UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2012] UKUT 86 (LC)
Case Number: LRX/145/2010

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – service charge – reserve funds – lease providing that reserve funds could be used to meet any temporary deficiencies in monies available for general expenditure – whether LVT should have embarked on any consideration of the question of whether monies from the reserve funds had been so spent and (if so) whether any legally sufficient reasons given for its conclusions on this point and related points (raised by LVT) under Article 1 of First Protocal of ECHR and under the Unfair Terms in Consumer Contracts Regulations 1999 – jurisdiction of LVT – whether LVT entitled to disagree with and to refuse to follow a High Court decision regarding application of s.20(B) Landlord and Tenant Act 1985 – reasonableness of service charges - costs

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

BETWEEN **(1) SOLITAIRE PROPERTY MANAGEMENT COMPANY LIMITED**
(2) HOLDING & MANAGEMENT (SOLITAIRE) LIMITED **Appellants**

and

DR STEPHEN HOLDEN & OTHERS **Respondents**

Re: Properties at Weekday Cross Buildings,
Weekday Cross,
The Lace Market,
Pilcher Gate,
Nottingham, NG1 1QF

Before: His Honour Judge Nicholas Huskinson

Sitting at 43-45 Bedford Square, London, WC1B 3AS
on 14 February 2012

Justin Bates, instructed by Eyvind Andresen of Peverel Property Management, on behalf of the appellants
Dr Stephen Holden appeared on behalf of himself and the other respondents

The following cases are referred to in this decision:
London Borough of Newham v Khatun [2004] EWCA Civ 55)
Leicester City Council v Master LRX/175/2007)
Gilje v Charlgrove Securities Limited [2003] VWHC 1284 (Ch)
Pepper v Hart [1993] AC 593
English v Emery Reimbold & Strick Limited [2003] 3 All ER 385 at paragraphs 18-20.
Halliard Property Company v Belmont Hall & Elm Court RTM Company Limited (LRX/130/2007)
Ridehalgh v Horsefield [1994] 3 All ER 848.
Sisu Fund Limited v Tucker [2005] EWHC 2321 (Ch)
Re Edward Pryor [2009] UKUT 131 (LC).
Holding & Management (Solitaire) Ltd v Sherwin (LRX/67/2009, 10 December 2010)
Swanlane Estates Ltd v Woods (LRX/159/2007)
Sisu Fund Limited v Tucker [2005] EWHC 2321 (Ch)
Sinclair Investments (Kensington) Limited v The Lands Tribunal [2005] EWCA Civ 1305
Holding & Management (Solitaire) v Sherwin [2010] UKUT 412 (LC).

DECISION

Introduction

1. The appellants appeal to the Upper Tribunal, with permission, from a decision of the leasehold valuation tribunal for the Midland Rent Assessment Panel (the LVT) dated 6 September 2010 whereby the LVT gave certain determinations upon an application which had been made to it by the respondents under section 27A of the Landlord and Tenant Act 1985 as amended in respect of certain service charges.

2. The properties with which the case is concerned are at Weekday Cross Buildings and they comprise a new building containing 98 flats and a listed building containing 22 flats. At all material times the respondents held their respective flats upon long leases from the second appellant as landlord. The first appellant was at all material times until 31 July 2009 the managing agent for the second respondent.

3. There had been previous proceedings between the parties before the LVT which had resulted in (a) a decision of the LVT determining the service charges for the listed building for the service charge years prior to that commencing on 1 April 2007; and (b) a decision of the LVT that a new manager (Mr Bulmer) should be appointed from 1 August 2009.

4. The respondents' applications to the LVT asked the LVT to determine the service charges in respect of the years (for the new building) 2005/6, 2006/7, 2007/8, and 2008/9 and in respect of the years (for the old building) 2007/8 and 2008/9.

5. There is before the Tribunal a document which I was told was a typical form of lease. I proceed on the assumption that all leases are in the form of this lease, which is dated 11 December 2003 and constitutes a lease of flat No. 217 at Weekday Cross. The following terms of the lease should be noted:

(1) Clause 1.7 provides a definition of the service charge in the following terms:

> "the Service Charge" means a sum equal to the Service Charge Proportions (or such other proportions as may be determined pursuant to Part II of the Fourth Schedule) of the aggregate Annual Maintenance Provision for the whole of the Block for each Maintenance Year (computed in accordance with Part III of the Fourth Schedule.) "

(2) By clauses 3.2 and 3.3 the lessee covenanted in the following terms:

> "3.2 In respect of every Maintenance Year to pay the Service Charge to the Company by two equal instalments in advance of the Half yearly Days provided that in respect of the Maintenance Year current at the date hereof the Lessee shall on execution hereof pay a due proportion of the Current Service Charge.

3.3 To pay the Company on demand a due proportion of any Maintenance Adjustment pursuant to paragraph 3 of Part III of the Fourth Schedule."

(3) The Fourth Schedule in Part I provided for what the service charge proportions were to be and Part II made provision for the variation of such proportions (neither of these provisions are relevant to the present case). Part III of the Fourth Schedule dealt with "calculation of Annual Maintenance Provision" in the following terms:

"1. The Annual Maintenance Provision in respect of each Maintenance Year shall be computed not later than 31 March immediately preceding the commencement of the Maintenance Year (other than the Maintenance Provision for the current Maintenance Year which has already been computed) and shall be computed in accordance with paragraph 2 hereof.

