



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

<b>Case reference</b>	:	<b>LON/00AW/OLR/2014/1288</b>
<b>Property</b>	:	<b>Flat 5, 17 Cranley Gardens London SW7 3BD</b>
<b>Applicant</b>	:	<b>Sophie Aaron</b>
<b>Representative</b>	:	<b>BPE solicitors</b>
<b>Respondent</b>	:	<b>The Wellcome Trust</b>
<b>Representative</b>	:	<b>CMS Cameron McKenna</b>
<b>Type of application</b>	:	<b>Lease extension</b>
<b>Tribunal members</b>	:	<b>Judge Nicol Mr R Shaw FRICS</b>
<b>Date and venue of hearing</b>	:	<b>24<sup>th</sup> February 2015 at 10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	:	<b>25<sup>th</sup> February 2015</b>

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**DECISION**

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**Decisions of the tribunal**

- (1) The Tribunal determines that the Guarantors should be parties to the new lease and that there are no grounds to exclude the guarantee from the new lease.
- (2) The Tribunal has decided to refer this case to the President of the Property Chamber with a request that it be considered for transfer to

the Upper Tribunal under rule 25 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

- (3) The Tribunal has made the three directions and the confidentiality order set out in paragraphs 21, 23 and 25 below.

### **The application**

1. The Applicant is the lessee and the Respondent is the lessor of the subject property. The Applicant seeks a determination under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") as to matters remaining in dispute in relation to the acquisition of an extended lease.
2. The following issues have been agreed between the parties:
  - (a) Date of valuation: 25<sup>th</sup> February 2014.
  - (b) Unexpired term of the existing lease: 41.32 years (to 21<sup>st</sup> June 2055).
  - (c) Gross internal area: 1,311 square feet.
  - (d) Deferment rate: 5%.
  - (e) Current Ground Rent: £300pa to 23<sup>rd</sup> June 2027, £900pa to 23<sup>rd</sup> June 2048 and £2,700pa for the remainder of the term.
  - (f) Capitalisation rate: 5%.
  - (g) Unimproved freehold value at valuation date: £2,750,000.
  - (h) Extended lease value as percentage of freehold value: 99%.
3. The issues remaining in dispute are:
  - (a) The existing lease provides that Brawley NV, Graham Meehan and Keith Meehan are guarantors of the lessee's covenants. The parties dispute whether they should also be parties to the new lease.
  - (b) Relativity issue. The existing lease must be valued under paragraph 4A of Schedule 13 to the Act on the assumption that there are no rights under the Act to acquire a new lease. The parties dispute the value on the basis of the existing lease relative to the freehold interest in the flat. The Respondent's expert, Mr Alastair Stimson MRICS, has used what might be termed the orthodox method by looking at current market evidence, cross-checked by reference to a number of relativity graphs, to produce a relativity of 63%. The Applicant's expert, Mr James Wyatt FRICS, has instead used the hedonic regression method first considered by the Upper Tribunal in *Kosta v Carnwath (re: 47 Phillimore Gardens)* [2014] UKUT 0319 (LC) to produce a relativity of 81.18%. Using these figures, the experts value the premium to be paid by the Applicant to the Respondent for her new extended lease as £681,900 and £431,797 respectively, a difference of £250,103.

- (c) The Applicant disputes the Respondent's valuation even if her expert cannot rely on the hedonic regression method, albeit that the difference between the experts would likely be much less. The Applicant has yet to set out details of any objections or a positive case as to what the valuation should be in those circumstances.
4. The Applicant had disputed whether the new lease should include the covenant against alterations which appears in the existing lease but this point was conceded just before the hearing before the Tribunal.
  5. The Tribunal heard the dispute on 24<sup>th</sup> February 2015. The Applicant was represented by Mr Philip Rainey QC and the Respondent by Mr Stephen Jourdan QC. Both counsel provided very helpful Skeleton Arguments.
  6. The parties were agreed that the Tribunal should proceed in this hearing to determine the first issue about the inclusion of the Guarantors as parties to the new lease. However, both parties' preference was that the second issue should be referred to the Upper Tribunal under rule 25 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to join another case there, concerning two properties on Elm Park Road, London SW3, which raises the same valuation issue on the hedonic regression method. These issues are considered in turn below.

