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Commercial Leases Update

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ABOUT RICHARD SNAPE

Richard has been the Head of Legal Training at Davitt Jones Bould (DJB) since 2002. He speaks at numerous courses for law societies all over the country, various public courses, in-house seminars within solicitors' firms and has also talked extensively to local authorities and central government bodies. His areas of specialism include both commercial and residential property, in particular in relation to local government law, conveyancing issues, development land, commercial property and incumbrances in relation to land.

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OUTCOME FOCUSED TRAINING INFORMATION

Lecture is aimed at: Property professionals and fee earners involved in both contentious and non-contentious property work

Learning Outcome: To give an increased knowledge of the subject matter. To update on current issues, case law and statutory provisions and to be able to apply the knowledge gained in the better provision of a service to the client.

Satisfying Competency Statement Section: B – Technical Legal Practice

For further information please see http://www.sra.org.uk/competence

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BANNING UPWARDS-ONLY RENT REVIEW CLAUSES

On July 10th, 2025, the English Devolution and Community Empowerment Bill, was introduced into the House of Commons. For the most part, this concerns devolution in England and is 329 pages in length. One part, clause 71 and Schedule 31 surprised everyone by introducing a proposed ban on upwards-only rent review clauses. This was done without any consultation. It intends to add a new s.54A and Schedule 7A and B to the Landlord and Tenant Act 1954. Despite the name, those part of the Bill applies to England and Wales. The Law Commission made no reference to this in their recent review of the Landlord and Tenant Act 1954 where they proposed keeping contracting out and a possible increase in the length of time before the Act would apply from more than 6 months to 2 years. The Impact Assessment for the Bill suggests implementation for 2027 to 2028.

Requirements for the ban on upwards-only rent reviews:

Condition A - The provisions will apply to leases within the Landlord and Tenant Act 1954 including contracted out leases. S.23 of the Act requires occupation under a lease as opposed to a licence at least partly for business purposes. A business is defined under s.23 (3) as including any trade commerce profession or employment and includes any activity carried on by a body of persons whether corporate or unincorporated. ***In Ruby Triangle v the Jesus's Sanctuary Ministries [2020] EWHC 2247*** a worship centre occupied by a corporate tenant was a business tenancy. Presumably they will apply to mixed business–residential leases: ***Cheryl Investment v Saldhana [1978] 1WLR132.*** The legislation will not apply to intermediate landlords as they are not in occupation, see below. This may cause problems in relation to cashflow for such landlords if the rent for any sub-letting has fallen.

Condition B – It will not be retrospective and only apply to leases granted after the provisions come into force. It will not apply to an agreement for lease entered prior to the provisions coming into force. It seems likely it will apply to lease renewals including statutory renewals after this date. Presumably surrender and regrant including implied surrender will also give rise to the ban. It will have to be seen if Landlords rush to grant new leases prior to implementation. On a 1954 Act renewal the court is supposed to have regard to the terms of the current tenancy***: O'May v City of London Real Property Company [1983] 2AC726.*** It may be difficult top convert from one pattern of rent review to another.

Condition C – It must contain a relevant rent review provision whereby the rent will or may change during the term of the tenancy and the amount of rent increase is not known or cannot be determined when the tenancy us granted. It will not therefore apply to fixed increases or stepped rents and it remains to be seen whether these become more common in the future.

Condition D – The rent review must be by reference to inflation or any other index, e.g. CPI or RPI, or the actual rent for the premises, a hypothetical market rent, or other notional rent, e.g. turnover. If these conditions are met and the amount above is lower than the current rent, the new passing rent will be the lower amount. It also applies to options to put which are on a rent to be as determined above. It does not apply to options to renew. As inflation over a long term tends only to rise, then it will have to be seen whether index linking becomes more common.

Other Provisions

There is also provision allowing tenants to trigger a rent review clause by notice in writing as long as the time for initiating the rent review has not lapsed. As time in a rent review is not normally of the essence, then this will be a rarity. A tenant can also take operational action by notice in writing of 7 days if the landlord is delaying the review process.

Rent Collars

On the face of it, rent collars will be ineffective if the provisions become law. The Government wish to make sure that rent collars which state a minimum rent will not be used to avoid the legislation. The Secretary of State will have power to make regulations which can define exceptions whereby rent collars may be used. This will be subject to formal consultation but might include a flat rate of not less than 10%, 15% or 20% of rent payable or allowing a collar where a corresponding rent cap is applied at the same time.

Conclusions

The Government's avowed intention is to ensure that high-street retailers can afford the rent and will not have to close. On July 25th, the British Property Federation produced a blog stating that rent review clauses were not really used in that part of the retail sector and the duration was too short in a significant number of leases to justify their presence. It also stated that upwards-only rent review gave rise to a stable, predictable income for users and a higher initial rent might give rise to a trade off for tenants for things like rent free periods. It will also be interesting to see what the effect is on the initial rent.

