

Minutes for CLLS Land Law Committee meeting on 20 September 2023 by Teams and in person

Attendees: Jackie Newstead, (Chair), David Hawkins (Vice Chair), Warren Gordon (Secretary), Jamie Chapman, Caroline DeLaney, Jayne Elkins, Martin Elliott, Adrian Footer, Laurie Heller, Matt Hooton, Daniel McKimm, John Nevin, Brigid North, Julian Pollock, Jeremy Shields, Sangita Unadkat, Ian Waring and Patrick Williams.

1 **Apologies:** Kevin Hart (from the CLLS), Jeremy Brooks, Alison Hardy, Vikki Hills, Stephen Josephides, Paul Kenny, Franc Pena.

2 Committee update

Laurie Heller and Ian Waring are stepping down from the Land Law Committee. Both have contributed a huge amount to the Committee's work over many years and the Committee greatly appreciates this and thanks them for all their work. The Committee wishes Laurie and Ian all the best for the future.

3 CLLS matters

New AI Specialist committee

The CLLS has concluded that there is scope for a specialist AI committee. Subject to sign off at the CLLS Committee meeting, the CLLS will be recruiting new members in the next couple of days. This committee will be slightly different to other specialist committees in that the membership will be broadened to include partner, associate, and non-law AI experts. The committee is due to be in place in good time before the AI international conference at Bletchley Park at the beginning of November.

Intellectual Property Law Committee

The Intellectual Property Law Committee has been in abeyance for a period of time. In the light of ongoing work, not least in the AI sphere, it is felt that it should be revived. Specialist Committee Chairs have been asked to revert with any colleagues who might be potential candidates for the post of Chair of the committee, and further soundings will be carried out amongst senior partners etc. The timeline for this currently is that it should follow on from the appointment of the AI committee, although this might change. Please can members of the Land Law Committee spread the word in terms of a potential chair, and also for members to join the Intellectual Property Law Committee when the advertisement goes live.

Action point: Please can members of the Land Law Committee spread the word about the new AI and Intellectual Property Law Committees around their respective firms to encourage applications to join those committees.

Bridges

It has been suggested that members of the (main) CLLS Committee should each join one specialist committee as a bridge to better communications between the specialist committees and the CLLS Committee. The Land Law Committee thought that this was a good idea. The purpose of this is for the CLLS Committee to get a better feel of the work each of the specialist committees are carrying out.

Shadows

It has been suggested that each specialist committee might wish to invite a small team of non-partner level solicitors to sit in on the committee and to shadow the work that it

is doing, so that they get a feel of what it is like to sit on the committee should they decide to do so once they are made up as partner/equivalent. The Land Law Committee will explore the viability of this proposal and will work out the basis on which this is to operate, for example, whether shadows should be involved in specific projects of the Committee.

Autumn events

- The Construction Law Committee is holding its biennial training law programme across November 2023. Further details will be released shortly.
- The Annual CLLS Gray's Inn Lecture is taking place on 8 November 2023. This year's theme will be on "The Rule of Law? Does it really matter to commercial lawyers?" Two senior members of the judiciary, Lady Justice Andrews, and Sir Stephen Irwin, as well as Solicitor-General Michael Tomlinson KC MP, will be speakers at the event. There will then be a panel discussion, on which the speakers will be joined by The Law Society's Chief Executive, Ian Jeffery, and which will be moderated by Colin Passmore.
- On 21 November 2023, the latest of the City of London Solicitors' Company's' Food For Thought Events will take place examining ethical matters faced by many of CLSC members. There will be a panel of experts giving their views on the issues before opening the discussion to the audience. A time for informal networking and continued discussion will follow.

For all of these events, members are requested to pass on the invitation to their teams and junior associate/trainees; these are events to facilitate greater socialising post-Covid and the chance to meet members of CLLS and CLSC. Further details will be put on the CLSC and CLLS websites and social media.

4 Approval of draft Minutes for July 2023 Committee meeting

The draft Minutes for the July 2023 Committee meeting were approved and are on the CLLS's website [Land-Law-Mins-120723.pdf \(citysolicitors.org.uk\)](#)

5 Economic Crime Act – update to the Report on title

Minor changes have been made to Schedule 2 to the CLLS short form Report on title to cover the updating requirements for the Economic Crime Act. The revised Report has been added (in Word and pdf) to the Precedents section [Certificate of Title and related documents – The City of London Law Society ~ CLLS \(citysolicitors.org.uk\)](#) of the CLLS website. The changes are shown in red below and are referred to in the Notes to Users in the Report. The Certificate of title (8th edition) already has this extra wording.

