UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – Administration Charges – purpose of covenant not to underlet without consent – charge for consent to underletting – whether payable in absence of express reference in lease – reasonableness – whether fee for registering underlease an administration charge – Landlord and Tenant Act 1927 s.19(1)(a) – Commonhold and Leasehold Reform Act 2002, Sch. 11, paras 1 and 5 – Landlord and Tenant Act 1988 s. 1 – appeal allowed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF A LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

BETWEEN:

PROXIMA GR PROPERTIES LTD **Appellant**

and

DR THOMAS D MCGHEE **Respondent**

Re: Flat 82.
Wards Wharf Approach
London
E16 3EX

Martin Rodger QC, Deputy President

Decision on written representations

The following cases are referred to in this decision:

Treloar v Bigge (1884) LR 9 Ex.151

F.W. Woolworth & Co. v Lambert [1937] Ch 37

Holding & Management (Solitaire) Ltd v Norton [2012] UKUT 1

Freehold Managers Nominees Ltd v Piatti [2012] UKUT 241 (LC)

Bradmoss Ltd [2012] UKUT 3 (LC)

International Drilling Fluids Ltd v Louisville Investments (Uxbridge) Ltd [1986] Ch 513

Ashworth Fraser Ltd v Gloucester City Council [2001] 1 WLR 2180

DECISION

Introduction

1. How much is it reasonable for a tenant to be asked to pay for consent to underlet a leasehold flat? What is the consequence of a request for an unreasonable sum? Is there any statutory restriction on the fee which a landlord may charge for registering an underlease? The individual sums to which these questions relate are very modest, but requests for their payment recur regularly and, cumulatively, the amounts involved are significant. The questions now arise in this appeal against a decision of the leasehold valuation tribunal for the London Rent Assessment Panel ("the LVT") dated 25 June 2012 which concerns charges levied by the appellant landlord for considering an application by the respondent tenant for consent to underlet and for registering an underlease.

2. Permission to appeal was granted by the LVT and, with the consent of both parties, I have determined it on the basis of their written representations.

The facts

3. The charges to which this appeal relates were claimed by the appellant, Proxima GR Properties Limited, the landlord under the lease of a flat at 82 Wards Wharf Approach, London E16 granted to the respondent, Dr McGhee, on 25 April 2003. The lease is for a term of 999 years and includes a covenant by the tenant to comply with obligations contained in the eighth schedule. Those obligations include a covenant, at paragraph 25.2 of the eighth schedule, which requires that the tenant will:

> "Not at any time during the term:
>
> …
>
> Underlet the demised premises without the prior written consent of the Manager or its agents (such consent not to be unreasonably withheld or delayed PROVIDED ALWAYS that such underletting shall be by means 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."

4. Paragraph 27 of the eight schedule requires the tenant:

> "To give written notice within 28 days to the Manager (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 Manager 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 and mortgage the fee shall only be payable on one of such matters."

5. The respondent does not live in the flat but chooses to under-let it. Once such underletting had already taken place (it would appear without prior reference to the appellant) when, on 8 March 2012, the appellant's managing agents, Estate & Management Ltd ("E & M"), wrote to the respondent providing details of its charges for considering an application for consent to the underletting. The fee for a retrospective "standard consent" was said to be £95 and an additional fee of £95 was also required on receipt of the written notice required to be given by paragraph 27 of the eighth schedule 8.

6. As an alternative to the payment of the standard consent fee the appellant's agents offered the respondent a "global licence" for a term of five years for which a fee of £330 was said to be payable.

7. The respondent considered that the sum requested was unreasonable and tendered a cheque for half of that amount, £95 in total, while informing the appellant of his intention to make an application to the LVT for a determination of his liability to pay the sum demanded.

8. In its submission to the LVT (which, with the consent of both parties, considered the respondent's application without a hearing) the appellant described a variety of tasks which its agents undertook when an application for consent to underlet was received. E&M was said to manage a large portfolio of property on behalf of several clients and to employ a "sublet team" to "deal with high volumes of new applications for consent every day".

