

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985**

**86 FREMANTLE HOUSE, DOVE STREET, BRISTOL BS6 6AY**

Applicants: (1) GRAHAM MARTIN WESTERN  
(2) VALERIE PEARL WESTERN (Lessees)

Respondent: BRISTOL CITY COUNCIL

Dates of hearing: 18 December 2007

Date of inspection: 18 December 2007

Appearances: Mr David Western for the applicants  
Mr John Tooze (Home Ownership Manager)  
Ms Mary Millington (Home Ownership Officer) for the respondents

Members of the Leasehold Valuation Tribunal:

Mr MA Loveday BA(Hons) MCI Arb  
Mr S Hodges FRICS  
Mr D Wills

## BACKGROUND

1. This is an application under section 27A of the Landlord and Tenant Act 1985 (“LTA 1985”) for a determination of liability to pay service charges. The applicants are the leasehold owners of a maisonette at 86 Fremantle House Dove Street in Bristol. The respondent is the freehold owner of the block.
2. A hearing took place on 18 December 2007. Mr David Western presented the application on behalf of his parents. Mr John Tooze presented the matter on behalf of the respondent.
3. The application dated 7 October 2007 was for a determination in respect of the amount payable for unspecified service charge years. Preliminary directions were given on 12 October 2007 and the matter proceeded on the fast track without a pre-trial review. At the outset of the hearing, it was agreed that the following contributions to relevant costs were in issue (the figures being taken from the annual certificates of service charges provided by the respondent).
  - (a) Lifts 2005/06. These charges include £987.52 for “Lift Repair/Refurbishment – Major Works”, £82.49 for “Lift Contract”, and £2.38 for “Lift repairs”.
  - (b) Lifts 2006/07. These charges include £2,681.69 for “Major works: Lift Refurbishment”, £79.49 for “Lift Contract” and £6.42 for “Lift Cost”.
  - (c) Caretaking 2005/06 £376.27.
  - (d) Caretaking 2006/07 £434.47.
  - (e) The City Council charges an administration fee of 15% on these sums. Consequently this element of the administration fee is also in issue.

## THE LEASE

4. The Tribunal was provided with a lease for the subject premises dated 6 September 1982. The lease was granted by the respondent to the applicants under the right to buy provisions of the Housing Act 1980. By clause 1(B)(iii) “building” is defined as  
*“the block of flats at Dove Street Kingsdown in the city of Bristol known as Fremantle House Dove Street...”*

By clause 5(2) the applicants are required to pay:

*“(A) ... a proportion of the reasonable expenses and outgoings incurred and or anticipated by the Council in respect of the repair maintenance and renewal or the structure and exterior of the building and in respect of the other matters specified in the Third Schedule hereto.”*

Under clause 5(2)(E) the service charge is to be certified annually by the City Treasurer and under clause 5(2)(I) the charge payable by the applicants is calculated by dividing the rateable value of the flat by the rateable value of Fremantle House. Paragraph 2 of Schedule 3 to the lease provides that the recoverable service charge costs include:

*“The cost from time to time of as and when necessary of cleansing and/or redecorating the exterior of the building and of all parts thereof including gutters and external pipes and any external stairway and any balconies (including the railings thereof) and the windows and exterior doors thereof.”*

Paragraph 4 of Schedule 3 permits recovery of the costs of maintaining gardens and courtyards, pathways etc. Paragraph 13 of Schedule 3 also permits recovery of certain other relevant costs:

*“Such other costs and expenses (if any) as may be incurred by the Council in continuing to make available for the enjoyment of the Tenant (in common with others) any such premises facilities or services as were so enjoyed under or by virtue of the secure tenancy and which are not otherwise in this Schedule provided for and which (without prejudice to the generality of the foregoing) may (but may not) include some or all of the following that is to say:*

*...(e) the cost of periodically inspecting maintaining overhauling repairing and where necessary replacing the whole or any part of ... any lifts lift shafts and machinery therein.*

*(c) the cost of employing maintaining and providing accommodation for any caretaker (including the provision of uniforms and protective clothing)....”*