THE LEVELLING-UP AND REGENERATION ACT 2023: HIGH STREET RENTAL AUCTIONS (ENGLAND ONLY)

This was announced in the Queen's Speech and introduced into the House of Commons on 11 May 2022. Part 10 allows local authorities to designate high streets or town centre streets or areas as being important to the local economy because of a concentration of high street users. This will include shops, offices, restaurants, pubs, meeting places, community halls and light industrial units, but not warehouses.

The legislation came into force on December 2nd 2024, as did the Local Authority (Rental Auctions) (England) and Town and Country Planning (General Permitted Development) (Amendments) Regulations 2024. There is also non-statutory guidance in place. Bassetlaw, Darlington and Mansfield Councils are early adopters with Bournemouth Christchurch and Poole Council acting in an advisory role. On March 7th 2025, eight more local authorities agreed to take part in the scheme.
If premises are vacant for at least one year or 366 days or more in the last two years, but are suitable for high street use the local authority can notify the landlord that they intend to put the premises up for high street rental auction. The local authority must consider that occupation would be beneficial to the local economy, society or environment. Occupation involves regular presence of people at the premises but there is no clear definition of what this means, for instance, what about use as storage? Premises includes the whole or part of the building or any that with reasonable adaptation can be used as such.

The first stage is for the local authority to serve an initial notice which may last up to 10 weeks. During this period the owner cannot rent out the premises without the consent of the local authority unless a contract is already in place. The local authority must consent to letting if the tenancy is for at least one year and the local authority is satisfied that the lease will result in occupation by the regular presence of people.

If the premises have not been let within 8 weeks the local authority may serve a final letting notice expiring a maximum of 14 weeks later. During the period the landlord cannot let out the premises or carry out works without local authority's consent.

The local authority can then conduct a rental auction for a lease of between one and five years' duration. The lease will be excluded from the Landlord and Tenant Act 1954. The local authority acts in its own name but with an indication that it is binding on the landlord. The local authority will give the landlord a signed copy of the tenancy agreement as soon as is reasonably possible. The terms of the tenancy will be down to regulations but it can include a requirement for the landlord to carry out works or allowing the tenant to do works. The local authority must have regard to any representations by the landlord.

The landlord can counter-notice on the final letting notice being served. The counter-notice may include the fact that the landlord intends to carry out substantial works of construction, demolition or reconstruction affecting the premises, or they intend to occupy for their own business or residential purpose.

There will be an agreement for lease during which time the landlord must bring the premises up to a minimum standard, for instance in relation to water ingress, mould and damp, fire, gas and electrical

safety. It is envisaged that the lease itself will be standardised. The tenant must yield up in the same condition and there must be a schedule of condition.

A mortgagee and superior landlord will be deemed to have given consent to any lease. There will be no requirements to bring up to Minimum Energy Efficiency Standards but the landlord may face enforcement action for non-compliance. Permitted development is changed to allow any use for the duration of the tenancy but not afterwards and planning permission may still be required for building work. The local authority will prepare the auction pack and the landlord must respond to enquiries, provide proof of title and other documents. Non-compliance may result in a £2,500 fine.
The auction process will last around 11 weeks at the latest. The landlord will be given a proposed agreement to the lease in the second week. The landlord can make representation in the 3rd week as to possible suitable high street use. There will be 6 weeks of marketing and bids must be submitted by the end of the 11th week. The landlord will be notified of the bids and will be given 2 days to tell the local authority of its choice which need not necessarily be the highest bid. If the landlord does not respond, the local authority can choose not to accept the bid. Otherwise they must accept the highest bid unless not reasonably practicable to accept. The landlord will have up to 3 months to bring up to standard at their own expense, including complying with a fire safety assessment, asbestos assessment, gas and electrical checks, removal of mould growth and water ingress. Completion will be within 10 working days of the landlords completing the works or earlier if the parties agree.

THE AUCTION PROCESS

Preliminary Steps

The local authority must instruct a qualified person to enter and survey the premises for the purpose of providing a schedule of works to raise the premises to a minimum standard (see below).

Rental Auction: First Week

Before the end of the first week the local authority must serve a notice of its intention on the landlord. As soon as possible after this they must undertake local authority enquiries in form CON29 but not optional enquires, local land charges search, drainage and water enquiries on CON29DW and a flood risk search.

Second Week

Before the end of the second week the local authority must serve a notice on the landlord requiring the following information unless the local authority consider it unnecessary or irrelevant in relation to the premises. This includes full and accurate response to enquiries, proof of landlord's title. It also includes the following certificates if available:

I. Current electrical installation certificate;
II. Current energy performance certificate;
III. Current water safety certificate;
IV. Current gas safety certificate;
V. Current fire certificate;
VI. Test certificate for mechanical, electrical or life safety systems.