9. The tasks undertaken by the agent's sublet team included writing to tenants who appear to be subletting without consent" providing an application to be completed together with guidelines and a summary of tenant's right and obligations. The tenant's response would be considered by a supervisor who would allocate it to a member of staff, who would consider it again and check the terms of the relevant lease which had previously been entered on the agent's computer system. The same member of staff would then "investigate whether there were any arrears of ground rent or service charges", which might be followed by phone calls or correspondence with the tenant. Tenants sometimes challenge the fee requested or allege that consent has already been given, in which case a copy of the lease will be retrieved from storage, further investigations are undertaken and a response is given.

10. Once consent is agreed in principle an appropriate document is issued. It was said that some application are completed promptly but that in a considerable number of cases matters the process is more complicated. In normal circumstances an application may

take between 3 and 10 hours of work, depending on the complexity of the issues encountered, but "the average time an application takes is 6.5 hours". The appellant's evidence then asserts that E&M "has calculated that the hourly rate for dealing with sub-let applications is £55 based on labour costs, and including infrastructure costs, overheads, IT systems, the archives and legal departments." No evidence or other details were provided in support of that assertion. Despite a request by the Tribunal that copies of all of the correspondence between the parties be provided none has been supplied, and it is therefore assumed that the letters sent by the appellant's agent were standard letters which required minimal alteration by the member of staff who sent them out.

11. In this case the respondent had disputed the charges demanded of him and the appellant suggested that a total of 1 hour and 55 minutes had already been spent considering the request for consent before the respondent made his application to the LVT. That time included 40 minutes spent before any communication was received from the respondent, 15 minutes spent checking the state of the ground rent and service charge account, sending three letters out and receiving one letter and one telephone call from the respondent.

Relevant statutory provisions

12. At common law a tenant is free to assign or underlet the premises demised to him without a landlord's consent, unless the terms of the lease or tenancy require that such consent be obtained. The leases of residential premises, especially those granted for long terms, do not usually include any restriction on assignment but will often require that the landlord's consent be obtained before any underletting of the premises takes place. Such covenants are almost always qualified to the effect that the landlord's consent is not to be unreasonably withheld. Such covenants are also affected by a number of statutory provisions, including in particular s.19(1)(a) of the Landlord and Tenant Act 1927 ("the 1927 Act") and the Landlord and tenant Act 1988 ("the 1988 Act").

13. Section 19(1) of the 1927 Act provides as follows:

> "(1) In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against assigning, under-letting, charging or parting with 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."

14. The 1988 Act introduced important safeguards for tenants who covenant not to assign or underlet without consent. Section 1(3)(a) imposes a statutory duty on landlords and others who receive an application for consent to assign or underlet to give consent within a reasonable time, except in a case where it is reasonable not to give consent. The duty is not satisfied where consent is given subject to a condition which is not reasonable (s. 1(4)). A breach of the statutory duty gives rise to a claim on the part of the tenant for damages (s. 4). The burden of proving that consent was given within a reasonable time or was withheld reasonably or made subject to reasonable conditions all fall on the landlord (s. 3(6)).

15. Section 158 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") make provision for the regulation of administration charges. Schedule 11 defines the expressions "administration charge" in paragraph 1(1) as including:

> "… 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."

The expression "variable administration charge" is also defined by paragraph 1(1) and 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. Paragraph 2 of Schedule 11 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

16. Paragraph 5 of Schedule 11 to the 2002 Act permits an application to be made to a leasehold valuation tribunal to determine whether an administration charge is payable and, if it is, the amount that is payable and other relevant details.

The LVT's decision

17. The LVT first considered whether it had jurisdiction to determine the reasonableness of the registration fee charged by the appellant's agent under paragraph 27 of the eighth schedule to the lease and concluded that it did not. It described paragraph 1(1) of Schedule 11 to the 2002 Act as "very restrictive" and held that a fee for registering the grant of a sub-lease did not fall within paragraph 1(1)(a) or any of the other categories of charges which were administration charges. Hence it had no jurisdiction to consider a challenge to the reasonableness of the sum demanded.

