

**CITY OF LONDON LAW SOCIETY**

**LAND LAW COMMITTEE**

**Minutes of a meeting held on 18 November 2009 at CMS Cameron McKenna, Mitre House,  
160 Aldersgate Street, London EC1A 4DD**

<b>In attendance</b>	<b>Nick Brown (Chair)</b> <b>Warren Gordon (Secretary)</b> <b>Edward Bannister</b> <b>Nick Brent</b> <b>Jeremy Brooks</b> <b>Martin Elliott</b> <b>John Fordham (representing Mark Wheelhouse)</b> <b>Laurie Heller</b> <b>Simon Hillson</b> <b>Jackie Newstead</b> <b>Mark Rees-Jones</b> <b>Jeanette Shellard</b> <b>David Sinclair</b> <b>Nicholas Vergette</b> <b>Martin Wright</b>
<b>Apologies</b>	<b>James Barnes</b> <b>John Butler</b> <b>Alison Gowman</b> <b>Nick Jones</b> <b>Anthony Judge</b> <b>Daniel McKimm</b> <b>Lewis Myers</b> <b>Jon Pike</b> <b>John Trevethan</b> <b>David Waterfield</b>

**1. WELCOMES**

The Committee welcomed John Fordham who was standing in for Mark Wheelhouse for the discussion on virtual signings.

**2. MINUTES**

The Minutes for the Committee meeting of 16 September 2009 were approved.

### 3. CONCLUSIONS ON VIRTUAL SIGNING OF DEEDS AND REAL ESTATE CONTRACTS

At the September committee meeting, it was agreed that further advice would be sought from Jonathan Gaunt QC and Charles Harpum on whether there can be an intention to create multiple originals using a virtual signing. Counsel has now issued a Third Addendum to their Joint Opinion addressing that issue.

They state that there is no logical reason why different counterparts of a **deed** cannot be signed in different ways, some by virtual signing and others by way of a "wet ink" deed. However, it will be necessary for the deed to contain both a recital to that effect and a covenant by the executing party to deliver the wet ink counterpart to the other party. The counterpart will have to be executed on or before the date of the deed. Counsel emphasised the need for there to be a mechanism for compelling each party to execute and deliver a wet ink counterpart to ensure that the deed can be registered at the Land Registry.

The Committee notes the observation of Counsel that if the absent party fails to execute and submit a counterpart with a wet ink signature, it might, in practice, be easier to obtain a court order directing the Land Registrar to register the deed on the basis of the pdf signature, than to try to enforce the party's obligation to provide the counterpart with a wet ink signature.

This observation highlights why the Committee believes some caution should be exercised if a virtual signing is to be used for a deed that requires registration at the Land Registry. The parties are likely not to want the hassle of potentially having to obtain a court order to allow a deed to be registered. It will be for each firm to decide whether to incorporate the additional recital and undertaking/covenant suggested by Counsel.

Counsel also considered whether, if there is an appropriate protocol agreed in advance (covering, for example, how and when exchange occurs), it would be possible for some parts of a **land contract** (to which section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 applies) to be signed by way of a wet ink signature and some by virtual signature. Counsel saw no reason, in principle, why an exchange of contracts should not be effected in this way. There is no reason why all the signatures have to be either wet ink or virtual.

There were no current proposals to change standard documentation to take account of virtual signings, although the production of a standard protocol to ensure consistency of approach to virtual signings may be of use. The Chair will discuss this with the Chairs of other CLLS committees and report back. Certain firms represented on the Committee had produced their own protocols.

The "Joint Working Party" has made some minor alterations to their note on virtual signings- it is no longer "guidance". The Law Society has also produced a practice note on "execution of documents at virtual signings or closings". The Committee had a couple of small changes to the practice note and Warren Gordon would revert to Louise Speke

of the Law Society suggesting their incorporation. **[POST MEETING NOTE- THESE CHANGES HAVE BEEN INCORPORATED.]**

Companies House (CH) has recently announced a change of policy on document signatures. CH will accept in good faith that documents presented for filing which have automatically generated signatures have been properly approved by the signatory. Documents will no longer be rejected simply because the signature does not appear to be original. This change of policy does not extend to accepting documents by fax.

The Land Registry has not yet followed Companies House's lead in their approach to signings.

The Chair will revert to the Committee with details of the arrangements for payment of Counsel's costs.

Consideration would also be given as to whether an article on virtual signings for Estates Gazette should be produced by members of the Committee.

**In conclusion, documents can be virtually signed effectively in accordance with the Joint Working Party note and Law Society Practice Note, but the Committee has reservations about the virtual signing process in relation to documents requiring registration at the Land Registry and, for that situation, the parties should arrange where possible for wet ink signatures to be readily available.**

#### **4. UPDATE ON CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 ("TPR")**

There have been no further developments on the framework document for warranties/using TPR on development transactions awaited from the CLLS construction law committee. This will be chased up.

#### **5. CLLS SERVICE CHARGE CLAUSES**

The sub-group has agreed a draft set of service charge provisions and these were distributed at the meeting (and will be emailed subsequently to the Committee for those absent from the meeting). Warren Gordon will send the provisions to representatives of the two main PSL groups seeking one set of comments from each group.

The Committee was asked to provide any comments on the provisions by Friday, 18 December so that the sub-group has the time to consider them before the next Committee meeting on 13 January 2010, at which it was hoped there could be an informed discussion on the provisions.

The Committee considered that alienation provisions would be a suitable next project- a sub-group will be formed in due course.

#### **6. CRC ENERGY EFFICIENCY SCHEME**

The working party behind the BPF Guide on CRC is apparently to issue, very shortly, a consultation paper on possible drafting for the CRC Energy Efficiency Scheme, for

example, relating to the apportionment of the landlord's costs in respect of CRC among its tenants. The Committee will consider the drafting once it is released.

PLC has also issued some possible CPSE-type enquiries on CRC, which are on the PLC website for comment.

## **7. AOB**

- Certain large landlords refuse to include in their insurance their tenant's contractors in respect of fitting out or other works. This creates an exposure for the contractor, with the landlord refusing to seek from its insurer a waiver of subrogation rights against the contractor. A sub-group of the Committee will look further into this issue, liaising with the CLLS Construction Law committee.
- There was a brief discussion over whether there was a need for a CLLS form of rent deposit deed where the deposit was held by a stakeholder (such as a managing agent). The Committee concluded that such an arrangement was now not that common and did not justify a CLLS document.
- Mention was made of Land Securities' new form of retail lease, which is more tenant-friendly with the intention of speeding up the letting process.
- The DCLG has also published on their website certain leases, drafted by Denton Wilde Sapte on behalf of the Government, for use in relation to the temporary occupation of empty town centre retail premises by non-commercial occupiers such as charities. The leases are entitled "Meanwhile Use Leases".
- Important changes have been made to the rule against perpetuities pursuant to the Perpetuities and Accumulations Act 2009, the key provisions of which have yet to come into force. The rule will not apply to most property related documents taking effect on or after the date the provisions come into force.

## **8. CPD- 1 hour.**

## **9. Meetings for 2010 at 12.30pm: 24 March, 19 May, 14 July, 8 September, 17 November. 24 March at Allen & Overy, One Bishops Square, London, E1 6AD. All the rest at CMS Cameron McKenna, Mitre House, 160 Aldersgate Street, London EC1A 4DD.**