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**HM COURTS AND TRIBUNAL SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/29UN/LIS/2012/0033**

**REASONS**

**Application** : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended (“The 1985 Act”)

**Applicant/Leaseholder** : Alan John Wilkes

**Respondent/Landlord** : Proxima GR Properties Limited

**Building** : The Mansions, Fairfield Road, Broadstairs, Kent, CT10 2QH

**Premises** : Flat 26, being part of the Building

**Date of Application** : 5 March 2012

**Date of Directions** : 7 March 2012

**Date of Hearing** : considered by the Tribunal on 1 May 2012 without a hearing pursuant to Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended, and in accordance with the directions given by the Tribunal

**Member of the Tribunal** : Mr P R Boardman MA LLB (Chairman)

**Date of Tribunal’s Reasons**: 1 May 2012

**Introduction**

1. This an application by the Applicant/Leaseholder for a determination :
  - a. whether a charge of £40 for the Housing Ombudsman Service should be included in the service charge for 2012
  - b. whether, and, if so, to what extent, the costs incurred by the Respondent/Landlord in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholder
2. The documents before the Tribunal are those in a bundle attached to a letter from Peverel Management Services Limited, registered in England number 1614866 registered office Queensway House 11 Queensway New Milton Hampshire BH25 5NR trading as Peverel Retirement (“Peverel”), with pages numbered 1 to 67. References in these reasons to page numbers are to page numbers in the bundle
3. Neither party has requested that the Tribunal should inspect the Premises, and, in light of the limited issues before the Tribunal, the Tribunal has decided not to do so

#### **Respondent/Landlord's statement of case dated 13 April 2012 [sic]**

4. Peverel stated that :
  - a. the Respondent/Landlord had given the conduct of the case to Peverel
  - b. Peverel had an internal complaints procedure (pages 57 to 62)
  - c. it was beneficial for complainants to be able to refer a complaint to an external body if they felt their complaints had not been properly dealt with by Peverel; the Housing Ombudsman Service was providing that facility; once a development was registered with the Housing Ombudsman Service, the lessees at the development were entitled to avail themselves of the service without further charge
  - d. the Building was a development of 29 properties and therefore the individual cost of the subscription to each property at the Building was £1.38
  - e. paragraph 6.2 of schedule 8 to the lease permitted the charging of the Housing Ombudsman Service registration fee to the service charge account
  - f. the cost was reasonably incurred
  - g. the Peverel area manager discussed the Housing Ombudsman Service with lessees at the annual budget meeting and the majority consensus of the lessees at that meeting was that they wanted to subscribe to the Housing Ombudsman Service
  - h. Peverel did not propose to make any submissions on the Applicant/Leaseholder's application under section 20C of the 1985 Act

#### **Applicant/Leaseholder's submissions in response dated 29 March 2012 [sic]**

5. The Applicant/Leaseholder's submissions were that :
  - a. the current complaints procedure which was available at the Building by the notice boards and in the site's development file was attached (page 65); the document produced by Peverel at pages 57 to 62 was an entirely new form of the document which had never been mentioned and to which the lessees did not have access
  - b. although Peverel had stated that they would abide by a decision by the Housing Ombudsman Service, the Applicant/Leaseholder understood that the Housing Ombudsman Service had no legal authority whatever and would therefore only add a further tier of complaint to what was already a lengthy process before taking a case to an LVT
  - c. the small cost of this so-called service was irrelevant; it would obviously rise from year to year, and once agreed in principle it would be very hard to discontinue and had no impact whatever on the enjoyment, security and safety of the lessees in these 29 dwellings
  - d. Peverel had changed ownership on a number of occasions and the Applicant/Leaseholder doubted whether the present Peverel could now be considered a legal party to the lease
  - e. the only way the managing agent could levy this charge was by way of their administration fee and if Peverel had such a right it would be inconsistent with Peverel putting it forward to the lessees as an optional service as stated by Peverel's area manager at the AGM on 6 September 2011 (page 66)
  - f. the Applicant/Leaseholder had not been present at the annual budget meeting referred to in Peverel's statement of case, but the residents who did attend had stated that there were insufficient lessees to vote on the proposal by the area manager that the Housing Ombudsman Service was warranted, as confirmed by the declaration at page 67

#### **The lease of the Premises dated 26 June 2000 (pages 2 to 44)**

6. The material provisions in the lease are as follows :

**Particulars**

**The Manager:** *Pevel Management Services Limited registered in England number 1614866 whose registered office is at Queensway House 11 Queensway New Milton Hampshire BH25 5NR*

