Hill & Redman's Law of Landlord and Tenant

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

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DIVISION A: GENERAL LAW

Games Station Ltd insolvency – treatment of advance payments of rent when tenant goes into liquidation

Pillar Denton Ltd v Jervis (Re Games Station Ltd) [2014] EWCA Civ 180 is the long awaited Court of Appeal decision reviewing the two controversial first instance decisions on the treatment of advance payments of rent when a company goes into liquidation: *Goldacre (Offices) Ltd v Nortel Networks UK Ltd* [2009] EWHC 3389 (Ch), [2011] Ch 455, and *Leisure (Norwich) II Ltd v Luminar Lava Ignite Ltd* [2012] EWHC 951, [2013] 3 WLR 1132. In the former HHJ Purle QC had decided that if a quarter's rent, payable in advance, fell due during a period in which the administrators were retaining the property for the purposes of the administration, the whole of the quarter's rent was payable as an administration expense even if the administrators were to give up occupation later in the same quarter. In the latter HHJ Pelling QC had decided that where a quarter's rent payable in advance fell due before entry into administration none of it was payable as an administration expense even if the administrators retained possession for the purposes of administration: the rent was simply provable as a debt in the administration. The result of these decisions was generally thought to be unsatisfactory, leading to its becoming common for companies to enter administration on the day immediately following a quarter day, thus being able to retain possession of the property whilst avoiding liability for the rent (see [5]). In the instant case – commonly known as the Games Station Ltd litigation – the judge at first instance, Mr Nicholas Lavender QC, simply followed both decisions and granted permission to appeal. The landlords sought to make

administrators liable for rent if they remained in occupation; there was, however, a contingent cross-appeal, which would have the result that administrators could require an apportionment if they went out of occupation during the quarter. An underlying problem is that at common law rent (whether payable in advance or arrear) is not apportionable by time; and that the Apportionment Act 1870 applies to rent payable in arrears, but not in advance. As Lewison LJ points out, payment of rent in arrears was the norm in the 1800s, but generally rent is now payable in advance.

Lewison LJ gives the only judgment, with which Patten and Sharp LJ agree. His judgment contains an extensive historical review of the evolution of the law on apportionment of rent, and an analysis of the Insolvency Act and Regulations. The basis of his decision is that he holds that whether rent is payable as an administration expense depends on a principle sometimes known as 'the *Lundy Granite* principle' but which he prefers to term the 'salvage principle'. This principle depends not on the common law, or the Apportionment Act, but on equity ([9]); and it applies generally, and not as a matter of discretion ([77]). The fact that rent payable in advance is not apportionable under the 1870 Act does not mean that the salvage principle does not apply ([80]).

After lengthy discussion, the judgment of the Court was that *Leisure (Norwich) II Ltd v Luminar Lava Ignite Ltd* was overruled, and the appeal was allowed, so that if administrators remain in occupation, they should become liable for the rent, even if it fell due before the administration. As a corollary to that, the contingent cross-appeal was also allowed (*overruling Goldacre (Offices) Ltd v Nortel Networks UK Ltd*), so that if administrators should subsequently go out of occupation, they should cease to be liable for the rent.

It may be noted that the judgment includes useful analysis not only on the evolution of the law of apportionment by reference to time, but also on apportionment in respect of estate (ie assignments of part) (see [23]) and on distress ([24]–[26]) and forfeiture ([27]).

Variation of lease – automatic discharge of surety – whether the variation, a 'Licence for Alterations', amounted to forbearance

Topland Portfolio No 1 Ltd v Smiths News Trading Ltd [2014] EWCA Civ 18 is the landlord TP's appeal against the decision of Ms Alison Foster QC (sitting as a Deputy HC Judge) (neutral citation [2013] EWHC 1445 (Ch)), noted *in Bulletin No 100*. TP disputed the application here of the rule established in *Holme v Brunskill* (1877–78) 2 QBD 495 (and applied at first instance) to the effect that a variation of the lease without the consent of a surety will automatically release the surety from liability. In the instant case a lease had been granted in 1981 and, following the dissolution of the tenant in 2012, the landlord TP had attempted to recover the arrears from SNT, and to force them to take a new lease for the remainder of the term, in accordance with an express provision in the lease; or alternatively to pay rent for six

months, or until the premises were relet, whichever might be the less. SNT as surety resisted on the basis of a variation, namely a 'Licence for Alterations' in 1987, which permitted the then tenant to execute works of alteration and extension to the premises. SNT argued that the rule was a strict one, and applied unless it was self-evident that the variation was insubstantial or could not be prejudicial to the surety. As the extension formed part of the demised premises, the repairing, etc., covenants would apply to them, thus enlarging the surety's obligations. On this point the Court of Appeal (Arnold J, with whom Hallett and Sullivan, LJJ concurred) agreed with the deputy judge that the rule in *Holme v Brunskill* applied, [23]; the deputy judge had further held (at [45] of her judgment) that the burden of proof lay on the lessor to establish that the alteration was insubstantial, or could not be prejudicial to the surety. An argument that this was not correct was not pursued on appeal, though the CA clearly thought that it was correct (see [23]).

The landlord's second argument was that, even if the rule in *Holme v Brunskill* did apply, the Licence was either a forbearance or included the allowing of time, and so was within the proviso in the lease which provided that the surety should be liable notwithstanding a forbearance or the allowing of time on the part of the landlord. The CA agreed with the deputy judge that the Licence did not amount to a forbearance, [38], and further held that it did not amount to a 'giving of time' on the part of the landlord, [41], a point not raised at first instance. The landlord's appeal was therefore dismissed.

(case noted at: E.G. 2014, 1408, 117)

Closure of steelworks – whether tenant entitled to remove plant as 'tenant's fixtures' before expiration or sooner determination of the term

Peel Land and Property (Ports No 3) v TS Sheerness Ltd [2014] EWCA Civ 100 is the appeal against the decision of Morgan J at first instance (neutral citation [2013] EWHC 1658 (Ch)) which was discussed in *Bulletin No 100*. To repeat the factual background: the case involved a steelworks demised for a term of 125 years from 1968, and the tenant, T, had sought to remove various items (131 were enumerated in the relevant Schedule) of heavy plant ('the plant') which it had installed. L disputed that T was entitled to remove them. L claimed that T's covenant not only to erect buildings on the demised land but to equip them as a steelworks meant that, as a matter of commercial reality, the plant had to belong to L. More specifically, there was, in addition, a covenant in the lease against making alterations, and L alleged that this effectively displaced the general rule of law that a tenant might remove fixtures if they were 'tenant's fixtures' (notwithstanding that they remained fixtures for all other legal purposes).

At the conclusion of the hearing at first instance, Morgan J declared that all but one of the 131 headings of plant in dispute were either chattels or tenant's fixtures, and that T was entitled to remove them. The appeal was solely on the issue of whether T could remove the tenant's fixtures. Although

the lease provided that T might remove them at the end or sooner determination of the term, L claimed that T's covenant to equip the steelworks militated against its being entitled to remove them as tenant's fixtures any earlier than so provided for. One of the tenant's fixtures was an electric arc furnace weighing 1195 tonnes, which gives some indication of the sort of items that were in dispute.

Morgan J had accepted that a lease might expressly exclude a tenant's right to remove tenant's fixtures, but held, relying on the construction put upon *Lambourn v McLellan* [1903] 2 Ch 268 by Woodfall (13.153), that, if the landlord wished so to restrict a tenant's right, plain language must be used: any ambiguity would be resolved in favour of the tenant. The Court of Appeal (Rimer, McFarlane and Vos LJJ) parted company from Morgan J at this point. Giving the leading judgment, Rimer LJ interpreted *Lambourn* as merely an application of the *eiusdem generis* rule, and not as imposing some especially high standard before a lease could be interpreted as disapplying a tenant's right to remove tenant's fixtures ([19]).

