PLA press release

4 March 2019

PROPERTY LAW REFORM NEEDED TO BOOST 'GLOBAL BRITAIN'

The Property Litigation Association has canvassed its members on major areas of property law to ascertain whether they are still fit for purpose and to help prioritise those ripe for reform.

The survey of the PLA's 1,400 members – property litigation specialists from all around the UK – included the 1954, 1987 and 1995 Landlord & Tenant Acts, CRAR, squatting, rights to light and break options.

Members found most areas of property law to be overly complicated, costly and in urgent need of clarification and refinement – and in some cases, wholesale renewal.

The most serious offenders were the 1995 and 1987 Acts with 72% and 71% respectively considering them unfit for purpose. Although only 14% said the 1995 Act (dealing with lease assignments and guarantors) should be abolished, nearly 45% called for the 1987 Act (residential tenants' first right of refusal) to be scrapped entirely.

The 1954 Act (security of tenure for business tenants) received more mixed views with only 51% believing it fit for purpose but 85% stating it should not be abolished. 43% thought that the current contracting-out procedure needed a complete rethink.

A high percentage (83%) also supported keeping residential squatting criminalised with 64% wanting to see this extended to commercial properties. And on CRAR (commercial rent arrears recovery), two-thirds (66%) thought that the current law on using bailiffs to seize goods for non-payment of rent was unfit for purpose.

The timing of the survey is critical, following the 2017 launch of the Law Commission's 13th Programme of Law Reform. This aimed to "boost global Britain and help enhance the UK's competitiveness as we leave the EU" but failed to address any of the issues with commercial property law. It is hoped that future reform programmes will not make the same omission.

Mathew Ditchburn, chair of the PLA's Law Reform Committee, says: "Brexit negotiations have severely hampered the government's ability to effect key property law reforms that would streamline processes, cut red tape and stimulate economic growth and productivity at a time when they are needed more than ever.

"With commercial real estate contributing £95.6bn a year to the UK economy (according to the British Property Federation), it is massively important in attracting domestic and international investors. Yet problems with commercial property law are said to adversely affect 1.2 million businesses in England and Wales, hampering business and causing significant preventable financial losses.

"Commercial property should be freed of red tape and legal loopholes, so that it remains competitive on the world stage and attractive to investors and occupiers alike as we prepare to leave the EU. The PLA will continue to push forward key areas of reform through consultation and representation, to ensure that property law remains fit for purpose."

Other key findings

1995 L&T Act

While many respondents thought the Act gave tenants greater protection from historic liabilities than the previous law on privity of contract, there remained problems with repeat guarantees and intra-group assignments. Amendment of the relevant provisions to remove unintended consequences was the preferred option.

1954 L&T Act

Asked whether the contracting-out process should be scrapped and replaced with simple health warnings on leases, members were divided – 43% said yes, 40% said no.

Despite this, the comments demonstrated a definite leaning towards retaining the existing contracting-out process. Some suggested that a health warning alone would not provide tenants with sufficient awareness of the risks involved in contracting out.

One said: "The current arrangement neatly allows both freedom of contract (as tenants can, with warning, contract out) and protection for tenants. It thus roughly already strikes the right balance."

Others suggested that the lease renewal process could be much more streamlined.

1987 L&T Act

Only 4% of respondents thought the 1987 Act was fit for purpose. The law states that landlords wishing to dispose of any interest in a building containing two or more flats must give qualifying tenants a right of first refusal. This was considered prohibitive in many cases, especially in relation to mixed-use schemes where the disposal of commercial parts was caught by the Act. Even minor technical breaches could result in criminal sanctions.

Some pointed out that the Act was no longer needed in view of later legislation and the complete overhaul of leasehold enfranchisement which is currently the subject of consultation.

CRAR

71% thought CRAR should cover service charge and insurance premiums as well as rent, and 72% believed the seven-day enforcement notice should be abolished.

Many thought the law was pointless, a waste of time and money and that the seven-day notice period took away any element of surprise, giving tenants time to remove items from premises.

Squatting

While respondents were in favour of levelling the playing field by also making squatting in commercial properties a criminal offence, they recognised the difficulties in enforcing that, given how stretched police resources already are.

One suggested that the police regard squatting as a civil matter, so it was a 'toothless law', while another thought that an insurance pool model, like Pool Re, could be used to fund its policing.

Rights to light

More than half (55%) thought that rights to light law was not fit for purpose. 63% said there should be a time limit (of up to a year) in which to claim an injunction against new developments to protect rights of light. Asked whether neighbouring properties should be stopped from injuncting altogether, and be awarded damages instead, 56% said no.

A few questioned when the time limit should start and thought a year might be too short, especially for developments with funding issues. Some recommended wider use of notices; tighter control at the planning stage was also suggested.

This issue drew strongly opposing views. One respondent said: "It seems rights to light results in developers being held to ransom by their neighbours", while another opined: "Many would rather have light than cash. Being able to stop developments is an important property right."

Break options

Members were divided on the question of break options with 39% saying the law was fit for purpose and 42% stating it wasn't. They were similarly split when asked whether the law should be changed to give courts discretion to grant relief when break conditions were not fully observed: 48% said yes, 35% no.

Several said that break options were a matter of contract and if drafted properly, the law should not need to intervene. Furthermore, granting relief was thought to remove certainty.

Other areas of property law in most need of reform

This open-ended question drew suggestions as diverse as CVAs, easements, boundary disputes, residential possession/eviction procedures, long leasehold reform and enfranchisement.

In useful summary, one respondent said: "You have ignored the elephant in the room. Government policy needs to change, to finance civil justice properly… There is no point 'taking back control of our laws' if those laws cannot be enforced adequately, affordably and promptly. There are few higher priorities for a civil society than the effective rule of law."

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The Property Litigation Association is a members' organisation for professionals specialising in property litigation, including commercial, residential and agricultural property law. Established in 1995, the Association has around 1,400 members and plays an important role in lobbying for improvements in property law, the court service and a wide range of judicial matters. It also organises regular courses, training seminars and conferences alongside a calendar of social events.