(2523)

LON/00AJ/LSC/2006/0098
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1987, AS AMENDED

Address	17 Fairlawn Avenue, Chiswick, London W4 5EF
Applicants	Mrs A Dumville (Flat 17) Miss K McKerrow and Mr M Wallace (Flat 17b)
Respondents	R and A Nako (1) Granville & Co (2)
Hearing date	18th July 2006
Appearances	Mrs A Dumville Miss K McKerrow Mr M Wallace — For the Applicants No appearances — For the Respondents
The Tribunal	Mrs J Goulden Mr C Kane FRICS Mr M Martynski

LON/00AJ/LSC/2006/0098

PROPERTY: 17 FAIRLAWN AVENUE, LONDON, W4 5EF

BACKGROUND

1. The Tribunal was dealing with the following applications:-

   (1) An application dated 6 April 2006 under Section 27A of the Landlord and Tenant Act 1985, as amended (hereinafter referred to as "the 1985 Act") 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) An application dated 6 April 2006 under Section 20C of the Act to limit landlord's costs of proceedings.

2. 17 Fairlawn Avenue, London, W4 5EF (hereinafter referred to as "the property") was described in the application as *"Terraced house (approx 100 years old) converted into 3 self contained flats. Flat 1 (17) – private access property with private garden. Flats 17A & 17B with communal access on shared stairway."* The Tribunal was advised that one of the Respondents, Mr R Nako, was the landlord of Flat 17A which was let.

3. No provision had been made in Directions issued by the Leasehold Valuation Tribunal for an inspection of the property and no request for an inspection by the Tribunal was made by any party who attended the hearing.

HEARING

4. The hearing took place on 18 July 2006.

5. The tenant Applicants, Mrs A Dumville, Miss K McKerrow and Mr M Wallace appeared in person. They were not represented.

6. The Respondents, Messrs R and A Nako (the freeholders) and Granville & Co (the managing agents) did not appear and were not represented.

7. Some of the original issues were not pursued by the Applicants since either concessions had been made by the Respondents or the matters complained of were outside the jurisdiction of the Tribunal.

8. The service charge issues which remained and which required a determination of the Tribunal were as follows:-

   (a) Management fees and Section 20B in respect of management fees
   (b) External repairs and redecorations

(c) Professional fees on external repairs and decorations
(d) Water ingress inspection fee
(e) Solicitors' fees
(f) Respondents' contribution to emergency repairs
(g) Insurance
(h) Lighting repair
(i) Limitation of landlord's costs of proceedings
(j) Reimbursement of fees

9. The salient parts of the evidence and the Tribunal's determination is given under each head. The service charge year in this case runs from 1 January to 31 December in each year.

(a) Management fees and Section 20B in respect of management fees

10. This related to the service charge years 2000 to 2003 in the amounts of £1,000 plus VAT for each year.

11. The Applicants' challenges were:-

(1) For the years 2000 and 2001, that the management fees bore no relation to the amount estimated which was £432 plus VAT;

(2) For the year 2000, that the demand was made out of time under Section 20B of the Act;

(3) In respect of all the service charge years, that the level of management fees was too high for the service provided.

12. The Applicants said that prior to 2000 there had been no managing agents (although ground rent had been paid to Granville & Co) and repairs etc had been carried out on an ad hoc basis with one or other of the Applicants arranging for repairs to be carried out and contributions obtained thereafter from the other tenants.

13. A letter dated 21 March 2000 had been sent to the tenants from Granville & Co which indicated that it was intended to estimate annual costs of service and management.

14. This letter stated, inter alia:-

> *"As you will be aware from our previous correspondence, despite the covenants within your individual Leases to instigate a service charge fund, our clients have previously not done so as managing the property largely themselves they have been able to directly contact other owners within the building and settle such incurred costs by immediate recovery on a personal level. Given now however that they do not occupy the first floor premises and have appointed my firm from 1 January 2000 in such matters, we have advised that this situation has become untenable for proper management in the future and as such we are instructed to prepare the service charge budgets at the*

beginning of each financial year – which will be deemed as 1st January in each subsequent year – and to provide as soon as possible a five year plan of the building on such a basis.

