

CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE

Minutes of a meeting held on 21 November 2018 at Hogan Lovells LLP, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG

In attendance	Jackie Newstead (Chair) Warren Gordon (Secretary) Anthea Bamford Nick Brent Martin Elliott Alison Hardy David Hawkins Laurie Heller Matthew Hooton Paul Kenny Daniel McKimm John Nevin Tom Pedder Jon Pike Jeremy Shields Sangita Unadkat Ian Waring
Apologies	Jeremy Brooks Caroline DeLaney Jamie Chapman Bruce Dear Jayne Elkins Victoria Hills Franc Peña

1. WELCOMES AND THANKS

Anthea Bamford and Jeremy Shields (on his return) are welcomed to the Committee. Pranai Karia has stepped down from the Committee and the Committee thanks him for all his hard work for the Committee over the years.

2. APPROVAL OF MINUTES

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

3. **DREAMVAR PROTOCOL**

The London Property Support Lawyer Group's draft Protocol to deal with the implications of the Dreamvar decision was circulated to the Committee before the meeting.

The Committee considered that adoption of the Protocol should be voluntary.

Some on the Committee expressed serious concern that the Protocol requires the seller's solicitors to undertake that they are authorised to receive the completion funds on the seller's behalf, being the true owner. If the seller's solicitors have properly carried out AML checks and are not at fault, why should they be liable if the seller is a fraudster? Concerns were expressed about the professional conduct implications of a breach of undertaking. A key point is that the buyer's solicitors should not end up with the liability if the seller is a fraudster and therefore rather than tackling this issue via a Protocol, it was suggested that buyer's solicitors' engagement letters should exclude any liability if the seller is a fraudster. Buyers should also be encouraged by their solicitors to consider their own insurance at their own cost if they are concerned about the risk of fraud.

Some on the Committee agreed prima facie with the seller's solicitors providing the undertaking, because buyer's solicitors would expect this and whilst there is some risk for the seller's solicitors, they are best placed to bear it. Concerns were expressed about the impact on transactions if seller's solicitors refuse to provide such an undertaking or the equivalent. The insurers for the seller's solicitors should cover the solicitors if they have done what they should, subject to the limits of the cover. The provision of such an undertaking may be inappropriate if the value of the transaction exceeds the cover or if the client is not well known to the solicitors. It was considered that the risks are greater with residential property and clients who are individuals.

The Dreamvar decision interpreted references to "the seller" in the Code for Completion as being the true seller and the Protocol is an attempt to reflect the judgment.

However, concerns from some Committee members at the exposure of and risk for seller's solicitors under the undertaking means that the Committee cannot endorse the Protocol. However, many firms will take the view that the Protocol reflects a reasonable allocation of risk between seller's solicitors and buyer's solicitors, provided that there are no specific circumstances of the type mentioned earlier that would make it inappropriate for the undertaking to be given.

Warren Gordon will provide this feedback to the authors of the Protocol.

4. **TENANT'S WORKS AND BUILDING INSURANCE NOTE**

The Committee was not clear how this draft provided by the Construction Law Committee differs from the previous version that the Committee approved a number of years ago. Jackie Newstead will ask the Chair of the Construction Law committee to send through a comparison and the Committee will then consider it.

5. **CLLS RESPONSE TO MHCLG CONSULTATION ON IMPLEMENTING REFORMS TO THE LEASEHOLD SYSTEM IN ENGLAND.**

The Committee considered the suggested response circulated to the Committee in advance of the meeting and ultimately decided to make no changes. The Committee has until close of business tomorrow to feed back any further comments to Warren. The deadline for submission of the response to MHCLG is Monday 26 November.

6. **LAW COMMISSION'S CONSULTATION ON ELECTRONIC EXECUTION OF DOCUMENTS**

The Committee discussed the proposed response of a joint working group of the CLLS Company and Financial Law Committees. The general view among the Committee was that the response was a sensible one and it was generally supportive of it. However, since the Committee first saw the response just before the meeting, it was concerned about putting in a formal response to endorse it, in view of the very limited time available to review the consultation paper in detail.

7. **LAW COMMISSION'S CONSULTATION ON LEASEHOLD ENFRANCHISEMENT**

Laurie Heller summarised some of the key issues of the consultation including simplification of the legislation and making it cheaper for tenants to buy. It was agreed that Laurie would circulate the Law Society's proposed response (with which he is involved) and the Committee can decide whether to endorse it by letter. This will need to be done by email since the deadline for responding occurs before the next Committee meeting. Sangita Unadkat also agreed to send through some points of concern about transactional structuring, which can be added to the Committee's response.

8. **GOVERNMENT CONSULTATION ON ENSURING TENANTS' ACCESS TO GIGABIT-CAPABLE CONNECTIONS**

This consultation has some disturbing aspects including the possibility for an operator to gain access to the landlord's property with a magistrates' court warrant of entry if a landlord is absent or unidentifiable. Alison Hardy kindly agreed to produce a first draft, which will be agreed by email in view of the deadline for responses of 21 December 2018.

9. **CODE FOR LEASING BUSINESS PREMISES**

The working party met recently to discuss changes to the draft of the new Code. A final consultation will shortly take place and the new Code will likely go live in the second half of 2019.

10. **DEVELOPMENT MANAGEMENT AGREEMENT**

Ian Waring will follow up with the Chair of the Construction Law Committee whether that committee has any comments on the proposed revised DMA.

11. **AOB**

CLLS is supporting the London International Disputes Week event, which takes place between 7 and 10 May 2019. Details were circulated to the Committee.

12. **Length of meeting: 1 hour 15 minutes.**

13. **Dates for 2019 Committee meetings** - To be confirmed shortly. All at 12.30pm at Hogan Lovells LLP, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG.