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

**Case Reference** : LON/00AG/LSC/2012/0803  
LON/00AG/LVM/2013/0001

**Property** : 66 Rosslyn Hill, London NW3 1ND

**Applicant** : Mr Isaac Sadeh (Flat 1)  
Ms Deborah Kol (Flat 2)  
Ms Caroline Ebborn (Flat 3)

**Representative** : No Appearance

**Respondent** : (1) Mirhan and Azzniv Charitable  
Trust  
(2) Mary-Ann Bowring  
No appearance by the First  
Respondent

**Representative** : Mr D Tang and A. Thring of Ringley  
Legal for the Second Respondent  
Application under section 27A and  
20C of the Landlord and Tenant Act  
1985 & Application under section  
24(9) of the of the Landlord and  
Tenant Act 1987

**Type of Application** :

**Tribunal Members** : Mr S Carrott LLB  
Mr S A Manson FRICS

**Date and venue of  
Hearing** : 15 May 2013  
Additional submissions received by  
both parties following the hearing  
10 Alfred Place, London WC1E 7LR

**Date of Decision** :

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**DECISION**

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## Decisions of the tribunal

- (1) The tribunal determines that the cost of insurance including terrorism insurance is reasonable and payable by the Applicant tenants without deduction in respect of the property owners' liability component or any deduction in respect of commercial risk loading.
- (2) The tribunal determines that the Applicant tenants are liable to pay the sum of £100 for accountant's fees for 2012 and £100 in respect of the estimate for 2013.
- (3) The Tribunal determines that the sum of £300 in respect of preparation of the section 20 consultation notice is reasonable and payable.
- (4) The Tribunal accepts in principle that the manager is entitled to charge an amount in respect of contract administration for major works. However the Tribunal does not determine that the sum of £900 is reasonable or payable because no evidence was adduced before the Tribunal with regard to the total contract price.
- (5) The Tribunal determines that the sum of £446.46 in respect of fire safety and asbestos testing for 2012 is reasonable and payable by the Applicant tenants. No sums are payable in respect of this item for 2013.
- (6) The Tribunal determines that the management fee of £1750 plus VAT is reasonable and payable by the Applicant tenants.
- (7) The management order dated 4 August 2012 is varied to insert a new paragraph 4B which will read as follows - *To take any legal action which the manager is reasonably required to take to make good such arrears, it being recognised that the manager shall be entitled to an indemnity from the service charge account in respect of any reasonable legal or other professional costs arising in connection with such action.*
- (8) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (9) Neither party shall reimburse the other party with the application and hearing costs.

### **The applications**

1. In Application LON/00AG/LSC/2012/0803, the tenants, Mr Issac Sadeh, Ms Deborah Kol and Ms Caroline Ebborn seek a determination from the Tribunal as to the reasonableness and liability to pay service charges.
2. In application LON/00AG/LSC/2013/0001 the manager, Ms Mary-Anne Bowring applies to the Tribunal pursuant to section 24(9) of the Landlord and Tenant Act 1987 for a variation of a management order made by the Tribunal on 4 August 2011 in order to be indemnified for the legal costs incurred in seeking to attain compliance with the terms of the leases.
3. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

4. The manager Ms Mary-Anne Bowring was represented by Mr Daniel Tang of Ringley Legal and assisted by Mr Alex Thring.
5. There was no appearance by the tenants and there was no appearance by the landlord. The tenants nevertheless provided the Tribunal with comprehensive submissions contained in their Statement of Case and further submissions dated in respect of the manager's proposed amendment to the terms of the management order.

### **The background**

6. The subject property 66 Rosslyn Hill, London NW3 1ND, is a four-storey building with three residential flats on the upper floors with a commercial unit on the lower floors.
7. Each of the tenants has held long leases of their individual flats for a number of years, with all of the leases being in common form.
8. In 2010 the landlord issued an application in the Tribunal for a determination of the reasonableness of service charges for the years ending 2010 [LON/00AG/LSC/2010/0725].
9. Ms Kol in turn issued an application for the appointment of a manager [LON/00AG/LSC/2011/0007].
10. Both matters were heard together and on 4 August 2011, following a contested hearing, the Tribunal made its determination.

