



*Aviva Investors Ground Rent GP Ltd v Williams* [2021] EWCA Civ 27 was an appeal to the Court of Appeal from the outcome summarised at paragraph 24 of the Upper Tribunal's decision. The question was as to the operation of s.27A(6) of the Landlord & Tenant Act 1985:

An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination:

- (a) in a particular manner; or
- (b) on particular evidence,

of any question which may be the subject of an application [to the FTT].

The leases stated that the lessee's "share of building services costs is 0.7135% or *such part as the Landlord may otherwise reasonably determine*" (my emphasis).

Having reviewed the case law, allowing the landlord's appeal, the Court of Appeal held that:

... the clear thread that runs through the previous decisions of the UT is that section 27A(6) is concerned with no more than removing the landlord's role (or that of another third party) from the decision-making process; in order not to deprive the FTT of jurisdiction under section 27A(1). ... [T]he statutory objective is satisfied if the landlord's role is transferred to the FTT. To reach a broader conclusion than that would, in my judgment, leave the contract emasculated and, in practical terms, unworkable. Nor, as [the] cases also show, is there any objection in principle to a degree of flexibility in the apportionment of a service charge, provided that the decision is taken by the FTT

In the present case the service charge provision envisages that the lessee may be liable to pay (as an alternative to the fixed percentage) a different percentage (a) which is to be identified by someone acting reasonably and (b) that that someone is the landlord... [O]nly the second component is invalidated by section 27A (6) ... All that is necessary for compliance with section 27A (6) is to deprive the landlord of its role in making the determination"

The landlord was therefore not restricted to the specified percentage, but the ability to specify a different percentage was transferred from the landlord to the FTT.

