OUTER HOUSE, COURT OF SESSION

[2026] CSOH 63

P260/26

OPINION OF LORD SANDISON

in the Petition

ARBITRATION APPLICATION No 2 OF 2026

Petitioner: CMS Cameron McKenna Nabarro Olswang LLP
Respondent: Morton Fraser MacRoberts LLP

26 June 2026

Introduction

[1] By way of this application, the petitioner seeks in terms of rules 69 and 70 of the Scottish Arbitration Rules to challenge the decision of an arbitrator dated 3 February 2026, alleging that he fell into legal error in his determination. Such a challenge requires the leave of the court to proceed unless the proposed respondent in the appeal agrees to it, which it does not.

[2] In terms of rule 70(5) of the Rules, the petitioner's application for leave falls to be determined without a hearing unless I am satisfied that one is required. Having reviewed the papers, I consider that the relevant issues have been appropriately canvassed there and that a hearing is not required.

Background

[3] The arbitration was brought further to provisions contained in a 15-year lease entered into in January 2010 of office premises across four floors of a building in Edinburgh. The petitioner came to hold the landlord's interest in the lease and the proposed respondent to the appeal was the tenant. The ish of the lease was in October 2024, when the tenant vacated the premises. Various disputes arose in connection with the condition of the leased premises at the ish.

[4] One such dispute was whether the petitioner was entitled to make a claim against the tenant for breach of contract in respect of a failure to remove certain works it had carried out to the third floor within the premises, and to reinstate that part of the premises. Such a claim would only be available to the petitioner if it had previously required the tenant to remove those works and reinstate the affected premises in accordance with a power given to it in the lease so to require, and the tenant had failed to comply with that requirement. In that regard, clause 6.19 of the lease, so far as material for present purposes, provided:

> "Not to alter
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> 6.19.1 [Not] at any time without the consent in writing of the Landlords… to… (4) make any structural alterations to the Premises…. It shall be a condition of any consent required under the provisions of this clause 6.19… that the Landlords, acting reasonably, shall have the option (in accordance with the provisions of this Clause 6.19) to require…the Tenants at the termination of the Lease either (i) to reinstate the Premises to their condition prior to the carrying out of the relevant alterations or additions or (ii) (without compensation and except in the case of tenants' or trade fixtures and fittings) to leave the Premises as altered or added to as the case may be.
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> 6.19.2 If the Landlords so require, by notice in writing given to the Tenants not less than six months prior to the natural expiry of this Lease (but without prejudice to the Tenant's obligations under clause 6.6, 6,7 and 6.13), the Tenant shall effect such reinstatement referred to in Clause 6.19.1 hereof by the date of such expiry and in the event that the Tenants fail to do so the Landlords shall be entitled to carry out the necessary work of reinstatement and the Tenants shall be obliged to reimburse the Landlords within 14 days of written demand therefore the proper and reasonable

costs necessarily incurred in so doing together with professional fees reasonable and necessarily incurred by the Landlords in connection with reinstatement."

[5] On 16 February 2024 (more than 8 months prior to the ish of the lease), the petitioner's solicitors sent a letter to the tenant raising a number of issues in connection with the condition of the premises. The letter stated *inter alia*:

"… WE HEREBY GIVE NOTICE that:

1. as the tenant of the Property, you are in breach of your repair, maintenance and other obligations contained in clauses 6.6, 6.8, 6.9, 6.16, 6.19.2 and 6.19.3 of the Lease;
2. the cost of the work carried out to the Property by the Landlord to ensure that the Property was put back into the condition which the Lease requires is detailed in the enclosed schedule of dilapidations;
3. you are required to carry out the works as detailed in the enclosed schedule of dilapidations within a reasonable period; and
4. you are liable for the costs incurred by the Landlord in relation to the preparation and service of the enclosed schedule in terms of clause 6.26 of the Lease …"

[6] The letter was accompanied by a schedule which *inter alia* required reinstatement of the third floor of the premises by way of removal of the works carried out by the tenant there.

[7] By letter dated 14 March 2024 the tenant replied, stating *inter alia*:

"3. Clauses 6.19.2 and 6.19.3 founded upon are not relevant.

In your letter of 16 February you make reference to Clauses 6.19.2 and 6.19.3 of the Lease.

