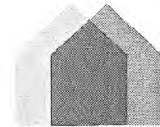


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Residential  
Property  
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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER [SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference:** LON/OOBE/LSC/2012/0398

**Premises:** A property on the Sovereign Estate, London SE16

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**Applicants:** Mrs A  
Mr B

**Representative:** None

**Respondent:** Holding & Management (Solitaire) Limited  
(freeholder)

**Representative:** None

**Date of hearing:** 17 & 18 January 2013  
Reconvene 17 April 2013

**Appearance for Applicant(s):** Mrs A

**Appearance for Respondent(s):** Ms McQueen – Prince

**Leasehold Valuation Tribunal:** Mrs S O'Sullivan  
Mr P Tobin  
Mrs R Turner JP

**Date of decision:** 17 June 2013

### **Decisions of the Tribunal**

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) The Tribunal determines that the Respondent shall reimburse the Applicants within 28 days of this Decision fees paid to the Tribunal in respect of the application and hearing by the Applicants.

### **The application**

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The hearing in this matter took place on 17 and 18 January 2013. The hearing was then reconvened to 17 and 18 April 2013 being the first available date for the parties and Tribunal members. The First Applicant appeared in person on behalf of both Applicants. The Respondent was represented by Ms McQueen-Prince.
4. Also appearing for the Respondent as witnesses were Nicola Griffiths, Charles Bettinson, Greg Spitelli, Nicola Wood, Sharon Brandelli, Hannah Dearing, Sean Doherty.

### **The background**

5. The property which is the subject of this application is a flat in a purpose built block of nine flats built in the 1990s forming part of a much larger estate.
6. Directions were first made in this matter on 6 August 2012 which at the Applicants' request provided for a paper determination. The determination was then converted into an oral hearing and further directions were made dated 11 October 2012 following a case management conference called due to the non-compliance with directions.
7. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

8. The Applicants hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

### **The issues**

9. At the start of the hearing Mrs A raised an issue in relation to data protection. She asked that the names and addresses of the Applicants and their witnesses be removed from all public records. The Tribunal confirmed that it did have the power to make such an order. This application was further considered at the conclusion of the hearing. It was not opposed by the Respondent. Having regard to the overriding objective and on the grounds put forward by the Applicants the Tribunal concluded that the order should be granted. The Applicants will therefore be referred to as Mrs A and Mr B and the property as "*a property on the Sovereign Estate*".
10. Both parties had prepared Scott schedules setting out their positions on the items in dispute. However both parties had produced separate schedules which made the Tribunal's consideration more difficult. The manner in which the parties gave evidence also caused some problems for the Tribunal. Both parties constantly interrupted the other and on one occasion both parties sought to make comments during witness evidence. This all made consideration of the evidence more difficult.
11. The Tribunal also heard detailed evidence as to individual invoices and in many cases the amounts in issue conflicted. It was for the parties to present their case accurately. The Tribunal has done its best to reconcile the figures before it by reference to the invoices and accounts and cannot be held accountable for any errors in the figures contained herein.
12. The Tribunal heard evidence over several days and the parties had both filed detailed evidence. The Tribunal sets out below what is necessarily a summary of the evidence heard. It does not attempt to set out all the evidence heard which is in any event contained in the bundles in the parties' possession.
13. The Applicants raised challenges in respect of the majority of the service charge categories over the entire period.
14. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

### **Insurance**

15. The cost of estate insurance was challenged over the entire period before the Tribunal (apart from 2012).

16. Mr Bettinson confirmed the cost of the insurance to be as follows;

2009 £125,508.29

2010 £128,347.16

2011 £130,926.15

2012 £95,143 (not challenged)

2013 £87,656 (£102,007 on renewal but subsequently adjusted)

17. The history of the dispute in relation to insurance was somewhat complicated. The Applicants had raised queries as to the cost of the insurance in 2012 and obtained an alternative quotation, this undoubtedly led in part to the Respondent renegotiating the premium to the reduced sum of £95,143. It was the Applicants' case that the sums for 2009, 2010 and 2011 should be reduced to reflect the fact that they said lower insurance premiums could have been obtained for those years and that the sums charged were too high. Mrs A asked the Tribunal to take the alternative quotation obtained for 2012 and the renewal premium itself as evidence for the proposition that cheaper insurance could have been obtained for the previous years.
18. In relation to the period 2009 to 2011 the Tribunal heard oral evidence from Mr Bettinson, head of insurance at Estates & Management Limited who had also made two witness statements in support. The Tribunal was informed that the claims history at the property was very high. Over the 3 year period the average claims were 89%. This stemmed mostly from 2009 when the loss ratio had been 184%. On this basis Mr Bettinson's evidence was that the premiums obtained were competitive and reasonable. He did not consider that the 2012 premium could reasonably be used as a proposition for the submission that the earlier years' premiums were too high.
19. As far as 2013 was concerned the Applicants had obtained an alternative quotation. This was lower than the initial renewal figure of £102,007. However the Tribunal heard that on setting the renewal quotation Mr Bettinson had mistakenly failed to take account of the five blocks which had gone right to manage. As a result the renewal quotation for 2013 was confirmed to have been revised downwards by an undated letter received on 18 April 2013 to £87,656.
20. Mrs A was extremely unhappy about the position in relation to the 2013 insurance. She had not been informed that several blocks had gone right to manage and thus her alternative quotation was based on the whole estate. She considered that had she had that information her alternative quotation may well have been lower than the revised figure put forward by the Respondent. She submitted that Mr Bettinson had been less than

straightforward in his evidence as he had been aware that blocks had gone right to manage and had not provided that information to the Applicants.

