**Michaelmas Term**
**[2014] UKSC 57**
*On appeal from: [2012] EWCA Civ 635*

# JUDGMENT

# Telchadder (Appellant)
# *v*
# Wickland Holdings Limited (Respondent)

**before**

**Lady Hale**
**Lord Wilson**
**Lord Reed**
**Lord Carnwath**
**Lord Toulson**

## JUDGMENT GIVEN ON

## 5 November 2014

**Heard on 1 May 2014**

| *Appellant* | *Respondent* |
| --- | --- |
| Martin Westgate QC<br>Lindsay Johnson<br>(Instructed by Shelter Eastern Counties) | Richard Wilson QC<br>Stephen Goodfellow<br>(Instructed by Asher Prior Bates) |

**LORD WILSON:**

*Issues*

1. The appeal raises troublesome issues of construction of para 4 of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 ("the 1983 Act"). By section 1, the 1983 Act applies to any agreement under which a person ("the occupier") is entitled to station a mobile home on land forming part of a protected site and to occupy it as his only or main residence; and, by section 2, the terms set out in Part 1 of Schedule 1 to it shall, notwithstanding any express term to the contrary, be implied in any such agreement between the site owner and the occupier. Thus, by paragraph 1 of Chapter 2 of Part 1, a term is, subject to an irrelevant exception, implied that the occupier's right to station his mobile home on the site shall subsist until the agreement is determined under one of four subsequent paragraphs. Of the three (now numbered 4, 5 and 5A) which relate to determination by the site owner, the relevant paragraph is 4 ("the para 4 term") which provides that:

> "The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the appropriate judicial body –
>
> (a) is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and
>
> (b) considers it reasonable for the agreement to be terminated."

2. In the present case the occupier's breach was an act of anti-social behaviour. It raises the following issues:

   (i) Can an occupier 'remedy' a breach of a covenant against anti-social behaviour?

   (ii) If not, what is the effect of the para 4 term?

   (iii) Alternatively, if so,

(a) how may he 'comply' with a notice to remedy and

(b) what is the effect of his obligation to do so 'within a reasonable time'?

3. Mr Telchadder, who is an occupier of a mobile home, appeals against an order of the Court of Appeal (Mummery LJ, Black LJ and Dame Janet Smith) dated 16 May 2012, [2012] EWCA Civ 635, by which it dismissed an appeal against an order made by HHJ Moloney QC in the Southend County Court on 17 August 2011. In proceedings brought by Wickland (Holdings) Ltd ("Wickland"), which owns and operates a site for mobile homes at Meadowview Park, Little Clacton, Essex, Judge Moloney held that, pursuant to the para 4 term, Wickland was entitled to terminate its agreement with Mr Telchadder dated 1 June 2006 and he proceeded to order that his licence to station his mobile home at Plot No.160 at the park be terminated forthwith. Pending determination of this appeal and, were it to fail, of a potential application to suspend execution of the judge's order under section 4 of the Caravan Sites Act 1968 ("the 1968 Act"), Mr Telchadder continues to station his mobile home at Plot No. 160 and to occupy it there.

*Facts*

4. The site at Meadowview Park is protected within the meaning of sections 5(1) of the 1983 Act and 1(2) of the 1968 Act. It is not a site for holiday caravans: the mobile homes are for occupation throughout the year and are fixed to the ground and, notwithstanding their description, they are not easily removed. There are about 200 homes on the site. The close proximity in which they are set places a premium on good-neighbourliness. About 30% of the occupiers are aged at least 70 and children aged under 16 are not permitted permanently to reside there. Wickland does not own the homes and it appears that the occupiers themselves almost always own them. Occupiers who merely rent the homes from third parties may well not be protected under the 1983 Act: see Clayden, *The Law of Mobile Homes and Caravans*, 2nd ed (2003), p 87.

5. On 1 June 2006 Mr Telchadder entered into a written agreement with Wickland for the right to station a mobile home, which he owns, on the park, at Plot No.160, on payment of a pitch fee of £1516 p.a. subject to annual review. The terms which the 1983 Act required to be implied into the agreement, therefore including the para 4 term, were all set out expressly in accordance with section 1(2)(d) of that Act. Mr Telchadder also expressly undertook not to act in such a way as to annoy or disturb other occupiers of

the park. Furthermore he undertook to comply with the Park Rules, which were annexed to the agreement. By way of preface to the rules, Wickland stated that their object was not to place unnecessary restrictions on residents but to ensure that they might live peacefully in unspoilt surroundings and it explained that some of them were necessary because residents lived in closer proximity than house-dwellers. One rule forbade residents to carry offensive weapons or any other objects likely to give offence while on the park. Another rule repeated the prohibition against acts of annoyance to other residents.

6. Judge Moloney found that Mr Telchadder, who is middle-aged, was somewhat eccentric and suffered certain mental problems, had a mild learning disability and exhibited autistic traits.

7. On 31 July 2006 Miss Puncher, a female resident of the park, complained to Wickland that a man in camouflage clothing, with camouflage netting over his head, had startled her by jumping out at her from behind a tree on the park and by waving at her. The man was Mr Telchadder. Although Wickland did not plead this incident in its Particulars of Claim, the judge held that he thereby "breached a term of the agreement" for the purposes of the para 4 term, in that he broke his undertaking not to act so as to annoy or disturb other occupiers of the park; and the successive appeals have proceeded on that basis.

8. By letter dated 15 August 2006 to Mr Telchadder, Wickland wrote:

> "… there is the … extremely serious matter of your behaviour in that you are dressing in what appears to be military combat clothing and obscuring your face with a mask while outside your home in the Park area.
>
> You are also making unwanted approaches to some Residents while dressed in this manner causing alarm and distress.
>
> Your apparel in itself is not a great problem but not really desirable or in keeping with Meadowview Park, it is your actions which are not acceptable in that:
>
> A. ON NO ACCOUNT MUST YOU MASK OR OBSCURE YOUR FACE WHEN YOU ARE IN ANY AREA OF THE PARK OUTSIDE YOUR HOME

B. ON NO ACCOUNT MUST YOU MAKE UNSOLICITED APPROACHES OR ADVANCES TO OTHER RESIDENTS ON MEADOWVIEW PARK

> Should you ignore either A or B above you will leave us no alternative but to apply to Colchester Court to have your Agreement terminated and your home removed from Meadowview Park."

Judge Moloney held that the letter dated 15 August 2006 amounted to "a notice to remedy the breach" which had occurred on 31 July 2006 for the purposes of the para 4 term. The Court of Appeal agreed with him; and the current appeal proceeds on that basis.

9. The central fact in this appeal is that Mr Telchadder committed no further breach of the agreement until 15 July 2009, almost three years after the notice dated 15 August 2006. It is true that in June 2007 and April 2008 Wickland had written further letters to Mr Telchadder, prompted by further complaints by residents of a relatively minor character, but the judge attached no significance to them.

10. On 15 July 2009 Mr Telchadder (so the judge found) told Mr Carter, a resident of the park, that two women had reported him for jumping out on them in the woods and that he, Mr Telchadder, was going to kill them. When Mr Carter told him to calm down, he said "I'll fucking kill you as well – I've got shotguns and air rifles". Mr Carter called the police and Mr Telchadder left. But he soon returned, swinging a stick and repeating that he was going to kill him. The judge found, however, that Mr Telchadder never intended to implement his threats to kill the women or Mr Carter and that the threats were stupid and ill-advised.