To this end we submit for your consideration an estimated budget for the forthcoming year which has been approved by our clients. It is our intention to instigate this matter with effect from 1st January, but in order to provide the opportunity for some consultation before this date, we would appreciate any comments being made on the estimated costs suggested in the attached document to be made to this office no later than 13th December 2000."

15. The Applicants complained that no information had been supplied as to the managing agents' duties, demands were late, correspondence was ignored, payments made were not correctly allocated and the accounts were confusing. The Applicants produced an alternative quotation from a local firm which indicated a fee of £195 plus VAT per flat (i.e. £585 plus VAT per annum for the property).

16. The Respondents in their Response dated 23 June 2006 stated, inter alia:-

"In respect of the Ground Floor lessee there is no dispute that these costs are payable under the terms of the lease, merely a contention that the sums may not be reasonable ...

Clause 3(6) of the Lease requires the Lessee to contribute to the cost of the appointment of a Managing Agent ...

Bills were late in being raised by Granville & Co., and sent to the Freeholders Messrs R & A Nako Esq,. In turn they were consequently only able to demand recover [sic] *of these costs through the service charge when these were made known to them.*

The current lessee of the second floor flat did not take assignment of their lease until 22nd December 2003. This Applicant is not entitled to any reimbursement of these costs as they were not the party making payment ...

Granville & Co's charge for management in the year 2000 was raised on 30 August 2002 and demanded by the Freeholder from the Lessees within eighteen months of this date.

There is no requirement for the Landlord to make notification to the Lessees of any fee to be incurred in advance of that cost being incurred. However, it is admitted by the application that such notification was given in a letter dated 21st March 2000 ... Indeed, further notification of this proposal was also made in a letter to all lessees dated 4th December 2000 ...

Our client is satisfied that the fee structure that we have agreed with them for the management of the premises is reasonable and competitive in the circumstances.

This is supported by a great many enquiries made on or about 25 October 2002 of similar management firms to undertake management of this block. More than 17 (seventeen) different organisations were asked to quote with all but one unwilling to be instructed on this property.

Of that one – "Prior" – known and working in association with Granville on another project at the time – they were only willing to provide such an initial estimate because of their association with us and only after some persuasion by ourselves. This was still subject to a review of the management situation and particularly any contentious issues ...

Granville & Co's requirement to charge a minimum fee is in line with standard market practice and does not impose any significant additional burden on the lessees over and above that which would otherwise operate."

17. Section 20B of the Act states:-

"If any of the relevant costs taken into account in determining the amount of any service charges were incurred more than 18 months before a demand for payment of the service charge is served on the tenant then (subject to sub section (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred

(2) Sub section (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."

18. The Tribunal also considered the definitions set out in Section 18 of the Act which provides as follows:-

"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 or improvements or insurance or the landlords cost of management and

(2) the whole or part of which various or may vary according to 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 an earlier or later period."

19. Under the terms of Section 20B, the time limit starts to run from the date costs were incurred unless the tenants were notified under Section 20B(2).

20. For the year 2000, the trigger is not when the sums were demanded but when they were incurred. The Tribunal is of the view that the management fees were incurred on the date the Respondents were contractually bound to pay such fees, namely the date of the contract between the freeholders and the managing agents. Whilst the agreement produced was a draft, the letter from the managing agents dated 21 March 2000 confirmed their appointment from 1 January 2000. No evidence was produced to the Tribunal that notification had been sent to the Applicants under Section 20B(2).

21. The Applicants said that they were billed on 31 December 2002. The Applicants were notified on 4 December 2000 with regard to management costs but this related to the service charge year 2001 (and not 2000).

22. On that basis the demand for management fees for the service charge year 2000 are caught by Section 20B and are therefore out of time.

23. With regard to the service charge year 2001, the management fee (as stated above) was incurred on 1 January 2001. It was demanded (as stated above) on 31 December 2002. There was notification dated 4 December 2000 but this indication pre-dated the date the liability was incurred, namely 1 January 2001, and therefore is not considered valid notification.

