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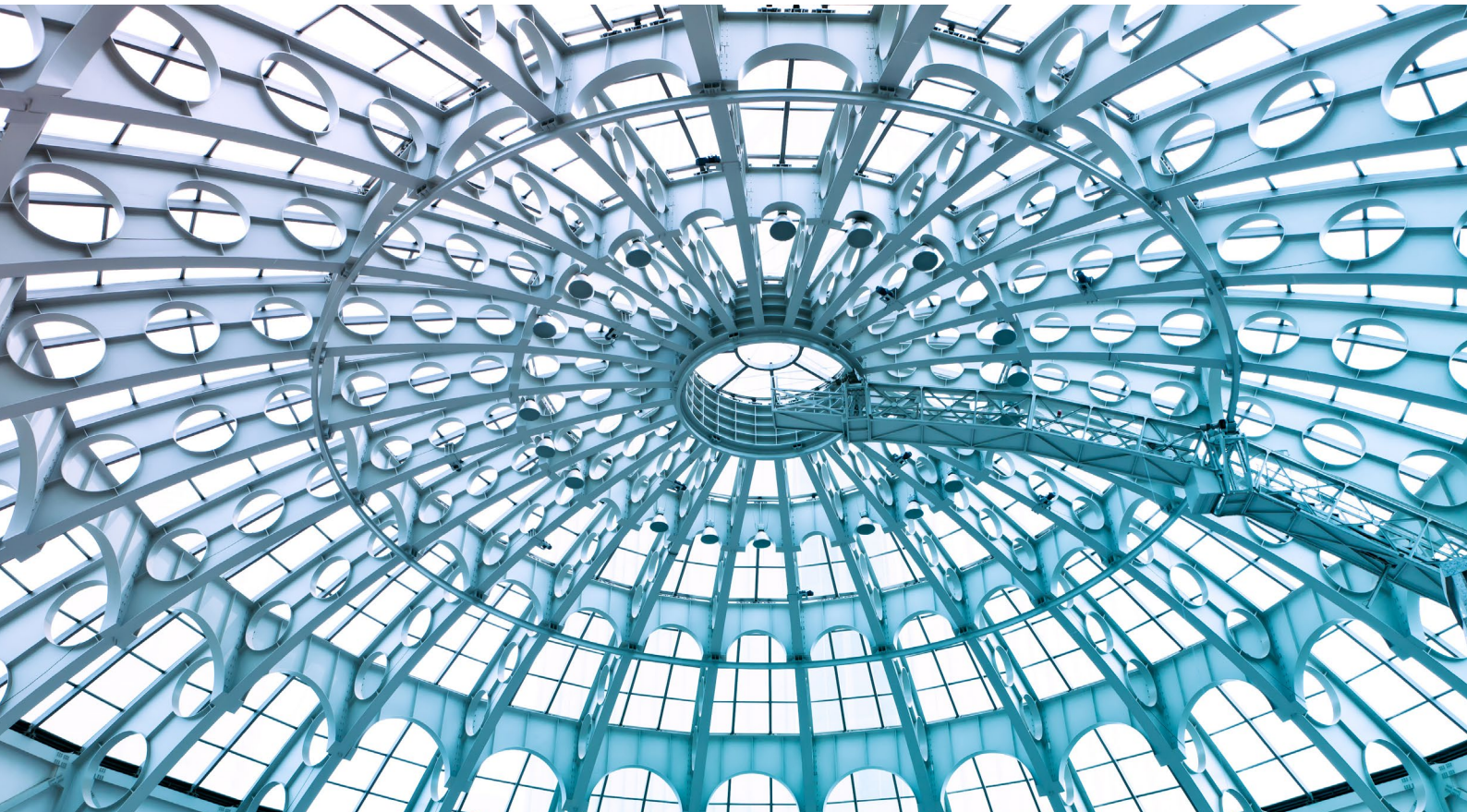
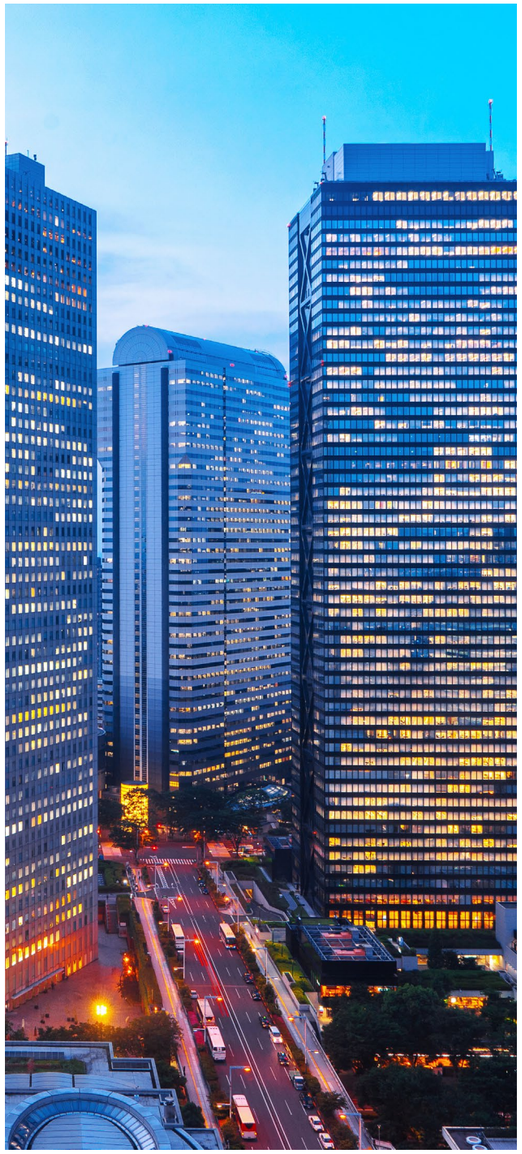
FOREARMED

A GUIDE TO LIKELY TRENDS IN UK REAL ESTATE DISPUTES IN 2026 AND BEYOND



Forearmed

Our Real Estate Dispute Resolution team has experience spanning decades, guiding our clients through several cycles of the economy. This has equipped us with the ability to make accurate predictions of risks and potential real estate disputes on the horizon which every real estate developer, investor or occupier should know about. It also means that we are best placed to put forward our suggestions on how to anticipate and avert these likely disputes before they become an issue. After all, forewarned is forearmed...



Quick Read

Here is a summary of our predictions, with a link in each case to our detailed views and our roadmap on how to prepare for the coming months.

1. **Rights of light, section 203, and the insurance market: A shifting landscape**

   The well-publicised High Court judgment in *Cooper v Ludgate House Limited and Powell v Ludgate House Limited* [2025] has reinforced the law surrounding rights of light disputes whilst also providing some compelling commentary on the usefulness to developers of utilising section 203 of the Housing and Planning Act 2016.

   We anticipate that developers and rights of light surveyors may face harder negotiations for releases from neighbouring owners, who may feel emboldened by the court's calculation of negotiation damages based on a developer's projected development gain (and disregard of lower book-value calculations previously favoured by developers' surveyors).