11. By letter dated 12 August 2009 Wickland informed Mr Telchadder that, because he had been harassing, threatening and terrorising other residents, it proposed to apply to court for termination of his agreement. On 8 September 2009 it issued its claim for possession of Plot No.160. But the hearing of the claim did not begin until 15 August 2011 and, in the intervening period of almost two years, Mr Telchadder, so the judge found, perpetrated other acts to which the judge had regard in considering, for the purpose of sub para (b) of the para 4 term, whether it was "reasonable for the agreement to be terminated".

12. The other acts were as follows:

(i) In October 2009 an anonymous note was delivered to Mr Carter's home. Mr Carter decorates his home with two Samurai swords. The note asked Mr Carter to leave one of the swords outside for the writer to collect. Later Mr Carter saw Mr Telchadder lurking outside his house. Mr Telchadder (so the judge found) had written the note.

(ii) In February 2010 Mr Telchadder harassed and intimidated two elderly residents, one of whom was also disabled, as a result of which, on his plea of guilty, the local magistrates made an order restraining him from contacting them again.

(iii) In July 2010 Mr Telchadder behaved in a threatening manner to a member of the family which owns and operates Wickland.

(iv) In March 2011 Mr Telchadder left empty shotgun cartridges outside Mr Carter's home.

(v) In April 2011 Mr Telchadder approached two elderly residents, who asked him to go away and threatened to call the police. At their request another resident joined them. Later Mr Telchadder returned, confronted the other resident, used foul language towards him and put his face up close to him. The other resident pushed him away.

*Legislation*

13. About 85,000 households live in mobile homes on about 2000 sites governed by the 1983 Act. The number of households is increasing: in 2002 there were only about 65,000. As at Meadowview, a substantial proportion of the residents of mobile homes (about 68% in 2002 and probably more today) are elderly.

14. The law has been slow to bring security of tenure to occupiers of mobile homes. First, limited, steps were taken in the 1968 Act. Section 2 provides that, where a contract is terminable by notice, at least four weeks' notice must be given. Section 3(1) makes it a criminal offence for a site owner to recover

possession of a plot otherwise than by court order. Section 4(1) empowers the court to suspend execution of a possession order for up to a year at a time.

15. The Mobile Homes Act 1975 ("the 1975 Act"), by section 2(1), obliged a site owner to enter into a written agreement with an occupier for a minimum of five years. Section 3 required the agreement to include a number of terms there specified, including provision for:

> "(g) the right of the owner to determine the agreement for breach of an undertaking, subject to the requirement, in the case of a breach which is capable of being remedied, that he has served written notice of the breach upon the occupier and has given the occupier a reasonable opportunity of remedying it;"

16. Before proceeding to consider the 1983 Act, I should compare section 3(g) of the 1975 Act with section 146(1) of the Law of Property Act 1925 ("the 1925 Act"), which replaced section 14(1) of the Conveyancing and Law of Property Act 1881 (44 & 45 Vict c 41) and which restricts a lessor's right of forfeiture for breach of covenant on the part of the lessee. The right is unenforceable

> "unless and until the lessor serves on the lessee a notice –
>
> (i) specifying the particular breach complained of; and
>
> (ii) if the breach is capable of remedy, requiring the lessee to remedy the breach; and
>
> (iii) in any case, requiring the lessee to make compensation in money for the breach;
>
> and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money… for the breach."

In drafting section 3(g) of the 1975 Act the draftsman almost certainly had section 146(1) of the 1925 Act in mind. Both subsections require service of a notice of the breach which gives the lessee/occupier a reasonable opportunity to remedy it. More importantly for present purposes, both qualify

their provisions by reference to the case of a breach which is "capable of remedy" or "capable of being remedied". But the qualification operates at different stages. Section 146(1) requires service of a notice in any event but, if the breach is capable of remedy, the notice must require the lessee to remedy it and he must be given a reasonable time in which to do so. Section 3(g), by contrast, did not require service of a notice at all unless the breach was capable of being remedied.

17. For reasons irrelevant to this appeal, the limited security of tenure which, by the 1975 Act, Parliament sought to give to occupiers of mobile homes proved to be flawed. The 1983 Act largely replaced the 1975 Act and, in particular, section 6(2) of the former (together with its related Schedule) repealed section 3(g) of the latter.

18. The three terms implied by paragraphs 4, 5 and 5A of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act, and which represent the owner's only means of determining an agreement to which the Act applies, take an unusual form. They provide that the owner's very entitlement to determine the agreement arises only once a court (or in some cases a tribunal) has been satisfied of one of the three facts respectively there specified and has concluded that it is reasonable for the agreement to be determined. If, at the end of the proceedings, his entitlement thus arises, the owner can, as the history of the present case demonstrates, there and then exercise his entitlement and obtain an order that the licence be duly terminated.

19. Thus I arrive back at the para 4 term, set out in 1 above. The difficulties surround the requirement in sub para (a), which it is convenient to set out again, namely that the court should be

> "… satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time;"

20. Omitted from sub para (a) of the para 4 term is any reference to "a breach which is capable of being remedied", such as was included in section 3(g) of the 1975 Act and as is, with minor terminological variation, included in section 146(1) of the 1925 Act. Debate surrounds the omission. We should surely assume that the draftsman of sub para (a) had in mind the words of the provision which it was replacing and we should strive to attach significance to the omission. But there is nothing in the para 4 term, even when considered in the context of the other terms and of the apparent purpose of the entire 1983 Act, which casts any light on the reasons for the omission. In the end

the question is whether to seek to attribute significance to the omission by concluding that the twin requirements in sub para (a) to serve notice and to afford to the occupier a reasonable time within which to comply with it apply even to a breach which is incapable of remedy. In my opinion the question has only to be asked for it to be rejected. It would be nonsensical to require service of a notice to remedy a breach which is incapable of remedy.

21. A similar approach was adopted by Lord Reid in *L Schuler AG v Wickman Machine Tool Sales Ltd* [1974] AC 235. The basis of the decision of the House of Lords was that, in context, the word "condition" in the contract between the parties did not mean a term, breach of which afforded to the other party an immediate and unqualified right to rescind. But, in his reasoning to that end, Lord Reid adverted to clause 11(a)(i) of the contract which entitled either party to determine the agreement if "the other shall have committed a material breach of its obligations hereunder and shall have failed to remedy the same within 60 days of being required in writing so to do". In a passage with which Lord Simon of Glaisdale agreed, Lord Reid said, at p 249, that it appeared to him that the clause was intended to apply to all material breaches of the agreement which were capable of being remedied. So, although it was contractual rather than statutory, the provision, as here, referred to a breach, to a written requirement to remedy it and to a failure to do so; and, notwithstanding the absence of any express limitation to breaches capable of remedy, it was construed to be so limited.

22. I conclude that the twin requirements in sub para (a) of the para 4 term refer only to a breach capable of remedy. Perhaps the draftsman of sub para (a) considered that the reference in section 3(g) of the 1975 Act to a breach capable of remedy was unnecessary. Alternatively his omission of it might even have been a rare, inadvertent error.

*Breach Capable of Remedy*

23. The next challenge is to identify the nature of a breach which, in the context of the 1983 Act, is capable of remedy. The only jurisprudence which affords assistance relates to the interpretation of the clause in section 146(1) of the 1925 Act that "if the breach is capable of remedy…". I see no danger in borrowing from it.

