Hill & Redman's Law of Landlord and Tenant

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This Bulletin includes material available up to 31 October 2014.

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DIVISION A: GENERAL LAW

Consent to assignment of leases – requirement that parent company should continue to guarantee lessees' covenants – principles to be adopted in construing leases – effect of s 25 of the L&T(C)A 1995 – severance of offending words

Tindall Cobham 1 Ltd v Adda Hotels (*an unlimited company*) *and others* [2014] EWCA Civ 1215 is a very rapid appeal from a case heard at first instance on 17 July (judgment delivered on 29 July) and reported as [2014] EWHC 2637 (Ch). It is the most important case on the operation of the guarantee/AGA provisions of the Landlord and Tenant (Covenants) Act 1995 and the effect of the anti-avoidance provision in s 25 of that Act since *K/S Victoria Street v House of Fraser* (*Stores Management*) *Ltd* [2011] EWCA Civ 904. The dispute arose from the assignment of the leases of ten hotels in the Hilton Group. The predecessors in title of the claimants TC1(the present respondents) had granted leases of ten hotels to the original lessees ('Adda') at substantial base and turnover rents which were originally guaranteed by Hilton Group plc, which was later validly replaced by Hinton Worldwide Inc. ('HWI'), the international parent company registered in Delaware. The leases contained provisions as to the conditions which might be applied – so as to satisfy s 19(1A) of the LTA 1927 – on assignments generally, and some streamlined provisions which applied in the event of assignments to associated companies within the Hilton Group. The present dispute arose when Adda purported on 1 July 2014 to assign the leases without obtaining the consent of the

landlords, TC1. TC1 immediately sought a declaration that the assignments were unlawful and therefore did not activate the automatic discharge provisions of s 5(2) of the 1995 Act; and an order for the re-assignment of the leases to Adda. TC1 sought summary judgment, and an expedited hearing took place before Peter Smith J on 17 July. TC1 was concerned about the assignments as they were to newly-established £1 subsidiary companies within the Hilton Group; the urgency arose because TC1 were in the process of refinancing their operations and their ability to obtain a new loan facility would depend upon the valuation of the hotels in question, which would in turn depend upon whether TC1 could look to covenants which were stronger than those of the £1 companies.

The Hilton Group (here to be taken to include both the assignees and HWI) initially argued that the consent of TC1 was not required to the assignments, but Peter Smith J had decided this point against them. To quote from Patten LJ (at [6]):

> 'He decided that the 1 July assignments had been carried out in breach of cl 3.14 of the leases so that they were excluded assignments within the meaning of s 11 of the 1995 Act. But he also made a declaration that under cl 3.14.6 the tenants were not permitted to assign the leases without first applying for the written consent of the landlords (such consent not to be unreasonably withheld) and that the landlords were entitled, as a condition of giving consent, to require compliance with the conditions set out in sub-clauses (a) and (b) of cl 3.14.6. His construction of sub-clause (b) was that this entitled the landlords to require the assigning tenants to procure a new guarantor (approved by the landlords) in place of Hilton Worldwide Inc. whose own guarantee would expire on the next lawful assignment of the leases.'

On the appeal – before Longmore, Patten and Ryder LJJ – it was common ground that the consent of TC1 had been required to the assignments, so they were not excluded assignments under s 11 of the 1995 Act. The tenants appealed on the basis that a decision was still needed as the effect of any *future* assignments and what arrangements for suitable guarantees would apply. The arguments and the dispositive part of the judgment involve a discussion of the precise inter-relationship between the provisions which apply generally to assignments and the streamlined provisions which apply to intra-group assignments. The latter – which were not drafted with exemplary clarity – seemed to require HWI to continue to guarantee the tenants' covenants notwithstanding the assignment; and, moreover, directly, rather than in the manner of a 'sub-guarantee' accepted in *K/S Victoria.* The Group had argued that the two sets of provisions were mutually exclusive, but the CA disagreed, and held that an intra-group assignment could take place governed by the general provisions, albeit they were more extensive and onerous than the streamlined provisions. The Group argued that s 25 of the 1995 Act operated not to invalidate the 'streamlined' conditions for an assignment, but merely prevented TC1 from exercising their rights under those conditions so as to require that HWI (or another existing guarantor)

