



**Neutral Citation Number: [2025] EWHC 383 (Ch)**

**Case No: CH-2024-000095**

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**CHANCERY APPEALS (ChD)**

**ON APPEAL FROM THE ORDER OF HHJ SAUNDERS DATED 18 MARCH 2024  
SITTING AT THE COUNTY COURT AT CENTRAL LONDON (Ref: J01EC986)**

Rolls Building  
Fetter Lane  
London, EC4A 1NL

24/2/2025

**Before:**

**MRS JUSTICE JOANNA SMITH**

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**Between:**

**HUSEYIN SIK**

**Appellant**

**- and -**

**MOHAMMED ABDUL MALIK**

**Respondent**

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**Ms Rachel Coyle (instructed by CGS Legal) for the Appellant**  
**Mr David Lonsdale (instructed by Zyba Law) for the Respondent**

Hearing date: 6 February 2025  
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## **APPROVED JUDGMENT**

This judgment was handed down remotely at 10.00 am on 24 February 2025, by circulation to the parties or their representatives by e-mail and by release to the National Archives.

## MRS JUSTICE JOANNA SMITH

1. This is an appeal from a decision made by HH Judge Saunders (“**the Judge**”) following a hearing on 22 February 2024 (“**the Hearing**”). In his reserved judgment dated 8 March 2024 (“**the Judgment**”) the Judge granted relief from forfeiture to the Respondent tenant (“**Mr Malik**”) following a peaceable re-entry of demised property by the Claimant landlord (“**Mr Sik**”) on grounds of non-payment of rent, on condition that Mr Malik should pay (i) full rent arrears plus interest to the date of the peaceable re-entry; and, (ii) half the rent plus interest from the date of peaceable re-entry to the date on which possession was regained. At the heart of the appeal lies the question of whether the Judge was right to exercise his discretion to require a payment of only 50% of the rent arrears since the date of re-entry as a condition of relief.

### The Background Facts

2. The relevant background, which includes some procedural complexities potentially relevant to the outcome of aspects of the appeal, is as follows. Mr Sik is the owner of property at Ground Floor and Basement, 201 Mile End Road, London E1 4AA (“**the Property**”). By a lease dated 26 June 1997 (“**the Lease**”), the Property was demised to Muhammed Nisar Patel for a term of 25 years. By an assignment dated 15 October 2021, the unexpired residue of the term was vested in Mr Malik, who is recorded in the judgment as occupying the Property for the purposes of carrying on business as a restaurant and takeaway. The term of the Lease (which, as a business tenancy, fell within the Landlord and Tenant Act 1954 (“**LTA 1954**”)) was due to expire on 25 June 2022.
3. On 23 December 2021, Mr Sik served on Mr Malik a notice to terminate the lease under section 25 LTA 1954, giving 25 June 2022 as the date for termination and stating that Mr Sik would oppose an application to the court for the grant of a new tenancy on the ground contained in section 30(1)(f) LTA 1954 (i.e. that on the termination of the Lease Mr Sik intended to carry out substantial work of construction at the Property which could not reasonably be done without obtaining possession). On 26 May 2022, Mr Malik issued a claim in the County Court pursuant to section 24 LTA 1954 for the grant of a new tenancy (claim no. J01EC986) (“**the Renewal Claim**”). This claim had the effect of continuing the terms of the existing Lease pending a determination by the court. A Defence was filed by Mr Sik on 25 August 2022 disputing Mr Malik’s right to the grant of a new tenancy.
4. On 22 August 2023, the court dealt with an application by Mr Malik to amend his pleading in the Renewal Claim together with an application by Mr Sik to strike out that claim on the grounds that it had been pleaded on a wrong basis, granting the amendment application and dismissing the strike out application.
5. By the end of August 2023, Mr Malik was in arrears in respect of part of the March 2023 and June 2023 quarters. On 30 August 2023, Mr Sik peaceably re-entered the Property, thereby forfeiting the Lease. Mr Sik’s solicitors wrote to Mr Malik’s solicitors on the same day notifying them that the Lease could only be restored by a court order on the application of Mr Malik for relief from forfeiture. It was Mr Sik’s case before the Judge, and before this court, that upon re-entry, Mr Sik discovered that Mr Malik was not in occupation and that he had parted with possession of the whole or part of the Property. This is disputed and for reasons to which I shall return I do not

consider it to be relevant to the issues I must decide on this appeal. However, there is a reference to “other alleged breaches” in the Judgment which states that there is “no evidence” of those breaches. In fact, the allegation that Mr Malik was not himself in possession of the Property was supported by evidence from Mr Sanger, the solicitor acting on behalf of Mr Sik, prepared in support of a second strike out application made by Mr Sik on 7 September 2023. Absent an application for relief from forfeiture, the second strike out application asserted that, following the peaceable re-entry, there was no tenancy or occupation in existence and thus there could be no renewal of the Lease.

6. A CCMC was listed in the Renewal Claim for 8 September 2023. On the evening of the day before (i.e. the 7 September 2023), on the same day that the second strike out application was made, Mr Malik served an application for relief from forfeiture on Mr Sik together with Particulars of Claim in that application (“**the Relief Claim**”). These two late applications appear to have caused the adjournment of the CCMC. The court ordered that the second strike out application be listed for hearing on 4 October 2023 and that the CCMC in the Renewal Claim be adjourned pending the outcome of that application.
7. On 15 September 2023, Mr Malik’s solicitors sought to substitute revised “updated” Particulars of Claim in the Relief Claim (which had, as yet, not been issued by the Court), now alleging that (by reason of the content of counsel’s skeleton argument served for the purposes of the hearing on 22 August 2023) Mr Sik had waived the right to forfeit for any breach of the Lease, including non-payment of rent. The updated pleading thus alleged that the peaceable re-entry on 30 August 2023 was unlawful and constituted a trespass and a breach of the covenant of quiet enjoyment of the Lease. The claim to relief from forfeiture was now pleaded in the alternative, in the event that the entry was lawful and effective to forfeit the Lease. Mr Malik also pleaded that he had lodged with his solicitor the sum of £14,750 to be used to pay the rent arrears “if relief be granted”. In an email dated 27 September 2023 (which I was informed was not drawn to the attention of the Judge), Mr Sanger, acting for Mr Sik, suggested to Mr Malik’s solicitors that the Renewal Claim be stayed pending determination of the Relief Claim. There was no response to this proposal.
8. The matter came back before the court on 4 October 2023, by which time there was still no issued Relief Claim. Nevertheless, the court took the view (communicated to the parties on 28 September 2023) that the Relief Claim and the second strike out application in the Renewal Claim should be heard together on that date. However, in the event, the hearing was adjourned once again. This seems to have been because the Relief Claim had not been issued; there was uncertainty on the part of Mr Sik as to whether the updated Particulars of Claim were being relied upon; (if they were) there was a need for Mr Sik to respond to the new allegation of waiver made in the updated Particulars of Claim in the Relief Claim; and because Mr Sik had been given insufficient notice of the court’s intention to deal both with the second strike out application and the Relief Claim at this hearing. A second witness statement from Mr Sanger addressing these issues was filed on behalf of Mr Sik for the purposes of the hearing.
9. The Order of 4 October 2023 recorded Mr Malik’s undertaking by his counsel to issue the Relief Claim (which would rely upon the updated Particulars of Claim) and, amongst other things, ordered that the second strike out application in the Renewal

Claim be relisted at a hearing at which the court would also determine four issues arising in the Relief Claim, namely (i) whether Mr Sik waived his right to forfeit the Lease such that his re-entry on 30 August 2023 was unlawful; (ii) whether, if there was no waiver, the court should grant relief from forfeiture; (iii) the terms of any such relief from forfeiture; and (iv) any consequential orders and directions. Mr Sik was ordered to file and serve a Defence to the updated Particulars of Claim in the Relief Claim by 11 October 2023. Apparently recognising the urgency of the matter, the court ordered that the hearing be listed for the first open date after 11 October 2023.

