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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] [& SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002]

Case Reference:	LON/00BE/LSC/2012/0109
Premises:	49 Missenden, Inville Road Walworth, London SE!7 2HT
Applicant(s):	Primeview Developments Limited
Representative:	Anthony Tse Solicitors
Respondent(s):	London Borough of Southwark
Representative:	Home Ownership Unit
Date of hearing:	20th April 2012
Appearance for Applicant(s):	Mr Anthony Tse
Appearance for Respondent(s):	Mr Orlando Strauss – Legal Mr Gulam Dudhia – Accountant Mr Dave Coombs – Accountant (Debtors)
Leasehold Valuation Tribunal:	Mrs N Dhanani LLB (Hons) Mr D Jagger Ms Dalal
Date of decision:	24th May 2012

(NB: Unless otherwise stated: the numbers in the square brackets correspond to the page numbers in the papers produced by the Applicants and Respondent)

Decisions of the Tribunal

(1) The Tribunal determines that the following sums are payable as part of the estimated service charges for the year 2011/2012:

Item	Cost £	Amount Payable £
Heating and hot water	933.51	695.51
Care and Upkeep	251.93	251.93
Un-itemised repairs	258.40	258.40
Electricity and Estate lighting	47.76	47.76
Administration Costs	176.98	153.18

]

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of the estimated service charges and administration charges payable by the Applicant in respect of the service charge year 2011/2012.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Mr Anthony Tse of Anthony Tse Solicitors and the Respondent was represented by Mr Orlando Strauss.

The background

4. The property which is the subject of this application is a purpose built maisonette on the first and second floors of a building known as 1-75 Missenden situated on the Aylesbury Estate.

5. The Applicant acquired the leasehold interest in the property by way of a purchase at an auction on the 8 June 2011.

6. The Respondent holds the freehold title to the property. The title is registered under title number TGL303136.

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 Applicant holds 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 Lease is dated 29 May 2003 and made between the Respondent (1) and Jesse Adeniyi (2). The Lease granted a term of 125 years from 29 May 2003. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as the liability to pay and/or reasonableness of the estimated service charges for 2011/12 relating to the following items:

Item	**Cost £**
Heating and hot water	933.51
Care and Upkeep	251.93
Un-itemised repairs	258.40
Electricity and Estate lighting	47.76
Administration Costs	176.98

10. Mr Tse confirmed that the Applicant has conceded liability to pay the contribution in respect of building insurance.

11. Mr Tse confirmed that the Applicant was no longer seeking to pursue a claim for the loss of rental income as part of this Application.

The Applicant's case

12. The Applicant asserts that the property has been uninhabitable since the date of purchase. It is claimed that the water pipes were stolen and the property was without heating and hot water since early 2011 until 14 December 2011. The Applicant contends that as the property was uninhabitable they have not gained any benefit from the services and so the Applicant should not be required to pay the service charge.

13. The Applicant relies on the witness statement of Mr Rajesh Tankaria a director of the Applicant and his statement of case. Mr Tse made oral submissions at the hearing in support of the Applicant's case.

14. Mr Tankaria claims the Respondent has failed to provide an adequate standard of service in respect of their maintenance and repair obligations under Clause 4(5) of the Lease and so the service charges in respect of repairs, care and upkeep and administration costs should not be payable.

15. Mr Tse contends that as no services were provided by the Respondent to the Applicant a service charge cannot be payable.

16. Mr Tankaria claims that the front door of the property was broken into on the 16th June 2011 and the property was rendered completely insecure as a result. Mr Tankaria claims he reported the matter to the Respondent on the same day and continued to chase the Respondent in an effort to have the door replaced. The Applicant has produced copies of correspondence in support. In the meantime as a temporary measure Mr Tankaria boarded up the property.

17. Mr Tankaria claims that on the 10th and 11th July 2011 the property was broken into and burgled. The water pipes, radiators and the kitchen window frame and window were removed and damaged. The cut water pipes caused a leak which caused further damage to the property.

18. Mr Tankaria states that the property remained unsafe and it was frequently broken into whilst the Respondent delayed in replacing the door. Mr Tankaria states that after waiting for the Respondent to resolve the matter, on the 13 July, he took the matter into his own hands and ordered a replacement door from the Respondent's own contractor and paid to have the door replaced. Mr

Tankaria contends that the Applicant has not been reimbursed the cost of replacing the door.

19. Mr Tankaria claims that although he had managed to have the door replaced, the damaged window could not be replaced as the design of the windows is specific to the building, the window replacement could only be arranged by the Respondent through their designated contractor.

20. Mr Tankaria claims that on visiting the property after the door had been replaced he found the pipes were still leaking and he contacted the Respondent to repair the leak. He states that he received no response from the Respondent so he arranged for a plumber to undertake the work.

21. Mr Tankaria claims the property was without heating and hot water from 9th July until December 2011. He contends that although under the Third Schedule paragraph 7(2) of the Lease it provides that the service charge will include the costs of providing the services as defined in the Lease, and the definition of services in the Lease includes the supply of central heating and hot water, these services were not provided by the Respondent for a period of over 5 months.

22. Mr Tse states that there was undue delay by the Respondent in dealing with matters, it took over 6 months for the Respondent to agree to resolve the problems and it took a day to fit the windows and 2 days to restore the heating and hot water. Mr Tankaria claims that that the property could not be enjoyed or occupied during this period.

23. Mr Tse confirms that the Applicant has accepted liability to pay the Insurance as it did benefit from the Insurance.

24. Mr Tse states that the Applicant does not accept liability to pay towards the care and upkeep as the Applicant has had no benefit of any care and upkeep. He stated that under the provisions of the Lease the Respondent is obliged to fix the door but failed to do so and so the Applicant had no option but to arrange for the door to be fixed. He states that the circumstances became untenable as the Respondent failed to act, despite numerous requests from the Applicant and so the Applicant had to take matters into his own hands and undertake the repairs.

25. In respect of the un- itemised repairs, the Applicant challenges the sum charged as the Respondent has not provided a breakdown of the repairs undertaken and no repairs were undertaken at the property.

