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**HM COURTS & TRIBUNALS SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

In the matter of an application under  
Sections 27A and 20C of the Landlord and Tenant Act 1985

Case No. CHI/29UH/LSC/2012/0029

Property: **24 Buckland Rise  
Buckland Hill  
Maidstone  
Kent  
ME16 0YN**

Between: **DPS Property Holdings Limited  
(the Applicant/Landlord)**

and

**Mr Anthony Richard Pond  
(the Respondent/Tenant)**

Date of hearing: 21<sup>st</sup> May 2012  
Date of the decision: 11<sup>th</sup> June 2012

Members of the Tribunal: Mr D. Dovar LLB (Hons)  
Mr R Athow FRICS MIRPM

## **INTRODUCTION**

1. This is a transferred application under section 27A of the Landlord and Tenant Act 1985 ('the Act') from the Bromley County Court pursuant to the order of District Judge Thomas dated 17<sup>th</sup> February 2012 in claim number OUA24688 for the purpose of determining the amount of service charges payable for the period 2007 to 2010. Directions were given for this application on 27<sup>th</sup> February and 26<sup>th</sup> March 2012. There are also applications by DPS Property Holdings Ltd (hereafter referred to as 'DPS') for the hearing fee and costs and an application by Mr Pond for an order under section 20C of the Act.
2. DPS was represented at the hearing by Dr Austen Morgan and the Mr Pond by Cecily Crampin. Both parties had complied with the directions and therefore the Tribunal had a bundle prepared by each. The Tribunal heard evidence from Mr Desai, an employee of DPS and Mr Shah, their accountant. Mr Pond also gave evidence and there were a number of witness statements produced (with a Bromley County Court heading) in support of his case; although none of those witnesses attended.
3. On the morning of the hearing, there was a late application by Mr Pond to adduce further evidence in relation to management fees, namely evidence of fees charged for a different block. However, that application was refused because of both the lateness of the application and as it would not have assisted the Tribunal in determining the issue of management fees for this property in that the basis of the charges, the scope of work they included and the type of the block they covered were not evident.

## **THE PROPERTY**

4. Buckland Rise is a purpose built block of flats comprising 24 flats ('the Property'). The block is split into two with two communal entrances,

hallways and staircases. Flat 24 which is owned by Mr Pond is situated on the second floor of the second block ('the Flat').

5. The Tribunal, accompanied by Mr Pond, Ms Crampin, Mr Camicia and a Mr Ketan Patel (the latter two on behalf of DPS), inspected the communal parts. They consisted of a garden, car park, electrical housing, rubbish housing, two communal entrances, hallway and staircase. It was clear that some works had been very recently carried out; there were areas of internal plasterwork which looked as if they had just been filled in. The building appeared to be in want of repair, despite only having been built in 2007, there were already signs of neglect and although the lease required the landlord to redecorate the exterior every three years it appeared that the exterior had not been repainted since the building was originally constructed.

#### **LEASE PROVISIONS**

6. By a lease dated 10<sup>th</sup> April 2007, DPS (Buckland) Limited demised the Flat and a car parking space number to Mr Pond for a term of 125 years from 24<sup>th</sup> June 2006.
7. By clause 2 (13) Mr Pond covenanted ' ... (b) To pay and indemnify the Lessor against all costs and expenses including (without prejudice to the generality of the foregoing) solicitors' costs ... in respect of or incidental to any advice sought or any action reasonably contemplated or taken by or on behalf of the Lessor in order to prevent or procure the remedying of any breach of non-performance by the Lessee of any of the covenants conditions or agreements herein contained and on the part of the Lessee to be observed and performed.'
8. By clause 3 (5) Mr Pond covenanted to '(a) Contribute and pay on demand the proportionate part set out in paragraph (g) of Part V of the Schedule hereto of all costs charges and expenses from time to time incurred or to be

incurred by the Lessor in performing and carrying on the obligations and each of them under Part IV Schedule hereto as set out in the Notice mentioned in paragraph 11 of Part IV of the Schedule ...;'

9. Part IV of the Schedule provides for the Landlord's obligations including their repairing covenants and provides:

'8. The Lessor will ... (b) take all and any action or remedy available in its own name against any lessee who defaults in making any payments as provided in Clause 3 (5) (a) or 3 (5) (b) herein or otherwise and the Lessor will be entitled to collect all costs, charges and expenses (including solicitors costs, barristers fees, surveyors fees and Court costs or otherwise and also its own administration expenses) properly incurred in relation to incidental to any such action which the Lessor is unable to collect from any such defaulting lessee by incorporating all such items expended or to be expended as part of the costs charge and obligations as referred to in paragraph 9 of this part and shall be properly accounted for in accordance with paragraph 10 against of this part.