11. With regard to the section 27A application the Tribunal amongst other things, made certain findings in relation to the cost of insurance. Ms Kol was successful in her application for the appointment of a manager. However the manager that was appointed was not of Ms Kol's choice. The Tribunal found at that time, that manager proposed by Ms Kol did not have the requisite experience or formal qualifications to undertake the management of the building. The Tribunal instead, appointed Ms Bowring, who not only had formal qualifications but also the requisite experience to carry out the Tribunal's appointment.
12. In its order appointing Ms Bowring, the Tribunal gave the manager the power to issue legal proceedings to enforce the terms of the lease. There was however no express provision in the order for the manager to recover her legal or other professional costs in taking such action and indeed there was no argument before the Tribunal as to whether such a term should be included in the order.
13. It is most unfortunate that the relationship between the tenants and the manager has deteriorated. This has led to the section 27A application and the cross application to vary the terms of the order so as to make provision for the manager's legal costs.
14. The Tribunal is now asked to determine the reasonableness and liability to pay service charges and also to determine whether and if so, how the original order should be varied.

### **The Service Charge Dispute**

15. The present application challenges the service charges for the year ending 2012 and 2013 and in particular, to the cost of the insurance, its component parts and the commission alleged to have been obtained by Ms Bowring. In addition the tenants challenge the cost of the preparation of the service charge budgets for 2012 and 2013, make a pre-emptive challenge to the cost of major works and challenge the cost of contract administration fees, the cost of the preparation of the section 20 Consultation Notice, the cost of qualifying works, the cost of fire safety and asbestos surveys, and the cost of management fees.
16. Further, the tenants challenge the manner in which the manager has carried out appointment and contend that the appointment of Ms Bowring is unlawful.
17. The issues outlined in paragraph 16 above do not fall within the scope of an application under section 27A of the Landlord and Tenant Act 1985 and the Tribunal does not have jurisdiction to impugn its previous determination.

## Insurance

18. The tenants submitted that under the terms of the lease they were not liable to pay a contribution towards the premium for Property Owner's Liability and commercial usage of the building (which it is alleged attracts a higher risk loading than residential usage).
19. According to the tenants, Property Owner's Liability did not fall within the terms of the lease. They relied upon a number of authorities which, whilst not precisely on point, nevertheless illustrated the proposition that the fundamental question for the Tribunal in the present case was whether the item in question was properly chargeable under the terms of the lease, having regard to the proper contextual meaning of the contractual language.
20. The tenants also argued that if there was any ambiguity in the terms of the lease, then the relevant terms should be construed *contra preferentem* against manager who was relying upon the terms.
21. The tenants submitted that the relevant provisions of the lease required the landlord to insure the building. The Property Owner's Liability component did not pertain to the building, the objective intention of the parties being to exclude the lessor's liability for any physical injury sustained by any persons on the site of the property.
22. Likewise, it was argued that the premium in respect of commercial usage was not chargeable to them under the terms of the lease, it being neither fair nor reasonable under the terms of the lease.
23. Under this head of challenge the tenants also adduced written evidence to show that this component of commercial risk loading was included in the insurance premium and that this went beyond the one third of the total expenditure which they were required to pay in relation to the upper residential part of the building as prescribed by the Second Schedule of the lease.
24. On behalf of the manager, Mr Tang reminded the Tribunal that this same challenge in relation to Property Owner's Liability was made in the previous application and that the finding made in the Tribunal's earlier decision was that '*...property owner's liability is a standard element of cover under most comprehensive insurance policies*'.
25. Mr Tang submitted that there being no appeal or indeed even an application for permission to appeal, that same argument could not be raised again in the current application.

