Waiver of forfeiture

What do recent cases tell us about waiver of the right to forfeit – what are the pinch points for landlords as regards their conduct, considering both remedial and irremediable breaches and, continuing and once and for all breaches?

MARTIN HUTCHINGS KC

REMINDER OF BASICS

Waiver is really the effect of an election, and an election is something a contracting party does where it has a choice between inconsistent rights: the right either to treat the lease as continuing despite a breach or to terminate it relying on a forfeiture right in the lease. This 'elective waiver' is therefore what happens when a landlord, whether deliberately or inadvertently, makes apparent to the tenant that it is treating the lease as continuing. It is an abandonment, arising from a party making an election.

It has nothing to do with estoppel. And when we are thinking about the term in our context, we should always distinguish it in our minds from 'waiver by estoppel'. Election is a common law doctrine – therefore one would expect it to, and it does, in the context of waiver of the right to forfeit, operate strictly – it is a hard edged: it doesn't depend on equitable notions of fairness, or unconscionability or approbating and reprobating: those ideas really only apply in the context of estoppels – including of course waiver by estoppel.

This distinction is potentially important in this respect: you cannot or at least, it is very difficult, to contract out of estoppel – a contract clause stating that '*the parties agree that no estoppel can arise in relation to their dealings'* is obviously ineffective.

But the position is potentially different in the area of election and particularly whether a right can be waived by prior agreement.

Now lets just remind ourselves of the basics of continuing and once and for all breaches and remediable and irremediable breaches and let's deal with the easy points first, before coming back to the idea of contracting out of the effect of waiving the right to forfeit.

CONTINUING AND ONCE AND FOR ALL BREACHES

Waiver operates in relation to past breaches not future breaches.

When considering waiver of the right to forfeit the key first question therefore, in this context is whether the breach is **continuing or once and for all,** for the obvious reason that, if the breach is continuing (disrepair being the obvious example) the right arises each day that a breach occurs, so any action on a day recognising the lease (such as rent demands) won't waive the right to forfeit provided thereafter that the forfeitable breach continues. Moreover, assume with a **continuing breach** that the act of waiver is acceptance of rent in advance, but by the end of the rent period the breach has ceased, can L still forfeit? In general yes, because the waiver by acceptance only operates in respect of those breaches known at the time of demand to be continuing and to waive for such period as it is definitely known they will continue (*Segal Securities Ltd v Thoseby* [1963]).

But of course the 'rules' are different, and simpler, for **once and for all** breaches. The demand is an unequivocal election to treat the lease as continuing

Now those basic rules are quite clear. And so the only real difficulty in this respect is to know whether the breach of covenant is a continuing one or, treated as a once and for all breach.

Here case law has created some slightly weird distinctions. You need first to construe the relevant covenant and then check the case law.

So for example insolvency is a continuing breach, whereas the appointment of a receiver or liquidator is probably a once and for all breach; unlawful alterations (once and for all) but wrongful user (continuing). You need to check the case law. And you will find there are still arguments based on the true construction of lease covenants as to whether breaches are of once and for all or continuing

covenants – take ***Azam v Violet Developments*** [2025] (costs judgment reported at [2026] 3 WLUK 53) where the issue was whether a covenant to use reasonable endeavours: '*to carry out and complete works as soon as reasonably practicable'* was once and for all or continuing. The CC Judge (rightly) held in line with a case called ***First Penthouse*** which I will refer to again below, to be a once and for all obligation, on the basis you could ascertain with precision the date that the works had to be completed and the fact that the obligation was also to carry out the works 'as soon as reasonably practicable' did not turn the covenant into a once and for all obligation.

HOW IS THE QUESTION OF WAIVER AFFECTED DEPENDING ON WHETHER THE BREACH IS REMEDIABLE OR IRREMEDIABLE?

Again the way the distinction has developed is not always intuitive, so the case law means you have to check. Some breaches that you would think are obviously *remediable* (such as immoral user) are not. Others, such as wrongful alterations which you might think were *irremediable*, if you had the precedent case law on immoral user in mind, (you can reverse alterations in the same way you can end immoral user) are not. In this respect it's the same a failing to carry out building works within a time limit laid down in the lease: that ***is*** remediable. Its all a bit weird, no hard and fast rules exist.

PRACTICAL CONSEQUENCE OF THE REMEDIABLE / IRREMEDIABLE DISTINCTION

And whilst the distinction between remediable and irremediable might nowadays be thought to be less important than it once was because of course (again perhaps counter-intuitively) whether or not the breach is remediable or irremediable does not influence significantly the question of whether relief from forfeiture will be given, nevertheless, it still has one important practical consequence.

