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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002 and SECTION 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference : LON/00AM/LAC/2011/0019

Premises : 62 Vanguard House, Martello Street, London E8 3QQ

Applicant : Mr Justin Hempson-Jones

Respondent : Proxima GR Properties

Date of Application: 5 December 2011

Date of Decision : 5 April 2012

Tribunal : Mr Robert Latham (Barrister)

Decision of the Tribunal

(1) The sum of £105 demanded to grant a licence to sublet is unreasonable. Rather a sum of £40 (+ VAT if payable) is reasonable.

(2) The additional sum of £85 demanded for the registration of the subletting is not payable.

(3) 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.

(4) The Tribunal determines that the Respondent shall pay the Applicant £50 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. The Applicant seeks a determination pursuant to Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether the charges levied by the Respondent in connection with the subletting of the premises are payable and reasonable.

2. The Applicant also seeks an order for the limitation of the landlord's costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act").

3. The application was issued on 5 December 2011. The applicant did not include this in the bundle, but is a document to which I have had regard. The applicant relied on three decisions of Leasehold Valuation Tribunals (LVTs) in support of his argument that the proposed charged were not reasonable.

4. Directions were given on 24 January 2012. The Tribunal identified the following issues to be determined:

   (i) Are the proposed fees either of £190 (single letting) or £300 (global letting) in relation to consent and registration of under-letting reasonable?

   (ii) whether an order under Section 20C of the 1985 Act should be made.

   (iii) whether an order for reimbursement of the application/hearing fees should be made.

5. The Tribunal was aware that there is another application involving the same landlord (Case Reference LON/OOAF/LAC/2011/0020). It directed that the two applications be heard together on a paper determination. When I come to discuss the reasons for my decision, I refer to this application as "Vanguard House" and the linked application as "Exchange Apartments".

6. The Applicant has prepared a bundle to which I refer in the decision. The Statement of the Respondent (1.2.12) is at C6. The Respondents state that they do not intend to make any claim for their costs to be paid from the service charge fund and suggest that s.20C does not therefore apply (see [11] of their statement). In a letter dated 16.2.12, the Applicant has responded to this case (at A1).

7. In these two applications, I have been provided with a number of decisions by the parties to which I refer in my decision. These include two decisions of the Upper Tribunal and some 14 decisions of Leasehold Valuations Tribunals. In Vanguard House, the lessor referred to BIR/44UC/LAC/2005/0003. This decision does not raise any points of principle and the market in February 2005 seems to have little relevance to that of 2012. It may be that for this reason, the lessor did not include a copy of this decision with their submissions.

8. When I first considered this application, it was apparent that the further decision given on 15 February 2012 by George Bartlett QC in *Holding and Management (Solitaire) Limited v Cherry Lilian Norton and others [2012] UKUT 1 (LC)* ("the *Solitaire decisions*") is relevant to the matters which I am asked to determine. I therefore invited the parties to make any further written representations in respect of this aspect of his decision by 16.00 on 30 March. Neither Applicant nor Respondent has made any representations in this case.

The Background

9. The property which is the subject of this application is 62 Vanguard House, Martello Street, London E8 3QQ ("the premises"). This is a one bedroom flat on the 12th floor of a purpose built block. The Applicant derives his interest from a lease dated 21 October 2005 whereby Barratt Homes Limited granted Sona-Ari Jack a 155 year lease of the premises (at F1). The Respondent is the freeholder.

10. Part One of the Eighth Schedule of the lease specifies the covenants by the lessee which are enforceable by the lessor:

Paragraph 25: "Not at any time during the Term..... 25.2 underlet the Demised Premises without the prior written consent of the lessor or its agents (such consent not to be unreasonably withheld or delayed) PROVIDED ALWAYS that such under letting shall be by means either of an assured shorthold tenancy agreement or any other form of agreement which does not create any rights of tenancy for the tenant after the term of any such agreement shall have expired AND ALSO to pay or cause to be paid to the Lessor such reasonable sum at the same time as the granting of every such consent."

Paragraph 27: "to give written notice within 28 days to the Lessor (or its agents) of any assignment transfer mortgage charge grant of probate letters of administration order of court or other matter disposing of or affecting the Demised Premises or devolution of or transfer of title to the same with a certified copy of the instrument effecting any such dealing AND ALSO to pay or cause to be paid at the same time to the Lessor such reasonable fee appropriate at the time of registration in respect of any such dealing PROVIDED ALWAYS that in the case of a contemporaneous transfer or mortgage the fee shall only be payable on one of such matters."

11. The Respondent's managing agents are Estates and Management Limited ("E&M"). E&M administer some 300,000 properties.

12. In September 2011, the Applicant approached E&M seeking their consent to their proposed sub-letting of the premises under an assured shorthold tenancy ("AST") for a term of 12 months (less 1 day) from 10 October 2011.E&M responded on 14 September enclosing their "Sublet Guidelines". The Sublet

Guidelines are premised on the assertions that the "freeholder's" consent is generally required under the terms of the lease for any subletting and that formal notice of the subletting must be served on the "freeholder". This language does not reflect the terms of the Applicant's lease. In this application, I am only concerned with their "Standard Consent".

