Butterworths Property Law Service

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I. FREEHOLD CONVEYANCING

Buyer in breach of contract – time when sellers' loss should be assessed

Hooper v Oates [2013] EWCA Civ 91 is a case which may well achieve some significance in those parts of the country where property values are declining. At a previous hearing the Recorder (affirmed by the Court of Appeal: [2010] EWCA Civ 1346) had determined that the defendant buyer was in breach of contract and liable for his deposit to be forfeited, plus damages. When the Recorder came to assess the damages, the evidence of the joint single expert valuer was that the open market value of the property had been £600,000 at the date set for completion in June 2008 and £495,000 in September 2010, when valued before the hearing (by which time the sellers had given up trying to sell the property, and had moved back into it themselves). The contractual sale price had been £605,000, so accordingly he awarded damages of £110,000 (setting off the deposit against this sum).

The defendant appealed, arguing that damages should normally be assessed as at the date of the breach of contract. The Court of Appeal (Lloyd, Leveson and Toulson, LJJ), following *Johnson v Agnew* [1980] AC 367, agreed that this was the general rule, but noted that in that case the House of Lords had itself accepted that this was not an absolute rule, and that the court had power to fix such other date as was appropriate, if necessary so as to avoid injustice. The Court of Appeal agreed with the Recorder that this was such a case. The implication would seem to be that, in a falling market, the exception rather than the rule will prevail, and that a buyer who defaults may face a substantially larger bill for damages.

Different persons both registered by mistake as proprietors of land – whether one could be in adverse possession for the purposes of the Limitation Act 1980

Parshall v Hackney [2013] EWCA Civ 240 raises an unusual point on a second appeal relating to a claim for rectification of the land register. Owing to a mistake made by the Land Registry, two different persons were registered as the proprietors of the same piece of land. The applicable statute was the Land Registration Act 1925. Mummery, Patten and Treacy LJJ held that someone who was the registered proprietor of land, even if this was as a result of a mistake, could not be in adverse possession of it for the purposes of the Limitation Act 1980. If there were concurrent registered titles, neither had a right of action to recover possession from the other until the register was rectified.

Fraud and errors in completion and registration of two legal charges – one legal charge discharged in error – borrower bankrupt – whether lender entitled to re-registration of charge

Garwood v Bank of Scotland [2013] EWHC 415 (Ch) is an unsuccessful appeal from an Adjudicator on the issue of whether the respondent bank was entitled to a legal charge over a fraudster's property (the Property). The result of this determined whether much of the equity in the Property belonged to the bank, or to the fraudster's trustee in bankruptcy, the appellant G. Although the appeal was dismissed, Norris J reached his conclusions on rather different grounds from the adjudicator.

Of the factual background, the judge agreed with the adjudicator that it is 'difficult to conceive of a greater conveyancing muddle'. Few will disagree. With some simplifications: in 2003 the Borrower (F) acquired the Property with the aid of a legal charge from Mortgage Express. He subsequently divided the Property into two flats: on the ground floor, Flat A (later referred to as Flat 1) and on the first floor, Flat B (later referred to as Flat 2). In June 2004 F obtained an advance (the June 2004 loan) of £96,725 from the respondent bank (BoS): the transaction number ended '891', and apparently related to Flat B. In July 2004 F obtained an advance (the July 2004 loan) of £97,701 from the respondent bank (BoS): the transaction number ended '181', and apparently related to Flat A. F misrepresented to BoS that he was buying long leases (which did not exist) of Flats A and B, and did not of course disclose to BoS that he already owned the freehold of the Property. The same solicitors acted for BoS and F on both loans. Certificates of title were given and the advances were made, but the legal charges were never completed. Remarkably, BoS never seem to have got around to checking that the legal charges had been completed, or to ask for its advances back.

In July 2004 F executed a Legal Charge form (the 2004 Charge) which stated that it referred to the '181' account, but purportedly granted security over 'Flat B' at the Property (i.e. over the 'wrong' flat). By the end of September

2004 the aggregate mortgage advances had apparently been used to redeem the existing £134,000 mortgage to Mortgage Express, and in January 2005 the 2004 Charge was registered against the freehold of the Property. The BoS Mortgage Conditions disapplied s 99 LPA 1925, but nevertheless in November 2009 F granted to A a 99 year lease of Flat A (now described as Flat 1). Shortly afterwards BoS made an electronic application to discharge the 2004 Charge, the title number quoted being that of the freehold. BoS were told that the '891' account was being redeemed, but the only charge on the register was the 2004 Charge which had originally been tied in with the '181' account but which did affect the freehold.

Those who have followed the story so far will appreciate that this meant that by December 2009: (1) A was the registered leasehold proprietor of Flat A; (2) F owned the freehold of the Property, giving him vacant possession of Flat B and the reversion to Flat A; but (3) BoS had no security registered against either of these interests or indeed any property interest. It had become an unsecured lender in respect of what was originally the '181' account.

In September 2010 F became bankrupt, owing debts of around £2M. G wished to dispose of F's interest in the Property (ie to sell the garage, to grant a lease of Flat B, and to sell the reversion to Flats A and B). BoS claimed a security interest in F's property, but when it discovered that none was registered to it, it lodged an application for a unilateral notice claiming a security interest in the Property and alleging that the 2004 Charge had been wrongly redeemed. G applied for the removal of the notice and the matter came before an adjudicator, who had therefore to determine the merits of the issue that underlay the claim: *Silkstone v Tatnall* [2011] EWCA Civ 801 at paragraphs [37] and [48]. Although the adjudicator came to the same conclusion as Norris J, the judge reached it by a different line of reasoning. To confine oneself to the judge's reasoning:

(1) the June 2004 loan was not used for its proper purpose, and should therefore have been returned to the BoS.

(2) the July 2004 loan was not used for the acquisition of a leasehold interest in Flat A, but the July 2004 Charge, when executed, referred to Flat B; in spite of this, it was in fact registered against the freehold of the Property, and so took effect as such; and as a charge against the whole of the freehold, not as a charge over the freehold of Flat B only.

(3) the adjudicator had accepted an argument of BoS based on subrogation, but Norris J rejected any scope for subrogation: in respect of the June 2004 Loan, BoS did not need to claim a charge by subrogating into the discharged Mortgage Express mortgage, because the 2004 Charge had given it a charge over the freehold (more, in fact, than it had bargained for). Neither could it subrogate in respect of the July 2004 Loan, as the 'all monies' provision in the 2004 Charge meant that loan was also secured over the Property.

(4) G argued that there had not in fact been a 'mistake' here which needed rectification, as there was no evidence of any, and banks do sometimes

release 'all monies' charges even when there is a balance outstanding. Norris J rejected this argument, saying it was clear that BoS was unaware that in discharging the 2004 Charge it was releasing its security for both the June 2004 and July 2004 Loans. Even if (and he expressed no view on the point) it was not possible to 'rectify' the register (in the narrow sense used in the LRA 2002) when the mistake was that of a party, and not of the Registrar, it was still possible to 'amend' the register, as provided for in the LRA 2002. The electronic discharge was a 'disposition' which could be set aside.

The result was therefore that BoS was entitled to be re-registered as the proprietor of the 2004 Charge which secured its July 2004 Loan; the equity in the Property which was available to G was correspondingly reduced.

Freehold covenants – whether covenant requiring prior approval of application for planning permission was restrictive – whether implied that consent would not be unreasonably withheld – whether lessees could enforce

89 *Holland Park* (*Management*) *Ltd v Hicks* [2013] EWHC 391 (Ch) raises several points on freehold restrictive covenants. The vendor sold part of the garden of 89 Holland Park (89 HP) in 1965. In 1968 the purchaser entered into a supplemental deed with him by which she agreed that, if she did not proceed to develop the plot in accordance with an existing planning permission, she would not apply for any further planning permission without having first obtained the vendor's consent. The plot was never developed, and eventually the defendant acquired the land in 2012. By this time the vendor had granted leases of the six flats comprising 89 HP to six long leaseholders, and the freehold had been transferred to the first claimant, a management company owned by them. The six leaseholders individually were the second to seventh claimants. The defendant disputed the making of the declaration, on the grounds that (1) the claimants (including the first claimant) were not entitled to the benefit of the covenants; (2) that the covenants did not bind the Defendant as (a) they did not touch and concern the land and (b) they were not restrictive; (3) the covenants were subject to an implied proviso that approval or consent would not be unreasonably withheld; and (4) the covenants were not capable of being enforced by the second to seventh claimants as lessees.

On Issue (1) the Deputy Judge (Mr Robert Miles, QC) held that LPA 1925, s 78 (as interpreted in *Federated Homes Ltd v Mill Lodge Properties Ltd* [1980] 1 WLR 594) would allow the claimants to enforce the covenants, and that the land intended to be benefited was easily identifiable, so satisfying *Crest Nicholson Residential* (*South*) *Ltd v McAllister* [2004] 1 WLR 2409. He rejected the argument – accepted in *Roake v Chadha* [1984] 1 WLR 40 – that a contrary intention had been evidenced, so that the power to approve the plans would have required to be expressly assigned.

On Issue (2)(a) counsel for the defendant argued that there was no reported authority to the effect that such a covenant 'touched and concerned' the land

benefited. The Deputy Judge rejected this, holding that it would benefit and indeed affect the value of 89 HP if it had some control over development on the adjoining land.

On Issue (2)(b) counsel's argument was that the covenant – requiring that plans be approved before they were submitted in an application for planning permission – did not technically affect the use of the land. This contention was also rejected, the Deputy Judge affirming that although expressed in an indirect way, the covenant was in substance a restriction affecting the use of the land.

On Issue (3) the Deputy Judge held (following *Cryer v Scott Brothers* (*Sunbury*) *Ltd* (1988) 55 P. & C.R. 183 (CA)) that the covenant was subject to an implied proviso that consent would not be unreasonably be withheld: he laid particular stress on the point that the land had expressly been sold in 1965 with the intention that it should be developed, the procedure set out in the clause provided for this, and there was no suggestion that the seller at the time could have withheld consent on a whim.

Finally, on Issue (4), the Deputy Judge held that although the second to seventh claimants were not 'assigns' within the meaning of the covenants, they were nevertheless as lessees entitled to enforce the covenants under LPA 1925, s 78, although the context required that the approval would be given by the first claimant, the management company which was controlled by them.

