

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

Neutral Citation Number: [2023] EWHC 825 (KB)

IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION



No.QA-2022-000128

Royal Courts of Justice

Thursday, 9 March 2023

Before:

MR JUSTICE LANE

B E T W E E N :

CITY OF WESTMINSTER COUNCIL

Appellant

- and -

(1) ABDUL KAZAM

- and -

(2) ARMIN RAHIMI

Respondents

MR D CREHAN (instructed by Bi-Borough Legal Services) appeared on behalf of the appellant.

MS S STEINHARDT (instructed by Shelter Legal Services) appeared on behalf of the second respondent/defendant.

The first respondent did not appear and was not represented.

## J U D G M E N T

MR JUSTICE LANE:

- 1 The appellant appeals against the order of HHJ Hellman, made following an *ex tempore* judgment delivered on 26 May 2022, dismissing the claim for possession brought by the appellant, Westminster City Council, against the second respondent. For convenience, I shall refer to the respondents as “D1” and “D2”. The judge also declared that D2 had succeeded to a secure tenancy of what I shall refer to as “the property”. The judge gave permission to appeal at the conclusion of the hearing.
- 2 The relevant facts are essentially as follows. On 21 February 2005 the appellant granted a secure joint tenancy of the property to D1 and Mrs Hussain, who was D1’s wife. On or around 11 May 2011, Trinity Solicitors LLP sent a letter to the appellant’s housing benefit department on behalf of D1 stating that D1 had departed from the property on 18 March 2011 and was waiting for the appellant to arrange private accommodation where he could live alone.
- 3 The letter said:

“We have been requested to confirm on behalf of the above-mentioned person [ D1] that he had departed from his home in the above property on 18 March 2011. We are instructed that he has been living in [an address was given in Maida Vale] since that date with his daughter temporarily. He is now waiting for your department to arrange for him private accommodation where he can live alone as his daughter, she has a family, and he cannot continue to live with them as she has children”.
- 4 On or around 23 May 2011, Praxis Community Project sent a letter to the appellant’s homelessness unit on behalf of D1, making an application for housing under Part 7 of the Housing Act 1996. The letter said:

“We believe that our client should be treated as homeless or threatened with homelessness because he has been asked to immediately leave as he was staying with his partner. He is staying with his daughter on a temporary basis”.
- 5 There is an internal document from the appellant headed, “Amendments to housing tenancy details”. This is a *pro forma* document dated 28 July 2011. Under the heading, “Parties and agreements”, the option “joint to sole” is ticked and there is a handwritten note stating, “Please remove Mr AM Kazam from rent account”. It is signed by the appellant’s housing officer and witnessed by the appellant’s estate manager.
- 6 Two days later, D1 registered under the appellant’s allocation scheme and in or about June 2012 he was given a social housing tenancy in the borough of Westminster.
- 7 In May 2017, Mrs Hussain sought legal advice from the Migrants’ Law Project in respect of her grandson, D2, who was then living in a refugee camp in Greece. Prior to that, D2 had been imprisoned in Turkey. Mrs Hussain supported D2’s visa application and gave a witness statement dated 26 May 2017 which, amongst other things, said this:

“I have a secure tenancy through Westminster City Council and I enclose a copy of my tenancy agreement confirming the same”.

(It is common ground that this agreement was the joint tenancy agreement between D1 and Mrs Hussain and the appellant). The statement continued:

“My husband was previously living with me but he has now been provided with his own apartment in the same block since he is a lot older than me and is unable to get upstairs. This means there is only me living at the property”.

- 8 Upon his arrival in the United Kingdom in September 2017, D2 lived with Mrs Hussain at the property, until her death on 10 July 2020.
- 9 On 12 November 2020, D2 applied for a discretionary succession from the appellant. On 25 November 2020, the appellant wrote to refuse that application.
- 10 On 3 August 2021, the appellant issued a claim for possession of the property in the County Court at Central London. On or around 9 November 2021 D2 filed and served a defence and counterclaim seeking a declaration that he had succeeded to Mrs Hussain’s tenancy. The defence proceeded on the basis that:

“1. The original tenancy had been surrendered by way of operation of law on or around 1 August 2011 after D1 had left the property and the council had re-granted Mrs Hussain a secure tenancy on a sole basis. D2 was the grandson of Mrs Hussain and upon her death he had succeeded to the sole secure tenancy pursuant to s.87 of the Housing Act 1985.

2. The appellant’s notice to quit was accordingly not valid.

3. The eviction of D2 would amount to a breach of Article 8 of the ECHR.”

- 11 The particulars of the defence read as follows:

“(a) the first defendant and Mrs Shukriya Hussain separated on or around July 2011. Thereafter the first defendant moved out of the property, ceased paying rent for the property, and was granted a separate tenancy by a registered social landlord for a different property;

(b) the second defendant will rely on a document entitled ‘Amendments to housing tenancy details’. Annexed to this defence is sch.1 to aver that the claimant accepted that the joint tenancy had come to an end. In particular the document states at para.2 that the tenancy be ‘amended’ from ‘joint to sole’ and states ‘please remove Mrs A K Kazam from rent account’.

(c) the second defendant avers that such ‘amendment’ constitutes a fundamental change to the terms of the tenancy such as to operate as an implied surrender and re-grant with a fresh sole tenancy granted to Mrs Shukriya Hussain on or around 1 August

2011. It is averred that the claimant is estopped from claiming that the first defendant was a tenant of the property after 1 August 2011”.

12 The trial took place on 26 May 2022. Before the judge, D2 did not pursue the ECHR Article 8 defence and made no challenge to the service or validity of the notice to quit, save that it was alleged the notice to quit was ineffective because D2 had succeeded to the tenancy.

13 The two issues for the judge to determine at the trial were as follows:

(a) whether the joint tenancy had been surrendered by operation of law and the tenancy re-granted to Mrs Hussain on a sole basis; and

(b) whether D2 satisfied the conditions for succession under s.87 of the Housing Act 1985 (“the 1985 Act”).

14 At the end of the trial, the judge gave an *ex tempore* judgment, holding that:

(1) the joint tenancy had been surrendered by operation of law and re-granted to Mrs Hussain on a sole basis, so it is said, at least; and

(2) D2 had satisfied the conditions for succession of s.87 of the 1985 Act.

