

CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE

Minutes of a meeting held on 17 May 2017 at Hogan Lovells, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG

In attendance	Jackie Newstead (Chair) Warren Gordon (Secretary) Jon Bowey from RICS Nick Brent Jeremy Brooks Caroline DeLaney Martin Elliott Alison Hardy David Hawkins Laurie Heller Victoria Hills Pranai Karia Nick Jones John Nevin Tom Pedder Franc Peña Sangita Unadkat Ian Waring
Apologies	James Barnes Jamie Chapman James Crookes Bruce Dear Jayne Elkins Anthony Judge Daniel McKimm Jon Pike Peter Taylor

1. WELCOME AND MINUTES

The Committee extended a welcome to Jon Bowey, Associate Director, UK Commercial Property Professional Group at the RICS, who will talk about current RICS projects.

The Minutes for the 22 March 2017 Committee meeting were approved and will be added to the Committee webpage.

The Committee submitted a response to the Land Registry consultation on changes to the Land Registration Rules 2003 and the response can be found on the Committee's webpage.

2. **UPDATE ON PROJECT TO REVIEW CLLS REPORT ON TITLE**

Laurie Heller who leads the sub-group updated the Committee on the CLLS report on title project.

The sub-group has now met and Laurie summarised the meeting. Laurie also produced a note highlighting the key points. It was considered that an independent CLLS form of report gives assurance that the key issues will be highlighted. The current form of the report is a good starting point for the new document with minor changes needing to be made. It should be a short report between solicitors, which will concentrate on title. The solicitor for the recipient of the report will carry out searches and make its own investigations unlike with the CLLS's certificate of title. Consequently, the provider of the report will avoid the type of assurances and confirmations contained in the longer certificate. Guidance will be provided on when it is appropriate to use the report and the level of detail that should be included.

The report would be used for example in a large reporting exercise where for cost and time reasons it is decided to issue a report rather than a certificate of title. The report will be more than a red flag document – it needs to be sufficiently detailed to satisfy a buyer or lender, so that solicitors can recommend it as a starting point. It needs to be an intermediate product fitting between a red flag report and a certificate of title.

The language of the report should be consistent with the certificate, for example, consideration will be given to incorporation of the certificate's boilerplate.

An important part of the certificate is the confirmation that there is a good and marketable title. There is a tension over including such a confirmation in the report. It is not a certificate and the report is often prepared on the basis of limited information, for example, obtained from a dataroom. Consideration will be given as to whether the "marketable" reference should be included.

Since there is arguably more risk in providing the report (than the certificate), some considered that there should be specific wording in the report limiting the liability of the solicitor providing it. It was also considered sensible to send a draft of the report to some banks to ascertain if it will be acceptable to them for the type of transactions for which it is designed.

The sub-group comprises Laurie Heller, Bruce Dear, David Hawkins, Pranai Karia, Jon Pike, John Nevin and Warren Gordon.

Action: The Committee's sub-group will meet to discuss revisions to the report.

3. **CLLS PROPERTY FRAUD NOTE**

Committee members have provided comments on Jayne Elkins draft note on "Property fraud – issues to consider". Jayne will consider the comments and refresh the note. It will then be circulated to the Committee a final time with a view to publishing it on the Committee's webpage in a few weeks. Many thanks again to Jayne for all of her work on the note.

The uncertainty of the legal position on solicitors' duties in relation to property fraud pending a Court of Appeal decision on Dreamvar and related cases means that it is very difficult for representative or regulatory bodies at this stage to publish guidance on what the duties of solicitors should be including which enquiries should be raised. However, the Law Society and Land Registry plan to publish a joint note shortly that is intended not to set down the duties of solicitors, but instead to raise awareness as to those circumstances that may be indicators of fraud. Often there are more than just one indicator of fraud and the recent cases have highlighted that.

Buyer's solicitors should not necessarily rush to ask additional identity enquiries in the light of the recent cases if there are no obvious suspicious circumstances. However, if there are such circumstances (and this is where awareness notes like the Law Society/Land Registry joint note may be useful), further enquiries may need to be raised by buyer's solicitors who may need to alert their client.

Action: Jayne Elkins to revise note for final comments from Committee and then publication on Committee's webpage.

4. **RICS SERVICE CHARGE CODE**

Jon Bowey provided an introduction to the RICS's project to create a new edition of the RICS Service charge Code for commercial property.

This project has been going on over the last year. It is an important project for the RICS. The Code has been in the same format for some time and RICS is looking to enhance the status of the document to improve the operation of service charge regimes.

There are new mandatory requirements which go beyond the best practice approach of the current Code. This enables the RICS to regulate against RICS regulated managers of service charge regimes. Consequently, the proposed new Code will make a difference to managing agents.

A draft, that has been circulated to the Committee, has been sent to certain stakeholders ahead of the formal consultation.

The mandatory requirements are known as Core Principles and paragraph 1.2 contains 12 principles (there are higher level Core Principles in the Ethics section). The Committee noted that principles 6 and 9 related to time limits for the issue of budgets and detailed statements of actual expenditure. There was a concern that an employed surveyor may not be able to comply with these Core Principles if their employer (who is not RICS

regulated) refuses to allow them to do so. Similarly if an overseas client refused to allow an RICS regulated surveyor acting for them to comply with these Principles. This could put the employee or surveyor in an invidious position.

