



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference	: HAV/23UB/LBC/2025/0637
Property	: 6 Brompton House, East Approach Drive, Cheltenham, GL52 3JE
Applicant	: Brompton House Property Ltd
Representative	: R Duncan of counsel, instructed by
Respondent	: Gillian Holder
Representative	: A Turner, solicitor, of Hughes Paddison Solicitors
Type of Application	: Breach of covenant (s.168 Commonhold and Leasehold Reform Act 2002)
Tribunal Members	: Judge M Loveday Ms J Dalal
Date and venue of hearing	: 24 September 2026 CVP
Date of Decision	: 27 September 2026

DETERMINATION

Introduction

1. This is an application under s.168(4) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) for a determination of breaches of covenant in a lease of a flat and garage space in Cheltenham.

Background

2. The matter relates to 6 Brompton House, East Approach Drive, Cheltenham, GL52 3JE (“the Flat”). The building comprises a period house with gardens converted into 8 flats.
3. By a lease dated 20 November 2013, the Flat was demised for a term of 999 years from 1 January 2003 (“the Lease”). The freehold is owned by Brompton House Property Ltd, which is a lessee-owned company. The Respondent is the registered proprietor of the Lease. For much of the relevant period the Flat has been occupied by the Respondent’s daughter, Donna Holder.
4. There have been previous similar proceedings involving the same parties. On 31 July 2025 a Tribunal determined in case no.HAV/23UB/LBC/2025/0608 CHI that:

“In breach of clause 3.14 of the lease, between 21 May 2024 and 31 July 2024 the Respondent (allow[ed] to remain upon the Premises anything that may be or become or cause a nuisance annoyance disturbance or inconvenience injury or damage to the Landlord his tenants or the owners or occupiers of adjacent property or any Neighbouring Property.”

5. By an application dated 8 December 2025, the Applicant sought a further determination that the Respondent was in breach of the covenants of the Lease in respect of incidents between 11 August 2025 and 2 December 2025. The application referred to an injunction granted by the County Court at Gloucester on 6 November 2025.
6. Directions were given on 20 May, 10 June and 8 July 2026. The Applicant served a statement of case on 9 July 2026, accompanied by witness statements from various neighbours. The evidence was mainly set out in a witness statement by Ms Caroline Macklin (Flat 1), and it was supported by statements from Mr Shaun Hancock (Flat 1), Ms Petra and Mr Kevin Wise (Flat 2), Mr Christopher and Mrs Lucie Bate-Williams (Flat 4), Ms Amy Savidge (Flat 8) and Mr Edward Bressington (Flat 8). The Respondent served a statement of case on 28 August 2026.
7. The matter was listed for a remote hearing on 25 September 2026. The Applicant was represented by Mr Rhys Duncan of counsel, and the Respondent was represented by Mr Andrew Turner of Hughes Paddison Solicitors. Both provided helpful skeleton arguments and made oral submissions. The Tribunal is grateful to them both.

The Lease terms

8. The relevant covenants in the Lease on the part of the lessee are:

“3.14: not to do on the Premises or bring or allow to remain upon the Premises anything that may be or become or cause a nuisance annoyance disturbance or inconvenience injury or damage to the Landlord his tenants or the owners or occupiers of adjacent property or any Neighbouring Property.”

...

3.32: not to play or use or permit the playing or use of any musical instrument television radio loudspeaker or mechanical or other noise making instrument of any kind or practice any singing or permit the practising of any singing in the Premises between the hours of 11pm and 7am or at any other time or times so as to cause any nuisance or annoyance to any of the occupants of the other parts of the Estate or any Neighbouring Property and for these purposes the decision of the Landlord as to what constitutes a nuisance or annoyance shall be final and binding on the parties”

9. Clause 1.34 extends the scope of those covenants by stating that:

“Any covenant of the Tenant not to do an act or thing shall be deemed to include an obligation not to knowingly permit or suffer such an act or thing to be done by another person.”

