



Under rule 9 of the First-tier Tribunal rules, the Tribunal has the discretion to strike out a party's case where it considers that "the proceedings or the manner in which they are being conducted, to be ... an abuse of the process of the Tribunal".

In *Bedford v Paragon Asra Housing Ltd* [2021] UKUT 0266 (LC), the landlord applied for a determination that there had been a breach of the covenant against sub-letting.

Mr Bedford, the lessee, applied to strike out the landlord's case on the ground that the application was an abuse of process because the landlord had waived the right to forfeit and the application was therefore purposeless. The FTT dismissed his application. Mr Bedford appealed.

In the Upper Tribunal, Martin Rodger QC held that it was "obviously correct, in principle", that the FTT had the jurisdiction to decide "whether the right to forfeit had been waived as part of its consideration of the application to strike out".

However, he also held that the availability of other potential remedies justified FTT's refusal to strike out the proceedings. The landlord might seek an injunction or damages in the county court as an alternative or in addition to forfeiture respectively. He said:

"A waiver of the right to forfeit for the breach would not provide a defence to either type of claim (although waiver might be relevant to the exercise of the Court's discretion to grant an injunction if no further breach had been committed since Paragon last demanded rent).

"In either case it would be essential for it first to be determined whether a breach of covenant had occurred; if it wished to forfeit it was essential that the determination of breach be made by the FTT. Unless it could be seen when the determination proceedings were commenced that the right to forfeit had indisputably been waived, and that a defence of waiver was guaranteed to succeed in the County Court, it is quite impossible to regard the determination proceedings as abusive."