### **Guarantors**

7. In relation to the first issue, the Tribunal had been concerned as to whether the Guarantors had had sufficient opportunity to object to the continuation of the guarantee in the new lease because the Applicant's solicitor had been under the mistaken impression that they were uncontactable and, when that mistake was corrected, had only given their solicitors notice of the hearing in a phone call the day before. However, the original notice of claim was served by recorded delivery and, in relation to Graham Meehan and Keith Meehan, had not been returned. All three Guarantors are represented by the same solicitors, Stepien Lake LLP. In the circumstances, the Tribunal is satisfied that the Guarantors have had notice of the proceedings and an opportunity to join in if they wished.
8. Both parties pointed to section 57 of the Act as being the relevant statutory provision (as set out in full in the Appendix to this decision) and, in particular, the following subsections:
  - (6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—

- (a) it is necessary to do so in order to remedy a defect in the existing lease; or
  - (b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.
- (9) Where any person—
- (a) is a third party to the existing lease, or
  - (b) (not being the landlord or tenant) is a party to any agreement collateral thereto,
- then (subject to any agreement between him and the landlord and the tenant) he shall be made a party to the new lease or (as the case may be) to an agreement collateral thereto, and shall accordingly join in its execution; but nothing in this section has effect so as to require the new lease or (as the case may be) any such collateral agreement to provide for him to discharge any function at any time after the term date of the existing lease.
9. Put simply, Mr Jourdan argued on behalf of the Respondent that subsection (9), being in mandatory terms, obliged the Tribunal to make the three Guarantors parties to the lease. Mr Rainey argued on behalf of the Applicant that the guarantee clause in the existing lease should be excluded from the new lease under subsection (6)(b) and, there then being nothing for the Guarantors to sign up to, they should not be parties to the new lease.
10. Subsection (1) of section 57 of the Act provides the starting point that the new lease shall be on the same terms as the existing lease, subject to the exceptions provided elsewhere. Subsection (6)(b) contains conditions which must be satisfied before a term may be excluded or modified under it, namely that:
- (a) it would be unreasonable to include the term, or include it without modification,
  - (b) in view of changes since the date of commencement of the existing lease,
  - (c) which affect the suitability of its inclusion in the new lease,
  - (d) on the date when the tenant served their notice of claim for a new lease.
11. Mr Rainey relied on four related and mutually-supporting matters which he asserted were changes making it unreasonable to include the guarantee in the new lease:
- (a) Mr Rainey pointed out that, since the enactment of the Landlord and Tenant (Covenants) Act 1995, the Respondent would be entitled to ask for a guarantee on assignment, given that the lease contains a qualified covenant against alienation, subject to the conditions in that Act. He

asserted that it is not reasonable to include anything beyond that. However, in the Tribunal's opinion, given the presumption in favour of keeping existing terms, neither is it unreasonable. While it is unusual for a landlord to insist on guarantors, particularly where the tenant is an individual like the Applicant, there is nothing inherently unreasonable in doing so. It is noteworthy that those principally concerned, namely the Guarantors themselves, have not sought to object to the continuation of the guarantee – Mr Rainey conveyed to the Tribunal that their solicitors had said they would reluctantly submit to the continuation of the guarantee if the Tribunal should order it.