The Court of Appeal also differed from Morgan J in its interpretation of whether the lease did in fact exclude the tenant's right to remove fixtures. Morgan J had been particularly influenced by the fact that clauses 2(7) and 2(11) of the lease specifically expanded the reference to 'the said premises' to make it clear that fixtures were included, but clause 2(6) – which prohibited alterations, etc. – did not. Rimer LJ did not feel that one could put such weight on the distinction ([36]), as the result would be commercially unrealistic ([37]). Adding some remarks of his own in concurrence, Vos LJ observed that the fact that 'fixtures' were expressly referred to in other clauses could not override what was clearly the proper meaning of clause 2(6).

The appeal was therefore allowed, and the tenant was not permitted to remove the tenant's fixtures.

Closure of steelworks – whether heaps of slag amounted to a 'refuse dump or rubbish heap'

The saga of the Sheerness steelworks continues to be fertile ground for litigation. Having produced the first instance and appellate decisions noted above (and also a reported unsuccessful application for an interim injunction restraining removal of tenant's fixtures: neutral citation *[2013] EWHC 2689 (Ch)*, discussed *in Bulletin No 102*), we now also have *Peel Land and Property (Ports No 3) v TS Sheerness Ltd* [2014] EWHC 39 (Ch), which is a dispute as to whether T was in breach of the lease in allowing secondary slag to accumulate on the premises. Again, lest the issue may seem a trivial one, the slag in question consisted of three piles weighing approximately 30,000 tonnes.

The lease – which was granted in 1971 – contained a covenant, clause 2(16), 'not to form or permit to be formed any refuse dump or rubbish heap on the … premises'. At first sight this might seem clearly to include the heaps of secondary slag, but the clause went on to refer to 'all used tins cans boxes and containers whatsoever' and T argued that this restricted the clause to rubbish

of this kind; further, when the plant was established, it would have been accepted that T could accumulate by-products such as slag and deal with it as it wished. Primary slag could be sold to be used for various purposes, and until tighter environmental regulations came into force in 2008, the operators of the steelworks had allowed local farmers regularly to remove the secondary slag for use as foundation material on farm tracks. The case therefore raised some broader issues on the meaning of waste (a term now regularly used in leases, but not used in this particular lease in 1971), and whether the lease should be interpreted as it would have been understood when it was granted, or given a meaning more in line with contemporary understanding. The Deputy Judge, Richard Snowden QC, referred to these as the 'static' or 'mobile' meanings ([71]).

On both issues the Deputy Judge found in favour of L. Construing clause 2(16), he saw no reason to construe the reference to 'all used tins, [etc]' as limiting the clear meaning of the first part of the clause, and he thought that it was entirely appropriate to construe a lease for 125 years in a 'mobile' way by interpreting the references to 'refuse' and 'rubbish' as including what would now generally be referred to as 'waste'. The Deputy Judge therefore made a declaration that the heaps of secondary slag on the site fell within the scope of clause 2(16). It seems likely that a further stage in the litigation remains to be reported, as the question of the appropriate remedy to enforce the declaration was reserved for further hearing.

Judicial review – refusal of council to renew lease of solicitor who conducted litigation against the council

Trafford v Blackpool Borough Council [2014] EWHC 85 (Admin) is an application for judicial review by a solicitor who was aggrieved at the respondent Council's refusal to renew the lease of her office premises. Her tenancy was contracted out under the LTA 1954, but, on its expiry, the Council refused to renew it, and the reason given was the large number of personal injury claims – mainly highway tripping cases – which her practice had brought against the Council. Sitting as a Deputy Judge of the QBD, Administrative Court, HHJ Stephen Davies firstly determined that the Council's refusal to grant the applicant a new lease was not merely a private law matter but was justiciable in public law and thus amenable to judicial review. He then went on to quash the Council's decision, on the basis that it was taken with an improper or unauthorised purpose, and thus was tainted with illegality. Alternatively, it was unreasonable in the *Wednesbury* sense, and further, it was tainted with procedural unfairness. (Other grounds of challenge were rejected). The Council's decision was therefore quashed.

(case noted at: L.S.G. 2014, 111(4), 4)

Sub-leases containing cap on review provisions of ground rent to ensure that sub-leases did not fall within Rent Acts – whether cap should operate when Rent Acts could no longer affect property and rating list had ceased to exist

Furlonger v Lalatta [2014] EWHC 37 (Ch) raises some interesting issues, and demonstrates that the rent control regime of the Rent Acts continues to reverberate in current case law. The factual background is that the claimant F held a head lease for 61 years from the Cadogan Estate of a house in a prestigious area of central London. The headlease – which was granted in 1981 – contained provisions for a review every ten years of the ground rent, which stipulated that the ground rent should in essence be 0.4% of the capital value of the lease (assuming a peppercorn rent): those provisions contained a clause, commonly included at the time, providing that the reviewed ground rent should be capped so that it did not exceed two-thirds of the rateable value (RV) of the property. This was intended to ensure that an assignment of the property was not 'caught' by the provisions of the Rent Act 1977 (see ss 120, 127) making it a criminal offence to charge a premium on the grant or assignment of a tenancy which fell within their scope. Similar provisions were included in each of the sub-leases of the flats granted by the claimant to the defendants. The provisions were not, however, identical to the provisions in the headlease: the headlease specifically said that the cap should operate only so long as there were provisions in force limiting the premium which might be charged on the grant or assignment of a lease, whereas the subleases contained the cap but did not make it clear that it should cease to operate if there were no longer provisions in force limiting premiums. The cap had not had not been a relevant issue when the rents payable under the headlease and the subleases were reviewed in 1991 and 2001, but this had become an issue when the rents were reviewed in 2011. As the provisions of the Rent Acts limiting premiums were no longer in force, the claimant had little choice but to agree a rent with the Cadogan Estate which fully reflected the value of the leasehold interest in the property: some of the sub-lessees, however, argued that, on the wording of their sub-leases, the cap continued to apply notwithstanding the abolition of the prohibition of premiums. The result of this would be that the sub-landlord would be out of pocket. A Part 8 claim requiring the construction of the rent review provisions therefore came before Mr Jonathan Klein (sitting as a Judge of the Chancery Division).

Counsel for the claimant sub-landlord argued (at [23]) that, as the RV of the property (which had been set under the General Rate Act 1967) had, in effect, been abolished on the replacement of domestic rates by the community charge (subsequently replaced by the Council Tax), the court should substitute a contemporary value calculated in accordance with the same principles. Counsel for the defendant sub-lessees argued (at [24]) that the cap has still to be calculated in accordance with the last rating list prepared under the General Rate Act 1967 (being the 1973 valuation list).

The Deputy Judge rejected both these arguments: [28]–[29]. Drawing (see [25]) on the familiar canons of the interpretation of documents set out by Lord Hoffmann in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, he held that the machinery set up by the sub-leases had, in effect, broken down ([35]). He therefore had to devise machinery which would meet the objectives of the original machinery. That had been devised to ensure that these long leases did not fall within the ambit of the Rent Acts, and thus render illegal the making of payments on assignment, and there was no longer any danger of that happening. He further held that this point would have been brought home to the sub-lessees as they would have investigated the claimant's title, ie the headlease. He therefore declared that the cap operated only so far as was necessary to ensure that the charging of a premium on assignment was not rendered illegal. In effect, the cap was no longer effective. The judge adjourned the case for further argument on the precise terms of the order, but he seems to have phrased his decision in this way so as to leave it open for the cap to become effective again if similar controls on the taking of premiums should ever be re-imposed.

