LEASE CONFERENCES

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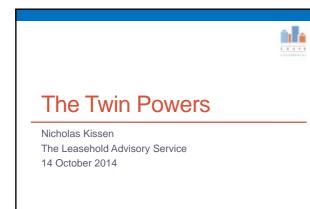
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Disclaimer



Whilst we make reasonable efforts to ensure our content is accurate and up-to-date, information and guidance in this webinar does not and is not intended to amount to legal advice in any particular case

No responsibility for any consequence of relying upon the webinar material or presentations of the webinar is assumed by LEASE or any of our advisers



Relevant legislation

- Landlord and Tenant Act 1985
- Landlord and Tenant Act 1987
- Housing Act 1996
- Commonhold and Leasehold Reform Act 2002

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And what are those powers?

- Appointment of a manager by the tribunal
 Part II of the 1987 Act
- As amended by the 1996 Act
- Acquisition order
- Part III of the 1987 Act

www.lease-advice.org The appropriate tribunal The First-tier Tribunal (Property Chamber) England The Leasehold Valuation Tribunal Wales

Tribunal procedure



- Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules
 - SI 2013/1169
- Leasehold Valuation Tribunals (Procedure) (Wales) Regulations
 SI 2004/681



THE APPOINTMENT OF A MANAGER

Important factors



- Fault-based grounds
- May include more than one building
- Can apply even if substantial commercial areas
- Order appointing manager can override lease terms

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Possible path to an acquisition order

What does being a Tribunal-appointed manager mean?

- Manager nominated by applicants
- Tribunal-appointed official
- Neutral party to manage building in best interests of the parties
- Powers and functions come from the Tribunal order and not from the leases

The main steps



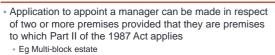
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- Preliminary notice
- Application to the appropriate tribunal
- Prove grounds of appointment
- Show appointment just and convenient in all the
- circumstances Order made
- Registration

ÎL The premises • The whole or part of a building · Must contains two or more flats

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Two or more premises



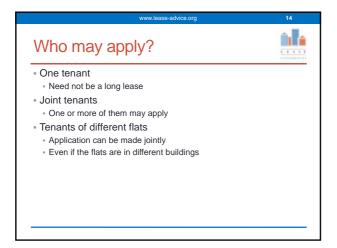
What is a flat?

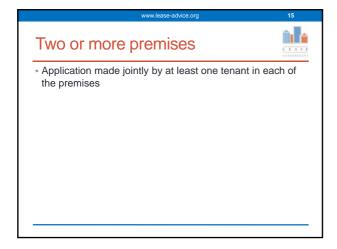


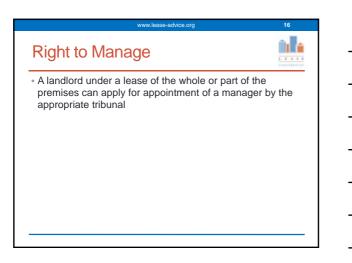
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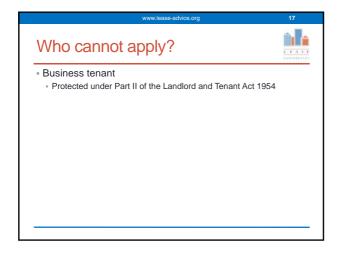
- A separate set of premises
 - Whether or not on the same floor
 - Which forms part of a building
 - Is divided horizontally from some other part of the building and
 Is constructed/adapted for use for the purposes of a dwelling

Is constructed/adapted for use for the purposes of a dwelling









When an application cannot be made

- Exempt landlords
- Resident landlords
- Premises within functional land of a charity

Exempt landlords



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- Most local authorities
- Registered social landlords
- The Common Council of the City of London
- Others listed in Section 58(1) of the 1987 Act

Resident landlords



 Premises are not, and do not form part of, a purpose-built block of flats

ase-advice.ord

- Landlord occupies a flat as only or principal residence
- Has so occupied throughout a continuous period of not less than 12 months

Resident landlord



- This exception **DOES NOT APPLY** if at least half of the flats are held on long leases which are not tenancies to which Part II of the 1954 Act applies
- Long leases includes leases granted for a term certain exceeding 21 years

Functional land of a charity



- Charity as defined in Charities Act 1993
- Occupied for the charity or by its trusteesWholly or mainly used for charitable purposes

