UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2021] UKUT 268 (LC)
UTLC Case Number: LC-2021-000171

HOUSING – RENT REPAYMENT ORDER – Procedure – Application for joinder of true landlord as respondent to application after expiry of statutory limitation period – First-tier appeal dismissing application for substitution – Appeal dismissed

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

AN APPEAL AGAINST A DECISION OF
THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

(1) MELISSA GURUSINGHE
(2) ALI MAHOMED
(3) SAMUEL HACKWOOD
(4) AHISH KAUSHIK

Appellants

-and-

DRUMLIN LIMITED

Respondent

Re: Flat 2,
41 Calthorpe Street,
London WC1X 0JX

His Honour Judge David Hodge QC
Tuesday 26 October 2021
Determination on written representations

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The following cases are referred to in this decision:

24 Eastfield Road, London, E17 3BA (Ref. No LON/00BH/HMFK/2019/0070)

Adelson v Associated Newspapers Ltd [2007] EWCA Civ 701, [2008] 1 WLR 585

Evans Construction Co Ltd v Charrington & Co Ltd [1983] QB 810

Harringay Meat Traders Ltd v Greater London Authority [2014] UKUT 302 (LC)

Ketteman v Hansel Properties Ltd [1987] AC 189

The Sardinia Sulcis [1991] 1 Lloyd's Rep 201

William Hill Organization Limited v Crossrail Limited [2016] UKUT 275 (LT)

Introduction and background

1. This appeal raises the apparently novel, and important, question whether the FTT, or the Tribunal on appeal from the FTT, have any power to add, or to substitute, a new respondent to an application for a rent repayment order after the expiry of the 12 months' limitation period prescribed by s. 41 (2) (b) of the Housing and Planning Act 2016 ('the 2016 Act'), which provides that a tenant may apply for a rent repayment order only if the relevant offence "was committed in the period of 12 months ending with the day on which the application was made".

2. This is an appeal against the refusal of the First-tier Tribunal ('the FTT'), by Order dated 8 January 2021, to substitute Drumlin Limited ('Drumlin') in place of Cheshire House Developments Limited ('Cheshire') as one of the two respondents to the appellants' application, made to the FTT on 26 April 2020, for rent repayment orders under Part 4 of the 2016 Act. The appellants are represented by Tenants for Justice, a not-for-profit tenant advice and support service. Drumlin is represented by Freemans Solicitors.

3. The appellants' case is that the landlord had committed the offence, under s. 72 (1) of the Housing Act 2004 ('the 2004 Act'), of having control in relation to, or managing, an unlicensed house in multiple occupation ('HMO'). The subject premises, Flat 2, 41 Calthorpe Street, London WC1X 0JX ('the flat'), comprise a four bedroom, self-contained flat within a three-storey converted house with a shared kitchen and one bathroom and one shower-room. The flat was occupied by the four appellants at all times during the relevant period, which ran from 10 September 2018 to 10 September 2019. Each tenant occupied their own room on a permanent basis, with one tenancy for all four tenants. It is said that this was a standard HMO arrangement in that there were communal cooking, and toilet and washing, facilities, with separate, unrelated individuals each paying rent and occupying their rooms as their only place to live. The appropriate HMO licence was not held during the relevant period; and the application for such a licence was not made until 5 February 2020, significantly after the expiry of the tenancy and the relevant period. The first respondent, Cheshire, was believed to be the person having control in relation to and/or managing the flat; whilst the second respondent, Mr Michael Bolt ('Mr Bolt'), was Cheshire's sole shareholder and director and the person named as the landlord in the assured shorthold tenancy agreement dated 16 August 2018. The appellants ask for one rent repayment order to be made against both respondents to prevent any potential enforcement problems. The appellants seek rent repayment orders for the period of 12 months ending on 10 September 2019 in the following sums: £11,180 (Melissa Gurusinghe), £10,140 (Ali Mahomed), £9,880 (Samuel Hackwood), and £7,800 (Ahish Kaushik).

4. On 10 November 2020 the respondents applied to strike out the application under rule 9 (3) (d) and (e) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules') on the basis that neither of the respondents was the landlord of the flat and therefore no rent repayment order could be made against either of them. The registered proprietor of the long leasehold title to the flat was Drumlin, a company incorporated in the Isle of Man, which is the respondent to this appeal. The respondents contended that: (1) land registry documents, which had been supplied by the appellants themselves, confirmed that Drumlin was the registered proprietor and the landlord of the flat; and (2) the appellants had

been informed, prior to the submission of the application to the FTT, by way of emails from the managing agents, Carter Reeves, and the original respondents, that the true landlord was Drumlin, and they had also been supplied with its correct address.