15 The findings of the judge in respect of the succession issue are not the subject of this appeal. The findings material to the surrender issue which are the subject of the appeal are that:

(a) D1 had surrendered the tenancy by unequivocally relinquishing possession, moving out of the property and requesting new social housing accommodation; and

(b) Mrs Hussain had unequivocally agreed with D1’s act of surrender by excluding him from the property.

16 The transcript of the judgment records the following submissions of Ms Paris, who was counsel for D2.

“Ms Paris, on behalf of the second defendant, submits that the first defendant surrendered the tenancy by operation of law. She submits that Mrs Hussain agreed to the surrender and that the claimant accepted the surrender. She submits a new tenancy of the same property was granted to Mrs Hussain by operation of law and, therefore, Mrs Hussain was not, at time of death, a sole surviving tenant under the original tenancy. [Ms Paris] submits that the second defendant succeeded to the new tenancy, that is the new tenancy granted by operation of law to Mrs Hussain, on Mrs Hussain’s death. He was another member of Mrs Hussain’s family, being a grandchild, and he had occupied the Property as his only or principal home throughout the 12 months ending with Mrs Hussain’s death. There was no bar to his succession as he would not be a second successor under the original tenancy”.

17 There followed in the judgment of the judge a summary of the cases setting out the principles regarding surrender by operation of law. The relevant findings of the judge are as follows:

“54 In the present case, I am satisfied as follows: first, the first defendant unequivocally relinquished possession. He moved out of the Property; he requested alternative accommodation from the claimant, and he accepted a new social housing tenancy. He notified the Housing Benefit department of the claimant that he had left the Property, the clear implication being that he would no longer be claiming housing benefit in relation to it. His failure to serve notice to quit, not surprising perhaps as he had been excluded from the Property, and the absence of evidence that he returned his keys, does not negative the unequivocal nature of the above indicators.

55 I am satisfied that the claimant unequivocally accepted the first defendant’s surrender. That is because they removed the first defendant from the rent account, as happened in *Ealing Family Housing Association v McKenzie*. I draw the reasonable inference that the claimant was also instrumental in rehousing the first defendant. He had, after all, applied to be rehoused to them. The claimant would have been most unlikely to rehouse him had they formed the view that he would remain a tenant of another social housing property in the Borough.

56 I am further satisfied that Mrs Hussain unequivocally agreed to the termination of the joint tenancy. She did so by excluding the first defendant from the Property. I accept that she excluded him from the Property by asking him to leave from the near-contemporaneous letter to that effect on behalf of the first defendant, to which I referred earlier in this judgment, to the Westminster Homelessness Unit. There is no evidence that that exclusion was rescinded as the first defendant never returned to the Property, and certainly never returned there to live.

57 There are two factors which I have considered, which, in my judgment, are equivocal and so I do not rely on them in reaching the unequivocal termination by Mrs Hussain, a conclusion which I have reached. First, Mrs Hussain became solely responsible for paying rent for the Property. I have no evidence that she agreed to assume sole responsibility once and for all. Her paying the rent was consistent with the joint tenancy surviving and the first defendant contributing when and if he returned to live at the premises. Secondly, I have considered the statement in Mrs Hussain’s first witness statement that she had a secure tenancy with the claimant and that she exhibited a copy of the tenancy agreement confirming the same. That was a statement made in a witness statement in 2017, some six years after the tenancy had been terminated. By then it was too late to affirm the tenancy.

58 In any event, the witness statement was made in order to support the second defendant’s request to be allowed to join her in the

UK. The purpose of the reference to a secure tenancy agreement was to provide written documentation that Mrs Hussain was a secure tenant and could, therefore, provide the second defendant with accommodation. The witness statement was not directed to the basis on which she held a secure tenancy because that was not an issue in the application for the second defendant to be allowed to join his family in the United Kingdom”.

- 18 As I have already indicated, the appellant takes no issue with the finding of the judge that D2 had succeeded to the secure tenancy if, importantly, Mrs Hussain held a sole tenancy at the time of her death, rather than being a joint tenant with D1 under the joint secure tenancy granted to D1 and Mrs Hussain on 21 February 2005. The appellant does, however, contend that Mrs Hussain did not in fact hold a single secure tenancy and that the judge was wrong to hold that the joint tenancy had been surrendered. That meant D1 continued to be the tenant under the 2005 tenancy but, since he was not living at the property, then the appellant was entitled to possession.
- 19 In respect of a secure tenancy granted before the commencement of the Localism Act 2011 on 1 April 2012, succession to the tenancy on the death of the tenant is governed by ss.87 to 90 of the 1985 Act.
- 20 Section 87 provides as follows:
- “A person is qualified to succeed the tenant under a secure tenancy if he occupies the dwelling house as his only or principal home at the time of the tenant’s death and either:
- (a) he is the tenant’s spouse or civil partner; or
  - (b) he is another member of the tenant’s family and has resided with the tenant throughout the period of 12 months ending with the tenant’s death unless in either case the tenant was himself a successor as defined in s.88”.
- 21 Section 88(1) provides that the tenant is himself a successor if (...):
- “(b) he was a joint tenant and has become the sole tenant”—
- or (...)
- “(e) he became the tenant on the tenancy being vested in him on the death of the previous tenant”.
- 22 Section 113 of the Act provides that a “family member” includes grandchildren.
- 23 Ms Steinhardt draws attention to the case of *Bassetlaw District Council v Renshaw & Renshaw* [1991] 23 HLR 603. In that case, the Court of Appeal considered the question of whether a wife, who had gone from being a joint tenant to a sole tenant after her husband had served notice to quit, would fall within the meaning of “successor” given in s.88(1)(b). The Court of Appeal held that in construing s.88(1)(b) the term “tenancy” should not be conflated with “property”. Accordingly the wife had never held the same tenancy as both a joint and a sole tenant. Instead, she had been granted one tenancy as a joint tenant, which

was terminated by notice to quit, and then had been granted a new tenancy for the same address as a sole tenant.

- 24 I said that the judge referred to authorities on the subject of surrender by operation of law. I too must do so. I begin with these passages from *Woodfall: Landlord and Tenant*.