If available a fire safety risk assessment and asbestos survey and asbestos management plan must be provided.

If the landlord fails to provide the information without reasonable excuse or provides false information, they may be prosecuted.

Third Week

If the landlord wishes to make any representations, then they must serve the use on the local authority before the end of the third week and the local authority must take these into account in deciding the terms of the contract and tenancy.

Fourth Week

The local authority must by the end of the fourth week serve the landlord with the auction pack. This will include the contract and terms of the tenancy, a brief explanation as to how the landlord's representations have been taken into account, the information listed above, a marketing brochure, results of searches and any survey.

Fifth – Tenth Week

As soon as reasonably practicable in the fifth week the local authority must begin marketing with a link to the auction pack. This must be in a prominent position on the local authority website and also on a website which is one of the leading websites advertising commercial property for rent.
The local authority must continue marketing until the end of the tenth week. They must serve all valid bids on the landlord as soon as reasonably practicable after the end of the
ninth week and in any event by the end of the tenth week. A valid bid must specify the annual rent bid exclusive of the VAT.

Auction costs

The local authority may require the successful bidder to pay them the legal costs of preparing the auction pack, search fees, and the cost of a survey. They cannot charge any other costs.

LANDLORD WORKS

The landlord will be required to obtain any consents in relation to landlord's required works to bring the property up to standard. They must use all reasonable endeavours to procure the works are completed within three calendar months of the date of the tenancy contracts. This period may be extended if such a provision is determined by a professional surveyor appointed by the landlord acting reasonably if there is a delay caused by an event which is beyond the landlord's control.

Tenant's Remedies

If the landlord does not comply with the above, then within five working days the tenant may claim liquidated damages of £55 per day or part of a day. The contract may also include provision allowing the tenants to serve notice on the landlord that they will carry out works and deduct the cost from the rent. If the landlord's works are not completed by 4pm on the last day of the period of six months starting with the date of the tenancy contract the tenant may serve written notice that unless the works are completed within twenty working days, they will terminate the contract.

TERMS OF THE TENANCY

If the landlord does not enter into the lease than the local authority can do so on behalf of the landlord but there must be a note in the lease to this effect. The lease will be for between one and five years and contracted-out of the Landlord and Tenant Act 1954.

Tenants Obligations: The Rent

This will be paid in equal monthly payments in advance on the first day of each month. There will be no right for the tenant to set off any payments.

Repairs
The tenant will be required to keep the premises clean, tidy and in not worse state of repair and decoration than that evidenced in a schedule of condition. The schedule of condition should be produced by the tenant as soon as reasonably practicable following the date of the tenancy. Within five working days of completion of the schedule of condition the tenant must supply the landlord with a copy. Within five working days of receipt the landlord may give the tenant notice that the schedule of condition is final and binding or may give the tenant notice that it is not agreed to be final and binding. If the latter occurs, the parties must in good faith try to seek agreement and reasonable variations of the schedule within ten working days. If there is no agreement a schedule of condition will be provided by an independent surveyor appointed by either landlord or tenant.

The landlord will have a right at reasonable times and on reasonable notice to examine, record, inspect, maintain or clean the property or make good any default by the tenant.

Alterations
There will be provision for the tenant not to alter the exterior of the premises expect for installing a sign for advertising. Internal alternations will be subject to landlord's consent.

Use
There will be a requirement that the tenant does not use the premises other than for permitted use identified in the particulars of the tenancy.

Insurance
The landlord will insure, and the tenant will pay a fair proportion of the costs incurred.

Landlord's Obligations: Service Charge
Where the premises form part of a building the local authority can include one of three obligations whichever they consider appropriate

1. The landlord keeps in repair the state of the building so as not to interfere with the tenant's ability to trade from the premises.
2. The tenant pays a fair proportion of the landlord's provision of services which will be determined by the landlord's surveyor.
3. Provision for a service charge substantially similar to the service charge contained in the landlord's own lease, other leases in the building or in the case of a shopping centre other leases in the centre or other leases of adjoining premises in which the landlord has an interest.