26. With regard to commercial risk loading, Mr Tang pointed out to the Tribunal that Clause 1 of the lease required the tenants to pay '*a fair proportion of the yearly sum ... expended by the Lessor in insuring the building ... against loss or damage ...*'
27. As the building contained a commercial unit, the full reinstatement of the property would require commercial cover. He submitted that the commercial unit paid a greater proportion of the service charge which took account of such added cost to the insurance.
28. Mr Tang reminded the Tribunal that there was no challenge to reasonableness of the sums in respect of Property Owner's Liability and the commercial risk loading, that if the tenants were liable to pay those sums under the terms of the lease, then the Tribunal should accordingly find the total amounts involved, £161.00 and £295.00 respectively, reasonable.
29. Mr Tang also pointed out that the total insurance budgeted for 2012 (also being the actual expenditure) was £1,480.00. In the earlier Tribunal application the Tribunal had held that the greater sum of £1,952.82 in respect of insurance was reasonable.
30. In addition to the points made above which were included in the original application, the tenants also argued that (1) the costs for insurance for 2013 had not been reasonably incurred, (2) that terrorism insurance did not fall within the terms of the lease, and (3) that the manager had in effect failed to account for the commission she had obtained from the insurance policies. The latter three points were not included in the original application to the Tribunal although they were included in the tenant's statement of case.
31. With regard to the placing of insurance the manager had put in place two policies for 2013, an all perils risk (excluding terrorism) for £1029.98 and terrorism insurance for £355.26. The tenants' argued that since it was well known that almost all insurance policies contain a provision restricting an insurer's liability under its policy where an insured building is covered by another policy, this could lead to practical problems of determining liability under one policy or the other and produce unnecessary litigation risk.
32. The tenants also argued that terrorism did not fall within the terms of the lease.
33. With regard to commission Ms Bowring obtained the sum of £184.39 commission, The tenants argued that this was allowed under the terms of her appointment as manager and stated that they had a zero tolerance approach to 'kickbacks and sweeteners' particularly as they were victims of such malpractice during the years of 2004-2011.

34. On behalf of the Manager, Mr Tang submitted that Ms Bowring had been appointed by the Tribunal. So far as the placing of the insurance was concerned, Mr Tang said that Ms Bowring had acted within the terms of her appointment and that the tenant's criticism in this regard amounted to 'nit picking'. So far as the excess was concerned in relation to the all risks policy, he argued in essence that given the difference between the previous policy and this policy was £50 and the fact that the total payments were considerably less than the previous policy, the difference itself was not material. He argued that terrorism insurance did fall within the terms of the lease.
35. Mr Tang invited the Tribunal to accept that there was nothing wrong with the manager obtaining commission from the placing and claims handling of the insurance.

### **2012 and 2013 Service Charge Accounts – Value £100 and £520**

36. The tenants argument under this head was that each of the service charge budgets for 2012 and 2013 provided for £520 for preparation of service charge accounts. In the closing accounts for 2012, the actual charge was £100 for preparation of service charge accounts. The tenants contended that these items were not chargeable under the terms of the lease. The tenants referred to a number of authorities as supporting their proposition (indirectly) that this cost was not a chargeable item.
37. Mr Tang's simple answer to this submission was that it did fall within the lease because if the landlord was obliged to provide a final and interim certificate under the terms of the lease the cost was therefore chargeable as being a cost in relation to the 'administration of the building'.

### **Pre-Emptive application to the Tribunal should the leaseholders object to major works**

38. The tenants argued that they wished to make a pre-emptive application to the Tribunal should the tenants object to the major works. The justification for this was that they may contest this item (now or in the future) on the basis that it was not permitted under the terms of the lease. Although the argument was set out over some 7 paragraphs in the Statement of Case, no evidence was adduced and no proper particulars were given.
39. Allied to this was a challenge to the cost of qualifying works. The tenants relied upon **Garside and Anson v RFYC Limited and Maunder Taylor [2011] UKUT (LC)** as authority for the proposition that the landlord should take into account affordability on the part of the tenant in assessing the reasonableness of the

expenditure. However in the present case neither tenants nor the manager provided figures for the Tribunal to consider.