18. The LVT then turned to the fee claimed for considering the respondent's application for consent to underlet. It concluded that no sum was payable, for the following reasons given in paragraph 16 of its decision:

> "There are no provisions in the lease that allow for the recovery of any fees for a written consent to let. The [appellant] relies upon the provisions of section 19(1)(a) of the Landlord and Tenant Act 1927 ("the 1927 Act") to suggest that they

may make a charge for the consent to be granted. However, the Tribunal disagrees with this interpretation of the statutory provisions. It is the opinion of the Tribunal that the provisions of the 1927 Act apply to cases where there are provisions within a lease that allow for the recovery of fees for such a consent and that they do not permit for fees to be added in due course. As such, there are no provisions for the recovery of a consent-to-let fee and therefore the fee is not payable."

19. Finally, the LVT acceded to an application under section 20C, Landlord and Tenant Act 1985, that the costs incurred by the appellant in connection with the proceedings before the LVT were not to be regarded as relevant costs to be taken account in determining the amount of any service charge payable by the respondent.

The Issues

20. The following issues arise for consideration:

(1) Was the LVT correct in its conclusion that the lease did not permit the levying of a charge for considering an application for consent to underlet?

(2) If not, was the sum of £95 which the appellant sought to charge a reasonable charge?

(3) Was the LVT's order under section 20C of the 1985 Act one which it was entitled to make.

21. The appellant did not challenge the LVT's decision that the registration fee was not a variable administration charge, a conclusion which it clearly regarded as being in its favour. The respondent has not sought permission to cross-appeal on this issue and therefore, strictly, it is not before the Tribunal. Nonetheless, as the issue recurs with some regularity I take the opportunity to record that I agree with the conclusion of the LVT, for the reasons which it gave. I will briefly explain those reasons in my own words.

22. A sum payable as a fee for registering a document is not, in my judgment, payable "directly or indirectly for or in connection with the grant of approvals under [a] lease or applications for such approvals" so as to come within paragraph 1(1)(a) of Schedule 11 to the 2002 Act. If a request was made for the landlord's approval of a proposed underletting, and that approval was granted but the underletting did not then proceed, there would be no question of a registration fee being payable under paragraph 28 because no transactions would have taken place. The written notice which the respondent was required to give under paragraph 27 of the eighth schedule to the lease was not a request for an approval of any sort, nor was the charge which the appellant is entitled to make for registering the transaction of which notice is given a charge for the grant of an approval or in connection with an application for approval. This conclusion is consistent with views expressed in the leading text books: *Commercial and Residential Service Charges*, Rosenthal and others (2013) at paragraph 29-54, and

Service Charges and Management, Tanfield Chambers, (third edition) (2014) at paragraph 17-007).

Issue 1: Does the appellant have a contractual entitlement to request a fee for considering applications for consent to underlet?

23. The respondent described the obtaining of consent as "a mere formality" and suggests that all the lease requires is that he provide a copy of the assured shorthold tenancy agreement. I am satisfied that that is a misunderstanding of the relevant covenants. The respondent is not entitled to underlet unless he obtains the prior consent of the appellant in writing. Where, as appears to have been the case here, consent was not obtained the respondent committed a breach of covenant and his lease was liable to be forfeited. The appellant has not elected to take that course (nor would it be likely to secure any benefit by doing so as relief against forfeiture would be likely to be granted) but that does not mean that there had been no breach.

24. The appellant relied on section 19(1)(a) of the Landlord and Tenant Act 1927 before the LVT in support of its submission that it was entitled to charge a fee for considering any application made under paragraph 25 of the eighth schedule to the lease for its written consent to the underletting of the demised premises. The LVT decided that section 19(1)(a) did not assist the appellant because the lease did not specifically refer to the payment of a fee. In my judgment the LVT was mistaken in its understanding of the effect of the relevant covenant and the applicable statutory provision.