“Nature of surrender by operation of law

17.018 There is no legal distinction between a surrender by operation of law and an implied surrender. The term surrender by operation of law ‘is applied to cases where the owner of a particular estate has been a party to some act the validity of which he is afterwards sopped from disputing, and which would not be valid if his particular estate had continued to exist. There the law treats the doing of such act as constituting a surrender’. This principle does not depend on the actual intention of the parties but on estoppel. A surrender by operation of law does not depend on the intention of the parties; it takes place independently, and even in spite of intention. The foundation of the doctrine is estoppel. There is no estoppel by mere verbal agreement; there must be in addition to such agreement some act done which is inconsistent with the continuance of the lease. Similarly, the giving of a bad notice to quit is no surrender, although there may be a surrender if the notice is subsequently acted upon.

In point of time the surrender is treated as having taken place immediately before the act to which the tenant is a party.

...

Act must be unequivocal

17.020 The conduct of the parties must unequivocally amount to an acceptance that the tenancy has ended. There must either be relinquishment of possession and its acceptance by the landlord, or other conduct consistent only with the cesser of the tenancy, and the circumstances must be such as to render it inequitable for the landlord or the tenant to dispute that the tenancy has ceased.

Thus the appointment of the tenant of a manor to the office of bailiff of the same manner is no surrender, since the office of bailiff is not an interest in land. Nor is there a surrender where the landlord allows the tenant the gratuitous use of further accommodation in addition to the property comprised in the tenancy”.

Grant of new lease to tenant

17.023 The grant by the landlord of a valid new lease to the tenant is a surrender by operation of law, if the new lease is to begin during the currency of the existing lease, because the landlord would have no power to make such a grant unless the old lease had been surrendered. ‘If there is a new arrangement which the tenant is asserting by his conduct, then he is estopped from denying that the landlord was capable of entering into that new arrangement; and if the new

arrangement could not be entered into while the old agreement subsisted, it follows that the tenant is equally prevented from denying that the old agreement has gone’.

Any arrangement between landlord and tenant which operates as a fresh demise will work a surrender of the old tenancy and this may result from an agreement that the tenant gives up part of the land and pays a reduced rent for the remainder. The grant of a tenancy at will to the existing tenant will effect a surrender. An arrangement between the landlord and a third party that the tenant should have a new lease does not operate as a surrender.

In order to operate as a surrender of an existing tenancy, the new lease must be valid. If it is void or voidable there is no surrender, for it could not be the intention of the parties that acceptance of a bad lease should be a surrender of a good one. Thus a surrender by the acceptance of a new lease is subject to an implied condition that the new lease is good, and if it is not, the old lease remains in force.

...

#### By tenant

17.033 The surrender must be made by the tenant. This means the person for the time being entitled to the legal estate in the term. In the case of joint tenants, all must join in the surrender”.

- 25 Both Mr Crehan and Ms Steinhardt acknowledge the importance of the judgment given by Morgan J in the Court of Appeal in *Sable v QFS Scaffolding* [2010] LNTR 30. Paragraph 10 of Morgan J’s judgment reads as follows:

“10 Rather than set out substantial passages from Woodfall, I will refer to the propositions which appear in Woodfall and which are relevant to the specific way in which the landlords put their case on this appeal. Sometimes the propositions in Woodfall refer to the position of a tenant and sometimes they refer to the position of a landlord. This is usually as a result of Woodfall referring to a decided case in which the principles were applied to the position of a tenant or a landlord, as the case may be. As the general propositions ought to apply to both parties, I will adapt the propositions in Woodfall to refer to the position of a landlord and of a tenant. Further, as these propositions are taken from a number of different paragraphs in Woodfall, there may be some element of repetition. The propositions are:

i) there is no legal distinction between a surrender by operation of law and an implied surrender;

ii) the term surrender by operation of law is applied to cases where a landlord or a tenant has been a party to some act, the validity of which he is afterwards estopped from disputing, and which would not be valid if the tenancy had continued to exist;



- iii) the principle does not depend upon the subjective intentions of the parties but upon estoppel;
- iv) in this context, there is no estoppel by mere verbal agreement; there must in addition be some act which is inconsistent with the continuance of the tenancy;
- v) in point of time, the surrender is treated as having taken place immediately before the act to which the landlord or the tenant is a party;
- vi) the conduct of the parties must unequivocally amount to an acceptance that the tenancy has ended; there must be either a relinquishment of possession and its acceptance by the landlord, or other conduct consistent only with the cesser of the tenancy;
- vii) it has been said that the circumstances must be such as to render it inequitable for the landlord or the tenant to dispute that the tenancy has ended;
- viii) an agreement by the landlord and the tenant that the tenancy shall be put an end to, acted upon by the tenant's quitting the premises and the landlord by some unequivocal act taking possession, amounts to a surrender by operation of law; the giving and taking of possession must be unequivocal;
- ix) where the tenant requests the landlord to let the property to a third party, and the landlord does so, the lease is surrendered at the time of the new letting; the surrender does not take place before the time of the new letting; it is essential that the new letting is effected with the consent of the original tenant; if the original tenant does not consent or know of the new tenancy, there is no surrender; the original tenant's consent may be inferred from conduct or from long acquiescence in the new arrangement;
- x) a surrender by operation of law may take place where the landlord, with the original tenant's consent, accepts a new tenant as his direct tenant; the consent of the landlord and the original tenant is needed".

26 In *Leek v Moorlands Building Society* [1952] 2 QB 788, the Court of Appeal held that:

“We would have thought it plain that one of two joint lessees cannot in the absence of express words of authority surrender the rights held jointly”.

27 In *Greenwich LBC v McGrady* [1983] 6 HLR 36, Sir John Donaldson MR affirmed the judgment in *Leek*, holding that:

“It is clear law that if there is to be a surrender of a joint tenancy that is a surrender before its natural termination and all must agree to the surrender”.

- 28 In *Sanctuary Housing v Campbell* [1999] 1 WLR 1279, the Court of Appeal was concerned with a tenancy granted to a lady who cohabited in the premises in question with her partner whom she subsequently married. She was eventually driven from the home by reason of the husband’s violence. He remained and sought to defend possession proceedings brought by the wife’s landlord. Thorpe LJ held:

“In the present case there was nothing equivocal in the conduct of either the plaintiff or Mrs Campbell. *A fortiori* I conclude that on the agreed facts there was a surrender of the contractual tenancy by operation of law in February 1997 when Mrs Campbell, having rehoused herself, did all that she could in compliance with the plaintiff’s stipulation that she should vacate the premises and return the keys. Her husband, a violent man as she asserts, was in possession and denying her access. Unless it was incumbent upon her to seek either an ouster order in divorce proceedings or an order terminating his rights of occupation under the Matrimonial Homes Act 1983 there was nothing more that she could have done”.