**Contract administration fee £900 and section 20 consultation notice for internal and external redecorations**

40. The tenants argued that since the Tribunal had set the manager's rate of remuneration, the manager was not entitled to claim additional sums for the items above.
41. Mr Tang relied upon paragraph 2.5 of the R.I.C.S Service Charge Residential Management Code as demonstrating that the manager was entitled to charge separately for these items.

**2012 Fire Safety/asbestos testing – value £446.46 for residential and commercial units, 2013 asbestos survey samples – Type 2 survey required – value £350**

42. The tenants challenged the reasonableness of both of the above items. They obtained quotations for both fire safety and asbestos testing via a local firm of managing agents. Both were rejected by the manager on the basis that Sargon, the company put forward for the fire risk assessment, did not use fully qualified engineers and only supply a basic fire risk assessment.
43. The tenants also sought advice from LEASE. LEASE confirmed in its advice to the tenants that although a landlord or manager of a residential building was required to undertake a fire assessment under health and safety at work regulations in relation to the common parts, there was no specific Housing Act duty in relation leasehold flats which were not houses in multiple occupation.
44. The tenants therefore argued that on this basis, there was no reason why the quotations that they obtained fell short of any statutory requirements.
45. The tenants did not seek to argue that the above costs did not fall within the terms of the lease.
46. Mr Tang argued that a landlord or managing agent was not obliged to accept the lowest quote, nor to accept the suggestions of the tenants and stated that the sum of £540 was well within the range of reasonableness for such items.



## **Management Fee**

47. The tenants argued that the management fee was excessive having regard to the what they termed the unlawful interference with the tenants' rights and the misappropriation of their money and on the grounds that the manager was an unfit person to undertake the Tribunal's appointment.
48. Mr Tang pointed out that the Tribunal in fact set the management fee and that therefore there were no grounds for interfering with this sum.

## **Application to vary the Tribunal's Order of 4 August 2011**

49. The manager's case is that the order as drafted is lacking in detail since it does not specifically deal with the manager's ability to recover legal costs or other professional fees arising out of the appointment and that whilst a purposive construction of the terms of the order would nevertheless lead to the conclusion that the manager does indeed have the ability to recover such costs, for the avoidance of doubt it should nevertheless be spelt out.
50. In his oral arguments before the Tribunal Mr Tang pointed out that such a clause was normally included in management orders of the type in question.
51. The tenants in their written submissions argued that the Tribunal had no power under section 24(9) of the Act to vary the order unless the specific conditions subsection (9A) were met. They considered the application to be vexatious and an abuse of process and noted that the manager had not given sufficient justification for seeking to vary the terms of the order.
52. In further written submissions received on 29 May 2013, the tenants argued that the manager had now sought to change the terms of the draft clause originally set out in the application and added that the such a clause in fact fettered the discretion of the Tribunal to deal with costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

## **Reasons for the tribunal's decision**

### **(1) Insurance**

53. The Tribunal considered that there were no grounds for interfering with the placing of the insurance or indeed the cost of the same. Moreover the issue of property owners' liability had already been dealt with in paragraph 9 of the Tribunal's determination of 4 August 2011.