RECENT COMMERCIAL LEASE CASE LAW

Landlord & Tenant Act 1954; When the Act Applies

To come within the 1954 Act the tenant must occupy under a Lease at least partly for business purposes: S.23. In the case of ***Graysim v P&O Holdings Limited (1996)*** the House of Lords held that only one person can be in occupation at any time and in the case of a sub-letting this will usually be the sub-tenant. In the case of ***R (Annington) v Secretary of State for Defence [2023] EWHC 1155*** the Ministry of Defence had transferred its housing stock to Annington in 1996 for £1.662 billion and then obtained a leaseback for 200 years. They then sub-let to service families. Due to house price inflation this proved to be financially disastrous for them. They therefore served claims notices under the **Leasehold Reform Act 1967**. If there is a 1954 Act tenancy, they can only do this if they are resident. It was held that the 1954 Act did not apply as they were not residents as the service families were. The case was due to be heard by the Court of Appeal on July 25th 2024 but subsequently the parties entered into negotiations. On December 17th 2024 Annington agreed to sell back to the MOD 36,347 properties worth £8.1 billion for £5.994 billion thus eliminating the need to pay £230 million per annum rent.

In ***Royal Borough of Kensington and Chelsea v Mellcraft [2024] EWHC 539*** a flat where the director of a company lived was held to be occupied under a business tenancy as it was the only premises from which the business was run. If premises is mixed business residential then it will come within the Landlord and Tenant Act 1954 unless the business use is ancillary or a breach of user covenants. To avoid this a Home Business Tenancy may be created under the Small Business Enterprise and Employment Act 2015.

Renewal terms

B&M Retail Limited v HSBC Pension Trust (UK Limited) (2023) County Court. B&M had a twenty year Lease from 2000. The premises were outdated. HSBC entered into a conditional agreement with Aldi that on obtaining vacant possession they would be granted a lease and would redevelop although there was some evidence that they may be prepared to wait until 2029.

B&M served a S.26 request for a new lease. This was not opposed by the Landlord as they had problems with the post room during the lockdowns. They would have opposed underground F, demolition and reconstruction. The Court relied on the case of ***National Car Parks v Paternoster Consortium [1990] 1EGLR 99*** where the tenant was given a ten year lease but the landlord successfully included a rolling redevelopment break exercisable after two years by which time planning issues might have been decided. In the current case the tenant was given a five year Lease with a six month rolling redevelopment break exercisable immediately.

In ***Kwik-Fit Properties Ltd v Resham (2024) County Court K*** wanted a 15 year lease with break options every five years as they stated that this was company policy and also policy within the auto industry. The landlord objected as this would diminish the value of the reversion. The court stated that under ***O'May v City of London Real Property Company*** (above) it was up to K to show a good reason for a change on a renewal and there was no evidence of any policy on break clauses in the auto industry. For Landlords breaks as in ***National Car Parks***, (above) the Landlord had to show a real possibility that development would occur within the lease term. The burden should be the same in

relation to a tenant break and K could not show a real possibility of exercising a break. Moreover, a higher rent would not adequately compensate the Landlord.

In ***Betty's Café v Phillips Furnishing Stores (1959)*** the matter should be determined at the date of the court hearing. The Court of Appeal held that this was not the case, and the matter could be looked into in relation to breaches throughout the duration of the lease. The grounds refer to the fact that the tenant "ought not to" be granted a new lease. It was held that the tenant needs should be taken into account as well as the Landlord's and as the tenant had learnt their lesson a new lease was ordered.

Man Limited v Back Inn Time Diner Limited [2023] EWHC 363 Here the tenant served a S.26 request which the landlord opposed on ground (f), intending to develop the premises into a multi-storey mixed use development. The landlord produced evidence of an ability to fund the development but as this was not provided until the start of the trial it could not be considered. They also produced evidence of ownership of other property which could be used as security, but this was not clearly identified.

The High Court stated that there must be a realistic prospect of funding, similar to the test for obtaining planning permission. The landlord's ownership of other properties may also be relevant. Here there was no realistic prospect, and the landlord failed.

Sainsbury's Supermarkets v Medley Assets (2024). Sainsbury's took a Lease of a four-storey building plus basement. They operated a supermarket on the ground floor, but the rest of the building was unoccupied apart from 26 metre² of the first floor. The Landlord opposed a new lease on ground (f), intending to demolish and reconstruct. A week before the initial court hearing the tenant vacated the first floor. The Landlord intended to do work lowering the basement and widening a staircase on the first floor. As the tenant was not in occupation of any of the premises where work was intended the Landlord could not use ground (f). The tenant was entitled to a new lease of the holding and so could go back into occupation when the court decided the renewal terms.

In any case, the county court decided that the ground beneath the basement was not part of the demise and the work was not sufficiently significant to use ground (f).

MVL Properties (2017) Ltd v The Leadmill Ltd (2025) here the Landlord opposed a new lease on ground (g) in that he wanted to carry out the same business of providing a music and entertainment venue. The court accepted that the Landlord could use ground (g) in these circumstances, see ***Humber Oil Terminal Trustees Ltd v Associated British Ports [2011] L&TR27***. The Landlord estimated that they would be able to open the new venue within six months of the court order. This was accepted as being a reasonable time and in any case the fitting out of the premise would constitute occupation. The Tenant argued that losing their goodwill would be a breach of Article 1 of Protocol 1 European Convention of Human Rights and the right to possessions. This argument failed as the Tenant only had a contingent right to renew and in any case the Tenant's argument was not in the public interest.