24. On that basis the management fees for the service charge year 2001 are caught by Section 20B and are therefore out of time.

25. With regard to the service charge years 2002 and 2003, the management fees were not caught by Section 20B. Such fees are relevant and recoverable and the Tribunal then considered whether they were reasonably incurred.

26. On questioning by the Tribunal, the Applicants accepted that the managing agents had to carry out duties which may not have been readily apparent to the Applicants. However, they still felt that the cost per unit for the services provided were too high and therefore unreasonable.

27. From the Tribunal's knowledge and experience, management fees of £1,000 plus VAT per annum for a block of this size for the years 2002 and 2003 are not considered excessive and the Tribunal determines that the management fees of £1,000 plus VAT for each of the service charge years 2002 and 2003 are relevant and reasonably incurred and properly chargeable to the service charge account.

(b) External repairs and redecorations

28. This was in the sum of £1,186.75 in the 2004 service charge year. The Applicants' challenge is that it related to works carried out on the windows of the landlord's flat. The Applicants, in an (undated) statement to the Tribunal, said, inter alia:-

> *"In May 2004 the Managing Agents tendered for works which were primarily for the repair and replacement of timber frame windows. At that time only the windows of flat 17A required attention. In recent years, the owners of flats 17 and 17B had maintained/replaced their windows at their own cost. Because of this, the tenants did not agree there was a shared liability for the replacement of the windows to flat 17A.*
>
> *In addition, the tender did not include other necessary maintenance. The tenants obtained competitive quotes for re-pointing, guttering and general making good of the property with regard to possible water ingress. However, the Managing Agents rejected these quotes and no work has taken place.*
>
> *On the Landlord's instruction, the Managing Agents proceeded with replacing the windows of flat 17A, and in a letter to the tenants the Landlord agreed that he would pay for the window replacement but wanted to charge the tenants for the associated paintwork.*
>
> *However, the tenants have been charged 56% of the total invoice amount for window replacement and redecoration. There is no breakdown of costs on the invoice showing the basis for this charge."*

29. The Respondent said that the work undertaken was the supply and fitting of a new UPVC window and frame to the front bay first floor elevation, removal of rubbish, burning off paint to the other windows, priming bare timbers, other rubbing down and preparation, painting of timbers, replacement of window fittings, glazing and cleaning. The work totalled £1,800 plus VAT, of which the Respondent had paid £790 plus VAT. Section 20 Notices had been served, estimates for the cost of professional fees had been obtained for the project with five surveying firms being approached for tenders, of which only two had responded (details of which were provided to the Tribunal). Granville & Co had been appointed on their usual terms and conditions and they had produced a specification of works. Mr R Nako had completed repairs and redecoration of *"his level"* of the building and paid for the same himself. The Respondent now sought to have the balance of the works undertaken as specified and for these to be paid for through the service charge provisions in the lease. The Applicants had not been charged any cost in relation to the replacement window and the necessary adjustments would be made when all the costs were known. The exterior was in need of repair.

30. The original proposed works were correctly tendered and the lowest tender in the sum of £9,892.50 was accepted. The tenants accept that they had objected during the Section 20 consultation period to the works being carried

out since *"most of the joinery repairs needed were to the windows of the first floor (the landlord's) flat which had not been maintained for several years."* The works under that contract did not proceed and reduced works were carried out and there is no dispute that the landlord paid for the cost of the replacement window to the first floor flat. The Respondents are entitled to redecorate the exterior under the terms of the lease.

31. The Tribunal determines that the sum of £1,186.75 inclusive of VAT in respect of external repairs and decorations is relevant and reasonably incurred and properly chargeable to the service charge account.

(c) Professional fees on external repairs and decorations

32. This was in the sum of £1,069.73 in the 2004 service charge year.

33. The Applicants' challenge is that a 15% contract administration fee had been applied by the managing agents to the total value of the tender for the first stage external redecoration works. They considered 15% was excessive and the full works were not carried out. Only the repair and replacement of the windows of Flat 17A had been completed. In addition, all payments were to be made in arrears in accordance with the lease terms. Mr Wallace thought that the works had not been necessary and the costs had been inflated to achieve a higher fee.

