

CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE

Minutes for CLLS Land Law Committee meeting on 26 May 2021 by audio conference

In attendance	Jackie Newstead (Chair), Warren Gordon (Secretary), Kevin Hart (from the CLLS), Jeremy Brooks, Jayne Elkins, Martin Elliott, Alison Hardy, David Hawkins, Laurie Heller, Stephen Josephides, Daniel McKimm, Brigid North, Tom Pedder, Franc Pena, Julian Pollock, Jeremy Shields, Sangita Unadkat, Patrick Williams and Paul Kenny (guest attendee).
1. Apologies	Nick Brent, Jamie Chapman, Caroline DeLaney, Vikki Hills, Matt Hooton, John Nevin and Ian Waring.

2 Approval of Minutes for March 2021 Committee meeting

The Minutes for the March Committee meeting were approved and are on the Committee's webpage.

3 Certificate of title

Further suggested changes to the front end of and Schedule 5 to the Certificate were circulated to the Committee prior to the meeting.

The discussion primarily focused on whether there should be a move away from the standard statements in Schedule 5 on the basis that a disproportionate amount of time and effort is required in disclosures by the certifying firm. The Committee's view is that the principle of having standard statements should remain – banks and other parties relying on the Certificate would expect to see standard statements as reflecting what is institutionally acceptable and therefore more readily highlighting where there is an issue. Moving away from the standard statements raises the question of what replaces them and the problem previously encountered of certifying firms just including chunks of the leases.

While standard statements will remain, the Committee in producing the new edition will look for opportunities to streamline the statements to improve the process for producing the Certificate. So a balance is achieved between having a Certificate that provides sufficient certainty for the recipient on the key elements of an institutionally acceptable letting document, but at the same time removing some of the more intricate drafting (an example cited at the meeting was in the VAT statement) to facilitate the Certificate's production.

Please can Committee members send through further comments on the form of Certificate circulated. A further meeting of the drafting sub-group will take place shortly.

There was also a discussion about organisations wanting to use the Certificate to help develop their own tech products. While the Committee could see merits if it brought benefits to firms in facilitating production of the Certificate, it must be on the basis that the CLLS's IP position is suitably protected; that the relevant organisation will not have exclusive rights to create products which might assist firms with generating content for the Certificate; that the wording of the Certificate must not be corrupted or otherwise interfered with; and that the CLLS is not endorsing

the particular product. Every request will be evaluated on its own merits by the CLLS who will prescribe such requirements as it deems suitable.

Post-meeting note: Tom Pedder reported back on the Construction Law Committee's progress with the Construction report for the Certificate. They are reasonably well progressed on guidance notes on construction reporting that can accompany or form part of the Certificate and are also considering the questions included in the Certificate on construction matters and considering to what extent these ought to be updated and/or extended. Tom will suggest that one of the Construction Committee joins the next Certificate drafting sub-group meeting to take the sub-group through where they are currently on the construction updates and likely timings.

4 Response to the Law Commission's consultation on its 14th Programme of reform

In advance of the meeting there was circulated to the Committee a proposed response from the Committee to the Law Commission's consultation on its 14th Programme of reform, which focuses on commercial leasehold (and in particular the Landlord and Tenant (Covenants) Act 1995 and the Landlord and Tenant Act 1954).

The main comment on the response was that brief mention should be made of the problems associated with the right of first refusal under the Landlord and Tenant Act 1987, which has an increasing impact in a commercial context because of the greater prevalence of mixed use developments. The instance cited was the grant of a lease of a shop on the ground floor of a mixed use building that could be caught by the right (see *Dartmouth Court Blackheath Ltd v Berisworth Ltd* [2008] EWHC 350 (Ch)).

The Committee considered that the response should also endorse the Law Commission's suggestion that they may consider the wider question of whether security of tenure is still relevant in the current market.

The Law Commission also raised issues in relation to the specifics of the process for lease renewals and the terminal dilapidations regime and the Committee considered that the Property Litigation Association (PLA) was better placed to address these. If the PLA is providing a response to the Law Commission, the Committee would be keen to see this with a view possibly to endorsing what is said. **Alison Hardy and Warren Gordon will progress this with the PLA.**

Please can Committee members feedback any further comments on the response. The closing date for the consultation is 31 July 2021 and in view of the proximity to the next Committee meeting on 28 July, it will be helpful for any comments to be provided before that meeting.

5 Turnover rent report

The Committee thanked the sub-group for producing this informative report. Laurie Heller, who led the sub-group, explained that very little had changed in the report from the version previously circulated.

The Committee approved the report and **it will be added to the Committee's webpages.**

The Committee stressed the importance of proper publicity of the report and other documents produced by the Committee. This could include press releases and interviews and **Kevin Hart will pursue this with the CLLS's PR advisers.**

6 APSL/LPSLG sub-group on deeds in the light of e-signing / Mercury

Some PSLs have set up a sub-group to consider the approach to deeds in the light of electronic and Mercury signing. They have focused on producing a pro forma deeds schedule which they propose will include significantly more information than a traditional asset management deeds schedule, such as the apparent form of document signing (e.g. wet ink / Mercury, e-Platform etc.), dating and the way the document is kept / will be handed over to a buyer (e.g. electronic / paper).