5. There is common ground that the respondent has for many years not calculated service charges on the basis set out in the above provisions. This has come about in an informal way. In 1985, meetings took place between the applicants and the respondent and a local councillor. As a result, it was agreed that the definition of the block in the lease would be amended. However, a letter dated 6 December 2006 in the hearing bundle refers to the words of a letter dated 29 January 1985 “when it was agreed to amend the definition of the block in [the] lease [to]:

*“The block currently is defined as 1-101 (inc) Fremantle House, but as you correctly assert your flat is contained within a block of eighteen maisonettes*

*attached to the main building. I therefore feel that the original block definition is unreasonable and I have, with your agreement, redetermined the same as nos. 84-101 Fremantle House. However, I am informed that as you retain the possibility of using certain facilities encompassed within the main building, you do not feel that it is unreasonable that you should bear a proportion of the cost of repairs, or replacement of the same."*

It may well be that a copy of this letter was signed by one or both of the applicants. No copy of any variation deed was apparently prepared and nothing in writing has been provided to the Tribunal.

6. Although the parties do not appear to have complied with the requirements for a formal variation of the lease, they agreed that for the purpose of the present application the passage quoted above reflects the relationship between the parties (presumably by estoppel). At the hearing, the Tribunal verbally expressed its concern that the respondent had adopted an informal means of varying the terms of the service charge provisions and it repeats its concern again now.
7. The effect of this 'variation' is that under the lease the applicants are obliged to pay:
  - (a) A fixed proportion of costs relating to the four storey block of maisonettes based on the rateable value of the flat. That proportion is the rateable value of the flat divided by the rateable value of the maisonette blocks. The fixed costs include the costs of cleaning the maisonette block.
  - (b) An unspecified proportion of the cost of repairs or replacement of facilities within the main block at Fremantle House which the applicants are able to use. Those costs include the lifts and caretaking services.

## **INSPECTION**

8. The layout of Fremantle House is complex, and it is necessary to go in to some detail to explain the Tribunal's determination.
9. Fremantle House is situated in the Kingsdown area of Bristol, forming part of a modern estate of several blocks constructed on a steep slope above the City centre. The lower (southern) side of the estate is bounded by Dove Street South. The upper

(northern) side is bounded by Dove Street. In this determination, "front" means the lower slope and "rear" means the upper slope.

10. Fremantle House itself is a 13 storey tower block of 83 flats surrounded by a complex of garages, walkways and service areas. The main entrance hallway is on the ground floor with level access to Dove Street South. This main entrance has an externally mounted controlled access keypad with a sign stating "*Please note that nos. 84-101 are not part of the controlled access door entry system.*" The entrance door gives access to a lobby and lifts. At third floor level to the rear is a door leading to the garage areas operated with a key. At fifth floor level is a communal laundry and another door at the rear giving foot access to Dove Street which is referred to below.
11. To the rear of the main tower block is a low block of 18 maisonettes (numbered 84-101) of grey brick with a flat roof. The subject premises are located on the lower two floors of this block. The entrance doors to the lower maisonettes are from a concrete pathway bounded by a red brick dwarf wall facing Dove Street. Access to the upper row of maisonettes is provided by a staircase at the end of the block.
12. The most direct street access from the maisonette block is to Dove Street which is up a short flight of steps immediately behind the block. There is pedestrian link to the rear of the main block up a short flight of steps to the door mentioned above. This provides access to the laundry on the fifth floor of the main block and through the lifts to the main entrance lobby at Dove Street South. Somewhat confusingly, on the rear elevation of the main block by this door is mounted a controlled access keypad marked "*Fremantle House Nos 84-101*" - although there is no suggestion the keypad is linked to the maisonettes. The pad also incorporates a key fob facility allowing access to fob holders. Access to the garage areas from the maisonette block is across a communal terrace (which forms the roof of the garages on the level below) and then down slopes and walkways and gates to the garages themselves. There are steps and pathways across the estate – although the terrain makes these somewhat inconvenient.

13. A short distance from the main tower of Fremantle House to the front of the estate is another 4 storey block called Francis House.
  