24. The breach by a lessee (or a licensee) most obviously capable of remedy is a breach of a positive obligation. Under the agreement Mr Telchadder had, for example, obligations to pay the pitch fee monthly in advance and to keep his mobile home insured and in a sound state of repair. Any breach of these

obligations would ordinarily have been capable of remedy – by belatedly paying the fee (together with interest) and by belatedly insuring or repairing the home (together with damages for any loss caused by his delay in doing so). In *Expert Clothing Service and Sales Ltd v Hillgate House Ltd* [1986] Ch 340, at p 355, Slade LJ, with whom the other members of the Court of Appeal agreed, accepted that the breach of a positive covenant would ordinarily be capable of remedy. Ordinarily… but not always. Slade LJ noted that, for instance, the burning down of the premises during a period of the tenant's failure to insure would be irremediable. So, no doubt, would be their collapse by reason of a failure to repair.

25. But what about a breach of a negative obligation?

26. In *Rugby School (Governors) v Tannahill* [1935] I QB 87 the school owned a property in Great Ormond Street which, in breach of her covenant not to do so, its lessee allowed to be used as a brothel. The Court of Appeal rejected the trial judge's conclusion that breach of a negative covenant was never capable of remedy. But, although the lessee had closed the brothel, it proceeded to hold that the stigma attaching to the property and the resultant loss of value rendered the breach irremediable (Greer LJ, p 91) or, at least, irremediable within a reasonable time (Maugham LJ, pp 93-94).

27. Notwithstanding an early grumble of discontent (see *Hoffmann v Fineberg*) [1949] Ch 245), the law has proceeded from the foot of the observations of the Court of Appeal in the *Rugby School* case that some breaches of negative covenants are remediable within the meaning of section 146(1) of the 1925 Act. As O'Connor LJ said in the *Expert Clothing* case, at p 362:

> "To stop doing what is forbidden by a negative covenant may or may not remedy the breach even if accompanied by compensation in money. Thus to remove the window boxes and pay for the repair of any damage done will remedy the breach, but to stop using the house as a brothel will not, because the taint lingers on and will not dissipate within a reasonable time."

28. In *Savva v Hussein* (1996) 73 P and CR 150 the breaches by a lessee of commercial premises were of negative covenants, namely not to change the exterior sign and not to alter the premises without consent. The Court of Appeal held that the breaches were remediable. Staughton LJ said at p 154:

> "In my judgment…the question is: whether the remedy referred to is the process of restoring the situation to what it would have been if the covenant had never been broken, or whether it is sufficient that the mischief resulting from a breach of the covenant can be removed. When something has been done without consent, it is not possible to restore the matter wholly to the situation which it was in before the breach. The moving finger writes and cannot be recalled. That is not to my mind what is meant by a remedy, it is a remedy if the mischief caused by the breach can be removed. In the case of a covenant not to make alterations without consent or not to display signs without consent, if there is a breach of that, the mischief can be removed by removing the signs or restoring the property to the state it was in before the alterations."

Aldous LJ, at p 157, cited the conclusion of Slade LJ in the *Expert Clothing* case that the test was whether the harm resulting from the breach could effectively be remedied and noted that the breach in that case was of a positive covenant. He observed:

> "There is in my view nothing in the statute, nor in logic, which requires different considerations between a positive and negative covenant, although it may be right to differentiate between particular covenants. The test is one of effect."

29. In *Akici v LR Butlin Ltd* [2005] EWCA Civ 1296, [2006] 1 WLR 201, the breach by a lessee of commercial premises was also of a negative covenant, namely not to share possession of the premises. The Court of Appeal held that the lessor's notice failed to comply with section 146(1) of the 1925 Act in that it specified only other alleged breaches which it had failed to establish. But the court went on to observe that the breach was remediable and indeed had been remedied by a discontinuance of the sharing of possession. Neuberger LJ, with whom Mummery LJ agreed, suggested at para 64 that the proper approach to the remediability of a breach should be practical rather than technical; and he conjectured at para 65 that the great majority of breaches of covenant should be capable of remedy.

30. The breaches of negative covenants in the *Rugby School*, *Savva* and *Akici* cases had a continuing effect. They precipitated a state of affairs. The brothel stayed open until it was closed – and even then the continuing stigma precluded remediability. The sign stayed up until it was taken down; the alterations remained until they were removed. Possession remained shared until the sharing was discontinued. Mr Telchadder entered into negative

covenants of analogous effect. He undertook, for example, not to erect a shed on the plot licensed to him. Had he done so, the breach would surely have been remediable by his dismantling it and paying any necessary compensation. But the nature of the covenant which he broke and of his breach of it was of a different order. The covenant was not to act so as to annoy or disturb other occupiers and the breach was to jump out at Miss Puncher while he was dressed in camouflage and thereby to startle her. Nothing could thereafter have been done to "unstartle" Miss Puncher. That is why the word does not exist. The incident had ended. It must have been highly unpleasant for her but there is unsurprisingly no evidence that she suffered other than transient distress. So its effects had ended too. Was that breach remediable and, if so, how?

31. In my view the answer is to be found by a practical inquiry whether and if so how (to adapt the words of Staughton LJ in the *Savva* case) the mischief resulting from Mr Telchadder's breach could be redressed. In relation to a breach of a covenant against anti-social behaviour, there is no escape from the conclusion that the inquiry requires a value judgement on the part, first, of the covenantee and, then, of the court in determining whether the requirements of section 146(1) of the 1925 Act, or, as the case may be, of the para 4 term have been satisfied. Had Mr Telchadder not only jumped out at Miss Puncher but, for example, deliberately perpetrated a significant injury upon her, Wickland might well have been entitled to conclude that the breach was irremediable; that there was therefore no need for it to serve a notice to remedy; that it should apply directly to the court under the para 4 term; but that, as a prelude to doing so, it should notify Mr Telchadder of its proposed application and of its reasons for having concluded that the breach was irremediable and that therefore there was no need for it to serve a notice to remedy. Obviously there would have been a risk that the circuit judge would either have disagreed with Wickland about the irremediability of the breach or have declined to consider it reasonable for the agreement to be terminated. Nevertheless, by reference only to the simple facts postulated, Wickland might have contemplated that risk with equanimity.

32. But Mr Telchadder's breach was in no way of that gravity. To an inquiry whether, and if so how, the mischief resulting from it could be redressed, the practical response is to say: yes, of course it can be redressed by his committing no further breach of his covenant against anti-social behaviour for a reasonable time. That was in effect Wickland's own reaction to the breach when it wrote the letter dated 15 August 2006, namely that Mr Telchadder should remedy it by not perpetrating any further breach. I need to recognise, however, that the para 4 term refers to a failure to comply "within" a reasonable time. That preposition is apt when the necessary remedy is to do something – say belatedly to pay the pitch fee required by a positive

obligation or to remove an alteration effected in breach of a negative obligation. It is inapt when the necessary remedy is not to do something: it makes no sense to require Mr Telchadder not to commit a further breach "within" a reasonable time. In this context sense can be made of the para 4 term only by reading the word "within" as if it meant "for".

