

## **Minutes for CLLS Land Law Committee meeting on 17 July 2024 at 12.30pm by Teams and in person at Hogan Lovells**

**Attendees:** Jackie Newstead, (Chair), David Hawkins (Vice Chair), Warren Gordon (Secretary), Nick Barnes, Jayne Elkins, Alison Hardy, Vikki Hills, Simon Kenley, Omer Maroof, John Nevin, Brigid North, Franc Pena, Jeremy Shields, Emma Willoughby and Laura Uberoi (bridge contact from the main CLLS Committee).

**Apologies:** Andy Bruce, Jamie Chapman, Caroline DeLaney, Adrian Footer, Matthew Hooton, Paul Kenny, Julian Pollock, Patrick Williams and Kevin Hart (from the CLLS).

### **Stephen Josephides**

It is with great sadness that the Committee announces the death of its Committee member, Stephen Josephides. Stephen was a respected member of the Committee, making valuable contributions to all of the Committee's projects and meetings. Stephen will be greatly missed. The Committee passes on its heartfelt condolences to Stephen's family, friends and colleagues.

### **1 Welcomes**

The Committee is delighted to welcome, as new Committee members, Emma Willoughby from A&O Shearman, Omer Maroof from DLA and Nick Barnes from Macfarlanes and looks forward to their contributions to the Committee's meetings and projects. The Committee was also delighted to welcome Laura Uberoi to the meeting. Laura is a bridge contact from the main CLLS Committee and the Committee hopes that Laura will be able to attend future meetings.

### **2 Membership:**

Sangita Unadkat has stepped down from the Committee. The Committee wishes to thank Sangita for all her work for the Committee over the years, especially more recently in relation to the Certificate of title.

### **3 Discussion with the Land Registry**

The Land Law Committee was delighted to welcome Emily d'Albuquerque, General Counsel and Director, Data & Register Integrity Group at HM Land Registry. The Committee was very appreciative of Emily taking the time to attend the meeting to discuss various matters relating to the involvement of HM Land Registry on real estate transactions.

There were some restrictions on what can be said post-election in relation to certain policy matters, but this was unlikely to inhibit the discussions. The record of the discussions is classified under headings below. The red wording reflects the issues raised by the Committee and the rest of the text reflects the discussions and Emily's comments.

### ***General observations***

The responsible department for HM Land Registry (HMLR) is the re-named Ministry of Housing, Communities & Local Government.

There are no material changes to the Government's priorities as far as HMLR is affected. A key focus of the King's Speech 2024 was economic growth and linked to that is the importance of the efficiency of the property market. HMLR can assist with that by reducing the backlog of applications, which helps to streamline transactions and improve HMLR's processes.

### ***Backlog and recruitment at HMLR***

Delays in processing applications, which delays are not improving and are generally worsening – one firm recently reported an estimated completion date for a new lease for 2026 (the application was submitted on 03/06/2024 and the estimated date of completion (ECD) is 14/01/2026, which is over 19 months from submission) and that even simple TR1s are now triggering ECDs in autumn 2025.

Backlog and recruitment at HMLR is a top priority for HMLR although the impact of the work to improve the position takes time and isn't completely visible to customers just yet.

HMLR continues to recruit new caseworkers. One third of caseworkers have been with HMLR for less than 18 months. The caseworkers have been receiving training, but it is unavoidable that less experienced caseworkers are less able to be pragmatic about dealing for example with requisitions. However, they do receive support from more experienced staff before a requisition is raised and when dealing with where a customer (such as a law firm) queries the requisition.

Guidance for caseworkers has been improved and importantly, caseworkers are encouraged to call and discuss with law firms issues that arise on applications. There is a clear recognition that good communication (including phone calls) between HMLR and law firms will help to shift the backlog.

The timing for completing applications on average is or is planned to be as follows:

**Last year:** 20-22 months.

**Now:** 4-8 months for simple applications e.g. for a mortgage, transfer, or transfer and mortgage, or for other straightforward applications such as removing notices.