In order to exercise a right to forfeit for any covenant other than non-payment of rent, the landlord must serve a section 146 notice and give the tenant a **reasonable period of time** within which to consider whether to remedy the breach, pay compensation or apply for relief. In the case of an irremediable breach, the time period can be very short: a matter of days or weeks, with irremediable breaches the reasonable time period can be significant.

This gives rise to the vexed question whether a landlord can elect to waive their right to forfeit prior to the expiry of that reasonable period of time, and before the right to forfeit has become exercisable? So, the question relates to the position where a landlord has served a s.146 Notice for a remediable breach, and whether the landlord can, within the reasonable time required to be given to remedy the breach, waive the right to forfeit?

I deal with this shortly as one of the pinch points that my talk's title asks me to address.

So that deals with basic terminology. Coming back however to my first basic point in the waiver context: the first question is:

CAN YOU CONTRACT OUT OF WAIVER OF A CONTRACTUAL RIGHT TO FORFEIT?

Again, starting from basics and the concept of freedom of contract, the answer ought to be yes. We know that it is now well established that you can, by agreement contract on a false factual basis (something which is called contractual estoppel) – so for example a contract (including of course leases) can declare that the parties have not relied in entering into the lease on any representations of fact made by the other party. Such a clause is in principle effective: even if party A did in fact make misrepresentations, nevertheless those, in principle, can't be relied upon by party B - if party B signs a lease with such a clause. Consumer law (such as UCTA 1977) might provide some protections against unreasonable terms in some contexts, but that is by the by.

Thus, equally as regards an anti-waiver provision, in the ordinary contractual (non-lease) context the answer, broadly, is now, 'yes' you can contract on the basis that no waiver of a party's right will occur in whatever circumstances. Provided the clause in question covers clearly the particular contractual right that it prevents waiver of, then the Courts should uphold it. Thus in ***State Securities Plc v Initial Industries Ltd*** [2004] a provision preserving a right to terminate an equipment lease after the occurrence of a breach 'whether or not any rental or other payment has been made in the meantime' was held to be effective. The Judge said:

’*57. It is undoubtedly the case that the law relating to forfeiture of leases has evolved very strict, some would say artificial rules as to when the right to forfeit is lost. <u>Even a conditional or without prejudice acceptance of rent operates to waive the right to forfeit.</u> I can see no reason in principle why the parties to an equipment lease ….or other commercial contract should not be free to stipulate that a particular act, such a as a payment of a rental instalment should not be taken to waive a right to terminate for an earlier breach……*

It may be in the interests of the lessee that the finance company should not have to take an early decision whether to terminate. <u>Perhaps the same might be said of real property leases</u>….’.

So in the contractual field it seems that clauses which contract out of the common law election doctrine in relation to specific rights that may accrue where one party is in breach will be upheld. (And so as lawyers we ask the next question: can you be estopped from relying on the non-waiver provision: The question whether such “no waiver” clauses can themselves be waived is a matter which is not conclusively resolved in the authorities. Support for the idea that such a provision can be waived, can be found in the decision of the Supreme Court in ***MWB Business Exchange Centres Ltd v Rock Advertising Ltd*** [2016] in relation to the efficacy of no oral modification clauses, which by analogy, might be said to apply equally to no waiver clauses).

It is unclear if the point the Judge made in ***State Securities*** that the law in relation to property leases is different is correct. If you look at ***Woodfall*** you will see that it states the traditional view - by reference to an old case ***R v Paulson*** [1922]. ***Woodfall*** says (at 17.096): ‘*Because of the foundation of waiver in the doctrine of election such* [no waiver] *clauses are ineffective to prevent the ordinary principles of waiver from being applied to the facts of a particular case. <u>There is a logical inconsistency in the landlord claiming that the lease is at an end while at the same time relying on a provision in the same lease in order to prevent a waiver</u>.*’

The ***Paulson*** case is a very thin basis for the position that ***Woodfall*** takes. It is a PC case (an appeal from Canada) and in fact what Lord Atkinson said giving the PC’s opinion:

'…*it may well be that many cases may occur to which the clause as to waiver would be applicable*…'.

In other words he was accepting that such clauses could be effective, but that the particular clause that the Court was considering, did not. Furthermore, Courts in Australia and New Zealand have found more recently that ***Paulson*** did not decide that no – waiver clauses were ineffective.

