



Lease Extensions: The terms of the new lease

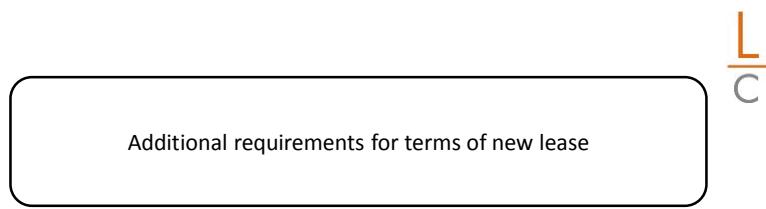
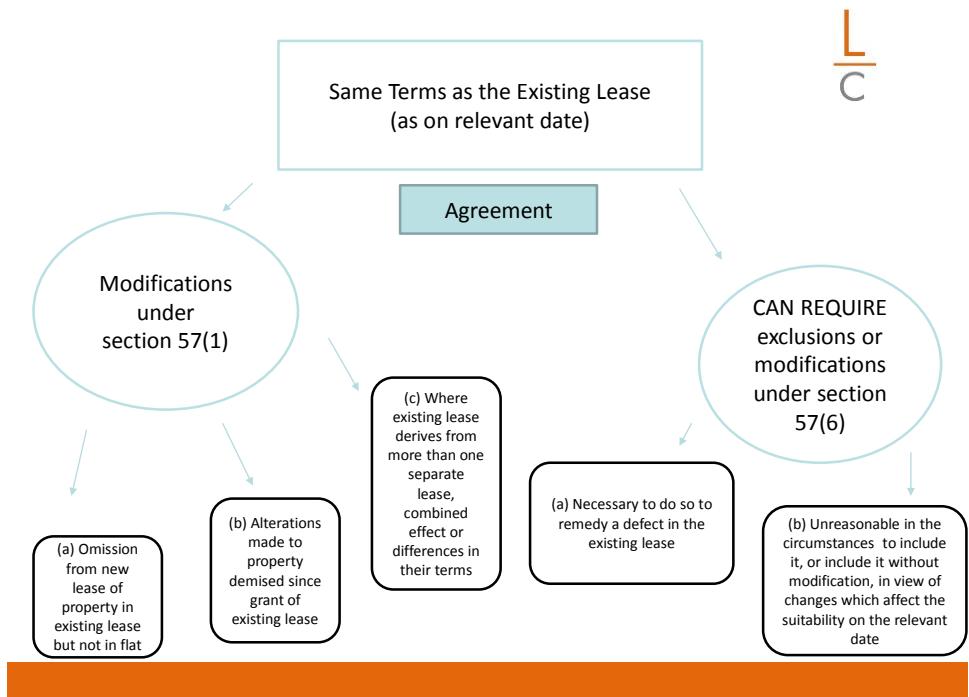
Miriam Seitler
Landmark Chambers
25th May 2017



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

Rent= Peppercorn

s.56



Modifications as may be required or appropriate

(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)

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)

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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

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- 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

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

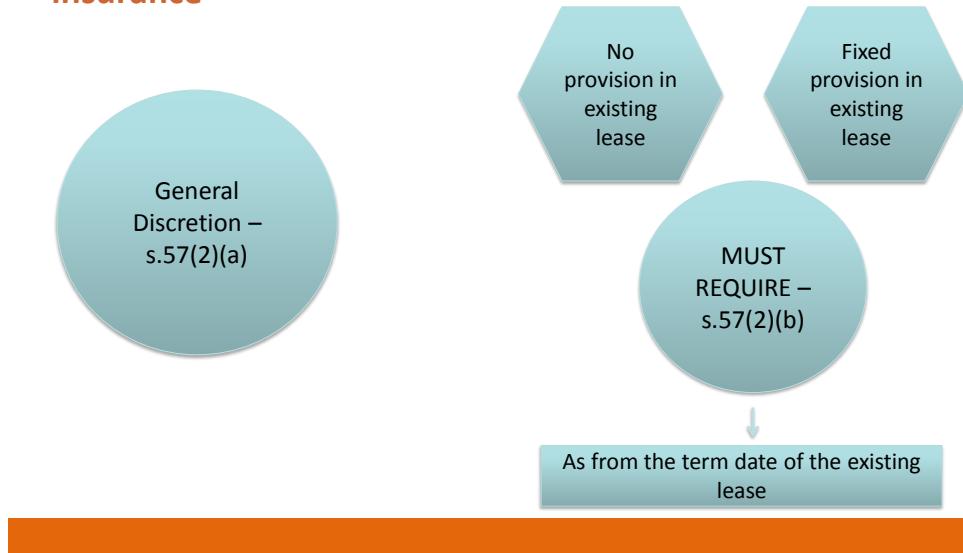
- Council of Mortgage Lenders, Lenders' Handbook;
 - Changes in the value of money;
 - Changes in conveyancing practice; and
 - New legislation.
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- Note the limits, in particular the requirement to show "*it would be unreasonable to include or include 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 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—
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- (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**

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Premium – Schedule 13

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- 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)

What happens to a HEADLEASE?

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



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