15-16 months for complex transfers of part, leases or first registration.

17.5-18 months for developer estate work.

The overall average is 13-17.5 months, albeit there may be further delays if applications are stuck behind other applications.

In any event the expedite process (see below) can be used for urgent situations.

**By 31 March 2025:** the target is 8-10 months for leases and transfers, and everything else within 12 months. Registration of large estates is the work type most at risk of missing those intended timeframes. In any event the expedite process can be used for urgent situations.

### ***Processing and expediting***

Multi-applications in the day list are processed in one go by a single, more experienced caseworker.

The expedite process is a priority service for HMLR with ring-fenced resources. There has been an increase in expedite applications, but the number has settled down and is managed well. HMLR see this

as an important tool to progress the processing, in particular, of commercial applications where delays are causing difficulties. Another possibility being considered for an expedite situation is to put the firm requesting an expedite in touch with the firm whose pending application is delaying matters.

More generally, the oldest cases are processed first, except where it makes sense to process a more recent one. Overall, HMLR is looking to bring down the timeframes for all applications including complex transactions (see timeframes above).

### ***Fees and resourcing***

The consultation on Land Registry fees – some Committee members said that they would be happy to pay higher fees to provide resources to improve the service.

The possibility of a separate Land Registry service for more complex real estate transactions perhaps for a higher fee.

There is secondary legislation in relation to an increase in search fees by £1-2 per search. The legislation missed the wash-up before the July election, but it is a priority of the Labour government and should require minimal Parliamentary process. It is planned to generate £50 million per year to invest in Land Registry people and services and this may create possible increased resourcing in Autumn 2024.

The impact of the backlog on the market may help to support and justify future spending review bids.

Reference was made to the recent HMLR fee consultation. This requires ministerial sign-off and the outcome will probably be published in Autumn 2024. In general terms, the consultation elicited a mixed response with an even split between those wanting no or little change and those wanting a more radical review of fees. What came out is the need to recognise the difference between transaction types and the needs of different types of customer (such as for residential or commercial property).

Members of the Committee queried whether a fee on an application can be debited at the time that the application is made rather than when the application is completed. This avoids the money for the fee having to be held in the lawyer's client account for an extended period. This would also link to the new approach of not cancelling the application by default (see below).

### ***Requisitions including those that lead to cancellations***

Requisitions are raised a long time (sometimes years) after the application was submitted when relevant fee earners may have left the firm making it much more difficult and costly to deal with the requisition.

And

The requisitions being raised by the Land Registry are increasingly fussy and for example if 5 requisitions are raised on an application, 4 are fully dealt with and one isn't, members have had experience of cancellation rather than dealing with the outstanding requisition.

HMLR is encouraging their caseworkers not to cancel an application, unless there is clear intent from the law firm that made the application, that registration cannot progress for whatever reason. So cancellation should not be a default response and the caseworker is encouraged to pick up the phone and speak to the firm before cancelling. The firms themselves should consider who are the best contact points for caseworkers to reach out to.

The problem is that once an application is cancelled, it is very difficult for it to be reinstated, primarily because of problems with priority.

There will be greater education of caseworkers to highlight the risk of cancellation, not only to customers but also to HMLR.

With applications sometimes taking a long time to be considered by HMLR, by the time they are considered and requisitions may be raised, the relevant person at the law firm may no longer be there. Requisitions will often end up in the wrong place e.g. by being emailed to people who have left. HMLR want to begin to move away from emails and the requisitions are available in the Portal. HMLR acknowledge that it is difficult for firms regularly to track all pending applications and appreciate the resources that are required. If an individual has left a firm, HMLR do not know if there is a bounceback. Mention was made of the centralised inboxes which some law firms have and enable easier access to requisitions/cancellations etc from HMLR sent to people who have left.