The 2002 Act

10. The material provisions of the 2002 Act are as follows:

“168 No forfeiture notice before determination of breach

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) This subsection is satisfied if—

- (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
- (b) the tenant has admitted the breach, or
- (c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

...

(4) A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.”

11. The Tribunal’s jurisdiction is limited to the question whether the Respondent is in breach. For example, issues such as waiver of the right to forfeit are outside the Tribunal’s remit. That question is dealing with the remedies available to a landlord on the basis of a breach of covenant which has been determined to have occurred or has been admitted by the tenant: *Swanston Grange (Luton) Management Ltd v Langley-Essen* [2008] L. & T.R. 20 at [16].

Facts

12. Mr Turner indicated at the start of the hearing that he was putting the Applicant to proof of the evidence in the above witness statements. But he did not wish to cross-examine any of the neighbours. Counsel identified the relevant paragraphs in Ms Macklin's witness statement of 5 August 2026 which set out the facts the Applicant wished to rely on. These are reproduced in Appx A to this decision, save for some minor editing made by the Tribunal for clarification. The Tribunal finds the facts in Appx.A proved.

The issues

13. Counsel opened his case by explaining that the Respondent did not reside at the Flat. It was occupied by Donna Holder. The terms of Donna Holder's occupation were unknown, and the Respondent had not provided any evidence the terms of Donna's occupation. In addition to the witness statements, there were around 200 pages of police reports, and evidence used by the local authority when it obtained the injunction against Donna Holder on 6 November 2025. Counsel argued that for the purposes of clause 3.14, the matters in Appx.A clearly amounted to a "nuisance annoyance disturbance or inconvenience injury or damage to the ... tenants or the owners or occupiers of adjacent property or any Neighbouring Property." They were also a "nuisance or annoyance to any of the occupants of the other parts of the Estate or any Neighbouring Property" for the purposes of clause 3.32.
14. Mr Turner did not challenge any of these contentions. But he raised three arguments, which the Tribunal will deal with in turn.

Notice

15. First, the Respondent argued the application was premature. The first time the Respondent was given basic details about the complaints that had been made about Donna was on the afternoon of Friday, 5 November 2025, when the Applicant's solicitors wrote to the Respondent's solicitors. The Applicant filed its application the following Monday 8 November 2025. The Respondent argued that a landlord's covenant to repair was ordinarily a covenant to repair on notice: see, for example *Makin v Watkinson* (1870) LR 6 Ex 25 at p.28 and *O'Brien v Robinson* [1973] AC 912 at p.926E-F and p.930E. Reading this principle across to tenant's covenants not to permit a nuisance, the tenant must have notice of the nuisance before they can be in breach. This was supported by the express inclusion of the word "knowingly" in clause 1.32 of the present Lease. The Respondent did not have notice of the events relied on in the application until the solicitors' letter of 5 November 2025. That was not sufficient notice to enable her to take action to prevent the nuisance.
16. In response, counsel referred to the 'overarching point' that there was no evidence the Respondent had taken any action to abate the nuisance or address the issue. There was no notice seeking possession or notice to quit served on Donna Holder. Addressing the covenants in the Lease, in clause 3.14, "anything" meant something which amounted to a nuisance, whether it was caused by a person or a thing. Clause 1.34 was the provision which rendered the Respondent liable for

the acts of “another person” such as Donna, provided she “knowingly permit[ed] or suffer[ed]” the “act or thing to be done”. The Applicant’s case was that the previous Tribunal’s determination gave the Respondent the requisite knowledge. If the question was asked, ‘did the previous Tribunal decision give the Respondent knowledge that Donna was causing disturbances and other nuisances?’ - the only answer could be “yes”. The Respondent had knowledge from the previous proceedings, and ought to have taken steps to stop them. She also had knowledge from a letter dated 15 August 2025, which stated:

“Note that the conduct complained of is ongoing and on Monday the 11th of August 2025 our client was obliged to make a report to the police due to a further incident of stomping, screaming etc, all of which take place at bedtime or very early morning”.