Freehold positive covenants – application of 'benefit and burden principle'

Wilkinson and others v Kerdene Ltd [2013] EWCA Civ 44 deserves to be noted even though its subject matter – the enforceability of positive freehold covenants – is not dealt with in the principal work, because there can be few conveyancing practitioners who have not encountered the frequently misguided attempts of draftspersons to enforce financial contributions by positive freehold covenants. The instant case involved – as it seems do many – a village of holiday bungalows, in this case in Cornwall. The conveyancing history of the development, which was a former RAF station, was complex. Essentially, as part of the development, in 1987/88 around 97 bungalows were sold freehold, and the transfer deeds required the buyers to pay a fixed annual service charge, with provision for index-linking. The deeds granted the owners rights of way over the roads, paths and drives, etc., and the seller covenanted to maintain the roads, drives, car-parks, etc, and to maintain 'the lawns, pleasure grounds and other recreational facilities' (regardless of the fact that some of the facilities lay outside the seller's title, and the fixed service charge seems inadequate to cover any more than basic facilities, even allowing for the index-linking). The appellant owners were dissatisfied with the level of maintenance of the village, and withheld payment of the service charge. K Ltd, the respondent company, had claimed the arrears of service charges. By the time the case reached the Court of Appeal the live issue was whether the charges could be recovered under the Rule in *Halsall v Brizzell* ([1957] Ch 169), also known as the 'benefit and burden principle'. HHJ

Vincent in the Bodmin County Court had held that the Rule did apply. The appellants appealed, relying on the qualifications put on the Rule in cases such as *Rhone v Stephens* [1994] 2 AC 310 (HL) and *Thamesmead Town Ltd v Allotey* [1998] 3 EGLR 97, which suggested that there had to be a direct correlation between the benefit and the burden, and also that, in order for A to rely on the Rule, there must at least be the theoretical possibility that B had a choice and could renounce the benefit, and thus not be subject to the burden.

Patten LJ (with whom Rix and Arden, LJJ, agreed) dismissed the appeal. He affirmed – as had *Rhone v Stephens* and *Thamesmead Town* (and indeed *Halsall v Brizzell*) – that there was no need for the benefit to be made expressly conditional on the burden. He also held that it was not necessary for the burden to correlate directly with the benefit: it was sufficient ([32]) for the financial contribution to be recoverable that it related, at least in part, to the benefit. *Thamesmead Town* was distinguished because there (a) the service charge was calculated on an item by item basis, and so could be severed into its parts and (b) the irrecoverable part of the service charge related to the maintenance of the greens and open spaces, and the transfer deed did not grant any right to use them. Here it was accepted that it was not possible to apportion a fixed service charge. On the question of the need – if A is to enforce payment – for B to be able to renounce the benefit in order not to be subject to the burden, the Court of Appeal appears to have upheld the principle in theory, but then said it did not apply here as the argument related to the roads and paths, and none of the appellants had suggested that they wished to renounce the right to use them or could manage without using them. Clarification of this rather elusive concept of 'choice' was not therefore forthcoming.

The decision may encourage some owners/developers to attempt to recover service charge expenditure where they felt that existing case law was too strict. It would, however, in this editor's opinion, be most regrettable if the case served to encourage developers to disregard basic land law rules and to try to enforce the collection of common expenses by relying on positive covenants and/or the Rule in *Halsall v Brizzell*, the scope of which is still not entirely clear. Why not set up a workable scheme of estate rentcharges?

Misrepresentation – whether tort of deceit made out

Bush v King [2013] All ER (D) 23 (Mar), an extempore judgment of HHJ Michael Kay (sitting as a deputy judge of the QBD) of does not raise any novel issues but is very briefly noted as a rare example of a claimant succeeding in establishing that representations made prior to their purchase of land had been made fraudulently, and that the tort of deceit had therefore been made out.

Mistake made in discharging mortgage – extent of breach of trust

AIB Group (UK) plc v Mark Redler and Co Solicitors [2013] EWCA Civ 45 is another case (cf *Lloyds TSB plc v Markandan and Uddin* [2012] EWCA Civ

65 (see Bulletin No 128) and *Davisons Solicitors v Nationwide Building Society* [2012] EWCA Civ 1626 (see Bulletin No 130)) which addresses the issue of how far negligence on the part of conveyancing solicitors may also amount to a breach of trust, and therefore entitle a lender to a possibly more generous measure of damages. The Defendant solicitors were acting on a remortgage of £3.3M of their clients' home (allegedly worth £4.5M) to fund a business expansion. They were also acting for the claimant lenders. They were aware that their clients had two relevant mortgage accounts, but, in discharging the legal charge, relied on what was clearly, if they had examined it, a figure relating only to the larger account. As a result the claimants never obtained a first legal charge over the relevant property, and, when it was sold, they were under-secured by an additional £274,000 (the amount that remained outstanding on the first mortgage). The claimants argued that, in parting with the mortgage advance in breach of the terms of their retainer, this was a breach of trust relating to the whole advance.

The judge at first instance (HHJ David Cooke, sitting as a judge of the Chancery Division) had held that the breach extended only to the amount by which the defendants had failed to ensure that the lenders obtained their first charge.

The Court of Appeal (Arden, Sullivan and Patten LJJ) reversed him on this technical point, holding that the breach of trust extended to the whole of the advance, but this was a pyrrhic victory for the lenders, as, applying the relevant causation test to their claim, the Court of Appeal held that this would not make any difference to the amount of equitable compensation which should be awarded. With interest, this amounted to £323,501.

Rectification of Register – whether a void disposition was still a disposition

Although alteration of the Land Register is not a topic that the principal work covers, *Fitzwilliam v Richall Holdings Services Ltd* [2013] EWHC 86 (Ch) is noted briefly as it is an important case on rectification of title. *Malory Enterprises Ltd v Cheshire Homes (UK) Ltd* [2002] EWCA Civ 151, [2002] Ch 216 – a decision on the Land Registration Act 1925 – decided that, where a purported disposition of a registered estate was a nullity (eg because the transfer deed was a forgery), only the bare legal title vested in the transferee, who therefore held it on trust for the person who would otherwise have been the owner of the land. In the instant case legal title had been transferred using a forged power of attorney.

Newey J, sitting in the Chancery Division, held that although he recognised the strength of academic criticisms of *Malory* ([76]), he was bound to follow it as the wording of s 58 of the LRA 2002 did not differ significantly from s 69 of the LRA 1925 ([80]). A 'disposition' did not therefore include a void disposition ([84]). The register was therefore rectified against the defendant purchaser, although the claimant was required to reimburse the defendant for the amount paid to discharge his mortgage on the property.

II. EXISTING LEASEHOLDS

Alleged under-occupation of property by successor tenant – whether basis upon which judge's decision could be challenged

Brent LBC v Tudor [2013] EWCA Civ 157 was an unsuccessful appeal by the Council against the decision of HHJ McDowell in the Willesden County Court that the respondent tenant – a successor under s 89 Housing Act 1985 – was not under-occupying a six-bedroom council property. Although it was accepted that there were shortcomings in the evidence given by the respondent and her family, the Court of Appeal (Arden, Jackson and Beatson LJJ) held that the judge was entitled to come to the decision that he did, affirming that it would be difficult for a council to upset findings of fact in a case such as this.

The case may also be noted for the fact that the CA criticised the gaps in the transcript which had been supplemented, though not fully, by counsel's notes; the Court stressed that the judge should do his or her best to provide a full transcript, and should obtain his or her notes from the court if necessary; the CA should have to rely on counsel's notes only where there had been no official recording and therefore there was no transcript.

Appeal – whether should be by way of review or by way of rehearing

Camden LBC v Tonello [2013] All ER (D) 72 (Jan) is an extempore judgment of Henderson J in the Chancery Division hearing an appeal from the County Court. The local authority had granted the first defendant (D1) a joint tenancy of a property with her partner. In 2003, upon the breakdown of the relationship, D1 left the property. The partner and their daughter, the second defendant (D2), remained living in the property. The partner subsequently died. D1 had no contact with D2 and did not return to the property. In 2010 the appellant local authority served a notice to quit on D1. In September 2010 D1's solicitor wrote a letter (the letter) to the local authority expressing D1's wish to return to the property; the following month D1 met a housing manager and reiterated this wish. Later that month the district judge, hearing the possession claim, found that D1 was not occupying the property as her home and that there was insufficient evidence to show she had an intention to return, and granted the authority possession. Later D1 found the letter and sought to appeal the district judge's decision, requesting that the appeal be by rehearing rather than review. The circuit judge granted permission to appeal, directing that the appeal be by way of rehearing rather than by review.

The authority successfully appealed against the ruling that the appeal be by way of rehearing. Henderson J held that, under CPR 52.11, an appeal by way of review was the norm, and D1 had failed to establish sufficient grounds to justify an appeal by way of rehearing. The circuit judge appeared to have taken the view that the letter would almost certainly have been excluded if the appeal were by review; further, she had exaggerated its importance, as it was

merely evidence of what D1 had instructed her solicitors to say. In view of these errors of law, the Chancery Division had to consider the matter afresh, and the circuit judge's order allowing an appeal was varied so that the appeal would be by way of review and not rehearing.

Collective purchase of freehold – letter stating that ground rent would cease to be payable – whether Residents' Company estopped from collecting ground rent

Chasewood Park Residents Ltd v Kim [2013] EWCA Civ 239 raises an interesting point on a collective purchase by leaseholders and proprietary estoppel. A Residents' Association wrote to its members to solicit interest in the collective purchase of a freehold (in fact a very long leasehold reversion), and suggested that one of the advantages of the collective purchase would be that there would be no ground rent to pay. The Defendants subscribed to the purchase and the claimant company acquired the reversion but then resolved to continue to collect the ground rent, on the basis that it needed to build up a reserve to cover accountancy and legal fees (which presumably would not have been covered by the service charge provisions of the existing leases). The Defendant refused to pay any more ground rent, alleging that she had joined in the purchase in reliance on the representation made about the ground rent, and either the claimant was bound by an estoppel to grant her a new lease at a nil rent, or the claimant was estopped from claiming it rent under the existing lease. The Court of Appeal (Patten, Kitchin and McCombe, LJJ) upheld the judge at first instance and held that there was no estoppel here: the representation made in the initial letter was not sufficiently unambiguous, as it was clearly couched in conditional terms. Further, the defendant had not relied upon the representation, as she had clearly misunderstood it: it was clear from the defendant's correspondence that she believed that she was being offered the freehold of her flat and that, after the collective purchase, her lease would no longer exist.

Construction of document could be determined on summary judgment

Kingerlee Holdings Ltd v Dunelm (*Soft Furnishings*) *Ltd* [2013] EWHC 47 (Ch) is an application for summary judgment on the meaning of an agreement for a lease which Mann J described as 'labyrinthine'. The point at issue was whether the construction of a retail unit had been practically completed, so that the defendant was bound to take a grant of a lease. The judge ruled in favour of the claimant, and thus granted a decree of specific performance. He also granted a declaration as to the date for the commencement of payment of rent. Of wider interest is the judge's approval and following of *BBC Worldwide Ltd v Bee Load Ltd* [2007] EWHC 134 (Comm), where Toulson LJ suggested that, where a case involved a pure point of construction, the court could and should determine it if necessary on an application for summary judgment, or a trial of a preliminary issue, as the outcome would not be affected by evidence. Mann J confirmed that this principle could be applied

even where, as here, the document itself to be construed was of some complexity. The judge did, however, indicate (at [4]) that such cases should not be listed for hearing in the applications court, with its maximum hearing time of two hours, but should be listed as an application by order.