Clause 6.19.2 refers to reinstatement called for by the Landlords at termination under clause 6.19.1. That provision, in turn, relates to Landlords' consent required for various applications made and Works undertaken during the currency of the Lease. Save in respect of certain works carried out on the 3rd floor, and as noted above, no application for Landlords' consent under clause 6.19.1 was ever made by the Tenants, the necessary works having been carried out as Tenants' Variations to the original Landlords' Works instructed under clause 3 of the AFL [i.e., the Agreement for Lease previously entered into]. Clause 6.19.2 is accordingly irrelevant (with the exception of the minor 3rd floor works) …"

The arbitrator's determination

[8] Various disputes, including that relating to the removal and reinstatement of the tenant's works at the third floor within the premises, were referred to arbitration. On 12 November 2025, a debate was held before the arbitrator. The questions for debate were whether the letter of 16 February 2024 from the petitioner's solicitors to the tenant was a valid notice under the lease requiring removal of those works and reinstatement of that floor of the premises for the purposes of clause 6.19.2 of the Lease; and whether a reasonable recipient of that letter would have understood the petitioner to be invoking the specific provisions of clause 6.19.2 of the Lease.

[9] Following upon the debate, on 3 February 2026 the arbitrator issued a determination in which he dealt with those questions as follows:

> "[12] I should note four important features of this notice. First, it refers expressly to a breach by the Tenants of their repair and maintenance obligations 'contained in clause… 6.19.2… of the Lease'. That clause does not in fact contain any repair and maintenance obligations; as already noted, it describes a remedy that is available to the Landlords, taking effect at the date of expiry of the Lease, to compel the Tenants to effect reinstatement. The Tenants' repair and maintenance obligations are contained in clause 6.19.1, but there is no reference to that clause in the notice. Thus the notice does not mention the clause containing the critical repairing obligations of the Tenants.
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> [13] The second important feature of the notice of 16 February 2024 is that its relationship to the contractual structure of clauses 6.19.1 and 6.19.2 is unclear. Paragraph 2 of the notice assumes that work has been carried out to the Property by the Landlord, apparently in accordance with the schedule of dilapidations attached to the notice. Paragraph 3, by contrast, purports to require the Tenants to carry out the work in the schedule of dilapidations. That might be thought to conform to the power in clause 6.19.2, but there is an important discrepancy in that the works in question are to be carried out according to the notice 'within a reasonable period', whereas clause 6.19.2 very specifically requires the works to be performed by the date of expiry of the Lease. Clause 6.19.1 specifies that the Landlords, acting reasonably, may if they wish require the Tenants 'at the termination of this Lease' to reinstate the premises or leave them in their altered condition.
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> [14] The third important feature of the notice is that it assumes that the Tenants are already in breach of contract, and are therefore liable to pay, in effect, damages.

The obligation to make reinstatement, however, is only operative as at the natural expiry of the Lease, that is to say, on 21 October 2024. Furthermore, the terms of clause 6.19 clearly assume that the normal remedy for the Landlords will not be damages for breach of contract but an order to implement the Tenants' obligations of reinstatement (clause 6.19.1, which of course also leaves open the possibility that the Landlords may wish to leave alterations in place) or by using a notice served under clause 6.19.2 to compel the Tenants to reinstate the property by the date of expiry of the Lease, 21 October 2024. The notice itself refers to the cost of the work 'carried out to the Property by the Landlord', and the schedule of dilapidations accompanying the notice gives precise costs for a list of very specific items of work. That plainly assumes that the Landlord has already carried out the remedial work specified in the notice, whereas it appears that that was not the case.

[15] The fourth feature of the notice is that, according to its structure, particularly in the schedule, it relies on breach of various provisions in the contract. The only one of these that could be relevant for present purposes is clause 6.19.2. In effect, the notice asks the Tenants to pay damages for breach of contract, whereas clause 6.19 requires them to carry out works of reinstatement, failing which the Landlords are entitled to carry out such works and to charge the cost to the Tenants. The notice treats the necessary works as 'dilapidations'. The word 'dilapidations' denotes physical defects in a building that appear over time, either as a result of ordinary wear and tear or in consequence of more specific acts that cause damage: *Grove Investments Ltd v Cape Building Products Ltd*, 2014 Hous LR 35, at paragraphs [14]-[15]. Thus the basic claim that is made in the notice is for, effectively, damages for defects that have emerged, without giving the Tenants the right that they would normally have had under the last part of clause 6.19.1 to carry out the necessary works themselves (or through a contractor employed by them). This would obviously give the Tenants greater control over the work of reinstatement, such as by choosing their own contractor and by forming the initial view as to what work is necessary for reinstatement. In this connection, I would refer to the point made in paragraph [7] above that the two parts of clause 6.19 are related. If clause 6.19.2 is invoked, that is essentially to notify the Tenants that they are required to carry out the work of reinstatement in terms of that clause.

