

### The Background

1. Many property owners are taking advantage of new technology to advertise short term stays at their properties on various platforms. Two of the most common are Airbnb and Booking.com. Changes to the tax relief available on buy to let mortgages has also caused a move towards Furnished Holiday Lettings.
2. In Newcastle-upon-Tyne, Mr and Mrs Beattie had a flat. They moved away, and found it convenient to let out the flat through a management company which in turn advertised the flat on Airbnb and Booking.com. Mr Beattie used the flat on one or two nights a week.

### The Covenant

3. The lease of the flat contained this covenant:

*Not at any time to carry on or permit to be carried on upon the Property any trade or business whatsoever nor to use or permit the same to be used for any purpose other than as a private dwelling house for occupation by one family at any one time.*

4. The freeholder considered that Mr and Mrs Beattie's use of the flat breached this covenant in two ways:
  - a. They were carrying out a business; and
  - b. There were not using the property as a private dwelling house.
5. The First Tier Tribunal found against the freeholder, and so they appealed to the Upper Tribunal.

### The Decision

6. At the Upper Tribunal, Martin Roger QC Deputy Chamber President considered the authorities.
7. The Upper Tribunal found that the test for whether a property is being used a dwelling house is a question of fact, and in answering the following are relevant factors:
  - a. The degree of permanence of occupation;
  - b. The relationship between the occupants;
  - c. Whether there is payment for occupation;
  - d. If the owner is present or not.
8. Applying these factors, and the authority of *Tendler v Sproule* [1947] in which the taking of lodgers was considered to be breach of the covenant to use as a private dwelling house, the Upper Tribunal allowed the freeholder's appeal.
9. The Tribunal found that a series of short-term licences was a breach of the covenant.
10. The Tribunal did not find that Mr and Mr Beattie had breached the covenant by carrying out a business at the Property; the judge considered that all the business was done elsewhere, in essence on the digital platform.

### Summary

11. It is always important to advise clients buying leasehold properties about the restrictions they may face in trying to use the property for a second income through short-term licences.

12. The authorities on this covenant may appear a little harsh, as it was common for many years for people to take lodgers into their homes to supplement their income. This was not contrary to using it as a private dwelling house.
13. Until this decision, on this covenant, is challenged in a higher court then purchasers would be well advised to read the small print on their lease.

To view the judgement please [click here](#).



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*Whilst every effort has been taken to ensure these notes are as correct, they are intended to give a general overview of the law. Delegates are respectfully reminded that they are not intended to be a substitute for specific legal advice. No liability is accepted for an error or omission contained herein.*