LRX/130/2007
LRA/85/2008

LANDS TRIBUNAL ACT 1949

LANDLORD AND TENANT – LVT procedure -- Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 as amended Regulation 13 – Commonhold and Leasehold Reform Act 2002 Schedule 12 paragraph 10 – costs – whether a party to proceedings before an LVT acted "otherwise unreasonably" under paragraph 10(2)(b) in exercising its right to request an oral hearing rather than accepting the LVT's suggestion that the matter should be determined on paper

IN THE MATTER OF APPEALS FROM THE DECISIONS OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

BETWEEN **HALLIARD PROPERTY COMPANY LIMITED** **Appellant**

and

BELMONT HALL AND ELM COURT RTM COMPANY LIMITED **Respondent**

Re: Belmont Hall Court and Elm Court Belmont Hill London SE13 5DX

AND BETWEEN **CITY AND COUNTRY PROPERTIES LIMITED** **Appellant**

and

L BRICKMAN LIMITED **Respondent**

Re: 85 Oslo Court Prince Albert Road London NW8 7EW

Before: His Honour Judge Huskinson

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
On 31 October 2008

Simon Serota of Wallace LLP on behalf of the Appellants.
Peter Luck (by permission of the Tribunal) secretary and director of Belmont Hall and Elm Court RTM Company Limited on behalf of that Respondent
L Brickman Limited did not attend and was not represented.

The following cases are referred to in this decision:

Ridehalgh v Horsefield [1994] 3 All ER 848.

DECISION

Introduction

1. These are two separate appeals which raise the same point under Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform 2002 regarding the power of an LVT to make an order for costs against a party to an application to the LVT on the basis that that party has exercised its right to require an oral hearing before the LVT regarding the matter in dispute and has declined the suggestion of the LVT that the mater was appropriate for determination upon the papers and without an oral hearing.

2. In each case the application to the LVT was made by a landlord (the Appellants in the present appeals) for the purpose of obtaining a decision from the LVT as to the amount of costs to be paid to it in circumstances described below.

3. At the hearing before the Lands Tribunal L Brickman Limited ("Brickman") neither appeared nor was represented. There was however a letter from its solicitors asking that the written material previously sent in should be taken into consideration. As regard Belmont Hall and Elm Court RTM Company Limited ("Belmont") this Respondent was not professionally represented. However Mr Luck, a director and the secretary of Belmont, asked that he be allowed to represent Belmont. There was no objection from the Appellants and I agreed to this course.

Facts

4. The background circumstances leading to an application to the LVT in the case concerning Belmont are as follows:

(1) Belmont had made an application to exercise the right to manage the relevant premises pursuant to the provisions of the Commonhold and Leasehold Reform Act 2002. This claim to acquire the right to manage was withdrawn by Belmont by a letter from its agent dated 4 May 2007.

(2) In consequence by letter dated 18 May 2007 the solicitors for Halliard Property Company Ltd ("Halliard"), who are Belmont's landlords, wrote enclosing a schedule of costs incurred by Halliard in consequence of the claim notice which had been given and subsequently withdrawn. Belmont's agents were invited to agree such costs which totalled £2,733.64.

(3) Belmont's agents on 21 May 2007 wrote saying they would refer the letter to their clients but would anticipate they would not agree the costs and stating

"We would draw your attention to recent referrals on such matters of the Leasehold Valuation Tribunal and you may wish to reconsider your application accordingly".

(4) On 22 May 2007 Halliard made an application to the LVT in pursuance of section 88(4) of the 2002 Act for a determination by the LVT of the costs payable by Belmont.

(5) By directions from the LVT dated 8 June 2007 the LVT stated, in the pre-amble to the directions:

> "Having considered the papers so far filed, the Tribunal determines that this matter may be dealt with by way of documents only, without an oral hearing and without an inspection. But if party (sic) may request an inspection provided they do so within **14 days** of these Directions."

The directions went on to direct the matter be dealt with on the paper track without a hearing or inspection and required the Respondents' case to be served on the Applicant with a copy to the Tribunal on or before 25 June 2007.

(6) By a letter dated 11 June 2007 Halliard's solicitors requested that the matter be set down for an oral hearing.

(7) In consequence there was an oral hearing on 12 July 2007.