10. Mr Sik filed a “Without Prejudice” Defence to the (still unissued) Relief Claim within the permitted time, but the court refused to accept that filing in the absence of a case number. On 11 October 2023, Mr Sik’s solicitors wrote to Mr Malik’s solicitors setting out the rent due following re-entry in the total sum of £14,750 together with an interest calculation. At the same time, they identified the “cost of peaceful re-entry” as £6,246. At paragraph 13 of Mr Sik’s Defence filed on the same day, Mr Sik asserted in bald terms that “[t]he costs of the Defendant stand at £6,246.00”.
11. On 20 October 2023, Mr Malik’s solicitor sought to persuade the court to list the hearing as soon as possible given the harsh consequences for Mr Malik if he was forced to await a hearing in February of 2024, a date which, by that point, had apparently been intimated by the court. Mr Malik’s solicitor asked for the Relief Claim to be issued.
12. On 30 October 2024, the court sent out a notice that “the Defendant’s application hearing” would take place on 22 February 2024 before the Judge. There was no reference in this notice to the Relief Claim, notwithstanding that the Order of 4 October 2024 had identified that issues arising in the Relief Claim would be determined at the next hearing.
13. On 15 February 2024, the Claim Form for relief against forfeiture was finally issued by the court under claim no. L00CL599. It is unclear why there was a delay of in excess of 5 months before this took place. However, in the Judgment at [34], the Judge accepted that Mr Malik’s solicitors had attempted to chase up the issue of the Relief Claim (as is clear from correspondence in the bundles before me), but that they had “no power over the question of issue” and were “reliant upon the court in that regard”. He expressed the view that “the system failed the parties because proceedings were not issued until 16 February 2024 (*sic*)” and he accepted therefore that Mr Malik had sought to issue the Relief Claim promptly. There is no appeal against this decision.
14. Absent issue by the court of the Relief Claim, it appears that, in preparing for the Hearing on 22 February 2024, Mr Sik’s legal team operated on the basis that it would be concerned solely with the application to strike out the Renewal Claim. However, on the afternoon of 19 February 2024, they received the issued claim form in the Relief Claim. Although Ms Coyle, acting on behalf of Mr Sik, made submissions before the Judge at the Hearing as to the procedural disadvantage suffered by her client by reason of this state of affairs, the Hearing nonetheless went ahead on the issues identified in the Order of 4 October 2023. Although one of the grounds of appeal originally raised a question of procedural fairness, permission to pursue that ground was refused and so there is no issue before me as to the procedural fairness of the Hearing.

## The Judgment

15. Having heard argument at the Hearing, the Judge reserved his judgment, handing it down on 8 March 2024.
16. At [1]-[11] of the Judgment, the Judge set out the facts of the case and some of its procedural history. At [13] the Judge identified the issues to be addressed as set out in the Order of 4 October 2023. At [14]-[30] the Judge considered and dismissed the allegation of waiver made in the Relief Claim. There is no appeal against that decision.
17. At [31], the Judge turned to the question of whether the court should grant relief from forfeiture, dealing first with the question of “promptness” at [32]-[34] and accepting that the application for relief had been made with “reasonable promptitude”. It was in connection with this decision that he made the observations about the failure of the court’s processes in relation to the issue of the Relief Claim to which I have already referred.
18. At [35], the Judge explained that “the question remains as to whether I should grant relief from forfeiture, which is a discretionary remedy”. He then went on to say this:

“36. The defendant says that I cannot be satisfied, on the evidence before me, that the claimant tenant has the money; in short, he has provided no substantial evidence, it is said, that he is able to pay.

37. In particular, it is said that, even if the defendant were reluctant to accept rent due to the fear of accepting that the tenancy existed, the claimant could have made a payment into court or to “abide the event”, or for it to be held pending resolution of these proceedings. Alternatively, the claimant could have applied, it is said, for an interim injunction if they were so concerned they should get back into the property.

38. In my view, there are a number of difficulties with the defendant's approach to the relief application. The suggestion that the court should be satisfied that the tenant has the means before making an order before me, rather puts the cart before the horse. It is for the court, if it decides to grant relief, to set those terms. If the tenant (in this case the claimant) fails to abide by it then so be it, and the consequences are clear.

39. In this case, whilst I accept that there may have been some sense in paying monies into court (and I expressed that view, in the course of the hearing), and that that would of course would have had a greater persuasive effect upon me, there was no requirement for the claimant to do this.

40. I note that the claimant's solicitors wrote to the defendant's solicitors on two occasions, on 15 September 2023 and 29 September 2023, seeking to make arrangements to pay the rent arrears.

41. On 15 September 2023 there was a request to transfer £14,750; on 29 September 2023, this would increase to £20,500.

42. The defendant cast doubt on whether such funds were available, but here it has to be said you have a solicitor of the senior courts, who is an officer of the court (knowing all of the obligations imposed upon them as a solicitor, and the

implications otherwise if that was incorrect) setting out the they are in funds of this amount. In reality, due to what appears to be either an attempt to try to settle by providing enhanced sums, or more likely an accounting error, the money offered is £5,750 more than in fact was actually due, without giving any discount.

43. The authorities, which I need not set out here, tell us that relief should be readily given. The suggestion that the claimant has not been consistent with the position regarding a possible interim injunction application is, in my view, not a strong argument because it may well not have achieved anything. This is because the same issues as raised in this case would be in issue and, applying the American Cyanamid principles, would be likely to be refused upon the basis of, if proven to be correct, the claimant could be compensated by an award of damages.

44. I therefore consider that, in the round, relief from forfeiture should be granted. The arrears are relatively modest. However, the relief should be, in my mind, be granted on strict terms.

45. Mr Lonsdale conceded at the hearing that this should include the rent owed during the period that the claimants were in occupation and interest on that amount. In my view, allowance should be made in that the landlord has chosen to resist the application in that it is not so straightforward when the application for relief is so strongly opposed.

46. The other alleged breaches are not before me and in short there is no evidence, so, I have to order, at my discretion, what I think is appropriate. For the avoidance of doubt, I accept Mr Lonsdale's concessions.