That brings us to the most recent case to deal with this in England and Wales which is: ***Tropical Zoo Ltd v Hounslow BC*** [2025] 2 P & CR 1 ('***TZL***'). In that case the Judge found the reasoning in the Commonwealth cases compelling, in that ***Paulson*** was a case which could be confined to its own facts: a decision on the wording of a particular clause. Nevertheless, the Judge in ***TZL*** found that in the particular lease with which she was concerned, the clause was not worded sufficiently clearly to amount to an effective non-waiver provision in relation to rental payments. In ***TZL*** the clause read: '*The landlord may re-enter "(even if the Landlord has waived any previous right of re-entry)*'. This was held insufficient. The Judge held that this wording only reflected in effect, the common law position: that if I waive a right to one breach the fact that a further, forfeitable breach occurs does not mean that because I waived the right to forfeit for the first breach that I am therefore unable to exercise my right for the second breach.

So **LESSON 1** from the most recent case is:

If it is to be effective at all, the Lease anti-waiver provision must be entirely clear – and it may, for clarity's sake, be best to confine its operation specifically to the acceptance of rent and not other acts of waiver. And the reason for doing so is that of course the waiver of the right to forfeit doctrine is strictest in its operation in the field of waiver by acceptance of rent.

So how about something along the lines of: '*acceptance of rent shall on no basis amount to a waiver of any accrued right of forfeiture arising from any breach by the tenant of the lease covenants*'.

As we know acceptance of rent still bedevils the issue of waiver. It is an 'outlier' compared to other lease breaches when it comes to the question of waiver

The law has developed a strict rule which (unless the matter is considered by the Supreme Court) will continue to afflict landlords.

So, intention and surrounding circumstances are irrelevant, even a mistaken acceptance of rent for example will, as we know, waive the right to forfeit. The development of these strict, ancient rules made sense when there was (as before 1881) no statutory right to relief from forfeiture - but surely that is no longer the case.

How if at all can a landlord protect itself against the strictness of the doctrine and argue that (mistaken) acceptance of rent in the circumstances did not amount to a waiver (apart from including a clear, anti-waiver provision in its lease and hoping the Courts will, relying on the obiter comments in ***TZL***, accept that ***Woodfall*** is wrong?)

I have one point to make on this, arising from recent case law, and it is:

WHOSE WAIVER IS IT ANYWAY?

So, the landlord accepts rent, that amounts to a waiver of the right to forfeit.

But what about rent received by an agent of the landlord: a bank, building society manager, or a letting, or managing, agent? Now the instinctive reaction is to say that acceptance of the payment made to the agent must amount to a waiver, and in some cases, it most certainly can.

Yet here, ancient law in the landlord and tenant field comes to the landlord's aid. In old case law - and I mean very old: the cases date from 1798 and 1834 it has been established that where rent is accepted by an agent of the lessor, this will only amount to a waiver if the agent had authority not only to collect the rent but also to grant a new lease by waiving the breach – see e.g. (***Doe d. Nash v Birch*** (1834)).

In the ***TZL*** case, it was argued by the tenant that this did not represent the law following the case of ***Central Estates v Woolgar*** in the 1980s. But that argument was in ***TZL***, rightly in my view rejected - in particular by reference to subsequent House of Lords authority - (***Mardof Peach v Attica*** [1977]) where it was said that payment of money (not rent) to a ship owner's bank had affirmed the continuation

of a charter-party – on the basis that the agents in ***Woolgar*** who had accepted the money, had in fact had authority to let the premises. So that the ***Woolgar*** case did not overrule the earlier position in the landlord and tenant context.

(This of course is to be contrasted with the question of an agent's knowledge of the breach binding the landlord and therefore constituting *notice* of the breach **-** where it is often the case that the managing or other agent's knowledge will bind the landlord).

This is useful, and provides **LESSON 2** in that, as a landlord is better protected by having its agent accept rent, provided that agent is expressly not authorised to grant a new tenancy. If so, then why not ensure that: rent is payable to a separate agent whose express contract is clearly limited and, expressly does not allow it to grant or terminate tenancies. And, include a lease provision (if it refers to payment of rent to an agent) pointing out that the recipient agent has no authority to terminate or grant leases in respect of the demise.

A final **LESSON 3** from ***TZL*** is that it never does any harm to tell the tenant in writing when forfeiting the lease that it must not make or attempt to make, any rent (or other) payments once the lease has been forfeited.

