

CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE

Minutes of a meeting held on 13 May 2015 at Hogan Lovells, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG

In attendance	Jackie Newstead (Chair) Warren Gordon (Secretary) James Barnes Nick Brent Jamie Chapman Mike Edwards Jayne Elkins Martin Elliott David Hawkins Laurie Heller Anthony Judge John Nevin Jon Pike Sangita Unadkat Nicholas Vergette Ian Waring Sarah Dawe and Kieran Wilson from the Law Commission
Apologies	James Crookes Alison Gowman Alison Hardy Charles Horsfield Nick Jones Pranai Karia Emma Kendall Daniel McKimm Darren Rogers Peter Taylor

1. WELCOME

Welcome to our new member Sangita Unadkat from Trowers & Hamlins.

2. MINUTES

The minutes of the March 2015 Committee meeting were approved and are on the Land Law committee webpage.

3. LAW COMMISSION PROJECT TO CONSIDER THE LAND REGISTRATION ACT 2002

The Committee would like to thank Sarah Dawe and Kieran Wilson from the Law Commission for attending the meeting to discuss the Law Commission's project to consider changes to the Land Registration Act 2002. There was an extremely helpful discussion, which included the items set out below. The Law Commission does not want to reinvent the wheel, but some major changes may be needed to the legislation to address matters that are not working well or as envisaged. Practice concerns may be outside the Law Commission's remit.

The Law Commission asked for any suggestions for reforming the Land Registration Act 2002 and Land Registration Rules 2003 to be emailed to them at propertyandtrust@lawcommission.gsi.gov.uk. The Law Commission plans to issue a consultation paper in Spring 2016 with the Report on the project and a draft Bill to follow at the end of 2017. The Committee will respond formally to the consultation and it was suggested that the Committee meet again with the Law Commission following the publication of the consultation.

Suggested areas for Law Commission's consideration include –

- Mines and minerals; discontinuous leases; registration of variations of registrable leases.
- E-conveyancing – the Law Commission explained that it was currently not clear the extent to which this would form part of the project. Mention was made of the increasing usage of virtual signatures for execution of documents especially by overseas parties and that the Land Registry's practice (based on what the legislation currently permits) of insisting on a wet ink signature now appears a little out of date and restrictive. The Law Commission was not convinced that this was the right project to examine e-signatures, which have a much wider context beyond conveyancing. There are also fraud concerns around virtual signatures.
- Mistake/rectification/indemnity. Impact of recent "Swift" decision and the right for the registered proprietor to have a registered forged charge set aside, which took effect as an overriding interest based on the registered proprietor's occupation of the property at the time that the charge was created. Should there always be an opportunity to unravel registrations through rectification, or should a stricter line be drawn to provide greater certainty to the registered title? Should there be an opportunity to remove an entry from the registered title, because it had not been properly protected when the land was unregistered?
- Concerns about general boundaries on plans, which links in to concerns about mines and minerals and ownership of sub-strata. Problems with the way lease

extents (where part of a building) are now not shown on title plans – just stated to be within the building edged red (or words to that effect). The Committee expressed concern that this was an example of the Land Registry taking less responsibility for information and exposing solicitors to potentially greater liability.

- Priorities – protection of option or pre-emptions against overriding interests. Need for “valuable consideration”. Protection of donees.
- Use of unilateral notices to protect manorial rights and chancel repair. Is this the appropriate form of protection? Should agreed notices be used instead? The Committee was sympathetic to the latter suggestion.
- Should easements be registrable if contained in leases that are themselves not registrable? The Committee supported the easements not being registrable in those circumstances.
- Should there be an ability to revive an overriding interest if such interest was protected on and then removed from the register?
- Should the principle from *Wall v Collins* be enshrined in statute?
- Peculiar consequence of enlargement giving rise to a property having two freeholds.
- Greater consistency with approach to exempt information document applications and what is hidden.
- Cleaning up titles – making it easier to remove leases noted on landlord’s title when the leases are clearly no longer applicable.
- Delays in the Land Registry processing applications, leading to problems because of the registration gap. Could there be a statutory recognition of an ability to deal while a buyer’s registration is being processed?
- Problems with the “Early completion” procedure.
- Strict approach in relation to non-standard forms of restriction.
- Problems with registering as a legal interest an easement over a specified area (shown, for example, by colouring) where the route of the easement can be shifted by the owner of the servient tenement to a new route, for example, in the event of development (a “lift and shift” provision).
- Evidence of identity requirements for attorneys causes problems.

4. **NEW DRAFT ELECTRONIC COMMUNICATIONS CODE – LATEST POSITION. UPDATE ON WAYLEAVE PROJECT AND INDUSTRY INTEREST**

The Committee has responded to the consultation on the new Electronic Communications Code and the response can be found on the Land Law Committee's webpage

<http://www.citysolicitors.org.uk/attachments/article/114/Response%20to%20consultation%20on%20new%20Electronic%20Communications%20Code.pdf>

There is an on-going Committee project to produce a standard wayleave agreement and a further meeting is due to be set up.

Warren Gordon has been contacted by Philip Saunders of the City of London Corporation, who mentioned what appears to be a significant project to facilitate the roll-out of broadband infrastructure. The project involves a number of stakeholders including the City of London Corporation, the Government, British Standards Institute, Camden and Westminster councils, operators and institutions. The project would like to use the wayleave agreement that the Committee's sub-group will be producing as a key document in the project.

Philip has agreed to provide further details as to how the Corporation wishes to move this forward, but this appears, potentially, to be a very exciting project for the CLLS. Philip's email will determine the nature of the meeting that is arranged on the wayleave agreement.

5. **DEVELOPMENT MANAGEMENT AGREEMENT PROJECT**

The Committee's project to produce a standard asset and development management agreement progresses smoothly. The latest version was provided to the Committee and comments sought within the next couple of weeks so that the document can be finalised. Once the document is agreed, the sub-group may consider also producing a short form version of the agreement. There are no current plans to produce a self-contained asset or property management agreement.

6. **PROTOCOL FOR DISCHARGING MORTGAGES OF COMMERCIAL PROPERTY**

Committee members were asked to encourage real estate and finance colleagues at their firms and lender clients to use the Protocol for discharging mortgages of commercial property. The Protocol is balanced and will assist with transactions, so the infrequent hits on the Protocol on the CLLS website are disappointing. The major obstacle to take-up is certain banks whose discharge arrangements are more complex than that envisaged by the Protocol. An approach will be made to the Association of Property Lenders, who endorsed the Protocol, asking them to remind their members about the Protocol and encourage its use.

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

8. **REMAINING 2015 COMMITTEE MEETING DATES**

8 July, 30 September and 25 November - All at 12.30pm at Hogan Lovells LLP, Atlantic House, Holborn Viaduct, London EC1A 2FG.