Butterworths Property Law Service

Bulletin Editor
Nicholas Roberts, BA, LLM, PhD, Solicitor and Notary Public
Principal Teaching Fellow, School of Law, University of Reading

Filing instructions: Please insert this Bulletin in Binder I of *Butterworths Property Law Service* immediately after the "Bulletins" guidecard.

This Bulletin includes material available up to 31 December 2012.

I. FREEHOLD CONVEYANCING

Adverse possession – need to show continuity of possession of the relevant land

Devanney v Hounslow LBC [2012] EWCA Civ 1660 demonstrates that the Land Registration Act 2002 has made it more difficult for adverse possession to succeed, as here, crucially, the owner of a mobile café near Heathrow Airport had to show 12 years' continuous adverse possession prior to 13 October 2003 in order to claim ownership of the site. Proof that the site was not so possessed at any time during that period would defeat his claim. The case is also noteworthy as it shows the increasing use of aerial photography to substantiate or defeat adverse possession claims. Here the claimant had alleged that a photograph purportedly taken in 1999 had been doctored as it showed a later road layout. The Court of Appeal pointed out that, even if it had, it did not support the claimant's claim, as it showed his mobile café in a position different from that in which he alleged it had continuously been located.

Anti-social behaviour injunction – adjournment pending adverse possession claim – whether court bound to allow Land Registry to fulfil its statutory role

There can have been few cases where issues of adverse possession have arisen in the context of proceedings by a landlord for an anti-social behaviour injunction, but *Swan Housing Association Ltd v Gill* [2012] EWHC 3129 (QB) offers just such an example. The claimant Housing Association (the respondent to the appeal in the QBD) had sought an anti-social behaviour injunction

in the Southend County Court against G, who was their assured tenant, alleging that greenhouses and a gazebo installed by him were obstructing a right of way and were encroaching on land that was not demised to him as his part of the garden: though it was unclear whether this land belonged to the landlord or to a third party. G defended on the basis that he had acquired title to the land by adverse possession, but was unaware that, since the LRA 2002 came into force, this could be established only by the procedure set out in Sch 6 to the Act. He therefore sought an adjournment, on the basis that he had just applied to the Land Registry under Sch 6. An adjournment was granted, but so that the registered proprietors of the adjoining properties could be joined as defendants, and the Land Registry informed of the proceedings. G appealed, and Eady J agreed that the claimant's application for an injunction should be adjourned until after the Land Registry application had been determined.

The decision is noteworthy, because it holds that the courts now play only a limited rule in determining adverse possession claims: claims must follow the procedure set out in Schedule 6, and courts cannot purport to arrogate to themselves the role of determining what now has to be done through the Land Registry. Further, Eady J determined that the statutory bar (contained in para 1(3)(a) of Sch 6) on a defendant defending with an application for title by adverse possession applies only if possession is formally disputed: the bar had no application here, where the Housing Association was claiming an injunction.

Although it clarifies these procedural points, the decision as reported seems to raise certain questions, not least why the adverse possession point was relevant to the anti-social injunction dispute. It is clear law that G – an assured tenant – would not be able to acquire title by adverse possession to land which was owned by the association, whether or not it was let to his neighbour in the upstairs flat. Although G might have been able to acquire – for the benefit also of his landlord – title to land which belonged to a neighbouring freehold owner, it is not obvious how this would be relevant in determining the obstruction issue. Possibly the greenhouses overlapped a right of way over land which belonged to the neighbour; but the judgment reads as though the gazebo encroached on land belonging to the landlord. If the application to the Land Registry is reported, then this may all become clearer.

Compromise of boundary dispute – whether agreement had to comply with LP(MP)A 1989, s 2(1) – whether a distinction could be drawn between demarcation agreements and other compromise agreements

Yeates v Line [2012] EWHC 3085 (Ch) illustrates the application of the principles established in *Joyce v Rigolli* [2004] EWCA Civ 79 in the new context of the adverse possession provisions of the LRA 2002. The appellants had in January 2011 applied to the Land Registry under LRA 2002, Sch 4 to be registered as the proprietors of a triangular piece of land

measuring 34 metres by 24 metres at its widest point, on the basis that they had acquired title to it by adverse possession. The Adjudicator found that they had acquired title to it, but declined to direct the amendment of the register, finding that there were exceptional circumstances within para 3(3), those circumstances being that, at a site meeting at Easter 2011, attended by the parties but not by solicitors, the parties had orally agreed that it appeared that the respondents appeared to have paper title to the land, whereupon the appellants had orally agreed that the respondents could erect a fence along a line which gave all but a very small part of the land to them (the respondents). The applicants appealed to the Chancery Division against the Adjudicator's dismissal of their application, being permitted to raise the new point on appeal that, as the adjudicator had held that the appellants had acquired title to the disputed land, the agreement had had a dispositionary effect, and Law of Property (Miscellaneous Provisions) Act 1989, s 2(1) provided that such an agreement should be void if not in writing.

Mr Kevin Prosser, QC, sitting as a deputy judge of the Division, rejected the appeal, following *Joyce v Rigolli.* This case, it will be recalled, had involved the demarcation of a disputed boundary, and, in response to the argument that it would therefore have to be in writing and otherwise comply with s 2(1) of the 1989 Act, Arden LJ had applied the same principle as had been applied in *Neilson v Poole* (1969) 20 P&CR 909, in determining whether such an agreement was a 'contract to convey a legal estate' within the meaning of Land Charges Act 1925, s 10(1). She held that a demarcation agreement might have a 'disposing effect' but it was not made with a 'disposing purpose' so as to bring it within LP(MP)A 1989, s 2(1). The judge in the instant case thought that the agreement here would more accurately be described as a compromise agreement rather than a demarcation agreement, but the same principles should nevertheless apply. The oral agreement reached by the parties at Easter 2011 did not have a 'disposing purpose' and did not therefore need to be in writing.

The decision perhaps illustrates the possible dangers of parties compromising boundary disputes without first referring to their solicitors.

Express declaration of trust – constructive trust to be implied only if sound basis for doing do

Pankhania v Chandegra (*by her litigation friend, Ronald Andrew Eagle*) [2012] EWCA Civ 1438 offers a welcome reminder that if there is an express declaration of trust, the court should go behind it and attempt to deduce the intentions of the parties (as was done in *Stack v Dowden*: reviewed in *Jones v Kernott*) only if there is a sound basis for imposing a constructive trust. The facts of the case were that P had in 1987 purchased a small property in the joint names (as tenants in common in equal shares) of himself and of C, who was his aunt (or, to be pedantic, his uncle's wife). It was clear that P had joined in the purchase because he could obtain a mortgage, whereas his uncle and aunt were unable to do so. There was a conflict on the evidence as to the further intentions of the parties. P alleged that the intention was that his uncle would eventually live in the property and the parties would sell their

interests to him, but that, in the meantime, it was to be an investment P and C. From 2001 onwards C had changed the locks, and refused to allow P to enter the property. P said that his uncle had paid the mortgage up until he died in 2003, and thereafter it had been paid by P and C equally. In 2009 P issued proceedings for an order for sale. C claimed that there had been an understanding within the family that the property would be her home, and that she had made the mortgage repayments, with only occasional contributions from P's father, her brother.

In the Oxford County Court, HHJ Harris QC had approached the case "upon the footing that he had a free hand to decide what was the common intention of the parties at the relevant time" ([16]) (i.e. the time of the transfer), but that approach ignored the fact that there was an express declaration of trust contained in the transfer deed, which both parties had executed. It therefore followed that "that inquiry was simply not open to him unless the defendant had established a case for setting the declaration of trust aside" ([16]).

The express declaration could be set aside only if one of the parties could show fraud, mistake or undue influence ([17]) and none of these was alleged by the defendant. If the express declaration could not be set aside, then "there was no need for the imposition of a constructive or common intention trust of the kind discussed in *Stack v Dowden* nor any possibility of inferring one because, as Baroness Hale recognised in paragraph 4 of her speech in that case, such a declaration of trust is regarded as conclusive unless varied by subsequent agreement or affected by proprietary estoppel." ([13]).

If there was an express declaration of trust, there were no grounds for setting it aside, and it was not possible to infer a subsequent agreement or proprietary estoppel, then applying *Goodman v Gallant* [1986] 1 FLR 513, the express declaration had to be applied. The Court of Appeal therefore allowed the appeal and ordered the sale of the property, the proceeds of sale to be divided in equal shares.

Order for sale following charging order – duties owed by agent for chargee

Taylor v Diamond [2012] EWHC 3008 (Ch) is a further judgment in the ongoing saga reported in Bulletin No 132 as *Taylor v Diamond* [2012] EWHC 2900 (Ch): a ruling made without a hearing on what Norris J perhaps pointedly referred to as 'the Eleventh Application'. The Judge, declining to vary his previous order, made it clear that, in a sale carried out by court order following a charging order, it is the chargee who has conduct of the sale (subject to any directions given by the Court). He was particularly critical of the fact that the estate agents whom D, the chargor, had wished should be instructed had (a) written to him direct and (b) appeared to misunderstand both the duty owed by an agent in such a case, and to whom it was owed.

