

CITY OF LONDON LAW SOCIETY – CONSTRUCTION LAW COMMITTEE
Minutes of meeting held on Wednesday 12th September 2018 at Bryan Cave
Leighton Paisner LLP, Adelaide House, London Bridge, London EC4R 9HA

In attendance:

John Hughes-D'Aeth (Chair)
Matthew Jones (Vice-Chair)
Richard Ceeney
Paul Cowan
Angus Dawson
Nicholas Downing
Marc Hanson
Francis Ho
Alistair McGrigor
Drew Norman
Victoria Peckett
Martin Potter
Andrew Thornton

Apologies for absence

Apologies had been received from Eleanor Milne (Secretary), Kevin Hart (CLLS), Stephanie Canham, Julia Court, Fiona Edmond, Rob Horne, David Metzger, James Pratt and Gillian Thomas.

Minutes of last meeting

The Minutes of the meeting held on 13th June 2018 were approved and will be posted on the CLLS website.

Membership of the Committee

It was reported that Rob Horne wished to resign from the Committee. The Chair agreed to ask whether he would still be willing to participate in the Foundation Level Training. [**Post meeting note:** Rob has confirmed that he will.]

The Chair noted that Martin Potter would be retiring on 31st May 2019 and would leave the Committee on that date. He thanked Martin for his long and valuable contribution to the Committee's work. It was agreed to consider possible successors from the industry who might be co-opted in Martin's place.

Update on current activities

Tenant's works and insurance: Victoria Peckett agreed to update the draft note to take on board final comments received and issue it to the Land Law Committee for consideration. The Committee noted that this was particularly topical, given the recent spate of fires in buildings undergoing refurbishment. [**Post meeting note:** Done.]

Performance bonds: The Committee noted the paper circulated by Andrew Thornton on the possible introduction of US-style 100% surety bonds to the UK. The consensus view was that this would require a complete change of approach in the bonding market and was unlikely to happen in the short term. UK market practice (even post-Carillion) was still for 10% bonds, with adjudication bonds available (at a slightly higher cost) for larger clients and projects. Work on the JCT's model form of adjudication bond was progressing slowly.

Retentions: It was noted that the second reading of the Aldous Bill had been postponed (again) to 26th October. Francis Ho confirmed that his draft paper for BEIS outlining the drawbacks of a retention deposit scheme would be available for review by mid-October.

Security assignments in lending transactions: Marc Hanson reported that a draft paper was being prepared and would be circulated for review shortly.

Due diligence reporting: Matthew Jones reported that a draft framework was being prepared and would be circulated for review shortly. The sub-group charged with this work had decided to focus on development finance transactions (rather than M&A) and to provide a descriptive, rather than prescriptive, guide to best practice. The Committee agreed that a "tick list" of reporting requirements was probably not helpful, owing to the range of procurement routes and contracting approaches now in use.

Other business

Reverse charge to VAT: The Chair reported that both the BPF and BCLP's tax team had responded to HMRC's consultation on the draft Regulations, pointing out some anomalies in the proposals and urging that the guidance that was intended to accompany the Regulations be published in draft as soon as possible. Other CLLS member firms had made similar submissions and HMRC's response was awaited.

Consultation on Approved Document B: It was agreed that this was largely a technical, rather than a legal matter. Of more interest was the upcoming consultation on substantive changes to the Building Regulations, including the proposal to ban ACMs.

Construction Act review: Martin Potter reported that BEIS officials had raised queries about the impact of the Exclusion Order exempting PFI Tier 1 sub-contracts from the "pay when paid" prohibition in the Construction Act, and on the use of duplicate payment notices before and after the 2011 changes to the Act. There was as yet no indication as to when the Government's formal response to the review might be published, although it seemed clear that BEIS's priorities currently lay elsewhere.

Brexit: The Chair reported that the CLLS and the Law Society had formed a series of working groups to assist the Government with the task of transposing EU legislation into UK law post-Brexit. Although none of the working groups focussed specifically on construction, the Committee should be willing to support the other working groups if requested. This subject was on the agenda for discussion at next week's meeting of CLLS Committee Chairs. The Committee also noted the increasing incidence of requests for Brexit clauses in contracts, covering matters such as tariffs, currency and labour costs and delays to materials imports.

Development Management Agreement: Marc Hanson reported that the Land Law Committee had published a template DMA, apparently without input from the Construction Law Committee. The Chair agreed to raise this with the Chair of the Land Law Committee.

CLSC Livery Dinner: Marc Hanson reported that this was taking place on Monday 5th November at Carpenter's Hall. The Chair agreed to circulate details to the Committee.

Christmas lunch: The Committee agreed, as in past years, to hold a Christmas lunch at the Little Ship Club. Marc Hanson agreed to make enquiries and circulate potential dates.

Date of next meeting

The next meeting will be held on Wednesday 21st November 2018 at 12.30 pm.