

**CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE**

**Minutes of a meeting held on 27 June 2018 at Hogan Lovells, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG**

<b>In attendance</b>	<b>Jackie Newstead (Chair)</b> <b>Warren Gordon (Secretary)</b> <b>Nick Brent</b> <b>Jeremy Brooks</b> <b>Caroline DeLaney</b> <b>Alison Hardy</b> <b>David Hawkins</b> <b>Laurie Heller</b> <b>Matthew Hooton</b> <b>Paul Kenny</b> <b>Tom Pedder</b> <b>Jon Pike</b> <b>Sangita Unadkat</b> <b>Jon Bartley from CLLS Data Law Committee</b>
<b>Apologies</b>	<b>Jamie Chapman</b> <b>James Crookes</b> <b>Bruce Dear</b> <b>Jayne Elkins</b> <b>Martin Elliott</b> <b>Victoria Hills</b> <b>Pranai Karia</b> <b>Daniel McKimm</b> <b>John Nevin</b> <b>Franc Peña</b> <b>Ian Waring</b>

**1. APPROVAL OF MINUTES**

The Minutes for the May 2018 meeting were approved and will be added to the Committee's webpage.

**2. GDPR**

There was an extremely valuable discussion about GDPR with Jon Bartley, chair of the newly formed CLLS Data Law Committee. The discussion focused on the application of

GDPR in a real estate context and was very enlightening if somewhat disturbing. Here are a few observations noted (clearly, this is only a summary of a complex area of law and practice):

- GDPR applies to individuals' personal data.
- As a general rule, there should be no need to include in leases specific drafting for GDPR, such as the tenant's consent to the processing of their data. However, certain agreements such as property management agreements and asset management agreements will likely need GDPR provisions to cover the interaction between the client and the manager and their responsibilities in relation to third party personal data. The client will be a data controller and, whilst the manager may be a processor, it may also be a controller – this will impact on the GDPR provisions to be included.
- Aside from the contractual side, there will be the requirement in various situations for clients or their agents to provide a "fair processing notice" under GDPR to individuals whose data is being processed. This could be in a sale situation, or when the individual provides personal data, or in other situations where personal data is being disclosed to somebody else. There was concern about the potentially wide application of GDPR to those situations. The notice could provide for the individual's consent to the processing of the data and also state that the data may be disclosed to prospective purchasers or bidders.
- To reduce the GDPR risks of clients or their agents/brokers using data about the public, for example, visitors to shopping centres, anonymise the data, although there are still risks.
- In bidding situations, provide bidders with time-limited access to personal data, after which the data must be deleted.
- Info can be personal data for GDPR purposes, even though it is publicly available at for example the Land Registry.
- There are exemptions from compliance in the Data Protection Act 2018, because it is disproportionate or impairs the objectives of the process.
- Clients should be in a position to provide documented reasons why fair processing notices were not given.
- Query whether to exclude GDPR advice from law firms' terms of engagement letters.
- Clients need to provide for staff training, policies and protocols to ensure GDPR compliance.

**Action point: Warren will liaise with Jon Bartley with a view to Jon providing some suggested GDPR drafting for a property or asset management agreement, which can be published on the Committee's webpage.**

### 3. COMMITTEE'S ASSET AND DEVELOPMENT MANAGEMENT AGREEMENT

The proposed new 2nd edition (2018) of the Committee's Development Management Agreement (DMA), circulated with the papers, was briefly discussed. Points noted include:

- Query satisfied on the wording of the calculation of the Performance Fee by reference to IRR – the wording used expressed how the calculation is made and achieved the same result as the alternative wording suggested.
- The form of DMA is very much a starting point only and is likely to need to be changed to reflect the particular circumstances.
- Items of expenditure: interest on loans – query excluding shareholder loans to reduce taxation incidence.
- The Asset Management Services Schedule should be moved to later in the agreement since it may not apply in every situation. Also suggested that the agreement is changed to make it easier to strip out the asset management elements.

**Action point: Please pass any comments on the DMA (clean copy and comparison to 1st edition attached) to Warren by close of business, 20 July 2018.**

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

The proposed revised Digital Infrastructure Wayleave Agreement for the new Electronic Communications Code, circulated with the papers, was briefly discussed. Points noted include:

- The agreement more clearly indicates where Code rights are being terminated, or where termination is limited to the contractual agreement.
- For example, termination for "substantial breach" only applies to the contractual rights and does not refer to the Code's 18 months' notice. There has been some feedback from property owners that including 18 months' notice in the contractual termination right for substantial breach would be unacceptable. The majority of the Committee was happy that the agreement does not detail all of the Code provisions, reflecting that it is not unusual for contractual agreements to be subject to statutory provisions even if they are not referred to in the agreement. It is likely that clients will seek advice from their advisers when for example applying the termination provisions.
- Lift and shift for repair has been distinguished from lift and shift for redevelopment. This is reflected in separate termination provisions with only the redevelopment one requiring 18 months' notice. The footnotes remind users about the 18 months' notice requirement for Code rights.

- Some legal points will be included in the guidance to accompany the revised agreement – they are more likely to highlight the changes in the agreement to reflect the new Code.
- The agreement is likely to be launched mid-late Summer 2018. There was a lot of demand for this to happen as soon as possible.

**Action point: Please pass any comments on the Agreement (clean copy and comparison to 1st edition attached) to Warren by close of business, 20 July 2018.**

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

The consultation produced a large number of comments and the drafting group met some weeks ago to consider the responses. It is likely that some changes will be made to the form of the Code to reflect the comments made.

6. **SUB-STATION LEASES PROJECT**

The first meeting will be on 10 July 2018 and there will be representation from power companies as well as Committee members. Objectives may include a form of lease, a process for deducing title (perhaps using a truncated form of certificate of title) and generally a collaborative approach, to improve efficiencies for all parties' benefit.

7. **AOB**

Dreamvar will be discussed at the September 2018 Committee meeting.

There have been volunteers from the Committee for the Brexit group.

The Committee has provided comments to the CLLS on the Law Commission's role – it provides an excellent function, but there are frustrations with the delays in the Commission's recommendations being enacted.

**Meeting lasted 1 hour 15 minutes.**

**Dates for remaining 2018 Committee meetings - 26 September and 21 November, both at 12.30pm.**

**Note that the September meeting is at CMS Cameron McKenna Nabarro Olswang LLP, Cannon Place, 78 Cannon Street London EC4N 6AF.**

**November meeting is at Hogan Lovells LLP, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG.**