**The Service Charge :** *the expenses and outgoings incurred by the Manager in providing the services and carry out its obligations in accordance with schedule 7 (taking into account the provisions of schedule 8).....*

**Schedule 5 (Lessee's covenants with the Lessor and the Manager)**

*2 Subject only to the provisions of paragraph 6 of schedule 9 to pay to the Manager :  
2.2 ..... the Service Charge Proportion specified in the Particulars being part of the expenses and outgoings properly incurred by the Manager in respect of rates services repairs or maintenance of the Buildings in the Estate the provision of services in the Buildings in the Estate and the other heads of expenditure incurred by the Manager in the performance of its covenants contained in this lease.....*

**Schedule 8 (terms and provisions relating to the Service Charge and the Service Charge Proportion covenanted to be paid by the Lessee in this lease)**

*6 The expression "the expenses and outgoings properly incurred by the Manager" shall be deemed to include :  
6.2 any additional expenditure in respect of any additional service or item provided by the Manager during the Term which in the Manager's absolute discretion shall enhance the enjoyment security or safety of the Lessees of the Dwellings*

**The Tribunal's findings**

7. **The identity of Pevel**

8. The Tribunal finds that the name, registered office and company number of Pevel as stated in the Particulars of the lease are the same as those set out in the letter from Pevel with which the bundle of documents was submitted, and that on the face of the documents it is accordingly the same company, irrespective of the question whether the shareholders of the company have changed from time to time

9. **The fee for the Housing Ombudsman Service £40**

10. The Tribunal finds that :

- a. the fee for the Housing Ombudsman Service can be included in the service charge only if the lease so allows
- b. the Respondent/Landlord has sought to justify the inclusion in the service charge of the fee for the Housing Ombudsman Service by relying on paragraph 6.2 of schedule 8 to the lease,

*namely any additional expenditure in respect of any additional service or item provided by the Manager during the Term which in the Manager's absolute discretion shall enhance the enjoyment security or safety of the Lessees of the Dwellings*

- c. however, the words of paragraph 6.2 of schedule 8 to the lease, by their plain and ordinary meaning, do not expressly include a subscription to the Housing Ombudsman Service, and do not impliedly do so either in that :
  - the Housing Ombudsman Service is not a “service or item provided by the Manager”, in that it is a service provided by the Housing Ombudsman Service
  - the subscription to the Housing Ombudsman Service is not a “service or item provided by the Manager”, in that it is a subscription to the Housing Ombudsman Service
  - the facility of paying the subscription through the service charge is not a “service or item provided by the Manager” which “shall enhance the enjoyment security or safety of the Lessees of the Dwellings”, in that the subscription provides access to an additional body to whom lessees can complain, and does not enhance their enjoyment security or safety
  - the facility of the lessees at the development being entitled to avail themselves of the Housing Ombudsman Service without further charge upon the development being registered with the Housing Ombudsman Service is not a “service or item provided by the Manager” which “shall enhance the enjoyment security or safety of the Lessees of the Dwellings”, in that, again, the registration of the development with the Housing Ombudsman Service provides access to an additional body to whom lessees can complain, and does not enhance their enjoyment security or safety
- d. the Respondent/Landlord has not sought to rely on any other provisions of the lease as justifying the inclusion in the service charge of the fee for the Housing Ombudsman Service
- e. the fee for the Housing Ombudsman Service is not payable by way of service charge accordingly

**11. The application under section 20C of the 1985 Act**

**12. The Tribunal finds that :**

- a. the costs of the Respondent/Landlord in relation to this application to the Tribunal can be included in a service charge only if the lease so allows
- b. the Respondent/Landlord has not drawn the Tribunal’s attention to any provisions of the lease which might so allow
- c. the Tribunal, having considered all the terms of the lease, finds that there is no provision in the lease which expressly or impliedly so allows
- d. in any event, even if, contrary to the Tribunal’s findings, there were such a provision in the lease, the Tribunal would have found that in light of the Tribunal’s findings in favour of the Applicant/Leaseholder earlier in these reasons it would have been right to make an order under section 20C
- e. the Tribunal accordingly orders that the costs incurred by the Respondent/Landlord in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholder

Dated 1 May 2012

Signed

P R Boardman

A Member of the Tribunal appointed by the Lord Chancellor