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HM COURTS & TRIBUNALS SEVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of Applications under:
Sections 27A (and 19) of the Landlord & Tenant Act 1985
(Service Charges)
Schedule 11 to the Commonhold and Leasehold Reform Act 2002
(Administration Charges)
Section 20C of the Landlord and Tenant Act 1985 (limitation of costs)
Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002
(Costs) and
Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003
(Reimbursement of Fees)

Case No.	**CHI/29UC/LIS/2012/0076**
Property:	**26 Kings Road** **Herne Bay** **Kent** **CT6 5DA**
Between:	**Mrs. K. Hennelly** **Ms S. Sala** **("the Applicants")**
	And
	Waterglen Limited **("the Respondent")**
Date of Hearing:	**28th February 2013**
Members of the Tribunal:	**Mr. R. Norman** **Mr. J.N. Cleverton FRICS** **Ms L. Farrier**
Date Decision Issued:	**27th March 2013**

26 KINGS ROAD, HERNE BAY, KENT CT6 5DA

Decision

1. The Tribunal makes the following orders:
(a) Waterglen Limited ("the Respondent") is to pay to Mrs. K. Hennelly the sum of £471.76 in respect of overpaid service charges, calculated as set out in paragraph 58 below.

(b) The Respondent is to pay to Ms S. Sala the sum of £668.82 in respect of overpaid service charges, calculated as set out in paragraph 59 below.
(c) An order is made under Section 20C of the Landlord and Tenant Act 1985 ("the Act") that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Mrs. K. Hennelly or Ms S. Sala (collectively referred to as "the Applicants").
(d) An order that the Respondent pay Mrs. K. Hennelly £100 towards costs in respect of these proceedings.
(e) An order that the Respondent reimburse Mrs. K. Hennelly the Applicants' application and hearing fees totalling £200 in respect of these proceedings.
(f) Payment of the sum of £771.76 to Mrs. Hennelly and payment of the sum of £668.82 to Ms Sala to be made by cheque within 28 days of the issue of this decision.
(g) In addition, if any part of the sums of £400 demanded in respect of service charges for the period 1st January 2012 to 31st December 2012 has been paid then the Respondent is to repay them to the Applicants.

Background

2. Mrs. K. Hennelly is the lessee of the First Floor Flat at 26 Kings Road, Herne Bay, Kent CT6 5DA ("the subject property"). Ms Sala is the lessee of the Ground Floor Flat at the subject property and was joined as an Applicant. The Respondent is the freeholder of the subject property.

3. Applications have been made concerning service charges, administration charges and ancillary matters.

4. A Pre-Trial Review was held on 19th November 2012 and was attended by Mrs. Hennelly on behalf of the Applicants and by Mr. Bland from Pier Management Limited ("Pier") on behalf of the Respondent.

5. Mr. Bland stated that Pier is the managing agent for ground rent and buildings insurance and that with effect from 1st January 2012 Gateway Property Management ("Gateway") had replaced Countrywide Estate Management Limited as the managing agent for service charges and minor repairs. However, the first communication which the Applicants received from Gateway was in August 2012.

6. Directions were issued and documents have been received from Mrs. Hennelly on behalf of the Applicants and from Mr. Bland on behalf of the Respondent.

Inspection

7. On 28th February 2013 the Tribunal inspected the exterior of the subject property, the common parts and the interior of the Ground Floor Flat. Present were the Applicants, Mr. Bland and Miss Skurr from Pier (observing).

8. The subject property is a mid terraced property comprising a ground floor flat and a first floor flat. We saw that the ground floor flat has a sitting room, one bedroom, a kitchen and a bathroom and we were told that the first floor flat has similar accommodation but with a different layout. The common parts consist of a

forecourt, which could be used to park two cars, the entrance and a small hallway. The lessee of the ground floor flat has exclusive use of the rear garden and there is pedestrian access to the garden from a lane at the rear of the subject property.

9. Ms Sala pointed out the wood flooring in the kitchen which had been replaced following damage caused by an overflow of water. The matter had been the subject of an insurance claim and she considered that the new flooring was of inferior quality compared to the original flooring, which was still in place in the sitting room. The new flooring did appear to be less substantial.

Hearing

10. The hearing was attended by the Applicants, Mr. Bland and Miss Skurr.

11. Mr. Bland confirmed that he was dealing with everything on behalf of the Respondent and that there would be no attendance by anyone from Gateway.