These triggered responsibility under clause 3.14.

17. Mr Turner responded that action had been taken to deal with the issues. The Flat was on the market, and the Respondent had recently decided to drop the asking price to achieve a quicker sale.

The Tribunal’s decision

18. The Tribunal rejects the analogy between landlord repairing covenants and the covenants in this case. There is no absolute rule, even in the context of landlord repairing covenants, that notice is required before the covenanting party is in breach: see, for example, *Edwards v Kumarasamy* [2016] UKSC 40. Moreover, the parties are free to agree strict liability, if they so choose. Ultimately, it is a matter of interpretation of the Lease terms. In this instance, the crucial obligation is the deeming provision in clause 1.34 of the Lease. The Respondent was obliged “not to knowingly permit or suffer” any nuisance to be caused by Donna. That is not the same as a landlord’s obligation to repair.
19. The Tribunal has no hesitation in finding that by continuing to allow Donna to occupy the Flat, the Respondent “permitted” and/or “suffered” the “acts” of her daughter. Mr Turner suggests the Respondent did not have express knowledge of the acts themselves, but that is not what the covenants require. Clause 3.14 prohibits the Respondent from doing anything which may “be or become or cause a nuisance”. It is prospective, in the sense that the tenant must prevent things which may eventually “become” a nuisance. There is no requirement for the tenant to be aware of the particular event of nuisance itself. Clause 1.34 must be read in this context. The Respondent must not “knowingly permit or suffer” anything in the Flat which may “become or cause a nuisance”. And she knew from both the previous Tribunal proceedings and the letter of 15 August 2025 that there was something in the flat which might become a nuisance. That was a clear breach of clause 3.14 of the Lease.
20. Moreover, if one focusses on clause 1.34 alone, a tenant may be in breach of a covenant not to “suffer” an annoyance, damage or disturbance if it deliberately closes its eyes to the risk: *Borthwick-Norton v Romney Warwick Estates* [1950] 1 All E.R. 362. In this case, Donna was the Respondent’s daughter, and Appx.A shows that she had a history of challenging behaviour. As a mother, the Respondent may understandably have chosen to take no steps (or inadequate steps) to resolve the problem. The Tribunal was told that the Respondent is aged

87, and that her husband passed away in 2024. The Respondent may understandably have preferred to avoid the troubles in which she might be involved if she took the appropriate action to end the nuisance – and the Tribunal has every sympathy with the almost impossible predicament. But she was shutting her eyes to the obvious, given the results of the previous Tribunal proceedings and the letter of 15 August 2025. Putting it simply, the risk of Donna causing a nuisance was obvious.

Jurisdiction

21. Mr Turner next argued that the Tribunal had no jurisdiction to determine any breaches which occurred after the issue of the application on 8 November 2025. For the sake of clarity, the Tribunal has identified these later events in Appx.A. The submission started with the proposition that there was nothing in s.168(2)(a) of the 2002 Act which gave the Tribunal jurisdiction to finally determine that a breach had occurred after the date an application was made under s.168(4). He suggested it was analogous to the position in County Court proceedings where one was expected to plead all the breaches in the claim.
22. Counsel argued there was nothing in s.168(2)(a) of the 2002 Act which limited the Tribunal's jurisdiction to events which preceded the application. It was common for Tribunals to make such findings, and he illustrated this with three decisions where Tribunals had made s.168 determinations of breaches after the date of the initial application: *9 Cwrt Pencraig, Caerau Crescent, Newport NP20 4HG* LVT/0022/09/17, *Forest House Estates Ltd V Al-Harhi* [2013] UKUT 0479 (LC) and *First Floor Flat, 48 Harrington Road Brighton East Sussex BN1 6RF* CHI/00ML/LBC/2022/0017. Moreover, the argument that the Tribunal was limited to consideration of matters before the date of issue was inimical to the overriding objective in r.3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In practical terms, this would mean that a series of applications would have to be made for a continuing breach of covenant. This was not proportional, nor in any parties' interest.