   Following a hardening of the rights of light insurance market over the past decade, we anticipate that savvy insurers will bring more bespoke products to market to assist developers to successfully deploy section 203 to de-risk their developments.

2. **No hiding behind the corporate veil: Limits on liability will continue to expand under the Building Safety Act**

   The Building Safety Act 2022 continues to reshape liability for building safety defects, particularly in light of continuing remediation programmes following the wake of the Grenfell tragedy. Its key innovation lies in piercing the corporate veil to hold landlords, developers, and associated entities directly accountable for remediation of unsafe cladding and fire safety issues in residential buildings over 11 metres or five storeys. Two central enforcement tools - Remediation Orders and Remediation Contribution Orders - enable affected parties, including occupiers, to seek redress more swiftly and effectively than traditional litigation.

   Court decisions in the past two years have demonstrated a policy-driven approach, consistently favouring applicants and expanding the scope of liability. The trend indicates growing financial exposure for landlords, developers, and their corporate affiliates. We also expect to see the High Court imposing more Building Liability Orders to move financial liability to associated companies of the original developer company, particularly where the original developer company has been dissolved or has no assets.

   With the judiciary actively testing the boundaries of these instruments, due diligence is critical before acquiring or investing in potentially affected properties or corporate structures.

3. **Power struggles: urgent infrastructure need is likely to increase disputes over land rights and compensation**

   As the UK races toward Clean Power 2030 and Net Zero 2050, the need for electricity infrastructure upgrades is urgent. Parties responsible for developing this connectivity will have to interpret and rely upon existing rights or seek new ones. Where new rights are required, compulsory methods will be deployed where agreement cannot be reached with landowners. Disputes over the scope of historic rights and compensation for new ones are expected to rise, especially as reforms to necessary wayleaves and compulsory acquisition compensation take effect.

4. **Drawing the line between lease and licence: Telecoms disputes risk development delays**

   Disputes over the classification of telecoms site occupation agreements are becoming an increasing risk for development. The legal distinction between a lease and a licence is critical, particularly for agreements predating the 2017 Electronic Communications Code. It affects the termination process and the applicable legal framework — either under the Code or the Landlord and Tenant Act 1954.

   Site providers aiming to redevelop must carefully assess the nature of existing telecoms agreements. The nuanced interpretation of contractual terms and supplemental documents will continue to underscore the importance of thorough legal analysis to avoid delays in securing vacant possession. Where uncertainty exists, serving alternative notices may help mitigate risk.

5. **Live, work, sue? Inter-tenant nuisance claims on the rise as mixed use developments become ever more prominent**

Mixed-use developments, which integrate residential, commercial, and recreational spaces, continue to gain traction, driven by demand for walkable, vibrant communities. Simultaneously, the office sector continues to evolve post-COVID, with landlords seeking to incorporate lifestyle amenities into office buildings to lure home workers back into the office. These trends bring benefits, but also give rise to the potential for inter-tenant frictions, with an increased risk of private nuisance claims for disturbance such as noise or vibration as diverse tenant uses coexist in shared spaces.

Landlords and tenants must proactively manage these risks through careful lease drafting, clear expectations, and evidence-based dispute resolution. Where claims are threatened or brought, parties will need to carefully scrutinise the basis of such claims, given their highly fact and context-specific nature.

6. **Private rented sector transformation: Investor dominance, improved housing, and courtroom consequences**

The UK rental market is unusual in Europe in regards to the number of individual small scale landlords, as opposed to institutional investors, who let property. The Renters' Rights Act 2025 addresses two key areas that are perceived as disadvantageous to residential tenants: unaffordability and lack of security. The market at present permits and encourages itinerancy, which is as bad for landlords as it is for tenants. To gain a reasonable return, the property must always be let, but with heavy competition among tenants, and without security, there is little incentive for tenants to take care of the property or for landlords to provide high-quality housing. This "churn" increases administration time and costs on landlords and agents, and discourages institutional investors looking for long-term income and capital appreciation. Once the Act is implemented, we believe the Act will create a shift in the perception of residential rental properties as viable long-term investments, with a substantial proportion of individual or smaller landlords exiting the market.

On the negative side, the Act will force landlords and tenants to use the courts and tribunals service to a greater degree: repossession and rent increases will require court hearing time, which is even now under serious pressure in an overstretched system.

7. **Empty properties, full rates: The fall of mitigation schemes**

Full business rates apply to empty commercial properties after three months (six months for industrial), a rule in place since 2008, but it creates a significant ongoing cost for landlords of unlet premises and one that may increase further under the new revaluation in 2026. This additional tax burden has led to widespread use of mitigation schemes which have been tested by the courts (with varying degrees of success for the landlord), including:

- charity lettings
- "box schemes" (short-term storage use to reset rate-free periods, now 13 weeks); and
- special-purpose vehicle insolvency schemes.

Cash-strapped local authorities are cracking down on rates avoidance measures as they seek more revenue to bolster their stretched budgets. Scotland has passed anti-avoidance laws to deal with this issue already and Wales is likely to follow in 2026. Accordingly, we predict that legislation to clamp down on rates mitigations schemes in England is likely on the horizon.

8. **Cash-strapped local authority crackdowns more likely for breaches of the MEES Regulations**

The Minimum Energy Efficiency Standards ("**MEES**") now require all non-domestic rented properties in England and Wales to have an EPC rating of E or above. Since April 2023, landlords breaching this standard face fines of up to £150,000 for non-domestic properties, with enforcement expanding to cover both new and ongoing leases.

Recent tribunal cases confirm that local authorities are using public EPC data to target and penalise non-compliance—even for breaches that have ended within the last 18 months. With the government mandating further stricter minimum standards (EPC C by 2027 and B by 2030), local authority enforcement activity and financial penalties are expected to increase, driven by both climate policy and local authority budget pressures.

9. **Anti-protest injunctions: are their days numbered?**

As highlighted in our Yule Blog, the past two years have seen a considerable upsurge in the use of preventative "newcomer" injunctions - court orders made against unknown individuals who may engage in activities such as trespass, protest, urban exploring, or unauthorised encampments. These injunctions are notable for their broad scope, applying in principle to anyone, anywhere in the world.

In *Wolverhampton City Council v London Gypsies and Travellers* [2023], the Supreme Court held that the courts have the power to grant newcomer injunctions, but only where there is a compelling need to protect civil rights or enforce public law, and where other remedies are inadequate. The court also emphasised the need for procedural safeguards to protect the rights of those affected.

However, the legality of applying these injunctions to protest activity is now under challenge. Friends of the Earth has brought a case before the European Court of Human Rights, arguing that such injunctions infringe human rights safeguards. The case is currently pending, but a ruling in favour of the applicants could significantly curtail the use of newcomer injunctions in protest contexts.