47. As for the period when the claimant remained out of the possession, I must shut my eyes to any suggestion of unlawful sub-letting because there is no evidence that is before me, apart from an assertion, which is not enough. In addition, and on the other hand, there is no evidence as to whether the landlord has been able to utilise the premises in the meantime.

48. In the absence of that evidence (and there is no suggestion that the premises remained other than that), in view of the consent order on 6 October 2023 setting this out, I consider what I think is an equitable solution that the claimant do pay half the rent for the period when the property remained unoccupied up to the present day. On the evidence that is before me, that is the best I can do.

49. Therefore, the claimant should pay the defendant's rent up to the date of the peaceable re-entry and half the rent up today and continuing until possession is regained.”

19. Following the hand down of the Judgment, and as is clear from the transcript, Ms Coyle sought to draw a number of matters to the Judge’s attention. She pointed out that, although other breaches of the Lease were not before the court for determination, the Judge was wrong to say in his judgment that there was no evidence of such breach. This appears to have been accepted by the Judge who acknowledged that the point “could have been worded better”. However, the Judge reiterated that his decision to award 50% of the rent was within his discretion. Ms Coyle expressed concern,

observing that she did not know how the Judge had arrived at the 50% reduction in rent. She also said that she did not understand why the Judge had not awarded the entirety of the rent as a condition of relief, indicating that the Judge's approach was not something that she could see "in the case law" and pointing out that the Judge had not referred to any of the authorities on which she had relied. She specifically referred to *Bland v Ingrams Estates Ltd (No 2)* [2001] EWCA Civ 1088 ("*Bland v Ingrams*"), a case which had been relied upon during the Hearing.

20. The Judge's response to these points was to the effect that he had given his judgment and that if Mr Sik wished to challenge that judgment he could do so on appeal. In refusing an application for permission to appeal in respect of his decision to order payment of only 50% of the rent from the date of re-entry, the Judge again expressed the view that this order was within his discretion having heard all the evidence.
21. Following argument on costs, the Judge then determined that Mr Sik should pay 50% of Mr Malik's costs. This included the costs of the second strike out application and the Relief Claim. Upon Ms Coyle querying whether the Judge would address the actual costs of forfeiture separately (costs which it had been conceded by Mr Lonsdale were payable by Mr Malik), the Judge said that he would not because he had looked at all of the costs "in the round". The Judge refused an application for permission to appeal his decision on costs, including on the grounds that he had conflated the legal costs with the costs of forfeiture.

#### The Grounds of Appeal

22. Leaving aside the question of procedural unfairness, the grounds of appeal are as follows:
  - i) "Ground 1: the learned Judge erred by reducing the rent due as a condition of relief from forfeiture to 50% between peaceable re-entry and the grant of relief from forfeiture despite there being no evidence of use [by Mr Sik] (alleged landlord), such lack of evidence the learned Judge accepted. The learned Judge asserted he was exercising a discretion to do what is 'appropriate' and based on making 'allowances' because [Mr Sik] 'chose to resist the Application' when there was no other evidence of breaches before him";
  - ii) "Ground 2: the learned Judge erred by awarding [Mr Malik] 50% of [his] costs"; and
  - iii) "Ground 3: the learned Judge erred by conflating legal costs with re-entry costs".
23. There is no appeal as to Judge's decision to grant relief from forfeiture and so no appeal against paragraphs [36]-[44] of the Judgment in which he sets out the reasoning behind that decision.
24. By an Order dated 17 October 2024, Meade J granted permission to appeal on Grounds 1 and 3 observing that these grounds included arguable points of law and/or tenable allegations that the Judge had no basis for the decision made. Permission was also granted in respect of Ground 2 but "only because it appears to have some arguable relationship to and dependency on Grounds 1 and/or 3". Meade J made clear in his



reasons that “[t]he grant of permission should not be understood to endorse a general attack on the overall assessment of costs if no other point is made out”.

#### Ground 1: the reduction in rent to 50%

25. Put simply, Ms Coyle, who appears again on this appeal for Mr Sik, submits that the Judge had no discretion to reduce the amount of rent due between peaceable re-entry and the grant of relief. She accepts that there is authority for such a reduction to be made where there is evidence of a landlord receiving a benefit from use of the Property during such a period, but she says that, as the Judge accepted, there is no such evidence here.
26. By contrast, Mr Lonsdale, who again appears for Mr Malik, submits that the approach taken by the Judge was reasonable and well within the generous ambit given to him in the exercise of his discretion to decide the terms on which relief from forfeiture should be granted. He seeks to rely on unreasonable resistance on the part of Mr Sik to the Relief Claim, and he submits that, in light of this behaviour, it would have been unreasonable for the Judge to require Mr Malik to make full payment of rent arrears as a condition of relief. His central submission is that there is no authority which determines what a court of equity should do where a tenant “is wrongly kept out of premises by a wholly unjustified resistance to relief being granted over four hearings and where the court is not presented with any evidence one way or the other as to the use the landlord has made of the premises during the long period between forfeiture by re-entry and relief being obtained”. Against that background, Mr Lonsdale contends that the Judge was attempting to balance the entitlement to rent against the fact that Mr Sik’s unjustified resistance to relief had denied Mr Malik the use of the Property for seven months. Accordingly, Mr Lonsdale invites this court to determine that “an unwarranted resistance to an inevitable order for relief may lead to the landlord not being able to recover the entire contractual rent during the period of resistance”. Mr Lonsdale submits that this approach would encourage reasonableness on the part of landlords generally, both in the method adopted for forfeiting a lease and in the decision whether to resist an application for relief.
27. It is common ground that the County Court has power under the County Courts Act 1984, section 139(2), (“**CCA 1984**”) to grant relief from forfeiture in a case of re-entry on grounds of non-payment of rent:

“(2) Where a lessor has enforced against a lessee, by re-entry without action, as right of re-entry or forfeiture as respects any land for non-payment of rent, the lessee may at any time within six months from the date on which the lessor re-entered apply to the county court for relief, and on any such application the court may, if it thinks fit, grant the lessee such relief as the High Court could have granted”.
28. During the course of submissions, I was referred to a number of authorities which deal with the scope of the court’s powers on an application made under section 139(2) CCA 1984. I can summarise the main principles as follows:
  - i) The foundation of the equitable jurisdiction to relieve from forfeiture on non-payment of rent is that the right of re-entry reserved by the lease in the event of

non-payment of the rent is regarded as a security for payment of the rent (*Bland v Ingrams* per Chadwick LJ at [12] and [23]);

- ii) Thus, relief from forfeiture will normally be granted upon terms that the arrears of rent and any costs properly associated with re-entry are discharged (*Bland v Ingram* at [12]). This was described as “an invariable condition of relief” by Pennycuik J in *Barton Thompson & Co Ltd v Stappling Machines Co* [1966] Ch 499 (“*Barton Thompson*”) at page 510, a description that was adopted by Arden J in *Inntrepreneur v Langton* [2000] 8 Estates Gazette 169 and repeated in *Bland v Ingrams* at page 184 and by Arden LJ (as she had then become) in *Crisp v Easthaugh* [2007] EWCA Civ 638 at [17];
- iii) The precise length of time within which the arrears of rent and any costs must be paid is a matter of discretion for the court (*Barton Thompson* at page 510 and *Crisp v Easthaugh* at [17]);
- iv) However, “the imposition of the condition is not a matter of discretion: it is a requirement of law rooted in the principle upon which relief is granted. It follows that readiness to pay arrears within such time as the court shall think fit is a necessary condition of the tenant’s claim for relief” (*Crisp v Easthaugh* at [17] citing *Inntrepreneur v Langton*). In the very recent case of *The Tropical Zoo Ltd v The Mayor and Burgesses of the London Borough of Hounslow* [2024] EWHC 1240 (Ch); [2024] L&TR 31, Bacon J, citing *Crisp v Easthaugh*, put the point thus, at [149]:

“Relief from forfeiture is...discretionary, and the court must have regard to the individual circumstances of each case. But the discretion to grant relief is circumscribed by established principle and *is not simply to be exercised in a way that the court considers fair on the particular facts*” (*emphasis added*).