Crown tenancies



 The provisions in relation to appointment of a manager under Part II of the 1987 Act apply to Crown land

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Grounds for the appointment of a manager

- The landlord is in breach of obligation owed to tenants
- Unreasonable service charges
- Unreasonable variable administration charges
- Breach of Code of Practice
- Other circumstances

Breach of obligation

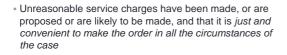


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 Any relevant person is either in breach of an obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part thereof or (where the obligation is dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give appropriate notice, and in either case that it is just and convenient to make the order in all the circumstances

www.lease-advice.org Pelevant person Landlord Management companies Management trustees Right to Manage companies

Unreasonable service charges



Unreasonable variable administration charges



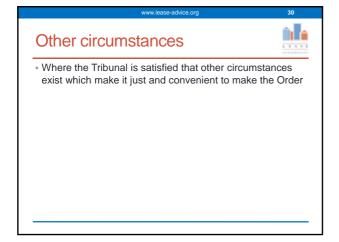
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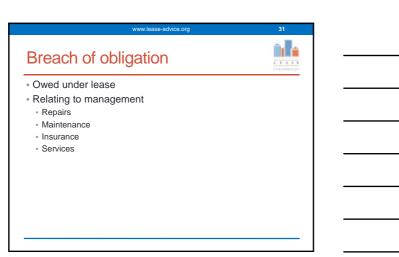
• Unreasonable variable administration charges have been made, or are proposed or are likely to be made and that it is *just and convenient to make the order in all the circumstances of the case*

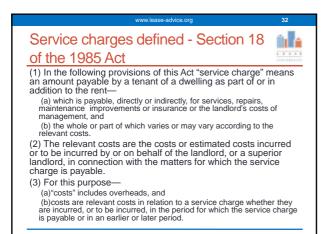
Code breaking



 That any relevant person has failed to comply with any relevant provision of a code of management practice approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 and that it is *just and convenient to make the order in all the circumstances*







Unreasonable service charges



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- The amount is unreasonable having regard to the items for which it is payable
- If the items for which it is payable are of an unreasonably high standard
- If the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred

Unreasonable variable administration charges - Schedule 11 of the 2002 Act

- An amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly
 - a) For or in connection with the grant of approvals under his lease, or applications for such approvals
 - b) For or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - In respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - d) In connection with a breach (or alleged breach) of a covenant or condition in his lease

Codes of Practice



- RICS Service Charge Residential Management Code
- RICS Rent Only Management Code
- The Association of Retirement Housing Managers' Code of Practice for the Management of Leasehold Sheltered Housing

The preliminary notice - who to serve?

- The landlord
- Any other person who owes obligations relating to the management of the building to the tenant

Preliminary notice - content



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Specify

- Leaseholder's name
- Address of flat
- · Address to serve notices on leaseholder
 - Address in England and Wales
 - Including notices in proceedings

Preliminary notice - content Image: Content State Intention to make application for a management order Will not do so if requirement for breach to be remedied as spelt out in the notice is complied with Image: Content of the applicable If applicable Image: Content of the applicable

www.lease-advice.org

Preliminary notice - content

Specify

- Grounds on which Tribunal would be asked to make the order and
- Matters relied on for purpose of establishing those grounds

Preliminary notice - content



Where matters capable of remedy require recipient

- Within such reasonable period
 (As specified)
- To take such steps
- (As specified)
- For the purposes of remedying them

www.lease-advice.org 41 Period for remedy A reasonable one How much information to provide? What if breach not capable of remedy?

Preliminary notice - missing information

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The appropriate Tribunal can if it thinks fit make a management order notwithstanding

- The notice failed to comply with any of the content requirements or
- The notice failed to allow a reasonable period for the landlord to remedy breaches

Preliminary notice - requirements

Must be in writing

- May be sent by post
 - Section 7 of the Interpretation Act 1978

Preliminary notice - requirements



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 If landlord's interest subject to mortgage the landlord must serve a copy of the notice on the mortgagee as soon as reasonably practicable after receiving it

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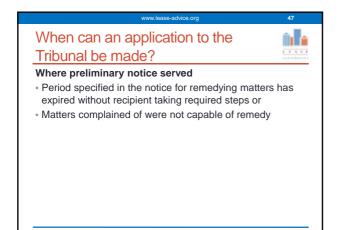
When can Tribunal dispense with notice?