Priority of interests in proceeds of sale of a property – whether a Tomlin Order had effected a declaration of trust

Hughmans Solicitors v Central Stream Services Ltd (*in liquidation*) [2012] EWCA Civ 1720 is an appeal against the decision of Briggs J reported as [2012] EWHC 1222 (Ch) and noted in Bulletin No 130. It raises an unusual point about the priority of equitable interests in the proceeds of sale of a property. The Appellant firm of solicitors H had been defending litigation brought against its client D by the Respondent company CSS; CSS's liquidator (who was also a respondent) had settled the claim by agreeing a Tomlin Order which provided for the property which was the subject matter of the litigation to be sold, and for the proceeds of sale to be utilised (a) in repaying a legal charge; (b) in paying £100,000 to CSS; (c) in paying the fees of H in acting for D. When H ceased to act for D they obtained judgment against him for the fees in the sum of £19,000 and then secured this with a charging order over the property, which they attempted to protect by lodging a unilateral notice at the Land Registry. When the property was eventually sold, the amount realised after repaying the legal charge was just over £49,000. The liquidator claimed this for CSS, whilst H claimed that their charging order took priority. Briggs J had held that the Order had given CSS a beneficial interest in the property to the extent of £100,000, and that this took priority over the charging order subsequently obtained by H. H appealed.

The Court of Appeal (Ward and Hughes LJJ, and David Richards J) affirmed the decision of Briggs J on both points. Although recognising ([19]–[21]) that Lord Neuberger MR in *Tradegro* (*UK*) *Ltd v Wigmore Street Investments Ltd* [2011] EWCA Civ 268 had indicated that courts would need to find clear words of intention before they found that commercial agreements should create trust arrangements, the CA followed the principles set out by the Privy Council in *Palmer v Carey* [1926] AC 703 (which had in fact there found against an equitable charge) and held that 'if for valuable consideration the owner of property agrees to hold the property on terms which appropriate it for the benefit of another party, and the agreement is one which the court will enforce by an order for specific performance, the effect of the agreement is to create an equitable interest in the property in favour of the latter party.' (see [26]).

On the second issue, it was conceded by H in the CA that the charging order was not 'made for valuable consideration' within the meaning of LRA 2002, s 29(1), and that therefore under s 28 of the LRA 2002 the priority of equitable interests followed the order in which they were created. H sought to challenge Briggs J's outworking of this by arguing ([31]) that, if the sale of the property had proceeded without the prior removal of their unilateral notice, the title transferred to the purchaser would have been subject to their charging order, whereas the purchaser would have taken free from CSS's interest, which was not registered. The CA rejected this argument ([32]) on

the basis that CSS, as the owner of a prior equitable interest, would have been entitled to require H to remove their unilateral notice protecting their charging order.

Proprietary estoppel – whether right of way should be granted

Although *Crabb v Arun DC* [1976] 1 Ch 179, [1975] 1 All ER 865 is one of the leading cases in the evolution of the modern law of proprietary estoppel, there would appear to have been no subsequent reported appellate decisions where the claimant was seeking a right of way. *Joyce v Epsom and Ewell BC* [2012] EWCA Civ 1398 is such a case, and offers useful guidance on aspects of proprietary estoppel, in particular the role of unconscionability, and how the equity should be satisfied.

The factual background involves the details of a planning application in 1991 for the construction of a supermarket. H – who was the claimant J's predecessor in title – owned a bungalow on a large site near the proposed development, and had objected to the development. He had, however, put forward to the defendant council (the respondents in the Court of Appeal) the suggestion that, if the supermarket were constructed, his property should be given rear access along a private service road which could be constructed as part of the scheme. This was eventually done, over land which was vested in the Council, and H had proceeded to erect a garage at the rear of the property. H and his successor in title had continued to use the rear access way without payment, but when J had sought the formal grant of a right of way across the rear access way, the Council had asked for a premium of £5,000 and stipulated that it would be limited to serving the existing building on the plot. J, a property developer, with ambitions to redevelop the plot, rejected this, and sought a declaration that the property already enjoyed an unrestricted right of way for all purposes by estoppel. This declaration was refused in the Guildford County Court, HHJ Reid QC finding a representation by the council, and detriment and reliance on the part of H, but also finding that the council did not know of H's reliance, and that it was not unconscionable for H, and thus J, not to have a right of way.

J appealed. Delivering the unanimous judgment of the CA, Davis LJ reversed HHJ Reid QC. The judge's finding of fact that the council did not have knowledge of H's actions was not justified on the evidence, and, in any event, as the council had in effect *encouraged* H to build the garage, it was irrelevant whether or not they realised that he had done so. Further, it was clear that the access road had been constructed so as to provide rear access to the property: not so that H or his successor could, at some future date, negotiate to acquire a right of way over it. It was therefore unconscionable for the council now to seek a premium from J.

In deciding how to satisfy the equity that had arisen, the CA considered the familiar phrase "the minimum equity to do justice to the Plaintiff" found in *Crabb,* but considered that later case law, especially *Jennings v Rice* [2002] EWCA Civ 159, had altered the focus onto what was fair and proportionate

as between the parties. The CA nevertheless determined that the appropriate remedy would be a right of way for all purposes, but limited to serving a single house on the plot. One suspects that J will not have been particularly pleased at the outcome of the appeal, as this was on offer (at a price) before the proceedings were commenced. Clearly, what J was really seeking was a right of way which would have permitted more intensive redevelopment. If this is correct, it seems a trifle unfair for Davis LJ to criticise the fact that the parties had been unable to reach a 'pragmatic compromise'.

Purchaser taking subject to obligation to re-transfer – not registered as estate contract – whether constructive trust could be imposed

The factual background to *Groveholt Ltd v Hughes* [2012] EWHC 3351 (Ch) is a complex property development arrangement. The case reported is, unusually, the separate disposal of H's counterclaim (the claim itself having been reported as [2012] EWHC 686 (Ch)). By an agreement entered into between H and C, C had agreed, in certain circumstances, to transfer back to H a plot of development land. By his counterclaim H sought to enforce against G Ltd that obligation, notwithstanding that H had no contractual relations with G Ltd. The obligation had not been registered as an estate contract at the Land Registry, so H sought to enforce the obligation by means of a constructive trust, relying on arguments raised in cases such as *Lyus v Prowsa Developments Ltd* [1982] 1 WLR 1044, *Lloyd v Dugdale* [2001] EWCA Civ 1754 and *Chaudhary v Yavuz* [2011] EWCA Civ 1314 (though it should be noted that only in *Lyus v Prowsa* did the argument actually succeed). H failed to convince the court (David Richards, J) that a constructive trust should be imposed.

Applying the tests in *Lyus v Prowsa*, the conscience of G Ltd would have to be affected by the obligation, and further he would have had to have undertaken some new obligation to give effect to the obligation. Although G Ltd accepted that it was aware of the obligation to re-transfer, the second of the requirements was not satisfied. Further, following on from what Lloyd LJ had said in *Chaudhary v Yavuz*, according to David Richards J (at [17]) *Lyus v Prowsa* had to be seen as 'on the outer edge of the circumstances in which a constructive trust will be found to exist'.

A special factor in *Lyus v Prowsa* was that the plaintiffs had registered a caution to protect their contract with the original vendor, but because the defendants derived title from a prior mortgagee, that caution was ineffective. Lloyd LJ pointed out (at [61]) that he was not aware of a case in which *Lyus v Prowsa* had been followed, though he did not thereby cast doubt on the correctness of the decision. The analysis in the instant case therefore sheds useful light on the restricted scope of *Lyus v Prowsa*.

Solicitors as victims of conveyancing fraud – whether breach of trust in parting with mortgage advance

Nationwide Building Society v Davisons Solicitors (*a firm*) [2012] EWCA Civ 1626 is the successful appeal by the solicitors against the decision of

Ms Catherine Newman QC (sitting as a deputy judge of the QBD) reported as [2012] All ER (D) 141 (Apr), and noted in Bulletin No 94. The solicitors (the present appellants) acting for a purchaser and the respondent Building Society in a residential conveyancing transaction had apparently been defrauded by a fraudster who had purported to set himself up as a branch office of a *bona fide* sole practitioner. The Society alleged that, in parting with the mortgage advance funds in a "completion", the solicitors had been in breach of trust. The solicitors sought relief from the breach of trust under s 61 Trustee Act 1925. They had made appropriate enquiries to establish the *bona fides* of the established sole practitioner and of the fake office set up in his name (it would appear that the SRA and the Law Society had at the relevant time been misled too). The Deputy Judge had affirmed the stance taken by the Court of Appeal in the previous case of *Lloyds TSB Bank Plc v Markandan & Uddin* (*A Firm*) [2012] EWCA Civ 65 (noted in Bulletin No 128) to the effect that solicitors who were unwittingly parties to a breach of trust in such a case could expect the court to exercise its discretion in their favour on an application under s 61 provided that they had done all that a careful and diligent solicitor ought to have done. The Court of Appeal felt bound by the authority of *Markandan & Uddin* to agree with the decision of the Deputy Judge that no 'conventional completion' had taken place, and that therefore the solicitors had not applied the mortgage advance in accordance with the Society's requirements, so as to discharge the trust. But she had gone on to hold that the solicitors had failed in their duty to do all that a diligent solicitor ought to have done, by accepting a reply – in requisitions on title – to the effect that the subsisting legal charge would be discharged, and that the Law Society's Code for Completion by Post would be adopted; she had taken the view that they should have insisted upon a specific undertaking to discharge the mortgage. As they had failed to obtain this she had held that they were not entitled to relief under s 61.

On this point the Court of Appeal (Sir Andrew Morritt, C, and Munby and Sullivan, LJJ) disagreed with the Deputy Judge. It was not correct ([44]) to say that the reply did not amount to an undertaking: further, obtaining an undertaking which (arguably) fell short of best practice had not caused or contributed to the Society's loss ([50]). The case was distinguishable from *Markandan & Uddin* in that there the solicitor had not carried out the proper checks on the identity of the purported solicitor for the vendor. The solicitor in the instant case had acted honestly and reasonably, and there was no basis upon which the Court could not exercise its discretion in favour of his firm, under s 61 TA 1925 ([50]).

