

## **Minutes for CLLS Land Law Committee meeting on 19 November 2025 at 12.30pm in person at Hogan Lovells and via Teams**

**Attendees:** Jackie Newstead (Chair), David Hawkins (Vice Chair), Warren Gordon (Secretary), Andy Bruce, Chris Cartwright, Caroline DeLaney, Nick Harris, Matt Hootton, Simon Kenley, Katherine Lang, John Nevin, Sarah Walker and Patrick Williams.

**Apologies:** Nick Barnes, Adrian Footer, Tom Goldsmith, Kevin Hart (from the CLLS), Paul Kenny, Omer Maroof, Henry Moss, Anton Newton, Franc Pena, Julian Pollock, Laura Uberoi, Alex Watt and Emma Willoughby.

### **1 Farewell and new Chair**

This was the final meeting for Jackie Newstead as Chair and member of the Committee. Jackie joined the Committee in 2005 and has been Chair since 2012 having presided over some 63 meetings, making her the longest serving of the current Chairs of the CLLS Committees.

Jackie thanked the Committee members (past and present) for all their work and support for the Committee over the years which has undertaken and continues to undertake projects of great value and importance supporting the profession.

David Hawkins led the Committee's thanks for Jackie's great leadership of the Committee over the years and Jackie will be a very difficult act to follow.

Matt Hootton has very kindly put his name forward to be the new Chair. The Committee gave their approval to Matt becoming the Chair and this will be put to the CLLS for confirmation. David has kindly agreed to continue as Vice Chair.

Jackie's position on the Committee will be advertised in due course.

Future Committee meetings will be held at the offices of Matt's firm, Simmons & Simmons [London | Simmons & Simmons](#)

### **2 Membership - application from David Horan of Sidley Austen**

This is ongoing.

**3 Approval of Minutes for September 2025 Committee meeting** – see attached Minutes [CLLS-Minutes-17-September-2025.pdf](#) and added to the Committee's webpage.

### **4 Certificate of title – Building Safety Act and other matters**

The Committee has been considering whether the Building Safety Act 2022 (“BSA”) should be dealt with in the Certificate of title.

Emma Willoughby has kindly provided some suggested drafting (circulated to the Committee) for a new paragraph 28.2 in Schedule 3 (paragraph 28 being the statements for Residential and mixed-use buildings). The suggested drafting has a number of statements which include Company confirmations to the effect that no relevant building on the Property (or no relevant building of which the Property

forms part) satisfies the height or storeys test for it to be a “relevant building” or “higher risk building” as defined by the BSA, with a new provision for independent sections and more detailed footnotes.

The key purpose behind the new statements is to factually ascertain (by way of company rather than solicitor confirmation) whether a building on the Property (or a building of which the Property forms part) is a “relevant building” or “higher risk building” for the purposes of the BSA. A disclosure against the statements may then prompt further actions outside the scope of the Certificate, but at least the statements would trigger practitioners to think about the BSA on transactions contemplated by the Certificate. In that way, the suggested approach is similar to that used for the existing statements covering other residential related legislation in paragraph 28.

At the last meeting the Committee accepted the principle of including such statements for the BSA and Eversheds were asked if their Cardiff office might be able to assist with alternative wording for properties in Wales.

Once the new wording has been finalised, the questionnaire and confirmation letter will be updated to reflect the changes to be made to the Certificate.

Since the revised Certificate will not be launched until 2026, the revised Certificate should be called the **Eighth Edition 2026 Update**.

The Committee was asked to take this opportunity to consider any other updates to the Certificate (since the intention is to update the Certificate only once per year).

