

Lease Conferences

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- 0800 389 9772
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Managing a building – the law you should know

Kavita Bharti

14th June 2016

Learning Objective

By the end of this training, you will gain knowledge of:

- The importance of common lease provisions
 - Basic health and safety requirements
 - Levying service charges
 - Getting notices right
 - When and how to recover management charges
-

Common lease provisions

- Contract
 - LEASE
- Express obligations
- Facilitates management of the building
- No clause = no obligation
 - Lease variation
 - Consensual v statutory variations
- Implied covenants



Landlord's covenants

- Quiet enjoyment
- Responsible for the building/grounds
- Insure
- Not to derogate from grant
 - *Birmingham, Dudley and District Banking Co v Ross* (1888) 38 Ch D 295
- Duty of care
 - Health and Safety
 - [S42 Landlord and Tenant Act 1987](#)



Tenant's covenants 1

- Pay the ground rent/ service charge/ taxes and rates
 - “whether or not demanded” - Statute prevails
 - Responsible for the demise
 - Allow access
 - Pets/ Annoyance Nuisance/ etc
 - Tenant-like manner
-

Tenant's covenants 2



Alienation: Subletting/assignment

- Commonly drafted: *not to assign sublet or part with possession of the demised premises or any part thereof...*

Alterations

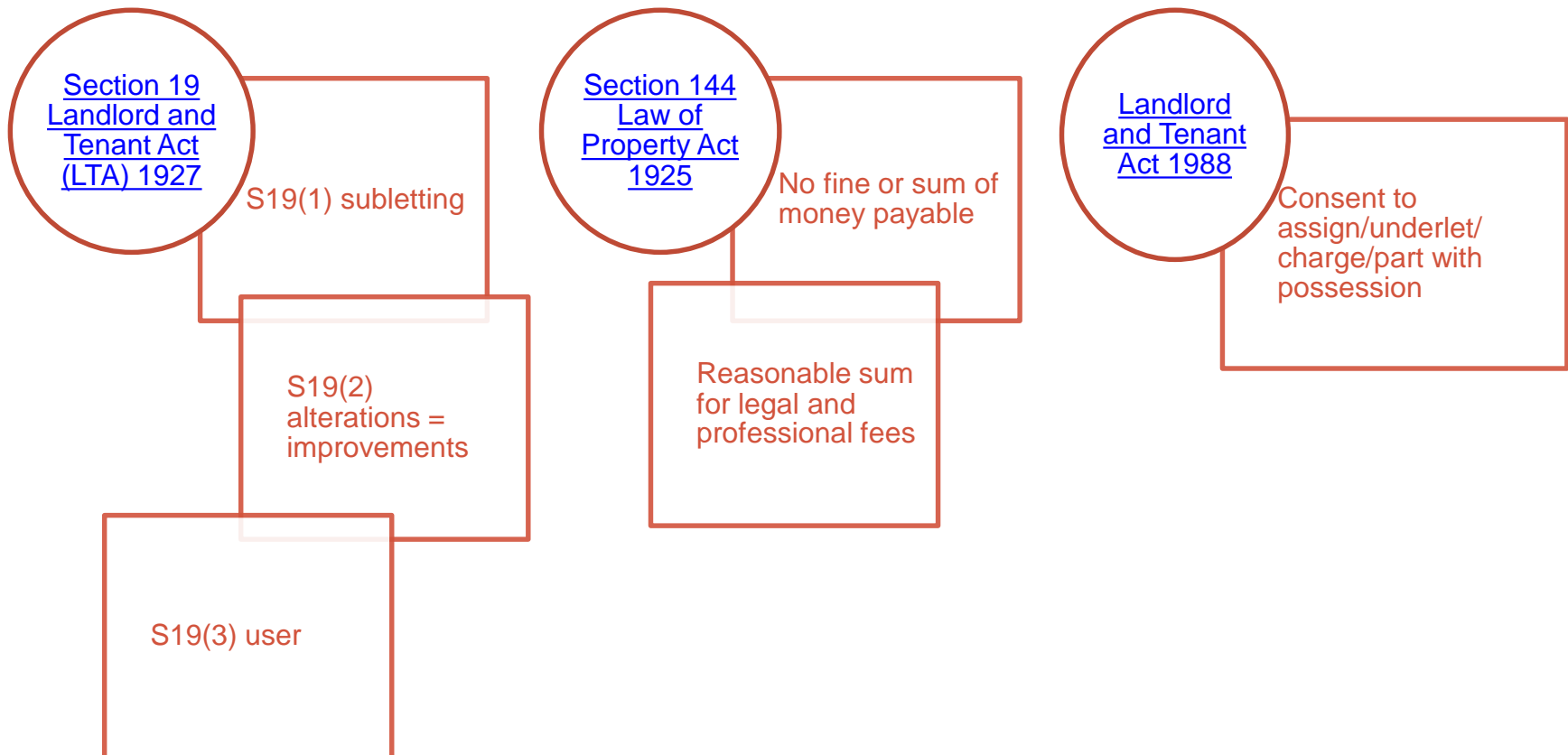
- Commonly drafted: *not to alter cut maim or injure structural or non structural walls or make any additions nor remove any of the Landlord's fixtures...*