If the registered proprietor is an overseas entity as defined in section 2 of the Economic Crime (Transparency and Enforcement) Act 2022 ("ECTEA"), is the entity registered in the register of overseas entities established under section 3 of ECTEA? [Yes/No/Not applicable]

If so, include the overseas entity ID for the entity and the date of registration in the register: Overseas entity ID []; Date of registration (or most recent update to the register) []

If the Company (if different from the registered proprietor) is an overseas entity as defined in section 2 of ECTEA, is the entity registered in the register of overseas entities established under section 3 of ECTEA? [Yes/No/Not applicable]

If so, include the overseas entity ID for the entity and the date of registration in the register: Overseas entity ID []; Date of registration (or most recent update to the register) []

The Committee will look to review its Report on title in 2024 – the last time it was reviewed in detail was in 2018.

Action point: Please can members let Warren know if they wish to be on the working group to review the Report on title.

Separately, the Economic Crime and Corporate Transparency Bill had included further triggers for updating the Companies House overseas entities register (i.e. an event-driven update on beneficial ownership information and an update no more than 14 days before the completion of a land transaction). Those triggers have been rejected by the House of Commons and the Lords will not seek to retain them.

6 Suggestion for Certificate of title

A suggestion had been made to the Committee to include in the Certificate of title a specific section for leases of electronic communications apparatus. The Committee thanked the correspondent for the suggestion, but in view of the recent publication of the 8th edition, the Committee would not be changing the Certificate for this suggestion. The Committee noted that the Certificate does not include specific provisions for wayleaves or sub-station leases with such documents being included as an Incumbrance in Part 3 (and not in Schedule 5). It is for the certifier and recipient of the Certificate to agree the level of detail required on such documents and for a lease of electronic communications apparatus. It was noted at the meeting that the Electronic Communications Code has a critical importance for some key aspects relating to the electronic communications apparatus regardless of what the lease states.

In terms of the reactions of users to the new Certificate of title, no negative feedback has been encountered by members and the Committee hopes that the changes in the new edition are helping both certifiers and recipients of the Certificate.

There was a discussion over whether the Certificate should include more on the Building Safety Act 2022. The Construction Documents section of the Notes to users states as follows:

The Certificate includes no specific reference to the Building Safety Act 2022 although that Act might be relevant for certain of the Certificate's statements, for example where there is a reference to statutory compliance. Consideration should be given as to whether that Act affects the Property and if so, whether any specific disclosure should be made. Matters relating to that Act are likely to be picked up on technical reports or surveys relating to the Property's condition and paragraph 3.3 of Schedule 1 to the Certificate provides that except as disclosed by the results of the searches listed in Schedule 6, the Certificate does not consider technical reports or surveys relating to the Property's condition and the recipient of the Certificate should consider what investigations it wishes to make in relation to those matters.

It is likely to be apparent from the Certificate or otherwise whether the Building Safety Act 2022 impacts on the relevant property and the solicitors for the recipient of the Certificate should provide the recipient with the legal analysis on its implications.

7 Building Safety Act 2022

The Committee considers that the Act will have a significant impact on transactions involving residential and mixed-use properties and will become a standing item for the Committee's agenda.

A particularly pressing point is the need to register existing occupied "higher risk" buildings with the Building Safety Regulator by 30 September 2023. It is an offence if after this date such a building is occupied but not registered with the Regulator. New and refurbished higher-risk buildings will also need to be registered once works are complete and before they can be occupied. This comes into force from October 2023 and is subject to further regulations. In summary, during the occupation phase a "higher risk" building is a building in England that is at least 18 metres in height or has at least 7 storeys and contains at least two residential units. Among the buildings expressly excluded from this definition are buildings comprised entirely of a hotel. Building height is measured from ground level to the floor of the top storey. If the building is situated on ground, which is not level, the height is measured from the ground level on the lowest side of the building to the floor of the top storey (excluding roof-top plant areas).

The Act entails a number of roles and responsibilities for managing building safety risks that need to be considered closely for relevant buildings.

Another area of increasing interest is the recovery of the costs of carrying out building safety measures and remediation works. Where remediation works are needed to address a "relevant defect" (which relates to a building safety risk) in a "relevant building" (this is at least 11 metres high or has at least 5 storeys, contains at least two dwellings and is not a leaseholder owned building), the Act restricts when and how much of the costs of remediation works can be charged to certain tenants via the service charge. These statutory provisions cannot be contracted out.