9. The Lessor shall keep proper books of account of all costs charges and expenses incurred by it in carrying out its obligations under the Part of the Schedule and an account shall be taken on the 31<sup>st</sup> March of each year during the continuance of the demise of the amount of the said costs charges and expenses incurred since the date of the commencement of the term of or the last preceding account as the case may be.

10. The account taken in pursuance of the last preceding paragraph shall be prepared and audited by a qualified accountant who shall certify the total amount of the said costs charges and expenses (including the audit fee for the said account and any other professional accountancy charge) for the period to which the

account relates and the proportionate amount due from the Lessee to the Lessor under this Lease credit being given for any amount which shall already have been paid under Clause 3 (5) (a) of the Lease.

11. The Lessor shall within two months of the date of which the said account is taken serve on the Lessee a Notice in writing stating the total and proportionate amount certified in accordance with the last preceding paragraph together with details if known and an estimate of the amount required for the following year.

12. The Lessor shall be entitled to charge a reasonable management fee ...

10. Mr Pond's proportionate part of the service charge under Clause 3 (5) (a) is 5.5% (paragraph (g) of Part V of the Schedule).

#### **THE STATUTORY PROVISIONS**

11. Section 18 of the Act defines service charges as those amounts payable by a tenant as part of or in addition to rent, which are payable directly, or indirectly for services, repairs, maintenance or insurance or the landlord's costs of management and the whole or part of which vary or may vary according to the relevant costs. Relevant costs are defined as the costs or estimated costs incurred or to be incurred by the landlord in connection with matters for which the service charge is payable.
12. Section 19 places a statutory limit on service charges by only allowing their recovery to the extent that they are reasonably incurred and where the service or work is to a reasonable standard.
13. Section 21B provides for certain information to accompany any demand for a service charge; a summary of tenant's rights. A failure to include this

information means that the sums are not due until the section has been complied with.

14. Section 27A confers jurisdiction on the Tribunal to determine whether a service charge is payable and if so, (amongst other matters) the amount which is payable and the date at or by which it is payable. The determination can be made whether or not any payment has been made and also in respect of anticipated expenditure.

### **THE SUMS IN DISPUTE**

15. The application, having originated from the County Court, was based upon estimated expenditure for the years 2007 to 2010.
16. There are three service charge periods in question, as per the exhibit to Mr Desai's first witness statement (the exhibit being his witness statement before the Bromley County Court) at paragraph 6, they were:
  - a. January 2007 to March 2008;
  - b. April 2008 to 23<sup>rd</sup> June 2009;
  - c. 24<sup>th</sup> June 2009 to 23<sup>rd</sup> June 2010.
17. The copy invoices provided were mostly contained in the exhibits to Mr Desai's second witness statement. They were:
  - a. 5<sup>th</sup> December 2007: An on account demand from Acorn as (managing) agent for DPS (Buckland) Limited for the period 1<sup>st</sup> April 2007 to 31<sup>st</sup> March 2008 for £1,083.68. A credit of £555.50 is given as payment received. This was under cover of a letter from Acorn, which made no reference to any summary of tenant's rights. It also included a breakdown of the estimated expenditure totalling £20,200 of which Mr Pond was liable to contribute 5.5%. Amongst the items were:

- i. £4,100, cleaning of common parts;
  - ii. £1,800 general maintenance;
  - iii. £3,950 block management fees;
  - iv. £650 accountant fees
  - v. £80 bank charges
- b. 18<sup>th</sup> March 2008: An on account demand from Acorn as agents for DPS (Buckland) Limited for the period 1<sup>st</sup> April 2008 to 31<sup>st</sup> March 2009 for £1,048.30. It also refers to an attached summary of rights and obligations and to a statement of anticipated expenditure. It also included a breakdown of the estimated expenditure totalling £16,440 plus insurance of £2,260 and amongst others estimated the following:
  - i. £2,040, cleaning of common parts;
  - ii. £1,800 repairs and maintenance;
  - iii. £4,320 block management fees;
  - iv. £650 accountant fees
  - v. £30 bank charges
- c. In July 2008, Acorn was replaced by Harrington and Sons as managing agents. By this time, DPS was the freeholder. They issued an on account demand on 20<sup>th</sup> January 2009. That sought payment of services in advance for the period 24<sup>th</sup> June 2008 to 23<sup>rd</sup> June 2009 totalling £1,689.58. There was no reference to any summary of tenant's rights and the Tribunal were not provided with any breakdown of the estimated costs. In around August 2009, Harrington ceased acting as agents and DPS dealt with the management themselves. They employed Mr Camicia to that end.