continue to guarantee the tenants' covenants notwithstanding the assignment. Alternatively, the Group argued that a severance should be effected, and the assignment could take place without the guarantee provisions. Peter Smith J had regarded that outcome as 'wholly uncommercial' (see [27] of the CA judgment). The Group's appeal against the judge's construction of the 'streamlined' conditions was based, first, on his acceptance of TC1's argument that 'the commercial construction of the clause has to be driven by the consequences of the application of the 1995 Act', [29]; and, second, on his reliance on the maxim *verba ita sunt intelligenda ut res magis valeat quam pereat* (sometimes abbreviated to the *ut res magis valeat* doctrine, and here dubbed 'validate if possible'), [29]. Whilst accepting that the latter doctrine underpins modern canons of interpretation of documents, the CA held that it could not be applied here as it required the judge to impose a construction upon the words which they would not bear, [36]. The Court of Appeal also held that it was not possible to construe the words of the 'streamlined' provisions so as to comply with s 25 of the 1995 Act, as the section was a clear anti-avoidance provision, and, if it had the effect of striking down terms of a lease, then that had to be implemented in that way. The Court of Appeal did not adopt the arguments of either TC1 or the Hilton Group on this point. It rejected the Group's argument that s 25(1) was engaged only when TC1 purported to exercise its power to impose the guarantee provision, [43], and rejected also TC1's argument that it could rely on the invalidity of the provision as constituting non-compliance with the provision, [44]. The Court of Appeal, following the House of Lords in *London Diocesan Fund v Phithwa* [2005] UKHL 70, stated that s 25 should be 'interpreted generously so as to ensure that the operation of the 1995 Act is not frustrated either directly or indirectly', [45]. The Act called for some measure of severance. The Court of Appeal could not, however, accept the Group's argument that simply the condition setting out the 'guarantee provisions' could be severed, as that would leave TC1 with a very different agreement, [48]. (The other condition simply required that notice of assignment be given within ten days). The appeal was therefore dismissed, subject to the deletion of certain sub-paragraphs of Peter Smith J's order. As they were not recited in the Court of Appeal judgment, and the transcript of the first instance judgment refers to them by reference to the claim form, it is difficult for this Editor to say with confidence what the precise outcome was of the appeal. It would appear, however, that *both* conditions of the 'streamlined provision' were deleted so that the 'streamlined provision' could take effect as a straightforward qualified covenant against assignment.

(case – when in Chancery Division – noted at: EG 2014, 1438, 127)

Articles of Association of Residents' Management Company – whether provided for one vote per share or one vote per member

Sugarman and others v CJS Investments LLP and others [2014] EWCA Civ 1239 is the first case which this Editor is aware of in which the Court of Appeal has had to rule on the meaning of a provision for voting rights

contained in the Articles of Association of a Residents' Management Company. Although it would normally be considered to be a company law case, it is noted here because of its likely interest to those whose practice extends to leasehold flats. The dispute involved the problem, which is a familiar one in this area, as to whether voting at General Meetings should be on the basis of one vote per member, or one vote per flat. The issue was of particular importance here, because, of the 104 flats in the development, 66 were owned by one company (the first defendant), and a further six by another. Most of the rest were owned by individuals who owned just one flat.

The company was limited by shares, so normally one would expect that votes would follow the number of shares, which would give the first defendant a majority of votes at all meetings. This was the conclusion of HHJ Raynor QC (sitting in Manchester as a Deputy Judge of the Chancery Division). The Articles were, however, particularly badly drafted. Section 284(1)–(4) of the Companies Act 2006 provides that, in the case of a company limited by shares, normally each share carries one vote, and otherwise each member has one vote. This may, however, be disapplied by express provisions in the Articles. Regulation 54 of Table A – the model articles applicable to present company – follows this section, but one of its 'bespoke' articles disapplied it. In particular, art 13 read:

'(a) Subject as hereinafter provided, every Member present in person or by Proxy shall have one vote, provided that where a dwelling has no dwellingholder those members who are subscribers to the Memorandum of Association or who have been nominated Members under Article 4(a) shall have such number of additional votes each that when taken collectively form a three quarters majority of the votes cast.

(b) Regulation 54 and 55 in Table A shall not apply to the Company … ."

As Floyd LJ observed, delivering the main judgment of the Court of Appeal, the opening words appear to give each member one vote (so nullifying the default position with companies limited by shares); but does not make the distinction made by s 284 and reg 54 of Table A between votes taken on a show of hands and votes taken on a poll; and it then further makes special provision for cases where a dwelling has no 'dwellingholder' (as defined).