The CA went on to consider whether the firm was in breach of its retainer, and held that it was not. The absolute undertaking for which the Society was arguing would be "the equivalent of an absolute guarantee that all existing charges would be redeemed and Nationwide would obtain a fully enforceable first charge by way of legal mortgage over The Property. If that was the intention of the parties almost all the rest of the CML Handbook would be redundant" ([57]).

Whether easements of drainage and of mutual support should be implied into a voluntary transfer – principles to be applied

Walby v Walby [2012] EWHC 3089 (Ch) involved some difficult issues concerning whether easements should be implied. Dick Walby had transferred part of his farm to his son Malcolm by a transfer in 1989. The dispute that came before Morgan J in the Chancery Division was whether there should be implied into the transfer an easement for the benefit of his successor (his other son, Andrew) as owner of the retained land an easement to use a farm drainage system which was situated mainly on the transferred land; and further whether mutual easements of support could be implied in respect of a building which straddled the retained and the transferred land. The case is complicated by the complex situation on the ground, and also because the evidence was in certain respects unsatisfactory. Morgan J nevertheless clearly upheld certain established principles:

(1) He confirmed that the reservation of an easement in favour of a transferor would not fail as a legal easement merely because (applying the technical pre-1926 rules) the transferee had not executed the transfer; this was the effect of s 65(1) LPA 1925 ([27]);

(2) He confirmed the established principle that the rules for the implication of easements apply even though the transfer deed be a voluntary deed; it is not necessary for the transferee to have given consideration ([25]–[26]).

(3) He confirmed the general principle that, when easements are implied on the division of a property, whilst the transferee will get the benefit of rights which existed as quasi-easements over the retained land, the transferor will not generally be able to retain by implication the benefit of rights which he previously enjoyed over the land transferred ([28]–[29]); and

(4) There are, however, exceptions to (3), which include easements of necessity ([32]), and reciprocal easements of mutual benefit ([33]).

Applying these principles to the facts, Morgan J held that the test for whether an easement was one of necessity was that it should not be possible to use the retained land at all without the benefit of the easement. The transferor could not on this basis claim that the use of the drainage system was an easement of necessity ([49]). Further, it was not an instance of mutual benefit either; the case of *Pyer v Carter* (1857) 1 H&N 916 depended on its special facts (water originated on the servient tenement, drained on to the dominant tenement, and then drained back through the servient tenement) and these did not apply here ([50]–[58]). The building which straddled the boundary was, however, a clear case where rights of support should be implied, as they were for the mutual benefit of both parts of the building ([59]).

II. EXISTING LEASEHOLDS

Correction:

In Bulletin No 132 (p.7) it was stated that in *Spencer v Secretary of State for Defence* [2012] EWCA Civ 1368 the Court of Appeal upheld an appeal from Vos J. The note should have read that the appeal was dismissed.

Consent to sub-letting – whether possession had been shared – whether landlord could forfeit – whether breach waived – time for landlord to reach decision

Ansa Logistics Ltd v Towerbeg Ltd [2012] EWHC 3651 (Ch) nicely illustrates the application of some established principles in a case raising several commonly-encountered issues. A, the claimant, held a site at Speke in Liverpool under two leases from its landlord, the defendant T, for 99 years from 1 January 1970. The site was used for the storage and transportation of vehicles on behalf of Ford (F), the Part 20 defendant in the proceedings. Over the years F had increasingly taken over itself the conduct of the site, it reaching the point where by 2007 there had been a transfer of A's employees to F for the purposes of the TUPE Regulations. On 28 November 2011 A sought consent for a sub-letting to F until December 2017. Following a request for information about the nature of F's existing occupation, on 21 December 2011 T refused consent, on the grounds that:

(i) A was in breach of the usual covenant about not parting with possession by having allowed F into occupation, and by having declined to supply details of the documents under which F was in occupation;

(ii) F's accounts indicated that it was insolvent;

(iii) the underletting would diminish the value of T's reversionary interest, in that it would diminish the prospects of T obtaining planning permission for a change of use of the site; and

(iv) this would then diminish the prospects of getting planning permission for the change of use of T's adjoining land, and thus decrease its value.

At the same time T served notice on A under LPA 1925, s 146, claiming to forfeit the leases based on the parting with possession.

On 18 January 2012 A made a second application for consent to underletting, explaining that although F was in occupation, A remained in possession. A also offered to guarantee F's obligations under the proposed underlease. On 30 January T repeated its refusal, for the same reasons as previously given. A sought a declaration that consent to the subletting had unreasonably been refused; T claimed possession from A and F on the basis of the alleged parting with possession. The case raised four issues: (i) had A parted with possession to F? (ii) if so, had T waived the breach? (iii) if there was a breach, and it had not been waived, was A entitled to relief? And (iv) if there was no breach, or the breach had been waived, or if A was entitled to relief, then can T show under s 1(6) LTA 1988 that its consent was unreasonably withheld?

On issue (i), Floyd J applied the established test applied in *Akici v L.R. Butlin Ltd* [2005] EWCA Civ 1296 and gave a strict, narrow meaning to 'parting with possession'. 'The acid test for possession, as contrasted with mere occupation, lies in the right of the person in occupation to exclude others, including the tenant, from the premises.' (see [41]) Applying this test, A remained in possession.

Issue (ii) did not therefore arise, but Floyd J addressed it, in case of an appeal. He said that, if there had been a breach, it would not have been waived by T's acceptance of rent. Counsel for A had submitted – relying on *Van Haarlam v Kasner* (1992) 64 P&CR 214 – that constructive knowledge would be sufficient for the purposes of waiving the breach of a covenant against alienation. Floyd J held that (assuming, without deciding, that this was correct) T had no reason to suppose that A had been ousted from possession of the site ([53]).

Issue (iii) did not therefore arise either, but Floyd J addressed it. Applying established principles and case-law, if there had been a breach, it would not have been particularly serious ([56]), it would have been gradual and inadvertent rather than wilful ([58]), and it had not been deliberately concealed ([59]). Although A did not propose to remedy the breach by ending the arrangement with F, any breach would also be remedied if there were an authorised sub-letting to F ([60]). Further, if relief against forfeiture were refused, A would lose a valuable asset – the capital value of the lease might be £2.5 million. *Scala House v Forbes* [1974] QB 575 confirmed that this was a factor which might be taken into consideration ([61]). Finally, it could not be said that A was an unsatisfactory tenant (62]). If there had been a breach, it would be appropriate to grant relief from forfeiture.

On issue (iv) Floyd J applied from *Ashworth Frazer Ltd v Gloucester CC* [2001] UKHL 59 the principles that a landlord could not refuse on grounds which were extraneous from the subject matter of the contract, and that the landlord's obligation to show that refusal was reasonable should be construed in a broad, common sense way. Further, the landlord should be confined to the reasons which he had put forward within a reasonable time: *Go West Ltd v Spigarolo* [2003] EWCA Civ 17 at [22]. As it had just been held that T had not parted with possession, Ground (i) (see above) was not tenable: but, if it had been a breach, it did not seriously prejudice T, and would have been remedied by the underletting itself ([67]). Ground (ii), even if technically correct, did not acknowledge the reality that F had operated in the UK for over 100 years and was considered unlikely to fail; further, on an underletting, the financial position of the underlessee is of only marginal relevance to the head landlord ([68]). Grounds (iii) and (iv) related to planning proposals to which F had indeed objected (albeit unsuccessfully) in spite of being a mere licensee; and, in any event, so long as A retained its lease, it would be unlikely that T could develop either the site in question or its adjacent land ([69]). T's consent to the underlettings was therefore unreasonably withheld ([71]).

Interpretation of leases – whether break clauses could be operated only if landlord had contracted to sell reversions

HFI Farnborough LLP and others v Park Garage Group plc [2012] EWHC 3577 (Ch) involves the interpretation of a Deed of Variation to each of four leases. The predecessor in title ('Sprint') to each of the four claimant LLPs had on various dates in 2006 and 2007 granted leases for terms of 25 years from June 2006 of four petrol filling stations to the defendants, a company which operated filling stations. The leases themselves contained a break clause, exercisable on three months' notice by the landlord, but alongside the leases the parties had concluded overage agreements which (a) placed restrictions on the exercise by the landlord of the break clause and (b) provided that, if the break clause was exercised, the landlord would pay overage to the tenant so as, in effect, to share the profit that the landlord had made on the property. Difficulties had been encountered in getting the overage agreements noted at the Land Registry, so on 11 July 2008 Deeds of Variation were completed whereby the provisions of the overage agreement were substantially incorporated into the leases themselves. In 2011 Sprint sold each of the four freehold reversions to one of the four claimant LLPs. The restrictions on the exercise by the landlord of the break clauses appeared to operate whenever the value of the reversion exceeded the original price (ie paid by Sprint). The landlord-claimants therefore purported in each case to exercise the break clause, relying on valuations purporting to show that the condition had been satisfied, and thus sought possession from the defendant.

The issue between the parties was substantially whether the break clauses could indeed be exercised as long as the value of each reversion exceeded the relevant price, or whether the restrictions on the use of the break clause should be construed as allowing the landlord to terminate each lease only in the event of the landlord having contracted to sell the reversion. Sitting as a Deputy Judge of the Chancery Division, HHJ Behrens relied on the principles of interpretation set out in cases such as *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 at 912F-913G; *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38 at [14]–[15] and [21]–[25] and *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50 at [21]–[30], which emphasised that an interpretation with business commonsense should, if possible, be preferred. He applied *KPMG v Network Rail Infrastructure Ltd* [2007] EWCA Civ 363, and the approach of Arden LJ in *Scottish Widows v BGC International* [2012] EWCA Civ 607 (applicable to cases where 'something must have gone wrong' with the drafting) and held that the Deeds of Variation should be interpreted so that the break clause could be exercised only in the event of there being a sale, and the price exceeding the original price, so as to link the break clause in with the requirement that overage had to be paid. It was conceded that the claimant-landlords wished to have vacant possession for the purpose of granting new leases, and not for the purpose of sales. Having interpreted the Deeds of Variation in this way, it was strictly unnecessary for the court to determine the defendant tenant's alternative claim for rectification of the Deeds, but the

judge indicated for the purpose of any appeal that, had he not been able to interpret the Deeds as the tenant contended, he would have ordered rectification. He did order rectification of the Deeds on a subsidiary issue, viz. the definition of the sale costs, which had to be taken into account in calculating the overage.

