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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

COMMONHOLD AND LEASEHOLD REFORM ACT 2002 – SECTION 159  
LON/00AC/LLE/2006/0001

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**Property:** Hampstead Garden Suburb, London NW11

**Applicants:** Mr and Mrs Freeman  
Mr R Papadopoulos  
and other freehold owners

**Represented by:** Mr R Papadopoulos  
Mr H Freeman

**Respondent:** Hampstead Garden Suburb Trust Ltd

**Represented by:** Mr A Radevsky (counsel)  
Ms K Glanville (Pemberton Greenish solicitors)  
Ms J Blackburn

**Date of Hearing** May 22, 2007

**Tribunal** Siobhan McGrath  
Mr C Kane  
Ms S Wilby

## The Tribunal's Decision and Reasons

### Introduction

1. This is an application under section 159(6) of the Commonhold and Leasehold Reform Act 2002 (the Act) for a determination of the payability and reasonableness of the estate management charge levied for the year ending April 5, 2006 by Hampstead Garden Suburb Trust Ltd.
2. The applicants are a number of freehold owners of properties situate in the Hampstead Garden Suburb. The original application was made in December 2006 under cover of letters from Mr and Mrs H Freeman and from Mr R Papadopoulos on behalf of himself and others.
3. An application was also received under section 159(3) of the Act from Mr A Walker which it was agreed should be dealt with separately from the instant proceedings.
4. A pre-trial review was convened on January 30, 2007, when directions were given for notice of the applications to be given by the respondent to all those liable to pay the estate charge. Further notification was also required to be given by advertisement. As a result of the notification, the Tribunal received numerous letters in support of the application and a number of letters in opposition.
5. On March 28, 2007, the Tribunal convened to determine a preliminary issue in the case, namely whether on the proper construction of the scheme of management, the estate charge levied for the year 2005 to 2006 was irrecoverable by virtue of the application of a "cap". The Tribunal decided that there was no such limitation and further directions were given for the hearing of the substantive claim. It was also directed that Mr Papadopoulos and Mr Freeman should be the lead applicants in the case.

6. On May 22, 2007, a hearing of the application was convened. The Tribunal decided that it was unnecessary to inspect the estate.

## **Background**

7. Hampstead Garden Suburb was created by Henrietta Barnett at the beginning of the last century, her aim being to provide better housing for the poor. The Suburb was designed to include a variety of classes of person living as a community in well designed houses grouped at low density, surrounded by gardens with access to a variety of open spaces. The Suburb covers some 800 acres and includes roughly 3,500 houses and 1,500 flats.
8. In January 1968, the provisions of Part I of the Leasehold Reform Act 1967 came into effect granting leaseholders the right to acquire the freehold interest in their houses. In March 1968, the Hampstead Garden Suburb Trust Ltd. (the Trust) was incorporated. Its principal object, set out in its memorandum of association, is to do all things possible in order to maintain and preserve the present (sic) character and amenities of the area of the Suburb and to provide people of all classes with houses with gardens or houses in close proximity to gardens and open spaces.
9. On January 17, 1974, the High Court approved the Hampstead Garden Suburb Scheme of Management under the provisions of the 1967 Act. Initially, the scheme provided for the payment of a contribution to the costs of managing and maintaining the estate of £2.00 for each enfranchised property. This level of charge was to apply for five years following which an application could be made for a re-assessment to be undertaken by a surveyor appointed by the President of the RICS. In the event, an application for a variation of the scheme was sought from the Court and amendments to the mechanism for calculating the charge were approved in 1983.

## **The scheme**

10. The scheme extends to all enfranchised property in the specified area and provides that the rights and powers of management authorised by the scheme shall be exercised by the Trust. The provisions of the scheme for regulating the use, appearance and maintenance of enfranchised property and for the maintenance of property or common parts of the estate are set out in the scheme schedule.