10. **Proposed ban on upwards only rent reviews looks set to disrupt 1954 Act rent reviews with unintended consequences**

In June 2025, the Law Commission recommended retaining the current "contracting-out" model under the Landlord and Tenant Act 1954 ("**1954 Act**") but proposed extending statutory protection only to tenancies of two years or more. Industry reactions were muted until, a month later, the government unexpectedly moved to ban upwards-only rent review ("**UORR**") provisions in new business leases via the English Devolution and Community Empowerment Bill.

This ban will also apply to lease renewals under the 1954 Act, meaning reviewed rents can decrease as well as increase, leading to greater market uncertainty and potentially a two-tier market. Notably, the ban does not cover headleases or intermediate leases, creating the risk of income shortfalls for landlords if occupational rents fall below headlease obligations. Landlords may respond by seeking fixed or stepped rent increases, which could ultimately disadvantage tenants more than if the UORR ban was not implemented at all.

Rights of Light

1. Rights of light, section 203, and the insurance market: A shifting landscape

Comment

It's rare for a rights of light dispute to reach a full hearing without the parties reaching a commercial settlement, so when the High Court handed down its decision *in Cooper v Ludgate House Limited and Powell v Ludgate House Limited* [2025], the real estate sector took notice.

The judgment reaffirmed established principles of rights of light but also offered valuable commentary on the assessment of damages in lieu of an injunction and the role of section 203 of the Housing and Planning Act 2016 in such disputes.

Negotiating damages

Whilst each case is decided on its own facts, the judgment analysed the correct approach to assessment of damages and explained how traditional "book value" calculations, favoured by surveyors acting for the developer, were not the appropriate method. Instead, the court looked at the value to the developer of a hypothetical reasonable negotiation to buy-out the rights of light with reference to their potential profit gain to the developer. This judgment will undoubtedly impact rights of light negotiations going forward, although it is helpful for developers that the court declined in this case to award negotiating damages based on a one-third share of the additional profit to the developer. The court held that a substantial profit-share approach, which was advocated by the claimants and had been seen in other "ransom" type cases, was overruled. Instead, the court found that a 12.5% "profit pot" was more appropriate in the circumstances, to be shared between all affected neighbours, leading to an apportioned share for the claimants from that pot.

Section 203

Section 203 empowers local or specified authorities to override certain property rights—such as rights of light—where a development is deemed to bring genuine public benefit. Crucially, it prevents affected parties from seeking an injunction and restricts their remedy to the payment of statutory compensation. The exercise of this power offers developers greater certainty that their projects won't be derailed by late-stage claims from neighbouring owners.

While section 203 offers strong protection, it is not universally available. The process is costly, time-consuming, and requires the active and often early support of a local authority. However, where a local authority is already engaged in the planning process, securing that support may be more achievable—particularly for developments with clear public benefit.

Will insurance be the answer?

There has been a shifting of sands around rights of light disputes in recent years, leading to a significant hardening of the insurance market and making traditional insurance less attractive to developers. Key drivers included:

- increased awareness of rights of light, leading to more claims;
- rising compensation awards; and
- emphasis on "good neighbourliness", discouraging developers from relying solely on insurance without first engaging with affected neighbours.

As a result, premiums and excesses have risen, and "wait and see" policies are now largely reserved for very low-risk sites. In their place, "agreed conduct" policies have become the norm. These require developers to proactively engage with affected neighbours and incur costs up to a defined threshold before insurers step in to take over the claim, but the high premiums started to outweigh the benefit in the eyes of many developers.

Historically, there has been very little interaction between section 203 (or its predecessor section 237 of the Town and Country Planning Act 1990) and the insurance market. The options were viewed as mutually exclusive for various reasons, most notably because the use of section 203 requires the developer to engage with its would-be claimants. This directly contrasts to the classic "*wait and see*" approach that historically dominated the insurance market in this area.

We often see that available insurance products are around 2 years behind key market developments. Following the *Cooper v Ludgate House* case, we expect to see more bespoke insurance products coming to market that integrate section 203 into their risk management strategies. Section 203 offers insurers a compelling advantage: it can eliminate the risk of an injunction, the most-costly outcome for both developer and insurer. A tailored "section 203 policy"—with reduced premiums and excesses for developers who secure local authority support—could offer a win-win: lower risk for insurers and greater certainty for developers. It would also provide developers with comfort that litigation costs incurred in any challenge to the use of section 203 would be covered by the policy.

Steps to take now

- Read our article on *Cooper v Ludgate House* for further information on the court's approach to rights of light claims, and the implications for developers and practitioners.
- Developers should speak openly with their insurers and gauge their interest in providing a more bespoke development specific product.
- Developers should take stock of the level of support they have from their local authorities and the availability of section 203.
- Contingencies should be made in respect of both the cost and the delay associated with section 203.
- Subject to the terms of any insurance policy, developers should follow the Rights of Light Protocol which aims to resolve potential rights of light issues quickly and cost effectively. Read our blog post for further information.

Back to Quick Read

2. No hiding behind the corporate veil: Limits on liability will continue to expand under the Building Safety Act

Comment

A central feature of the Building Safety Act 2022 (the "**Act**") is its policy-driven framework designed to address the widespread issue of unsafe cladding and fire safety defects in residential and mixed-use buildings over 11 metres or five storeys in height, containing at least two dwellings. In response to the post-Grenfell crisis, the legislation takes a clear political stance: landlords and developers must bear responsibility for remediation works and associated costs.

However, traditional contractual remedies often fail to provide recourse for those most affected—the occupiers. Moreover, the complex corporate structures commonly used in construction projects, coupled with the principle of limited liability under English company law, have historically shielded parent and associated entities from direct claims. To overcome these barriers, the Act pierces the corporate veil, enabling direct liability for remediation through two key enforcement mechanisms: Remediation Orders ("**ROs**") and Remediation Contribution Orders ("**RCOs**"):

- ROs compel landlords to carry out remediation works within a specified timeframe.
- RCOs can impose liability for remediation costs on a broad range of parties, including current and former landlords (as at 14 February 2022), developers, and associated entities.

This novel framework came into force on 28 June 2022, without judicial precedent. Initially slow to gain traction, applications to the First-tier Tribunal ("**Tribunal**") have steadily increased as stakeholders test the scope of these new remedies.

Compared to traditional claims in the Technology and Construction Court—which can take over two years and require contractual or tortious standing—RCO applications are resolved in approximately 12 months and are based on a simpler threshold: whether it is "*just and equitable*" to grant the order. The list of eligible applicants is deliberately broad, encompassing anyone with a legal or equitable interest in the building. It also includes the Building Safety Regulator, local authorities and the fire authority.

Tribunal decisions to date reflect a policy-led approach, to ensure that remediation costs are passed on to developers:

- RCOs are non-fault-based; the applicant's motivation and the existence of other potentially liable parties are irrelevant.
- RCOs can apply retrospectively to costs incurred before the Act commenced.
- Associated entities not involved in the original construction can be held liable.
- Joint and several liability may be imposed across multiple entities to facilitate recovery.
- ROs are routinely granted, even where remediation has already begun, to ensure completion by a specified date.
- Lease restrictions in headleases do not prevent the issuance of ROs.
- Building safety defects are not limited to breaches of building regulations.

