

**Welcome to Landmark Chambers'**

**'COVID-19 and University Students: Renting a  
room you can't use' webinar**

**The recording may be accessed [here](#).**

# Your speakers today are...



**Justin Bates (chair)**

**Topic:**  
Private law  
issues for both  
halls of residence  
and private  
tenancies



**Admas Habteslasie**

**Topic:**  
Public and regulatory  
law issues for halls of  
residence and private  
tenancies (including  
rent strikes)

## Private law issues for both halls of residence and private tenancies



**Justin Bates (chair)**

## Private law issues

- Frustration?
- Breach of contract?
  
- But be careful what you ask for...

# Frustration

What is it?

Where an event occurs *after* the formation of the contract which renders it *physically or commercially impossible* to fulfil the contract or which transforms the obligation into something radically different

## Problems for students

- 1) Timing – what is the event that has occurred after the formation of the contract?
  - Cannot be the pandemic *per se*, for obvious reasons
  - Something caused by the various lockdown restrictions? Perhaps

## Problems for students

### 2) Physically or commercially impossible?

- Do the various “lockdown” regs prohibit return?
  - Not that I can see – travel is permissible for any “reasonable excuse”
  - Note that letting property is permissible and housing market is “open”
  - (*cf* Wales and some restrictions on entering Wales from England)
- For Halls of Residence, are they actually open?
  - If not, then an argument for frustration/breach of contract
- But the length of the interruption might be relevant: see *Li Ching Wing v Xuan Yi Xiong* [2003] HKDC 54 (10 day lock out due to SARS did not frustrate 2 year lease)

## What would be the effect of frustration?

- Contract ends
- Rental liability ends *but* so does right to use the room
- Do you want that? What if lockdown gets lifted and face-to-face starts again?  
What about your property in the room?

## Breach of contract

### Halls of Residence

#### *Tenant sue the university?!*

- If locked out then, if not frustrated, potentially a breach of contract
- If ancillary services are provided as part of the contract (catered Halls) then there is a potential breach of contract
- Could student accept this as a repudiatory breach and walk away? But is that what they want? What happens if lockdown gets lifted and face-to-face starts again? What about your property in the room?

## Breach of contract

### Private landlords

- Hard to see what breach there would be
- More likely tenant is in breach as it is usually a requirement that you not leave the property unoccupied for more than a set period of time (14/28 days)

## Where does this leave us?

Negotiation looks like the only realistic option

Litigation very fact specific and hard to see how a case would be concluded soon enough to make a difference

In the private sector, the obvious risk is LLs go after guarantors.

## Public and regulatory law issues for halls of residence and private tenancies (including rent strikes)



**Admas Habteslasie**

## STRUCTURE OF TALK

1. Context: Covid-19 and university accommodation
2. International students: do any sponsor issues arise?
3. Rent strikes: what are the legal issues?

## COVID-19 and UNIVERSITY ACCOMMODATION

*“Residential higher education is entrenched in English culture and leaving home to study is considered to be an important part of the higher education experience.”* (House of Commons [Library](#))

- According to Office for Students:
  - 62% of university students live away from home (1.1m)
  - 20% of undergraduates and 16% of postgraduates live in halls (2018/19)
  - Around 30% of students live in private accommodation, mostly houses in multiple occupation rented from private landlords; 8% in private sector halls
  - International students particularly likely to live in purpose-built acc

## COVID-19 and UNIVERSITY ACCOMMODATION

- **March 2020** “[students] *should now stay where they are and not attempt to travel. If you are living in student halls, or private rented accommodation, you should remain there*”
- **Nov 2020**, following announcement of second lockdown: “*you should stay in your current home. This means you should not leave your term time address to return to your parents’ or carer’s home until at least 2 December*”
- **20 Dec 2020**: “*To be clear any student can travel home once during the period 3 December 2020 and 7 February 2021.*”
- **December 30** (4-tier system, with much of the country in Tier 4): Govt wrote to universities asking them to restrict students returning to those a small number of courses (medicine, veterinary science, social work, teacher training and a few others), “*all remaining courses should continue to be offered o term. Given the rising infection rates, the return of all other students should be paused until at least the week commencing 25 January.*”
- **Jan 4**: Third lockdown
- **February 2021**: “*Given the ongoing national restrictions, the return/arrival of all other students should be postponed until at least 8 March*”

