

## **Lease Extensions: The terms of the new lease**

**Miriam Seitler  
Landmark Chambers  
25<sup>th</sup> May 2017**

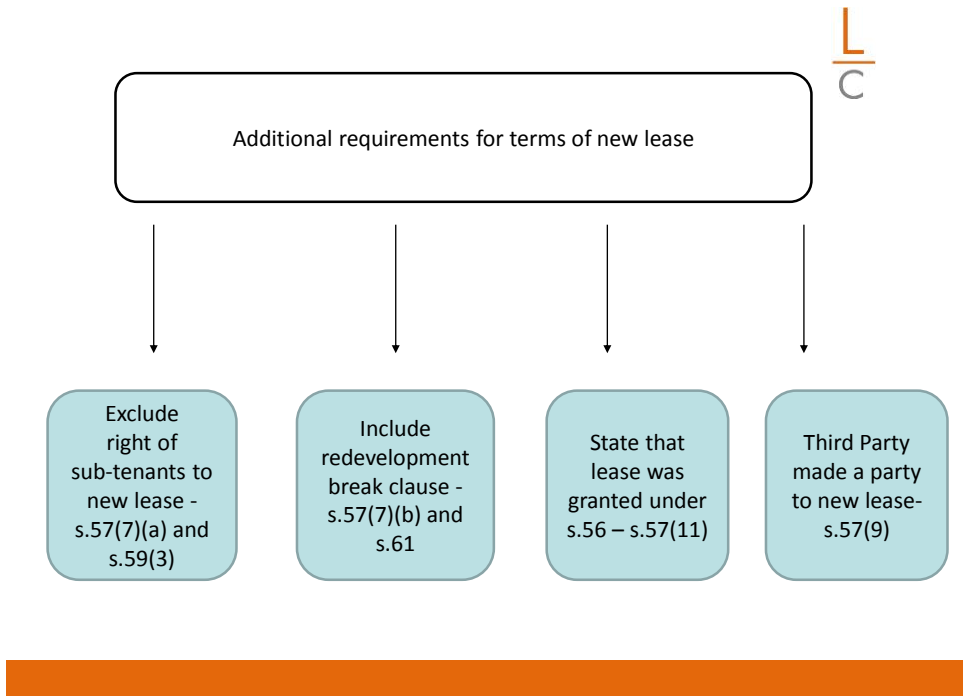
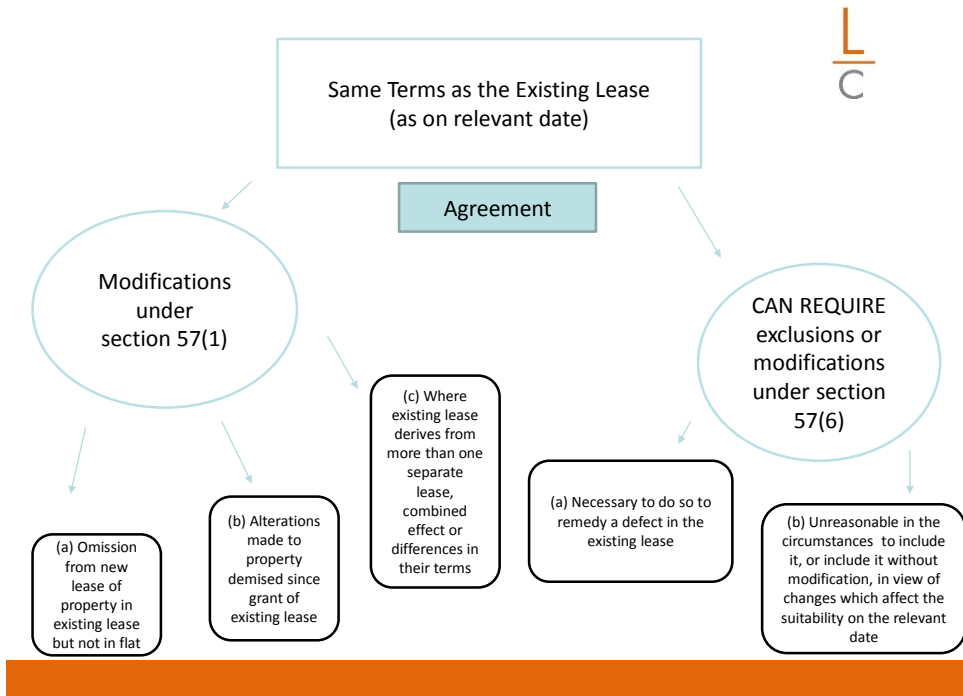
---

**Term = expiring 90 years after term date of  
existing lease**

**Rent= Peppercorn**

**s.56**

---



## Modifications as may be required or appropriate $\frac{L}{C}$ section 57(1)

### (a) Property in the lease but not the flat

- Typically, a lease of a flat comprised in a head-lease of the building
- See drafting suggestions in *Howard de Walden Estates v Aggio* [2008] UKHL 44 at [48].
- Since then the matter has come back before the LVT in the case of 26 Cadogan Square, (LON/00AW/OLR/2008/0940) in which the Tribunal addressed and resolved the outstanding issues. The decision provides the best guidance on what is to be expected in a new lease of a flat granted to a head lessee.