(Case noted at [2013] Comm Leases 1909–1912)

Damages for wrongful eviction of business tenant – treatment of premium

Grange v Quinn [2013] EWCA Civ 24 well illustrates the point that a case where the amount at stake was comparatively small may still raise some particularly difficult legal issues. Indeed, the low amount at stake appears to have contributed to the difficulties in that (a) an expert's report was admitted by both parties, even though it was subsequently found – by one of the panel in the Court of Appeal – to contain errors; and (b) the price paid when the lease was granted (£9,950) was later argued to be an overvalue, so the court had to consider the possibility that the lease and business might have had a negative value. The Court of Appeal allowed the appeal, but by a majority, with Arden LJ dissenting, and Jackson LJ and Gloster J, though united in their decision, differing as to their reasoning.

The claimant/appellant, Mrs Grange, was granted a six year lease of a sandwich bar previously run by the defendants/respondents, Mr and Mrs Quinn. The rent was £5,200 p.a, with the claimant paying for repairs and insurance. By an oral agreement the claimant paid a further £9,950 for the business. The particulars had stated that this was for "business/lease/fixtures and fittings …" but the recorder at first instance had found it to be for the goodwill. The respondents wrongfully evicted the appellant after six months, alleging breaches of covenant which would not have justified eviction; they had also failed to serve any s 146 Notice, and, by accepting rent, had in any event waived any breach. The recorder rejected Mrs G's claim for repayment of the sum paid, on the basis that she had got what she had paid for, and her loss resulted from the fact that – as found by the agreed expert's report – her business was only barely breaking even and was in fact valueless. He awarded her £300, which was variously and somewhat inconsistently described as "nominal damages" or "to compensate her for distress and inconvenience".

Jackson LJ allowed the appeal, relying largely on the earlier CA case of *Sampson v Floyd* [1989] 2 EGLR 49, and taking the broad-brush approach that it "would be manifestly unjust if the Defendants could evict the claimant after only six months and still keep the purchase price" ([87]). He substituted for the award of £300 one of £9,079, reducing the claim for the full price of £9,950 by 1/12 on the basis that the claimant had enjoyed only six months of her six year term. The fact that the recorder had found that the price paid was a payment for goodwill rather than a premium in the strict sense was glossed over.

Gloster J also allowed the appeal and concurred in Jackson LJ's order, but adopting a more closely reasoned argument; she also followed *Sampson v Floyd*, but argued that it was implicitly based on the principle that a claimant

might claim not for a loss of bargain but "on the alternate basis of a claim for out-of-pocket expenses expended in his part performance of the contract" ([97]). (On this point she was closer to the view of Arden LJ than that of Jackson LJ ([99])). She reached a different conclusion overall from Arden LJ as she (ie Gloster J) was also prepared to allow the appellant to revise the figures and calculations that had been contained in the admitted expert's report on the value of the business.

Arden LJ's dissent would have upheld the decision of the recorder. She took the view that the premium could not be treated as a payment of rent in advance, either in principle, or, *a fortiori,* here, having been found by the recorder to be a payment for goodwill; essentially therefore the appellant's claim was that she wished to be relieved of the consequences of having made a bad bargain. She expressed no view on the recorder's award of £300, as that was not subject to any cross-appeal.

This comparatively small claim generated a combined judgment of 131 paragraphs in the Court of Appeal, and – in any future case involving unusual issues on the appropriate method of assessing damages – would warrant more detailed consideration than is appropriate in a note of this kind.

(It may be noted that, although both Jackson LJ and Gloster J followed *Sampson v Floyd*, the CA in *Branchett v Beaney* [1992] 3 All ER 910 described it as a decision per incuriam, at least on the point that damages for breach of a covenant for quiet enjoyment can include an element for mental distress).

(Case noted at: [2013] Comm Leases 1912–1915)

Disclaimer of leases – whether surety still bound to take new leases – whether forfeiture – whether order for SP would be redundant – whether rent review applicable

RVB Investments Ltd v Bibby [2013] EWHC 65 (Ch) does not decide any novel point of law but does illustrate the application of several established principles. The tenant of two industrial units had gone into insolvent liquidation, and the leases had been disclaimed: one by the liquidator, the other by the Treasury Solicitor. The claim was an action by the landlord against the defendant, the surety under both leases, for specific performance of his alleged obligation to take new leases for the residue of each term. The defendant resisted the claims on the basis of the wording of the disclaimed leases, which required the surety to take a new lease 'during the period from the date hereof until the expiry of the tenancy hereby created or (*if earlier*) *the date on which the Lessee ceases to be bound by the covenants in this lease'* (italics added by the judge). The defendant claimed that, on its literal interpretation, this would include the disclaimer of the leases. Sitting as a judge of the Chancery Division, HHJ Behrens disagreed: the italicised words referred to the discharge of original tenant liability under the Landlord and Tenant (Covenants) Act 1995, and so the position was governed by *Hindcastle Ltd v Barbara Attenborough Associates Ltd* [1997] AC 70 (HL). The defendant remained bound to take the new leases. The judge also rejected an

argument that the 'fixed charge' provisions of L&T(C)A 1995, s 17 protected the defendant: these provisions applied only where there had been an assignment, and not where the landlord was imposing liability on a surety.

In the alternative, the defendant argued that the landlord had by its conduct either re-entered the properties and effected a forfeiture, or else accepted a surrender of the leases. Both of these arguments were rejected on the evidence, both parties accepting that the relevant law was contained in cases such as *Artworld v Safaryan* [2009] EWCA Civ 303, *Bellcourt Estates v Adesina* [2005] EWCA Civ 208 and *Relvok Properties v Dixon* [1973] P. & C.R. 1.

The defendant argued against the grant of specific performance in respect of Unit 2 on the grounds that it would be redundant as the term had already expired. The judge accepted the argument that *Kingston-upon-Thames RLBC v Marlow* [1996] EGLR 1 might benefit the landlord here. In that case the Divisional Court had accepted that once a lease had been forfeited, the tenant was no longer entitled to possession, and so was no longer liable for the business rates. The landlord successfully argued here that an order for SP would render the defendant rather than itself liable for the rates, and that damages would not therefore be a sufficient remedy. (The defendant was himself insolvent, so unlikely to be able either to meet the rates or to indemnify the landlord if it were liable).

The rent review clauses under the lease of Unit 2 provided for the landlord to be able to initiate a rent review on the third anniversary of the term, to either the original rent, uplifted in accordance with the RPI, or to the market rent. The lease which the defendant was being required to sign reserved a rent which the landlord had purported to increase in accordance with RPI. The defendant objected to this, and succeeded on this subsidiary point, the judge holding that the claimant had not taken the steps required by the lease to implement the review, and could not therefore claim a higher rent than that in the original lease.

Lessor's failure to consult under LTA 1985, s 20 – effect on recoverability of service charge

Daejan Investments Ltd v Benson [2013] UKSC 14 is the long-awaited Supreme Court decision on the effect of non-compliance with the service charge consultation requirements of s 20 of the Landlord and Tenant Act 1985. It will be recalled that the appellant property company were proposing to carry out substantial works on a building in Muswell Hill comprising shops and seven flats. The works, as carried out, cost some £454,000, of which nearly £280,000 should have been recoverable from the leaseholders of the flats. As a result of the ruling of the LVT that they had not complied with the consultation requirements (a ruling which was upheld in the Upper Tribunal and the Court of Appeal) the appellants were restricted to recovering £250 from each leaseholder. Prior to the Supreme Court decision it had generally been accepted that the effect of non-compliance with the consultation requirements (detailed provisions for which

are now contained in the Service Charges (Consultation Requirements) (England) Regulations 2003) gave the LVT what Lord Neuberger describes as a 'binary choice': either the LVT grants a dispensation under s 20(9), or else the amount recoverable from the leaseholders via the service charge is capped at the relevant amount (£250 for 'qualifying works' or £100 pa for long term contracts). The Upper Tribunal ([2009] UKUT 233 (LC) (see Bulletin No 115) had expressly confirmed that, in its view, LVTs were faced with these two stark alternatives, and the Court of Appeal ([2011] EWCA Civ 28 (see Bulletin No 123)) had thought this probable. The Supreme Court, however, unanimously (per Lord Neuberger, for the majority, at [54]; joined on this point by Lord Hope [95] and Lord Wilson [115] (both of whom otherwise dissented)) held that it was open to an LVT to attach as a condition for granting consent that the amount recoverable should be reduced by an appropriate amount.

What divided the majority and the minority was their view of the purpose of the consultation requirements. Lord Neuberger (with whom Lords Clarke and Sumption agreed) held ([44]) that the purpose of the requirements was to ensure that tenants did not pay for inappropriate works, or more than was appropriate for those works. Failure to comply should therefore mean that the tenants would not pay more than they would have paid had the requirements been complied with ([45]). Adherence to the consultation requirements was not an end in itself ([46]). He did not think it helpful to focus – as the LVT, UT and CA had – on whether the failure to consult was 'serious' or 'a technical, minor or excusable oversight'. This was a recipe for LVTs to come to inconsistent decisions. He pointed out (at [48]) the more serious view taken by Lord Wilson in the instant case (at [99]). LVTs should focus instead on the *consequences* of a breach.

To address the argument that the consultation requirements needed to be strictly enforced as otherwise there would be no incentive for landlords to comply with them, Lord Neuberger suggested that, if landlords needed to seek dispensation, it ought not to follow that the broadly 'no costs' regime of the LVT should necessarily be applied. There would be nothing to stop an LVT from imposing, as conditions of allowing recovery: (a) a condition that the sum recoverable be reduced by such sum as the tenants may have been prejudiced ([58]); and (b) a further condition that the landlord pay the tenants' legal costs incurred in connection with the landlord's application ([59]). Later the costs of obtaining expert advice from a surveyor were also mentioned ([69]).

(Although he did not specifically mention it, it would seem implicit in the President's thinking that, *a fortiori*, the LVT would also make an order under s 20C to prevent the landlord from adding its own legal costs to the service charge).

Dissenting, Lord Hope, DPSC, and Lord Wilson both rejected the idea that leaseholders who opposed a dispensation ought always be required to identify the extent to which they had been prejudiced (usually financially).

Lord Wilson in particular (at [98]–[99]) took a dim view of the way that the appellants had aborted the consultation procedure before it had been completed.

To say that landlords will welcome the decision and that leaseholders will bewail it is perhaps an oversimplification. Treating the now complex consultation requirements as a form of judicial 'snakes and ladders' inevitably causes problems for landlords and may discourage them from undertaking much-needed schemes. The guidance given ([56]) on how dispensation for urgent repairs may be given subject to conditions should be broadly welcomed. Leaseholders who live in blocks which are self-managed may well welcome the decision, as an inability to make a full recovery of service charge expenditure may jeopardise the viability of a residents' management company. On the other hand, Lord Neuberger rejects the idea that the nature of the landlord is a relevant factor to be taken into consideration in deciding whether to grant dispensation ([51]); he claims that this was the view of the CA: this is surprising, given Gross LJ's remarks at [67](ii). If prejudice, usually financial, has to be shown, perhaps this does not greatly matter.

