

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

**Minutes of a meeting held on 26 November 2014 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>James Barnes</b> <b>Nick Brent</b> <b>Jeremy Brooks</b> <b>Jamie Chapman</b> <b>Jayne Elkins</b> <b>Martin Elliott</b> <b>Laurie Heller</b> <b>Nick Jones</b> <b>Anthony Judge</b> <b>Jon Pike</b> <b>Peter Taylor</b> <b>Nicholas Vergette</b> <b>Edward Benzecry and Dion Panambalana (external visitors for item 3 on Model Commercial Leases)</b>
<b>Apologies</b>	<b>William Boss</b> <b>James Crookes</b> <b>Mike Edwards</b> <b>Alison Gowman</b> <b>Alison Hardy</b> <b>David Hawkins</b> <b>Charles Horsfield</b> <b>Pranai Karia</b> <b>Emma Kendall</b> <b>Daniel McKimm</b> <b>John Nevin</b> <b>Ian Waring</b>

**1. WELCOME**

The Committee welcomed Edward Benzecry and Dion Panambalana who will present on the item on the Model Commercial Leases.

## 2. **MINUTES**

The minutes of the September 2014 Committee meeting were approved and are on the Land Law committee webpage.

## 3. **MODEL COMMERCIAL LEASES**

The Committee was joined by Edward Benzecry of CMS Cameron McKenna and Dion Panambalana of Hogan Lovells (members of the drafting committee) to discuss the Model Commercial Leases.

A number of firms are adopting the Model Commercial Leases to varying degrees. CMS Cameron McKenna, Hogan Lovells, Eversheds and Brechers are all adopting the leases subject to a few tweaks. The first three firms had representatives actively involved in drafting the leases. Land Securities has adopted the leases for most parts of their business other than Central London offices and shopping centres. Land Securities' "Clearlet" lease was the starting point for the leases. There will be certain constraints on adoption of the leases such as statutory lease renewals restricting the form of lease. Especially with shopping centres there is likely to be a form or forms of lease for the centre and this will inhibit introducing a new form. A new asset or a new situation will be the most appropriate occasion to introduce the new leases.

It is the intention of the drafting committee to maintain the leases and other ancillary documents on the website <http://modelcommerciallease.co.uk/> and introduce appropriate resourcing to meet that need.

Tenants and the British Retail Consortium have been positive about the new leases. While they are drafted in a sufficiently landlord-friendly way to make the leases institutional, it is important to have tenant traction and the drafts are, therefore, more balanced with the removal of most of the more obvious landlord-friendly points. This is to avoid pointless arguments and accustom users to a more balanced position that enables quicker agreement but at the same time does not harm either party.

Conscious of this, the drafting committee compared the leases against the relevant statements in the CLLS Certificate of title to ensure consistency with the standard statements for occupational lease provisions.

The Committee considered that the leases are mostly likely to succeed in the office context.

There is also an educational application in terms of enlightening and convincing lawyers and their clients that certain age-old points can be conceded with no particular detriment to the landlord, with the added advantage of concluding the deal more speedily.

It was agreed to invite Edward and Dion to a Committee meeting in a year's time for an update on progress with the leases.

There is likely to be a project led by the Law Society to create a short form lease (including rent review provisions) based on the Model Commercial Lease for a low rent letting of part of an office building and also of a shop.

There is also a possible project involving the Law Society and the PSL community to create a short form set of pre-contract enquiries based on the CPSEs.

#### **4. GREEN LEASES**

Anthony Judge sits on the British Property Federation's Sustainability Committee, which has been discussing current industry approaches to Green lease drafting. Is standard green lease wording being incorporated automatically or is it an optional extra? The Model Commercial Leases have a Sustainability schedule and the Better Buildings Partnership's green lease toolkit also offers detailed drafting. A Memorandum of Understanding offers a more flexible approach.

The Committee considered that the property industry's appetite generally for incorporation of green lease provisions was limited to the light green variety and they possibly should be dealt with outside the lease by a Memorandum of Understanding. There was no desire among Committee members to incorporate more detailed (dark green lease) provisions, whether automatically or as an option.

#### **5. CERTIFICATE OF TITLE WRAPPER DOCUMENT**

This has been favourably received on transactions – a success story for the Committee.

