

CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE

**Minutes of a meeting held on 23 January 2014 at Hogan Lovells, Atlantic House, 50
Holborn Viaduct, London EC1A 2FG**

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

1. MINUTES

The Minutes for the Committee meeting of 20 November 2013 were approved and are on the CLLS website.

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

The Protocol has been added to the Committee's page of the CLLS website. The Association of Property Lenders will be asked to add a link to the Protocol on their website. Anthony Judge has kindly written an Estates Gazette article on the Protocol. The Committee thanked Anthony in particular for his work on this project. The Committee was asked to obtain feedback on the Protocol and there will be a discussion at the May 2014 meeting on initial experiences with the Protocol.

3. **LEASE INSURANCE CLAUSES PROJECT**

The insurance clauses for a rack rent commercial lease produced by the Committee's sub-group are now in final form and will be added to the Committee's page of the CLLS website. Many thanks in particular to Nick Brent and Laurie Heller, as well as Bill Gloyn and Ray Robinson, for their work on these clauses.

4. **PRE-PACKS PROJECT**

The British Property Federation's proposed survey on pre-packs (administration) was sent to the Committee for its comments and any feedback should be provided to the Chair. The *Game* decision is awaited shortly and this may impact on the type of questions that will be asked of the BPF's members.

5. **CERTIFICATE OF TITLE**

The Committee decided for the time being not to pursue a possible project with the CLLS Construction Law committee to produce an annex to the certificate of title for construction documentation.

The Committee remains keen on producing a standard form overlay or wrapper for the certificate. The Clifford Chance wrapper was considered to be a sensible starting point. This would be considered at the meeting on 27 January of the Committee sub-group tasked with producing the wrapper. The sub-group comprises Daniel McKimm, Peter Taylor, Mike Edwards, John Nevin, Jeanette Shellard, Nicholas Vergette and Warren Gordon.

There was a discussion about the purpose of the wrapper. It was considered that the primary purpose was to provide comfort to the recipient of the wrapper that it will not be prejudiced by relying on the report on title to which the wrapper relates. The recipient would have received nothing more if it had the benefit of the certificate itself. The point was made that the relevant "Company" would still have to give the relevant confirmations for the purposes of the wrapper.

The discussion broadened out into how the certificate could be improved from a valuation perspective. It was acknowledged that the certificate was not ideal as a management tool, but the banks still insisted on the use of the certificate. This is perhaps where a wrapper may be helpful taking as the starting point a report that could be used for

management purposes and using the wrapper, in effect, to turn the report into the certificate which will assure the banks.

The certificate-related issues discussed included:

- Dealing with more than one addressee, a commonly encountered scenario;
- The certificate in the context of deal rooms and the impact of having seen documents in a deal room on the ability to rely on the certificate;
- Increasing requests for certifying firm to produce PI information. Query whether such disclosure impacts on the validity of the cover;
- The way the certificate caters for corporate (share) sales and disclosure by the “Company”. It was considered that the certificate does not comfortably cater for such a transaction and in a future edition of the certificate or as a separate project the current clause 4 should be reviewed to ascertain how it can better cater for a sale of shares in the Company that would normally give the confirmations, but of course the buyer of the shares will not be suing the Company that it has just acquired;
- The possibility of attaching plans as an appendix or annexe.

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

The drafting for the Community infrastructure levy considered at the meeting was thought to be helpful. A 1-2 page explanatory note will be added and the drafting will be added to the Committee’s page on the CLLS website in due course. The Chair of the CLLS Planning and Environmental Law committee will be sent the drafting and note.

On the subject of documents on the CLLS website, Robert was asked to ascertain whether the disclaimer against liability could be made more prominent on each page.

7. **CONSULTATION ON EXTENSION OF LAND REGISTRY POWERS TO COVER LOCAL LAND CHARGES** - <https://www.gov.uk/government/consultations/land-registry-wider-powers-and-local-land-charges>

The Committee was concerned about the impact on resourcing at the Land Registry of it having to take on the local land charges function when its resourcing is already stretched. Will it save any time for the public and professionals when the CON29 forms still need to be dealt with by local authorities? Will the interaction between the Land Registry and relevant local authority simply add further administration and increase the chance of error?

8. **AOB**

The Committee was reminded that the more tenant-friendly commercial rent arrears recovery (replacement for distress) launches 6 April 2014.

There was a brief discussion of the Land Registry's e-DRS system and the fact that the fees will be considerably cheaper through e-DRS for relevant applications from 17 March 2014. Consideration should also be given to risks involved with the required certification aspect of the e-DRS process, for example, that a scanned copy is a true and exact copy of the original.

There are a number of membership vacancies and positions will be advertised in accordance with CLLS procedures.

9. **CPD - 1.5 hours** (CPD reference CRI/CLLS).
10. **FUTURE COMMITTEE MEETINGS** - 19 March, 21 May, 9 July, 17 September and 26 November 2014, all at 12.30pm at Hogan Lovells LLP, Atlantic House, Holborn Viaduct, London EC1A 2FG.