### ***Deletion of accounts***

Deleting accounts which have pending applications on them. Why is this done and can these accounts be kept open? The problem is that once an account is deleted, notifications of cancellations and completions stop. While the Land Registry may agree to put a flag on all pending applications from deleted accounts requesting/instructing the case worker on the application to send what appears to be a manual email notification to the applicant firm when the application is completed/cancelled, how reliable are those requests/instructions?

HMLR's position currently is to keep accounts open for only a limited amount of time for security reasons.

HMLR's new position, which will begin in the next few months, is that accounts will not be deleted automatically (although business administrators at firms, if they so wish, can inform HMLR when staff at the firm have left).

### ***Powers of attorney***

There is a greater focus on powers of attorney sometimes up a chain (presumably because of general concerns around fraud).

HMLR need to see an unbroken chain of authority, but don't necessarily need to see all of the powers of attorney themselves. A conveyancer's certificate will suffice and HMLR adopts a risk-based approach, in order to address concerns.

### ***Daylist information***

There is a need for more helpful identifying information about applications on the daylist.

HMLR's developer teams are looking at some type of application enquiry, to help firms to evaluate the risk of prior pending applications.

### ***HMLR's action without consent of the parties***

HMLR sometimes takes actions without the consent of the parties, for example, merging titles.

HMLR should not merge titles without the consent of the relevant party. It has power to amalgamate titles, but should normally let relevant parties know, in case they don't want this.

### ***Fraud risk letters (objection or information notices)***

It will be helpful to have some clarificatory messaging from HMLR on when they issue fraud risk letters.

They are usually intended for DS1 situations, but mention was made by Committee members of them being issued for an e-DS1 and the completion of a new charge.

### ***Index map errors***

Errors in result of a search of the index map, for example, including neighbouring properties and there being missing titles.

Emily from HMLR asked for specific examples. Caseworkers update the indexing when they spot errors etc. Some of the discrepancies may be accounted for by changes in the Ordnance Survey mapping over time.

### ***Telephone lines on Friday***

There are no telephone line on Fridays.

Customers can still request a call back from HMLR on Fridays. The reason for no phone lines on Fridays is to enable the staff who would take the calls (including senior caseworkers) instead to do case work (including complex work) on Fridays, which has improved the processing of applications.

### ***Relevant pending applications***

Difficulties caused by the Land Registry exercising unknown discretion to include only "relevant" pending applications in official search results.

The Land Registry has now said the following and PG12 will be updated accordingly. *“In accordance with clause G of part 3 of schedule 6 of the Land Registration Rules 2003, only relevant pending applications are revealed on an official search result. Our former practice was not to reveal pending applications for change of address, change of property description or vectorisation of a parent title plan on the basis that they were not relevant pending applications. However, as a result of customer feedback and following a review of our practice, these pending applications are now revealed on an official search result. Business e-services customers can check the day list for basic details of any pending applications or unexpired priority official searches using the ‘Application Enquiry’ service through the HM Land Registry portal.”*

So pending applications shown in official search results will in future match those shown in Application enquiries and not just include “relevant applications”.

### ***Practice Guides***

Changes to various practice guides have been made recently and will be made shortly. They were delayed by the Election.

There is a new PG62A on rights to light or air.

A request was made for the details of any update to a practice guide to be included on the webpage for the practice guide itself and for the update details to include a more accurate summary of what has changed e.g. not suggest that only 2 things have changed when in fact 4 have.

#### **4 Approval of Minutes for May 2024 Committee meeting**

The Committee approved the Minutes for the May 2024 Committee meeting. All the minutes are in the course of being migrated to the new CLLS website.

#### **5 Report on title review**

The Committee has an ongoing project to review its short form Report on title Short Form Report on Title 2023 (doc) (ccls.org)

It is hoped that the new edition will be launched towards the end of 2024. Since the changes are unlikely to be significant, there will be no wider consultation on this edition.

#### **6 Length of meeting – 1 hour 30 minutes**

**7 Dates for remaining 2024 meetings, at 12.30pm and hybrid in person at Hogan Lovells/virtual – 25 September and 20 November.**