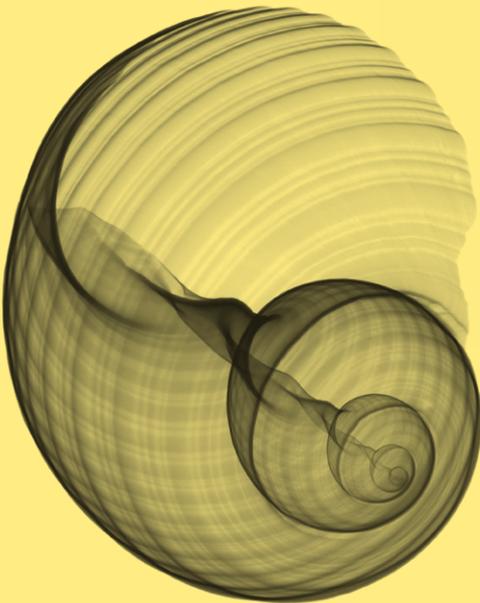
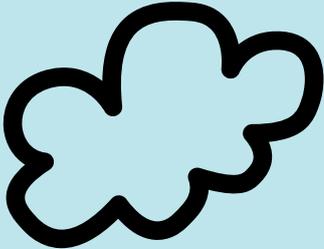


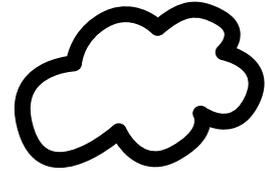
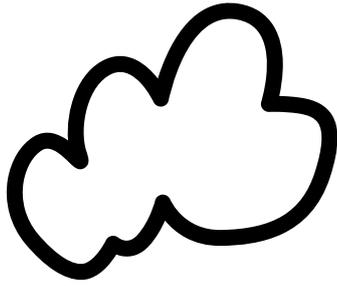
Housing Newsletter



2017







Welcome

Our renowned national team of housing experts continues to grow in size, depth and quality.

Jonathan Hulley and Chimi Shakohoxa, formerly co-heads of social housing at Clarke Willmott, have joined the housing team at Capsticks, bringing with them their teams and a track record of exceptional client service.

Chimi and Jonathan will work closely with Philip Brown, Head of Housing, and will help deliver commercial and pragmatic solutions for all our housing clients. Our combined teams will offer a complete suite of legal services, from development advice through to housing management.

In this newsletter we have included details of our free general housing helplines. We know there are some situations where you need a swift response; call us to help resolve your particular issue.

We've also included some news about our forthcoming events and we look forward to meeting you in the next few months. Contact your usual Capsticks lawyer to ensure you receive further details or email: capsticks.events@capsticks.com.



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Out with the old and in with the new – new consent rules for social housing dwellings

In April, the old Consent regime to dispose of social housing dwelling and land was replaced with the duty to notify the Homes and Communities Agency ("HCA") of any Relevant Disposals after the event. The duty to notify only applies to Relevant Disposals. Notification will be via the online National Register of Social Housing ("NROSC") Scheme and is submitted by the Registered Provider.

So, what constitutes a Relevant Disposal of Social Housing properties? The regulator has set out three main categories of relevant disposal:



Landlord Disposals Categories 1-5:

1. out of sector disposals (whether the dwelling is occupied or not)
2. within sector disposals (where the dwelling is occupied at the point of disposal)
3. on the disposal of the last social housing dwelling
4. from a non-profit provider to a for-profit provider (whether the dwelling is occupied or not)
5. disposal of 5% or more of social housing stock in a single transaction (Small Registered Providers only).

Finance Disposals Categories 6 and 7:

These include Standard Finance arrangements such as bonds or bank funding, but also include non-standard forms such as sale and leaseback arrangements. It is important to note that Small Registered Providers are required to notify the HCA in the event of any Finance Disposal (Category 6), whereas Large Registered Providers need only notify to obtain Non Standard Finance Disposal (Category 7).

Guarantee Disposals Category 8:

This includes parent company guarantees (given to guarantee the performance of an associated company) or guarantee a debt or obligation of the provider.