User

- Commonly drafted: *Not to use the premises for anything other than as a private residence in single occupation...*
-

Landlord's consent 1

- Qualified v absolute v absolutely qualified



Landlord's consent 2

- Unreasonably withhold consent
 - [*International Drilling Fluids Ltd v Louisville Investments \(Uxbridge\) Ltd* \[1986\] EWCA Civ 3; Ch 513](#)
 - Refusal must be for a reason related to the LL's property interests
 - LH to make request clear and prove that the refusal is unreasonable
 - LL refusal reasonable if based on conclusion a reasonable LL would have reached
 - Refusal not automatically unreasonable if proposed use falls under the lease
 - Knowledge of LH plans relevant
 - Proportionality of the decision's effect on the parties
 - If purely pecuniary loss, refusal not reasonable if can be compensated
 - **Question of fact, dependant on all the circumstances** , and actual reasons that impelled him to refuse consent
-

Landlord's consent 3



LL remedies for failing to seek consent

Damages - where property value depreciated

Injunction - reinstate the premises

Forfeiture - possession



LH remedies for unreasonably withholding

[Section 53\(1\)\(b\) LTA 1954](#) – declaration ([CPR Part 8](#))

Go ahead anyway - risky

Service charge demands 1



Check lease terms!

- Mechanism
- Repairs v improvements



Section 21B LTA 1985

- Summary of rights and obligations: [England](#) - [Wales](#)



Section 47 LTA 1987

- [Beitov Properties Ltd v Elliston Martin \[2012\] UKUT 133 \(LC\)](#)



Section 20B LTA 1985

- 18 month rule or if not s20B notice
- LEASE article - [Recovering payment out of time](#)

Service charge demands 2

- [Section 19 LTA 1985](#)
 - Reasonably incurred
 - Works or services a reasonable standard
 - Advance payments reasonable in amount
 - [Garside and another v RFYC and another \[2011\] UKUT 367 \(LC\)](#)
- [Section 20 LTA 1985](#) or dispensation?
 - Regulations: [England 2003](#) - [Wales 2004](#)



Waaler v LB Hounslow

- [\[2015\] UKUT 0017 \(LC\)](#)
 - Upper Tribunal (Lands Chamber)
 - Appeal by way of Review against FTT Decision dated 9 Dec 2013
 - Landlord demanded payment of service charges totalling £55,195.95 for the payment of major works
-

Waaler v LB Hounslow

- New test for improvements
 - Discretion to undertake works
 - Take particular account of
 - Lessees' interests
 - Views on proposals
 - Financial impact
 - Availability of alternative and less expensive remedies
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Waalder v LB Hounslow

- Going to the Court of Appeal
- Listed for hearing January 2017



FTT jurisdiction

- [Section 27A LTA 1985](#)
 - Provisionally determined “reasonableness”
 - Either party may apply
 - [Section 168 Commonhold and Leasehold Reform Act 2002](#)
 - Breaches of lease terms
 - [Section 20ZA LTA 1985](#)
 - Landlord only
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Ground rent demand