12. There was concern that the Respondent had not fully complied with the Directions issued and evidence was given by Mrs. Hennelly and Mr. Bland in connection with that. Mr. Bland accepted that he had not supplied to the Tribunal 4 copies of the Respondent's statement of case and had not replied to requests to do so. However, he had by email supplied Mrs. Hennelly with the statement and she had been able to deal with it. He later supplied to the Tribunal 4 copies of a "Statement in Reply of the Respondent" which he stated was identical to the statement of case and accompanying documents sent to Mrs. Hennelly and confirmed that it was that statement upon which the Respondent intended to rely.

13. Mr. Bland referred in particular to pp 32 and 33 of the Respondent's statement bundle where he had set out lists of charges and payments in respect of Mrs. Hennelly and Ms Sala respectively, together with a short note in respect of challenged items.

14. For a considerable time Pier had on their records an incorrect address for Mrs. Hennelly. It was the address provided to them by the conveyancer dealing with Mrs. Hennelly's purchase of her flat. The number was incorrect and caused communication problems. Some letters she received but others she did not. In May 2010 Mrs. Hennelly wrote to Pier and her correct address was in the letter heading but this was not noticed by Pier and for a considerable time the incorrect address had been used.

15. The Applicants challenged the charges demanded for insurance:

(a) 24th June 2010 – 23rd June 2011 yearly insurance in advance £389.76 demanded of Mrs. Hennelly (not challenged by Ms Sala as this was before her purchase of her flat).
(b) 24th June 2011 – 23rd June 2012 yearly insurance in advance £412.79 demanded of Mrs. Hennelly and Ms Sala.
(c) 24th June 2012 – 23rd June 2013 yearly insurance in advance £453.69 demanded of Mrs. Hennelly and Ms Sala.

16. In each case half the insurance cost had been demanded of the lessee of each of the flats.

17. Mrs. Hennelly's evidence was that she had been an insurance broker for 30 years, dealing with bespoke insurance for high end performance people. She has dealt with brokers and arranges insurance for some properties in the Herne Bay area for which she does not receive any commission. She puts the insurance out to the market each year. At pp 44 to 46 of the Applicant's bundle are certificates of insurance provided to the Respondent by Brit Insurance. For the year 2009/2010 there is an index linked increase over the year 2008/2009 but then for 2010/2011 the premium almost doubles. The Brit Insurance premium for 2010/2011 (p 46) on a buildings declared value of £299,250 is £779.51. A like for like quote from Residentsline for insurance by Zurich Insurance (pp 49-51) in respect of the same declared value is in the sum of £471.32. Mrs. Hennelly wrote to Pier about this and received conflicting responses. One member of staff said the quote had never been received but another member of staff at Pier said it had been received and would be passed to those dealing with insurance. Mrs. Hennelly, assuming the matter was being dealt with and having received nothing to indicate otherwise, on 20th June 2010 sent a cheque for £235.66 (half her quote) attached to a copy of her previous letter dated 24th May 2010 in order to indicate how the sum was calculated (p55). Pier later dismissed the quote as being not like for like. Mrs. Hennelly suggested that the declared value should be £100,000 which was the figure given verbally to her by Willoughbys, a local firm with over 40 years experience in the area, but she did not have written confirmation of that. In a telephone call Mr. Cutler from Pier had promised to put the matter to the broker (at p 59 there is a print out of the call) but apparently that was not done. The broker only puts out the insurance to the market every 2 or 3 years.

18. Asked about the sudden increase in the sum insured and the declared value in 2010, Mr. Bland had no record of anyone looking at the subject property and thought the increase may have been as a result of a desktop valuation; perhaps requested by a solicitor or the Respondent. To instruct a surveyor to carry out a formal valuation would be a cost to the service charges which the lessees may not want to incur. He could not say what the valuation should be and stated that the Respondent would leave it to the Tribunal to decide the correct figure for the declared value. He submitted that the difference in premium was because of the different declared value and that if the declared value were reduced then the Respondent's insurers' quote would beat the Applicants' insurers quote. He referred to the decision of another tribunal concerning a property in Westcliffe Essex. That property was semidetached as opposed to terraced but otherwise identical and would be comparable. However, the Tribunal noted that the Westcliffe property had two bedrooms not one. Mr. Bland said his recollection was that it had only one bedroom but there may have been a small second bedroom.

19. The Tribunal considered that, from the inspection, the declared value appeared to be high. Mr. Bland pointed out that if there was a total loss by fire then there could be claims by occupiers of adjoining properties and restrictions of access to rebuild. There would also be professional fees.