The sub-group's proposal is that the expanded schedule would serve a dual purpose of:

- record keeping and promoting best practice going forward; and
- being used for due diligence packs and attached to transactional documents.

The sub-group hopes to circulate the proposed documentation to the wider PSL community in the next few weeks for comments.

The Committee would welcome sight of the documents to consider them more fully.

7 Borrower's solicitor's undertakings document

The Committee will consider the couple of suggestions made in relation to this document at the next Committee meeting.

8 Residential leasehold reform – implications of Leasehold Reform (Ground Rent) Bill

The Queen's Speech in May 2021 highlighted that measures will be brought forward to end the practice of ground rents for new leasehold properties and shortly afterwards the Leasehold Reform (Ground Rent) Bill, which applies to England and Wales, was published and is currently going through Parliament. The legislation will require that ground rents in new residential long leases (essentially granted for a term exceeding 21 years) will be set in law at a 'peppercorn rent' level, effectively restricting ground rents to zero financial value. There are concerns that the legislation as currently drafted will extend to all other payments reserved as or in the nature of rent such as service charge and insurance premiums.

There are limited exemptions such as statutory lease extensions and certain products involving equity release or Islamic finance. Financial penalties may be imposed for a breach of the legislation.

The Law Society may be commenting on the Bill. **Please can Committee members send through any comments that they want forwarded to the Law Society.**

The Committee noted that the Bill will not assist tenants with existing leases with escalating ground rent problems.

The Queen's Speech also announced in relation to residential leases in England that the Government will later in 2021 publish its consultation response on reforming the law to abolish section 21 'no fault' evictions and improve security for tenants in the private rented sector, and bring forward reforms to drive improvements in standards in rented accommodation, including exploring the merits of a landlord register.

9 Brief cases review (CVAs and business rates)

Brief mention was made of some of the recent cases exploring CVAs and the new restructuring plan procedure under the Corporate Insolvency and Governance Act 2020.

The Virgin Active case highlighted that restructuring plans may well be the company's only valid restructuring choice if landlords have sufficient voting power to vote down a CVA.

The Regis CVA was overturned on the basis that the preferential treatment given to the company's sole shareholder was not justified and was unfairly prejudicial to those creditors whose debts were impaired by the CVA.

The challenge to the New Look CVA failed, but this is being appealed.

Brief mention was also made of the Supreme Court decision on business rates, *Hurstwood Properties (A) Ltd v Rossendale Borough Council*, which casts serious doubt on the viability of schemes currently seeking to take advantage of the exemption from business rates by leasing a property to a special purpose vehicle (SPV) and then either winding-up the SPV or allowing it to be struck-off.

10 Government consultations on energy efficiency

Kevin Hart will enquire as to whether the CLLS Energy Law Committee is responding to the Government's consultations on energy efficiency and if so the Committee can consider the response possibly with a view to endorsing it.

11 Use of the CLLS sub-station lease

The Committee reported that there has been some resistance among some distribution network operators to using the CLLS sub-station lease, although it has been helpful with some negotiations.

Warren will reach out to some of those involved to explore the use of the document and whether the project can be expanded to cover other situations; dealing with a superior lease was one mentioned at the meeting.

12 Guidance note considering rent suspension provisions in a pandemic context

The Committee decided not to start a project looking at a guidance note considering rent suspension provisions in a pandemic context. It was considered that there was insufficient consistent market practice at this time to form the basis of such a note.

13 Use of disclaimers and hosting of 3rd party documents

Kevin reported that consideration was being given to more visible copyright notices on the CLLS website. Consideration was also being given to the use of disclaimers for documents on the Committee's webpages. CLLS is not unhappy to host appropriate 3rd party documents on the website, but relevant disclaimers will be added.

14 Points from meeting of Chairs of the CLLS Specialist committees

This will be covered at the next Committee meeting.

15 Suggested changes to the CLLS Overseas legal opinion

This will be covered at the next Committee meeting.

16 CLLS AGM

The CLLS's AGM is on Wednesday 23 June at Apothecaries' Hall, Black Friars' Lane, Blackfriars, London, EC4V 6EJ

The timing is as follows:-

5.30pm – City of London Solicitors' Company AGM

6.00pm – City of London Law Society AGM

6.30pm – Champagne reception

All committee members and all members of the CLLS are encouraged to attend, particularly since this is likely to be held in person providing one of the first occasions for CLLS members to meet up after the lockdown.

17 AOB

Vice Chair of the Committee

Committee members were encouraged to apply for the position of Vice Chair of the Committee and should contact the Chair or Kevin if interested.

Work plan

The Law Society's Conveyancing and Land Law Committee kindly allowed the Committee sight of some of the matters from their work plan with a view to the two Committees working together on projects of mutual interest. The two Committees had previously submitted a joint response to the

Department for Digital, Culture, Media and Sport's consultation on changes to the Electronic Communications Code.

The Committee agreed that they would look to work with the Law Society on certain items of the work plan and would notify the Law Society accordingly.

18 Length of meeting – 1 hour 30 minutes

19 Remaining 2021 meetings: 28 July, 29 September and 24 November