13. The Sublet Guidelines provide:

"**£105**: Consent granted for individual sub-letting arrangements meeting the requirements of the terms of the lease, to include the review of all documentation by our legal and administrative team, issuing of all consent documentation and the updating of our records.

In addition your lease will require that notice of the subletting be given to the freeholder. We have incorporated the form of notice within the application for your convenience. As you w//ill see your lease provides for a registration fee for the notice to be given, our current registration fee is **£85**. Every time a new tenant takes occupation a registration fee will be payable.

If the same tenant continues to reside at the property the consent will need to be renewed and we only renew this for a further fixed term. The fee payable is 50% of the registration fee."

14. The Guidelines also make provision for a global letting fee of £300. However, the Applicant rather elected to pay the fee in respect of the single consent. It is therefore not necessary for me to consider the reasonableness of the global consent.

15. The Applicant paid the sum of £220 under protest in order to enable him to be able to proceed with the subletting. It is not apparent why the Applicant was required to pay £220 rather than the lesser sum of £190 (£105 + £85) due under the Guidelines.

16. It is to be noted that the fees differ from those in the Exchange Apartments application Vanguard House application where E&M require a single consent fee of £135, a registration fee of £75, and a global fee of £330.

17. The Respondent disputes the Applicant's right to challenge the reasonableness of the registration fee submitting that this is not a variable administration charge. The Respondent relies on three LVT decisions, namely LON/OOAY/LAC/2011/0010; CAM/26UJ/LAC/2010/0001 and LON/00AY/LVA/2011/0005. The Applicant rather relies on CAM/22UF/LAC/2010/0007 and CAM/00MC/LAC/2010/0003. These decisions have now been considered by the Upper Tribunal, albeit not on the point in issue.

18. The Applicant makes the exceptional application for an order of his costs in respect of his time in preparing for the tribunal which he computes at 9 hours. He suggests that E&M have acted wholly unreasonably in failing to amend their charging regime in the light of adverse findings against them.

The *Solitaire* and *Bradmoss* decisions

19. On 5 January 2012, the President of the Upper Tribunal (Lands Chamber), George Bartlett QC, gave guidance in the *Solitaire* decisions on the recoverability and reasonableness of administration charges. These appeal related to four linked cases:

(a) In *Holding and Management (Solitaire) Ltd v Cheryl Lilian Norton ("Norton")*, the respondent held the subject property for a term of 155 years as successor in title under a lease dated 25 February 2005. The Lessee's covenants included one not to underlet the property without the consent of the Company, such consent not to be unreasonably withheld and a covenant to pay all reasonable costs and expenses incurred in granting any consent under the Lease. The respondent, wishing to underlet the property, sought the consent of the appellant, who sought to charge her a fee of £105 for this (as well as £75 for the preparation of a deed of covenant and £75 for registration of the underletting).

(b) In *Samnes Ltd v Jessica Rudnay ("Samnas")* the respondent held the property for a term of 125 years as successor in title under a lease dated 30 March 2007. There was a covenant with the landlord not to underlet without the landlord's written consent, such consent not to be unreasonably withheld. The tenant was required within four weeks after any underletting to give notice in writing and deliver to the landlord or its solicitors a certified copy of any instrument of underletting and to pay to the landlord's solicitors a reasonable fee, not being less than £40, for the registration of any such notice. The respondent, wishing to underlet the property, sought the consent of the appellant, who sought to charge her a fee of £105 for this (as well as £75 for registration of the underletting).

(c) In *Flambayor Limited v Andrew Hill ("Flambayor")* the respondent held the property for a term of 125 years under a lease dated 3 May 2007 from Fairclough Homes Limited. There was a covenant, enforceable by the lessor and the management company, not to underlet the demised premises without the prior written consent of the lessor and the management company, such consent not to be unreasonably withheld or delayed. The respondent, wishing to underlet the property, sought the consent of the appellant, who sought to charge her a fee of £135 for this (as well as £75 for registration of the underletting).

(d) In *Holding and Management (Solitaire) Ltd v James Knight ("Knight")* the respondent holds the property for a term of 125 years as successor in title under a lease dated 18 December 1998 from Barratt Homes Ltd. The appellant was also a party to the lease. The tenant covenanted not to underlet the demised premises without the consent in writing of the management

company, such consent not to be unreasonably withheld. The respondent let the property under an assured shorthold tenancy agreement from 28 January 2010 at a rent of £750 per month, and the appellant sought from him a fee of £135 for consent to an underletting and a notice fee of £75.

20. In each case, the Leasehold Valuation Tribunal ("LVT") had considered the effect of s.19(1)(b) of the Landlord and Tenant Act 1927 and held that the landlord was not entitled to charge a fee in respect of its consent to the underletting. In his first decision, dated 5 January 2012, the President held that the LVTs were wrong and allowed the appeals. He was satisfied that such charges were administration charges under Schedule 11 of the 2002 Act, and in particular were variable administration charges (being charges neither specified in the lease nor calculated in accordance with the lease). Such charges are required to be reasonable and, as the LVTs had not considered this point, the parties were invited to make written submissions.

21. In his second decision, dated 15 February, The President went on to consider the reasonableness of the service charges sought. He reached the following decisions:

(a) *Norton*: The LVT had held that £75 for the deed of covenant was unreasonable and that £75 for registration was unreasonable but that £50 would be reasonable. This decision was not challenged on appeal. The President was not satisfied that a fee of £105 for the grant of consent in addition to fees for the covenant was justified. He concluded that a fee greater than £40 + VAT could not be justified and determined that this sum was payable.

(b) *Samnas*: The LVT held that £75 for registration was unreasonable, but that £40 would be reasonable. This decision was not challenged on appeal. The President was not satisfied that a fee of £105 for the grant of consent was justified and determined the same sum of £40 + VAT to be payable.

(c) *Flambayor*: The LVT held that £75 for the registration of a shorthold tenancy was unreasonable and not payable. This decision was not challenged on appeal. The landlord sought to justify the higher fee of £135 because the consent was a retrospective one. The landlord had not shown that any extra costs had been incurred. Again, the President determined that the sum payable was £40 + VAT.

(d) *Knight*: The LVT held that, since the property was let at a rack rent for less than 7 years, the lease itself excluded the registration process. This decision was not challenged on appeal. The President reached the same decision as in *Flambayor* on the fee for subletting.

22. I set out the relevant passages from the President's judgment:

"12. It is pointed out that the £105 sought in *Norton* and *Samnas* was for advance consent and the £135 sought in *Flambayor* and *Knight* was for consent where no application had been made by the lessee with consent being granted retrospectively. It is said that in each case an application for consent is processed by the appellant's agents. The procedure adopted is claimed to be extensive: the agents will undertake a perusal of a copy of the under-lease to ensure that the appropriate covenants are contained within it. Once completed, the full details of the under-lease will be entered by the agents in their records and will pass the appropriate information to the property managers, who need a complete current record of the occupants of all the flats.

13. In each case, it is said, the work comprises: (i) seeking legal advice from in-house lawyers in connection with the drafting of all documents; (ii) perusing each lease and determining the requirements for consent under it; (iii) requesting the proposed tenancy documents, examining them, and ascertaining appropriate requirements; (iv) engaging in correspondence, email communications and dealing with telephone queries; (v) the execution of documents, such as the recording of all information, utilisation of IT infrastructure and lease storage and retrieval.. After the grant of consent all documents are scanned onto the appellants' database. In each case the work involved is undertaken by trained administrators under the supervision of qualified legal staff. It is not possible, when so many applications have to be processed, to set either an hourly rate or a charge out rate. It is estimated, however, that an administrator will spend approximately two hours dealing with the application and the legal department about one hour.

14. Mrs Norton said that she had never contested the fee for the preparation of a deed of covenant and had reached agreement with the appellant prior to the LVT hearing that the fee for registration should be limited to £30 plus VAT. She took issue with the charge for consent, however. All that was necessary to ensure compliance with the covenants in the lease was for the underlessee to enter into a deed of covenant, as required by paragraph 9(d) of the Third Schedule to the lease to observe and perform the covenants and conditions in the lease. The lease specifically precluded the insertion of covenants other than this where the underletting was a shorthold tenancy. There was thus no need for the lease to be perused, nor was there any need for the appellant even to see a copy of the tenancy agreement, since it was sufficient that the deed of covenant had been entered into. For the same reason there was no need for a review of the documentation by the legal department. Mrs Norton suggested that the consent aspect of

the process, consisting of reviewing the deed of covenant and issuing a consent letter should take between ten and twenty minutes. In its statement of case to the LVT the appellant had suggested a fee of £150 for three hours work. At the same rate the fee for ten or twenty minutes' work would be £8.33 or £16.67, and even if it was held necessary to review the tenancy agreement, an additional 55 minutes at the appellant's suggested rate would add £45.83 to the fee.

15. Dr Rudnay said that under her lease the only obligation was to give notice within four weeks of the underletting. It could not be seriously suggested that the landlord would obtain his own references on a tenant already in occupation under a shorthold tenancy agreement. Her letting agents, Stepping Stones of Banbury were an experienced firm of repute and integrity, who introduced the tenant, obtained references and managed the necessary finances. The landlord had no advance knowledge of the tenant's identity or the agreed terms. There could be no purpose, nor any benefit to the landlord, in carrying out an expert's scrutiny of a familiar standard form assured tenancy agreement drafted by lawyers for a reputable agent. In the circumstances of her lease her estimate of the justifiable administration costs for such a tenancy was just over £50 excluding VAT.

16. Mr Hill said that in his original correspondence with Flambayor he made an offer of £40 for the granting of consent, but this was declined. The way in which payment was sought for the granting of consent was inequitable. The lease, whilst stating that consent must be obtained, set out no criteria for the type of tenant that would be acceptable, and the consent was a mere formality.

