Butterworths Property Law Service

Bulletin Editor
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This Bulletin includes material available up to 31 October 2013.

I. FREEHOLD CONVEYANCING

Alteration of Land Register – whether cancellation of registration of title to Fell land should follow on cancellation of title to manor – relevance of exceptions in LRA 2002, Sch 4, para 6(2)

Walker and another v Burton and another [2013] EWCA Civ 1228 is another case with a long chronology, in this case extending back to the mid-13th century. Although it is of considerable historical interest, it is noted mainly because it illustrates some crucial points on the alteration of the Register under the Land Registration Act 2002.

The salient facts are that B, the respondents (to the original application to the Land Registry, and its reference to a Deputy Adjudicator, and to the first appeal to the Chancery Division, and this second appeal to the Court of Appeal) had in 2000 acquired an historic farmhouse, with its adjacent land, outside the small Pennine village of Ireby in Lancashire. No reference was made in the contract or the conveyance to Ireby Fell, comprising 362 acres of hill land, or to the Lordship of the Manor of Ireby. B would seem to have discovered that a conveyance of the farmhouse to their vendors in 1995 had mentioned 'the manor or reputed manor of Ireby thereto belonging'. B had then made some further investigations and engaged the services of solicitors specialising in manorial law. Just before the LRA 2002 prohibited the future registration of lordships of the manor as incorporeal hereditaments at the Land Registry, B submitted their application, and the result was that in 2004 B were registered as Lords of the Manor of Ireby, backdated to 2003. In 2005 B made a statutory declaration to the effect that Ireby Fell formed part of the waste land of the manor, and they were subsequently registered as proprietors of the Fell (which was, however, subject to registered common rights).

W and his co-appellant were villagers of Ireby who claimed no title to the manor or to the land but objected to B's assumption of the Lordship of the Manor and the ownership of the Fell. They applied to the Land Registry for the alteration of the register by removing B as proprietors of both. Their application was referred to the Deputy Adjudicator, who first ruled that W had standing to make the application even though they did not claim an interest in either the Lordship or the Fell. In a lengthy and detailed judgment he ruled that the Lordship of the Manor had either vested in the Crown in 1540 or else had become extinct by the mid-17th century, and so closed the title to that, but he declined to alter the register relating to the Fell, the essential difference being that the Lordship was not 'land', as defined in LRA 2002, s 132 (see also the former definition in LPA 1925, s 205 (ix)). The restriction in LRA 2002, Sch 4, para 6(2) against altering the register against someone in possession of land therefore protected B in their ownership of the Fell but not in their ownership of the Manor. B did not cross-appeal against the loss of the Lordship.

W and his co-appellant thereafter appealed to the Chancery Division, and then to the Court of Appeal, alleging that either or both of the exceptions in para 6(2) applied: either B had been guilty of a 'lack of care' in making their applications in respect of the Fell, or it would be unjust not to alter the Register. W failed in the Court of Appeal, as in the Chancery Division, on both grounds. Mummery LJ (sitting with Jackson and McCombe LJJ) held that although B had been mistaken in claiming ownership of the Lordship (carrying with it the ownership of its waste land), he had made his claim in good faith, and it was a reasonable belief, given what was at that time known about the history of the Manor ([98]). Further, the lack of care point had been pleaded in respect of the dispute as to title to the Manor, but not in respect of title to the Fell. On the injustice point, Mummery LJ accepted that it might be perceived as illogical that B could lose title to the Lordship, but not to the Fell, the title to which depended on the Lordship, but this was the effect of the LRA 2002. Further, the implication of the decision of the Deputy Judge of the Chancery Division was that the Lordship belonged to the Crown (which was therefore likely to have a claim to the Fell). The Crown had not been joined as a party by the appellants, and, although aware of these proceedings, had not sought to intervene; it had instead intimated that it would await the outcome of this dispute. It could not therefore be said to be unjust if B remained the registered proprietors of the Fell.

Claim to adverse possession based on Limitation Act 1980, Sch 1, para 5 – whether there was a 'lease in writing' – whether need for notice to comply with LTA 1954, Pt II

Mitchell v Watkinson [2013] EWHC 2266 (Ch) is a case on facts which the judge (Morgan J) described as 'highly unusual', an additional complication being that the arguments of the parties shifted from their pleaded cases during the course of the hearing. In essence Mr Arthur Mitchell in 1947 granted a written tenancy to three persons as trustees of a cricket club.

However, shortly before the tenancy was granted, Mr Mitchell had conveyed the land by deed of gift to his son, whose widow was the current claimant. Title to the land was now registered, but, if there had been adverse possession, it had been completed before 2002. Rent had ceased to be paid in 1974, and the defendants defended the possession claim brought by the son's widow's by relying on the Limitation Act 1980, Sch 1, para 5, ie the special rules applicable to tenancies from year to year 'without a lease in writing'. The claimant disputed their applicability, on the basis that there *had* been an agreement in writing, but Morgan J rejected this argument: although he accepted that the tenancy would have implicitly incorporated the terms in the written agreement, applying *Long v Tower Hamlets LBC* [1998] Ch 197, the special rules applied even when a lease was evidenced in writing: for para 5 not to apply, the lease had actually to be *effected* in writing.

A further point that arose was whether the requirement of para 5 – that a tenancy from year to year should be treated as having been determined – should apply even though in practice any notice would have had to comply with the LTA 1954. This point was left open in *Long*, but Morgan J applied by analogy the case of *Moses v Lovegrove* [1952] 2 QB 533, which had held that para 5 deemed a tenancy to have come to an end for adverse possession purposes, and it was irrelevant that it would have been continued by the Rent Acts. So here Morgan J decided that it was unnecessary to decide whether the tenancy of the cricket club trustees fell within the 1954 Act or not, as, even if it did, para 5 would deem that the tenancy had been determined for the purposes of establishing adverse possession. The views on this expressed in Jourdan and Radley-Gardner on Adverse Possession, 2nd edn, at paras 24–37 to 24–41 were preferred to an unreported County Court decision.

(Case noted at: E.G. 2013, 1341, 117)

Contracts exchanged at a sales fair – whether complied with LP(MP)A 1989, s 2 if assembled after signature but before exchange

Mr Nicholas Strauss QC, the Deputy Judge in *Rabiu and others v Marlbray Ltd* [2013] EWHC 3272 (Ch) states that it is believed to be the first reported case involving litigation arising out of a 'sales fair': an event where prospective purchasers are encouraged there and then to enter into a purchase contract. A full conveyancing package is assembled by the seller's solicitors, and a panel of solicitors (in this case drawn from four different firms) is on hand to accept immediate instructions to act on behalf of prospective purchasers and to exchange contracts there and then. Usually such fairs involve the sale of apartments, but here the properties were individual 999 year leasehold rooms in a new Central London 'apart-hotel', which were being sold as investments. The claimants claimed rescission of the contracts, on the basis that they were unconscionable bargains, but this hearing involved the preliminary issue of whether there were in fact binding contracts.

One area of dispute was whether a contract would comply with Law of Property (Miscellaneous Provisions) Act 1989, s 2 if a purchaser had signed a frontsheet which was not, at the time, attached to the detailed terms of the contract. It was held, following *Koenigsblatt v Sweet* [1923] 2 Ch 314 (a case in fact on the Statute of Frauds) that the time to consider whether an agreement complied with the section was the time of the agreement, not the time when it was signed; and following that case, and *Gavaghan v Edwards* [1962] 1 Ch 220 (CA), that there was no reason why a document should not be exchanged, having been altered or assembled by a party, or by his agent, with his authority. The Deputy Judge also held that there was no absolute requirement that the frontsheet should have been stapled or otherwise attached to the remainder of the contract at the time of exchange: it was sufficient that the documents were clearly referable to one another.

In some of the cases the further issue arose of whether a term as to an income guarantee agreement had been effectively incorporated. The contract stipulated that it applied if the word 'Applicable' appeared against the relevant box of the contract. It was held, unsurprisingly, that the term would also apply if the word 'Yes' had been written in the relevant place.

The case report offers an interesting account of the conduct of a busy sales fair – held in 2005 when, in the words of one of the witnesses, the market was 'frenetic'.

Contract for purchase of property 'off the plan' – delay in completion – whether purchasers entitled to treat contract as discharged

Urban 1 (*Blonk Street*) *Ltd v Ayres and another* [2013] EWCA Civ 816 brings together several features of the modern world of law and property: the lack of legal aid, resulting in more litigants in person; the recession in the property market; and the decline of large loan-to-value ratio mortgages. The Appellant U was the developer of a mixed commercial and residential development in Sheffield; the respondents, Mr and Mrs A, in January 2007 contracted to purchase a leasehold apartment 'off the plan'. The contract contained no completion date, the respondents agreeing to complete after the property was physically completed, and U agreeing to take all reasonable steps to prevent delay. The target date for physical completion was December 2008, but work started on construction one month late. Various factors outside the control of the developers resulted in further delays. In June 2008 the respondents were advised by their solicitors that completion was likely to take place in December 2008 (this would appear to have been optimistic and inaccurate even then) and therefore that they should arrange their mortgage finance. In September 2008 they received a mortgage offer for the necessary 90% of the purchase price, which expired on 31 December 2008. In November the respondents were informed that the mortgage advance would have to be drawn down by that date, because the mortgage lenders would be ceasing to advance 90% mortgages. The respondents requested that their lender's valuer be allowed to inspect the flat to meet that deadline, but this request was not granted, the property not being ready. By the end of January 2009 it looked

as though completion would not take place until May. On 20 March 2009 the respondents' new solicitors wrote to U alleging that it was an implied term that the contract would be completed within a reasonable time, alleging that the appellant was in repudiatory breach, and purporting to treat the contract as discharged. The appellant did not accept this, continued to treat the contract as on foot, and served on the respondents a notice advising them of them completion date, followed by a formal notice to complete.

The appellant sought specific performance of the contract, and damages for late completion, interest and costs. At the hearing before HHJ Kaye QC, sitting as a deputy High Court judge, both parties were litigants in person, though some arguments drafted by solicitors or counsel were available to the judge. He found in favour of the respondents. The appellants appealed, and succeeded. The Court of Appeal (Sir Terence Etherton, C, and Underhill and Floyd LJJ) agreed with the first instance judge that, in the absence of a fixed completion date, it was an implied term that completion should be within a reasonable time. Where they parted company from him, however, was that he had held that the respondents were entitled to treat the contract as discharged in March 2009. The Court of Appeal pointed out, however, that the time for completion was an innominate term, and breach could only justify repudiation (1) if it became inequitable to grant the appellant SP; or (2) if and when the delay went to the root of the contract; or (3) if the appellant showed it had no intention of carrying out the contract. The delays up until March 2009 did not satisfy any of these high thresholds. The respondents had not attempted to make time of the essence by serving their own notice to complete in accordance with the contract: though it seems unlikely that they could in practice have risked doing that, when their lack of mortgage finance meant that any such notice could have rebounded on them. The letter written on their behalf on 20 March 2009 had not therefore had the effect which it purported to achieve.

The judgment of the Court of Appeal is particularly useful for the succinct summary of the principles to be derived from three centuries of case law (see [43]), and how they should be applied in cases such as the instant case: see [44]. The point is made that statements to be found in textbooks and decided cases do not always accurately reflect the complex law applicable here (see [44](6)).

(case noted at NLJ 2013, 163(7574), 12–13 and N.L.J. 2013, 163(7576), 10)

Covenant to contribute to upkeep of roadway – meaning of 'successors in title' – whether costs could be apportioned – whether requirements of 'benefit/burden principle' were satisfied – whether the burden of a positive covenant was an overriding interest

Elwood v Goodman v others [2013] EWCA Civ 1103 is another appeal which arises out of the difficulties encountered in attempting to enforce contributions to the maintenance of common facilities where properties have been sold freehold and those who set up the scheme have not utilised the estate rentcharge.

The judge at first instance had resolved the difficulties in favour of the owner of an estate roadway who was seeking contributions from the owners of industrial units who had the right to use it. The right to use the roadway had originally been reserved to Dobson (D), the owner of the retained land by a Transfer of 29 September 1986, which transferred the roadway, with adjoining land, to Elwood (E) and by which E covenanted to maintain the road, and D, covenanted to pay towards the cost of its upkeep. Goodman (G) and the other defendants/appellants had then acquired from D parts of the retained land, on which their respective industrial units were situated: in G's case this was by a Transfer dated 10 December 1986. After these proceedings were commenced D expressly assigned the benefit of G's covenant as purchaser to E. There nevertheless remained two obstacles in the way of E's recovering contributions from G. The first was that the December 1986 Transfer referred to G's covenant being with D and his 'successors in title'. G argued that this had to be strictly construed, and covered only those who acquired title from D *after* the date of the Transfer of December 1986: E had acquired from D the block of land that included the roadway in September 1986. Patten LJ (sitting with Arden and Beatson LJJ) preferred a broader construction of the meaning of 'successors in title': although the expression usually referred to subsequent owners of the property (*Re Ecclesiastical Commissioners for England's Conveyance* [1936] Ch 430) , ([22]), the Transfer had to be interpreted in its context (see *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896), ([23]), and that clearly pointed to a broader meaning that included those who had *already* acquired title from D. G's second objection was that the relevant covenants assumed that the retained land would remain in one ownership and would not be subdivided. The court had no hesitation in deciding that if necessary it could apportion the costs in a way that was fair and reasonable ([30]).

Although G was an original purchaser, one of the defendants/appellants (M&R) was not, so the issue also arose in its case as to whether the benefit/burden requirements of *Halsall v Brizzell* [1957] Ch 169 were satisfied. The Court followed its decision in *Davies v Jones* [2009] EWCA Civ 1164 at [27] as to the three requirements to be satisfied, and held that they were satisfied as to the September 1986 Transfer but not as to the December 1986 Transfer: this, however, was sufficient.

An argument was also raised on behalf of the appellants which the Court thought was without previous authority, and that was to the effect that the burden of the positive covenant was not binding on them because they were not overriding interests under s 70(1)(g) LRA 1925 and it had not been substantively registered as an incumbrance ([33]). The Court of Appeal approved a passage in *Barnsley's Conveyancing Law and Practice* (4th Edn) at p 497 to the effect that such covenants are not required to be registered ([44]), as 'the burden of a positive covenant gives the third party nothing more than a personal right to enforce the covenant in equity against the registered proprietor' ([35]).

The appeal was, however, allowed in one minor respect, the court holding that the obligation to contribute to expenses did not cover the upkeep of a strip of land adjoining the roadway.

Dispute over use of right of way – whether use as a distribution centre was use as 'an industrial unit'

British Malleable Iron Co Ltd v Revelan (IoM) Ltd [2013] EWHC 1954 (Ch) is a dispute between two freehold owners which brings in an issue on non-derogation from a grant. The claimant BMI owned a private road which gave access to a small industrial estate owned by R. The deed of grant was 'for the purposes of industrial units' and there was a reference in one clause to BMI having the power to withhold consent to changes of use from these if they would result in increased traffic. The entrance to the roadway was barred by a gate which was kept open during weekday business hours but could be opened on request at other times. R had let one of the industrial units to CES (UK) Ltd which (BMI alleged) operated a warehouse/distribution centre for motor parts which delivered to local garages at short notice, and hence involved numerous comings and goings, and also involved some retail sales. This both increased the traffic on the private road and also – because of the frequent openings of the gate – compromised security. BMI sought a declaration seeking a restrictive construction of the right of way; R applied for summary judgment dismissing the claim. HHJ David Cooke, hearing the case as a Deputy Chancery Judge, made the point that R would be liable for the actions of its tenants, including CES, only if it had expressly or impliedly authorised the use. This would be a question of fact, to be determined at trial. The judge did not, however, allow the matter to go to trial, because he held that, as a matter of construction of the deed of grant, here 'use as industrial units' should here be taken as including uses falling with the B8 (storage and distribution) use class, as well as B2 (general industrial – i.e. processing) uses. Even making all relevant assumptions of fact in the claimant's favour, therefore, its claim could not succeed.

Newly-built property – guarantee not available – measure of damages

Brune v Perkins [2013] EWHC 2977 (QB) raises an unusual and possibly novel issue: how should one assess the measure of damages if a newly-built property does not have the expected guarantee from the NHBC or one of the alternative providers? The Defendants had commissioned the building of a detached property in a desirable area near Marlow; the Claimants had completed the purchase from them, but then found that the guarantee granted to the defendants by Premier, one of the two providers besides the NHBC then offering cover, was invalid because it was designed to cover only genuine 'self-builders': it accordingly became invalid if the house was sold within two years of the grant of the policy, and cover was also excluded if the original grantees either did not intend to live in the property, or had undertaken another self-build within the previous two years. On all of these grounds the policy was invalidated. The Defendants in their contract had warranted that a Premier Guarantee would be handed over, and the Claimants therefore sued the Defendants.

The judge thought that in principle the measure of damages should be the cost of obtaining an alternative policy, but, when the action was commenced,

no provider offered cover unless it had been able to make inspections during construction, so no alternative cover could be purchased ([9]). The judge (Mr David Donaldson QC, sitting as a deputy judge of the QBD) therefore agreed to consider the quantification of damages based on the diminution of the value of the property, though he was not convinced it was strictly a legally correct approach ([10]). Neither party's expert valuer could point to any plausible comparables. The judge rejected the Claimants' argument that as the property would be unmortgageable it would appeal only to an investor and that the price should therefore be determined by its investment value. He thought the whole argument that the property was unmortgageable was undermined by the fact that the Claimants had managed to remortgage the property without difficulty when their original fixed-rate mortgage had expired (though might one question whether the lenders were fully aware of the position?). In any event, even if it were difficult to mortgage the property, the judge accepted the evidence of the Defendants' expert that there were a significant number of cash buyers for properties of this type in the Marlow area who would not therefore be deterred by a property's unmortgageability. By the time of the first hearing, however, a new provider, Build-Zone, was prepared to offer cover on recently built properties, subject to survey, even if they had not been able to inspect during construction. The case was adjourned for this to be investigated further, and damages were ultimately awarded based on the cost of the premium for this cover, and the incidental costs arranging it, including the cost of some remedial building works which were necessary before the cover could be offered.

The case offers a useful analysis of the difficulty in quantifying damages in cases such as this. It also offers a warning to conveyancers of a potential trap: a guarantee policy may be offered by the seller, but is the policy itself appropriate?

Rectification of Lease where parties under mistaken belief that prior document would supplement principal agreement

Ahmad v Secret Garden (*Cheshire*) *Ltd* [2013] EWCA Civ 1005 is on the often problematic area of rectification. A, the landlord, and S, the owner and driving force behind the tenant company, had agreed and signed terms for a seven year lease, in a document ('Lease 1') which was not legally enforceable as it did not include all the terms, and it was intended that there would be a final lease. Shortly afterwards they signed a formal lease in the Law Society's printed form LS2 ('Lease 2'). This lease did not include the terms contained in Lease 1. The recorder in Manchester County Court accepted that both parties had mistakenly thought that the terms that they had originally agreed in Lease 1 would remain in effect to supplement Lease 2. She therefore ordered that Lease 2 be rectified to incorporate also the terms agreed in Lease 1.

In the Court of Appeal Arden LJ (sitting with Lloyd Jones and Fulford, LJJ) applied the test for rectification applied in *Swainland Builders Ltd v Freehold Properties Ltd* [2002] EWCA Civ 560 and approved by the House of Lords in

Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] AC 1101 at [48], and held that it had been correctly applied here. One argument of the landlord, opposing rectification, was that *Oun v Ahmad* [2008] EWHC 545 (Ch) did not permit rectification of one document where the parties had deliberately decided to retain some terms in another document (see [51]). Arden LJ, however, distinguished the present case, pointing out that in the former case the parties had made a deliberate decision to have separate documents, as it was necessary to achieve their ends. Here the parties had executed Lease 2 under the common misapprehension that the amendments to the standard form lease agreed in Lease 1 would remain effective ([52] – [53]).

The landlord also challenged the recorder's exercise of her discretion in ordering rectification, alleging that she had taken insufficient account of the tenant's delay in seeking rectification, possible acts of affirmation, and the fact that the property had been re-let to another tenant (although the new lease would not override the subject lease). These challenges were also rejected.

Order for Sale under TLATA 1996, s 14 – whether prior agreement on condition for sale should be upheld

Finch v Hall [2013] All ER (D) 92 (Oct) (otherwise unreported: no neutral citation) deals with orders for sale under TLATA 1996, s 14, a topic on which there is not a great deal of judicial guidance. Four siblings had inherited a house from their father. In 2006 they agreed not to sell it, but to let it. In 2012 the property was registered in the joint names of two siblings as trustees, and a declaration of trust was signed whereby the four beneficial owners agreed to hold the property as tenants in common in equal shares, and that decisions regarding the property would be determined by majority vote. They subsequently decided in principle to sell the property, and in August 2012 signed an agreement that any offer to purchase should be accepted only with the agreement of all four owners. An offer was received which three of the four were prepared to accept, but the fourth thought that a better price could be obtained. The claimants sought an order under TLATA, s 14 for the immediate sale of the property.