20. Mr. Bland referred to p 49 of the Applicants' bundle where there was a quote from Residentsline of £471.32 on a declared value of £299,250. He had prepared a

comparison and provided copies. Mrs. Hennelly reminded us that she had asked Pier to refer back to the insurance broker and had been told that the broker had not put to the market and had not considered her quote. She considered it was now late in the day to produce comparisons. The only difference was the excess. She had not been able to obtain quotes on a block policy but she believed her quotes did include public liability. She had asked for like for like and that is what she received. She referred to pp 64 – 67 of the Applicants' bundle and considered that the Respondent's quotes included commission and inflated sums insured. Residentsline is designed for multi tenanted flats and covers public liability, landlord's contents etc. and loss of rent.

21. Mr. Bland submitted that the Respondent was unable to take out a home owner's property insurance in respect of each property in isolation. It was not available in the market as it was to an individual. What was reasonable was a commercial landlord's policy. Asked what benefit that was to residents, he said that the landlord could only do what it could, but there could be a benefit in dealing with claims. On the subject of which he had had no dealings with the claim concerning flooring in the ground floor flat and was not aware of the complaint until the inspection. At the Pre-Trial Review two insurance quotations were given by Mrs. Hennelly to Mr. Bland at his request and Mr. Bland stated that going forward it may be good to insure the subject property by itself rather than as part of a block policy. However he now stated that it could not be done. If the subject property was insured by the tenant the premiums would be lower and the benefits would be restricted. He submitted that there are benefits reflected in the premiums and that there are advantages and disadvantages to each type of policy.

22. Mr. Bland accepted that there is commission on the portfolio which is paid to the Respondent or another member of the group but not to Pier and he could not work out the commission as it was not within his knowledge.

23. Mr. Hennelly asked where in the lease it provided that the lessee had to pay commission in addition to the broker's commission. In her experience commission of 40% would be received on a large portfolio and the landlord could add any figure.

24. Mrs. Hennelly was concerned about the charges claimed for late payment. Her queries about insurance were not put to a broker as promised and not referred to a director as requested. She did not realise that considerable charges were being added while Pier were not responding to communications. She also stated that she had sent a cheque for ground rent and there had been a delay in paying it in. Mr. Bland stated that cheques are banked on the day received except at the end of the month when there may be a delay of one or two days for auditing. A sum of £70 had been put on the account in anticipation of taking court proceedings but when payment was received there was no need for proceedings and the £70 was credited back immediately. He accepted that the statement at p 74 of the Respondent's bundle did not have the addressee's name and so would not be received.

25. Mrs. Hennelly pointed out, as she had previously, the following provision in each of the leases:

"There shall also be paid by way of further or additional rent such sum or sums to be assessed in manner referred to in this Clause as shall be a one equal fifth share of the

amount which the Lessor may from time to time expend and as may reasonably be required on account of anticipated expenditure:-
(a) in performing the Lessor's obligations as to repair maintenance and insurance hereinafter contained..."

26. Mr. Bland was aware of this as in the Respondent's statement in reply, which he had prepared, it is stated that it is the Respondent's view that 'fifth' was inserted in error and the first three and a half pages of the statement concern the possibility of making an application to vary the leases. He accepted that the Tribunal could not consider such an application at this hearing.

27. Although not included in the Respondent's statement in reply, at the hearing Mr. Bland tried to argue that each of the lessees should pay one half of the charges for insurance and management. This was on the basis that there are only two flats. He sought to rely on paragraph 12 of the Third Schedule to the leases which reads: "To pay a one half part of the costs and expenses incurred by the Lessor in maintaining and repairing the communal parts of the Building." He accepted that the two provisions were contradictory but submitted that paragraph 12 further supported the payment by each lessee of one half. However, Mrs. Hennelly referred to paragraph 11 of the Third Schedule which reads: "To sweep and keep clean jointly with the tenants of the other flats the communal paths porch and hall" and submitted that 'communal' could be interpreted to mean 'communal paths porch and hall'.

28. Mr. Bland stated that at the time reminder letters about charges were sent he was not aware of any challenge to the insurance and that normally if there is a dispute, action would not be taken. He now accepted that there was a dispute and he was aware that the Tribunal had decided that the leases provided that each lessee pay only one fifth of the cost of insurance. Consequently he stated that the Respondent would not proceed with the claims for charges for late payment and reminder letters. He also conceded the visitation fee of £100 and disbursements of £60 dated 30th July 2012.