It is suggested that the footnote for clause 3.2 be supplemented as follows in bold italics and the Committee was happy with the addition:

*“The additional wording in square brackets in clauses 3.2, 3.3, 3.3.1(e) and 3.3.1(g) should be used if the Certificate is given in connection with an acquisition of the Company owning the Property. **If a Certificate is being provided by the law firm acting for the seller of the shares in the Company and the recipient of the Certificate is the buyer of the shares (and assuming no financing of the acquisition), in clauses 3.2 and 3.3.1 the reference should be to the Company (and “the purchaser” references should be removed) and choose the 2<sup>nd</sup> alternative wording referring to a share purchase in the 1<sup>st</sup> paragraph of clause 3.3. The confirmation letters are sent to the Company. Importantly, in the SPA for the share sale, a warranty must be provided by the seller that the information, provided by or on behalf of the seller or the Company to the solicitor so that it could produce the Certificate, is accurate.**”*

There was a discussion of the extent to which a small number of banks continue to object to the standard wording in the Certificate for limiting the quantum and period of liability. The cap level and period of liability are to be determined for each transaction, but some banks object to the principle of there being any limit on quantum or period.

The current guidance in the Certificate states that ***the cap is a matter of negotiation which may be linked to the value of the deal, property or loan, but there are no absolutes here and the particular circumstances will dictate what is agreed. For example, if the property is of a high value, the parties will need to agree a sensible cap, which may be lower than the value of the loan or property. The certifying firm should check its internal procedures as to its policy on whether to limit its liability and, if so, the level of the cap.***

Some banks are requiring caps that do not equate to the value of the loan or the property and do not reflect what any loss is likely to be i.e. it is highly unlikely that the entire value of the property would be lost if there was a mistake in the Certificate.

The insistence on a high cap has led to firms having to take out top-up insurance sometimes at very high premiums which would often be at the borrower's cost.

It was noted that other non-lawyer professionals on the transaction are not being required to take on such high levels of potential liability.

The Committee reiterated that having a cap on liability and a limitation on the period of liability are both market practice. This point will be reinforced in the 2026 Update of the Eighth Edition. Committee members were encouraged to talk to bank clients and banking colleagues to explain the reasoning behind the Certificate approach to limiting the quantum and period of liability.

Separately, in the context of the Renters' Rights Act (see item 7 below) it was noted that the only references to assured shorthold tenancies in the Certificate was in the guidance notes which stated that the certifier and recipient of the Certificate should agree whether the Certificate should cover any assured shorthold tenancies or other residential Letting Documents and, if so, the level of detail required. Those references to ASTs will be amended also to include assured periodic tenancies from 1 May 2026.

**Action: Committee members are asked to send through any changes to the Certificate or associated documents for the new 2026 Update. The intention is to launch the 2026 Update in the first quarter of 2026.**

## **5 Draft legislation to ban upwards only rent reviews for commercial leases**

Draft legislation to ban upward-only rent reviews ("UORR") in commercial leases was introduced in Parliament in July without prior warning.

It's part of the English Devolution and Community Empowerment Bill ("Bill") [English Devolution and Community Empowerment Bill - Parliamentary Bills - UK Parliament](#) which is now at Report stage in the Commons. The provisions can be found in Schedule 31 [English Devolution and Community Empowerment Bill](#), which includes a new Schedule 7A and 7B to the Landlord and Tenant Act 1954.

The change will not affect existing leases (with one exception, see below) but will ban the introduction of UORR in new leases. Landlords will need to choose between agreeing fixed rents or introducing a review clause that allows rents to fall as well as go up. The ban will also apply to renewal leases where the tenant has security of tenure under Part II of the Landlord and Tenant Act 1954.

Following the ban, if a UORR clause is in a new or renewal commercial lease, the requirement for rent not to decrease will be unenforceable. The Government says: "The new rent will be determined by whatever methodology is specified in the lease, for example in line with changes to the retail price index. The new rent may be higher, lower or the same as the previous rent."

On 30 October 2025, a new version of the ban provisions was produced. At first sight, the revised Bill looks significantly different from the original version, but on closer examination, most of the Bill is the same but re-ordered. The new provisions seek to address a few concerns primarily expressed by tenants, but they don't fully address those concerns, nor do the provisions give much assurance to landlords. Key points include:

- There is a retrospective change for existing (pre-ban) superior tenancies. If the landlord under the superior tenancy can require that a sub-tenancy includes UORR, the Bill modifies the terms of the superior tenancy to permit a rent review that is not upwards only in the sub-tenancy. So, it appears that if a pre-ban superior tenancy has an UORR the tenant remains bound by the UORR, but the landlord under the superior tenancy cannot require an UORR in the sub-tenancy.