This will provide some protection in the circumstances that arose in that case – namely where a large institutional landlord (Hounslow BC) sought to put a stop on payment of rent by giving instructions to its bank not to accept any rent, but did not tell the tenant, in terms, <u>not</u> to pay rent and that any rent received would be repaid.

What happened was that, as is common in cases of this kind, the landlord had served a notice to forfeit (s.146) but because the section requires a landlord to wait until a reasonable time after the breach to allow the tenant to comply before exercising its right and, because the breach was a failure to complete a building (therefore the reasonable time to comply was arguably, many months, rather than weeks) the tenant played a common trick, following service of the notice, of 'sneaking' money into the bank account of the landlord. No demands for rent were sent but rent continued to be paid. Hounslow's bank

received some of the regular rent payments and returned them immediately. But by an error the bank sent one payment back to the wrong account – so the tenant did not receive it back quickly. Of course the landlord assumed it had been returned, like other rent payments had. Several months passed before the error was realised, giving the tenant the argument that this failure to seek to return the instalment for some months, meant that there had been a waiver.

Now on the particular facts, the Court found that this was not the case – even though usually a mistaken acceptance of rent will not avail a landlord.

But it is quite clear that the tenant's argument that this constituted a waiver would have been much more difficult if it had been told, in express terms, not to try to make any payments of rent during the period after the breach had occurred and that any such payments would be returned immediately.

Thus LESSON 3 is therefore to make the point as clear as possible at the time of exercising the right: there will be no demands for rent and any payment will not be accepted and will be returned. Then, even if there is a banking or accounts dept error thereafter, the landlord is very arguably better protected from the waiver argument – and old authority supports this position (see ***Pierson v Harvey*** (1885) 1 TLR 430).

TZL points to another common issue faced by landlords in the waiver context. Thus a landlord with a remediable, 'building' breach for example may serve it's s.146 notice but in order to be sure of its right to forfeit being validly exercised, it will want to give the tenant possibly a long period to see if it complies with the notice. Because 'a reasonable time' can vary greatly, and there is always the risk that what seemed like a generous time turns out in the circumstances not to be - making an early forfeiture invalid, means the landlord must err on the side of caution when calculating the 'reasonable time'..

Just assume for a moment you were forfeiting an airport because its lessee was in breach of a positive covenant, in that the airport had been closed. How long do you need to give for the tenant to comply if it has given up its CAA licence? The answer might be: well over 2 years. Of course because in that example the breach is continuing there is not a waiver problem – but you may well find once and for

all breaches (say an illegal alterations case) that will take a time to remedy and where the landlord is in limbo for months and months. Which gives rise to the next pinch point

WAIVING THE RIGHT:

CAN THE LANDLORD WAIVE THE RIGHT DURING THE PERIOD BEFORE THE FORFEITURE, BUT AFTER SERVICE OF THE S.146 NOTICE?

The natural logical answer, untrammelled by authority would have to be no.

To remind you of course, this problem only arises <u>before</u> the proceedings are served, once that happens the election has been made: this has been the law since at least the early 19th Century (***Doe d. Morecraft v Meux*** (1824)). Once that occurs there is no issue with waiver.

But in that period after the notice has been served but the reasonable time has not elapsed, the point is that the landlord has given notice of its intention to end the lease but is statutorily barred from doing so because of the need to leave a 'reasonable time' for compliance in relation to remediable breaches. The problem is naturally confined to remediable breaches. In the case of irremediable breaches, no reasonable time is required because s.146(1) only requires the reasonable time *'if the breach is capable of remedy'*. So as said above, in the case of irremediable breaches the landlord need only give a short time before issuing and serving proceedings.

During the 'reasonable time' period, there is no election to be made. The landlord has no choice in the matter – the lease continues and the rent is due because the statute prevents the landlord from exercising its right until the notice is expired. That is the logical position.

Indeed by analogy perhaps – there is authority that, as regards a continuing breach which is still <u>continuing</u> at the expiry of the notice, there is no need for a further notice to be served even if the landlord has been accepting rent in the meantime: ***Greenwich LBC v Discreet Selling Estates*** (1990). So the argument advanced in that case by the unsuccessful appellant was that, where a right of re-entry or forfeiture has been waived (e.g. by acceptance of rent) and a new right arises, that new right cannot

be enforced unless a later notice is served. The CA conclusion rejecting that argument is obvious good sense even though the CA questioned the correctness of the rule in ***Greenwich***, because imagine my airport situation – you would never practically speaking, be able to forfeit. Even if the landlord didn't accept rent for 2 years there would be bound to be other alleged actions in the meantime which arguably constituted a waiver.