Sitting as a Deputy Judge of the Chancery Division, Mr David Donaldson QC declined to make an order for sale. He rejected as implausible the claimants' explanation of what he thought was the clear meaning of the August 2012 agreement. Applying *Re Buchanan-Wollaston's Conveyance* [1939] Ch. 738, a court of equity should normally act so as to enforce an agreement rather than go against it. If circumstances had materially changed since the making of the agreement, then the result might be different, but that was not the case here.

Ownership of River Thames and its banks in London – claims for adverse possession

Couper and others v Albion Properties Ltd and others [2013] EWHC 2993 (Ch) deserves noting principally for the wealth of historical material that the

judgment – which extends to over 700 paragraphs – contains relating to the ownership of the River Thames and its banks in London, and the evolution of the Port of London Authority, which was one of the defendants. The claimants were the owners of the barges housing the Couper Collection which are moored off Albion Wharf, between Battersea Bridge and Albert Bridge. Although the claimants included claims for adverse possession, these formed but a small part of the matters in dispute, and appear to decide no novel points of law.

Ownership of River Thames and its banks in London – claims for adverse possession in respect of 'mooring roots'

Port of London Authority v Tower Bridge Yacht and Boat Co Ltd [2013] EWHC 3084 (Ch), like the case above, also raises issues as to rights to moor barges in the Thames. In this case the barges were residential, and moored below Tower Bridge. Like the previous case, it also required consideration of the history of the moorings, the judgment in the end holding that the defendants did not require licences from the PLA for three mooring 'roots' which had existed prior to 1857, when the predecessor of the PLA was established, but did require licences in respect of seven mooring roots which were of more recent origin. Again, the subject matter of the dispute is rather too specialised for detailed consideration in this publication, but one may perhaps note that claims here that ownership of mooring roots had been acquired by adverse possession on the basis that adverse possession required *animus possidendi* and that the defendants would not have known the extent of the land that they were supposedly possessing. For those, like the present editor, for whom a 'mooring root' is a novel term, it is the block or anchor embedded in the bed of the river to which mooring chains can be attached. If the defendants had succeeded in their claim then the PLA's ownership of the riverbed would have been dotted with such roots (the defendants claiming neither the land below nor the column of water above). The judge (Mann J) noted that this would be an oddity, but not an impossible result ([270]).

Solicitors acting for purchasers – extent of duty to advise on planning matter when not specifically requested to so advise

AW Group Ltd v Taylor Watson (*a firm*) [2013] EWHC 2610 (Ch) is a case which offers useful if not novel guidance to the general legal practitioner. The claim against the defendant solicitors alleged that, in acting for the claimants on the purchase of land, they had failed to advise them of its lack of planning permission to park HGV vehicles. The defendants claimed that they had not been instructed to advise on this. The judgment is a lengthy one which considers the course of events in great detail, but essentially HHJ Hodge QC (sitting as a judge of the Chancery Division) applied the decision of the Court of Appeal in *County Personnel Ltd v Alan R Pulver & Co Ltd* [1987] 1 WLR 916 to the effect that, if potential problems arose which might not be obvious to the intelligent layman, a solicitor ought to point them out

to the client, leaving him to seek further advice on the problem, from that solicitor or from a more appropriate specialist. He further applied the decision of Laddie J. in the High Court in *Credit Lyonnais SA v Russell Jones & Walker* [2002] EWHC 1310 (Ch) (which in turn followed *Mortgage Express Ltd v Bowerman & Pnrs* [1996] 1 All ER 836) to confirm that, whilst a solicitor was under no obligation to expend time and effort on issues lying outside the scope of his retainer, he was bound at least to warn the client of the existence of the problem, and the desirability of obtaining further advice.

The outcome of the case was the defendants were found in breach of their duty, though the claim failed overall on the issue of causation.

Transfer into joint names – undue influence; whether compromise agreement satisfied LP(MP)A 1989, s 2

Brown v Stephenson [2013] EWCA Civ 2531 (Ch) is a dispute between business partners over the ownership of a smallholding: in particular, Mrs Brown sought to have a transfer into the parties' joint names, and a declaration of trust, set aside on the basis of undue influence on the part of Mr Stephenson. The decision, as one might expect, very much relies on a fairly lengthy factual background, but it may be noted that the principles set out in *Royal Bank of Scotland v Etridge* [2001] UKHL 44, [2002] 2 AC 773 were applied.

The judgment contains a salutary warning for practitioners. At one stage of the dispute the parties had had an agreement drawn up at an advice centre which provided for the division between them of the property in question. HHJ Behrens (sitting as a judge of the Chancery Division) declined to grant specific performance of the agreement as it did not identify what the boundaries between the two parts of the property should be, and the document did not comply with Law of Property (Miscellaneous Provisions) Act 1989, s 2.

II. EXISTING LEASEHOLDS

Appeal against LVT decision alleging procedural unfairness – 'moot' by the time appeal was heard – whether costs should be awarded – whether £500 cap to be applied

The initial purchase notice under Part 1 of the LRHUDA 1993 was served in the instant case in 2004, so, as one might expect, the detailed factual background in *Curzon v Hobbs* [2012] UKUT 0419 (LC) is complex. In essence, the five leaseholders in a block of six flats were seeking to purchase its freehold, which was owned by L, who resided in the sixth flat *quâ* freeholder, no lease having been granted of it. It had been agreed in principle that, on completion of the freehold purchase, L would be granted a lease-back of his flat, but the parties had been unable to agree the terms of it. The chief area in dispute was whether the lease-back to L should include various rights to extend the building and redevelop the garage and garden. It seems

clear that L was deliberately trying to spin out the enfranchisement process ([25]), though both sides seem to have contributed to various communication difficulties. L's appeal, alleging procedural unfairness on the part of the LVT, was originally listed for January 2013, but was then relisted for July. At the hearing his counsel disclosed that in October 2012 L had granted to himself and his wife a lease-back of the flat that they occupied, on terms more favourable to him than the LVT had previously ordered, including the right to redevelop using part of the garden, the roof, and airspace over it. It was conceded by the highly experienced counsel for the (other) leaseholders that this lease was valid and would bind them when they eventually acquired the freehold (he reserved his position as to whether they would have separate rights to have the lease set aside, as a breach of agreed terms, or they would have rights under the right of first refusal under LTA 1987, Pt I). In any event, counsel for L withdrew the appeal, and counsel for the leaseholders applied for their costs. Prior to 1 July 2013 this was governed by Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, r 10(7)(c) (as amended) and allowed the UT to award costs, up to a maximum of £500, only if it considered that a party had acted unreasonably in bringing, defending, or conducting proceedings. The changes that took effect on 1 July 2013 did not alter the circumstances in which costs could be awarded, but did remove the £500 cap. A transitional provision allowed the UT to ensure that this operated fairly. In the circumstances Mr Martin Rodger QC, Deputy President, considered that L had acted unreasonably in not disclosing to the leaseholders the grant of the new lease to himself and his wife, and that he should pay their costs, but that the cap should apply, as otherwise there would be 'an unattractive retrospectivity' ([29]).

Practitioners ought to note that, had the initial purchase note in 2004 been protected by a notice at the Land Registry, this would not have prevented the grant of the new lease of the flat occupied by L, but it would probably have prevented the inclusion in the lease of the airspace and garden (see Hague: *Leasehold Enfranchisement*, 5th Edn, 25–15, n.121 and *Cawthorne v Hamden* [2007] Ch 187): see [13]. The lesson is obvious.

Application to vary leases – whether LVT had complied with regulation permitting determination of an issue without an oral hearing

Keeney Construction Ltd Brooke [2013] UKUT 329 (LC) offers some guidance on the procedure to be adopted by the LVTs (now the FTT) in determining applications in whole or in part without an oral hearing. The original application to the LVT was for a variation of leases under LTA 1987, s 35. The building in question was a block of 9 flats above commercial premises, and was in poor repair. It appeared that the flats did not bear a fair proportion of the cost of upkeep of the building. Following a contested oral hearing, the LVT ordered variation of the leases, but also held that the case was appropriate for the award of compensation to the leaseholders under LTA 1987, s 38(10). The LVT's order therefore invited the submission of a claim for compensation, and provided for that part of the case to be heard

either on the 'paper track', or by an oral hearing should either party request one. The leaseholders submitted expert evidence, which was served on the appellant landlord's solicitors, but no further explicit directions were given. No response was received from the landlord's solicitor, and the LVT then proceeded to determine the issue of compensation, largely accepting the leaseholders' submissions.

The landlord appealed on the basis that there had been a procedural irregularity. HHJ Huskinson in the Upper Tribunal allowed the appeal, holding that ([22], [24]), although the landlord's solicitors had received the submissions on behalf of the leaseholders, the order of the LVT did not sufficiently comply with Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, which deals with determination of applications without an oral hearing. Further, the LVT had not taken into account that it was inherently unlikely that the landlord would have no observations to make on the unusual step of awarding compensation when leases were varied. He left open (at [23]) the wider question of whether it was ever permissible to use the written representation procedure under Regulation 13 for a discrete part of a case where there had been an oral hearing, save with the express consent of the parties. The landlord's appeal was accordingly allowed, and the matter of compensation remitted to what is now the FTT for rehearing.

Construction of service charge provisions in 'Right to Buy' leases – whether broader matters might be included within scope of 'management charge'

Blackpool BC v Cargill [2013] UKUT 0377 (LC) (which is in fact a conjoined appeal with *Blackpool BC v Morris*) is in essence a decision on the interpretation of the lease granted by Blackpool Borough Council to its leaseholders under the 'right to buy': one suspects, however, that it may in practice have wider influence in determining the approach of the FTT when faced with challenges to the management charges levied by local authority landlords.

The background was that Blackpool BC had for many years levied a standard management fee for all of its long leasehold units as part of its service charge arrangements: this was increased by a small amount each year, and between 2002–03 and 2010–11 had increased from £50 to £64 p.a. In 2007, however, the Council had devolved its management responsibilities to a not-for-profit company (which was also a party to the proceedings) and this eventually led to a review of the management charge. Accordingly for the year 2011–2012 the management charge was raised to nearly £195 p.a. Mr C succeeded in having this reduced before the LVT to £50; Mr M subsequently succeeded in having the charge for each of the past 12 years reduced to £50. As the Council felt obliged to apply this to all their 401 leaseholders, this would have amounted in total to a considerable sum.

The LVT had reached its decision on a restrictive interpretation of the service charge provisions of the leases, which on its reading appeared to allow an element for management to be added only to reflect the Council's compliance

with the most essential covenants, including repair, reinstatement and insurance. On the basis of this restrictive interpretation, the LVT determined that £50 pa would, based on its expert knowledge, be a reasonable charge.

The Council appealed, with the permission of the LVT, and HHJ Huskinson allowed the appeals, quashed the LVT's determination, and proceeded to rehear the cases. Although recognising that the interpretation of the Council lease was not without difficulty, he held that a reference to the Council's providing other services had to be given some meaning, even though it appeared as part of a lessee's covenant to pay the service charge, rather than as covenant imposing a positive obligation on the lessor. (The reason for this style of drafting – common enough in practice – was of course to ensure that the lessor could charge for some services, even if not obliged to provide them). It therefore followed that the management costs relating to the other services could reasonably form part of the service charge.

It was not, however, an outright victory for the Council. Costs such as those relating to enforcement of arrears, registering assignments, the granting of consents, the provision of information to sellers' solicitors, and a Newsletter intended principally for 'renting' tenants were not, according to the Upper Tribunal, properly recoverable under the lease: and the UT also declined to accept the apportionment of the time allegedly spent by certain officers of the management company on dealing with leaseholders, as it was based on a subjective assessment rather than any detailed time-recording. The UT's own estimate was substituted for this apportionment. The management charge for 2011–12 was accordingly reduced from £195 to £155. The moral for local authorities and their agencies of this part of the decision would seem to be that detailed records need to be produced when arguing for a time apportionment of salaries and on-costs.

Costs incurred by 'in-house' solicitor – whether charge out rate should be reduced

Re an Appeal by Alka Arora [2013] UKUT 0362 (LC), LRX/171/2012 confirms the short but important point that, where a party is required to pay another's legal costs, these are not to be reduced by reason only of the fact that the legal services are provided by an in-house solicitor. Mr Arora had been in practice as a solicitor but now had an arrangement to work for a company owned by members of his family. He had acted for the landlords on a largely uncontentious tenant's application for a lease extension under Part II of the LRHUDA 1993. His costs had been charged as 7 hours at £250 per hour. The LVT reduced the charge to £1,000, on the basis that 5 hours should have sufficed, and also reduced the hourly rate from the £250 which would have been reasonable for a solicitor in private practice for the sole reason that he was an 'in-house' solicitor and so had lower overheads. Permission to appeal had not been granted on the point about the reduction in the hours allowed, but Mr Martin Rodger, QC, Deputy President, held that to reduce the hourly rate solely because the lawyer was 'in-house' went again established costs precedents such as *Henderson v Merthyr Tydfil Urban*

District Council [1900] 1 Q.B. 434 and *Re Eastwood* (*deceased*) [1975] Ch. 112. Mr Arora was therefore entitled to recover £1,250 in respect of his costs.

Covenant for use 'as a private dwelling for the lessee and his family …' – whether it prohibited sub-letting

Burchell v Raj Properties Ltd [2013] UKUT 0443 (LC) raises two short but interesting points. A 99 year lease of a flat granted in 1988 contained a use clause restricting the use of the flat to use 'as a private dwelling for the lessee and his family and for no other purpose' but did not contain any restriction on sub-letting *per se*. The leaseholder applied for a lease extension under LRHUDA 1993, Pt II. When the freeholder wanted this provision to be carried over in to the new lease the lessee sought the deletion of the words 'for the lessee and his family'. The LVT – having had to exercise the power to clarify its ruling – determined that the contentious words should remain. The leaseholder presented three arguments in the alternative: (i) that the use clause, properly construed, did not restrict the use of the flat to use by the leaseholder personally; (ii) that its ambiguity was a defect which could and should be corrected by amending it under LRHUDA 1993, s 57(6)(a), by omitting it; or (iii) that if the wording did, in effect, prohibit subletting, the tribunal should exercise its power under s 57(6)(b) and remove the contentious words on the basis of changes occurring since the lease was granted: the decreased security of tenure afforded to short term tenants under the assured shorthold tenancies provided for by the Housing Act 1988; and an alleged practice on the part of the respondent in waiving the covenant in other leases in exchange for a payment.

Mr Martin Rodger QC (Deputy President) had little hesitation in rejecting the leaseholder's argument that the words 'for the lessee and his family' had a substantially different meaning from the more commonly encountered 'by the lessee as his family' as, if let, the dwelling would still be *for the benefit* of the lessee, who would draw the rent from it ([32]). He was in no doubt that the clause required personal occupation by the lessee. He also rejected the argument that the wording should be amended in the new lease. Cases such as *Lewis Lee's Application* [2012] UKUT 125 (LC) had accepted that there might be a genuine advantage in having a block of flats occupied by owner-occupiers rather than tenants of buy-to-let leaseholders. To justify a change of the terms of the lease based on s 57(6)(b) would require evidence of the alleged change of circumstances, and this had not been adduced before the LVT. The appeal was therefore dismissed.

Damages for unlawful eviction – whether appeal could raise issue as to whether defendant was properly a party

Lee v Lasrado [2013] EWHC 2302 (QB) is an appeal by the landlord, principally against an order for payment of damages for unlawful eviction, under the Housing Act 1988. The chief ground of his appeal was that his wife, rather than he, was the landlord of the property in question. The appeal

failed on this ground, as it had not been raised in the original county court proceedings, the appeal was out of time, and no evidence to support it was adduced. The court also dismissed an appeal as to the quantum of damages awarded – a total of £24,600 – as Griffith Williams J was satisfied that the various elements of the award lay within the accepted brackets.

Estate Management Charge under LRA 1967, s 19 – whether jurisdiction to vary under CLRA 2002, s 159 – new power to review now enjoyed by First Tier Tribunal (Property Chamber)

Scriven and others v Calthorpe Estates and others [2013] UKUT 0469 (LC) is a rarity, a decision on the power to vary an estate charge made under an estate management scheme under Leasehold Reform Act 1967, s 19. That section made provision for estate management schemes to be sanctioned where leasehold houses became enfranchisable. An application had been brought before the Midland LVT for an estate charge to be varied under CLRA 2002, s 159. The LVT had declined jurisdiction, following the decision of the London LVT in *Walker v Hampstead Garden Suburb Trust Ltd* (LON/OOAC/LVE/2007/001) to the effect that there was no power under LRA 2002, s 159(3) to vary an estate management scheme which made provision for a variable estate charge as defined in s 159(2). Unbeknown to the Midland LVT, that decision of the London LVT had been reversed by the Lands Tribunal, but under the title (because of a substitution of appellant) of *Botterill v Hampstead Garden Suburb Trust Ltd* (LRX/135/2007). When the existence of the successful appeal by Mr Botterill was brought to the attention of the Midland LVT, they granted permission to appeal to the UT.

The point in question on the appeal was whether a tribunal had jurisdiction under s 159(3) to vary *any* estate management charge, or only an estate management charge which fell outside the definition of a variable estate management charge contained in CLRA 2002, s 159(2). On the actual point in question, Mr Martin Rodger QC (Deputy President) allowed the appeal, holding that that the LVT did have jurisdiction, and remitted to what is now the FTT the question of whether the estate charge should in fact be varied. As appellants and respondents wanted this to happen, and neither was legally represented, Mr Rodger felt that it was appropriate to follow the *Botterill* appeal, though he expressed ([21]) doubt as to whether that decision was in fact correct, wondering whether the two LVTs might in fact have 'got it right', and that the tribunal's power under s 159(3) was indeed restricted to non-variable estate management charges.

The Deputy President took the opportunity to point out that the transfer of jurisdiction from the LVT to the FTT meant that the FTT now had jurisdiction to review its decisions and to correct its own errors in certain circumstances. If those powers had been exercisable in this case, it would have avoided the need for an appeal to the UT. In addition he pointed out that a decision of a three judge appeal panel (including Carnwath LJ, SPT) in *R* (*RB*) *v First-tier Tribunal* (*Review*) [2010] UKUT 160 (AAC) had provided

guidance on when and how the review power should be exercised, and that this was now also applicable to the Property Chamber of the FTT.

Forfeiture – allegations that property being used as commercial lodgings and therefore possession being shared – whether s.146 Notice correctly expressed District Judge's declaration re: breach

The pitfalls involved in forfeiture proceedings are a frequent topic in this Bulletin, and *Anders v Haralambous* [2013] EWHC 2676 (QB) is yet another example of this. The landlords, H, thought that their tenant, A, had turned the demised premises into a multi-occupied student property. They sought a declaration of breach in the Central London County Court under s 168 CLRA 2002 (Note: in view of *Cussens v Realreed Ltd* [2013] EWHC 1229 (QB) – see Bulletin No 135 – the County Court would appear not to have jurisdiction to make a declaration under subsection (4) of this section, but the point was apparently not raised, and the county court stage predated this High Court appellate decision; in any event, this distinction would seem to make very little difference in practice, as *Cussens* further decided that a County Court *did* have power under its general jurisdiction in contract to make a declaration which would satisfy s 168(2)). At an application for summary judgment, the District Judge held that A's use of the property amounted to breach of covenant (k) – which required use as a private dwelling for residential use only; and also of covenant (m) – which contained a provision 'not to assign, underlet or part with or share possession or occupation of part only of the premises'. Unfortunately, the DJ's finding was that taking in student lodgers amounted to 'parting with or sharing possession of part of the premises'. (In view of the well-known judgment of Neuberger LJ in *Akici v LR Butlin Ltd* [2005] EWCA Civ 1296, [2006] 1 WLR 201, this was a questionable finding, though, as the clause also covered sharing *occupation*, the DJ might well have found that there was a breach of that wing of the covenant). The solicitors for H then compounded their problems by serving a Section 146 Notice on A which referred to operating a business on the demised property, and also alleged that it had been *sublet*. In reliance upon this H then commenced proceedings for possession, and A applied for relief from forfeiture. HHJ Dight in the CLCC heard the proceedings on 27 March 2013, and declared that A's lease had been forfeited, with the questions of possession and relief to be determined at a subsequent hearing. A appealed.

A's appeal was allowed by Jay J. With reference to covenant (m) (not to assign etc …part of the premises), although A, in some of her witness statements, appeared to admit sub-letting,, she was representing herself, it took some time to elucidate her position, and the final finding was of a sharing of possession, not of sub-letting; and whilst the latter was not capable of remedy, the former was. Applying the *Mannai* test, the Section 146 Notice did not make it clear to A what she had to do to put matters right. Jay J also found in favour of A on the covenant (k) point (use as a private dwelling for residential use only). It would not have been sufficient ([44]) merely to have

stated that the premises were being used otherwise than for residential purposes: something more had to be specified so that A knew what she had to do to remedy the breach, and the further detail was, in effect, 'contaminated' by including allegations of sub-letting rather than of sharing of possession. The DJ had found the latter – even if a finding of sharing of occupation would have been a more accurate one. The appeal was therefore allowed.

(Jay J found against A on a second ground of appeal, where she in effect argued that, in view of her Convention rights, in particular Art 1, Prot 1, and Art 8, HHJ Dight ought not to have accepted a concession on the part of A's previous counsel that the alleged breaches were incapable of remedy, but should have investigated the matter of his own motion).

Judicial review of refusal of Upper Tribunal to grant permission to appeal – refusal quashed when based upon assumption which was contrary to facts as found by the LVT

R. (*on the application of Ground Rents* (*Regisport*) *Ltd v Upper Tribunal* (*Administrative Appeals Chamber*) [2013] EWHC 2638 (Admin) is a judicial review arising out of the refusal of the Upper Tribunal to grant permission to Regisport to appeal against a decision of the LVT, the UT being unable to review its decision as the circumstances did not fall within Rule 45 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The factual background to the case is that a company (Countryside) had developed three blocks of flats in Merton in SW London. Whilst the flats were in the development stage Countryside had entered into an agreement with Thames Water Utilities Services ('Thames') for the provision of water and sewerage services. Following the sale of the last flat, Countryside had sold the freehold to Regisport. Following the transfer, Thames continued to bill Countryside, with the result that most of the charges remained unpaid. When the mistake was eventually discovered, the leaseholders claimed the benefit of the 18 month 'limitation period' in s 20B LTA 1985 to restrict their liability. This argument succeeded before the LVT, but Regisport sought permission to appeal. This was refused by the President in the UT. Regisport contested this refusal, on the basis that the UT had assumed in refusing permission that the demands for payment had been sent to Countryside *before* the transfer of the freehold to Regisport. This was contrary to the findings of fact made by the LVT.

In the Administrative Court Leggatt J. confirmed that the court has power on judicial review to declare unlawful a decision taken on the basis of no evidence. The criteria set out by the Court of Appeal in *E v Secretary of State for the Home Department* [2004] EWCA Civ 49, [2004] QB 1044 were satisfied, and, without expressing any view on the merits, the UT's decision to refuse permission to appeal had to be quashed.

Jurisdiction of First Tier Tribunal to determine under CLRA 2002, s 168 whether breach of covenant – whether there should be a finding of breach when a breach had been remedied

Forest House Estates Ltd v Dakhil Allah R Al-Harthi [2013] UKUT 0479 (LC) decides a short but significant point on the remit of the First Tier Tribunal in determining applications as to whether there has been a breach of covenant for the purpose of CLRA 2002, s 168. The leaseholder – the respondent to the appeal – had begun to remove fitted carpeting from his flat, and to install wooden laminate flooring, in breach of a covenant to carpet all the rooms save the kitchen and bathroom. He continued in spite of being asked by the managing agent to desist. When the work was completed he claimed that he had installed wooden flooring over the existing sound insulation material plus further installation, and that 95% of the flooring would be covered by rugs, so the sound insulation would in fact be improved. The appellant first took this as an admission of breach for the purposes of CLRA 2002, s 168(2)(b), and served a Section 146 Notice, but then had second thoughts, and thought it prudent to obtain a determination from the LVT. By the time that the LVT inspected the flat, fitted carpets had been installed in accordance with the covenant, and the LVT's determination was therefore to the effect that any breach had been remedied (though it did not explicitly find that there had been a breach).

Sitting in the Upper Tribunal, Mr Peter McCrea FRICS determined that the approach of the LVT was inconsistent with the decision of Mr George Bartlett QC (the President), sitting in the Lands Tribunal in *GHM* (*Trustees*) *Ltd v Glass* (LRX/153/2007). The jurisdiction of the LVT (and so now the FTT) is to determine whether there has been a breach, leaving the questions of whether it has been remedied, and any award of damages, or grant of forfeiture, for the Court to decide. He accordingly quashed the determination of the LVT and determined that there had been a breach of the lease for a period of four months in 2012.

One may note that the restrictive interpretation of the role of the Tribunal in the instant case does not sit comfortably with the decision of HHJ Huskinson in the Lands Tribunal in *Swanston Grange* (*Luton*) *Management Ltd v Langley-Essen* [2008] L&TR 20 (which was cited and implicitly approved in the *GHM Trustees* case), where he determined that the LVT had power to determine whether a breach of covenant had been waived. If these two cases and the instant case are reconcilable then it must be on the basis that the decision in the *Swanston Grange* case was that the landlord had waived treating the leaseholder's omissions as a breach, in the sense that it was estopped from asserting that there was a breach, and the covenant was, in effect, suspended (see *Swanston Grange* at [16]), rather than that the Tribunal had jurisdiction to determine whether there has been waiver of breach as it is more generally understood, i.e. that a landlord cannot rely on an act or omission which is clearly a breach because he has taken some step which acknowledges the continued existence of the tenancy. If this analysis is

correct then the footnote in the principal work (see *Butterworths Property Law Service*, Division IV, para **IV [563.4]**, n.5) is correct in suggesting that *Swanston Grange* is limited to estoppel cases: the instant case offers persuasive dicta on tribunals' lack of jurisdiction over waiver in the more general sense.

Landlord's failure to comply with LTA 1987, ss 47 and 48 – issue not raised by leaseholders before LVT

Cullen v Barnard Lodge Management Ltd [2013] UKUT 0493 (LC) (HHJ Nigel Gerald) dismissed the leaseholders' appeal on the basis that the LVT could not be criticised for having failed to consider their argument that the landlord had not complied with LTA 1987, ss 47 & 48, when the leaseholders had failed to raise the issue themselves.

Position of a 'tolerated trespasser' who was granted a new tenancy under 'decant agreement'– whether a secure tenant of either property

Francis v Brent Housing Partnership Ltd [2013] EWC Civ 912 deals with the interrelationship between a F's status as a 'tolerated trespasser' and a 'decant agreement', whereby F was given alternative accommodation while her own property was being repaired. F was granted a secure tenancy and occupied 25C Stonebridge Park from 1981 until 2005. As a result of rent arrears, a possession order was made against her in 1991, but for the next 14 years she remained in possession under various orders suspending the execution of the original order. By 2002 her rent account was in credit, though it slipped into arrears in 2004. Under the law as it existed prior to the changes introduced by s 299 and Sch 11 to the Housing and Regeneration Act 2008, F's status was that of a tolerated trespasser.

In 2004 Brent LBC (which, in spite of the title of the case, was the landlord) wished to repair 25C and so entered into a 'decant agreement' with her, whereby she was given alternative accommodation at No 1 Kingthorpe whilst 25C was being repaired. For various reasons she was still residing at No 1 in 2009 when Brent LBC obtained an outright possession order against her in respect of *that* property on the ground of rent arrears. A warrant under the 2009 order was eventually suspended: the fact that it was suspended implicitly recognised that her tenancy of No 1 was secure. When the works to 25C were completed, Brent advised F – which they had not done previously – that as her 'decant' had persisted for more than 12 months, she would not be permitted to return to No 25C, but would instead receive a home loss disturbance allowance.

Trying a preliminary issue, HHJ Moloney QC in the Central London County Court determined that F had a tenancy of No 1, but not of 25C. She appealed against this decision, and succeeded on this point in the Court of Appeal (Laws, Rimer and Beatson, LJJ). The basis of the decision was that the decant agreement was clearly worded on the assumption that F was a secure tenant, and not a tolerated trespasser. The Court therefore declared

that she was and remained a secure tenant of 25C (see [47]). It rejected a subsidiary argument of F that she became a secure tenant of 25C by virtue of HRA 2008, s 299, on the ground that she could not satisfy the condition that 25C was her 'only or principal home': she clearly could not, as this would be inconsistent with the finding that she had a secure tenancy of No 1.

(Case noted at: [2013] 32 E.G. 56 (C.S.): H.P.L.R. 2013, 87(Jul), 3–4; and H.L.M. 2013, Oct, 1–5)

Private prosecution for breach of LTA 1985 – whether company secretary liable for breach by limited company landlord

Riniker v Mattey [2013] EWHC 1851 (Admin) is an appeal by way of case stated from a private prosecution by a leaseholder, who had served a notice on her landlord – a limited company – at its registered office, requiring various details and copy documents relating to the buildings insurance, the notice being served pursuant to LTA 1985, Sch, para 3(1)(b). When it failed to comply she laid an information leading to her private prosecution of the company secretary. The District Judge (Magistrates' Court) dismissed the case, and, on an appeal by way of case stated by the leaseholder/prosecutor, the Divisional Court (Laws LJ, and Irwin J) held that he was correct to do so: the company bore the obligation to the leaseholder, and the company secretary was not rendered a landlord by dint of being served with the notice.

(Case noted at: J.H.L. 2013, 16(5), D104-D105)

Provision of audited accounts as a condition precedent for liability for service charges – whether Warrior Quay Management Co v Joachim (2006) applied – whether applied to demands for insurance premiums

Wrigley v Landchance Property Management Ltd [2013] UKUT 0376 (LC) is significant chiefly in that it applies and slightly qualifies the decision of the Lands Tribunal in *Warrior Quay Management Co v Joachim* (LRX/42/2006), which concluded that whilst a condition that a service charge should become payable upon the provision of audited accounts might operate as a condition precedent for payment of a final payment or 'balancing charge', a landlord might be able to avoid the effect of the condition if it were able to collect the service charge by relying on the provisions for payments in advance on account. W, the appellant leaseholder here, alleged that the LVT had incorrectly construed the lease, and applied the case inappropriately. Sitting in the Upper Tribunal, HHJ Huskinson allowed the appeal in part, holding that the main part of the service charge would be recoverable once certain statutory formalities had been complied with; this did not apply, however, to the element of the service charge that covered the insurance premiums. These had not been included within L's estimate of future expenditure, and so could be recovered only once they had been incurred; and at that latter stage they were recoverable only if the condition precedent as to auditing had been complied with.

HHJ Huskinson also determined that, as the lease clearly reserved the service charge as rent, the limitation applicable to claiming arrears was six years rather than 12 years.

Right To Manage – whether a tribunal was confined to considering landlord's objections which had been included in its counter-notice

Fairhold (*Yorkshire*) *Ltd v Trinity Wharf* (*SE16*) *RTM Co Ltd* [2013] UKUT 0502 (LC) involved a dispute over the exercise of the Right To Manage (RTM). The RTM Company had served a notice on the landlord, which had sought further information from the RTM Company. This had not been supplied by the time for service of the landlord's counter-notice, so the landlord served its counter-notice. When the RTM Company then applied to the LVT, the LVT determined that the landlord was confined to the objections included in its counter-notice and that the LVT could not therefore entertain the landlord's other objections. The landlord appealed, and Sir Keith Lindblom (President) allowed the appeal. There was nothing in CLRA 2002, s 84 which so restricted the landlord. The LVT's statutory remit was as set out in s 84(3): to determine whether the RTM Company was on the relevant date entitled to acquire the RTM. Here the landlord's relevant contention was that a Notice to Participate had not been validly served on the relevant tenants, as no copy of the Notice had been produced. Section 78(7) excused 'any inaccuracy' in the particulars, but not the omission of the Notice in its entirety. The appeal was therefore allowed and the RTM Company's application was remitted for the LVT to consider it.