Space does not permit a detailed analysis of all the arguments deployed by each side, but essentially the Claimants/Appellants argued that, in spite of the inevitable difficulty in construing art 13, it clearly assumed that each member would have only one vote, [15]; the defendants/respondents, on the other hand, stressed the 'uncommercial' consequences of this interpretation, and went so far as to argue that this interpretation would lead to commercial absurdity, [17].

Following *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, Floyd LJ saw the role of the Court as to enquire whether 'the main voting provision in art 13(a) is capable of bearing the meaning contended for by the Respondents, or whether, as the Appellants submit, it is clear and unambiguous'. The Court of Appeal came down on the side of holding that art 13 was 'clear and

unambiguous', [38], and could not be said to 'flout common sense' or to result in' commercial absurdity'. In a separate, concurring judgment Briggs LJ made the interesting point that, in effect, discriminating against multiple as opposed to single owners could be seen not as a commercial absurdity but perhaps 'even an intentional disincentive to the concentration of ownership of an excessive number of flats in a single investor, [49]. Practitioners in this field will be aware that, if a large number of flats in a single building are owned by one investor, their voting strength within the Residents' Management Company can be such that the owners of individual flats feel that they have, in effect, an 'outside' ground landlord rather than an RMC which represents them.

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

Morris v Blackpool Borough Council [2014] EWCA Civ 1384 is the appeal to the Court of Appeal against the decision of the Upper Tribunal in *Blackpool BC v Cargill* [2013] UKUT 0377 (LC) (noted in *Bulletin No 102*). Although specifically a decision on the interpretation of the precise wording used by Blackpool BC in granting its 'Right to Buy' leases, the tenor of the decision will no doubt influence the approach of the First-tier Tribunal (FTT) when faced with challenges to the management charges levied by public sector landlords.

The background to the dispute was that in 2007 the Council had hived off its management responsibility to a not-for-profit company (which was also a party to the proceedings). This led to a review of the management charges. The standard management fee element with the service charge for all Council RTB leases jumped from £64 in 2010–11 to £195 in 2011–12. The appellant M had succeeded before the Leasehold Valuation Tribunal (LVT) in getting this element of the charge reduced to £50. The Council appealed, and, sitting in the Upper Tribunal (UT), HHJ Huskinson had substantially allowed its appeal on the interpretation point: because of the lack of evidence to support the Council's apportionment of its officers' time, the management charge for 2011–12 was, however, reduced to £155.

The Court of Appeal (Jackson, McCombe and Gloster LJJ) revisited the interpretation point, and dismissed the appeal, substantially adopting the same reasoning as did HHJ Huskinson. Although the decision given in the judgment of Gloster LJ is ultimately on the wording of specific clauses, some broader points emerge. The nub of the dispute was whether a provision of the lease should be interpreted as allowing the Council to charge for services even though it was not obliged to provide them (the sort of provision which is to be found in many long leases, not just those granted by public sector landlords). The Court of Appeal, like the UT, was reluctant to adopt the interpretation of the lease adopted by the LVT which rendered the provision in question 'inherently meaningless', as this went against the canon of

construction of attempting to give effect to every part of a written instrument, which can be dated back to *Re Strand Music Hall Co Ltd* (1865) 35 Beav 153. '[C]ommercial sense and consideration of the document as a whole' had to be applied here, [47]: the 'evolving challenges faced by a landlord may well require some room for adaptation as to what services best meet its lessees' requirements', [51], especially where the landlord is a local authority. The provision (which was 'oddly placed' in the lease) did not 'give the Council free rein to provide voluntary services as it saw fit and to pass on the charges to lessees' as the clause limited itself to 'reasonable expenses and outgoings' and it would moreover be subject to ss 18 to 30 of the LTA 1985, [54].

Another broader interpretation point was that the Court of Appeal, like HHJ Huskinson, thought that the scope for adopting the *contra proferentem* rule in interpreting leases (that is relying on the fact that leases were generally drafted by landlords and thus should be construed against them) was extremely limited. Relying on Sir John Pennycuick in *St Edmundsbury and Ipswich Diocesan Board of Finance v Clark* (*No 2*) [1975] 1 WLR 478 at 477, the Court of Appeal's view was that it should be adopted only as a last resort if the court found itself 'unable on the material before it to reach a sure conclusion on the construction of a particular contractual term', [53]. It was not a factor to be taken into account by the court in reaching its conclusion. As the wording of the lease was not so vague or ambiguous that the court could not reach a conclusion, the presumption never came into play, [53].