26. The Applicant disputes liability to pay the charges in respect of Estate lighting and Electricity as the property was uninhabitable for a considerable period of time and so the Applicant claims it has gained no benefit from this service.

27. In respect of the Administration Cost although the Applicant accepts the Lease provides for Administration Costs to be included in the service charge, the Applicant challenges this as the Applicant is unsure as to how the amount is quantified.

28. The Applicant claims the Respondent has been kept informed of the deficiencies in the property but it has failed to rectify the problems in an efficient and professional manner. The Applicant's case is that without a front door for access to the property and without any water or heating the property was uninhabitable and therefore none of the services provided by the Respondent (with the exception of the building insurance) could have been used or enjoyed by the Applicant and so the service charge is wholly unreasonable in this respect.

29. Mr Tse confirmed that the Applicant accepts that the Lease makes provision for the Respondent to charge a service charge for the items charged and it is accepted that the method of apportionment used is reasonable. He stated that the issue was whether in the particular circumstances of the case it was reasonable for the Respondent to charge the Applicant a service charge when the Applicant did not receive the services.

The Respondent's case

30. The Respondent relies on the statement of case, the witness statements of, Mr David Coombs the Respondent's debtors accountant and Mr Gulam Dudhia the Respondent's accountant, both of whom are employees in the Respondent's Home Ownership Services and Tenant Management Initiatives division. Mr Strauss the Respondent's legal representative made oral submissions at the hearing in support of the Respondent's case.

31. The Respondent admits that damage occurred to the property, and states that the Applicant purchased the property following a long period of inoccupation. The Respondent states the broken window was reported on the 13thJuly 2011 and was boarded up on the same day. The full window replacement was completed on the 29th September 2011.

32. Mr Strauss stated that that the property was purchased for letting and the application to the tribunal was premature as the Applicant had submitted an insurance claim for a full indemnity including a claim for loss for loss of rent. He stated that he was concerned that if the application before the Tribunal were to succeed the Applicant may be compensated twice.

33. Mr Coombs gave various accounts as to the insurance claim. After allowing Mr Coombs two short recesses to contact the Insurance company and broker, eventually it was confirmed that there are four elements to the Insurance claim

    (i) Damage due to theft of water pipes resulting in water ingress,

(ii) Loss of rent whilst the property was left unoccupied,

(iii) Theft of three internal doors, and

(iv) Theft of the front door

Mr Coombs stated the Insurers have confirmed that they have the received the invoice for the door [95] and a further invoice relating to the cost of boarding up, they have stated that they are still considering the claim. He confirmed as the Respondent is responsible for the front door and it is clear that the Applicant had incurred a cost in replacing the door there is no reason why the Respondent cannot reimburse the Applicant for the cost of this door. He confirmed he will arrange for such a payment to be made to the Applicant.

34. Mr Strauss referred to the various provisions in the Lease in support of the service charges and in support of the Applicant's liability to pay the service charges [24-26].

35. Pursuant to paragraph 2(1) of the Third Schedule to the Lease the Respondent is obliged to provide a reasonable estimate of the service charge for the year. Pursuant to paragraph 2(2) of the Third Schedule the Applicant has covenanted to pay the estimated service charge in advance on account by equal payments on the quarter days (1 April, 1 July, 1 October and 1 January).

36. Mr Strauss explained the Respondent uses a bed weighting method for apportioning the annual service charge, whereby each flat is assigned a weighting of 4 units with an additional unit for each bedroom. The Applicant's property has three bedrooms and it is therefore accorded a bed- weighting figure of 7. This figure is then divided by all the dwellings sharing the service. The method of apportionment has been agreed by the Home Owners' Council (a leaseholders' representative body). The Respondent produced the breakdown and supporting documentation for the charges [31-39].

37. He explained that the property is provided with full central heating and hot water through a district heating system and as such the bed -weighting for this service is calculated by multiplying the bed-weighting figure of 7 by 4.52 which gives 32. The factor of 4.52 was calculated by an engineer. The apportionment for hot water only is 20% and this is given a weighting of 1. If the property has partial heating the weighting is 2.5.

38. He also explained that the heating charge includes a number of elements for the provision of the service. The bulk of the charge is for the fuel but it also includes charges for the maintenance of the boiler house, repairs and overheads. The fuel and gas charges are based on the previous year's actual charges. The hot water is supplied all year round but the heating is usually turned off in the summer months around April until the end of October unless the weather changes drastically from the normal. Although the Applicant did not receive any hot water or heating due to the problems, the Respondent kept

the system running for the rest of the estate. The Respondent has a system of compensation for non provision of service in place whereby a claim for compensation can be made if for any reason a particular property is without heating or hot water. In terms of the costs themselves the Respondent states that they are reasonable. The Respondent admits the repair took place in December. Therefore the Respondent contends that the property was without heating for a period of 3 months from October to December.

39. Mr Strauss stated that the Respondent is responsible for maintaining the system in the boiler house as well as the individual flats and all the pipe work. All faults reported by the residents are attended to by the heating contractor under the supervision of the heating engineers.

40. The cleaning and Upkeep charges [34] relate to cleaning of the common parts such as stairwells corridors etc within the estate as well as the block. The cost is based on the number of hours spent in undertaking the work and are calculated on the contract value provided by the contractor. The charge for refuse disposal represents the hire of refuse storage bins.

41. The ground maintenance charges [37] relate to the cost of maintaining the communal land on the estate including flowerbeds and grass areas. The charge is based on a total annual contract cost for the borough divided by the number of properties receiving the service and apportioned to the individual flats using the bed- weighting method. The charge for the 2011/2012 estimate is based on prior year's costs with a percentage increase for inflation.

42. The charge for un-itemised repairs [38] covers any communal repairs to the block or estate and apportioned using bed-weighting. The charge for 2011/12 estimate is based on adjusted average repair costs to the block and estate for the previous three years. The cost for the maintenance of the cold water tanks is the only exception in that this has to be contracted out to a specialist and the repairs etc from year to year vary according to what is necessary. The sum for overheads in relation to un- itemised repairs relates to the management of individual repairs.