- v) There are sound reasons of policy why the discretion should be circumscribed and consistently exercised: “[i]f the courts do not uphold the terms of the lease except in limited situations, there will be a strong disincentive to landlords to invest in property and let it out on lease. By enforcing rights of property, the law promotes the use and availability of this resource within society, and property can be used...for commercial purposes which can serve society’s prosperity...The principles have been established by the higher courts and over centuries. They cannot be swept aside by this court” (*Crisp v Easthaugh* at [17] citing *Inntrepreneur v Langton*);
- vi) It would however, be inconsistent with the equitable foundations of the jurisdiction to grant relief “on terms which enable the lessor to profit from the exercise of the right of re-entry. The lessor is entitled to be restored to the position in which he would have been if the default which gave rise to the exercise of the right of re-entry had not occurred; but that leads to the conclusion that he should give credit for benefits which he has enjoyed, as a consequence of the re-entry. In so far as those are benefits which he would not have enjoyed if he had not re-entered, he should bring them into account” (*Bland v Ingrams* at [23]). Thus “a lessor who uses the property for his own business during the period of

inchoate forfeiture should be charged with a full occupation rent” (*Bland v Ingrams* at [27]).

29. In *Bland v Ingrams* the facts were slightly complicated because, upon peaceable re-entry for non-payment of rent by the tenant, the landlord of the property (Ingrams Estates) immediately granted a new lease to Mr and Mrs Uddin, effectively making Mr and Mrs Uddin the immediate lessors and persons entitled to possession of the premises. In circumstances where it appears to have been common ground (and is recorded by Chadwick LJ at [19]) that the Uddins had been in actual occupation of the property and had carried on business there, the court applied the principles to which I have referred above such that, in determining what payment should be made to the Uddins by the tenant as a condition of relief from forfeiture, it required the Uddins to bring into account the benefits they had enjoyed whilst in actual occupation (which it quantified by reference to a full occupation rent) during the period in respect of which that payment was to be made.
30. Importantly, as it seems to me for present purposes, although the Court of Appeal subsequently held that the landlord, Ingrams Estates, had attempted “to impede or frustrate a legitimate claim to relief from forfeiture” over many months (conduct to which the Uddins had also been a party) and although Chadwick LJ observed (at [34]) that the landlord’s defence of a claim to relief from forfeiture in relation to a lease in which it did not appear to have any direct commercial or financial interest “may seem bizarre”, nowhere is it suggested that this conduct is relevant to anything other than costs. The Court of Appeal certainly did not treat it as a factor to be taken into account in determining the conditions upon which relief was to be granted.
31. Applying the principles to which I have referred, I consider that Ground 1 of this appeal is made out. The Judge was wrong in law to order payment of only 50% of the rent during the period from peaceable re-entry as a condition of granting relief from forfeiture. In my judgment he had no discretion to bring into account any “allowance” for the fact that Mr Sik had chosen to resist the application, as he appears to have done at [45] of the Judgment, just as he had no discretion to order what he considered to be “appropriate” ([46]) or “an equitable solution” ([48]). The discretion to grant relief from forfeiture is circumscribed and cannot be exercised in a way which the court thinks is “fair” on the particular facts of the case.
32. Mr Lonsdale submits that the “allowance” made by the Judge expressly recognises the unfairness of requiring Mr Malik to pay a full rent in circumstances where he has been “kept out” of occupation of the Property for so long by Mr Sik’s unreasonable resistance to the Relief Claim. However, there is no express finding in the Judgment that Mr Malik had been deliberately “kept out” of the Property or that Mr Sik had “unreasonably resisted” the Relief Claim thereby causing Mr Malik to have been deprived of his right to occupy the Property for many months. There is no cross-appeal to the effect that the Judge should have made findings to this effect.
33. I agree with Mr Lonsdale that the Judge did expressly find that “there are a number of difficulties with [Mr Sik’s] approach” to the Relief Claim (at [38]), specifically Mr Sik’s reluctance to accept that funds were available to pay the rent (notwithstanding letters of 15 and 29 September from Mr Malik’s solicitors seeking to make arrangements to pay) (at [40]-[42]). He also stated at [45] that the Relief Claim had

been “strongly opposed”, and this may have fed in to his view that “allowance” should be made. (Although, this is not clear; I note that in his short judgment on costs the Judge expressly acknowledged that “[Mr Sik] was entitled to strongly oppose [the Relief Claim]” but then went on to observe that the Relief Claim “could have been consented to” and required Mr Sik to pay 50% of Mr Malik’s costs). However, whatever the Judge’s view of Mr Sik’s conduct, there is nothing in any of the authorities to which I was referred to suggest that strong opposition (or even “unreasonable resistance”) to a claim for relief from forfeiture should be taken into account in determining the level of the rental payment to be made by the tenant as a condition of relief and Mr Lonsdale was frank in his acknowledgment that he had been unable to find any authority in support of his arguments.

