

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

Attendees: David Hawkins (Vice Chair and acting Chair for this meeting), Warren Gordon (Secretary), Chris Cartwright, Caroline DeLaney, Alison Hardy, Nick Harris, Simon Kenley, Paul Kenny, Katherine Lang, Omer Maroof, Anton Newton, Julian Pollock, Jeremy Shields, Sarah Walker and Emma Willoughby.

Apologies: Jackie Newstead (Chair), Kevin Hart (from the CLLS), Andy Bruce, Nick Barnes, Jamie Chapman, Adrian Footer, Matt Hootton, Tom Goldsmith, John Nevin, Franc Pena, Laura Uberoi and Patrick Williams.

1 Welcomes and Thanks: The Committee is delighted to welcome Sarah Walker of Travers Smith and Nick Harris of Reed Smith to the Committee and looks forward to their contributions to the work of the Committee.

This is the last Committee meeting for members Jamie Chapman and Jeremy Shields. They have both made great contributions to the Committee's work over many years and the Committee thanked both of them for all their work for the Committee and wished them all the best for the future.

2 Approval of Minutes for January 2025 Committee meeting – see [Minutes for January 2025 CLLS Land Law Committee meeting](#) now on the CLLS website.

3 Committee membership

The Committee approved the appointment to the Committee of Alex Watt of Freshfields and Chris Benbow of Ashurst (subject to any further requirements from the CLLS).

Action: The Committee agreed that it was important to continue to promote the diversity of the Committee's membership.

4 Report on title and Certificate/Wrapper changes

The new edition of the Report, together with the small changes to the Certificate of title and Wrapper, were launched in January 2025.

A couple of changes were also made to the Certificate at the start of March 2025.

The changes are shown in red below to paragraph 28.2.3 of Schedule 3. The changes arise from section 49 Leasehold and Freehold Reform Act 2024 coming into force on 3 March 2025.

“28.2.3 for the purposes of Chapter 1 of Part 2 (Right to Manage) of the Commonhold and Leasehold Reform Act 2002 -

(a) the whole of or that part of the Property which is used for residential purposes is a self-contained building, more than 50% of the internal floor area (excluding common parts) of which is occupied or intended for non-residential purposes; or

(b) the whole of or that part of the Property which is used for residential purposes is a self-contained building, 50% or less of the internal floor area (excluding common parts) of which is occupied or

intended for non-residential purposes, but the number of flats held by qualifying tenants within the relevant building is less than two-thirds of the total number of flats in that building.”

The draft confirmation letter and questionnaire have also been updated to reflect those changes.

Please click on the Certificate of title tab linked here [Precedent Documents](#) for the revised Word and pdf versions, plus the rest of the suite of Certificate of title documents.

The Committee considered whether the Building Safety Act should be dealt with in the Certificate of title. This is an issue that lenders are increasingly interested in. The Committee agreed that the next time that the Certificate is updated (which is unlikely before the start of 2026), consideration will be given to including in the Certificate some Company confirmations in relation to whether the property is a higher risk building for the purposes of the Building Safety Act. The confirmations will go in the residential properties section of Schedule 3. The confirmations would be limited in scope and their purpose (as with the other residential confirmations) is a potential trigger to the recipient of the Certificate that they may need to do something further. There may also need to be some guidance to assist with such Company confirmations.

Action: Emma Willoughby kindly agreed to circulate some suggested wording that can be discussed at the May Committee meeting.

5 Law Society’s Climate Change Risk Conveyancing Practice Note

The note is close to being finalised. The Chair of the Committee circulated a close to final form of the note to the Committee which had no further comments. The note will be launched in May 2025.

6 Law Commission’s consultation on Part 2 of the Landlord and Tenant Act 1954

The Committee submitted a response to the consultation [Response of the Land Law Committee to the Law Commission’s first consultation on the reform of the Landlord and Tenant Act 1954](#) and many thanks to all those who contributed to the response.

7 Updating of the Committee’s service charge provisions

The RICS will be launching a new 2nd edition of its professional standard for Service charges in commercial property. This will probably be launched within the next month or so. The standard will refer to the Committee’s service charge provisions (which were produced over 10 years ago for an earlier “service charge code”). There are separate provisions for a shopping centre and an office building.

The Committee has a sub-group (David Hawkins, Matt Hooton, John Nevin, Katherine Lang and Warren Gordon joined by Jonathan Lovejoy of British Land from the RICS group) which met a few weeks ago to review the CLLS provisions, looking at those for a shopping centre.

The revised draft from the sub-group’s meeting was circulated to the Committee in advance, but the sub-group’s discussions are ongoing.

The Committee’s views were requested on clause 29 of the draft, the energy efficiency clause.

- Should the CLLS service charge provisions reflect the approaches to ESG in the RICS standard?

