

Minutes for CLLS Land Law Committee meeting on 25 May 2022 by Zoom and in person

Attendees: Jackie Newstead (Chair), Warren Gordon (Secretary), Caroline DeLaney, Martin Elliott, David Hawkins, Laurie Heller, Matt Hooton, Stephen Josephides, Daniel McKimm, John Nevin, Brigid North, Tom Pedder, Franc Pena, Julian Pollock, Jeremy Shields, Sangita Unadkat and Ian Waring.

1 Apologies: Nick Brent, Jeremy Brooks, Jamie Chapman, Jayne Elkins, Alison Hardy, Kevin Hart (from the CLLS), Vikki Hills, Paul Kenny, Patrick Williams.

2 Committee News

- Nick Brent has stepped down from the Committee and the Committee approved Adrian Footer from Druces to join the Committee as Nick's replacement. The Committee thanked Nick for all his work for the Committee over the years and is looking forward to welcoming Adrian to future meetings.
- The Committee is delighted to announce that David Hawkins has agreed to become the Vice Chair of the Committee – many congratulations to David.

3 Approval of Minutes for March 2022 Committee meeting Land-Law-Committee-Minutes-23-March-2022.pdf (citysolicitors.org.uk)

4 Certificate of title

The majority of the meeting comprised a discussion of outstanding points on the draft 8th edition of the Certificate of title. Prior to the meeting, the current draft of the Certificate together with suggested drafting for residential property and the Chancery Lane Project's (CLP's) suggested climate change disclosures were circulated to the Committee.

Climate change provisions

There was a lengthy discussion about whether the climate change disclosures should be included in the Certificate.

The Committee noted that for particular transactions it may be appropriate to include some of the provisions from the CLP's document. However, the Committee considered that now was not the right time to make extensive changes to the Certificate to reflect CLP's document.

The Committee's view was influenced by the fact that the majority of current leases do not reflect the type of wording included in CLP's document and to include the CLP wording in the Certificate will lead to extensive disclosure.

As time passes if the majority of leases reflect CLP's document and it is generally considered that the Certificate needs to address climate change issues in a more extensive way, then at that point the Committee will consider introducing further changes to address those issues.

However, it is generally accepted that data sharing provisions in leases are important and the Certificate will include a statement that there are data sharing provisions relating to environmental performance.

The Certificate will also include more specific information about the rating of the energy performance certificate and when the EPC expires.

As part of the forthcoming consultation on the form of the Certificate, there will be a question on whether the Certificate should seek further information on environmental performance and climate change issues.

Construction statements

Tom Pedder will follow up with his contact on the CLLS Construction Law Committee to see if that Committee proposes any changes to the Construction statements.

Schedule 5, guarantor's indemnity

This will relate to any loss suffered by the landlord as a result of the default of the tenant.

Residential statements

In terms of the approach adopted to the drafting of the statements for residential issues, there are perhaps too many technicalities/ specific defined terms (all of which differ slightly amongst the various relevant Acts) to include all of this in detail in the Certificate. The suggested approach instead seeks to enable the provider of the Certificate to establish through the flowchart of statements whether there is a risk of the relevant Acts applying. If there is, further investigations would be required. So the proposed statements are not intended to cover every situation, nor whether the relevant Transaction which is the subject of the Certificate triggers the relevant Act, but rather to flag where there may be an issue.

It was considered that the statements should come from the Company as they include issues that the certifying firm would not be able to ascertain from the deeds.

Further consideration will be given as to how straightforward it is to ascertain whether a tenancy is an assured shorthold tenancy.

The statements in relation to tenant's rights to a lease extension/freehold acquisition will refer to a Company confirmation that no claim has been made for a lease extension/freehold acquisition.

The Committee has agreed that there will be no Schedule 4 equivalent for a long term residential lease.

Actions:

- Please respond to the relevant points above.
- The Committee is asked by 17 June 2022 to provide final comments on the form of the Certificate circulated with the papers. There will then be a consultation, probably hosted on the CLLS website, seeking views on the form of Certificate. The consultation will last a couple of months. Once any comments are received, the Committee can determine whether further changes are needed and then the accompanying notes and ancillary documents can be produced. At this stage, there is no specific timing for launch of the Certificate.

5 Length of meeting – 1.5 hours

6 Dates for remaining 2022 meetings, all at 12.30pm and hybrid in person/virtual:
20 July, 21 September and 23 November.