It will be interesting to see whether the additional expense and inconvenience of having to seek dispensation subject to the conditions outlined above will ensure that landlords will still broadly comply with the consultation requirements, or whether the requirements will be increasingly disregarded. Lord Wilson may have a point when he doubts ([97]) whether tenants will be able to discharge the burdens that will now be put upon them if they seek to rely on a breach of s. 20. Already, since the decision, the current editor has been faced with a situation where leaseholders have sought advice when s 20 may have been breached. Getting contractors to spend time producing a worthwhile estimate or quotation for works which they will not be awarded to them (and which may already have commenced or even been completed) will rarely be a practical proposition. Incurring the expense of a building surveyor prepared to advise on a realistic alternative figure for the cost of qualifying works is likely to be a more viable way of proceeding.

(One may note in passing that the judgment of the Supreme Court casts no light either way on the correctness of the decision of the Chancellor in *Phillips v Francis* [2012] EWHC 3650 (Ch): the references to 'qualifying works' would be equally applicable to the interpretation of those words in that case or to the words as they had previously been understood).

(Discussed in S.J. 2013, 157(10), 3 and March 7, 2013 (Online edition); S.J. 2013, 157(12), 14–15; and in E.G. 2013, 1311, 79)

Lessor's failure to provide address for service – doubts as to service of LVT proceedings – whether default judgment should be set aside

Tobicon Ltd v Collinson [2013] UKUT 47 (LC) raises a potentially useful point on the service of LVT proceedings. Leaseholders – of whom the respondent was one – had succeeded in challenging the validity of six years of service charge accounts on the basis of failure to provide an address for

service (LTA 1987, s 48), failure to include a summary of rights and obligations (LTA 1985, s 21B) and failure to notify them that costs had been incurred within 18 months (LTA 1985, s 20B). They had also secured the Right To Manage, including an order that £9,400 unexpended service charges be paid over to the RTM Company. They further secured an order by default in the County Court for the repayment of service charges amounting to nearly £150,000 each. When those orders came to the attention of the Appellant it took steps to have them set aside. The Appellant further applied unsuccessfully to the LVT for permission to appeal on the basis that it had no knowledge of the proceedings. The President of the Lands Chamber granted permission and allowed it to give evidence as to whether it had been served. The Appellant had been registered in Jersey but its business was administered from Zurich; it was now registered in the British Virgin Islands. Evidence of who knew what and when about the proceedings was predictably confusing.

The UT found that the LVT proceedings had never been properly served on the Appellant; the 2003 Regulations 23(4)(a)(iii) and 23(5) envisaged either that if a respondent were out of the jurisdiction then either an order for substituted service would be made or service would be dispensed with. The question then arose as to how far the Court had a discretion to refuse to set a judgment aside if proceedings had not been duly served. The UT accepted that *Nelson v Clearsprings* (*Management*) *Limited* [2007] 2 All ER 407 (CA) entitled the Appellant to apply to have the proceedings set aside, but Counsel for the Appellant accepted that it was not bound to do so if the Appellant was in fact aware of the proceedings. The UT was satisfied that the proceedings had come to the Appellant's knowledge, but it had deliberately chosen to ignore them until the default judgments were obtained in the County Court. The UT therefore dispensed with service of the proceedings and declined to remit the matter to the LVT.

Notice to quit – capacity and undue influence issues – Human Rights Act 1998 – whether daughter should have been granted joint tenancy

Birmingham CC v Beech [2013] EWHC 518 (QB) adds to the growing list of cases where guidance is given on what circumstances will be considered sufficiently serious to mount a challenge possession proceedings based on the HRA 1998. The defendant B was the adult daughter of a secure council tenant (W); W was tenant of a house which included three bedrooms and two living rooms. W was the survivor of joint tenants, so (prior to the amendments brought about by the Localism Act 2011) under ss 87 and 88 no succession to the property was permitted. In November 2007 B moved back to live with W, and was joined by her new partner, whom she later married. B and her partner sought a council tenancy in Birmingham, but turned down the properties that they were offered. B then sought to become a joint tenant with W, but this was turned down, as the council's policy was to permit cross-generational joint tenancies only in exceptional circumstances. In October 2009 W went into hospital for an operation and was discharged into a care home. B requested that the tenancy be transferred into the names of

herself and her partner, but a council officer visited W and got her to sign a notice to quit. B again sought the tenancy; whilst the request was being considered, W died, in June 2010; the request for the tenancy was again refused; there were further reviews and an internal appeal. The Council thereupon commenced possession proceedings. These were challenged on several grounds: (1) whether W had validly given notice to quit: this was challenged on the basis (a) that W had not had mental capacity at the relevant time, or (b), in the alternative, was procured by the Council by undue influence and unconscionable behaviour; (2) a public law challenge to the Council's refusal to add B's name to the tenancy; (3) a public law challenge to the Council's refusal to grant the tenancy to B and her partner; (4) a defence under Art 8, on the basis that the council was acting disproportionately in seeking to evict B from what had become her home; and (5) a further argument under the HRA 1998 that the statutory succession scheme itself under s 88 was itself not compliant with the Act.

The defence on ground 1(a) failed: s 1(2) of the Mental Capacity Act 2005 requires one to assume that a person has mental capacity unless the contrary be proved, and the defendant was not able to do this. Capacity issues were nevertheless explored, as they were relevant to ground 1(b). The present editor is not aware of any other reported case where it has been argued that a notice to quit was procured by undue influence, but one can appreciate that this case could have raised such issues. Keith J applied the general principles to be found in *Royal Bank of Scotland Plc v Etridge* (*No. 2*) [2002] 2 A.C. 773; B therefore faced an uphill task here, as the relationship of housing officer and tenant is not one that gives rise to an irrebutable presumption of trust and confidence. No undue influence was found.

On ground 2, B failed to impugn the council's refusal to add her name to the tenancy. Any request to add her name would have had to come from W as the existing tenant. This was clearly the appropriate way of proceeding, and W had never herself taken any action.

On ground 3, the council's decision could again not be impugned: the various factors upon which B and her partner relied had been considered by the council, but it had taken the view that these were outweighed by the need to prevent under-occupation of a desirable council property.

On ground 4, Keith J rejected the idea that the council's decision to seek a possession order was a disproportionate way of implementing its policy to prevent under-occupation. (It was accepted that, although B and her partner were merely licensees, Article 8 was potentially engaged). Relying on cases such as *Thurrock Borough Council v West* [2012] EWCA Civ 1435, it was clear that B's housing needs were in no way exceptional.

On ground 5, it was argued that the prohibition of a second or subsequent succession did not reflect any pressing social need (which was reflected by recent amendments to the HA 1985 by the Localism Act 2011), so as to justify interference with her Art 8 right to respect for B's home; and that her Art 14 rights (coupled with Art 8) were infringed insofar as the provision discriminated between the child of a single parent (who might succeed) and

the child of joint tenant parents (who would not be entitled to succeed). Keith J rejected this argument, on the basis that the obstacle to D was that W was herself treated as a successor; that D had not been residing with W for 12 months before her death; that, through needing to be in a care home, W, whilst remaining a tenant, had ceased to be a secure tenant; and that W's tenancy had in any event come to an end well before her death.

Notice to quit given by only one joint tenant – human rights considerations – whether could take effect as a release to the other tenant

Sims v Dacorum Borough Council [2013] EWCA Civ 12 is the first case since *Manchester CC v Pinnock* [2010] UKSC 45 and *Hounslow LBC v Powell* [2011] UKSC 8 to go to the Court of Appeal on the effect on one joint tenant if the other joint tenant serves a notice to quit on the landlord. To give a brief summary, it will be recalled that the House of Lords in *Hammersmith & Fulham LBC v Monk* [1992] AC 478 confirmed that this had the effect of bringing the tenancy to an end for both joint tenants, even against the wishes of the joint tenant who wishes to remain. The House of Lords in *Qazi v Harrow LBC* [2003] UKHL 43 held that this was unaffected by the Human Rights Act 1998, though the European Court of Human Rights in *McCann v UK* (App. No 19009/04) held that this was a breach of the remaining joint tenant's Art 8 rights. Following this case the Supreme Court in *Pinnock* and *Powell* has recognised that Article 8 considerations may prevent a possession order from being made even where a statute apparently gives a court no discretion but to grant one.

The facts of Sims are typical of this genre of cases: a joint tenancy was granted by the Council to both tenants, Mrs Sims made allegations of violence against Mr Sims, she moved out with the children, and sought rehousing from the Council. The Council suggested that she serve them with notice to quit, and she did so. The Council then took possession proceedings against Mr Sims, who was occupying a three bedroom family house. The possession claim came before a Deputy District Judge (DDJ) in Watford County Court, who ordered possession. Mr Sims appealed to the Circuit judge, but the appeal was removed into the Court of Appeal. In view of the binding precedent of *Monk* counsel for both the appellant and the respondent agreed that the appeal would have to be dismissed, but counsel for the appellant (Mr Andrew Arden QC) argued that the Court of Appeal should grant leave for an appeal to the Supreme Court so that the *Monk* principle could be reconsidered in the light of *Pinnock* and *Powell.* The respondent council opposed this. The appellant argued that to make the common law on notices to quit compliant with the HRA 1998, the notice to quit ought to take effect so as to release Mrs Sims from her rights and obligations under the tenancy, leaving Mr Sims as sole tenant.

The Court of Appeal dismissed the appeal, and also refused permission to appeal to the Supreme Court. The reasoning of Mummery LJ – who sat with Etherton LJ and Sir Scott Baker, but delivered the only reasoned judgment –

presents difficulties. He was evidently impatient with the appellant's arguments (see [23], [31], [37] and [38]). He concluded that it would be quite improper for Mr Sims to deprive the Council of the ability to reallocate a three bedroom home from the appellant to a family whose need for it is greater ([34]). But, with all due respect to his Lordship, his judgment tends to confusion. To suggest that a notice to quit needs to take effect as a release of the tenancy to the other joint tenant may well go beyond what is required to bring the common law into compliance with Article 8. The more basic issue here is surely whether, in hearing a possession claim in these circumstances, the judge is (a) bound to make a possession order, because there can be no defence to the action; or (b) whether the judge can examine the proportionality of making an order i.e. consider an Article 8 defence. Nowhere is this clear in the judgment. The DDJ appears to have examined the lawfulness of making an order for possession ([17] of the appeal judgment; [79] of hers) but then held that she was bound by authority to hold that the joint tenancy had been determined ([18] of the appeal judgment; [52] of hers). She was not, however, considering whether the matter was fit for the Supreme Court to reconsider. Although counsel for the appellant Council argued – accepting the thrust of *McCann* – that 'The rights of Mr Sims in relation to those [sc. possession] proceedings are adequately safeguarded by the court's assessment of the proportionality of possession orders and eviction.' Mummery LJ approaches the case from the standpoint that Mr Sims lost his interest in his home purely as a result of the predetermined operation of the common law on joint tenancies ([35]–[36]). This approach surely cannot remain valid following *Pinnock* and *Powell*.