11. By paragraph 6 of the scheme:

“6. There shall be payable to the Trust in respect of every enfranchised property an annual management charge as a contribution to the expenses of the Trust in operating the Scheme the said management charge being payable in respect of each separately rated residential unit or shop where the enfranchised property comprises more than one such unit”

12. Paragraph 7 sets out the level of the charge as follows: for the first five years to April 1979, £2.00; for the year to April 5, 1980, £9.48; for the year to April 5, 1981, £16.56; for the year to April 5, 1982, £12.38 and in subsequent years the following:

“7(d)(i) for each period of one year following the 5<sup>th</sup> April 1982, a sum equal to a proportionate part of the expenses of the Trust in operating the Scheme in an economical, efficient and consistent manner during that financial year (those expenses to include proper provision for accrued expenses and to take account of any surplus arising from the rounding up of the previous year's charge and the amounts due from Owners enfranchising during that financial year) as certified by the Trust's Auditors, the proportion to be calculated by dividing the said expenses by the number of enfranchised properties on the 6<sup>th</sup> April in that financial year and rounding up to the nearest 10p...”

13. Provision is also made within paragraph 7 for inspection of the certified account for each year to be available at the Trust's offices and for copies of the account to be provided on request. Further provision is made for owners to notify the Trust of any specific objection to the sum specified. Where, within six weeks of the publication of the account, not less than 200 owners notify the Trust of specific objections to the sum specified then the amount of the charge is to be determined by the surveyor appointed by the President of the RICS.

14. Until 1988 a large number of freehold properties were owned by a company known as Ashdale. The scheme also made provision for Ashdale to object to the charge if: first,  
"7(iii)(a) the amount of the sum specified by the Trust exceeds the sum certified or determined for the previous year by more than 5% above the rise in the retail price index for the same period"  
and secondly at the date of the notice of objection it owned no less than 200 houses within the estate. In 1988 the Trust acquired the Ashdale properties and these particular provisions therefore no longer operate.

15. Finally, by paragraph 13 of the Scheme it is provided that:

"13(1) Any monies received by the Trust under the provisions of this Scheme shall be held in a specially designated bank account containing no other monies (save any interest earned thereon) and shall in so far as not actually expended in accordance with the said provision in the year in which they were received by the Trust, be held in trust...."

### **The Statutory Provisions**

16. Section 159 of the Commonhold and Leasehold Reform Act 2002, introduced a new provision allowing challenge to be made to charges under estate

management schemes approved by the Court or the Leasehold Valuation Tribunal.

17. By section 159(2):

“A variable estate charge is payable only to the extent that the amount of the charge is reasonable; and “variable estate charge” means an estate charge which is neither –

- (a) specified in the scheme, nor
- (b) calculated in accordance with a formula specified in the scheme.”

18. By section 159(6)

“An application may be made to a leasehold valuation tribunal for a determination whether an estate charge is payable by a person 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.”

### **The Applicants' case**

19. The case for the applicants was put separately by Mr Papadopoulos and Mr Freeman.

#### *Mr Papadopoulos' submissions*

20. Mr Papadopoulos made two sets of written submissions in support of his case. At the hearings on both March 28, 2007 and May 22, 2007, he also made oral submissions and questioned Miss Blackburn who gave evidence on behalf of the respondents.

21. His submissions may be summarised as follows:

- (a) That whilst there is no “cap” or limit to the management charge within the scheme, the reference in paragraph 7(iii)(a) to the annual increase

in the charge, exceeding the increase in the retail price index by more than 5% indicates the level of charge contemplated by the Court when the scheme was approved. In particular, this may be regarded as a measure of the operation of the scheme in an “economical, efficient and consistent manner.” The charge for the year ending 2006 exceeded that amount to such an extent that it could not be recoverable;

- (b) That the Trust provides monopolistic services and that, objectively, an increase in the charge by 90% in one year cannot be reasonable. The level of the charge imposed is not at the absolute discretion of the Trust but must be measured by reference to the scheme itself, its purpose and to the test of reasonableness imposed by the 2002 Act. There is, he contended an ascertainable limit to any increase and he asked the Tribunal to assess what that limit should be. To put it another way, he asked, is there any increase that is not allowable;
- (c) That the increases in the management charge between 1983 and 2005 were increases broadly in line with inflation and that it was not possible to justify a sudden shift in the practice of the Trust that would justify an increase of 90%. The actual increase in expenditure between 2004-5 and 2005-6 was in the order of 20%;
- (d) That although it was accepted that the Trust ought not to subsidise the estate charge from its own funds, it was misleading to suggest that any subsidy caused financial pressure on the Trust which had not insubstantial reserves and had been able both to subsidise the management charge by as much as £1,000,000 and in the late 1980s to purchase hundreds of properties from Ashdale;
- (e) That the increase in the charge was “largely based on the change in ratio between leasehold and freehold properties”. The ratio had changed from 62/38 for the year 2004-2005 to 80/20 for the year 2005-2006. It was not possible, he contended, for the actual ratio to substantially change within a year and no explanation had been given for the rationale behind making the change at this particular time.