5. This in turn provoked an application by the appellants, on 1 December 2020, for Drumlin to be substituted as a respondent in the place of Cheshire. Having initially indicated that it was minded to substitute Drumlin for Cheshire, the FTT directed that a case management hearing should take place, when the question of the substitution or addition of Drumlin would be determined as a preliminary issue. The FTT made its determination on 8 January 2021. It determined that it had no jurisdiction to add Drumlin as a respondent to the application as the 12 month limitation period for doing so had expired by the date when the application was made.

6. The FTT also determined to add Drumlin to a second application relating to the same flat made by four applicants (of whom one was also an applicant in the first application) seeking rent repayment orders, each in the sum of £3,333.66, for the period from 10 September 2019 to 5 February 2020. That application had been issued on 22 July 2020 so no limitation issue was engaged in that case. Procedural directions were given for the further conduct of that application, as to which no issue arises on the present appeal.

The FTT's decision

7. The FTT set out the parties' arguments at [9] - [27] of its decision. The appellants argued that Drumlin should be added as a respondent to both applications. They explained that the reasons for the failure to name Drumlin as a respondent at the time of both applications was that: (1) in both cases the tenancy agreements had stated that Mr Bolt was the landlord, (2) the appellants had received conflicting information when they had contacted the managing agents for information about the landlord, and (3) when the appellants did receive the correct information, it was difficult to identify that such information was correct because of the previous misinformation. The appellants only became aware that the respondents considered that Drumlin should be the respondent in the matter when their representative received the respondents' bundle on 19 November 2020. On 1 December 2020 the appellants contacted the FTT to ask for Drumlin to become the respondent. They therefore made this request as soon as it had become apparent to them that it was necessary. The appellants said that they had overlooked the entry on the land registry documents that showed Drumlin as holding a long leasehold interest in the property. They apologised to the FTT; and they explained that it was because Justice for Tenants does not employ legally qualified staff. The appellants asked the FTT to note that initially the FTT had determined to substitute Drumlin for Cheshire. The appellants argued that in the circumstances of this case, the FTT should exercise its power under its procedural rules to add Drumlin as a respondent to both applications. This would be consistent with the overriding objective of the rules to enable the FTT to deal with cases fairly and justly. The appellants argued that doing so would not lead to any prejudice being suffered by Drumlin. The appellants pointed to rule 10 (1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules') by which the FTT is given specific powers in relation to the addition, substitution, and removal of parties in order to demonstrate that the FTT has extensive powers under its procedural rules.

8. The respondents' position was that the FTT should not substitute or add Drumlin as respondent to the first application. They denied that Mr Bolt had signed the tenancy agreements. They argued that the signature on the tenancy agreements was quite distinct from the signature on the statement of case. The respondents argued that the appellants had been aware much earlier than the time of the receipt of the respondents' bundle that the correct respondent was Drumlin; they had been informed in correspondence, and it had also been revealed by the land registration documents. The respondents denied that there was any misrepresentation regarding the landlord of the property at any stage. On the contrary, clarity had been provided about Drumlin's role as landlord when it was raised by the tenants.

9. The respondents' main argument was that the FTT was precluded from substituting or adding Drumlin as a respondent because the 12 month period allowed by s. 41 (2) (b) of the 2016 Act for making an application for a rent repayment order had by then expired. They referred the tribunal to the Upper Tribunal's decision in *William Hill Organisation Limited v Crossrail Limited* [2016] UKUT 275 (LC) ('*William Hill*') in which the Deputy President (Martin Rodger QC) was required to determine whether Transport for London ('TfL') should be substituted for Crossrail Limited ('Crossrail') in an application for a disturbance payment under s. 37 (1) (a) of the Land Compensation Act 1973. In its application, the applicant had, by mistake, wrongly identified Crossrail, rather than TfL, as the acquiring authority. It then applied, after the expiry of the limitation period, to substitute TfL for Crossrail. The respondents' argument was that this decision precluded the FTT from adding or substituting a respondent after the expiry of the 12 month statutory limitation period in the 2016 Act. That Act made no provision to extend the applicable time limit of 12 months for making an application for a rent repayment order. The respondents argued that *William Hill* had dealt with the same principles; and that the Tribunal in that case had concluded that there was no jurisdiction to extend a time limitation period in these circumstances at [47] to [51]. The respondents also referred to, and relied upon, the FTT decision in *Re 24 Eastfield Road, London, E17 3BA* (Ref. No LON/00BH/HMFK/2019/0070), which had considered the question of the substitution of parties subsequent to the expiry of the 12 month limitation period. It had determined that the FTT did not have the power to do this, relying upon the authority of *William Hill*.

10. The appellants responded by arguing that the FTT was not prevented from ordering the addition of a new party by the decision in *William Hill*. They argued that in that case the Upper Tribunal had in fact made the substitution requested. They also argued that *William Hill* had concerned the Limitation Act 1980 which was not relevant to the matter before the FTT. They repeated their position that the FTT had the power to make the substitution or addition as a result of its procedural rules.

11. The FTT set out its reasons for determining that it lacked any jurisdiction to add Drumlin as a respondent to the application at [30] – [34] of its decision. The 2016 Act imposed a strict limitation period of 12 months for any application for a rent repayment order. The Act made no provision for extending the 12 month deadline. The FTT agreed with the respondents' argument that there was a distinction between a statutory limitation period, where the FTT had no power to extend time, and a procedural limitation period. This was the distinction that had animated the Upper Tribunal in its decision in *William Hill*. Although the Upper Tribunal had found in favour of the applicant, which had applied to substitute a respondent,

this had been done on an alternative argument based on s. 35 (3) to (6) of the Limitation Act 1980 ('the 1980 Act') and rule 19.5 (3) of the Civil Procedure Rules ('the CPR'). The FTT agreed with the judge in *William Hill* that this argument had no relevance to the current case. It also agreed with the reasoning of the FTT in *Re 24 Eastfield Rd* when it had determined that the time limit in the 2016 Act was jurisdictional and therefore could not be extended. The judge in that decision had also made it clear that the FTT's general power to regulate its own procedure was expressly subject to the provisions of the Tribunals, Courts and Enforcement Act 2007 ('the 2007 Act') and any other enactment. It was therefore limited by s. 41 (2) (b) of the 2016 Act, which only afforded the FTT the jurisdiction to make a rent repayment order if "the offence was committed in the period of 12 months ending with the day on which the application is made."

12. The FTT determined to add Drumlin as a respondent to the second application because it was in the interests of justice to do so. That decision was said to be consistent with the overriding objective because there did not appear to be any prejudice suffered by Drumlin as a result of the addition, and there appeared to have been confusion and opacity about the identity of the applicants' landlord on the part of the respondents.

The appeal

13. On 8 February the FTT considered the appellant's request for permission to appeal and determined that: (1) it would not review its decision; but (2) it would grant permission to appeal. The law surrounding the issue of what, if any, time limit applies to the addition of a new respondent in the context of the 2016 Act was complex, as was the question of whether the FTT was bound, in the particular circumstances of the case, by the decision in *William Hill*. The issues raised by the appellants were of potentially wide implication. It was therefore right for them to be considered afresh by an appellate body. Had it not been for the decision in *William Hill*, the FTT would have been minded to have exercised its discretion and to add the new respondent because of: (1) the delay in processing the application as a consequence of the pandemic, and (2) the reasons set out in paragraphs 21 to 23 of the application for permission to appeal.

14. The FTT's decision to grant permission to appeal was sent to the appellants on 18 February 2021. A notice of appeal, dated 17 March 2021, was received by the Tribunal by email on 18 March 2021.

15. Initially, by an Order dated 15 April 2021, the Tribunal had directed that this appeal should be a review of the decision of the FTT and would be conducted under the Tribunal's standard procedure. However, following the parties' consent to the appeal being determined by written representations, by Order dated 22 June 2021 the Tribunal directed that the appeal should be determined under the Tribunal's written representations procedure; and further procedural directions were given for the conduct of the appeal (with which the parties have complied).

The grounds of appeal

16. Two grounds are advanced in support of the appeal: First, that the FTT erred in its belief that its powers were limited by s. 41 (2) (b), or by any other section, of the 2016 Act. Second, that the party which the appellants seek to add to the application may be added by the Tribunal pursuant to the powers conferred on the Tribunal by s. 25 of the 2007 Act.