It may be noted that the decision resolves conflicting decisions of LVTs on whether a tribunal could consider landlords' objections which had not been included in a counter-notice.

Right to Manage Company – whether letters 'RTM' had to be included in its registered name

Fairhold Mercury Ltd v HQ (*Block 1*) *Action Management Co* Ltd [2013] UKUT 0487 (LC) raises a very short but potentially important point on the Right To Manage provisions of the CLRA 2002, namely whether a company can be an RTM Company if it does not include the initials 'RTM' in its registered name. The Northern LVT had decided that this was not a fatal omission and granted its application for the RTM, but the freeholder appealed.

The potential conflict in the legislation arose because CLRA 2002, s 84 defines an RTM Company as 'a private company limited by guarantee' the articles of association of which include as an object 'the acquisition and exercise of the right to manage the premises', whilst the RTM Companies (Model Articles) (England) Regulations 2009 stipulate (Art 2) that "The name of the company is [name] RTM Company Ltd" thereby implying that the company name has to be in that format.

Mr Martin Rodger QC (Deputy President) held that the appellant was an RTM Company, notwithstanding the omission of the letters from its registered name. The statute was clear in its definition of an RTM company, and it was not permissible to refer to regulations made under it to help to interpret the parent act. Further, ss 74(4) and (5) and Regulation 2(1) made it clear that, if the adopted articles of an RTM company are inconsistent with the prescribed articles, they are *pro tanto* of no effect. If the discrepancy in the name were to be seen as an inconsistency, and the letters 'RTM' were essential, Regulation 2(2) would ensure that the Articles should be read as if the letters were there.

Service charge dispute – whether underlessees had to contribute to expenses incurred in relation to land outside their estate

Paddington Basin Developments Ltd and others v Grits and others [2013] UKUT 338 (LC) is a decision on the construction of the ultimate underleases which has as its background the same complicated factual scenario as the widely-reported decision of Lewison J in *Paddington Basin Developments Ltd v West End Quay Management Ltd* [2010] EWHC 833 (Ch), in which he held that an 'Estate Management Deed' (EMD) was capable of being a 'qualifying long term agreement' for the purposes of s.20ZA LTA 1985. That was, however, only the determination of a preliminary issue, and it would appear that further proceedings on that action were stayed pending the determination of the present case.

Mr Grits ('G') was the underlessee of one of the individual flats. The service charge provisions in his underlease required payment of a block service charge to the appropriate block management company, and an estate service charge to West End Quay Management Ltd. Some of the services provided by WEQM, however, were provided across the Paddington Basin Development – a wider area than the estate – by Paddington Basin Management Ltd. The EMD required WEQM to contribute a proportion of these costs. The point at issue was whether these costs could include the costs that PBM incurred in maintaining an area of land referred to as 'the retained land', an area which lay outside the West End Quay estate.

Sitting in the Upper Tribunal, HHJ Walden-Smith upheld the decision of the LVT and construed the underlease as not requiring G to contribute to such of PBM's expenditure as related to the retained land, rather than to the West End Quay estate itself. Although large sums of money were at stake for the parties involved, the case is essentially one on the construction of specific documents, and it does not seem possible to extract from the decision any point which is likely to be of wider relevance. The judge's starting point in construing the documents was, as one might expect, the judgment of Lord Hoffmann in *Investment Compensation Scheme Limited v West Bromwich Building Society* [1998] 1 WLR 896.

It seems unlikely that this decision will be the end of the Paddington Basin saga. Although 'divided' service charges are unavoidable with complex

developments, it does seem rather asking for trouble to set up a development scheme which requires as many as three tiers of management.

Time limit imposed by LTA 1985, s 20B – meaning of when 'costs incurred'

Wenghold Ltd v Egleton [2013] UKUT 0420 (LC) can be briefly noted. An appeal by L in a service charge dispute involving the cost of lighting the common parts was allowed as the decision of the Southern LVT was inconsistent with the subsequent decision of the Upper Tribunal in *OM Property Management Ltd v Burr* [2012] UKUT 2 (LC), which was recently upheld by the Court of Appeal in [2013] EWCA Civ 479.

Unreasonable failure to engage in ADR – Court of Appeal guidance on effect on orders for costs

The subject matter of *PGF II SA v OMFS Company 1 Ltd* [2013] EWCA Civ 1288 is not in any way related to the usual areas of practice covered in the principal work, but it is noted because of the broad relevance of the decision. In *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576 the Court of Appeal (Maurice Kay, Beatson and Briggs, LJJ) had decided that an unreasonable refusal to engage in ADR could result in the refusing party being penalised in costs. The instant case takes that principle a stage further and confirms that if one party simply remains silent and refuses to respond to an invitation to engage in ADR, that too may result in a penalty as to costs. The implication must be that, if a party considers that it has reasonable grounds upon which to decline ADR, it must state what those reasons are.

The CA was, in fact, dealing with an appeal and a cross-appeal here. The defendant – which had remained silent in response to the invitation to ADR – appealed against its being deprived of its costs during the relevant period, alleging that the judge had adopted a mechanistic approach in refusing its costs. The claimant cross-appealed, alleging that not only should the defendant be deprived of its costs incurred during the relevant period, but that the judge should have ordered the defendant to pay the claimant's costs as well, in respect of the relevant period. The Court of Appeal confirmed that the judge had a broad discretion to depart from the otherwise automatic consequences of Part 36 (see [55]), and that even though 'a little more vigorous' than Briggs LJ would have preferred (see [56]), the judge's order as to costs lay within that discretion. The cross-appeal, in arguing that the otherwise successful party might not only be deprived of its own costs, but also ordered to pay all or part of the unsuccessful party's costs, went further than *Halsey* envisaged ([52]). In principle, Briggs LJ agreed, the court should have that power: but that draconian sanction should be 'reserved for only the most serious and flagrant failures to deal with ADR, for example where the court had taken upon itself to encourage the parties to do so, and its encouragement had been ignored' ([52]).

Whether expert evidence properly excluded, which challenged basic assumptions made in Sportelli

R. (*on the application of Wellcome Trust Ltd*) *v Upper Tribunal* (*Administrative Appeals Chamber*) [2013] EWHC 2803 (Admin) was an attempt by W as landlords to secure a second appeal against a decision of the LVT concerning the deferment rate applicable to the valuation of a freehold. Permission to appeal had been refused by the UT, hence W had to apply for judicial review of that decision (an unsuccessful attempt to appeal to the Court of Appeal had confirmed that this was how W had to proceed). Ouseley J, sitting in the Administrative Court, held that the LVT had correctly excluded expert evidence as inadmissible – having duly considered it – which would have had the effect of challenging the basic assumptions made in *Sportelli*. *Earl Cadogan v Erkman* [2009] 1 EGLR 87 had confirmed that such evidence should be adduced only in exceptional circumstances. If specialist tribunals such as the LVT and Upper Chamber were to fulfil their role it was essential that cases such as *Sportelli*, which set out general principles, should generally be followed, allowing tribunals to make use of their specialist knowledge in applying those principles.

PERMISSION TO APPEAL

On 26 July 2013 the Supreme Court granted permission to appeal in *AIB Group* (*UK*) *plc v Mark Redler and Co Solicitors* [2013] EWCA Civ 45 (noted in Bulletin No 134).

The decision of the Upper Tribunal in *Voyvoda v Grosvenor West End Properties, 32 Grosvenor Sq Ltd* [2013] UKUT 0334 (LC) contains a reference to a pending application for permission to appeal the Chancellor's controversial decision in *Phillips v Francis* [2012] EWHC 3650 (Ch) (as to which see Bulletin No 133).

NOTES ON CASES

Arnold v Britton (2013] EWCA Civ 902: E.G. 2013, 1339, 99; and L. & T. Review 2013, 17(5), D45 (noted in Bulletin No 135)

Avon Freeholds Ltd v Regent Court RTM Co Ltd [2013] UKUT 213 (LC): L. & T. Review 2013, 17(5), D43 (noted in Bulletin No 135)

BDW Trading Ltd v South Anglia Housing Ltd [2013] EWHC 2169 (Ch): E.G. 2013, 1337, 99 (noted in Bulletin No 135)

Boyd v Incommunities Ltd [2013] EWCA Civ 756: J.H.L. 2013, 16(5), D93-D94 (noted in Bulletin No 135)

Clarke Investments Ltd v Pacific Technologies Ltd [2013] EWCA Civ 750, [2013] 2 P. & C.R. 20: E.G. 2013, 1328, 77; and E.G. 2013, 1340, 108 (noted in Bulletin No 135)

Cravecrest Ltd v Sixth Duke of Westminster [2013] EWCA Civ 731: E.G. 2013, 1330, 77; and J.H.L. 2013, 16(5), D106 (noted in Bulletin No 135)

NOTES ON CASES

Cussens v Realreed Ltd [2013] EWHC 1229: (QB) J.H.L. 2013, 16(5), D103-D104 (noted in Bulletin No 135)

Daejan Investments Ltd v Benson [2013] UKSC 14; [2013] 1 W.L.R. 854 (SC): H.P.L.R. 2013, 87(Jul), 7–9; (noted in Bulletin No 134)

Daejan Investments Ltd v Benson [2013] UKSC 54: L. & T. Review 2013, 17(5), D44 (noted in Bulletin No 135)

DV3 RS Limited Partnership v Revenue and Customs Commissioners [2013] EWCA Civ 907: E.G. 2013, 1335, 49

Gala Unity Ltd v Ariadne Road RTM Ltd [2012] EWCA Civ 1372: [2013] Conv. 447–454 (noted in Bulletin No 132)

Gavin and another v Community Housing Association Ltd [2013] EWCA Civ 580: L. & T. Review 2013, 17(5), 190–192 (noted in Bulletin No 135)

Golden Ocean Group Ltd v Salgaocar Mining Industries Pvt Ltd [2012] EWCA Civ 265: E.G. 2013, 1332, 55

Hammersmatch Properties (*Welwyn*) *Ltd v Saint-Gobain Ceramics & Plastics Ltd* [2013] EWHC 1161 (TCC), [2013] 2 P. & C.R. 18: L. & T. Review 2013, 17(5), 174–177; and L. & T. Review 2013, 17(5), D38 (noted in Bulletin No 135)

Henley v Cohen [2013] EWCA Civ 480: L. & T. Review 2013, 17(5), 185–187 (noted in Bulletin No 135)

