

CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE

Minutes of a meeting held on 27 March 2019 at Hogan Lovells LLP, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG

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

1. APPROVAL OF MINUTES

The minutes for the January 2019 meeting were approved and will be added to the CLLS website. Not mentioned at the meeting, but the Committee continues to look to appoint a Vice Chair. If you are interested, please let Jackie know.

2. UPDATE ON ELECTRICITY SUB-STATION LEASE PROJECT

The electricity sub-station lease project continues to progress well. The drafting group has a further meeting next week to conclude its preliminary discussions on the UK Power

Network form of lease, which was the starting point used. Following that meeting, a revised lease will be created which will be circulated to the Committee for comments. It is intended that there will be accompanying transactional documents and guidance. Laurie Heller kindly agreed to assist with the drafting.

3. **DREAMVAR PROTOCOL**

There has been considerable further discussion among law firms about the Protocol produced by the London Property Support Lawyers Group (LPSLG) as a response to the Dreamvar decision. In that light, the Committee was asked again to consider whether it could endorse the Protocol but excluding specified member firms which do not support the endorsement. Or perhaps endorsing subject to exceptions such as where the potential liability under the undertaking exceeds the seller's solicitors' PII cover.

One member highlighted that the seller's solicitors would in any event have a liability as a result of breach of trust if the completion money was lost as a result of fraud. There was therefore no need for the Protocol. He added that solicitors should only be giving an undertaking if they can perform it and this cannot be guaranteed with the Protocol undertaking in the case of a sophisticated fraudster. Breach of the undertaking brings with it serious professional conduct implications as well as the potential financial liability, even though the seller's solicitors may have carried out all the required regulatory checks. Other members had sympathy with these views.

There is a separate point as to whether seller's solicitors wish to (or for that matter can) carve out liability for breach of trust. And buyer's solicitors may also consider their terms of engagement in relation to responsibility to their buyer client if the seller is a fraudster.

One member firm only accepts money acting for a seller on the basis of a statement it sends to the buyer's solicitors which among other points limits its liability in the event of fraud. Some firms specifically increase their PII cover on certain transactions if it is perceived there is a risk of total loss and they do not want to limit liability.

Some members were more supportive of the Protocol. The Dreamvar decision has shone the spotlight on responsibility for the buyer's completion money in the event of fraud. The Law Society's new Code for Completion expressly reflects the Court of Appeal's comments in Dreamvar that the seller's solicitors' undertaking to have the seller's authority to receive the completion money refers to the person who will at completion be entitled to convey the title.

The LPSLG considered that buyer's solicitors would normally expect to receive this undertaking. Since the Code for Completion is only rarely used on commercial deals (and includes other provisions that may be inappropriate for such deals), the LPSLG extracted an equivalent of the undertaking to create the Protocol. They considered that the seller's solicitors are best placed to give the undertaking and an undertaking provides greater comfort and certainty than relying on a breach of trust claim.

Some Committee members said that buyer clients would struggle to understand why seller's solicitors could not undertake as to their client's identity. This could be seen as sending a bad message to the property industry.

Use of the Protocol should be more acceptable where the seller's solicitors act for an institutional or listed company client, who they have acted for on a regular basis. Using the Protocol when acting for a seller for the first time creates greater risk. Firms should also cap their liability if it could exceed their PII cover.

If the Protocol is to be used, this should be agreed at the start of the transaction.

In summary, there were mixed views on the benefits of the Protocol, which meant that the Committee reiterated its previous stance that it cannot endorse the Protocol. However, many firms will wish to use the Protocol with or without exceptions and carve outs.

4. GLA MOBILE WAYLEAVE PROJECT

The Greater London Authority has an ongoing project to create industry standard templates for a rooftop wayleave agreement and for a greenfield wayleave agreement. There has been a recent consultation on the documents. Among the issues raised was whether the templates should be a lease. Where the apparatus exclusively possesses a fixed area, a lease would seem to be more suitable. There is a lift and shift mechanism which may entail the need for a new lease to be granted. Warren Gordon will send the draft agreements to the Committee when permitted to do so. No "go live date" has yet been set.

5. CITY OF LONDON'S FIXED LINE WAYLEAVE

Some operators appear not to be using the City of London's fixed line wayleave. The reasons for them not doing so are being investigated by the City. Warren will ask Kevin of the CLLS whether the CLLS can organise a survey of firms who use the wayleave to cover such issues as the reaction of operators.

6. NEW RICS PROFESSIONAL STATEMENT ON COMMERCIAL SERVICE CHARGE

The new RICS Professional Statement on Commercial Service Charge goes live on Monday 1 April 2019. This has greater regulatory importance for RICS regulated surveyors and firms, especially the new mandatory requirements. There was no consensus among the Committee on what to put in leases (if anything) for the new Statement and firms will adopt their own approach.

7. COMMONHOLD AND RESIDENTIAL

The Committee has submitted a [response](#) to the Law Commission's consultation on commonhold.

The Housing, Communities and Local Government Committee has called for wide ranging reforms to the residential leasehold system in a report published last week. That committee found that the balance of power in existing leases, legislation and public policy is too heavily weighted against leaseholders. The report is an interesting read.

The Law Commission has launched a consultation on right to manage for residential property. The Committee will not be responding to the consultation.

8. **DEVELOPMENT MANAGEMENT AGREEMENT**

The Committee's new Development Management Agreement is on the [website](#). Please send through any feedback.

It was agreed that the Committee will look to create a standard Property Management Agreement. There seems to be demand for this among firms. Please can those interested in being involved let Warren know.

There have been some very positive stats for hits on the CLLS website to the Committee's standards, but they are for 2017/18. More up to date stats will be sought.

9. **NEW RICS CODE FOR LEASING BUSINESS PREMISES**

The RICS launched on 26 March a further consultation on the new Code for Leasing Business Premises which is an RICS Professional Statement. The consultation is open until 5 May 2019.

Jackie Newstead and Warren Gordon sit on the working group. The Committee is likely to submit a response and please send to Jackie and Warren any comments on the consultation document by 18 April. The new document has a very small number of mandatory requirements for RICS regulated surveyors, which relate to negotiations and the contents of heads of terms.

10. **AOB**

- The request for GDPR wording for property/asset management agreements from the CLLS Data Law committee will be followed up.
- On Brexit, there has been some impact on documents for example in relation to change in circumstance clauses. And there has been the High Court decision in Canary Wharf v European Medicines Agency from February relating to Brexit and frustration of contracts and an appeal will be heard by the Court of Appeal.
- The IPF Streamlining Transactions guide will be discussed at the May 2019 Committee meeting.

11. **Length of meeting: 1 hour 30 minutes.**

12. **Dates for remaining 2019 Committee meetings** - 26 June, 25 September and 27 November. All at 12.30pm at Hogan Lovells LLP, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG.