

## **Minutes for CLLS Land Law Committee meeting on 15 January 2025 at 12.30pm by Teams and in person**

**Attendees:** Jackie Newstead, (Chair), David Hawkins (Vice Chair), Warren Gordon (Secretary), Nick Barnes, Andy Bruce, Chris Cartwright, Jamie Chapman, Caroline DeLaney, Adrian Footer, Tom Goldsmith, Matt Hooton, Simon Kenley, Paul Kenny, Katherine Lang, John Nevin, Anton Newton, Julian Pollock, Patrick Williams and Emma Willoughby.

**Apologies:** Kevin Hart (from the CLLS), Alison Hardy, Omer Maroof, Brigid North, Franc Pena, Jeremy Shields and Laura Uberoi.

### **1 Farewell and thanks**

Brigid North is leaving the Committee (Brigid has become managing partner of Reed Smith's London office) and this was her final Committee meeting. Brigid has made a great contribution to the Committee's work over many years on such projects as the Certificate of title and, most recently, the registration gap clauses. The Committee thanked Brigid for all her work for the Committee and wished her all the best for the future.

### **2 Welcomes**

The Committee welcomed to the Committee:

Anton Newton, a partner at Pinsent Masons;  
Chris Cartwright, a partner at Addleshaw Goddard; and  
Tom Goldsmith, a partner at Eversheds Sutherland;

and very much looks forward to their contributions to the Committee's meetings and projects.

### **3 Committee membership**

The Committee approved the following new members:

Nick Harris, a partner at Reed Smith; and  
Sarah Walker, a partner at Travers Smith;

and looks forward to welcoming them to future meetings.

**4 Approval of Minutes for November 2024 Committee meeting** – The Minutes were approved and are on the CLLS website.

### **5 Report on title review and Certificate/Wrapper changes**

The new edition of the Report will be launched this month (probably 21 January). The close to final form of the Report and a comparison showing the changes from the 2018 Fourth edition [Short Form Report on Title 2023 \(doc\) \(cils.org\)](#) were circulated to the Committee in advance of the meeting. A contents page has been added and the document looks better, for example, removing unnecessary columns in the schedules. The adverse interests paragraph in the confirmation letters has been tweaked to conform them to the adverse interest paragraph in Schedule 2, as below

"any adverse interests (apart from any disclosed in the documents of title or other documents relating to the Property) which would materially affect the Company's interest in or business at the Property, or materially increase its liabilities in respect of the Property; nor"

The Report also includes a section in the Note providing details of the changes for the new edition.

At the same time as the launch of the Report, there will be 2 changes to the Certificate of title, mentioned at previous Committee meetings. The 1<sup>st</sup> change will also be made to the Wrapper. The changes are shown below and will be referred to in the Note to each document.

- In clause 3.3 in the front end, it will read as follows with the additional red wording

“[[The Company is purchasing the Property from the Seller] [The shares in the Company that owns the Property are being purchased from the Seller] as part of completion of the Transaction. That being the case:

The [Company’s] [purchaser’s] knowledge of the Property and related documents and information has been acquired through:”

- The second point is in Schedule 4 para 5 on repair which will include the additional wording in red

### **Repair**

1.1 The tenant is responsible for keeping the whole of the Premises and (to the extent they form part of the Premises) fittings and plant and equipment in good repair and condition. Where the Disclosures to paragraph 9 of Schedule 4 indicate that the landlord is required to insure the Property, damage by insured risks is excluded from the tenant’s responsibility for repair except to the extent that payment of any insurance monies is refused because of the act or default of the tenant, or any person under the tenant’s control or with the tenant’s authority, unless the tenant has paid the landlord a sum equal to the amount which the insurer has refused to pay.

1.2 The tenant is responsible for the decoration of the interior and exterior of the Premises.

The revised Certificate and Wrapper (which are a 2025 Update of the same edition) will be added to the Precedent Documents section of the CLLS website probably on 21 January and Panterra (who do the CLLS’s publicity) will publicise the new Report and the other changes, which can also be mentioned on LinkedIn.

The Committee proposes not to reissue any of the other documents that accompany the Certificate, since the changes do not affect them. The update Note in the Certificate and Wrapper states that the accompanying documents have not been reissued since the changes do not affect them and while those documents refer to the “(Eighth Edition 2023)”, they apply equally to the “(Eighth Edition 2025 Update)”. This approach will hopefully be welcomed, because otherwise firms will have to spend time updating the accompanying documents to refer to the 2025 Update.

The Committee approved the Report and the changes to the Certificate and Wrapper.

One Committee member made the very useful point about keeping track of downloads of the Report and other CLLS documents and this point has been mentioned to Kevin Hart of the CLLS.

**Action: The new Report and updated Certificate and Wrapper will be launched.**

### **6 Law Society’s Climate Change Risk Conveyancing Practice Note**

The note is being finalised. The point mentioned at the last Committee meeting (the note should be clear that the type of transaction and the sophistication of the client will help to

determine whether it is appropriate to obtain a climate risk search) has been taken on board. The note will probably be launched in March 2025.

Warren Gordon (who is one of the authors of the Practice Note) will send the Committee the close to final form of the note before it is launched, for any final comments.

**Action: Warren to circulate to the Committee the close to final form of the practice note.**

## **7 Law Commission's consultation on Part 2 of the Landlord and Tenant Act 1954 (consultation is open until 19 February 2025)**

A working group including members of the Committee and from the Law Society's Conveyancing and Land Law Committee met on 14 January to discuss a response. Warren circulated a draft response (which has yet to be considered by the Law Society) in advance of the Committee meeting and there was a wide-ranging discussion. In the light of points made, Warren will circulate a revised draft and also send this through to the Law Society for their comments.

**Action: Warren to circulate to the Committee a revised draft of the response to the consultation.**

## **8 Registration gap clauses**

The clauses have now been launched and are on the CLLS website [Example clauses to cover the Registration Gap issue - Dec 2024](#). An Estates Gazette article was published at the start of December. The impact of possible Land Registry strikes reiterates the importance of registration gap drafting. BPF and AREF are planning on sending a paper to the Land Registry about the adverse impact of the backlogs/delays for the property industry.

The Committee will be interested in any feedback on the registration gap clauses and this will remain an agenda standing item for the next few meetings.

## **9 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 in 2025 and the RICS working group is considering responses to the consultation on the new edition. The intention of the working group is for the standard to refer to the Committee's service charge provisions (which were produced over 10 years ago for an earlier "service charge code"). Here are links to the Committee's service charge provisions. There are separate ones for a shopping centre and an office building. The Committee worked on them with Peter Forrester, who leads the working group for the service charge professional standard.

[CLLS Service Charge Provisions office 2013 \(doc\)](#)

[CLLS Service Charge Provisions shopping centre 2013 \(doc\)](#)

Some members of the working group have provided comments on the provisions, which will be considered by the Committee.

The Committee has a sub-group (David Hawkins, Matt Hooton, John Nevin, Katherine Lang and Warren Gordon) to review the CLLS provisions. It makes sense for that review to take place when there is a clearer picture as to the form of the new standard in the light of the consultation responses. 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: Committee working group to review CLLS Service charge provisions once an updated draft of the new RICS professional standard is available. Further volunteers from the Committee are sought for the working group.**

## **10 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 \(www.gov.uk\)](#)

The Bill is at 2<sup>nd</sup> reading stage in the House of Lords. It will then move to Committee stage and if opportunities arise the Committee will consider making submissions.

A big point has come up in the latest set of changes to the Bill. The proposed prohibition on rents being "due in advance" (see proposed new section 4B in the Housing Act 1988). The explanation for this proposed provision is that it modifies the terms of an assured tenancy to disapply terms which provide for rent to be due in advance, unless it is rent for the first rent period, or a subsequent rent period ending within the first 28 days of the tenancy and is due between the tenancy being entered into and the term of the tenancy beginning.

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. Preventing this will change the way referencing companies, insurers, and therefore agents and landlords look at these tenants.

The prohibition doesn't appear to take account of why an "in advance" payment may be required (and be appropriate in particular circumstances). All of this will be very concerning for PBSA providers, among others. The Government so far has not clarified the ongoing uncertainty regarding student accommodation.

It is also worth noting that "due in advance" means due **before** the rent period for which it is payable. The proposed legislation, therefore, appears to allow for rent due on the first day (or other "regular rent day" under section 4B) of the relevant rent period, such as monthly rent payable in advance on the 1<sup>st</sup> day of the month. The legislation also allows for the terms of an assured tenancy so far as it provides for initial rent (as defined) to be due during the permitted pre-tenancy period, which is the period that (a) begins when the tenancy is entered into, and (b) ends with the day before the first day of the tenancy.

But the impact of the legislation's prohibition on the situations mentioned above will be problematic.

Prohibited rent payments "due in advance" will be classified as prohibited payments under the amended Tenant Fees Act 2019. Landlords and agents will no longer be able to request, encourage, or accept these payments, and any violations will incur civil penalties. The BPF has highlighted in recent communications that the amendments extend the Tenant Fees Act to licences, closing an avenue often used in the student, co-living and serviced apartment markets and additionally, rental guarantee products may be affected as tenants cannot be required to purchase insurance or third-party contracts under the changes.

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

**Action: Warren to mention to the Law Society the concern about transitional provisions, with a view to this point being highlighted in committee proceedings in relation to the Bill.**

## **11 Should a firm ask for a confirmation / make an assumption when dealing with other law firms on transactions where money is moving, that they have done relevant CDD on their client / the counterparty?**

This would be a bit of a departure from prior practice, where most firms would just assume that the other firm had complied with CDD obligations, unless there was some suspicion of non-compliance.

## **12 SRA consultation on client account monies: escrow agreements**

There is an ongoing SRA consultation on client account monies [SRA | Consultation on potential changes to how client money is handled in the legal sector | Solicitors Regulation Authority](#), which as a consequence may encourage the use of escrow agents to hold monies, which may add time and cost to transactions. Most of the US firms will not allow monies to go through their client account and UK firms are coming under pressure to follow suit. Should there be a model form of escrow agreement? The lack of a client account would impact on firms being able to give undertakings. The deadline for responding to the consultation is 21 February 2025.

**Action: Matt Hooton will consider whether the Committee should respond to the consultation.**

## **13 Terrorism (Protection of Premises) Bill**

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

**Action: The Committee will consider this further when the Bill obtains Royal Assent.**

**14 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](http://betterbuildingspartnership.co.uk)) (standing item)

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

**16 Update on Use of disclaimers for documents on Committee’s webpages – Kevin Hart (next meeting)**

## **17 AOB**

- The Estates Gazette appears to have been rescued, which was welcomed by the Committee.
- Land Registry has updated its [Practice guide 8: execution of deeds - GOV.UK](#) to include a new section on limited partnerships (see section 2.7.2). Noteworthy was the statement that evidence of the authority of the executing partner(s) should be lodged (the partnership agreement, any partnership minutes, and any other constitutional documents of the limited partnership).

**18 Length of meeting: 1 hour 30 minutes.**

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