

# Issues in the construction of 'sweeper' clauses

Rupert Reed QC  
serle court



## **‘Sweeper’ provisions – ‘services’**

“All works installations and things as in the reasonable discretion of the Landlord may be considered necessary or desirable for the proper maintenance safety amenity and administration of the Development”

“Such other services of functions as the Management Company shall think fit for the upkeep and enhancement of the Estate or for the benefit of the flats thereon”

“Any other facility service amenity or thing provided on or for the Estate and intended to benefit the Estate and the majority of occupiers thereon”

## Construction of contracts – core principles

- Reasonable person having background knowledge available to parties: *ICS* [1998] 1 WLR 896
- Ordinary and natural meaning of words
- Construed in context of factual matrix

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# Construction of contracts - wrinkles

- 'Conventional' usage of language
- Corrective construction: *Chartbrook* [2009] UKHL 38
- Exclusion of 'subjective' documents: *Chartbrook*
- 'Commercial common sense' – where ambiguity:  
*Rainy Sky* [2011] 1 WLR 2900
- Spectrum of ambiguity: *Excalibur* [2011] EWHC 2111

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## Historic 'special rule'

- *Restrictive* construction of service charge provisions
- Reasonable to expect parties to clearly 'spell out' service obligations and service charges
- Lease to subsist through successive ownerships of reversion and tenancy
- But provisions should not be deprived of real effect

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## ***Arnold v Brittan* [2015] UKSC 36; [2015] AC 1619**

- No special rule of interpretation
- Ordinary principles apply:
  - Ordinary and natural meaning
  - Other relevant provisions
  - Overall purpose / factual circumstances
  - Commercial common sense

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## Other relevant provisions

- Relationship with repair covenants
- 'Genus' of other services – *Orford* [1992] 2 EGLR 44
- Length of term

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## Factual matrix

- Extraneous documents – eg planning documents
- Principles of ‘good estate management’
- Formality and quality of drafting
- *Contra proferentem* construction

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## Arguments as to *benefit* of service

- Wording may require extent of benefit
- Arguments as to no individual benefit
- Absurdity of consequences
- Benefit likely to be reflected in apportionment

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# Statutory requirements

- Application of ss. 18-19 LTA 1985
- Dwellings – requirement of landlord and tenant
- Costs taken into account only if and to the extent they are reasonably incurred

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## Element of *discretion*

- Not dishonestly, for improper purpose, capriciously or arbitrarily: *Socimer* [2008] EWCA Civ 116
- Duty to take account of other's interests
- Duty of rationality – process and substance:  
*Braganza* [2015] UKSC 17

**Thank you**

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