

## **Minutes for CLLS Land Law Committee meeting on 25 January 2024 at 12.30pm by Teams and in person**

**Attendees:** Jackie Newstead, (Chair), David Hawkins (Vice Chair), Warren Gordon (Secretary), Andy Bruce, Jeremy Brooks, Jamie Chapman, Jayne Elkins, Adrian Footer, Matt Hooton, Paul Kenny, Stephen Josephides, John Nevin, Brigid North, Franc Pena, Julian Pollock and Sangita Unadkat.

**Apologies:** Kevin Hart (from the CLLS), Caroline DeLaney, Alison Hardy, Vikki Hills, Simon Kenley, Daniel McKimm, Jeremy Shields and Patrick Williams.

1 **Welcome:** The Committee welcomed Andy Bruce from Linklaters to his first Committee meeting and looks forward to his contributions to the Committee's work.

### **2 CLLS matters**

The CLLS would like each Committee to set up a liaison point with the new AI specialist committee. This should be a current Committee member, but the member can propose a colleague at non-partner level or with tech/AI experience from their firm, to assist in the liaison work between the two Committees.

Julian Pollock and his colleague Kathryn Oie have kindly volunteered to be the liaison point.

### **3 Approval of Minutes for November 2023 Committee meeting**

The Minutes were approved. All of the Committee's minutes are in the course of being migrated to the new CLLS website.

### **4 Land Registry**

The Committee requested Warren Gordon to reach out to Mike Harlow from the Land Registry to request him to attend a Committee meeting, ideally in May 2024, to provide an update on Land Registry related matters including the current position on delays.

### **5 Consultation on the Transparency of land ownership**

The Government has issued a consultation on the [Transparency of land ownership involving trusts](https://www.gov.uk/government/consultations/transparency-of-land-ownership-involving-trusts) - GOV.UK ([www.gov.uk](https://www.gov.uk)).

This consultation seeks views on improving transparency of land ownership involving trusts. It seeks specific views on options to widen access to trust information held on the Register of Overseas Entities (ROE). It also seeks general views on how ownership of land involving trusts (including UK trusts) can be made more transparent. To help inform decisions on balancing the making of information available and any legitimate concerns in sharing that information publicly, the consultation seeks views on what data would be most useful and why. This consultation will last for 8 weeks from 27 December 2023 and closes on 21 February 2024.

The British Property Federation is likely to be responding to the consultation and, if the Committee is happy with the response, it will endorse it.

## **6 Consultation on contractual controls on land**

The Government has launched a consultation [Contractual controls on land: consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk) on new regulations which will require the provision of certain information about agreements used to control registered land in England and Wales, intended to secure the land for residential, commercial or mixed-use development. The Government proposes that there will be a more transparent, publicly available data set of where and how land is under control, short of outright ownership. The regulations are expected to commence in April 2026 and will affect not only new agreements, but also existing agreements entered into from April 2021 and potentially earlier. There are criminal offences for failure to comply.

While there may be some benefits of having publicly available information about agreements that contractually control land (for example for local planning authorities), the Committee has a number of concerns. They include:

- The Land Registry already has serious resourcing challenges leading to excessive delay in processing applications. Although the regulations are unlikely to go live for over 2 years, there will be worries about whether the Land Registry will have the resources to cope with the additional work involved with these regulations, without there being an adverse impact on their other workflows. That is especially the case if the regulations apply not only to options and pre-emptions but also to any and all agreements for lease since 2021 if not before, relating to a lease of more than 7 years and conditional on the carrying out of works, or on the obtaining of planning permission for change of use (albeit the 12 months requirement will reduce the number).
- Although the regulations are unlikely to come into force before April 2026, the requirement to provide information applies to agreements entered into from 6 April 2021 and even earlier in certain circumstances. Questions will be raised as to whether it is appropriate for the regulations to have this retrospective application. A grantee of an option agreement may have entered into an agreement say in April 2022 and protected this at the Land Registry with a unilateral notice (meaning that the agreement did not need to be submitted and only limited information needed to be provided). This may have been done for the very valid reasons of confidentiality and commercial sensitivity and yet now, retrospectively, information (some of which will be commercially sensitive) will need to be provided with criminal sanction for failure to do so. The approach is reflecting a recent trend, see for example the retrospective impact of the proposals on existing ground rents. The Government should give consideration to the regulations only applying to future agreements.
- There are criminal offences for a failure to comply. While the Government is presumably including these as a strong incentive for relevant parties to comply, the question should be raised as to whether this is an appropriate remedy for breaches of these regulations.
- If the purpose of the regulations is ultimately to provide greater transparency in relation to the practice of land banking for example in the context of housing

development, is it appropriate for the regulations to affect land intended for the development of commercial property? Also, option agreements, pre-emption agreements or conditional contracts, even if they have some link to development, are not necessarily always used for land banking. Such agreements may be needed for example to allow time to obtain a relevant planning permission for the relevant development.