Restrictive covenant requiring consent of neighbours before planning application submitted – application submitted before this was obtained – whether consent unreasonably withheld – balance of convenience with interim injunction

Although not a leasehold case, *Hicks v 89 Holland Park* (*Management*) *Ltd* [2014] EWHC 2962 (Ch) is noted here because the factual scenario – the requirement that plans be approved prior to an application for planning permission, and the matters to be considered on an application for an interim injunction – may well be replicated under leases. The case exemplifies an instance where an application for an interim injunction to enforce restrictive covenants raised difficult issues of where the balance of convenience lay. Previous proceedings, 89 *Holland Park* (*Management*) *Ltd v Hicks* [2013] EWHC 391 (Ch) (which for similar reasons was discussed in *Bulletin No 99*) had held that restrictive covenants requiring that plans be approved, prior to the submission of planning permission for the redevelopment of a plot of land, could be enforced both by the Management Company as owner of the freehold of the neighbouring land, and by the individual lessees, but that the approval was, in the circumstances, subject to an implied proviso that it was not to be unreasonably withheld.

By the time the judgment in the previous proceedings was issued in February 2013, H, the present claimant, had submitted an application for planning

permission which had been refused. In June 2013 H began some excavation works, which D (the Management Company) argued required planning permission an approval under the covenant: H denied this, arguing they were purely exploratory. After correspondence and a dispute, the excavations were backfilled. On 20 November 2013 the Management Company refused approval of further plans. After further correspondence, H started Court proceedings, claiming that the refusal was unreasonable, and seeking a declaration that she was entitled to make an application for planning permission without being in breach of the covenant which had been previously upheld. The Management Company thereupon made an application for an interim injunction restraining the making of a planning application.

At the hearing of this application before Rose J it was accepted by both parties that the ordinary *Cyanimid* test for the grant of an interim injunction applied, and that the issues on the pleadings raised a triable issue of whether the refusal of 20 November 2013 was reasonable. The judge held that the balance of convenience lay in refusing the injunction, though she was heavily influenced by the fact that H undertook that, if she lost at the trial of the substantive issue, she would immediately withdraw any pending application for planning permission, and that if planning permission were granted, she would not act upon it until the trial had determined the substantive issue; and if she lost at the trial, she would not implement the permission. H further undertook not to dispose of the property to a third party without procuring that they entered into similar undertakings.

An interesting piece of background information is the huge growth in the number of applications submitted to the Royal Borough of Kensington and Chelsea for subterranean basement developments: up from 46 in 2001 to 450 in 2013. As a result of this, the Council is considering an imminent tightening of its guidelines, and this was one of the reasons why H was keen promptly to submit her own application.

DIVISION D: PUBLIC SECTOR RESIDENTAL TENANCIES

Possession order against person suffering from a mental health condition who was refusing to leave accommodation provided for him on a temporary basis – whether test for discrimination under s 15 of the Equalities Act 2010 involved the same high threshold as under the Human Rights Act 1998

Akerman-Livingstone v Aster Communities Ltd (*formerly Flourish Homes Ltd*) [2014] EWCA Civ 1081 deals with the interrelationship of the duties owed to a homeless person with the Equality Act 2010 (EA 2010). A-L was suffering from a 'severe prolonged duress stress disorder' and was also homeless. The local authority agreed that it owed a duty to him, which it had satisfied by securing temporary housing for him with Aster. Aster wished him to move from that temporary accommodation to more permanent accommodation, but A-L declined on the basis that he could not cope with what this would

entail. Eventually the local authority argued that they had discharged their duty to him, as he had failed to accept suitable accommodation, which was one of the events which is specified as bringing their duties to an end. A-L argued that the bringing of possession proceedings against him amounted to discrimination against him as a disabled person under s 15 of the EA 2010. HHJ Denyer in the Bristol County Court refused to let the matter go to a full trial, on the basis that he did not have a seriously arguable case. Cranston J agreed with this order, and A-L appealed to the Court of Appeal.

The Court of Appeal held that the test applicable to a defence based on disability discrimination under the EA 2010 should be approached in the same way as one would approach a defence based on art 8 of the ECHR. As the Supreme Court in *Pinnock* and *Powell* had set a high threshold there, the same test should apply in cases where discrimination under the EA 2010 was raised. The judge's refusal to let the case go forward for full argument should therefore stand.

The case is discussed only briefly as permission has already been granted for an appeal to the Supreme Court, which is listed for hearing on 11 December 2014.