- [Section 166 Commonhold and Leasehold Reform Act 2002](#)
 - Form of rent demand
 - [England](#)
 - [Wales](#)
 - Confusion over 30-60 day date for payment
 - Landlord's name and address
 - [Beitov case](#)
-

Recovering management costs

- Mechanism in the lease
 - Landlords own costs
 - % of total costs v flat fee
 - Standard fee plus additional fees for additional tasks
 - Terms of management contract
 - Commissions
- RICS Service Charge Residential Management Code
 - [Section 19 LTA 1985](#)
 - [Section 20 LTA 1985](#)
 - QLTA



Costs of recovering arrears

- Recovery from individual leaseholder
 - Costs associated with service of a [Section 146 notice](#) for forfeiture of the lease
 - [69 Marina, St Leonards-On-Sea, Freeholders of v Oram & Anor \[2011\] EWCA Civ 1258](#)
 - [Barrett v Robinson \[2014\] UKUT 322 \(LC\)](#)
 - Recovery through the service charge
 - [Plantation Wharf Management Co Ltd v Jackson and another \[2011\] UKUT 488\(LC\)](#)
 - [Section 20C LTA 1985](#)
-

Pay attention to lease machinery

•Pendra Loweth Management Limited v North [2015] UKUT 0091 (LC)

Lease permits Man.Co to demand “a fair and reasonable interim payment having regard to the Service Expenditure estimated by the Management Company under clause 29.”

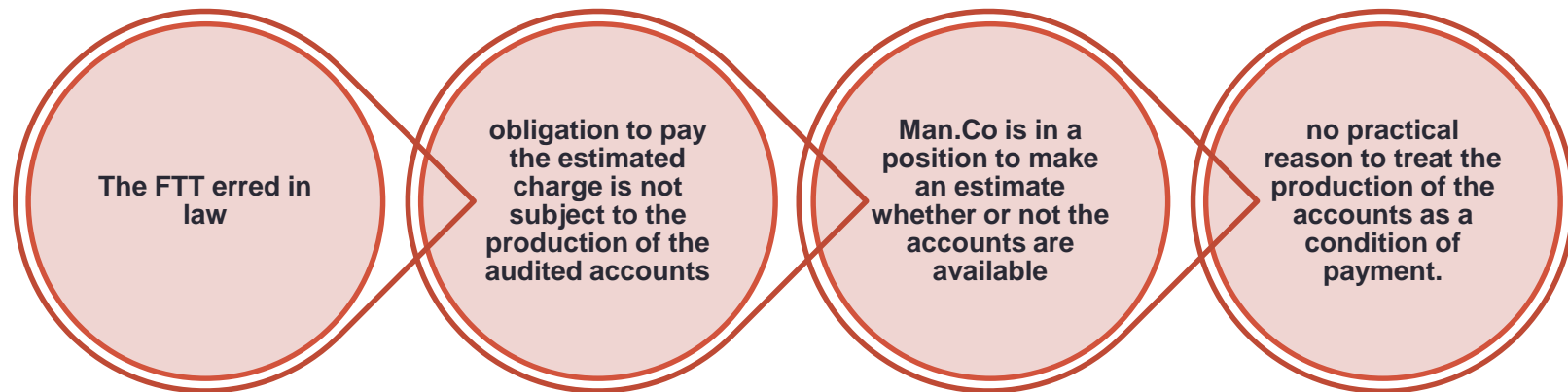
Man.Co has failed for a number of years to comply with covenants requiring service charge accounts to be delivered within 90 days of year end or procure annual audit of accounts

Lessee relies on this non-compliance as grounds for saying that none of the estimated charges have been properly demanded.

FTT agrees with this analysis. Man.Co appeals

Pendra Loweth v North

- Held by UT:



- In [Elysian Fields Management Co. Ltd v Nixon \[2015\] UKUT 427 \(LC\)](#) the UT reaches a similar conclusion.
- UT remits the appeal to the UT and makes directions requiring the landlord to serve fully audited accounts for each completed service charge year, as required by the lease in question.