- 29 In *R v Hammersmith & Fulham LBC ex parte Quigley* [2000] 32 HLR 379 a sole secure tenant lived in the premises with his wife. The tenant was a drug dealer who fled the country in fear for his own safety, leaving behind his wife and children. The landlord served a notice to quit, asserting that the wife was a trespasser. The wife succeeded in an application for judicial review of the landlord’s decision to serve a notice to quit. The Court of Appeal held:

“4 In *Brent LBC v Sharma* [1992] 25 HLR 257, CA, the tenant wrote to her landlord stating that she was no longer living in the property. The landlord closed the tenant’s rent account and served notice to quit. The Court of Appeal held that in all the circumstances the tenancy had been surrendered. See also *Sanctuary Housing Association v Campbell* [1999] 32 HLR 100, CA.

5 A local authority’s decision to evict a tenant who does not have security of tenure may be challenged on principles of public law, eg that in making the decision, the authority failed to take into account relevant considerations, or took into account irrelevant factors: *Bristol DC v Clark* [1975] 1 WLR 1443, CA and *Cannock Chase DC v Kelly* [1978] 1 WLR 1, CA”.

- 30 *Ealing Family Housing Association Ltd v McKenzie* [2004] HLR 21 was relied on heavily by Mr Crehan before the judge. Mrs McKenzie was a sole assured tenant of a flat in which she lived with her husband. She left the flat following an accusation by her of domestic violence against the husband. She wished to terminate her tenancy in order to obtain other rented premises. She was told by the council she would have to terminate the tenancy of her flat before that could happen. The issue before the Court of Appeal was whether she had done enough to end the tenancy. The Court of Appeal held she had not. Rimer J held as follows:

“16 The material events that had happened by the end of July 11 were (1) Mrs McKenzie moving out of Flat 2 and her statement to Ealing that she had no intention of resuming occupation of it, (2) Ealing’s offer to Mrs McKenzie on July 7 of a tenancy at No.38, one accompanied, according to the judge’s findings, by a statement that if she accepted it she would have to terminate her tenancy at Flat 2, and (3) the signing on July 11 by Ealing and Mrs McKenzie of the new tenancy agreement of No.38.

17 I do not accept that these events can have effected an implied surrender of Mrs McKenzie’s tenancy of Flat 2. Mrs McKenzie did not give up possession of Flat 2 to Ealing on July 11, 2000 and nor could she. It was still occupied by Mr McKenzie. There is no evidence that she even did so much as to give Ealing any keys she may still have had to Flat 2. Nor did she do anything else on July 11 pointing to the giving up by her of the tenancy on that day. The most that can be said about the events of July 11 is that there was an implied, or perhaps even an express, oral agreement between Mrs McKenzie and Ealing that, in consideration of a grant of the new tenancy of No.38, she would terminate her current tenancy of Flat 2. But any such agreement – being one for the disposition of the interest in land that Mrs McKenzie had in Flat 2 – would have been void as failing to satisfy the writing requirements of s.2 of the Law of Property (Miscellaneous Provisions) Act 1989”.

...

“30 Of particular importance for present purposes is that that case shows it is not essential to the effecting of a valid surrender by operation of law that the tenant must actually give up possession to the landlord. It may be sufficient if the tenant does all that he can do to indicate his abandonment of the tenancy provided that the landlord then so conducts himself as to show that he is accepting that the tenancy has been abandoned.

31 The other case to which Ms Stagi referred us which also supports this last point, is *Sanctuary Housing Association v Campbell* [1999] 1 WLR 1279 32 HLR 160 CA. In that case the claimant had granted a secure weekly tenancy of a maisonette to Mrs Campbell, which she occupied with her husband and children. Mrs Campbell then left the maisonette, leaving the husband in occupation. The husband made a proposal to the claimant whose substance was that he should be given the tenancy of the maisonette, but the claimant refused, saying that once Mrs Campbell was re-housed it would require vacant possession. Mrs Campbell was re-housed, although not by the claimant, and she then wrote to the claimant saying that she was giving up the maisonette and asking what she should do with the keys. The claimant’s response was that she must empty the maisonette of her possessions before returning the keys and that until such times as the keys were returned she would be liable for the rent. Her response was that she could not do this because her husband remained in possession and had changed the locks. She enclosed her own keys with her letter. She asked to be given the opportunity to

remove her own possessions from the maisonette once her husband had vacated it, following which the claimant wrote to the husband asking him to leave. He did not, and so two months later the claimant sued him for possession. The judge held that on those facts there had been an implied surrender of the wife's tenancy to the claimant, a decision which this court upheld on appeal. Lord Justice Thorpe referred to Scott LJ's judgment in *Sharma* and said there was nothing equivocal about the claimant's and the wife's acts and that they showed there had been an implied surrender. I respectfully agree. Mrs Campbell had evinced a clear intention to surrender her tenancy by giving up her keys to the claimant. She did not give it vacant possession basis she could not. But she had done all that she could to manifest her intention to surrender the tenancy. The claimant had the option of declining to accept any surrender but it instead unequivocally indicated its acceptance by promptly asking the husband to go, an action consistent only with a recognition by the claimant that the tenancy was at an end. The events of and surrounding July 17, 2000 in the present case, which I regard as supporting the judge's conclusion that there was an implied surrender, are not in my view very different in substance from what happened in *Sanctuary Housing Association*.

32 In these circumstances while, with respect, I am not convinced that in his judgment the judge identified a sound basis for his conclusion that there had been an implied surrender, I am satisfied that on the whole of the evidence before him he could and should have come to the conclusion that he did, that there was an implied surrender on July 17, 2000. As Scott LJ said in *Sharma*:

‘If both tenant and landlord are unequivocally treating a tenancy as at an end the law has no business to insist on its continuance’.