(case noted at: HLM 2014, Sep, 7–12)

Warrant for possession – permission of judge required if exercised more than six years after possession order made – claims for conspiracy and misfeasance in public office made out against Council officers

AA v Southwark LBC [2014] EWHC 500 (QB) is a disturbing case to have to note. The main point of law to be noted is that HHJ Anthony Thornton QC (sitting as a Deputy Judge of the QBD) affirmed and applied the principle that one cannot apply for warrant for possession after more than six years have elapsed since it was made, except with the permission of the judge. This was in the context of a claim by AA for unlawful eviction and unlawful interference with his goods: when he was evicted from his one-bedroom flat his furniture and belongings including his passport, lap-tops, papers and personal possessions were sent to a refuse disposal facility for destruction. The disturbing feature of the case is that it included not only successful claims for unlawful eviction, unlawful homelessness and the unlawful destruction of his possessions, but also the torts – committed by council officers, for whom the council was vicariously liable – of conspiracy, negligence, misfeasance in a public office, and claims under art 8 of the ECHR. Named officers had conspired to short-circuit the proper procedures and had then further conspired to cover up the unlawful nature of their original actions.

The trial on the issues of liability only took place in November/December 2013 but judgment was not handed down in open court until 13 October 2014. Although it dealt with issues of liability only, it would appear that issues of remedies and damages were dealt with by means of an out of court

settlement. (The judgment runs to 299 paragraphs; it is preceded by a nine paragraph summary by the judge, which does not form part of the judgment itself).

DIVISION E: LONG LEASES

Marriage value on enfranchisement of a lease under the LRA 1967 (as amended) –whether academic research by an economist posed a challenge to accepted relativities

Kosta v Carnwath (*otherwise Kosta v Trustees of the Phillimore Estate* [2014] UKUT 0319 (LC) is an unusual case which will be of particular interest to those dealing with leasehold valuation disputes, especially those involved with the Prime Central London high value market. The case involved the quantum of marriage value on the enfranchisement of a lease with 52.45 years left to run at the valuation date, and the dispute was essentially whether the relevant 'relativity' to the freehold vacant possession value should be 87.04%, as argued for by the appellant leaseholder K, or 75.5%, as argued for by the respondent landlords. The LVT had adopted a relativity of 76%, and the leaseholder appealed to the UT. The freehold value had been determined by the LVT as over £16M (there was no appeal against this), so it was clearly a high value property.

The unusual feature of the case is that the appellant did not adduce any expert valuation evidence as such, either before the LVT, or before the UT. Rather her expert evidence took the form of a report from a highly reputable economist, Dr Bracke, a Research Economist and Teaching Fellow at the LSE, who basing his research on transactions concluded prior to the LRHUDA 1993 (and thus relatively 'uncontaminated' by the effect of the Act), was critical of the generally accepted relativities. Before the LVT the landlords had confined themselves to proffering expert evidence relating to this particular transaction from a valuer. Before the UT Dr Bracke's evidence was supplemented evidence from another economist, Prof Sean Holly, who is a Reader at Cambridge University, and factual rather than expert evidence from a valuer. Before the UT the landlords also called Prof Colin Lizieri, of the Department of Land Economy at Cambridge University, in order to test Dr Bracke's evidence.

It is not possible to discuss the various arguments in detail, but the result was that the UT (HHJ Huskinson sitting with Mr McCrea, FRICS) did not feel that a case had been made out to shift from established relativities, and upheld the LVT's figure of 76%.

The case is interesting in that Dr Bracke's work was carried out partly in response to the invitation by the Lands Tribunal in *Arrowdell Ltd v Coniston Court* (*North*) *Hove Ltd* (LRA/72/2005) that the RICS should produce guidance in the form of standard graphs of relativities that could readily be applied by valuers carrying out enfranchisement valuations. Apparently the RICS did convene a Group on this but it was unable to agree upon definitive graphs.

Another point of interest in the case is that the landlords sought to exclude Dr Bracke's evidence on the basis that he had a commercial interest in its adoption. At a case management conference, the Deputy President had declined to debar Dr Bracke's evidence. The landlords had sought permission from the Court of Appeal to appeal this ruling, but the Lord Justice had refused permission, on the basis that any issue as to his impartiality could be explored by cross-examination.

It seems unlikely that we have heard the last of Dr Bracke's research. As the UT noted when granting permission to appeal 'Dr Bracke's approach is likely to be relied on in other high value cases'.