#### **6. LIMITING CERTIFICATE OF TITLE TO EXCLUDE CONFIRMATION ON UNREGISTERED CHARGES, MORTGAGES OR LIENS**

While Peter Taylor mentioned that one certifying firm sought to exclude such a confirmation, this was not a common exclusion – no members round the table had sought to exclude this.

#### **7. WAYLEAVES**

There will be a meeting of the Wayleave agreements sub-group, hopefully, in January 2015, to which at least one operator representative has been invited. Jeremy Brooks and Nick Brent kindly agreed to join the sub-group.

Mention was made of the frequent impasse between landlords and operators over the landlords' requirement for the indemnity from the operator to extend to indirect loss, particularly in the realm of loss of profits and adverse impact on the business of tenants from damage caused by the apparatus. Operators will often refuse to give such an indemnity, because they cannot cover off their exposure through insurance. It is often the party who actually wants the apparatus such as the tenant who is caught in the middle. As always, much depends on the strength of the negotiating positions of the landlord and operator.

Operators will sometimes want to enter into the wayleave with the landlord rather than individual tenants. Some landlords see a request for a wayleave as an opportunity to generate some funds.

There was also the issue about whether a wayleave or lease should be used to document the installation – much depends on the nature of the apparatus. The Wayleave agreements sub-group is likely to focus on producing documentation more frequently encountered in relation to equipment on City buildings and leases tend to be more often used.

**8. CERTIFYING OF DOCUMENTS FOR LAND REGISTRY'S E-DRS**

For the purposes of certifying scanned documents for submission under the Land Registry's electronic submission system (e-DRS), a reminder that the certificate as a true copy has to be based on a wet ink signed original, not a virtually signed one. This was because of the requirements in the land registration legislation. This could cause problems if there is only a virtually signed and no wet ink document – this is unlikely to be the case with dispositions as opposed to contracts. It was agreed that the Law Commission should be asked to consider the issue of the Land Registry's requirement for wet ink signatures, as part of its forthcoming project on the Land Registration Act 2002.

It was suggested that Professor Elizabeth Cooke of the Law Commission be invited to a Committee meeting in early 2015.

**9. REGISTRATION OF DEEDS OF RELEASE OF RIGHTS TO LIGHT AT THE LAND REGISTRY**

Correspondence with the Land Registry has revealed that they will make an entry in the property register of the title benefiting from a prescriptive right of light where that right has been released. The entry will state "A Deed dated xxxxx made between xxxxxxxxxxxxxxxxxxxxxx contains a release in respect of rights of light as therein mentioned. NOTE:-Copy filed." There does not appear to be scope to register against the burdened title. Perhaps another point for the Law Commission?

**10. NEW EDITION OF LAW SOCIETY'S STANDARD COMMERCIAL CONDITIONS OF SALE**

Mention was made of a new 3rd edition of the Standard Commercial Property Sale Conditions and some of the key changes, which are subject to Oyez's sign-off. There is no agreed launch date as of yet.

**11. CARRYING OUT OF COMPANIES COURT SEARCHES**

While some firms round the table carried out Companies Court searches on purchases and loans, it was not a universal practice. Some considered that the information revealed was important because of the potential impact on subsequent transactions.

**12. PROTOCOL FOR APPLYING FOR CONSENTS TO ASSIGN/SUB-LET**  
**[HTTP://WWW.PROPERTYPROTOCOLS.CO.UK](http://www.propertyprotocols.co.uk)**

If this is taken up by the property industry, it may become evidence of when a landlord unreasonably withholds consent to assignment or sub-lease. It was agreed that Mathew Ditchburn of Hogan Lovells, an author of the Protocol, would be invited to a Committee meeting in 2015.

**13. AOB**

A brief discussion took place over mortgagee protection provisions in leases and this will be discussed at greater length at a future meeting.

**14. CPD - 1 HOUR 15 MINUTES NB: CPD REFERENCE IS CRI/CLLS.**

**15. 2015 COMMITTEE MEETING DATES - 28 JANUARY, 25 MARCH, 20 MAY, 8 JULY, 30 SEPTEMBER AND 25 NOVEMBER. ALL AT 12.30PM AT HOGAN LOVELLS LLP, ATLANTIC HOUSE, HOLBORN VIADUCT, LONDON EC1A 2FG.**