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**H M COURTS AND TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : Flat 116 Gavin Way, Libius Drive,  
Highwoods, Colchester Essex CO4 9FP.

**Applicant(s)** : Broadwood (One) Management Ltd

**Respondent(s)** : Mr D J White

**Case Number** : CAM/22UG/LSC/2012/0145

**Type of Application** : Payability of Service Charges

**Tribunal** : Mr Graham Wilson  
Mr Neil Martindale FRICS

**Date of Hearing  
(Application to dismiss  
Application)** : 24 January 2013

**Appearances  
(at the hearing to  
dismiss Application)** : Mr T Weatherill (solcitors' agent) for the  
Applicant  
The Respondent did not appear and was  
not represented

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**DETERMINATION**

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- (1) The Tribunal determined that the service charges payable for each of the service charge years, 2009, 2010, 2011 and 2012 was (there being no identifiable dispute about them) £830.
- (2) The Tribunal determined no other issues between the parties. In particular, the Tribunal did not determine that the legal costs that the Applicant sought to recover from the Respondent were reasonable and properly payable by the Respondent. Subject to the court's decision, these costs may be recoverable under the terms of the Lease but their assessment was not a matter for the Tribunal.

**Reasons**

1. (Part of) the County Court claim had been referred to the Tribunal "for determination by that Tribunal".

2. The Tribunal had issued Directions with which the Respondent had not complied. The Applicant sought to dismiss the Application on the basis of the Respondent's non-compliance.
3. A hearing was fixed at the Tribunal Office. The Respondent did not attend. The Applicant was represented by its solicitors.
4. Following the conclusion of the hearing, the Tribunal determined that the Application to dismiss should itself be dismissed/refused. The Order and Further Directions are appended to this Determination.
5. In particular, the Tribunal made provisional findings and invited the parties' written responses. The Respondent did not reply. The Applicant replied through its solicitors, by letter dated 4<sup>th</sup> February 2013.
6. The letter in essence submitted that:
  - (1) the service charges for the 2012 service charge period should, there being no dispute, be determined at £830.
  - (2) the recovery of ground rent was not a matter for the Tribunal.
  - (3) the remaining legal costs were, it was submitted, recoverable under the terms of the Lease.
7. The Tribunal accepted submissions (1) and (2). So too, did it accept (3). However, as it had found at paragraph 5.8 of its provisional findings, such costs (which the Lease itself distinguished from service charges) would have either to be charged to the annual service charge accounts (when they would be susceptible to challenge by the Respondent) or fixed by the court and added to the judgement amount.
8. The case would be referred back to the County Court with the service charge determined in the amount(s) sought.
9. While the Respondent's non-participation in the referral to the Tribunal might be regrettable, he had by his Defence, made his position clear: his challenge was only to the legal costs, which the County Court would be able to subject to scrutiny.

Graham Wilson  
Lawyer Chair

Dated: 11<sup>th</sup> March 2013.

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**Applicant(s)** : Broadwood (One) Management Ltd

**Respondent(s)** : Mr D J White

**Case number** : CAM/22UG/LSC/2012/0145

**Date of Referral** : 9 November 2012

**Type of Application** : Payability of Service Charges

**Tribunal** : Mr Graham Wilson  
Mr Neil Martindale FRICS

**Date of Hearing** : 24 January 2013

**Appearances** : Mr T Weatherill (solicitor's agent) for the  
Applicant  
The Respondent did not appear and was not  
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### **ORDER AND FURTHER DIRECTIONS ORDER**

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#### **ORDER**

- 1 The Applicant applied to the Tribunal for an Order under Regulation 11 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 dismissing the Application for the Respondent's failure to comply with paragraph 1 of a Directions Order dated 19 November 2012 requiring him to file and serve a statement identifying the matters in dispute.
- 2 The Tribunal declined to make such an Order. The County Court file made tolerably clear what the proceedings were about and it would serve no useful purpose to dismiss the Application, or rather the referral, because it would leave the County Court proceedings extant and with the County Court's referral unresolved.

- 3 The Tribunal declined to make an Order that the Respondent should pay costs to the Applicant.

### **PROVISIONAL FINDINGS AND FURTHER DIRECTION**

- 4 So as to resolve the referral, the Tribunal used the date fixed for the hearing of the Application to consider the case.

- 5 The Tribunal provisionally found as follows.

5.1 The County Court Claim was for £2,930.80 being sums demanded for "the period 1 January 2012 to 1 January 2012", interest and costs. The Claim was said, in paragraph 1 of the Particulars, to be "for outstanding services charges and Ground Rent".

5.2 The County Court had no doubt intended that it was the service charge dispute that the Tribunal should determine. The Tribunal had no jurisdiction to deal with the claim for rent arrears.

5.3 There was included in the Court file and attached to the Reply to Defence a Statement of Account dated 5 October 2012 for the period 1 January 2009 to 22 November 2011 showing that £1,975.80 was allegedly owed by the Applicant. There was also attached a "Tenant Statement" for the period "01/01/0001 to 03/08/2012" showing that a further £125 ( Ground Rent) and £830 (half-yearly service charge) had become due, leading to the total appearing in 5.1 above. It was not clear whether the "Tenant Statement" correctly stated that the service charge for the half-year was £830, because the "Statement of Account" referred to that amount as the charge for the whole year.

5.4 In any event, the Defence made clear that the Respondent's challenge was not the service charge per se but to the figure said to be owed by him. He admitted that £955 was owed for 2012. The balance for the period to 2011 had been cleared by a payment made by his mortgagee, he thought. The Defence did however challenge the solicitors' costs added to the account.

5.5 The Tribunal considered the items on the Statement of Account. The Ground Rent was not a matter for the Tribunal. The amount and payability of the yearly (or half-yearly) service charge was not in dispute. That left charges for court fees, "legal letter", legal fees, Land Registry fees, and interest on late payment: which the Respondent was to be taken as by his Defence as challenging.

5.6 A service charge is an amount payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management (section 18 Landlord and Tenant Act 1985).

5.7 The Lease dated 8 October 2004 in Schedule 3 1(a)(i) imposed on the Tenant a liability to pay maintenance charges. Paragraph 12 of the same Schedule imposed a liability to pay "expenses" for the recovery of arrears or for costs in connection with a forfeiture notice.

5.8 It was the Tribunal's provisional view that it had no jurisdiction to determine "expenses" under paragraph 12 of the Third Schedule. The Landlord may seek to charge them via the maintenance charge provision in 1(a)(i) and then once charged, they would fall within the Tribunal's jurisdiction: but that was not (so far) the case.

- 6. The Tribunal directed that the parties should have the opportunity to respond to its provisional findings above. It appeared that the matter was suitable for paper determination and the Tribunal, provided that the parties did not require a hearing, would determine the matter on or shortly after 1 March.**

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**G WILSON**  
**Chair**

**Date: 24 January 2013.**