17. The appellants seek to justify the consent fee in terms that apply to all consents, and they do so by setting out (see paragraph 13 above) a list of work that, it is claimed, their agents do. It looks to me to be a list of all the things that could conceivably be done in connection with the grant of consent rather than the things that would need to be done in a typical case or that were in fact done in the cases under consideration. I agree with Mrs Norton that in relation to her shorthold tenancy agreement there was no need for the lease to be perused and that, in view of the covenant, there was no need for the tenancy agreement to be examined or for the documentation to be reviewed by the legal department. I am wholly unpersuaded by the appellant's assertion that

it would have been necessary for an administrator to spend approximately two hours dealing with the application and the legal department about one hour.

23. In the absence of any information on the part of the landlord as to what was actually done, by whom and for how long, the President determined the sums specified in paragraph 21 above.

24. On 15 February 2012, the President also gave his further decision in *an Appeal by Bradmoss Limited* ("*Bradmoss*") [2012] UKUT 3 (LC). This case related to fees of £135 for subletting and £75 for the registration of the underletting. The LVT had held that the registration fee was not an administration charge as defined by schedule 11 of the 2002 Act and therefore it did not have jurisdiction under paragraph 5 to deal with it. The lessees did not appeal on this point. The LVT also held that the terms of the lease did not permit the landlord to charge a fee for their consent to subletting and granted the landlord permission to appeal on this point. The President allowed the appeal and held that the landlord was entitled to make a reasonable charge as part of their consent.

25. The President went on to consider what fee would be reasonable for the granting of that consent. The lessor said that in each case an application for consent was processed by their agents. The standard procedure adopted was claimed to be extensive: the agents undertake a perusal of a copy of the under-lease to ensure that the appropriate covenants are contained within it. Once completed, the full details of the under-lease are entered by the agents in their records who pass the appropriate information to the property managers, who need a complete current record of the occupants of all the flats.

26. The President was wholly unpersuaded by the appellant's assertion that it would have been necessary for an administrator to spend approximately two hours dealing with the application and the legal department about one hour. In the absence of any information on the part of the appellant as to what was actually done, by whom and how long it took, he was not satisfied that a fee of £135 for the grant of consent in addition to the £75 fee for registration of the underletting was justified or that consent could reasonably have been refused in the event that the tenants had refused to pay it. It did not seem to him that a fee greater than £40 plus VAT could be justified, and he determined that amount to be payable.

Decisions of Leasehold Valuation Tribunals ("LVTs")

27. In these two cases, the parties have, directly or indirectly, asked me to consider the following decisions of LVTs:

(i) 29 Glenmuir Close, Manchester - MAN/OOBU/LAC/2008/0003 (Mr Holbrook, Mr Roberts and Mr Davey, 5 January 2009). The lessor was

Solitaire Property Management Co Ltd. **First**, the LVT held that a "global licence to underlet" fee was not an administration fee within paragraph 1(1) of Schedule 11 of the 2002 Act. The Tribunal found that it was not payable ...for or in connection with the grant of approvals under [the Applicant's] lease". Rather it was payable pursuant to a contract made outside the lease, namely a global licence to underlet. To put it another way, the lease did not entitle the lessor to require the lessee to enter into (or to pay for) a global licence as a condition of the grant of consent to an underletting. The lease contemplated that consent to underletting would be applied for, and granted, on a case by case basis through the standard licence. **Secondly**, if it was wrong, the LVT found that the fee of £136 + VAT was reasonable. **Thirdly**, the LVT held that the registration fee of £30 + VAT was an administrative charge for the purposes of the 2002 Act. Although it was not immediately apparent that this was a amount payable "for or in connection with the grant of approvals under his lease" because the registration of an underletting should not occur until after the question of the lease has been addressed, there was a sufficiently close nexus between the requirement to obtain consent to underlet and the registration requirement for the latter to be regarded as flowing from, and connected with, the former. **Fourthly**, the LVT found that this was a variable service charge. **Fifthly**, the LVT found that whilst a registration fee of £30 + VAT would not normally be excessive, the amount which was reasonable in the particular circumstances of the case was the registration fee of £25 + VAT which was specified in the relevant licence.

(ii) 2 Jetty House, Chertsey, Surrey – CHI/43UG/LAC/2009/0013 (J.B.Tarling and K.M.Lyons, 20 April 2010). The LVT was asked to consider the reasonableness of an administration charge of £100 + VAT charged by Peverel PM Limited for consent for a sub-letting together with the registration fee. The lease made express provision for both consent to any sub-letting and the registration of the AST. Both clauses required the lessee to pay a reasonable charge for each of these functions. The LVT was satisfied that the lessor was requiring just one fee for both functions. The Tribunal noted that no evidence was adduced by the applicant as to what a reasonable fee might have been in the property management "market" or any evidence as to what other managing agents were charging. The Tribunal had regard to four LVT decisions noting that these were not binding and that the facts and leases may have been different. The Tribunal also applied their considerable expert knowledge and experience. They concluded that a single fee of £75 + VAT was reasonable for both functions.