Work must be started within a reasonable time of the end of the original lease which normally terminates after three months of the court order: S.64. In ***Spirit Pub Co. (Managed) London Ltd. V Pridewell Property Ltd. (2025)*** it was reasonable to commence redevelopment work fourteen

months later. In addition, the tenant's refusal to grant additional rights of access to undertake preparatory steps to a planning application justified a longer time period.

Misrepresentation

McDonalds Restaurant v Shirayama Shokusan [2024] UKHC 1133 Here the Landlord successfully opposed a new lease in favour of McDonalds under S.30 (1) (g), intention to occupy for their own purposes. The premises would be run as a Japanese restaurant named Zen Bento. They undertook that they would open by November 2019 but did not open until March 2020 when due to covid restrictions it could only be used as a takeaway. They then closed but reopened in February 2021 as a different type of restaurant, coffee shop and bakery. McDonalds sued for misrepresentation under S.37 A of the LTA 1954 which states that if the court makes an order for termination of the tenancy which was obtained by misrepresentation or concealment of material facts the court may order the Landlord to pay compensation. It was held that this was the case here.

This seems strange as Ground (g) requires the Landlord to occupy for their own purposes and does not state the need for a specific purpose.

Lease and Licence

AP Wireless II v On Tower [2025] EWCA 971 This judgment was from July 25th. A lease must have a fixed maximum duration. Here there was stated to be a minimum term of 10 years. Then either side could give the other no less than 12 months' notice expiring at any time on or after the expiry of the minimum term. There was exclusive possession and the rent was payable quarterly in advance. Nevertheless, the term was held to be uncertain and the agreement gave rise to a licence.

LAW COMMISSION CONSULTATION ON RIGHT TO RENEW BUSINESS TENANCIES

The first stage of consultation was produced on November 19th 2024 and the consultation period ends on February 19th 2025. Firstly, alternatives to contracting-out will be looked at as it is thought that contracting-out is costly to the landlord and may result in inadvertently allowing security of tenure when there are faults in the notices or when notices are not served on termination of the initial term. The possibilities are: mandatory security; abolition of security and the tenant relying on contractual options instead; keeping contract out; having to contract in.
When the Act applies, and when it is excluded will also look at with possible exclusion based on use of the premises, duration, existence of another regime or other characteristics such ass floor space, rent, or location.

On June 4th 2025 the Law Commission announced that they did not see the need for any changes apart from the possibility of increasing the time period for which the Act would not apply from six months to 2 years.

TENANCIES AT WILL AND PERIODIC TENANCIES

Under a tenancy at will either side can terminate at any time and a tenancy at will not have the benefit of security of tenure under the ***Landlord and Tenant Act 1954***. In the case of ***Javid v Aqil [1991] 1WLR 1007*** the tenant paid three months' rent in advance on entry into the premises whilst negotiating the final lease. They remained and made three further payments of rent. As negotiations were going nowhere, the landlord required the tenant to leave. The tenant claimed that they were a periodic tenant within the 1954 Act. It was held by the Court of Appeal that payment of rent would not give rise to a periodic tenancy but, as the parties were still negotiating, there would be a tenancy at will.

Erimus Housing Limited v Barclays Wealth Trustees (Jersey) Ltd [2014] EWCA Civ 303 In this case, the landlord had granted to the tenant a lease which was contracted out of the protection of the Landlord and Tenant Act 1954. The contracted-out lease came to an end, and although at first there were some attempts to negotiate a new lease, it was eventually accepted that the tenant was holding over on the terms of the expired lease. Heads of Terms for a new contracted-out lease were later agreed, but no new lease was ever completed. Nearly two years after the original lease had expired, the tenant suggested that it should continue to hold over for another six months or so, and the landlord made no objection to this.

In fact, the tenant vacated in September 2012, almost three years after the original lease had expired. The tenant argued that it had validly given three months' notice to quit ending on 28 September 2012, but the landlord argued that there was a yearly periodic tenancy, so that the tenant was required to give at least six months' notice, expiring on the anniversary of the term (so that the lease could not be brought to an end before 31 October 2013).

On appeal, the Court of Appeal unanimously allowed the appeal. Although the progress of negotiations had been slow and lacking any urgency, there was no evidence that the negotiations had ever ceased or been abandoned by the parties because of an inability to agree terms.