43. The estate lighting charge covers the maintenance of lamp columns and replacement light bulbs on the estate and block and the electricity consumed. The charge is based on a metered reading from the electricity bill and the costs apportioned to individual flats on the bed- weighting method.

44. Mr Strauss stated that a 10% administration charge is specifically provided for in the Lease under Paragraph 7(7) of the Third Schedule on the proviso that no other managing agents are employed by the landlord. He explained that the charged covered the cost of the Home Ownership Unit providing a billing service, an initial point of contact for leaseholders to liaise with other departments within the Local Authority. He stated that the actual charge made falls short of the actual cost of providing the service and so it is partly funded

by the public purse. He stated that where leaseholders have exercised the right to manage they have found the cost to be about 20-25%.

45. 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.

The Tribunal's decision

46. The Tribunal determines that the following amounts are payable by the Applicant to the Respondent in respect of the estimated service charges for the year 2011/2012:

Item	Cost £	Amount Payable £
Heating and hot water	933.51	695.51
Care and Upkeep	251.93	251.93
Un-itemised repairs	258.40	258.40
Electricity and Estate lighting	47.76	47.76
Administration Costs	176.98	153.18

Reasons for the Tribunal's decision

47. The Lease requires the Respondent (as landlord) before the start of each year (beginning on 1st April and ending on 31st March) to make a reasonable estimate of the amount of service charge which will be payable by the Applicant (as a leaseholder) in that year and to notify the Applicant of the estimate (3rd Schedule Paragraph 2(1)).

48. The Applicant covenants to pay to the Respondent in advance on account of service charge the amount of the estimated service charge by equal payments on the 1st April 1st July 1st October and 1st January in each year (Clause 2(3)(a) and 3rd Schedule Paragraph 2(2)).

49. The items included in the estimated service charge for the year 2011/12 are items which fall within the definition of "the services" under the Lease. The Lease provides that the service charge payable by the Applicant is a fair proportion of the costs and expenses set out in paragraph 7 of the 3rd schedule and these include the costs incurred by the Respondent in providing the services as defined in the Lease as well as the costs of carrying out all works required by sub clause (2) to (4) of Clause 4 of the Lease.

50. The Respondent covenants under Clause 4 of the Lease as follows:

> "(2) To keep in repair the structure and exterior of the flat and of the building ….and make good any defect affecting that structure
>
> (3) To keep in repair the common parts of the building and any other property over or in respect of which the Lessee has any rights under the First Schedule hereto
>
> (4) As often as may be reasonably necessary to paint in a good workmanlike manner with two coats of good quality paint outside parts of the building usually painted and also all internal common parts of the building usually painted
>
> (5) To provide the services more particularly hereinbefore set out under the definition of "services" to or for the flat and to ensure so far as practicable that they are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services…"

51. The Tribunal notes that there is no dispute as to the items included in the Service charge or as to the method of apportionment used by the Respondent.

52. The thrust of the Applicant's submissions is that because of the Respondent's unreasonable delay and in the case of the damage to the front door the Respondent's failure to act and comply with it's obligations under the Lease the property was rendered uninhabitable. The Applicant submits that as a result it gained no benefit from any of the services and so the Applicant should not be required to pay a service charge in respect of the disputed items.

53. The Respondent under Clause 4(2) of the Lease covenants to keep in repair the structure and exterior of the flat and of the building and make good any defect affecting that structure. The external windows and doors and window and door frames are specifically excluded from the definition of "the flat". Therefore the Respondent is responsible for the replacement and repair of the front door and windows.

54. In addition under Clause 4(5) of the Lease the Respondent covenants "To provide the services more particularly hereinbefore set out under the definition

of "services" to or for the flat and to ensure so far as practicable that they are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services". The definition of "the services" includes Central heating and hot water supply. Therefore the Respondent is responsible for the repair and replacement of the Central heating and hot water pipes and radiators as well as ensuring that a reasonable level of service is maintained.

55. The Tribunal finds that the items included in the service charge to be in accordance with provisions of the Lease and having considered the evidence and submissions. The Tribunal finds that with the exception of the charges for the heating and hot water and the administration costs, the estimated amounts charged to be reasonable. The Tribunal notes that the Respondent has produced a breakdown together with evidence in support of the estimated amounts charged. The Tribunal appreciates that the Applicant is not disputing the reasonableness of the overall costs but challenges liability to pay the amounts on the basis that the Applicant received no benefit.

56. The Respondent is obliged under the terms of the Lease to provide the services and undertake the repairs and maintenance of the building, and the common parts, regardless of whether the Applicant is able to occupy it's property. The Applicant is obliged under the provisions of the Lease to pay a fair proportion of the estimated costs and expenses of the Respondent undertaking its obligations. The fact that the property could not be occupied by the Applicant does not automatically extinguish the Applicant's liability to pay the service charge. The Tribunal noted that the property was purchased by the Applicant at auction. There was no evidence before the Tribunal as to the condition of the property at the time of acquisition and it is possible that some of the damage to the property pre- dated the Applicant's purchase of the property.

57. In relation to the charges for the heating and hot water it is clear that due to the delay in remedying the theft and damage of the pipes and radiators on the part of the Respondent the property was without heating and hot water from 10th July until 14th December which is 157 days. The Tribunal estimates that as a result the estimated annual sum should be reduced from £933.51 to £695.52.

58. In relation to the administration costs the Lease allows the Respondent to charge an administration charge of 10% of the total service charge. The Tribunal considers this to be a reasonable amount. In this case given the failure on the part of the Respondent to properly manage the repairs and the inordinate delays the Tribunal considers it reasonable to reflect this in the administration costs. The Tribunal having considered the evidence determines the sum of £153.18 to be reasonable.

59. In the application form, the Applicant 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 it is just and

equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman: ______________________
Mrs N Dhanani

Date: 24th May 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

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

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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.