- (b) The lessee at the commencement of the existing lease was Jupzin Properties NV, an offshore company. Mr Rainey pointed out that a guarantee for such a lessee made more sense than for an individual like the Applicant. He said that the change in the lessee from an offshore company to an individual meant that it would be unreasonable to continue the guarantee. Mr Jourdan pointed out that the Applicant was not yet the lessee at the time of the service of the notice of claim but, whatever the merit of that point, the Tribunal does not accept that the nature of the assignee is insufficient to render it unreasonable to continue the guarantee. Clause 7 of the existing lease, which sets out the guarantee, provides for the lessee to be either a company or an individual. The guarantee does not make the distinction relied on by Mr Rainey.
  - (c) By operation of the Act, the ground rent under the new lease is reduced to a peppercorn. Mr Rainey pointed out that the Guarantors would no longer be guaranteeing a rent. However, he also rightly did not place much emphasis on this point. The guarantee extends to all the lessee's obligations. The obligation to pay a ground rent is only one of those obligations and almost certainly not the most important either. The exclusion of one obligation does not render it unreasonable to continue the guarantee for all the others.
  - (d) When a new lease was granted in accordance with the Act for a neighbouring flat, Flat 9, the guarantee was not included despite the same guarantee having appeared in the original lease. Mr Rainey argued that, whatever the Respondent's reason for agreeing to this, the fact that there was no guarantee for the lessee of Flat 9 demonstrated that the term was otiose. In the Tribunal's opinion, Mr Rainey is trying to make this circumstance more significant than it is. There may be any number of reasons not to include the guarantee in any particular lease but its exclusion in one lease has very little bearing on whether it should be included in another. The situation with Flat 9 can certainly not render it unreasonable to include the guarantee in the new lease for the subject property if it would otherwise not be unreasonable.
12. Mr Rainey pointed out that the guarantee clause proposed by the Respondent for the new lease had been modified from that in the existing lease in that it provided for the discharge of the Guarantors' obligations on the date at which the original lease would have come to an end. He asked rhetorically how this could be possible if, as Mr

Jourdan argued, subsection (6) was subordinate to subsection (9) so that the Guarantors were obliged to be parties to the new lease without any consideration of the unreasonableness of the inclusion of the guarantee in that new lease. The answer is in the proviso to subsection (9) which provides that “nothing in this section has effect so as to require the new lease ... to provide for [the third party] to discharge any function at any time after the term date of the existing lease.” The proviso provides a sufficient basis for the modification without the need to refer to subsection (6).

13. The Applicant’s motive for objecting to the continuation of the guarantee was that the Guarantors might be able to prevent or substantially hinder the grant of the new lease. However, there is no evidence that they might wish to do so. Further, there is an adequate enforcement method through the court under section 48(3) of the Act if the Guarantors or the Respondent should be reluctant to execute the lease.
14. In the circumstances, the Tribunal is satisfied that there are no grounds to exclude the guarantee from the new lease.

### **Referral of Relativity Issue to the Upper Tribunal**

15. The hedonic regression method for considering relativity as proposed by the Applicant’s expert, Mr Wyatt, was considered by the Upper Tribunal in *Kosta v Carnwath (re: 47 Phillimore Gardens)* [2014] UKUT 0319 (LC). The Upper Tribunal concluded that the method was not appropriate in that case, not because it was necessarily wrong, but because the evidence presented did not support it. This has opened the door to parties in other cases seeking to use the method but based on other evidence.
16. The First Tier Tribunal has now received, and continues to receive, applications, including the one under consideration in this decision, raising precisely this point. It seemed inevitable that any Tribunal decision would probably be appealed and so the decision was taken to refer one of the first cases, involving two properties in Elm Park Road, London SW3, to the Upper Tribunal under rule 25 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Upper Tribunal has indicated informally that they intend to hear and decide the appeal in June or November 2015 (not July as was mistakenly mentioned at the hearing). The President of the Property Chamber of the First Tier Tribunal, Mrs Siobhan McGrath, has indicated that she is minded to stay all other cases raising this issue while the Upper Tribunal has indicated a preference to consider only the one test case rather than a potentially unmanageable number of cases.

