

## Property quarterly update - January to March 2019

The latest property quarterly update aimed at in house lawyers (and other professionals) practising in the property / real estate sector.

05 April 2019

### Cases

#### **Canary Wharf (BP4) TI Ltd and others v European Medicines Agency [2019] EWHC 335 (Ch)**

The High Court has ruled in a highly significant case that a tenant's lease is not frustrated by Brexit.

[Read our case update](#)

#### **Taurusbuild Ltd and others v McQue and another [2019] UKUT 81 (LC)**

The Upper Tribunal turns conventional wisdom on its head by ruling that an easement could be implied into a mortgage of part under the rule in Wheeldon v Burrows.

[Read our case update](#)

#### **Oakley and others v Harper McKay Developments Ltd [2018] EWHC 3405 (Ch)**

Failing to assign the copyright in plans on or before completion could have meant that a seller's notice to complete was invalid.

[Read our case update](#)

#### **EE Ltd and another v The Mayor and Burgesses of the London Borough of Islington [2019] UKUT 53 (LC)**

The first illustration we have of the price of rights granted under the Electronic Communications Code 2017.

[Read our case update](#)

#### **O'Byrne Re Land at Tubney, Manor Farm [2018] UKUT 395 (LC) and Roberts v Parker and another [2019] EWCA Civ 121**

A couple of cases on the interpretation of easements create no new law, but illustrate a couple of important points.

[Read our case update](#)

#### **Thorpe v Frank and another [2019] EWCA Civ 150**

Repaving of land was sufficient evidence on its own to establish a claim for adverse possession of that land.

[Read our case update](#)

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### Legislation, consultation and guidance

# Homes (Fitness for Habitation) Act 2018

This came into force on 20 March 2019. It inserts new sections 9A, 9B and 9C into the Landlord and Tenant Act 1985.

Section 9A(1) implies into a lease under which a dwelling is let in England wholly or mainly for human habitation for a term of less than 7 years a landlord's covenant that the dwelling is fit for human habitation at the beginning of the lease and will remain so during the term of the lease.

Although not retrospective in its effect, the implied covenant will apply to periodic or secure tenancies which come into existence on or after 20 March 2019 on expiry of a lease term granted before that date.

## Tenant Fees Act 2019

This has received Royal Assent and the main provisions come into force on 1 June 2019.

The Act applies in England to assured shorthold tenancies (excluding long leases and social housing), student accommodation and most licences to occupy. Subject to a number of exceptions, it prohibits letting fees paid by tenants. Exceptions include rent, a tenancy deposit (not exceeding five weeks' rent (or six weeks' rent where the annual rent exceeds £50,000)), a holding deposit (not exceeding one week's rent), interest on late payments of rent (not exceeding 3% above base rate and only where more than 14 days late), payments for council tax, utilities, TV licences and communication services and the reasonable cost of replacing lost keys.

For one year, the Act only applies to new tenancies, but from 1 June 2020 it will apply to all tenancies.

## HM Treasury and HM Revenue & Customs joint consultation on non-UK resident surcharge for Stamp Duty Land Tax (SDLT)

This follows on from an announcement in the Autumn 2018 Budget that the government intends to consult on the introduction of an SDLT surcharge for foreign buyers of residential property.

The main proposals are as follows:

1. A surcharge of 1% (on top of existing applicable SDLT rates) will be payable on freehold and leasehold purchases of residential property by non-UK residents (including the rates that apply to the rental element of leasehold property).
2. Individuals will be treated as non-UK resident if they spend fewer than 183 days in the UK in the 12 months ending with the effective date of the transaction. However, a refund will be available where an individual who has been subject to the surcharge spends 183 days or more in the UK in the 12 months following the effective date of the transaction.
3. The surcharge will also apply to non-UK resident companies. For these purposes, a company will be UK resident if it is incorporated in the UK or its central management and control are in the UK. The surcharge will also apply to UK resident close companies under the direct or indirect control of non-UK participators.
4. The surcharge will apply to the whole consideration if any one of joint buyers is non-UK resident. However, unlike with the supplemental SDLT charge for additional residential properties, the surcharge will not apply if the buyer is UK resident and his or her spouse or civil partner is non-UK resident.
5. Where a bare trust buys property (not involving the grant of a lease), the surcharge will apply if one or more of the beneficiaries is non-UK resident. In all other cases involving trusts, if an individual beneficiary has a lifetime right to occupy or to receive the income, the surcharge will apply if the beneficiary is non-UK resident. Otherwise, the surcharge will apply if the trust is non-resident (to be determined according to existing income tax and capital gains tax rules).

The consultation closes on 6 May 2019. A copy can be downloaded from [here](#).