*A Reasonable Time*

33. In the Court of Appeal Mummery LJ, with whom the other members of the court agreed, said at para 52:

> "[Counsel for Mr Telchadder] objected that the notice could not possibly have been intended by Parliament to have perpetual effect. As there had been compliance for a reasonable time following the 2006 notice, it was necessary, he asserted, to serve another notice before commencing proceedings. I do not agree. Paragraph 4 does not set any end-date for the expiration of a notice. There is no reason why the notice served in this case should not have continuing effect for the whole period of [Mr Telchadder's] occupation of the mobile home on Plot Number 160. All that the notice was seeking to achieve was future compliance with continuing obligations in circumstances where [a breach] had already occurred."

34. It is, indeed, tempting to reflect that Mr Telchadder had committed a breach of the agreement; that it was hardly oppressive to require him to abide by it for as long as it was to subsist; and that, even were he to commit a further breach, the safety net of sub para (b) of the para 4 term remained in place to protect him unless it was reasonable for the agreement to be terminated. But, with respect to a distinguished judge, I consider that Mummery LJ has failed to afford proper value to sub para (a) of the para 4 term. If, which I doubt, it is helpful to speak of the "expiration" of the notice, it occurs under sub para (a) once the occupier has complied with it within a reasonable time. It is wrong to say that para 4 sets no end-date for its expiration. To equate the phrase "within a reasonable time" with "throughout the subsistence of the agreement" is, in this context, to deprive it of all significance. It raises the prospect of an order for termination based primarily upon a breach committed perhaps 20 or 30 years earlier, provided that (which seems doubtful) the site owner is then in a position to prove it. And it places the occupier for whom, like Mr Telchadder, the requisite remedy happens to be *not to do* something in an anomalously different situation from that of the occupier for whom the requisite remedy happens to be *to do* something. The latter can do it promptly,

thereby comply with the notice and rid himself of its overhanging effects under sub para (a).

35. Wickland protests that to reject the Court of Appeal's conclusion that the requirement to comply with the notice continues indefinitely is to permit the anti-social occupier to play cat and mouse with the site owner to the distress of the park community. The spectre is that the occupier commits a breach and is served with a notice; that he commits no further breach for a reasonable time and thereby complies with the notice; that thereupon he commits a further breach; that the cycle begins again; and that his licence cannot be terminated. I trust that the spectre is indeed just that – unreal; but I am confident that, all other things being equal, a reasonable time for compliance with a notice to remedy a second breach will be longer than for compliance with a notice to remedy a first.

*Conclusion*

36. It remains only to consider whether in all the circumstances the period of almost three years during which Mr Telchadder complied with the notice dated 15 August 2006 amounted to a reasonable time for him to comply with it. My view is that it clearly did so; and it is inappropriate to speculate about whether some shorter period would also have done so. In retrospect it is obvious that, following the breach dated 15 July 2009, Wickland should have served a further notice to remedy; or, in the light of its seriousness, have raised an allegation that it was irremediable, upon which, no doubt, there would have been lively argument. Relevant to that issue would have been a finding (which the judge did not make) as to whether, although Mr Telchadder never intended to implement his threats to kill, Mr Carter took them seriously. It is too late to introduce into these proceedings the issue of whether that breach was irremediable. But, in the light of the surprising absence, until now, of any analysis of the proper application of the para 4 term to a breach of a covenant against anti-social behaviour, Wickland can hardly be criticised for having proceeded as it did.

37. I would allow Mr Telchadder's appeal and would determine the issues identified in para 2 above as follows:

    (i) An occupier can in principle 'remedy' a breach of a covenant against anti-social behaviour but some such breaches are so serious as to be irremediable.

(ii) Not applicable

(iii) (a) The occupier 'complies' with a notice to remedy a remediable breach of such a covenant by not committing any further breach of it within a reasonable time.

(b) The effect of his obligation not to do so within a reasonable time is that he must not do so for a reasonable time.

38. Since drafting this judgment, I have read, in draft, the judgments of Lady Hale, of Lord Carnwath (with which Lord Reed agrees) and of Lord Toulson. I suggest that the effect of the four judgments is as follows:

(a) I, Lady Hale and Lord Toulson conclude that, in the case of an irremediable breach, the para 4 term does not require service of a notice to remedy it. But our conclusion in this respect is not central to this decision because the breach dated 31 July 2006 was not irremediable and in any event a notice to remedy it was duly served.

(b) All members of the court conclude that Mr Telchadder's appeal should be allowed but the reasons given by Lord Carnwath and Lord Reed for their subscription to that conclusion represent a minority view. Their reasons are that, in the case of a remediable breach of a covenant against anti-social behaviour, compliance with the notice to remedy must continue indefinitely (Lord Carnwath, para 91 below) but that there needs to be a causal or temporal link between the notice to remedy and the subsequent breach (para 92 below), which was absent in the present case (para 96 below).

(c) By contrast, the reasons of the majority are, in essence, that a breach of such a covenant is remediable if the mischief resulting from it can be redressed; and that Mr Telchadder redressed the mischief resulting from the breach dated 31 July 2006, and thereby complied with the notice to remedy, by not committing a further breach prior to 15 July 2009.

**LADY HALE**

39. The issue in this case is simple to state but difficult to decide: is it open to the owner of a mobile home park to launch proceedings to evict the occupier of a plot, on the basis of a notice to remedy a breach of the term of his licence to occupy which prohibited anti-social behaviour, some years after that notice was served? The answer is important for the large and growing number of people who live in mobile homes and to the owners of the sites where their homes are located. It is important that the occupiers, many of whom are elderly or vulnerable, are protected, not only from anti-social behaviour by their neighbours, but also from over-hasty eviction from their homes.

40. The site owner is only able to terminate his agreement with the occupier in the circumstances laid down in Part 1 of Schedule 1 to the Mobile Homes Act 1983. The relevant one for our purposes is para 4:

> "The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the appropriate judicial body [in this case the local county court] –
>
> (a) is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and
>
> (b) considers it reasonable for the agreement to be terminated."

41. The problem lies with the interpretation of paragraph 4(a). This has three elements:

> (i) that the occupier has breached a term of the agreement;
>
> (ii) that the owner has served a notice to remedy that breach; and
>
> (iii) that the occupier has not complied with the notice within a reasonable time.

42. It is easy to see how this works in the case of a breach of a positive obligation which can readily be put right. If the mobile home has not been painted when it should have been painted, the owner can serve a notice telling the occupier to paint it, and if the occupier does not paint it within a reasonable time, then para 4(a) is satisfied. If the occupier has not paid his site fees on time, the

owner can serve a notice telling him to pay, and if he does not do so (with interest) within a reasonable time, then para 4(a) is satisfied. Incidentally, it is for the court, not the owner, to decide what is a reasonable time, but there is nothing to prevent the owner telling the occupier what he thinks will be a reasonable time, after which he may go to court.

43. It is *not* so easy to see how this works (a) in the case of a breach which cannot be put right; and (b) in the case of a breach of a negative obligation which can be put right. Does the owner have to serve a notice at all in case (a)? What is the effect of a notice in case (b)?

44. On the first question, I agree with Lord Wilson (para 20) that, strictly speaking, the site owner does not have to serve a notice in respect of a breach which cannot be put right. I do not see this as writing words into the Act. A "notice to remedy" necessarily implies that a remedy is possible. The site owner is telling the occupier to remedy the breach and how to do it. How can he do that if no remedy is possible? Why indeed, in such a rare and egregious case, should he have to wait for a reasonable time to elapse before bringing proceedings?

