8299

HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**145B Grove Street Edge Hill Liverpool L7 7AF**
Applicant	:	**Mr D Rawlins**
Respondent	:	**Regenda Homes Limited**
Case number	:	**MAN/00BY/LSC/2012/0018**
Date of Application	:	**5 February 2012**
Type of Application	:	**Application for a determination of liability to pay and reasonableness of service charges**
The Tribunal	:	**P J Mulvenna LLB DMA (chairman) R D Pritchard FRICS**
Date of decisions	:	**3 August & 5 October 2012**

ORDER

1. That the service charges demanded by the Respondent in respect of the Property for the years ended 31 March 2005, 31 March 2006, 31 March 2007, 31 March 2008, 31 March 2009, 31 March 2010, 31 March 2011 and 31 March 2012 be reduced by 25% in respect of the charge for cleaning, 30% in respect of gardening and 50% in respect of management.

2. That the service charge in respect of the caretaker be reduced by 10% in for the year 2007/08, but are otherwise reasonable and payable by the Applicant.

3. That the services charges included in respect of the digital television aerial provision; window cleaning; and maintenance of digital television aerial, closed circuit television and door security are reasonable and payable by the Applicant.

4. That the principle of including in the service charges the actual cost of electricity charges is reasonable and such charges are payable by the Applicant following adjustment for any rebates and/or refunds due from the suppliers.

DETERMINATION AND REASONS

INTRODUCTION

1. By an application dated 5 February 2012, the Applicant applied for the determination of the reasonableness and recoverability of the service charges sought to be recovered by the Respondent for the years 2005 to 2012.

2. The Applicant is the tenant of the Property which is held under an assured tenancy evidenced by a tenancy agreement ('the Tenancy Agreement') made between the Maritime Housing Association Limited (1) and the Applicant (2) and dated 4 May 1993, although the tenancy is expressed to have commenced on 22 May 1989. The Respondent is the landlord and has a freehold interest in the Property.

THE PROPERTY

3. The Property is a second floor, two bedroom flat in a purpose built, three storey block ('the Block') containing 30 flats. The Block, which is situated on the eastern side of Grove Street, Liverpool (A5048), is part of a larger development comprising 147 self-contained flats, most of which are situated in similar blocks on the western side of Grove Street. For ease of reference, the location of the Block is referred to as 'Grove Street' and the location of the larger part of the Development as 'Groveside.' There is a small office on Groveside which serves the whole of the Development but which is, essentially, a point from which to make telephone contact with the Respondent's officers.

4. The Block has a number of entrances, each giving access through a secure door with an entry phone arrangement to six flats. The common area to which the doors give access is an unwelcoming brick stair well with poor decoration and floors covered with dated linoleum. The exterior communal areas comprise unallocated car park spaces, basic and poorly maintained garden areas, bin stores and a small, but reasonably pleasant, sitting area on Groveside. The benefit of the sitting area is probably of limited value to the residents of Grove Street as they are separated from it by a relatively busy main road.

5. The Development is adjacent to the University of Liverpool (it was originally constructed by Liverpool City Council in or around 1967 with a view to providing student accommodation) and has reasonable access to local shops, facilities and amenities, to public transport and to Liverpool city centre.

THE INSPECTION

6. The Tribunal inspected the common parts of the Development externally and of the Block internally on the morning of 3 August 2012. The Tribunal was also taken to the properties on Falkner Street (about ten minutes' walk from the Development) which are referred to in paragraph 22 below. The Applicant was present at the inspection. The Respondent was represented by Mr I B Alderson, solicitor, Mr P E Crosby, the Respondent's head of financial services, and Mr K Warriner, the Development caretaker. The Tribunal found the Property, the Block and the Development to be as described in paragraphs 3 to 5 above.

PROCEEDINGS

7. Directions were issued by a procedural chairman on 25 April 2012 and subsequently amended at the Respondent's request.

8. The substantive hearing of the application was held on 3 August 2012 at Cunard Building, Pier Head, Liverpool. At the substantive hearing, the same persons mentioned in paragraph 6 above represented the parties.

9. The Tribunal had before it the written evidence and submissions of the Applicant and the Respondent. It heard oral evidence and submissions from the Applicant and oral evidence from Mr Crosby, together with oral submissions from Mr Alderson on behalf of the Respondent.

10. It became evident during the course of the hearing that it was not going to be possible for the Tribunal to determine some of the issues in dispute without making assumptions or hearing further evidence and/or submissions from the parties. It was considered that the fairer and more equitable way forward would be to invite further evidence and/or submissions on those issues. In these circumstances, the Tribunal decided, having heard the parties' submissions on the matter, to proceed with the determination of those matters which could be disposed of on the basis of the evidence presented at the hearing and to give Further Directions on the remaining issues, then to adjourn the proceedings to a later date at which the outstanding issues could be considered with the benefit of the further evidence and submissions.

11. The determination of those issues which could be disposed of on the basis of the evidence presented at the hearing is recorded in paragraphs 15 to 38 below. An indication is also given in those paragraphs of the reasons for the need for further evidence and/or submissions. The Further Directions are set out at paragraph 39 below.

12. The reconvened hearing of the application was held on 5 October 2012 at the Appeals Tribunal building, 36 Dale Street, Liverpool. At the reconvened hearing, the same persons mentioned in paragraph 6 above represented the parties, together with Ms S Harvey, who accompanied the Applicant, and Mr A Morris, one of the Respondent's officers.

13. The parties complied with the Further Directions and the Tribunal had before it at the reconvened hearing the further written evidence and submissions of the Applicant and the Respondent. The Tribunal heard further oral evidence and submissions from the Applicant and oral evidence from Ms Harvey on his behalf; and further oral evidence from Mr Crosby, together with oral evidence from Mr Morris and further oral submissions from Mr Alderson on behalf of the Respondent. The determination of the issues at that hearing are set out in paragraphs 40 to 59 below.

THE LAW

14. The relevant law is contained in the following provisions of the Landlord and Tenant Act 1985:-

(i) Section 27 A(1) provides that 'An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to... (c) the amount which is payable'.

(ii) Section 27 A(3) provides that an application may also be made 'if costs were incurred '.

(iii) Section 19(2) states that 'Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise'.

(iv) Section 20(2) provides –
'In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.'

(v) Section 27A provides, so far as it is material to the present case –

'(4) No application under [the provisions relating to the determination by a leasehold valuation tribunal of the payability of service charges] may be made in respect of a matter which –
(a) has been agreed or admitted by the tenant...

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

THE TRIBUNAL'S DELIBERATIONS

15. The Tribunal considered the evidence and submissions and relied on its own knowledge and expertise to address the matters in issue and have reached the following conclusions on the basis of the evidence and submissions before them at the first substantive hearing.

(i) The Tenancy Agreement

16. The contractual basis for the provision of, and charging for, services is contained in the Tenancy Agreement. It is an inadequate vehicle for that purpose and the inadequacy is a major contributory factor to the failure of the evidence before the Tribunal at the first substantive hearing satisfactorily to address all the issues in dispute.

17. The only references in the Tenancy Agreement to services are in Clause 1(1) and (3) which provide:

'(1)...within the amount of the Rent set out above the Association has allocated £[1.40] as the cost of the provision of services referred to in 1.3 below.'

'(3) The Association shall provide the following services in connection with the Premises
[Communal lighting/cleaning/gardening, caretaker and maintenance of TV aerial.]'

The words in square brackets are manuscript additions to a printed form.

18. The Tenancy Agreement provides for the variation of the rent and, as it is expressed as an element of the rent, also the service charge.

19. The Tribunal conclude from the way in which the Tenancy Agreement has been prepared, a printed form with manuscript additions, that it was not prepared with an intention that it should relate only to the Development. That is understandable in terms of the administrative ease which would be provided for a landlord with a large and disparate stock spread over a wide geographical area, but it does create difficulties when, as in the present case, there is a dispute over the quality and cost of services.

20. In particular, the Tenancy Agreement does not contain any reference to the standards of service, to the way in which the provision of services will be managed, to the means by which costs are to be estimated, calculated or recharged, to the provision of accounts and/or other supporting documentation. In short, there is a total lack of transparency and accountability. It is that lack of transparency and accountability which has led to the present unsatisfactory state of affairs.