14. The Tribunal was shown many individual items demonstrating the condition of the maisonette block, the main block and the surrounding areas. It is not possible to deal with every individual item in this determination, most of which were not elaborated on at the hearing. However, they can be summarised as follows:
  - (a) The external decorative condition of the elevations of the main block was quite good, with woodwork and other painted areas in good condition.
  - (b) Internally, the communal areas of the main block were to a basic municipal standard, without carpets or apparent space heating in corridors or staircases. They smelt strongly of disinfectant. Internal decorative condition and cleanliness was quite good, with woodwork and other painted areas in good condition. The internal common parts were well lit and secure. The internal condition of the lift cars was also good, the internal faces and lift car controllers appearing new.
  - (c) The external condition of the maisonette block was rather poorer. There was peeling paintwork and large damp patches to the underside of the staircase to the main block. Cabling was unclipped and surface mounted electrical boxes lacked covers. Brickwork was stained with water marks. Rainwater hoppers were choked with weeds. The laminated surface of the doors to the electricity substation forming part of the maisonette block had come away.
  - (d) The condition of the stairwell to the maisonette block was also poor. Paint and plaster was blown. There was a general build up of dirt to the ceilings and walls and staining to the walls. Part of the floor was black with oily deposits and very damp. Under the stairs were broken glass tubes and stained foil squares consistent with drug abuse.
  - (e) The "garden" areas around the maisonette block did not show any obvious signs of maintenance (although the inspection did take place in winter). The steep slope between the maisonette block and Dove Street (immediately outside the front door to the subject premises) was in part overgrown and in part rough grass. The gutter at the foot of this slope adjacent to the dwarf

wall was full of leaves and debris to the extent that no gulley was evident.

The whole area was heavily littered.

- (f) The various paths and terraces were also in rather poor condition. Concrete tiles and paths and Tarmac paths were in many places cracked and weeds had penetrated the surface. Access panels for electrical and water services were missing. There was extensive rubbish and cigarette ends. On the terrace leading to the garage blocks (immediately outside the windows of the subject premises) is a pole-mounted electric lamp which was defective and had not worked for a considerable time.

## **LIFTS**

15. The parties dealt with the six items of relevant costs for the lifts (and the administration fee payable on these costs) together. The applicant accepted that the relevant costs were recoverable under the terms of the lease and (insofar that the costs related to major works) that section 20 of Landlord and Tenant Act 1985 had been complied with. The sole issue was whether the lift costs were “reasonably incurred” under section 19(1) of the 1985 Act.
16. The applicants’ case. Mr Western relied on written submissions dated 11 November 2007 which he expanded upon at the hearing. He stated that the applicants had bought the property under the right to buy in 1982. When they signed the lease, the applicants and their visitors to their home (including delivery and service persons) had free access to the lifts through the doorway at the fifth floor level of the main block. However, the use of the lifts was now restricted for two reasons. First, the Council had installed a controlled access system after 1982 which (it was suggested) made the lifts almost unusable by residents in the maisonette block. The applicants had key fobs giving access to the main door on Dove Street South and the rear door of the main block, but there was no telephone or remote access linking the interiors of the maisonettes with the main entrance lobby at the front of the main tower block. As a result, only the applicants could effectively use the lifts. Visitors without a fob could not get access to or from the lift, and there was no means of calling the applicants to allow them access to the lifts. This was compounded by the problem that the

applicants were not given keys to the door at the third floor level from the garages to the main block. This meant that the applicants could not drive into their garages and then gain level access to the lifts through the door to go up to fifth floor level.

