

## **Minutes for CLLS Land Law Committee meeting on 22 March 2023 by Teams and in person**

**Attendees:** Jackie Newstead (Chair), David Hawkins (Vice Chair), Warren Gordon (Secretary), Jeremy Brooks, Caroline DeLaney, Jayne Elkins, Martin Elliott, Alison Hardy, Laurie Heller, Stephen Josephides, Paul Kenny, Daniel McKimm, John Nevin, Brigid North, Tom Pedder, Franc Pena, Jeremy Shields, Sangita Unadkat and Ian Waring.

**1 Apologies:** Jamie Chapman, Adrian Footer, Kevin Hart (from the CLLS), Vikki Hills, Matt Hooton, Julian Pollock and Patrick Williams.

### **2 Membership**

This is Tom Pedder's last meeting since he is retiring from Macfarlanes. The Committee thanks Tom for all his contributions over the years and wishes him all the best for the future. Kevin Hart will arrange for an advertisement to be placed on the Committee's website to fill this Committee post.

### **3 Final comments on Certificate of title documentation and process to launch and publicise the Certificate.**

Since the January 2023 Committee meeting there have been further discussions around aspects of the Certificate of title documents and the package was sent to the Committee in advance of the March meeting as follows:

- Certificate of title Eighth Edition 2023
- Note to users
- Questionnaire
- Confirmation letter re draft Certificate for Company/purchaser of Company
- Supplemental enquiries (covering points not covered by CPSEs)
- Wrapper for report on title
- Confirmation letter re final draft Certificate for Company/purchaser of Company

The first part of the March meeting was spent discussing outstanding points on the documentation. In particular, it was decided not to have a specific statement on the Building Safety Act 2022 and instead this would be dealt with in the Note to Users. The Note to Users would continue to be part

of the Certificate and not a separate document. It was agreed that a comparison document showing the changes for the new Eighth Edition would be included with the documents on the Precedents Documents section of the CLLS website.

The Committee agreed to launch the Certificate in May 2023.

Many thanks to all Committee members for all their contributions and in particular the work of Stella Bliss (from Hogan Lovells) on the Questionnaire, Martin Elliott on the Wrapper and Brigid North on the Supplemental Enquiries.

#### **4 Possible protocol to deal with Registration gap problems.**

This issue has been raised at the Property Litigation Association Law Reform Committee and it is unlikely to be dealt with, and certainly not swiftly enough, by reform (although noting there might be an opportunity to do so in part at least with the upcoming focus on reform to the Landlord and Tenant Act 1954). The issue is with the restriction on a buyer being able to deal with various key matters (e.g., 1954 Act lease renewals and associated proceedings, break notices, surrenders and any other court proceedings) until the registration gap closes without the involvement of the seller as registered owner. In some cases, the registration gap is open for a number of years due to administrative delays at HM Land Registry. Whilst reform should still be considered, the most sensible way forward may instead be to consider an industry protocol for dealing with these issues in sale contracts. This will require input from both a transactional and litigation perspective.

The Committee agreed that it was interested in being involved in this project.

**5 HMRC's Trust Registration Service** - are real estate transactional trust situations (such as nominee situations) caught? Matt Hooton – this will be discussed at a future meeting.

**6 Building Safety Act** – is this impacting on transactions?

Concern included the impact on already completed developments. It was considered that physical due diligence would be a key way of becoming aware of issue arising from the Building Safety Act. This issue would be kept on the agenda and reviewed over time.

#### **7 Land Registry issues**

The Committee expressed serious concerns about Land Registry delays in processing applications.

The Committee discussed various methods of trying to improve the position, but as a first step it was agreed that a senior Land Registry representative should be invited to a Committee meeting, at which the Committee's concerns can be discussed. The Committee's views would be sought on the questions to be put to the Land Registry.

## **8 Update on registrations on Companies House's Register of overseas entities and impact on real estate transactions**

Close to 27,000 overseas entities have now been registered on the overseas entities register.

## **9 Update on CLLS Committee chairs' response to The Law Society's proposed Climate Change Guidance**

Discussions have taken place between the Law Society and various chairs of the CLLS Committees. The discussions were seen as helpful at addressing some of the areas of concern.

## **10 Cryptoassets/Cryptocurrency**

In the wake of FTX which has generated a lot of publicity, there was a discussion about what the firms represented on the Committee are doing (if anything) in relation to cryptocurrencies. It was considered that at this stage the use of cryptocurrencies wouldn't necessarily be suitable for conveyancing deals, but perhaps may be for the sale of shares in a company. What would one include in the SDLT return? How would money laundering obligations be satisfied in relation to cryptocurrencies? Should firms' terms of engagement specifically carve out responsibility for cryptocurrency? The consideration passes directly from client to client. It appears that regulation needs to be stronger for cryptocurrencies to be used on conveyancing deals. The Committee will keep the situation under review.

**11 Retained EU Law (Revocation and Reform) Bill** <https://bills.parliament.uk/bills/3340> - currently passing through Parliament (at report stage in the House of Lords) and this will completely overhaul the body of UK domestic law known as "retained EU law". That body of law was created by the EU (Withdrawal) Act 2018 as amended by the EU (Withdrawal Agreement) Act 2020 and came into existence at the end of the post-Brexit transition period at the end of 2020. The Bill among other points:

- places a "sunset" on retained EU law – causing most, but not all, of it to expire at the end of 2023;

- enables, via statutory instrument, most retained EU law (if it takes the form of legislative instruments) to be exempted from the “sunset”;
- enables the “sunset” to be postponed (for some but not all retained EU law) until as late as 23 June 2026, via statutory instrument;
- renames any remaining retained EU law after 2023 “assimilated law”;
- formally abolishes, for wholly domestic law purposes, the principle of supremacy and other general principles of EU law after 2023;
- enables the effects of supremacy and general principles of EU law to be preserved or recreated in specific cases, via statutory instrument.

There is concern that the sunset clauses may create substantial uncertainty for business. Kevin Hart will provide an update at a future meeting.

**12 Opinion** - here is a link to the revised Overseas Legal Opinion on the CLLS website on the Committee page and in the Precedents section Land Law Committee Form of Overseas Legal Opinion on Transactions relating to real property in England and Wales – The City of London Law Society ~ CLLS ([citysolicitors.org.uk](http://citysolicitors.org.uk)) The Committee requested that this should be more widely publicised and the CLLS’s publicity organisation, Project Associates, would be asked to look into this.

**13 Update to earlier e-signatures paper** [CLLS-and-Law-Society-E-signatures-paper-October-2022.pdf](#) ([citysolicitors.org.uk](http://citysolicitors.org.uk))

The Committee noted this, but had no particular comments at this stage.

**14 The “truth test”** - the linked Gazette article Land Registry sets 'truth test' to tackle delays | News | Law Gazette looks at an issue that may significantly impact on conveyancers. Conveyancers could be required to confirm that information contained in applications to HM Land Registry is true. The Committee was concerned about the suggested shifting of risk to lawyers and will keep this under review.

**15 Update on Use of disclaimers for documents** on Committee’s webpages – Kevin to update at a future meeting.

**16 Length of meeting** – 1 hour 30 minutes

**17 Dates for remaining 2023 meetings**, at 12.30pm and hybrid in person/virtual – 17 May, 12 July, 20 September and 22 November

Warren Gordon

PSIL

Secretary, CLLS Land Law Committee