The Tribunal's decision

23. The Tribunal is not aware of any rule in the County Court that the court may not consider events which arose after the issue of proceedings. No authority was cited to support this very wide-ranging proposition. Moreover, there is nothing in the statutory language of s.168(2) which imposes a clear date-of-issue limitation.
24. Rather, limits on the scope of the issues before a Tribunal involve questions of procedural fairness and pleading. And in this case, there is no question of procedural unfairness. The Respondent's statement of case on 9 July 2026 was accompanied by Ms Macklin's witness statement and para 3 of the statement of case said:

"The instances of nuisance annoyance disturbance or inconvenience etc. are set out in detail in the witness statement of Caroline Macklin and in the document "redacted police reports Dec 2025" annexed to this statement."

All the incidents referred to in Appx.A were therefore expressly pleaded as long ago as 9 July 2026. The Respondent has had notice of them for over 2 months, and she responded to them in her own statement of case. There is therefore nothing procedurally unfair in relying on all the events in Appx.A.

25. Moreover, the Tribunal agrees with counsel that in the circumstances of continuing breaches of covenant, the practical effect would be to require landlords to issue fresh applications at regular intervals to establish breaches of covenant before it can be “finally determined” that the alleged breach has occurred. That is a practical nonsense, and it would be extremely wasteful of costs in a forfeiture jurisdiction where (in most cases) the lessees bear the costs on an indemnity basis.
26. The Tribunal therefore sees no reason to depart from the very common approach of allowing post-issue events to be pleaded and determined in s.168(2) applications.

Equality Act 2010

27. Mr Turner’s final argument is most fully articulated in the Respondent’s statement of case at 19-20. It is said:

“19. ...As set out in the evidence filed in the previous Tribunal proceedings, Donna has been diagnosed with psychosis and with complex post-traumatic stress disorder. Although there have been periods of recovery, there have also been breakdowns and periods of ill-health along the way. The Respondent has worked hard with Donna to help with her recovery. It has not been easy and has required careful management.

20. Donna’s condition is a disability and therefore a protected characteristic under the Equality Act 2010. Whilst the Applicant might seek to downplay the significance of Donna’s disability, her disability is relevant when it comes to the question of how the Respondent should respond to any behaviour that may be a consequence of that disability.

21. The Respondent’s case, as outlined above, is that the Applicant failed to provide her with sufficient information about the alleged nuisance before it filed its application. In the absence of such information, serving a section 21 Notice on Donna, with the Respondent blind to the underlying facts, would not necessarily have been an appropriate solution. Donna’s disability requires careful consideration of section 15 of the Equality Act 2010 which provides that:-

“15 (1) A person (A) discriminates against a disabled person (B) if -
(a) A treats B unfavourably because of something arising in consequence of B’s disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.”

28. When pressed in argument, Mr Turner also referred to s.35(1) of the 2010

Act:

“35 Management

(1) A person (A) who manages premises must not discriminate against a person (B) who occupies the premises—

(a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility;

(b) by evicting B (or taking steps for the purpose of securing B's eviction);

(c) by subjecting B to any other detriment.

(2) A person who manages premises must not, in relation to their management, harass—

(a) a person who occupies them;

(b) a person who applies for them.

(3) A person (A) who manages premises must not victimise a person (B) who occupies the premises—

(a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility;

(b) by evicting B (or taking steps for the purpose of securing B's eviction);

(c) by subjecting B to any other detriment.

Donna's eviction would be a necessary consequence of a forfeiture order. A s.168(2) determination was therefore a “step” for the purposes of securing her eviction under s.35(1)(b) of the 2010 Act.

