

Freeholder's challenge to Leasehold and Freehold Reform Act 2024

Shabnam Ali-Khan and Richard Jones, partners at Russell-Cooke, explain why a claim of breach of human rights was rejected by the High Court

The Leasehold and Freehold Reform Act 2024 (LAFRA), which was rushed through parliament last year in the washup has been making waves for some time. Three of its key valuation proposals form the basis of the human rights challenge mounted by several large freeholders. However, the High Court has rejected their argument that it breaches Article 1 Protocol 1 of the European Convention on Human Rights (A1P1) – the right to peaceful enjoyment of possessions.

What was challenged

The three key provisions which were claimed to breach A1P1 rights were: the cap on ground rent for the purposes of premium valuation for lease extensions and freehold purchases to the lower of the existing lease ground rent provisions or 0.1% of the freehold vacant possession value (FVPV); the removal of marriage value in the premium payable for leases below 80 years; and the removal of leaseholder's obligations to pay any of the landlord's costs. Therefore, generally each party to pay their own costs.

The claimants were ARC Funds and others; Cadogan Group Limited, Grosvenor Limited and others; Abacus Land and others; Wallace Partnership Group Limited and others; John Lyon's Charity; and trustees of the Portal Trust.

The decision

The court accepted that bringing in these reforms would impact A1P1 rights. However, the statutory objectives behind LAFRA and their

connection to leaseholder A1P1 rights justifies these provisions.

The key intention behind LAFRA was to address the "inherent unfairness and imbalance in the nature of leasehold property". This particularly relates to the diminishing nature of leasehold assets, the lack of security and control.

"The judgment supported the government's legislation"

The court determined that the removal of marriage value from the premium calculation was justified to redress the imbalance between parties and the inherent unfairness in the leasehold system. The court rejected the argument that removing marriage value would result in the landlord receiving compensation which would not reasonably relate to market value.

The costs recovery reforms were necessary to remedy the wasting asset problem and unfairness and imbalance in the relationship between the parties.

The cumulative effect of these provisions was rejected.

Will there be any exempt landlords?

John Lyons Charity asked the court to consider raising an exception for charity landlords, and made comparisons to the exemptions provided by the LAFRA to the National Trust and its protected inalienable land. Many charity landlords rely on these types of premiums to fund their charitable endeavours. However, this was rejected by the court as there was no requirement by parliament to differentiate between different types of landlords.

The judgment concluded that the LAFRA struck a fair balance, only allowing some minor exemptions to the new rules for the National Trust (and others such as community housing providers, the Crown Estate and Duchy of Cornwall), and otherwise allowing charities to be subject to the same new rules as all other landlords. The court's logic was that the National Trust was only afforded such exemptions as the properties in question, where marriage value could continue to be extracted by the charity

landlord, are held and preserved as part of the core charitable mission of the National Trust, whereas John Lyons Charity's portfolio was merely regarded as commercial investment activity.

Portal Trust raised a challenge that those tenants who are not in occupation but lease and sublet a significant number of residential properties should be excluded from these provisions. This was dismissed by the court.

What next?

The claimants have since lodged permission to appeal the recent High Court decision. It can take up to five months before we find out if permission has been granted. If it is, the appeal process can take up to 18 months to work its way through the Court of Appeal with a further 18 months' wait to be heard by the Supreme Court if the High Court's decision is upheld.

Implication for charities

The judgment supported the government's legislation in merely allowing a finite exception to new rules where the leaseholders in a limited scenario know that they lease a protected National Trust property and it is a special case where they have fewer tenant rights due to the status of the property. It seems that the court felt that allowing wider exemptions for more charities would be too broad and might open a can of worms.

Subject to the possible appeal, the judgment will mean that certain charity landlords which own freehold investment sites subject to long residential leases will extract less value from their portfolio to put towards their charitable objectives. This is obviously a blow for the charity sector, and at a time when charities are already feeling the pinch.

The judgment and the unwavering position of the LAFRA does however leave heritage property charities (other than the National Trust) in an intriguing, and it could be argued unfair, position. There are many such charities across the country (of various sizes), where the property is at the heart of the charitable objects, and there may be instances where they too should arguably still benefit from marriage value and be shielded from certain leaseholder enfranchisement rights.