54. In that determination the Tribunal explained the position in clear terms: 'The Tribunal considered that the Respondents' submissions were founded on a misunderstanding of the law relating to the legal responsibility of those owning, controlling or managing premises. Briefly stated, in the case of loss or damage of any kind to a third party, any, and every person owning, controlling or managing premises, from the caretaker to the freeholder, is potentially liable if some contractual liability or breach of duty to the injured party can be proved. Thus the Respondents, as property owners of long leasehold interests, fall within the group of persons exposed to liability. This point was put to the Respondents at the hearing. The Respondents also seemed unaware of the legal liability for the loss of rent that falls upon the tenant unless there is a contractual agreement to the contrary. Further, property owners liability is a standard element of cover under most comprehensive insurance policies. Contrary to the Respondents' submissions, the matter is covered by the clear words of clause 1 ...'
55. This Tribunal agrees with the above statement of law and would go further in that, in the light of the fact that there was no application for permission to appeal the earlier Tribunal's decision (and consequently no appeal), and in the light of the failure of the tenants to put forward any grounds to show that the earlier decision of the Tribunal could be regarded as erroneous, it was an abuse of process to yet again raise the very same argument before the tribunal.
56. Likewise the argument as to commercial risk loading also failed. It appeared to the Tribunal that the insurance of the subject property could not be divorced from the physical state of the premises. This was a mixed residential and commercial development and the *building* which the landlord was obliged to insure, and for which the tenants were obliged to pay, included the whole development.
57. Further, the Tribunal accepted Mr Tang's argument that the tenants were paying a fair proportion of the insurance as Clause 1 of the lease stipulated.
58. In addition the Tribunal agreed with the observations made in paragraph 9 of the previous determination that clauses 3(2) and 5(6) of the lease do not affect the construction of clause 1.
59. Neither could the manager's placing of the insurance be faulted. It appeared that on the documentary evidence before the Tribunal that the manager had acted reasonably in placing the insurance as she did. Whilst the tenants did not agree to this, there was nothing in the evidence and submissions that led the Tribunal to conclude that the cost of the insurance was not reasonably incurred, or to put it another way, that the manager had acted unreasonably in placing the insurance as she did. Under the terms of the lease and under the terms of her

appointment, the manager was obliged to effect and maintain a policy of insurance.

60. Moreover as Mr Tang submitted to the Tribunal, there could be no argument that the amount paid was excessive or unreasonable. The sum in dispute was £1,385.24. The manager had obtained insurance, which was cheaper than that which had been approved by the Tribunal in the earlier proceedings.
61. With regard to commission, of £184.39, alleged to have been paid to the manager, the Tribunal found that evidence from both the tenants and the manager deficient. It was not sufficient to allege without more evidence that commission was paid. It was incumbent upon the tenants to set out their case as to why the manager should account for the commission. If the tenants were in doubt about the position they should have asked the manager for clarification. There was no excuse for the deficiency in the evidence. Commission was a feature of the earlier Tribunal proceedings and the Tribunal in its earlier determination had set out law in a manner which was both lucid and concise so as to enable the parties to understand what such a challenge entailed.
62. Likewise, it was not sufficient simply for Mr Tang to submit that the manager was responsible for handling claims, without producing evidence of that fact or at the very least written evidence from the manager to that effect.
63. Although the sum involved was relatively small, the onus nevertheless remained on the tenants to prove that the manager was liable to account for the commission. The Tribunal concluded that the tenants had not discharged this onus.
64. Further, the Tribunal was not persuaded on the facts of this case (the property including a commercial unit) that terrorism insurance fell outside of the terms of this particular lease. Reliance upon the *contra proferentem* rule did not assist the tenants in this respect. There was no ambiguity in Clause 1 of the lease. It obliged the tenants to pay for the costs of the insurance for the building of which the demised premises formed a part. It covered all of the usual risks including 'such other risks as the Lessor shall reasonably think necessary ... in the full reinstatement value thereof ...'
65. The Tribunal was satisfied that the manager had carefully considered the need for terrorism insurance and considered it to be reasonably necessary in the circumstances.