This doesn't prevent the landlord and tenant under the sub-tenancy agreeing the rent review terms, but if the sub-tenancy is completed after the ban comes into force, it seems that it couldn't include an UORR in any event. So, there would remain a rental mismatch between the UORR in the superior tenancy and the non-UORR in the sub-tenancy, which would potentially disadvantage the tenant under the superior tenancy. There will also be a concern for landlords that the draft legislation deprives the landlord under the superior tenancy of any control over the rent review provisions of the sub-tenancy even if they are not upwards only (which seems wider than the legislative purpose).

- A tenant who is not in occupation (but has a right under its tenancy to occupy for business purposes) is treated as a "business tenant" and is therefore protected from UORR. This addresses a tenant concern highlighted by the original Bill - the prospect of a tenant not in occupation under a lease being subject to an UORR but not being able to include an UORR (due to the ban) in an underlease where the undertenant is in occupation. This change does **not** apply the ban to pre-ban tenancies, so a tenant under a pre-ban lease with an UORR who post-ban sublets its space cannot include an UORR in the sub-tenancy; again, a rental mismatch.
- Under the original version of the Bill, for existing tenants, it was proposed that the ban would apply to post-ban put options or agreements for lease with "day-one" UORR designed to circumvent the effect of the ban. This has now been extended to post-ban call options (such as an option to renew) benefiting tenants under existing tenancies, closing a gap in what the Bill covers.

There is no sign as yet that the Government is seeking to address concerns expressed by landlords. The context and key motivation behind the Bill appeared to be vacancies in the high street and especially in retail, but the ban continues to apply to all commercial leases. While the explanatory notes accompanying the Bill hinted that there may be a place for collars in certain circumstances, nothing has yet been included in the Bill.

No timing is set for when the Bill will come into force, but the fact that there is so much other substantial material in the Bill (unconnected to rent review) is only likely to delay matters. There are likely to be technical consultations on the proposals and indications are that the proposals will not come into force until at least 2027.

It was noted that if the ban comes into force, this is likely to encourage more fixed increases or fixed percentage increases in the rent at the review dates.

The Committee will look for further opportunities to work with the BPF among others in relation to trying to ensure that the Bill's provisions are workable.

## **6 Updating of the Committee's service charge provisions**

The RICS has launched a new 2nd edition of its professional standard for Service charges in commercial property [Service charges in commercial property](#), which is usually called the Service Charge Code. This is the first update in 7 years and it comes into effect on **31 December 2025**.

This sets down industry best practice guidance in the management and administration of service charge in commercial property. There are mandatory requirements for RICS accredited professionals and regulated firms, but this doesn't have any binding effect for landlords not regulated by the RICS. The Professional Standard strikes a balanced perspective for both landlord and tenants and is intended to promote best practice, uniformity, fairness and transparency throughout the management process of service charges in commercial property.

The key changes are set out here [Service-Charges-in-Commercial-Property Basis-for-Conclusions.pdf](#) and the timing issue below is one of the more significant ones.

### ***Timing for budgets and year end accounts***

The timing requirements for the issue to tenants of budgets and service charge year end accounts are now in the mandatory requirements section of the Professional Standard (relevant wording below). Previously they were a so-called “core principle” for which, unlike mandatory requirements, strict compliance may not always be possible.

*“Managers must issue to tenants:*

- budgets, including an explanatory commentary at least one month prior to the start of the service charge year.*
- an approved set of service charge year end accounts showing a true and accurate record of the actual expenditure constituting the service charge within four months of the service charge year end.”*

Although this is a mandatory requirement, the Professional Standard does state that where these timescales cannot be met, a timely explanation must be provided of when they will be issued and the reason for the delay in line with the mandatory communication provisions. This does not dispense with the obligation to provide both. Where there is a legitimate reason for the delay in issuing budgets or reconciled year end accounts, managers must use all reasonable endeavours to issue these as soon as practicably possible.

The new Professional Standard refers to the Committee’s service charge provisions as below -

“The City of London Law Society [Precedent Documents](#) has previously drawn up service charge lease provisions that reflected the provisions of the code at the time. These may also be subject to review and updating, therefore, it is recommended that interested parties keep abreast of any updates.”