22. Mr Papadopoulos had intended to call Mr Christopher Kellerman, a former Trust manager, to give evidence in support of his case, however in the event he was not available to attend the Tribunal.
23. Initially, no substantive challenge was made to any item of expenditure within the 2005 to 2006 accounts. However, in his statement of case, Mr Papadopoulos sought an explanation for items of expenditure under the heading “*legal fees and/or other professional charges*” which the accounts showed had increased from £15,224 for the year 2003-2004 to £84,231 for the year 2005-2006.

*Mr and Mrs Freeman’s submissions*

24. Mr and Mrs Freeman’s written submission was sent to the Tribunal under cover of a letter dated May 8, 2007 and was supplemented by a further letter dated May 14, 2007. In breach of the Tribunal’s directions dated March 29, 2007, neither document was served on the Trust. Accordingly, it had no notice of the submissions made until the day of the hearing. Mr Radevsky, counsel for the Trust, contended that in those circumstances, the submission should be rejected by the Tribunal.
25. Mr and Mrs Freeman’s submission falls into two parts. First, there is a wide ranging, but unspecified, critique of a general increase in expenditure which is said to be out of hand and unacceptable. Reference is made to increases of £56,000 in management expenses in four years, £52,000 in establishment and administration in one year, £69,000 in two years for other professional charges and £28,000 in wages in one year, plus £12,000 in four years for other management expenses. However, other than generalised statements, such as “it would appear that extra staff have been taken on, although the number of applications has not increased” and “does anyone employed by the Trust have experience in running a business” no detailed challenge to the accounts or costs underlying the accounts is made.



26. The Tribunal decided that it would not consider that part of Mr and Mrs Freeman's case for the following reasons:
- (a) No other owner had challenged the expenses incurred by the trust (with the exception of Mr Papadopoulos' request for an explanation of legal fees);
  - (b) The only year at issue is 2005-2006 and Mr Freeman's challenge, if accepted, is far more wide ranging;
  - (c) The Trust had been given no notice of the detail of the challenge at any time and Mr Freeman had made no real attempt to communicate with the Trust manager about his concerns;
  - (d) Mr Freeman had not taken the opportunity to visit the Trust's offices to examine and discuss the accounts or even to narrow the issues. An examination of those accounts and underlying costs by the Tribunal in those circumstances would have been entirely disproportionate.
27. The second part of Mr and Mrs Freeman's submission relates to the proper compliance with the terms of the Management scheme. The following contentions are put:
- (a) There has been no certification that the Trust has been run in "an economical efficient and consistent manner";
  - (b) The accounts ought only to relate to enfranchised properties and should not reflect income and expenditure for leasehold properties;
  - (c) Monies received under the scheme ought to be held "in a specially designated bank account containing no other monies..." and are not so held.
28. The Tribunal considered that these matters which concern the proper construction of the management scheme required determination.

*The Evidence and Submissions for the Trust*

29. At the hearing, evidence was given on behalf of the Trust by Mrs Jane Blackburn, Trust Manager and company secretary to the Hampstead Garden Suburb Trust Ltd. The Tribunal also had regard to a written statement from Mr Mervyn Mandell, Trust Chairman, who was unable to attend the hearing because of ill-health.