28. Counsel submitted that the evidential basis for the submission was not made out. There was no medical evidence that Donna was a disabled person pursuant to section 6 of the 2010 Act. It followed there was nothing which arose from the alleged disability pursuant to s.15 of the Equality Act 2010 and s.35 was not engaged. But in any event, no action was being taken in relation to Donna's rights of occupation. It was all about the Respondent's lease. Section 15 was not therefore relevant. In any event, counsel referred to a previous tribunal decision in the bundle *Flat 8 St. Leonards Lodge, Maze Hill, St. Leonards On Sea, East Sussex TN38* oHW CHI/21UD/LBC/2023/0026:

“144. As Mr Withers submitted, any such defence has to be raised before the County Court. The Tribunal accepts that section 113 of the Equality Act sets out that contraventions of the Act must be brought pursuant to Part 9 (enforcement). Section 114 gives the County Court (in England and Wales) sole jurisdiction to consider contraventions of the Act in relation to Part 4 (Premises). He is also entirely correct that the Tribunal is a creature of statute and possesses the many and varied jurisdictions which have been given to it but does not have jurisdiction in any other matters.

145. Hence, the Tribunal cannot consider the point and so the issue ends there for these purposes.”

The same reasoning applied in this case.

The Tribunal's decision

29. The Tribunal agrees with the Respondent in relation to the Equalities Act 2010. As to evidence, there are repeated suggestions that Donna has had mental health difficulties, but there is no actual evidence of a disability. The position was the same as at the time of the previous Tribunal, which stated:

“35. Whilst there is no medical evidence regarding Donna Holder’s mental health, it is not in dispute between the parties that she experienced an episode of mental ill-health from about mid-April 2024, described by Mr Turner as a mental health crisis. Donna Holder says she had a breakdown

36. The Tribunal makes no finding as to the nature of Donna Holder’s mental health condition or whether there is any likelihood of a recurrence. There is insufficient evidence to do so.”

There is therefore no evidential basis for the argument.

30. As to the 2010 Act itself:

- a. Section 15 is not an ‘operative’ provision of the Act. Part 2 sets out key concepts, which are then applied in the subsequent parts of the Act: see Explanatory Notes to the 2010 Act para 13. As in *St Leonards Lodge*, the Tribunal finds that s.114 does not give it jurisdiction to determine disability discrimination issues under the Act.
- b. In any event, the application does not raise issues of discrimination against Donna Holder. The Tribunal is being asked to decide whether the Respondent is in breach of covenants of the Lease, not whether Donna Holder should be evicted. This is the sole jurisdiction for the Tribunal under s.168 of the 2002 Act. Whether the Applicant has any consequential remedies (such as a right to possession against Donna Holder) is for the County Court: *Swanston Grange (Luton) Management Ltd* (supra).

Conclusions

31. Having rejected the three arguments raised by the Respondent, there is no answer to the allegation of breaches of clause 3.14 of the Lease.
32. Clause 3.32 of the Lease largely deals with mechanical sources of noise and music. However, the lessee also covenants not to “permit the practising of any singing in the Premises between the hours of 11pm and 7am”. Only two of the numerous allegations of “singing” in Appx. A are said to have happened at night (14 and 28 April 2026). These were also additionally breaches of clause 3.32 of the Lease.
33. Both are subject to the deeming provision in clause 1.34 of the Lease.
34. The Tribunal therefore finds the Respondent was in breach of clauses 3.14 and 3.32 of the Lease dated 20 November 2013 by knowingly permitting or suffering the matters in Appx.A between 1 August 2025 and 25 May 2026.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