45. If a notice to remedy were always required, then it seems to me that a failure to remedy within a reasonable time would also be required. I have difficulty in seeing how the first can be required, even in the case of an irremediable breach, without the second. It follows that the owner would have to wait for a reasonable time before bringing proceedings even in respect of an irremediable breach. I do not myself see any room for the common law doctrine of a repudiatory breach of contract to apply (the first possibility aired by Lord Toulson at para 57). The site owner is not entitled to bring the agreement to an end otherwise than in accordance with the provisions of Schedule 1: para 1 provides that (subject to an irrelevant exception) "the right to station the mobile home on land forming part of the protected site shall subsist until the agreement is determined under paras 3, 4, 5 or 6 below".

46. In practice, however, given the view expressed by the Court of Appeal in *Akici v LR Butlin Ltd* [2005] EWCA Civ 1296, [2006] 1 WLR 201 that the great majority of breaches should be capable of remedy, it would be unwise for a site owner to bring proceedings without giving the occupier some sort of either/or notice: "You have done [this] in breach of [this] term of your agreement. I do not consider that this breach is capable of remedy. However, in case the court takes a different view, I hereby give you notice that you must remedy the breach within a reasonable time of this notice. If you do not, I may bring proceedings against you."

47. The views of the court on this issue are, strictly speaking, *obiter dicta*, as we are all agreed that the breach in respect of which the notice was served in this case, the incident on 31 July 2006 (see para 7) which prompted the letter of 15 August 2006 (see para 8), could be put right.

48. This brings me to the second question. What is the effect of a notice in the case of a breach of a negative obligation which can nevertheless be put right? Lord Wilson has helpfully pointed out (para 28) that it is easy to see how a breach of some negative obligations can be put right: putting up a prohibited shed can be put right by taking the shed down; allowing children under 16 to live in the mobile home can be put right by turning them out. It is not so easy to see how breach of a covenant not to annoy or disturb other residents can be put right: but I agree with Lord Wilson (para 30) and Lord Toulson (para 64) that an incident such as that on 31 July 2006 can be put right by refraining from such behaviour for a reasonable time, time enough for the fears and anxieties it caused to calm down. I also agree with Lord Toulson (para 63) that, while the occupier remains under a contractual obligation not to annoy or disturb other residents throughout the term of the agreement, the effect of a notice to remedy lapses once a reasonable time has elapsed without further incident.

49. This is the majority view and constitutes the *ratio decidendi* of this case. Whatever the reasonable time in question, it must have elapsed before the incident on 15 July 2009 which prompted these proceedings. I would only add that the minority view, that there must be some causal or temporal link between the notice to remedy and the acts which justify the court's intervention (para 92 of Lord Carnwath's judgment), is likely to lead to the same result in most cases.

50. The different analyses of para 4(a) lead to different conclusions as to how the site owners should have dealt with the much more serious incident on 15 July 2009. There would, as Lord Wilson points out (para 36), have been lively argument about whether the breach was remediable. If it was not, then on the majority view, no notice was required and the site owners could have begun proceedings immediately, although they would have been wise to serve the sort of notice he suggests (at para 31). It appears that, in the minority view, notice would have been required. But it also appears to be their view that the site owners would not have had to wait for a reasonable time before launching proceedings (note that the court has to make its findings before the site owner is entitled to terminate forthwith). For the reasons given earlier, I have difficulty in accepting that analysis. That difficulty reinforces my view that Lord Wilson's analysis is the correct one.

**LORD TOULSON**

51. The interpretation of para 4(a) of the Mobile Homes Act 1983 raises the question what is required to remedy a breach. A linked question is, 'what is the correct procedure if a breach cannot be remedied within a reasonable time?'

52. I agree with Lord Wilson that the answer to the first question calls for a practical approach, that is, whether and how the mischief caused by the breach can be redressed. The context is a relationship between an occupier of land and the owner of the land, who also has responsibilities towards others living in close proximity including the elderly and vulnerable. In a case of anti-social behaviour by an occupier towards a neighbour, much must depend on the nature of the conduct in determining whether and how the mischievous effect of a particular breach may be remediable.

53. A minor incident may not be expected to cause lasting harm to the peace of mind of other residents. In some cases an apology may be an appropriate means of redress. But human nature being what it is, there may be cases (for example, involving serious violence or threats of violence) where the conduct is such as to cause physical harm or feelings of fear and anxiety which the injured person could not be expected to get over within a reasonable time period, regardless of the other person's subsequent behaviour. There is no reason why neighbours, especially if elderly and vulnerable, should be expected to live for months (let alone years) in a state of fear and anxiety.

54. The second question presents a difficulty because of the wording of the term implied by para 4, which entitles the owner to terminate the agreement if the appropriate judicial body

> "(a) is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and
>
> (b) considers it reasonable for the agreement to be terminated."

55. Lord Wilson observes that it would be nonsensical to require service of a notice to remedy a breach which is incapable of remedy. Therefore he says that the requirement to serve a notice to remedy should be read by necessary implication as limited to a breach which is capable of remedy (within a reasonable time).

56. Lord Carnwath observes that para 4 replaced (with amendments) an analogous provision in section 3 of the Mobile Homes Act 1975 which expressly limited the requirement for service of a notice to "a breach which is capable of remedy". He says that the omission of similar words from para 4 must have been deliberate and that the court should not read into it words which the drafter has omitted. Lord Carnwath concludes that a notice to remedy must be served in all cases. He also says that in the case of a negative user condition, compliance with a notice to remedy will require ceasing the use indefinitely. There is no shorter "reasonable" period for compliance with obligations which the occupier is already contractually bound to observe for the full term of the agreement.

57. It is not difficult to imagine cases where the irreparable effects of an occupier's conduct may be such that the only reasonable course is for the owner to be able to terminate the contract forthwith. Four possible approaches have been canvassed in the course of argument. First, some egregious misconduct might arguably be treated as amounting to a repudiation of the contract, and so entitling the owner to treat the contract as terminated without going through the statutory procedure of Schedule 1; but even if that were so, it would be unlikely to cover every instance of an irremediable breach. As a possible solution to the problem of an irremediable breach, it would therefore be incomplete.

58. No such limitation applies on Lord Wilson's approach, which is that a notice to remedy is not required in the case of an irremediable breach as a matter of construction of the Schedule.

59. A third possible solution is that the owner must serve a "notice to remedy" as a matter of form, but that the notice may adopt the Hill & Redman formula, quoted by Lord Carnwath at para 79, of stating the occupier must remedy the breach if he can; and that the notice may also state that the owner does not believe it to be capable of remedy and will therefore be issuing proceedings.

60. A fourth approach is that a notice to remedy is required in all cases and that even in the case of an irremediable breach the occupier must be allowed a period of time amounting to a reasonable time to comply with the notice before possession proceedings are begun. I would reject that approach. If the consequences of the breach are such that they are impossible to remedy, I cannot see how a reasonable time to comply with the notice could be assessed by the owner or the court. They would face the conundrum "what is a reasonable time to perform the impossible?" The question defies an answer. Any period chosen would be arbitrary and purposeless. It would serve simply

to delay matters in circumstances which may sometimes be dangerous or intolerable for other occupiers.

61. Both Lord Wilson's and Lord Carnwath's favoured solutions involve some straining of language. The former involves reading words of limitation into the provision about service of a notice to remedy. The latter involves reading the words "after service of a notice to remedy the breach, has not complied with the notice within a reasonable time" as satisfied in a case where there was nothing which the occupier could have done to comply with it, and so was not given any time to do so.