d. 22<sup>nd</sup> February 2010: An on account demand from DPS for the period 24<sup>th</sup> June 2009 to 23<sup>rd</sup> June 2010 in the sum of £1,403.68. There was no reference to any summary of tenant's rights. There is also an annual service charge forecast for the period 2009 to 2010. Mr Pond's share is said to be 6.32% of £22,210, namely £1,403.67. The forecast includes:

- i. £6,300 block management
- ii. £700 accountancy
- iii. £60 bank charges
- iv. £700 debt recovery.

18. On 19<sup>th</sup> October 2009, Mr Pond, after setting out a number of issues he had with the management of the Property, sent a cheque to DPS in the sum of £1,447.38.

19. DPS has since provided accounts showing actual expenditure for the periods in question. They show:

a. For the period January 2007 to March 2008, actual expenditure was £16,952. The interim service charges was said to be £14,557. The actual expenditure included the following items that are relevant to this case (i.e. not all items of expenditure are shown here):

- i. £1,000 for accountants;
- ii. £26 for bank charges;
- iii. £2,010 for cleaning;
- iv. £4,324 for management fees;
- v. £921 for general maintenance;



- vi. £264 for service charges arrears collection fee.
- b. For the period April 2008 to 23 June 2009, the interim service charges were said to amount to £31,120 and the actual expenditure was £20,614. The actual expenditure included the following items that are relevant to this case (i.e. not all items of expenditure are shown here)::
- i. £1,000 for accountants
  - ii. £8 for bank charges
  - iii. £3,646 for cleaning;
  - iv. £5,025 management fees (£4,320 for Harrington);
  - v. £2,730 for general maintenance (of which £2,000 is for 'compensation' and two amounts of £500 are for 'Vignes'; there is also a credit of £269.06 'per Acorn');
  - vi. £2,500 for service charges arrears collection fee.
- c. For the period 23 June 2009 to 23<sup>rd</sup> June 2010, the interim service charges were said to amount to £18,495 and the actual expenditure £18,401. The actual expenditure included the following items that are relevant to this case (i.e. not all items of expenditure are shown here):
- i. £1,760 for accountants;
  - ii. £83 bank charges;
  - iii. £953 cleaning and gardening;
  - iv. £1,043 general maintenance;
  - v. £6,300 Block management fees;
  - vi. £2,368 service charge arrears collection fee.

20. At the date that proceedings were issued (26<sup>th</sup> March 2010), DPS was claiming £2,759.94 by way of unpaid service charges from Mr Pond plus interest. However, this figure appears to include ground rent which this Tribunal has no jurisdiction to determine upon and at least one on account demand based upon a contribution of 6.32% and not 5.5% in accordance with the terms of the lease.
21. Given that the figures for the actual expenditure have been provided, it is the Tribunal's view that it would be of assistance to the parties to deal with those figures. However, the Tribunal considers that its views on the actual expenditure can also be taken as a determination, to the extent that it is necessary, on the sums recoverable under the estimated expenditure.

## **ISSUES ON RECOVERY**

### *Service*

22. DPS sent their service charge demands to the Flat. Mr Pond maintains that he did not receive them. The Tribunal did not take his evidence to amount to a challenge to the fact that the demands were sent; simply that he did not receive them. It seems that the demands were sent to the Flat. This is unfortunate as it appears that DPS was aware that Mr Pond was not residing there. However, Mr Pond has subsequently received the demands and therefore whether or not he got them when they were originally sent is not material to the issues that the Tribunal is asked to decide.

### *Change in landlord*

23. Mr Desai gave evidence that DPS (Buckland) Limited was a development company and that once the Property was constructed, ownership was transferred to a property holding company, the Applicant, DPS. This occurred in around May 2008.