34. Absent authority and given the clear guidance set out in the cases to which I have referred above, I cannot see that it was within the Judge’s discretion to bring Mr Sik’s conduct of the proceedings, however that was characterised, into the equation when determining the conditions to be attached to the grant of relief from forfeiture. If strong opposition (or “unreasonable resistance”) is relevant to the exercise of the discretion, it is surprising that it was not considered by the Court of Appeal in *Bland v Ingrams*, despite the express finding of “frustration” of a legitimate claim for relief by both Ingrams Estates and by the Uddins – a finding that goes well beyond the Judge’s observation in this case that there were “difficulties” with Mr Sik’s approach to the Relief Claim. The Court of Appeal took this conduct into account only when dealing with costs.
35. Aside from the unspecified “allowance” to which he refers (in [45]), it is not easy to discern from the Judgment how the Judge arrived at the 50% reduction in rent. He appears to have carried out a balancing exercise which involved, on the one hand, the absence of evidence of any unlawful sub-letting, but on the other hand, the absence of evidence that Mr Sik had been able to utilise the Property for his own benefit. As to the former, there was in fact some evidence (albeit contested) of unlawful sub-letting to which I have already referred. However, if relevant at all, that should have been addressed in the context of the exercise of the discretion to grant relief (which is, of course, not challenged on this appeal). It could not possibly be relevant to the imposition of the conditions to the grant of relief, and I did not understand Mr Lonsdale to suggest otherwise.
36. As for the other side of the Judge’s putative balance, it is common ground that there was no evidence one way or another as to what Mr Sik had done with the Property after re-entry. It is also common ground that there was nothing in the pleadings in the Relief Claim that sought to put Mr Sik to proof on this issue. Mr Lonsdale suggests that the Judge must have inferred that Mr Sik had obtained a benefit from his occupation of the Property and he submits that this inference was reasonable in circumstances where Mr Sik had been in occupation and had unreasonably resisted the Relief Claim. He also contends that the burden of establishing how the Property had been used lay with Mr Sik, who had not satisfied that burden. As I understand this submission it is really to the effect that, in all the circumstances, the Judge gave Mr Malik the benefit of the doubt over the use of the Property by Mr Sik in reducing the rent (even if the extent to which either the benefit of the doubt or the “allowance” played into the 50% reduction is unclear).

37. I reject this submission. Aside from the fact that the Judge made no express finding of “unreasonable resistance”, there is nothing in the Judgment to support the proposition that the Judge made the suggested inference. On the contrary, the Judge expressly said in [47] that he had “no evidence”, a point he immediately reinforced at [48] when he said in parenthesis “(and there is no suggestion that the premises remained other than that)”, by which I understand him to have meant (as Ms Coyle submits) that neither side had presented evidence to suggest that Mr Sik had used the Property for his own benefit. Accordingly, if the Judge had made the inference suggested by Mr Lonsdale he would have been wrong to do so given that he had expressly found that there was no evidence one way or another. Against this background, the question of whether or not there was a legal or evidential burden on Mr Sik to draw the court’s attention to any benefits he may have gained from the Property following re-entry appears to me to be irrelevant. Mr Lonsdale did not suggest that he had argued before the Judge that the failure to satisfy any such burden could properly give rise to an inference and he does not appear to have invited the Judge to draw any such inference. There is no cross-appeal from Mr Malik to the effect that the Judge was wrong to determine that there was no evidence of use of the Property by Mr Sik.
38. Beyond the points to which I have referred, I can see no other justification in the Judgment for the decision to require Mr Malik only to pay 50% of the rent. I was concerned to understand the reference in [48] to “the Consent Order on 6 October 2023” but was informed by Ms Coyle (with whom Mr Lonsdale did not disagree) that this was a typographical error and was obviously intended as a reference to the Order of 4 October 2023 in which the Judge had set out the issues to be determined at the Hearing. As for the observation at the end of [48] that “[o]n the evidence that is before me, that is the best I can do”, it is difficult to read this in context as anything other than a reference to (i) the strong opposition to relief mounted by Mr Sik, referred to at [45]; (ii) the absence of evidence of other breaches; and (iii) the absence of evidence of use of the Property for Mr Sik’s benefit. For reasons I have explained, none of these factors properly supports the decision to reduce the rent arrears payable by Mr Malik as a condition of the grant of relief from forfeiture to 50%; indeed, none of these factors properly supports any reduction. I consider that the condition that should have been imposed by the Judge was payment of the full arrears of rent from the date of re-entry to the date of relief.
39. During his oral submissions and again in writing in a short Note following the hearing of the appeal, Mr Lonsdale sought to emphasise the potential consequences of my granting this appeal to all commercial tenants in England who fail to pay “as little as a single penny” on time. He suggested that this would be a licence for unscrupulous landlords to resist claims for relief from forfeiture on spurious grounds and to drag out their resistance so as to leave the tenant (who is relying on his income from the premises to pay the rent) in a situation where he would be unable to satisfy the condition imposed as a grant of relief.
40. I reject these submissions. Even assuming this to be a case involving unreasonable resistance, it is clear that the court has had to deal previously with unjustified resistance to a claim for relief and that it has taken this into account on costs alone. Although there has been an unusual delay in this case between re-entry and the grant of relief, I did not understand that to be commonplace; indeed, Mr Lonsdale informed me that the court would ordinarily deal with applications for relief from forfeiture as a matter of

urgency. Unusually in this case that did not happen, but that appears to have been in no small part because of (i) the introduction of the allegation of waiver into the Relief Claim; (ii) the court's inability to fix a swift return date following the 4 October 2023 hearing and (iii) the court's failure (accepted by the Judge) to issue the Relief Claim for approximately five months from the date on which it was filed. I do not consider there to be anything in this judgment which changes the law as it has previously existed, or which should encourage the kind of behaviour suggested by Mr Lonsdale.

### Ground 3: conflation of costs of the proceedings and the costs of re-entry

41. The Judge dealt with costs when he handed down his reserved Judgment on 8 March 2024 and I have been provided with a transcript of the argument and of his short judgment (“**the Judgment on Costs**”).
42. The argument appears to have focused on the question of the costs of the two applications that were before the court – which I understand to be the Relief Claim and the second strike out application. There was no specific reference (prior to the Judge giving judgment on the issue of costs) to Mr Sik's costs of re-entry. In the circumstances, it is perhaps unsurprising that the short Judgment on Costs focused on “two cross-applications” and did not allude to those costs. Having balanced various factors arising in the parties' pursuit of the Relief Claim, the Judge decided that “[Mr Sik] should pay 50% of Mr Malik's costs”. Ms Coyle then pointed to the fact that this decision did not provide for any separate costs to be awarded in respect of the forfeiture. She complained that she had not had the opportunity to make submissions about peaceful re-entry costs and she referred to a concession from Mr Lonsdale to the effect that Mr Malik must pay “the costs of the forfeiture itself”. Mr Lonsdale acknowledged that he had indeed made such a concession. The Judge observed that in the Judgment on Costs he had looked at the matter “in the round” and that he considered Mr Sik to be “better off in some ways”. The Judge reiterated his decision that 50% of the overall costs was “the right order to make”.
43. While I cannot look at any procedural aspects of this decision, Ground 3 invites me to determine that the Judge was wrong to conflate the costs of re-entry with the costs of the proceedings. Essentially Ms Coyle contends that the Judge made no attempt at an “off-setting exercise”, as he could have done, but that instead he wrongly bundled together the costs of re-entry and the legal costs in the Relief Claim and the second strike out application. She points out that the Judge had available to him a figure for the re-entry costs of £6,246 (as set out in the letter of 11 October 2023; Ms Coyle did not refer me to the similar figure appearing in the Without Prejudice Defence).
44. Mr Lonsdale submits, on the other hand, that, although Mr Malik did indeed concede that he must pay the costs of forfeiture, nevertheless there was no evidence (beyond the assertion in the letter of 11 October 2023) and no breakdown, of those costs. He submits that, in the circumstances, the Judge was unable to make a separate order regarding the costs of forfeiture. Further and in any event, Mr Lonsdale submits that the costs of forfeiture are typically small and that the Judge's overall determination that Mr Sik must pay only 50% of Mr Malik's costs is properly to be regarded as having taken into account any small sum to which Mr Sik may have been entitled in respect of the costs of the forfeiture itself.