62. In practical terms it makes no difference whether the notice requirement in para 4 (a) is construed as limited to breaches which are capable of remedy (within a reasonable time) or applies in all cases but may be satisfied in the case of an irremediable breach in the way just considered. In that sense the difficulty which arises from the unsatisfactory wording of the statute does not matter in terms of the result, but I prefer the approach of Lord Wilson. It makes no sense to require a person to remedy something which is incapable of remedy, and, but for the legislative history, I would have little difficulty in reading the requirement of service of a notice to remedy as confined to a remediable breach, just as the House of Lords in *L Schuler AG v Wickman Machine Tools Ltd* [1974] AC 235 construed a contractual requirement of a notice to remedy in a similar fashion. The legislative history to which Lord Carnwath has referred makes it all the more of a mystery why para 4(a) omits any words of qualification, but it is a matter of judgment what weight should be given to the legislative history in a given case. Sometimes it may throw considerable light on the proper interpretation of a later statute; in other cases the court may be left uncertain about the reason for a change of wording, in which event a comparative study will not help the court in its task of giving to the current statute the meaning which appears to fit best with its purpose. In this case the statutory scheme of serving a notice to remedy a breach and allowing the occupier a reasonable time in which to do so serves an obvious purpose in the case of a remediable breach, but would serve no comprehensible purpose if the breach is irremediable and would therefore be a vain requirement.

63. The question which I have been discussing arose in argument but it is strictly obiter. The issue at the heart of the appeal arises from the proposition that a notice to remedy a breach of a negative user condition requires "indefinite compliance". Contractual conditions have effect throughout the life of the contract. A notice to remedy a breach which has occurred is rather different, and I do not share the view that it is continuing and indefinite in the same way.

64. I come back to my starting point that whether a breach can be remedied for the purposes of the para 4 procedure depends on whether the mischief caused by that breach can be redressed within a reasonable time. A notice to remedy gives the occupier the opportunity to do so, and should not be regarded as a gateway throughout the remainder of the contract for termination in the event of a subsequent breach. That does not mean that in the case of a serial offender every breach must be looked at without reference to past history. Repeated misconduct may lead to the proper conclusion that the cumulative mischief caused by him has passed the point of being remediable and that the owner should be entitled to terminate the contract forthwith. Although I have expressed myself differently from Lord Wilson, in practical terms I suspect that the result is likely to be the same.

65. In the present case the owner did not regard the offensive behaviour towards Miss Puncher in July 2006 as causing irremediable harm. The incident in July 2009, which the judge described as very serious, might have been seen as sufficiently harmful to justify immediate termination of the agreement, with or without reference to the past background, but the case was not argued before us on that basis. Like Lord Wilson, I do not consider that the possession order can be justified on the platform of the notice which had been served on the appellant 3 years earlier. So I agree that the appeal must be allowed.

66. I agree with Lord Wilson's summary of the effect of the judgments.

**LORD CARNWATH (with whom Lord Reed agrees):**

67. I gratefully adopt Lord Wilson's exposition of the relevant facts and the legal background. In this judgment I will address:

i) The structure and effect of the para 4 term;

ii) The particular problem of negative user conditions and repeated breaches;

iii) The resolution of this appeal.

*The structure of paragraph 4*

*A long pedigree*

68. Paragraph 4 is best understood, in my view, as the draftsman's attempt to reproduce the essential features of the section 146 regime as it had evolved through the authorities, but in simpler and more modern form, appropriate for the relatively uncomplicated legal world of the mobile home. So seen it is not in my view necessary to depart materially from its ordinary wording. In this respect I respectfully disagree with Lord Wilson's approach to construction (para 20) for reasons I shall explain in this section.

69. As he shows (para 16), provisions restricting the right of an owner to terminate a lease or licence for breach of its terms have a pedigree dating from the 19th century. Relevant in the present context are the following:

i) Section 146(1) of the Law of Property Act 1925 (replacing section 14 of the Conveyancing and Law of Property Act 1881) provided that a right of forfeiture under a lease for breach of covenant -

> "shall be unenforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice –
>
> (a) specifying the particular breach complained of; and
>
> (b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and
>
> (c) in any case, requiring the lessee to make compensation in money for the breach;
>
> and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach."

Even where these requirements were satisfied, the landlord faced a further hurdle in the right of the tenant (under s 146(2)) to apply to the

court for relief from forfeiture, in relation to which the court had a wide discretion to –

> "grant or refuse relief, as the court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit".

ii) The Mobile Homes Act 1975 section 3 (no longer in force) provided that the written agreement for stationing a mobile home to be occupied as a residence (required by s 1) was to contain specified "terms and conditions", including:

> "(g) the right of the owner to determine the agreement for breach of an undertaking, subject to the requirement, in the case of a breach which is capable of being remedied, that he has served written notice of the breach upon the occupier and has given the occupier a reasonable opportunity of remedying it;"

iii) Finally, para 4 itself: the Mobile Homes Act 1983 Schedule 1, provided for certain terms or conditions to be "implied by [the] Act", including :

> "4. The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the appropriate judicial body –
>
> (a) is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and
>
> (b) considers it reasonable for the agreement to be terminated."

Reference was also made before the Court of Appeal (paras 34, 40) to analogous provisions under the Housing Acts 1985 and 1988, but it was noted that the contents of the notices are generally prescribed by regulations. They were not relied on by either party in this court.

70. Common to each of these provisions is the concept of giving notice of the breach to the tenant or licensee and allowing him a reasonable time (or opportunity) to remedy it.

*The 1983 Act*

71. In the present case we have to look at the issue of construction through the eyes of the draftsman of the 1983 Act. In doing so it is clearly reasonable to assume that he would have had in mind the approach adopted in authorities under section 146 and its predecessor.

72. Lord Wilson has referred to *Rugby School v Tannahill* [1935] 1 QB 87, which in 1983 was still the leading authority on the subject. (It was so regarded by the Court of Appeal in *Expert Clothing Service* in 1985.) The judge, MacKinnon J [1934] 1 KB 695, had taken the apparently logical view that a negative covenant was in principle incapable of remedy. The Court of Appeal declined to endorse such an absolute rule. Greer LJ said:

> "I think perhaps [the judge] went further than was really necessary for the decision of this case in holding that a breach of any negative covenant —the doing of that which is forbidden—can never be capable of remedy. It is unnecessary to decide the point on this appeal; but in some cases where the immediate ceasing of that which is complained of, together with an undertaking against any further breach, it might be said that the breach was capable of remedy." (p 90)

However, the court accepted the landlord's argument so far as directed to a case where the nature of the particular breach (use as a brothel in that case) would have an effect on value even after the use had ceased.

73. Maugham LJ referred in his concurring judgment ([1935] 1 KB 87 at pp 92-93) to authorities dating from 1893 (including the House of Lords case of *Fox v Jolly* [1916] 1 AC 1), which showed that the section –

> "has always been construed, having regard to the common sense of the matter, that the tenant is to be given reasonable information as to what he is required to do, and he is given the right to apply to the Court for relief".

He cited, as an example of this "common-sense interpretation", the early decision (*Lock v Pearce* [1893] 2 Ch 271) that "although its language pointed in the opposite direction" the section did not require the notice to claim compensation which the lessor did not want.