25. It is quite correct that the tenant's covenant against underletting without consent makes no reference to the payment of fee in connection with the grant of consent. Paragraph 25 is a covenant by the tenant that he will not do something, namely underlet the demised premises without obtaining prior written consent, rather than a covenant that he will do something, namely make a payment. Nonetheless, if the tenant wishes to underlet the premises the requirement that the consent of the landlord must first be obtained in order to avoid a breach of the tenant's covenant creates an opportunity for the landlord to impose conditions for the grant of the necessary consent. The effect of the qualification that the landlord's consent is not to be unreasonably withheld or delayed is that any such condition must be reasonable; a consent which is made available only if an unreasonable condition is satisfied is being withheld unreasonably. That is recognised by s.1(4) of the 1988 Act which makes the imposition of an unreasonable condition a breach of statutory duty.

26. Returning to the application of section 19(1) of the 1927 Act, the LVT was clearly wrong in my judgment, to assume that the statutory proviso had no application to paragraph 25 of the eighth schedule. The statutory language is perfectly general and applies "in all leases" which contain a covenant against underletting without licence or consent. In this case the lease includes an express proviso that consented is not to be unreasonable withheld, so the statutory deeming of the same qualification adds nothing to the parties' own contract. Nonetheless the statute makes clear that such a proviso

does not prevent a landlord from requiring payment of a reasonable sum in respect of legal or other expenses incurred in connection with a consent. In other words, a landlord will not be taken to have withheld consent to an underletting unreasonably if that consent is made conditional on the payment by the tenant of a reasonable sum to cover the landlord's legal or other expenses.

27. In *Holding & Management (Solitaire) Ltd v Norton* [2012] UKUT 1 the Tribunal (George Bartlett QC, President) rejected the argument of the LVT in this case (which had found favour in other LVT cases) that the effect of s.19(1)(a) is simply to preserve any right conferred by the lease to make a charge. He held, at paragraph 9 of the decision:

> "While it clearly does have this effect … it is not in my judgment restricted in this way. For the reasons given in the previous paragraph the withholding of consent would not be unreasonable if the lessee refused to pay a reasonable charge for it, and section 19(1)(a) makes clear that such a charge is not precluded."

28. A requirement that a condition must be satisfied before a necessary consent will be granted does not, in itself, impose an additional obligation on the tenant. If the tenant refuses to comply with the condition the landlord will not be able to take action to enforce it. On the other hand, if a tenant refuses to comply with a landlord's reasonable condition and nonetheless proceeds to grant an underlease without consent, the tenant will be in breach of his own covenant.

29. The position is very different, however, if the term which a landlord seeks to impose as a condition of granting consent is unreasonable. If consent is requested but unreasonably refused or delayed the consequence is that the tenant is released from the covenant in relation to the particular underletting to which the request related. That is because the need to obtain the landlord's consent is itself subject to the proviso or condition that consent will not be unreasonably refused; if the condition is broken, the need for consent goes with it. That conclusion is well supported by authority including *Treloar v Bigge* (1884) L.R. 9 Ex.151, and *F.W. Woolworth & Co. v Lambert* [1937] Ch 37. Where a landlord is asked for consent to the grant of an underlease or tenancy and seeks to impose a condition requiring the payment of an unreasonable sum, therefore, the tenant is not obliged to pay that sum and is instead entitled to proceed with the proposed underlease without the need to obtain the approval of the landlord.

30. I am therefore satisfied that the LVT reached the wrong conclusion on this issue and that the appeal must therefore be allowed.

Issue 2: Was the charge of £95 reasonable?

31. In contrast to the registration fee, the appellant's proposed charge of £95 for considering the request for consent to underlet was an administration charge under paragraph 1(1) of Schedule 11 to the 2002 Act because it was an amount payable by the respondent tenant in addition to the rent in connection with the grant of an approval

under the lease. The charge was also a variable administration charge because the amount payable was not specified in the lease nor was it to be calculated in accordance with a formula specified in the lease. The respondent is therefore entitled to the benefit of paragraph 2 of schedule 11 which provides that there are variable administration charges payable only to the extent that the amount of the charge is reasonable.