Holt v Reading BC [2013] EWCA Civ 641: J.H.L. 2013, 16(5), D109-D110 (noted in Bulletin No 135)

Jastrzembski v Westminster CC [2013] UKUT 0284 (LC): L. & T. Review 2013, 17(5), D44-D45 (noted in Bulletin No 135)

Johnson v Old [2013] EWCA Civ 415, [2013] H.L.R. 26: H.P.L.R. 2013, 87(Jul), 2 (noted in Bulletin No 135)

Ker v Optima Community Association [2013] EWCA Civ 579: J.H.L. 2013, 16(5), D100-D101; [2013] Conv 422–431 (noted in Bulletin No 135)

Malik v Fassenfelt [2013] EWCA Civ 798: S.J. 2013, 157(31), 9; E.G. 2013, 1332, 48–50; J.H.L. 2013, 16(5), D102-D103; and L. & T. Review 2013, 17(5), 170–173 (noted in Bulletin No 135)

Moorings (*Bournemouth*) *Ltd v McNeill* [2013] UKUT 243 (LC): J.H.L. 2013, 16(5), D105-D106 J.H.L. 2013, 16(5), D105-D106 (noted in Bulletin No 135)

Nationwide Building Society v Davisons Solicitors [2012] EWCA Civ 1626: P.I.P. 2013, 44 (Sep), 7–10 (noted in Bulletin No 133)

Paratus AMC Ltd v Persons Unknown [2013] EWCA Civ 827: J.H.L. 2013, 16(5), D107-D108 (noted in Bulletin No 135)

Parshall v Hackney [2013] EWCA Civ 240: N.L.J. 2013, 163(7581), 17–18 (noted in Bulletin No 134)

Peel Land and Property (*Ports No.3*) *Ltd v TS Sheerness Steel Ltd* [2013] EWHC 1658 (Ch): L.S.G. 2013, 111(31), 24; E.G. 2013, 1328, 77; E.G. 2013, 1336, 109; and [2013] Comm Leases 1962–1966, 1968 (noted in Bulletin No 135)

Project Blue Ltd v Revenue and Customs Commissioners [2013] UKFTT 378 (TC): E.G. 2013, 1335, 45

R. (*on the application of Spaul*) *v Upper Tribunal* [2013] EWHC 2016 (Admin): J.H.L. 2013, 16(5), D104 J.H.L. 2013, 16(5), D105-D106

Siemens Hearing Instruments Ltd v Friends Life Ltd [2013] Lexis Citation 52l, [2013] All ER (D) 188 (Jul): [2013] Comm Leases 1970–1973; E.G. 2013, 1338, 105; and L. & T. Review 2013, 17(5), D37-D38 (noted in Bulletin No 135)

Superstrike Ltd v Rodrigues [2013] EWCA Civ 669: J.H.L. 2013, 16(5), D110-D111; L. & T. Review 2013, 17(5), 187–189; P.I.P. 2013, 44 (Sep), 27–29; and H.L.M. 2013, Oct, 5–9 (noted in Bulletin No 135)

Twinmar Holdings Ltd v Klarius UK Ltd [2013] EWHC 944 (TCC); [2013] 2 P. & C.R. 6: E.G. 2013, 1340, 107 (noted in Bulletin No 135)

ARTICLES OF INTEREST

1925 and all that (less common provisions of LPA 1925) E.G. 2013, 1330, 72–73

A costly business (application of CPR 36.14 in 'near miss' cases): E.G. 2013, 1337, 93

A lighter shade of green (Growth and Infrastructure Act 2013, and restrictions on registration of Town and Village Greens) E.G. 2013, 1328, 77

A new paradigm for overreaching – some inspiration from Down Under [2013] Conv. 377–394

Ageing, difference and discrimination: property transactions in the crucible of human rights norms (considers equity release schemes from human rights perspective) K.L.J. 2013, 24(2), 202–236

Aiming high (profitability and conveyancing) P.I.P. 2013, 44 (Sep), 22–23

And here is the news: some of it good (establishment of Property Chamber within First-tier Tribunal; and the *Legal Education and Training Review 2013*) [2013] Conv 255–258

Avoiding a messy break up (break clauses in commercial leases) E.G. 2013, 1333, 44–46

Challenging a secure tenancy (in fact relates to opposing renewal under Pt II LTA 1954) E.G. 2013, 1332, 52

Commercial Property: Building Sights (in house lawyers and commercial property external advisers) (2013) Law Soc Gazette 5 Aug, 16

"Constructing" a notice to quit [2013] Conv. 403–415

ARTICLES OF INTEREST

CRAR creeps closer (Commercial Rent Recovery scheme due to be implemented April 2014) (2013) 5 Corporate Rescue and Recovery Journal 135

Crowning Glory? (compulsory purchase and Crown land) NLJ 2013, 163(7579), 13–14

Deeds speak louder than words. Attesting time for deeds? [2013] Conv 298–310

Don't get caught out (avoiding land registration fraud) E.G. 2013, 1333, 51

Don't get into deep water with flood-risk valuation E.G. 2013, 1330, 71

Empty promises (meaning of 'vacant possession' when a break clause is exercised) E.G. 2013, 1334, 44, 46

Exercising a right to forfeit (forfeiture of long residential leases, esp. ss 166, 168 CLRA 2002) E.G. 2013, 1334, 48–49

Exercising break options: a practical guide for tenants L. & T. Review 2013, 17(5), 193–198

Going Green Together (Better Buildings Partnership's Green Lease Toolkit, 2nd edn) E.G. 2013, 1335, 42–44

Held over a barrel? (LTA 1954, Part II) E.G. 2013, 1340, 103

Hot property: avoiding the mortgage fraud trap S.J. 2013, 157(38), 18–19,21

House of Cards? (residential service charge regulation) N.L.J. 2013, 163(7578), 15–16

Human rights and mortgage repossession: beyond property law using Article 8 Legal Studies 2013, 33(3), 431–454

Human rights and the rule in Hammersmith and Fulham LBC v Monk (reviews *Sims v Dacorum BC*) [2013] Conv 326–334

Improving Protection for Landlords (consultation on proposed revised RICS Service Charge Residential Management Code) E.G. 2013, 1335, 48

In Practice: Legal Update: Commercial Property LS Gaz, 2 Sep 2013, 24.

Is your insurance watertight? (pitfalls in wording of property insurance policies) E.G. 2013, 1336, 108

Ker v Optima Community Association: is "rent to homebuy" always what it is held out to be? J.H.L. 2013, 16(5), 107–109

Landlords beware: no guarantees after a material variation S.J. 2013, 157(36) Supp (Property Focus), xiii-xiv

Migrating liability for visa checks to landlords (discusses Government proposals) E.G. 2013, 1334, 47

Of trees, adverse possession and lease interpretation S.J. 2013, 157(36) Supp (Property Focus), ix-xi

One from the vaults (ownership of basements projecting under highways) E.G. 2013, 1334, 51

Private client update (focuses on conditions for donationes mortis causa of land) S.J. 2013, 157(35), 30–31

Property tax changes 2013 [2013] Conv 259–264

Proprietary estoppel and inheritance: "enough is enough"? [2013] Conv 280–297

Proving property boundaries [2013] Conv. 395–402

Putting on the Breaks (*Marks & Spencer Plc v BNP Paribas* [2013] EWHC 1279 and other recent cases on payment of rent and break clauses) NLJ 2013, 163(7571), 15–17

Recent developments in housing law Legal Action 2013, Sep, 26–31

Regulating efficiency (pending regulations to require landlords to make commercial buildings more energy efficient): E.G. 2013, 1337, 94–95

Rent reviews (discusses update to 8th Edn of RICS guidance on acting as expert in rent review cases) [2013] Comm Leases 1979–1980

Repeat problems (problems with AGAs and inter-group assignments – proposals of Property Litigation Association for reform) E.G. 2013, 1338, 96–98

Residential property update S.J. 2013, 157(38), 30–31

Resisting occupation (dangers of allowing buyers into occupation before completion) S.J. 2013, 157(31), 21

Restricted movement (cancellation of restrictions in Form A) P.I.P. 2013, 44(Sep), 24–25

Richall Holdings v Fitwilliam: Malory v Cheshire Homes and the LRA 2002 M.L.R. 2013, 76(5), 924–934

Safe as houses (use of ADR in landlord and tenant disputes) N.L.J. 2013, 163 (7573), 21

Second phase of Help to Buy "good news for solicitors" S.J., October 7, 2013 (Online edition)

Seeing Clearly: Greater Transparency in Rights to Light S.J. 2013, 157(24) Supp (Property Focus), 15–17

Shining a light on losing a right (rights of light) E.G. 2013, 1332, 51

Shining a light on risk (insurance against rights of light claims) E.G. 2013, 1324, 97

Singular plurality (interpretation of singular terms as if plural under LPA 1925, s.61) [2013] Conv. 370–376

Social housing fraud: does the criminal law hold the key? J.H.L. 2013, 16(5), 101–106

Social landlords and the courts bear the brunt for welfare reform J.H.L. 2013, 16(5), 95–100

Surviving succession: the relationship between statute and the common law (reviews *Solihull MBC v Hickin*) [2013] Conv 314–326

Termination in administration (forfeiture of lease of tenant in administration) E.G. 2013, 1336, 105

The appearance virus (requirement for long use to appear to be asserted 'as of right') [2013] Conv. 416–421

The buying and selling game S.J. 2013, 157(36) Supp (Property Focus), v-vii

The delayed completion dilemma (options when a buyer fails to complete on time) E.G. 2013, 1340, 104–105

The law on treasure from a land lawyer's perspective [2013] Conv 265–279

The outlook is mixed ('Flood Re' and government proposals for flood insurance) E.G. 2013, 1330, 68–70

The register's guarantee of title (reviews *Fitzwilliam v Richall Holdings Services Ltd*) [2013] Conv 344–351

The right to manage multi-block flats L. & T. Review 2013, 17(5), 181–184

The statutes that add value (lesser known statutes applicable to contracts relating to property) E.G. 2013, 1341, 111

The ties that bind (positive and restrictive covenants, and overage) P.I.P. 2013, 44 (Sep), 14–15

Think of a number (calculation of SDLT in certain circumstances) E.G. 2013, 1338, 100–101

Time provisions at common law and equity [2013] Conv. 355–369

Title solved: the legal indemnities catalyst for housing market recovery S.J. 2013, 157(38), 22

Treat Landowners Equally (call for squatting in commercial as well as residential premises to be made a criminal offence) (2013) LS Gaz, 16 Sep, 10

Tribunals: access all areas (interview with Siobhan McGrath, President of Property Chamber within FTT) E.G. 2013, 1336, 102–104