To say that Mr Sims should automatically become the sole tenant of the property is no doubt a 'step too far'. But sooner or later (save in the unlikely event that Parliament steps in first) the Supreme Court will need to address the issue of whether in a possession action in these circumstances the court can consider the proportionality of making an order against the (former) joint tenant. This would appear to have been carried out here by the DDJ, so as at least to form an alternative ratio for her decision, and there would appear to have been no appeal by the appellant against this part of her judgment. The facts here would clearly militate against allowing the (former) joint tenant to remain, and the proportionality of making a possession order was at least considered by the DDJ, so this may not be the most appropriate case to go to the Supreme Court. But occasionally in other cases – notably perhaps *Qazi*, where by the time of the possession proceedings Mr Qazi had acquired a new wife and dependants – the merits can be more evenly balanced. Quite what would then be the legal status of the ex-husband (for such is it usually) in such an exceptional case remains to be seen.

(Case noted at: Sol. Jo., January 24, 2013 (Online edition))

Paucity of evidence for apportionment of service charge – how LVT should proceed

Service charge disputes which come before the Upper Tribunal raise a wide variety of issues, and *Southwark LBC v Bevan* [2013] UKUT 114 (LC) raises

one of the stranger ones: how should an LVT resolve the question of the number of bedrooms in a flat if the owner did not permit an internal inspection? The long lease of a council flat permitted the landlord council to adopt any reasonable method for the calculation of the service charge proportion, and, in an eight flat block, it had decided to do so on the basis of the number of bedrooms, one bedroom flats paying half what a two bedroom flat would pay. The respondent – who held the only long leasehold flat in the block – had not disputed this method of calculation, but alleged that the council had done its calculation on the basis that one of his neighbours had a one-bedroom flat, when he claimed that it had two. The council could produce no plans of the (other) flat; one of its officers who had entered had said that it had only one bedroom, and a large cupboard: but he produced no plan or photographs of the flat. The LVT made an external inspection: its appearance suggested that the respondent was correct in saying that it was likely to have two bedrooms, but the inspection was ultimately inconclusive. The LVT reduced the proportion of service charge allocated to the respondent's flat, saying that the onus was on the council to demonstrate that its adopted method of calculation was fair, and it had failed to do so.

The Upper Tribunal (HHJ Huskinson) allowed the council's appeal. The only evidence before the LVT was that of the council's officer, and there was no reason to reject it. The fact that the (other) flat was in a lower Council Tax band from the respondent's tended to support the officer's evidence.

Prospective application re: repair of exterior of property, including balconies – how LVT should have proceeded

Hillfinch Properties Ltd v Lessees of Southbourne Court [2013] UKUT 96 (LC) is an appeal to the Upper Tribunal from the determination – or possibly more accurately the non-determination – of an application under LTA 1985, s 27A in respect of a service charge. The ground landlord had commenced a s 20 consultation on substantial exterior repair works and then sought a prospective ruling on whether those costs would be reasonably incurred; and also as to whether the landlord or the leaseholders would be responsible for repairs to the balconies. At the LVT hearing there was no real dispute as to the need for the works, or as to the suitability of the works proposed, and the LVT had no doubt that the cost of the works on the balconies could form part of the service charge. The only live issue was whether the leaseholders felt that they could afford the cost. The LVT felt that the UT decision in *Garside v RFYC Ltd & Maunder Taylor* [2011] UKUT 367 (LC) made this potentially relevant. The LVT expressed the view that a further consultation would be required in respect of the balcony works, as it was now clear that they would be borne by the service charge. Precisely what else the LVT decided is difficult to discern. The landlord clearly was in similar difficulties, as it appealed to the UT, which ruled that the case should be remitted to the LVT for it to decide the *Garside* point, which was the only live issue between the parties. Counsel for the appellant landlord took the view that *Garside* had decided that the affordability of proposed works was relevant to the issue of

the reasonableness of a service charge only when there was the possibility of phasing those works, and it was not possible here to 'split' the proposed works.

The LVT had also made an order under LTA 1985, s 20C, preventing the landlord from adding any of its costs to the service charge. The rationale behind this appeared to be that (a) its application under s 27A on the reasonableness point was premature and (b) it was the landlord's responsibility that it had been necessary to seek a determination of the construction point, as the lease had been proffered by the landlord. The UT rejected the LVT's reasoning on both points and remitted the s 20C order for redetermination by the LVT.

Service charge – obligation to produce accounts – whether 'full accounts' had to be provided or whether a 'list of expenses' would suffice

Morshead Mansions is surely a name familiar to practitioners in the residential leasehold field, and no doubt it strikes terror in the hearts of judges and tribunal chairs who are faced with its name in their lists. *Morshead Mansions Ltd v Mactra Properties Ltd* [2013] EWHC 224 (Ch) is no exception to this. The case involves the obligation of a landlord to provide accounts in respect of service charges, and Warren J describes it as remarkable, in that the landlord was asserting a more onerous obligation than the tenant, in order to resist the latter's application for an order for specific performance of the requirement on the landlord to produce accounts.

The historical background is that MML – the defendant/appellant – was incorporated to acquire, and did acquire, the freehold of a block of 104 flats. As a result of previous dissension, from 2000 until 2003 a manager was appointed under Part II of the LTA 1987, but his appointment was suspended because of alleged inadequacies in his management and accounting techniques. Management of the block thereupon reverted to MML. MML claimed that it had considerable difficulty in producing service charge accounts for the calendar years 2003 to 2007 inclusive because of the previous manager's failings, and his failure to hand over all the records to MML when his appointment ceased. In 2008 Mactra Properties Ltd (the claimant/respondent, and owner of 19 leasehold flats in the block, held on substantially identical leases) issued a Claim Form for an order that MML perform its obligations under the lease to provide accounts. MML defended the claim on the basis that it was required to produce them 'as soon as practicable' and its inability to produce the accounts was due to the failings of the previous appointed manager. In 2011 MPL issued an application for summary judgment for an order. The application before the judge in the Central London County Court, and the appeal before Warren J, revealed a dispute on the construction of the lease. MML argued that it was required to produce 'Full Accounts' (with an Income and Expenditure Account, and Balance Sheet) – MPL argued that an 'Expenses List' would suffice. A Schedule of Expenses prepared by MML for 2009 was taken as an example of the latter.

The lengthy judgment is essentially based on the judge's construction of the particular lease, and thus is of limited relevance. It does, however, contain much useful discussion of the various forms which service charge accounts may take. There is much insight and discussion there which would be relevant to any dispute over the technical aspects of producing service charge accounts. The judge in the Central London County Court had, on the application for summary judgment, ordered MML to produce annual 'Expenses Lists'. MML had argued that the requirement of the lease was that 'Full Accounts' should be produced, to which the problems encountered when it took back the management of the property would arguably amount to a defence. In the end Warren J in the Chancery Division decided that 'Full Accounts' were not required, but that what was envisaged by the lease meant that the 'Lists of Expenses' would need to be expanded to include matters such as accruals and pre-payments, so that they would give a fuller picture of the service charge account. He therefore ordered that these be provided for the years 2004 – 2006, recognising that the 'Lists of Expenses' already provided might require expansion. In respect of the 2003 accounts he declined to make an order on summary judgment, as he thought there might be an arguable defence, due to the problems resulting from the handover, and also declined to make an order in respect of the 2007 accounts, because of an arguable defence based on the point that the claim might have been issued prematurely in respect of that year.

Shared ownership lessees – whether qualifying tenants for Right to Manage

Corscombe Close Block 8 RTM Company Limited v Roseleb Limited [2013] UKUT 81 (LC) decides the useful point that, for the purposes of the exercise of the Right To Manage, the owners of flats held on shared ownership leases (who will in fact be sub-lessees) are qualifying tenants, even if their 'shared ownership share' is less than 100%. The LVT had determined that the qualifying tenant would be the Housing Association, but the Upper Tribunal (HHJ Mole, QC) decided that the sub-lessees qualified. He interpreted s 76(2)(a) CLRA 2002 as including shared ownership leases, provided that they exceeded 21 years in length (which they generally would). This admittedly left little scope for s 76(2)(e) ever to apply, but the judge was reinforced in coming to the view that this was the correct interpretation by the decision of Burnton J in *Brick Farm Management Ltd v Richmond Housing Partnership Ltd* [2005] EWHC 1650, who had come to a similar conclusion on the very similar provisions of ss 5 and 7(1) of the LRHUDA 1993. The various sub-sub-clauses of s 76(2) were therefore alternatives, and the scope of s 76(2)(a) was not to be cut down because of the presence also of s 76(2)(e).

Tenant's break notice – whether rent had been fully paid when exercised

Canonical UK Ltd v TST Millbank LLC [2012] EWHC 3710 (Ch) is another case where a tenant's service of a break notice has been held to be unsuccessful, due its failure to comply with the terms of the lease as to payment of

rent. The lease in question (as amended) provided that the tenant might terminate a lease by giving six months' notice provided (inter alia) that it had paid the rent due up to the break date, plus a further month's rent. The tenant served notice on the landlord on 17 February 2012 to terminate the lease on 22 August 2012. The landlord invoiced the tenant for a quarter's rent on 7 June, which was paid, slightly late, on 29 June. By 22 August the tenant had vacated the premises.

The landlord refused to accept that the tenant had validly determined the lease, on the basis that a quarter's rent had fallen due on 24 June, and the tenant had paid only this, and not the extra month's rent. The tenant argued that the reddendum of the lease had reserved the rent '… yearly and proportionately for any part of a year … by equal quarterly payments', and that this should apply on the exercise of the break clause. The landlord's counter-argument was that *Capital and City Holdings Ltd v Dean Warburg Ltd* [1989] E.G.L.R. 90 (CA) had held – in respect of a forfeiture – that a reddendum in similar form applied only at the end of a term, and did not affect a termination within a quarter; this had been applied then in the High Court, where a break clause was involved, in *QuirkCo Invmts Ltd v Aspray-Transport Ltd* [2011] EWHC 3060 (Ch). The case also has similarities with the case of *PCE Investors Ltd v Cancer Research UK* [2012] EWHC 884 (Ch) (see Bulletin No 129), though in that case the break clause required that "the tenant must have paid the rents reserved and demanded by this lease up to the termination date" but the reddendum had no reference to payment 'proportionately'.