Timescales for notification

1. Priority disposals need to be notified to the regulator within 3 weeks of the disposal. Priority disposals include Category 1 (out of sector disposals of occupied dwellings), Category 3 (disposal of last social housing dwelling), Category 5 (Small Registered Providers disposal of more than 5% of social housing stock) and Category 6 (disposals made by Small Registered Providers to secure private finance).
2. All other relevant disposals are to be notified within 3 weeks of the relevant quarter. We set out below some examples provided by the HCA in their Guidance Note of disposals for which notification will not be required (not an exhaustive list):
 - a) a vacant social housing dwellings from one to another non-profit provider
 - b) social housing land not constituting a dwelling (including post demolition)
 - c) release of restrictive covenants over social housing land or dwellings
 - d) upon initial grant of an option (but please note this may be a Relevant Disposal when the option is exercised)
 - e) disposals of parts of dwellings, the solar panels, telecoms equipment etc.
 - f) disposal of parts of social housing dwellings such as parts of garden garages and rights of access.

It is important to remember that the HCA will still have oversight and the ability to regulate through the Regulatory Framework and the use of regulatory gradings. The decision-making process and evidence supporting a disposal will still be subject to scrutiny.

Another point to note is that the provisions of Part 7 of the Charities Act 2011 will still apply to those Registered Providers who are non-exempt Charities and are registered with the Charity Commission (not the FCA). This includes in some cases the need for pre-marketing certification from a Valuer.

Contact:

For further information please contact **Jennifer Bennett** or **Jenny McNeil**.



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Accessing public land – there is no better time

In March 2017 Lord Naylor produced his report on the future of the NHS estate. In a BBC interview, Theresa May has confirmed her support for the Report's findings, saying "We're backing the proposals in the Naylor report".

What is the Naylor Report all about?

Lord Naylor was tasked with developing a new NHS estates strategy, releasing £2 billion in assets, and delivering land for 26,000 new homes.

What it means for housing

Lord Naylor recommends that the NHS adopts a "carrot and stick" approach, which will give NHS organisations real incentives to improve the utilisation of the estate in their local area. As well as prioritising the release of land for housing, Lord Naylor has put an emphasis on key worker accommodation for NHS staff, and has even suggested that the NHS could establish its own housing provider to deliver that accommodation – either alone or in partnership with Registered Providers.

As a result, we anticipate a rise in:

- the disposal of surplus NHS land
- opportunities for more joint ventures, e.g. for mixed hospital/residential use
- a rise in NHS key worker accommodation projects.

Challenges for the NHS

The challenges being faced by the NHS historic under-investment has left the NHS estate in bad shape. The estate is aged, with more than 43% of it being older than 30 years. Backlog maintenance of at least £5 billion (£1.5 billion in London) is needed, with a further £5 billion required to deliver the NHS' "Five Forward View."

NHS estates planning has traditionally been very fragmented, because the estate is spread across such a large number of independent NHS organisations. As a result, the NHS has been working on "Sustainability and Transformation Plans"

("STPs"): local estates strategies that seek to bring together the different NHS organisations in each area, to agree on a joint estates plan. STP capital requirements are expected to total around £10 billion. These eye watering sums could be funded from property disposals, income generation schemes (including rental income), increased planning contributions via section 106 contributions, private capital and from HM Treasury. The report is clear, however, that a robust capital strategy is needed to determine final investment requirements via the STPs.

Lord Naylor's proposed solution

There is an emphasis, throughout the Report, on the need for quick action. The NHS needs robust capital plans and aligned clinical strategies to maximise value for money and to address backlog maintenance – all using government capital only where essential. NHS organisations are encouraged to reduce running costs and waste through better utilisation and regulation of their estate (including passing on costs to occupiers where possible), sustainability and energy programmes, estates rationalisation and addressing backlog maintenance, resulting in an estate that is fit for purpose and efficient.