29. Insurance administration fees were claimed. Mr. Bland stated that in return for those fees Pier provide copies of certificates of insurance to lessees. This involves postage, printing, liaising with tenants and providing the staff to perform these tasks. It is a specific standard charge. Pier does not charge a management fee but charges for work done on an individual basis. The service charges claimed by Gateway would be greater if Gateway did this.

30. Mr. Bland referred to section 6 at p 7 of the Respondent's statement in reply under the heading management fees/service charges – Gateway where it is stated that at exhibit DB2 is the account budget in respect of the property for the year 2013 and that this represents the service charges under query by the Applicants. There is no DB2 attached but he then referred to pp 65 and 66. Presumably these are the appropriate documents. P 65 is in respect of the first floor flat and p 66 is in respect of the ground floor flat. They are both headed "Statement of Anticipated Service Charge Expenditure" and "Service Charge Period 1 Jan 2012 – 31 Dec 2012". Each one demands £400 calculated as follows: Repairs and Renewals £320; Management Fees £480 Total £800 – 50% = £400. As there had been no repairs or renewals Mr. Bland said the £320 was superfluous. That would leave £200 + VAT = £240 per flat claimed. Mr. Bland said that Gateway would usually inspect but Mrs. Hennelly said

there had been no inspection and provided at p 109 of the Applicant's bundle a copy of an email from Gateway confirming that they had not attended the property. Mr. Bland referred to decisions of other Tribunals in support of his submission that the fees were reasonable. Also that another managing agent would charge £1,000 to take on the subject property (in isolation not as part of a portfolio).

31. Mrs. Hennelly stated that the Applicants had self managed the subject property, not through choice but through necessity. For example, there had been a problem with an overflow pipe. They had contacted Pier and were told that Pier did not deal with that; just insurance. The Applicants dealt with the problem. At the Pre-Trial Review Mr. Bland had stated that with effect from 1st January 2012 Gateway had replaced Countrywide Estate Management Limited as the managing agent for service charges and minor repairs. However, it appeared that he now accepted that Countrywide Estate Management Limited had not managed the subject property. The email at p 109 of the Applicants' bundle states that Gateway were appointed on 1st March 2012. The first communication in respect of these charges (which bore the wrong address in respect of Mrs. Hennelly even though Mr. Bland stated that the correct address was known by November 2011) was dated August 2012. This was after the application had been made to the Leasehold Valuation Tribunal. Ms Sala had telephoned about the demand and was not advised of her obligations but was given account details to avoid further action.

32. Mr. Bland stated that the summary of rights exists and that it would have been included with the invoices from Gateway. However the evidence from the Applicants was that the summary of rights was not included.

33. Ms. Hennelly gave evidence that she had a two bedroom flat in a listed building where the management charges were £115 per annum and knew of a block of 15 flats in Bromley where the charges are £125 +VAT and in both cases the managing agents dealt with insurance.

34. The Applicants queried why Gateway should charge for a full year when according to the email from Gateway they were not appointed until 1st March 2012.

35. Mr. Bland stated that Gateway were on standby and could therefore charge fees. Asked what would have happened if the Applicants had tried to contact the managing agents before the Applicants were notified in August 2012 that Gateway were involved, Mr. Bland stated that if there had been a problem the Applicants would have telephoned Pier and would have been told to ring Gateway. However Pier work only office hours so he accepted that that would have been no good if an emergency had occurred outside office hours. He submitted that the Respondent could instruct a managing agent under clause (b) (p 12 of the Respondent's bundle) which imposes the obligation to pay one fifth.

36. Asked why it had not been necessary to appoint managing agents until March 2012, Mr. Bland stated that Pier has full time staff carrying out an audit and when they come across a property requiring managing agents they pass it to the property services department. The landlord has obligations to repair and maintain and before the appointment of Gateway, Pier would have dealt with such matters.

37. As to the application for an order under Section 20C of the Act, Mrs. Hennelly submitted that the Applicants had no alternative but to put the matter before the Leasehold Valuation Tribunal. Letters, emails and requests to refer the matter to a director had been ignored and matters claimed to be enforceable under the lease were not. Mr. Bland stated that there had been no costs of counsel incurred and the Respondent would not ordinarily charge costs to the service charges accounts. He did not intend to charge so had no objection to an order under Section 20C of the Act.

38. As to costs and reimbursement of fees, Mr. Bland submitted that there had originally been no such application and that depending on the Tribunal's determination the parties could then make submissions. However, the Tribunal informed him that the matters had been raised in the Applicants' case and would be dealt with.

