

Minutes for CLLS Land Law Committee meeting on 20 July 2022 by Teams and in person

Attendees: Jackie Newstead (Chair), David Hawkins (Vice Chair), Warren Gordon (Secretary), Jayne Elkins, Martin Elliott, Alison Hardy, Laurie Heller, Matt Hooton, Stephen Josephides, Daniel McKimm, Tom Pedder, Franc Pena, Julian Pollock, Jeremy Shields, Ian Waring and Patrick Williams.

1. **Apologies:** Jeremy Brooks, Jamie Chapman, Caroline DeLaney, Adrian Footer, Kevin Hart (from the CLLS), Vikki Hills, Paul Kenny, John Nevin, Brigid North, Sangita Unadkat.

2. Approval of Minutes for May 2022 Committee meeting

The Minutes for the May 2022 Committee meeting were approved and are on the Committee's webpage [Land-Law-Committee-Minutes-25-May-2022.pdf](https://www.citysollicitors.org.uk/land-law-committee-minutes-25-may-2022.pdf) ([citysollicitors.org.uk](https://www.citysollicitors.org.uk))

3. Certificate of title

Following the Committee meeting on 25 May, Warren Gordon updated the draft of the proposed new 8th edition of the Certificate to reflect comments made and this was then circulated to the Committee and discussed at the July meeting.

The Committee agreed that for the new edition the following changes shown in red should be made to the listed buildings statement in Schedule 3.

18. Listed buildings etc.

18.1 None of the buildings or other structures or erections on the Property has been listed under Section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“Listed”) nor has the relevant local authority served or authorised the service of any building preservation notice under Section 3 or Section 3A of the Planning (Listed Buildings and Conservation Areas) Act 1990 or any repairs notice under Section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of the Property, nor is the Property located within a conservation area.

18.2 Where there are any buildings or structures or erections on the Property that are Listed, the Company has told us that it is not aware that:

18.2.1 any works or alterations which have been carried out to the Listed part of the Property are unauthorised or have been carried out without any necessary consents being obtained;

18.2.2 any enforcement proceedings under the Planning (Listed Building and Conservation Areas) Act 1990 (or any other relevant Town and Country Planning Legislation) have been commenced or notices served; and

18.2.3 any such proceedings or notices have been proposed.

18.3 Where there are any buildings or structures or erections on the Property that are Listed:

- 18.3.1 the listed building consents affecting the Property are subject only to conditions which the Company has told us have either been satisfied so that nothing further remains to be done under them or, in the case of continuing conditions, are being complied with and the Company knows of no reason why those conditions should not continue to be so complied; and
- 18.3.2 there are no unusual or onerous conditions attaching to any listed building consents affecting the Property.

The Committee will seek comments on the Certificate's construction statements from the CLLS Construction Law Committee as part of the forthcoming consultation on the new edition.

There are some new residential property statements in the Certificate, although the Committee agreed that there would not be a statement that the Letting Document is an assured shorthold tenancy, because of the complexities of determining whether it is in fact an AST.

The Committee agreed that the Certificate (both the current and new editions) should cover the Economic Crime (Transparency and Enforcement) Act 2022. The wording proposed which is quite brief will provide a useful signpost for both providers and recipients of the Certificate. The wording will be included in Schedule 2 in a new paragraph after "Name of registered proprietor" (the latter will also be included in the current edition) and will state "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? If so, include the overseas entity ID number for the entity and the date of registration in the Register."

The Chancery Lane Project (CLP) has asked the Committee whether there is any scope to reference the CLP's additional climate change disclosures in the notes to the Certificate. The disclosures presuppose that there is a climate change statement to disclose against, which is not currently envisaged for the Certificate. However, the Committee thanked CLP for their helpful suggestion and will keep this under review. The Committee will provide a link on its webpage to the CLP's website for anyone who might be interested in what CLP is doing.

The Committee approved the Certificate so that the document can be put out for consultation on the CLLS's website. Comments will be welcomed from all including the PSL community and the Law Society's Conveyancing and Land Law Committee. Warren will produce a brief covering explanatory document and the consultation will run for a couple of months from September. Once the Committee has responses, it can determine whether further changes are needed and then the accompanying notes and ancillary documents can be produced. Launch of the new edition is likely to be early 2023.