The requirements for a valid notice

[16] The first question that arises in the present case is whether the letter of 16 February 2024 is a valid notice under the Lease requiring removal of the Level 3 Works and reinstatement of that floor for the purposes of clause 6.19.2 of the Lease. The letter certainly conforms to certain of the requirements: it is in writing, and given to the Tenants not less than six months prior to the natural expiry of the Lease. Nevertheless, as indicated at paragraphs [12]-[15] above, it is defective in a number of substantive requirements. First, it refers to a breach of repair and maintenance obligations, but without founding on the primary source of those obligations, namely clause 6.19.1. Secondly, it does not, in accordance with clause 6.19.1, require reinstatement at the termination of the Lease, but applies to the period before that

(under reference to the expression 'within a reasonable period') and sets out an estimated claim for the cost of the works specified in the notice.

[17] Thirdly, the notice, in particular in its schedule, takes the form of, in substance, a claim for damages. The powers in clause 6.19.1 and 6.19.2, by contrast, are framed as requiring specific implement of the Tenants' obligations. It is true that paragraph 3 of the letter of 16 February 2024 states that the Tenants 'are required to carry out the works as detailed in the enclosed schedule of dilapidations', but as already noted the schedule takes the form of a claim for costs which conforms to paragraph 2 of the letter. Fourthly, the Schedule refers to extensive works on the fourth, fifth and sixth floors of the Premises as well as the third floor. It is only the third floor where alterations were carried out by the Tenants that would fall within clause 6.19.1, which expressly refers to reinstatement of the Premises following Tenants' alterations or additions. Clause 6.19.2 refers to the reinstatement referred to in clause 6.19.1, and therefore it too is confined to the third floor.

[18] In summary, for the foregoing reasons, in my opinion the structure of the notice of 16 February 2024 does not make it clear that the Landlords are making use of the option given to them by clause 6.19.1, to require reinstatement of works carried out by way of alteration or addition. Nor does it make it clear that the Landlords are making use of the specific option conferred by clause 6.19.2 to require reinstatement by the date of expiry of the Lease. The notice as a whole in substance requires the payment of damages for works that have not yet been carried out, and does not make use of the specific contractual options conferred by clause 6.19.1 and 2. This is an important conceptual difference rather than a point of detail; specific implement is a fundamentally different remedy from damages, a distinction that underpins the Scots law of contract when compared with other systems. On this basis, I am of opinion that the letter of 16 February 2024 does not amount to a valid notice exercising the options conferred by either of the relevant parts of clause 6.19.

The meaning of the purported notice of 16 February 2024

[19] For the foregoing reasons it is not strictly necessary for me to consider whether a reasonable recipient of the notice would have understood the meaning that notice, considered objectively, to be that the recipient was obliged to implement the contractual obligations in clause 6.19.1 and .2 of the Lease. I will nevertheless comment briefly on this matter.

[20] For the foregoing reasons, the letter of 16 February 2024 contains a number of important discrepancies when set against the contractual requirements of clauses 6.19.1 and 6.19.2. The most important of these is that the letter takes the form of, in effect, a claim for damages for remedial work, rather than an exercise of the options contained in clauses 6.19.1 and 6.19.2 and implement of the obligations specifically required in those clauses. In addition, the letter refers to certain other clauses of the contract which are not relevant to the present claim, and the time limit referred to, 'within a reasonable period', is not a time limit that is referred to in clause 6.19.

> [21] A further important point is that the works referred to in detail in the schedule of dilapidations appended to the letter are not confined to Level 3 of the Premises, which is the only level where there are Tenants' alterations and additions that would fall within the provisions of clauses 6.19.1 and 6.19.2. This makes the import of the purported notice very unclear, since to the extent that it goes beyond Level 3 it appears to be plainly invalid."