31 In *Belcourt Estates Ltd v Adesina* [2005] EWCA Civ 208, Peter Gibson LJ held:

“30 The doctrine of surrender by operation of law is founded on the principle of estoppel, in that the parties must have acted towards each other in a way which is inconsistent with the continuation of the tenancy. That imposes a high threshold which must be crossed if the tenant is to be held to have surrendered and the landlord is to be held to have accepted the surrender”.

32 *Solihull Metropolitan Council v Hickin* [2012] UKSC 39 is particularly important for what Lord Sumption, who was in the majority, had to say about the importance of abiding by legal principles when the sympathies of the court may be with a particular party who stands to lose, if those principles are followed. The facts can be taken from the headnote in [2012] 1 WLR 2295:

“The claimant local housing authority let a three-bedroom property on a weekly basis to the defendant's parents, Mr and Mrs H, as joint secure tenants, and the defendant lived there with them. At some time after 1980, Mr H left the property and never returned but Mrs H and the defendant continued to reside there as their only and main

residence. When Mrs H died in 2007 the claimant served a notice to quit on Mr H as the surviving joint tenant although he no longer lived at the property, and claimed possession of the property against the defendant. The district judge granted the claimant possession but on appeal the county court judge declared that the secure tenancy had vested in the defendant on the death of Mrs H under the succession provisions in Part IV of the Housing Act 1985. The Court of Appeal allowed the claimant's appeal and held that section 89 of the 1985 Act had not vested the tenancy in the defendant on Mrs H's death so as to divest Mr H of the sole tenancy to which he succeeded, and since he had not been residing in the property at the time of Mrs H's death the tenancy ceased to be a secure tenancy and had been determined by the notice to quit".

33 At para.15 of the judgment, Lord Sumption JSC said as follows:

"It is fair to say that on the facts of the present case Mr. Hickin will suffer no detriment because his interest as the surviving joint tenant was of little if any real value to him. He had been out of occupation for a number of years when Mrs. Hickin died, and had no intention of returning to the former family home. The tenancy was not assignable. Its subsistence mattered only to the landlord, and then only for the purpose of enabling the landlord to terminate it by serving notice to quit. I therefore have every sympathy for Elaine Hickin's position. However, the issue before us cannot be decided simply on her particular facts. If she is right in principle, the operation of section 89 will have a much wider application. It will apply to defeat the interest of a surviving joint tenant who is out of occupation but wishes to return to the property on the death of the deceased and has every interest in doing so, for example because the survivor is the deceased's wife who left the property on account of her husband's violence or abuse. It will apply to defeat the interest of a survivor who has been in occupation throughout but is not a member of the deceased's family. If Mr. and Mrs. Hickin had been divorced, and it was Mr. Hickin who died, section 89 would on the Appellant's construction require the automatic expropriation of Mrs. Hickin's joint tenancy in favour of her daughter, notwithstanding that she was occupying the property, because in those circumstances the daughter but not the mother would be a member of the deceased's family as defined in section 113. Mrs. Hickin would on that hypothesis have been converted by the operation of section 89 from a secure tenant to an unprotected licensee. The same result would follow if the joint tenants had never been members of the same family but had simply been sharing accommodation and the one who died had a child or other close relative living with him or her at the relevant time. I have no doubt that in the great majority of cases, the joint tenants of social landlords will be members of the same family within the very broad definition in section 113. They will therefore be qualified to succeed each other under section 87, even if their subsisting rights as joint tenants have been abrogated. But I do not think that Parliament can be taken to have legislated on the assumption that that would always be so, or that the exceptions were unimportant. Public sector landlords are likely to vary in their letting policies, both as between themselves and over

time. The letting policies of housing associations, housing co-operatives and charitable housing trusts (which are also covered by Part IV) may well be even more heterogeneous, depending on their purposes. The examples that I have cited are not fanciful. What they show is that although it may seem arbitrary, even capricious, for Elaine Hickin's claim to be defeated on account of the rights of her absent father, equally arbitrary and capricious consequences follow from any alternative construction. It is difficult to say which consequences will arise more often. Nor does it matter. Any system of statutory protection which deals with interests as varied as residential tenancies and depends for its practical operation on the accidents of cohabitation, matrimonial break-up and death will inevitably give rise to anomalies at the margins. But the scope of the rights created and the circumstances in which they arise are questions to be resolved on a principled basis. It is not productive, on an issue like this one, to decide it by reference to the competing anomalies and injustices that result from each side of the argument”.

- 34 Ms Steinhardt relied upon a number of further cases to which reference must be made. In *Tarjomani v Panther Securities* [1983] 46 P&CR 32 a tenant had signed what purported to be a surrender of his lease, but thereafter remained in possession. Peter Gibson J held that there had been no surrender by operation of law.

“In my judgment, it is indeed estoppel that forms the foundation of the doctrine. The doctrine operates when the tenant is a party to a transaction that is inconsistent with the continuation of his tenancy, but in my judgment the conduct of the tenant must unequivocally amount to an acceptance that the tenancy has been terminated. There must be either relinquishment of possession and its acceptance by the landlord or other conduct consistent only with the cesser of the tenancy, and the circumstances must be such as to render it inequitable for the tenant to dispute that the tenancy has ceased”.

- 35 Having examined the evidence which included the plaintiff accepting consideration in the form of a release from arrears of rent, the judge concluded as follows:

“In my judgment the evidence in the present case is not sufficiently clear to show that there was acceptance by the tenant of a new status inconsistent with his previous tenancy”.

- 36 *Gibbs Mew Plc v Graham Gemell* [1998] 7 WLUK 429 CA, featured heavily in Ms Steinhardt's submissions. The judgment exists only in the form of an approved transcript. The defendant and his partner had a joint tenancy of a public house. The defendant accepted a new offer of a tenancy at will on less onerous terms than those of the lease. He subsequently sought to resist possession on the basis that because his partner had not assented to the surrender of the joint tenancy, that tenancy continued and the tenancy at will was therefore invalid.

