

Sector updates

The New Insolvency Regime for RPs - 5 July 2018

To date, very few RPs have found themselves in financial difficulties and no funder in the sector has suffered a loss. However, as RPs become larger and more complex, a more robust insolvency regime was required. The new insolvency regime for RPs was brought into force by two statutory instruments (the Insolvency of Registered Providers of Social Housing Regulations 2018 and The Housing Administration (England and Wales) Rules 2018). It enables the appointment of a housing administrator to manage an RP's affairs in accordance with two objectives.

For more detail, please follow this link to our briefing note on the new regime.

Social Housing Green Paper – 14 August 2018

The long-awaited Social Housing Green Paper emphasises the importance of social housing and proposes "major reform" of the sector. At this stage, the proposals (on which consultation is sought by 6 November 2018) raise more questions than answers. In particular:

- How and when will the Regulatory Framework be updated?
- Voluntary Right to Buy – will this still be pursued and if so how will it be funded?
- Tenant Services and league tables – how will "key performance indicators" of RPs be measured and enforced?
- Housing Supply – how will this be boosted in an effective and long-lasting way?
- Shared Ownership – how will these products, and their fundability, be effected?

For more detail, please follow this link to our briefing note on the Green Paper.

Legal updates

No oral variation of contracts confirmed by the Supreme Court – a failure to comply with the requirements of a 'no oral modifications' clause will not necessarily invalidate a verbally agreed change to a contract but it will be more difficult to prove such an amendment is effective, even if the other party is agreeable to it. The judgement in *Rock Advertising v MWB Business Exchange Centres Limited* emphasises the importance of checking and following formal procedures set out in a contract to vary its terms.

Consent withheld by lender deemed 'unreasonable' – in *Crowther and another v Arbutnot Latham & Co Ltd*, the High Court held that a secured lender had unreasonably withheld its consent to a disposal of a property forming part of its security as its refusal had not been based on the sale price and therefore, 'objectively reasonable', but rather on a desire to improve its position from when the loan agreement was originally entered into (when the security did not cover the entire loan in any event). This case has brought clauses in funding agreements requiring a lender's consent not to be unreasonably withheld or delayed into greater focus.

No general equitable duty for a lender to act in good faith – receivers and mortgagees owe equitable duties (for example, to act in good faith) to a mortgagor when selling a mortgaged property (as established by existing case law). In *Standish and others v The Royal Bank of Scotland Plc and another*, the claimants argued that these duties arise even when the mortgagee is simply holding a real property mortgage, in relation to any action taken, regardless of whether or not they are in possession. The Court held however that the duties which apply when enforcing security cannot be extended to apply to all dealings that a lender has with a mortgagor.

Electronic signatures consultation - the Law Commission has published a consultation paper on electronic signatures with a view of standardising their use – and generally exploring whether deeds and their related formalities remain "fit for the 21st century". The consultation closes on 23 November 2018 and we will provide further updates.



SOME OF OUR
RECENT WORK
INCLUDES:

Bond

Advising Longhurst Group on its £250m (including £100m retained) secured bond issue, including advising on all bond documentation and assisting with related charging requirements.

Charging

We acted for L&Q Housing Trust in relation to charging properties to secure their innovative new £100m facility from BNP Paribas.

Revolving Credit Facility

Acting for Sovereign Housing Association in its £40m revolving credit facility with Handelsbanken.

Upcoming seminars

The following seminars will take place in our office near London Bridge and are free to attend. For more information and to register to attend, please visit wslaw.co.uk/events.

Joint Ventures	13 November, 2018
Housing Finance Update	24 January, 2019
Charging Update	26 February, 2019

Upcoming conferences

Social Housing Annual Conference
5 December, 2018

We will be hosting the breakfast briefing on 'The rise of shared ownership'. We look forward to seeing you there.

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