- The BBP Toolkit adds a number of extra energy efficiency-related heads of expenditure such as meter installation to promote accurate billing, and the installation of technology to monitor and control the environmental performance of the building <https://www.betterbuildingspartnership.co.uk/green-lease-toolkit/green-lease-clauses/service-charge>. Should the CLLS provisions include references to either of those?
- The key question is whether and to what extent the energy efficiency clause in the CLLS provisions should be updated? The CRC wording must be deleted. Should any form of the BBP service charge drafting be included? Or simply a drafting note to consider these points on a case-by-case basis?

The Committee considered that the inclusion of green lease provisions would depend on the particular building and approach of the landlord. While a note will be added suggesting that consideration is given on a case-by-case basis to inclusion of green lease drafting (with a reference to the Better Buildings Partnership's Green Lease Toolkit [GREEN LEASE TOOLKIT | Better Buildings Partnership](#)), no additional green lease drafting will be included in the CLLS service charge provisions.

The Committee commented on the following further points in relation to the CLLS service charge provisions:

1 Should there be a definition of Insured Risks (only used in 10.2) to match up with the definition of Insured Risks in the main body of the lease, or at least a footnote on the point? A footnote should highlight that the definition should be consistent with that used in the lease.

2 Clause 5.2. – should the sinking fund be used to top up shortfall for unbudgeted expenditure or should that be ring fenced for major items? It should not top up a shortfall for unbudgeted expenditure. It was noted that the unbudgeted expenditure clause is separate to the sinking/reserve fund provisions.

3 Clause 7.1 – should the landlord have to include any unbilled expenditure in the immediately subsequent period or any subsequent period? Any subsequent period. There may be reasons why this may be necessary which are not due to landlord default.

4 Clause 9 – should the management charges be capped? No.

5 Heat Networks – should they be referred to? Or the drafting could state that if there is a heat network, then the costs associated with compliance and maintenance are recoverable and compliance would be one of the services. It was considered not necessary to include this reference in the provisions, it being noted that one of the heads of charge is statutory and other requirements.

6 “Re-charges” – it is perhaps unusual for leases to reserve as rent the cost of the utilities consumed within the demise (although it may be sensible to do so). It may often get swept up in the “Outgoings clause”. But if it is going to fall into the service charge, does it make sense to include it as part of the Landlord's Costs? It was noted that the provisions include as a head of charge the payment of Outgoings in respect of the Retained Parts and also a head of charge for heating the building. The cost of the utilities consumed within the demise falls outside these provisions.

The Committee agreed that the provisions should allow for, at the expiration or earlier determination of the term, the landlord refunding to the tenant a due proportion (as defined in the provisions) of any surplus contributions within any reserve fund paid by that tenant. This is consistent with the *Brown's Operating* decision from 2007.

It will be made clear in the CLLS provisions that they are designed for a fully commercial building, but if there is a residential element, consideration should be given to the impact of the Building Safety Act.

Action: It is hoped that the revised CLLS service charge provisions can now be finalised, approved at the May Committee meeting and launched shortly after, with the CLLS publicising the provisions.

8 Sanctions drafting in leases and agreements for lease

Are Committee members seeing any OFAC (Office of Foreign Assets Control) Sanctions wording in contracts / leases (in forfeiture or termination provisions, or alternatively in a covenant not to become designated as a sanctioned person) particularly with US counterparties? This has appeared in a few leases recently.

The Committee concluded that there is no consistency in practice and inclusion of such drafting is an exception rather than the rule. Some concern was expressed about tenants having wide-ranging obligations relating to sanctions, breach of which could lead to the lease being forfeited.

9 Compulsory purchase consultation

The Law Commission are consulting on the law of compulsory purchase and compensation. The consultation is open for responses until **31 March 2025**.

<https://consult.justice.gov.uk/law-commission/compulsory-purchase/>

The Committee decided not to respond. It was considered that the CLLS Planning and Environmental Law Committee may be better placed to respond and the press discussion on the proposal to remove hope value and only value land on current use value was a valuation question which the Committee considered fell outside its expertise.

As a connected point for information, the Planning and Infrastructure Bill has been published [Planning and Infrastructure Bill](#)

Here is the accompanying press release: ['Biggest building boom' in a generation through planning reforms - GOV.UK](#)

And areas of particular interest are:

- NSIPs and changes to judicial review
- Compulsory purchase orders and
- Rule of law and access to justice considerations

10 Land Registry

A summary was circulated to the Committee of an AREF/BPF call with HM Land Registry covering such matters as the backlogs.

Action: The Committee agreed that Mike Harlow or another of the senior team at the Land Registry should be invited to the Committee's May or July 2025 meeting, which would be about a year since the last Committee/Land Registry discussions.

11 Renters' Rights Bill

This is a very big and important piece of legislation [Renters' Rights Bill - Parliamentary Bills - UK Parliament](#).

See also [Guide to the Renters' Rights Bill - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

The Bill is at Committee stage in the House of Lords.