On that basis, the arbitrator held that the two questions which had been debated both fell to be answered in the negative.

The proposed grounds of appeal

[10] The petitioner claims that the arbitrator erred on a point of Scots law in holding that the letter of 16 February 2024 was not a valid notice under the lease requiring removal of the tenant's works on the third floor and reinstatement of that floor for the purposes of clause 6.19.2 of the lease, and in deciding that a reasonable recipient of that letter would not have understood the petitioner to be invoking the specific provisions of clause 6.19.2.

[11] It maintains that the letter of 16 February 2024 was plainly a valid notice requiring removal of those works further to clause 6.19.2 and, indeed, was read as such by the tenant, pointing out that the letter made express reference to the clause and that the accompanying schedule required reinstatement of the third floor by way of removal of the works. The arbitrator is said, firstly, to have proceeded on the erroneous basis that, in order for the letter to be formally valid, it required to make express reference to clause 6.19.1 of the lease as the primary source of the reinstatement obligations under clause 6.19.2. It is suggested that that analysis is wrong as clause 6.19.2 did not impose any requirement (either expressly or implicitly) for clause 6.19.1 to be referred to in any notice under clause 6.19.2, but merely required notice in writing requiring removal of the tenant's works, and reinstatement, to be given not less than 6 months before the ish, which requirements were met by the letter of

16 February 2024. Secondly, it is said that the arbitrator also erroneously held that the letter was invalid as it only stated that the removal and reinstatement words were to be carried out "within a reasonable period". In the circumstances of the dispute, it is said to have been clear that that was a requirement for reinstatement in the reasonable contractually stipulated period (ie by the ish of the lease).

[12] Thirdly, the arbitrator also noted that the letter in substance took the form of a claim for damages. However, he then accepted that the letter expressly stated that it required the carrying out of works in accordance with the accompanying schedule. This matter accordingly provided no support for the determination.

[13] Fourthly, the arbitrator noted that the schedule accompanying the letter referred to works at other floors of the premises, as well as on the third floor. Again, this factor is said to have provided no support for his analysis or determination.

[14] Further, for all of the foregoing reasons, the determination that a reasonable recipient would not have understood the petitioner to be invoking the specific provisions of clause 6.19.2 of the lease is also said to have been erroneous. The letter of 16 February 2024 intimated to the tenant the matters required under clause 6.19.2 and required removal and reinstatement in respect of its works on the third floor. The tenant's letter of 14 March 2024 acknowledged that the petitioner's letter of 16 February 2024 relevantly raised clause 6.19.2 in relation to the third floor, plainly indicating that a reasonable recipient of that letter would regard it as, *inter alia*, a notice requiring removal of the works there and reinstatement of the premises further to clause 6.19.2. In consequence of the arbitrator's errors, his determination should be set aside and a proof before answer allowed in relation to the petitioner's substantive claims in the arbitration.

[15] Rule 69(1) of the Scottish Arbitration Rules provides: "A party may appeal to the Outer House against the tribunal's award on the ground that the tribunal erred on a point of Scots law (a 'legal error appeal')."

[16] Rule 70 provides:

> "(1) This rule applies only where rule 69 applies.
>
> (2) A legal error appeal may be made only –
> (a) with the agreement of the parties, or
> (b) with the leave of the Outer House
>
> (3) Leave to make a legal error appeal may be given only if the Outer House is satisfied –
> (a) that deciding the point will substantially affect a party's rights,
> (b) that the tribunal was asked to decide the point, and
> (c) that, on the basis of the findings of fact in the award (including any facts which the tribunal treated as established for the purpose of deciding the point), the tribunal's decision on the point –
> (i) was obviously wrong, or
> (ii) where the court considers the point to be of general importance, is open to serious doubt …"

[17] In relation to these matters, the petitioner makes the point that the arbitrator's determination clearly substantially affects its rights. It maintains that the claimed errors which it has identified render the arbitrator's analysis obviously wrong. In any event, it claims that the proper approach to be taken to both the required content of such notices (which flow from terms that are said to be in common use in commercial leases) and to the application of the "reasonable recipient" test is a point of general importance, in respect of which the arbitrator's approach was open to serious doubt. The provisions of rule 70 are thus said to be met.