21. The Tribunal would suggest that the Respondent needs to address this issue and to prepare a statement of practice which provides the required transparency and accountability which is fundamental in any relationship which involves the recovery of charges. The person who ultimately pays is entitled to know precisely what he/she is being asked to pay for and how the charge has been calculated.

(ii) Electricity Charges

22. The Applicant produced a spreadsheet which had been prepared by the Respondent. It contained details of the properties included in the electricity supplier's invoice for the year ended 31 March 2010. It included a number of properties in Falkner Street, which the Tribunal were taken to as part of their inspection. Those properties were remote from the Development and the Respondent appears to have no interest in them. Mr Crosby was unable to say at the hearing whether or not the spreadsheet included all of the properties at the Development. He did, however, believe that energy consultants retained by the Respondent had reconciled the invoices by reference to the meters at the Development. He was unable to demonstrate this by means of documentary evidence. The Tribunal would emphasise that no criticism is made of Mr Crosby – he had not been given notice that he would be asked to comment on the issue.

23. It became clear to the Tribunal that a sustainable decision could not be taken in respect of the electricity costs with such uncertainties in the evidence. The only way forward was for further evidence to be provided. This was addressed in the Further Directions below. In the first instance, the Respondent was to reconcile the position in respect of the year ended 31 March 2010. If that did not present a clear picture, it would then be prudent to carry out the exercise for other years.

(iii) Caretaker

24. The Applicant claimed that the caretaker spent less time at the Development than admitted by the Respondent. He said that he could call witnesses to give evidence of fact to substantiate his claim. The Tribunal decided that, given the need for an adjournment in any case, he ought to be given the opportunity to do so. The issue is addressed in the Further Directions below.

25. The Tribunal also observed that the caretaker provided at least some of the communal cleaning and might have some quality control function, for example, in relation to the gardening. These might give rise to double counting in the recharges. The parties were invited to make submissions on this aspect.

(iv) Communal Cleaning and Gardening

26. The Applicant complained that the quality of the communal cleaning and gardening were poor and did not represent good value for money. The Tribunal's inspection revealed that both the communal cleaning and gardening were of poor quality.

27. The communal cleaning is limited to the stair wells. They have already been described by the Tribunal as unwelcoming (see paragraph 4 above). The general unwelcoming air is exacerbated by obvious signs of grime which are evidence of long standing neglect. The standard falls significantly below that which might reasonably be expected and the charge made for the service does not represent value for

money. The Tribunal finds that the charge is unreasonable and is to be reduced by 25% in respect of each of the years in issue.

28. The gardening is basic, comprising the care of a number of small lawned areas, clipped bushes and a few trees. The general impression is that the garden areas are given little more than cursory attention with an emphasis on growth containment. Close inspection reveals the presence of debris which appears to have been there for some time, extensive weed and moss invasion and neglect of some areas. The standard falls significantly below that which might reasonably be expected and the charge made for the service does not represent value for money. The Tribunal finds that the charge is unreasonable and is to be reduced by 30% in respect of each of the years in issue.

29. The Applicant suggested to the Tribunal that the standards at Groveside were higher than those at Grove Street. The Tribunal does not find that such is the case. Superficially, they appear better at Groveside because there are some larger lawned areas, but close inspection reveals the same shortcomings.

(v) Window Cleaning

30. The Tribunal has no sustainable evidence that the window cleaning service is of poor quality or not value for money. The windows throughout the Development appeared to be in a clean condition. The Tribunal finds that such charges are reasonable and payable by the Applicant.

(vi) Digital Television Aerial

31. The Applicant's challenge to this charge was based on the mistaken belief that he was being asked to fund the new aerial provided on the transfer of television services from analogue to digital signals. The Respondent confirmed that the cost of that aerial was to be borne by the Respondent. The charge now being levied was to provide a fund to purchase a new aerial when the present aerial needs replacement. It was estimated that such need would arise in 20 years' time. The contribution had been limited to £250.00 to avoid the need for consultation so far in advance of the anticipated provision.

32. The Tribunal finds that it would be prudent and reasonable to make the provision, but has no evidence upon which to assess the estimate of the life of the present aerial or the cost of a replacement at the appropriate time. Nonetheless, the sum included in the service charge does not appear to be excessive and the Tribunal finds that it is reasonable and payable by the Applicant.