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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 & SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference : LON/00BJ/LSC/2011/0787

Premises : Flats 14, 22, 80 Sherwood Court, Chatfield Road, SW11 3UY

Applicants : Mr & Mrs Murphy (Flat 80)
Mr D Loke (Flat 22)
Ms Wong (Flat 14)

Represented by : Mrs Murphy appeared for herself and the other applicants

Respondent : OM Property Management Ltd

Represented by : Mr Rankohi (in-house Solicitor of the Respondent)

Date of Application: 18 November 2011

Date of Hearing : 3 April 2012

Date of Decision :

Tribunal : Mr Robert Latham MA
Mr Michael Cartwright FRICS
Mr Owen Miller BSc

Decisions of the Tribunal

Section 27A application by the three Applicants in respect of the contribution to their reserve fund

(1) The Tribunal determines that the contribution made by the Schedule B lessees to the reserve fund for 2011 and 2012 should be reduced from £6,800 to £4,000 per annum. The reduction in respect of each lessee is as follows:

(i) Mr and Mrs Murphy (33.36% contribution) reduced from £2,268.48 to £1,334.40;

(ii) Mr Loke and Ms Wong (each with a 17.25% contribution): reduced from £1,173.00 to £690.00.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(3) The Tribunal determines that the Respondent shall pay the Applicants £175 within 28 days of this decision, in respect of the reimbursement of the tribunal fees paid by the Applicants which are attributable to this application.

Schedule 11 application by Mr and Mrs Murphy Mr Loke

(4) The Tribunal makes the determinations as set out in paragraph 44 of its decision:

(i) Mr and Mrs Murphy: there be a reduction of £1,194.00 in respect of professional fees;

(ii) Mr Loke: there be a reduction of £474.50 in respect of arrears recovery.

(5) The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985, However, it assesses the Respondent's legal costs reasonably incurred in respect of this application at £760 + VAT.

(6) The Tribunal makes no further determination in respect of the reimbursement of the Tribunal fees paid by the Applicants.

The Application

1. The Tribunal is required to determine two applications:

(i) an application made by Mr and Mrs Murphy, Mr Loke and Ms Wong pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to their liability to pay and the reasonableness of service charges. This application is at p.1-12 of the Bundle.

(ii) an application made by Mr and Mrs Murphy, Mr Loke pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to their liability to pay and the reasonableness of administration charges. This application is at p.13-20.

2. Directions were given on 20 December 2011 (at p.37-42). The following issues were identified:

(i) reasonableness of service charge demands for contributions to the reserve fund for service charge years ending 2011 and 2012. This relates to all the applicants.

(ii) payability and reasonableness of administration charges demanded in the service charges years ending 2007, 2008, 2009, 2010 and 2002.

3. The Respondent has argued that the payability and reasonableness of administration charges demanded in the service charges years ending 2007, 2008 and 2009 had been determined in two previous LVT decisions, LON/00BJ/LSC/2007/0241 (at p.123-130) and LON/OOBJ/LSC/2009/0600 (at p.113-22). The Leasehold Valuation Tribunal ("LVT") directed that the question whether the administrative charges for those years has already been determined should be determined as a preliminary issue.

4. Pursuant to these directions, the Applicants have provided a statement setting out their case which is at p.43-53. This clarifies the two issues which we are asked to determine:

(i) The contributions which the Applicants have been required to contribute to the reserve fund for 2011 and 2012 (see p.43). The Respondent has produced a schedule of estimated expenditure upon which these contributions have been computed which is at p.49.

(ii) Mr and Mrs Murphy and Mr Loke dispute a number of items of administration charges. This are set out in two tables at p.47.

5. The Respondent's Case is at p.55-75. The Applicants have responded to this in additional submissions at p.77-85; 87-89; 91-97 and p.99.

6. On 30 March, the Respondent served a statement from Veronica Beadle, the Regional Property Manager of OM Property Management Limited ("OMPM") who manage Riverside Plaza, the development within which the demised flats are situated, on behalf of the OM Limited, the manager named in the relevant leases.

7. The relevant legal provisions are set out in the Appendix to this decision.

<u>The Hearing</u>

8. Mrs Murphy represented both herself and the other Applicants. She was assisted by her husband. Neither Mr Loke nor Ms Wong appeared, but Mrs Loke was present. The Respondent have required confirmation that Mrs Murphy has authority to act for Mr Loke and Ms Wong. This has been provided at p.367-8. We heard evidence from Mrs Murphy

9. The Respondent were represented by Mr Rankohi, a solicitor employed by OMPM. We heard evidence from Miss Beadle.

10. Mrs Murphy complained about the late service of the statement from Miss Beadle. It had been e-mailed to her on the previous Friday, but she had only been able to print it out on the Monday before the hearing. We were satisfied that the statement provided no new material, but rather sought to clarify the Respondent's case. We adjourned the matter for a short period to enable Mrs Murphy to deal with this

11. We indicated to Mr Rankohi that it was apparent that neither of the two previous LVTs had been asked to determine the administration charges which were challenged in the current applications. He responded that his argument was rather that these matters should have been raised on a previous occasion. When we indicated that we did not find this argument attractive, he withdrew this objection.

12. During the hearing, it became apparent that there is a more fundamental issue which needs to be resolved between the parties, namely how the costs of repairing and maintaining the exterior to the Roof Space extension ("the Roof Space") which has been constructed above Flat 81 Sherwood Court, impacts upon the service charges payable by the Applicants. There are four residential flats at Sherwood Court, namely Nos. 14, 22, 80 and 81. Three of these flats are occupied by the Applicants. The fourth flat has the benefit of the Roof Space extension. The problem has arisen because this extension was constructed after the leases had been granted in respect of Applicant's flats. The Applicants provided us with a copy of the lease for the Roof Space together with some of the architect's drawings which were submitted with the planning application in 1998.

13. At the end of the hearing, we asked the Respondent to provide us with further Information relevant to the issues which we are required to determine.