- (f) In this particular case, Mr Wyatt's method has produced a value for the existing lease without the right under the Act to a new lease which is £232,450 higher than the existing lease was sold, with such rights, just 6 days after the valuation date. Therefore, this case provides a test for the hedonic regression method which is not available in the Elm Park Road cases or likely to be available in any other such case.
- (g) There is a strong argument that it would be unfair to exclude the parties in this case from making their submissions in a test case on this issue given that it does not involve a pure point of law but depends substantially on the evidence to be presented. There is a significant risk that the Upper Tribunal would reach a decision without highly relevant evidence or submissions because the parties in one case would not necessarily present the same evidence or make the same submissions as those in another case.
- (h) The Tribunal having decided the issue relating to the Guarantors, there are no issues remaining between the parties which would add to the burden of the Upper Tribunal in seeking to reach a final decision.
20. Both parties indicated that they wished to make submissions in an effort to influence the President of the Property Chamber to make the referral and the Upper Tribunal to accept it. Mr Rainey indicated that he might want to make those submissions at an oral hearing. It appears to this Tribunal that, despite the lack of any express reference to such a procedure in rule 25, the parties are entitled to make such submissions and at an oral hearing if they want one. Having said that, the Tribunal is sure both parties can see the benefit in speed and proportionality of limiting their representations to written form.

### **Direction 1**

21. In the circumstances, the Tribunal makes the following direction (already conveyed verbally to the parties at the hearing):
- Each party shall, by 4pm on **3<sup>rd</sup> March 2015**, make written submissions to the President of the Property Chamber (and copied to the other party) as to whether and why this case should be referred to the Upper Tribunal and may also make written submissions as to why the referral should be considered at an oral hearing.

### **Further valuation issue**

22. If it is held in due course that the Applicant may not rely on the hedonic regression method, it is likely that any revised valuation by Mr Wyatt will be sufficiently close to that of Mr Stimson that the parties would face the usual opportunity to compromise and therefore settle the proceedings without a further hearing. However, any final settlement or Tribunal determination cannot happen without Mr Wyatt setting out his positive case as to what the valuation should be on that basis. He has yet to do so.

### **Direction 2**

23. In the circumstances, the Tribunal makes the following direction (already conveyed verbally to the parties at the hearing):

The Applicant shall, by 4pm on **9<sup>th</sup> March 2015**, serve on the Respondent a supplemental report from Mr Wyatt setting out his valuation on the basis that he is not permitted to rely on the hedonic regression method.

### **Disclosure of Mr Wyatt's data**

24. Mr Wyatt's valuations using the hedonic regression method are based on commercially confidential data. The parties invited the Tribunal to replicate the orders made in similar cases to protect that data but also allow the Respondent to see it and make use of it within these proceedings. Mr Wyatt's concern is to retain control of the data in order to ensure that it is not seen or used by any person who should not see or use it. In this case, the Respondent has yet to appoint an expert other than Mr Stimson and the Applicant is concerned that any disclosure of the data before such an appointment may result in a breach of confidentiality.

### **Direction 3**

25. In the circumstances, the Tribunal makes the following direction:
- (a) Subject to the confidentiality provisions below, the Applicant shall disclose the following documents to the Respondent within 14 days of the appointment by the Respondent of any expert in addition to Mr Alastair Stimson MRICS unless they raise an objection thereto in writing:
- i) The confidential John D Wood database
  - ii) Cleansed datasets
  - iii) Verification on the steps taken to cleanse the datasets
  - iv) The details of Mr Wyatt's methodology
  - v) The general results of Mr Wyatt's analysis
  - vi) The full raw dataset
  - vii) Full access to the data and the Stata codes in order to replicate the model predicated by Mr Wyatt and tests of the possible inclusion of other variables
  - viii) Clarification of the units of price, and the type of logs used
  - ix) Confirmation on the characteristics of the baseline property



- x) The coefficients of the lease-length “dummy” variables together with the coefficients for the street variables and the coefficients for the time-quarter variables
- xi) The full results of the diagnostic test of models
- xii) Background information on the bootstrapping procedure with particular regard to the sampling procedure mentioned in Mr Wyatt’s report
- xiii) Background information on the method for fitting the polynomial and the full results
- xiv) Such other background documentation as the Respondent’s expert shall require in connection with Mr Wyatt’s report provided at least 7 days’ written notice of the same is given by the Respondent to the Applicant.