45. In *Bland v Ingrams* at [14] Chadwick LJ explained that “the object of the court when granting relief is to put the lessor (as well as the lessee) back in the position in which he would have been if there had been no forfeiture”. He went on to say that it is “this principle which underlies the practice of requiring the applicant, as a term of relief, to pay the costs properly incurred by the lessor in connection with the re-entry and the proceedings for relief. Accordingly, the applicant will normally be required to pay the lessor’s costs of the forfeiture proceedings, save in so far as those costs have been increased by the lessor’s opposition to the grant of relief, upon appropriate terms”.
46. I bear in mind that the court has a discretion on costs and that I may only interfere with the exercise of that discretion if I consider it to have exceeded the generous ambit within which reasonable disagreement is possible. However, in this case I am satisfied that the decision of the Judge fell outside that generous ambit.
47. Mr Malik conceded before the Judge that Mr Sik was entitled to recover the costs of re-entry. This concession was entirely consistent with the principle as expressed in *Bland v Ingrams* that the lessor must be put back into the position he would have been in had there been no forfeiture. In the circumstances, and before determining the question of the remaining costs in the legal proceedings (including both the second strike out application in the Renewal Claim and the Relief Claim), together with any overall percentage deduction, I consider that the Judge should have made clear that the costs of re-entry, together with any other legitimate costs that would have been incurred in connection with a short, unopposed application for relief from forfeiture, must be paid by Mr Malik as a condition of the grant of relief. A determination “in the round” failed to acknowledge Mr Sik’s entitlement to his reasonable costs of the forfeiture.
48. In so far as there was a dispute over the amount of the costs of forfeiture, the Judge could then have taken a view as to the reasonable and proportionate level of such costs (or, if necessary, asked for further information as to how the figure provided in the letter of 11 October 2023 had been arrived at). Having done that, there could have been no objection to the Judge deciding that any award of costs made in Mr Malik’s favour could then be set off against the costs to be paid by Mr Malik in respect of the forfeiture.
49. This was also the approach taken by the Court of Appeal in *Bland v Ingrams*. At [36], Chadwick LJ said this:

“It would be appropriate to require [the tenant] to pay the costs that would have been incurred on a short and unopposed application to the county court for relief from forfeiture, but it would not be appropriate to require [the tenant] to pay the costs which flow from [the landlords’] attempt to defend the indefensible”.
50. At [38] Chadwick LJ granted relief from forfeiture on terms that the tenant pay the Uddins a sum equal to the aggregate of (i) an identified figure for rent plus interest and (2) an amount in respect of the Uddins’ costs “equal to the amount of costs that would have been incurred on an unopposed application for relief in the county court” but after deduction of (3) one half of the tenant’s costs in the Court of Appeal. In other words, as I understand this decision, the Court of Appeal determined that the Uddins must pay 50% of the tenant’s costs in the Court of Appeal, which could be set off against the sums that were payable by the tenant as a condition of the relief from forfeiture.

51. In light of my decision on Ground 3, what order should I make on the costs of forfeiture? Mr Sik contends that I should order that Mr Malik pays the costs of peaceable re-entry in the sum of £6,246. However, I am not satisfied that such an order would be a fair outcome in circumstances where there is, to my mind, a lack of clarity as to what the figure of £6,246 relates to. I note, in particular that, although the letter of 11 October 2023 expressly identifies the costs of “peaceful re-entry” as £6,246, the Without Prejudice Defence filed by Mr Sik to the Relief Claim on the same date (verified by a statement of truth) pleads at paragraph 13 that “[t]he costs of [Mr Sik] stand at £6,246”. On its own, it might be said that one reading of this paragraph is that Mr Sik’s total costs incurred to date amount to that figure. However, if that were right then they would presumably include his costs of pleading in detail to the allegation of waiver – not work which should be covered by an order for costs in respect of forfeiture. I appreciate that there is another possible reading of this paragraph given its position in the pleading, but where there is potential ambiguity and where Mr Lonsdale has taken considerable exception to this figure, I am not persuaded by Ms Coyle’s submission in her Note provided after the appeal hearing that this court is restricted to making an order for the sum set out in the 11 October 2023 letter. I bear in mind that at no time has a breakdown of this figure been provided.
52. Although the figure that I am concerned with is relatively small, it appears to me that the only fair approach for me to take is to give Mr Sik and his solicitors the opportunity to provide the court with detailed information as to the costs reasonably incurred in effecting peaceable re-entry, together with Mr Sik’s costs of dealing solely with the claim for relief from forfeiture up to and including the 4 October 2023 hearing (costs which, doing the best I can, appear to me likely to have been reasonably incurred in connection with the forfeiture). That information (which should be readily available) should be provided as soon as possible to Mr Malik and his solicitors and to the court upon receipt of this judgment. In the event that it cannot be agreed, the matter will have to be addressed following the hand down of this judgment.

#### Ground 2: what provision should be made for costs?

53. I deal with Ground 2 last owing to the indication given by Meade J in granting permission to appeal that this ground is dependent upon the success of the other two grounds. However, where Mr Sik has prevailed on those grounds, I must now consider whether the Judge was right to order that Mr Sik should pay 50% of Mr Malik’s costs.
54. I have again borne in mind that costs are a matter for the broad discretion of the Judge, but where, as here, he informed the parties that he had factored into the exercise of that discretion a matter which (in my judgment) should have been dealt with separately (i.e. the reasonable costs of forfeiture), I do not consider that it would be safe to permit his decision to stand; that decision was plainly wrong. Furthermore, owing to the way in which the Judge expressed himself on costs, it is impossible to discern how he took all the factors to which he had regard into account and thus impossible to say what effect his decision to factor in the reasonable costs of forfeiture had on his overall decision. In the circumstances I reject Mr Lonsdale’s submission that, even if I am against him on Grounds 1 and 3, I should nevertheless decline to interfere with the Judge’s decision on costs.