- 37 The Court of Appeal held that the defendant was estopped from denying the validity of the tenancy at will. Peter Gibson LJ, as he had then become, addressed the position of the defendant's partner as follows:

“As he himself said in his second Affidavit, all invoices, correspondence, etc from the landlord were only ever addressed to him and not altered to add her and over time he forgot that she had signed the 1994 Lease. There is no evidence that she at any time asserted her rights as a joint tenant and she appears to have acquiesced in all that Mr Gemmell did as tenant. Mr Gemmell appears to have discussed with Ms McGonigle at least the question whether she executed the 1994 Lease (see para.13 of his second Affidavit: ‘my partner and I recollected that we had signed a blank lease document.’) She has taken no part whatever in these proceedings not even to put in any evidence. She has not sought to be joined as a party nor did she seek to dispute Gibbs Mew’s and Centric’s claim to possession nor the giving up of possession by Mr Gemmell after the judge’s order. It is therefore somewhat artificial to find Mr Gemmell now asserting her interest which he previously had denied and which she herself has never sought to assert and does not even now assert.

Mr Beloff relied on the decision of this court in Hounslow LBC v Pilling [1993] 1 WLR 1242 as establishing that as a matter of law a joint tenancy cannot be surrendered by the action of only one joint tenant. That was a case where the joint tenant other than the one purporting to surrender the tenancy was successful in asserting that the tenancy remained on foot. I am extremely doubtful if Ms McGonigle could now assert a claim, having appeared to acquiesce in Mr Gemmell’s actions as tenant. But whatever Ms McGonigle’s position might be if at this very late stage she were to assert a claim, in these actions we are only concerned with Mr Gemmell. Mr Green submitted that Mr Gemmell by entering into the Tenancy at Will and occupying the Red Lion on the less onerous terms of the Tenancy at Will surrendered the 1994 Lease, the surrender being by operation of law. He also submitted that Mr Gemmell is estopped by convention from asserting that the Tenancy at Will did not govern the relationship between himself and Gibbs Mew. He further advanced a number of arguments as to why s.38 did not apply, though one of those arguments, based on s.28 of the 1954 Act, he later abandoned, in my view rightly.

In my judgment Mr Gemmell cannot now be allowed to deny that he did surrender the previous tenancy and that he held The Red Lion from February 1996 as a tenant at will on the terms of the Tenancy at Will. The doctrine of estoppel forms the foundation of surrender by operation of law (see, for example, Tarjomani v Panther Securities Ltd (1982) 46 P&CR 32 at p.41). There must be conduct by the tenant unequivocally amounting to an acceptance that the tenancy has been terminated. That conduct can be relinquishment by that tenant of possession and its acceptance by the landlord or other conduct by the tenant inconsistent with the continuation of the tenancy, and in addition the circumstances must be such as to render it inequitable for the tenant to dispute that the tenancy has ceased. Further, the essential requirements of an estoppel by convention are as stated by Lord Steyn in Republic of India v India Steamship Co [1997] 3 WLR 818 at p.829):

‘It is settled that an estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by them both or made by one and acquiesced in by the other. The effect of an estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on the assumption’.

It is plain that the Tenancy at Will was intended to supersede, and was treated by the parties as having superseded, the previous tenancy arising from the 1994 Lease. Both parties acted on it accordingly. Although Gibbs Mew might have obtained possession of The Red Lion because of the rent and other arrears owed by Mr Gemmell, it allowed him to occupy, and he occupied, Gibbs Mew’s public house on the more advantageous terms of the Tenancy at Will, paying the lower rent reserved until he countermanded the direct debit instructions and fell into arrears. But he occupied The Red Lion as a tenant at will. In my judgment it would be unjust if having occupied The Red Lion on that basis for 8 months he could, on Gibbs Mew’s termination of the Tenancy at Will, deny the surrender and assert the continuation of the earlier tenancy”.

- 38 Ms Steinhardt also referred to *Laurance v Faux* [1861] 175 ER 1130; *Foster v Robinson* [1951] 1 KB 149; and *Haringey v Ahmed* [2018] HLR 9. These cases concern surrender where a new tenancy has arisen. In *Lawrence v Faux*, the court held that the receipt of rent from a third party constituted a fresh tenancy and that accordingly the previous tenancy must have been surrendered.
- 39 In *Foster v Robinson*, Lord Evershed MR said that a new arrangement which the tenant is asserting by his conduct will estop the tenant from denying that his landlord was capable of entering into that new arrangement (p.155).
- 40 In *Haringey v Ahmed*, the signing of a joint tenancy effected the surrender and re-grant of the previous sole tenancy.
- 41 It is now necessary to return to the hearing before the judge on 26 May 2022. At p.27 of the transcript the judge asked counsel for D2 to address the conduct of Mrs Hussain which was said to be “only consistent with a termination of the tenancy”. He said he was not sure he could take from Mrs Hussain’s conduct any more than that her husband moved out and she continued living in the property.
- 42 Counsel’s reply as follows:

“Your honour, the only thing I can rely on is the amendment to the housing tenancy form which states that under everyone’s agreement the tenancy would be converted from joint to sole”.

Later, at p.30 of the transcript, beginning at line 33, counsel referred to:

“(…) the implied conduct of Mrs Hussain though I accept there is limited evidence of her conduct, but certainly the conduct of the Council, the only realistic assumption that can be reached is that they



accepted the state of affairs as it was. That they accepted that the tenancy, the joint tenancy between, with Mr Kazam and Mrs Hussain could not continue in its current form and that it had to continue in a separate form as a sole tenancy. There's no way in law for that to have happened unless there was a surrender by operation of law and a re-grant of the tenancy".

43 There followed submissions from Mr Crehan who, as now, represented the appellant. Then, at p.50, beginning of line 4 Mr Crehan is recorded as saying this:

"So, Mr Rahimi [ D2] has not provided any evidence that Mrs Hussain ever expressly to the surrender of the joint tenancy or gave authority to Mr Kazam to do so, so in the defence there are no facts pleading either expressed agreement or surrender on the part of Mrs Hussain or any conduct on her part, which could amount to unequivocal evidence of surrender and it's not obviously in the witness statements and it's not in my learned friend's skeleton other than, no criticism of my learned friend is intended, but the reference to the amendment of tenancy form it's suggested that Mrs Hussain agreed to that.

But there's no evidence of that, it's not been signed by Mrs Hussain; so my learned friend can only mean that there's an implication that she agreed in those circumstances. But in my submission the law is clear on this point, there must be an expressed agreement".

44 Page 56 beginning line 30, we have this exchange:

"MS [PARIS]: It says, 'All must agree to surrender', in my submission, Your Honour, the basic principle of implied surrender is that there's no requirement for there to be express agreement, so there doesn't need to be a notice, whether it be invalid or not. The point is surrender by operation of law comes from estoppel; it is by unequivocal conduct.