Looking ahead to 2026, the volume of cases is expected to grow as occupiers and owners become more confident in deploying these tools tactically.

Whilst we have seen a slower take-up of Building Liability Orders ("**BLOs**") in the High Court, which can be used to impose financial liability on companies "associated" with the original developer company where it is just and equitable to do so, cases are also on the rise. We predict that BLOs will become a particularly strong tool in the armoury for recovery of remediation costs where the original corporate structure used for the development has been collapsed.

The judiciary, including the Supreme Court, will likely continue to explore the outer limits of liability under the Act over the next year.

Steps to take now

- Thorough due diligence is essential before acquiring affected buildings or investing in corporate structures with potential exposure. Given the retrospective nature of the legislation, landlords, developers, and associated entities face significant contingent liabilities.
- Where an RO or RCO is issued, specialist legal advice should be sought to assess options for recovery or apportionment among responsible parties, including the potential use of a BLO.
- Read our blog post for further information on the retrospective reach of the Act and contact us for our latest client briefing notes – exclusively available for our clients and contacts.

Back to Quick Read

3. Power struggles: Urgent infrastructure need is likely to increase disputes over land rights and compensation

Comment

UK demand for electricity is expected to increase by 50% by 2035 and double by 2050, as electricity replaces fossil fuels in heating and transport. At the same time, the government has committed to meet Great Britain's total electricity consumption from clean sources by 2030 (Clean Power 2030) and achieve economy-wide net zero by 2050.

The UK's ageing and overwhelmed electricity grid infrastructure is therefore undergoing a period of renewal and expansion, through projects such as National Grid's "Great Grid Upgrade", to ensure that electricity can be transmitted from new, renewable sources around the country to where the demand is – and enough of it. The UK's National Energy System Operator has said that twice as much new transmission network infrastructure will be needed by 2030 as has been delivered in the past decade.

At the same time, developers nationwide are scouring both brownfield and greenfield sites to develop energy-hungry emerging asset classes such as data centres or logistics facilities, often requiring new or upgraded electricity connections.

All of this means that a variety of entities are looking at how to maximise the property and contractual rights they already hold to run electric lines on, over or under land, and are considering how best they can acquire any further rights they need to deliver expanded and enhanced electricity networks.

Where entities already hold rights, these may have been granted decades ago with no ability to predict how technology would evolve and improve. Disputes may therefore arise between rightsholders and landowners over the scope of the right and the ability to carry out upgrades to electric lines without exceeding the authority granted. Such disputes are likely to increase in frequency in the coming years as the boundaries of existing rights are tested in pursuit of urgent upgrades.

Where new rights are necessary, voluntary agreements can often be reached between developers and landowners, resulting in the grant of a lease, easement or wayleave. Where agreements cannot be reached, however, developers with sufficient statutory powers (eg as an electricity licensee) or those that can partner with such an entity may have to resort to compulsory methods, including seeking compulsory acquisition powers or a necessary wayleave under the Electricity Act 1989 in respect of the target land.

Once the policy-based decision on whether to grant such rights is made, landowners are entitled to seek compensation for the burdening of their land and, where this is disputed, they must ultimately make a claim to the Upper Tribunal (Lands Chamber) which can determine the amount due by applying the relevant statutory test to the factual (and usually expert) evidence of the case.

We anticipate that such claims are likely to increase in frequency in the coming years as more compulsory rights are granted, giving rise to more entitlements to compensation. This is all the more likely given that the government is pushing ahead with reforms to both (i) the process of obtaining a necessary wayleave and (ii) how compulsory purchase compensation is calculated. New and untested law will fuel an increase in cases before the tribunal and, where appealed, the court.

Steps to take now

- Electricity licensees and others looking to develop should scrutinise the drafting of their existing rights, and take legal advice where there is any uncertainty.
- Developers without statutory powers that require new electricity connections should consider their strategy and potential statutory entities with whom they could partner.
- Where new rights are required, electricity licensees should plan ahead and leave enough time to pursue compulsory processes if voluntary agreement is not forthcoming – these processes can take 18-24 months.
- Landowners approached by developers should consider their entitlement to compensation and ensure that they take legal advice on making a formal claim if a voluntary offer falls short of their entitlement.
- Landowners and developers alike should keep an eye on government reforms coming into force and take advice on the implications for their position.
- Read our blog post on reforming land rights and consents processes for electricity network infrastructure.

Back to Quick Read

4. Drawing the line between lease and licence: Telecoms disputes risk development delays

Comment

The correct categorisation of telecoms agreements is increasingly becoming a point of contention in the courts. While such agreements do not need to follow a specific format to attract security of tenure protection for the operator's apparatus under the Electronic Communications Code (the "**Code**"), they must meet minimal requirements—most notably, being in writing. However, the nature of the occupation interest created by the agreement —whether it constitutes a lease or a licence—is a critical factor when determining the appropriate termination process, particularly for agreements granted before the revised Code came into force in December 2017 (known as "pre-existing agreements").

If a pre-existing agreement is classified as a licence, it may be terminated on one of the statutory grounds set out in Part 5 of the Code, such as the site provider's intention to redevelop the property. In such cases, the site provider must serve notice on the operator in the prescribed form. If the operator disputes that the statutory ground is satisfied, the matter may be referred to the First-tier Tribunal ("**Tribunal**") for determination.

Conversely, if a pre-existing agreement satisfies the requirements to be a lease (usually looking at whether it confers exclusive possession of the premises for a certain term with payment of rent), it is necessary to then consider whether it has been contracted out of the security of tenure provisions under the Landlord and Tenant Act 1954 (the "**1954 Act**"). If it has been effectively contracted out, termination may proceed under the Code. If not, the appropriate legal route is termination via the County Court under the 1954 Act.

In *AP Wireless II (UK) Ltd v On Tower (UK) Ltd* [2025], the Court of Appeal clarified that telecoms agreements specifying a "minimum term" do not automatically constitute a lease. Despite the presence of exclusive possession and rent, the court upheld the Tribunal's finding that the agreement was a licence due to the absence of a term certain.

The agreement in question permitted termination by either party with 12 months' notice following a ten-year minimum term—a model commonly used in telecoms agreements. However, the court found this arrangement lacked the requisite certainty to qualify as a lease and rejected the argument that the agreement should be construed as a periodic tenancy (which would have attracted protection under the 1954 Act). It was therefore a licence and fell to be dealt with under the Code.

In a separate, earlier dispute between the same parties, the Tribunal was asked to assess the status of a series of agreements at various properties. In September 2024, the Tribunal held that one agreement did take effect as a lease and that the parties had properly followed the contracting-out procedure under the 1954 Act. However, the operator contended that a licence to assign and a deed of variation—both supplemental to the lease—had altered the term by introducing continuation wording. Drawing on the Court of Appeal's decision in *Newham LBC v Thomas-Van Staden* [2009], which held that a contractual term with continuation wording that refers to any period of holding over falls foul of the contracting out requirements of the 1954 Act, the operator argued that the term was no longer a "term of years certain" and thus could not be effectively contracted out, even if the procedure had been followed.