In the light of these precedents Vos J not surprisingly came down in favour of the landlord, holding that the reference to proportionate payments applied only when the lease came to an end by effluxion of time, and also rejecting an argument that the final payment of three months' rent could be appropriated as preferred by the tenant so that it would have complied with the condition precedent to the exercise of the break clause. The tenant had not indicated in any way that its final payment was intended to include the extra month's rent, and although it hoped that its break clause would be effective, it could not know until the break date that it was entitled to terminate the lease.

NOTE: Leave to appeal was granted, both on the point relying on the wording of the lease, and the appropriation point. It was suggested that it might be possible for the appeal in the instant case to be listed after the pending appeal in *PCE Investors Ltd v Cancer Research UK*; when the instant case was heard (December 2012) this was listed for February 2013. Although the *PCE Investors* case would clearly be persuasive and it was desirable that there should be consistency, the points in the present case had not arisen in *PCE Investors*.

(Case noted at: [2013] Comm Leases 1895–1896)

Underlease permitted but did not require employment of resident caretaker – whether costs reasonably incurred when caretaker had to be employed to prevent forfeiture of headlease

Carey-Morgan v de Walden [2013] UKUT 134 (LC) raises a point which, so far as Counsel were aware, is a novel one. The appellant landlords (DeW) held the relevant property under a headlease from the Cadogan Estate. It was a six storey building containing four flats and what was described as a 'maisonette' on two floors. The headlease required DeW to employ a resident caretaker. The caretaker's basement flat had been let out by DeW to obtain a rental income, but in 2008 the head landlord's solicitors wrote pointing out the breach and threatening forfeiture proceedings. DeW thereupon began to employ a resident caretaker. In their interim service charge account to the sub-lessees (including C-M) which was under dispute, they included a figure for the caretaker's remuneration, and a sum representing the value of the accommodation. This had the effect of substantially increasing the service charge. The sub-lease to C-M included provisions allowing DeW to employ a resident caretaker 'in its absolute discretion' but did not oblige it to provide caretaking services. In the LVT proceedings it was common ground that it would not now be usual to employ a resident caretaker in such a small building. The LVT ruled that the provision entitling DeW to pass on the cost of a caretaker was subject to the overriding requirement of reasonableness under s 19 LTA 1985. It was clearly not reasonable to employ a caretaker in a building to look after only four other units (there was no suggestion that the property had not been adequately managed prior to 2008), and the LVT reduced the charge for the caretaker to a level commensurate with the engagement of a non-resident cleaner. Recognising that DeW had come under pressure from their own landlords, the LVT opined that it was not unusual for landlords to find themselves unable to make a full recovery of the service charges due to defects in the lease.

In the Upper Tribunal HHJ Huskinson allowed the appeal. He held that insufficient weight had been given to the factual matrix within which the sub-leases had been granted. The power to charge for a caretaker had to be considered not in isolation but in the context of a head lease which required that one be employed. It was clearly in no one's interest that the head lease and the sub-leases should be under threat of forfeiture, and the cost of employing a caretaker had been reasonably incurred. It followed on from this that DeW were also entitled to add, in accordance with the sub-leases, the cost of providing her with accommodation.

Variation of leases following enfranchisement of one of eight blocks – whether order should have been backdated

Brickfield Properties Ltd v Botten [2013] UKUT 133 (LC) is one of a growing number of decisions on the hitherto under-explored field of the statutory variation of leases. The factual background is a familiar one. Eight blocks,

each of eight flats, had paid a composite service charge. The proportion of the service charge payable by each flat was set by reference to the rateable value, so as to total 100%. In November 2006 the leaseholders of one of the blocks exercised their right compulsorily to enfranchise under the LRHUDA 1993, with the result that the contributions payable from the remaining seven blocks totalled only 85.55%. In June 2007 the appellant's predecessor in title wrote to each of the leaseholders pointing out what had happened, and the existence of the powers contained in LTA 1987, ss 35 and 38 and invited each leaseholder to enter into an agreement for a deed of variation whereby his contribution payable would be uplifted by an appropriate percentage, so that they would again total 100%. A number of leaseholders pointed out that the percentages, based on the old rateable values, were no longer appropriate, so the landlord thereupon recalculated all the percentages basing them on Gross Internal Area (GIA), and in August 2007 wrote to each leaseholder again in similar terms. Few responses were received, and by January 2011 only three leaseholders had entered into deeds of variation. In April 2011 the appellant applied to the LVT under LTA 1987, ss 35 and 38 for orders varying all the remaining long leases in accordance with its GIA proposal. The application sought the backdating of the variation to the date when the eighth block was enfranchised. The LVT granted the application, but declined to backdate it.

The landlord appealed on the basis that the LVT had erred in not backdating the order for variation. The UT (HHJ Huskinson) allowed the appeal. He accepted that the provisions of ss 35 and 38 were expressed in wide terms, with no prohibition on backdating; that the leaseholders had been advised at an early stage of their landlord's intention to have the leases varied, and had been invited to enter into a deed of variation; and that their inaction had forced the landlord eventually to apply to the LVT. He rejected the reasons given by the LVT for not backdating the variation. He rejected its holding that 'leases are to be construed against the landlord' as being a rule of construction having no relevance to the present circumstances. Although the LVT had said that there was no evidence *why* the variation of the leases should be backdated, he stated that the need for this was obvious. As for the idea that the application could have been made earlier, this was not a valid reason.

Vulnerable non-secure tenant – whether Article 8 defence – whether notice to quit could be withdrawn once served

Fareham BC v Miller [2013] EWCA Civ 159 is another example of the difficulties faced by county courts in assessing and implementing the Article 8 defence afforded to non-secure tenants by the decisions of the Supreme Court in *Manchester CC v Pinnock* [2010] UKSC 45 and *Hounslow LBC v Powell* [2011] UKSC 8. The defendant had a long history of petty offending (mainly theft to fund a drug habit). In 2009 the council accepted that he was homeless and in priority need and granted him a non-secure tenancy of a Flat. There were repeated occasions when he was in prison, he gave the key of the Flat to a friend to check on it and collect his post, and the friend and

others moved in, in breach of the covenant against sharing possession, and causing nuisance to neighbours. Finally on 21 April 2011, when the defendant was in prison, the council served notice to quit on him. Before he was released from prison, at a meeting on 19 May, the defendant's probation officer and a representative of the Drug Intervention Programme prevailed on the council to give him another chance, and to allow him to return to the Flat. Within four days the defendant had returned to prison, and the council proceeded to issue proceedings for possession.

The defendant defended those proceedings, raising an Article 8 defence and alleging that the council's response in seeking possession was disproportionate given his vulnerability as an ex-offender and a drug addict; his difficulty in controlling those who occupied the Flat when he was in prison; and the council's failure to seek other methods to control those who were occupying his flat. It was agreed that these Article 8 issues should be dealt with on the witness statements on a summary basis. The Recorder, Mr Wood, rejected this challenge to the council's decision, but nevertheless declined to make a possession order on the basis that the council had withdrawn its notice to quit at the meeting on 19 May 2011, that the tenancy therefore continued, and it had not thereafter been validly determined.

The Court of Appeal (Patten, Black and Kitchin LJJ) rejected this analysis. As a matter of law it was impossible to withdraw a notice to quit once served (*Tayleur v Wildin* (1868) LR 3 Ex 303). Once it had taken effect a new tenancy would have to be inferred from the payment and acceptance of rent, and clearly the council had not accepted rent with the intention to creating a new tenancy. The Court also rejected the suggestion the respondent had a defence based either on *Wednesbury* or Article 8 grounds. The former did not require the decision to be objectively reasonable, but a decision which a reasonable authority might take. Neither had the 'high hurdle' of qualifying for a full proportionality review under Article 8 been satisfied. The appeal was allowed, and an order for possession made.

Whether reimbursement of insurance premiums formed part of a service charge – whether term to this effect should be implied in a lease

Sadd v Brown [2012] UKUT 438 (LC) is yet another case (four examples were noted in Bulletin No 132) of an LVT adjudicating of its own motion on an issue which had not been raised before it by the parties. The applicant leaseholder had challenged the reasonableness of insurance premiums, and the LVT had determined that the lease did not entitle the lessor to recover them. The appellant lessor then obtained permission to appeal; before the matter was heard the original applicant had sold the flat, and her successor indicated that she did not wish to oppose or participate in the appeal. HHJ Alice Robinson, sitting in the Upper Chamber, decided that, as the issue of the construction of the lease had been raised, and the lessor had now had an opportunity to be heard on it, she ought to proceed to determine it. On the construction point she decided that the lease did not make provision for the lessor to recover the insurance premiums. Although the scope of the decision

is of course limited to what was clearly a defectively-drawn lease, some points may be of broader relevance. She held that a covenant for the lessee to reimburse any 'rate, duty, charge, assessment or imposition' levied on the property was not apposite to cover an insurance premium. She further held – following cases such as *Rapid Results College v Angell* [1986] 1 EGLR 53 – that it was not possible to imply a term that the lessee reimburse insurance premiums, as it did not pass the test of being necessary to give business efficacy to the contract. The lessor's remedy would lie in rectification or in the variation of the lease under the LTA 1987.

IV. GRANT OF LEASES — RESIDENTIAL PROPERTIES

Collective enfranchisement under LRHUDA 1993 – estate management scheme – whether transfer of freehold should also include restrictive covenant

Kutchukian v Governors of Free Grammar School of John Lyon [2012] UKUT 53 (LC) is an appeal to the Lands Chamber against a decision of the LVT on the terms to be included in a collective enfranchisement under the LRHUDA 1993, and a cross-appeal on the issue of the price to be paid. The property in question was originally constructed as one house, but had been converted into four self-contained flats. The headlease was vested in the appellants and the leases of the individual flats in their associated companies. The property was situated in an area which was subject to an estate management scheme. The main point in dispute was whether a restrictive covenant in the headlease – to the effect that the property was to be occupied only as four flats – should be included in the transfer of the freehold. It was agreed that the unencumbered freehold interest in the building was worth (in 2008) £5.5M if it remained divided into flats but £8.5M if it were to be converted back into a single dwelling. Including the restrictive covenant in the transfer of the freehold would therefore have the effect of delivering a 'ransom clause' for the future into the hands of the respondents. The decision of the Upper Tribunal (Mr Rose FRICS and HHJ Huskinson) was that the estate management scheme sufficiently protected the respondents' interests, and the restrictive covenant should not therefore be included ([39]–[49]); and that, even if it were argued that restrictive covenants offered stronger protection than the (fully qualified) covenants included in the estate management scheme, any restrictions should be confined to residential use, and not to use as four flats. The respondents appeared to be encouraging the conversion of properties in the area back to single dwellings, so including the clause could not be seen as protecting their interests.

There was also a dispute as to the approach that the tribunal should adopt when there were disputed points of law under s 61 and Schedule 14. The tribunal decided ([70]) that it should not decide all the disputed points and then assess the price payable under Schedule 6 on the basis that the position was certain, having been so decided by the tribunal. Rather they should assess the price by analysing what the hypothetical purchaser's bid would be, taking account potential legal and planning difficulties. This would, however, have

to take into accounts the strength of the various arguments of law and practice ([71]). The tribunal went on to proceed with a detailed valuation.