JUDGE HELLMAN: So, what is the unequivocal conduct of Mrs Hussain?

MS [PARIS]: So, in terms of Mrs Hussain the highest I can put it in the absence of Mrs Hussain being here to give us evidence, I'm afraid, is that she accepted that she wanted to, she would pay the rent in full, so she didn't seek any assistance from Mr Kazam in respect of the rent, and that she has, so you've heard my learned friend's submissions regarding what weight you can give to her witness statement, she has, in those statements, explained that her husband has moved out of the property; there's no suggestion that she thinks that it's continuing in the form of a joint tenancy. My point here is that insofar as there is conduct both on behalf of Mr Kazam and Mrs Hussain, that conduct all points in the right direction, it is unequivocal.

JUDGE HELLMAN: Yes, I understand that, although you might want to address me on the cases that Mr Crehan says suggest that it is not enough to establish unequivocal conduct, but I am particularly focussed on the unequivocal conduct by Mrs Hussain.

MS [PARIS]: Your honour, I'll be repeating myself, the highest that I can put it is that she continued to pay the rent".

## **DISCUSSION**

45 There are four grounds of challenge brought by the appellant.

**Ground 1** contends that the judge erred in law in finding that Mrs Hussain had unequivocally concurred with D1's act of surrender of the joint tenancy by excluding him from the property.

**Ground 2** contends that it was unjust because of serious procedural irregularity for the judge to find that Mrs Hussain had excluded D1 from the property and thereby unequivocally concurred with D1's act of surrender in circumstances where the argument had not been pleaded or otherwise advanced by D2.

**Ground 3** asserts that the judge's finding that Mrs Hussain had excluded D1 from the property and thereby concurred with his act of surrender exceeded the generous ambit of the judge's discretion on the evidence before him.

**Ground 4** submits that the judge erred in law in finding that D1 had surrendered the joint tenancy by unequivocally relinquishing possession, moving and requesting new social housing accommodation, whereas Mrs Hussain remained in possession of the property.

46 The approach that this court must adopt in an appeal of the present kind is set out in CPR 52.21. This provides that:

"The appeal court will allow an appeal where the decision of the lower court was—

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court"

In CPR 52.21(3)(a) "wrong" means that the court below:

1 erred in law; or

2 erred in fact; or

3 erred to the appropriate extent in the exercise of its discretion."

47 As regards CPR 52.21(3)(a), where a judge's evaluation of facts is challenged, it will be very difficult for an appellate court to place itself in the position of the trial judge who would have had to take account of both written and oral evidence.

48 Authoritative guidance on the approach that appellate courts should take when called upon to assess a trial judge's evaluation of facts has been given in a number of cases. These include *Re B, (a child) (Care proceedings: threshold criteria)* [2013] UKSC 33. The

authorities and particular *Re B* are, Ms Steinhardt says, well summarised in the case of *Prescott v Potamianos*, also known as *Re Sprintroom* [2019] EWCA Civ 932.

- 49 As recorded at para.76 of the judgment, the proper approach is that:  
“... on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, ‘such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion’”.
- 50 I bear this fully in mind in reaching my judgment on the appeal. I intend to approach the grounds advanced in the following order. I shall begin with ground 1, followed by ground 3, then ground 4 and, finally, ground 2.
- 51 Beginning, then, with ground 1, there is a good deal of common ground between Mr Crehan and Ms Steinhardt. On the case law, Ms Steinhardt makes no criticism of the way in which Morgan J articulated the sixth of the propositions derived from **Woodfall** in the judgment in *Sable*, namely:  
“The conduct of the parties must unequivocally amount to an acceptance that the tenancy has ended”.
- 52 The case for D2 is that there are two matters of significance. First, where there are joint tenants, it is not the case that the law requires each joint tenant to engage in an act which on its own terms constitutes an act of surrender. Ms Steinhardt points to the *dicta* in *Leek v Morland* that one joint tenant must act with the “authority of the other” and that Sir John Donaldson MR held in *LB Greenwich* that the joint tenant can “agree” to the surrender. Second, Ms Steinhardt lays emphasis on the fact that the law on surrender and re-grant lies in estoppel. This, she says, means that it is the totality of the conduct of the parties that falls to be considered.
- 53 It is necessary first to identify why the court needs there to be a quality and depth of evidence in order to engage the principle of surrender by operation of law. The reason lies in the fact that the principle is an exception to the formal requirements that are laid down by statute for the creation and extinction of rights in land.
- 54 The doctrine of estoppel comes into play where the insistence on those requirements would give rise on the particular facts to an injustice. This leads to the important point made by Lord Sumption in *Solihull Metropolitan Council v Hickin*, that the desire to achieve a solution in a particular case should not lead the courts away from deciding cases on a principled basis.
- 55 With these considerations in mind, the fact we are concerned with joint tenants is of considerable significance. If, by relaxing established principles, it were to become easier for a court to find a joint tenancy has come to an end, the position of joint tenants is, as a general matter, likely to be adversely affected.
- 56 The cases disclose many instances in which one joint tenant leaves as a result of disharmony or worse with their spouse or other partner. If the joint tenancy can be ended in these circumstances by anything less than the unequivocal conduct of the joint tenant who remains in the property, one can easily envisage how that tenant’s interests could be damaged. There is, accordingly, a high degree of importance in the terminology used in the cases, such as the

“high threshold” in *Belmont Estates*, and the fact that, as in *Hammersmith*, the behaviour cannot be “equivocal”. The facts of *Tajormani* show how even the actions of both parties, which might be said to point clearly towards surrender, may not in fact be taken to have that consequence.