The Tribunal rejected this argument, finding that the continuation wording in the licence did not vary the term granted under the lease. Nonetheless, the case highlights the complexity of telecoms agreements and the potential for dispute over seemingly minor drafting choices.

While most of these disputes arise between operators and infrastructure providers, the stakes are particularly high when an operator seeks to remain in occupation of a prime location at a property that a site provider intends to redevelop.

Steps to take now

- **Conduct a thorough review of existing agreements**. Site providers should not rely solely on the title or description of a document. A detailed analysis of both the contractual terms and the factual circumstances on the ground is essential to determine the correct legal framework governing the agreement.
- **Ensure strict compliance with notice requirements**. Notices must be served in accordance with the applicable legal regime—whether under the Code or the 1954 Act. Failure to comply with procedural requirements may invalidate the termination process.
- **Consider serving notices on a without prejudice basis where uncertainty exists**. If there is any ambiguity regarding the classification of the agreement (eg lease v licence), site providers may wish to serve multiple notices under alternative frameworks—expressly without prejudice to one another—to preserve their position and mitigate risk.

Back to Quick Read

5. Live, work, sue? Inter-tenant nuisance claims on the rise as mixed use developments become ever more prominent

Comment

The popularity of mixed-use developments combining residential, commercial and recreational spaces is no new phenomenon. But with an ever-greater focus on walkable neighbourhoods and vibrant communities, they continue to be a popular choice for developers.

Alongside this, the office sector continues to evolve following the post-COVID work from home boom and the subsequent creep back to greater in-person presence. Shifting tenant expectations mean there is a stronger focus on the integration of lifestyle amenities within office buildings. From on-site gyms and wellness centres to cafés, event spaces and rooftop bars, the modern office is no longer a siloed workspace but a multi-functional environment designed to attract and retain talent, and lure home-workers back out of their spare rooms.

Whilst these trends are positive for placemaking and worker wellbeing, they present greater opportunity for legal disputes due to disturbance between neighbouring uses – most notably through private nuisance claims.

These claims can be brought where a person does something on their own land which wrongfully interferes with the ordinary use and enjoyment of neighbouring land, for example by causing excessive noise or vibration or emitting smoke or odours.

Traditionally, nuisance claims in "pure" office buildings were relatively rare, perhaps limited to claims of excessive noise or vibration from mechanical plant or construction work. However, the proliferation of communal and leisure facilities alongside traditional office spaces is creating new friction points between tenants with very different needs and activities.

Consider, for example, a professional services firm occupying a quiet floor adjacent to a tenant operating a high-intensity fitness studio. Or a tech company hosting regular networking events in a shared atrium, much to the dismay of a neighbouring law firm conducting confidential client meetings. Such scenarios are increasingly common in mixed-use and amenity-rich developments.

The challenge for landlords and tenants alike is that nuisance claims are inherently fact sensitive. The court will consider factors such as the character of the locality, the duration and intensity of the interference and the reasonableness of the conduct in question. In a building marketed as a "modern mixed-used workspace" and targeted at disruptive start-ups, the threshold for what constitutes unreasonable noise or disruption may be higher than in a traditional office block dominated by professional services occupiers.

We anticipate that claims between aggrieved tenants and neighbouring tenants, as well as against landlords, will increase over the coming years, as tensions come to the fore. Claimant tenants will need to carefully consider the extent of interference with their use of their premises in the context of their building and development and consider whether the terms of their lease give them any recourse against the landlord as well as against neighbouring tenants. Defendant tenants will need to be ready to assemble evidence showing that they are not using their premises in an unreasonable manner. Landlords will need to try and stay above the inter-tenant fray to the extent possible, relying upon robust lease drafting and, where they are pulled into disputes, landlords will need to respond accordingly.

Steps to take now

- Developer landlords should seek to mitigate the impact of varied neighbouring uses through proactive and considered design, such as zoning and acoustic separation – ensuring that high-impact amenities (eg gyms, event spaces) are physically separated from quieter-use tenants.
- All landlords should seek to mitigate the risk of inter-tenant nuisance claims through robust lease drafting, including detailed user provisions and disturbance clauses, as well as effective building management policies that seek to foster collaborative inter-tenant relations.
- Tenants should conduct thorough due diligence on a building's amenity mix and operational profile before signing a lease. Where possible, they should negotiate bespoke protections — such as enhanced soundproofing or usage restrictions — particularly if their business model depends on discretion or quiet.

Back to Quick Read

Private Rented Sector

6. Private rented sector transformation: Investor dominance, improved housing, and courtroom consequences

Comment

The Renters' Rights Act 2025 (the "**Act**") will abolish fixed-term assured shorthold tenancies ("**ASTs**"), which has been the standard contract for residential renting since the late 1980s, and will replace them with periodic tenancies, which will automatically renew on a rolling basis unless terminated by notice from the tenant or the landlord. The landlord will be entitled to terminate only on section 8 mandatory or discretionary grounds for possession (which include persistent rent arrears, anti-social behaviour, breaches of the tenancy agreement or an intention by the landlord to occupy the property as his/her main home). Section 21 notices (which enable termination of an AST for any reason) will also be abolished. The unavailability of fixed-term ASTs will remove a landlord's ability to increase rent year-on-year by granting a new contract, and will instead require them to serve section 13 notices giving two months' notice of an increase (which the tenant will have the right to challenge).

That may all sound rather bleak for landlords: little flexibility to get the property back and a longer and more difficult process for increasing rent. But there are positives. Anyone who has rented privately in England and Wales knows its temporary nature, which discourages personalising the property and turning it into a home. The knock-on from that is that there is limited incentive to take care of the property, leading to a gradual deterioration in quality and disputes over deposits.

Institutional investment in residential properties is less common in England, other than high-end properties (which are not let on assured shorthold tenancies anyway). That could change once the substantial changes in the Act bed in, and the private rental market could become much more attractive to larger-scale landlords. Greater security will lead to longer-term tenants, fostering better relationships, a regular income stream and better care being taken of the property itself.

The difficulties will arise with problem tenants and where landlords have a need for the property to be returned, for example for sale, redevelopment or for the landlord's own occupation. The section 8 grounds for possession will remain available, so if, for example, a tenant falls into arrears, possession will be obtainable. A significant change, though, is that it will always be necessary to attend a court hearing.

The accelerated possession process attached to a section 21 termination, whereby a landlord could seek a possession order on the papers by filling out a form and attaching the necessary documents, will no longer be available, and that process accounts for a large proportion of residential possessions.

Inevitably, therefore, there will be an increase in pressure on an already overloaded County Court system. Hearing dates are likely to be further in the future, leaving landlords exposed without an income stream for longer; a cost smaller-scale landlords are less likely to be able to absorb. The effect on County Court delays will depend on how successful the ultimate goal of the Act is: but even if improved tenant security reduces the number of possession claims overall, the loss of the accelerated possession procedure is bound to have a detrimental impact on court waiting times.