PERMISSION TO APPEAL

Akerman-Livingstone v Aster Communities Ltd (*formerly Flourish Homes Ltd*) [2014] EWCA Civ 1081: permission to appeal has been granted and the appeal will be heard by the Supreme Court on 11 December 2014.

NOTES ON CASES

Birmingham CC v Beech [2014] EWCA Civ 830: JHL 2014, 17(5), D98-D99 (noted in *Bulletin No 106*)

Boots UK Ltd v Goldpine Estates Ltd (unreported) [2014] Comm Leases 2092–2093

Century Projects Ltd v Almacantar (*Centre Point*) *Ltd* [2014] EWHC 394 (Ch) [2014] Comm. Leases 2095–2096 (noted in *Bulletin No 107*)

Coventry v Lawrence (*No 2*) [2014] UKSC 46: NLJ 2014, 164(7620), 12 (noted in *Bulletin No 107*)

Crompton v Woodford Scrap Metal Ltd [2014] EWHC 1260 (QB): [2014] Comm Leases 2091–2092

*Durley House Ltd v Firmdale Hotels Plc [*2014] EWHC 2608 (Ch): [2014] Comm. Leases 2096–2098

Marks & Spencer plc v Paribas Securities Service Trust Co (*Jersey*) *Ltd* [2014] EWCA Civ 603: NLJ 2014, 164(7618), 8–9; and NLJ 2014, 164(7622), 13–14 (noted in *Bulletin No 106*)

McDonald v McDonald [2014] EWCA Civ 1049: NLJ 2014, 164(7621), 11–12]; and HLM 2014, Sep, 7–12 (noted in *Bulletin No 107*)

Mount Eden Land Ltd v Bolsover Investments Ltd (*Ch D*) (landlord could not use covenant against alterations to block possible enfranchisement claim): Estates Gazette, 6 September 2014, 96

Qdime Ltd v Bath Building (*Swindon*) *Management Company Ltd* [2014] UKUT 0261 (LC): JHL 2014, 17(5), D97-D98 (noted in *Bulletin No 106*)

R. (*on the application of Trafford*) *v Blackpool BC* [2014] EWHC 85 (Admin): NLJ 2014, 164(7620), 16–17 (noted in *Bulletin No 104*)

Southend-on-Sea v Armour [2014] EWCA Civ 231: JHL 2014, 17(5), 98–102 ((noted in *Bulletin No 105*)

Waites (*H*) *Ltd v Hambledon Court Ltd* [2014] EWHC 651 (Ch): [2014] Comm Leases 2093–2094 (noted in *Bulletin No 105*)

Westbrook Dolphin Square Ltd v Friends Life Ltd [2014] EWHC 2433 (Ch): EG 2014, 1436, 98–99 (case noted in *Bulletin No 107*)

Youssefi v Mussellwhite [2014] EWCA Civ 885: EG 2014, 1439, 99; SJ 2014, 158(37) Supp (Property Focus), 15,17; [2014] L & T Review 193–195; and NLJ 2014, 164(7623), 18 (noted in *Bulletin No 107*)

ARTICLES OF INTEREST

A clean break (increasing popularity of warranty and indemnity insurance in real estate transactions) EG 2014, 1436, 90–92

A right to buy? LTA 1987, Pt 1, and its application to mixed-use tenancies) EG 2014, 1438, 122–123

Check up or pay up (requirement on landlords to check tenants' immigration status) EG 2014, 1436, 93

Confidentiality clauses and rent review arbitrations EG 2014, 1440, 94–96

Consenting adults (discusses Protocol for Applications for Consent to Assign or Sublet, and provisions for ADR in case of disagreement) EG 2014, 1438, 118–121

Contributions please! (how the Civil Liability (Contribution) Act 1978 affects property professionals) Estates Gazette, 6 September 2014, 94–95

Conventional Wisdoms (why the LRA 1967 and the LRHUDA 1993 have been so often litigated) NLJ 2014, 164(7628), 18–19

Damages for breach of covenant to repair/reinstate: Stratton v Patel [2014] L & T Review D34

Devolution and beyond (effect on landlord and tenant law and housing law) JHL 2014, 17(5), 91–93

Dilapidations and damages EG 2014, 1439, 97

Do standard leases have their place? EG 2014, 1439, 90–93

Flats: how to avoid rising tensions (recent case law) SJ 2014, 158(37) Supp (Property Focus), 27, 29