(b) In order to preserve the confidentiality of certain confidential information consisting of the following documents and matters (collectively, “the Confidential Information”), each to be disclosed as above:

- A. The confidential John D Wood database,
- B. The cleansed datasets (as described in the report of James Wyatt FRICS and any subsequent reports),
- C. The exact details of the steps taken to cleanse the datasets (but not the fact of nor the idea of that cleansing, nor in general terms what the purpose of that cleansing was),
- D. The precise details of the methodology (but not the idea of hedonic regression, or in general terms the use of that technique in the way it is used in that methodology),
- E. The Strata programming code that runs the methodology, and
- F. The general results of the analysis (in any format (including numerical and graphical) for a wide range of lease terms) as shown in the tables and figures in the report, which reveal information about the bulk dataset or reveal the results of the Parthenia Research and Parthenia Valuation analysis, and
- G. The other matters listed above.

It is ordered that:

- 1) The parties, their legal advisors and the Respondent’s experts shall not publish or disclose the Confidential Information other than for the purposes of these proceedings provided that this prohibition shall not apply in relation to any details of the Confidential Information that the First Tier or Upper Tribunal refers to in its decision.
- 2) The parties, their legal advisors and the Respondent’s experts shall not use the Confidential Information other than for the purposes of these proceedings provided that this prohibition shall not apply in relation to any details of the Confidential

Information that the First Tier or Upper Tribunal refers to in its decision.

- 3) The preceding two paragraphs of this order shall apply notwithstanding the fact that the Confidential Information or any part of it may have been read to or by the Tribunal.

**Name:** NK Nicol

**Date:** 25<sup>th</sup> February 2015

**Leasehold Reform, Housing and Urban Development Act 1993**

**48 Applications where terms in dispute or failure to enter into new lease.**

- (1) Where the landlord has given the tenant—
- (a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or
  - (b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

- (2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.
- (3) Where—
- (a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and
  - (b) all the terms of acquisition have been either agreed between those persons or determined by a leasehold valuation tribunal under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

- (4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).
- (5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).
- (6) For the purposes of this section the appropriate period is—
- (a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or
  - (b) where all or any of those terms have been determined by a leasehold valuation tribunal under subsection (1)—
    - (i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or
    - (ii) such other period as may have been fixed by the tribunal when making its determination.

- (7) In this Chapter "the terms of acquisition", in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new

lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

**57 Terms on which new lease is to be granted.**

- (1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—
  - (a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;
  - (b) of alterations made to the property demised since the grant of the existing lease; or
  - (c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.
- (2) Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance—
  - (a) the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord; and
  - (b) (if the terms of the existing lease do not include any provision for the making of any such payments by the tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—
    - (i) for the making by the tenant of payments related to the cost from time to time to the landlord, and
    - (ii) for the tenant's liability to make those payments to be enforceable by distress, re-entry or otherwise in like manner as if it were a liability for payment of rent.
- (3) Subject to subsection (4), provision shall be made by the terms of the new lease or by an agreement collateral thereto for the continuance, with any suitable adaptations, of any agreement collateral to the existing lease.
- (4) For the purposes of subsections (1) and (3) there shall be excluded from the new lease any term of the existing lease or of any agreement collateral thereto in so far as that term—
  - (a) provides for or relates to the renewal of the lease,
  - (b) confers any option to purchase or right of pre-emption in relation to the flat demised by the existing lease, or
  - (c) provides for the termination of the existing lease before its term date otherwise than in the event of a breach of its terms;

and there shall be made in the terms of the new lease or any agreement collateral thereto such modifications as may be required or appropriate to take account of the exclusion of any such term.