The judge distinguished the position in the instant case from leasehold enfranchisement cases, where the RV of the property on a particular date may still be relevant to determine the basis on which a leaseholder may enfranchise, as the LRA 1967 (as amended) specifically makes reference to the RV on given dates.

The present editor is wary of suggesting that Counsel and the judge may have been proceeding under a misapprehension, but is it strictly correct to assume – as they all appear to have done – that rateable values under the 1973 Valuation List no longer exist? Although not used for the Council Tax, are they not still the basis of domestic water and sewerage charges where the water supply is unmetered? To adopt the terminology used by the judge, is it not still a 'live list', rather than a 'historic document'?

Solicitors' negligence – grant of lease with surety for fixed period – failure to advise surety of effect of delay in completion of lease

Xenakis v Birkett Long LLP [2014] EWHC 171 (QB) is a professional negligence claim against solicitors arising out of a commercial lease transaction. The defendant LLP was acting for the claimants on the grant to an LLP owned by them of the lease of a restaurant for a 20 year term. The landlords wished the claimants to guarantee the rent and performance of the other lease covenants: the claimants had managed to negotiate that this would be limited to a period of three years from the date of the lease. It was hoped that the lease would be completed and commence in January 2006, but for various reasons the completion was delayed. The tenant LLP went into occupation in January 2006, but the lease was not actually completed until December 2006. The term was expressed to commence in January 2006, and rent was payable from July 2006, when the rent-free period expired. However, as the lease had not been completed until December 2006, the three year

guarantee period ran from then. The claimants argued that they had assumed that the guarantee would have run from January 2006 and were surprised to find that the delay in completion in effect extended the period of the guarantee. It soon became apparent that the restaurant was running at a loss. Rather than close it, and risk liability under a keep-open covenant, the claimants continued to fund the tenant LLP.

Andrews J found that there was here negligence on the part of the solicitors acting for the tenant and the claimants. Solicitors are under a duty to warn sureties of their liabilities, and that the effect of delay in completion would be to extend the period. The judge, however, with regret felt unable to award the claimants the bulk of their claim, as they had funded the tenant LLP by making loans to it. Their loss was therefore restricted to the interest that they had lost on those sums.

Claim re: mound of rubble at entrance to an industrial estate – whether assignee could sue when already in existence prior to assignment – whether within scope of covenant to manage Estate when not part of the common parts

Innerspaces Self Storage Ltd v Harding [2014] EWCA Civ 46 is an appeal from the Southampton County Court. The tenants by assignment of a self-storage facility on a small industrial estate had sued the defendant landlords for breach of covenant, alleging that the presence of a heap of rubble at the entrance to the estate was having an adverse effect on their business. The rubble was left over from the demolition of a unit. The landlords were actively seeking planning permission to redevelop the site of the unit, but their proposals to date had not gained approval from the planning authority. The tenant had sued alleging breach of an express covenant for quiet enjoyment, breach of an implied covenant not to derogate from the grant, breach of an express covenant to provide services, and misrepresentation, in that it was alleged that prior to the assignment of the lease to the appellant an assurance was given that the rubble heap would be removed.

The District Judge dismissed the claim on all four causes of action. The appeal proceeded solely on the alleged breach of the covenant to provide services, in particular a covenant to maintain the Estate. The DJ had dismissed the claim based on this cause of action on the basis that the heap was in existence before the present claimant took the lease by assignment, and the appellant tenant could not expect the Estate to be put into any better state and condition. This argument, it would appear, had not been raised by the defendants before him, and neither party sought to sustain it before the CA, both accepting that the covenant to provide services was a continuing one, and that the position was governed by the well-known principle in *Anstruther-Gough-Calthorpe v McOscar* [1924] 1 KB 716. The argument in the CA therefore revolved around the issue of whether a covenant to 'administer and manage the Estate' could include the carrying out of works

on what were admittedly the Retained Parts of the Estate rather than the Common Parts. Although Gloster LJ accepted that 'administering and managing the Estate' might extend to more than office functions, the Lease did distinguish between the Landlord's obligations with respect to the Common Parts and to the Retained Parts, and in each case it was required to act reasonably. Properly construed, the clause did not require the landlord to clear the heap. The District Judge had therefore fallen into an error of law in applying the test that he did, but, applying the correct test, the CA found that there was no breach of the covenant to provide services. The appeal was therefore dismissed.

Communal heating system – whether leaseholders could be required to contribute towards it when lease appeared not to include it

Pas Property Services Ltd v Hayes [2014] UKUT 0026 (LC) is an appeal to the Upper Tribunal (HHJ Alice Robinson) against the decision of the Northern LVT that the cost of gas supplied to a common heating and hot water system could not be recovered under the service charge levied on the lessees, who jointly held leases of four flats in a development. The development was partly the conversion of an old building, and partly a new building. Two of the four flats were in the old building, and did not benefit from the communal heating system (CHS). The other two flats were in the new building, and did. The landlord had attempted to recover the cost of the gas used from all the leaseholders via the service charge, regardless of whether their flats benefited from the system or not. The leases of the respondent leaseholders' four flats were substantially the same, and it was clear that there was no clause relating specifically to the CHS.

It was accepted before the UT, as it was before the LVT, that the starting point for the interpretation of the lease should be the well-known approach of Lord Hoffmann in *Investors' Compensation Scheme Ltd v West Bromwich BS* [1998] 1 WLR 896 at 912–3. Counsel for the landlord relied on three provisions to support his claim that the lease did require the leaseholders to contribute. One of those provisions was, he admitted, what was generally termed a 'sweeper clause', and HHJ Robinson held that something clearer than this would be required to permit the landlord to pass on the charges for the CHS either to the flats which enjoyed it, or to the flats which did not. She derived support for this from the decision of Mr David Neuberger QC (as he then was) in *Lloyds Bank v Bowker Orford* [1992] 2 EGLR 44, where he held that such sweeping up words would have to take their colour from what had preceded them. The clause was, however, sufficient to include the cost of heating the common parts in the service charges for all the flats, even though only the flats in the new building made use of those common parts (several elements of the service charge expenditure did in fact benefit those flats and not those in the old building, eg the provision of a lift).

A clause referring to supplying gas 'for all purposes in connection with the … Building or any part thereof' was held not to include the cost of supplying

gas to heat individual flats. So too a clause allowing the Landlord to vary the services provided from time to time was held not to be of assistance.

HHJ Robinson did, however, agree with the parties (this was common ground between them) that a clause in the lease (Cl.2.3 of the Fourth Schedule) which required the leaseholder 'to pay and discharge the cost of all water electricity gas and telephone (including all meter rents) used or consumed in the Apartment' was sufficient to enable the landlord to recover the cost of the CHS. This argument had not been raised before the LVT. (An argument before the UT on the part of the leaseholders' that the gas was not actually 'consumed' in the apartment was rejected). It was also conceded by both parties that, if this clause did allow the landlord to recover costs relating to the CHS, they would have to be recovered from each leaseholder individually, and could not form part of the service charge. Further, this would mean that the costs had to be borne only by the leaseholders in the new building, who were connected to the CHS. As technically only the service charge dispute had been before the LVT and was now before the UT, the landlord's appeal was technically dismissed, but the parties agreed that, as the issues were before the UT, and had been fully argued, it would be useful to have the views of HHJ Robinson on the implementation of Clause 2.3 of the Fourth Schedule.