32. As I have already explained, if a landlord makes the grant of consent to an underletting conditional on the payment of an unreasonable sum, the result is that the tenant ceases to be under an obligation to obtain the landlord's consent to the particular underletting at all. Although paragraph 5(1) of Schedule 11 to the 2002 Act confers jurisdiction on the first-tier tribunal to decide what a reasonable sum would be, that does not alter the contractual position in the event that an unreasonable sum has already been requested. It is not a matter of the landlord being entitled to whatever sum is found by the tribunal to be reasonable, because the covenant on which the landlord's entitlement to ask for any sum will no longer bind the tenant in relation to the current request. It is therefore important to determine whether the sum the appellant requested in this case was reasonable or not.

33. The appellant relies on the material it put before the LVT and which I have referred to in paragraph 8 to 11 above as demonstrating that the charge of £95 (which I assume includes VAT) was reasonable. The respondent suggests that no more than half that amount would be reasonable and describes the work said to be undertaken routinely by the landlord's agents as "spurious" and "unnecessary".

34. Both parties rely on previous decisions of tribunals as demonstrating that the sum of £95 is either within a reasonable bracket for granting consent to underlet or exceeds such a bracket. The appellant has relied on decisions of leasehold valuation tribunals upholding fees of £135, £150 and £180 charged for consent to underlet as being reasonable.

35. In *Freehold Managers Nominees Ltd v Piatti* [2012] UKUT 241 (LC) (His Honour Judge Nicholas Huskinson) determined that a fee of £165 including VAT was a reasonable administration charge for a tenant to pay for consent to a sub-letting, where there was only a fee of £3.15 payable separately under the lease for registration of the transactions. The Tribunal was influenced by the fact that, although the consent which was requested was for the renewal of an underletting to an existing sub-tenant, the fact that the tenant had previously failed to obtain consent meant that a greater level of investigation was required, as did the fact that a complaint had been made about a dog which was kept by the sub-tenant.

36. Those considerations illustrate that, although many applications for consent to sub-let residential property will be entirely routine, some applications will give rise to more work than others. The approach taken by most landlords (including those for whom E&M acts as agent) is to charge a standard fee, but care should be taken to ensure that any such standard fee is not an inflated or unreasonable fee for a routine and unobjectionable application. It is necessary to consider the work required to deal with a

particular application. The evidence relied on by the appellant suggests that that is not the approach it takes and that it applies the same standard fee of £95 whether the work involved takes 3 hours or 10 hours.

37. The burden of proving that a fee claimed by a landlord as a condition of granting consent was reasonable falls on the landlord by virtue of s.1(6)(b) of the 1988 Act. In *Bradmoss Ltd* [2012] UKUT 3 (LC) the Tribunal (George Bartlett QC, President) considered a landlord's claim that administrative work taking two hours and legal work taking one hour were required to process an application for consent and that a fee of £135 was justified. The Tribunal held that in the absence of any information as to what had actually been done, by whom and how long it took, it was not satisfied that a fee at that level was justified or that consent could reasonably have been refused in the event that the tenant had refused to pay it. The Tribunal substituted a fee of £40 plus VAT as the amount payable. For the reasons I have already given I would respectively suggest that, an unreasonable fee having been demanded, the tenant had in fact become entitled to underlet without the need to obtain the landlord's consent at all and therefore without the need for the payment of any fee.

38. When considering the reasonableness of a fee it is worth recalling the purpose of a covenant in a lease against underletting without consent. The purpose of such a covenant is the same as that of a covenant not to assign without consent, namely, to protect the landlord from having his premises occupied in an undesirable way or by an undesirable tenant. The covenant must be interpreted and applied in order to give effect to that purpose. It may not be used by a landlord for a different purpose, or to obtain an advantage over the tenant which it was not intended to secure. These principles are derived from the decision of the Court of Appeal in *International Drilling Fluids Ltd v Louisville Investments (Uxbridge) Ltd* [1986] Ch 513, 520 and were subsequently approved by the House of Lords in *Ashworth Fraser Ltd v Gloucester City Council* [2001] 1 WLR 2180.

39. Given that the purpose of the covenant is to protect a landlord from having his premises occupied in an undesirable way or by an undesirable tenant, it may not be used as a source of profit for landlords or their managing agents. While it is reasonable for a landlord to grant consent to an underletting on condition that the tenant reimburse its reasonable expenses of considering whether to grant consent, including administrative expenses, it is not reasonable to treat the requirement to obtain consent as an opportunity to charge a fee unrelated to the costs of the routine enquiries or administrative tasks which are appropriate in most cases.