Option to renew lease – Section 9 of Perpetuities and Accumulations Act 1964 – whether being exercised by a successor in title when variation had effected a surrender and re-grant

Souglides v Tweedie [2012] EWCA Civ 1546 is the successful appeal against the decision of Newey J [2012] EWHC 561 (Ch) which was discussed in Bulletin No 129. The rather complicated factual background, and the issues of law which arose were set out in some detail in that previous discussion, to which reference should be made. The Court of Appeal (Sir Andrew Morritt, and Rix and Patten LJ) clearly shared the present editor's doubts about the correctness of the decision, and allowed the appeal. The crucial point was that the Court of Appeal agreed with the defendants' argument that, as there had been a surrender and re-grant of the underlease, the claimant could not be the successor in title of the person to whom the original underlease had been granted; and that the claimant could not therefore bring himself within the scope of the exemption contained in s 9(1) of the Perpetuities and Accumulations Act 1964. The option was therefore void, though the court clearly reached that decision with a certain reluctance.

Repairing obligations under lease – whether lease contained a slip or whether it should be construed literally

Daejan Properties Ltd v Campbell [2012] EWCA Civ 1503 is an interesting decision on the construction of the provisions of a lease dealing with the (sub-)lessor's repairing obligations, and the contributions that the (sub-)lessee was required to make towards them. Although it necessarily turns on the construction of the particular lease, it does shed some light on the approach to be adopted by the court.

The defendant C (the appellant in the CA) held a long lease (in fact a sub-lease) of a maisonette on the third and fourth floors of a property in Wimpole St, W1. Under cl 3(iii) of the lease, D covenanted to ''keep the roof and outside walls of the premises in good repair and condition and to paint the exterior of the premises once every seven years'. By cl 2(xxv) C was to pay on demand two-fifths of the expenses incurred by D in performing the covenant. C took proceedings for a declaration that the reference to 'premises' in cl 3(iii) should be construed as if it read 'house' – this would therefore affect how cl 2(xxv) should take effect. It should be noted that the current lease had been granted in 1999 under Ch 2 of the LRHUDA 1993, but incorporated wording that had been contained in the original 1958 lease.

In the Chancery Division Rattee J had granted the declaration, taking the view that the use of the word 'premises' was clearly a slip, and that 'house' had clearly been what had been intended. He gave five reasons in support of his view, though essentially the basis of his decision that this must clearly have been what was intended.

The Court of Appeal, however (Laws, Lloyd and Jackson, LJJ) allowed the appeal, and declined to grant the declaration sought by D. Although at first sight the line taken by Rattee J had its attractions, the CA observed that the division of expenditure set out in cl 3(iii) and cl 2(xxv) (ie for C to bear 40% of the cost of repairing the roof and the external walls bounding her flat, and nothing towards the repair of the lower floors) was not as irrational as it seemed. In terms of the floor area of the 'house', the 'premises' (ie the maisonette) occupied only around 30%. Other fractions were used to apportion the cost of other outgoings. Although the contribution to the insurance premium had originally been set at 40%, this had been reduced by agreement to 33%. Other proportions were applied to the division of the rates, the cost of an entry bell, and (originally) to the central heating, and a 'rateable proportion' was to be paid for repairs to the common parts. Further, the extensions to the lower floors had flat roofs, from which C's maisonette derived no benefit; if 'premises' meant her maisonette, rather than the 'house', she would not have to contribute to the cost of repairing them. To the argument that the interpretation favoured by C would leave her with no way of ensuring that the lower parts of the external walls were kept in repair, the CA's answer was that she might well be content to rely on the covenants on D's part contained in the Head Lease, and in the (sub-)leases of the lower floors; and on the fact that the building was listed. There was no presumption that the contributions under such arrangements would necessarily add up to 100%, particularly when the pattern of leases had evolved historically. Further, the possible difficulty in interpreting clause 3(iii) had arisen prior to 1999, and D had taken no steps to have the new lease amended, to read as D contended, when it was granted in that year.

IV. GRANT OF LEASES — RESIDENTIAL PROPERTIES

Acquisition order under LTA 1987, Part III – whether notice under s 27 was valid – how far landlord should be given opportunity to put matters right where a manager had previously been appointed

Wildsmith v Arrowgame Ltd [2012] EWHC 3315 (Ch) is, according to Counsel in the case – both highly experienced in the field – so far as they are aware the first contested case on the interpretation of s 27 of the Landlord and Tenant Act 1987. This falls within Part III of the Act, which deals with the compulsory acquisition by qualifying tenants of a landlord's interest in a property. It is commonly considered to be the 'fault-based' route to acquisition of a reversion, and, from the tenants' point of view, its advantage over collective enfranchisement under LRHUDA 1993 is that the price they pay has only to match the price that would be paid by a willing buyer, excluding

the possibility that the tenants themselves were purchasing (LTA 1987, s 31(2)). The tenants were thus keen to utilise the LTA 1987 'acquisition order' route if possible.

The factual background was that Arrowgame Ltd (the defendants, now the appellants) were the headlessors, and the claimants, now the respondents, were the lessees of 11 of the flats in a block, and a company set up as their 'nominated person' to acquire the headleasehold interest. From 2003 onwards the block had been managed by A Ltd's solicitor G, and, because of various shortcomings, in 2006 the LVT had appointed MT as manager. He experienced various difficulties himself in managing, which were attributed to G's unwillingness to co-operate with him. Eventually, in January 2010 the claimants served a notice on A Ltd under LTA 1987, s 27 that they would seek the making of an acquisition order under s 28. The order was granted in 2011 by HHJ Cowell in the Central London County Court; A Ltd appealed to the Chancery Division, where the appeal was heard by Miss Geraldine Andrews, QC. The issues in the appeal were:

(1) whether the notice under LTA 1987, s 27 was valid;

(2) if it was defective, whether HHJ Cowell had exercised his power under s 29(6)(b) to make an acquisition order notwithstanding any defects; and

(3) had the judge correctly exercised his discretion, under s 29(1)(c), as to whether to make an acquisition order.

An underlying difficulty with s 29, revealed by the arguments in the instant case, is that, assuming the formal conditions referred to in s 29(1)(a) are met, it, in effect, prescribes alternative conditions for the making of an acquisition order. Section 29(2) envisages an ongoing breach of the landlord's obligations, which is likely to continue; s 29(3) offers the alternative route of a manager having been appointed under Pt II of the Act for at least two years. In either case, the court must also consider it to be 'appropriate' to make an acquisition order (s 29(1)(c)). Section 27(2)(c) then requires that the tenants specify the grounds on which they intend to make their application, but s 27(2)(d) envisages that the landlord should be given an opportunity to remedy matters which are remediable. Discussion largely revolved around (a) how s 27(2)(d) would apply in cases such as the instant case where the applicants relied on s 29(3) as – *ex hypothesi* – the manager rather than the landlord would have control of the building; and (b) how far the principles which had evolved to deal with notices under LPA 1925, s 146 and remediable and irremediable breaches were relevant to applications for acquisition orders.

Anyone dealing with drafting a s 27 notice, or considering its validity, will clearly need to pay close attention to the points raised, but the Deputy Judge offers useful guidance on the distinction between the 'grounds' that have to be specified and the 'matters' that the applicants will rely on, though there might be an overlap between them, and they did not necessarily have to be specified separately (at [35]). Although she acknowledged that there were

similarities with s 146, she stressed that the analogy should not be stressed too far (at [30]): the purpose of the content of the s 27 notice was to give the landlord warning of the case that he would have to meet, not primarily to give him an opportunity to 'mend his ways' (see [32]). Here, the applicants had sufficiently made out the grounds that they had specified – principally the lack of cooperation they had received from G, A's solicitor and agent – meant that the appointment of a manager *simpliciter* was insufficient to address the tenants' problems. They had therefore made out their case that it was 'appropriate' for there to be an acquisition order.

On the second point, the Deputy Judge agreed with HHJ Cowell that, on the view that they had both taken of the validity of the s 27 notice, it was not necessary to consider the exercise of discretion under s 29(6)(b) as to whether to waive strict compliance, but that if that was wrong, and the s 27 notice were defective, she could on appeal also exercise the discretion, and would – like the first instance judge – exercise it in favour of the making of an acquisition order.

On the third point, it was contended for A Ltd that an acquisition order was an extreme remedy and ought rarely to be granted. The Deputy Judge agreed (at [51]) that the test in s 29, that the making of the order was 'appropriate', set a higher threshold than the test for the making on an order under Part II, namely that the appointment of a manager be 'just and convenient'. But it was clear that the question that the trial judge had asked himself was whether there was any real alternative to the making of the order, if the problems were to be addressed. 'This cannot be said to be setting the bar too low.' ([51]). There was therefore no reason to interfere with the trial judge's exercise of his discretion as to whether to make an acquisition order. Nor were there any grounds to challenge his decision not to suspend it.