(iii) Flat 40, the Quadrant, Rickmansworth - CAM/26UJ/LAC/2010/0001, G.K.Sinclair, B.Collins and C Gowman, 1 July 2010). One of the issues considered by the LVT was the reasonableness and the liability to pay a fee of £99.88 (inc VAT) for registering a notice of underletting. The LVT held that on a proper interpretation of the particular lease, the fee was not an administration charge, so the tribunal had no jurisdiction. All that this lease required was that when the lessee underlets, he must give notice to the landlord and to the managing company, for which he must pay a reasonable fee of not less than £40 + VAT. The Tribunal observed that why this particular

type of charge was not included in paragraph 1(1)(a) of Schedule 11 of the 2002 Act was a "complete mystery". The Tribunal added that were the lessee to tender only what he considered to be reasonable, not being less than £40 + VAT, the lessor would have the options of (i) accepting the sum offered; (ii) issuing County Court proceedings and seeking to persuade a District Judge that the fee is reasonable; or (iii) applying to a LVT for a determination under s.168 of the 2002 Act that the lessee is in breach of covenant, prior to the service of a s.146 notice. In this third scenario, the tribunal could then determine whether the failure to pay a substantially higher fee that that specified in the lease was a breach if a proper, or "reasonable" amount has been tendered. The LVT subsequently refused the lessee permission to appeal.

(iv) 109 Caversham Place, Sutton Coldfield - BIR/00CN/LAC/2010/0003 (John de Waal, 31 August 2010). The lessor, Perevel Properties Limited, had sub-letting guidelines which specified fees of £150/£180 for a standard licence for individual subletting arrangements and £80 for subsequent renewals, or £300/£300 for a global licence and £50 for subsequent renewals. The LVT found that the fees set out in these guidelines were reasonable and thus payable. The Tribunal described it as "quite a modest charge when payable over the whole period of a tenant's ownership of the lease".

(v) The *Norton* case discussed above – CAM/22UF/LAC/2010/0007 (Bruce Edgington and David Brown, 23 November 2010). No issue was taken on whether the registration fee was an administration charge. The LVT found that the registration fee for the subletting of £75 was unreasonable and that a reasonable fee would be £50 + VAT. The LVT had found that the additional fees for subletting and for the deed of covenant were not payable.

(vi) Flats 10, 14, 19, 27, 28, 31 and 32 Bunhill Row, London E1 – LON/00AU/LAC/2010/0030 (Adrian Jack, 6 January 2011). The lease contained no terms prohibiting sub-lettings of the whole of the flats and no provision requiring the tenant to obtain the landlord's consent to an underletting. However, the lease did require the tenant within one month of the creation, disposition or devolution of any interest in the premises to give written notice thereof to the landlord, produce a certified copy of any relevant document and to pay the landlord or their solicitor a reasonable registration fee of at least £30. The LVT held that it had no jurisdiction as the charge was for registration only. It was not "in connection with the grant of approvals under [the] lease, or applications for such approvals". Neither was it "in connection with the provision of information or documents by or on behalf of the landlord". Despite this finding on jurisdiction, the LVT went on to consider the reasonableness of the fee sought of £75. The landlord had suggested that the "consent/registration involves around one hour's work". The most onerous of these were checking the head lease and the proposed tenancy agreement, including further information from tenants if necessary. The Tribunal noted that as the landlord had no power to refuse consent, much of this work was unnecessary. A fee of £30 (+ VAT if applicable) was the reasonable fee, albeit that this finding was not binding on the parties.

(vii) The *Samnas* case discussed above – CAM/38UB/LAC/2010/0009 (Bruce Edgington and David Brown, 18 February 2011). The LVT found that the fee of £75 claimed for registration of the subletting was unreasonable and not payable. The Tribunal noted that the fee to be charged for the registration of the notice of subletting was set out in the lease as being a minimum of £40 + VAT which was payable to the landlord's solicitors for the registration of the notice. The fee of £75 was rather claimed by E&M, the landlord's managing agents who were not solicitors. Their decision was that had the subletting been registered by the landlord's solicitors, £40 + VAT would have been the reasonable fee. The LVT noted the limited work involved. The practice would normally be for the notice of subletting and copy tenancy to be received, an acknowledgment sent and details of the transaction passed to the managing agent. The Tribunal observed that "this takes very little time". The primary lessee is still liable under the terms of the lease and there is very little fee earning professional input needed in this task. As noted above, the landlord did not appeal this aspect of the decision.

(viii) The *Flambayor* case discussed above – CAM/00MG/LAC/2011/0002 (Bruce Edgington and David Brown, 3 May 2011). The LVT found that the fee of £75 claimed for registration of the subletting by way of an AST was unreasonable and not payable. The Tribunal noted that the lease made specific provision as to what was to happen if the property was sublet by means of an AST. However, it made no provision allowing for registration or collection of a registration fee. There was express provision for the registration of a list of transactions affecting the property which must be registered. A sub-letting was not mentioned. As noted above, the landlord did not appeal this aspect of the decision.