17. The first ground of appeal is that the FTT erred in its belief that its powers were limited by statute. It is not in dispute that: (1) the FTT has the power to add a party to a rent repayment order application pursuant to rule 10 of the 2013 Rules, and (2) s. 41 (2) (b) of the 2016 Act places a 12 month limitation period on an application for a rent repayment order being brought after a relevant breach has occurred. What is disputed is whether adding a party is to be treated in any way as starting a new claim. The FTT made it clear that it based its decision on the case of *William Hill*. The basis of that case is that s. 9 (1) of the 1980 Act provides that an action to recover a debt and any interest must be started within six years "from the date on which the cause of action accrued". Whilst appropriate in *William Hill*, this line of argument does not apply to the matter at hand in this appeal. By ss. 1 and 39, the 1980 Act only applies to the specific types of actions detailed within that Act. The period of 12 months prescribed for making a rent repayment order application is specified in s. 41 (2) (b) of the 2016 Act so the 1980 Act does not apply and one must turn to the 2016 Act and the 2013 Rules. The 2016 Act contains no restriction on the addition or substitution of parties. Rule 10 of the 2013 Rules confers a general, and unrestricted, power on the FTT to give a direction to add, substitute or remove a person as an applicant or a respondent, and to give such consequential directions as it considers appropriate Therefore, it is contended that the FTT is clearly not limited from using its discretion to add or to substitute a party when it deems it to be appropriate or necessary. There is no requirement under the rule permitting substitution or addition that the party being added or substituted should be informed within any specific time period. This would be counter-productive, as in many instances (including the present case) the FTT, or the parties, may only realise after proceedings have been issued, and after further information has come to light, that a party may need to be added or substituted to the application. This does not amount to the issue of new proceedings, or any extension of the limitation period, but rather the substitution or addition of a parry or parties where this is necessary and appropriate. By seeking to substitute, or to add, a party, the appellants are not seeking to extend a statutory time limit but rather to rectify the fact that Drumlin was not listed as a respondent because there had been a great deal of confusion as to who the landlord actually was. This is said to be a necessary substitution in the interests of justice, and one that is provided for, with no restriction as to time limits, under rule 10 of the 2013 Rules and the 2016 Act. There is nothing in the 2013 Rules which states that the FTT must treat a rule 10 application as a new case. Therefore, it can exercise its discretion - as it has been minded to do throughout the proceedings to date - and add Drumlin as a respondent.

18. The second ground of appeal is that the Tribunal has the power to add Drumlin as a respondent and should do so in order to further the overriding objective in both the 2013 Rules and the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 ('the 2010 Rules') of enabling the FTT and the Tribunal to deal with cases fairly and justly. It is said to be in the interests of fairness and justice not to allow an undisclosed principal to benefit from not appearing on a tenancy agreement for which it has received the rent. It would not be in the interests of fairness and justice, and therefore in accordance with the overriding objective, to allow Drumlin to benefit from its name not appearing on the tenancy agreement

when it was the party which had, in fact, received the rent from the tenants, unbeknown to them. Indeed, at [35] of its decision, the FTT exercised its undoubted discretion to add Drumlin to the second application for a rent repayment order against the same respondents, in respect of the same flat, and arising out of the same breach. Drumlin acted as an undisclosed principal through Mr Bolt and/or Cheshire, the other named respondents. At no point during the appellants' tenancy was Drumlin appropriately, or clearly, disclosed; and internal works to the flat had been carried out both by Mr Bolt and/or by Cheshire. The absence of Drumlin as a respondent would have been spotted at an earlier point had it not been for the delays caused by the global Covid-19 pandemic. The application was made on 26 April 2020 in respect of a period of breach ending on 10 September 2019. Without the pandemic, the respondents' evidence bundle would have been received within 12 months of 10 September 2019, removing any dispute over whether the addition of Drumlin should be allowed. At [59] and [63] of ***William Hill***, the Tribunal recognised that among the powers vested in the Tribunal by s. 25 of the 2007 Act is the power to substitute a party after the expiry of any relevant limitation period For these reasons, if the Tribunal should decide that the FTT did not have the necessary discretion to allow a new respondent to be joined to the application due to there being a limitation period that applies to this application, the appellants request the Tribunal to exercise its discretion to do so.

19. Drumlin's overarching response to the appeal is that neither the FTT, nor the Tribunal, have any power to extend a statutory time limit, or to substitute or add a new respondent, after the 12 month time limit prescribed by s. 41 (2) (b) of the 2016 Act expired on 10 September 2020. The limitation period of 12 months for applications under Part 4 of the 2016 Act, relating to rent repayment orders, is said to be "set in stone".

20. Specific to the instant appeal, it is said that whilst there may have been some initial confusion concerning the identity of the landlord of the flat, because the tenancy agreement named Michael Bolt as the landlord, this had been clarified (by email) before the first application was submitted to the FTT. In any event, any confusion as to the identity of the landlord had been removed by the time the appellants submitted their bundle during August 2020 (still within the 12-month time limit) because the bundle supplied by the appellants had included the land registry title document for the flat showing Drumlin as the reversioner.