One reason why the appellants, A Ltd, were particularly keen to prevent the making of an acquisition order here was that they claimed to have plans for the addition of further floors to the building. Although the Deputy Judge did not accept that development potential would always be an irrelevant factor in deciding whether to make an acquisition order ([57]) the trial judge had been correct in affording it little weight here as it had been raised at a late stage. A Ltd could not argue that an acquisition order should not be made as it would prevent them from attaining the true value of their reversion, as s 31(2) required the LVT to determine its value on an open market basis ([10]), which would, so far as appropriate, take into account development potential.

Appeal to UT on administration charge dispute –whether fee could be imposed as condition for consent to sub-letting – whether fee was reasonable

Freehold Managers (*Nominees*) *Ltd v Piatti* [2012] UKUT 241 (LC) is another case on whether the landlord of a leasehold flat can charge a fee for consenting to sub-letting, and on what a reasonable fee would be. The appeal was by the landlord against a decision of the LVT that the landlord was not entitled to make a charge. HHJ Huskinson, considering the appeal by the

written representation procedure, allowed it, applying s 19(1)(a) LTA 1927, and following the decision of the President of the Lands Chamber in *Holding and Management* (*Solitaire*) *Ltd v Norton* [2012] UKUT 1 (LC) (see Bulletin No 129 and *Butterworths Property Law Service* Division IV, paras [575], [575.5]). Having decided that a fee was payable, HHJ Huskinson had then to determine the reasonableness of the charge. The landlord did not seek to justify the rather higher fees originally claimed in its 'Sublet Guidelines' but instead sought a fee of £165, inclusive of VAT (perhaps relying on the decision of HHJ Gerald in *Crosspite Ltd v Sachdev* [2012] UKUT 321(LC)? – not cited in the instant case, but see Bulletin No 132). This fee was allowed. HHJ Huskinson pointed out that, although on this occasion the consent was for renewal of a tenancy, as the leaseholders had not previously applied for permission, this fee was allowed on the basis that it was appropriate for a first application. He indicated that a reasonable fee for a renewal, where permission had previously been obtained, would be more like £35, inclusive of VAT, thought this would depend on what work was actually involved.

Discretionary Variation of Leases under LTA 1987, s 37 – provisions relating to Management Company owned by the leaseholders

Thirlaway v Masculet [2012] UKUT 302 (LC) is another Upper Tribunal appeal offering guidance, albeit limited, on the principles to be adopted in an application to vary leases under the discretionary jurisdiction contained in LTA 1987, s 37. Only three leases were involved, and the freehold reversion was held by a company wholly owned by the lessees. Mr Rose FRICS, sitting in the Lands Chamber, refused an appeal by one of the lessees against an order of the LVT which had the effect of varying the leases to include provisions to allow the freehold Management Company to include in the service charge: (i) its own internal costs (including the filing of Annual Returns and Company Accounts); (ii) legal costs which it might incur in defending legal proceedings brought against it; (iii) the cost of directors' and officers' insurance; and further to add covenants to the leases: (iv) indemnifying the freehold Management Company against breach by a lessee of his or her obligations; and (v) providing for the payment of interest on late payments of service charge.

Mr Rose held that the proposed variations satisfied the requirements of LTA 1987, ss 37(3), 38(6)(a) and 38(6)(b). The judgment contains some interesting observations recognising that a leaseholder-owned freehold Management Company had to maintain its solvency, that directors even of the smallest blocks could expect the Company to take out directors' and officers' insurance, and that the Company might reasonably require safeguards in the lease (eg variation (v)) to assist it to manage the block without having to resort to the 'nuclear option' of forfeiture.

It may also be noted that Mr Rose required that a proviso be added to variation (i), allowing the Management Company's expenses to be added to

the service charge only if its Memorandum and Articles of Association were amended to restrict its activities to the management of the property in question.

Estate Management Scheme under LRA 1967, s 19 – whether consent to make alterations had been reasonably withheld

Constance Long Term Holdings Ltd v Duke of Westminster [2012] EWHC 3434 (TCC) is a rare example of the court being required to rule on whether consent to alterations was being unreasonably withheld, when the property in question was freehold but subject to an estate management scheme set up under Leasehold Reform Act 1967, s 19. The claimant company had purchased the long lease of a property on the Grosvenor Estate, and had shortly afterwards purchased the freehold under the LRA 1967, but subject to the Grosvenor Belgravia Estate Management Scheme. The claimant put forward alternative schemes to carry out extensive works at the property: 'Option A', which included the construction of basement, and involved the construction of a piled wall ('piling') around the perimeter of the house and garden, and 'Option B' which included more modest proposals, but which also involved the same piling. As the piling was not necessary for the current proposals, the inference was that this would facilitate the long-term objective of the construction of a basement.

The first issue was whether the defendants had, through their Estate Surveyor, already consented to 'Option B' in correspondence, by stating that – subject to the provision of detailed plans – they had no objection to the proposals. Ramsey J, in the Technology and Construction Court, held that, on the true construction of the letter in question, that they had not ([67]).

The second issue was whether the defendants were unreasonably refusing, withholding or delaying consent to carry out the piling works. Ramsey J held that consent was not being unreasonably withheld. Bearing in mind that the decision to refuse consent to the construction of the basement ('Option A') had not been challenged, the piling was not a necessary part of 'Option B' ([114]). Although the additional disruption that would be caused by the piling would be minimal, refusal was a decision that a reasonable estate manager might take ([116]). The claimant had argued that the interest of the Claimant in having the works done outweighed any interest that the defendants might have in refusing. The court here applied *Dulwich Estate v Baptiste* [2007] EWHC 410 and held that the estate manager acts reasonably in having regard only to the interests of the estate, unless there is some disproportion between the benefit to the estate and the detriment to the defendant, so rendering the decision unreasonable ([119]). (The *Dulwich* case in effect applied by analogy the principles of *International Drilling Fluids Ltd v Louisville Investments* (*Uxbridge*) *Ltd* [1986] 1 Ch 513 (CA) to the situation where an estate management scheme was being considered). Finally, the claimant had argued that the defendant's surveyor was motivated by animus towards it. On this point the judge followed Neuberger J's analysis in *BRS Northern Ltd v Templeheights Ltd* [1998] 2 EGLR 182 at 192M of *British*

Bakeries (*Midlands*) *Ltd v Michael Testler & Co Ltd* [1986] 1 EGLR 64 and held that, even if this were the case, the principle was that the presence of a bad reason would not vitiate a decision which had been taken for a sufficiently good reason ([122]).

Interpretation of ground rent subject to escalator clause – whether clause imposed a 'service charge'

Arnold v Britton and others [2012] EWHC 3451 (Ch) offers a salutary reminder to solicitors to check figures with the calculator before agreeing to an escalator clause in a lease! The leases were of chalets on a leisure park at Oxwich, in the Gower, near Swansea. There were in fact five slightly different versions of the wording in question, though in essence the issues that they raised were the same. The leases, which were first granted in 1977, demised the chalets for terms of 99 years from 1974. Besides the ground rent, the leases required the lessees to pay a 'service charge' of £90 p.a. in respect of various services. The leases further provided, however, that the charge should rise 'by Ten Pounds per Hundred' for every subsequent year. The claimant lessor sought a declaration that this provided for a 10% uplift in the service charge each year. This would result in the current service charge amounting to over £3,000 p.a. per chalet, which would rise to £1,025,004 in the final year, 2072–73. Although no evidence was admitted as to the lessor's expenditure, it was obvious that the charges already exceeded the lessor's expenses of providing the services.

In the Cardiff County Court, HHJ Jarman QC found in favour of the lessees, holding that they were liable to pay only their proportionate share of the lessor's actual expenditure, the sum of £90 and the 10% uplift representing the maximum that a lessee could be required to pay. That charge was accordingly a 'service charge' within the meaning of LTA 1985, s 18(1). Hearing the appeal in the Cardiff District Registry, Morgan J reached a contrary decision. Whilst the result might appear extreme, applying established canons of interpretation (summarised by Lord Neuberger of Abbotsbury MR in his judgment in *Pink Floyd Music Ltd v EMI Records Ltd* [2010] EWCA Civ 1429) the relevant clauses could bear no other meaning than that claimed by the lessor. Although inflation had reached 10% p.a. and more in the 1970s, the much lower rates in subsequent decades had meant that the '10% escalator' clause had turned out badly for the lessees, but this was not a reason to re-write the contract: both parties were bound by it.

The judgment contains some interesting observations on the construction of service charge clauses. Morgan J rejected (at [42]) the suggestion, to be found in Woodfall (relying on *Jollybird v Fairzone* [1990] 2 EGLR 55) to the effect that, in the absence of clear words, a service charge should not be construed so as to allow a landlord to make a profit. Such a principle could be relevant only when there was a variable service charge, calculated on the basis of the costs incurred by the landlord ([43]). He took a similar stance on any supposed rule that a service charge should always be construed restrictively ([45]). The point as to whether the chalets were 'dwellings' as described in LTA 1985, s 18 (as amended by LTA 1987, s 41) did not arise in the light of

Morgan J's ruling that the service charge amounted to a fixed charge rather than a variable one, but practitioners in this area may be interested to note that both parties accepted that they would be 'dwellings', thus preferring the decision on this point in the Queen's Bench Division in *Phillips v Francis* [2010] L&TR 28 to that of an earlier decision of the Lands Tribunal in *King v Udlaw* [2008] L&TR 28.

Introductory tenancy –ECHR, Article 8 – judge's failure to take into account tenant's conduct since proceedings commenced

Southend-on-Sea BC v Armour [2012] EWHC 3361 (QB) is a rare example of an appellate court (in this case, Cranston J in the QBD) allowing a defence under Article 8 of the ECHR to defeat a possession claim: in this case, for a property held under an introductory tenancy. A had been granted an introductory tenancy, and signed the tenancy agreement on 31 January. Within two months there had been complaints about his being abusive and threatening to a neighbour, to a member of the managing agent's staff, and to electrical contractors working at the property. It was alleged, though denied by A, that he had switched the power supply back on, causing a contractor to receive an electric shock. A review panel upheld the three complaints of abuse, but made no finding on how the power supply had become live again. It accordingly dismissed A's appeal, and the Council issued possession proceedings in June. It should have been heard in July or August, but, because of four interlocutory hearings, it was not heard until March 2012. The Recorder applied the guidance in the relevant Supreme Court cases (*Manchester CC v Pinnock* [2010] UKSC 45 and *Hounslow LBC v Powell* [2011] UKSC 8) and determined that the making of a possession order would not be proportionate in the circumstances, given the defendant's history of mental health problems, and the fact that he seemed at last, with assistance from various support mechanisms, to be getting on top of those problems. Particular weight was put on the fact that, at the time of the hearing, 11½ months had elapsed since there had been any cause for complaint against the defendant's conduct.

Counsel for the appellant Council attempted to challenge this decision on the basis that, although bad behaviour subsequent to the issuing of proceedings might prejudice a defendant's chances of retaining the property, good behaviour was only what was expected, and should not be weighed in the defendant's favour. He placed some reliance on dicta of Lord Neuberger MR in *Birmingham CC v Lloyd* [2012] EWCA Civ 969 (at [24] in *Lloyd*). Cranston J pointed out, however, that the facts of Lloyd were exceptional, in that the defendant had entered the flat as a trespasser, so his conduct was irrelevant. Although the Court of Appeal in *Corby BC v Scott* [2012] EWCA Civ 276 had held that 'a court must be rigorous in ensuring that only relevant matters are taken into consideration in relation to proportionality' it was clear from *Pinnock* ([57], [124] and [125]) and from *Powell* ([53]) that 'subsequent behaviour, even good behaviour, may be a relevant consideration' (see [26] in *Armour*).

Counsel for the appellant Council also attempted to challenge the decision on the basis that the Recorder should have approached her consideration of the matter on the assumption that she was hearing the claim in July or August 2011, when it should have been heard, and not as in March 2012, when it was in fact heard, as public policy required that a defendant should not be able to reap an advantage by delaying proceedings. Whilst acknowledging the issue of policy involved, Cranston J nevertheless held that the Recorder had correctly considered the proportionality defence as at the time of the hearing, and indeed was bound to do so ([29]). The appeal therefore failed. Whilst the outcome seems a fair one, it will be interesting to see how the courts deal with the substantial incentive to drag out proceedings that this gives to those representing defendants.

(Case noted at: 162 NLJ 1524)

Public sector tenancies – grandson without right of succession – whether his circumstances amounted to a defence under ECHR, Art. 8

Thurrock BC v West [2012] EWCA Civ 1435 is another example of the difficulties experienced by judges at the judicial 'coal face' when assessing whether a defence under Article 8 of the European Convention on Human Rights has been made out. In this case the predecessors of the appellant council had granted the respondent's grandparents a tenancy in 1967. In 2007 he had moved in, partly because he needed somewhere to live, and partly as his grandmother's carer. When his grandfather died in 2008 his grandmother succeeded to the tenancy automatically under Housing Act 1985, ss 87 and 89(2); but although she had been a joint tenant, by virtue of s 87(1)(b) she was treated as a successor and hence no further successions were possible (HA 1985, s 37). When therefore she died in December 2010, the weekly tenancy vested in her estate, the council served notice to quit on the Public Trustee, and followed this up with a claim to recover possession from the respondent. By his defence the respondent grandson claimed that the making of a possession order would be a disproportionate interference with his right of respect for his home under ECHR, Art. 8. The case was allocated to the multi-track, and, following a hearing, the District Judge had declined to make a possession order. He referred to *Manchester CC v Pinnock* [2010] UKSC 45, and held that to evict the respondent would be disproportionate. It was argued on behalf of the respondent in the Court of Appeal that the case was exceptional because of the cumulative effect of factors such as the housing needs of a couple with a young child, their limited finances, the respondent's long family connection with the property, and the lack of any breach of the financial or other obligations of the tenancy.

The Court of Appeal emphatically denied that there were any exceptional factors here, and stressed that facts did not even reach the threshold of there being a seriously arguable Art. 8 defence, so the defence should have been struck out summarily without a hearing. The respondent and his partner and child were in no more exceptional position than many other young families of limited means, and Parliament, in restricting succession rights, had made it

clear that the respondent's connection with and sentimental attachment to the property should not weigh in the balance. The fact that the Council would have to accept responsibility for rehousing his family, if anything, told against him, as the District Judge's refusal of possession was, in effect, usurping the Council's responsibility to decide on the appropriate allocation of its housing stock.

In fairness to the District Judge, it may be pointed out that his decision was given on the very day that guidance was given on the application of the principles in *Pinnock* and *Hounslow BC v Powell* [2011] UKSC 8 by the Court of Appeal in *Corby BC v Scott* [2012] EWCA Civ 276 (see Bulletin No 129); this has since been followed by the further guidance in *Birmingham City Council v Lloyd* [2012] EWCA Civ 969 (see Bulletin No 131) and *Southend-on-Sea BC v Armour* [2012] EWHC 3361 (QB) (below). All these cases stress that the instances where a defendant may be able to make out an Article 8 defence will be very much the exception, and that Defences which purport to raise them should be struck out at an early stage, and not be allowed a full hearing. Interestingly, however, the Court of Appeal cited with approval the explanations given by the courts in the pre-*Pinnock* cases of *Wandsworth LBC v Michalak* [2002] EWCA Civ 271 and *R* (*on the application of Gangera*) *v Hounslow LBC* [2003] EWHC 794 (Admin) when considering the policy of Parliament in restricting successions, so as to allow local authorities to make best use of their limited housing stock.

Service Charge – interpretation of provisions allowing for employment of agents and the levying of a percentage management fee – application of consultation requirements to 'qualifying works' – how threshold applied

Phillips v Francis [2012] EWHC 3650 (Ch) is an important decision by Sir Andrew Morrit, C, which is likely to be controversial. The appeal, from HHJ Cotter in the Truro County Court, involved the service charges payable by lessees of an estate of holiday bungalows at St Merryn. At an earlier stage of the litigation (reported as *Phillips v Francis* at [2010] L&TR 28) it had been determined by HHJ Griggs, sitting as a Deputy High Court judge, that the provisions of LTA 1985, ss 18–30 did apply to holiday chalets, there being no requirement that a 'dwelling' be one's principal dwelling.

The points at issue in the present appeal involved (i) the interpretation of the leases and (ii) the application of the provisions in LTA 1985, s 20 limiting the charges that may be made in respect of 'qualifying works' as defined in s 20ZA(2).

The service charge provisions of the leases were set out in Schedule 3. Paragraph 6 in the schedule required the lessees to bear the costs of employing any staff, 'together with any amounts of fees paid to architects agents surveyors and solicitors employed by the Lessor in regard to the management of the Estate'. Paragraph 8 then went on to allow the Lessors to

charge a 5% management charge on top of all the items in the Schedule. HHJ Cotter had determined that the Lessors were allowed to levy the management charge in addition to any fees paid to a managing agent, but the Chancellor disagreed. He held that the 'fees paid … to agents' included in para 6 would be limited to those charged to the Lessors by professional agents (who might be a company in which the Lessors were interested) but this would 'not extend to non-professional management services provided by the Lessors either personally or through their management company' ([18]). He accordingly declined to allow the Lessors to charge the £95,000 that they had paid themselves as 'wages', particularly as they could not employ themselves. Whilst the decision is to be welcomed, attempting to distinguish between 'professional management services' and 'non-professional management services' (as quoted above) must surely raise as many questions as it answers.

The Chancellor's decision on the interpretation of 'qualifying works' is likely to be of more general importance, and more controversial. The number of chalets on the estate (in excess of 150) when multiplied by the threshold figure of £250 per unit produced a large figure (c. £41,000) before the consultation requirements of LTA 1985, s 20 were triggered. Although the Lessors had an ongoing and extensive programme of repairs and maintenance, none of the individual items triggered the consultation requirements. In the County Court, HHJ Cotter applied the test set out by Walker LJ in *Martin v Maryland Estates* [1999] 2 EGLR 53 and decided whether any of the sets of qualifying works exceeded the threshold, applying the 'commonsense approach' ie treating each set of works as an entity, and not allowing the lessor artificially to divide what was clearly one project. On this basis he held that the requirements had not been triggered. Counsel for the lessees appeared ([30]) to have invited the Chancellor to view the various projects as single set of works (as the Lessors had announced their intention to upgrade the holiday estate). The Chancellor, on the other hand, went further and held that the test applied by HHJ Cotter was derived from Walker LJ's gloss on the original provisions contained in the LTA 1985. Under the amendments introduced by the CLRA 2002 'the emphasis has shifted from identifying and costing the works before they start to notifying an intention to carry out the works and limiting the amount of the individual contributions sought to pay for them after their completion' ([35]). Accordingly the threshold of £250 per unit applied to the *totality* of the lessor's expenditure on 'qualifying works' over the accounting period, and there was no question of applying the threshold to each 'set' of works. The excess over £250 was therefore irrecoverable from each tenant.

This is not how LTA 1985, s 20 has been generally understood to work, even after the 2002 amendments. In small and medium sized blocks it will mean that a few quite trivial repairs may trigger the need for a consultation (or an application for dispensation). In any event, in a block of six flats, what purpose is served by consulting on the minor repairs that are likely to cost £100, just because £1,450 has already been spent on two or three other minor repairs in the accounting period? The judge in the County Court may have been wrong not to aggregate the qualifying works in the present case, but the Chancellor's ruling, if it stands, is likely to cause major difficulties in practice.

