

## THE CITY OF LONDON LAW SOCIETY CONSTRUCTION COMMITTEE MEETING

Minutes of a meeting of the members of the City of London Law Society Construction Committee (the "**Committee**") held on 8 September 2010 at 5.00 p.m. at Broadwalk House, 5 Appold Street, London.

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### **PRESENT:**

Paul Cowan	White & Case
Miranda Ramphul	Herbert Smith LLP
Richard Hill	Norton Rose
Patrick Holmes	Macfarlanes
John Hughes-Daeth	Berwin Leighton Paisner LLP
Matthew Jones	Nabarro
Victoria Peckett	CMS Cameron McKenna LLP
Martin Potter	Canary Wharf Contractors
John Scriven	Allen & Overy LLP
Gillian Thomas	Lovells LLP
and	
Marc Hanson (Chairman)	

### 1. **Apologies for absence**

The Chairman began the meeting by reporting the apologies he had received from the following members of the Committee for their absence:

Lynne Freeman, Reed Smith  
Jenny Baster, Arup  
William Gloyn, JLT Group  
David Metzger, Clifford Chance LLP  
Stephanie Canham, Trowers & Hamlin  
Paul Hocknell, Willis  
John Woolley, Denton Wilde Sapte LLP

### 2. **Approval of Committee Terms of Business**

It was agreed that it was necessary to formalise the rules governing the operation of the Committee.

The Chairman explained that the draft Committee Terms of Business (the "**Terms of Business**"), which had been circulated to the Committee prior to the meeting, were intended to encourage members to attend meetings, and to ensure that, if persons are to sit on the Committee, they should make a positive contribution to it. It was agreed to adopt the Terms of Business with the amendments shown on the copy Terms of Business attached.

It was agreed that all current members would continue to be members of the Committee, save where two representatives of the same firm had previously been members of the Committee. In such circumstances only one member of the relevant firm would continue to sit on the Committee.

It was agreed Gillian Thomas (Hogan Lovells) would assume the role of vice-chairman of the Committee until elections are held in Summer 2011.

### 3. **Third Party Rights**

The Committee had previously made plain its support for the use of Third Party Rights ("**TPRs**"), and had submitted a paper on this subject to the CLLS Land Law Committee (the "**Land Law Committee**"). The Land Law Committee agreed with the paper but asked for it to be redrafted to be more public-facing. The intention was to use it to promote the use of TPR's to surveyors and banks. Gillian Thomas (Hogan Lovells) agreed to reissue the TPR paper.

The SCL meeting on TPRs which had taken place on 7 September 2010 was discussed. The majority of attendees at the SCL meeting had shown their support for TPRs, but this support had by no means been unanimous, and there was still a perception that there was something to be nervous of when using TPRs.

The Committee discussed the fact that there were still many organisations and individuals in the construction industry who would not be convinced as to the viability of using TPRs until case law explicitly clarified that TPRs are enforceable.

It was agreed that, going forward, the Committee should liaise with the BPF and RICS to promote TPRs.

The Committee agreed that it should offer training sessions to members of the construction industry on the role of TPRs in order to alleviate concerns regarding the use of TPRs. Victoria Peckett (CMS Cameron McKenna) was due to carry out a training talk on construction law issues for the RICS on 24<sup>th</sup> November and agreed to promote TPR's in her talk.

### 4. **Fit-out Contract Insurance Initiative**

The Chairman stated that this issue had been discussed by the Committee, the CLLS Insurance Committee and the Land Law Committee, that it had received attention in the press, and that there was now recognition that it was an important issue which needed to be addressed when fitout works by a tenant in a landlord's building were planned.

The Committee discussed whether a standard solution to the problem was required, and the question was raised whether JCT should take this into consideration in relation to its updated contracts. The Committee agreed that JCT guidance on this point would be a very good idea, and it was noted that Bill Gloyn (AON) had been asked to write something for the JCT on this.

It was agreed that the Chairman and Gillian Thomas (Hogan Lovells) would continue to take this matter forward in conjunction with the Land Law Committee.

### 5. **Training Sessions**

The Committee agreed that it would be useful to repeat the entry level training sessions last held in 2008. A date in November 2011 was considered suitable.

### 6. **EU Commission Green Paper on Contract Law**

The Chairman stated that the aim of the EU Commission Green Paper on Contract Law (the "**Paper**") was to consider whether it would be advantageous to harmonise EU contract law. The Paper was currently subject to public consultation. The Ministry of Justice has issued a "call for evidence" to inform its response to the Paper. The Committee agreed that it should make representations to both the MoJ and the EU.

The Committee discussed the options in the Paper which ranged from agreeing that there should be a full civil code harmonising contract law throughout the EU to, at the other extreme, merely publishing the findings of the consultation exercise.

It was discussed that whilst harmonisation of contracts might make sense for areas of law such as consumer protection, harmonisation was not necessary for the construction industry.

It was discussed whether it would be advantageous to have a directive which harmonised contract law across borders in relation to a few key problem areas such as limitation. However, on balance the Committee were of the opinion that harmonisation of EU contract law was unnecessary and potentially harmful to the UK given the widespread use of English law on international projects. The Committee agreed to delegate responsibility regarding responding to this Paper to a sub-committee consisting of the Chairman, Patrick Holmes (Macfarlanes), Paul Cowan (White & Case) and John Scriven (Allen & Overy).

7. **Livery Initiative**

The Chairman stated that membership of the Livery is dwindling, and encouraged members of the Committee to become Liverymen. The Chairman stated that the Livery is part of the City of London's heritage, and that there are benefits to being a Liveryman, such as being able to vote for the Lord Mayor of London and the Sheriffs of the City of London. The Chairman therefore urged the other members of the Committee to become Freemen of the Company, and subsequently to become Liverymen.

8. **Close**

There being no further business, the chairman declared the meeting closed.