And of course it is not just about the rent. In my example, what if inspections by the landlord were required during the 'reasonable time' period? Under the lease when it is subsisting the landlord simply relies on the tenant covenant requiring it to permit inspection. But if the breach of a once and for all covenant is waived by reliance on the lease, this inability to inspect relying on the lease covenant to this effect, seems wrong and impracticable – nevertheless it is the law.

Thus as with all things in this area of law, it is different when one is considering once and for all breaches which are remediable. In ***First Penthouse v Channel Hotels*** [2004] Mr Justice Lightman addressed the argument directly for apparently the first time, as far as I am aware. He was deciding a case where a section 146 notice had been served on 16 August 2002 for breach of a covenant to carry out an agreed development. On 10 September 2002 (whilst the notice was still running), the landlord exercised an option to call upon the tenant to grant a sub-lease out of the main lease. The Judge concluded that the landlord thereby waived the right to forfeit the lease. He specifically rejected an argument that waiver of the right to forfeit could not occur until the section 146 notice had expired saying:

> '*At one stage [the landlord] contended that for there to be a waiver of the right to forfeit there must be at the date of the acts of waiver not merely a right to forfeit, but the right must be enforceable and accordingly any necessary notice served under s.146 of the Law of Property Act must have been served and expired. In my judgment there is no need for service or expiration of such notice. It is sufficient that the right to forfeit has arisen* .'

But the reasoning is sparse. In the most recent case: ***TZL***, the court felt constrained to follow ***First Penthouse*** but clearly opened the door for a higher court to reconsider the position in light of compelling Commonwealth authority. The case of ***Woolgar*** was also cited in support of the proposition that the CA had determined that waiver could occur before the right to commence proceedings (or peaceably re-

enter) arose – but that was a case where the breach was irremediable - so the landlord could have re-entered before the act of waiver occurred (either by serving proceedings or peaceably).

Not long before the ***First Penthouse*** case was reported, in the New Zealand case of ***McDrury v Luporini*** [2000] the NZ Court of Appeal had taken a different course when considering the equivalent provision to section 146 applicable in New Zealand and had reached the opposite conclusion. They held that, by reason of the fact that there is no enforceable right to forfeit the lease until expiration of the statutory notice, the Landlord ***cannot*** elect not to terminate the lease prior to the service ***and expiry*** of the statutory notice. In ***TZL****,* the judge saw the merit in the Commonwealth approach - but felt confined by the ***First Penthouse*** case.

The Commonwealth position surely has to be the better position – albeit it is not without difficulties.

All of these contortions and difficulties you might think, arise from a different age, when there was no right to relief or when that right was perhaps less readily granted. Is it any surprise that the last time the Law Commission looked at this in 2006, they recommended that the doctrine of waiver should cease to apply to the termination of tenancies. Under its recommendations the tenancy would continue until a termination order is made (or a summary termination takes effect).

But for the time being, the law in England appears to remain that a landlord can waive the right to forfeit before the expiry of a section 146 notice. However, this principle - coupled with the highly mechanistic approach English law continues to take to the question of waiver by acceptance of rent - leaves landlords in a difficult position between the time they learn of a once-and-for-all breach of covenant and the time of completing a forfeiture: any acceptance of rent will waive the right to forfeit. The force of the reasoning in ***McDrury v Luporini*** offers a strong alternative and the issue seems ripe for review in England when a suitable case of waiver during currency of a s.146 notice next reaches the CA.

But this is not to say that the courts adopting the Commonwealth approach does not create practical problems of its own: if and when it does it will be necessary to grapple for example with the full implications of a decision that waiver is impossible until expiry of a section 146 notice. Whilst such an

approach might arguably strike a better balance between the interests of the landlord and the tenant following a breach of covenant by the tenant, fresh areas of uncertainty and dispute would be brought to the fore.

The point in time at which a section 146 notice expires would take on a heightened importance under this alternative approach because it would not only be the point at which peaceable re-entry or proceedings become lawful for the landlord, but also the point at which the landlord could for the first time validly waive its right to forfeit. So take my airport example again, and imagine that the reasonable time for compliance (objectively speaking) undeniably expires after 18 months. But the landlord, just to be absolutely sure decides to leave it another two months, and in that period before it serves the proceedings, does some act which arguably constitutes a waiver: such as some clear reliance on the lease covenants to inspect, to ensure that no covenant compliance has occurred. In these circumstances a waiver can occur.

Its not easy but, for my money, the Commonwealth position still has to be preferable.