21. In summary, Drumlin contend that: (1) There is no power to substitute a party in these proceeding after the 12 month time limit has expired in accordance with s. 41 (2) (b) of the 2016 Act. That 12 month time limit ran until 10 September 2020, 12 months after the expiration of the tenancy agreement. Therefore Drumlin cannot be substituted for Cheshire since the application for substitution was made in December 2020. (2) The application to add or substitute a party could have been made in time before 10 September 2020 as the appellants and their representatives had the information required to make such a decision at that time so that any discretion should be exercised in favour of Drumlin.

Determination and reasons

22. The Tribunal agrees with the decision of the FTT to dismiss the application for the joinder of Drumlin as a respondent to the rent repayment order application and also with its reasons for doing so, as set out at [11] above. In summary, the FTT had no jurisdiction to make such

an order after the expiry of the 12 month limitation period prescribed by s. 41 (2) (b) of the 2016 Act. The Tribunal accepts the arguments advanced by Drumlin. The Tribunal therefore rejects the first ground of appeal. That also effectively disposes of the second ground of appeal. That is because the Tribunal is exercising its appellate jurisdiction to correct an asserted error of law on the part of the FTT. Since there was no error of law on the part of the FTT, the appeal must be dismissed. The Tribunal is not exercising its original jurisdiction, as it was in *William Hill*, where it was required to determine an application for a disturbance payment under the Land Compensation Act 1973.

23. Both parties recognise that the leading authority for the purposes of this appeal is the decision of the Tribunal (Martin Rodger QC, Deputy President) in *William Hill*. The facts are summarised at [9] above. For present purposes, the principal issues in that case were whether the Tribunal had the power to substitute a new party as the respondent to a reference for compensation for disturbance after the expiry of the relevant limitation period and, if so, how that power was to be exercised. It was common ground that the Tribunal had no power to extend an applicable statutory limitation period (as it had recently confirmed in *Harringay Meat Traders Ltd v Greater London Authority* [2014] UKUT 0302 (LC)); but the claimant contended that the Tribunal had jurisdiction under rule 9 (1) of the 2010 Rules to substitute a party, and that the only restriction on the exercise of that jurisdiction was the overriding objective of dealing with cases fairly and justly.

24. The Tribunal determined that it did have the necessary jurisdiction to allow the substitution of a party after the expiry of the applicable limitation period. But it is necessary to understand both the reasoning which led the Tribunal to that conclusion and also the context in which the question arose for determination.

25. There were two strands to the Tribunal's reasoning in *William Hill*. The first (at [49]-[52]) concerned the operation of the 1980 Act. The Tribunal found it impossible to accept that rule 9 (1) of the 2010 Rules conferred any jurisdiction to permit a new claim to be made after the expiry of an applicable limitation period, since that would be expressly contrary to s. 9 (1) of the 1980 Act, preventing any reference for compensation from being brought more than six years after the accrual of the cause of action. Subject to any impact of s. 25 of the 2007 Act, s. 35 of the 1980 Act could not be relied upon to bolster rule 9 (1) because s 35 (1) and (2) confer no power to permit new claims, and the rule-making powers conferred by s 35 (3) to (6) do not apply to proceedings in the Tribunal.

26. The second (considered at [53]-[63]) depended on s. 25 of the 2007 Act, which vests the Upper Tribunal with the powers of the High Court in relation to the attendance and examination of witnesses, the production and inspection of documents, and "all other matters incidental to the Upper Tribunal's functions". The claimant in *William Hill* submitted that this means that the Upper Tribunal has the same powers as the High Court in relation to substitution after the expiry of any applicable limitation period, so that s. 35 (3) to (6) of the 1980 Act, and the relevant rule of court made in reliance upon it (CPR rule 19.5 (3)), must be taken to extend additionally to the Tribunal. The Tribunal accepted this submission. It held that the "functions" of the Tribunal obviously include the resolution of disputed compensation; and the management of references for the determination of such compensation, including the procedure for the joinder of the correct parties, were "matters incidental" to that function. It followed that amongst the powers akin to those of the High

Court which were vested in the Upper Tribunal by s. 25 of the 2007 Act was the power conferred on the High Court by s. 35 (3) to (6) of the 1980 Act to allow, in accordance with the relevant rules of court, a new claim to be made by the substitution of a new party after the expiry of the relevant limitation period provided the conditions in s. 35 (5) were satisfied.