Valley View Health Centre v NHS Property Services [2022] EWHC 1393 In early 2007 Valley View partners entered premises the immediate landlord of which was a Primary Care Trust. In April 2013 the landlord's interests passed to NHS Property Services. Rent was paid, but no formal agreement was reached. It appears that there was no negotiation as to a lease for the first four years and after that, negotiations were sporadic and for substantial time periods there seemed to be no negotiation at all. Nevertheless, the High Court held that this gave rise to a tenancy at will on the basis of the above cases. The Court also implied service charge liability primarily in relation to maintenance of the boiler system.

St Andrew's Medical Centre v NHS Property Services [2022] EWHC 1393 Here, the medical centre was given a 15-year lease which terminated in 2019. They then remained negotiating a new lease and paying the rent. Negotiations were temporarily suspended due to a dispute over service charge liability. This also gave rise to a tenancy at will.

AP Wireless II v On Tower (2025) Where leases expired on January 2nd 2017, the rent was demanded yearly and accepted until January 2026. It was held that this gave rise to a tenancy at will, as the tenant had the benefit of separate legislation. There is no inferral of a periodic tenancy.

WAIVER AND FORFEITURE

Tropical Zoo Ltd v London Borough of Hounslow [2024] EWHC 1240. Here, the Council Granted T. a 125 year lease in March 2012. T. covenanted to build a zoo building within two years. They also covenanted that they would remedy any breach notified to them by the Council within two months. The zoo building was not built but T. continued to pay the rent. In November 2020 the Council commenced forfeiture proceedings. Their agents were instructed to return any rent payments immediately but did not do so on two occasions. T. claimed that by acceptance of rent there had been a waiver on the right to forfeit. The Court held that the ability to serve two months notice meant that the breach was ongoing, and waiver had not occurred at the time of commencement of proceedings. The agents were merely exercising a treasury function and the fact that the rent had not been returned promptly was not binding on the Landlord.

Sik v Malik [2025] EWHC 383. The Landlord peaceably re-entered premises due to non-payment of rent. The Tenant was granted relief from forfeiture in the lower court on the basis that the Landlord would be entitled to all rent owed before the re-entry and 50% after the entry. The Landlord was also told to pay 50% of the Tenants costs. On appeal both of these were overturned. As in ***Barton Thompson v Stappling Machines [1966] Ch499***, payment of arrears in invariably a condition of relief of forfeiture.

SERVICE CHARGE LIABILITY

In the case of Sara and ***Hossein Asset Holdings v Blacks Outdoor Retail [2020] EWCA 1521*** a landlord's certificate in relation to service charge was stated to be conclusive as to liability. The Court of Appeal held that this applied to both the itemised works and total amount. The clause was clear and unambiguous and could not be contested.

The Supreme Court have now heard this case ***[2023] UKSC 2***. The Tenant had to pay the service charge. If they objected to the amount they would have to bring a separate court action.

In ***Criterion Buildings v McKinsey & Co [2021] EWHC 256*** the landlord successfully claimed £2.2 million plus interest of service charge arrears. The lease stated that the tenant would pay a "due proportion" of the service charge as determined by the landlord. The court decided that as long as the lease covered the works done the landlord's determination would be conclusive save in exceptional circumstances.

Tower Hamlets London Borough Council v Long Leaseholders of Brewster House and Maltings House [2024] UKUT 193 The case concerned two blocks of flats originally constructed as council housing in the early 1960's. Some of the council tenants had purchased long leases under the right to buy provisions. The blocks had been constructed with a Large Panel System which subsequently was found to be defective and remedial works was done over the years. After Grenfell inspection of the blocks showed ore defects and remedial work would cost over £9 million. The service charge allowed the Landlord to charge for repair and maintenance and there was also a sweeper provision. The

other tribunal held that repair and maintenance did not cover structural defects and the Leaseholders did not have to pay.

It should be noted that short-term leases of dwellings of less than 7 years, the Landlord cannot charge for repair to the structure and exterior under **S.11 Landlord and Tenant Act 1985** but by buying under right to buy the Leaseholders may be charged depending on the wording of the service charge.

REPUDIATORY BREACHES

Ramsbury Properties Ltd v Ocean View Construction Ltd [2024] UKDC40 the case was heard by The Privy Council. Premises on the island of Nevis in the Caribbean. OV had entered into a 7 month lease to house 250 workers as sleeping accommodation whilst they repaired a nearby hotel which had been damaged by a hurricane. When the workers entered the premises, they were not allowed to eat there and there were no drying facilities and inadequate air conditioning. For a repudiatory breach to occur, the breach must be sufficiently serious. They vacated the premises and stated they would not be bound by the lease and they were rescinding the contract. A previous case of ***Total Oil v Thompson Garages [1972] QB318*** had stated that normal contractual remedies would not be available in relation to leasehold premises of land although this was subsequently doubted in other cases. For instance, in ***Smith v Marrable (1843)*** it was implied that furnished accommodation should be fit for human habitation at the beginning of the lease. As the premises was infested with vermin, the tenant could rescind the lease.

