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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/16UG/LSC/2012/0170**

Property : **4, Greyrigge Court, Kents Bank Road,
Grange-over-Sands, Cumbria LA11 7HD**

Applicant : **Mr J Bolton and others**

Respondent : **Peverel Management Services Ltd (acting as
managers for Peverel Investment Services
Ltd)**

Type of Application : **Landlord and Tenant Act 1985
Section 20C**

Tribunal Members : **Mr J R Rimmer
Mr J Faulkner**

Date of Decision : **30th October 2013**

Order : **The costs of the Respondent in this matter are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any person in the current or future years.**

A Application.

- 1 The Applicants are parties to proceedings which were brought by them to seek a determination from the Tribunal in relation to a number of matters arising from the service charges relating to Greyrigge Court, Grange-Over-Sands. The

Respondent is the company having responsibility for the provision of those services

- 2 The decision of the Tribunal in relation to the question of the reasonableness of the charges was handed down in September of this year and is available on the Tribunal's website. The Applicants now ask that the Tribunal exercise its discretion under Section 20C Landlord and Tenant Act 1985 to order that the Respondent be prevented from adding all or part of its costs in relation to the Tribunal proceedings to the service charges for future years. This did form part of the Applicants' original application but time constraints prevented its consideration at the hearing and the parties were invited to make written representations for consideration by the Tribunal.
- 3 3 Section 20c is quite straightforward in its wording and sets out what the powers are that the tribunal has:-
 - (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... or leasehold valuation tribunal...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-...
 - (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;...
 - (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.

B Submissions

- 4 The Tribunal received a submissions on behalf of the Applicants from Mr Bolton in which he pointed out that in relation to two complaints in particular he had made he received no satisfactory response from the Respondent and he had been compelled to bring the Tribunal proceedings. The Respondent had fallen short of the high standards that it had set itself in its "Customer Charter" and the way its complaints panel had dealt with issues raised by Mr Bolton.
- 5 The Respondent's submission pointed out that, in effect, it had successfully defended itself and only minimal deductions had been made by the Tribunal from the original service charges levied. The Respondent had spent a disproportionate amount of time in investigating and responding to the issues raised compared with the amounts in dispute. It was entitled under the provisions of Paragraph 1 of the Fourth Schedule to the leases involved to employ the appropriate professional

assistance and recover this through the service charge and it was not appropriate in this case to disallow the recovery of the appropriate amounts.

C Decision

- 6 The Tribunal considered the most important issues to be those set out below and the findings of the Tribunal upon each of those issues have informed its final decision:
 - The basic premise adopted by the Respondent is that for the most part it had won its case and it was just that it recover its costs in some way.
 - The Respondent also argues that the proceedings were initiated only after it had sought to resolve matters within its own complaints procedure and the tribunal process was disproportionate given the amounts in question. The Tribunal is not greatly in favour of this argument, having seen at the hearing that there was considerable concern about the manner in which Mr Bolton's complaints had been dealt with.
 - There is no guidance available to the Tribunal, judicial or otherwise, as to how it should exercise its discretion in deciding what is just and equitable in the circumstances and it has therefore sought so far as it can to be fair to the parties whilst recognising that being fair as between them must also take account of the other leaseholders who have not partaken in the proceedings and who will ultimately be responsible for some part of the costs unless the Applicants are completely successful in their application. The Tribunal acknowledges that many such leaseholders may be regarded as "Passive Participants" in the proceedings, but equally there are undoubtedly leaseholders who have paid their services charges when demanded and through no fault of their own now face further costs. It is clear that Section 20C does not give them any sort of "super status" for particular beneficial consideration nor does the Section appear to be in such specific terms that it envisages a Tribunal apportioning costs according to "blame", "responsibility", or "participation".
 - Although some tribunal proceedings now embrace the principle of costs following the event as allowed for by appropriate legislation it is still a fundamental tenet of the tribunal process that it is as cheap and effective as possible without the cost implications of more formal proceedings.
- 7 The Tribunal is of the view that on balance the interests of justice are best served by an order under Section 20C to prevent the Respondents costs of these proceedings being added to future service charges.

J R Rimmer (chairman)
30th October 2013

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