Recommendations

Lord Naylor's recommendations include:

- that NHS Property Services Ltd and Community Health Partnerships be merged to form a new NHS Property Board. They should lead from the centre, to give expertise and delivery support to STPs
- that each area should have an STP focussed on their estate and infrastructure, supported by business cases. Targets and benchmarks must be met to qualify for capital funding in the form of grants, loans or private finance

- that HM Treasury should not claw back sales receipts upon property disposals. Instead, they should match those receipts, providing a real incentive to sell
- that surplus NHS land should be prioritised for the development of residential homes for NHS staff, where there is a need
- that lots of small scale developments to deliver housing should be accelerated as a matter of urgency.

What will happen next?

The Prime Minister's recent endorsement of the Naylor Report indicates that the Government is likely to want to implement the Report's recommendations in order to free up additional funding for the NHS.

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For further information please contact **Kevin Steele, Lisa Geary or Susie Rogers.**



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Simon Strelitz joins Capsticks to bolster our in-house advocacy expertise

Simon is a practising barrister who specialises in all aspects of housing, property and local government. He is also an accredited mediator for commercial and civil matters.

Simon joined Capsticks as an in-house barrister in April 2017, from Clarke Wilmott LLP, having spent the first 11 years of his career in self-employed practice at the specialist housing set, Arden Chambers.

Simon has considerable experience of advising housing clients on a range of contentious and non-contentious matters, as well as appearing in courts at all levels from the County Court to the Court of Appeal, and the First Tier Tribunal (Property Chamber) and Upper Tribunal.

His work with the team at Capsticks includes cases involving anti-social behaviour, succession, possession, injunctions and committal proceedings, and leasehold and service charge disputes, as well as cutting-edge advisory work on tenancies, policies and procedures.

Simon supports the work of the Housing Advisory Service, speaking at housing events across the country and delivering bespoke training to providers, often assisting clients to reduce the costs of and exposure to litigation and, wherever possible, keep cases out of court.

Notable projects Simon took to appeal (appearing himself at first instance) include Southend-on-Sea Borough Council v Armour [2014] EWCA Civ 231 and Akerman-Livingstone v Aster Communities [2015] UKSC 15.

Contact:

For further information please contact **Simon Strelitz**.



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Diary of upcoming events

National Housing Federation Annual Conference, Birmingham - 19 & 20 September

We will be exhibiting at the NHF's annual conference. It's a great opportunity for us to catch up with our clients and friends. If you are attending then please drop by our stand (number 49) and enjoy a coffee from our very own barista. If you want to pre-arrange a meeting with any of our housing team then please email: capsticks.events@capsticks.com. Further information on the conference can be found [here](#).

HALA training course: The practical housing and leasehold management update London - 26 September

Capsticks' expert legal team is delivering this one day training course for the Housing Associations' Legal Alliance looking at ASB-evidence gathering and case preparation, the Courts' approaches to housing cases and how to respond, fire safety, safeguarding, hoarding and tenancy fraud and leasehold management. For more information including how to register, please [click here](#).

Capsticks does not accept responsibility for the content of any external internet websites.

NLG masterclass: Preparing for and surviving FTT, London - 27 September

Capsticks' own Bridget Stark-Wills will lead and host this masterclass with Justin Bates of Arden Chambers for the National Leasehold Group aimed at leasehold property officers/managers. You can find further information and pricing on the NLG's website by [clicking here](#).

Housing Management update seminars

Based on the queries we receive from our clients, our housing experts will talk you through all the latest housing management developments, providing "need to know" tips and guidance. The dates and locations are:

Birmingham, 17 Nov

Winchester, 23 Nov

Central London venue TBC, 6 Dec

To ensure you receive an invitation please email your details to:

capsticks.events@capsticks.com

For all other queries about our events please email our Events team:

capsticks.events@capsticks.com

Why not contact our general housing helplines?

If you need instant access to one of our housing specialists for a quick response concerning a corporate, employment, home ownership, land and property development or regulatory issue, call us on: 03300 580076.

If you need advice and a quick response to a housing management query, call us on: 07766 011885 or 01962 678 300.

For a written response to any legal housing issue, email us on housing@capsticks.com

Meet our Housing Partners

A national team of housing specialists



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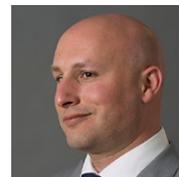
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