Building liability orders under the Act address the possibility that certain developers might escape civil liability for safety defects because they had carried out projects through shell companies or SPVs. Such an order may be granted by the courts to extend the specific liabilities of one body corporate to any of its "associates" (as defined in the legislation) and make them jointly and severally liable, thereby piercing the corporate veil and undermining the normal position on privity of contract. There is a serious concern on corporate acquisitions as to whether the purchaser may take on any liability under the Act.

Developers were required to sign the developer remediation contract by 13 March 2023, committing them to remediate life critical fire safety risks in residential and mixed-use buildings over 11 metres high which they developed in the last 30 years. Failure to 'sign up' may in the future result in developers being unable to develop certain land under schemes, which the government can introduce under the Act. On 25 April 2023, the government laid draft affirmative regulations to establish a Responsible Actors Scheme for developers, which requires as a condition of membership that eligible developers enter into a contract with the Secretary of State containing the self-remediation terms.

Mention was also made of the Part 2 specific lender requirements in the UK Finance Mortgage Lenders' Handbook in relation to the Act and certain requirements that solicitors may be unable to fulfil.

Action point: The Building Safety Act 2022 will be a standing item for the Committee's agenda.

8 Better Building Partnership's Green Leases Toolkit

This is likely to be published towards the end of this year and the Committee will consider it further once published.

9 Law Society's Climate Change Note

Impact of climate change on solicitors | The Law Society

Annex 2 (examples of climate legal risks) in the real estate section states "You should advise on physical climate risks and how they impact real estate ownership and use, such as flooding, fire, inaccessibility, uninsurability and availability of capital investment".

The Committee had concerns about the implications of this statement for reporting and the searches to be carried out. The Committee noted that the Law Society has recently released a consultation seeking views on a more specific climate change guidance note for the property sector. The period for response is only a few weeks.

The Committee considered that the general requirement to advise on physical climate risks and their impact should not apply to commercial property transactions. Principals involved in commercial property transactions routinely carry out their own environmental investigations and, if not, solicitors on such transactions routinely carry out environmental and flood searches. Those involved in such transactions generally have a greater appreciation of climate risks now and into the future (in considering for example re-development plans for the property in the longer term) and it was considered that those involved in commercial property transactions are better placed to make their own judgment on the impact of physical climate risks. It is hoped that the specific climate change guidance note for the property sector can distinguish in that way between residential and commercial property transactions.

10 Registration gap

A number of industry stakeholders will discuss a possible protocol to deal with Registration gap problems. The registration gap issue was raised at the Property Litigation Association Law Reform Committee and it is an issue that is unlikely to be dealt with, and certainly not swiftly enough, by reform (although noting there might be an opportunity to do so in part at least with the upcoming focus on reform to the Landlord and Tenant Act 1954). The issue is with the restriction on a buyer being able to deal with various key matters (e.g., 1954 Act lease renewals and associated proceedings, break notices, surrenders and any other court proceedings) until the registration gap closes without the involvement of the seller as registered owner. In some cases, the registration gap is open for a number of years due to administrative delays at HM Land Registry. Whilst reform should still be considered, the most sensible way forward may instead be to consider an industry protocol for dealing with these issues in sale contracts. This will require input from both a transactional and litigation perspective. At the March meeting the Committee agreed that it was interested in being involved in this project. **Caroline DeLaney, Matt Hooton, Brigid North and Jayne Elkins kindly volunteered for the project.**

11 HMRC's Trust Registration Service - are real estate transactional trust situations (such as nominee situations) caught?

The answer is potentially yes. For example:

- A taxable relevant trust i.e. a trust that is liable to pay any of a number of taxes in the UK (including SDLT) in relation to assets or income of the trust.

- UK non-taxable express trusts (including bare trusts and nominee arrangements), subject to exemptions.
- Non-UK resident trust acquiring UK real estate.
- Non-UK trusts with UK trustee entering into a business relationship on or after 6 October 2020 with a UK obliged entity.

For those trustees who have not registered a trust within the deadline where required to do so, HMRC's guidance states that there will be no penalty for a first offence of failure to register or late registration unless it can be shown that the failure is due to the deliberate behaviour of the trustees. Should a failure be considered 'deliberate', a penalty of £5,000 may apply per offence.

12 Retained EU Law (Revocation and Reform) Bill

<https://bills.parliament.uk/bills/3340> - now enacted.

13 Update on Use of disclaimers for documents on Committee's webpages – carried forward to November's Committee meeting.

14 **AOB** - None

15 **Length of meeting** – 1 hour 45 minutes

16 **Date for remaining 2023 meeting, at 12.30pm and hybrid in person/virtual** - 22 November

Warren Gordon
Secretary of the CLLS Land Law Committee