21. The Applicants did not challenge the commission payable to Oval of approximately 3.5%. They did not challenge the commission payable to Kingsborough directly although Mrs A made the point that Kingsborough were not under any incentive to obtain the lowest premium given that they received commission averaging 15.88% on the total premium.
22. In response however Mr Bettinson said that the reduction to the original sum insured for 2013 to take into account the 5 right to manage blocks was 17%. Applying this to the alternative quotation obtained by the Applicants reduced that figure to £92,447, which was greater than the current premium. As far as the commission was concerned he submitted that an average commission of 15.88% was reasonable for an estate of this size.
23. The Applicants also challenged 3 insurance excesses each in the sum of £250. The Applicants submitted that these were not recoverable pursuant to the lease.

#### **Insurance – the Tribunal’s decision**

24. The Tribunal allowed the premiums for 2009, 2010 and 2011. It had no evidence before it that they were unreasonable for that period. The estate had a very high claims history over that 3 year period which no doubt contributed to the level of the premium. It might be the case that, had the property been remarketed in 2011, the premium may well have been lower; but the Tribunal cannot second guess what the result might have been in those circumstances.
25. The premium for 2012 was not challenged.
26. The Tribunal allowed the premium for 2013. The Applicants’ alternative quotation was higher than the original premium and both were on the same footing, that is, they included the right to manage blocks. The Tribunal did not consider that Mr Bettinson had been in any way untruthful in the manner in which he gave his evidence and accepted his explanation that he had simply made a mistake. This was unfortunate. However if reduced by the same percentage the Applicants’ alternative quotation would still be higher than the current premium. The Tribunal accordingly finds the premium for 2013 reasonable.
27. The commission payable to both Oval and Kingsborough was not directly challenged by the Applicants at the hearing. However in any event the Tribunal would note that it considered both of these commissions to fall within the reasonable range.

28. The Tribunal allowed the cost of the insurance excesses in the total sum of £750. It considers them recoverable pursuant to the lease as part of the cost of the insurance. The costs themselves are modest and are standard excess amounts.

### **Estate costs**

#### **Estate – Electricity charges**

29. The amount budgeted for estate electricity in 2009 was £880. The sum of £6,888.70 was billed. The Tribunal heard that there were no separate electricity meters for the estate charges but rather the charges were split between the estimated estate charges and the block costs. The electrical costs attributable to the estate were heard to include two sets of vehicle gates, and in excess of 30 street lamps. Certain blocks did not contribute to the electrical costs associated with the estate car park.
30. For 2010 the charges were £4509.64.
31. For 2011 the charges were £7114.02,
32. The charges for each block were determined by reference to recommendations made by D & H Electrical Installations. They carried out a load test which measured the load current being drawn to each block. This was then translated into a percentage split for electricity consumption. The report noted that “ *the percentage split measurements can be sporadic and should really be used as a rule of thumb rather than an exact science*”. The report went on to recommend further investigations to be carried out.
33. Mrs A confirmed that the Applicants had little confidence in the recommendations of D & H as they had experienced a lot of problems with them in relation to the intercom system. She accepted some reasonable provision should be made for electricity but questioned the whole basis upon which the charges were apportioned.
34. The Tribunal asked whether the further investigations recommended by D & H had been carried out and it was confirmed that they had not. They had not taken any initial steps in this regard. In addition it was confirmed for the Respondent that it had not investigated the cost of installing separate meters to each block as it was considered this may be exorbitantly expensive.

#### **Electricity - the Tribunal's decision**

35. The Tribunal with some reluctance allowed the cost of the electricity in full for the period before it.

36. The Tribunal had sight of the invoices and it was clear these sums had been incurred. It also acknowledged that the Respondent had made some effort to apportion these costs between the blocks by commissioning the report by D & H.
37. The Tribunal did however have some concerns about the reliance on the report by D & H. On the front page itself D & H acknowledges that its methodology is a “rule of thumb” rather than exact science. In addition when considering the schedule of those costs there did not appear to be any justification for the discrepancy of the costs from block to block. Even when the properties which did not contribute to the car park costs were discounted, the electricity costs vacillated wildly between the blocks. Accordingly the Tribunal would expect the Respondent to undertake further investigations as to the cost of a system by which the costs would be properly apportioned. The Tribunal considers the Respondent’s failure to do so as a management failure which it took into account when considering the amount of management fee to be allowed below.

### **Door entry system**

38. The door entry charges were not challenged.

### **Water**

39. In 2009 it was explained that the sum of £97.37 in issue had been reversed in the following years accounts as shown on page 140 and thus this item was no longer in dispute.
40. In 2010 an invoice in the sum of £25.21 was confirmed to be missing but the complaint under this head went to an accounting issue rather than the water charges themselves.
41. In 2010 the water charges were heard to be £147.99 although they appeared in the accounts as £171.53. The Tribunal heard that this was an accrual as invoices had yet to be received for this period. The amount accrued was based on the previous year’s charges. The Tribunal was referred to a copy email from the accountant at page 1138 of the Respondent’s bundle Volume 3 which explained that the delay was due to invoices being sent to the wrong address.
42. The charge for 2011 of £283.04 was contested by the Applicants on the basis that there were no invoices.
43. The Tribunal accepted the evidence from the Respondent’s accountant as to the reason for the delay and allowed the charges for 2010 in full.