74. The draftsmen of what became the relatively short-lived 1975 Act borrowed from section 146 the distinction between remediable and irremediable breaches, but none of its other significant features. There was no general requirement for a notice specifying the breach, and no general discretion for the court to oversee the process of enforcement.

75. The structure of the 1983 provision was quite different from the 1975 model, but much closer to that of section 146 as it had evolved. The key features were the service of a notice to remedy the breach (not in terms limited to breaches capable of remedy), non-compliance with the notice after a reasonable time, and a judgment of the court as to the merits ("reasonableness") of termination. As under section 146, the reference to compliance "within a reasonable time" was not to something needing to be specified in the notice itself, but rather a matter to be judged retrospectively by the court in considering the merits of enforcement.

76. It is hardly surprising that the draftsman of a modern Act for a different subject-matter did not find it necessary or desirable to replicate all the 19th Century language. For example, the phrase "considers it reasonable" was an entirely adequate substitute for the convoluted language used to express the comparably broad discretion conferred on the court by section 146(2). The more controversial feature of the 1983 model was the omission of the reference to breaches "capable of remedy". I shall return to that after considering the post-1983 case-law. (For completeness I should note that new "parliamentary materials" on the background to this provision, submitted by the respondents following the hearing, were at best inconclusive and for the most part clearly inadmissible under ordinary principles of statutory construction.)

*Post-1983 developments*

77. As Lord Wilson has shown, the courts have continued to grapple with these issues since 1983, but in context of breaches of covenant quite different from the present. The more significant include *Expert Clothing* (1986) (breach of positive covenant to reconstruct), *Savva* (1996) (covenant against alteration of premises without consent), and *Akici* (2005) (covenant against sharing possession of commercial premises). As the judgments in the last case

indicate, the approach of the courts is "practical rather than technical" ([2006] 1 WLR 201, para 64), and most breaches are now regarded as capable of remedy. As regards negative covenants relating to user, it appears to be accepted that breaches can be remedied by ceasing the unlawful use concerned, save where the breach causes the premises to be "stigmatised" (*Hill & Redman's Law of Landlord and Tenant* para [4685]).

78. The result of the narrowing of categories of breach regarded as incapable of remedy is conveniently summarised in *Woodfall: Landlord and Tenant* para 17.132.1, after referring to the "stigma" cases:

> "Until recently it was assumed that breach of a covenant against carrying out alterations without consent was also irremediable. However, the position appears to have changed. The test is now one of fact and degree as to whether in reality the mischief can be remedied. Similarly, it now appears that parting with or sharing possession, at least where it falls short of creating or transferring a legal interest, is a remediable breach.
>
> In addition the following breaches have been held to be incapable of remedy:
>
> 1. running catering premises contrary to the licensing laws in breach of a covenant to conduct them according to those laws;
>
> 2. contravening the Food and Drugs Act resulting in 14 convictions;
>
> 3. assigning the lease without the landlord's consent;
>
> 4. sub-letting the premises or part thereof;
>
> 5. using the property for the sale of obscene material;
>
> 6. using the premises for espionage resulting in convictions under the Official Secrets Act."

(The references to all but the last of the six examples are from cases decided before 1983.)

79. In the modern law, technical issues about such distinctions, and the contents of a section 146 notice more generally, should not normally be of practical concern for landlords or the courts. A well-drafted notice will simply state that the tenant is "required to remedy the breach, if it is capable of remedy…" (*Hill & Redman* para [4681]). Nor need the notice itself specify what is "a reasonable time" for compliance. "All that the statute requires is that a reasonable time to remedy the breach must elapse between service of the notice and the exercise of the right of re-entry or forfeiture" (*Billson v Residential Apartments Ltd* [1992] 1 AC 494, 508 per Sir Nicolas Browne-Wilkinson V-C).

80. Thus, unless the breach is one of the limited categories now regarded as incapable of remedy under section 146, the practical purpose of the notice is simply to alert the tenant to the nature of the alleged breach and give him an opportunity to remedy it, and, if he is unwilling or unable to remedy to do, to trigger his right to invoke the jurisdiction of the court to consider the overall merits of enforcement in the context of an application for relief. Although these principles have been refined and restated in more recent cases, the general approach has not changed materially, at least since the *Rugby School* case in 1935.

*Alternative interpretations*

81. I turn to Lord Wilson's proposed explanation for the omission of the reference to breaches "capable of remedy", and of its consequences (para 20). He suggests that, assuming no "rare, inadvertent error", the words were treated in effect as surplusage, because it would have been "nonsensical" to require notice to remedy a breach which was incapable of remedy (para 20). He concludes that the "twin requirements" to serve notice and to afford the occupier a reasonable time to comply apply only to a breach capable of remedy.

82. That seems to me, with respect, to involve unwarranted violence to the statutory language. I would discount the possibility of an error by the draftsman, who was replacing the very recent wording of the 1975 Act, covering the same issue on a matter of some public controversy. We must proceed on the basis that the omission was deliberate.

83. There is another explanation which is no less plausible in my view, and has the merit of consistency with the language used. The draftsman was seeking to reproduce the general effect of the section 146 protection in simplified form, including the general requirement for a formal notice as a preliminary step to enforcement. However, he may have thought it desirable to dispense at the notice stage with the historic distinction between remediable and irremediable breaches, and the baggage of sometimes confusing case-law associated with it. He may have considered it an unnecessary complication, given the very limited categories of breach still recognised as in principle incapable of remedy, following the *Rugby School* cases, and the even more limited significance of most of them for ordinary owners and occupiers of mobile homes. In those circumstances no practical harm would result from a general requirement for a notice to remedy as a preliminary to court action.

84. As I understood it the alternative reading now proposed by Lord Wilson was not advanced by either side at the hearing in this court. There was, however, some discussion of the operation of the paragraph in relation to breaches which on any view would be incapable of remedy, one of the more extreme examples being setting fire to the adjoining mobile homes. One suggested answer was that such a breach might be treated as a repudiation of the contract under common law principles, and thereby implicitly excluded from the protection of Schedule 1 of the 1983 Act. Whatever the merits of that argument, I agree with Lord Toulson that the general requirement for a notice to remedy cannot sensibly be understood as carrying with it the implication that every breach, however grave, must be treated by the court as remediable. There will be breaches sufficiently serious that, as he suggests, the owner will be entitled to treat the notice to remedy as "a matter of form" only, and to commence proceedings for possession forthwith. In such cases the court may be satisfied that the occupier has failed to comply, not because he has failed to act within a particular time, but, because having regard to the nature of the breach, there was nothing he could have done to remedy it. This will be matter to be determined, by reference to the practical realities of mobile home life, rather than to parallels with cases in a different context under a different statute.

*Negative user conditions and repeated breaches*

85. Whatever the true explanation for the structure and wording of para 4, the principal difficulty in the present case arises from the intermittent nature of the breaches in question. The mischief lies not so much in that of the initial breach, which in common sense terms can be readily dispelled (as Lord Wilson says: para 30), but in its repetition at irregular intervals over a significant period. Those features do not appear in any of the cases to which we have been referred under section 146. Indeed, none of the more recent

authorities was concerned with breach of a negative user condition, that is one prohibiting conduct of a specified kind. In respect of such breaches, the law does not appear to have developed materially since the *Rugby School* case in 1935.