DEALING WITH PRACTICAL PROBLEMS ARISING FROM THE ABOVE

I thought it might be helpful to just illustrate a few of the difficulties that can arise given the present state of the law regarding what you cannot do in the reasonable time period, and how to deal with them.

So in the ***Azam*** case, the landlord faced a real dilemma. This was a case where a landlord had granted a long lease which obliged the tenant to develop out the land as flats with commercial space beneath. A breach had occurred. The '*as soon as reasonably practicable'* date had passed, and yet the landlord wanted to see if the tenant would comply with its building obligations, not least because the deal involved a lease-back to the landlord freeholder of part of the premises when built (a commercial unit on the ground floor) as well as a surrender provision, once the developer leaseholder had sold off the flats on long leases (so the landlord would then sit as freeholder on a ground rent income stream from 60 or so flats). In my experience quite a common arrangement.

So, long after the relevant date for completion the landlord had not forfeited the lease – a completely understandable position and yet the law as it stands required him (in relation to *that* breach at least) to snatch at the breach as soon as it occurred by serving the s.146 notice and then wait a further, indefinite 'reasonable time', otherwise his right to forfeit was lost. An unenviable position.

There is no obvious answer to a landlord's dilemma in this respect - other than (with foresight) to ensure that the lease contains provisions which mean there will always be a chance of finding **continuing** building breaches for which a later forfeiture is therefore possible.

In the ***Azam*** case and again, as is common with these building type leases, the lease contained an obligation on the tenant to provide monthly progress reports. Inevitably, when development stopped because of the tenant's solvency issues, the reports ceased. And although many months of reports had been missed, the landlord was able to forfeit for the failure to supply one single report, even though it had long ago waived the *'as soon as reasonably practicable'* building breach.

So: for the lease drafters amongst you: build in an innocent continuing obligation in the lease - breach of which, down the line, might provide some protection from the problem of having to 'snatch' at the breach once the stipulated time for completion of the development has, technically, passed.

Let us then consider briefly another problem in the continuing breach context.

In the airport example, imagine the s.146 notice has been served and the tenant, desperate for cash, wants to sublet for a short period of a few months on an unprotected tenancy for an alternative use of part (which use the lease permits, with permission) such as car-parking. Now, assume that the reasonable time to remedy has 1 year still to run – is the landlord obliged to grant consent, or will it breach its covenant by refusing? Clearly on present authority, the breach will not be waived by a short letting, and the landlord is obliged to comply with its lease obligations during the 'reasonable time' period – just as much as the tenant is also. What does the landlord do? Does it refuse, thereby potentially putting itself in breach of its obligations or does it permit the short underletting?

The answer is that it would almost certainly amount to a good reason for refusal of consent that the landlord is anticipating it will forfeit the lease in future in relation to an un-waived, serious breach – albeit the forfeiture would occur after the sub-letting has ended. Although it is right that the mere existence of a right of forfeiture will not of itself justify an outright refusal, nevertheless a serious breach probably would. If in my airport example on the other hand, the tenant was taking steps during the reasonable period to remedy the breach, the position might be different.

FINAL POINT:

The above landlord dilemmas also raise the question: where a 'long' reasonable period is required, does the landlord always has to wait for the full time to elapse before forfeiting?

It is obviously often very disadvantageous for the landlord to have to wait. In my airport example where the tenant, even a year after the s.146 notice had been served, was doing absolutely nothing to remedy the breach (it was actively seeking planning permission for an alternative use, not permitted by the lease) does the landlord have always to wait the full reasonable time period before actioning the notice by instituting proceedings?

Once again, we do not have clear authority on the point, but the better view is that where the tenant is showing no signs of remedying the breach a landlord should be able to proceed to forfeit the lease without having to wait for what would otherwise be the reasonable time period to expire. In the case of ***SBP 2 SARL v 2 Southbank Tenant Ltd*** [2025] the Court was asked to consider the question and was referred to what Lord Browne-Wilkinson had said in ***Billson v Residential Apartments Ltd*** [1992]: '*If the actions of the lessee make it clear that he is not proposing to remedy the breaches within a reasonable time, or indeed any time, in my judgment a reasonable time must have elapsed for remedying the breaches once it is clear that they are not proposing to take the necessary steps to remedy the breach*…'. The Judge in ***SBP*** did not have to decide the point, and the ***Billson*** remarks of the law lord were clearly obiter. Nevertheless, this is surely right.

MARTIN HUTCHINGS KC **WILBERFORCE CHAMBERS**