(ix) The *Knight* case discussed above – CAM/00MC/LAC/2010/0003 (Bruce Edgington and David Brown, 9 May 2011). The LVT found that neither the subletting fee of £135 or the registration fee of £75 were payable, As the property was let at a rack rent for a term of less than 7 years, the lease excluded the registration process.

(x) 17 Primrose Place, Doncaster - MAN/00CE/LAC/2010/0024 (Mrs C Wood, 19 July 2011). In this case, the lessor's managing agents were E&M. The LVT considered the two packages in the "Sublet Guidelines" namely the "standard licence" of £135 and the "global licence" of £330. The global licence included the registration fee of £75; if the standard licence was paid and addition registration fee of £75 was payable. The LVT held that the fees for both the standard licence and global licences were administration charges within paragraph 1(1)(a) of Schedule 11 of the 2002 Act. Further, these were variable charges within paragraph 1(3). The LVT concluded that a sum of £150 was reasonable and payable in respect of the global licence and £75 in respect of the standard licence. The LVT preferred the evidence of the lessee to that of the lessor in respect of the work involved. The LVT had regard to the decision in CHI/43UG/LAC/2009/0013 and applied her own knowledge and experience.

(xi) 116 Chamberlayne Avenue, Wembley – LON/00AE/LAC/2011/0010 (Dr Helen Carr, 10 August 2011, as amended on 25 October 2011). The lessor was Proxima GR Properties and their managing agents were E&M. The LVT held that the registration charge of £75 did not fall with the definition of an administrative charge for the purposes of paragraph 5 of Schedule 11 of the Act. The Tribunal relied on the earlier decision of LON/00AU/LAC/2010/0030. The LVT held that the additional fee of £105 was payable and reasonable in respect of the standard consent to sub-letting of £105. The Tribunal accepted that the sum demanded represented a reasonable charge for the work required.

(xii) The *Bradmoss* decision discussed above – MAN/00BU/LAC/2011/0005 (Laurence Bennett and Elizabeth Thornton-Firkin, 15 August 2011). The LVT doubted whether a subletting under the terms of an assured tenancy fell within the registration requirements in paragraph 27.1 of Part 1 of the Eighth Schedule of the lease. The terms of that paragraph would seem to be similar with the terms which I am asked to consider. However, the LVT went on to consider whether, if they were wrong on this, the registration fee was an administration charge falling within Schedule 11 of the 2002 Act. They held that it did not fall within the terms of the statutory definition.

(xiii) 3 Blackburne Court, London SW2 - LON/00AY/LVA/0005 (Peter Leighton, 20 December 2011). The LVT was asked to determine whether the payment of a registration fee of £75 on the assignment of his lease was an "administration charge". The Tribunal had regard to the LVT decisions in LON/OOAE/LAC/2011/0010 and CAM/26UJ/LAC/2010/0001 and was unwilling to depart from them. In the event that the LVT had had jurisdiction, he would have found the fee of £75, whilst on the high side, was not so unreasonable that it would be improper for the landlord to recover it.

Applying these Decisions

28. In *Earl of Cadogan v Sportelli* [2008] 1 WLR 2142, Lord Justice Carnwath (as he was then) noted the important role of then Lands Tribunal to "promote consistent" practice. It was entirely appropriate for the Tribunal to offer guidance and, unless and until the legislature intervenes, to expect LVTs to follow generally that lead. The jurisdiction of the Lands Tribunal has now been subsumed into that of the new Upper Tribunal which is a "superior court of record". Carnwath LJ noted that it will be principally for the new tribunal to lay down guidelines as to the precedent effect of its decisions for different purposes.

29. In *Arrowdale Ltd v Conniston Court (North) Hove Limited* LRA/72/2005, the President, George Bartlett QC observed (at [23]):

> "It is entirely appropriate that, as an expert tribunal, an LVT should use its knowledge and experience to test, and if necessary to reject, evidence that is before it. But there are three inescapable requirements.

> Firstly, as a tribunal deciding issues between the parties, it must reach its decision on the basis of evidence that is before it. Secondly, it must not reach a conclusion on the basis of evidence that has not been exposed to the parties for comment. Thirdly, it must give reasons for its decision."

30. I have also had regard to the guidance given by Mr Justice Wood who gave the judgment of the Court of Appeal in *Yorkbrook Investments Ltd v Batten* (1985) 18 HLR 25 (at p.34):

> ".. we can find no reason for suggesting that there is any presumption for or against a finding of reasonableness of standard or of costs. The court will reach its conclusion on the whole of the evidence. If the normal rules of pleadings are met, there should be no difficulty. The landlord in making his claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable. .... If the tenant gives evidence establishing a prima facie case, then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions. The question of a reasonable charge arises in claims for a *quantum meruit*, and the courts over the years have not been hampered by problems about the burden of proof."