86. Lord Wilson (para 33) has referred to an argument relied on by the owners in the present case, which he describes as the "cat and mouse spectre" –

> "The spectre is that the occupier commits a breach and is served with a notice; that he commits no further breach for a reasonable time and thereby complies with the notice; that thereupon he commits a further breach; that the cycle begins again; and that his licence cannot be terminated."

He discounts this concern as "unreal".

87. I do not think that the argument can be dismissed so summarily. It is of interest that some 80 years ago a similar argument was successful at first instance in the *Rugby School* case. In holding that negative covenants were in principle irremediable, McKinnon J took account of "a very obvious disadvantage" from the landlord's point of view of the opposite approach:

> "… supposing the case of a breach of covenant not to do something and, when the landlord complained, an immediate abstention from the user of the premises in breach of the covenant, the landlord would be deprived of any cause of action, or, if he had already begun one, he would have it dismissed with costs. And that might happen again and again; the landlord would have to give a fresh notice in each case, with the same result." ([1934] 1 KB 695, 701).

This passage was also cited with approval as part of Harman J's "grumble of discontent" in *Hoffmann v Fineberg* [1949] Ch 245, 254: Lord Wilson para 25.

88. The Court of Appeal in *Rugby School* did not find it necessary to address the point, in view of its conclusion on the facts of the case. However, its reasoning may provide a clue to the answer. The assumption behind McKinnon J's concern was that a notice to remedy the breach would become spent as soon as there had been compliance, for however short a period, and would have no effect if the offending use was resumed thereafter. That does

not appear to be how Greer LJ saw the matter (para 72 above). His view of compliance required not simply "the immediate ceasing of that which is complained of" but also "an undertaking against any further breach". Although it was unnecessary for him to explore the legal practicalities of that suggestion, it shows that immediate cessation by itself was not enough.

89. Thus, in the context of a negative user condition, compliance with the notice meant not simply a temporary pause, but ceasing the use altogether and indefinitely. If when the matter came to court, it was found that the tenant had, following a period of abstinence, resumed the offending use, the court would be able to hold both that a reasonable time had elapsed and that he had failed to comply, and (subject to questions of relief under section 146(2)) to uphold the landlord's right to enforce. The same approach in my view can be applied under the 1983 Act, and it provides a practical and common sense answer to the "cat and mouse" problem as it arises under para 4.

90. That reading also provides an answer to Lord Wilson's concern about the need to give some meaning to the words "within a reasonable time". He concludes that, in relation to breach by an occupier of a negative user condition, the effect of the obligation not to do the prohibited act "within a reasonable time" is that he must not do it "for a reasonable time" (paras 30, 35(iii)). The implicit assumption is that the landlord, and ultimately the court, would have to determine what was the "reasonable time" during which the occupier should be expected to comply with the covenant, so as to bring any repetition of the breach within the scope of that particular notice to remedy. Again, with respect, I find this an unwarranted distortion of the wording of the provision. First, it would be strange to find the same phrase "within a reasonable time" being used in two quite different senses in the same provision. Secondly, I find it difficult to understand why or on what basis the landlord or the court should be expected to specify a "reasonable" period for the occupier to comply with his obligations under the agreement, other than the full term for which he is already contractually bound.

91. On the reading I have proposed, it is an unnecessary distortion. Compliance within a reasonable time in this context means immediate and continuing compliance. If when the matter comes to court, that has not been achieved, the court can be satisfied of the matters required under para 4(a), and the determining issue will be that of reasonableness under (b). That approach seems to me both consistent with the wording of the paragraph, and one which maintains a fair balance between the interests of owner and occupier.

*The present case*

92. It remains to apply these principles to the present case. The application of the analysis outlined above would have presented no real difficulty if the later breaches had occurred within a short time after the first (and only) qualifying notice to remedy. Further incidents within a few weeks or even months of the notice to remedy could fairly have been treated as parts of a continuing failure to comply, properly referable to the same notice, regardless of the intervening periods of good behaviour. The problem arises because of the very long gap (some three years) between that notice to remedy and the breaches which in the event triggered the court action. The structure of para 4 suggests the need for some causal or temporal link between the notice to remedy and the acts which justify the court's intervention. As Lord Toulson says, a notice to remedy should not be regarded as a gateway for termination for any breach throughout the remainder of the contract. I agree with him, however, that the history may be relevant in judging whether a later breach is truly irremediable.

93. In the Court of Appeal, Mummery LJ did not see the gap in time as an obstacle. As he explained in a passage quoted by Lord Wilson (para 31), he saw no reason why the notice served in 2006 should not have continuing effect for the whole period of the defendant's occupation of the mobile home (para 52).

94. As I understand it, the judge had adopted a similar approach. He had helpfully explained his view of the law at the beginning of his judgment:

> "First of all, my interpretation of clause 4(a) is that what is required is that there be what I might call an initial breach, then a notice to remedy that breach, and a failure to comply with the notice within a reasonable time. In the context of this case, which concerns what I can roughly call antisocial behaviour, that would mean an instance of antisocial behaviour, a notice complaining of it and requiring him to desist from it and then a proven instance of further antisocial behaviour in disregard of the notice." (para 4)

95. His factual conclusion under para 4(a) came towards the end of the judgment (para 33). Having set out the relevant clause 14 prohibiting any act "which may be or become a nuisance, damage, annoyance or inconvenience" to the neighbours. he said:

> "I do find, first of all, that he was warned against antisocial behaviour of that kind by the notice of 15 August 2006 'No unsolicited approaches or advances to other residents on Meadowview Park causing alarm and distress' and it appears to me that that is sufficient, though I think only just sufficient, to constitute a notice complaining of harassment of neighbours and warning him of the consequences of harassment to neighbours. As I have found, I take the view that on 15 July 2009 he did engage in a very serious incident of such antisocial behaviour when he made the threats to kill to Mr. Carter and made threatening gestures with a pole in the manner that I have found. So I do I consider that that is a pleaded and actionable and proven breach after notice, satisfying the requirements of clause 4(a) and opening the way to the court to remove him if it considers it reasonable to do so."

He then went on to express his conclusions on the issue of reasonableness under (b), in relation to which no there is no challenge.

96. In agreement with the other members of the court, I have concluded that this reasoning cannot be supported. He does appear to have treated the notice to remedy the August 2006 breach as a sufficient platform in itself for the action in respect of the breach three years later. Although my interpretation of para 4 differs in some respects from that of Lord Wilson, I agree with him, and with Lord Toulson, that the lapse of that period between the notice to remedy, and the conduct on which the court ultimately based its order, was too great.

97. I reach this conclusion with some regret. Faced with a very disturbing case, and in the absence of clear guidance in the statute or the cases, the judge adopted what seemed a sensitive and practical approach, and his conclusion on the reasonableness of termination is not under challenge. I also agree with what Lord Toulson says about the July 2009 incident, viewed as a potential ground for proceedings in its own right. However, that was not the basis on which the case has proceeded.

98. Accordingly, for the reasons given above, but in agreement with Lord Wilson as to the conclusion, I would allow the appeal. The main practical difference of my approach is that it gives effect to the natural reading of the paragraph by requiring a formal notice to remedy in every case, even where the owner intends to assert that it is irremediable. As to the issues identified by Lord Wilson (paras 2, 35) I agree with his answer to questions (i) and (ii), but would answer question (iii) as explained in para 91 above.