30. In her evidence, Mrs Blackburn explained how the increase in the management charge had occurred. This was, she said as the result of three separate factors:
- (a) The Trust had decided to end the practice of subsidising the management charge;
  - (b) The ratio by which costs were attributed to either leasehold or enfranchised properties had been adjusted so that a greater burden properly fell to be paid from the management charge;
  - (c) Actual costs had also increased because of moves to modernise the management of the Trust and specifically, an increase in litigation costs.
31. The Trust is funded from two main income streams. The first derives from the charges made to freeholders under the scheme of management which are applicable only to work in connection with freehold properties (and land to which they have access). This income includes, for example, the management charges, some insurance commissions and building consent fees. The second derives from ground rents and other charges made to leaseholders, again including insurances commissions but also rental income (from the flat above the management suite) and any surplus on sales of freehold. The second stream of income is designated as the "General Fund"

*The subsidy*

32. Mrs Blackburn explained that a subsidy to the management charge had come about because over a period of about 20 years it had become custom and practice only to raise the management charge broadly in line with inflation. In years where this would have caused a loss, a transfer was made from the Trust's general funds to the scheme of management. As a result, a balancing charge had been made only once in the past 20 years.
33. By reference to the accounts exhibited to Mr Mandell's statement it was demonstrated that:

(a) For the year 2003 to 2004, the income to the management scheme fund totalled £212,146 (£146,202 being receipts of management charges) but that the expenditure attributable to management expenses relating to the enfranchised properties, was £219,182. Accordingly, there was a deficit of £7,036 in the management scheme fund. That deficit was addressed by the transfer of an equivalent sum from the General Fund to the management scheme fund.

(b) For the year 2004 to 2005, the income to the management scheme fund totalled £235,231 (£156,273 being receipts of management charges) but that the expenditure attributable to management expenses relating to the enfranchised properties, was £247,997. Accordingly there was a deficit of £18,628 in the management scheme fund. That deficit was again addressed by the transfer of an equivalent sum from the General Fund to the management scheme fund.

34. In effect therefore the scheme of management was being subsidised by the Trust from its general funds. By 2005, it was said, the continuance of the subsidy had to be reviewed. The Trust is required to fulfil its obligations under the scheme of management at a time when there is a vast increase in property values and moves to litigation. Mrs Blackburn emphasised the Trust's responsibility to look after its assets and heritage and cited the need to defend that heritage from hostile development in the Suburb.

35. Furthermore, the Trust had found that it was necessary to maintain minimum levels of reserves. The management charge bills are sent out at the end of August but expenditure is sustained from April, therefore the cash flow is somewhat unusual and the outflow of cash in June, July and August is such that there may be a danger that bills cannot be met.

*The ratio between enfranchised and leasehold properties*

36. The second reason given for the increase in the management charge was the re-assessment of the ratio in which costs were attributed to either enfranchised or leasehold properties. For a long time, the two types of properties were

considered to be of equal workload but in fact, it was said, the flats in large blocks cause the trust less work than the houses. A large proportion of the Trust's expenditure, for example in salaries for the management team, could not be separately assessed without the application of weighting. Where expenses are incurred which are directly attributable to either leasehold or enfranchised properties, this is reflected separately in the accounts.

37. In order to demonstrate how the new weighting had been arrived at, Mrs Blackburn prepared an analysis for the Tribunal. This shows that of a total of 5094 dwellings, 1699 are held on leasehold and 3387 are held on freehold (there being eight other unspecified properties). By applying a weighting of a 1:10 for management expenditure where flats are weighted at 1, and houses are weighted at 10, whether leasehold or freehold, the resulting proportions for the management of leasehold (houses and flats) is 19.85% and 79.99% for freehold houses.

38. The Trust had considered other alternative weighting formula but in consultation with its accountants, considered that a weighting of 1:10 properly reflected the division between the types of property. For comparison purposes Mrs Blackburn also gave the figures where a weighting of 1:2 is applied. This results in the proportions for the management of leaseholds being 26.87% and 72.97% for freeholds.

39. The new regime was explained in note 2 to the 2006 accounts as follows:  
"Items of income and expenditure are allocated to the scheme of management or the general fund as appropriate and the Trust's auditors certify by the signing of the statutory accounts that the scheme has been charged with a proportionate part of the expenses of the Trust in operating the scheme. Items which are incurred in respect of both the scheme of management and the general fund are apportioned according to the proportion of enfranchised (ie freehold) properties to all properties in respect of which the management charge or lease rents are payable to the Trust. Within this calculation flats are weighted against houses in the proportion 1:10. The weighting has been determined by an analysis of staff time. This calculation results for 2005/2006 in an apportionment of 80%:20% or 4:1 between the scheme of

management and the general fund. This apportionment has been confirmed with the Trust's auditors."