34. The Respondents' view was that it was quite usual for a specification or work tender process for this type of project to be handled not by a managing agent (who may be unqualified) but by a building surveyor, and for a charge to be levied on a mixture of an hourly rate and percentage of the cost of the work for such a small project. The fee had been levied on a percentage of the cost of intended work and the Respondent suggested that this was not out of keeping with other tenders obtained. It was stated *"works have been partially completed and the remainder can be contracted upon sufficient funds being made available".*

35. From a perusal of photographs supplied, it would appear that the property had been in need of repair and it was therefore reasonable for the managing agents to embark on the programme of works of repair and redecoration.

36. On 4 March 2004, a Notice of Intent was sent by the managing agents to each of the tenants in accordance with the new Section 20 consultation requirements inviting comments.

37. A fee of 15% of the contract works is not considered unreasonable. Although Granville & Co carried out at the supervision themselves, they had obtained proposals from other firms and their fees were in line with those proposed to be charged by Granville & Co.

38. However, in the event, the bulk of the work was not carried out due to the tenants' objection. Under RICS guidelines the managing agents are entitled to charge up to 75% of professional fees incurred up to tender stage. The bulk

of the work, in the view of the Tribunal, is in drawing up the specification and engaging in the tender process.

39. The Tribunal determines that the sum of £1,069.73 inclusive of VAT in respect of professional fees is relevant and reasonably incurred and properly chargeable to the service charge account.

(d) Water ingress inspection fee

40. This was in respect of the managing agents' fees for inspection of water ingress in the sum of £235 in the 2004 service charge year.

41. The Applicants' challenge was that the water ingress from the first floor flat into the ground floor flat was as a result of the failure of the Respondents to maintain and repair the first floor flat and it should not be a service charge item. Mrs Dumville went through the chronology of water penetration over a period of some ten years and provided photographic evidence in support.

42. The managing agents, in their statement of 23 June 2006, accepted that there was water ingress from the first floor flat into the ground floor flat, but denied that this was due to any failure to maintain the first floor flat. They said *"repairs (on more than one occasion) were completed by Mr R Nako to eradicate the defect at his cost"*. The agents maintained that several visits had been carried out by them at no cost to the tenants, but the charge in this case *"is made in relation to a specific visit at the insistence of the ground floor lessee who reported new water ingress after completion of repair works ... she insisted that water had come through into her lounge in the same place as previously ..."*.

43. The Tribunal accepts that visits had been made on earlier occasions, for which no charge had been made to the Applicants, and that this charge was in relation to a specific request from Mrs Dumville. The Tribunal also accepts that this type of investigation would not fall within the scope of usual management fees. The cost does not appear to be unduly excessive.

44. The Tribunal determines that the sum of £235 inclusive of VAT in respect of the managing agents' inspection is relevant and reasonably incurred and properly chargeable to the service charge account.

(e) Solicitors' fees

45. This related to solicitors' fees of £141 in the 2003 service charge year.

46. The Applicants' challenge was on the grounds that there was no provision in the lease which entitled the landlord to recover solicitor's costs from the tenants except in connection with forfeiture of the lease, and as such the cost should not be included in the service charge account.

47. The Respondents said *"in continuance of disputed service charges, Morgan Cole were requested to prepare for forfeiture action by confirming the right to recover legal costs as part of such action under the terms of the lease ... Morgan Cole acted for the vendor in the sale of their interest to the second*

floor lessee Applicant. The previous lessee of the second floor flat has made settlement of this charge before assignment of the leasehold interest to the current lessee. The Applicant is not entitled to any reimbursement of these costs as they were not the party making payment".

48. The narrative on the solicitors' invoice is poor and it is not clear what work was undertaken in respect of this charge. However, the Tribunal is of the view that this is not a service charge item, but the responsibility of the defaulting tenant. This sum should therefore not appear on the service charge account. In this connection, the Tribunal notes that this sum (which is not large) has apparently been paid by the previous tenant.

49. The Tribunal determines that the sum of £141 in respect of legal fees is not relevant and is therefore not reasonably incurred and not properly chargeable to the service charge accounts.

(f) Respondents' contribution to emergency repairs

50. This related to repairs to the guttering in the sum of £220 and repairs to the rear first floor extension in the sum of £425, both of which were in the 2004 service charge year.

51. With regard to the guttering, it was stated that in 2003, Mrs Dumville had reported water ingress into her bedroom. The managing agents instructed Tectum to effect the repairs. The cost of this repair was included in the service charge account for 2003. There was further water ingress in the same place in August 2004 and Mrs Dumville instructed contractors to undertake an emergency repair. Mrs Dumville obtained reimbursement from the other tenants of their contribution towards the cost, but the Respondent had not made any contribution.

52. As to the repairs to the extension, Mrs Dumville instructed contractors to carry out emergency repairs to the rear extension, following rainwater ingress. Mrs Dumville obtained reimbursement from the other tenants of their contribution towards the cost, but the Respondent had not made any contribution and was contesting liability.

53. The Respondents said that, in respect of guttering repairs in late 1993, Tectum had completed works of investigation and repair to the front of the building including supply of labour to site to investigate water ingress, clearance of gutters, and repair of lead work. The cost was not disputed. The lessee responsible for reimbursement was Mr R Nako and not the Respondents.

54. With regard to the repairs to the first floor extension, the Respondent said that although better particulars had been requested from both Mrs Dumville and the contractor, this had not been provided. The work had been unnecessary and did not prevent water ingress continuing into the extension. The managing agents had been unable to replicate the water ingress into the property despite Mrs Dumville's assertion at the time that water ingress continued. The extension was erected by the lessee and after the grant of the

lease and does not form part of the landlord's or the other tenants' demises. There was therefore no obligation on these parties to contribute to the upkeep of this part of the structure.

55. The above examples indicate the difficulties which occur when tenants take it upon themselves to have works carried out (even where there is emergency) without involving the landlord and/or the managing agents.

56. With regard to both the guttering and the parapet, attention is drawn to Section 18 of the Act as referred to in paragraph 18 above. Neither of the costs of these matters have been incurred *"by or on behalf of the Landlord"* and are therefore not service charge matters.

57. The Tribunal determines that the sum of £220 inclusive of VAT in respect of guttering and £425 inclusive of VAT in respect of the repairs to the extension are not relevant and are therefore not reasonably incurred and not properly chargeable to the service charge account.

58. With regard to the ground floor rear extension, it would appear from the lease of the ground floor flat which was granted on 19 July 1984 that there was no extension at that time and planning consent to the original lessees was not granted until 20 March 1989. The parties are advised to seek legal advice in order to regularise the position as to responsibility for the extenstion in order to prevent similar problems in future.

(g) Insurance

59. This related to the premium of £1,078.63 in the 2005 service charge year and was disputed on the grounds of the scope of the policy and the reasonableness of the increase in the premium over previous years.

60. The Applicants indicated that they may not have challenged this item if their queries had been answered. The amount of the premium was not disputed. No alternative quotations had been obtained by the Applicants and they conceded that the property had a poor claims history.

61. The Respondents said, inter alia, that the landlord insured the building under the terms of the lease, loss of rent cover was included as a usual standard provision, the policy was brokered through an independent broker who had been instructed to obtain a competitive quotation and on renewal in 2004, the claims history on the property was noted by the broker as being a factor in the availability of alternative cover.

62. The Tribunal determines that the sum of £1,078.63 in respect of the insurance premium is relevant and reasonably incurred and properly chargeable to the service charge account.

(h) Lighting repair

63. This was in the sum of £46 in the 2004 service charge year.

64. The Applicants' challenge is that this was not a service charge item because it did not relate to a common part as defined by the lease. The broken light fitting to which it related was in the shared stairwell of Flats 17A and 17B, and had been repaired by the tenants of Flat 17B.

65. The Respondents said *"proper lighting is a fundamental requirement for safe use of the building and consequently is a consideration in dealing with compliance with regulatory health and safety matters and may otherwise invalidate any insurance policy for the building".*

66. The Tribunal accepts that the Respondents would have to comply with all regulatory requirements and check that any repairs carried out had been carried out in compliance with statutory and/or regulatory requirements.

67. The Tribunal determines that the sum of £46 in respect of lighting repair is relevant and reasonably incurred and properly chargeable to the service charge account.

(i) Limitation of landlord's costs of proceedings under Section 20C of the Act

68. The Applicants submitted that they had gone to great lengths to resolve matters with the Respondents. Mrs Dumville said *"we have done everything. This is our last resort. We have tried to be cooperative".* The Respondents had been *"bullying and rude".*

69. The Applicants said that they were happy to pay for reasonable works and reasonable fees, and tried to find better deals and better quotes, but had been continually *"fobbed off".*

70. It is not known if the Respondents do intend to place any costs of proceedings before this Tribunal on the service charge account. The Tribunal's determination is therefore on the basis that this may be their intention.

71. Under Section 20C of the Act –

"(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 or leasehold valuation tribunal, or the Lands 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 the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(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 Lands 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."

72. In applications of this nature, the Tribunal endeavours to view the matter as a whole including, but not limited to, the degree of success, the conduct of the parties and as to whether, in the Tribunal's opinion, resolution could or might have been possible with goodwill on both sides.

73. In the judgement of His Honour Judge Rich in a Lands Tribunal Decision dated 5 March 2001 (**The Tenants of Langford Court v Doren Ltd**), it was stated, inter alia, *"where, as in the case of the LVT, there is no power to award costs, there is no automatic expectation of an order under Section 20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs of defending such conduct. In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under Section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not to be used in circumstances that makes its use unjust".*

74. Under new legislation, there is now a limited power for the Tribunal to order costs, but Judge Rich's comments are still valid.

75. In accordance with Section 20C(3), the applicable principle is to be the consideration of what is just and equitable in the circumstances. Of course, excessive costs unreasonably incurred would not be recoverable by the landlord in any event (because of Section 19 of the 1985 Act) so the Section 20C power should be used only to avoid the unjust payment of otherwise recoverable costs.

76. In his judgement Judge Rich indicated an extra restrictive factor as follows:-

> *"Oppressive and, even more, unreasonable behaviour however is not found solely amongst landlords. Section 20C is of a power to deprive a landlord of a property right. If the landlord has abused his rights or used them oppressively that is a salutary power, which may be used with justice and equity; but those entrusted with the discretion given by Section 20C should be cautious to ensure that it is not itself turned into an instrument of oppression".*

77. The Tribunal considers that resolution between the parties would not have been possible without an application before the Tribunal, but having considered the relevant case law and, in particular, the decision in the **Gilje v Charlegrove Securities Ltd (2001)**, the Tribunal is of the view that there is no clause sufficiently wide so as to allow the landlord to place costs in respect of proceedings before the Tribunal on the service charge account. The Tribunal considers that there is an absence of clear words showing that a class of expenditure was contemplated. Such a construction has to emerge clearly and plainly from the words that are used. The question of whether or not the Tribunal should exercise its discretion therefore does not arise.

(j) Reimbursement of fees

78. In accordance with paragraph 8 of Directions issued by the Leasehold Valuation Tribunal on 27 April 2006, the Tribunal considered whether to exercise its discretion under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

79. The Applicants' submissions were as for the application for limitation of landlords' costs under Section 20 of the Act.

80. Although the Applicants are entitled to bring an action before the Tribunal (and the Respondents are similarly entitled to defend such action) and both sides have incurred costs which are irrecoverable, it is considered that to order the Respondents to reimburse application and/or hearing fees would be punitive in this case.

81. The Tribunal does not intend to exercise its discretion in this case and declines to make an Order for the Respondents to reimburse to the Applicants the application or hearing fees or any part thereof.

The determination of the Tribunal as to service charges is binding on the parties and may be enforced through the county courts if service charges determined as payable remain unpaid.

CHAIRMAN .....

DATE ..... 29 August 2006

JG