A complicating factor was the fact that the landlord had installed in each of the flats a meter which allowed for the monitoring of each leaseholder's individual consumption of heating and hot water. For various reasons they had not been brought into use. Clause 2.3 of the Fourth Schedule was preceded by a provision allowing the landlord's surveyor to make a reasonable apportionment of expenditure. The judge expressed the view that, in the circumstances, the landlord's surveyor would have to make use of the meters to make a reasonable apportionment of the costs, but that, once a pattern of consumption had been established, it might be appropriate for the surveyor then to apportion expenditure on some other reasonable basis (the use of the meters would involve additional expenditure to the company that provided them).

Sections 21 and 22 of the LTA 1985 – whether civil liability is imposed on the landlord as well as a criminal sanction

Morshead Mansions Ltd v Di Marco [2014] EWCA Civ 96 is yet a further instalment in the ongoing dispute between these parties. Some of the complex background to the dispute is set out in the note to [2013] EWHC 224 (Ch) to be found in *Bulletin No 98*. Fortunately a knowledge of the background is not required for an understanding of the present dispute, which is an appeal against the decision of Mann J in *[2013] EWHC 1068 (Ch)* which was discussed in *Bulletin No 100*. The point raised is a short one. Section 21 of the LTA 1985 entitles a tenant to require his landlord to supply him with a written summary of costs which will form part of a service charge. Section 22 then allows a tenant who has received such a summary to require the landlord to afford him reasonable facilities for inspecting the documents

supporting the summary. Criminal sanctions are imposed on non-compliance, under s 25. Di Marco, the current respondent, claimed that a tenant was also entitled to enforce compliance with the sections by applying in a civil court for an injunction. HHJ Hand QC held that an injunction could not be granted to require compliance; Mann J in the Chancery Division disagreed; the Court of Appeal (Patten, Lewison and Sharp LJJ) has now agreed with HHJ Hand QC.

The only judgment is given by Lewison LJ, an acknowledged expert in this field. His judgment offers a helpful review of the history of legislative intervention to regulate residential service charges and related matters, and a similar overview of the current scheme of the LTA 1985, as amended. It is useful to have these matters set out so clearly. He affirms ([25]) that whether legislation which prescribes a criminal sanction also imposes a civil liability is a matter of construction of the statute: *Cutler v Wandsworth Stadium Ltd* [1949] AC 398. He comes to the conclusion that ss 21 and 22 impose criminal penalties only and are not enforceable at the suit of a lessee. In reaching this conclusion he notes (inter alia) that many of the provisions of the LTA (and of related legislation) do prescribe both criminal and various civil sanctions for non-compliance; that the legislation does now amount to a statutory code on service charges, etc; and that Parliament has intervened many times to reform the law in this area, but has not seen fit to prescribe civil consequences for non-compliance with these sections. Lewison LJ also makes the point that most lessees will under their leases have contractual rights to the provision of information, and that a lessee can therefore enforce those provisions under the contract.

Rent review – arbitration – whether arbitrator should be removed or award set aside

Sumner v Costa Ltd [2014] EWHC 96 (Ch) is a claim by the landlords seeking to challenge the result of an arbitration determining a rent review under a lease of shop premises in Falmouth, Cornwall. Originally they sought only to challenge the findings under ss 68 and 69 of the Arbitration Act 1996, but they then added claims under ss 57 and 70(4) of the 1996 Act requiring the Arbitrator 'to correct and clarify and set out his full reasoning' and under s 24 to remove him. The landlord's most substantial allegation was that the arbitrator had referred in his award to 'established case law on post review date evidence' but had not identified any such case law in his award, nor had he invited the parties to comment on the case law that he was applying. The Arbitrator stated that he had used the term 'case law' to refer to discussion in the Handbook, and that he had used the term 'loosely, albeit, on reflection, mistakenly'. Mr Clive Freedman, QC, sitting as a Deputy Judge of the Chancery Division rejected all the Landlord's challenges to the arbitration. The award did not intentionally fail to contain all of the arbitrator's reasoning, and the arbitrator had not said anything intentionally untrue in saying that there was nothing to add to that reasoning. There was no error of law in the award, and neither did it cause substantial injustice to the claimant landlord. Even if the arbitrator had wrongly applied the 'post review date

evidence', the amount by which it would have affected his award – it might have increased the passing rent by a maximum of 10% – did not amount to 'substantial injustice' to the claimant.

Rent review – arbitration – whether award should be set aside

Fulham Broadway Trustees No 1 Ltd v Telefonica UK Ltd [2014] All ER (D) 197 (Feb) is another unsuccessful attempt by a landlord to challenge a rent review arbitration. T, the tenants, alleged that a comparable – another letting of a unit in the same Shopping Centre at the relevant time – should be treated with caution as it was not an open market transaction. The arbitrator had broadly accepted this contention, and held the market rent of the instant property to be lower. FBT, the landlords, alleged that this had not been 'squarely raised' with the arbitrator on behalf of T in the arbitration, and that their valuer had not therefore had a proper chance to deal with it. They alleged that this amounted to a serious irregularity within the meaning of s 68 of the Arbitration Act 1996. Mr George Bompas QC, sitting as a Deputy Judge of the Chancery Division dismissed this claim, affirming that arbitration was intended to be a quick and cost effective manner of resolving disputes; that an arbitrator should be allowed a reasonable margin of discretion; and that s 68 was intended to cover situations where it could be said that the arbitration process was clearly far removed from what ought to have happened. That was not what had happened here. The fact that the arbitrator had failed to give reasons for treating the alleged comparable as he did was not a ground for an appeal.

Review of ground rent – effect of landlord's decision not to initiate a periodic review

Bywater Properties Investments LLP v Oswestry Town Council [2014] EWHC 310 (Ch) raises a short point on the construction of a rent review clause. The parties' predecessors in title had entered into a 99 year building lease in 1963 and a very similar supplemental lease in 1964. The leases provided for the rent to reviewed, upon notice being given by the landlord, at 25 yearly intervals. The landlord had initiated a rent review in 1988, but – no doubt fearing that the rent might be reviewed downwards – had decided not to do so in 2013. The leases provided that the rent, after a rent review date, should not be less than the initial rent of £2,500 pa. The leases, however, did not stipulate precisely what was to happen if a rent review took place on the first review date, but not on the second. The defendant landlord argued that the rent as previously reviewed continued to apply; the claimant tenant argued that the result was that the rent reverted to the initial reserved rent of £2,500.

HHJ Stephen Davies, sitting as a Deputy Judge of the Chancery Division, considered the familiar case law on interpretation of contracts in general (including the recent case of *Marley v Rawlings* [2014] UKSC 2) and rent review clauses in particular, and came down in favour of the Landlord's contention. The judge placed reliance on the fact that the lease referred to the

landlord's right to review 'the yearly rent for the time being payable hereunder' which he felt clearly referred to the initial rent and also any subsequent increased rent (see [23]), so that if it was not reviewed, that rent continued to be payable ([25]). The judge also drew support from the fact that the lease provided that the reviewed rent should be payable 'from and after each such date of review' ([26]). The judge did not, however, accept the submission of counsel for the landlord to the effect that he should 'approach the construction of the rent review clauses in this case on the basis that both landlords and tenants would have entered into the leases assuming that any rent review would only ever produce an upwards only review' (see [33]), in spite of the support given to this contention by passages in the principal work.