Administration charges

Schedule 11 Commonhold and Leasehold Reform Act (CLRA) 2002

- Grant of approval
- Provision of information
- Non-payment
- Breach of lease
- Check mechanism in lease
- Summary of rights and obligations
 - [England](#)
 - [Wales](#)
- FTT can determine disputes



Responding to notices

- Watch out for legal notices
 - Response required?
 - [Section 22 LTA 1987](#)
 - Preliminary notice for appointment of a manager
 - Time limit?
-

RTM Notices

- Information notices
 - Sections [82](#) and [93](#) CLRA 2002
- Notice of claim and counter notice
- Prescribed by regulations
 - [England](#)
 - [Wales](#)
- Contract and contractor notices
- [Prescribed in Wales](#)



Enfranchisement notices

Section 42 Leasehold Reform Housing and Urban Development Act 1993

- Lease extension
- Counter-notice required

Section 13 Leasehold Reform Housing and Urban Development Act 1993

- Collective enfranchisement
- Counter-notice required

Leasehold Reform Act 1967

- Houses
 - Counter-notice optional
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Provision of information



- [Section 48 LTA1987](#)
- Providing landlord's name and address
 - [Section 1 LTA 1985](#)
- Sections 21 and 22 LTA 1985
 - Service charge information
 - Amendments never brought into force
 - [Schedule to LTA1985](#)
 - Insurance information

Basic health and safety

- Fire safety
- Asbestos
- Common parts
- Individual flats
- Risk assessments
 - Public
 - Employer liability
- Legislation v lease terms
- Insurance



Lease v legislation



- Can the costs be recovered?
 - Insurance requirements?
 - Who is responsible?
 - Consider lease variation

Insurance



- May require certain measures to be taken
 - Public liability insurance
 - Directors liability insurance
 - RMC
 - RTM
 - FH company
-

Fire safety - individual leaseholder

[The Regulatory Reform \(Fire Safety\) Order 2005](#)

- Extent of the demise
 - Front doors
 - Not to vitiate insurance
-

Fire safety – landlord

- Fire risk assessment of common parts
 - Enforcement of lease covenants
 - Recovery of costs
 - [Example risk assessment](#)
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Asbestos

Control of Asbestos Regulations 2012

- Common parts only
 - Includes roof spaces
 - Outhouses etc
 - Identify and keep an up-to-date record
 - Identify the risk of exposure
 - Produce and implement an action plan
 - Provide information to anyone who is liable to work on or disturb the materials
 - [HSE guidance](#)
-

Risks assessments

Management of Health and Safety at Work Regulations

1999– cleaner, gardener, managing agent, repair contractors etc. access common parts

- Risk assessment required
 - Include external areas
 - Work at heights
 - Electrical equipment
 - Legionella
 - COSHH
 - Hazardous substances
 - RIDDOR
 - Reporting of injuries, diseases etc
-

Building regulations

- New buildings and extension of existing buildings
- Alterations to individual flats
 - eg loft conversion
- No requirement to up-grade
- [Government guidance](#)



New codes of practice



New codes of practice

- **Some amendments in the RICS code:**
 - Aims of the code
 - New chapter headings include ethics and core principles, health and safety/risk assessment
 - Audit of service charge accounts
 - Budgets
 - Handovers
 - Complaints and disputes
 - Insurance commission
-

New codes of practice

- **Some key changes in the ARHM code of practice:**
 - Accounting info
 - Commission
 - Leaseholders monies
 - Event Fees
 - Greater transparency of information
 - Are fees as a consequence of a service?
 - Purchaser information
 - Associate Companies
 - Transfer of Management
 - Uncommitted monies at handover of management
 - Disabled adaptations
 - Rent on accommodation
 - Relatives
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Useful links

- lease-advice.org
- Follow LEASEONLINE:



- arma.org.uk

hse.gov.uk

- directgov.gov.uk

[Business Link](#)



Questions?

The Leasehold Advisory Service

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Next webinar: 13 July 2016

- Lease extension case law you should know
 - Service of an initial notice
 - Tactical applications
 - Admissibility of statements made in previous Upper Tribunal decisions
 - Deferment rate
 - Relativity and Hedonic Regression
 - Section 60 Costs
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