The First-tier Tribunal ("**Tribunal**") will also face a significant increase in claims from tenants seeking to challenge rent increases proposed under the section 13 process (which is limited to one rental increase proposal per year). As with the County Court, no additional capacity has been made available in the Tribunal, so waiting times there are also likely to become much longer.

There is also an interesting question over landlord's redevelopment, one of the section 8 grounds. This has been rarely used, and there is limited case law on the evidence required to establish the landlord's "intention to redevelop". Lessons from the equivalent provision in the Landlord and Tenant Act 1954 ("**1954 Act**"), however, suggest that the process is far from straightforward, or cheap. 1954 Act redevelopment claims require detailed factual and expert evidence, something which is unlikely to attract small scale residential landlords. We do not expect that this ground will be widely used, unless residential property is taken up by larger landlords with the ability to meet the costs of a claim.

The main changes under the Act, including abolition of ASTs and section 21 terminations, will come into force on 1 May 2026.

Steps to take now

- Take steps now to calculate likely rental yields over the short to medium term, and consider whether the income stream is likely to remain viable if rental increases are limited and open to challenge in the Tribunal.
- Revisit pricing strategies for new lettings to counter-balance the incoming ban on rental bidding-wars and new regime for increases.
- Take advice on the notice requirements for rent increases under section 13 and ensure that those steps are followed.
- Landlords who require the flexibility of repossessing rented properties at relatively short notice should consider whether to remain in the market or whether their property or portfolio could be converted to a longer term-venture.
- Landlords considering redevelopment should seek to accelerate those plans as far as possible in advance of the Act coming into force.
- Contact us for our latest client briefing note on the Act – exclusively available for our clients and contacts.

Back to Quick Read

Business Rates

7. Empty properties, full rates: The fall of mitigation schemes

Comment

Empty properties are liable for 100% of the business rates payable after an initial rate-free period of three months for most property, and six months for industrial property. This has been the case since 2008, when empty property relief was abolished (except in a few limited circumstances). At that time, the change was promoted as an incentive for property owners to bring vacant properties back into use. The tax has, however, been extremely unpopular with those who pay it, who see it as a financial burden on their failure to let their property, which is often due to circumstances outside of their control. For example, most property owners would not choose to have their commercial property lying vacant rather than occupied and bringing in revenue for the business. As a result, an industry developed which operated various schemes designed to mitigate empty rates liability by using all available reliefs to the mutual advantage of the ratepayer and the scheme operator - some more meritorious than others.

Letting the property to a charity, who will benefit from charitable relief, is generally successful where the property is actually occupied for charitable purposes, although this may have tax implications for the landlord and should only be considered after taking tax advice.

Another popular rates mitigation scheme is a "box scheme", where the empty property is used for storage of papers for 13 weeks. This is the minimum period of occupation before a new rate-free period applies for the landlord, known as the "reset period". These schemes have been repeatedly upheld by the courts as legitimate, including the widely reported case of *The Mayor and Commonality and Citizens of The City of London v 48th Street Holding Ltd and another* [2025] in May 2025. On 1 April 2024, the government extended the reset period from 6 weeks to 13 weeks, to make the schemes less attractive to landowners. It does not appear to have had any significant impact on the use of such schemes - although it has impacted the ability of small retail operators to let a shop for a few weeks, for example, in the run up to Christmas as such an operation will be unattractive to the landlord. Box schemes are the most prevalent rates mitigation scheme that we see with many long term vacant properties being let repeatedly under such schemes as soon as the relief period has expired.

At the other end of the scale, schemes involving the setting up of special purpose vehicle companies ("**SPVs**") purely to accept the grant of a lease and then immediately being put into an insolvency process were more doubtful. These schemes were inspired by the limited exceptions to the 2008 abolition of empty property relief, which include a property "*whose owner is a company which is subject to a winding-up order made under the Insolvency Act 1986 or which is being wound up voluntarily under that Act*". A test case on these schemes was considered by the Supreme Court in *Hurstwood Properties (A) Ltd and others v Rossendale Borough Council and another* [2021]. It involved short leases of the unoccupied properties being granted to SPVs, such that the SPVs became the "owner" and were liable for the business rates. The SPVs were then immediately put into liquidation with the SPV thus benefitting from the empty rates relief for as long as the lease remains in existence, or it was dissolved with the lease transferring as *bona vacantia*, usually to the Crown – who has immunity from empty rates in such circumstances. The local authority issued a claim against the property owner for non-payment of rates. The Supreme Court ruled against the property owners' application for strike out of the claim due to the exception, finding that the SPVs lacked any real or practical ability to exercise their legal rights to possession under the lease, therefore control of the property (and the liability for business rates) remained with the property owner. The Supreme Court remitted the cases to the High Court for full trial and judgment was handed down on 12 September 2025 (*Wigan Council v Property Alliance Group Ltd; Trafford Council v Property Alliance Group Ltd* [2025]). Labelling the scheme "*an abuse of the insolvency legislation*", the High Court required the property owner to repay the business rates. It is estimated that local authorities around the country could have claims worth around £100m for unpaid rates hiding behind these schemes.

All rates mitigation schemes are now under increased scrutiny as financially pressed local authorities seek to raise ever higher sums to cover the costs of local government. Scotland already has legislation in place to address rates avoidance schemes that are considered "artificial" in nature and Wales is expected to bring in regulations to apply from April 2026. The government has previously threatened to bring in a "General Anti-Avoidance Rule" for business rates in England and it appears increasingly likely that a legislative change is coming.

Steps to take now

- Property owners should review their portfolio of empty properties and consider whether they could be more profitably let.
- Be circumspect about any potential anti-avoidance schemes and take advice on their likely effectiveness and potential savings.
- Be aware that schemes may not have a long shelf life and ensure that they can be terminated if the scheme is found to be unlawful.
- Watch out for any avoidance scheme that looks like a scam: if it seems too good to be true, it probably is.

Back to Quick Read

8. Cash-strapped local authority crackdowns more likely for breaches of the MEES Regulations

Comment

The Minimum Energy Efficiency Standard ("**MEES**"), introduced under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, set out minimum energy standards for rented commercial properties in England and Wales. The regulations state that, as of 1 April 2023, it is unlawful for landlords to grant a new lease or continue letting an existing lease of any non-domestic property that has an Energy Performance Certificate ("**EPC**") rating below band E—in practice, this means any property rated F or G.

A property falling below this EPC threshold is defined by the regulations as "sub-standard." Landlords cannot let, or continue to let, sub-standard commercial properties unless they have registered a valid exemption on the government's PRS Exemptions Register. Exemptions might apply if, for example, all cost-effective improvements have been made, or if required third-party consents (such as planning or tenant consent) are withheld.