Unsuccessful application for appointment of manager under Part II of the LTA 1987 – whether lease required leaseholders to pay landlord's costs as part of the service charge – effect of order under s 20C of the LTA 1985

Conway v Jam Factory Freehold Ltd [2013] UKUT 592 (LC), LRX/36/2012, is a decision of the Deputy President, Mr Martin Rodger QC. He was hearing an appeal brought by a group of leaseholders against the decision of the London LVT that the leases of flats in a converted jam factory did permit the Landlord (a company owned by approximately half of the leaseholder) to add to the service charge the costs which it had incurred in defending an application to have a manager appointed for the development under Part II of the LTA 1987. The appellants appealed the point – in spite of having secured an order under s 20C of the LTA 1985 that the costs were not to be added to their service charges – because of its possible implications for other disputes between the leaseholders and the Landlord Company. The landlords cross-appealed on whether the s 20C order should have been made.

There was clearly a lengthy background to the dispute. The salient points appear to be that the development had been mismanaged by an outside ground landlord for a number of years. When the ground landlord went into liquidation, the respondent, a company formed by around half of the leaseholders, acquired the freehold. Their decision to retain the same managing agents was not popular with some of the leaseholders, including the present appellants. A substantial number of leaseholders withheld payment of the service charges.

On the point as to whether the provisions of the lease allowed the landlord to include the cost of defending the Part II of the LTA 1987 proceedings in the service charge, the Deputy President upheld the LVT on this, confirming that it did. Whilst this is of course always a matter of interpretation of a specific lease, on this point the DP drew support from *Schilling v Canary Riverside Development PTE Ltd*, LRX/26/2005, a decision of HHJ Rich QC in the Lands Tribunal, to the effect that resisting an application for the appointment of a manager fell within the scope of a clause referring to costs incurred 'in

connection with the general overall management and administration and supervision of the building'. The wording of the lease in the instant case was similar.

The cross-appeal raised some possibly more significant issues. The DP agreed with HHJ Gerald in the UT in *Church Comrs v Derdabi* [2011] UKUT 380 (LC) that the tribunal which had heard the proceedings was best placed to decide whether to make an order under s 20C, and that an appellate tribunal should interfere with this only if some error of principle had been made ([58]). He also endorsed ([54]) the comments of HHJ Rich QC in *Schilling* to the effect that the only guidance which can be given as to the exercise of the statutory discretion is to determine 'what is just and equitable in the circumstances'. Of wider import is the DP's endorsement of HHJ Gerald's view in *Derdabi* that 'circumstances' would include the fact of 'the landlord being a resident-owned management company with no resources apart from the service charge income' ([57] of the instant case, [21] of *Derdabi*). Whilst recognising that the appellate tribunal should be reluctant to interfere with the lower tribunal's exercise of its discretion here, the DP did set aside the LVT's s 20C order. It seemed clear that the LVT had not considered how its order would operate, but assumed that it would apply to the service charge generally, and prevent the landlord from recouping its costs from any of the leaseholders. On this point the DP agreed with the solicitor-leaseholder who was representing himself and the other appellants, and held that the benefit of an order under s 20C extends only to 'the tenant or any other person or persons specified in the application' ([71]). As the LVT had simply said that the application under s 20C was allowed, this would have the effect of relieving the group of leaseholders from having to pay the part of the service charge that related to the LVT costs, whilst having no effect on that paid by the other leaseholders. Balancing the various factors, namely, that:

(a) the group of leaseholders had failed in their application under Pt II of the LTA 1987 to show that it was appropriate to appoint a manager;

(b) the candidate that they had put forward as manager had been found to be unsuitable; but

(c) it was clear that the conduct of the landlord and their managing agents could be criticised, the DP made instead an order under s 20C that 10% of the costs incurred by the landlord in defending the LTA 1987 application should be omitted from the group's service charges ([77]).

This part of the judgment raises a point which is not referred to in the principal work, and has never before come to the attention of the present Editor. The DP made the point that the s 20C order of the LVT did not specify to whom it was to apply (ie the leaseholders generally, or the parties to the proceedings). But the wording of s 20C refers to 'the tenant or any other person or persons specified in the application'. Does this not suggest that, unless the applicant has sought an order that the service charge payers generally should be exonerated from payment, a tribunal simply does not have the power to make an order of such width?

Order under s 20C of the LTA 1985 – whether benefited leaseholders generally or only applicants to proceedings

Re SCMLLA (Freehold) Ltd's Appeal [2014] UKUT 0058 (LC) confirms the present Editor's impression that the point raised in *Conway v Jam Factory Freehold Ltd* (above) was a comparatively novel one. This appeal, also heard by Mr Martin Rodger, QC (DP) addresses the specific point raised above. The LVT had made an order under s 20C of the LTA 1985 which purportedly prevented the landlord – a company owned by the leaseholders – from recovering its costs by adding them to the service charge of *any* leaseholder. The company appealed, alleging that none of the applications before the court had sought a s 20C order in such wide terms. The appeal proceeded under the written representation procedure, but in a somewhat unusual way: as the respondent leaseholders did not respond to the appeal, the Deputy President had to have recourse to the LVT file to clarify certain points. The upshot of this was this it appeared that only one of the applicants before the LVT had sought a s 20C order in such wide terms as had been granted, and the LVT, in considering the application for a s 20C order, had been unaware of what that applicant had sought. The DP therefore set aside the wide s 20C order, and made in its place a s 20C order which benefited only those applicants who had actually sought the benefit of such an order. He took the view that it was unlikely that s 20C had been intended to interfere so widely with contractual rights under a lease, and that, in order for a s 20C order to be made, it was necessary either for a leaseholder to have made an application of his own, or to have been specified in an application made by someone else (see [25]). In setting aside the order, and substituting the more restricted order, the DP gave permission to the applicant who had sought a s 20C order of general application to apply back to the LVT within a month for his application to be fully considered; and also indicated that if other leaseholders wished to apply to the LVT for the benefit of a s 20C order in their favour they should do so promptly. The DP recognised that the effect of the making of a s 20C order could be particularly serious where (as here, and in the *Jam Factory* case) the landlord was a company owned by the leaseholders and had no assets of its own besides the freehold (see [24]).

The net result of this case and the *Jam Factory* case would therefore seem to be that:

(a) if a leaseholder applicant wishes leaseholders other than himself/herself to have the benefit of a s 20C order, this must be mentioned in the application form (or raised in the hearing);

(b) the respondent landlord must therefore have an opportunity of considering the application, and making representations both as to the making of the order, and its scope; and

(c) the First Tier Tribunal then has the difficult task of determining not only whether a s 20C order should be made, but how wide its scope should be, with little guidance other than the comments of HHJ Rich QC in *Schilling* quoted in the *Jam Factory* case above.

Dispensation under s 20ZA of the LTA 1985 – application of principles derived from Daejan v Benson to the case

Re OM Property Management Ltd [2014] UKUT 0009 (LC) is an appeal against the refusal of the Northern LVT to grant the landlord a dispensation under s 20ZA of the LTA 1985 against complying with the consultation requirements of s 20 of the LTA 1985. The LVT's refusal resulted in the landlord being unable to recover approximately £200,000 of major refurbishment costs. The LVT, in refusing dispensation, was applying the law as it stood before the decision of the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14. The landlord had appealed, and the appeal now of course fell to be determined under the Supreme Court's view of the law. Although the consultation had not been well conducted in several respects, this had not resulted in loss to the leaseholders, so dispensation was granted, on condition that the landlord paid the leaseholders' costs incurred in its application to the LVT for dispensation, and on condition that the landlord's costs of the application and appeal be not included in the service charge. Although the appeal does not decide any novel point of law, it is of interest as an example of the application of the principles of *Benson* in practice, and of the approach that one may in future expect from the First Tier Tribunal.

