

CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE

Minutes of a meeting held on 30 March 2016 at Hogan Lovells, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG

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

1. WELCOME

Welcome to Tom Pedder from Macfarlanes who was attending his first meeting.

2. **MINUTES**

The minutes for the January 2016 meeting were approved and will be added to the CLLS website.

3. **DISCUSSION WITH PAUL BAGUST, DIRECTOR OF POLICY FOR COMMERCIAL PROPERTY AT RICS**

Paul Bagust, Director, Commercial Property professional Group at the RICS, was welcomed to the meeting.

Paul outlined some of the key areas on which the RICS was focused and particularly in relation to commercial property.

RICS was developing professional content for commercial property. There is a focus on international standards in three areas in particular. Measurement standards with the new mandatory international measurement standards for offices and a consultation taking place on when to introduce the change for residential properties. This is referred to again later in these minutes. The second area is in relation to international valuation standards and the "Red Book" (which for example includes the definition of "market value"). This is a more developed valuation standard and is constantly reviewed. The Committee suggested that the valuations standards should be made available for free which would make it more likely solicitors would have a copy.

The third international standard priority is a global consultation around ethics <http://www.rics.org/uk/the-profession/how-you-can-contribute/consultation-listing/standards-consultations/international-ethics-standards/>. There is also a separate consultation on conflicts of interest. Paul will send through a link to the consultation. Generally, there is an emphasis on beefing up standards and regulations.

The service charge code for commercial property will be revised in the next 12 months. This will entail a consolidation of papers, looking at management fees, environmental apportionment, accounting procedures and the tax treatment of sinking funds. Consideration will be given to making parts of the service charge code mandatory for surveyors. These changes would likely require an update to the Committee's standard service charge clauses for office and retail.

The RICS is also looking at anti-money laundering, agency standards and small business activities.

There is a project kicking off in April 2016 to update the Code for Leasing Business Premises. Currently, the RICS, BPF and Law Society are involved. Government does not appear that interested (with the other issues currently capturing its attention) but are happy to support the property industry self regulate. The Land Law Committee will put forward a representative for the Code discussions.

There was a discussion about the effectiveness of the current Code. It was considered that it had influenced behaviour and was a yardstick - only asking for authorised

guarantee agreement if reasonably required; in relation to the operation and content of break rights (broadly, the pre-condition is payment of principal rent and there is a nervousness about vacant possession - ensuring there is nobody physically in occupation is clearer); greater preponderance of uninsured damage provisions.

While both the Code and the service charge code are matters of best practice for surveyors, consideration is being given to making certain elements mandatory for surveyors. This would be particularly around ethics, transparency and fairness.

The Committee expressed concern about making the Code mandatory. While it may be mandatory for there to be a process to notify the other side if there is a departure from the Code, making it mandatory only to require an AGA if reasonable would not be acceptable to many landlords. What is fair is also subjective which makes mandating parts of the Code problematic.

The RICS is also involved in the standard fixed line wayleave agreement of which the Committee is well aware.

More specifically on the introduction of the new measurement standards for offices, Paul acknowledged that it will take a number of years for them to be embedded. The RICS is fairly flexible at this stage about use of the new standard. The Committee suggests that solicitors should consider updating references to the measurement standards in their precedents and also consider with their clients whether it is appropriate to use the new standards on transactions. Differences between the old and new standards may impact on the rent payable.

4. UPDATE ON WAYLEAVE PROJECT AND DIGITAL INFRASTRUCTURE WAYLEAVE AGREEMENT

Warren Gordon updated the Committee on the wayleave project and digital infrastructure wayleave agreement, being led by Central London Forward and the BSI. A further meeting of the operators and property owners was hosted at Guildhall on 21 March 2016 and good progress was made on trying to agree the remaining points on the wayleave. The operators are to produce a marked up copy of the wayleave over the next couple of weeks for the wider group's deliberations.

5. UPDATE ON PROGRESS WITH REVISIONS TO 7TH EDITION OF CERTIFICATE OF TITLE

There was an update on progress with the project to revise the 7th edition of the Certificate of title. Members of the sub-group have had a preliminary meeting and thanks to Bruce Dear, James Barnes and Peter Taylor in particular for providing comments. The next drafting meeting will take place on 11 April 2016. The project is merely to update and tweak the 7th edition, so it will be a 2016 update of the 7th edition rather than a new 8th edition. The Committee will consider producing an 8th edition no earlier than 2018. Once the sub-group has concluded its project to update the 7th edition, it will turn its attention to the Committee's short form report on title, which has proven to be a popular document.

6. **NOTE FOR WEBSITE ON THE FACTORS THAT COULD INDICATE A PROPERTY FRAUD AND SHOULD MAKE A CONVEYANCER SUSPICIOUS AND SOME PRACTICAL SUGGESTIONS: JAYNE ELKINS**

Jayne Elkins talked about the possibility of producing a note for the Committee's webpage on the factors that could indicate a property fraud and should make a conveyancer suspicious and some practical suggestions. Jayne will produce an initial draft which can be discussed at the next meeting in May.

7. **MARKS & SPENCERS CASE – SUPREME COURT DECISION ON WHETHER TENANT ENTITLED TO A RENT REFUND FOLLOWING SUCCESSFUL EXERCISE OF TENANT'S BREAK**

The Committee was reminded of the important recent Supreme Court decision Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Limited from December 2015. The case concerned whether a tenant was entitled to a rent refund following successful exercise of tenant's break. The key consequence of the decision is that if a tenant successfully breaks its lease, the landlord will usually not be obliged to refund to the tenant any advance rent paid for the period after the date that the lease terminates, unless the lease expressly requires the landlord to make the refund. Draftsmen should take note.

8. **SDLT POINTS TO NOTE**

Warren Gordon mentioned a few points on SDLT. The Committee will be aware of the Budget's changes on the SDLT rates for commercial property and the adoption of a slice rather than slab approach. The Budget also provided further detail on the extra 3% SDLT for additional residential properties. HMRC proposes to reduce the filing period for SDLT returns from 30 to 14 days. This may cause issues with more complex submissions where some consider the 30 day period necessary. There will shortly be a consultation on this.

Important point – there is no guarantee that the SDLT Manual is up to date. Currently, HMRC is struggling with the resourcing to keep it updated. It has been suggested that HMRC flag the sections that are seriously out of date. HMRC should not be able to penalise the taxpayer for relying on an out of date Manual.

At a recent meeting with HMRC, it was mentioned that there is the possibility of HMRC requiring payment before an SDLT5 certificate will be issued, a change from the current position. There is also the possibility of HMRC mandating electronic payment (thereby not allowing cheques). These suggestions appear to be at an early stage and there needs to be full discussions around these issues which have important implications.

Attempts are still being made to encourage the Valuation Office (VOA) to reduce the length of the SDLT returns, particularly in relation to occupational lease information. The VOA say they are still keen to move this forward but they have resourcing limitations. We will continue to press for change here.

9. **CPD – 1 HOUR 15 MINUTES: CPD REFERENCE IS CRI/CLLS.**

10. **MEETING DATES**

Remaining 2016 Committee meeting dates – 25 May, 13 July, 28 September and 23 November, all at 12.30pm at Hogan Lovells LLP, Atlantic House, Holborn Viaduct, London EC1A 2FG.