**(2) 2102 and 2013 Service Charge Accounts – Value £100 and £520**

66. The lease in the present case required the landlord to carry out certain obligations in clause 3. In particular clause 3(e) provided that 'If the lessor employs agents to manage the building, to discharge all proper fees charges and expenses payable to such agents in connection therewith including the cost of computing and collecting the maintenance charge'.
67. Paragraph 2(3) of the Second Schedule to the lease provided that – 'As soon as practicable after the expiration of each accounting period there shall be served on the lessee by the lessor or its agents a certificate containing the amount of the total expenditure for the accounting period and secondly a certificate containing (a) the amount of the interim service charge paid by the lessees in respect of the accounting period together with any surplus carried forward from the previous accounting period as hereinafter provided (b) The amount of the service charge in respect of any excess or deficiency of the service charge over the interim charge'.
68. The term total expenditure is defined in paragraph 1(a) of the Second Schedule as meaning 'the total expenditure incurred by the lessor in any accounting period ... in respect of its obligations under clause 3.
69. Clause 3(5)(f) of the lease provided that the lessor may - 'Without prejudice to the foregoing do or cause to be done all such works installations acts and matters and things as in the absolute discretion of the lessor may be necessary or available for the proper maintenance safety and administration of the building'.
70. The tenants argued that the lease in the present case was similar to the lease considered by His HHJ Huskinson in **Ralph Rettke-Grover v John Elliot Needleman and Anne Marie Wolfroyd [2010] UKUT 283 [LC]**.
71. HHJ Huskinson at paragraphs 15 to 23 of that decision analysed the various clauses of the lease and concluded that the landlords in that case had specific obligations to prepare the accounts and the appropriate certificates. The lease, as in the present case, made no provision for the engagement of an accountant. Judge Huskinson said that it was open to the landlords, if they so wished, to use an accountant, rather than prepare the account themselves but that was an expense that they had to bear themselves.
72. The LVT in that case had fallen into error because it held that it was not unreasonable for the landlords to engage the services of an accountant. However, that was not the issue before the LVT. The issue was whether the costs of an accountant fell within the terms of the lease.

73. After analysing the terms of the lease HHJ Huskinson held that on a proper construction of the terms of the lease the cost of an accountant was not chargeable to the tenants. In paragraph 17 HHJ Huskinson stated:-  
'This is a case where a management fee is expressly made payable calculated at 15% of the total amount expended by the lessor on insurance and in complying with the covenants in clause 4(3)(a) and (b). It is in my view clear that the lessor is not entitled to argue that the engagement of professional managing agents, however sensible or desirable that may be for the efficient management of the Building etc, is something which falls within paragraph iv and is not the type of "other service ... of whatever nature" as is referred to in paragraph iv. There is express provision in clause 2 for a management fee. Paragraph iv is not therefore sufficiently wide as to allow the provision of the services of managing agents to come within it. If the provision of the services of managing agents does not fall within paragraph iv I see no reason to reach a different conclusion in respect of the provision of an accountant insofar as the lessor chooses to employ an accountant to perform a function which otherwise the lessor would have to perform itself in managing the building'.
74. On that basis the decision of HHJ Huskinson is readily distinguishable from the present case. In the present case not only can the landlord employ managing agents under the terms of the lease, clause 3(5)(f) allows the landlord to 'do or cause to be done all such works installations acts and matters and things as in the absolute discretion of the lessor may be necessary or available for the proper maintenance safety and administration of the building.' This clause is sufficiently wide to permit the manager to employ a chartered accountant to provide a certificate. Thus the engagement of a chartered accountant to provide a certificate forms part of the obligations carried out under clause 3 of the lease.
75. Given that the actual figure was £100 for 2012, this was the sum that would be allowed for the budget for 2013.

**(3) Premptive application to the tribunal should the leaseholders object to major works**

76. The tenants principal concern was about the affordability of works. They were right to contend that the financial impact on the tenants is a relevant consideration as to whether the works should be phased: see **Garside and Anson v RFYC Limited Maunder Taylor [2011] UKUT 367 [LC]**. However it was impossible for the Tribunal to reach a determination on that issue without rudimentary evidence.
77. There was nothing for the Tribunal to determine under this head. Neither party adduced evidence about the actual or estimated cost of major works. Although as a matter of law it was open to a Tribunal to

make a determination under section 27(3), if costs are to be incurred in respect of services, the subsection nevertheless requires the parties to adduce evidence about the matters in dispute.