(8) The ambit of the matters in dispute before the LVT can be briefly stated and comprised:

(a) the question of whether certain costs incurred before Belmont's notice of claim could be recovered having regard to the wording "in consequence of" in section 88(1); of the 2002 Act

(b) whether the hourly rate of charge was excessive; and

(c) whether the amount of hours charged for was excessive.

(9) The substance of the LVT's decision on these points was that it found against Halliard on point (a) but in favour of Halliard on points (b) and (c).

5. In its decision the LVT, having reached the findings mentioned above on the substance of Halliard's application, turned to the question of the costs of the proceedings before the LVT. In paragraphs 35 and 36 the LVT stated as follows:

> "35. Finally, the Tribunal does not accept Mr Serota's submission that because a party is entitled to an oral hearing on request it follows that a request is necessarily reasonable. On the contrary, the Tribunal considers that, where there has been a considered decision of the Tribunal that the matter might be suitably dealt with by way of documents only, a party requesting an oral hearing ought to be able to show

that there were good reasons for imposing the time and costs involved on the other party and, indeed, on the Tribunal and that the request was not made irresponsibly. In making the request for an oral hearing, the Applicant's Solicitors offered no explanation of why it was considered that this matter was not suitable for a paper determination. At the Hearing neither party submitted any oral or other evidence, nor was any argument made which had not already been made in writing or any additional information provided which could not have been provided in writing. In these circumstances, it is the opinion of the Tribunal that the Applicant, through its Solicitors, acted unreasonably in connection with the proceedings by requesting an oral hearing unnecessarily and for no demonstrated and justifiable purpose.

36. Accordingly, the Tribunal has determined to order that the Applicant shall pay the Respondent's costs incurred in connection with this Hearing, not exceeding £500, by virtue of the power conferred by para 10 of Schedule 12 to the 2002 Act."

It is this order that Halliard must pay costs, not exceeding £500, against which Halliard appeals. Permission to appeal was granted by the LVT on the basis that the LVT considered that the scope of its jurisdiction and the exercise of it discretion under Schedule 12 paragraph 10 of the 2002 involved issues on which it was appropriate to seek guidance from a superior tribunal or court.

6. So far as concerns the facts regarding the case concerning Brickman these can be summarised as follows:

(1) Brickman had made a claim under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 to exercise its right to the grant of a new lease. This right had been admitted by City and Country Properties Limited (CCPL) and a formal counter notice under section 45 had been served, which referred to (and enclosed) a copy of a draft new lease.

(2) In due course this claim for a new lease became deemed to be withdrawn and CCPL's solicitors wrote to Brickman's solicitors on 21 January 2008 drawing attention to this fact and stating that details of CCPL's costs would be provided, which they were by a letter of 25 January 2008.

(3) By letter dated 31 January 2008 Brickman's solicitors wrote objecting to the costs being claimed. They raised certain points and asked for comments thereon. CCPL's solicitors responded on 4 February 2008 justifying the costs claimed and stating that in the absence of agreement they would make an application to the LVT for determination of such costs.

(4) There being no such agreement, CCPL did make the application to the LVT dated 22 February 2008.

(5) By directions dated 26 February 2008 the LVT informed the parties that it considered the matter was suitable for determination without an oral hearing but that if either party desired a hearing a request in writing should be made, preferably within 14 days. Directions were given for the service of the Respondent's case by 25 March 2008.

(6) By letter dated 27 February 2008 CCPL solicitors requested an oral hearing.

(7) In due course there was an oral hearing on 21 May 2008. At that hearing the points in issue between the parties concerned:

(a) The time taken by CCPL's solicitors to scrutinise the validity of the section 42 notice.

(b) The time spent in the preparation of the counter notice and

(c) The time spent in the preparation of the draft lease which was sent with the counter notice.

(8) The substance of the LVT's decision on these points was that CCPL succeeded on points (a) and (b) but failed upon (c), it being held that it was not reasonable for a draft lease to have been attached to the section 45 counter notice.

7. The LVT having reached the foregoing conclusion on the substance of the matter before it, the LVT then stated as follows:

> "9. The Tribunal is of the view that the Applicant's insistence on having an oral hearing in respect of a dispute amounting to £397.50 (representing the sum claimed and the sum offered) was unnecessary and unreasonable. Although the Applicant may have a 'right' to request an oral hearing, it is the Tribunal's view that this does not absolve the Applicant from all obligations to consider the issue of proportionality between the sums claimed and the sums expended in attending an LVT hearing. No reasons for requesting an oral hearing were set out in the applicant's letter of 19/3/08. The Tribunal does not accept that there is an important point of principle to be decided in respect of the attachment of draft leases to the Counter Notice. The Tribunal can envisage that where many, and many substantive changes to a lease are sought, it might prove beneficial to draft such a lease at an early stage. However, in this case no such changes have been proposed other than a modernised version of the lease and the Tribunal does not find the case relied upon by Ms Bone as setting any precedent that this Tribunal is required to follow. In any event, Ms Bone had not sought to make any new points not contained in her Witness Statement and had prefaced her remarks to the Tribunal that as she relied on her Witness Statement she "Would not repeat its contents". Therefore, the Tribunal determines that the behaviour of the Applicant in the unremarkable application has been unreasonable and unjustified, and the Respondent should not be expected to incur unnecessary costs simply because the other party wants to exercise its 'right' without any justification in doing so. Therefore, in the circumstances of this case, the Applicant must expect to pay to exercise its right to insist on an oral hearing and the Tribunal orders the Applicant pay to the Respondent the sum of £500 towards the costs incurred in respect of this application, this being the maximum sum allowance under the Act."

It is against this order for the payment of costs of £500 that CCPL appeals.

Statutory provisions

8. So far as concerns the Belmont case, Halliards right to seek payment of the reasonable costs incurred as a result of the service and subsequent withdrawal of the notice claiming the right to manage is contained in section 88 of the 2002 Act which provides in subsection (4)

> "Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement be determined by a leasehold valuation tribunal".

9. So far as concerns the claim by CCPL against Brickman in respect of the costs incurred as a result of the lapse section 42 notice the right to seek such costs is contained in section 60 of the 1993 Act. Section 91(2)(d) provides that the amount of any costs payable under, inter alia, section 60(1) is a matter which, if in dispute, is to be determined by the LVT.

10. The procedure in relation to proceedings before a leasehold valuation tribunal is governed by the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended. Regulation 13 as amended provides as follows:-

> "13.(1) A tribunal may determine an application without an oral hearing, if in accordance with the following provisions of this regulation,
>
> (a) it has given to both the applicant and the respondent not less than 28 days' notice in writing of its intention to proceed without an oral hearing; and
>
> (b) neither the applicant nor the respondent has made a request to the tribunal to be heard,
>
> but this paragraph is without prejudice to paragraph (3).
>
> (2) The tribunal shall –
>
> (a) notify the parties that the application is to be determined without an oral hearing;
>
> (b) invite written representations on the application;
>
> (c) set time limits for sending any written representations to the tribunal; and
>
> (d) set out how the tribunal intends to determine the matter without an oral hearing.
>
> (3) At any time before the application is determined –
>
> (a) the applicant or the respondent may make a request to the tribunal to be heard; or

(b) the tribunal may give notice to the parties that it intends to determine the application at a hearing in accordance with regulation 14.

(4) Where a request is made or a notice given under paragraph (3) the application shall be determined in accordance with regulation 14.

(5) ...."

11. Schedule 12 of the 2002 Act, which has force by virtue of Section 174 thereof, provides the power (in paragraph 8) for the making of procedure regulations including provision for the determination of applications without an oral hearing. Paragraph 10 of Schedule 12 provides as follows:-

"(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."

Appellants' submissions

12. Mr Serota's primary submission was that the LVT had, in each case, adopted the wrong approach to the meaning of "... or otherwise unreasonably" in paragraph 10(2)(b) of Schedule 12. He drew attention to the context and submitted that the expression should be construed *ejustem generis* with the words which had gone before, namely frivolously vexatiously abusively and disruptively. He further drew attention to *Ridehalgh v Horsefield* [1994] 3 All ER 848. This case concerned the approach to the making of a wasted cost order under the

Supreme Court Act 1981 Section 51 as amended, subsection (7) of which provided that "wasted costs" means any costs incurred by a party

> "(a) as a result of any improper, unreasonable or negligent act or omission ..."

on the part of any legal or other representative or employee etc.

13. Mr Serota drew attention to the judgment of the court (per Sir Thomas Bingham MR) when he dealt with the word "unreasonable" in the following terms

> "'Unreasonable' also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simple because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable."

14. Mr Serota stressed that the Appellants enjoyed an absolute right, consistent with the right conferred by Article 6 of ECHR, to have the dispute regarding the recoverable costs ruled upon by the LVT after an oral hearing. Regulation 13 of the 2003 Regulations does not qualify the right to request a hearing or require any reason to be given for such a request. In consequence Mr Serota submitted that there would have to be something exceptional in the circumstances to justify a conclusion that to exercise this absolute right (namely to request a hearing) was to act "otherwise unreasonably" within paragraph 10 of Schedule 12 to the 2002 Act. He accepted that in theory circumstances might arise where such a request for an oral hearing was indeed unreasonable in this sense, for example (he suggested) if there had been a Calderbank type offer by a tenant for the payment of costs in a sum more than the landlord ultimately obtained, or if a landlord asked for an oral hearing for the purpose of deliberately delaying or inconveniencing a tenant rather than because of the merits or substance of the matters in dispute. However he submitted there was nothing approaching such conduct in the present case.

15. In further support of his argument that the requesting of an oral hearing was not made "otherwise unreasonably" within paragraph 10 of Schedule 12 Mr Serota drew attention to the following matters.

16. The matter of criticism levelled against each Appellant by the respective LVTs was the requesting of an oral hearing. However the directions issued by the LVTs either required or requested that the respective Appellant made a request for an oral hearing (if such a request was to be made) within 14 days, which was before the time specified for the service of a statement of case by the Respondent. Accordingly the request for an oral hearing was in each case made at an early date at a time when the Appellant did not know the extent of the dispute which would be raised by the Respondent. Also the LVT's suggestion that the matter should

be decided on paper was made prior to the LVT knowing what points would be raised by the Respondent, rather than being "a considered decision of the Tribunal that the matter might be suitably dealt with by way of documents only" as described in the Belmont case.

17. Further Mr Serota pointed out that the absolute right to request an oral hearing was not made conditional upon the giving of good and sufficient (or indeed any) reasons for so requesting. He therefore submitted that the LVTs had erred in holding against the Appellants the omission of any reasons being given when the request for an oral hearing was made.

18. Mr Serota drew attention to the fact that each of the applications to the LVT was in respect of a claim for costs and that sometimes the panel constituting the LVT may be comprised of persons inexperienced in dealing with question of costs. It was therefore reasonable to wish to attend an oral hearing in case any such problem arose so that explanations could be given. More broadly Mr Serota submitted that there was an advantage (which there was no reason for a party to forego) in being present and able to deal with any difficulties which might arise in relation to that party's claim.

19. He submitted that in fact there was little saving of time in preparing exhaustive written submissions on the one hand rather than preparing briefer documentation to be supplemented by an oral presentation on the other hand, especially for his firm, which represented each of the Appellants, which was located only a few minutes walk from the LVT premises.

20. He submitted that in each of the two cases there was a point of potential importance, namely:

(1) In the Belmont case there was the proper interpretation of "inconsequence of" in section 88 of the 2002 Act. There was also the potentially important point regarding the rate of hourly charge and the hours taken.

(2) In the Brickman case there was the question of the reasonableness of adopting a practice of sending a draft lease with the counter notice.

Respondent's submissions (Belmont)

21. On behalf of Belmont Mr Luck advanced the following points.

22. He accepted that there was a right for Halliard to require an oral hearing but he submitted that with rights go responsibilities and the right to require an oral hearing must be exercised responsibly and reasonably.

23. He accepted that as at the date at which the request for an oral hearing was made (in accordance with the LVTs directions) it may not have been unreasonable for Halliard to request an oral hearing. However he submitted that the LVT was entitled to look at subsequent

events to see whether in fact the request (or the persistence in the request) for an oral hearing was reasonable.

24. Mr Luck accepted that no reasons were required to be given at the time of requesting an oral hearing, but when at a later stage consideration was being given to whether such a request was reasonable or unreasonable it was then that party would be expected to justify with reasons the request for an oral hearing.

25. Mr Luck drew attention to the fact that a decision of one LVT does not bind another LVT and that therefore it was disproportionate for Halliard to be so concerned regarding the outcome of the case as to require an oral hearing. He submitted that there had been a "rush to the Tribunal" in the sense that little time had been given to seek to agree the matter before the application was made by Halliard (although he accepted that as matters turned out the dispute remained unresolved despite the substantial further passage of time before the LVT hearing).

26. As regards the expertise upon costs of an LVT he pointed out that the decision was within the LVT's jurisdiction and the LVT must be assumed to be competent to exercise it.

27. As regards the personal factor, namely that Halliard's solicitors had offices close to the LVT, he suggested that consideration should also be given to the other party and here Belmont's representatives had offices in Hertford.

28. So far as concerns the points raised by the LVT at the oral hearing with Halliard's advocate (Mr Serota) he suggested that the limited questions raised could have been dealt with by being raised and answered in correspondence.

29. As regards the wording of paragraph 10 of Schedule 12 he submitted that Halliard had acted both abusively and unreasonably.

Respondents' submissions (Brickman)

30. As already recorded Brickman neither appeared nor was it represented. However submissions had been made on its behalf by its solicitors letter of 1 August 2008 enclosing a copy of their letter of 17 June 2008 (which had been sent to the LVT). In summary it was submitted that, while asking for an oral hearing may not by itself be unreasonable, it was unreasonable on the facts of Brickman's case bearing in mind the very small amount in dispute. It was also pointed out that even if the original request for an oral hearing was reasonable CCPL could have (and should have) agreed subsequently to a paper determination once they were aware of Brickman's comments on the various items in dispute.

31. It was submitted that it was wrong to suggest that making representations on paper would take as long as dealing with the matter at an oral hearing.

32. Brickman solicitors reasserted the merits of the arguments (on which Brickman won) that CCPL was not entitled to claim the costs of the draft lease.

33. It was not accepted that the word "unreasonably" should be construed *ejustem generis* with the previous words in the sentence. It was also suggested that CCPL's conduct could be considered as frivolous.

Conclusions

34. In my judgment neither of the orders for costs made against Halliard or CCPL can stand. My reasons for so concluding are substantially based upon those advanced in argument by Mr Serota and are as follows.

35. I consider that, with respect, the LVT has in each case given too wide an interpretation to "otherwise unreasonably" in paragraph 10 of Schedule 12 and has also erred in its approach as to whether Halliard and Brickman did act unreasonably in requesting an oral hearing.

36. So far as concerns the meaning of the words "otherwise unreasonably" I conclude that they should be construed *ejustem generis* with the words that have gone before. The words are "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably". The word "otherwise" confirms that for the purposes of paragraph 10 behaviour which was frivolous or vexatious or abusive or disruptive would properly be described as unreasonable behaviour. The words "or otherwise unreasonably" are intended to cover behaviour which merits criticism at a similar level albeit that the behaviour may not fit within the words frivolously, vexatiously, abusively or disruptively. I respectfully adopt the analysis of Sir Thomas Bingham MR (as he then was) in *Ridehalgh v Horsefield* as to the meaning of "unreasonable" (see paragraph 13 above) which I consider equally applicable to the expression "otherwise unreasonably" in paragraph 10 of schedule 12 to the 2002 Act. Thus the acid test is whether the behaviour permits of a reasonable explanation.

37. I also consider it of importance that the statutory provisions grant to a party an absolute right, unqualified by the need to produce any reasoned justification for insisting upon such right, to have an oral hearing. There being this unfettered right to require an oral hearing, being a right consistent with article 6 of the ECHR, there would in my judgment need to be shown exceptional circumstances if a party was to be found to have acted unreasonably in doing no more than what was its right, namely to request an oral hearing.

38. In neither of the present cases do the facts constitute such exceptional circumstances as to justify a finding that the respective Appellant acted unreasonably in requesting (and in persisting in the request for) the oral hearing to what it was entitled.

39. The timetables given by the LVTs in their respective directions to Halliard and to CCPL are significant. In the Halliard case the Appellant appears to have been required to request an

oral hearing (if it was going to do so at all) within 14 days. In the CCPL case the Appellant was requested to make any such request within 14 days. Within this time scale the respective Appellants did not know the full ambit of the respective Respondents' cases and thus did not know the extent of any challenge to the costs being claimed. It cannot therefore in my judgment be said to have been unreasonable to make the request for an oral hearing in either case if one judges the question as at the date at which such request was made. It would theoretically have been open to the LVT to consider whether, supposing that the request for an oral hearing had been reasonable when made, the respective Appellant had acted unreasonably in not retreating from that position at a later date after the submission of the respective Respondents' case, but that is not the basis of the decision of either of the LVTs.

40. In any event I do not accept that it was unreasonable for either of the respective Appellants to omit to cancel their request for an oral hearing after receiving the statement of case from the respective Respondent. In the Belmont case it cannot be said that the matter lacked any point of importance or principle bearing in mind that a point of construction under section 88 of the 2002 Act arose (and it is notable that the LVTs decision on this, adverse to Halliard, was a decision which disagreed with an earlier decision on the point by another LVT). Also I consider the question of the charging rate to be a point of potential importance. So far as concerns the Brickman case the question of whether CCPL was entitled to charge for the draft new lease, which was enclosed with the section 45 counter notice, was a point of potential importance. These points were of potential importance not only in the present cases but also in other future cases and the Appellants, being part of a substantial property group, were entitled to be concerned about the effect of an adverse decision in future cases. I reject Mr Luck's argument that, bearing in mind that LVT decisions are not binding upon a subsequent LVT panel, the Appellants had no need or justification for being so concerned as to the outcome for present cases that they required an oral hearing.

41. I was not impressed by Mr Serota's argument that the Appellants were entitled to be concerned as whether the LVT panel would have adequate knowledge regarding costs matters to deal with the present applications. However I do consider that Mr Serota was entitled to take the broader point, namely that a party does not know in advance of an LVT making a decision as to what if any points in the party's case may trouble the LVT and may give rise to problems for the party. Accordingly it will in general not be unreasonable to seek an oral hearing so as to be in a position to deal with such difficulties as may arise in the minds of the LVT. The mere fact that, as things turn out, no such difficulties in fact arise at a hearing does not mean that the party was acting unreasonably in being sufficiently concerned, prior to the LVT's decision, as to the possibility that some such difficulty might arise as to want have to have an oral hearing so as to be able to deal with such point (if any) as did arise.

42. As regards Mr Luck's point that consideration should be given to the other side and to the inconvenience and expense which the other party may incur in attending an oral hearing, it should be noted that it is, of course always open to the other party, if it takes the view that an oral hearing is unnecessary and that everything that needs to be said can be said in writing, to put in its submissions in writing and to decline to attend the oral hearing.

43. For the foregoing reasons I conclude that the respective LVTs were not entitled to find that either Halliard or CCPL had acted "otherwise unreasonably" in requesting (or in persisting in a request for) an oral hearing. There is a statutory right to request an oral hearing. This right is not qualified by the need to justify it with reasons, either at the time of making the request or subsequently. It would need to be an exceptional case for an LVT to be justified in concluding that a party acted unreasonably (within the meaning of paragraph 10 of Schedule 12) in insisting upon this unqualified right to an oral hearing. Neither of the present two cases is such an exceptional case. In each case the request for an oral hearing permits of a reasonable explanation.

44. Accordingly I allow Halliard's appeal against the LVT's decision that it pays costs not exceeding £500 to Belmont. I also allow CCPL's appeal against the LVT's decision that it pays £500 towards the costs of Brickman.

45. Mr Luck made an application under section 20C of the Landlord and Tenant Act 1985 as amended that the costs incurred in these proceedings before the Lands Tribunal were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the relevant tenants. No such formal application was made on behalf of Brickman or the relevant tenants in that case. However Mr Serota, after pointing out that there was no such charging provision in the leases relevant in the Belmont case, gave an undertaking to the Tribunal. He undertook on behalf of the two Appellants that neither Appellant would seek to recover through the service charge provisions any of the costs incurred by that Appellant in connection with these proceedings before the LVT or before the Lands Tribunal. In the light of this undertaking, which the Tribunal accepts and acts upon, I do not consider it to be just and equitable (or indeed appropriate) to make any order under section 20C.

46. Neither Appellant sought any order for costs against either Respondent. Brickman made no application for costs against CCPL (and indeed Brickman did not attend the hearing). However Mr Luck on behalf of Belmont made an application for costs, limited to £500, against Halliard. Bearing in mind the outcome of this case it is clear that no such order for costs should be made. I would in any event have concluded that the matters raised in this appeal were points of importance for which permission had been granted and, even if Halliard had lost on the main issue, I would not have found Halliard to have acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in pursuing this appeal to the Lands Tribunal.

Dated 12 December 2008

His Honour Judge Huskinson