



In this series of articles, we aim to highlight 3 of the most interesting cases in our field decided in the past month. This month we have chosen 3 Court of Appeal decisions: one on the Electronic Communications Code; guidance on joining a new party after the end of the limitation period; and whether services can be counted as rent for the purposes of determining whether a tenancy is an assured tenancy.

FEBRUARY 2026

On Tower UK Ltd v AP Wireless II (UK) Ltd [2026] EWCA Civ 43

Summary

The Court of Appeal determined that a code operator who is a successor to the original operators is entitled to renew under Part 5 of the Code if the benefit of the agreement had been assigned to it; it did not need to show that it had also assumed the burden of performing the obligations in it, either as a matter of contractual indemnity to the original licensee, or via a deed of covenant given to the site provider.

Why it's important

This decision provides important clarification as to when a successor operator can renew a code agreement under Part 5. Furthermore, the Court of Appeal reiterated that a purposive approach to interpreting the Code should be adopted, stressing that there was no reason why Parliament should be taken to have intended that such an operator should have to renew via Part 4.

Adcamp LLP v Office Properties PL Limited [2026] EWCA Civ 50

Summary

The Court of Appeal decided that a claimant who mistakenly thought that a successor firm had assumed liability for prior acts of professional negligence was not entitled to amend its claim to add or substitute the original firm after the end of the limitation period.

The claimants argued – relying on dicta in *Insight Group Ltd v Kingston Smith* [2014] 1 WLR 1448 - that they fell within s35(6)(b) / CPR 19.6(3)(b), because their



substantive claim was that the advice received was negligent and, if the successor firm had not assumed responsibility for prior professional negligence, this claim could not proceed unless the original firm were joined. The Court of Appeal rejected that argument on the basis that the claim as originally pleaded involved an allegation that the defendant had assumed liability for the negligence, and that allegation would not need to be made against the original firm, so the claims were not the same.

Why it's important

This case demonstrates the importance of joining all potential defendants at the outset if a claim is issued near to the expiry of the limitation period.

Worth noting also is that the Court of Appeal suggested that the Supreme Court might wish to consider whether to overrule existing authority that making a mistake as to the correct identity of the defendant (as here) did not fall within s 35(6)(a) of the Limitation Act 1980/CPR 19.6(3)(a), which was confined to misnomers. Permission to appeal to the Supreme Court has been given, so watch this space!

Phillips v Garraway [2026] EWCA Civ 55

Summary

The Court of Appeal dismissed a second appeal against a possession order. The tenancy in question was not an assured tenancy, because it was a tenancy under which no rent was payable within the meaning of paragraph 3 of schedule 1 to the Housing Act 1988.

The property in question was within the landlords' wider estate. The tenancy agreement provided that the 'rent' would be 2 days' work (agreed to be per week) on the estate. The tenant performed gardening services.

The landlords served notice to quit on the basis that the tenancy was a common law tenancy as no 'rent' was payable within the meaning of the 1988 Act. That argument succeeded at first instance and on first appeal. On second appeal, the tenant argued that the services were 'rent' because the court could calculate their value, even though no value had been agreed (and in face of authority under the Rent Acts that goods or services may be 'rent' only if a value has been attributed to them).

The Court of Appeal unanimously dismissed the appeal. Males LJ, with whom Moylan LJ agreed, considered that Parliament had not intended to alter the position from that under the Rent Acts. Falk LJ said that she was not convinced



Falcon Chambers

that it would be unworkable to extend the definition of 'rent' as the tenant had suggested, but that doubt was outweighed by the indications that Parliament had intended to adopt the same test as under the Rent Acts.

Why it's important

This case will be of relevance to all landlords and tenants whose tenancies make provision for performance of services in lieu of monetary payment (most likely to be estate landowners, as was the case here). If the agreement does not attribute a monetary value to the services provided, such tenants may be without statutory protection.

No amendments are to be made to the relevant provisions by the Renters Rights Act, so this will remain a decision of significance after the main provisions of that Act come into force on 1 May 2026.

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