Green leases – drafting for all situations [2014] L & T Review 199–206

Ground rents: modern v nominal (rent review provisions) EG 2014, 1438, 126

In place of strife (consent to assignment and sub-letting and ADR) LSG 2014, 111(34), 8

Invalid notices: form over substance? [2014] L & T Review 176–182

Mixed use and residential tenants' rights (entitlement to enfranchise) EG 2014, 1440, 98–99

Mixed use, commercial leases and the 1987 Act problem [2014] L & T Review 163–164

Not the disaster many feared (commercial rent arrears recovery) EG 2014, 1440, 101

On borrowed time (whether lenders have duty not unreasonably to delay consents) Estates Gazette, 6 September 2014, 97

Power to the social landlord? (anti-social behaviour) SJ 2014, 158(37) Supp (Property Focus), 23,25

Private eye (discusses various means of regulating the private rented sector) EG 2014, 1437 Supp (Residential), 17–18

Rents for social housing from 2015–16: summary of responses JHL 2014, 17(5), D99

Saving heartache and expense on leasehold repairs SJ 2014, 158(35), 28

Section 2 turns 25 (has s 2 LP(MP)A 1989 brought certainty?) NLJ 2014, 164(7627), 16–17

Simplification of the implication (implied terms) EG 2014, 1439, 94–95

Speeding up evictions SJ 2014, 158(37) Supp (Property Focus), 30

Tenancy deposits again: Gardner v McCusker [2014] L & T Review 191–193

The model commercial lease [2014] L & T Review 183–188

The new Anti-social Behaviour Act 2014 – what it means for landlords and tenants: Part 2 [2014] L & T Review 165–168

The rule in Wringe and Cohen – still good law? [2014] L & T Review 172–175

The simpler the better? The future of renting homes in Wales JHL 2014, 17(5), 103–108

Timely consent to assign (effect of LTA 1988) EG 2014, 1435, 65

The unknown unknown (liability to repair hidden defects) EG 2014, 1435, 66–67

Vague and regression (contracting out procedure under LTA 1954) EG 2014, 1435, 62–64

What is a reversion upon a lease? [2014] LQR 635–647

Where the law went wrong – apportionment of rent: Ellis v Rowbotham [2014] L & T Review 2014, 169–171

NEWS AND CONSULTATIONS

The **Department for Communities and Local Government** is consulting in its **Housing Standards Review** on changes to the **Building Regulations**. In particular, it is considering standards to improve home security, optimise water use

and to meet the needs of older and disabled people. Responses are invited by 7 November 2014: see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/354154/140911__HSR_CONSULTATION_DOCUMENT_FINAL.pdf

The **Welsh Government** has opened a consultation into proposed amendments to the **legislation on easements**. The proposals would allow easements to be overridden permanently if land is acquired for planning purposes, and not merely temporarily as at present. Responses must be received by 16 January 2015: http://wales.gov.uk/consultations/planning/amendments-to-easements-and-other-rights/?lang=en

The Law Society has issued a reminder to the minority (4%) still lodging **SDLT returns on paper** that, as from 1 October 2014, a valid local authority code must be included at Q.29 of SDLT (and on the other forms, if applicable), or the return will be rejected: http://www.lawsociety.org.uk/advice/articles/sdlt-returns-on-paper/

OFFICIAL PUBLICATIONS

Commercial and corporate ownership data – Land Registration guidance. This sets out how to get title records in all ownership categories: https://www.gov.uk/commercial-and-corporate-ownership-data

The **Department for Communities and Local Government** has published a **code of practice for the private rented sector**: http://www.rics.org/Global/Private_Rented_Sector_code.2014.pdf https://www.gov.uk/government/news/a-better-deal-for-hardworking-tenants

It has also published a **model agreement for an assured shorthold tenancy** and accompanying **guidance**: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/353175/140911_Model_tenancy_agreement-online_version.docx https://www.gov.uk/government/news/a-better-deal-for-hardworking-tenants

The **Home Office** has issued the final version of its **guidance on landlords' responsibilities for checking their tenants' immigration status** and 'right to rent': https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice

REPORT

The **Property Ombudsman** has published his **Interim Report** for **2014**: http://www.tpos.co.uk/downloads/reports/TPO-Interim-Report-2014.pdf

PRACTICE GUIDES ETC

The **Legal Ombudsman**, working with the **Solicitors Regulation Authority**, has issued a Guidance Note for solicitors and others on using SDLT avoidance schemes: http://www.legalombudsman.org.uk/downloads/documents/publications/Tax-avoidance-schemes-Guidance-140929.pdf

H.M. Land Registry has issued revised versions of **Practice Guide 2** on first registration of title if deeds are lost or have destroyed (updated re: Statement

of Truth Form ST3); **PG15** on overriding interests and their disclosure; **PG19A** on restrictions and leasehold properties; **PG28** on extension of leases; **PG70** on nil-rate band discretionary trusts; and **PG74** on searches of the index of proprietors' names.