31. In these two applications, there are issues of law which I am required to determine, namely whether I have jurisdiction to deal with the registration fees and the global licence fee for subletting. On these matters, I have no guidance from the Upper Tribunal.

32. I must also determine the reasonableness of the fees which may be payable. I readily accept that this is a decision for me having regard to the particular facts of each case. I must have regard to the fees charged in the individual cases, having particular regard to the time engaged by the landlord on the relevant tasks. However, these are largely standard administrative processes. In assessing what a reasonable charge would be in respect of such standard administrative processes (my "starting point"), I am assisted by the decisions of both the Upper Tribunal and my colleagues at other LVTs. The President has now made five determinations as to what he assesses to be reasonable fees for consents to sublettings. The reasons given for his decisions are compelling.

33. I regret that I conclude that the thirteen LVT decisions which I have discussed have proved equally unlucky for both landlord and tenant. Both parties are equally uncertain as to what falls within the jurisdiction of a LVT as a variable

administration charge and as the level of fees which a Tribunal is likely to find to be reasonable.

34. Having read all the papers and authorities submitted by the parties, it falls to me to assess all the material before me and to apply my own knowledge and experience as to what is reasonable.

Issue 1: Is the Proposed Singe Subletting fee of £105 reasonable?

35. It is common ground that the landlord is entitled to charge a reasonable fee in respect of granting its consent to the subletting (see paragraph 10 above and Schedule 8, Part 1, paragraph 25 of the lease) and that I have jurisdiction to deal with the reasonableness of this charge. I understand that it is also common ground that the landlord has served the requisite statutory summary of rights (see C10). The Respondent contends that the fee of £105 is reasonable for the work involved. The Applicant rather suggests a figure of £50 to £75.

36. The Respondent (at C6-8) describes how the work involved in processing an application for consent is carried out by trained administrators under the supervision of qualified legal staff. Given the large number of such consents that they process, it is not possible to set either hourly or charge out rates. It is suggested that the average time for the various tasks is some two hours.

37. The Respondent has a duty on behalf of their clients to ensure that the terms of the lease are fully complied with. The staff will see the application, log it on their computer system and requisition a copy of the Lease to ensure that there is full compliance with the Lease terms. This will mean perusing a copy of the AST to ensure appropriate covenants are contained within the tenancy. Once these tasks are completed, full details of the tenancy will be registered. Appropriate information will be passed to property managers as a full record of occupants of all flats will be needed especially, in the event of an emergency.

38. The work required is said to comprise the following:

- Seeking legal advice from in house lawyers in connection with the drafting of all documents including licences offered;

- Perusing each lease and determining the requirements for consent under that lease;

- Requesting proposed tenancy documents, examining these and ascertaining appropriate requirements;

- Engaging in correspondence, e-mail communications and dealing with telephone queries;

- The execution of documents including staff time and additional resources required such as the recording of all information utilisation of IT infrastructure and lease storage and retrieval;

- After grant of consent, all documents are scanned onto the Respondent database, storing copies and charging correspondence addresses.

39. The Applicant suggests that most of these procedures can be standardised by a body as large as E&M. Most are basic administrative tasks. He suggests that the work involved is exaggerated. For example, the need to take legal advice is likely to be a rare occurrence. He notes that separate charges for registration and consent would appear to utilise much of the same administrative muscle and that it is difficult to see how these costs break down separately.

40. I conclude that the fee of £105 for the grant of consent is not justified. I determine a reasonable fee to be £40 + VAT (if payable). I reach this decision for the following reasons:

(i) I am wholly unpersuaded by the Respondent's assertion that it would be necessary for a trained administrator under the supervision of qualified legal staff to take around two hours.

(ii) The list of tasks said to be involved looks to me to be a list of all the things that could conceivably be done in connection with the grant of consent rather than the things that would need to be done in a typical case or that were in fact done in the case under consideration.

(iii) I agree with the Applicant that a large managing agent such as E&M will have standardised these processes.

(iv) There is no suggestion that this application for consent was anything other than standard.

(v) I am reassured in these conclusions by the decisions of the President. I note that the tasks described by the Respondent are almost identical to those described by the landlord in the *Solitaire* decisions (see [12] and [13] of the judgment).

(vi) I have also had regard to the decisions of the LVTs which I have summarised. I regret that I find them to be of limited assistance given the range of fees which they have found to be reasonable. I recognise that, given that range, the decision of the President is striking. However, applying my personal knowledge and experience, I see no reason to prefer the approach adopted by any of these Tribunals in preference to that of the carefully reasoned judgment of the President.

(vii) I have considered whether there are any factors which would lead me to adopt either a higher or a lower figure to that determined by the President. I am satisfied that there are none. In such circumstances, it would be wrong to adopt a different figure. This is an area where consistency is required. The costs involved in the growing number of applications to LVTs to challenge these fees are disproportionate to the sums in dispute.

Issue 2: The Registration Fee of £85

41. There are three distinct matters which I am required to consider:

(i) Is the registration fee a "variable administrative charge" within Schedule 11 of the 2002 Act? If not, I have no jurisdiction to deal with this aspect of the application.