55. Accordingly, I must exercise the discretion afresh and, in doing so, I must consider the extent to which (if at all) the costs of forfeiture were increased by reason of Mr Sik's opposition to the Relief Claim (such that he should not be permitted to recover those costs) and whether the costs of the various hearings were wasted by reason of the conduct of Mr Sik such that it would be right to order that he pays Mr Malik's costs. I bear in mind that one option for the court is to refuse to permit a landlord to recover all of his costs in connection with forfeiture proceedings and that another option, in appropriate circumstances (as illustrated by *Bland v Ingrams*), is to make an order for costs in favour of the tenant. Given that I must exercise the discretion afresh, it is unnecessary for me to set out the Costs Judgment.
56. Mr Malik succeeded in persuading the court at the hearing on 22 February 2024 to grant relief from forfeiture; in turn this meant that the second strike out application in relation to the Renewal Claim was dismissed. However, to treat Mr Malik as the winning party overall would be to overlook the fact that Mr Malik failed in his waiver claim; a claim included by Mr Malik as his primary case in the Relief Claim, a claim he pursued to an unsuccessful conclusion and a claim which, Mr Sik contends, made it impossible for him to do anything other than resist the Relief Claim. The second strike out application did not feature in the Judgment following the Hearing before the Judge owing to the fact that the court had determined it would first address issues arising in the Relief Claim and once relief was granted, the second strike out application fell away.
57. Mr Lonsdale argues that unreasonable conduct on the part of Mr Sik significantly increased the costs of the proceedings such that an order for payment by Mr Sik of 50% of Mr Malik's costs (i.e. the order made by the Judge) would be fair. Indeed, Mr Lonsdale contends that "[t]he Judge could well have ordered a much higher percentage of costs to be paid to reflect the overall extent of [Mr Malik's] success", although he did not go so far as to suggest that in exercising the discretion afresh, I should take that approach.
58. In support of these arguments, Mr Lonsdale raises three main points. First he says that by 8 September 2023, Mr Sik had received a fully pleaded claim in the Relief Claim to which he should have consented on that date, thereby bringing the proceedings to an end – on this analysis the hearings on 4 October 2023, 22 February 2024 and 8 March 2024 would not have been necessary and the costs incurred in dealing with those hearings were wasted. Second he says that at the hearing on 4 October 2023, Mr Sik should have consented to an order for relief, but on the basis that he wished to continue to dispute the waiver point. Mr Lonsdale says that Mr Malik could then have resumed occupation of the Property so long as he complied with the terms granting relief from forfeiture. On this scenario, however, I understood Mr Lonsdale to accept that it would still have been necessary for the parties to attend court to argue over the alleged waiver. Third, Mr Lonsdale says that after the 4 October 2023 hearing, Mr Sik should not have continued to resist the grant of relief up to and including at the hearing on 22 February 2024. He points to the Judge's observations in his Judgment about Mr Sik's "strong opposition", his rejection of the proposition that the court must be satisfied that the tenant has the means to pay the rent before it will grant relief from forfeiture and his reference to the letters from Mr Malik's solicitors dated 15 September 2023 and 29 September 2023 seeking to make arrangements to pay the rent arrears.

59. Taking these arguments in turn, I reject the suggestion that Mr Sik acted unreasonably at the time of the 8 September 2023 hearing which was listed for a CCMC in the Renewal Claim. On 7 September 2023, before receipt of the Relief Claim, Mr Sik issued the second strike out application, as he was entitled to do where there had been no intimation that a claim for relief from forfeiture would be made. After hours that same evening, Particulars of Claim in the Relief Claim were provided to his legal team. It is unsurprising, in the circumstances, that the hearing was adjourned. The recitals to the Order made following that hearing record both the issue of the second strike out application and the lodging of the application for relief from forfeiture as the background to the court's decision to adjourn the CCMC. Furthermore, at this stage the court ordered that the second strike out application (and not the Relief Claim) be dealt with at the next hearing. I cannot see that Mr Sik can be criticised at this point for failing to accede to an application for relief from forfeiture which had only been notified to him the night before the CCMC and which had not yet been issued. Further and in any event, Mr Sik could not simply have conceded the application for relief from forfeiture without a court order, without risking the creation of a new lease.
60. In this regard, Ms Coyle drew my attention to *Zestcrest Ltd v County Hall Green Ventures Ltd* [2011] 3 EGLR 9, a decision of District Judge Worthington sitting in the Lambeth County Court. In that case it was agreed that there had been a lawful forfeiture of a lease by peaceable re-entry, but the issue was whether it was reasonable for the landlord to require the tenant to issue proceedings for relief from forfeiture. The District Judge held that it was reasonable, essentially because (i) a lawful re-entry brings a lease to an end by operation of law; (ii) a lawful re-entry cannot simply be set aside or waived by agreement of the parties; (iii) a lease, once forfeited, cannot be revived by the parties on the pretence that there has been no forfeiture; and (iv) it is only the grant of relief from forfeiture by the court that has the statutory effect (pursuant to section 138 (9B) CCA 1984) of enabling the tenant to "hold the land according to the lease without any new lease". In the circumstances, the District Judge determined that he was satisfied that:
- "in order to preserve and continue the original lease between the parties, an application to the court under section 138 was necessary and any other consensual arrangement between the parties in the absence of such an application would be likely to amount to the grant of a new lease and therefore prejudicial to the landlord because it would not be contracted out of the 1954 Act".
61. Although section 138(9B) CCA 1984 is expressly said to apply to the grant of relief on an application under section 138(9A) (which is not concerned with peaceable re-entry) and although it therefore appears to me that the appropriate section (at least in this case) is section 139(2) CCA 1984 (as indeed is common ground), Mr Lonsdale did not suggest that the District Judge was wrong in his analysis, or that it did not apply to the facts of this case. Section 139(3) expressly provides that subsections (9B) and (9C) of section 138 "shall have effect in relation to an application under subsection (2) of this section as they have effect in relation to an application under subsection (9A) of that section". Indeed Mr Lonsdale accepted during his oral submissions that parties cannot simply agree that there should be relief from forfeiture without a court order.
62. Returning to the chronology, a few days later, Mr Sik was provided with a second version of the Particulars of Claim in the Relief Claim which now put a new allegation

of waiver at the heart of Mr Malik's case. Specifically, it was alleged that, in light of Mr Sik's waiver, Mr Malik was entitled to damages for trespass or breach of covenant. The claim to relief from forfeiture was now pleaded as an alternative to this claim for damages. In the face of this new claim, it is perhaps unsurprising that Mr Sik was reluctant to accept the offers of rental payments made in letters dated 15 and 29 September 2023 from Mr Malik's solicitors and it is unclear whether Mr Malik would have wished to continue with the waiver claim had these payments been accepted. At the time these letters were written, the Relief Claim had still not been issued and there was no clarity as to which of the versions of the Particulars of Claim that had been sent to Mr Sik would ultimately be relied upon by Mr Malik. As the Judge noted, it would have been possible for Mr Malik to instruct his solicitors to pay the rent arrears into court, albeit as the Judge also observed, there was no requirement for Mr Malik to do this. In any event, Mr Sik could not have risked permitting Mr Malik to re-enter the Property absent a court order for reasons I have already addressed.