PRESS RELEASES

The **Department for Communities and Local Government** has announced that a new **Model Tenancy Agreement** will be introduced for private tenants: see https://www.gov.uk/government/news/a-better-deal-for-hardworking-tenants

Ministers at the **Department for Communities and Local Government** have announced their backing for a **Private Member's Bill** introduced by Sarah Teather MP which would outlaw **retaliatory evictions** of tenants who request repairs: see https://www.gov.uk/government/news/stephen-williams-vows-to-outlaw-revenge-evictions%20

The **Law Commission** has announced that it will consult and report on '**Transfer of Title and Change of Occupancy Fees in Leaseholds'** These are generally encountered in the sheltered retirement home market and are commonly if somewhat tactlessly referred to as '**exit fees'**. A consultation will be issued in Summer 2015 with a view to the Commission reporting with interim recommendations for reform in March 2016. See: http://lawcommission.justice.gov.uk/areas/2928.htm

LEGISLATIVE PROPOSALS

A **House of Commons Library Standard Note** contains background information on the **Household Safety (Carbon Monoxide Detectors) Bill 2014**: http://www.parliament.uk/briefing-papers/SN06979.pdf

STATUTES ETC

The **Housing (Wales) Act 2014** reforms certain aspects of housing in Wales, including compulsory registration and licensing of landlords, letting and management agents, the law relating to homelessness, and the provision of sites for gypsies and travellers, and introduces a set of standards for local authorities in the social housing sector. It also provides for more than the standard council tax to be levied on properties which are left empty long-term.

STATUTORY INSTRUMENTS

The **Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, SI 2014/2359** requires those who engage in the work described to belong to a redress scheme which deals with complaints.

The **Building (Amendment) Regulations 2014, SI 2014/2362** update the list of bodies authorised by the Secretary of State to register individuals as competent to certify compliance with certain requirements of the Building Regulations 2010.

The **Financial Services Act 2012 (Consequential Amendments) Order 2014, SI 2014/2371** updates form CIT in the Land Registration Rules 2003 to include references to the Financial Conduct Authority and the Prudential Regulation Authority

The **Absolute Ground for Possession for Anti-social Behaviour (Review Procedure) (England) Regulations 2014, SI 2014/2554** allow secure tenants convicted of anti-social behaviour offences, to request a review of their landlord's decision to seek a new absolute ground for possession on their property. The provisions came into force (in England only) on 2 October 2014.

The **Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No 7, Saving and Transitional Provisions) Order 2014, SI 2014/2590** came into force on 20 October 2014, and introduces the new absolute ground for the possession of a dwelling and the new Criminal Behaviour Orders.

The **Residential Property Tribunal Procedures and Fees (Wales) (Amendment No 2) Regulations 2014, SI 2014/2553** update the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012 so that references are to the Mobile Homes (Wales) Act 2014 instead of the Mobile Homes Act 1983. The Rules also make provision for new applications that can be made to the Residential Property Tribunal.

The **Immigration (Residential Accommodation) (Prescribed Requirement and Codes of Practice) Order 2014, SI 2014/2874**, which comes into force on 1 December 2014, set out the checks that landlords and their agents are required to carry out. The Regulations also set out the financial penalties for their breach.

The **Immigration (Residential Accommodation) (Prescribed Cases) Order 2014, SI 2014/2873**, which also comes into force on 1 December 2014, exempt from checks cases where a tenancy is extended automatically due to contractual rights.

The **Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No 2 and Transitional Provisions) (Wales) Order 2014, SI 2014/2830**, introduced in Wales with effect from 21 October 2014 a new absolute ground for courts to grant possession of a dwelling subject to a secure tenancy (equivalent provisions apply in England by virtue of amendments to the Housing Act 1985 which were made by s 96 of the Anti-social Behaviour, Crime and Policing Act 2014).

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Published by LexisNexis

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

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

ISBN 978-1-4057-8503-7

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