 If satisfied that it would not be reasonably practicable to serve such a notice on the relevant person
 Eg Missing landlord

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 The Tribunal may direct that such other notices are served, or such other steps be taken, as it thinks fit

www.tesse-advice.org Tribunal application Use Form Leasehold 02 Specify proposed manager Including professional qualification(if any)



When can an application to the Tribunal be made?

Where requirement to serve preliminary notice been dispensed with

- Any notices Tribunal required to be served have been served or
- Any steps which were required to be taken have been taken or
- No direction was made in making the dispensing order

www.lease-advice.org The just and convenient test Landlord's likely future conduct Identity of the manager and their plans

Just and convenient - factors



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Seriousness of covenant breaches

- Length of time involved
- How did landlord respond to preliminary notice
- Does landlord have serious proposals to remedy situation?

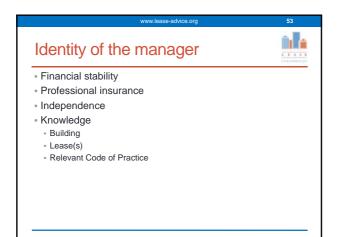
Just and convenient - factors

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- Are other remedies available?
- Failure to comply with Section 20 consultation
- Identity of proposed manager

Identity of the manager

- Experience
- Qualifications
- Suitability
- Understanding of role
 Officer of the Tribunal
- Enough time and resources
- Management plans



Identity of the manager

THE MANAGER SHOULD EXPECT TO ATTEND THE HEARING AND BE EXAMINED BY THE TRIBUNAL AND PERHAPS BY THE OTHER PARTY

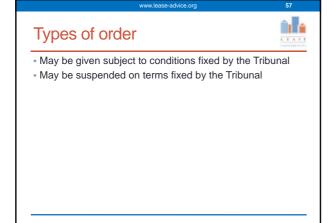
What order can the Tribunal make?



 Appoint a manager whether interlocutory or final to undertake such functions in connection with the management of the premises, or such functions of a receiver, or both, as the Tribunal thinks fit

• May be for a specified time only

www.lease-advice.org 56 Management Includes Repair Maintenance Improvements Insurance



Ambit of area covered by the order



59

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- May be in respect of premises which are either more or less extensive than those specified in the application
- Amenity land
- Cawsand Fort Management Company Limited v Stafford and Others [2007] EWCA Civ 1187; [2007] 48 EG 145
 Causal link

Ambit of area covered by the order • May include/exclude commercial areas

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What if service charges pay for both?

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Types of order



 The Tribunal may make provisions with respect to such matters relating to the exercise by the manager of his functions under the order and such incidental or ancillary matters as the tribunal shall think fit

The order may provide for...



- Rights and liabilities arising under contracts to which manager is not a party to become rights and liabilities of the manager
- The manager to be entitled to prosecute claims in respect of causes of action (whether in contract or tort) accruing before/after date of appointment

The order may provide for...



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 Remuneration to be paid to the manager by any relevant person or by the tenants of the premises in respect of which the order is made, or by all or any of those persons

• For the manager's functions to be exercisable by him either during a specified period or without a limit of time

The importance of the order



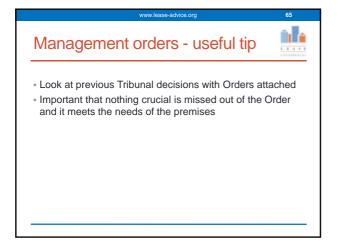
Functions powers and duties of manager contained in the Order

- Repair
- Maintenance
- Improvements
- Insurance
- Levying service charges
- Spell out in detail what manager will do

The lease



- The Tribunal order may go beyond the provisions of the lease
- Lease may be defective
- Advance service charges
- Sinking fund
- Repairs
- Building insurance



Period of appointment



- Best for a fixed and realistic period
- Seek extension of appointment where time elapses and need to continue

Directions from the Tribunal



- Manager can apply to the appropriate tribunal for directions to be given with respect to the exercise of his functions
- OFFICER OF THE TRIBUNAL

examples advice.org68Registration of OrderImage: Complex advice.org• Land Charges Act 1972Land Registration Act 2002