(vii) Maintenance of Digital Television Aerial, Closed Circuit Television and Door Security

33. The Respondent accepted that further evidence needed to be produced on these issues and they are dealt with in the Further Directions below.

(viii) Management

34. There is no express provision in the Tenancy Agreement for the recovery of a management charge. The Tribunal accepts Mr Alderson's submission that the costs mentioned in the Tenancy Agreement will have included a management element and

that the present practice of showing them separately was not the introduction of a new head of charge, but a more transparent means of accounting.

35. The Tribunal finds, however, that there are serious shortcomings in the management processes insofar as they relate to the provision of services for which service charges are demanded. There is a clear and demonstrable failure in the management of the communal cleaning and gardening contracts which the Tribunal has found to be significantly below that which might reasonably be expected and not to represent value for money. The most modest of management input would have identified these shortcomings and instigated remedial action.

36. The absence of transparency and accountability in the service charge process is a direct result of the absence of management control in respect of the services and the demands for payment. The Tribunal has no criticism of the Respondent's general management processes, but there does appear to have been a lack of understanding that the provision of services for which a charge is made fall outside the general management of housing stock, the management of which is part of the overheads taken into account when deciding the level of rents. The management of those services for which separate charges are made must be demonstrably related to those services and be shown to be effective.

37. The Tribunal finds that there has been inadequate and ineffective management of the services for which the service charges have been demanded. To the extent that any such services have been provided, they fall significantly below that which might reasonably be expected and the charge made for the service does not represent value for money. The Tribunal finds that the management charges are unreasonable and should be reduced by 50%.

(ix) Residents' Association

38. The Applicant included in his application the question of recognition of a residents' association. There is little evidence on the matter before the Tribunal and it does appear that the parties have different views as to the documentation which has passed between them. In these circumstances, the Tribunal is unable to take a view and invites the parties to provide any relevant evidence and submissions to enable consideration to be given to any aspect falling within the Tribunal's jurisdiction. Reference has been made to the issue in the Further Directions below.

FURTHER DIRECTIONS

39. The Tribunal, having decided for the reasons mentioned above that further evidence and/or submissions were needed on certain matters, issued the following further Directions:

    1. The Respondent shall, within 20 working days, provide a reconciliation of the electricity charges for the year ended 31 March 2010 (supplemented by such further reconciliations as the Respondent considers to be appropriate) based on the invoices received from the supplier and the relevant meter readings. The Appellant shall provide submissions on such reconciliation within 10 working days of its receipt.

    2. The Applicant shall within 5 working days identify the witnesses to be called to give evidence as to the caretaker's hours of attendance at the Development; and to produce witness statements (to stand as evidence in chief) for each of the

witnesses within 10 working days. The Respondent shall within 10 working days of receipt of such witness statements lodge in response any submissions and/or witness statements (to stand as evidence in chief).

3. The Respondent is to prepare schedules of invoices in respect of the maintenance of the digital television aerial, the closed circuit television system and the door entry system and to lodge the same together with any submissions within 20 working days. The Applicant shall lodge any submissions in response within 10 working days of receipt.

4. The parties shall within 15 working days exchange evidence and submissions on the question of recognition of a residents' association and within a further 10 days lodge final evidence and submissions with the Tribunal.

5. Unless otherwise indicated the lodgement or provision of any information and documentation shall be by way of providing both the Tribunal and the other party with any information and the lodgement of any document by sending three copies to the Tribunal and one copy to the other party. Time shall run from receipt of these Further Directions by the parties which shall be deemed to be two days after they have been sent to the parties by the Residential Property Tribunal Service.

6. It shall be open to either party to request an amendment, addition or variation to these Further Directions.

7. The Tribunal does not intend to carry out a further inspection of the Property.

THE TRIBUNAL'S DELIBERATIONS

40. The Tribunal considered all the evidence and submissions and relied on its own knowledge and expertise to address the matters in issue and have reached the following conclusions on the basis of the evidence and submissions before them at the first substantive hearing as supplemented by the evidence and submissions before them at the reconvened hearing.

(i) Electricity Charges

41. The Respondent produced evidence that the properties in Falkner Street referred to in the spreadsheet (see paragraph 22 above) were incorrectly described in the bills from the suppliers and that the costs charged were, in fact, for properties in the Development. It had been calculated that this had led to an overcharge of around £13,000 which would be refunded to the residents.