- There is uncertainty inherent in the chosen word of “development” used in the regulations. This could include construction works and/or change of use (in a planning sense) and the Government should clarify whether it is the intention that such development should be disclosed. For example, are the regulations intended to capture an agreement for the grant of an occupational lease of commercial premises which is conditional only on obtaining a planning permission for change of use (between whatever use classes)?
- No evidence has been provided to demonstrate how the regulations will specifically encourage the construction of new housing. Other factors such as the planning system (for example, the length of time it takes to get consent or extensive pre-commencement conditions) or factors making development uneconomic for a developer, including planning obligation requirements, inflation, borrowing costs and likely sale values, will be bigger reasons why new housing developments are being stalled.
- The grantee of a relevant agreement may need to incur additional costs in seeking professional advice to comply with the requirements – this is particularly an issue for agreements entered into before the regulations come into force. That would be a particular concern for developers given the proposed wide reach of the regulations, which would catch many transactions that do not relate to land banking, such as agreements for the grant of a commercial lease, subject to planning.

## **7 Response to the Law Society consultation on the New Code for signing and exchanging property contracts**

A response from the Committee was submitted.

## **8 Registration gap protocol – an update on the meeting on 23 January**

The meeting was very helpful and the group has finished its initial analysis of the drafting proposed. The document will be called a Protocol and will comprise suggested drafting plus guidance notes. The document will offer not only the agency approach (i.e. the buyer being appointed to act as the seller’s agent for certain matters during the registration gap) but also the alternative of the seller itself acting in cooperation with the buyer. Jayne Elkins very kindly agreed to produce the next version of the document and the group meets next in March.

## **9 Report on title review**

Andy Bruce, Adrian Footer, David Hawkins and John Nevin have kindly volunteered for a 2024 project to review the Committee’s standard Report on title. The Committee agreed that, while the Report is intentionally not as detailed as the Certificate of title, the Report continues to fulfil a useful function for a variety of transactions including those with a mixture of high and

low value properties. In fact, the Certificate can be used together with the Report on the same transaction reflecting the nature of the relevant properties.

## **10 Government consultation on capping existing ground rent for residential long leasehold properties in England and Wales**

A response from the Committee was submitted to this consultation and can be accessed at [CLLS Land Law Committee response to Consultation on Capping Ground rents.](#)

## **11 Certificate of title – small change proposed**

The following change in red is proposed to paragraph 32 in Schedule 5 to the Certificate of title. Logically this should be included since a new lease in a 1993 Act context is already referred to. The change will be highlighted in the Note to users in the Certificate and once the change has been publicised on the CLLS website, Warren will mention this to the PSL community. Since the change is small, the Certificate will remain the 8<sup>th</sup> edition 2023. The change also requires an equivalent amendment to the Questionnaire and the Client confirmation letter for the draft Certificate.

Proposed change to 32.1 in red:

If the Premises are residential:

- 1.1 the Company has told us that no tenant has made a claim against the Company nor, so far as it is aware, against any of its predecessors, to acquire:
  - 1.1.1 a new lease of the Premises pursuant to Chapter II of Part I (Individual Right of Tenant of Flat to Acquire New Lease) of the Leasehold Reform, Housing and Urban Development Act 1993; or
  - 1.1.2 the freehold **or an extended lease** of the Premises pursuant to Part I (Enfranchisement and Extension of Long Leaseholds) of the Leasehold Reform Act 1967.

## **12 Building Safety Act 2022**

The PSL community has set up a group to try and come up with some standard drafting for the Building Safety Act for property documents. A preliminary meeting has taken place with further meetings to follow. The Committee will be kept updated.

## **13 AOB**

- Forthcoming CLLS events – annual dinner for the specialist committees on 30 March 2024; CLLS/Grays Inn lecture on 17 April 2024.
- On 29 January 2024, the Better Buildings Partnership launches the updated Green Lease Toolkit. The Committee will consider the Toolkit in more detail at the March Committee meeting.
- There are a few places available on the Committee which will be advertised in the City Solicitor. The Committee is keen to promote diversity among its membership.

## **14 Length of meeting: 1 hour 30 minutes**

**15 Dates for remaining 2024 meetings, at 12.30pm and hybrid in person/virtual –  
20 March, 15 May, 17 July, 25 September and 20 November**