Parthenia
James Wyatt F.R.I.C.S.

Millions of leaseholders will be very disappointed by the Court of Appeal in their dismissal of the Mundy appeal. Edwin Johnson Q.C. asked the question, "Is the Parthenia Model flawed or rather an inconvenient truth for the entire industry?". We know the Parthenia model is not flawed, as it has been extensively peer reviewed by the top housing economists and uses more untainted market evidence than all the other graphs combined. The problem is it contradicts the market evidence set or influenced by the existing relativity graphs, which have now been shown not to have any robust methodology or any untainted sales evidence and to have undervalued leaseholders' interest amounting to an enormous transfer in wealth from leaseholders to freeholders.

Leaseholders now look to the Government to act and make the whole process 'easier, faster and cheaper', as it promised on 21st December.

Pemberton Greenish LLP
Kerry Glanville – Senior Partner (the solicitor with conduct of the case for Sloane Estates)

The Court of Appeal has today handed down its decision in the Mundy case which is of interest to enfranchisement practitioners. Effectively, the Parthenia model deployed on behalf of the tenant as an appropriate way to ascertain relativity for the purpose of the statutory valuation prescribed by Chapter II of the Leasehold Reform, Housing and Urban Development Act 1993, has been consigned to history, at least in its current form.

It is undoubtedly correct that just because use of a particular methodology has become widespread it should be immune from challenge if it is thought to be outdated due to changes in market conditions or if there is a better and more accurate way to arrive at a premium in accordance with the requirements of the statute. This case shows, however, that until the "holy grail" for determining relativity is found, the courts and tribunals will tend to favour a valuation approach which is based as closely as possible on relevant market evidence and the application of valuation judgment and experience in applying appropriate adjustments.

Enfranchisement has been specifically included in the Law Commission's 13th Programme of Law Reform. This may well lead to changes in the way in which premiums payable by tenants for extended leases are assessed but until the Government, after due consultation, decides what legislative changes are to be made we are pretty much back to business as usual.

Tanfield Chambers

Philip Rainey QC - "Governments usually do not wish to amend laws which are the subject of a pending appeal. So (whatever one thinks of the result) the appeal decision opens the way

for DHCLG and/or the Law Commission to consider the statutory valuation basis in the enfranchisement legislation".

Mark Loveday reinforced this with – "The message from the judges is that it is for the valuation industry or the government to sort out leasehold relativity."

PM Legal Services
Cassandra Zanelli

There can be little doubt that residential leasehold is in the spotlight, perhaps more in recent times than it has been for a generation. Reform, regulation, and greater fairness for leaseholders underpin the moves towards fixing what the Government has termed our "broken housing market".

The sheer volume of consultations that we've been responding to over the last 12 months or so highlights the potential game changers that we're likely to be facing in the near future.

In December, the Law Commission announced its thirteenth programme of law reform. And amongst the areas of reform identified was enfranchisement. In particular, the Law Commission announced it will look at ways to simplify the procedure and make valuation fairer and more transparent. And of course this complements the work the MHCLG (formerly DCLG) is doing on leasehold reform.

Following the Court of Appeal's decision in the *Mundy* case, this might be rather welcome news, and a step towards the fabled holy grail of valuations in statutory lease extensions. Because whilst the Parthenia model of hedonistic regression (in the words of the Upper Tribunal "a clock which strikes 13") has been rejected, the Gerald Eve graph (described by the Upper Tribunal as the "industry standard") has not escaped criticism for overstating relativities.

In *Mundy,* the Court considered the issue of "relativity" when calculating the premium payable for lease extensions. There are two aspects to relativity:

1. the determination on the value of the freehold with vacant possession; and

2. the relationship between the value of a leasehold interest in the real world and the value of that interest if there were no rights to extend a lease or enfranchisement to buy the freehold.

There's an obvious problem because in the real world most sales of leasehold flats are sales of flats which have the right to a lease extension. But for the purposes of the Act, those rights are to be disregarded.

