

CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE

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

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

1. WELCOME AND NEW MEMBERS

Brigid North from Reed Smith was welcomed as a new member. Brigid replaces Jon Pike, who the Committee thanked for all his work for the Committee over the years. The Committee also approved Patrick Williams of Fried Frank and Stephen Josephides of VWV as new members of the Committee. One vacancy remains on the Committee.

2. APPROVAL OF MINUTES

The Minutes for the September 2019 meeting were approved and will be added to the Committee's webpage.

3. **UPDATE ON ELECTRICITY SUB-STATION LEASE PROJECT**

The standard sub-station lease and accompanying guidance note were approved by the Committee. The documents will be added to the Committee's webpage shortly.

4. **PROPERTY MANAGEMENT AGREEMENT**

The property management agreement, produced by the Committee sub-group, now includes GDPR wording provided by a Field Fisher colleague of Jayne Elkins. The agreement was briefly discussed at the meeting and was provided to the Committee for further perusal (together with a comparison showing the latest changes). If any Committee member has any further comments, please send them to Warren by COB 13 December 2019. The agreement will be added to the Committee's webpage shortly afterwards.

5. **NEW CERTIFICATE OF TITLE**

A sub-group of the Committee have had initial discussions on a new 8th edition of the Certificate of title. A further scoping meeting will take place on 9 December.

Key points noted are:

- Overall the current form of the Certificate works well.
- The Certificate can be improved for where there are significant numbers of Letting Documents. In particular, the Supplement table can be improved presentationally.
- There are no plans to create a specific Certificate for a development financing. Instead, a development add-on will be considered for title matters such as party walls, covenants and rights of light.
- Limitation of liability wording will be introduced into the front end of the Certificate. There should be a note to suggest various possible bases for limiting liability e.g. value of property, amount of loan, development value, firm's limit of PII cover, firm's policy on limiting its liability, link to liability limits of other professional advisors on the transaction. This will be a matter for agreement between the parties.
- Clause 1.6 (Multiple addressees) needs further consideration e.g. for parties with different interests (such as holders of senior and mezzanine debt). This may link into and be resolved by the limitation of liability provision. If a party has not become an Addressee by a specified time limit, then it cannot benefit from the Certificate. Any new addressee must notify the certifying firm before the time limit expires that they have become an Addressee.
- Reflecting the increasing number of mixed developments, there will be a new Schedule for a long residential occupational lease at a premium. Current

Schedule 4 will be used as a starting point and will be amended for matters such as insurance and service charge.

- In relation to construction matters, the Construction Law Committee is looking at putting together a standardised form of construction diligence report and this may be helpful for the Certificate. There should also be some standard statements reflecting typical provisions (in particular re. works) from an agreement for lease and specifying whether they are personal.

6. **BORROWER'S SOLICITORS' UNDERTAKINGS PROJECT AND DISCHARGE PROTOCOL**

The Standardised Undertakings project will be discussed at the January Committee meeting. Martin Elliott has kindly provided some comments on the drafts from Vikki Hills and Franc Pena. The Committee kindly asks Vikki and Franc to report back on progress with this project at the January meeting.

7. **STANDARD UNDERTAKING TO HOLD MONEY TO ORDER**

The Committee was happy with the form of the Simple undertaking from a law firm holding money to the order of a third party, except that the words “[orally or] by email” should be removed, so that the 1st paragraph now reads:

“Subject to Paragraph 2, we, [name of law firm holding money], undertake to you [insert name of third party law firm or other third party] to hold strictly to your order the money remitted by you, to, and received in cleared funds into, our client account in the amount of [] representing [describe what they relate to] (“Funds”), until you confirm to us that the Funds are released to us.”

The form of the undertaking will be added to the Committee’s webpage.

8. **NOTE ON TENANT’S WORKS AND BUILDINGS INSURANCE**

Jackie has forwarded to the CLLS Construction Law Committee the comments of the Land Law Committee on the note on Tenant’s works and buildings insurance.

9. **RIGHTS OF LIGHT RELEASE**

A query has been received on whether it was correct to refer to full title guarantee in the Committee’s deed of release of rights of light. The Committee agreed that it was and a full response from Laurie Heller will be sent to the enquirer.

10. **AOB**

The Committee will consider the Law Society’s revised Contaminated Land and Flood Practice Notes once they have been published.

As additional 2020 projects, the Committee will review its standard rent deposit deed and consider producing some guidance for escrow arrangements. Please let Warren know if you wish to be involved in either of those projects.

11. The meeting lasted 1 hour 15 minutes.
12. The 2020 Committee meeting dates are 29 January, 18 March, 6 May, 24 June, 9 September and 25 November, all at 12.30pm at Hogan Lovells LLP, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG.