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**HM Courts
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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SCHEDULE 11, PARAGRAPH 5 OF THE COMMONHOLD AND LEASEHOLD
REFORM ACT 2002 & SECTION 20C OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00AM/LAC/2012/0002

Premises: Units 4-6 Benyon Wharf, 295 Kingsland Road, London E8
4DQ

Applicants: Mr Marc Goodkind and Mr Peter John Goodkind (Lessees)

Respondent: Investland (Commercial) Limited (Lessor)

Date of hearing: 15 May 2012

Appearance for Applicant(s): Mr G Stevenson (Solicitor)

Appearance for Respondent(s): Mr J Gerrard (Director)

Leasehold Valuation Tribunal: Mr J P Donegan - Chair
Mrs S Redmond B Sc (Econ) MRICS - Professional
Member
Mrs S Justice – Lay Member

Date of Decision: 03 July 2012

Decisions of the Tribunal

- (1) The Tribunal makes the determinations, as set out at paragraphs 23 and 24 of this Decision.
- (2) The Tribunal declines to make an order for costs pursuant to Paragraph 10 of Schedule 12 to the 2002 Act.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) that all of the costs incurred by the Respondent in connection with these 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 leaseholders of 293/297 Kingsland Road, London E8 (“the Building”).
- (4) The Tribunal orders the Respondent to repay 50% of the fees paid by the Applicants, namely £125, pursuant to Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (“the 2003 Regulations”).

The application

1. This is an application to determine administration charges under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). The application was issued on 16 January 2012 and directions were issued on 18 January 2012.
2. The application relates to charges paid (and to be paid) by the Applicants to the Respondent and the Respondent’s solicitors, in connection with the assignment of underleases for flats at the Building.
3. The Applicants also seek an order for costs pursuant to Paragraph 10 of Schedule 12 to the 2002 Act, an order pursuant to section 20C of the 1985 Act and an order for the refund of their application and hearing fees pursuant to Regulation 9 of the 2003 Regulations.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicants were represented by Mr Glenn Stevenson of Stevensons Solicitors and the Respondent was represented by a Director, Mr Joe Gerrard. There was no oral evidence at the

hearing. Rather the parties relied on the statements of case contained in the hearing bundle and made oral submissions, as to the level of the administration charges and the law.

6. The Tribunal was provided with a bundle of documents containing copies of the statements of case and the relevant correspondence and documents.
7. During the course of the hearing, Mr Stevenson supplied the Tribunal and Mr Gerrard with extracts from the second edition of the Tanfield Chambers book "Service Charges and Management: Law and Practice". At the start of the hearing the Tribunal referred the parties to the recent decisions of The Upper Tribunal (Lands Chamber) in *Holding and Management (Solitaire) Limited v Cherry Lilian Norton and other appeals [2012] UKUT 1 (LC), LRX/33/2011* and *Re: Bradmoss Limited's Appeal [2012] UKUT 3 (LC), LRX/128/2011*. There was a short adjournment to enable the parties to consider these decisions.

The background

8. The Respondent holds a headlease of the Building that was granted on 31 October 2001, for a term of 150 years from 29 September 2001. Mr Marc Goodkind holds an underlease of Unit 5 at the Building, which is in the process of being sold. Mr Peter Goodkind holds an underlease of Unit 6 and formerly held an underlease of Unit 4, which was sold to John Terence and Company Limited on 17 November 2011. Copies of the underleases were contained in the hearing bundle. Mr Peter Goodkind also held an underlease of Unit 3 at the Building that was sold in 2010.
9. The Tribunal did not consider that an inspection of the flats or the Building was necessary having studied the documents contained in the hearing bundle.
10. The underleases for Units 4, 5 and 6 were all granted on 14 July 2006 and are each for a term of 125 years (less 10 days) from 31 October 2006.
11. The underleases contained the following covenants on the part of the Applicants:

"5.1.22 not to assign or transfer the entirety of the of the Premises unless contemporaneously with such assignment or transfer the assignee or transferee at its own cost executes a deed of covenant with the Landlord that he and his successors in title will at all times from the date of the assignment or transfer pay all rent becoming due and in all cases sums payable hereunder and observe and perform all covenants restrictions and stipulations herein contained and on

the part of the tenant to be observed and performed (whether running with the lease or of a purely personal or collateral nature) to the same extent as if the assignee or transferee were the original party hereto”

“5.1.33 to pay to the Landlord on a complete indemnity basis all costs fees charges disbursements and expenses (including without prejudice to the generality of the above those payable to counsel solicitors and surveyors) incurred by the Landlord in relation to or incidental to

5.1.33.1 every application made by the Tenant for a consent or licence required by the provisions of this Lease whether such consent or licence is granted or refused or proffered subject to any qualification or condition or whether the application is withdrawn

5.1.33.2 the preparation and service of a notice under the Law of Property Act 1925 section 146 or incurred by reason of or in contemplation of proceedings under the Law of Property Act 1925 section 146 or 147 notwithstanding that forfeiture is avoided otherwise than by relief granted by the court”

12. At clause 7.6 the underleases provided for following form of restriction to be entered in the proprietorship register of the leasehold title:

“Except under an order of the Registrar no transfer or lease by the proprietor of the land is to be registered without the written consent of the Landlord and no lease by the proprietor of the land is to be registered without confirmation from the Landlord that provisions of clause 5.1.22 and/or 5.1.23 (as the case may be) of the registered Lease has been complied with”

13. Prescribed clause LR13 of the underleases sets out the standard form of restrictions to be registered, namely:

“No transfer or lease of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the estate registered under title number EGL431006 or his conveyancer

No Transfer or lease of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed on behalf of Investland Limited by its secretary or conveyancer that the provisions of clause 5.1.22 and/or 5.1.23 (as the case may be) of the Registered Lease have been complied with”

14. The Respondent's headlease of the Building is registered under title number EGL431006. The underleases of Units 4, 5 and 6 at the Building are registered under title numbers EGL512916, EGL512918 and EGL512915, respectively. For each of the underleases the restrictions are registered in the proprietorship register of the relevant title. The effect of these restrictions is that an assignment of one of the underleases cannot be registered without the Respondent first certifying that the assignee has entered into a direct covenant with the Respondent to pay the sums due under the underlease and to abide by the obligations on the part of the tenant. The tenant must pay the Respondent's costs for providing the certificate. It follows that tenant must also pay the Respondent's costs in connection with the direct covenant.
15. In 2010, Mr Peter Goodkind made an application to HM Land Registry to remove the restrictions registered against the leasehold title of Unit 3 at the Building. That application was prepared by the Applicants' solicitors and was granted by the Land Registry. This meant that Mr Peter Goodkind was able to assign this underlease without obtaining a certificate from the Respondent. The Respondent asserts that the application to remove the restrictions was made improperly.
16. The hearing bundle contained a number of letters passing between the Applicants' solicitors and the Respondent's solicitors, regarding the removal of the restrictions but did not include the application itself. It appears, from the Respondent's statements of case that the restrictions were reinstated following the assignment of the underlease and that the Land Registry acknowledged that the restrictions should not have been removed. The Land Registry paid certain compensation to the Respondent's solicitors but Mr Gerrard was unable to confirm what sum was paid.
17. The Applicants also made applications to remove the restrictions registered against the leasehold titles for Units 4, 5 and 6 in 2010 but did not proceed with those applications. Again the Applicants' solicitors prepared the applications.
18. On 03 October 2011 the Applicant's solicitors wrote to the Respondent's solicitors in connection with the proposed assignment of the underlease of Unit 4. They requested a draft Deed of Covenant pursuant to clause 5.1.22 of the underlease. They also asked for details of the Respondent's charges in connection with an anticipated Notice of Assignment/Charge and for providing the written consents and certificates referred to in clause 7.6 of the underlease and paragraphs 4 and 5 of the Proprietorship Register for the flat. It is worth pointing out that the copy Land Registry entries for the flat, in the hearing bundle, were dated 05 January 2012 and the restrictions were shown at entries 3 and 4 of the Proprietorship Register. Presumably

the change in numbering is due to the assignment of the underlease and the fact that there is no longer a registered charge over the property.

19. There followed further correspondence between the solicitors for the Applicants and the Respondents. In a letter dated 05 October 2011, the Respondent's solicitors supplied the Applicants' solicitors with a draft Deed of Covenant and in a letter dated 12 October 2011 they stated:

"With reference to the restriction at entry no.5 of EGL512916 ("the Second Restriction") your client can either pay for it to be removed or can pay for a consent to dealing with the restriction being left on the title. The cost will be the same in either case. Our client will require payment of £2,000 for themselves and payment of this firm's fees of £2,500 plus VAT. The total comes to £5,000"

15. The Applicants' solicitors sent the executed Deed of Covenant and a client account cheque for £5,000 to the Respondent's solicitors on 03 November 2011. On 07 November 2011 the Respondent's solicitors supplied the Applicant's solicitors with two letters addressed to the Land Registry, to enable the assignment of the underlease to be registered.

The Issues

16. At the start of the hearing the Tribunal identified the following issues that would need to be determined, for the payments made in connection with the assignment of the underlease of Unit 4:
- 16.1 Was the sum of £2,000 paid by Mr Peter Goodkind to the Respondent a variable administration charge?
- 16.2 If the answer yes, then was the amount of the variable administration charge reasonable?
- 16.3 Was the sum of £2,500 plus VAT paid by Mr Peter Goodkind to the Respondent's solicitors a variable administration charge?
- 16.4 If the answer yes, then was the amount of the variable administration charge reasonable?

Submissions

17. The Applicants' case is that the payments made to the Respondent and the Respondent's solicitors were both variable administration charges. Mr Stevenson argued that the payments fell squarely within paragraphs (a) and (b) of paragraph 1 of Schedule 11 to the 2002 Act in that they were payments made for or in connection with the grant of approvals under the underleases and for or in connection with the provision of documents. He also pointed out that the inter-solicitor correspondence from 03 October 2011 made it clear that the payments totalling £5,000 were made for the production of the Deed of Covenant and the certificate/consent required by the Land Registry. At the hearing Mr Gerrard accepted that the payments to the Respondent and their solicitors were both variable administration charges. In their Reply to the Applicant's Statement of Case, dated 30 March 2012, the Respondent sought to argue that the payment to their solicitors of £2,500 plus VAT was a costs settlement rather than an administration charge.
18. The Applicants do not dispute the fee charged by the Respondent's solicitors for the notice of assignment/charge. However they contend that the sums demanded and paid for the Deed of Covenant and the letters addressed to HM Land Registry were excessive and therefore unreasonable. Mr Stevenson argued that a reasonable fee for producing the Deed of Covenant and the letters was £150 plus VAT. These were standard documents and were relatively simple to prepare. His view is that the work should have taken the Respondent's solicitors no more than 1 hour. Mr Stevenson also argued that there was no need for any input from Mr Gerrard in the preparation of the documents and that this work did not require a senior solicitor. He also pointed out that the Respondent's solicitors had seemingly received compensation from HM Land Registry in relation to the removal of the restrictions for Unit 3.
19. Mr Gerrard, on behalf of the Respondent, acknowledged that the payments totalling £5,000 were on the high side. However he did not accept that a fee of £150 plus VAT was reasonable. In the past the Respondent has charged a standard fee of £1,000 plus legal fees for the release of covenants at the Building, which other leaseholders have paid without complaint. Mr Gerrard also referred to a letter that the Respondent's solicitors had sent to the Applicants' solicitors, dated 30 March 2012, proposing a charge of £250 per flat for the release of the restrictions. In their Reply to the Applicant's Statement of Case the Respondent asked the Tribunal to determine the administration charge at a figure in excess of £300, if the Tribunal determined that a charge of £1,000 was excessive.

20. Mr Gerrard explained that the Respondent was a small company and he deals with most of the day-to-day running of the company. He does not have any administrative support and this means it falls to him to deal with any applications concerning the underleases for the Building. Mr Gerrard explained that he had spent a considerable amount of time liaising with the Respondent's solicitors in relation to the removal of the restrictions for Unit 3 and the assignment of the underlease for Unit 4. Mr Gerrard was unable to state the amount of time that he had spent in dealing with these two matters, as he does not record his time in any way. However the two matters had been very time consuming. In relation to Unit 3, Mr Gerrard argued that the Applicants had misled the Land Registry. He pointed out that the removal of the restrictions was a serious matter and had been investigated by the Police. Mr Gerrard did not know the outcome of that investigation.
21. Mr Gerrard also argued that the costs charged by the Respondent's solicitors of £2,500 plus VAT were higher than normal due to the additional work that they had undertaken. The work had been undertaken by Mr Ian Narbeth, who currently deals with all of the Respondent's property work. Mr Gerrard did not have a breakdown of the costs charged by the Respondent's solicitors but believed their actual charges, on a time cost basis, should have been more than £2,500 plus VAT. Mr Gerrard was unsure of the precise hourly rate charged by Mr Narbeth but believed that it was in the region of £300 per hour (plus VAT). Mr Gerrard was unable to comment upon whether the Respondent's solicitors had received any compensation payment from the Land Registry.
22. Both parties wish to avoid the scope for future disputes and the Applicants seek a determination of the administration charges that were payable on the assignment of the underlease of Unit 4 and the charges that will be payable on future assignments of the underleases of Units 5 and 6. Mr Peter Goodkind is currently in the process of selling Unit 5.

The Tribunal's decision

23. Mr Peter Goodkind is liable to pay the following administration charges in connection with the assignment of Unit 4 at the Building:

23.1 Fee payable to the Respondent on the application for written consent pursuant to clause 7.6 of the underlease - £40 plus VAT (if the Respondent is VAT registered);

23.2 Fee payable to the Respondent for solicitor's fees for Deed of Covenant and letters of consent for HM Land Registry - £300 plus VAT.

24. The Applicants also seek a determination of the administration charges payable in connection with the proposed, future assignments of Units 5 and 6 at the Building. The Tribunal determines that the following sums are payable, assuming that the assignments are completed by 31 December 2013:

24.1 Fee payable to the Respondent on an application for written consent pursuant to clause 7.6 of the underlease - £40 plus VAT (if the Respondent is VAT registered) per flat;

24.2 Fee payable to the Respondent for solicitor's fees for Deed of Covenant and letters of consent for HM Land Registry - £300 plus VAT per flat.

Reasons for the Decision

25. The payment of £2,000, made by Mr Peter Goodkind to the Respondent in November 2011, was clearly a variable administration charge in that it was a payment for dealing with the application for the consent for Unit 4, as stated in the letter from the Respondent's solicitors dated 12 October 2011.

26. The figure of £2,000 is extremely high, given the nature of the consent. All that was required of the Respondent was to confirm to their solicitors that they consented to the assignment of the underlease being registered. It was their solicitors that prepared the paperwork. Mr Gerrard was unable to provide details of the time that he spent in dealing with the consent. The Tribunal considers that this should have taken Mr Gerrard no more than 20 minutes, given the involvement of the Respondent's solicitors. Having regard to the recent decisions of The Upper Tribunal (Lands Chamber) in *Holding and Management (Solitaire) Limited v Cherry Lilian Norton and other appeals [2012] UKUT 1 (LC), LRX/33/2011* and *Re: Bradmoss Limited's Appeal [2012] UKUT 3 (LC), LRX/128/2011* the Tribunal determines that a fee of £40 plus VAT is payable to the Respondent.

27. The payment of £2,500 plus VAT, made by Mr Peter Goodkind to the Respondent's solicitors in November 2011 was also a variable administration charge. In their Reply to the Applicant's Statement of Case, the Respondent sought to argue that the payment was a costs settlement. However the letters exchanged by the Applicants' solicitors and the Respondent's solicitors between 03 October and 03 November 2011 demonstrate that the payment was made in connection with the Respondent's legal fees for providing the Deed of Covenant and the letters for the Land Registry. The costs are payable under clause 5.1.33 of the underlease and

relate to Mr Peter Goodkind's application for confirmation that clause 5.1.22 had been complied with.

28. Again the figure of £2,500 is extremely high, given the limited work involved in preparing the Deed of Covenant and the letters for the Land Registry. The Respondent is not entitled to recover any costs incurred by their solicitors in dealing with the application to remove the restrictions for Unit 3, under the terms of the lease and the Tribunal makes no findings in relation to Unit 3. We do not have any breakdown of the Respondent's legal fees in connection with Unit 4. The Tribunal considers that preparation of the Deed of Covenant and the letters for the Land Registry should have taken no more than 30 minutes. There was also the correspondence passing between the Applicants' solicitors and the Respondent's solicitors during the period 03 October to 03 November 2011, for which we allow a further 30 minutes. The Tribunal determines that a further fee of £300 plus VAT is payable for the Respondent's legal fees, representing a total of one hour's work at £300 per hour. The Tribunal accepts the charging rate of £300 per hour, given that the Respondent's solicitors are based in central London.
29. The Tribunal has determined that the same administration charges will be payable on the proposed assignments of Units 5 and 6, assuming that completion takes place within the next 18 months (by 31 December 2013). If completion takes place at a later date then higher charges might be appropriate to take account of inflation.

Costs/Administration Charges

30. Mr Stevenson, on behalf of the Applicants, invited the Tribunal to make an award of costs pursuant to Paragraph 10(2)(b) of Schedule 12 to the 2002 Act. However he was unable to refer the Tribunal to any conduct on the part of the Respondent that could justify an award of costs. The Tribunal declines to make an order for costs under Paragraph 10(2)(b) of Schedule 12 to the 2002 Act.
31. In the application form the Applicants applied for an order under section 20C of the 1985 Act. Although Mr Gerrard indicated that no costs would be passed through the service charge account, for the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge for the Building.

32. At the end of the hearing, Mr Stevenson made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that the Applicants had paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to repay 50% of the fees paid by the Applicants, namely £125, within 28 days of the date of this decision.

Chairman:

Jeremy Donegan

Date:

03 July 2012

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 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 leasehold valuation 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 a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

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.