Importantly, from April 2023, the definition of "letting" was broadened so that MEES applies equally to existing leases as well as new grants. This means that any ongoing lease of a "sub-standard" property after this date is in breach unless exempt. The EPC rating remains valid for 10 years, but landlords must ensure the rating is current and meets the required minimum standard; an expired or incorrect EPC can also trigger non-compliance.

If the regulations are breached, landlords are not relieved of obligations under their tenancy agreements: the letting may be unlawful under MEES, but the validity and enforceability of the lease itself remain intact (regulation 26). MEES also does not alter the separate obligations for repairs or improvements specified in tenancy agreements (regulation 2(4)).

Landlords who breach these MEES letting restrictions can face substantial financial penalties. For domestic properties, fines can be up to £4,000, whereas for non-domestic properties, fines can be up to £150,000 depending on the length and seriousness of the breach. These penalties can be imposed for breaches that occurred in the 18 months prior to a penalty notice, even if the breach has since ceased.

While enforcement by local authorities has historically been limited, recent cases—such as *Turnbridge v Islington LBC* [2024] UKFTT 829 (GRC) and *John Leonard Kenyon v the London Borough of Islington* [2025] UKFTT 00260 (GRC) — demonstrate that penalties *are* being issued (albeit currently at the lower end of the financial penalty scale), and local authorities are increasingly carrying out their own independent compliance checks on properties by relying on publicly available EPC information.

With local authority budgets tightening and government policy driving higher standards (with all rented properties needing to achieve a minimum EPC rating of C by 2027 and B by 2030), we expect local authorities will be increasing their monitoring of local housing stock and will be more likely to enforce breaches, raising potentially significant fines both to boost compliance and to generate additional revenue for their increasingly squeezed budgets.

Steps to take now

- **Audit your portfolio**: Review all properties (both domestic and commercial) for MEES compliance, paying particular attention to ongoing tenancies.
- **Improve energy ratings**: For properties below the required standard, instruct assessors now, and implement energy efficiency upgrades.
- **Register exemptions promptly**: If your property qualifies for a MEES exemption—for example, if all relevant improvements have been made or consent to carry out works is refused—ensure you register this officially and keep thorough records.
- **Monitor EPC expiry dates**: EPC ratings expire after ten years; arrange for new assessments in good time.
- **Train property managers and agents**: Ensure those managing assets understand the MEES obligations and triggers for breaches.
- **Plan for future standards**: Develop a phased programme for upgrades to meet the upcoming 2027 and 2030 minimum standards.
- **Listen to our podcast** on the impact of MEES on rent review, lease renewals and dilapidation claims

With stricter standards and likely increased enforcement, proactive compliance now is essential. Failing to act could result in significant financial and reputational risks—and those risks are only set to grow.

Back to Quick Read

9. Anti-protest injunctions: Are their days numbered?

Comment

Until recently, preventative injunctions (court orders against individuals who threaten to commit unlawful acts) were thought to be available only against identified individuals who had committed or threatened to commit unlawful acts (usually trespass) to prevent them from repeating the unlawful conduct in future. The individuals did not need to be identified by name: it was sufficient that they were identifiable (for example, by CCTV or bodycam footage) as having committed the unlawful acts prior to the date of the final injunction hearing (hence the well-known epithet "persons unknown").

In *Wolverhampton City Council v London Gypsies and Travellers* [2023], the Supreme Court held that the courts have the power to grant "newcomer injunctions" which are a category apart. They are granted without notice to the individuals affected by them, and those individuals are unknowable at the time of the grant and therefore they potentially apply to anyone in the world. Newcomer injunctions do not fall easily into the categories of "interim" and "final" injunctions either. For reasons such as lack of engagement from defendants with the proceedings due to cost, lack of a defence in law, and the disproportionate effort in defending the proceedings rather than finding another site, newcomer injunctions have recently been sought on an interim basis. They were described by Mr Justice Ritchie as "*different beasts from old fashioned injunctions against known defendants which need to be taken to trial. They do not 'hold the ring pending trial'. They are an end in themselves for the short or the medium term.*"

The penalties for breaching an injunction can be severe: up to 2 years imprisonment and/or an unlimited fine, plus costs.

Recently, private entities and local authorities have been granted newcomer injunctions to prevent disruption on their land by protesters, including:

- Cambridge University against a group named Cambridge for Palestine, which posed a threat to disrupt graduation ceremonies.
- Major UK airports (including Heathrow and Gatwick) against Just Stop Oil and similar environmental campaign groups.
- London University, where protesters against the University's alleged support for military action in Gaza were engaging in uncontrolled disruption and encampment.
- Valero Energy against environmentalist groups which trespassed, blocked entrances and made public threats of protest at the petrochemical group's sites.

The Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* held that the court's power to grant newcomer injunctions is subject to certain procedural safeguards.

Friends of the Earth, however, has filed an application with the European Court of Human Rights ("**ECHR**") challenging the use of newcomer injunctions against protesters in the UK, on the basis that they are being used to stifle lawful and peaceful protest which is alleged to be a breach of the European Convention rights to a fair trial and to freedom of expression. The objection is that the criminal justice system is being circumvented by private organisations and public authorities effectively to criminalise (through the risk of contempt of court) behaviour that is not a breach of the criminal law. The safeguards imposed by the court are said to be inadequate, as the wide-ranging effect of newcomer injunctions means that a large number of people could be caught by them without necessarily being aware of it, and there are serious costs risks of challenging the orders once granted.

The case is still at an early stage with the ECHR. If the challenge is successful, it could spell an end to the use of newcomer injunctions against protesters.

Steps to take now

- Injunctions have been shown to be an effective deterrent against disruptive behaviour, but the risk of serious protest is showing no signs of going away.
- Be aware of protest and other trespass risks by maintaining active security and police liaison, particularly in any sensitive industry.
- Landowners who are at risk of trespass for the purposes of protest should move quickly if they are at risk of disruptive protests on their sites and seek specialist advice on the injunction process.

Back to Quick Read

Upwards-only Rent Reviews

10. Proposed ban on upwards only rent reviews looks set to disrupt 1954 Act rent reviews with unintended consequences

Comment

In June 2025, the Law Commission published its interim statement following its first consultation on reforming the Landlord and Tenant Act 1954 ("**1954 Act**"), which governs security of tenure for business tenants.

After receiving over 160 responses, the provisional conclusions were slightly... *obvious*. The Law Commission concluded that the current "contracting-out" model should be retained, as it best balances the interests of landlords and tenants and avoids unnecessary disruption. The Law Commission also supported keeping existing exclusions for certain tenancy types (such as agricultural tenancies) but it did provisionally conclude that the minimum duration for protected tenancies should be increased from six months to two years to allow greater flexibility in short-term letting. Whilst these findings will shape the next phase of the consultation, which will focus on technical reforms to make the 1954 Act fit for today's commercial property market, the property industry's reaction to this interim statement was expectedly "*underwhelmed*".

Cue one month later and, with great shock to the property industry, the government announced (without *any* prior consultation) its proposal to ban upwards-only rent review provisions ("**UORR**") in new business leases, sneaking it into the English Devolution and Community Empowerment Bill.