(ii) Is a registration fee payable?

(iii) If so, is the fee of £85 reasonable?

42. First I am satisfied that the registration fee sought in this case is a variable administration charge for the purposes of the 2002 Act. This issue is whether it is "an administration charge", namely "an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly for or in connection with the grant of approvals under his lease" (see Schedule 11, paragraph 1(1)). I recognise that LVTs have reached different views on this issue. I am satisfied that in this case there is a sufficiently close nexus between the requirement under the lease to obtain consent to the underletting and the landlords demand for a registration fee in respect of this.

43. It seems to me that this adopts a proactive approach to the legislation. It is worth considering the consequences were I to be wrong and the registration fee is not a variable administration charge. Take the example of a tenant who considers that a fee demanded of £85 to be unreasonable and instead tenders a fee of £25. The lessor would have the options of:

(a) accepting the sum offered;

(b) issuing County Court proceedings and seek to persuade a District Judge that the fee is reasonable (see *Finchbourne Ltd v Rodrigues* [1976] 3 All ER 581); or

(c) apply to a LVT for a determination under s.168 of the 2002 Act that the lessee is in breach of covenant, prior to the service of a s.146 notice.

44. Secondly, I am not satisfied that the Respondent is entitled to payment of any registration fee having regard to the terms of this Applicant's lease. I find that the subletting of the premises under an AST does not fall within the registration requirements of paragraph 27 of Part 1 of the Eighth Schedule of the Lease (see paragraph 10 above). The Respondent has failed to identify

any other provision of the lease under which the registration fee may be payable.

45. In case I am wrong on the second point, I have considered the reasonableness of the fee demanded. It is a matter of regret that the President in the *Solitaire* and *Bradmoss* decisions was not given the opportunity to consider the reasonableness of the fees demanded for the registration of the subletting, particularly in the context of the related fees in respect to the requisite consents. I accept the Applicant's argument that there is a clear overlap between the administrative arrangements for the granting of consent and the subsequent registration of the underletting. I therefore start from the premises that £40 is the reasonable fee for the granting of consent. What further fee would be reasonable for the additional work in registering the underlease? I conclude that an additional fee of £85 is not justified. I rather determine that an additional fee of £25 (+ VAT if payable) is reasonable.

Further Matters

46. The Applicant applies for an order under section 20C of the 1985. Although the Respondent has indicated that no costs would be passed through the service charge, for the avoidance of doubt, the Tribunal nonetheless determines that, having regard to the decisions that it has reached, 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 on any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

47. The Applicant has made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that she had paid in respect of the application. The Applicant has been successful in his application. I am satisfied that he is entitled to a refund of the fee that he has paid.

48. The Applicant also makes the bold submission that he be awarded his costs in preparing for the tribunal having regard to the conduct of the Respondent. He suggests that E&M have maintained that current level of fees despite adverse findings by a number of LVTs. He asserts that their conduct "makes a mockery of the tribunal process" (see A4). Paragraph 10, Schedule 12 of the 2002 Act only permits me to make such an order if satisfied that a party has

acted "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings". This application was made before the President gave his judgments in the *Solitaire* and *Bradmoss* decisions. As is apparent from this decision, both parties have been able to rely on LVT decisions to justify the stance that they have taken. I find nothing improper in the manner in which the Respondent have responded to this application.

Chair: Robert Latham

Date: 5 April 2012

Appendix of Relevant Legislation

Commonhold and Leasehold Reform Act 2002

Section 158 – Administration charges

Schedule 11 (which makes provision about administration charges payable by tenants of dwellings) has effect.

Schedule 11

Meaning of "administration charge"

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.

Reasonableness of service charges

2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3 (1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

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.

Section 175

(1) A party to proceedings before a leasehold valuation tribunal may appeal to the Upper Tribunal (Lands Chamber) from a decision of the leasehold valuation tribunal.

(2) But the appeal may be made only with the permission of

(a) the leasehold valuation tribunal, or
(b) the Upper Tribunal.

(4) On the appeal the Upper Tribunal may exercise any power which was available to the leasehold valuation tribunal.

Landlord and Tenant Act 1927

Section 19 Provisions as to covenants not to assign, &c. without licence or consent.

(1) In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against assigning, underletting, charging or parting with the possession of demised premises or any part thereof without licence or consent, such covenant condition or agreement shall, notwithstanding any express provision to the contrary, be deemed to be subject—

(a) to a proviso to the effect that such licence or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such licence or consent; and

(b) (if the lease is for more than forty years, and is made in consideration wholly or partially of the erection, or the substantial improvement, addition or alteration of buildings, and the lessor is not a Government department or local or public authority, or a statutory or public utility company) to a proviso to the effect that in the case of any assignment, under-letting, charging or parting with the possession (whether by the holders of the lease or any under-tenant whether immediate or not) effected more than seven years before the end of the term no consent or licence shall be

required, if notice in writing of the transaction is given to the lessor within six months after the transaction is effected.

Landlord and Tenant Act 1985

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).