In ***Nynehead Properties v R.H. Fibreboard Containers [1999] 1EGLR7***, occasionally allowing loading bays to be blocked was not sufficiently serious. In the present case, it was held that the landlord's breach of quiet enjoyment was sufficiently serious to rescind the contract.

PROBLEMS WITH MIXED-USE PREMISES

Previously, under s.4 Leasehold Reform (Housing and Urban Development) Act 1993, residential long leaseholders can collectively enfranchise a block or exercise a Right to Manage if 25% or less, excluding common parts, is occupied by non-residential tenants. Under s.29 Leasehold and Freehold Reform Act 2024 this will go up to 50%. The provision came into force for RTM companies on March 3rd 2025. Enfranchisement is undergoing judicial review. The hearing was between July 15th and 18th 2025. We are waiting for a decision.

ENERGY ACT 2011

Minimum Energy Performance of Buildings Standard

Energy Efficiency Regulations 2015 - Minimum Energy Performance of Buildings Standard

S49 of the Energy Act 2011 required the Secretary of State to introduce legislation on minimum energy performance standards by 1st April 2018 for rented property at the latest.

Firstly, the minimum standard is an E rated building. (The previous Government was consulting on reducing this and the proposal is to introduce a minimum B rating by April 2030.) It is estimated that around 20% of buildings of rented property will fail on this. Secondly, the legislation will apply to all new leases (with exceptions below). Thirdly, for existing lettings there was a backstop of 1st April 2023 when they came within the legislation.

In February 2025, the Government announced that they will consult with a new metric to replace the current ratings. The plan is for new residential leases they should have a minimum equivalent to C rating by 2028. For commercial leases the proposal is to go down to a minimum C rating by April 2027 and B rating by April 2030.

Exclusions are as follows:

- The regulations will only apply to buildings where there is an EPC. There may be lettings in place before the introduction of EPCs in 2007 which therefore escape the regulations.
- Where EPC regulations exempt landlords from providing an EPC, the minimum efficiency regulations will contain the same exemptions, e.g. a short term letting of a building prior to its demolition.
- Lettings under 6 months subject to a maximum of two such lettings to the same tenant.
- Leases where the length is more than 99 years.
- Lettings where the landlord cannot obtain the necessary consents for the efficiency works. Necessary consents can include:

  a. Planning or buildings regulation approval

  b. Consents from lenders or superior landlords

c. Consent from a sitting tenant to allow the landlord access to do the works.

- Where the works cause a material net decrease in the property's capital value.

There will be major issues in relation to post 2018 rent reviews and dilapidations claims. In relation to the latter s18 Landlord & Tenant Act 1927 might limit the tenant's liability if the landlord has to bring the building up to minimum energy standards in order to re-let it. The tenant may also possibly find themselves liable, especially for leases terminating post April 2023 and April 2020 for residential properties, due to the statutory compliance provisions within the lease.

The Energy Efficiency of Buildings (Private Rented Property) (England & Wales) Regulations will apply to any commercial lease of more than 6 months and less than 99 years duration and to residential assured, assured shorthold and protected tenancies and to any other tenancy designated by the Secretary of State. Any exemption in relation to detracting from value will have to be confirmed by an independent surveyor and will only last for 5 years. The penalties will be a maximum fine of £5,000 or 5% of rateable value for commercial property where the breach has occurred for less than 3 months and a maximum £2,000 fine for residential property. The fine will be doubled after 3 months.

Note: Guidance suggests that the reduction in capital value referred to above should be at least 5%. Any exemption will only last for 5 years and any reduction must be confirmed by an independent surveyor.

Note: On 23rd February 2017 the Government produced guidance on minimum energy Efficiency standards for non-domestic premises. In particular, an exemption must be specifically applied for and will only last for 5 years. If the landlord cannot obtain necessary consents for the work, they must show that they have taken all reasonable steps to obtain such consent. There will be a register of exempt premises. The landlord may also be able to show that he has taken all steps that can be expected and cannot make the property E rated. There will also be an exemption if the landlord can show that the proposed work would not be paid for by the energy savings within 7 years.

If a property continues to be let after 1st April 2023 with a F or G rated EPC then they may be faced with enforcement action and the leasing out of the premises will be unlawful. It is unclear how this affects the landlord and tenant relationship.

If a listed building exemption is being claimed then the landlord must show that any EPC recommendation report would unacceptably alter the appearance of the building.

Any exemptions are personal and will not benefit a purchaser of the reversion who must apply for a new exemption. If they are an unexpected landlord, e.g. an inheritance or disclaimer, they have 6 months to apply for the exemption.