17. Secondly, social conditions on the estate had changed since the lease was signed. The applicants had no desire to use the lifts because there were drug addicts buying and selling drugs in the blocks, people were urinating in the lifts and tenants and leaseholders alike were scared of using the lifts. The Council had “changed the rules” since 1982.
18. In answer to questions from the respondent and from the Tribunal, the applicants stated that at the date of the lease, there had simply been swing doors. Controlled access was installed in about 1990 which was initially operated with ordinary keys. In about 2000-01 the key fob system was introduced. The sign at the main entrance on Dove Street South had been up about 2 years.
19. Mr Western submitted in closing that nothing should be allowed for the lift costs. Even a 25% discount was a lot to pay for something which the applicants did not want to use.
20. The respondent’s case. Mr Tooze relied on a letter to the applicants dated 8 October 2007 which he expanded upon at the hearing. In relation to the major lift works, the respondent had followed the proper consultation procedure under section 20 of the 1985 Act and he relied on various notices in the hearing bundle to this effect. None of the lessees in the block had objected to the proposal to replace the lifts. This was the first time since the lifts were installed that the whole of the lift system including the winding gear was replaced. The lifts had become old and required replacement. The lessees did have some facility from the lifts in that they could use them with a fob. The sign at the entrance was there for the benefit of casual visitors. He did not accept that failure to extend the door entry system to the maisonettes was a “fundamental weakness” in the system. He did, however, accept that for visitors and deliveries to the maisonettes the system had no benefit. Installation of the door entry system had



made the applicants' access to the lifts more inconvenient especially in the case of visitors to the maisonette. The respondent was therefore prepared to allow a discount of 25% of the lift costs backdated to the 2005/06 service charge year. He formally conceded that in this respect 25% of the cost of the lifts was not reasonably incurred under section 19(1) of the 1985 Act.

21. When questioned by Mr Western, Mr Tooze denied it was the respondent's policy to house drug dealers. Drug dealing was in breach of the standard tenancy conditions of the Council. Mr Tooze considered the conditions under the stairs of the maisonettes was poor, but other areas were quite clean. The 25% discount suggested by him reflected the fact that visitors and deliveries *did not* have access to the lifts.
22. In respect of social conditions on the estate, Mr Tooze stated that the respondent had statutory duties under homelessness legislation, and that this resulted in the bulk of new lettings in Fremantle House being for priority homeless households. Many had drug and other problems. Many were single, and had to be accommodated in places such as Fremantle House. This was a problem caused by changes in wider society. The Council tried to maintain quality for tenants and tried to keep the area clean. On inspection, the communal areas had been clean. Furthermore, when a right to buy lease was drawn up for a 125 year term, social conditions were bound to change over the term of the lease – it would be impossible to opt in and opt out of services.
23. Determination. The requirement under section 19(1) of the Act is not that relevant costs are "reasonable", but rather that relevant costs are "reasonably incurred". The principles were considered in *Forcelux v Sweetman* [2001] 22 EGLR 173 and *Veena SA v Cheong* [2003] 1 EGLR 175. One formulation of what is required involves a two stage test requiring consideration (1) whether the action taken by the landlord in charging for the lifts was reasonable and (2) whether the costs involved are out of line with the market norm.
24. The mere fact that an item of expenditure provides little or no utility for a lessee is in itself not a ground for objecting to liability to contribute a service charge: see for

example *Billson v Tristem* [2000] L&TR 220. However, in this case, Mr Tooze accepts that since the lease was made, the respondent has materially interfered with the applicants' ability to use the lifts by installing a controlled access door entry system which did not extend to the maisonettes. The formal concession that part of the lift costs were not "reasonably incurred" within the meaning of the 1985 Act means the Tribunal is limited to an assessment of the extent to which the controlled access system interferes with the utility of the lifts. In that respect, the lifts are fully available for use by the applicants themselves. They also have unrestricted access to the garages and to and from the Dove Street South lobby using the key fob. These are valuable amenities in the light of the nature of the site, which makes other access to the garages and to and from the City Centre quite difficult, especially for the elderly, the physically disabled and for parents with pushchairs. However, access from the garages to the subject premises and use of the lifts by casual visitors and deliveries using the Dove Street South entrance are in practice impossible. Access to the subject premises without using the lift is still possible for regular visitors and family who know that the front door to no. 86 is close to the upper side of Dove Street. Doing its best, the Tribunal finds that the nature of the controlled access door entry system renders 50% of the lift costs not reasonably incurred in relation to this particular maisonette in these particular years.

25. The Tribunal does not allow any further reduction in relation to the arguments raised about the changing social nature of Fremantle House. There is certainly evidence of drug use on the external parts of the estate (as was clear on inspection) but the lifts themselves were well lit, clean and secure. Furthermore, the Tribunal accepts the arguments advanced by Mr Tooze. The local authority has statutory duties to house homeless persons, and its freedom to allocate housing according to need should not be fettered by way of its ability to recover service charges. There is no evidence it was either in practice or in law capable of preventing antisocial behaviour in the lifts. Finally, the subjective concerns of the applicants (no matter how understandable) are not reflected in the test to be adopted under section 19(1) of the Act.