DIVISION C: PRIVATE SECTOR RESIDENTIAL TENANCIES

Possession claim – whether notice under s 8 of the 2004 had to set out Ground 8 verbatim

Masih v Yousaf [2014] All ER (D) 56 (Feb) (no neutral citation available) involves a possession claim: the defendant had issued a notice under s 8 of the Housing Act 2004, relying on ground 8 of the mandatory grounds in Part 1 of Sch 2 to the Housing Act 1988, under which the court had to order possession. The notice did not set out ground 8 verbatim: although it said that the defendant was owed three months' rent and that was 'rent unpaid' it omitted to recite that it was 'lawfully due'. The first DJ made a possession order, and a second DJ refused the present claimant's application to set that order aside. The claimant (the defendant to the earlier possession action) appealed to the Court of Appeal.

The Court of Appeal dismissed the appeal. The words 'lawfully due' added nothing to the contention that the rent was unpaid, as the claimant knew what allegations she had to meet.

DIVISION E: LONG LEASES

Enfranchisement – whether a leaseholder whose lease was vested in a trustee in bankruptcy could satisfy the 'two year occupation' requirement of the LRA 1967

John Lyon Free Grammar School (Keepers & Governors) v Helman [2014] EWCA Civ 17 is principally a case on the workings of the Leasehold Reform Act 1967, but it also includes some interesting observations on the mechanics of the Land Registration Act 2002.

J had in 2002 become the registered proprietor of the lease of a house in Maida Vale for a term of 99 years from 1951. He had later charged the lease to E, and the chargees had entered into a sub-charge with a Bank, L. J was adjudicated bankrupt in October 2009, and shortly afterwards a bankruptcy restriction was entered at the Land Registry under s 84(2) of the LRA 2002. D was appointed as J's trustee in bankruptcy but was not registered as the proprietor of the lease. In October 2010 Bank L appointed joint receivers of the lease. Their power and authority to act was not disputed. In February 2011 D filed a notice at the High Court under s 315 of the IA 1986 disclaiming all his interest in the leasehold house. In December 2011 the receivers entered into a contract for the sale of the house to the claimant H (respondent to the appeal), which was made between J, the receivers, and H, and signed by the receivers as attorneys on behalf of J. The same day the receivers, at the request of H, served a notice under the LRA 1967 on the appellants, claiming to be entitled to purchase the freehold of the house. The lease and the benefit of the notice were transferred and assigned respectively by J, by documents executed on his behalf by the receivers. H became the registered proprietor of the lease in February 2012.

Sitting in the Central London County Court, HHJ Deborah Taylor upheld the validity of the notice under the LRA 1967. The landlords appealed.

The Court of Appeal (Arden and Rimer, LJJ and Sir David Keene) allowed the appeal, on the basis of the Landlord's primary contention that the effect of s 27(5)(a) of the LRA 2002 was to vest the leasehold term in J's trustee in bankruptcy by operation of law. J therefore no longer fulfilled the 'two year condition' of s 1(1)(b) of the LRA 1967 when the notice was served. It was therefore a nullity (see [26]–[27]). Although J remained the registered proprietor at the Land Registry, and under s 24 of the LRA 2002 could dispose of the lease (and had indeed done so), this was no more than an example of a registered proprietor having the power to dispose of an estate which he no longer owned, [30].

The appellant landlord also submitted that the effect of the trustee in bankruptcy's disclaimer was to preclude the giving of a notice under the LRA 1967, on the basis that it might result in the imposition of further liabilities on the part of the trustee. As the appeal was allowed on the first ground, the CA did not address this issue, [36].

It would seem that the landlords – who of course own a large estate – may well have been chiefly concerned to establish a point of principle here, as by

February 2014 H would have owned the lease for two years and thus become entitled himself to serve a notice under the LRA 1967.

Right to Manage – whether landlord could object on a ground not raised in its counter-notice – whether flats built over part of a basement car park were 'structurally detached'

Albion Residential Ltd v Albion Riverside Residents RTM Co Ltd [2014] UKUT 0006 (LC) concerns a dispute over the right to manage a large and prestigious block overlooking the Thames in Battersea. The first issue was whether a landlord could subsequently raise an issue which it had not raised in its counter-notice. The landlord had received a notice under s 79(6) of the CLRA 2002 claiming the right to manage, and LVT had allowed the landlord to raise an issue which had not been raised in its counter-notice. Following this determination, but before this appeal was heard, the UT (Sir Keith Lindblom, P) in the case of *Fairhold (Yorkshire) Ltd v Trinity Wharf (SE16) RTM Co Ltd* [2013] UKUT 0503 (LC) (noted in *Bulletin No 102*) had determined this issue in favour of the landlord there. The present tribunal (Mr Martin Rodger, QC, DP, and Mr P R Francis, FRICS) – after hearing representations to the contrary – not unsurprisingly followed the previous decision of the UT on this point ([41]–[45]).

The second, substantive issue was whether the LVT had correctly determined that the block of flats in question 'consist[ed] of a self-contained building or a part of a building with or without appurtenant property' so as to satisfy s 72(1) of the CLRA 2002, and, in addition, whether the building was 'structurally detached'.

The premises in question consisted of a block of (it would seem) nine floors erected over a basement car park, the basement forming a single structure which extended under other buildings, and a contiguous piazza, and was integral both with the block in question, and the other buildings. The LVT had thought that the decision of the Court of Appeal in *Gala Unity v Ariadne Road RTM Co Ltd* [2012] EWCA Civ 1372 (noted in *Bulletin No 96* and in the principal work), which dealt with common parts which were appurtenant to buildings besides those which sought the RTM, was determinative of this issue, but on appeal it was common ground that the issues here were different, as the issue here was whether the building in question was structurally detached. After hearing expert evidence from the structural engineers who had advised on the structure – which was not available to the LVT – the UT ruled that the building in question was not 'structurally detached' and so was not eligible to exercise the RTM.

The implicit assumption behind the CLRA 2002 – in dealing both with commonhold and with leasehold reform – seems to be that blocks of flats are free-standing residential blocks, such as were the norm from the 1950s to the 1990s, or perhaps blocks with retail units at ground floor level. Many of the provisions of the Act are frankly difficult to apply to the sort of developments which have been built in the last twenty or so years, where developments combine residential and commercial elements, and often – as here –

more than block is built over subterranean parking facilities which may serve more than one block, and both residential and commercial tenants.

Lease extension under Part II of the LRHUDA 1993 – value of 138 year lease compared with freehold

Hauser v Howard De Walden Estates Ltd [2013] UKUT 0597 is a case on the valuation of an extended lease granted under the Leasehold Reform, Housing and Urban Development Act 1993. The subject property was in appearance a house, but it did not qualify as such under the LRA 1967 because of the degree to which it 'oversailed' another property. The appellant tenant was therefore seeking a lease extension, the relevant term being very nearly 138 years. The LVT had determined the value of the lease to be 99% of the freehold value at the relevant date. The argument of the appellant and his expert was, in effect, that a buyer would never be prepared to pay so close to the freehold value for a leasehold interest. It was argued that the 'relativity' should instead be 95%.

Those who practise in this area will clearly need to consider the very full judgment of HHJ Huskinson, sitting with Mr P D McCrea, FRICS, but in brief the UT upheld the LVT and concluded that a relativity of 99% was correct. The UT referred to its decision in *Earl Cadogan v Erkman* [2011] UKUT 0090 (LC) suggesting that a relativity of 99% was appropriate for leases where the term was in excess of 130 years. Reference was also made to the fact that freehold houses were virtually unobtainable on the Howard de Walden Estate, and that purchasers who wished to live in such a prestigious area accepted that they would have to buy a long lease.