39. Mr. Bland submitted that the Respondent had acted properly throughout. He accepted that three spare copies of the bundle had not been supplied but Mrs. Hennelly had received a copy and there had been no other negative conduct on the part of the Respondent.

40. Mrs. Hennelly stated that she had paid the Tribunal fees of £50 (application) and £150 (hearing) total £200.

41. Her costs had been flights to attend the Pre-Trial Review - £195; car hire - £160; flights to attend the hearing - £140; Car hire - £196; accommodation - £550; printing and postage £106; total £1,347 and £30 in fuel.

42. Mr. Bland submitted that the Respondent had not been vexatious or frivolous and that the flights were not recoverable.

43. Mrs. Hennelly pointed out that the Respondent had not, as required, provided information as to commission and written copies of documents. A very generalised statement of case had been provided. The Respondent had been asked to comply but had chosen to ignore that request.

44. On being asked about payment of money, Mr. Bland stated that if the Tribunal ordered money to be refunded to the Applicants Pier would pay within 28 days by cheque rather than a credit.

Reasons

45. The Respondent had not fully complied with the directions issued in that not all the evidence directed to be produced had been produced and copies of the documents which were produced had not been provided to the Tribunal at the time directed. However, Mrs. Hennelly had received by email (after some difficulty) such documents as had been produced in response to the directions and the Tribunal determined that the statement in Reply of the Respondent should be considered by the Tribunal.

46. It was accepted by Mr. Bland that there is the following provision in the leases:

"There shall also be paid by way of further or additional rent such sum or sums to be assessed in manner referred to in this Clause as shall be a one equal fifth share of the amount which the Lessor may from time to time expend and as may reasonably be required on account of anticipated expenditure:-
(a) in performing the Lessor's obligations as to repair maintenance and insurance hereinafter contained..."
The Tribunal found that the provision was clear and that the argument put forward by Mr. Bland in support of a claim that each lessee was obliged to pay one half was without foundation.

47. It follows that costs charged in seeking payment of the incorrect amount were not justified. In addition, Mr. Bland stated that if there is a dispute about a charge then action to recover the sum claimed is not taken, but at the time reminder letters were sent he did not know of the dispute. Had he known then presumably he would not have sent the letters and would not be claiming charges for pursuing the sums claimed. Other members of staff at Pier knew. In any event, at the hearing, he decided not to claim such charges.

48. As to insurance the position is far from satisfactory. The premiums charged are excessive. One reason for this is that insurance is arranged by a block policy. At the Pre-Trial Review two insurance quotations were given by Mrs. Hennelly to Mr. Bland at his request and he stated that going forward it may be good to insure the subject property by itself rather than as part of a block policy. However at the hearing he stated that it could not be done. Why he requested the quotes and made such a statement at the Pre-Trial Review was not explained and why it could not be done was not explained. When Mrs. Hennelly sent a quote to Pier, one member of staff said the quote had not been received but clearly it had as another member of staff said it would be passed to those dealing with insurance. When it was eventually rejected it was on the basis that it was not considered like for like, not that it could not be done. Mr. Bland suggested that there could be a benefit to lessees in improved claims handling but there was no evidence of that. In fact the only evidence of claims handling was of poor claims handling.

49. The sudden rise in the declared value in 2010 to £299,250 from £156,075 the previous year was not explained. Mr. Bland had no record of anyone looking at the subject property and thought the increase may have been as a result of a desktop valuation; perhaps requested by a solicitor or the Respondent. He could not say what the valuation should be and stated that the Respondent would leave it to the Tribunal to decide the correct figure for the declared value. Mrs. Hennelly gave evidence of a declared value of £100,000 given verbally to her but had no written evidence in support of the figure.