44. The charges for 2011 were £283.04. These were allowed in full as the Tribunal accepted the Respondent's explanation and the amount in dispute was less than £300.

### **Refuse collection**

45. For 2009 the cost was £11,441.06 and the Applicants had not intended to challenge this item and it was confirmed that the concern went more to management. The Applicants queried why the costs were so high and also asked why they now had to pay for an additional collection. The Respondent said that this had always been the case.
46. In 2010 the bin hire costs were £11,573.90. The Applicants complained that the costs were increasing year on year. The Applicants submitted that the costs of one collection was covered by Council Tax and that the leaseholders should only be paying for one collection. The Applicants complained that the Respondent could at least put the service out to tender and consider any costs savings which might be achieved by the purchase of the bins.
47. The Respondent explained that there were two separate charges, the cost of bin hire and the refuse collection itself. This service did not go out to tender.
48. The cost of refuse bin hire in 2011 was £10,864.23. This was challenged on the same basis as set out above.
49. The Tribunal heard that the refuse charges were not billed on a calendar year and thus some apportionment took place to bring the charges into line with the service charge year. There were two charges, one for bin hire and one for collection and both were in the region of £5,000 per annum.

### **Refuse collection – the Tribunal's decision**

50. The Tribunal allowed the cost of the refuse collection in full for all years. It was satisfied that the cost for each year included the cost of one collection and the cost of bin hire. It had no evidence before it of any alternative quotations for the cost of either collection or bin hire and considered they fell within a reasonable range. The Respondent may wish to consider the cost of purchase of bins as part of good management practice which may reduce costs in the long term.

### **Landscaping**

51. In 2009 the landscaping charges were £18,194.10. The Applicants challenged the sum charged on the basis of it being too high and the standard of the gardening being poor.



52. The maintenance element of these charges was £8,421.36. In addition there were the costs of sweeping the estate and car parks, replacement planting of £185.73 and eucalyptus pruning of £6021.01.
53. The Applicants relied on 2 quotations which were both provided to the Tribunal. *Frosts* quoted an annual figure of £6520 plus Vat and "*Ed's*" at the rate of £360 inclusive of Vat per month.
54. The Applicants alleged the standard left "*a lot to be desired*" although they did not have any photographs to evidence the condition of the gardens and planted areas in 2009.
55. The monthly sweeping cost was £1608. The Applicants had no alternative quotations for the sweeping and again said it left "*a lot to be desired*".
56. The sweeping of the underground car park was £1956 and was also challenged.
57. In response the Respondent pointed out the quotations were for 2012 not 2009. Mrs A said that in her view the cost of the quotations could be slightly reduced to reflect prices in 2009. It was also pointed out that *Ed's* had not visited the site.
58. In 2010 the landscaping charges were £12,455.16. The Applicants complained that the grounds were in a poor condition. This was made up of a monthly charge of £717.03 x 4 months and £752.88 x 8 months. There was also evidence of a complaint about maintenance as evidenced by an exhibit to Ms McQueen-Prince's witness statement.
59. For the Respondent Ms Wood confirmed that she was the property inspector at this time and had inspected the property during that period and was happy with the level of gardening.
60. In 2011 the total landscaping charges were £23,059.66. The Tribunal was referred to copies of the invoices and informed that following a re-tender of the contract it was awarded to the same contractor. The charges were made up of a charge for general maintenance of £7866, a sweeping contract in the sum of £1956 and the car park sweeping at £1608. The general maintenance contract was carried out by Landscape Maintenance and both sweeping contracts by Ecopoint.
61. The landscaping contract commenced on 1 November 2011 at an initial monthly cost of £807.34 which was subsequently reduced to £605 per month when the number of visits was reduced. The credit for this reduction would be shown in the 2013 accounts.

62. The Applicants had produced an alternative quotation which included landscape maintenance and sweeping but not the sweeping of the car park in the sum of £8736. Mrs A confirmed that she was happy to accept the cost of her alternative quotation on a pro rata basis to 17 visits as provided under the contract in principle. However she submitted that this should include the sweeping contract as this was part of the tender and should properly form part of what they were paying for under the landscape maintenance contract.
63. After some discussion and reference to documentation it was conceded for the Respondent that Landscape Maintenance should have been following the new specification which included the sweeping. However it appeared that they had continued to follow the old specification contained in the bundle and dated 1 June 2010. It was acknowledged that this had been superseded by the tender process in 2011.
64. The Respondent had confirmed that Landscape Maintenance had in error followed the now superseded specification and had failed to carry out the sweeping which formed part of the contract since the tender in 2011. Accordingly the cost of the general sweeping contract by Eco Point was disallowed.

#### **Landscape Maintenance – the Tribunal’s decision**

65. The Tribunal had very little evidence before it as to the condition of the gardens in 2009, 2010 and 2011 to merit a reduction for poor service.
66. In 2009 the Tribunal considered the costs of pruning the eucalyptus trees to be excessive and allowed 50%.
67. For 2009 as far as the Applicants’ quotations were concerned the Tribunal did not consider it could place a lot of weight on Ed’s given that they had not visited the property. Frosts had given a quotation of £6520 which did not include sweeping. As the Tribunal did not have any alternative quotations for sweeping it allowed the sweeping costs. The Tribunal notes that the Frosts’ quotation included more visits and accordingly considered it a good comparable. It therefore allowed the maintenance costs at £6520.
68. For 2010 the Tribunal concluded the maintenance element should be reduced to Frosts’ quotation of £6520. The additional costs of the sweeping were allowed.
69. For 2011 the cost of the general sweeping contract of £1956 was disallowed as the Respondent had confirmed that Landscape Maintenance had in error followed the now superseded specification and had failed to carry out the sweeping which formed part of the contract since the tender in 2011. Accordingly there had been no need to engage the services of Eco Point.

