</b> <b>Nick Brent</b> <b>Jeremy Brooks</b> <b>Jamie Chapman</b> <b>Caroline DeLaney</b> <b>Martin Elliott</b> <b>David Hawkins</b> <b>Laurie Heller</b> <b>Victoria Hills</b> <b>Pranai Karia</b> <b>Paul Kenny</b> <b>John Nevin</b> <b>Tom Pedder</b> <b>Sangita Unadkat</b> <b>Ian Waring</b>
<b>Apologies</b>	<b>James Barnes</b> <b>James Crookes</b> <b>Bruce Dear</b> <b>Jayne Elkins</b> <b>Alison Hardy</b> <b>Nick Jones</b> <b>Daniel McKimm</b> <b>Franc Peña</b> <b>Jon Pike</b> <b>Peter Taylor</b>

**1. APPROVAL OF MINUTES**

The Minutes for November's Committee meeting were approved and will be added to the CLLS website.

## 2. CLLS SHORT FORM REPORT ON TITLE

The sub-committee has progressed the Short form Report on title to a state where the Committee's approval is sought to its final form and launch. The document was circulated in advance of the meeting, to give members time to absorb the changes and allow for a thorough discussion. The majority of the meeting was taken up by this discussion. The Committee made a number of comments, some of which are noted below. Most of the comments did not entail significant changes to the Report. The sub-committee will amend the Report and circulate it to the Committee by email for final comments. The Report will be launched shortly afterwards with accompanying publicity.

The points noted included:

- The Report will be rarely used on a purchase for the reporting firm's own client.
- In certain respects, the front part of the Report reflects the Committee's Certificate of title.
- Clause 1.6.3 – “any legal proceedings arising from or in connection with this Report must be formally commenced within [3 years ] from the date of this Report;” The 3 years allows time for any issue to emerge, but the limitation reflects the short form nature of the report that will usually be used on low value, high volume transactions. It is also reflective of the approach on corporate transactions. However, the Report should state that this clause may not always be acceptable.
- 1.6.5 “where the Addressees constitute more than one person, our aggregate liability to all the Addressees is to be no greater than the liability we would have had if the Addressees were a single person,” – this is intended to avoid duplication of liability and consideration should be given to whether it is appropriate for the particular transaction.
- The Report has a narrower scope than the Certificate. Clause 2 highlights that the firm has examined and considered the documents of title and other documents relating to the Property specifically referred to in the Report and the results of the searches made by or disclosed to them (the latter is a narrow set of primarily Land Registry searches). The solicitor receiving the Report would highlight to their client what is missing (for example, compared to the Certificate).
- “Marketable” (as in “good and marketable title”) is dealt with by “there is nothing to indicate that the title to the Property is other than marketable; (clause 3.3)” reflecting the narrower scope of the Report.
- The Company (and not the firm) gives the confirmation on beneficial ownership – “Save as is otherwise disclosed in this Report it is solely beneficially entitled to the Property” (clause 4.1).
- Schedule 1, “Letting Documents” includes holding over situations under the Landlord and Tenant Act 1954.

- The Group and Seller's Group definitions have been removed.
- In paragraph 2 (Assumptions and qualifications), save as is otherwise disclosed in the Report, the firm does not investigate insurance matters relating to the Property, although title insurance will be highlighted as an exception. Reference should be made in the Report to the firm checking that there will be no problem with disclosing the existence of the policy in the Report.
- Schedule 2 relating to the Property has been considerably shortened. The heading "Documents of title" refers to various options "[See Appendix to this Report] [Made available in [section] [ ] of the Data Room][The documents listed here]".
- Schedule 3 (searches) includes reference to Official copies of registered title(s) to the Property. It will be made clear that this includes copies of any documents referred to as being filed at the Land Registry. The local search will not be standard, since it would not usually be carried out due to the low value/high volume nature of the transaction in relation to which the Report is used. An extra heading will be included for "Other searches made by or disclosed to the firm".
- There will be 2 types of Schedule 4 reporting on the headlease, the first for a lease where no rack rent is payable (usually for a longer term). The second is for a lease at a rack rent. Schedule 5 details income producing letting documents – its form is very similar to the second Schedule 4. The parties may choose to reduce the amount of detail reported on and, if so, should consider using a table of the type referred to in Schedule 5 to the Certificate of title.
- Consequential changes will be made to the Notes and confirmation letter from the Company at the back of the Report.

### **3. UPDATING CITY CORPORATION'S STANDARD WAYLEAVE AGREEMENT FOR THE NEW ELECTRONIC COMMUNICATIONS CODE**

A sub-committee comprising members of the Committee has been considering changes to the Committee's/City Corporation's wayleave for the new Electronic Communications Code. Changes have generally been confined to matters resulting from the new Code. The revised draft will be sent to the City Corporation, which will launch a consultation process shortly. It was noted that there is a high demand among law firms for the updated document.

### **4. CONSULTATION ON PROPOSED NEW RICS CODE FOR SERVICE CHARGES IN COMMERCIAL PROPERTY**

The Committee issued a response to the RICS's consultation on a replacement document for its existing Code for Service Charges in Commercial Property, 3rd edition. A link to the response is here -

<http://www.citysolicitors.org.uk/attachments/article/114/Response%20to%20RICS%20draft%20professional%20statement%20%20Service%20charges%20in%20commercial%20property%20-%202011%2012%2017.pdf>

**5. VAT ON SEARCHES**

Guidance is awaited from the Law Society on this. Increasingly, firms are now charging VAT on all electronic searches in the light of the “Brabners” decision.

**6. AOB**

- Brexit will be on the agenda for the March meeting to consider its impact on environment, energy, planning, procurement and movement of people and the market.
- The Government has announced that the planned public register listing the beneficial ownership of overseas companies that own UK property will be launched in 2021.
- There was a brief discussion of topics that might be mentioned at the upcoming Annual Estates Gazette legal dinner: Leasehold houses and ground rents; CGT changes for overseas buyers; pre-lets and development agreements in the light of Carillion; PropTech and building management systems and their exposure to hackers; MEES; and positive covenants.

**7. Length of meeting:** 1 hour 15 minutes. Where appropriate, please note this in professional development records.

**8. Dates for 2018 Committee meeting dates** - 21 March, 16 May, 27 June, 26 September and 21 November, all at 12.30pm at Hogan Lovells LLP, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG.