

Guaranteed to confuse

Good Harvest The outcome of this case has caused a degree of consternation throughout the industry and opinions vary as to its consequences.

LANDLORDS' PERSPECTIVE



Neil Sagoo, partner at Maples Teesdale acts for a number of institutional and private landlords that, post-*Good Harvest*, have had

to reconsider the value of guarantors.

For instance, are guarantees that were given in respect of earlier assignments now unreliable? If so, this will have two implications: it will affect underlying investment values and there is a risk that any guarantors that have been called on to make payments will reclaim money from landlords.

As for future assignments, the decision has negative consequences for both landlords and their tenants. Not only can a landlord no longer insist that a tenant's guarantor guarantees that tenant's

obligations in an AGA, but there is no point in the tenant offering that guarantor voluntarily: the landlord will not want that guarantor because of the risk of its liability being set aside. This will be frustrating for both landlords and tenants. The landlord will, acting reasonably, still expect the outgoing tenant's AGA responsibilities to be guaranteed. However, the tenant will be unable to offer the original guarantor and may have a limited pool of alternative suitable guarantors on whom to call.

The ruling also means that, on the grant of leases or licences to assign a lease, landlords are likely to consider those tenants or assignees supported by guarantors to be of considerably less value than they were before the decision, given that the guarantee will fall away on the next assignment. Our clients might therefore be more insistent on having the guarantor as the tenant/assignee.

Landlords would have liked clarification from the Court of Appeal that a guarantor can be required to guarantee an outgoing tenant's AGA responsibilities on assignment, and that a guarantor's release from liability occurs only on the occasion of the next lawful assignment. This would have been consistent with the principles of the 1995 Act, namely that a landlord can rely on the entirety of a tenant's covenant (albeit, perhaps, enhanced by a guarantor) while it is the tenant and also following assignment up to the next lawful assignment, even though the Act does not say that.

Landlords still look forward to such an interpretation of the 1995 Act. However, they recognise that such a change is not on the coalition's agenda and they will therefore have to wait until another case finds its way to court to challenge, and hopefully reverse, this decision.