The Committee’s working group is close to finalising the update of the provisions (draft for a shopping centre circulated to the Committee in advance of the meeting) reflecting the new Professional Standard and case law. There will be separate provisions for a shopping centre and for an office building. They will be circulated to the Committee for final approval. The provisions will be launched in early 2026.

**Action: Service charge provisions for a shopping centre and for an office building to be circulated to the Committee for final approval. Committee members are requested to provide any comments by the end of 2025. Provisions will be launched in early 2026.**

### **7 Renters’ Rights Act**

The Renters’ Rights Act (“Act”) [Renters’ Rights Act 2025](#), which gained Royal Assent on 27 October 2025, comprises the biggest change in decades to the residential private rented sector in England.

The changes under the Act are retrospective so will affect existing and new tenancies. The Government has announced the implementation dates for the Renters’ Rights Act 2025.

For the majority of the changes, this will be **1 May 2026**.

On this date, the Government plans to introduce the following:

- The abolition of Section 21 Notices and changes to Section 8 possession grounds;
- The abolition of Assured Shorthold Tenancy Agreements and the conversion to Assured Periodic Tenancies;

- The abolition of contractual rent review provisions;
- The ban on demanding rent in advance and rental bidding;
- The introduction of anti-discrimination provisions in respect of tenants with children or benefits;
- The simplification of the process allowing a tenant to request a pet in the property;
- The introduction of further fines, extension of rent repayment orders to two years and strengthened local council enforcement powers.

The most widely used residential tenancy has been the assured **shorthold** tenancy (“ASTs”). The effect of the Act is that ASTs will no longer be able to be created and existing ASTs will cease to function as such. They will no longer be able to be terminated on the shorthold (“section 21”) ground, taking away the main advantage of this tenancy for landlords. Instead, landlords will need to use a section 8 possession ground under the Housing Act 1988 (as amended) and, reflecting the abolition of section 21, the section 8 grounds will be expanded. ASTs will become assured periodic tenancies and existing tenancies will convert to the new system.

Landlords will be able to increase rents once per year to the market rate (the price that would be achieved if the property was newly advertised to let), but to do this they will need to serve a “section 13” notice, setting out the new rent and giving at least 2 months’ notice of it taking effect. If a tenant believes the proposed rent increase exceeds market rate, they can challenge this at the First-tier Tribunal, who will determine what the market rent should be. This can cause delays and tenants may be inclined to challenge as a matter of course since any increase is not backdated and will only apply from the date of the Tribunal determination. Rent increases by any other means – such as rent review clauses – will not be permitted. The Act seeks to avoid unnecessary ‘cliff edges’ by maintaining the validity of rent increases and notices served prior to implementation of the Act.

PBSA (Purpose Built Student Accommodation) providers under new tenancies will be exempt from the Act. The exemption is contingent on either the landlord or its managing agent being a member of a Government-approved code of practice (currently ANUK/Unipol and UUK). Of concern, there will be a transition period during which assured shorthold tenancies which have already been granted by PBSA providers prior to commencement of the Act will be affected by the changes under the Act. PBSA providers should therefore plan for this transition period and note the ability of relevant tenants to, amongst other things, be able to terminate their tenancy on 2 months’ notice.

## **8 Law Commission consultation on chancel repair liability**

The Law Commission is consulting on reforms to the law governing land registration and chancel repair liability.

There is an issue about the legal status of the liability and whether property owners are nevertheless bound despite the *Land Registration Act 2002* (by which chancel repair ceased to be an overriding interest back in 2013). Millions are spent each year on searches and insurance. The 2002 Act also only governs registered land and purchasers of unregistered land can still find that they are bound by an unexpected and undiscoverable chancel repair liability.

The Law Commission project aims to ensure that chancel repair liability does not bind purchasers of land, unless it is registered – and therefore visible – to purchasers. It will also help avoid the need for purchasers to undertake chancel repair searches, or to pay for insurance.

Provisional proposals (in Chapters 6 and 7) to amend the Land Registration Act 2002 clarify that:

- it is possible to register a notice relating to a chancel repair liability that affects a registered estate; and
- a purchaser of a registered estate is not bound by a chancel repair liability unless the liability is protected by a notice registered against the estate.
- for unregistered land, it is possible to lodge a caution against first registration relating to a chancel repair liability; and
- a chancel repair liability that is not recorded in the register during first registration ceases to bind the newly registered estate.

The consultation document is here [Chancel repair liability and registration – Law Commission](#) and the consultation closed on **15 November 2025**. The Law Commission will look to publish a final report with recommendations in 2026.

A response to the consultation on behalf of the Committee has yet to be sent in. The Law Commission has confirmed that it is happy to accept a response from the Committee by the end of November. Some proposed content for a response is set out below and the Committee is requested to provide any comments.

Separately, the Commission has also asked if any members of the Committee can mention any problems related to ownerless land (*bona vacantia* or *escheat*) that they think the Commission’s new project on [Ownerless land – Law Commission](#) should be addressing. The Commission is still working on defining the scope of the project.

### **Proposed content for a response to the chancel repair liability consultation:**

“It is a good idea that the Law Commission is seeking to address the continuing concern about chancel repair liability (CRL). Even though it ceased to be an interest with overriding status back in 2013, many conveyancers continue to carry out chancel repair searches which sometimes produce equivocal results leading to insurance being taken out (or insurance is taken out without a prior search). There has been a debate for many years about whether it is justifiable to take out this insurance almost as a standard process on certain types of transactions when pay-outs are rare. The consultation paper doesn’t highlight the pay-out record on CRL insurance policies.

Paragraph 8.3 of the consultation paper refers to a 2017 survey from the Conveyancing Association with 129 responses which suggested that conveyancers undertake a CRL search in relation to roughly 25% of purchases of land and that CRL insurance is taken out without a prior search (“non-search insurance”) in roughly 30% of cases (full results in Appendix 2 of the paper). Stakeholders in the insurance industry have told the Law Commission that the five largest insurers who provide CRL insurance issue in the region of 150,000 policies each year with total premiums of about £2,250,000 a year (and this does not take into account policies offered by smaller providers). The Law Commission acknowledge that this data is quite old and seek more up-to-date information. It would be useful to know whether most of the CRL insurance policies are obtained on standard residential transactions (which we suspect to be the case) rather than commercial transactions.

In a way the risks and legal complexity highlighted by the consultation paper may make it more likely that insurance may be taken out. As the paper acknowledges, it has been generally assumed (until now) that CRL is registrable (by entry of a notice) under the Land Registration Act 2002 (“the LRA 2002”) and that a purchaser of registered land is not bound by an unregistered CRL and it was thought that parochial church councils needed to protect their rights to CRL by 13 October 2013 or lose them on a

sale of registered land. And HM Land Registry's Practice Guide 66, on former overriding interests, states that if a notice relating to CRL (and other manorial rights) was not recorded against registered land, "a person who acquires the registered estate for valuable consideration by way of a registrable disposition after 12 October 2013 [would] take free from that interest". In paragraph 6.39, the Law Commission note that their legal analysis of the nature of CRL in this consultation paper is new; they are not aware of any other published analysis that suggests CRL is not an interest in land.

The consultation paper mentions the *Chivers* case, a decision of the High Court from 1955: *Chivers & Sons Ltd v Air Ministry*. According to *Chivers*, a person becomes a lay rector (and therefore subject to CRL) simply by acquiring a parcel of land that belonged to a lay rectory. *Chivers* may have been wrongly decided, but the common understanding of the current law is that CRL transfers automatically with the ownership of particular areas of land.

The Law Commission proposes to clarify that a purchaser of registered land will only be bound by a CRL if it is noted against the title to the land. The Committee questions whether such a change to land registration legislation would prevent the purchaser from having the CRL liability. The consultation paper states that the general law has been modified by the law governing land registration and that the LRA 2002 is the principal statute that governs registered land in England and Wales. But as the consultation admits, it is arguable that CRL is not registrable under or affected by the LRA 2002, so why would a change to the LRA make a difference to whether the purchaser is liable? That was why the Law Society a number of years ago was interested in the proposals to in effect abolish CRL (separate to any specific land registration implications). In paragraph 6.1 of the consultation paper the Law Commission state that they are not considering whether CRL should be reformed or abolished.