Service Charge – local authority landlord – vulnerable tenant

Hackney LBC v Akhondi [2012] UKUT 439 (LC) was a successful appeal by the Council against the reduction of service charge demands that it made on a leaseholder who had acquired her lease under the Right to Buy legislation. Although it does not raise any novel points of law, the President (Mr Bartlett, QC) and Mr Rose, FRICS, affirm the principle that the Council was not bound to take any special steps to accommodate the leaseholder's vulnerability as a single woman with dyslexia. Social landlords owed no special duties to their leaseholders, other than the disclosure responsibilities contained in ss 125 – 125C and Schedule 6 to the Housing Act 1985. The Council had adopted a borough-wide programme for upgrading their properties, and they were not bound to adopt some less elaborate, *ad hoc* procedure for updating the small block in respect of which the respondent's flat had to bear 30% of the service charge.

Service Charge dispute – leases failed clearly to identify extent of 'the Development' – significance of burden of proof

Redrow Regeneration (*Barking*) *Ltd v Edwards and others* [2012] UKUT 373 (LC) involved a dispute over the service charge provisions of a lease. Although the facts were specific to the case, the approach adopted by the Upper Tribunal (Mr George Bartlett, QC, P) offers useful guidance on any similar disputes.

The case involved a scheme for the regeneration of Barking Town Centre. The respondents were the leaseholders of various flats in a property known as 87 Axe Street ('the Building'). Their leases required them to pay a service charge. They challenged the inclusion of certain items, on the basis that they did not relate to the Building. Their leases provided for the payment of some items which were referable to 'the Development' but in spite of this term appearing more than 40 times in each lease, it was nowhere defined. The LVT took the view that, as the burden was on the landlord to show that the service charge was recoverable, this could not be established here, with the result that any expenditure incurred within the development but which did not relate to the Building would be recoverable only if the leases could be rectified or alternatively varied. The landlord (and a management company) appealed.

The President allowed the appeal, and remitted the matter for the LVT to determine issues as to the reasonableness of the charge. The LVT had fallen into error in placing such emphasis on the burden of proof. The interpretation of a lease was a matter of law, and the decision of the LVT was consistent only with a finding that the meaning of 'the Development' was incapable of ascertainment ([19]). Although the LVT did not have all the evidence before it, such evidence as there was on whether 'the Development' did include two other buildings besides 87 Axe Street was all one way in favour of this being the case. A court or tribunal should apply here the familiar principles set out by Lord Hoffmann in *Investors Compensation*

Scheme v West Bromwich Building Society [1998] 1 WLR 896 at 912F-913G for the interpretation of contractual documents. As Sedley LJ had said in *Daejan Investments Ltd v Benson* [2011] EWCA Civ 38 (at [86]), it was – or should be – rare for a court to need to consider who had the burden of proof of any particular point. Normally an evaluation of the evidence would suffice. Who bore the burden of proof should be a matter of last resort. Although the precise extent of 'the Development' could not be ascertained from the lease itself, the proportions of the 'development-wide' charges payable by the respondents clearly indicated that 'the Development' embraced a wider area than just 'the Building', and the LVT should have proceeded accordingly.

Whilst those who draft residential leases should clearly take care that the various spatial expressions required when dealing with composite service charges are clearly defined, the common sense approach here of the President of the Lands Chamber is to be welcomed.

Service Charge dispute – whether notice which failed to comply with LTA 1987, s 47(1) could satisfy LTA 1985, s 20B

Johnson v County Bideford Ltd [2012] UKUT 457 (LC) decides a short point on LTA 1987, s 47. The LVT had held that the landlord could not rely on a service charge demand, as it failed to include its full name and address, so as to comply with s 47(1). The President held it could nevertheless, when followed by a compliant demand, be a demand within s 47(2) for the purposes of satisfying LTA 1985, s 20B (relevant costs to be notified to leaseholder within 18 months of having been incurred). Further, although the reasons given by the LVT for the making of an order under LTA 1985, s 20C were inadequate, the result would not have been different if they had given fuller reasons.

Suspension of possession order in respect of secure tenancy – failure of judge properly to balance all factors under Housing Act 1985, s 85A

Birmingham City Council v Ashton [2012] EWCA Civ 1557 was an appeal by the claimant local authority against the decision of the judge in the county court to suspend an order for possession. The appellant had originally authority issued a notice seeking possession of the premises in reliance on grounds (1) and (2) of Schedule 2 to the Housing Act 1985. The incidents specified included a recent conviction in the Crown Court for offences of affray and possession of an offensive weapon relating to an incident which had taken place at the premises, and led to the making of a community order which required the respondent to stay away from the property; they also included three earlier convictions, and other incidents. At the hearing the local authority elected to proceed relying only upon the four convictions. The judge granted the possession order, but suspended it on terms that the respondent observed the terms of the tenancy and obeyed an injunction. He

did so in reliance upon the evidence that medical reports revealed that the respondent had been diagnosed with a bipolar disorder which was now considered to be stable, and was likely to remain so if the respondent refrained from using alcohol or cannabis. Provided he did so, the risk of further incidents was assessed in medical evidence as being between 20% and 30%, but very likely if the respondent did revert to his former usage. The respondent gave evidence as to the support that he was receiving, and how he was turning his life around, and was not likely to relapse into alcohol misuse, but this was not corroborated by supportive evidence from the professionals. Although the judge clearly had some misgivings over this aspect, he considered s 85A of the Housing Act 1985 and suspended the possession order. The local authority appealed against the suspension.

The Court of Appeal (Mummery, Patten and Treacy LJJ) allowed the local authority's appeal. The chances of a further incident, if correctly assessed at 20% to 30% could not justify the judge's finding that the risk would be 'low', and there was insufficient evidence to assess the chances of the respondent relapsing into drink or drug misuse. The judge had not adequately addressed the fact that, if there were a further incident, it would be the fifth in six years. Although the CA felt that the suspension was wrong, it did not consider it would be appropriate to substitute an immediate possession order. As nearly a year had elapsed since the original hearing, whether or not there should be a suspension – the possession order itself was not appealed – would need to be reconsidered by reference to the current situation, to make a realistic assessment for the future. The matter was therefore remitted to the county court for the issue of the suspension to be reconsidered by a fresh judge.

NOTES ON CASES

Birmingham City Council v Lloyd [2012] EWCA Civ 969: L. & T. Review 2012, 16(6) 229–232 (noted in Bulletin No 131)

Carey-Morgan and another v Sloane Stanley Estate [2012] EWCA Civ 1181: L. & T. Review 2012, 16(6), D41 (noted in Bulletin No 132)

Crosspite Ltd v Sachdev [2012] UKUT 321 (LC): L. & T. Review 2012, 16(6), D43 (noted in Bulletin No 132)

Day v Hosebay Ltd, Howard de Walden Estates Ltd v Lexgorge Ltd [2012] UKSC 41: EG, 27 October 2012, 113; EG 3 Nov 2012, 86; 162 NLJ 1451; P.L.J. 2012, 299, 2–4; L. & T. Review 2012, 16(6), D41-D43; and see also Press Release by the Leasehold Advisory Service at http://www.lease-advice.org/publications/documents/document.asp?item=100 (noted in Bulletin No 132)

E.ON UK plc v Gilesports Ltd [2012] EWHC 2172 (Ch): EG, 10 Nov 2012, 86–88; L. & T. Review 2012, 16(6) 229–232 (in general); and L.S.G. 2012, 109(41), 19 (on LTA 1988, s 1(3) issue) (noted in Bulletin No 131)

Edwards & Walkden (*Norfolk*) *Ltd v City of London Corpn* [2012] EWHC 2527 (Ch): [2012] Comm Leases 1873–6; and L. & T. Review 2012, 16(6), D39-D40 (noted in Bulletin No 132)

Fairhold Mercury Limited v Merryfield RTM Company Limited [2012] UKUT 311: L. & T. Review 2012, 16(6), D43-D44 (noted in Bulletin No 132)

Gala Unity Ltd v Ariadne Road RTM Company Ltd [2012] EWCA Civ 1372: EG, 24 Nov 2012, 125; and see also Press Release by the Leasehold Advisory Service at http://www.lease-advice.org/publications/documents/document.asp?item=99 (noted in Bulletin No 132)

Harsten Developments Ltd v Bleaken [2012] EWHC 2704 (Ch): EG, 1 Dec 2012, 61 (noted in Bulletin No 132)

Havering LBC v Smith [2012] UKUT 295 (LC) L. & T. Review 2012, 16(6), D44 (noted in Bulletin No 131)

Lazari GP Ltd v Jervis [2012] EWHC 1466 (Ch): [2012] Comm Leases 1871–3 (noted in Bulletin No 132)

Patel v MRD Property Developments Ltd [2012] EWCA Civ 727: L. & T. Review 2012, 16(6) 226–228 (noted in Bulletin No 130)

ARTICLES OF INTEREST

A code fit for the digital age or fit for the bin? (issues arising from Law Commission's consultation on the Electronic Communications Code) L. & T. Review 2012, 16(6) 211–215

A developer's nightmare (discharge and modification of restrictive covenants) EG, 1 Dec 2012, 58–59

A question of priorities: mortgages, sell-to-rent-back tenancies and overriding interests L. & T. Review 2012, 16(6) 220–225

A Review of the Law and Practice on Contaminated Land [2012] JPL 1459–1465

A warning on SDLT avoidance EG, 1 Dec 2012, 57

Analysis–FB 2013: The Residential Property Proposals (proposals relating to higher-value residential property in the draft Finance Bill 2013) Tax Journal, Issue 1151, 26.