- (5) Where the new lease is granted after the term date of the existing lease, then on the grant of the new lease there shall be payable by the tenant to the landlord, as an addition to the rent payable under the existing lease, any amount by which, for the period since the term date or the relevant date (whichever is the later), the sums payable to the landlord in respect of the flat (after making any necessary apportionment) for the matters referred to in subsection (2) fall short in total of the sums that would have been payable for such matters under the new lease if it had been granted on that date; and section 56(3)(a) shall apply accordingly.
- (6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—
- (a) it is necessary to do so in order to remedy a defect in the existing lease; or
  - (b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.
- (7) The terms of the new lease shall—
- (a) make provision in accordance with section 59(3); and
  - (b) reserve to the person who is for the time being the tenant's immediate landlord the right to obtain possession of the flat in question in accordance with section 61.
- (8) In granting the new lease the landlord shall not be bound to enter into any covenant for title beyond—
- (a) those implied from the grant, and
  - (b) those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee, but not including (in the case of an underlease) the covenant in section 4(1)(b) of that Act (compliance with terms of lease);
- and in the absence of agreement to the contrary the landlord shall be entitled to be indemnified by the tenant in respect of any costs incurred by him in complying with the covenant implied by virtue of section 2(1)(b) of that Act (covenant for further assurance).
- (8A) A person entering into any covenant required of him as landlord (under subsection (8) or otherwise) shall be entitled to limit his personal liability to breaches of that covenant for which he is responsible.
- (9) Where any person—
- (a) is a third party to the existing lease, or
  - (b) (not being the landlord or tenant) is a party to any agreement collateral thereto,
- then (subject to any agreement between him and the landlord and the tenant) he shall be made a party to the new lease or (as the case may be) to an agreement collateral thereto, and shall accordingly join in its execution; but nothing in this section has effect so as to require the new lease or (as the case

may be) any such collateral agreement to provide for him to discharge any function at any time after the term date of the existing lease.

(10) Where—

(a) any such person (“the third party”) is in accordance with subsection (9) to discharge any function down to the term date of the existing lease, but

(b) it is necessary or expedient in connection with the proper enjoyment by the tenant of the property demised by the new lease for provision to be made for the continued discharge of that function after that date,

the new lease or an agreement collateral thereto shall make provision for that function to be discharged after that date (whether by the third party or by some other person).

(11) The new lease shall contain a statement that it is a lease granted under section 56; and any such statement shall comply with such requirements as may be prescribed by rules made in pursuance of section 144 of the Land Registration Act 1925 (power to make general rules).

### SCHEDULE 13

#### PART II PREMIUM PAYABLE IN RESPECT OF GRANT OF NEW LEASE

##### *Premium payable by tenant*

2 The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of—

(a) the diminution in value of the landlord’s interest in the tenant’s flat as determined in accordance with paragraph 3,

(b) the landlord’s share of the marriage value as determined in accordance with paragraph 4, and

(c) any amount of compensation payable to the landlord under paragraph 5.

##### *Diminution in value of landlord’s interest*

3 (1) The diminution in value of the landlord’s interest is the difference between—

(a) the value of the landlord’s interest in the tenant’s flat prior to the grant of the new lease; and

(b) the value of his interest in the flat once the new lease is granted.

(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;

- (b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;
  - (c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and
  - (d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.
- (3) In sub-paragraph (2) "the relevant lease" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).
  - (4) It is hereby declared that the fact that sub-paragraph (2) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) might be expected to realise if sold as mentioned in sub-paragraph (2).
  - (5) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.
  - (6) The value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) shall not be increased by reason of—
    - (a) any transaction which—
      - (i) is entered into on or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before that date), and
      - (ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by the tenant; or
    - (b) any alteration on or after that date of the terms on which any such superior interest is held.