Which perhaps explains why there's been a number of methods of determining relativity that have been considered over the years, none of which have been without flaws. The holy grail is a method of determining relativity which is both reliable and simple to apply.

The Parthenia model produced an impossible result. The value of the flat in the real world was agreed (because it was based on the actual sale of the flat within a week of the valuation date). It was also agreed that the value of a lease with rights under the Act must be more valuable than a lease without rights. The problem for Parthenia is that when the model was applied to the agreed real world value, the figure for the lease **without rights** was **higher** than the value of the lease with rights. Hence the comments of the Upper Tribunal that the Parthenia model is "a clock which strikes 13".

The Court of Appeal therefore agreed with the Upper Tribunal that the Parthenia model should not be used in future cases.

It remains to be seem whether the holy grail can be found. There have been previous attempts. The Court of Appeal referred to the work done by the RICS working group in their attempt to produce definitive graphs that could be used to establish relativities. Unfortunately, the attempt was unsuccessful. It did however draw together the various relativity graphs with details of the underlying data. The Law Commission's task is not, therefore, an easy one. I wish it luck in its task ahead!

Association of Leasehold Enfranchisement Practitioners
Mark Chick, ALEP Director and Partner, Bishop & Sewell LLP:

"The Association of Leasehold Enfranchisement Practitioners (ALEP) has been eagerly awaiting the outcome in the Appeal of the so-called 'Mundy' case, (Mundy v. the Trustees of the Sloane Stanley Estate).

"The Court of Appeal has dismissed the appeal made by tenants in this case. The applicants were seeking to argue for a radically different way of calculating relativity, following on from their unsuccessful attempt to encourage the Upper Tribunal to do so in the original decision of that tribunal.

"This decision has been much anticipated and there has been a lot of recent comment, suggesting that if the Court of Appeal had sent this case back to the Upper Tribunal that this may have been very good news for leaseholders as there may have been scope to see the tribunals adopting a view of relativity that would have reduced the cost of lease extensions and freehold purchases where leases are under 80 years and marriage value applies.

"What is clear is that the decision confirms that the position of leaseholders whose leases are about to fall under 80 years, or have already done so, remains one where action is required. One crucial message that ALEP has striven to get across during its 10 year history, that leaseholders should not let the length of their lease fall below this mark, so the value of the property is protected.

"We would therefore encourage anyone in need of professional advice to make contact with ALEP to locate a member who can help them through the complexities of extending their lease or buying the freehold.

"Awareness of leasehold is at an all-time high, and today's ruling will further highlight the issue.

"The outcome will no doubt be seen as a blow to those who have been campaigning to see changes in the leasehold system and we cannot ignore the growing ground swell of consumer and political opinion that is now seeking changes to the leasehold system.

"However, what is important to note is that, notwithstanding the outcome of the ruling from the Court of Appeal, the government has in the outcome of the recent consultation on 'Tackling Unfair Practices in the Leasehold Sector' and other recent announcements indicated that it wants to look at many things, including making it easier for flat owners to enfranchise and also to 'simplify' the valuation process. Indeed, the Law Commission is going to be asked to look at this as part of the proposals from government."

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myleasehold ltd, Chartered Valuation Surveyors
Chris Glew

"As the issue concerns the roofs over people's heads, media coverage has been both emotive and febrile and a lot has been mis-reported and slanted - mainly because the subject matter itself is so technical. A few loud voices gave it more prominence and notoriety than it might otherwise have received, which is not necessarily a bad thing at all.

Discussing the issue with our industry peers, many in the valuation community in general weren't that engaged with the Parthenia model as it was simply "another opinion in a basket of many", notwithstanding the dedication and passion behind the valuation model itself.

On a practical level, looking at real world transactions made perfect sense, and is something we were doing years before the original Mundy case and subsequent appeal, which re-enforced this methodology.

A separate issue is the statutory process itself – right or wrong, this is an issue for government and the sector to address. As stated in para. 50 of the CoA judgment, "it may be, therefore, that the holy grail will one day be found"."