

Note of CLLS Land Law Committee Meeting Held on 29th January 2020

The key points are:

- 1.** Welcome to Patrick Williams and Stephen Josephides as new members of the Committee and we look forward to your contributions.
- 2.** The **minutes** for the November Committee meeting were approved and will be added to the Committee's webpage.
- 3.** The working group, comprising Committee members and representatives of the distribution network operators and independent distribution network operators, has now agreed the template **substation lease** for an outdoor freestanding site, together with a guidance note. The documents have been added to the Committee's webpage and there will be formal launch comms organised by Project Associates (communications consultancy who assist the CLLS). The launch comms will be approved in advance by the working group. Committee members should look to promote the documents e.g. suggest the template is referred to in heads of terms; use it in practice; possible articles. If the documents are a success, the working group will look to produce variants of the lease for other substation scenarios.

The proposed project to create a new industry standard sale contract for commercial property was discussed. Peter Williams (who is running the project) will be asked to contact Jackie Newstead to seek Committee representation.

- 4.** The Committee's **Property Management Agreement** project is now complete and the document has been added to the Committee's webpage. Of particular interest is the GDPR drafting for which thanks must go to Eleonor Duhs of Field Fisher. The PMA will be a helpful reference point as well as a standard for use in its own right. It can be adapted for an asset management agreement. The Committee will review reaction to the document in 6-12 months. Thanks to Laurie Heller and Matthew Hooton for their work on this document.

- 5.** The working group considering the new **8th edition of the Certificate of title** has met twice since the last Committee meeting. A big focus has been on the standard statements in Schedule 5 (Letting Documents) considering changes to conform them more closely to the Model Commercial Leases. They will not be identical but if they are more consistent with the MCL, this should reduce the amount of disclosures. There has also been a focus on potentially increasing the front end disclosures in particular having an express limitation on liability. The Certificate will set out examples of possible bases for limiting liability and will consider whether it would be acceptable to have a specific financial limit (£25 million is an amount sometimes encountered among other professionals such as accountants).

Consideration will also be given to Planning and Construction bolt-on reports for specifically prescribed situations – there is a desire to avoid them being used when not really required which will add to time and cost.

The Certificate will be shared with the PSL groups before being launched, not for extensive comments but to highlight obvious errors.

The intention is to bring a draft to the May Committee meeting, launching the new Certificate towards the end of 2020.

6. Standard undertakings required by lenders project. Vikki Hills explained that various precedent examples have been gathered and Martin Elliott has kindly provided comments. A composite version has been produced with options covering registration of land, SDLT, holding deeds to order, registration of charge etc, notice of dealing and rent authority letters. A version will be produced for consideration at the March Committee meeting. Among the issues are who should be the addressee, the lender or lender's lawyers or both (caution is required for the holding deeds to order undertaking which potentially lasts for an extended period where it is just the law firm benefiting in case they cease to act). Also on the lender side, the undertaking is likely to be for the benefit of the Security Agent (and not other finance parties) and Security Agent will include successors but without extending the liability of the firm giving the undertakings.

7. The CLLS Construction Law Committee's note on Tenants Works and Building Insurance has now been finalised (with some final comments from the Land Law Committee) and added to the CLLS website. The note is jointly endorsed by both Committees and Kevin Hart will check it is on both Committees' webpages. The Committee will consider the impact of the note in 6-12 months' time. The note offers options for solutions to the problem of the tenant and tenant's contractor not being covered by the landlord's insurer, but this needs to be addressed with the insurers before contracting.

8. The Committee will review its standard Rent Deposit Deed. Initial perusal confirms it is broadly fine with a little updating perhaps required. The trust element of the deed and possible alternative financial tests (for release of the deposit) will be reviewed. The document will make clear that it is not suitable for residential property (which has its own statutory requirements). Brigid North, Nick Brent and Laurie have already volunteered and please let me know if you would like to be involved.

9. The RICS Code for Leasing Business Premises has been finalised and will be published any time. It is likely to come into force 6 months after publication. The main impact will be the mandatory elements relating to Negotiations and Heads of terms.

10. Kevin Hart said that the CLLS will be discussing the use of disclaimers for templates on the website. Kevin will produce stats for use of the templates (hits to webpages) at the March meeting.

11. AOB – Kevin passed on thanks from the CLLS Chair and CEO to the Committee for all their work – it is one of the most active of the CLLS Committees. The CLLS Committees' dinner is on 4 February and all are welcome.

Mention was made of the Treasury's consultation on its draft implementation legislation for the expanded trust registration requirement under the Fifth Anti Money Laundering Directive (AMLD5). The consultation closes on 21 February 2020. The Committee does not propose to respond, but Kevin will discuss with the CLLS Revenue Law Committee. You may also wish to check with your PSLs whether your firms are responding.

12. The meeting lasted 1 hour 15 minutes.

13. Remaining 2020 Committee meeting dates: 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.