24. Mr Pond asserts that DPS is not able to recover service charges for the period prior the freehold being transferred to it. In the Tribunal's view, he is correct in that any service charges that had accrued by the sale of the reversion would not be enforceable by DPS save where there had been an express assignment of the right to claim those charges (see section 23(1) and (2) of the Landlord and Tenant (Covenants) Act 1995). There was no evidence of such an assignment and therefore the Tribunal finds that DPS is limited to claiming service charges from the date that they purchased the freehold. The result of this is that they are, subject to what is set out below, not entitled to claim for any sums incurred prior to 30<sup>th</sup> May 2008 which is the date shown in the Land Registry Official Copy shown at Tab 2 of the Respondent's bundle. This includes all the actual expenditure for the period of accounts drawn up between January 2007 and March 2008.

*Stipulations in the lease*

25. DPS has not followed the terms of the lease in relation to compiling audited and certified accounts. Mr Pond claims that this means that they are not entitled to any sums. DPS says that their failure is no bar to recovery as it is not a condition precedent of recovery and Mr Pond has not suffered any prejudice.
26. Mr Shah confirmed both in his witness statement and in oral evidence that the service charge accounts were unaudited. When questioned as to why the service charge accounts ran for two periods of 15 months and not yearly from March as required by the lease, his answer was that for the first period there had been little expenditure in the period from the start of the active management of the block up to 31<sup>st</sup> March 2007 and so it was felt not to be appropriate to prepare accounts for that period, but rather, to incorporate this along with the first full year from 1<sup>st</sup> April 2007 to 31<sup>st</sup> March 2008. With regard to the second period of 1<sup>st</sup> April 2008 to 23<sup>rd</sup> June 2009 that was at

the request of DPS. They had requested this in order that the service charge periods in the Block coincided with other properties held by them.

27. Both parties have relied on *Leonora Investment Company Limited v. Mott MacDonald* [2008] EWCA Civ 857. In that case, Tuckey LJ pointed out that whether sums were due under a lease were a matter for construction of the terms of the particular lease. However, it is noted that in that case, the landlord failed to recover as on the terms of that lease, there was no other way of recovering service charges other than by complying with the requirements set out in the lease, which the landlord had not adhered to.
28. In this case the lease does provide for the tenant to pay a service charge (both on account and in arrears). However, in the Tribunal's view there are preconditions to that obligation. Clause 3 (5) sets out what those preconditions are. There is no other clause in the lease which entitles DPS Property to payment of service charge without meeting those preconditions. The preconditions are:
  - a. That the service charge sums must be set out in a notice ('the Notice');
  - b. The Notice is that specified in paragraph 11 of Part IV of the Schedule. That is a notice served on the Lessee within 2 months of the Lessor taking an account ('the Account'). The Account is as per paragraphs 9 and 10, which provide that it is an account running to 31<sup>st</sup> March each year and one that is prepared and audited by a qualified accountant who shall certify the total amount of costs, charges and expenses and the proportionate amount due from the Lessee. The Notice therefore sets out the total and proportionate amount due. If a payment on account is sought, then the Notice should also set out an estimate of the amount required for the following year.

29. The Tribunal considers that the failure to adhere to the terms of the lease is an impediment to the Applicant's recovery of service charges under the lease.
30. This is a contractual point and accordingly the Tribunal does not consider that it matters whether or not Mr Pond has been prejudiced in any way by the failure to adhere to the terms of the lease. However, the failure to adhere to the terms of the lease has highlighted some issues which could amount to prejudice. In particular, the failure to audit the accounts has meant that insufficient scrutiny was applied to payments of compensation to leaseholders. Mr Shah stated that £3,000 for the period ending June 2009 was in relation to compensation paid either to lessees or a third party of their choice for the suffering and loss of rent due to leaks into their flat. Mr Shah stated he was simply told that these were to be posted to the service charge account. No explanation was given as to how payment of compensation to a leaseholder could fall within the service charge and why no insurance claim was made. The Tribunal's view is that these sums are not service charge items and are not recoverable under the terms of the lease.
31. Therefore the Tribunal determines that no sums are currently due because of DPS's failure as described above to adhere to the service charge provisions in the lease.

*Summary of Tenant's rights – s21B*

32. Mr Pond challenged the recovery of any sums on the basis that the wording prescribed by section 21B of the Landlord and Tenant Act 1985 had not been included with any demands.
33. The Tribunal noted that there was a reference to the section 21B wording on one of the demands that was sent out by Acorn Estate Management on 18<sup>th</sup> March 2008 (although that was in relation to a demand sent on behalf

of DPS (Buckland) Limited). In contrast, no other demand makes reference to the summary.