Professional negligence –LRHUDA 1993, Chapter 2, Part 1 – failure to carry 'indemnity provisions' into extended leases – limitation period

St Anselm Development Company Ltd v Slaughter and May [2013] EWHC 125 (Ch) is essentially a professional negligence claim: an appeal by the claimant company against the summary dismissal of a claim in negligence against a firm of solicitors on the grounds that the claim was time-barred. The case is, however, briefly noted as the claim arises out of the extension of two leases under Part 1 of Chapter 2 of the LRHUDA 1993, and it may serve as a warning that there is a potential liability trap here. The defendant solicitors had acted for the claimant underlessors in claims by the underlessee in 1997 and 1998 respectively for statutory extensions of two underleases (two flats had been combined into a single unit, though still held under separate leases). Although the claimant was the underlessee's immediate landlord, there was insufficient length left on its term to enable it to grant the extensions, so the freeholder had to act as the 'landlord' for the purposes of the Act. The claimant nevertheless had to join in the extensions, and the premium paid for the extension would include an element to compensate the claimant for the loss of its interest. The substance of the claimant's allegation was that, under the original leases, the claimant could include in the service charge payable by the underlessees the ground rent which it had to pay to the freeholder (after deducting the original ground rent) ("the indemnity provisions"); but that the defendant had neither ensured that these indemnity provisions were carried into the new leases, nor ensured that compensation was paid by the underlessee to the claimant as he would no longer have to pay the reviewed ground rent as part of the service charge. As the ground rent for the block had been reviewed from £4,000 in 1964 to £18,250 in 1978 and to £161,000 in 2006 this represented a significant amount.

The result of the appeal was that it was allowed in respect of the primary limitation period applicable to one of the flats, but dismissed in so far as it related to the application of the extended limitation period under Limitation Act 1980, s 14A in respect of the other flat.

(Noted in Sol Jo, 12 February 2013 (online edition))

Tenancy deposit –Housing Act 2004, s 213 – whether prescribed information had been provided

Ayannuga v Swindells [2012] EWCA Civ 1789 is a decision on the scope of s 213 of the Housing Act 2004, in its original form prior to the amendments introduced by s 184 of the Localism Act 2011. A tenancy deposit had been paid to the administrator of an authorised custodial scheme, the Deposit Protection Service, based in Bristol. The tenant, when faced with an action for possession on the basis of arrears of rent, counterclaimed for a refund of the deposit of £950 and a penalty of three times the deposit, pursuant to HA

2004, s 214 (3) and (4). Although the deposit had been paid to the DPS, the landlord had failed to comply with para 2(1)(c)-(f) of the Housing (Tenancy Deposit) (Prescribed Information) Order 2007, SI 2007/797 ('the Housing Order') in that the relevant information regarding the recovery of the deposit and the resolution of any disputes had not been supplied to the tenant. The DDJ, when hearing the claim, had held, relying on *Ravenseft Properties Ltd v Hall* [2001] EWCA Civ 2034, that, as the deposit had been held by an authorised custodial scheme, and the basic details of the scheme (though not such as would comply with para 2(1)(c)-(f) of the Housing Order) had been supplied to him during the course of the hearing, there had been substantial compliance with s 213, and the omissions were merely procedural.

In the Court of Appeal, Etherton and Lewison LJJ disagreed. There had not been compliance with para 2(1)(c)–(f) of the Housing Order. The fact that the tenant would have had sufficient information to contact the DPS by telephone, or to find out more via the internet, did not satisfy the compliance requirement. As Lewison LJ pointed out (at [36]), the purpose of the provisions was not only the safeguarding of tenancy deposits. They were also intended to facilitate the resolution of disputes.

(Case noted at: J.H.L. 2013, 16(1), D15; and E.G. 2013, 1307, 97)

Tenancy in common – order for sale – counterclaim of constructive trust or proprietary estoppel – principles for ordering partition

Ellison v Cleghorn [2013] EWHC 5 (Ch) was brought to court as an action by E one of two tenants in common of a building plot for an order for sale of the property, or in the alternative for his co-owner C to buy him out. C counterclaimed for a declaration that he was already the beneficial owner of his part of the property, either by virtue of a constructive trust or proprietary estoppel. C and E were two friends had purchased a plot with a view to their building a house on it: by the time the case came to court, C had had a five-bedroom property built on part of the site, whereas, due to the negligence of his surveyor and the incompetence of his builder, E's partially-built house had had to be demolished. At Briggs J's suggestion he dealt with the matter under the court's statutory power under TOLATA 1996, s 14 to direct a partition.

There is a lengthy discussion in the report as to how the expenditure of each party should be reflected, and whether equality money should be payable, but the end result was that the judge directed the division of the plot between the parties without the payment of equality money.

PERMISSION TO APPEAL

Permission to appeal has been refused in *R v Sumal & Sons* (*Properties*) *Ltd* [2012] EWCA Crim 1840, (noted in Bulletin No 131), but the Court of Appeal (Criminal Division) has certified that a point of law of general public importance arises (per Davis LJ, 18 December 2012)

It is understood that an application for permission to appeal out of time is to be made in *Phillips v Francis* [2012] EWHC 3650 (Ch) (see Bulletin No 133).

NOTES ON CASES

Birmingham City Council v Ashton [2012] EWCA Civ 1557: J.H.L. 2013, 16(2), D18-D19 (noted in Bulletin No 133)

Daejan Properties Ltd v Campbell [2012] EWCA Civ 1503: J.H.L. 2013, 16(2), D27-D28 (noted in Bulletin No 133)

Day v Hosebay Ltd [2012] UKSC 41: J.H.L. 2013, 16(2), 26–30 (noted in Bulletin No 132)

Evans v Brent LBC Unreported, December 18, 2012 (QB): J.H.L. 2013, 16(2), D30-D31

E.ON UK plc v Gilesports Ltd [2012] EWHC 2172 (Ch): E.G. 2013, 1310, 141 (noted in Bulletin No 131)

Freehold Managers (*Nominees*) *Ltd v Piatti* [2012] UKUT 241 (LC): J.H.L. 2013, 16(2), D28 (noted in Bulletin No 133)

Jameer v Paratus AMC (Unreported October 29, 2012 (CA (Civ Div))): J.H.L. 2013, 16(1), D14

Paratus AMC Ltd v Persons Unknown [2012] EWHC 3791 (Ch): J.H.L. 2013, 16(1), D13

Phillips v Francis [2012] EWHC 3650 (Ch): 163 N.L.J. 133; E.G. 2013, 1304, 105; and J.H.L. 2013, 16(2), D28-D29 (noted in Bulletin No 133)

Ridgewood Properties Group Ltd v Valero Energy Ltd [2013] EWHC 98 (Ch): E.G. 2013, 1310, 145

Swan Housing Association Ltd v Gill [2012] EWHC 3129 (QB): J.H.L. 2013, 16(2), D17 (noted in Bulletin No 133)

Taylor v Couch [2012] EWHC 1213 (Ch): E.G. 2013, 1301

Thurrock BC v West [2012] EWCA Civ 1435: 163 N.L.J. 313 (noted in Bulletin No 133)

Wildsmith v Arrowgame Ltd [2012] EWHC 3315 (Ch): J.H.L. 2013, 16(2), D26-D27 (noted in Bulletin No 133)

ARTICLES OF INTEREST

A battle over commission (litigation over estate agents' fees) E.G. 2013, 1309, 88–89

A margin of error (law on negligent valuation) E.G. 2013, 1309, 90

A rare case on landlord's refusal for other reasons (*Horne & Meredith Properties Ltd v Cox* Unreported 2013 (CC)) E.G. 2013, 1312, 73

Allaying the fears of lease re-gears (deeds of variation and reversionary leases) E.G. 2013, 1305, 92–93

ARTICLES OF INTEREST

An end to the LVT lottery S.J. 2013, 157(6), 28–29

Break notices after Avocet – a landlord's duty to speak? [2013] L. & T. Review 9–11

Bridging the lease-end gap E.G. 2013, 1307, 93

Broken Promises (drafting and exercise of break clauses) P.I.P. 2012, 41(Dec), 25–27

Building confidence in PRS (private rented sector) E.G. 2013, 1305, 74–75

Commercial property update S.J. 2013, 157(10), 27, 29

*Conditional break clauses: pay or stay***:** E.G. 2013, 1313, 72

Deposits and "time of the essence" (2013) 129 LQR 149–152

'Distressing' changes for landlords E.G. 2013, 1305, 91

Distressing times (overview of introduction of Commercial Rent Arrears Recovery (CRAR) and abolition of distress) E.G. 2013, 1309, 87

Don't leave your endeavours to chance ("Best endeavours") E.G. 2013, 1306, 100–101

Don't mix up mixed use charges (problems with service charges and mixed use properties) E.G. 2013, 1308, 102–103

Down among the moles (impact of subterranean excavations on neighbours) E.G. 2013, 1309, 84–86

Eastenders, Neighbours and Upstairs Downstairs: *Chaudhary v Yavuz* [2013] Conv 74–82

Economic woes for experts? [2013] L. & T. Review 1–3

Expert characteristics (types of experts: pt 2 of article) E.G. 2013, 1313, 66–68

Fairness and the Leasehold Valuation Tribunal J.H.L. 2013, 16(2), 31–34

Figuring out the future (open market rent reviews and indexation) E.G. 2013, 1301, 46

Going round the houses: common sense and the enfranchisement of commercial properties [2013] L. & T. Review 4–8

Green zone: part two (registration of town and village greens) L.S.G. 2013, 110(01), 18

Gremlins in the closet (late triggering of rent reviews) 163 N.L.J. 163

Hard cases make bad law (possession claims and proportionality, etc.) 163 N.L.J. 313

House points L.S.G. 2013, 110(6), 14–16,18,20

How do you solve the problem of rights of light? E.G. 2013, 1307, 90–92

Investigating title: unregistered land S.J. 2013, 157(7), 21

Jackson LJ condemns "massive" fees in eviction ruling (*Grange v Quinn* [2013] EWCA Civ 24): S.J. 2013, 157(5)), 3 (case noted above)

Jackson reforms: agony or ecstasy? E.G. 2013, 1313, 72

Keay v Morris Homes and section 2 of the Law of Property (*Miscellaneous Provisions*) *Act 1989* [2013] Conv 68–74

Keeping farming in the family (overview of agricultural succession rights) E.G. 2013, 1304, 102–103

Landowner and Landlord Liability for the Nuisance-Causing Actions of Third Parties on the Landowner/Landlord's Land: An Analysis of Brumby v Octavia Housing [2013] J.P.L. 5–18