27. Had the power conferred by s. 25 of the 2007 Act not been available to the Tribunal, there would have been no power to allow any amendment to substitute a new party after the expiry of any applicable limitation period. Once this analysis of *William Hill* is understood, the disposal of this appeal becomes clear.

28. S. 41 (2) (b) of the 2016 Act prescribes a 12 months' limitation period for applications for rent repayments orders by providing that a tenant may apply for a rent repayment order only if the relevant offence "was committed in the period of 12 months ending with the day on which the application was made". The FTT has no power to extend that limitation period. It matters not that the limitation period is prescribed by the 2016 Act rather than by the 1980 Act; it is still a limitation period prescribed by primary legislation, in the form of a statute, which cannot be extended by the FTT because there is no statutory power to do so. Nor is there any statutory provision, or power conferred by any procedural rule created by secondary legislation, which would enable the FTT effectively to override that limitation period by substituting the correct respondent landlord to proceedings commenced within time but against the wrong respondent.

29. Had s. 35, and the procedural rules made thereunder, extended to the FTT, then they would have conferred the power to make the necessary order for substitution. That is because it is now clearly established that the correct approach that applies (in accordance with s. 35 of the 1980 Act and CPR 19.5) to any application for the substitution of a new party for the party named in the claim form, on the basis that the latter party was named by mistake, is whether it is possible to identify the defendant by reference to a description which is material to the particular claim from a legal point of view: see *Adelson v Associated Newspapers Ltd* [2007] EWCA Civ 701, [2008] 1 WLR 585, approving the approach adopted in *The Sardinia Sulcis* [1991] 1 Lloyd's Rep 201. Thus, substitution will be allowed where a claimant has made a mistake as to the identity of the true landlord of premises to which the claim relates: compare *Evans Construction Co Ltd v Charrington & Co Ltd* [1983] QB 810. However, as the first strand of the Tribunal's reasoning in *William Hill* makes clear, s. 35, and the rule-making powers which it confers, have no application to the Tribunal, still less to the FTT.

30. Thus, the FTT was correct when it determined that it did not have the necessary jurisdiction to allow the substitution of a party after the expiry of the applicable limitation period. In doing so, it was merely applying a long-established rule of practice, which continues to apply in cases where recourse to s. 35 of the 1980 Act, and the procedural rules made in accordance with that section, have no application, as in the present case.

31. In *Ketteman v Hansel Properties Ltd* [1987] AC 189, a case decided under the law which applied prior to the changes governing new claims in pending actions effected by s. 35 of the Limitation Act 1980 ('the 1980 Act'), and what is now CPR 19.5, the House of Lords referred to the long-established rule of practice whereby no amendment should be allowed permitting the joinder of an additional defendant in a situation where a relevant period of

limitation had already expired in relation to the relevant cause of action against him. The true rationale for that rule of practice was explained not on the basis that the amendment relates back to the date of issue of the proceedings, but rather on the ground that no useful purpose would be served by joining an additional defendant at a time when an applicable period of limitation has already run in his favour because he is not deemed to have become a party at any earlier date than the actual date of joinder and the new party would therefore have an unanswerable defence to the claim against him. No court should allow an amendment that is doomed to fail.

32. Since the FTT's decision was correct in law, the Tribunal has no jurisdiction to allow an appeal from its decision. The "escape route", afforded by s. 25 of the 2007 Act, that was available to the Tribunal in ***William Hill***, was not available to the FTT in the present case because no similar statutory provision applies to the FTT, as befits its status as a tribunal inferior to the Upper Tribunal in the tribunal hierarchy. Nor can the Tribunal avail itself of its powers under s. 25 in a case, such as the present, where it is exercising its appellate jurisdiction because this is confined by the 2007 Act to correcting errors of law on the part of the FTT. In ***William Hill***, by way of contrast, the Tribunal was exercising its original jurisdiction, equivalent to that of the High Court, when discharging its function of resolving a dispute as to the level of an award of statutory compensation for disturbance.

33. For all these reasons, the decision of the FTT was correct in law; and this appeal therefore falls to be dismissed. It is unnecessary for the Tribunal to consider whether, in the exercise of any discretion, the substitution of Drumlin for Cheshire should have been ordered because there was, and is, no jurisdiction, whether in the FTT or the Tribunal, to order such substitution.

David R. Hodge

His Honour Judge David Hodge QC

Dated: 26 October 2021