## CARETAKING

26. The parties also dealt with the two items of caretaking costs (and the administration fee payable on these costs) together. Issues were raised as to the recoverability of the charges under the terms of the lease, whether the costs were reasonably incurred under section 19(1)(a) of the 1985 Act and whether the caretaking services were of a reasonable standard under section 19(1)(b).
27. The applicants' case. Mr Western again relied on the written submissions of 11 November 2007 supplemented by oral submissions at the hearing. He produced photographs showing the condition of Fremantle House (which the respondents did not object to) which were consistent with the condition found on inspection. The applicants explained there was no resident caretaker at Fremantle House. The caretaker for the block lived in Francis House. He stated that the standard of upkeep and general maintenance had been "consistently poor". The light on the terrace outside the subject premises failed in mid 2007 and had not been repaired. During major works, the workmen had damaged the applicants' property, wiring was hanging loose, masonry paintwork is in disrepair and flaking and the grounds are overgrown and weed-ridden. The lack of cleanliness was self explanatory. It was for the respondent to explain what the applicants got for their money. In answer to questions from the respondent and from the Tribunal, the applicants accepted that a caretaker and assistant caretaker looked after Fremantle House – although it was possible that they also looked after Francis House. The foot of the stairs in the maisonette block was not cleaned on a weekly basis. The condition on inspection was an accumulation of dirt etc over more than a week. In closing, Mr Western accepted that there were some caretaking services, but these were less than half of what should have been provided.
28. The respondent's case. Mr Tooze stated that caretaking was a cost separate to ground maintenance. In fact, the respondent did not charge the applicants anything for garden maintenance and general care of the courtyards etc. The respondent operated a centralised city-wide Caretaking Service across its 1,900 leasehold properties. The Caretaking Service was a direct labour organisation forming a division of the Housing Department. It was currently subject to a major caretaking review. For this block, a full

time and a part-time caretaker were employed and their work plan included cleaning the common parts twice a week. Mr Tooze did not have any details of this program. The charges for caretaking were not based on the costs in Fremantle House. It was based on bands which applied across the whole of the City of Bristol weighted to reflect the size of each leasehold property and whether the property was in a block with a resident caretaker. This scheme was the result of extensive consultation with leaseholders' representatives across the City who had preferred the scale charges to a scheme based on the actual costs in each block. These bands were not agreed with the individual leaseholders concerned.

29. When questioned by the Tribunal, Mr Tooze stated it would be quite difficult to calculate the cost of caretaking at Fremantle House. As to grounds maintenance, the cost of weeding and gardening was not charged to the lessees. Weeds between paving stones and on the tarmac were more of a caretaking issue. Minor repairs, such as the lamp, were entered onto the Council's repairs system. Mr Tooze had seen work tickets for unspecified broken lamps on the terrace but it was quite hard to identify whether they related to the light in question. He accepted that there were some problems with the standard of caretaking and offered an *ex-gratia* payment of £50 to cover this.
30. Determination. There is some confusion about precisely what is included in the caretaking costs of £376.27 in 2005/06 and £434.47 in 2006/07. The respondent suggests that in addition to the usual caretaking functions, these costs include internal cleaning of the main part of Fremantle House and the maisonette block and some element of clearing weeds from paths and terraces. However, the caretaking costs do not include any element of general grounds maintenance. There is also a separate line item in the service charge accounts for repairs. Since no charge is made for grounds maintenance, and separate items appear for repairs, many of the items which the applicants complain about (such as weeds in planted areas and general minor repairs) are not strictly relevant to the disputed caretaking costs.
31. The Tribunal finds, as a result of its inspection, that cleaning of the interior of the main block of Fremantle House is carried out to a good standard. However, apart from this,

cleaning of the maisonette block and external areas is poor. This may be the result of the general confusion about what is within the grounds maintenance function and what falls within the province of the caretaking service. Without further information about the contracts in each case, the Tribunal cannot determine the reason for the poor standard of service. Suffice it to say that cleaning of areas outside the main tower block at Fremantle House is not carried to a reasonable standard as required by section 19(1)(b) of the Act. Insofar as the caretaking charges include such relevant costs, the Tribunal would make a significant discount to reflect the standard of service.