What is a Flat? S.J. 2013, 157(24) Supp (Property Focus), 11, 13

When the hammer falls S.J. 2013, 157(35), 28

Where the law went wrong? – Milmo v Carreras L. & T. Review 2013, 17(5), 165–166, and 167–169

NEWS AND CONSULTATIONS

A letter to the Residential Landlords Association from Mr Mark Prisk MP, Minister for Housing at the **Department of Communities and Local Government**, comments that the outcome of the decision in *Superstrike Ltd v Rodrigues* [2013] EWCA Civ 669 (see Bulletin No 135) was not that intended by the legislation, and the Government will be considering whether amending

legislation is required:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/230293/Residential_Landlords_Association_letter.pdf

The **Department for Communities and Local Government** on 16 October 2013 published for consultation a **Draft Tenants' Charter: Guidance Note for Discussion**:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251148/Draft_Tenants__Charter.pdf

Guidance for lettings professionals: compliance with relevant consumer protection law: a consultation. The Office of Fair Trading on 16 October 2013 published a consultation seeking views on draft guidance to assist letting agents and landlords working in the private rented sector (comments by 20 December, 2013):
http://www.oft.gov.uk/shared_oft/consultations/oft1509.pdf

OFFICIAL PUBLICATIONS

OFGEM published on 12 September a Guidance Note ***Tenants' Energy Rights Explained***:
https://www.ofgem.gov.uk/ofgem-publications/83161/tenancyrightsfactsheetenglishweb.pdf

Selective licensing of private landlords – Commons Library Standard Note published 23 September 2013 (SN04634):
http://www.parliament.uk/briefing-papers/SN04634.pdf

Leased pub companies and pub closures – Commons Library Standard Note published 11 October 2013 (SN06740):
http://www.parliament.uk/briefing-papers/SN06740.pdf

The **Department for Communities and Local Government** on 16 October published the Government's response to the corresponding **Select Committee's Report on the Private Rented Sector**:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251147/CM_8730.pdf

PRACTICE GUIDES ETC

H.M. Land Registry has published revised versions of many of the **Practice Guides**, which are available on-line on the Land Registry website. In most cases the amendments are very minor. The guides which have been revised are not therefore listed, though if practitioners have downloaded copies they should ensure that they are consulting the most up-to-date version. It is perhaps rather more important to note **Practice Guide 66: Overriding interests losing automatic protection in 2013** which advises on how to deal with them. Certain overriding interests lost their overriding status on 13 October 2013, the tenth anniversary of the coming into force of the Land Registration Act 2012.

PRESS RELEASES

The Department for Environment, Food and Rural Affairs published on its website on 27 June 2013 '**Securing the Future of Flood Insurance – an introductory guide**' setting out the Government's current thinking in this area.

The Legal Services Board has approved the **Council for Licensed Conveyancers**' new code which does not ban referral fees, but requires greater disclosure: http://www.clc-uk.org/news49.php

The **Land Registry** on 6 August 2013 published a Press Release '**Property fraud line proves successful in its first six months**': http://www.landregistry.gov.uk/media/all-releases/press-releases/2013/property-fraud-line-proves-successful-in-its-first-six-months

The **Land Registry** announced on 6 August 2013 that it was opening up its **electronic Document Registration Service** (**e-DRS**) to all its professional customers who send in applications to change the register: http://www.landregistry.gov.uk/announcements/2013/updates-to-business-e-services-terms-and-conditions

Department for Communities and Local Government: ***Putting communities in control: giving social tenants more power*** (12 September 2013): https://www.gov.uk/government/news/putting-communities-in-control-giving-social-tenants-more-power

The **Law Society** on 10 October 2013 launched a new form **LPE1** for **leasehold property**. It is to be used to collect information held about a property by landlords, management companies, and managing agents, about matters such as ground rent, service charges and insurance: http://www.lawsociety.org.uk/advice/articles/law-society-launches-new-lpe1-form-for-leasehold-property/

The **Law Society** on 10 October 2013 issued information for solicitors on the Government's Help to Buy Scheme: http://www.lawsociety.org.uk/advice/articles/help-to-buy-scheme-information-for-solicitors/

The **Law Society** on 17 October 2013 issued a Press Release: **Chancel repair liability still an issue for conveyancers**: http://www.lawsociety.org.uk/advice/articles/chancel-repair-liability-still-an-issue-for-conveyancers/

The **Law Society** on 17 October 2013 announced a new format for form **CON29DW** (drainage and water search): http://www.lawsociety.org.uk/advice/articles/new-format-for-con29dw/

REPORTS

The **Office of Fair Trading** published its **Report** on the '**quick house sales**' market on 7 August 2013: http://www.oft.gov.uk/shared_oft/market-studies/oft1499.pdf. At the same time it also announced that it is commencing formal investigations into three firms for alleged unfair practices: http://www.oft.gov.uk/news-and-updates/press/2013/58-13#.UgHmsqzchjk

The **Leasehold Advisory Service** (**LEASE**) has published its **Annual Report and Accounts for 2012–13**:
http://www.lease-advice.org/documents/AR-2013.pdf

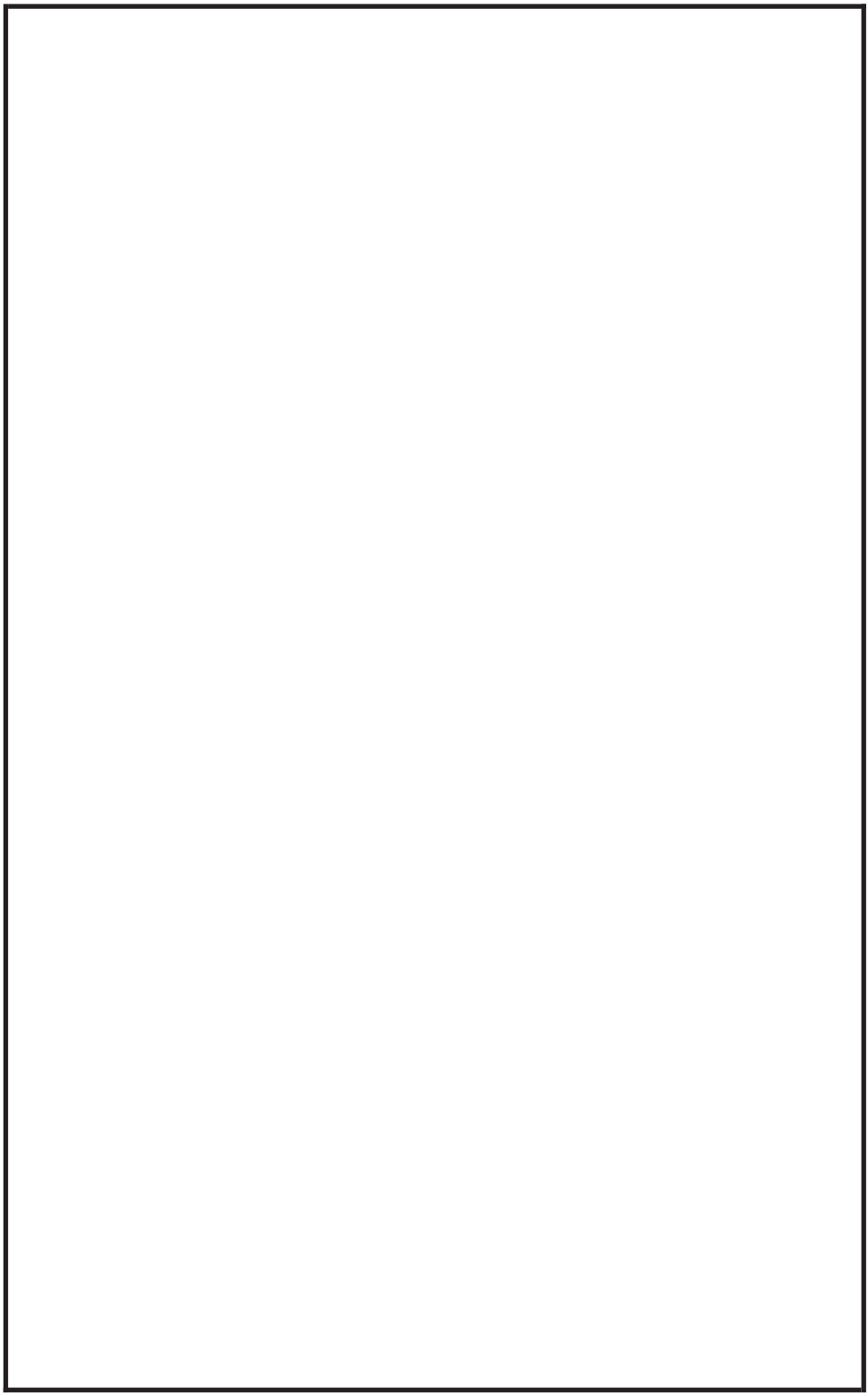
STATUTES, ETC

A **House of Commons Library Standard Note** published on 13 August 2013 provides background briefing on the **Prevention of Social Housing Fraud Act 2013**: http://www.parliament.uk/briefing-papers/SN06378/prevention-of-social-housing-fraud-act-2013. The Act received the Royal Assent on 31 January 2013 and comes into force on a date or dates to be appointed. The Press Release suggests that Regulations and Commencement Orders are expected 'later this summer'.

Section 15A is added to the **Housing Act 1988** with effect from 15 October 2013, consequent upon the coming in to force (in England only) of the **Prevention of Social Housing Fraud Act 2013, s 6** (by **SI 2013/2622**). It provides for assured tenancy status to be lost if an assured tenant parts with possession or sub-lets without consent.

STATUTORY INSTRUMENTS

Housing and Regeneration Act 2008 (**Consequential Amendments to the Mobile Homes Act 1983**) (**Wales**) **Order 2013, SI 2013/1722** (**W.166**) and **The Mobile Homes Act 1983** (**Amendment of Schedule 1 and Consequential Amendments**) (**Wales**) **Order 2013, SI 2013/1723** (**W. 167**) both came into force on 10 July 2013. The former Order amends the Mobile Homes Act 1983 by including references to Wales, and the latter Order amends Part 1 of Schedule 1 so that the sets of implied terms for local authority Gypsy and Traveller sites inserted by the Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011 in relation to England, are applied to the equivalent sites in Wales, though some of the terms implied in Wales differ from those implied in England. (Section 318 of the Housing and Regeneration Act 2008 was itself brought into force in Wales with effect from 10 July 2013 by The Housing and Regeneration Act 2008 (Commencement No. 3 and Transitional, Transitory and Saving Provisions) (Wales) Order 2013, SI 2013/1469 (W.140)).



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Published by Lexis Nexis Butterworths.

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ISBN 978-1-4057-7760-5
9 781405 777605