40. The failure to reassess the ratio in years prior to 2005 to 2006 had resulted in yet another subsidy by the Trust to the management scheme. The extent of that subsidy had been the subject of an analysis by Mr A Walker working as a volunteer for the Trust between September 2005 and December 2006. The Tribunal were provided with a copy of a memorandum from Mr Walker dated May 11, 2007, setting out the details of the exercise he had conducted where he sought to apply the revised allocation of overheads for 2005 to 2006 to the historic actual aggregate management charge for previous years. His conclusion was that in money of the day terms, the effective subsidy of the management charge from 1975 until 2005 was £1,104,203.

#### *Increased Costs*

41. From about 2003 onwards there had been moves to modernise the management of the Trust. Mrs Blackburn was appointed as Trust manager in the Spring of 2005 following a period of about six months when the post had not been filled. Steps to improve management included an investment in better systems by, for example, the acquisition of better computers and setting up a full data base for management information. Mrs Blackburn stated that systems are now more efficient and less expensive to run but that it had been expensive to get there. Staff had been taken on to manage the Trust and to provide necessary architectural and historic advice.

42. So far as the increase in litigation costs were concerned, these fall, generally speaking into two categories. First, there are reactive costs. The Trust has been involved in a dispute with the owners of 24 Ingram Avenue who seek to demolish a Suburb house in order to construct two large houses on the site. The developer has local authority consent to do this but the Trust has refused its consent and legal action was contemplated. The Trust considers that its

action is fundamental to the Trust's duty to protect the character and amenity of the Suburb. Other reactive costs have been incurred on costs where work had been carried out not in compliance with Trust requirements, boundary disputes, the registration of restriction titles of properties where debts are owed to the Trust, the clarification of Trust interest in land and advice on claims for subsidence due to alleged tree root damage.

43. The second type are costs incurred by the Trust proactively. Although most residents pay their management charge, a number do not. In late 2004 it was decided that the Trust should pursue an active policy to maximise payment levels. Debtors with arrears of two years or more were taken to the County Court. Mrs Blackburn defended this policy as being a necessary step to signal the Trust's policy towards non-payment.

#### **The Tribunal's decision**

44. The Tribunal determines that the management charge of £89.50 for the financial year 2005 to 2006 is reasonable and payable.

#### **The Tribunal's reasons**

45. The first step in the Tribunal's consideration was to determine whether the costs which had been charged to the management fund properly flowed from the operation of the scheme "in an economical, efficient and consistent manner during that financial year". The Tribunal is satisfied that during 2005 to 2006, the scheme was indeed operated in such a manner. It accepted Mrs Blackburn's explanation of the increases in actual expenditure and considered that the improvements to the management practices and systems were justified and beneficial. Furthermore it accepted that the increased legal costs were reasonable and also justified, in particular having regard to the Trust's duty to maintain the character of the Suburb.

46. The second consideration for the Tribunal was whether the change in the Trust's policy in regard to the direct subsidy to the management charge was both within the contemplation of the scheme and reasonable within the meaning of section 159(2) of the Act. It was recognised by the applicants that the Trust should not have to make a direct subsidy in this way and the Tribunal had no difficulty in finding that such a policy change was justified.
47. Thirdly, the Tribunal considered whether the change in weighting was also justified. In this respect the Tribunal accepted that the weighting previously applied to management expenses was not correct and that the Trust had been indirectly subsidising the costs of the management scheme from the General Fund as a result. The Tribunal also considered that the allocation of a proportion of 80% to 20% was reasonable having regard both to the number of enfranchised properties when compared to the number of leasehold properties and the amount of work involved in the management of houses compared to flats.
48. It is interesting to note that the scheme itself contemplates these matters in paragraph 7(d)(v) where provision is made in respect of a potential challenge to the charge and a determination by a surveyor appointed by the President of the RICS as follows:
- “(v) without prejudice to the right of the Surveyor to take account generally of such matters as he thinks fit and without limiting his jurisdiction in any way he shall take into account the following matters:
- (aa) whether in a case where the Trust has incurred in the operation of the Scheme or otherwise any item of expense for the benefit of the Owners and of other residents of Hampstead Garden Suburb the amount attributed and apportioned to the Scheme is fair and reasonable;
- (bb) that the purpose of the Scheme is expressed in paragraph 1 and that Hampstead Garden Suburb is designated under the Town and Country Planning Act 1971 as a conservation area whose character and appearance it is desirable to preserve and enhance, includes a large number of buildings which are individually listed as being of special architectural or historic interest and is recognised internationally as an important landmark in the evolution of domestic architecture and Town Planning;

(cc) the overriding requirement that the Scheme be operated in an economical efficient and consistent manner.”

