

City of London Law Society – Land Law Committee

Key points from Emergency meeting held on 17 April 2020

Attendees

Jackie Newstead, Warren Gordon, Kevin Hart, Anthea Bamford, Jeremy Brooks, Jamie Chapman, Caroline DeLaney, Jayne Elkins, Bridget Ford, Stephen Josephides, Daniel McKimm, Tom Pedder, Jeremy Shields, Sangita Unadkat, Ian Waring.

Land Registry Update

Land Registry provided a further update on 16 April 2020 on the position concerning cancellation of applications where no response has been received to a requisition.

In March, Land Registry announced that they would extend all current cancellation dates until 1 June 2020 where they have not received a reply to a requisition and would not issue any warnings of cancellation in the interim.

Land Registry announced on 16 April that they have extended all current cancellation dates **until further notice**. They will update us once they resume normal service. At that point, they will send warnings of cancellation again, giving us 4 weeks to reply to their requisitions.

In relation to Evidence of identity, Land Registry will no longer reject applications where identity evidence is not provided. Instead they will now raise a requisition so the application does not lose its priority.

Land Registry Customer Support Centre is not able to take calls at the moment, although they are working towards enabling customers to have direct conversations with them in the near future. Due to the large number of emails, it is taking Land Registry longer to reply to everyone than they would like, so they ask that urgent queries are sent only once. They promise to respond as soon as they can.

The Land Registration (Amendment) Rules

2020 <http://www.legislation.gov.uk/ukSI/2020/425/made> came into force on 16 April.

The Rules amend the Land Registration Rules 2003 to allow for the Chief Land Registrar to certify a day as an "interrupted working day". The effect of this is to extend the expiry date of the priority period given by an official search, and the date for responses to notices and requisitions, by the number of working days equal to the number of interrupted working days falling within the priority period or within the time given for responding to notices and requisitions.

So this depends on the Chief Land Registrar certifying and the Committee was not aware that this had happened. Members' experience was that the position on delays with OS1 priority searches had improved.

Searches

Thames Water are now accepting searches but with delays. Members reported that there was currently no obvious increased need for search insurance.

Landlord and Tenant

While there is the moratorium on forfeiture, it was reported that landlords are pursuing other remedies such as statutory demands or Commercial Rent Arrears Recovery. Courts

are using video hearings and triage hearings. While winding up petitions are unlikely to be heard for months, statutory demands may adversely impact tenants for example in potentially leading to a breach of banking covenants.

It was reported that discussions were taking place about changing the dates and terms of existing tenant break clauses perhaps because tenants would be concerned they could not physically move at the date currently provided for in the break, or because they would be unable to satisfy a vacant possession condition due to inability to access the premises. The Committee will monitor what is being requested for changes to break clauses.

Force majeure

This wording in development agreements etc is increasingly being supplemented to refer to the pandemic. There are publicised examples of quite detailed Coronavirus event definitions. While that may be appropriate for certain documents, the Committee considered that as a general rule it may be best to keep such definitions relatively general, avoiding the dangers of matters being missed by quite specific drafting. However, it very much depends on the particular circumstances.

Undertakings

They must be within the control of the solicitor, who should only give an undertaking if they can comply with it. Therefore, allowance must be given in the undertaking for the current circumstances preventing performance. The attached document produced by a working party of the Association of Property Support Lawyers (APSL) on page 9 provides some suggested wording that may be included in certain undertakings to take account of the pandemic.

Law Society Formulae

The attached APSL document also includes suggested changes to the Law Society Formulae for exchange to take account of virtual exchanges and electronic signatures, together with a memorandum of exchange.

E-signature platforms

Some of the best known platforms were discussed. Witnesses for e-signatures must be physically present when the signatory e-signs on the device. Some users are requesting the witness to sign a statement that they were physically present to provide further assurance. There are suggested approaches if the parties do not want the witness to see the full document if confidential. Mention was also made of the tool to pdf sign documents where such signatures are permitted.

Next meeting

Unless there is an urgent requirement for an earlier meeting, the next meeting will be the regular Committee meeting on 6 May at 12.30pm. The meeting will be a tel conference. The meeting will follow up on COVID-19 issues, but also look at other Committee projects.

Warren Gordon
CMS