

CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE

Minutes of a meeting held on 21 March 2012 at CMS Cameron McKenna, Mitre House, 160 Aldersgate Street, London EC1A 4DD

In attendance	Nick Brown (Chair) Warren Gordon (Secretary) Nick Brent John Butler Jamie Chapman Jayne Elkins Laurie Heller Nick Jones Anthony Judge Jackie Newstead Mark Rees-Jones Jeanette Shellard Peter Taylor Nicholas Vergette
Apologies	James Barnes William Boss Jeremy Brooks James Crookes Martin Elliott Alison Gowman Emma Kendall Simon Hillson Daniel McKimm John Nevin Jon Pike

1. WELCOME AND THANKS

Jamie Chapman from Ashurst LLP was welcomed as a new Committee member.

This is the last meeting of the Committee's Chair, Nick Brown. The Committee expresses its thanks to Nick for all his work for the Committee and especially in his role as Chair for

the last three years. Nick was presented with a gift in recognition of his services to the Committee.

Mark Rees-Jones is also retiring from the Committee, which expresses its thanks to Mark for his excellent contributions to the Committee's work over the years.

It is with great pleasure that the Committee announces that Jackie Newstead of Hogan Lovells LLP will become the new Chair of the Committee. Warren Gordon of Olswang LLP will continue as Secretary to the Committee.

2. MINUTES

The Minutes for the Committee meeting of 25 January 2012 were approved.

3. LAW COMMISSION TALK

The majority of the meeting was taken up with a talk from Professor Elizabeth Cooke on the Law Commission's report "Making Land Work: Easements, Covenants and Profits à Prendre".

The report makes recommendations to modernise and simplify the law relating to three interests in land – easements, covenants and profits à prendre. Quoting from a recent Ministry of Justice report, "The recommendations remove anomalies, inconsistencies and complications in the current law, saving time and money by making it more accessible and easier to use for those who rely on these interests most: homeowners, businesses, mortgage lenders and those involved in the conveyancing process. The recommendations also give new legal tools to landowners to enable them to manage better their relationships with neighbours, and to realise better the potential of their properties".

Topics discussed included the problems with freehold covenants, for example, difficulties in tracing the benefit, original covenantor liability, complex rules of enforceability and that positive covenants do not run with the land. The proposed solution lies in the new "land obligation" which, whether a negative or positive obligation, binds the owner of the burdened estate and other persons detailed in the draft Law of Property Bill.

The Committee expressed its thanks for the report and its admiration at the report's quality.

Professor Cooke encouraged the Committee and firms represented to write to the Ministry of Justice expressing support for the report's proposals and providing practical examples of why the proposals are very important (one everyday example is there will be greater clarity in the treatment of obligations relating to maintenance of shared driveways).

Post-meeting note: The need to do this was emphasised by a report from the Ministry of Justice on 22 March 2012 stating that the Government's consideration of the Law Commission's report has been delayed by work on other priorities, but it aims to give a substantive response by the anniversary of its publication, **8 June 2012**.

At the Committee meeting, there was also a discussion on the Law Commission's current project on rights to light, which was not covered in detail in "Making Land Work". Professor Cooke was made aware of the Committee's current project on rights to light and was keen to have a separate meeting with people involved in that project.

The Committee expressed their thanks to Professor Cooke and her colleague, Colin Oakley, for taking the time to speak to the Committee.

4. AOB

CLLS Land Law Committee's form of foreign legal opinion

Martin Elliott and Mark Rees-Jones have made some changes to the CLLS Land Law Committee's form of foreign legal opinion. The amended opinion was circulated to the Committee in advance of the meeting and any further comments should be provided to Warren Gordon by the end of April 2012. The amended opinion will then be added to the CLLS website. It was noted that many firms have their own form of opinion so for some users the CLLS form may be more of a checklist.

CLLS Land Law Committee's sub-group on rights to light

A meeting of the right to light sub-group took place on 16 February 2012. The sub-group was joined by two members of the CLLS planning and environmental law committee and also by a solicitor from the City Corporation. There was further discussion of the form of deed of release and what should accompany the deed- a general note or a checklist. Mention was made of a Rights of Light Disputes protocol, still in draft form, a project being led by the British Property Federation. Warren Gordon will be meeting Ian Fletcher, Director of Policy (Real Estate) at the BPF, to discuss the protocol and the Committee's right to light project.

CLLS Land Law Committee's sub-group on lease insurance clauses

This sub-group will meet on 22 March 2012 to continue their discussions on the Committee's current lease insurance clauses and also a set of lease insurance provisions kindly proffered by Laurie Heller.

CLLS Land Law Committee's Certificate of title

The drafting sub-group has received various final comments on the Certificate and will meet on 28 March 2012 to finalise the Certificate and Notes to Users.

Dangers of giving details of professional indemnity insurance

A committee member mentioned that their firm was asked to give the limit on their professional indemnity insurance in relation to the firm's provision of a Certificate of title. When querying this with their insurer, they were told that provision of information in relation to limits on the insurance cover would invalidate the insurance cover as far as this insurer was concerned. While practice with other insurers may differ, this is an important point to note.

Flood searches

In view of the expiry in June 2013 of the agreement for flood cover provision between the UK government and insurers (the ABI/government Statement of Principles), the need for a flood search is increasingly important. Failure to ensure, before contractual commitment to buy a property, that flood can be insured (and, if it can, that the premiums and excesses are reasonable and affordable) can potentially lead to major difficulties, for example, in financing the transaction. The Law Society will be issuing a practice guide on flood (as well as a revised environmental practice guide), which will provide further guidance on the approach solicitors should take to this issue.

The proposed 7th edition of the Certificate of Title in paragraph 3.3 of Schedule 1 states that the Certificate does not consider any environmental or flood assessments, audits, surveys or other reports on the environmental condition of the property and the recipient of the Certificate should consider what investigations it wishes to make in relation to those matters. This qualification reflects that such assessments are sometimes not dealt with by solicitors. If practice among solicitors changes for the types of transaction in which the Certificate is used (in the light of the Law Society guidance among other matters), this qualification may need to be re-visited.

Protocol for discharging mortgages

It was suggested that the Committee, in association with the CLLS Financial Law Committee, produce a City protocol for discharges of mortgages on completion including issues relating to the redemption money. This area causes a lot of problems in practice and it was considered that standardised, best practice in a protocol may be useful. It was also suggested that the Association of Property Bankers should be consulted. Anthony Judge, Peter Taylor, Nicholas Vergette and Warren Gordon agreed to join a sub-group on this topic. The Financial Law Committee will be contacted.

5. **CPD- 1.5 hours** (CPD reference CRI/CLLS).
6. **Dates will be circulated for Committee meetings for the remainder of 2012, to be held at Hogan Lovells LLP at Atlantic House, Holborn Viaduct, London EC1A 2FG.**