34. Mr Desai in his second witness statement confirmed that wording had been included. However, he exhibited three generic pages for 'Administration Charges', 'Service Charges' and 'maintenance charges'. Only one of those would have been sufficient to satisfy section 21B; the one with the heading that included the words 'Service Charges' as the legislation sets out the only wording acceptable for the Notice. In evidence he confirmed that he had not sent out the demands but that he had employed people who knew what they were doing and that they would have attached the summary to each and every service charge demand.
35. The Tribunal takes into account the fact that often a copy of a demand will be kept by the managing agent, but not the reverse side with the statutory wording (or any attachments). The Tribunal is also conscious of the fact that Mr Pond was unable to put a positive case that the demands did not contain the statutory wording. However, Mr Desai's evidence was not a positive assertion that it had been done, but that he believed it would have been done. He had no direct knowledge on this point. Given that and the fact that only one demand makes reference to the summary, other than the March 2008 demand, the Tribunal is not satisfied that the summary was attached to the demands. Therefore, no sums are currently payable until an appropriate demand is accompanied by a correctly worded summary.

#### *Management fees – s19*

36. The current fees charged by DPS for managing the Property are £262.50 per unit per annum. Mr Pond considers that this is excessive; particularly when he states that they have not managed the Property well.
37. Mr Desai stated that the fee was based on the fees charged by Acorn and Herrington. Those were around £180 per unit. Mr Desai justified the uplift

in DPS's fee on the basis that they had more work collecting arrears. However, in addition to a management fee was a service charge arrears collection fee. Mr Desai was unable to reconcile those two facts in evidence.

38. In Mr Desai's third witness statement he confirmed that DPS relied on reports back from the cleaners who attended the Property once month. There did not appear to be any schedule of planned maintenance over the years.
39. It was clear to the Tribunal both from the inspection and from Mr Desai's evidence that little attention has been paid to this Property by DPS and the previous managing agents. Mr Desia accepted that there had been problems in the past. He also stated that if the leaseholders wanted a better service they would have to pay for it. Whilst this is correct, it was reflective of his attitude towards the Property and of the fact that little, if anything, is done in relation to management of the Property. This is supported by the expenditure on the maintenance of the Property over the last three periods. There has been very modest expenditure and for the period to June 2009, the whole of the sum for general maintenance was in fact payment of compensation to leaseholders who appeared to have been affected by DPS 's failure to properly maintain the Property to a professional standard.
40. The Service Charge Residential Management Code, which has been prepared by the Royal Institution of Chartered Surveyors and approved by the Secretary of State for England under section 87 of the Leasehold Reform and Urban Development Act 1993, sets out good practice that should be followed by managing agents. Mr Desai was not aware of this publication.
41. In the Tribunal's view, the management fee is too high given the low level of involvement and lack of experience of those managing, it is therefore

unreasonably incurred. Further, the work being carried out is not to a reasonable standard. A reasonable sum for DPS's management would be no more than £75 per annum per unit. Therefore for the periods in question, subject to the issues above, the Tribunal determines that per annum, DPS would be entitled to recover no more than £1,800.

*Service charge collection fees – lease / s19*

42. Three sums have been claimed under the heading service charge collection fees. The only evidence of how that sum was derived was on the basis that it was Mr Camicia's salary for chasing arrears. Whilst it may be possible to recover these charges under paragraph 8 (b) of Part IV of the Schedule to the lease, that requires paragraphs 9 and 10 to have been complied with. For the reasons set out above, those paragraphs have not been complied with and therefore these sums are not recoverable.
43. These are also matters that the Tribunal consider should be part of the management fee and therefore the Tribunal does not allow them as a separate charge.

*General maintenance*

44. In the period to June 2009, the sum of £3,000 in total is attributable to compensation payments made by DPS to leaseholders for damage to their flats and/or loss of rent caused by a leak. This was included under the heading general maintenance in the service charge at the express instruction of Mr Desai who himself was unsure as to the origination or cause of the leak. There was nothing in the lease that permitted the inclusion of these costs in the service charge and they are not recoverable.

*Bank charges – lease*



45. The Tribunal were taken to no provision (and could find no provision) in the lease which permitted the recovery of bank charges. These charges are therefore not recoverable by way of service charge.