Respondent's position

[18] The proposed respondent maintains that the arbitrator's determination is not wrong, let alone obviously wrong, for the purposes of rule 70. It notes that the determination was made following a full and considered analysis of the relevant authorities as regards interpretation of commercial contracts and validity of notices issued under contracts. It contained no major intellectual aberration, false leap in logic, or any result for which there was no reasonable explanation. On the contrary, it was in accordance with the leading authorities on the issue, and certainly not obviously wrong.

[19] Separately, the determination did not concern a point of general importance. It concerned the proper interpretation of a bespoke lease between the parties to the arbitration as to the validity of a notice served thereunder. It had no wider resonance beyond the present dispute between the parties. Even if it did concern a point of general importance, it was not open to serious doubt. It involved a straightforward application of settled law on the questions of (i) validity of the purported notice and (ii) what that purported notice would convey to the reasonable recipient.

[20] Reference was made to *Antaios Compania Naviera SA* v *Salen Rederierna AB* [1985] 1 AC 191 at 206D - E; *Arbitration Appeal No 1 of 2023* [2023] CSOH 78 at [24] and [25] and *Arbitration Application No 2 of 2024* [2024] CSOH 83 at [21] and [22]. Leave should not be granted.

Decision

[21] The overall policy of the law in relation to legal error appeals is "in the interests of party autonomy, privacy and finality, that such awards should not be readily transferred to the courts for appellate review", per Rix LJ, dealing with the provisions in the (English)

Arbitration Act 1996 – on which the Arbitration (Scotland) Act 2010 was modelled – in *CGU International Insurance Plc* v *AstraZeneca Insurance Co Ltd* [2006] EWCA Civ 1340 at [3]. That policy is part of the pattern of benefits and disadvantages which falls to be taken into account by parties in deciding whether to introduce arbitration clauses into their contractual relations or in deciding whether to refer an established dispute to arbitration. The restrictions on a non-consensual legal error appeal contained in rule 70(3) of the Scottish Arbitration Rules reflect that policy. In the context of the present application, no issue is taken with the propositions that deciding the point which it is sought to place under review would substantially affect the parties' rights, and that the arbitrator was asked to decide it. What remains for consideration at this stage is whether his decision was obviously wrong or, if the point is considered by the court to be of general importance, whether it is open to serious doubt.

[22] It has been said that in this context, for a decision to be obviously wrong, it must involve something in the nature of a major intellectual aberration, or "making a false leap in logic or reaching a result for which there was no reasonable explanation": *HMV UK Ltd* v *Propinvest Friar Ltd Partnership* [2012] 1 Lloyd's Rep 416; *Arbitration Application 1 of 2013* [2014] CSOH 83 at [32]. One may be searching for a conclusion which is so obviously wrong as to preclude even the possibility that the arbitrator was right: *Antaios Compania*; *Arbitration Appeal No 1 of 2019* 2019 SLT 1309 at [8]; *Arbitration Appeal No 1 of 2021* [2021] CSOH 41 at [19]. It does not suffice to meet the criterion of obvious error if the criticised decision is one in relation to which respectable intellects might well disagree: *Doune Wind Farm (Scotland) Ltd* v *Alfred McAlpine Business Services Ltd* [2008] EWHC 426 (TCC); *Arbitration Appeal No 1 of 2019* at [6]. Another way of expressing that notion is that if a decision is arguably correct, it cannot be obviously wrong: *Arbitration Application No 2*

of 2016 [2017] CSOH 23 at [9]; *Arbitration Appeal No 3 of 2024* [2025] CSOH 7 at [35]. If the correct legal principles have been identified by the arbitrator, an incorrect application of them to the facts is not necessarily an error of law: *Benaim (UK)* v *Davies Middleton & Davies* [2005] EWHC 1370 (TCC); *Arbitration Appeal No 4 of 2019* [2020] CSOH 46 at [31].