42. The Applicant challenged the level of the overcharge calculated by the Respondent and submitted that an analysis of the evidence available suggested that there was a possibility that there had been further overcharging arising from incorrect metering and estimated supply at unsustainable and questionable levels. This possibility was increased as a result of changes in the supplier.

43. The Respondent accepted that there might be merit in the Applicant's challenge and submission and the parties were agreed that they should liaise with a view to carrying out a full reconciliation exercise over the periods in dispute and identify the correct charges which should have been made by the suppliers and then make any necessary adjustments to the amounts to be demanded from the residents.

44. The Tribunal cannot defer consideration of this issue any longer. It is in the parties' interests and in the public interest that proceedings are brought to finality within a reasonable time. The parties acknowledged that it was not possible to fix a timescale within which the proposed reconciliation might be completed. In these circumstances, the Tribunal indicated that the decision would be the endorsement of a principle rather than one of detail.

45. The Tribunal have determined that the principle of including in the service charges the actual cost of electricity charges is reasonable and that such charges are payable by the Applicant following adjustment for any rebates and/or refunds due from the suppliers. If, following the reconciliation exercise, there is still irresolvable dispute between the parties, it is open to either of them to make a fresh application to the Tribunal.

(ii) Caretaker

46. The Applicant was unable to call evidence to support his contention that the caretaker spent less time at the Development than admitted by the Respondent. The burden of proof lies with the Applicant to show that, on the balance of probabilities, it is more likely than not that the facts alleged by him are true. In the absence of such evidence, he has failed to discharge that burden. There is no merit in the Applicant's submission that he has been denied evidence by the Respondent to assist him in proving his case. There is no sustainable evidence that the Respondent has withheld any material evidence from the Tribunal and the Applicant has not indicated, save in very general terms, which evidence he alleges has been withheld or how it would assist the Tribunal in considering the issue.

47. The Respondent has admitted that, in the year 2007/08, the caretaker was engaged on duties not connected with the Development and has accepted that this would merit a 10% reduction in the recharge of his salary for that year. Subject to that admission, the Tribunal find that the charges for the caretaker are reasonable and payable by the Applicant.

(iii) Maintenance of Digital Television Aerial, Closed Circuit Television and Door Security

48. The Respondent produced evidence to support the level of the charges made for the maintenance of the digital television aerial, the closed circuit television system and door security. The Applicant challenged the charges on two bases: first, he claimed that the closed circuit television system and door security were not included in the Tenancy Agreement and that their provision amounted to a unilateral and unauthorised departure from the terms of the Tenancy Agreement; and, secondly, he contended that the charges for the digital television aerial, the closed circuit television system and door security were, in any event, inherently unreasonable.

49. The Applicant's first basis of claim is founded on Clause 1(5) of the Tenancy Agreement under the heading 'General Terms', which provides:

'With the exception of any changes in Rent or charges, this Agreement may only be altered with the agreement in writing of both the Tenant and the Association.'

50. The Tribunal has read and construed the Tenancy Agreement as a whole rather than seeking to construe an element of the document in isolation – a principle which was

confirmed in relation to tenancy agreements by Lord Neuberger of Abbotsbury in *Riverside Housing Association -v- White [2007] UKHL* 20. In particular, in this respect, the Tenancy Agreement also contains the following provision at Clause 2(5) under the heading 'The Association's Obligations':

'The Association agrees...To take reasonable care to keep the common entrances, halls, stairways, lifts, passageways, rubbish shoots and any other common parts, including their electric lighting, in reasonable repair and fit for use by the Tenant and other occupiers and visitors to the Premises.'

51. In addressing this issue, the Tribunal has had regard to Section 27A(4) of the Landlord and Tenant Act 1985 (which is set out, insofar as it is material to the present case, in paragraph 14 (v) above) and to the decision in *Julian Shersby -v- Grenehurst Park Residents Co Ltd [2009] UKUT 241 (LC)*. The judgement in *Shersby* contains no statements of principle but applies Section 27A(4) and (5) of the Landlord and Tenant act 1985 to the facts of the particular case. On that basis, it is clear that an assessment is fact sensitive and that each case must, therefore, be considered on its own merits.