There is, however, an acknowledgment in Client instructions on page 8 that, in relation to the specific timescales, RICS professionals will not automatically be liable to disciplinary proceedings in the event of delay, if this results from a client's failure to provide approval or instructions. This is provided that all reasonable steps have been taken to advise the client of the requirements of the professional statement. If a surveyor is asked not to comply to accept an instruction, the RICS would expect the surveyor to reject the instruction. If the surveyor did not do so, the ultimate penalty would be expulsion but there would be warnings first. For the RICS this is an important issue with a key motivation behind the Code being the importance of fiduciary duties in relation to the money of third parties.

The Committee asked that further consideration is given to whether principles 6 and 9 should be included as Core Principles.

There was a concern about a possible 2 tier market developing with non-regulated advisers being used who did not have to comply with the Code.

More generally many landlords were wary about including references to the Service Charge Code in leases, because of the parts of the Code that they may not comply with such as the timescales on issue of budgets, treatment of car park income etc. Some landlords are happier with the lease stating that they will have regard to the Code's principles, rather than comply with the Code.

Page 8 deals with where the Code conflicts with existing lease terms. Ultimately, the Code cannot override the lease.

The Committee will provide Warren Gordon with any further observations on the draft Code.

The formal public consultation that will launch shortly will be for an 8 week period over the Summer. The intention is to publish the Code in 2017 with an effective date of 1 April 2018.

Action: The Committee will provide comments on the Code to Warren Gordon for forwarding to the RICS.

5. **RICS CODE FOR LEASING BUSINESS PREMISES UPDATE**

There have been a number of further meetings on the draft of the new Code for Leasing Business Premises and accompanying documents (Heads of terms and Occupier's guide). There is now a period of seeking the views of stakeholder groups pre the formal consultation, similar to the Service Charge Code.

A difference with the proposed new Lease Code is that there are a number of mandatory requirements in the grey box for each heading. They relate in the main to what should be included in the heads of terms. The key point is that the landlord and tenant should agree formal heads of terms for each letting. This will mean that unrepresented tenants will have a clear picture of what they are signing up to.

There was then a general discussion about aspects of the Lease Code itself. For example, an authorised guarantee agreement can be required in a wider set of circumstances than under the current Code. The Committee considered that a tenant should be able to charge the lease to a bank or reputable lending institution without the landlord's consent.

There was nothing specific on the Minimum Energy Efficiency Standards and perhaps there should be something on who should bear the cost. Some landlords are concerned about internal non-structural alterations impacting on air-conditioning and therefore wish to consent to such alterations. The Committee asked that paragraph 9.5 be reviewed. Also the main box for paragraph 9 should summarise which consents if any are required for particular alterations.

Action: Any further comments from the Committee on the Code and accompanying documents should be provided to Warren Gordon for forwarding to the RICS.

6. **LANDLORD'S DUTIES TO ASSIST IN PREVENTION OF FRAUD – GOVERNMENT CONSULTATION ON TOBACCO DUTY EVASION**

At Budget 2016 the Government announced its intention to consult on detailed proposals on sanctions to tackle illicit tobacco.

The consultation has now been published https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/592228/17_0_216_Formal_Sanctions_Consultation_FINAL.PDF

The consultation seeks views on 4 potential additional sanctions which include a new statutory duty of care on landlords and landowners of properties or land.

The Committee will submit a response endorsing a more detailed response from Eversheds Sutherland.

Action: Response to be sent to the consultation.

7. **BEIS CONSULTATION ON OVERSEAS COMPANIES AND CONVEYANCING**

There was a discussion of the Department for Business Energy and Industrial Strategy's consultation on overseas entities, that own UK property, having to register their beneficial owners at Companies House. The entities would be issued with a number that would have to be provided to Land Registry to enable transactions involving the overseas entities to be registered.

The consultation document had been overtaken by subsequent discussions between BEIS and stakeholder groups. For example, the proposal that a transfer would be void if the overseas entity did not have a valid number had been dropped because of the unforeseen consequences e.g. what would happen to the proceeds if the transfer was void?

The period of the consultation took place between meetings so Warren Gordon had provided to the Committee a response to the consultation which had received a few comments and then been submitted. The response is on the Committee's webpage.

The Committee also mentioned the potential impact on overseas trustees of UK pension funds and on sovereign wealth funds and the apparent retrospective impact although there will be transitional provisions and the Committee stressed the need for entities to be given a reasonable period in which to become aware of the new regime.

8. **AOB**

LENGTH OF MEETING – 1 HOUR 30 MINUTES

REMAINING COMMITTEE MEETING DATES FOR 2017 - 5 JULY, 20 SEPTEMBER AND 22 NOVEMBER AT 12.30PM AT HOGAN LOVELLS LLP, ATLANTIC HOUSE, HOLBORN VIADUCT, LONDON EC1A 2FG.