4. The Economic Crime (Transparency and Enforcement) Act 2022

It is intended by the Government that the overseas entity register at Companies House will be launched on 1 August 2022 and the six months' transitional period referred to below will run from then.

At the end of June 2022 statutory instruments were laid before Parliament (but have yet to come into force) which provide further detail on the verification aspects of the application to Companies House and also on consequential changes to the Land Registry forms.

The Register of Overseas Entities (Verification and Provision of Information) Regulations 2022 provides that an application cannot be made to Companies House until a "relevant person" has verified the relevant information relating to the entity to be provided to Companies House. The relevant person must provide Companies House with a statement containing certain information, including confirmation that the relevant person has undertaken the verification of the relevant information; and that the verification has complied with the requirements of the Regulations and the Economic Crime (Transparency and Enforcement) Act 2022 (Act). The "relevant person" is defined by reference to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and includes a wide range of people/entities including credit and financial institutions; auditors, insolvency practitioners, external accountants and tax advisers; independent legal professionals (so not in-house at the entity); trust or company service providers; and estate agents and letting agents. Importantly, all of them must be acting in the course of business carried on by them in the United Kingdom – this will be problematic if the UK business is unable to do the verification, because it is not based in the jurisdiction of the overseas entity or is otherwise unable to carry out the verification. Overseas entities will need to find somebody to do the verification and the verifier will need to register themselves at Companies House.

The Law Society will be issuing some guidance in the next few weeks which may assist with approach to verification, but care should be taken before UK lawyers agree to do the verification, especially in view of possible criminal liability for the verifier if they get the verification wrong (further details on this are awaited).

The information required to be provided to Companies House relates to the beneficial owner of the entity as opposed to the beneficiary of the asset and the legislation requires the beneficial owner to confirm the information provided.

So the overseas entity will need to action the verification process and the beneficial owner confirmation before it can apply to Companies House. There is a time criticality here especially for overseas entities applying to register a transfer of a freehold or lease or the grant of a lease for more than seven years at the Land Registry in the period from 1 August and the month or so afterwards. If the Land Registry application is made and the entity is not registered at Companies House, the application will be rejected, so the Land Registry application may have to be delayed until the Companies House registration is complete which may endanger Land Registry priorities.

Overseas entities need to obtain the required information, decide what they are doing on verification and notify beneficial owners, so as to be in a position to make the Companies House application as soon as required from 1 August.

Some law firms will not be offering the verification service, because of concerns with the verification process, for example the difficulties of verifying whether the beneficial owner exercises significant influence or control over the entity. Companies House/BEIS is not issuing any detailed guidance on verification until after 1 August.

The Committee expressed serious concerns with the situation – the very short timeframes, problems with the verification process and the lack of Government guidance on what are complex issues and the risks to priority at the Land Registry if the application to the Land Registry has to be delayed.

The Committee asked the Chair to liaise with the CLLS to work with other CLLS Committees and the Law Society Committees to express concerns to the relevant Government Minister in particular about the problems with the verification process and the difficulties that this will cause with the land registration process. It was suggested that delaying the coming into force of the changes to the Land Registration Act (perhaps delay until the end of the transitional period) to allow time for the guidance on verification (what it involves; assumptions and responsibilities) to be published, will permit the new processes to be introduced in a more effective and workable way.

Post meeting note: On 22 July 2022 Companies House announced that the land registration elements of the Act will come into force on 5 September 2022. The effect of this includes that there is an additional 5 weeks in which an application may be made to the Land Registry to register the overseas entity as the owner, even though at the time of the application the entity is not registered on the Companies House overseas entity register.

5. Commercial Rent (Coronavirus) Act for COVID rent arrears: there has been recent publicity concerning an arbitration award under the Act from a barrister at Falcon Chambers, but Caroline will provide a fuller update at the next Committee meeting.

6. Length of meeting – 1.5 hours

7. Dates for remaining 2022 meetings, both at 12.30pm and hybrid in person/virtual: 21 September and 23 November.