### (b) Alterations

- Show changes in layout with plans and description
- Accretions must be claimed now.

## Exclusions or Modifications - s.57(6) $\frac{L}{C}$

### ***Gordon v Church Commissioners*** (LRA/110/2006)

- A distinction must be drawn between the terms in s.57(6) and s.57(1);
- S.57(1) deals with lease terms generally. In such cases, the terms may be the subject of modification as required “or appropriate”. Thus where subparagraphs (a), (b) or (c) apply there is a notably wider power to alter the existing terms than under section 57(6);
- In respect of s.57(6), there is no power for a party to require that there is added into the new lease a new provision which is not to be found in the old lease.
- As to what constitutes a “defect”, “a lease can only properly be described as containing a defect (in the sense of shortcoming, fault, flaw or, perhaps even, imperfection) if it can objectively be said to contain such a defect when reasonably viewed from the standpoint of both a reasonable landlord and a reasonable tenant.”
- A change in conveyancing practice can amount to a change in circumstances for the purpose of s.57

## Exclusions or Modifications - s.57(6)

L  
C

### A shift away from Gordon?

- In *Howard de Walden Estates v Aggio* [2008] Lord Neuberger commented at paragraph 49 that “Section 57(6) also indicates that the LVT was intended to have relatively wide powers, often involving sophisticated judgment.”
- This is sometimes cited as suggesting that the decision in Gordon is unduly restrictive: see, for example, the view expressed by the Tribunal in *Flat 17, 50 Sloane Street* (PJ/LON/00AW/OLR/2010/1297) that had it been necessary to decide the point, the word “modification” is wider than was suggested in *Gordon* and that the approach of Lord Neuberger was to be preferred.



### Examples of defects

L  
C

- No provision for recovery of legal costs
- Lack of sinking fund
- Lack of full repairing obligations
- Defective insurance provisions
- Council of Mortgage Lenders, Lenders’ Handbook



## Changes since commencement of the lease s. 57(6)(b)

$\frac{L}{C}$

- Council of Mortgage Lenders, Lenders' Handbook;
  - Changes in the value of money;
  - Changes in conveyancing practice; and
  - New legislation.
- 
- Note the limits, in particular the requirement to show "*it would be unreasonable to include or include without modification, the term in question*".
  - Cadogan Estate LON/NL/4214 and LON/NL/5416

## Service charges s.57(2) – where L has obligation in $\frac{L}{C}$ new lease for provision of services, 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

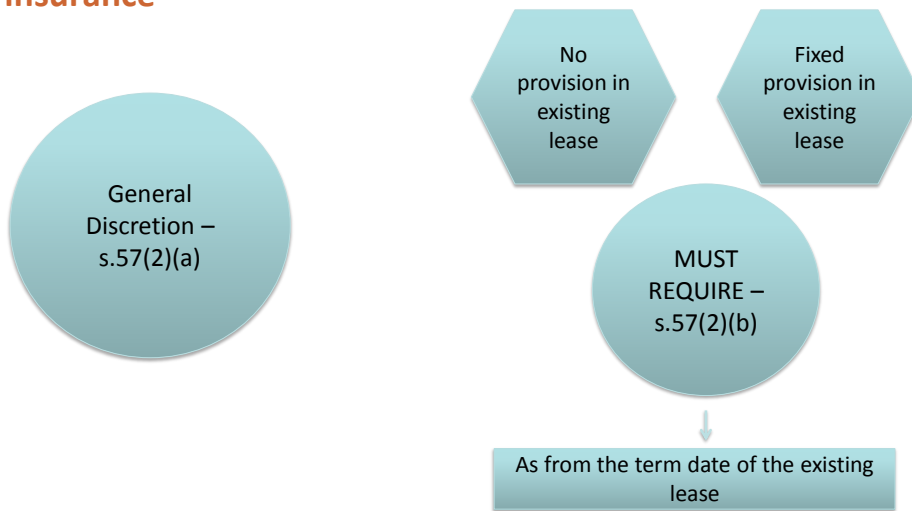
(b) (if the terms of the existing lease **do not include any provision for the making of any such payments** by the tenant or include provision **only for the payment of a fixed amount**) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—

(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.

**Service charges s.57(2) – where L has obligation for provision of services, repairs, maintenance or insurance**

$\frac{L}{C}$



**Premium – Schedule 13**

$\frac{L}{C}$

- When is the valuation date? Notice of the claim.
- Sum of:
  - Diminution in value of the landlord's interest
  - Landlord's share (50%) of marriage value
  - Compensation for loss re other property
- What else can the landlord require the tenant to pay before completion? Rent and other sums due under the existing lease – Section 56(3)

$\frac{L}{C}$

## What happens to a HEADLEASE?

- Deemed surrender and re-grant Schedule 11, para 10



$\frac{L}{C}$

## What about COSTS?

- Payable when? On completion
- For what?
  - Section 60
  - Investigation reasonably undertaken of tenants right to a new lease;
  - Valuation for fixing premium
  - Grant of new lease
- Does not include: costs of negotiations, dispute or hearing

