

## Human Rights & LFRA: An update from the courts

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### Introduction

- LFRA 2024 – valuation – judicial review
  - The claims
  - What is being challenged?
  - Where are we in the litigation?
  - What next?
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## LFRA 2024 - valuation

- New valuation exercise – Sch.4
  - An enactment in the “wash up” - 24 May 2024
  - Law Commission – foreshadowed HRA challenge
    - *“Leasehold home ownership: buying your freehold or extending your lease – Report to reduce the price payable”*
    - *Opinion of Catherine Callaghan KC*
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## LFRA – valuation – judicial review

- A1P1 – entitlement to peaceful enjoyment of possession
    - (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
  - Requirement of a fair balance – compensation terms are material
  - Requirement of proportionality – normally requires an amount reasonably related to value
  - Article 14 – protection and application of rights and freedoms without discrimination
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## The claims – the claimants

- Originally 7 claims:
    - Arc
    - Cadogan & Grosvenor
    - Abacus
    - Wallace
    - John Lyon’s Charity
    - Portal Trust (charity)
    - Annington
  - Annington – MOD buy-back; case settled
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## What is being challenged? – the challenges

- Removal of MV (s.37 and Sch.4, para.17(3)) – all claimants
  - Lack of exemption for charities – JLC / Portal
  - 0.1% cap on g/rents to be valued in term valuation (s.37 and Sch.4, para.26(4)) – Arc / C&G / Abacus / Wallace / Portal
  - Abolition of right to recover statutory costs subj. to certain exceptions (ss.38 & 39) – Arc / Abacus / Portal
  - Assumption that all intermediate leases between QTs lease and F’hold are merged or been surrendered (s.37 and Sch.4 para.17(2))– Abacus
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## **What is being challenged? – position of SoS**

- The scheme for compensation is a package of measures
  - That package is not yet complete
  - DRs and CRs are to be set by secondary legislation
  - Until they are set, the compensation is not known
  - Until the compensation is known, it is not possible to assess whether the legislation strikes a fair balance
  - Until that assessment can be carried out, the claims cannot be considered properly arguable
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## **What is being challenged? – the (common) response**

- The question of compatibility turns on the LFRA
  - So, e.g., if the removal of MV is incompatible with A1P1, that cannot be cured by secondary legislation
  - DRs and CRs cannot compensate for the removal of MV – they are concerned with different components of value
  - The “shadow of blight” – the effects of LFRA - are real and present: drop in no. claims / -ve effect on valuation of interests
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## Where are we in the litigation?

- 7 claims issued – HCt listed all 7 to be heard together
  - 4 claims agreed a stay with SoS; 3 did not
  - SoS applied for the 3 to be stayed
  - App for stay – 17 Oct 2024 (agreement that if SoS unsuccessful stay of 4 claims would be lifted)
  - Chamberlain J – app for stay refused
  - Listed for permission hearing - 29-30 Jan 2025
  - Issue: is there are an arguable case?
  - Chamberlain J – permission given in all claims
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## Permission – “shadow of blight”

- Chamberlain J:

*7. If the legislation under challenge had no current effect on the financial position of the claimants, unless and until it were brought into force, I would accept that it might well be appropriate for the determination of any challenge under A1P1 and/or Article 14 to await the decisions yet to be made in setting deferment and capitalisation rates.*

*8. However, as I observed in rejecting the applications for stays, the claimants have filed evidence which establishes, at least to the standard of arguability which applies at this stage of the proceedings, that even before the Act is brought into force, it is having real effects on them, in particular by reducing the number of enfranchisement applications.*

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## What next?

- Substantive hearing
  - 4-day hearing in July
  - Ministerial statement 21 Nov 24: remains to be seen how permission affects (if at all) what was said as to timetable.
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Thank you.  
Rob and James

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