Let there be light (rights of light) S.J. 2013, 157(12), 11

Lend me your ears (solicitors should have regard for a purchaser's plans for a property) S.J. 2013, 157(11), 21

Look into the light E.G. 2013, 1308, 98–101

Many happy returns (SDLT anomalies) [2013] Conv 7–16

Moving in, moving out: will judges allow adverse possession claims based on an offence? (squatting in residential buildings) S.J. 2013, 157(10), 10–11

Office to residential: the facts E.G. 2013, 1307, 94

On the brink of land obligations again? [2013] Conv 17–29

Out of pocket (implications for recovering rent if tenant goes into administration) E.G. 2013, 1310, 138–140

Phasing out rights to light S.J. 2013, 157(9), 9

Poor Rating for EPC Regulations (review of SI 2012/3118) E.G. 2013, 1307, 96

Practitioner page: squatting and commercial leasehold property [2013] L. & T. Review 28–31

Property: Payback time (application of sanctions for running of unlicensed HMO) 163 N.L.J. 288

Questions and answers: residential tenant changing locks – landlord's right to retain keys to the demised premises [2013] L. & T. Review 23–25

Questions and answers: business premises – tenancy by estoppel – protection under Part II of the Landlord and Tenant Act 1954 [2013] L. & T. Review 26–27

Recent developments in housing law Legal Action 2013, Jan, 37–43

Recent developments in housing law Legal Action 2013, Feb, 33–36

Recent developments in housing law Legal Action 2013, Mar, 18–22

Residential property update S.J. 2013, 157(6), 25–26

Seddon's Case: sense or nonsense? [2013] Conv 30–47

Tackling the rule in Hammersmith v Monk: in theory and in practice: Part 2 [2013] E.H.R.L.R 28–37

The art of persuasion – sweeteners under scrutiny (whether commercial leases need anti-bribery clauses to comply with the Bribery Act 2010) E.G. 2013, 1312, 76

The leeway of care (margin of error on valuations, and contributory negligence) EG 2013, 1309, 91

The Path to Enlightenment? (rights of light issues) 163 N.L.J. 225

The top 10 rules of break clauses E.G. 2013, 1302, 58–60

To write or not to write? (declarations of beneficial ownership) [2013] Conv 1–6

Updated practice on joint ownership S.J. 2013, 157(6), 23

Uses and "automatic" resulting trusts of freehold C.L.J. 2013, 72(1), 91–114

Wear and Tear (explains 10% wear and tear allowance in residential lettings) Taxation, 24 January 2013, 8

Weighing up the evidence (role of the expert and of expert evidence: pt 1 of article) E.G. 2013, 1312, 70–72

Where next for the private rented sector? J.H.L. 2013, 16(2), 19–21

Who guards the guardians? (operation of 'property guardian' agencies) J.H.L. 2013, 16(1), 13–17

NEWS AND CONSULTATIONS

The Law Society has published a new practice guide "Instructing a barrister: new standard contractual terms":
www.lawsociety.org.uk/advice/practice-notes/instructing-a-barrister/

The **Bar Standards Board** has issued an update explaining the current position on the implementation of the Quality Assurance Scheme for Advocates (QASA):
https://www.barstandardsboard.org.uk/media-centre/latest-news/qasa-statement-from-jag/ (It was not implemented in January 2013 as originally planned).

The Law Society and **Land Registry** have issued a joint practice note on the recording of joint purchasers' beneficial interests (published 15 January 2013):
http://www.lawsociety.org.uk/advice/practice-notes/joint-ownership/#jo1

The **Law Commission** has issued a **Consultation Paper** (CP210) on **rights to light**:

http://lawcommission.justice.gov.uk/docs/cp210_rights_to_light_version-web.pdf. Comments are invited by 13 May 2013.

REPORTS

Private sector letting and managing agents: should they be regulated? – Commons Library Standard Note (published 3 January 2013): http://www.parliament.uk/briefing-papers/SN06000.pdf

The Office of Fair Trading has issued a report on contract terms when **owner-occupied retirement homes** are purchased, including the levying of 'exit fees' when such homes are sold:
http://www.oft.gov.uk/shared_oft/consumer-enforcement/retirement-homes/oft1476.pdf

The Office of Fair Trading has issued a report on the operation of the **residential lettings market** in the UK:
http://www.oft.gov.uk/shared_oft/markets-work/lettings/oft1479.pdf

The **Property Ombudsman** has issued his **annual report for 2012**, including a call for the regulation of letting agents:
http://www.tpos.co.uk/downloads/reports/TPO-AnnualReport-2012.pdf

Co-ownership of Real Property – Commons Library Standard Note (published 4 March 2013):
http://www.parliament.uk/briefing-papers/SN06570.pdf

PRESS RELEASES

The **Land Registry**'s pilot scheme offering a **free restriction (RQ) to protect the rights of non-resident property owners** is to be continued:
http://www.landregistry.gov.uk/announcements/2012/free-restriction-proves-a-success

Land Registry launches Property Fraud Line for Home Owners:
http://www.landregistry.gov.uk/media/all-releases/press-releases/2013/land-registry-launches-property-fraud-line-for-home-owners

A letter from **HM Courts and Tribunals Service** suggests that date for establishment of the new **First-Tier Property Chamber** has been postponed from 1 May 2013 to 1 July 2013:
http://www.chba.org.uk/for-members/library/practice-directions-court-notices/establishment-of-the-property-chamber-delay

The Land Registry has announced that seven local authorities will participate in a pilot scheme to see if **local land charges** can be consolidated into a centralised digitised register:
http://www.landregistry.gov.uk/media/all-releases/press-releases/2013/land-registry-prototype-for-local-land-charges-searches

HM Revenue and Customs has launched its Property Sales Campaign, targeting unpaid CGT on sales of second homes:
http://hmrc.presscentre.com/Press-Releases/Property-tax-campaign-targets-second-home-sales-688ce.aspx

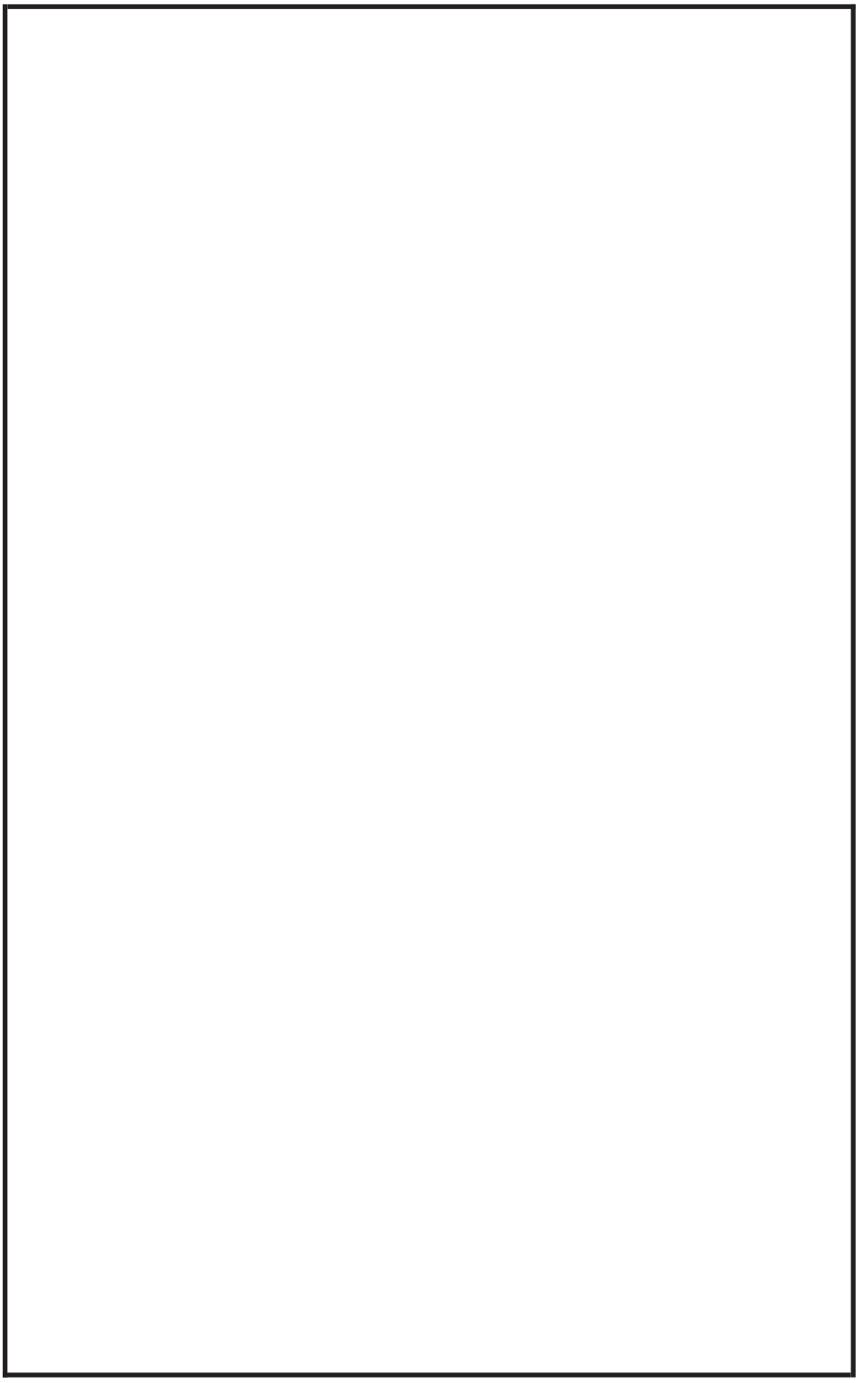
STATUTES

The **Prevention of Social Housing Fraud Act 2013** received the Royal Assent on 31 January 2013. The act addresses the sub-letting, etc, of social housing: http://www.legislation.gov.uk/ukpga/2013/3/pdfs/ukpga_20130003_en.pdf

STATUTORY INSTRUMENTS

The draft *Amendments to Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 Order 2013* proposes to add the rent assessment committees, the agricultural Land Tribunal and the Agricultural Land Tribunal for Wales to Schedule 6 to the principal act. This would have the effect of empowering the Lord Chancellor to transfer the functions of those bodies into the unified tribunal structure, and to make provision for appeals from them to lie to the Upper Tribunal. The draft *Transfer of Tribunal Functions Order 2013* would then effect the transfer the functions of those bodies (and those of the Adjudicator to HM Land Registry) to the First-Tier Tribunal, and abolish those bodies, and the office of the Adjudicator. The proposed rules for the new First-Tier Property Chamber are issued as: *Tribunal Procedure* (*First-tier Tribunal*) (*Property Chamber*) *Rules 2013* (*Draft*)

The *Housing* (*Right to Buy*) (*Limit on Discount*) (*England*) *Order 2013* (SI 2013/677) increases the maximum discount for persons exercising the right to buy in London to £100,000; in other areas the maximum remains £75,000.



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