## Law Society Code for Completion by Post (the Code)

A new version has been published and will take effect from 1 May 2019. It has been updated in the light of the Court of Appeal's combined decision last year in *P & P Property Ltd v Owen White and Caitlin LLP* and another and *Dreamvar (UK) Ltd v Mischoon de Reya* and others (the Dreamvar Case).

The updated Code reinforces the message from the Dreamvar Case that the undertaking given by the seller's solicitor in the Code that it will "have the Seller's authority to receive the purchase money on completion" refers to the true owner of the property (not any potential fraudster). The new Code also makes explicit the effect of the Dreamvar Case and other recent case-law that, pending completion, the seller's solicitor holds any purchase money on trust for the buyer to be either paid away in respect of a genuine completion (where the seller delivers a valid transfer to the buyer) or paid back to the buyer if completion does not take place. In other words, where a fraudster impersonates the true owner of a property and the purchase money is paid to the fraudster by the seller's solicitor, the seller's solicitor will be strictly liable to the buyer for both breach of undertaking (assuming the Code has been adopted) and breach of trust.

The requirement to deliver a valid transfer would also catch the situation where the transfer has not been validly executed by the seller (in such a case, the seller's solicitor will be in breach of trust by allowing the sale proceeds to be sent to the seller without delivering to the buyer a valid transfer).

To adopt the Code, both parties must agree to use it to complete a specific transaction, although if the parties have agreed to use the Law Society Conveyancing Protocol, adoption of the Code is automatically implied. Conveyancing Quality Scheme solicitors must use the Code.

A copy of the new Code (together with a marked up version showing changes from the old version) can be downloaded from [here](#).

## **Housing, Communities and Local Government Committee Report on Leasehold Reform**

This House of Commons Committee report makes recommendations on the future of residential leasehold tenure (which the government has acknowledged is not working in consumers' best interests and needs to be reformed).

The recommendations in summary are as follows:

1. The government ensures that commonhold becomes the primary model for owning flats in England and Wales.
2. The Competition and Markets Authority investigates mis-selling in the leasehold sector and makes recommendations for appropriate compensation. It also gives its view on whether onerous leasehold terms constitute 'unfair terms' (under the Consumer Rights Act 2015) and would therefore be unenforceable.
3. The government requires the use of a standardised key features document, to be provided at the start of the sales process by a developer or estate agent.
4. The government prohibits the offering of financial incentives to persuade a buyer to use a particular solicitor.
5. The government legislates to ensure that existing ground rents should be limited to 0.1% of the present value of a property, up to a maximum of £250 per year.
6. The government reverts to its existing proposal that grounds rents on newly-granted leases are capped at a peppercorn (not £10 per year as recommended in the government's latest consultation on leasehold reform).
7. The government legislates to restrict onerous permission fees in existing leases and only allows permission fees to be charged on freehold properties where they are reasonable and absolutely necessary.
8. The government requires the use of a standard form for the invoicing of service charges.
9. The government implements a new consultation process for tenants affected by major works in privately-owned buildings. In

addition, it legislates so that freeholders' costs can never be recovered through the service charge (or any other means) when the tenant has won a case against the freeholder in the First-tier Tribunal.

10. The Law Commission recommends a process that will make enfranchisement substantially cheaper. In addition, it conducts a more comprehensive review of leasehold legislation.

11. The government introduces low-interest loans, so that tenants who want to enfranchise or extend their leases can afford to do so.

A copy of the report can be viewed from [here](#) (which also has a link to a report summary).

## Land Registry

### Trial to reduce requisitions

The Land Registry started a three month trial on 4 February 2019 during which it will delay sending certain requisitions on what it calls 'straightforward register update applications' (e.g. registering a charge, registering a discharge and a charge, registering a discharge, registering a transfer of whole and a charge with no complicating factors etc.) for three weeks. This applies where the only outstanding matter is a discharge of a mortgage and the Land Registry cannot apply its early completion policy (e.g. because the mortgage being discharged has an accompanying restriction) or there are missing certificates or consents needed to comply with a restriction.

More complicated applications and applications creating a new title (e.g. a transfer of part or the grant of a lease) are not included in the trial.

### Update to Practice Guide 19

The Land Registry has updated paragraph 3.1.1 of this Practice Guide (on notices, restrictions and the protection of third party interests in the register) to provide that where a restriction requires consent, the consent obtained must expressly refer to the registration of the disposition, not just the disposition itself.

The Land Registry has stated that it will give practitioners 12 months to embed this new practice and that from April 2020, applications with incorrectly worded consents will receive a requisition.

This new practice does not apply to a restriction that requires a certificate. In that case, all that is needed is that the certificate complies with the requirements of the restriction.

A copy of Practice Guide 19 is available from [here](#).

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