32. Furthermore, the Tribunal is not satisfied that the landlord's processes are sufficiently robust to ensure that the caretaking costs are reasonably incurred within the meaning of section 19(1)(a) of the Act. A private sector landlord would generally be expected to give evidence that significant areas of cost are market tested on a regular basis in accordance with the RICS Service Charge Management Code. The fact that a local authority employs many caretakers across hundreds of properties does not absolve it from the need to show that it regularly market tests such costs. In this case, no evidence was given to show that market testing has occurred, although Mr Tooze does say that caretaking services are currently subject to review.
  
33. However, there is a more fundamental difficulty in the way of recovering the caretaking costs. On its own admission, the respondent has not attempted to establish the cost of cleaning the main block at Fremantle House or the maisonette block. The caretaking cost charged to the applicants is calculated by reference to something else, namely a scale cost based on the cost of providing caretaking services to hundreds of different types of property across the whole of the City of Bristol. Convenient though this may be, this is not the method of calculating the service charges prescribed by the lease of 86 Fremantle House (whether in its original or its "varied" form). Paragraph 2 of the Third Schedule to the lease requires the applicants to pay a fixed proportion of the cost of cleaning "*the building*" – which means either a proportion of the cost of cleaning both blocks at Fremantle House (under the lease) or the maisonette block alone (under the "varied" terms). The lease assumes that the landlord must calculate

the cost of cleaning the building – and without doing this it cannot properly calculate the cost attributable to the lessees.

34. Contractually, the respondent is therefore not entitled to recover from the applicants a proportion of the cost of caretaking across the City of Bristol under the central caretaking service scheme. Instead, it should calculate the costs in accordance with the provisions of the lease. The Tribunal need not determine what a reasonable cost for caretaking would be, but in any event no evidence was presented to the Tribunal in this case. It therefore finds that no part of the sums claimed by the respondent for caretaking services in 2005/06 or 2006/07 are payable.
35. Although this determination may have consequences for the recovery of scale caretaking charges in relation to the City Council's other leasehold properties, it is not necessarily the case that the respondent will be unable to recover such charges from every leaseholder. It may well be that the right to buy leases of other properties are worded differently. It may also be that the Council could produce evidence to show that there is a correlation between the actual cost of caretaking in any individual block and the scale charges produced by Caretaking Services. Insofar as it may be relevant, there may be evidence of what a reasonable caretaking charge would be. It should also be said that very little evidence of the workings of the scale scheme were produced to the Tribunal and the Tribunal was not addressed in detail on the provisions of the lease itself or the effect of the informal "variation".

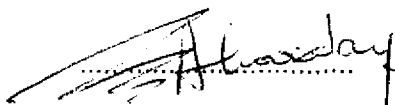
#### **LEGAL COSTS AND HEARING FEES**

36. Mr Tooze stated that the respondent would not seek to add any of the costs it incurred before the Tribunal to the service charges. Accordingly, the applicants made no application for an order under section 20C of the 1985 Act. It was agreed that this concession would be formally recorded in the Tribunal's determination.
37. The applicants also applied orally at the hearing for an order for reimbursement of fees under paragraph 9(2) of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. Since no notice had been given, the Tribunal gave oral directions for the

parties to make written submissions on this discrete issue. The applicants were to make written submissions by 2 January 2008. The respondent was to make any written submissions by 15 January 2008. The Tribunal will give a brief supplementary determination on this application when the deadlines have expired.