In ***Gilbert v Hyndburn BC*** **[2025]**, the First-tier Tribunal confirmed a financial penalty for not having an EPC. The fact that the tenants did not allow access was not a defence, as the landlord should have applied for a PRS exemption.

HEIGHT OF BUILDINGS AND THE BUILDING SAFETY ACT 2022

Higher Risk Residential Buildings

The Act has also introduced the Building Safety Regulator who will be a part of the Health and Safety Executive. They will have a general role in relation to building safety, but will also be responsible for building control in high risk residential buildings. In England a high risk residential building is one with at least two dwellings which is at 18 metres or more in height or, if less than 18 metres, which has 7 or more storeys. Such a building will have an accountable person who has a legal estate in possession in the common parts or is responsible for repair of the common parts. This will include any Right to Manage Company and any Residents Management Company if there is more than one accountable person then there will be a principal accountable person. A residents' panel must be constituted and the accountable person must listen to health and safety complaints. They will have to produce reports to the Regulator and keep records in relation to health and safety and report any fire safety or structural safety problems that have occurred. Originally, there was meant to be a Building Safety Manager who would be an intermediary between the building safety regulator and the accountable person. This was dropped due to cost. Also, the original Bill provided for a building safety charge whereby any costs could be charged to the long leaseholders. This was also dropped and any charges will now be covered by the service charge.

The accountable person will have access rights to individual flats on giving at least 48 hours' notice. If there is more than one accountable person, there will be a principal accountable person. They will have an interest in possession of the structure and exterior or be responsible for repair and maintenance of the structure or exterior of the building. There are also offences if anyone removes or disturbs a relevant safety item. Any high-risk buildings must be registered with the Building Safety Regulator. This came into force in England on April 6th 2023 and the principal accountable person will have to register the building with the Regulator by October 1st 2023. Guidance suggests that the registration must be approved by the Regulator and key building information provided by this date. The Regulator will then have to approve the registration.

Safety case report summarising major fire and structural hazards and risk management is mandatory for higher-risk buildings. Organisations must also establish a mandatory occurrence reporting system detailing communications with other accountable persons, arrangements for reporting to the Regulator and summaries of incidents.

In England, the provisions came into force on April 6th 2023**. The Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations** were introduced into parliament on March 9th 2023. There will be a registration fee of £251 which must be paid on the application. For new builds then the accountable person will commit a criminal offence if they allow anyone into residential occupation before completion certificates are available. This will include adding new residential units and doing work that results in the building becoming Higher-Risk. The principal accountable person will have to register the building with the Regulator within six months otherwise they will commit a criminal offence.

There are also **Higher-Risk Buildings (Key Building Information) (England) Regulations 2023**. Within 28 days of an application the principal accountable person must provide details as to use of the occupied building, any attachments or outbuildings, details of materials used, information about structure, storeys and staircases, energy supply and storage and emergency evacuation plans.

There are also **Higher-Risk Buildings (Descriptions and Supplementary Provisions) (England) Regulations 2023** which were laid in front of Parliament on March 6th 2023. A Higher-Risk Building is one which is 18 metres or more in height or has seven or more storeys. Any floor where the ceiling is below ground level will not be included, nor will any top floor which only includes rooftop plant and machinery. The measurement will be from the lowest part of the ground floor to the finished floor of the top floor. A mezzanine floor will be ignored if it is less than 50% in size of the largest storey vertically above or below it. A separate structure will be treated as being the same building if it can be accessed to another part which has a residential unit. This will not apply if the access is only intended for exceptional use for emergencies or maintenance. In the case of ***Waite v Kedai (2023),*** the first measurement of the building was stated to be 17.57 metres, the second measurement was 17.97 metres with a margin of error of 30 centimetres. It was later decided that a roof terrace was the top of the building. This caused it to be well beyond 18 metres in height. As a consequence of this case the RICS told members not to state the height of the building. In the first-tier tribunal decision of ***Smoke House and Curing House, 18 Remus Road, London E3 2NF***, it was decided that a roof terrace constituted a storey thus making the property a higher-risk building which would need to be registered and also have the regulator oversee any building work. This conflicts with the Government guidance which states that a storey must be fully enclosed although this seems to be wrong. On October 4th 2024 the Ministry of Housing and the Building Safety Regulator stated that the guidance should still be followed unless they say otherwise. On May 28th 2025 they confirmed this statement but also announced that they were in consultation to introducing amending Regulations to clarify the issue. On June 5th 2025 the Upper Tribunal gave their judgment on Smoke House in the case of ***Monier Road Limited v Blomfield [2025] UKUT 157***. They stated that the tribunal had no jurisdiction to decide on the height but did not say whether the tribunal was right or wrong. Presumably the same will apply to the Leaseholder Protections for qualifying leaseholders in relevant buildings of 11 metres or more or 5 or more storeys in height.

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