40. Nor do I consider it reasonable, where consent to underlet is requested, for the landlord to justify the fee it seeks by referring to the need to make enquiries to establish whether there are arrears of rent or service charges. Where it is proposed to *assign* a lease there may be circumstances in which a landlord may reasonably insist on breaches of covenant being satisfied as a condition of granting consent (because the direct relationship between the parties is being changed) but a landlord is in no different position in relation to arrears of rent or service charges if the demised premises are sublet

than if they are not. In those circumstances the need for consent could not reasonably be used as an opportunity to require that arrears be discharged as a pre-condition.

41. Where a landlord has already approved an application for consent to underlet premises to a particular tenant, and a second application is then made to grant a further tenancy on the same terms to the same tenant, it is difficult to see what further investigations or advice a landlord could reasonably undertake for which the payment of more than a very modest fee would be appropriate. Unless something had occurred which demonstrated that the tenant was not a suitable person to be permitted to occupy the premises, one would expect the approval in such a case to be a purely administrative exercise.

42. Where a tenant is simply permitted to remain in occupation following the expiry of an assured shorthold tenancy, without the grant of a new tenancy, no new underletting would be involved, there would be no need to seek the consent of the landlord and no occasion for any fee to be charged.

43. The concept of a "global licence" for a term of five years, which the appellant offered in this case in return for a fee of £330 also merits a comment. Such a licence is rather different from a one-off approval to the grant of a particular underlease. It would appear not to be charged for the grant of an approval at all, but rather as a fee payable for a release from the covenant against underletting without consent for a defined period. The terms on which such a release is granted are a matter for negotiation between landlord and tenant, and they are not subject to the limitation imposed by s.27(1)(a) of the 1927 Act, or the statutory duties imposed by the 1988 Act. Whether such a fee is an administration charge coming within paragraph 1(1)(a) of Schedule 11 of the 2002 Act is not a question to which the answer is obvious, and I say nothing about it.

44. In this case the landlord has supported its claim that a fee of £95 is reasonable with evidence of the time taken, so far, in considering the respondent's request for consent to underlet. Where a landlord receives a new request for consent to underlet it is entitled to satisfy itself that the terms of the proposed underletting are in accordance with the terms of the lease and to issue a written permission. In a routine case where the tenant provided the proposed underlease at the time consent was requested, and did not dispute the landlord's entitlement to charge a fee for considering the application, and where no other complications (such a retrospective consent) arose, I would find it difficult to understand how a fee of £95 (including VAT) would be reasonable for the minimal administrative tasks involved (especially where a further fee can be charged for receiving notice of the completed transaction and "registering" it). The suggestions in the appellant's evidence that such routine applications cannot be dealt with in under 3 hours and that the average application consumes 6 hours and requires the involvement of lawyers strike me as fanciful. I note, however, that significantly larger sums than £95 have been found to be reasonable by first-tier tribunals, which have greater experience of these assessments, and I do not question the reasonableness of those higher figures in some cases. In this case, which involves a retrospective application and a demand by the tenant for an explanation of the charge sought to be levied, I am satisfied that the

application was not routine and that the sum of £95 was a reasonable fee in the circumstances.

45. The appeal is therefore allowed and I will substitute a determination under paragraph 5(1) of Schedule 11 to the 2002 Act that the appellant is entitled to require the payment of an administration charge of £95 including VAT as a condition of granting its consent to the respondent's request to underlet the premises.

46. That leaves only the LVT's decision to make an order under section 20C of the Landlord and Tenant Act 1985. The Tribunal explained at paragraph 17 of its decision that it was making the order because it had found that the administration charge of £95 was not recoverable under the terms of the lease. I have reversed that decision and in light of that reversal I consider that the just and equitable order to make in the circumstances is to set aside the LVT's decision and to refuse the respondent's request for an order under section 20C in respect of the proceedings before the LVT and this appeal.

Martin Rodger QC,

Deputy President

6 February 2014