Understandably, the property industry has been in uproar. This surprise proposal to ban UORR in new commercial leases will have a significant impact on renewals under the 1954 Act.

Currently, where the parties cannot agree the rent that will apply on statutory lease renewals, the court will decide the level of rent payable under the renewed lease based on expert evidence which examines open market rent comparables. However, if the ban takes effect, any renewal of an existing lease under the 1954 Act will be subject to this ban. This will mean that UORR clauses will no longer operate in statutory renewals; instead, rents could move either up or down depending on market conditions at review.

In practice, this would create a temporary two-tier market: existing leases will keep their upwards-only provisions until renewed, while new and renewed leases will require truly market-reflective rent review provisions. In addition, the ban is based on the definition of business tenancies under the 1954 Act, so whilst it would affect occupational business leases it would not extend to headleases or intermediate leases. As a result, there would be a risk of a shortfall arising when an occupational business tenant's rent decreases following a statutory renewal, potentially leaving the intermediate landlord with an obligation to pay a higher rent to its superior landlord under their own lease.

The overall effect of this proposed ban will be to inject greater market uncertainty into rent reviews on 1954 Act lease renewals, but it could also introduce unintended market consequences. For example, the ban could also see a rise in landlords insisting initially on fixed/stepped rent review increases. This may end up being more disadvantageous for tenants than a review assessed and applied in the usual way before any ban, as landlords may be minded to set a higher fixed rent review on day one of the lease term to protect their interests and future cashflow.

Steps to take now

- **Increase initial rent levels** - to offset the risk of reduced rents where market conditions deteriorate and rent reviews may lead to decreases, landlords may consider setting higher initial rents at the start of a new lease. This would provide a buffer against future downward adjustments.
- **Use fixed or stepped rents** - consider including these in any new business leases as such rents are pre-agreed and therefore would not be caught by the potential ban. Landlords might increasingly use fixed annual increases or stepped rent arrangements, which guarantee rent growth regardless of market changes.
- **Consider implementing rent collars and caps** - although the government has announced that it plans to regulate the use of rent collars (minimum rent thresholds) and caps by implementing permissible parameters for their use, landlords may attempt to include these features (to the extent permitted) to set a floor or ceiling for rent reviews, thereby limiting downside risk.
- **Strengthen covenant and guarantee requirements** - landlords may seek stronger tenant covenants or require rent guarantees to protect their position if there is a risk of rent decline following a review.
- **Obtain detailed market analysis and legal advice** - with increased market-driven variability, landlords will need robust market analysis when negotiating leases and renewals, as well as appropriate legal advice to ensure compliance while protecting their interests.
- **Enter into agreements for lease or renewals before the ban is imposed** - where possible, entering into agreements for lease or renewal before the ban takes effect may enable the retention of upwards-only provisions for those tenancies in the short term.
- Read our blog post for further information on the proposed ban.

It is important to note that some of these steps (such as fixed/stepped increases and rent collars) may be limited or subject to further limits as the Bill makes its way through Parliament. It is therefore important for landlords to stay updated on legislative developments and to consult their legal professionals before implementing any new lease structures or provisions.

Back to Quick Read

Recap: Forearmed 2023

And finally...

In our Forearmed 2023 Guide, we made 12 predictions for the next 36 months. As we are now at the end of that timescale, we wanted to stocktake and see if our thoughts proved right or wrong.

This is how our predictions fared ...

Prediction	Reality
1. An upturn in commercial and residential tenant activism, including service charge challenges due to the deployment of the Building Safety Act 2022.	We have seen a significant upturn in tenant activism and service charge challenges. This will continue, with our new prediction that limits on liability will continue to expand under the Building Safety Act.
2. There will be continued political momentum for further residential leasehold reform in 2023 and beyond.	The Leasehold and Freehold Reform Act 2024 received Royal Assent on 24 May 2024, although most of the provisions are not yet in force. In 2025, we have seen consultations to strengthen leasehold protections and a White Paper with promises of consultations and a draft Leasehold and Commonhold Reform Bill in late 2025 to reform commonhold ownership as the new default tenure.
3. Green lease provisions will become much wider and more common in scope, as the focus on ESG continues to take centre stage.	This has undoubtedly happened as the focus on ESG continues. For more information, please see our hugely popular podcast series "Going for Green on Real Estate Transactions"
4. The Private Rented Sector may become less attractive as an investment class, although quality of housing stock should improve.	This one has been slower to come to fruition, with a change in government and the Renters' Rights Act 2025 replacing the former Renters (Reform) Bill. The effects of the reforms are starting to show with the decline in buy-to-let mortgage applications and increase in flats for sale ahead of the new regime coming into force. See our new prediction for an update.
5. Professional negligence claims against solicitors and valuers are likely to increase.	Professional negligence claims have been common in the past 2 years. Key developments include *Bratt v Jones* [2025], where the Court of Appeal clarified the test for valuer negligence, and cases like *Miller v Irwin Mitchell LLP* [2024], examining the extent of a solicitor's duty of care.
6. Transactional default and enforcement action will continue to increase.	We have seen a marked rise in failing transactions, with parties serving notices to complete or seeking advice on orders for specific performance.
7. More tenants to seek early surrenders for under-utilised premises, or seek to consolidate or re-purpose the use of their office premises in light of new working models.	Over the past three years, commercial tenants have increasingly sought widespread downsizing and consolidation, with increased demand for more flexibility in new leases.
8. Lease provisions will be strained as life sciences tenants attempt to repurpose under-used offices for research and development.	We were half-right on this one. In May 2025, CBRE reported that "*In London, 3.3m sq ft of stock at £2.5bn was sold between 2022 and 2024 for conversion to life sciences, hotels, student accommodation and wider residential assets*." However, we have not yet seen an increase in lease disputes to accommodate conversions.
9. Intervention needed to close gaps in the telecoms Code prejudicing developers.	In July 2023, the Court of Appeal closed the gap for intermediate lease structures as we predicted. For more information, see our blog post. However, disputes continue to arise under the Electronic Communications Code as per our new prediction.
10. Radical changes to the business rates regime will undermine confidentiality in commercial lease dealings.	We predicted that the majority of changes would apply from the revaluation in 2026 – from 1 April 2026, there is a new duty on business rate payers - a "Duty to Notify" -, which will become mandatory by 1 April 2029. We await specifics on how it will apply, but it requires ratepayers to proactively inform the Valuation Office Agency of property changes that could affect ratable value. Focus remains on business rates with our new prediction on empty rates schemes.
11. Developers must consider options to decarbonise or risk delay and challenge.	As predicted, this is a key consideration for developers. For more information, see our blog post on redeveloping v retrofitting.
12. Landlords will be faced with continuing and potentially increasing risk of breaching sanctions when managing portfolios of tenants.	This continues to apply. Sanctions remain fully active and have been significantly expanded in 2025.

Back to Quick Read

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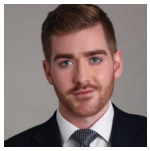

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