At the last Committee meeting, a big point was highlighted about the proposed prohibition on rents being “due in advance” (see proposed new section 4B in the Housing Act 1988).

Many tenants cannot pass affordability checks for rents and will make an upfront payment to reduce the rent for the first 12 months, which then allows them to pass an affordability check at this lower sum. The concern was that preventing this will change the way referencing companies, insurers, and therefore agents and landlords look at these tenants. And landlords of student accommodation may look to avoid the legislation to allow them to take rent in advance from overseas students.

The Committee was also particularly concerned about the apparent lack of transitional provisions, bearing in mind that the legislation is intended to be retrospective.

After the meeting, the Government responded to the Law Society on the transitional point:

“‘The Renters’ Rights Bill makes specific provisions to ensure a smooth transition to the new tenancy system and avoid unnecessary ‘cliff edges’. The transitional provisions can be found in Schedule 6 of the Bill—‘Application of Chapter 1 of Part 1 to existing tenancies: transitional provision’. The transitional provisions in Schedule 6 include maintaining the validity of possession notices served prior to implementation. This means that valid eviction notices submitted before the commencement date will remain valid until possession proceedings conclude, or the initiation of possession proceedings become time barred. Depending on when the notice was served, landlords will have up to three months from the commencement date to initiate possession proceedings.

We will work closely with all parts of the sector to ensure a smooth transition to the new system and will provide sufficient notice ahead of implementation. The government is currently conducting a review of the available guidance to tenants and landlords to ensure that each group is aware of their rights and can also fulfil their responsibilities.”

The Committee was told that there has been no further update on the “due in advance” concern. It was noted that Shelter and others had written to the Secretary of State about the potential consequences such as prospective tenants may not be able to benefit from a letting because they cannot show their ability to pay the rents.

12 Commonhold

The Government has published a White paper [Commonhold White Paper: The proposed new commonhold model for homeownership in England and Wales - GOV.UK](http://www.gov.uk) proposing a reinvigorated form of commonhold as a new form of ownership for flat owners. New leasehold flats will be banned and will be replaced by commonhold as the default tenure, with flat owners becoming commonhold unit owners. Commonhold will give flat owners a stake in the ownership of their buildings, providing them with greater control, power and security over their properties.

Key aspects of the proposed reformed commonhold in the White paper include:

- Commonhold will apply to all types of developments, including mixed-use schemes. There will be flexibility for developers in constructing and selling commonhold schemes.
- It will be cheaper, quicker and simpler for existing leaseholders to convert to commonhold.
- The commonhold unit owners will have more control over the operation of the commonhold.

- New powers to replace directors of the commonhold association who do not comply with the rules of the commonhold.
- Making it easier to take action against those who fail to pay their share of the commonhold's costs.
- Mortgage lenders will have protections and the solvency of commonhold association will also be protected.

While the proposed reforms naturally lend themselves to a new build situation, the question of the conversion of existing leasehold blocks to commonholds is also a crucial one. The Government wants to get to a position where the consent threshold for conversion to commonhold mirrors that for enfranchisement, which is 50%.

The draft Leasehold and Commonhold Reform Bill containing the new commonhold framework will be published in the second half of 2025 for pre-legislative scrutiny. Following the conclusion of this scrutiny, the Government intends to bring forward a Bill to implement the revised commonhold model and bring forward measures to introduce a ban on the use of leasehold for new flats and the consultation will seek input on fundamental points such as potential exemptions for legitimate use and how to minimise disruption to housing supply.

The Committee noted the position.

13 SRA consultation on client account monies: escrow agreements

The period has expired for responding to the SRA consultation on client account monies [SRA | Consultation on potential changes to how client money is handled in the legal sector | Solicitors Regulation Authority](#). The consultation may encourage the use of escrow agents to hold monies.

Action: Should there be a model form of escrow agreement? **This will be discussed at the May Committee meeting.**

14 Registration gap clauses – any feedback on [Example clauses to cover the Registration Gap issue - Dec 2024](#)

15 Terrorism (Protection of Premises) Bill

This was discussed at the last Committee meeting and it is currently in the Final Stages (Consideration of amendments) [Terrorism \(Protection of Premises\) Bill - Parliamentary Bills - UK Parliament](#)

The Committee will consider this further when it obtains Royal Assent.

16 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)

17 Building Safety Act 2022 – any developments? **PSL drafting project** (standing item).

18 Update on Use of disclaimers for documents on Committee's webpages – Kevin Hart

19 AOB – CLLS has been and will be responding to President Trump's attacks on several leading law firms over their DEI and employment practices. The Committee supported the CLLS's approach.

20 Length of meeting: 1 hour 30 minutes

21 Dates for remaining 2025 meetings, at 12.30pm and hybrid in person/virtual – 21 May, 16 July, 17 September and 19 November.