## CONCLUSIONS

38. Lifts 2005/06. The Tribunal finds that the costs of "Lift Repair/Refurbishment – Major Works", "Lift Contract" and "Lift repairs" are limited to 50% of the sums sought. The relevant costs payable by the applicants are therefore £41.25, £493.76 and £1.19 for these items. In addition, a reduction of the respondent's administration fees of 15% of these costs should be made, amounting to £80.43.
39. Lifts 2006/07. The Tribunal finds that the costs of "Lift Repair/Refurbishment – Major Works", "Lift Contract" and "Lift repairs" are limited to 50% of the sums sought. The relevant costs payable by the applicants are therefore £1,340.85 for "Major works: Lift Refurbishment", £39.75 for "Lift Contract" and £3.21 for "Lift Cost". In addition, a reduction of the respondent's administration fees of 15% of these costs should be made, amounting to £207.57.
40. The Tribunal does not allow the sum of £376.27 claimed for caretaking services in 2005/06. In addition, a reduction of the respondent's administration fees of 15% of these costs should be made, amounting to £56.44.
41. The Tribunal does not allow the sum of £434.47 claimed for caretaking services in 2006/07. In addition, a reduction of the respondent's administration fees of 15% of these costs should be made, amounting to £65.17.



Mark Loveday BA(Hons) MCI Arb

Chairman

29 December 2007

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER PARAGRAPH 9(2) OF SCHEDULE 12  
TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**86 FREMANTLE HOUSE, DOVE STREET, BRISTOL BS6 6AY**

Applicants: (1) GRAHAM MARRIN WESTERN  
(2) VALERIE PEARL WESTERN

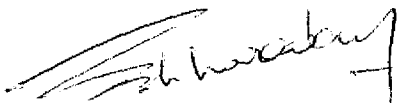
Respondent: BRISTOL CITY COUNCIL

Members of the Leasehold Valuation Tribunal

Mr MA Loveday BA(Hons) MCI Arb  
Mr S Hodges FRICS  
MR D Wills



1. The substantive matter is an application under section 27A of the Landlord and Tenant Act 1985 to determine liability to pay service charges. The application was heard on 18 December 2007 and a determination was given on 29 December 2007. The factual background is set out in full in those reasons.
2. At the hearing, the applicants orally sought an order for reimbursement of the application fee of £70 and the hearing fee of £150 under paragraph 9(2) of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. Directions were given for the applicants to file written submissions by 2 January 2008 and for the respondent to file written submissions by 15 January 2008. It was agreed the supplementary application would then be dealt with without a hearing by way of a separate determination. Only the applicants availed themselves of the chance to make written submissions, which were brief and to the point. The gist was that the applicants were justified in bringing the application.
3. Regulation 9 of the Leasehold Valuation Tribunals (Fees) Regulations 2003 is as follows:  
**Reimbursement of fees**  
*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.*
4. There is no guidance from the courts or from the Lands Tribunal on the provision. The Tribunal accepts that its discretion is a wide one. The words can be contrasted with the words of CALRA 2002 paragraph 10(2) of schedule 12 (which plainly fetters the Tribunal's discretion) and the express qualification that the Tribunal must find it "*just and equitable*" to make an award under LTA 1985 s.20C(3). The Tribunal may therefore consider both the conduct of the applicants and the conduct of the respondent falling short of actions which are "*frivolous*", "*vexatious*" or otherwise an "*abuse*" of process. Nevertheless, the Tribunal bears in mind the general presumption that a party before the Tribunal "*shall not be required to pay costs incurred by another person in connection with proceedings*": see CALRA 2002 paragraph 10(4) of schedule 12.
5. The Tribunal does not require the respondent to reimburse the applicants the application and hearing fees. It takes into account the previous history of Tribunal hearings which did not suggest a pattern of the respondent seeking unmeritorious charges. At the hearing, the respondent genuinely pursued the charges it sought to recover on substantial grounds. Indeed, the respondent had a fiduciary duty to Housing Revenue Account stakeholders to do so. It is equally true that the applicants pursued the application in a measured way. However, absent any conduct of either party which takes their actions out of the ordinary, paragraph 10(4) of Schedule 12 prevails. An order for reimbursement of fees simply because the applicants succeeded would import into the Leasehold Valuation Tribunal a presumption that costs follow the event – a principle which does not expressly appear anywhere in the regulations governing Tribunal procedure and which is alien to the "no-costs" regime in which the Tribunal operates.



Mark Loveday  
6 February 2008