*Landlord's share of marriage value*

- 4 (1) The marriage value is the amount referred to in sub-paragraph (2), and the landlord's share of the marriage value is 50 per cent. of that amount.
- (2) Subject to sub-paragraph (2A), the marriage value is the difference between the following amounts, namely—
  - (a) the aggregate of—
    - (i) the value of the interest of the tenant under his existing lease,
    - (ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and

- (iii) the values prior to the grant of that lease of all intermediate leasehold interests (if any); and
    - (b) the aggregate of—
      - (i) the value of the interest to be held by the tenant under the new lease,
      - (ii) the value of the landlord's interest in the tenant's flat once the new lease is granted, and
      - (iii) the values of all intermediate leasehold interests (if any) once that lease is granted.
  - (2A) Where at the relevant date the unexpired term of the tenant's existing lease exceeds eighty years, the marriage value shall be taken to be nil.
  - (3) For the purposes of sub-paragraph (2)—
    - (a) the value of the interest of the tenant under his existing lease shall be determined in accordance with paragraph 4A;
    - (aa) the value of the interest to be held by the tenant under the new lease shall be determined in accordance with paragraph 4B;
    - (b) the value of any such interest of the landlord as is mentioned in paragraph (a) or paragraph (b) of sub-paragraph (2) is the amount determined for the purposes of paragraph 3(1)(a) or paragraph 3(1)(b) (as the case may be); and
    - (c) the value of any intermediate leasehold interest shall be determined in accordance with paragraph 8, and shall be so determined as at the relevant date.
- 4A (1) Subject to the provisions of this paragraph, the value of the interest of the tenant under the existing lease is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the landlord nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—
- (a) on the assumption that the vendor is selling such interest as is held by the tenant subject to any interest inferior to the interest of the tenant;
  - (b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;
  - (c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and
  - (d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the existing lease of the tenant has effect.
- (2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest of the tenant under his existing lease might be expected to realise if sold as mentioned in that sub-paragraph.



- (3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.
  - (4) Subject to sub-paragraph (5), the value of the interest of the tenant under his existing lease shall not be increased by reason of—
    - (a) any transaction which—
      - (i) is entered into after 19th January 1996, and
      - (ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or
    - (b) any alteration after that date of the terms on which any such inferior interest is held.
  - (5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—
    - (a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and
    - (b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.
- 4B (1) Subject to the provisions of this paragraph, the value of the interest to be held by the tenant under the new lease is the amount which at the relevant date that interest (assuming it to have been granted to him at that date) might be expected to realise if sold on the open market by a willing seller (with the owner of any interest superior to the interest of the tenant not buying or seeking to buy) on the following assumptions—
- (a) on the assumption that the vendor is selling such interest as is to be held by the tenant under the new lease subject to the inferior interests to which the tenant's existing lease is subject at the relevant date;
  - (b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;
  - (c) on the assumption that there is to be disregarded any increase in the value of the flat which would fall to be disregarded under paragraph (c) of sub-paragraph (1) of paragraph 4A in valuing in accordance with that sub-paragraph the interest of the tenant under his existing lease; and
  - (d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the tenant's existing lease at the relevant date then has effect.
- (2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest to be held by the tenant under the new lease might be expected to realise if sold as mentioned in that sub-paragraph.

- (3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.
- (4) Subject to sub-paragraph (5), the value of the interest to be held by the tenant under the new lease shall not be decreased by reason of—
  - (a) any transaction which—
    - (i) is entered into after 19th January 1996, and
    - (ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or
  - (b) any alteration after that date of the terms on which any such inferior interest is held.
- (5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—
  - (a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and
  - (b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.

*Compensation for loss arising out of grant of new lease*

- 5 (1) Where the landlord will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.
- (2) This paragraph applies to—
  - (a) any diminution in value of any interest of the landlord in any property other than the tenant's flat which results from the grant to the tenant of the new lease; and
  - (b) any other loss or damage which results therefrom to the extent that it is referable to the landlord's ownership of any such interest.
- (3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the tenant's flat to the extent that it is referable as mentioned in that paragraph.
- (4) In sub-paragraph (3) "development value", in relation to the tenant's flat, means any increase in the value of the landlord's interest in the flat which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction affecting, the flat (whether together with any other premises or otherwise).