52. In the present case, it is to be observed that the limitation on altering the agreement in the Tenancy Agreement expressly excludes 'any changes in Rent or charges.' The Respondent's obligations include that referred to in paragraph 50 above. The obligation not only requires the common parts to be kept in good repair but also '...fit for use by the Tenant and other occupiers and visitors to the Premises.'

53. The Tribunal finds that it would be reasonable for a landlord to recover the costs of repair and improvement by way of increased rent or service charge. In those circumstances, if the costs in this case were incurred pursuant to an obligation in the Tenancy Agreement, it would follow that their recovery by way of increased rent and/or service charge would fall outside the scope of Clause 1(5) of the Tenancy Agreement.

54. The unchallenged evidence of the Respondent was that the closed circuit television system and door security had been commissioned in the 1990s in direct response to complaints from tenants in respect of trespass and vandalism. Having regard to this position, the Tribunal finds as a matter of fact that the closed circuit television system and door security were installed pursuant to the obligation contained in Clause 2(5) of the Tenancy Agreement. They were intended to keep the common parts '...fit for use by the Tenant and other occupiers and visitors to the Premises.' In these circumstances, Clause 1(5) would not apply for the treasons given in paragraph 53 above.

55. Moreover, having regard to the above facts, the Tribunal finds that the Applicant would be debarred by Section 27A(4) of the Landlord and Tenant Act 1985 from making an application on the issue to a leasehold valuation tribunal. He has accepted the services and paid his conribution to the costs over a long period. As aptly submitted by Mr Alderson, the Tenancy Agreement has been varied by the conduct of the parties.

56. Turning to the second basis of the Applicant's challenge, it is evident from the documentation submitted by the Respondent that the costs recharged are those which have actually been incurred. It is unfortunate that the costs of the digital television aerial and the closed circuit television system have not been shown

separately. That does not assist the Applicant in assessing precisely what he is being asked to pay for, but it does not in itself render the charges unreasonable.

57. In *Yorkbrook Investments Limited -v- Batten (1986) 18 HLR 25* it was held that there is no presumption for or against the reasonableness of standard or of costs as regards service charges. If a defence to a claim for maintenance costs claims that the standard or the costs of the service are unreasonable, the tenant will need to specify the item complained of and the general nature – but not the evidence – of his case; once the tenant gives evidence establishing a prima facie case, it will be for the landlord to meet those allegations.

58. In the light of the evidence given, and the submissions made, by the parties, the Tribunal observes that the Applicant has raised no sustainable issues or evidence-based challenges as to value for money in relation to any of the individual costs recharged in respect of the maintenance of the digital television aerial, the closed circuit television system and door security. He has simply challenged them in general terms as he considers them to be excessive. In particular, no evidence has been produced of comparable service charges for comparable works and services at comparable properties which would suggest that the service charges are inherently unreasonable. The Tribunal are aware from their own experience and knowledge that the service charges for these items are not substantially different from those of other, similar developments in the immediate area or in the wider area of the Residential Property Tribunal's Northern Region. The Tribunal finds that the Applicant has not discharged the burden of proof as to the reasonableness of the standards of the services and the costs incurred. The Tribunal finds, therefore, that they are reasonable and payable by the Applicant.

(iv) Residents' Association

59. The evidence before the Tribunal suggests that the Residents' Association did not secure the requisite number of resident signatories to require formal recognition by the landlord. The parties agreed that they would liaise on the matter with a view to establishing a recognised Resident's Association. The Tribunal is unable to make a formal order in relation to the matter but would observe that the absence of a Residents' Association was not a material factor in the deliberation or determination of any of the issues in dispute.

COSTS

60. Neither party made an application for costs. The Tribunal has, nonetheless, considered the position.

61. Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides:

'(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.'

62. The Tribunal did not consider that any of the prescribed circumstances arose in this particular case and concluded that it would not be appropriate to award costs to either party.

63. The Applicant included in his application a request for an order to be made under section 20C of the Landlord and Tenant Act 1985 that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. The Tribunal has no evidence that the Respondent has acted unreasonably in any respect and has decided that it would not be reasonable or proportionate to make an order.

P J Mulvenna,
Chairman

8 October 2012