**APPX. A:
FACTUAL ALLEGATIONS OF NUISANCE
IN STATEMENT OF CAROLINE MACKLIN DATED 8 JULY 2026**

Para	Date	Text
36	1 August 2025	around 10.10pm, Chris Bate-Williams and Lucie Bate-Williams report hearing Donna Holder talking loudly, shouting, singing loudly and stomping.
37	10 August 2025	between 9pm and 10.10pm, residents of flats 2, 4 and 8 (Petra Wise, Chris Bate-Williams, Lucie Bate-Williams, Amy Savidge and Edward Bressington) all report hearing Donna Holder at various times, including loud talking, loud singing, shouting and stomping.
38	11 August 2025	Caroline Macklin makes a police report about Donna Holder, having taken advice from the police, who recommend we report every single incident involving Donna Holder that causes noise, nuisance, harassment or alarm. The report includes some background and details the incidents from 25 July to 10 August inclusive.
	<i>(15 August 2025)</i>	<i>(Letter from applicant's solicitors to respondent)</i>
40	17 August 2025	Caroline Macklin makes report to the police... harassment without violence has been recorded.
41	22 August 2025	report made by Chris Bate-Williams... woken by Donna Holder due to her shouting, stomping and what sounded like the moving of furniture.
42	26 August 2025	report made by Lucie Bate-Williams... could hear Donna Holder shouting and screaming.
43	26 August 2025	Caroline Macklin makes report, as she heard Donna Holder shouting and ranting the previous evening around 9pm.
44	27 August 2025	report made by Amy Savidge... disturbed by Donna Holder, screaming, ranting and singing loudly.
45	2 September 2025	report made by Chris Bate-Williams due to hearing Donna Holder shouting and loudly talking outside his flat door.
50	26 October 2025	report made by Edward Bressington... accusations of theft.
51	29 October 2025	report made by Caroline Macklin ... claiming £1m from Brompton House in damages.
52	1 November 2025	report made by Lucie Bate-Williams... Donna Holder singing loudly, shouting and banging.
53	6 November 2025	injunction granted under the Anti-Social Behaviour, Crime and Policing Act 2014 against Donna Holder.
	<i>(8 November 2025)</i>	<i>(Application filed in FTT)</i>

62	9 November 2025	report made by Chris Bate-Williams... Donna Holder singing loudly, ranting, and banging repeatedly.
63	9 November 2025	report made by Caroline Macklin on behalf of Chris Bate-Williams.
64	24 November 2025	report made by Chris Bate-Williams due Donna Holder singing loudly and shouting.
65	29 November 2025	police report made by me...
68	21 January 2026	Caroline Macklin makes a police report. Around 12 noon...
69	21 January 2026	Lucie Bate-Williams makes a police report due to loud singing and ranting.
70	3 February 2026	Chris Bate-Williams makes a police report.
86	12 March 2026	Donna Holder photographed visitors and guests.
89	30 March 2026	12.30am. Chris Bate-Williams and his wife were woken by loud stomping and shouting by Donna Holder.
90	6 April 2026	Donna Holder speaking very loudly inside her flat.
93	14 April 2026	7.20am. Chris Bate-Williams reports hearing Donna Holder ranting...
94	14 April 2026	11.30pm. Chris Bate-Williams and Lucie Bate-Williams are woken by Donna Holder singing loudly and ranting.
95	16 April 2026	Donna Holder stands on the driveway... having a conversation with herself.
96	16 April 2026	CCTV reviewed for same incident.
99	26 April 2026	Donna Holder stood in parking area talking loudly.
101	28 April 2026	around 6.20am, residents woken by Donna Holder shouting, singing and ranting.
102	28 April 2026	c 8.15pm... Donna Holder shouting and talking loudly.
103	29 April 2026	c 7am, audio recording of Donna Holder talking very loudly.
104	29 April 2026	c 8.45am... "Amy Savidge is dead".
105	2 May 2026	late morning... Donna Holder started to talk loudly.
108	8 May 2026	Donna Holder talking incoherently.
109	9 May 2026	starts talking incoherently.
112	10 May 2026	Donna Holder on the balcony of flat 6, talking very loudly.
113	12 May 2026	very loud singing/shouting/ranting.
114	14 May 2026	singing loudly, dancing and clapping.
115	17 May 2026	Donna Holder stuttering loudly like she is a broken recording.
116	18 May 2026	shouting, ranting and arguing with herself.
117	21 May 2026	shouting, ranting, and arguing with herself.
118	25 May 2026	starts talking loudly.