**Contract administration fee £900 and section 20 consultation notice**

78. Although in principal the manager was entitled to a contract administration fee for major works, it was impossible for the Tribunal to determine whether the sum of £900 was reasonable without the knowing the cost of the major works.
79. The manager was entitled to charge for the cost of preparation and service of the section 20 consultation notice. This was clearly contemplated by paragraph 2.5 of the RICS Service Charges Residential Management Code and was not included in the figure set out in the management order.

**Fire safety/asbestos testing – value £446.46 for residential and commercial units, 2013 asbestos survey samples – Type 2 survey required – value £350**

80. The Tribunal accepted that it was necessary for the manager to undertake a fire safety inspection of the common parts for health and safety at work reasons. Likewise the Tribunal accepted that it was necessary to carry out asbestos testing in 2012. The Tribunal however did not understand why it was necessary to undertake both asbestos testing and fire testing in 2013 because the Service Charge budget at page 191 clearly contemplated that both surveys were not required again until 2014.

**Management Fee**

81. The management fee was set by the Tribunal in its order of 4 August 2011 at £1750 plus VAT (£2100 total). This is the figure that the tenants were being asked to pay.
82. The tenants made serious allegations about the conduct of the manager. The reliability of these allegations could not be fully tested not least because the tenants did not appear at the hearing and so could not be cross examined by Mr Tang.
83. Although the manager may not have been as person-centred as the tenants may have liked, it was important that the tenants should understand that the manager, having been appointed by the Tribunal under section 24 of the Landlord and Tenant Act 1987, was answerable solely to the Tribunal and was not answerable to the tenants.

84. Looking at the all of the documentary evidence it was clear that the manager had acted in good faith throughout. The tenants had failed to establish any grounds upon which the management fee could be reduced.

**Application to vary the terms of the management order**

85. It was clear for the avoidance of doubt that the management order required variation in order that the manager could recover the costs of legal action. The manager could not be expected to bear the cost of legal action against the tenant and accordingly the order would be varied in the terms set out by Mr Tang.
86. The Tribunal rejected the submissions of the tenants. The variation requested by the manager fell clearly within the ambit of section 24(9A). The tenants alternative wording for the variation was unduly restrictive.
87. Neither did the wording as originally drafted (which the Tribunal preferred) interfere with the statutory powers of the Tribunal to limit the landlord's costs where appropriate.
88. The wording as originally contained in the application would be approved by the Tribunal.
89. A copy of the variation is attached to this decision.

**Application under section 20c of the Landlord and Tenant Act 1985 and reimbursement of fees.**

90. Having considered the submissions from the parties and taking into account the determinations above, the tribunal does not order the manager to refund any fees paid by the tenants and neither does it order the tenants to repay any fees paid by the manager. The tenants had succeeded to a very limited extent on the minor issues
91. The Tribunal does not make any order under section 20c of the Landlord and Tenant Act 1985 despite the fact that the tenants have met with limited success in this application.
92. In reaching this decision the Tribunal has taken into account all of the circumstances of the case and in particular the conduct of the parties. It would have been possible to resolve these issues in mediation but the tenants rejected mediation. Moreover the issue of property owners liability was dealt with by the earlier Tribunal yet the tenants again sought to litigate this issue when there were no grounds for so doing. A

fair and just approach required the application under section 20c to be refused.

**Name:** S Carrott LLB

**Date:** 26 July 2013



## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

### **Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**

#### **Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

### **Commonhold and Leasehold Reform Act 2002**

#### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,

- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

**Schedule 12, paragraph 10**

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
  - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
  - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

**Section 24(9) Landlord and Tenant Act 1987**

24(9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected on an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, the tribunal may by order direct that the registration shall be cancelled.

24(9A) The court shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied –

- (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made;
- (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order