

CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE

Minutes of a meeting held on 30 September 2015 at Hogan Lovells, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG

In attendance	Warren Gordon (Secretary and Acting Chair for meeting) Jamie Chapman Caroline DeLaney Martin Elliott Alison Hardy Kevin Hart David Hawkins Nick Jones Anthony Judge Pranai Karia Jon Pike Darren Rogers Sangita Unadkat Nicholas Vergette
Apologies	Jackie Newstead (Chair) James Barnes Nick Brent James Crookes Bruce Dear Mike Edwards Jayne Elkins Alison Gowman Laurie Heller Charles Horsfield Emma Kendall Daniel McKimm John Nevin Peter Taylor Ian Waring

1. **WELCOME**

The Committee welcomed Caroline DeLaney to her first meeting.

2. **MINUTES**

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

3. **HITS ON COMMITTEE'S WEBPAGE**

The stats for visits to pages of the CLLS website kindly provided by Kevin Hart of the CLLS are extremely encouraging. There were 5,452 hits to the Certificate of title and related documents in the period 1 January – 3 August 2015. Kevin will continue to monitor and report back a couple of times a year. Kevin will also ascertain hits on the short form Report on title.

4. **IMPACT OF ORIENTFIELD DECISION**

The Committee decided that no changes need to be made to the Certificate of title in the light of the decision in Orientfield Holdings v Bird & Bird (solicitor negligence in relation to non-reporting of wide-ranging planning search result). The Law Society is considering whether any guidance is necessary following that case.

5. **FINAL SIGN-OFF OF SUB-GROUP'S DEVELOPMENT MANAGEMENT AGREEMENT**

The Committee approved the attached asset and development management agreement and this will be added to the CLLS website. Thanks in particular to Laurie Heller for all of his work on the agreement.

6. **IMPLICATIONS OF THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS**

The Committee noted the implications of the Consumer Protection from Unfair Trading Regulations, which have affected "immoveable property" since 1 October 2014. The Regulations potentially extend the duties of a trader (or a solicitor on their behalf) when dealing with a consumer. This particularly arises in the context of replies to enquiries on sales or lettings to consumers.

"Misleading actions" or "misleading omissions" (as defined in the Regulations) are potentially an offence with possible criminal sanctions. For solicitors, there is a risk of a conflict between the need to disclose under the Regulations and the duty of confidentiality to the client. If the client refuses disclosure, the solicitor may have to cease acting. The Committee agreed that the profession should remain keenly aware of the extra requirements under the Regulations in a trader/consumer context.

7. **INITIAL COMMENTS ON WAYLEAVE PROJECT AND DIGITAL INFRASTRUCTURE WAYLEAVE AGREEMENT**

The Committee was reminded of the background to the production of the digital infrastructure wayleave agreement, the current form of which was included in the papers for the meeting. This is a very prestigious project for the CLLS. British Standards Institute who is running the project is currently seeking comments on the agreement from invited respondents representing operators and property owners among others.

A sub-group of the Committee will meet on 15 October 2015 to discuss the comments and Committee members were requested to send through any comments that they may have on the agreement before then. There will be a steering group meeting of interested parties on 26 October 2015 to discuss the agreement.

8. **LAW SOCIETY PRACTICE NOTE ON FRAUD SCAMS**

The Committee noted the Law Society's new practice note on fraud scams included in the papers. The Committee is generally supportive of the note and compliance teams in member firms appear generally aware of it. The general feeling was that the compliance teams were perhaps better placed to comment on the detail. One member noted that his firm requires paper authority for payments to reduce the chances of fraud.

9. **SECURED TRANSACTIONS REFORM**

The Committee noted the project of the CLLS Financial Law committee in relation to Secured Transactions. A discussion paper produced by the CLLS Financial Law committee was included in the papers. There was admiration for the ambition of the project although some concern at the possible impact on property related legislation. The Committee requested Kevin to liaise with Dorothy Livingston (Chairman of the Financial Law committee) to ensure that the Committee has representation in any discussions impacting on real estate.

10. **THE CASE OF FCA V CAPITAL ALTERNATIVES LTD**

There was a brief discussion of FCA v Capital Alternatives. The Committee's initial view was that the decision appeared a little too fact specific to apply to particular property arrangements. The decision did, however, reiterate general concerns about being alert to the possibility of a collective investment scheme arising where there is more than one investor and depending on the nature of the management of the relevant property.

11. **FURTHER THOUGHTS ON COMMITTEE'S PROTOCOL FOR DISCHARGING MORTGAGES OF COMMERCIAL PROPERTY**

The Committee discussed ways to continue to promote the Committee's Protocol for discharging mortgages of commercial property. It will be helpful to understand where there is reluctance among lawyers to adopt the Protocol and Warren Gordon will email the main PSL groups to seek to ascertain any concerns about the Protocol.

12. **ELECTRONIC SIGNATURES**

Martin Elliott mentioned some developments around electronic signatures particularly among finance lawyers and the Committee should participate in any discussions on this topic among CLLS committees.

13. **REVIEW OF CERTIFICATE OF TITLE**

The Committee agreed to review its Certificate of title in 2016, not a wholesale revamp, but just making improvements highlighted by users since the launch of the 7th edition. Following the precedent set by the 6th edition, this will be an updated version of the 7th edition i.e. 7th edition (2016 update). If any Committee member has any comments, please send them to Warren for the review that will begin in early 2016.

14. **COMPANY COURT SEARCHES**

There was a discussion about the necessity to do a Company Court search – not everybody does this, but it can reveal important information. In its review of the Certificate, the Committee will consider whether to add this search to the Schedule of searches.

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

16. **REMAINING 2015 COMMITTEE MEETING DATE - 25 NOVEMBER AT 12.30PM AT HOGAN LOVELLS LLP, ATLANTIC HOUSE, HOLBORN VIADUCT, LONDON EC1A 2FG.**