(i) Roof Space: (a) the "Licence" which defines the extent of the premises demised to the lessee (see Schedule 3 of the lease); (b) the service charges paid by the lessee of the roof Space over the past two years; and (c) the contribution made by the lessee of the Roof Space to the external redecorations in 2007.

(ii) a Revised Schedule. It was apparent that the schedule at p.49 of our Bundle was computed on the wrong basis, namely that there were 5 chargeable units in the section of Sherwood Court (2B) whereas there are 4 units.

14. The Tribunal received the information requested from the Respondent on 17 April. The Applicants provided their response on 20 April. They exhibited a number of additional documents which were received on 24 April.

The Background

15. Sherwood Court forms part of a development known as Riverside Plaza comprising 76 residential and 3 commercial units arranged into six blocks. Four of these blocks are high rise and two are low rise.

16. Sherwood Court consists of the three flats occupied by the Applicants and a fourth flat, Flat 81, which now also consists of the Roof Space. This extension is illustrated in the photograph of Sherwood Court at p.363. A similar extension has been constructed at the neighbouring block, Mendip Court (see p.365).

17. The lease in respect of 80 Sherwood House is at p.131-170. The leases for 14, 22 and 81 are identical except for the contribution to the service charge. The lease for the Roof Space is similar, but has some significant differences. There are three parties to the lease: (i) "the landlord"; (ii) "the management company" which at all material times has been OM Limited; and (iii) the lessee. Riverside Plaza is "the development".

18. According to the respective leases, the service charge is made up of an aggregate of a "Block", a "Courtyard", a "Plaza", and, in respect of some leases, a "Waterage and Sewerage" Service Charge. A percentage is applied to the relevant costs as follows:

	Block	Courtyard	Plaza
Flat 14	17.25%	1.25%	1.22%
Flat 22	17.25%	1.25%	1.22%

Flat 80	33.36%	1.25%	1.22%
Flat 81	32.14%	1.25%	1.22%
Roof Space	100%	0%	0%

19. The difference in treatment between Flats 14, 22, 80 and 81 and the Roof Space is explained by two factors:

    (i) The Roof Space is an extension to Flat 81 and the tenant is not expected to make any additional contribution to the Courtyard or Plaza service charges. However, this Tribunal is only concerned with the Block charges and how provision is made for this in the reserve fund.

    (ii) The term "block" is given a different meaning in the lease for the Roof Space:

    > (a) For Flats 14, 22, 80 and 81, "block" means "that part of the Building or Development (as the case may be) outlined in blue on Plan No 1 Plan No.2 and Plan No.3 containing the Premises, but not that part or parts of the Building below the underside of the first level slab other than communal entrance and staircase".
    >
    > (b) For the Roof Space, "block" means "that part of the Building or Development (as the case may be) outlined in red on Plan No.2 containing the entirety of the Premises". The "premises" are described in schedule 3 of the lease and are shown edged in red on Plan No.2, and shall include "the entirety of the Works as more particularly defined in the Licence", "including for the avoidance of doubt all internal and external structural and non-structural parts comprised in the Works". We have Plan No.2, but have not been provided with a copy of "the Licence". In their letter of 16 April 2012, the Respondent informed us that neither the landlord or the management company have been able to produce a copy and that no copy is held by the Land Registry.

20. On 30 May 2009, Mr and Mrs Murphy and Mr Loke applied for a number of disputes to be determined by the Leasehold Mediation Service. This included the Respondent's refusal to explain why the tenants were not consulted when the new lease was drawn up in respect of the Roof Space, the effect of which was to exempt the lessee from any maintenance charges. It seems that Respondent was not content for this issues to be determined by mediation.

21. On 4 July 2007, the Applicants made their first application to a LVT (LON/OOBJ/LSC/2007/0241) in respect of their liability of their service charges for 2002-7. The first issued raised by the Applicants related to the respective

percentages that the tenants were required to pay. They asserted that these percentages should have been adjusted to reflect the construction of the Roof Space. The LVT gave their decision on 25 September 2007 (at p.123). The Tribunal was satisfied that the service charges had been calculated in accordance with the terms of their respective leases. The Tribunal noted the different meaning that was given to "block" in the lease for the Roof Space. Whereas the four other leases included matters such as repairs and cleaning in the Building Services which were included in the Block Service Charge, Part 1 of Schedule 6 to the lease for the Roof Space only required the lessee to pay 100% of the building insurance in respect of the Roof Space alone. As the Roof Space was not separately insured, the Respondent had adopted the practice of charging 4% of the expenditure for the whole block as producing a sum reasonably close to the actual liability of the lease of the Roof Space. The Tribunal did not address the distinct issue as to who was liable for the cost of any repairs, maintenance or decorations to the exterior of the Roof Space.

22. On 2 June 2009, the Applicants made their second application to a LVT (LON/OOBJ/LVL/2009/0006) for a variation of their leases under s.35 of the Landlord and Tenant Act 1987. This application was due to be heard on 21 October 2009. However, at that hearing, the Respondent produced a copy of the recent decision of the Upper Tribunal (Lands Chamber) in *Morgan and Morgan v Fletcher* [2009] UKUT 186 (LC). On 21 December 2009, the Applicants withdrew their application in the light of this decision (see p.103).

23. In the *Morgan* decision, the appellant freeholders (M) appealed against a decision of the LVT that the service charge provision in relation to a block of flats which they owned was not satisfactory. The respondents (F) were the respective leasehold owners of six of the eight residential flats in the block. M occupied one of the remaining flats and the other remaining flat was occupied by a third party (N). Each lease was a long lease requiring the tenant to contribute a proportion of the service charge costs for the entire block. F discovered that the total amount of the service charges payable under the leases added up to 116 per cent of M's expenditure. F therefore applied to the LVT for an order varying those proportions. M responded by reducing the service charge proportions in relation to the flats which were occupied by itself and N to approximately 0.1 per cent and 0.3 per cent respectively, the effect of which was to reduce the total payable by all eight flats to 100 per cent. The result, however, was that the service charge payable by some of the respondents was substantially greater than that payable in respect of the largest flat, which was the one occupied by M. The LVT decided that it retained jurisdiction to deal with F's application and on the ground that F's leases failed to make satisfactory provision with respect to service charge and reduced the service charge proportions payable by F to approximately 79% of the total expenditure. M appealed on the ground that the LVT had acted without jurisdiction because s.35(4) of the 1987 Act only entitled the tribunal to adjust service charges if the aggregate of such charges in respect of a building exceeded or fell short of 100 per cent. HHJ Jarman QC accepted this argument.

24. In support of their argument, F gave the example of a developer who converts a building into two flats and lets them on the basis that the lessees pay a service charge of 50% each. The developer could then build an extension to house a third flat and then sell or let that flat on the basis that the maintenance of the building is met by the two original lessees, thereby gaining a more valuable flat. It was submitted that Parliament could not have intended such a result. The Judge held that whilst it would have been a legitimate aim to permit a LVT to avoid a situation where the contributions were unfairly disproportionate, that had not been the mischief which s.35 was intended to address.

25. On 3 September 2009, the Applicants made their third application to a LVT (LON/OOBJ/LSC/2009/0006). This was determined on 24 February 2010. The first issue related to the allocation of the cost of the external decorations referable to the service charge year ending 31 July 2007. The overall cost of the works was £120,326 of which the schedule 2B contribution (relevant to the Applicant's Block) was £9,630.08. The LVT was satisfied that an appropriate apportionment had been made. The second issue related to the charge to the reserve fund for long term repairs for the years 2007/8; 2008/9 and 2009/10. The contribution to reserves charged to the Schedule 2B lessees was £21,500; £12,520 and £12,520. The LVT considered that these were high and had not been justified. The Tribunal indicated that such high fees would need to be justified by reference to some clear building survey prepared by professionals. The Tribunal took the view that this part of the service charge should be reduced by 75%.

26. Two matters arise from this decision. First, the Tribunal asked the Respondent to specify how much the lessee of the Roof Space had been required to contribute to the external redecorations. We are told that this was £385.20, namely 4% of the total of £9,630.08. Secondly, the Applicants success in respect of their contribution to the reserve fund may have proved a pyrrhic victory. Because their contributions were reduced for these years, the total reserve fund for the Schedule 2B lessees is now substantially less than for the other blocks.

27. 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.

Issue 1: Costs attributable to the Roof Space

28. The position of the parties is as follows:

(i) The Applicants contend that they should not be liable for any service charge in respect of the costs of repairing, maintaining or decorating any aspect of the exterior of the Roof Space. This extends to all external part of the premises which are demised to the lessee by the lease of the Roof Space as described in schedule 3. In the absence of the Licence, the best evidence of this is the

plan annexed to the lease edged in red. This includes the windows, walls and the roofs. The roof includes not only that part above the Roof Space extension, but also the three lower portions of the roof which are directly above Flat 81 and which are within the area edged in red. This would include the majority of the roof to the building which forms Sherwood Court.

(ii) The Respondent deny that any charges relating specifically to the Roof Space are charged to the Applicants. The lessee of the Roof Space is liable for the repair and maintenance of the windows and walls. The area of roof covering the block has not changed; part of it has merely been raised. The roof on the building must be maintained for the benefit of all lessees. It is accepted that there was originally a pitched roof, which has now been removed.

29. The Respondent argue that this issue is not relevant to the current applications. The Tribunal are satisfied that this issue cannot be "parked". The reserve fund contributions are estimated on the basis of major works to the roof in 2021 (£19.800); external cladding in 2026 (£11,200) and external redecorations in 2012, 2017 and 2024 (estimated at £14,500 on each occasion). On the Applicants contention, 66.66% of the roof repairs and 20% of the cladding and external redecoration should be charged solely to the lessee of the Roof Space.

30. We have already noted that the contribution made by the lessee of the Roof Space to the Block Service Charge is quite difference to that made by the lessees. Any such liability arises from the terms of the respective leases. The significant differences are to be found in:

(i) Schedule 2 - "The Maintained Property": For the Roof Space, this is restricted to property insurance. For the other lessees, this extends to all aspects of the structure and exterior or the building.

(ii) Schedule 3 - "The Premises": For the Roof Space, this includes all internal and external structural and non-structural parts comprised in the works defined in "the licence". For the other lessees, the schedule largely excludes external structural and non-structural parts. Whilst "premises" includes widow frames and glazing, it excludes the external decorative finish.

(iii) Schedule 6 - "The Building Services": For the Roof Space, this is restricted to insurance. For the other lessees, it extends to all aspects of repairing, maintaining and decorating the maintained property.

(iv) Schedule 8 - "Tenant's covenants enforceable by the landlord or the Management Company": The lessee of the roof Space covenants to repair, decorate and maintain the premises (see paragraphs 3 and 4.1). This will include all external structural and non-structural parts of the Roof Space. The repairing covenant of the other lessees is restricted to the interior of their flats.

They covenant not to carry out decorations to the exterior of the building (paragraph 4.1).

31. We understand that the leases of Flat 81 and the Roof Space are held by the same person. The Tribunal reach the following conclusions on this issue:

(i) The lease in respect of Flat 81, requires the tenant to pay Block, Courtyard and Plaza service charges on the same basis as the lessees of Flats 14, 22 and 80 albeit that the percentage contribution is different reflecting the size of their flats.

(ii) The lease in respect of the Rood Space only requires the tenant to pay a Block Service charge. This is restricted to the insurance premium.

(iii) It is for the management company to arrange the appropriate policy. This is likely to be a block policy. The managing agent must therefore seek to identify what percentage of that block policy is attributable to the insurance of the Roof Space, and the tenant of Roof Space will be liable for this portion.

(iv) The landlord has demised all external parts of the windows, walls and roof enveloping the Roof Space to the tenant. The best evidence of that "envelope" is the plan annexed to the lease for the Roof Space, a copy of which was provided to us by the Applicants at the hearing. The relevant part is that outlined in red on the plan.

(v) The tenant of the Roof Space is liable for repairing, maintaining and decorating that envelope.

(vi) Whilst it is open to the management company to carry out works of repair, maintenance or decoration to this envelope, this cannot be passed on as any part of the service charge to the tenants of the other flats. This is now part of the demise to the Roof Space tenant and is the sole liability of that lessee.

(vii) The effect of the subsequent grant of the lease in respect of the Roof Space has been to significantly reduce that portion of the roof to Sherwood Court for which the other lessees are liable under their Block Service Charge, namely by some 66.7%. This is the figure suggested by the Applicants in their letter of 20 April 2012.

(viii) At the hearing, the Respondent seemed to accept that the lessee of the Roof Space was responsible for the repair, maintenance and decoration of the walls and windows to the Roof Space Flat. It may make sound practical sense for external decorations to the Roof Space flat to be executed at the same time as to other parts of Sherwood Court. However, this is a matter for the Roof Space tenant and the management company to agree. The Roof Space lease makes no provision for this. The Roof Space lessee must be solely

responsible for any additional costs attributable to the exterior to the Roof Space flat.

(ix) In their letter of 16 April 2002, the Respondent have provided details of contribution made to the external decorations which were executed in 2006/7. The total cost (including management fee) for Riverside Plaza was £120,376. The cost to be borne by the lessees of Sherwood Court was £9,630.08 of which just £385.20 was charged to the tenant of the Roof Space. This was 4%. Such a low figure could only be justified if this was the additional cost attributable to decorating the exterior to the Roof Space. We say no more about this as the payability of the service charge for this year has already been determined by a LVT.

Issue 2: The Charge to the Reserve Fund for 2011 and 2012

32. Schedule 10, paragraph 3 of the Applicants' lease permits the managing agent to maintain a reserve fund. This is a trust fund account held by the managing agent on behalf of the individual lessees in respect of their potential service charges in respect of Sherwood Court. The Applicants complain that the contribution demanded of their block (the Schedule 2B lessees) has increased from £3,250, £3,130 and £3,130 in 2008, 2009 and 2010 (as adjusted as a result of the previous LVT decision) respectively to £6,800 in 2011 and 2011. This was a matter which was considered by a LVT on 24 February 2010. The Respondent contend that this decision reduced the reserves to an unduly low figure compared to the other blocks. The Applicants contend that their contribution has been raised again by an excessive amount.

33. The Respondent's decision to increase the reserve fund contribution was based on an estimate of future maintenance costs which is at p.49. The Respondent contends that this was approved by the Resident's Association. The Applicants are not members of this association. The Residents Association was not willing to fund the cost of commissioning a long term maintenance plan.

34. It became apparent at the hearing that there were significant errors in this schedule. It was premised upon there being 5 units at Sherwood Court; there are 4. There was also marked differences to the sums attributable to Sherwood Court (Schedule 2B lessees) and Mendip Court (Schedule 2C lessees) albeit that exterior of the blocks is similar.

35. On 17 April, the Respondent's revised this schedule. These revisions justify a contribution of £4,750, rather than £6,800. The fire equipment replacement has been reduced from £200 to £100 per annum. The fire equipment in Block 2B is limited, namely emergency lighting and automatic opening vents. This is a modest sum and we are satisfied that no further reduction is required.

36. Mrs Beadle also attached a cash flow summary to her statement. This indicated that were the management company to levy the annual contribution to the reserves of £6,800, there would be a surplus of £45,934 by 2028. On the other hand, were this to be reduced to £5,000, the surplus would be £15,334, which is close to the current level of reserves. Mr Rankohi conceded that this was a more realistic figure. This cash flow summary was based on the original schedule which has now been revised.

37. The Tribunal determine that the charge to the reserve fund made by the Schedule 2B lessees for the years 2011 and 2012 should be reduced from £6,800 to £4,000. We accept that the managing agent has a considerable discretion as to the sums to be set aside for a reserve fund. Any surplus is held on trust for the individual lessees. If the contributions are too low, lessees can face considerable financial problems when major works are required.

However, there has already been one finding by a LVT that the contributions demanded for the reserve fund have been too high. In the light of such a finding, any significant increase must be clearly justified.

38. The Tribunal have determined to make the reduction for the following reasons:

(i) The Respondent have revised their schedule and now conceded that this justifies an annual contribution of £4,750, rather than £6,800.

(ii) The Respondent have prepared the schedule on the basis that the lessees of Block 2B are liable for 100% of any works to the roof. We have already discussed under Issue 1, our reasons for concluding that the lessees are liable for a much smaller share than this. This also has an impact in respect of the costs of works to the cladding and external cladding which also extend to the external envelope of the Roof Space. It is not appropriate for this Tribunal to make any finding as to the percentage of such costs as should properly attributed to these lessees. However, when any works are executed, it is for the Respondent to ensure that the lessee of the Roof Space bears the full costs of any works for which that lessee is liable pursuant to the terms of their lease.

(iii) Miss Beadle exhibited to her statement (p.4-6 of "VB1") which suggested that an annual contribution of £6,800 would, even on the basis of the erroneous schedule which has now been revised, would have generated a surplus in the reserve fund of £45,934 by 2028. These cash flow projections have not been recomputed in the light of the revised schedule.

(iv) We recognise that the reduction which we have made is somewhat less than the figure of £2,750 suggested by the Applicants in their letter of 20 April 2012. We consider such a figure to be unduly low.

<u>Issue 3: The Administration Charges</u>

39. This aspect of the application only relates to Mr & Mrs Murphy (Flat 80) and Mr Loke (Flat 22). Their application Form at p.13-20. The disputed service charges are at p.47. It was agreed that in respect of some of the disputed charges, there had been a subsequent credit to the service charge accounts. Thus the following items were no longer in dispute:

Date	Item	Charge
28.6.10	Recovery Fee	£258.50
28.6.10	Recovery Fee	£258.50
24.6.09	Admin. charge	£57.50
24.6.09	Admin. charge	£57.50

40. Mr and Mrs Murphy dispute the following charges:

Date	Item	Charge	Relevant Documents
6.3.07	Interest	£421.76	p.362
29.3.10	Professional Fees	£2,388.00	p.296; 346; 339
7.3.07	Admin. charge	£58.75	p.362
30.8.07	Admin. charge	£58.75	p.345
7.3.07	Admin. charge	£58.75	p.341

41. Mr Loke disputes the following charges:

Date	Item	Charge	Relevant Documents
6.3.07	Interest	£71.73	p.343
3.8.07	Interest	£191.77	p.343; 351
30.8.07	Interest	£1,198.20	p.347
24.7.09	Gres Fee	£143.75	p.347
19.3.10	Arrears Recovery	£949.00	p.354; 337
28.6.10	Recovery Fee	£235.00	p.353; 338
7.8.07	Admin.charge	£58.75	p.351
23.10.11	Admin.charge	£60.00	p.361

42. The service charge account for Mr and Mrs Murphy is at p.341, whilst that for Mr Loke is at p.343. It is apparent that both tenants have been in substantial arrears over many years. The lease makes express provision for the payment of interest on arrears (see clause 1.1.8 (4% above base lending rate) and Schedule 8, paragraph 1.3). We are satisfied that the interest charged are lawfully due pursuant to the provisions of their leases.

43. The lease also makes provision for the payment of costs on an indemnity basis in respect of any breach of covenant or service of a s.146 notice (Schedule 8, paragraph 13). The Respondent described the procedures followed which lead to an administration charge. Service charge demands are dispatched and lessees have 30 days in which to make payment. If no payment is made after a further period of 14 days, the credit control department send a first reminder letter. If a payment is still outstanding after a further 14 days, a second reminder letter is sent. An administration charge is only levied if it is necessary to send this second letter. We are satisfied that the administration charges are payable and reasonable.

44. The Tribunal are however, concerned about two of these administration charges, namely:

(i) Mr and Mrs Murphy: the sum of £2,388 for professional fees. The invoice from Dickinson Dees, Solicitors, is at p.339. There is no indication of the work done. No s.146 notice was served. No proceedings were issued.

(ii) Mr Loke: the sum of £949 for arrears recovery. The invoice from Dickinson Dees, Solicitors, is at p.339. Again, there is no indication of the work done. No s.146 notice was served. No proceedings were issued.

In these circumstances, the Tribunal are not satisfied that these charges are reasonable and in each case reduce them by 50%.

45. In their letter dated 15 April, sent subsequent to the hearing, the Respondent attached an e-mail from Linda Bowskill, a Legal Executive, seeking to give a slightly fuller explanation of the work involved. We have only given limited weight to this. it does not provide the detail of the work involved that we would have required. The evidence should have been produced at the hearing. It is not material that we requested. The Applicants have not addressed it in their response. We are not persuaded to depart from our initial view on this.

Application under s.20C and refund of fees

46. In their application form, the Applicants apply for an order under section 20C of the 1985. The Applicant have also made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the application and hearing.

47. Mr Rankohi informed the Tribunal that the Respondent is minded to pass on the costs incurred in these proceedings through the service charge, whether to these Applicants directly or through the general service charge account. He assessed his costs up to the hearing at £1,950 + VAT and his costs for the hearing at £900 + VAT (namely 6 hours at £150). Even had the Respondent succeed on all aspects, we would have been satisfied that these fees were excessive for an in house solicitor and would have reduced them by 33% to £1900 + VAT. We attribute 60% of these costs to the Section 27A application (£1,140 + VAT) and the remainder (£760 + VAT) to the Schedule 11 application.

s.27A application by the three lessees in respect of the contribution to the reserve fund

48. We make orders that:

(i) pursuant to s.20C of the Act, none of the Respondent's costs of this aspect of the tribunal proceedings be passed on to the lessees through any service charge.

(ii) the Respondent reimburse the three applicants the tribunal fees which they have paid which are attributable to this aspect of the application. We understand that the following sums have been paid in respect of the two

applications: an application fee of £200 and a hearing fee of £150. 50% of the total of £350 (£175) is attributable to this application.

49. We make these orders for the following reasons: (a) the Applicants have been largely successful in this aspect of their claim; (b) this is the second successful application which they have brought in respect of the contribution which they have been required to make to the reserve fund; and (c) the Tribunal are satisfied that there has been a long running dispute as to the liability of the lessee of the Roof Space in respect of the maintenance and repair of the envelope to that flat. The Respondent has failed to adequately address that issue.

Sched 11 application by the two lessees in respect of administration charges

50. We make no order under either s.20C of the Act or for the reimbursement of tribunal fees. However, we assess the reasonable legal fees attributable to this aspect of the application to be £760 + VAT. The Tribunal are satisfied that the Respondent has been largely been successful in respect of these administration charges. We have also had regard to the service charge accounts of these two lessees which have been in arrears for many years.

Chair: Robert Latham

Date: 24 May 2012

Appendix of Relevant Legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
- (a) "costs" includes overheads, and
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  (a) the person by whom it would be payable,
  (b) the person to whom it would be payable,
  (c) the amount which would be payable,
  (d) the date at or by which it would be payable, and
  (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  (a) complied with in relation to the works or agreement, or
  (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
   (a) an amount prescribed by, or determined in accordance with, the regulations, and
   (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

The Consultation requirements for qualifying works for public notice is not required are set out in Schedule 4, Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003 No.1987). Inter alia,

(i) The landlord shall give notice in writing of his intention to carry out qualifying works to each tenant ; invite written observations and Invite nominations from whom the landlord should try to obtain an estimate (para 1)

(ii) The landlord shall supply to each tenant a statement giving details of at least two estimates and provide a summary of observations received and his response to them (para 2)

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

Section 168

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture)

in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) This subsection is satisfied if—
(a) it has been finally determined on an application under subsection (4) that the breach has occurred,
(b) the tenant has admitted the breach, or
(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—
(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(b) has been the subject of determination by a court, or
(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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.