[23] Although, building on that line of thought, it has been correctly observed that questions of contractual construction typify the sort of situation where two decision makers may often arrive at different conclusions without obvious error (*Arbitration Appeal No 1 of 2019* at [15]; *Arbitration Appeal No 1 of 2021* at [30]; *Arbitration Appeal No 1 of 2023* at [24]), that does not detract from the fact that the principles of contractual construction (and the variation thereof pertaining to the construction of contractual notices) are designed, if properly applied, to indicate the one true construction of the document being considered. While reasonable minds may differ as to what that true construction is, ultimately one construction is correct and the others are wrong. That is not to say that the true construction of a written contract or notice is a question of law. That is the position, as a result of historical quirk, in the law of England – see *Pioneer Shipping Ltd* v *BTP Tioxide Ltd (The Nema)* [1982] AC 724, per Lord Diplock at 736B - G, but in Scots law, particularly now that background circumstances are recognised as potentially highly pertinent to questions of contractual construction, the true construction of a document is a mixed question of fact and law. If a construction decision depends materially upon the tribunal's view as to the nature of the background facts, then it may be difficult effectively to criticise it as wrong, let alone obviously wrong. Where, as here, the factual element of the overall decision on construction is clear and undisputed, one may much more readily assess it as either right or wrong, but even the latter categorisation will not in itself meet the test advanced in rule 70(3)(c)(i). Only if that conclusion can be reached with a high degree of confidence will that test be satisfied.

[24] Turning from the general to the specific, it is slightly puzzling to see that the overarching issue which the parties wished the arbitrator to decide, namely whether the petitioner had validly required the tenant to remove its alterations to the third floor of the premises and to reinstate that part of them to their prior condition, was split into the two separate questions already noted. Unless the first question posed, namely whether the letter of 16 February 2024 was a valid notice to that effect, was regarded as limited only to the issue of whether the letter met what have been called the formal and technical requirements of the power given to serve the notice (*Mannai Investment Co Ltd* v *Eagle Star Life Assurance Co Ltd* [1997] AC 749, per Lord Clyde at 781G), namely in the present case that it was given in writing by the petitioner to the tenant not less than 6 months prior to the natural expiry of the lease, and not to the further issue of whether the substance of the notice adequately conveyed that such a requirement was being made, then it necessarily included the question of what a reasonable recipient of the letter would have made of it, and there was no room for that question to be winnowed out and posed separately as it was.

[25] In the present case, there was no dispute that the formal and technical requirements of the power were met. Further, the lease did not prescribe as an indispensable condition for the effective exercise of that power that it could only be invoked by the communication of any specific information (*Mannai*, per Lord Steyn at 767E). In such circumstances the only live question was what the reasonable recipient would have taken from the substantive terms of the letter.

[26] For present purposes, all that need be said about that reasonable recipient criterion is that it is satisfied if the notice is sufficiently clear and unambiguous to leave a reasonable recipient exercising his common sense in the context (including here the terms of the lease) and in the circumstances of the particular case in no doubt as to how and when it was

intended to operate, ignoring immaterial errors which would not have misled him and not requiring an absolute clarity or an absolute absence of any possible ambiguity: *Delta Vale Properties Ltd* v *Mills* [1990] 1 WLR 445, esp. per Slade LJ at 454E - G; *Carradine Properties Ltd* v *Aslam* [1976] 1 WLR 442 per Goulding J at 444; *Mannai* per Lord Steyn at 768E - H, Lord Clyde at 782C - D.

[27] When one considers the arbitrator's determination, on analysis he identifies four distinct matters which resulted in a lack of clarity in the letter of 16 February 2024. Firstly, it referred to a supposed breach by the tenant of its repair and maintenance obligations contained in clause 6.19.2, whereas that clause imposed no such obligations, and the clause which did contain the relevant obligations, clause 6.19.1, was not mentioned at all. Secondly, it was self-contradictory in that paragraph 2 assumed that the work said to be required by the notice had already been carried out by the petitioner, whereas paragraph 3 purported to require the tenant to execute it. That paragraph required the tenant to do so "within a reasonable period" whereas clause 6.19 required it to be carried out by the date of the natural expiry of the lease, creating a further potential discrepancy between the power which the petitioner truly enjoyed in terms of the lease and what the letter bore to ask the tenant to do. Thirdly, the letter proceeded on the basis that the tenant was already in breach of contract and was liable to pay damages, whereas the remedy actually afforded to the landlords in terms of clause 6.19 was, in the first instance at least, an option to require the tenant to remove the relevant works and reinstate the affected part of the premises by lease expiry, with a potential remedy in damages only if that requirement had been properly made and not obtempered.