Enfranchisement under Part I of the LRHUDA 1993 – applicant owning leases of both maisonettes in the building – whether 'development hope value' and 'development marriage value' should be included in valuation

Padmore v Trustees of the Barry and Peggy High Foundation [2013] UKUT 0646 (LC) has a straightforward factual matrix, but raises difficult valuation issues as points of law. The property in question was a semi-detached property constructed around 1900. Around 1972 the property was converted into two flats, which were sold on 99 year leases, though the property retained the appearance of a single house. The appellant was granted the lease of the maisonette on the upper two floors in 1975, and occupied it as her home. In July 2011 she also acquired the lease of the flat on the ground and lower ground floors. She thereupon wished to acquire the freehold under the LRHUDA 1993. The valuations were agreed, but there remained a dispute as to which of the alternative bases of valuation should be adopted. It was agreed that the value of house, if returned to a single dwelling, was £1,050,000, whilst if sold on separate 999 year leases it would be £765,000. The difference between the figures, £285,000, was referred to as the development value. The first agreed valuation of the landlord's interest, if no redevelopment were possible until the leases expired in 61 years' time, was agreed to be £85,000, which included neither 'development hope value' nor 'development marriage value' (though it did include a conventional marriage value calculation). The appellant was arguing before the UT for this figure.

The second agreed valuation produced a price of £194,000. This included 'development marriage value', and was the price for which the respondents were arguing on the cross-appeal before the UT.

The third agreed valuation was of £150,000. This included 'development hope value' but not 'development marriage value', on the basis that the latter was excluded by para 4 of Sch 6 to the 1993 Act, but that the former was permissible by virtue of para 3 of Sch 6. The LVT had come down in favour of this valuation.

The principal point argued by the appellant was that she had no intention of converting the property into a single dwelling, but instead she proposed to continue living in one and to rent out the other. The UT (HHJ Huskinson) determined that her personal intentions could not be a relevant consideration and dismissed her appeal ([69]).

On the cross-appeal, counsel for the landlords conceded that the decision of the UT in *Themeline Ltd v Vowden Investments* [2011] UKUT 168 was not helpful to him on the point about including 'development marriage value' but invited the UT to depart from its own decision on this. In the event the UT did not do so, preferring to take this option only after full argument, and the appellant had been representing herself with the aid of an expert's report from the LVT case and submissions prepared by her solicitors. As it happened, the UT did not need to do so, as it adopted the valuation of £194,000 on the basis that the UT in *Forty-five Holdings v Grosvenor* (*Mayfair*) *Estate* [2009] UKUT 234 (LC) had relied on the fact that, where the participating tenants and the nominee purchaser are one and the same person, the appellant could – if she wished – convert the property into one dwelling without granting new leases, but simply by varying the two existing leases to permit each to be used as *part* of a single dwelling, and by permitting the necessary structural alterations. The LVT had dismissed this option as 'not credible' but the view of the UT was that para 4(2) was concerned with opportunity, and this would be a possible course of action. The UT therefore allowed the cross-appeal and substituted the second agreed valuation of £194,000.

DIVISION I: PROCEDURE

Possession claim – 'unless order' – whether should be set aside when due to fault of a third party

Circle Thirty Three Housing Trust Ltd v Nelson [2014] EWCA Civ 106 concerned an action by the claimant/respondent social landlord for possession of a property on the basis that the first defendant/appellant was no longer occupying it. The District Judge in the county court had made an order for disclosure of documents relating to this, which had not been fully complied with. The Circuit Judge thereupon made an 'unless' order, striking out the defence, and transferring the case to the undefended list, unless the order was complied with. There was further failure to comply, and unless the order took effect. The first defendant's appeal against the striking out was

allowed, on the basis that further evidence disclosed that her difficulty in complying with the order had been as a result of failures on the part of Barclays, her bank.

The Court of Appeal noted the procedural difficulties presented by the making of an 'unless' order when the section under which possession was being sought required, as here, the court to be satisfied as to the reasonableness of making a possession order. It was not, however, necessary for the Court to address that issue in order in allowing the appeal on the stated grounds.

NOTES ON CASES

Ahmed v Mahmood [2013] EWHC 3176 (QB): L. & T. Review 2014, 18(1), D6

Assethold Ltd v 7 Sunny Gardens Road RTM Co Ltd [2013] UKUT 509 (LC): J.H.L. 2014, 17(1), D16-D17 (noted in *Bulletin No 103*)

Re A/Wear UK Ltd (In Administration) [2013] EWCA Civ 1626: Comm. Leases 2014, Feb, 2018–2020; and E.G. 2014, 1407, 86

Burchell v Raj Properties Ltd [2013] UKUT 443 (LC): E.G. 2014, 1401, 49; [2013] Comm Leases 2007–2009; and J.H.L. 2014, 17(1), D14 (noted in *Bulletin No 102*)

Eaton Mansions (Westminster) Ltd v Stinger Compania de Inversion SA [2013] EWCA Civ 1308: [2013] Comm Leases 2005–2006; and L. & T. Review 2014, 18(1), 26–29 (noted in *Bulletin No 103*)

Fairhold Mercury Ltd v HQ (Block 1) Action Management Co Ltd [2013] UKUT 487 (LC): J.H.L. 2014, 17(1), D14-D15 (noted in *Bulletin No 102*)

Fairhold (Yorkshire) Ltd v Trinity Wharf (SE16) RTM Co Ltd [2013] UKUT 502 (LC): J.H.L. 2014, 17(1), D15-D16 (noted in *Bulletin No 102*)

Grimason v Cates [2013] EWHC 2304 (QB): [2013] Comm Leases 2009–2010

Lie v Mohile [2013] EWCA Civ 1436: [2013] Comm Leases 2003–2005 (noted in *Bulletin No 103*)

MacGregor v BM Samuels Finance Group Plc [2013] UKUT 471 (LC): J.H.L. 2014, 17(1), D17 (noted in *Bulletin No 103*)

Martineau Galleries No.1 Ltd v Birmingham City Council [2013] EWHC 3018 (Ch); [2014] 1 P. & C.R. 6: L. & T. Review 2014, 18(1), 18–20

Mitchell v Watkinson [2013] EWHC 2266 (Ch): L. & T. Review 2014, 18(1), 23–26 (noted in *Bulletin No 101*)

Parkwood Leisure Ltd v Laing O'Rourke Wales and West Ltd [2013] EWHC 2665 (TCC): L. & T. Review 2014, 18(1), 20–22

PGF II SA v OMFS Co 1 Ltd [2013] EWCA Civ 1288: [2013] Comm Leases 2012–14 (noted in *Bulletin No 102*)

Scriven v Calthorpe Estates [2013] UKUT 469 (LC): J.H.L. 2014, 17(1), D19 (noted in *Bulletin No 102*)

Simpole v Chee [2013] EWHC 4444 (Ch): [2013] Comm Leases 2014

Sunlife Europe Properties Ltd v Tiger Aspect Holdings Ltd [2013] EWCA Civ 1656: Comm. Leases 2014, Feb, 2015–2017 (noted in *Bulletin No 99*)

Taylor v Spencer [2013] EWCA Civ 1600: N.L.J. 2014, 164(7590), 12–13; and E.G. 2014, 1404, 95 (noted in *Bulletin No 103*)

Tolui v Shelley [2013] EWHC 3585 (Admin): J.H.L. 2014, 17(1), D2

ARTICLES OF INTEREST

Curing defective leases under the Landlord and Tenant Act 1987 L. & T. Review 2014, 18(1), 12–14

Flexible tenancies and forfeiture: J.H.L. 2014, 17(1), 4–8

Housing repairs update 2013 Legal Action 2013/14, Dec/Jan, 11–19

In Practice: The Future is Nearly Here (technological advances and commercial property transactions) L.S.G. 2014, 111(5), 21–22