63. The matter came back to court on 4 October 2023 before the Judge. However, in circumstances where the Relief Claim had not been issued and Mr Sik had not therefore had an opportunity to file a Defence – including in relation to the waiver claim - it was again adjourned. As I have already recorded, Mr Malik undertook (through Mr Lonsdale) to issue a claim for damages (arising by reason of the alleged waiver) and in the alternative a claim for relief from forfeiture and confirmed that the revised Particulars of Claim would be relied upon. It is difficult to see how or why Mr Sik can be criticised for this adjournment, just as it is difficult to see why he should at this point have conceded Mr Malik's entitlement to relief from forfeiture. The Relief Claim had still not been issued and it was only clear at the hearing which of the two versions of the Particulars of Claim was being relied upon.
64. Furthermore, the issue of waiver depended upon an allegation about the conduct of counsel in her skeleton argument and I accept Ms Coyle's submission that Mr Sik was very concerned not to do anything that might result in another allegation of waiver, a point which is borne out by the content of his subsequent Without Prejudice Defence, to which I refer below. Indeed, it would appear that this concern was not misplaced – Mr Malik has, through his counsel, since sought to suggest that this very appeal is sufficient to amount to a waiver in respect of Mr Sik's right to forfeit for another different alleged breach of covenant (a point which was raised at the hearing before me and, it seems, has since been abandoned by Mr Malik).
65. The question of waiver was not only capable of causing considerable anxiety to Mr Sik, it was also logically the first question to be addressed in determining the Relief Claim as it was now pleaded. This was acknowledged by the Judge when identifying the issues to be determined at the next hearing in his Order of 4 October 2023; the question of waiver came first. This made good sense. Whether the entitlement to relief from forfeiture would be triggered, and on what terms, depended upon the prior question of whether the re-entry by Mr Sik was unlawful, a question which Mr Malik had chosen to put in issue and a question which, on the (still unissued) pleading as it stood had to be determined by the court.
66. Pausing there, it seems to me that in all the circumstances, a fair (albeit inevitably slightly broad brush) approach to take to the identification of Mr Sik's reasonable costs in the forfeiture proceedings is to award him his costs of re-entry together with his costs

of dealing solely with the claim for relief from forfeiture up to and including the 4 October 2023 hearing – hence the indication I have given above in dealing with Ground 2. Absent the waiver claim it could properly be argued that, while the hearing on 4 October 2023 would have been necessary, that was the point at which Mr Sik should have accepted that he had no defence to the claim of relief from forfeiture and submitted to an order.

67. The delay between 4 October 2023 and 22 February 2024 appears to have been caused by the court’s inability to list a hearing with a time estimate of one day prior to that date. Mr Sik served his Without Prejudice Defence in time (a Defence in which the vast majority of the pleading went to the question of waiver and in which Mr Sik explained his inability to accept rent “for fear that [Mr Malik] will consider the provision of the same to be a waiver of the breach”). Mr Sik resisted the claim for relief from forfeiture and he continued to do so in advance of, and at, the hearing on 22 February 2024.
68. When it came to it, the Judge took the view that Mr Sik in fact had no real defence to the claim of relief from forfeiture and he rejected Mr Sik’s main argument that the court could not be satisfied that Mr Malik had the money to pay the rent arrears. The Judge plainly considered that this defence was unmeritorious, and I agree. However, the parties had to attend the hearing on 22 February 2024 in any event to deal with the question of waiver and it is very likely that the hearing of 8 March 2024 would also have had to take place, even if Mr Sik had withdrawn his defence in respect of the claim for relief from forfeiture. The court would still have needed to give judgment on the waiver point and deal with costs.
69. Drawing the strings together:
  - i) I do not consider that Mr Sik’s conduct in resisting the application for relief from forfeiture has led to a proliferation of unnecessary hearings, as was suggested by Mr Lonsdale;
  - ii) however, there is no doubt that it has caused Mr Malik to incur some unnecessary costs in connection with his claim for relief from forfeiture and Mr Sik must pay for these from 5 October 2023 onwards;
  - iii) I also consider that Mr Sik must pay the costs of the second strike out application incurred from 8 September 2023 (i.e. from the date on which it was clear that there was an intention to pursue the Relief Claim). Mr Sik’s solicitor recognised the extent to which the success of the second strike out application was bound up with the success of the application for relief from forfeiture when he suggested a stay of the Renewal Claim;
  - iv) the corollary of approaching costs in this granular way is that, finally, it seems to me that the only fair order in relation to the waiver issue is to require Mr Malik to pay all of Mr Sik’s costs of that issue from the date on which it was first raised. Although an “issues based” order for costs will often not be appropriate, on the facts of this case it seems to me to be apt to achieve justice between the parties.

## Relief

70. During the hearing of the appeal, I asked both parties to produce short Notes (to be provided after the hearing) setting out the relief that they each contend I should grant, in the event that the appeal succeeds. Neither party had addressed the question of relief in their skeleton arguments on the appeal and I felt that there had been some confusion during the course of the hearing as to what was being proposed. Having considered those Notes in detail and given the decisions I have arrived at above, in my judgment:
- i) the relief conditions imposed by the Judge were wrong in law and, in the circumstances, the re-occupation of the Property by Mr Malik is strictly unlawful;
  - ii) the relief conditions should have involved:
    - a) payment by Mr Malik of the entire rent for the period from the date of peaceable re-entry to the date of relief (with account being given for any sums that Mr Malik has attempted to pay by depositing them with his solicitors or with the court);
    - b) payment by Mr Malik of interest on that rent (subject to the account referred to above);
    - c) payment by Mr Malik of the costs of peaceable re-entry together with the reasonable costs incurred in the forfeiture proceedings.
  - iii) where I have held that costs must go in two directions in respect of the remaining issues arising in respect of the Relief Claim and the second strike out application in the Renewal Claim, and where it is impossible for me to know what the outcome of that exercise will be, it would not be appropriate to impose as a further condition of relief the payment of any balance that may ultimately be payable by Mr Malik. This appears to me to be the only pragmatic approach in the circumstances. Obviously, the final position on the payment of costs will also be affected by the fact that Mr Sik has, as I understand it, already paid the costs ordered by the Judge. The question of the level of the costs payable on each side pursuant to my judgment must be dealt with after its hand down.
  - iv) As requested by Mr Sik (who remains concerned about the potential for waiver to be alleged yet again), the revised relief conditions must involve the payment into court by Mr Malik of the sums that are owing. These sums shall be paid to Mr Sik only upon conclusion or earlier settlement of county court claim L01CL618 between the parties. I reject Mr Malik's case that where the monies are only being paid into court there is no imperative for them to be paid by Mr Malik pending the outcome of those proceedings. It seems to me that, having overturned the Judge's decision on the conditions of relief, Mr Malik must now satisfy those conditions, even if that only means that he is paying the monies owed into court.
  - v) Also as requested by Mr Sik, I shall make an order to the effect that Mr Malik gives Mr Sik possession of the Property within a period of time after this judgment in the event that Mr Malik fails to comply with the revised conditions of relief. I can see no basis on which Mr Malik should be protected from ejection

from the Property pending the outcome of the county court proceedings, as was suggested by Mr Lonsdale for the first time in his Note after the hearing and he did not seek to justify this proposal. As for the time for payment, Mr Sik suggests a period of 28 days. Mr Malik says, however that any increase in rent and costs payable by him as a condition of forfeiture will necessitate an additional time in which to pay. This is an issue that I shall determine after the hand down of this judgment.

- vi) My current view is that Mr Sik is entitled to his costs of this appeal but if Mr Malik wishes to argue to the contrary, he must do so following the hand down of the judgment.
71. The outstanding matters on this appeal should have been capable of being dealt with on the papers but, given the extent of the disagreement between the parties, I have determined that they must be addressed at a consequential hearing to be heard remotely with a time estimate of 1 hour.