## COVID-19 and UNIVERSITY ACCOMMODATION

- Some university-owned halls of residence have allowed students who have left university accommodation due to Covid-19 to terminate early without any charges
- A number of student accommodation management companies had, by April last year, have waived fees for the third term of the 19/20 academic year if a student has vacated their accommodation.
- Reports of private student rental agencies and landlords reducing rents substantially
- Many students rely on part-time work to fund their living costs; many unable to do such work in present circumstances

## COVID-19 and UNIVERSITY ACCOMMODATION

- According to Universities UK:
  - university sector in 2019-20 facing losses in region of £790m from accommodation, catering and conference income as well as additional spend to support students learning online;
  - Risk of some universities having to close and others to reduce provision for student or research activities

## COVID-19 and UNIVERSITY ACCOMMODATION

- National Union of Students, 24 March 2020: *“...the Government must instruct all PBSA providers – both university owned and privately owned – to offer the option of a no-penalty release from contract to their tenants. If a student wishes to be released from their contract and rent has already been taken for forthcoming months, it must be refunded along with their deposit. We’re calling on all providers – university and private – to do this voluntarily now.”*
- 80,000 people have signed a petition started early last year that calls for the suspension of student accommodation rent for those students who had to return home due to covid-19

## COVID-19 and UNIVERSITY ACCOMMODATION

- [13 January 2021](#) (following lockdown announced on 4 Jan):

*“...this has been a very difficult year for students, and understandably, many are publicly questioning whether they should be entitled to both tuition fee and accommodation cost refunds... We are currently looking at what more we can do to support students and we strongly encourage providers and accommodation providers to review their accommodation policies to ensure they are fair, transparent and have the best interests of students at heart. As you know, we recently announced up to £20 million to help students most in need of support in these exceptional circumstances, for example those struggling to cover accommodation costs as a result of the pandemic, in addition to an existing £256 million universities can use to help those in financial hardship. We value your support in ensuring this money is focused on the students who most need it. It is important to be clear to providers that they should make students aware of the processes in place to support them if they have concerns about their accommodation costs or face particular financial hardship.”*

# INTERNATIONAL STUDENTS: IMMIGRATION ISSUES?

- In order to obtain a student visa, applicants must have been accepted as students with an institution that is registered as a licensed student sponsor
- Student sponsors are subject to a range of duties in relation to record-keeping, systems and appraising Home Office of changes to situation of their international students
- See Home Office guidance documents, in particular: *Student Sponsor Guidance Document 2: Sponsorship Duties* (available online)

## SPONSOR DUTIES

- Home Office has a wide discretion to revoke licences where it considers that there has been a breach
- R (Cranford College) v SSHD [2015] EWHC 1090:
  - “*high degree of trust in the educational establishment concerned to fulfil its responsibility to implement and police immigration policy*” in relation to its international students
  - “*the SSHD is entitled to expect a very high degree of vigilance on the part of the college... [and] entitled to maintain a fairly high index of suspicion as they go about overseeing colleges and a light trigger in deciding when and with what level of firmness they should act*”

## SPONSOR DUTIES

- Sponsors must inform Home Office if (e.g.)
  - student withdraws from course, misses a certain number of classes
  - is withdrawn from course
  - there is a significant change of circumstances. *“These include”* change in place of study/work placement, change of course; or *“anything that suggests that they are breaking the conditions of their permission to stay in the UK, such as working in breach of their conditions”*

## SPONSOR DUTIES

- Is there a duty to report fact student is in arrears with accommodation payments?
- Probably not in circumstances where (i) sponsor is otherwise clearly complying with its duties and (ii) it remains clear student is in fact studying.
- NB: the justification for the duties imposed on sponsors is protection of efficacy of the immigration control system and controlling risk of sponsors facilitating fraudulent applications

## Right to rent strike?

- Is there a legal right to go on a rent strike?

## Right to rent strike?

### Selection of successful UK rent strikes

- Glasgow late 19<sup>th</sup> C/early 20<sup>th</sup> C : bailiffs pelted with flour bombs. Strikes successful and spread throughout UK, leading to introduction of Rents and Mortgage Interest Restriction Act 1915, which restricted rent increases
- Kirkby Rent Strike, 14-month rent strike initiated by 3,000 tenants just prior to Christmas 1973, in protest at Housing Finance Act 1972 which had reduced council housing subsidy and removed controlled rents and allowed rent increases. Rent increase of £1 agreed
- 2015-2016: five-month rent strike by UCL students. Strike called off after UCL pledged to increase its accommodation bursary and freeze lowest rents

## Right to rent strike?

- Is there a legal right to go on a rent strike?
- **Short answer: significant risk of tortious liability. Reliance on human rights is possible, but not a guaranteed justification.**
- Risks for individual tenant: in breach of tenancy/licence: claim for rent arrears and possession (nb set-off)
- Risk of tort claims arise in organised action:
  - (1) Claim against those involved in unlawful means conspiracy
  - (2) Claim against those involved (and especially organisers) for procuring/inducing a breach of contract

## Unlawful means conspiracy

- **Unlawful means conspiracy: where two or more persons combine and take action which is unlawful in itself with the intention of causing damage to a third party who does incur the intended damage**
- Damage includes loss from breach of contract
- Not completely clear that a breach of contract would be ‘unlawful’ in this sense, but probably would: *“where several defendants combine to co-ordinate the breaking of contracts that they have with the claimant in order to amplify the harm inflicted, the case for allowing the claimant to sue for unlawful means conspiracy seems strong”*: **Clerk & Lindsell, 23-116**

## Inducing/procuring a breach of contract

- It is a tort to induce or procure a third party to commit a breach of contract. Justification is a defence.
- E.g. ***Lumley v Gye*** 2 E & B 216
- Well-known opera singer Johanna Wagner contracted with claimant Mr Lumley to perform exclusively at Queen's Theatre; Mr Gye "*enticed and procured*" Wagner to refuse to perform at Queen's Theatre and thereby break her contract, and perform at Mr Lumley's theatre instead. Gye liable.



## Inducing/procuring a breach of contract

- The general position in English law has been that strikes give rise to liability under this tort
- (Certain) strikes by trade unions are lawful only because they are exempted from tortious liability by statutory intervention. Trade Union and Labour Relations (Consolidation) Act 1992:

PART V

INDUSTRIAL ACTION

*Protection of acts in contemplation or furtherance of trade dispute*

Protection from  
certain tort  
liabilities.

**219.**—(1) An act done by a person in contemplation or furtherance of a trade dispute is not actionable in tort on the ground only—

- (a) that it induces another person to break a contract or interferes or induces another person to interfere with its performance, or
- (b) that it consists in his threatening that a contract (whether one to which he is a party or not) will be broken or its performance interfered with, or that he will induce another person to break a contract or interfere with its performance.

## *Camden Nominees Ltd v Forcey and Bennett*

- These principles applied in the context of a rent strike by tenants of Highstone Mansions in Camden in first instance decision in ***Camden Nominees Ltd v Forcey and Bennett*** [1940] Ch. 352



## *Camden Nominees Ltd v Forcey and Bennett*

- Tenants formed tenant's association in response to range of issues with landlord, including lack of sufficient heating in building; and then withheld rent for what they said were breaches
- Simonds J held that Chair and Secretary of tenant's association were liable in tort.
- Still considered good law - ?

## Right to rent strike?

- Rent strike by definition calls for a breach of tenancy/licence agreement
  - Individual tenant faces risk of order for rent and possession
  - In conspiracy/inducement claims, injunction but also claim for loss from the contract or contracts could be significant in a large rent strike
  - International students who intend to apply for leave to enter/remain in the future: where *person “deliberately and recklessly builds up debts and there is no evidence of a serious intention to pay them off”*, that is a ground for refusal
  
- Are there any legal arguments available to strikers?

## Right to rent strike?

- Possible issues:
  - 1) In context of inducing a breach of contract:
    - a) What does 'inducing' or 'procuring' require and will organising a rent strike necessarily meet that threshold?
    - b) Can a rent strike be 'justified'?
  - 2) What is the relevance of human rights, in particular the freedom of association?