Interim rent: where are we now? E.G. 2014, 1408, 112–113

Is an end to the crystal ball gazing in sight? (*Phillips v Francis* [2012] EWHC 3650 (Ch)) E.G. 2014, 1402, 60

Masterminding the basics of PACT L. & T. Review 2014, 18(1), 8–11

Room for argument (payments into court under s.138(2) County Courts Act 1984 and costs) N.L.J. 2014, 164(7593), 15–16

Residential property update S.J. 2014, 158(6), 33–34

New Lease of Life (principal recent developments in the law relating to residential long leases) N.L.J. 2014, 164 (7595), 13–14

Orthodox ways to combat the rule in Hammersmith v Monk Legal Action 2013/14, Dec/Jan, 38–39

Policy pitfalls: top 10 of title insurance E.G. 2014, 1404, 89

Practicalities of forfeiture E.G. 2014, 1402, 56–57

Practice points (various) E.G. 2014, 1402, 56–57

Practitioner page L. & T. Review 2014, 18(1), 33–39

Property lawyers demand strict conveyancing timetable for management companies Sol Jo, February 5, 2014 (Online edition)

Prosecuting landlords: an update – Part 1 Legal Action 2013/14, Dec/Jan, 19–21

Prosecuting landlords: an update – Part 2 Legal Action 2014, Feb, 38–41

Protecting mortgagees on forfeiture E.G. 2014, 1407, 85

Querying covenants E.G. 2014, 1404, 86–88

Questions and answers: option to renew – failure to comply with condition – availability of equitable relief L. & T. Review 2014, 18(1), 30–32

Recent developments in housing law Legal Action 2014, Feb, 26–32

Renewed interest in PACT? (professional arbitration on court terms) E.G. 2014, 1404, 93

Residential leasehold development schemes L. & T. Review 2014, 18(1), 4–7

Small but perfectly regulated? Shutting the stable door on the sell-to-rent-back market L. & T. Review 2014, 18(1), 15–17

Speedy Eviction L.S.G. 2014, 111(3), 18

Superstrike Ltd v Rodrigues: more questions than answers [2014] Conv 60–69

Taking ADR seriously (issues raised by *PGF II SA v OMFS Co 1 Ltd* [2013] EWCA Civ 1288 – noted in *Bulletin No 102*) E.G. 2014, 1405, 85

The draft Tenants' Charter L. & T. Review 2014, 18(1), 1–3

The lay of the land (review of property law developments in 2014) N.L.J. 2014, 164(7592), 11–12

The private rented sector in England: how to appear to do something while doing nothing J.H.L. 2014, 17(1), 1–3

Through the glass, darkly (various current matters) E.G. 2014, 1401, 43

Turnover rents (*Part 1*) [2014] Conv. 4–10

NEWS AND CONSULTATIONS

The Land Registry is consulting on its proposal to create a new company, subject to Government supervision, for the delivery of Land Registry services. An Office of the Chief Land Registrar would be retained, to carry out the setting of fees and other regulatory functions: www.gov.uk/government/uploads/system/uploads/attachment_data/file/274493/bis-14–510-introduction-of-a-land-registry-service-delivery-company-consultation.pdf. The Consultation closes on 20 March 2014.

The Department for Communities and Local Government on 12 February 2014 issued a Consultation on how best to tackle rogue landlords, without negatively impacting on good ones. Comments are invited by 21 March 2014.

Associated with this, DCLG on 24 February 2014 issued a Press Release: Creating a fair and flexible private rented sector. DCLG now also seeks views on whether letting a home for less than three months should require planning permission for change of use. (This restriction applies only in London).

The Welsh Government is consulting on draft statutory instruments to be made under the Mobile Homes (Wales) Act 2013. The Regulations will introduce new procedures on the sale and gift of mobile homes, reviews of pitch fees, and the making of site rules. Comments are invited by 6 May 2014.

OFFICIAL PUBLICATIONS

The Department for Communities and Local Government on 2 January 2014 issued new *Guidance*: *Providing social housing for local people—Statutory guidance on social housing allocations for local authorities in England*: see www.gov.uk/government/uploads/system/uploads/attachment_data/file /269035/131219_circular_for_pdf

The Department for Communities and Local Government on 7 January 2014 issued *Guidance: Instructions for redress schemes covering lettings agency work and property management work seeking government approval*: see: www.gov.uk/government/uploads/system/uploads/attachment_data/file /269448/Instructions_for_Redress_Schemes_covering_lettings_agency_work2.pdf

A House of Commons Library Standard Note SN/SP/638 *The Fair Rents Regime* published on 13 January 2014 explains who is entitled to a 'fair rent' and how these rents are set: http://www.parliament.uk/briefing-papers/SN00638.pdf

PRACTICE GUIDES ETC

H.M. Land Registry has issued revised versions of Practice Guides 10, 12, 13, 25, 27, 29, 37, 40 (Supplement 2), 43, 51 and 56, 65, 67 and 71.

H.M. Land Registry has also issued a Ready Reference guide offering a summary of the new fees payable for applications received by the Land Registry after 17 March 2014.

PRESS RELEASES

The Law Society on 17 January 2014 issued a Press Release: Using the correct reference number when paying SDLT, which includes this advice and generally outlines best practice on the payment of SDLT: www.lawsociety.org.uk/advice/articles/using-the-correct-UTRN-when-paying-stamp-duty-land-tax/?utm_source=emailhosts&utm_medium=email&utm_campaign=PU+-+16%2F01%2F14

Government News: First monthly meeting with insurance industry on flooding. Leaders in the insurance sector have made a commitment to guarantee affordable flood insurance. From 2015 Flood Re will replace the Statement of Principles, the voluntary agreement which has guaranteed the availability of insurance: www.gov.uk/government/news/first-monthly-meeting-with-insurance-industry-on-flooding

statutory instruments

The Mobile Homes (Site Rules) (England) Regulations 2014, SI 2014/5 came into force on 4 February 2014. The Regulations are intended to ensure that site rules are made fairly, with home owners involved in the process. They will be lodged with the local authority and available for public inspection, and rights of appeal are granted.

The Mobile Homes (Wales) Act 2013 (Commencement, Transitional and Saving Provisions) Order 2014, SI 2014/11 comes into force on 1 October 2014. They include the power given to local authorities to appoint interim managers of mobile home sites.

The First-tier Tribunal (Property Chamber) Fees (Amendment) Order 2014, SI 2014/182, brought in new fees in respect of certain applications with effect from 25 February 2014.

The Residential Property Tribunal Procedures and Fees (Wales) (Amendment) Regulations 2014, SI 2014/286, and the Leasehold Valuation Tribunals (Fees) (Wales)(Amendment) Regulations 2014, SI 2014/287, came into force on 10 March 2014. They prescribe that the receipt of Universal Credit will be taken into account in deciding whether an LVT or RPT fee may be waived. (Note: the Regulations apply to Wales only, and are a reminder that the jurisdictions of the LVT and the RPT in Wales have not been transferred to the First Tier Tribunal).

Correspondence and queries about the content of *Hill & Redman's Law of Landlord and Tenant* should be sent to Sarah Thornhill, Senior Editor, LexisNexis, Lexis House, 30 Farringdon Street Lane, London EC4A 4HH, tel: 020 7400 2736, email: sarah.thornhill@lexisnexis.co.uk.

Subscription and filing enquiries should be directed to LexisNexis Customer Services, LexisNexis, PO BOX 1073, BELFAST, BT10 9AS. Tel 0(84) 5370 1234.

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