The Law Commission note in paragraph 6.30 the uncertainty about the nature of CRL and whether it constitutes an interest in land, but state that regardless of whether CRL in technical legal terms currently constitutes an interest in land, they think that it would be possible to amend the LRA 2002 so that it is clear that a purchaser of registered land is not bound by CRL unless it is recorded in the register at the time of the purchase. The Committee notes the Commission's position, but for the reason mentioned in the previous paragraph, the Committee would like some further assurance from the Commission as to why this would be effective when the LRA 2002 approach was not.

The concern is touched on in Interpretation 1 on page 178 of the consultation paper. The Law Commission state that a person who acquires land that belongs to a rectory does not become subject to CRL unless they acquire the rectory. A person does not acquire a rectory automatically when they acquire rectorial land, although what would be involved in a transfer of a rectory today is not entirely clear. This Law Commission statement is helpful and it would seem that the risk here is remote since most purchasers will not intentionally be buying a rectory. That may provide enough assurance to rely on the Law Commission's proposed solution and for conveyancers to focus on whether CRL is noted against the title, rather than other CRL due diligence or solutions.

A possible consequence of the Law Commission's proposal is that more applications will be made to note CRL against registered titles and these may be spotted late on when obtaining Land Registry priority searches which can create problems in completing the transactions. Perhaps this is an unavoidable consequence of the proposal. It can also be said that beneficiaries would have registered in 2013 if they were going to do it."

**Action: Committee members are asked to provide any comments on the suggested response to the Law Commission's consultation on chancel repair liability by 26 November. Members are also requested to mention any problems related to ownerless land (bona vacantia or escheat) that they think the Commission's new project on Ownerless land – Law Commission should be addressing.**

## **9 CLLS Borrower’s solicitors’ undertakings document**

There will be a project in the new year to review the Borrower’s solicitors’ undertakings document. Emma Willoughby, Matt Hooton and Chris Cartwright have kindly agreed to be members of the working group.

## **10 Approach to Green Lease Toolkit PM Amends 15.05.2023 202304 GLT - consolidated draft clauses - V5 May 22-4 compared with PM Amends 15.05.2023 202304 GLT - consolidated draft clauses - V5 May 22-4-1 (betterbuildingspartnership.co.uk) (standing item)**

There was a brief discussion about the best way to promote the provisions amongst agents and others. Katherine Lang mentioned that she has been working with the Better Buildings Partnership to promote the Toolkit among smaller agent organisations acting for tenants, as well as other agent organisations. The Toolkit has the advantage of offering alternative light, medium and dark green lease drafting.

It was noted by another Committee member that green leases are a liquidity issue and the market is driving this.

Here is a link to the Green Lease Toolkit webpage [GREEN LEASE TOOLKIT | Better Buildings Partnership](#).

**Action: The CLLS will be asked whether an “Other Useful Resources” section can be added to the Committee’s webpage, to highlight resources such as the Toolkit.**

## **11 AOB**

- **SRA consultation on Client Account – this will not result in a prohibition on solicitors’ client accounts Consumer protection: SRA backs off from sweeping changes to solicitors’ client account | Law Gazette** – noted by the Committee.
- **RICS Common Auction conditions – does the Committee want to promote these or at least feature them on the Committee’s webpage (Conditions circulated to the Committee in advance of the meeting)?** The Committee will consider this as a project for 2026.
- **The Government has launched two consultations on home buying and selling reform and material information in property listings. This is focused on residential property transactions and consumers** – noted by the Committee.
- **The CLLS Construction Law Committee has approached the Committee to assist with updating a note on the Third Party Rights Act.** The Committee is happy to consider this in the new year.

**Action: New year projects on Auction Conditions and Third Party Rights Act.**

## **12 Length of meeting: 1.5 hours**

**13 Dates for 2026 meetings, at 12.30pm and hybrid in person/virtual. To be confirmed by the new Chair and to be at Simmons & Simmons.**