## Rent strikes: Inducing or procuring a breach

### What was the procuring/inducing in Camden Nominees case?

- 1<sup>st</sup> Letter, proposing association: *“It is the intention of the association to approach the landlord and insist on the maintenance of proper services”*
- General Meeting: resolved that committee should send a letter setting out complaints and failing remedying of complaints, that rent should be withheld
- 2<sup>nd</sup> letter, drafted by association for tenants, advising L that rent would be withheld, sent by 16 tenants
- Produced report issued to all tenants: advised tenants to inform association if visited by L in relation to dispute; report *“hoped...tenants will stick together in accordance with the democratic resolution”* and asked tenants to inform association if they had not notified L they were withholding rent pending resolution of issues

## Rent strikes: Inducing or procuring a breach

- Cases cited by Simonds J in support of his conclusion all involved situations where defendant involved a stronger element of involvement by the defendant:
  - “*the so-called advice here was much more than counsel; it was accompanied by orders to stop, which could not be disobeyed with impunity*”: ***Glamorgan Coal v South Wales Miners Federation***
  - Union sanctioned the strike: ***Smithies v NAOP***
  - Defendant itself boycotted a member: ***Pratt v BMA***
  - Defendant directly induced contracting party to breach of contract by obtaining an undertaking to that effect: ***Brimelow v Casson***

## Rent strikes: Inducing or procuring a breach

- *“He who wilfully induces another to do an unlawful act which, but for his persuasion, would or might never have been committed, is rightly held responsible for the wrong which he procured.” **Allen v Flood** [1898] AC 1.*
- *“...in these matters there is a difficult question of distinguishing between what might be called persuasion and what might be called advice, meaning by the latter a mere statement of, or drawing of the attention of the party addressed to, the state of facts as they were. In the case of Camden Nominees Ld. v. Forcey, it was held that the advice given was of such a nature (was of a character obviously intended to be acted upon) that it was for all practical purposes equivalent to persuasion” **D. C. Thomson & Co. LD. v Deakin** [1952] Ch 646*

## Rent strikes: Inducing or procuring a breach

- Case law seems to indicate that ‘advice’ would not suffice, but ‘persuasion’ would. Persuasion must be “causative”: ***Kawasaki Kisen Kaisha Ltd v James Kemball Limited*** [2021] EWCA Civ 33
- Facilitation not enough: ***CBS Songs v Amstrad*** [1988] AC 1013
- Persuasion well-established as a basis for inducement.
  - But is this a cogent distinction?
  - Can simply making someone aware of the possibility of a cause of action with its ramifications be a causative persuasion?
  - How does this work in a group situation in context of common but individual contractual obligations?

## Rent strikes: justified inducement of a breach?

- Inducing a breach of contract not unlawful if it is ‘justified’
- Not much authority on what constitutes a sufficient justification
- Protecting an equal or superior (contractual) right of D’s own: ***Edwin Hill & Partners v First National Finance Corpn plc*** [1989] 1 WLR 225.
- In ***Brimelow v Casson***, Actors’ Association induced a breach of contract where the wages paid were below the minimum wage fixed by the association; Russell J held they “*owed a duty to their calling and its members to take all necessary steps to compel the plaintiff to pay his chorus girls a living wage, so that they should not be driven to supplement their earnings by misconduct for the purpose of gain*”. Doubted in ***Camden Nominees***.

## Rent strikes: human rights

Article 11 of ECHR, domestic effect by virtue of Human Rights Act 1998:

- 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
- 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State*

## Rent strikes: human rights

- Right to strike is an element of the freedom of association under Article 11; Also widely recognised in international law: Council of Europe's Social Charter and International Labour Organisation ("ILO") Conventions
- Art.11 is a 'qualified right', therefore interference with it can be justified, e.g.:
  - *NURMT v United Kingdom* (2015) 60 EHRR 10: Ban on secondary strike action
  - *Association of Academics v Iceland* (2018) 67 EHRR SE4: legislation banning strike action in healthcare sector justified on grounds of likely effect on patient care

## Rent strikes: human rights

- A weighty factor justifying interferences with Article 11 right is normally democratic legitimacy of statutory intervention; domestic courts will defer to judgment of democratically elected branches of government, and European Court of Human Rights will grant a particularly broad ‘margin of appreciation’
- However, liability for a strike arises under judge-made common law: less of an issue

## Q&A

**We will now answer as many questions as possible.**

**Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.**

# Thank you for listening

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