50. The Tribunal considered the Respondent's declared value to be too high but there was no written evidence in support of the figures from the parties. Clearly from the fact that Mr. Bland had no evidence of how the declared value figure had been reached and why it had almost doubled from 2010 to 2011 and his statement that the Respondent would leave it to the Tribunal to decide, is an acceptance that the charges were too high. Mr. Bland accepted that the Respondent receives commission on the insurance but did not state how much, although this was required by the directions. From what is known of the number of properties in the Respondent's portfolio and the

range of commission charged in such situations it is clear that the Respondent is making a very substantial undisclosed 'secret' profit to which the Applicants are contributing. In order to comply with the basic rule of reasonableness and using such figures as had been provided together with the Tribunal's own knowledge and skill, the Tribunal came to the conclusion that the following would be reasonable premiums in respect of the subject property in the open market in the normal course of business without secret profits being earned:

In respect of the year 24th June 2010 to 23rd June 2011 - £471.32

In respect of the year 24th June 2011 to 23rd June 2012 - £474.30

In respect of the year 24th June 2012 to 23rd June 2013 - £514.30

51. As under the terms of the lease each of the Applicants is required to pay one fifth of the premium for the subject property this means that each Applicant's share is as follows:

In respect of the year 24th June 2010 to 23rd June 2011 - £94.26

In respect of the year 24th June 2011 to 23rd June 2012 - £94.86

In respect of the year 24th June 2012 to 23rd June 2013 - £102.86

52. In each year an insurance administration fee has been charged. Had management fees been charged then it would have been expected that the insurance administration would have been included in those fees. However, no management fees had been claimed until Gateway appeared in 2012. In those circumstances, the Tribunal determined that Pier was entitled to make such a charge and that the following charges were reasonable:

In respect of the year 24th June 2010 to 23rd June 2011 - £11.69

In respect of the year 24th June 2011 to 23rd June 2012 - £11.94

In respect of the year 24th June 2012 to 23rd June 2013 - £11.94

53. As to the management fees claimed in respect of Gateway, Mr. Bland confirmed that there had been no repairs so the figure of £320 claimed could be ignored. That leaves a figure of £240 + VAT = £240 claimed against each Applicant. Mr. Bland submitted that the Respondent could instruct a managing agent under clause (b) (p 12 of the Respondent's bundle) but that imposes the obligation to pay one fifth, not one half as demanded. That would reduce the sum which could be claimed for a full year to £80 + VAT = £96 per lessee. But the evidence from Gateway is that they were not appointed until 1st March 2012 and on that basis a full year could not be charged. In addition the Applicants were not informed of Gateway's involvement until August 2012. That would seem to possibly justify a charge for maybe 5 months rather than a full year and would produce a figure of £40 including VAT. However, the Tribunal was not satisfied on the evidence provided that the required summary of tenants rights and obligations had been served with the

demand and consequently no charge is payable. The Tribunal's understanding is that those demands for £400 made of each lessee have not been paid but if they have they must be refunded.

54. There is before us an application for an order under Section 20C of the Act. We find that it is just and equitable in the circumstances to make such an order for the following reasons:
(a) Neither the Respondent nor anybody on its behalf properly responded to communications from the Applicants and the Applicants were left with no choice but to bring these proceedings to clarify the position.
(b) The majority of the charges claimed were excessive.
(c) Some of the charges were conceded at the hearing.
(d) Neither the Respondent nor anyone on its behalf complied fully with the directions given at the Pre-Trial Review or provided us with all the required evidence, for example as to commission and declared value.
We therefore make an order that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

55. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides that in relation to any proceedings in respect of which a fee is payable under those Regulations a Leasehold Valuation 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. Having regard, in particular, to the matters set out in paragraph 54 above, we find it is just and equitable to make an order requiring the Respondent to reimburse the Applicants' application fee of £50 and hearing fee of £150 in respect of these proceedings.

56. Mrs. Hennelly has made an application for costs. The Tribunal's power to order payment of costs is contained in paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides in its material parts in relation to costs:

> "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 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."

57. For the reasons set out at paragraph 54 (a) and (d) above we find that the Respondent acted unreasonably. Mrs. Hennelly listed the expenditure she had incurred. We find that the majority of her expenditure arose because she lives in Spain but we were satisfied that the Respondent should pay £100 towards her postage and printing costs.

58. The Respondent claimed that Mrs. Hennelly owed £872.50 as at 17th December 2012 but there must be deducted from that £964.26 in respect of insurance and £380 in respect of administration fees (total £1,344.26). Consequently the Respondent owes Mrs. Hennelly £471.76 in respect of overpaid charges. There must be added to that £200 reimbursement of fees and £100 costs making a total of £771.76.

59. The Respondent claimed that Ms Sala was 6p in credit as at 17th December 2012. As a result of this decision Ms Sala has overpaid charges by £668.76 + 6p credit which means that the Respondent owes Ms Sala £668.82.

60. Mr. Bland stated at the hearing that any sums which the Tribunal determined should be paid to the Applicants would be paid by Pier within 28 days by cheque rather than by a credit.

R. Norman
Chairman