Variation and discharge of the order

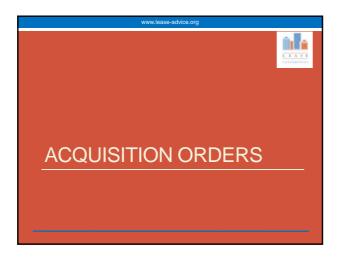


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- Application to the Tribunal by any person interested
- May vary/discharge order
- Conditionally or unconditionally
- Order to cancel entry at relevant land register

When can tribunal vary/discharge Order? Application by landlord or relevant person

 Tribunal must be satisfied that variation/discharge will not lead to a recurrence of the offending circumstances and that it is just and convenient to do so



The Order

- Acquire landlord's interest in premises without his consent
- May include more than one building
- May include any yard, garden, outhouse or appurtenance belonging to or usually enjoyed with the premises
- May exclude parts of the specified premises

Procedure



- Serve preliminary notice
- Apply to the county court for an acquisition order
- Register order
- Appropriate Tribunal decides price if cannot be agreed
- Complete purchase of landlord's interest

The premises



- Whole or part of a building
- Must contain at least two flats held by qualifying tenants
 At least two-thirds of flats contained in the premises are
- held by qualifying tenantsMust meet criteria up to the time the court considers granting an acquisition order

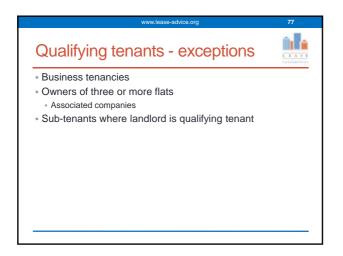
More than one premises

 Made jointly by the requisite majority of qualifying tenants in each set of premises

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Multi-block estate

www.lease-advice.org 76 Qualifying tenant Image: Comparison of the exceptions • Long lease unless falls within one of the exceptions • Includes granted for a term in excess of 21 years



Where an application cannot be made

- Exempt landlords
- Resident landlords
- Certain mixed-use buildings
- Functional land of a charity
- Crown land

Exempt landlord



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- Local authority
- Urban development corporation
- Registered housing association
- Charitable housing trust

Resident landlords



- Building not purpose-built
- Less than one-half of flats are let on long leases

Landlord resident for continuous period of last 12 months as only or principal residence

Mixed use buildings

- Over 50% "non-residential" internal floor area
 Neither occupied or intended to be occupied for residential purposes
- Disregard common areas

How many needed to apply?



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- Not less than two-thirds of qualifying tenants required to proceed
- "Requisite majority" on date notice served
- May be different persons comprising requisite majority at date court application made
- One vote per flat

Where to apply



- Local county court
- Serve on landlord preliminary notice unless dispensation order

Grounds for making the application



- Landlord in breach of obligation relating to repair, maintenance insurance or management of the premises and such circumstances likely to continue OR
- A Tribunal-appointed manager has been in place for two years prior to application being made and appointment in force at date of application
- Appointment made by reason of an act/omission on the part of the landlord
- In either case the court considers it appropriate to make an acquisition order in the circumstances



Specify

Names of qualifying tenants by whom servedAddresses of their flats

Preliminary notice - content

 Name and address in England and Wales of a person on whom the landlord may serve notices

Preliminary notice - content



- State qualifying tenants intend to apply for acquisition order unless (if applicable) requirements set out in notice regarding matters capable of being remedied are addressed
- Specify grounds on which the order will be sought, and the matters which will be relied on to establish them; and
- Regarding matters capable of being remedied, require landlord to take steps to do so within reasonable time (as specified)
- · Steps specified in the notice

Preliminary notice - missing information

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The court can if it thinks fit make an acquisition order notwithstanding

- The notice failed to comply with any of the content requirements or
- The notice failed to allow a reasonable period for the landlord to remedy breaches

Service of the notice



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- Shall be in writingMay be sent by post
 - Section 7 of the Interpretation Act 1978

Application to the county court

 If landlord fails to remedy matters set out in the preliminary notice

 Service of the notice dispensed with by the court and any directions made as to further steps or notices have been complied with

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Who makes the application to court?

The requisite majority of qualifying tenants

• The participating leaseholders named as Claimants

Who are the defendants?



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• Landlord and nominated person (if not a claimant)

 Nominated person may be a company comprising the participating leaseholders

How is it made?