49. The Tribunal is satisfied that the revised attribution is fair and reasonable and reflects a proper contribution from owners to the costs of the Trust in maintaining the Suburb and preserving its character. .
50. The Tribunal does not consider that it is possible to specify a cap or a limit beyond which the management charge can be increased as requested by Mr Papadopoulos. It does accept however, that the test of reasonableness is broad and is applicable both to the conduct of the management of the Trust as well as to the actual expenses incurred. In this case, the Tribunal recognised that the imposition of a much higher management charge than had previously been levied did require examination. The fact that a management decision was taken to stop the direct payment of subsidy and to change the proportion of expenses attributed to the management charge at a time when the expenses themselves were higher than usual caused a steep increase in the charge which came as a shock to residents. However, the Tribunal considered that as a matter of good management practice and having regard to the sums involved, the Trust were correct to imposed the new regime in the manner it did.
51. As to the issues raised by Mr Freeman in respect of the presentation and certification of the accounts and in respect of the holding of the management charge funds in a separate account, the Tribunal did not consider that any breach would in the circumstances of this case, been a bar to payability.
52. In the Tribunal’s view, a purposive construction must be given to the scheme and considered that the approach to the interpretation of the scheme should not be the same as for the construction of a lease. The scheme is wholly for the benefit of the owners and for the preservation of the Suburb. If the Tribunal were satisfied that breach of the precise terms of the scheme worked to the detriment either of the owners or the purposes of the Trust, then its conclusion may have been that the charge would not be payable. The Tribunal is not so satisfied.



53. The accounts have been presented as a composite account of the Trust's affairs without objection for a considerable number of years. The information within those accounts gives a greater transparency to the Trust's management than would be available otherwise. Although the certification in the 2005-6 accounts is different than in previous years, the Tribunal is satisfied that the spirit of the scheme has been adhered to. Finally, the Tribunal did not consider that it would afford any particular benefit to the owners or the scheme to require that the management charge should be held in a separate account.
54. The Tribunal accepted that this application was made in good faith and that the applicants, and those who support the application, had a real concern that the management charge was unfair. The Tribunal hopes that this determination will serve to clarify the issues raised. The changes which were implemented in 2005 to 2006 could have been explained more clearly. Having said this the Tribunal is satisfied that the Trust is working and has worked to ensure that the owners receive a good service within the terms of the scheme of management and that the investments made in modernisation and the rationalisation of the charge will be to the benefit of all.

### **Costs**

55. At the close of the hearing the Tribunal invited representations from Mr Walker and Mr Radevsky on the scope of the Tribunal's powers in relation to costs. Mr Walker had prepared a written submission dated May 15, 2007 and following the hearing of the application also wrote to the Tribunal in a letter dated June 7, 2007.
56. Mr Walker's submission is that the Tribunal has power to decide whether the legal costs incurred in this application and in application number LON/00AC/LVE/2007/2001 are payable as part of the estate management charge. Furthermore, and importantly, he submitted, the Tribunal is able to make that determination *before* the Trust seeks to include such costs as part of an estate management charge.

57. The Tribunal was firmly of the view that it has no power to determine the payability of costs until they are included in an estate management charge. Section 159(6) referred to above gives the Tribunal jurisdiction to consider an application for a determination "*whether an estate charge is payable*". There is no provision that gives the Tribunal jurisdiction to consider whether particular costs that may or may not be added to a future estate charge are payable or reasonable.

58. If the costs of these proceedings or the costs of application number LON/00AC/LVE/2007/2001 form part of an estate management charge in the future, then the Tribunal will be able to consider an application for a determination whether they are payable and reasonable.

Chairman



Date