*Accountancy charges*

46. These charges are challenged on the basis that neither DPS nor their accountants followed the terms of the lease. The Tribunal notes that the cost has increased in the last few years from £650 to £1,000 and then to £1,760. Mr Shah has included items such as the compensation payment in the accounts. The failure to adhere to the terms of the lease and the fact that some of the accountant's work was necessary because DPS wanted to change the year end date to suit them has added to the cost.
47. The Tribunal determines that a reasonable sum for this work if carried out in accordance with the terms of the lease would be £750. However, the failure to comply means that the accounts are of little practical value to either the landlord or the tenants. Should DPS wish to recover any service charges for the periods in question, to do so they would have to comply with the terms of the lease. This would require new audited accounts. In the circumstances, the Tribunal find that none of the accountancy fees are reasonably incurred and as a consequence they are not to be part of the service charges.

*Cleaning*

48. The problem with the cleaning is not that it is of a poor standard, but that once a month does not appear to be enough for a property of this size and occupancy. Therefore the Tribunal considers that the sum charged are recoverable, the poor condition of the Property is more to do with the lack of professional management. The Tribunal consider that where of block of this size is tenanted to the extent found in this instance it would be good management practice to place a contract for cleaning the communal areas

twice a week and the external areas weekly. This regime would prevent the build-up of dirt, debris and discourage the dumping of unwanted goods.

## **CONCLUSION**

49. Firstly, DPS are unable to recover any sum incurred by DPS (Buckland) Limited.
50. Secondly, no sums are presently due because:
  - a. Section 21B has not been proved to be complied with; and
  - b. The terms of the lease have not been complied with.
51. If those two factors were to be overcome then the following may be payable:
  - a. For the period January 2007 to March 2008, no sum is due.
  - b. For the period April 2008 to 23<sup>rd</sup> June 2009, no sum that was incurred by DPS (Buckland) Limited is recoverable, subject to that, as per the accounts save that:
    - i. Nothing for accounting;
    - ii. Nothing for bank charges;
    - iii. £1,800 for management fees
    - iv. Nothing for general maintenance;
    - v. Nothing for service charges arrears collection.
  - c. For the period 1<sup>st</sup> April 2009 to 31<sup>st</sup> March 2010, as per the accounts save that:
    - i. Nothing for accounting;

- ii. £1,800 for management fees;
- iii. Nothing for bank charges;
- iv. Nothing for service charges arrears collection.

52. Whilst the Tribunal has followed the accounting periods used by DPS, that should not be taken as an endorsement of them. In the Tribunal's view if the landlord wished to recover sums for those periods, the terms of the lease, including the accounting periods, should be adhered to. The sums set out above could then be used as a guide to what would be recoverable.

#### **HEARING FEE, COSTS AND SECTION 20C**

53. DPS has made an application for the refund of the hearing fee of £150 and for costs of £500 under Paragraph 9 of the Commonhold and Leasehold Reform Act 1993.
54. Given that DPS has not been successful in these proceedings the Tribunal declines to refund the hearing fee or make any order for costs under the 1993 Act. It does not consider that there was anything in Mr Pond's conduct of these proceedings which warrant a costs order.
55. In relation to recovery of costs under the lease. Before dealing with the section 20C application, DPS has sought a determination that it is entitled to its costs under clause 2 (13) of the lease. That was not a matter before the County Court and was not part of the transferred application. No separate application has been made and therefore the Tribunal does not make any determination in that regard.
56. Mr Pond seeks to limit the recovery of costs under the service charge under section 20C of the 1985 Act. It is noted that DPS does not wish to recover any sums under the general service charge but under clause 2 (13) and that it would be content for a section 20C order to be made on that basis. Given the determination, the Tribunal makes a section 20C order in relation to any

attempt to recover the costs of these proceedings by way of service charge. The Tribunal considers that sums demanded pursuant to clause 2 (13) are not service charges. Whilst the Tribunal notes the reference to *Forcelux Ltd* (LRX/33/2003) and the finding there that that any variable charge payable to a landlord for costs incurred by them are service charges, that was a decision before the coming into force of Schedule 11 of the 2002 Act. HHJ Rich QC in *Forcelux* recognised that once that schedule came into force, such charges would be administration charges, not service charges and that his decision would cease to be important. In the Tribunal's view, as clause 2 (13) relates to costs incurred in relation to a breach of covenant, it would be an administration charge and therefore not susceptible to an order under section 20C.

D Dovar LLB (Hons)  
Chairman