- CPR Part 8 Claim Form
- Paras.8.2 to 8.4 of the Practice Direction supplementing CPR 56

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· Form, content and service of Claim Form

What will the court consider?

• Premises fall within Part III of the 1987 Act

Proof of condition relied upon

- Appropriate to make order
- E.g. likelihood of future poor management

When are the court obliged to refuse to make order?



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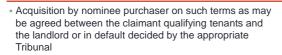
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- Application relates to part only of more extensive premises in which landlord has an interest and
- That interest is not reasonably capable of being severed from the more extensive premises

What can the court do?

- Impose conditions
- Suspend on conditions
- Order costs against landlord

Terms of Order



Absent landlord



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- · Court order to dispense with preliminary notice
- Where it is satisfied that it would not be reasonably practicable to serve such a notice on the landlord
- Terms of acquisition determined by the court
- Price determined by surveyor selected by the Senior President of the Tribunals
- Must also pay any outstanding amounts due under the lease eg ground rent



Role of the Tribunal

- Application by the nominee purchaser
- To decide the price
- To determine the *appropriate terms* of the transfer • Fair and reasonable

The price



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- What landlord's interest expected to realise if sold on the open market on the appropriate terms by a willing seller and assuming none of the tenants are in the market
- No marriage value where under 80 years left on lease(s)

The price

- No assumption that property valued in the "no-Act world"
- No specific disregard of value of tenant's improvements
- On the face of it price favourable to qualifying tenants

Discharge of the order



- Landlord may apply to court to discharge acquisition order where
- Can satisfy court that nominated person failed to complete acquisition within a reasonable time or
- Number of qualifying tenants falls below requisite majority or
- Where Part III of 1987 Act no longer applies to premises

Withdrawal



- Qualifying tenants or nominated person may serve on landlord a notice indicating they no longer wish to proceed
- Must be served
- Where number of qualifying tenants participating drops below requisite majority; or
- Where Part III of 1987 Act no longer applies to premises

Costs Landlord can recover costs (other than those incurred at Tribunal) where Acquisition order discharged Notice of withdrawal served Nominated person no longer willing to act and no replacement Number of qualifying tenants falls below requisite majority Where Part III of 1987 Act no longer applies to premises

Arrowgame Limited v Wildsmith and Others, EWHC 3315 (Ch) • High Court, Chancery Division • Judgment dated 22 November 2012

Who were the respondents?

• Nominee purchaser (company)



 Flats 1-10 and Flat 12 Colebrook Court, Sloane Avenue London SW3 (leaseholders)

Who was the appellant?



- Head-lessee: Arrowgame Limited
- Head-lease: 99 years from September 1966
- Bought headlease on 18th February 1993 for £5,500
- "Long term investment and development opportunity"

What happened at the building?



- 2006: LVT appointed manager under LTA 1987
- Section 27 preliminary notice alleged
 - Tribunal-appointed manager in place for two years
 - Appointment of manager not resolved problems experienced with manager
- Failure by Appellant to co-operate with LVT appointed manager

What did the High Court decide?



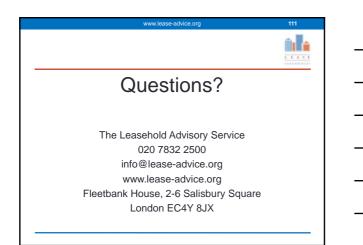
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- Primary purpose of notice is to inform landlord of case they have to answer and not provide opportunity to mend ways
- In simple terms the notice had to spell out reasons why appropriate case to make an acquisition order
- Not required to include in the notice a requirement that the landlord remedy any of the matters complained of within a reasonable time

• Collective Enfranchisement • Right to Manage

- Right of First Refusal
- Recognised Tenants Association
 Appointment of a Surveyor
- Management Audit





Upcoming LEASE training	
Service charges - 30 October 2014 – Manchester	25 November 2014 Webinar:
	Variation of leases
Lease extension – 13 November 2014 - London	 Why vary the lease?
	 Variation by Deed
	 Grounds for seeking variation at the Tribunal
Park Homes – 25 November - Manchester	 Majority application to the Tribunal
	 Contents of Tribunal application
	 Possible Tribunal orders and compensation
	 Unfair Contracts
	 Terms in Consumer Contracts Regulations 1999