

CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE

Minutes of a meeting held on 16 May 2018 at Hogan Lovells, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG

In attendance	Edward Sparrow, Chairman of the CLLS Jackie Newstead (Chair) Warren Gordon (Secretary) Nick Brent Jeremy Brooks Jamie Chapman Jayne Elkins Martin Elliott Laurie Heller Victoria Hills Matthew Hooton Pranai Karia Paul Kenny John Nevin Tom Pedder Jon Pike Sangita Unadkat Ian Waring
Apologies	James Crookes Bruce Dear Caroline DeLaney David Hawkins Daniel McKimm Franc Peña

1. CLLS AND BREXIT

Edward Sparrow, Chairman of the CLLS spoke about what the CLLS is doing in relation to Brexit.

The Brexit Law Committee (BLC) was formed as a result of discussions with Government. It is intended to be a clearing house for information from specialist committees.

BLC is looking at the effect of Brexit on the UK's legal system and is liaising with the Ministry of Justice.

There is also a Mutual Market Access Working group looking at the effect of Brexit on the legal profession and this group is liaising with BEIS.

BLC is chaired by Edward and comprises representatives from the Judiciary, Bar, Law Society of England and Wales, Law Society of Scotland, CLLS, City Corporation, City UK, GC 100, Ministry of Justice (Director of Policy) and other senior attendees.

The message from Government is that this is a positive exercise and BLC's contributions will be fed into the process, but the outcome will depend on political decisions yet to be taken.

What does BLC do?

It works at a high level and discusses papers already produced on topics such as Companies Act – schemes of arrangement impacted by European legislation; competition law; IP; insolvency; and tax. Enforcement of judgments is discussed. The existing Conventions are important to the attractiveness of the UK jurisdiction and the discussion includes the practicality of adhering to the Conventions.

In terms of key themes, BLC is not a special pleading by lawyers. The legal system is crucial to enable business in the UK to work.

The need is to replicate what we currently have or as near as possible. Is there a "red line" for example about the ECJ's jurisdiction for commercial matters, and how far does it extend?

Looking forward, there will be lots of legislation to transpose European law into UK law. BLC hasn't sufficient resources to deal with this alone, so there will be working parties based on the specialist CLLS committees (liaising via their Chairs) allied to the specialist Law Society committees (via their Chairs) and this resource will be made available to Government departments when they want comments on legislation.

The theory is that this is policy neutral since the transposing of European Law into UK law does not change policy.

Once European Law has been transposed into UK law, then there may be more contentious policy-driven changes. How that happens remains to be seen.

The Chairs of committees will seek resources from their committees.

The Bar has also offered help – 2 barristers are acting as clearing houses to pass points to other specialist barristers.

The BLC may also seek assistance from City Law firms.

Jackie Newstead said she would liaise with other relevant CLLS Committee chairs such as for Planning and Construction.

Volunteers will be sought from the Land Law Committee for the Brexit task force. Many thanks to Edward for attending the meeting and providing this very helpful update.

2. **APPROVAL OF MINUTES**

The Minutes for March's Committee meeting were approved and will be added to the CLLS website.

3. **GDPR**

On 25 May 2018, GDPR comes into force for information of individuals.

One Committee member, having spoken to their data protection expert, considered that the main problem is with "Big Brother" information that agents receive inadvertently. Examples would be personal information embedded in passes for buildings and customers' personal information/footfall monitoring tracked by owners or managers of shopping centres.

The issue is whether the relevant party such as a landlord is a processor or controller? A controller just receives information and according to the Committee member, landlords are more likely to be controllers. It was suggested that privacy notices would likely need to be sent to tenants. It would be a more difficult situation if a landlord was a processor - statutory provisions would be needed in leases and so leases would need varying.

It was also suggested that managing agents would need to serve privacy notice on tenants.

The question was posed that if an investor landlord outsources management to agents, do the GDPR duties sit with the agent? It was considered (but without the benefit of expert GDPR advice) that the landlord is responsible but delegates to the agent. It depends on who is the controller or processor. It was suggested that asset management agreements may need to be changed to clarify this.

GDPR concerns will also apply to turnover data.

This is clearly a highly complex subject and the Chair of the CLLS Data Law Committee and colleagues will be invited to come along to the June Committee meeting so that the Committee can raise particular property situations to seek the experts' views.

4. **UPDATING CITY CORPORATION'S STANDARD WAYLEAVE AGREEMENT FOR THE NEW ELECTRONIC COMMUNICATIONS CODE**

The City Corporation's Standard wayleave agreement has been updated for the new Electronic Communications Code. The City of London has run a short consultation on the updated document and there will be a meeting in June of draftsmen and the City to consider the feedback to the consultation. It is hoped that the revised wayleave will be launched shortly afterwards.

5. **PROPOSED NEW RICS CODE FOR LEASING BUSINESS PREMISES**

The Committee provided a response to the RICS's consultation on the new Code for Leasing Business Premises

<http://www.citysolicitors.org.uk/attachments/article/114/RICS%20Consultation%20on%20the%20new%20Code%20for%20Leasing%20Business%20Premises%20-%2012%2004%2018.pdf>

A meeting of the drafting group will take place on 18 May to discuss feedback to the consultation.

6. **LAW COMMISSION'S CALL FOR EVIDENCE ON COMMONHOLD**

The Committee submitted a response to the Law Commission's Call for evidence on Commonhold.

<http://www.citysolicitors.org.uk/attachments/article/114/Law%20Commission%20Consultation%20on%20Commonhold%20Land%20-%2019%2004%2018.pdf>

Many thanks to Laurie Heller who played a large part in producing the response.

7. **COMMITTEE'S ASSET AND DEVELOPMENT MANAGEMENT AGREEMENT**

A sub-group of the Committee recently met to review the Committee's asset and development management agreement with a view to a relaunch to create more publicity for the document. Some changes have been suggested and the sub-group may meet again with a view to having a draft ready for the next Committee meeting.

8. **CLLS OVERSEAS COUNSEL'S OPINION**

This has been updated for the Land Registry's new overseas entity execution wording. The form of Opinion itself dates from 2012 and it was suggested that it is reviewed to check it remains up to date. The document is widely used. This will be a project to follow conclusion of the Asset and Development Management Agreement project.

9. **PROPOSED NEW RICS CODE FOR SERVICE CHARGES IN COMMERCIAL PROPERTY**

The new RICS Professional Statement on Service charge for commercial property will be launched shortly.

10. **CONCERNS WITH PROCESS FOR AND DRAFTING OF SUB-STATION LEASES**

There was interest from representatives of power companies in being involved in a Committee project to create standardisation of process and documentation for the grant of sub-station leases. Volunteers from the Committee were requested for this project.

11. **AOB**

- The decision in Dreamvar has recently been published and this will be discussed at the June Committee meeting.
- Date for diaries - Monday 18 June 2018 – CLLS AGM at Tallows Chandlers' Hall. The CLLS main committee is keen to encourage this side of CLLS membership as another element of the valuable work carried out by the CLLS.

12. **Length of meeting:** 1 hour 30 minutes. Where appropriate, please note this in professional development records.

13. **Dates for remaining 2018 Committee meetings** - 27 June, 26 September and 21 November, all at 12.30pm. June and November meetings at Hogan Lovells LLP, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG. September meeting at CMS Cameron McKenna Nabarro Olswang LLP, Cannon Place, 78 Cannon Street London EC4N 6AF.