[28] Fourthly, the notice treated the premises as being in a state of dilapidation, ie suffering from physical defects which required to be rectified, whereas the situation

addressed by clause 6.19 referred to the removal of works done by the tenant which did not necessarily result in any want of repair to the premises at all, but simply represented present features of the premises which the landlord did not wish to be retained after expiry of the lease.

[29] For all these reasons in combination the arbitrator decided that the letter did not make it clear to the requisite standard that the petitioner was attempting to exercise the option given to it by clause 6.19.1 to require reinstatement of works carried out by way of alteration or addition by the date of expiry of the lease. He then confirmed that the application of the reasonable recipient criterion produced the same conclusion for the same reasons. While it would have been preferable for that criterion to have been identified from the outset and throughout as the applicable one when considering matters outwith the formal and technical notice requirements of the lease, the end result is the same: on a proper construction, the substance of the letter failed to convey the message which it needed to convey in order to operate as an effective requirement on the tenant to remove and reinstate the works it had carried out to the third floor of the premises. Put differently, a reasonable person in receipt of the letter of 16 February 2024 exercising his common sense in the context and in the circumstances of the case would not have been left without doubt as to what it was properly requiring him to do in terms of the lease. Having regard to the obscurities and self-contradictions in the letter identified by the arbitrator, that conclusion cannot be faulted, and certainly cannot be said to represent any major intellectual aberration, or to constitute a decision for which there was no reasonable explanation. The test for obvious legal error is accordingly not met.

[30] It is necessary briefly to deal with the petitioner's suggestions that the tenant did in point of fact understand what the letter of 16 February 2024 was attempting to do, and that

that makes a difference to the legal conclusion which falls to be drawn about the sufficiency of its terms. It rather seems to me that the relevant terms of the tenant's letter of 14 March 2024, set out above, on which the first of those suggestions is based, can easily be read as expressing puzzlement about what is being demanded of it, rather than as acknowledging that it understood that a demand in terms of clause 6.19.2 was indeed being made. However, it does not matter – if indeed it be the case – that the tenant in fact subjectively understood what the petitioner intended by the letter. That is because, consistently with the general objective approach taken by the law to the construction of contracts and notices, the question is not how the notice was in fact understood by its recipient, but what a reasonable person in his place would have understood from it: *Mannai*, per Lord Steyn at 767G - H and per Lord Clyde at 782D - E, under reference to *Micrografix* v *Woking 8 Ltd* [1995] 2 EGLR 32. The question of whether the letter adequately conveyed the message which it was required to convey is resolved by reference to the "reasonable recipient" criterion and to no other.

[31] I turn to the question of whether the proposed appeal might in any event be allowed to proceed under rule 70(3)(c)(ii) as raising a point of general importance in relation to which the arbitrator's decision is open to serious doubt. It has been recognised that issues of construction which arise in standard form contracts are more likely to be regarded as raising points of general importance within the meaning of the rule (*Arbitration Application No 3 of 2011* 2012 SLT 150 at [26]), so long as no significant alterations to the form have been made in the particular case (*Arbitration Application No 2 of 2016* at [10]), whereas a decision on a bespoke contract is likely to have no wider resonance, even where authority on the point is scarce: *Arbitration Application 1 of 2013* at [33]; *Arbitration Appeal No 1 of 2023* at [24]; *Arbitration Appeal No 2 of 2024* at [22]. The petitioner submits, but does not vouch, that the

form of lease which was used in the present case, and in particular clause 6.19, is in common use in the letting of commercial property in Scotland.

[32] Be that as it may, the submission misses the point that the terms of clause 6.19 are quite clear, and that the problem which arose here emerged not from those terms, but rather from what might most kindly be called the suboptimal terms in which the letter of 16 February 2024 was couched. No point of general importance is raised in relation to the matter truly determined by the arbitrator, namely whether the terms of that particular letter did or did not meet the requirements of the reasonable recipient criterion. For the avoidance of doubt, I would in any event have considered that the arbitrator's determination, backed up by the ample and detailed reasons he provided, was not open to serious doubt. Rule 70(3)(c)(ii) does not apply to allow the proposed appeal to proceed.

Disposal

[33] Leave to appeal is refused for the foregoing reasons.