Avoiding the fixtures and fittings minefield S.J. 2012, 156(43), 23

Breaking news (break clauses in leases) [2012] Conv 446–452

Catering for uninsured risks – the changing perspective L. & T. Review 2012, 16(6) 216–219

Chancel repair liability – the end is nigh? S.J. 2012, 156(47) Supp (Property Focus), 16

Commercial Property update S.J. 2012, 156(42), 29,31

Country Matters (legal issues in developing rural sites) EG, 27 Oct 2012, 112

Crafty circumventions (whether landlord's surrender of lease of two planned flats would amount to a 'disposal' for purposes of LTA 1987, Pt 1) EG, 8 Dec 2012, 65

ARTICLES OF INTEREST

Dilapidations: the twelfth protocol EG, 10 Nov 2012, 92

Don't be lulled into complacency (Unfair Contract Terms Act 1977 and commercial leases) EG, 17 Nov 2012, 116–117

Don't estop me now! (commercial leases, estoppel and break clauses) EG, 17 Nov 2012, 112–114

Don't fail the test of time (calculation of time periods; treatment of defective notices) EG, 15 Dec 2012, 98–99

Environment update (including Town or Village Greens: *R* (*Barkas*) *v North Yorkshire County Council* [2012] EWCA Civ 1373): S.J. 2012, 156(41), 27–29

Forfeiture by physical re-entry L. & T. Review 2012, 16(6) 239–243

Freeholders of 69 Marina: judicial reading between the lines … [2012] Conv 498–505

Going green (roundtable discussion of the Better Buildings Partnership) EG, 8 Dec 2012, 59–60

Housing for all S.J. 2012, 156(47) Supp (Property Focus), 19–21

Housing repairs update 2012 Legal Action 2012, Dec, 11–16

Improving the law on residential service charges (outlines recommendations of the Report by the Planning and Housing Committee of the GLA) Legal Action 2012, Dec, 17–18

Indemnity insurance for conveyancing S.J. 2012, 156(48), 14–15

Interfering with commercial transactions (compliance with formalities and proprietary estoppel) EG, 10 Nov 2012, 89

Invoking article 8 for squatters in commercial properties S.J. 2012, 156(47) Supp (Property Focus), 23–24

Is specific performance an option for landlords? S.J. 2012, 156(42), 12–13

Land Law: On Common Ground (fencing of common land) 162 NLJ 1493

Landlord and tenant update S.J. 2012, 156(44), 27, 29

My way, or the highway? EG, 10 Nov 2012, 93

New kid on the block (use of early neutral evaluation to resolve dilapidations claims) 162 NLJ 1491

One foot in the grave (liability for chancel repairs, and adequacy of insurance therefor) P.L.J. 2012, 299, 6–9

Professional Negligence: The Blame Game (recent cases on negligent valuations) 162 NLJ 1455

Professionals are increasingly under the microscope! L. & T. Review 2012, 16(6) 209–210

Property: Flood Warning (clients' expectation that solicitors will research flood risk) 162 NLJ 1489

Proportionality review in possession proceedings [2012] Conv 512–521

Protecting your firm from money laundering fraud S.J. 2012, 156(43), 12–13

Quiet enjoyment? Legal Action 2012, Dec, 23–25

Recent developments in housing law Legal Action 2012, Nov 19–23

Recent developments in housing law Legal Action 2012, Dec, 26–31

Registered charges in the contractual matrix (2013) 129 LQR 24–27

Registering coastal land as 'village green' S.J. 2012, 156(43), 16–17

Righting the wrongs (rectification of register) S.J. 2012, 156(47), 21

Second successions to secure tenancies [2012] Conv 453–466

Social obligation norm and the erosion of land ownership? [2012] Conv 484–497

Spotlight on Fixtures (new capital allowances rules for fixtures) Taxation, 15 November 2012, 9

Stamp Duty Land Tax – nine years in the making EG, 10 Nov 2012, 90–91

Tackling the rule in Hammersmith v Monk: in theory and in practice: Part 1 [2012] EHRLR 629

The Energy Act: a wolf in sheep's clothing? EG, 24 Nov 2012, 118–120

Uncertainty in leases: a role for promissory estoppel (2013) 129 LQR 10–12

Unwrapping the pick of 2012 EG, 15 Dec 2012, 92, 94

Upstairs, downstairs (covenants that can be included in leases of retail units to preserve the value of office space above) EG, 24 Nov 2012, 122–123

What's the landlord's loss? (LTA 1927, s 18) EG, 8 Dec 2012, 61

NEWS AND CONSULTATIONS

Land Registry has issued *Public Guide 25 – Registrations and notices about mines and minerals, chancel repairs and manorial rights* (issued 12 November 2012) see:
http://www.landregistry.gov.uk/public/guides/public-guide-25

Land Registry has updated *Practice Guide 1 – First Registrations* (issued 23 November 2012): see
http://www.landregistry.gov.uk/professional/guides/practice-guide-1

In particular, it is confirmed that an application for first registration cannot be made in the name of a deceased estate owner.

The Council for Licensed Conveyancers has rejected calls by the Law Society to prohibit referral fees in conveyancing, calling instead for increased disclosure requirements:
http://www.legalfutures.co.uk/latest-news/conveyancers-reject-law-society-call-referral-fee-ban/print/

The **Legal Ombudsman** warns of dangers of ABS conveyancing factories putting volume over service:
http://www.legalfutures.co.uk/latest-news/ombudsman-warns-dangers-abs-inspired-conveyancing-factories-putting-volume-service/print/

The **Chief Land Registrar** has stated that electronic conveyancing remains on the agenda, despite being 'more difficult to realise than anyone had thought'. The Land Registry is to launch a pilot to digitise content from the local land charges register and transfer it to the Land Registry: http://lawgazette.co.uk/news/land-registry-shock-digital-difficulty.

The **Department of Business, Innovation and Skills** summarises responses to its consultation on the Estate Agents Act 1979 and the Property Misdescriptions Act 1991, and outlines how the former will be amended and the latter repealed: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43393/12-1006-response-estate-agents-and-property-misdescriptions.pdf

REPORTS AND OFFICIAL PUBLICATIONS

Regulating Residential Letting Agents: The Issues and the Options (report by Prof Michael Ball, commissioned by the Property Ombudsman): see http://www.tpos.co.uk/downloads/reports/TPO_Report_v2.pdf

Losing the plot: Residential conveyancing complaints and their causes (Report by the Legal Ombudsman):
http://www.legalombudsman.org.uk/downloads/documents/publications/conveyancing_report_v3_121210.pdf

Conveyancing Review: Thematic review and recommendations relating to the regulation of conveyancing in England and Wales (Report by the Legal Services Board):
http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/review_and_recommendations_on_regulation_of_conveyancing_in_england_and_wales_(dec_2012).pdf

PRESS RELEASES

HM Revenue and Customs Brief 30/12 explains a change following the decision in *Robinson Family Ltd v HMRC* [2012] UKFTT 360 (TC). HMRC will not be appealing the ruling against it. The fact that the transferor of a property rental business retains a small reversionary interest in the property transferred does not prevent the transaction from being treated as a transfer of a going concern for VAT purposes.

The **Law Society** has announced in a Press Release that **Land Registry** closed its telephone ordering service on 14 December 2012:
http://www.lawsociety.org.uk/news/stories/land-registry-to-close-telephone-ordering-services/

The **Law Society** has announced in a Press Release that **Land Registry**'s electronic Document Registration Service (e-DRS) is now available for portal users. Conveyancers may now lodge electronically application forms, including applications to register transfers and/or charges, and applications that commonly affect titles:
http://www.lawsociety.org.uk/news/stories/land-registry-electronic-document-registration-service/

STATUTORY INSTRUMENTS

Mobile Homes (*Written Statement*) (*Wales*) *Regulations 2012,* SI 2012/2675. Prescribes additional information that has to be contained in written agreements between mobile home site owners and mobile home occupants, with effect from 19 November 2012 (Wales only)

The Land Charges (*Amendment*) *Rules 2012*, SI 2012/2884, amend and update the Land Charges Rules 1974 with effect from 17 December 2012. The amendments facilitate the use of new technology, including electronic communications, and allow for the closure of the telephone ordering service. Inter alia, a revised form K9 is introduced, and K14 is omitted.

The Land Charges Fees (*Amendment*) *Rules 2012*, SI 2012/2910, simplify the fee structure with effect from 17 December 2012. Fees remain the same (in one case the fee is reduced).

GUIDFANCE ON STATUTORY INSTRUMENTS

The Department for Communities and Local Government (DCLG) has published guidance (http://www.communities.gov.uk/documents/housing/pdf/2252992.pdf) on changes in the Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012, SI 2012/2588, which came into effect on 8 November 2012. The purpose of the regulations is to maintain the government's policy on eligibility for social housing and homelessness assistance in relation to non-EEA nationals.

Correspondence about the contents of this Bulletin should be sent to:
Fergus Burdon, LexisNexis Butterworths, Halsbury House,
35 Chancery Lane, London WC2A 1EL
(Email: fergus.burdon@lexisnexis.co.uk; Tel: +44 (0)1905 357743).

Subscription and filing enquiries should be directed to:
LexisNexis Butterworths Customer Services, PO Box 1073, Belfast BT10 9AS
(Tel: +44 (0)845 370 1234).

Visit Butterworths LEXIS NEXIS *direct* at www.lexisnexis.co.uk

Printed in Great Britain by Hobbs the Printers Ltd, Totton, Hampshire.

Published by Lexis Nexis Butterworths.

FSC
www.fsc.org
MIX
Paper from responsible sources
FSC® C020438

ISBN 978-1-4057-7755-1

9 781405 777551