- 57 In the present case the judge was, I find, wrong to distinguish the *Ealing* case from the present one on the basis that *Ealing* concerned a sole tenancy, whereas we are here concerned with a joint tenancy. As Mr Crehan said, the fact that we are concerned with a joint tenancy means that the court should be, if anything, more cautious about inferring surrender, not less.
- 58 The case of *Gibbs Mew* does not assist D2 in resisting this appeal. It is important to bear in mind that the court was there concerned with the justice of preventing the defendant from denying that surrender of the joint tenancy took place when he accepted the new tenancy. That is a classic instance of how the doctrine of estoppel operates. In that regard, it is significant that there was a dearth of evidence from the defendant’s partner, which the court plainly regarded as suspicious.
- 59 In *Gibbs Mew*, there was ample evidence of re-grant in the form of the agreement for the new tenancy. That stands in stark contrast to the facts of the present case. As I have set out, the pleaded defence relied entirely upon an internal record of the appellant, whereby a box on a form had been ticked indicating “joint to sole”, along with the words, “Please remove Mr Kazam from rent account”. This was the basis upon which counsel for D2 approached the hearing before the judge. When, faced with the case law relied on by Mr Crehan, the judge pressed counsel to point to any evidence that Mrs Hussain had agreed to the surrender, counsel for D2 was, understandably, at a loss to point to any. She certainly did not seek to advance the proposition that by “excluding” D1 from the property or even asking him to leave, Mrs Hussain had satisfied the requirements articulated by Morgan J in *Sable*.
- 60 Ms Steinhardt conceded in oral submissions before me that the judge did not, in fact, make a finding that a new tenancy had arisen, although she submitted that given his other findings and his order it must be assumed that he had done so.
- 61 Standing back, what all of this reveals is that there simply was no evidence of unequivocal concurrence in any surrender by D1. This strikes at the heart of D2’s case, so far as it rests upon the alleged estoppel by reference to surrender and re-grant. The contrast between the evidence before the judge and the facts of the cases where there has been found to be the creation of a new relationship of landlord and tenant could hardly be starker.
- 62 The submission that one should look holistically at the alleged re-grant and other conduct said to point towards surrender is one I cannot accept if, as is apparent here, it amounts to the suggestion that a collection of what are, at best, individually equivocal events can somehow be combined to surmount the high evidential threshold which the case law demands. The submission also runs counter to the approach of Peter Gibson J in *Tajormani*. Finally, it is, in any event, not the approach that the judge took.
- 63 In conclusion, therefore, the finding at para.66 of the judgment that Mrs Hussain unequivocally agreed to the surrender by excluding D1 from the property was wrong in law. Even taken at its highest, there is simply no evidence of “exclusion”. Even affording the necessary deference to the judge as the primary fact-finder, what was before him was incapable of constituting the unequivocal assent or agreement that was required by law. Ground 1 therefore succeeds.

- 64 I also find that ground 1 succeeds on a narrower, discrete basis; namely, that the act of Mrs Hussain said to constitute her agreement to D1's acts of surrender cannot constitute such an agreement, in any event, because it preceded those acts of surrender. This is not, as Ms Steinhardt suggested, a nit-picking criticism. On the contrary, it serves to demonstrate that, once the judge had correctly decided he could not make a finding in favour of D2 on the basis of D2's pleaded case, the judge put himself in the position of making bricks without straw. The structure he erected was, as a result, entirely unsound.
- 65 This leads directly to ground 3. I agree with Mr Crehan that there was no reference to "exclusion" anywhere in the evidence or the pleadings. The concept of exclusion also fails to chime with much of the evidence that described how Mrs Hussain had come to have sufficient accommodation in the property in order to accommodate D2, were he to be admitted to the United Kingdom. Ground 3 is made out.
- 66 I turn to ground 4. The appellant argues that the judge was wrong to hold that D1 had in effect done everything he could to give up possession of the property and thus surrender the tenancy. In particular, he had not handed in the keys or sought to have Mrs Hussain's continued possession brought to an end. Thus, on the basis of the decided cases, he could not be said to have surrendered.
- 67 Ms Steinhardt's attempt to counter this ground of challenge is based on the submission that there was enough before the judge to support a finding that the appellant had granted Mrs Hussain a fresh tenancy; and so there had been a surrender of the previous tenancy. However, as I have said, the judge did not make such a finding and there was, in any event, no evidence before him that could have supported such a finding.
- 68 D1's conduct can only be regarded as equivocal. He was interested in being re-housed. That is the extent of the evidence. As against this, Mrs Hussain remained in possession. In that regard, I have already explained why the judge was wrong to seek to distinguish the *Ealing* case. Ground 3 accordingly succeeds.
- 69 Finally, I turn to ground 2. In view of my findings on the other grounds, it is not strictly necessary to deal with ground 2; not least because, if it alone were to succeed, it would result in a re-trial, whereas the effect of the appellant succeeding on the other grounds is that it is entitled to an order for possession, on the basis that this is the only outcome which could result from the evidence.
- 70 I agree with Ms Steinhardt that, following the judgment of Birss LJ in *Satyam Enterprises Limited v Burton & Anor* [2021] EWCA Civ 287, the focus must be on whether the decision in question is unjust because of a serious procedural irregularity. The answer to that question will normally turn on whether there has been prejudice to the party who is complaining of the action taken by the judge. Viewed in this way, it is manifest that the appellant was caused prejudice. The appellant's legal argument had exposed the weakness in the pleaded case of D2. Those arguments had shown that D1 and Mrs Hussain needed to have acted in a way that caused the joint tenancy to be surrendered, which could have been by one of them unequivocally assenting to the surrender action of the other. As I have found, the suggestion that Mrs Hussain may have assented to the surrender by excluding D1 from the property featured nowhere in the written case of D2 or in the oral submissions made by counsel at the trial. The first that Mr Crehan knew of the matter was when he heard the judgment delivered. The prejudice in this case is therefore easily identified. It was the loss of opportunity for the appellant to make to the judge the very submissions on grounds 1 and 3, in particular, that it has been required to make to me on appeal. As is plain from my judgment, had Mr Crehan been able to deploy those submissions at the proper

time, they would have had a material bearing on the outcome of the case. Ground 2 is therefore made out.

- 71 I should conclude by saying that throughout this analysis, I have borne in mind Ms Steinhardt's final submission in her skeleton argument, which describes what she suggests is the absurdity of concluding that D1 remained a joint tenant with Mrs Hussain and then the sole tenant after her death, despite having eventually been provided with premises of his own by another social housing provider. The response to that submission lies in the case law, which is replete with instances whereby a joint tenant has remained as such, notwithstanding a significant absence from the property in question. It also lies in reminding oneself again of Lord Sumption's warning in *Solihull MC v Hickin*.
- 72 Finally, I wish to pay tribute to the high quality of the written and oral submissions of Mr Crehan and Ms Steinhardt.
-