70. 2011 costs also included works to crown reduction, the Tribunal considered these costs excessive and reduced them by 50%. The cost of planting was allowed as there was no evidence that this had not been carried out and the Tribunal accepted the Respondent's evidence in this regard.

### **Fire Equipment Maintenance**

71. In 2009 the charge was £557.75. The Applicants had challenged this cost but when the Respondent explained the work carried out under this heading withdrew the challenge.
72. In 2010 the charge was £282.
73. In 2011 there were no charges shown in the accounts.

### **TV Aerial**

74. In 2009 the total cost was £2,490.31. A number of the invoices were challenged on the basis that they had not been apportioned, were works to the leaseholder demise or should properly form part of the maintenance contract.
75. The Tribunal was referred to a copy of the maintenance agreement. It did appear to cover many of the general maintenance issues which had been the subject of call out charges. Further none of the call outs were to the contractor with whom the maintenance contract was held. The Respondent was unable to explain why there had been no claims on the maintenance contract. The Tribunal was also informed that it would be an operative who would make the call out booking who would not necessarily be aware of the maintenance contract in place.
76. In relation to the 2009 charges the Tribunal's concluded that many of the charges should have properly formed works under the maintenance contract. As a result it allowed only £1,000 of the total charges as the Respondent was unable to give any reason why the maintenance contractor not used
77. In 2010 the total charge shown in the accounts was £4079.60. The charges were challenged as follows;
- The Applicants challenged the invoice of £954.28. A summary sheet evidenced that £795.23 had been deducted from this cost and the sum of £159.59 actually charged. The Applicants no longer challenged this invoice.
  - The invoice in the sum of £310.08 was challenged on the basis it was a leaseholder responsibility. The Respondent said it was a communal component. The Tribunal accepted the Respondent's explanation and allowed the cost.

- The invoice in the sum of £223.25 on the basis it was a leaseholder responsibility and also that it should be covered by a maintenance contract. Mrs Dearing said it was due to a bad connection in the loft space. This was disallowed as it should have been covered by the maintenance contract.
  - The invoice in the sum of £170.38 was now accepted.
  - The invoice at page 821 in the sum of £76.38 was conceded by the Respondent.
  - The invoice at page 822 was questioned as to why it was necessary. Mrs Dearing said that if it was due to a flat it would be listed and that on any loss of signal a call out would be made for maintenance. The Tribunal allowed the cost.
  - The invoice at page 823 was questioned. Mrs Dearing said this was suggestive of a landlord problem as a fault was shown at 3 properties. The Tribunal accepted the Respondent's explanation and allowed the cost.
  - The invoice at page 824 was conceded.
  - The invoice at page 825 was challenged on the basis it should form part of maintenance. Mrs Dearing said this was part of the communal system and a replacement issue. The Tribunal accepted the Respondent's explanation and allowed the cost.
  - The invoice at page 826 was conceded by the Respondent.
  - The invoice at page 827 was challenged but said by Mrs Dearing to be part of a communal issue. The Tribunal accepted the Respondent's explanation and allowed the cost.
78. For 2011 the total sum of £10,836.32 was shown in the accounts. As a preliminary point Mrs A challenged any invoices which related in part to another year. The Respondent explained that where invoices straddled a service charge year they were apportioned over the relevant years. Mrs A accepted this explanation and no longer raised this general challenge. The amounts challenged and the Tribunal's decision in relation to each item were as follows;
- The Applicants challenged invoices on pages 1280 to 1292 on the basis that she argued these were leaseholder issues, works within a demise and should be the responsibility of an individual leaseholder. In response the Respondent submitted that although access may be required to individual flats they were works to communal components behind the face plate. The Tribunal accepted the Respondent's explanation and allowed the costs in full.

- The Applicants challenged ISG invoices at pages 1293 to 1302 on the basis that it was unclear why these works were necessary and why the contractor ISG was used when there was a maintenance contract with Switchsure. The Respondent confirmed that these works had formed part of a tendered contract which related to an aerial upgrade. This was challenged by the Applicants on the basis they had seen no evidence of this. The Tribunal accepted the Respondent's explanation and having considered the invoices allowed them in full.
- The Respondent conceded the invoice number 25455 in the sum of £288 to Astrix.

### **Estate General repairs**

79. The cost of general repairs in 2009 was £5,559.65. The Applicants challenged a number of repairs and those challenges, the Respondent's reply and the Tribunal's decision are set out below;
- a) £135.70 page 349, CDM basic call out charge, emergency as man hole cover had collapsed. Applicants say excessive. The Tribunal considered this reasonable and allowed it in full.
  - b) £1243.75 page 350. Poor quality of painting throughout the estate alleged. The Tribunal had no evidence of poor painting and allowed the cost in full.
  - c) £175 21/10/09. Removal of dumped items. Contractors attend several times in one day and duplication is alleged. The Tribunal considered the cost of the removal of dumped items to be unclearly recorded and agreed that some duplication appeared to have taken place. This item was disallowed.
  - d) The Applicants challenged a series of invoices relating to drain repairs and queried whether they should be recharged to individual leaseholders. The Respondent confirmed that the works fell to the estate rather than to individual demises. The Tribunal accepted the Respondent's evidence and allowed the cost in full.
80. In 2010 one of the Applicants' general concerns was the number of call outs to remove dumped items. On more than one occasion contractors were instructed to remove items more than once in a single day. This was to a large extent due to the nature by which repairs were actioned. All calls were made to a customer services repairs helpline, several calls made over a short period may be taken by different operatives and so may not be dealt with efficiently. The following items were challenged or accepted as set out below;
- a) Invoice in the sum of £603.74 from Able Lifts was conceded by the Respondent as it did not relate to this estate

- b) Invoice in the sum of £775 from Eco Point. The sum of £140 was conceded by the Respondent and the remainder was allowed by the Tribunal.
- c) An invoice in the sum of £648.72 from Landscape Management was challenged on the basis that the Applicants were not satisfied that the planting had taken place and that the beds were kept in very poor condition. No evidence of poor planting was provided so this sum was allowed.
- d) The autojet invoice in the sum of £578.10 was not challenged.
- e) The invoice from CDM in the sum of £715.57 was challenged on the basis that the Applicants were not aware of these repairs. The Tribunal saw the invoice and was satisfied with the Respondent's explanation and allowed the charges in full.
- f) The invoice from Eco Point in the sum of £75 was not challenged
- g) The invoice from CDM in the sum of £875.37 was challenged in the schedule but not pursued at the hearing. In any event the Tribunal was satisfied with the invoice provided and the Respondent's explanation and allowed it in full.
- h) Four items from Eco Point each in the sum of £75 were challenged all on the basis there should have been some economy of scale. Invoices were seen on pages 843, 845, 86 and 849. The Tribunal agreed and disallowed invoices on pages 843 and 845.
- i) The invoice from Autojet in the sum of £193.88 was not challenged.
- j) The invoice from CDM in the sum of £2338.25 was challenged on the basis that it was unclear what this was for. The Tribunal had regard to the invoice provided which related to roof works, it had no evidence the works were not done or were poor quality and allowed them in full.
- k) The invoice from Landscape Management in the sum of £458.25 was challenged on the basis that there was no evidence of any work done. No evidence was produced and the sum was allowed.
- l) The invoice from Fastsigns in the sum of £38.37 was challenged on the basis that the sign referring to CCTV was not necessary. The Respondents submitted that this was a good crime deterrent. This cost was allowed as it was considered reasonable to provide the signage.
- m) The invoice from GPF Lewis was accepted after it had been explained.

- n) The invoice from Wattlights in the sum of £344.20 was challenged on the basis that the cost of obtaining copy keys should not be charged. The Respondent was unable to explain the charge submitting perhaps it was the cost of replacement keys for the property manager although the basis upon which they might be needed was unknown. Alternatively it was submitted that these might be replacement keys for residents although in such case the Tribunal would expect to see a corresponding entry in the income section. This cost was disallowed.
  - o) The invoice from CDM in the sum of £1398.25 was not challenged.
  - p) The invoice from Grove Property Service in the sum of £1410 was challenged on the basis that there was no grit provided to the estate. The invoice was on page 860. The Respondent said that the grit bins were clearly visible on the estate. The Tribunal was provided with an invoice and the cost was allowed.
  - q) The invoice from Ecopoint in the sum of £480 was contested on the basis that it included properties not part of the estate. £80 was conceded by the Respondent and the Tribunal allowed the remaining £400
  - r) The invoice from CDM in the sum of £1451 was challenged on the basis it related to works outside the estate. The Tribunal considered the estate plans and allowed the charge.
81. The total charge for 2011 was £10,664.99. The following invoices were challenged;
- a) Page 1305 This was challenged on the basis that this was a return visit by a contractor after they had to return to carry out works not realising a square formed part of the development. The Tribunal agreed there had been duplication and disallowed the cost,
  - b) Page 1307 was disallowed as it was unclear to what this related.
  - c) Page 1308 this was allowed as it appeared to form part of a series of works
  - d) Page 1311 was disallowed as this appeared to form part of a series of works and no explanation was provided as to why they were necessary
  - e) Page 1312 was allowed as reasonable
  - f) Page 1313 was conceded by the Respondent



- g) Page 1314 was no longer contested
- h) Page 1315 was allowed as reasonable
- i) Page 1316 was allowed as reasonable
- j) Pages 1317 and 3318 were no longer challenged
- k) Page 1319 was allowed on the basis of the Respondent's explanation
- l) Page 1322 was contested as the problem remained. The Tribunal had no evidence from the Applicant and allowed the cost.
- m) Page 1323 was allowed as reasonable
- n) Page 1325 and 1326 were allowed
- o) Page 1330 was challenged as it appeared to be duplicate but this was work to different squares. It was allowed as reasonable.

### **Estate bank charges**

82. These were no longer challenged.

### **Accountancy fees**

83. There were 2 elements to the accountancy fees. The first was an audit fee for external auditing of the accounts. The second was an internal accountancy fee of the Respondent for preparing the accounts. The Applicants argued as a preliminary point that the internal accountancy charges should be disallowed as these works should fall as part of the work carried out under the management fee. The Tribunal disagreed. The lease clearly made provision for the recovery of the Respondent's costs in this regard.
84. The costs were as follows;
85. In 2009 the total cost was £1557.40. These were challenged on the basis that the Applicants had unearthed a lot of errors in the accounts.
86. In 2010 the total cost was £855.34 and were challenged on the same basis.
87. In 2011 the charges were £4,239.95 and were challenged on the same basis.
88. The Respondent explained that the auditors made a charge for a number of properties and these were apportioned by block. The number of units in each

block was taken into account. The invoice is apportioned between the estate and the block.

89. The Applicants challenged half of the auditor's fees and two thirds of the Respondent's internal charges. The Respondent's internal charges were challenged as they were said to be littered with mistakes and had provided the Applicants with a number of conflicting schedules.
90. In response Ms McQueen-Prince confirmed that it was conceded that some errors had occurred for which they apologised. She did not consider this was a large number of issues and did not consider they justified a large reduction to the charges.
91. The Tribunal was satisfied the lease allowed for the recovery of the external audit fees. It considered the sums reasonable and allowed them in full for each of the years before the Tribunal.
92. The Tribunal was satisfied that the lease allowed the Respondent to recover its internal accountancy fees. During the course of the hearing the Tribunal had seen a number of errors in the accounts. The level of these errors was considered by the Tribunal to be excessive. The Tribunal therefore disallowed 25% of the internal accountancy fees for each of the years before it.

### **Health & Safety**

93. In 2009 the charge was £534.75. This charge was conceded by the Respondent.
94. In 2010 the health and safety costs were £6,124.10. The Applicants challenged the cost of reports by Connaught relating to a General Health and Risk Assessment and a Fire Assessment. The Applicants had asked that the Tribunal "take a view" on the reasonableness of this sum. The Tribunal was in some difficulty as it was not provided with copies of those reports. No alternative quotations were provided by the Applicants. The Tribunal heard from the Respondent that these reports would be likely to be commissioned every two years.
95. The Tribunal considered that the cost for these reports appeared high given the extent of the property. In addition it bore in mind that the managing agents retain a high responsibility for health and safety and that some of the more basic inspections could well be undertaken by the property manager.
96. Accordingly for 2010 it disallowed 25% of the cost. This was because it did not have the reports and was concerned about the level of the fees. In addition in the future the Respondent should consider which elements of the health and safety inspections could properly be carried out by the managing agents on their regular visits thus avoiding the necessity for these reports on a two yearly

basis. The Tribunal would expect such reports to be carried out every 3-5 years.

97. There were no charges for 2011.

#### **2009 Prior year adjustments £15,943.23**

98. The sum of £11,500 was conceded by the Respondent in relation to a concession made on insurance.
99. The remaining sum of £4,382 related to refuse costs. This was heard to relate to an invoice for refuse collection which related to 2008 but was received in 2009. Mrs A confirmed she was happy for the Tribunal to make its own decision in relation to that sum.
100. Having considered the invoices the Tribunal as satisfied with the Respondent's explanation and allowed the prior year adjustment.

#### **Gate maintenance**

101. In 2009 the cost of gate maintenance was £7,902.25. The Applicants had obtained an alternative quotation for gate maintenance in 2012 and submitted that the costs in 2009 should be lower. The quotation in 2012 was for £3,096. It was not clear what the extent of the cover was as the appendices were not included in the bundle.
102. The Applicants' main submission was that the number of call outs was excessive and should not be at this level if proper maintenance were taking place.
103. The Respondent confirmed that there had been no maintenance contract in place for 2009.
104. The Applicants accepted that some call outs would be necessary as some issues would not be covered by a maintenance contract. The Applicants submitted that the total charge should be in the region of £5,000 to include annual maintenance of approximately £3,000 and £2,000 in respect of call out charges.
105. For 2009 the Tribunal agreed that the level of call outs appeared high. Although Mrs A had obtained an alternative quotation it was for 2012 and it was difficult for the Tribunal to use this to base figures for 2009 upon. However having regard to the Tribunal's own experience it considered total costs of £5,000 should be allowed.

106. In 2010 the cost of gate maintenance was £9,252.62. Mrs Dearing, property manager, was of the view that a maintenance contract had been in place for this period but none was provided. All of the invoices before the Tribunal related to call outs rather than maintenance.
107. Of the invoices Mrs A wished to challenge 7 call outs on the same day. She relied on her comments in the Scott Schedule. The invoices in dispute were as follows;
- The invoice at page 787 was conceded by the Respondent
  - The invoice at page 782 was accepted by the Applicants after discussion
  - The invoice at page 783 was submitted to be an issue for the development. The Tribunal allowed the invoice as it was satisfied that it related to the property.
  - The invoice at page 798 was challenged on the basis that a charge had been made when there was no fault. The Tribunal allowed this as it was reasonable for the Respondent to investigate complaints.
  - The invoice at page 804 was challenged on the basis that the replacement for a remote control should have been billed to an individual leaseholder. Mrs Dearing surmised that this might have been for office staff. The Tribunal disallowed this as there was no evidence that this was for staff use.
  - The invoice at page 809 should have been covered by a maintenance agreement. The Tribunal allowed the cost.
  - Invoice at pages 788 – 793 were all challenged as having been carried out over a 2 day period and that there should have been some economy of scale. Mrs Dearing said that these had been pre-costed works and that there was no increase in charges as the contractor had not charged for travel. The Tribunal saw no evidence of pre-costed works and agreed there should be an economy of scale. Accordingly the invoices at pages 788, 789 and 790 were disallowed.
108. For 2011 the cost of gate maintenance was £17,509.42.
109. The Respondent had some difficulties in explaining these costs. Costs for all fobs were conceded in respect of which no corresponding income had been shown.
110. The evidence before the Tribunal was very poor. It was difficult to establish how many gates there are in fact at the property with the Respondent veering between 28 to a final number of 16 (as supported by the witness statement of Nicola Wood). It may be that there were previously more gates but that these

now formed part of blocks which had gone right to manage. A maintenance contract was heard to be in place although the Tribunal was only provided with extracts from this. The cost of annual maintenance was confirmed to be £240 per gate at a total annual cost therefore of £3840 for 16 gates.

111. For 2011 the Tribunal allowed the cost of the annual maintenance contract for 2011 of £3840. As set out above it disallowed the cost of any fobs which were not accounted for in the income section. This left some £13,000 of costs which the Respondent could not fully account for. It was clear that in this service charge year the costs of the gates had spiralled out of control in comparison with the other service charge years. No explanation was provided by the Respondent for these increased costs. The Tribunal concluded it would take a broadbrush approach to the costs for this year. Having considered the invoices, extracts from the maintenance contract and evidence heard it allowed a total further cost of £5,000 in respect of call out charges.
112. The Tribunal expects the Respondent to keep a closer eye on future gate maintenance costs to avoid this escalation in future years.

### **Pest control**

113. This item was not challenged.

### **Management charges**

114. Mr Doherty prepared a summary of the management charge inclusive of Vat as follows;

	2009	2010	2011	2012
Estate	£108.63	£111.00	£116.26	£127.50
Block	£127.23	£130.00	£136.70	£148.80
<b>Total</b>	<b>£235.86</b>	<b>£241.00</b>	<b>£252.96</b>	<b>£276.00</b>

115. The Applicants accepted the management charges in principle and considered they would be reasonable fees if the service had been good. However the Applicants alleged that there had been poor management over the whole period.
116. The Applicants' complaints included;
- The management was reactive rather than proactive, by way of example the front door

- The managers failed to go out and get the best price and did not have proper regard to the terms of the contract, by way of example continuing to have sweeping carried out when it was included in a contract
- Very little time spent on site
- No proper supervision of works
- Accountancy errors
- Lack of knowledge of property, eg no knowledge of number of gates
- Failure to respond properly to queries

117. In response Ms Mc Queen Prince submitted that;

- Very few complaints had been received from residents
- The Respondent had been open and transparent and had conceded where appropriate
- The 15 year plan was said to evidence pro active management
- There was no evidence of poor supervision
- The property managers acknowledged that improvements could be made and were trying

### **Management Charges – the Tribunal’s decision**

118. The Tribunal agreed that the management charge fell within a reasonable range in principle. However it agreed that there had been instances of poor management. These included not only the complaints made by the Applicants but the Respondent’s poor management of the issue relating to estate electricity costs referred to above. It concluded that there should be a 15% reduction in the management charges across the period before it.

### **Estate licence fee**

119. The sum paid by way of estate licence was challenged. The Tribunal heard these charges were payable pursuant to clause 2(ii) of the 5<sup>th</sup> Schedule to the lease. This amount was not challenged by the Applicants but clarification sought. In any event the Tribunal considered the sum to be payable in

accordance with the provisions of the lease relied upon and having had sight of the invoices considered the amount reasonable.

### **Estate insurance.**

120. The cost of estate insurance was not contested for the period before the Tribunal.

### **Estate - Contribution to reserves**

121. The Applicants queried why there was a contribution to estate reserves in the sum of £63.81 in 2009 when the Respondent said that so much had been credited back. The Tribunal considered the costs and it became clear that the Applicants' contributions to reserves for the years 2009, 2010 and 2011 which were all in the region of £63 had been credited in 2011 when a total credit of £196.24 was made. All contributions for estate reserves were considered reasonable.

### **Block costs**

#### **Block electricity**

122. The Applicants did not challenge the block electricity charges for any of the service charge years before the Tribunal.

#### **Block repairs**

123. In 2009 the cost of block repairs was £3,142.72. The Applicants had totalled the invoices provided at £2,082. The Respondent conceded the two missing invoices in the sum of £364.79 and £694.91. Of the remaining charges the Applicants challenged only an invoice in the sum of £448.50 on page 404 on the basis it was a leaseholder charge. The Respondent's position was that it could not establish which property this emanated from and so the charge was placed on the general service charge. The invoice identified three properties from which the leak may have emanated. The Tribunal considers that the managing agent should have taken steps to identify which flat the leak came from out of the 3 possible properties and accordingly the invoice is disallowed.
124. In 2010 the Applicants wished to challenge certain invoices which all related to the door at the main entrance to the block on Rotherhithe Street. This is considered further below.
125. For 2010 the costs of an energy survey had been challenged but this was withdrawn at the hearing after some discussion.



126. The report by Connaught for 2010 was challenged on the basis that it had already been included under estate costs but the Tribunal was informed that these were different reports and therefore allowed the cost.

### **Block fire equipment**

127. In 2011 the charge was £333.50. This item was no longer challenged by the Applicants.

### **Cleaning**

128. All charges for block cleaning were accepted for the entire period.

### **The front door**

129. The front door has clearly been a problem for some years and remains an issue. A great deal of money has been spent over the past few years. The Respondent acknowledged that it had not instructed an engineer to look at it but had simply had a contractor from CDM to provide a view.

130. In 2010 by way of example the costs were as follows;

- £99.87
- £99.87
- £146.87
- £170.37

131. Mrs A said that the door has been an issue for a long time with repairs being carried out to try and remedy the problem since 2009. In 2011 the Applicants were informed that the reason the door did not close properly was due to a vacuum being caused by the inner door. The Applicants alleged poor workmanship and management of the ongoing problem. Mrs A said that the door still does not close at times and this was obviously a security issue. She did not understand why it had taken so long to try and resolve the problem and thought that costs had been duplicated with various repairs in a botched attempt to find a solution.

132. At first Miss Wood said that she had visited the property on 18 December 2012 and that there had been no problems with the door. Mrs Dearing's evidence was that she had noted that the door was not closing properly, there were no hinge issues and she was not aware of a vacuum problem. Miss Griffiths was however aware of the vacuum issue which was due to the inner

door not closing properly, a door closer had now been installed which appeared to have resolved the issue.

133. The Tribunal agreed with Mrs A that the issue of the front door had been dealt with in a reactive manner. Various repairs had been carried out over time but problems remained. The Tribunal concluded that taken as a whole the cost of the repairs was unreasonable. It therefore disallowed 25% of the total cost of works to the door over the period before the Tribunal.
134. The Tribunal would suggest that the Respondent now has the door inspected by a competent expert and effectively repaired to avoid the need for future reactive maintenance of this nature.

### **Health and safety**

135. The Tribunal was referred to various invoices in respect of Health & Safety costs.
136. The Tribunal's view is that a competent managing agent can carry out regular site inspections as part of its usual site visits for matters such as a blocked fire escapes, accumulated rubbish and, if already alerted to the presence of asbestos, to monitor any physical changes. It considers it reasonable to instruct appropriate experts to carry out Health and safety inspections every 3-5 years and expects property managers to take a sensible view as to whether more might be necessary on any particular block.
137. The Tribunal therefore allows all Health and Safety invoices before it but expects the Respondent to take a more considered view in future.

### **Block - Contribution to reserves**

138. As far as the block reserve fund payments were concerned total contributions of £3803 and £3630 had been demanded for 2010 and 2011 and the Applicants submitted payments of £3500 and £3600 respectively to be reasonable.
139. For 2012 a total of £5400 was demanded and the Applicants were concerned at this increase. The Applicants challenged the level of reserve fund payments for the block and submitted that a forecast of 15 years is excessive preferring rather estimates over a 5 year period. The Applicants suggested a reserve contribution of £3,800 for 2012.
140. For the Respondent Ms McQueen Prince confirmed that the figures had been collated using lifecycle reports prepared by their insurers. They had not begun to collect reserves until 2006. Some of the figures included appeared to be rather loose costings rather than estimated sums based on quotations. By way of example a provision was made for works to "wooden sashes". This could

however be repair or replacement of the windows and the cost of the two alternatives could vary greatly.

141. In principle the Tribunal considers it essential that there is sensible reserve fund planning. This helps leaseholders budget for the cost of major works. It acknowledges that it is extremely difficult to predict costings and indeed what works might become necessary. The Tribunal allowed the sum of £3500 and £3600 for 2010 and 2011. For 2012 the Tribunal agrees that a provision over 15 years is excessive and considers a provision of between 5-10 years to be reasonable. The Respondent must take account of the age and condition of the block and, as it is no longer new, maintenance issues will arise.
142. The Tribunal would mention that in 2013 the reserve fund contribution is increased to £11,460. However the Respondent has agreed to obtain quotations and properly cost works before collecting these sums.

### **Estimated costs for 2012**

143. The Applicants challenged some of the estimated costs for 2012 and the challenges and amounts allowed by the Tribunal are set out below.
144. Estate costs
- a) Electricity £910 - accepted
  - b) Water £250– accepted
  - c) Bin area cleaning £1,610 allowed
  - d) Refuse costs £10,000 allowed
  - e) Landscape maintenance £7357 allowed
  - f) Landscape planting £3000– although it was unclear whether this will be done it was allowed as a reasonable provision
  - g) Aerial maintenance- £3,500 allowed
  - h) Aerial repairs - £300 allowed
  - i) Gate maintenance - £3,100 allowed
  - j) Gate repairs - £2500 allowed
  - k) General repairs - £7,500 allowed

- l) Electrical maintenance – £1500 allowed
- m) Licences £2100 - allowed
- n) Audit fees - £4,060 allowed
- o) Reserves - £3,500 allowed

145. Block costs

- a) Electricity £250 allowed
- b) Cleaning - £800 allowed
- c) General repairs - £1,200 allowed
- d) Electrical maintenance – £420 allowed
- e) Contribution to reserves £3,800 allowed

**Application under s.20C and refund of fees**

146. At the end of the hearing, the Applicants made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that they 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 refund any fees paid by the Applicant within 28 days of the date of this decision.
147. In the application form and at the hearing, the Applicants applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that no order be made under section 20C of the 1985 Act. In making this decision the Tribunal took into account the fact that although it had disallowed certain service charges it had upheld the majority of them.

Chairman: Sonya O'Sullivan  
\_\_\_\_\_

[name]

Date: 17 June 2013



## 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.

### **Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**

#### **Regulation 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.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

### **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.