2. The Annual Maintenance Provision shall consist of a sum comprising:

(i) the expenditure estimated as likely to be incurred in the Maintenance Year by the Company for the purposes mentioned in the Fifth Schedule together with

(ii) (in the second and each successive Maintenance Year) an appropriate amount as a reserve for or towards those of the matters mentioned in the Fifth Schedule as are likely to give rise to expenditure after such Maintenance Year being matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year during such unexpired term including (without prejudice to the generality of the foregoing) such matters as the decorating of the exterior of the Block the repair of the structure thereof and the repair of the Conduits.

(iii) a reasonable sum to remunerate the Company for its administrative and management expenses (including a profit element) such sum if challenged by any lessee to be referred for determination by an independent Chartered Accountant appointed on the application of either party by the President of the Institute of Chartered Accountants in England and Wales acting as an expert and whose fees and disbursements shall be paid as the said independent Chartered Accountant shall direct

3(a) After the end of each Maintenance Year the Company shall determine the Maintenance Adjustment calculated as set out in the next following sub-paragraph

(b) the Maintenance Adjustment shall be the amount (if any) by which the estimate under paragraph 2(i) above shall have exceeded or fallen short of the actual expenditure in the Maintenance Year.

(c) the Lessee shall be allowed or shall on demand pay (as the case may be) the proportion of the Maintenance Adjustment appropriate to the Flat.

4. Subject to provisions of paragraph 2 (iii) of this part of this Schedule a certificate signed by the company and purporting to show the amount of the Annual Maintenance Provision or the amount of the Maintenance Adjustment for any Maintenance Year shall be conclusive of such amount.

5. The Company shall arrange for accounts of the Service Charge in respect of each Maintenance Year to be prepared and shall supply to the Lessee a summary of such accounts."

(4) The Fifth Schedule made provision for the purposes for which the service charge was to be applied. No point in the present case turns upon the precise wording of anything in the Fifth Schedule.

(5) Clause 8 of the lease dealt with what was described as "the Company's Powers of Investment." It should be noted that Holding & Management (Solitaire) Limited (i.e. the second respondent) was a party to the lease and was therein referred to as "the Company". Clause 8 was in the following terms –

8.1 The Company hereby declares that it will hold all service charges until the same are spent in trust for the lessees of the Units in the Estate in the same proportions as such service charge shall have been paid.

8.2 The Company shall place on deposit or loan at a bank or building society or with a local authority at interest or invest in the purchase of fixed interest government securities of the United Kingdom having a final redemption date not later than five years after the date of acquisition sums representing the reserve created pursuant to paragraph 2(ii) of Part III of the Fourth Schedule and to withdraw the same from deposit or realise the same as required in order to meet expenses referred to in that paragraph or to meet any temporary deficiency in the moneys available to meet expenditure referred to in paragraph 2(i) of that Part of the Schedule.

6. The LVT recorded that it had not investigated the relationship between the appellants and that the LVT would therefore refer to them at the hearing en bloc. No objection has been raised in respect of this and I follow the same course.

7. It was accepted before this Tribunal by the appellants that they had made demands for payments on account of service charge years but that they had not made any final demand for any balancing charge in the form of the Maintenance Adjustment as contemplated in the Fourth Schedule (or, to be more precise, the appellants accepted that either they had made no such demand for any balancing charge or any such demands as they had made had not complied with section 20B of the 1985 Act and that therefore the matter should proceed on the basis that no such demands for a balancing charge had ever been made).

8. In their final written representations to the LVT, submitted after the close of the hearing which had extended over 5 days, the respondents informed the LVT that they were merely saying that they would be prepared to pay reasonable service charges for services actually provided to a reasonable standard – they were not seeking to avoid all liability. Also during the hearing before

the LVT the respondents did not seek in their written submissions to raise a point to the effect that the money in the reserve fund had been wrongly spent by the appellants such that the appellants should be ordered to re-pay such monies to the new manager Mr Bulmer (who was not a party to the proceedings). However during the course of the hearing the LVT itself appears to have decided it should be concerned with the question of whether in fact (a) anything at all was payable by way of service charges for any of the years, and (b) the reserve fund had been misapplied by the appellants and should be made good by them by payment to the new manager Mr Bulmer.

9. The result of the respondents' applications for the determination of the service charges payable in respect of the various years mentioned above was a decision by the LVT upon six matters which the LVT set out at the beginning of its written decision in paragraphs A-F in the following terms:

> "A. No service charges are payable by the Applicants who are lessees of flats in the New Building to the Respondents in respect of Service Charge Years 2006/6; 2006/7; 2007/8 and 2008/9.
>
> B. No service charges are payable by Applicants who are lessees of flats in the Listed Building to the Respondents in respect of Service Charge Years 2007/8 and 2008/9.
>
> C. The Respondents are liable to pay forthwith to Mr Bulmer £67,264.73 service charges missing from the reserve funds.
>
> D. The Respondents are liable to pay forthwith to Mr Bulmer the amount which has been paid to the Respondents on account of service charges (other than contributions to reserve funds) in respect of 2005/6; 2006/7, 2007/8, 2008/9 (New Building Flats) and 2007/8 and 2008/9 (Listed Building Flats).
>
> (The Parties have liberty to apply to the Tribunal on the question of the amount).
>
> E. All of the costs incurred or to be incurred by the Respondents in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Lessees of flats in Weekday Cross Buildings.
>
> F. The Respondents to pay forthwith to Dr Holden £500 costs."

10. So far as concerns the LVT's analysis regarding the reserve funds question, the following points may be made:

> (1) The LVT concluded that the amounts which had been demanded by the appellants for the reserve funds were reasonable (paragraph 18 of the decision).
>
> (2) The LVT noted that the parties had agreed that on 1 August 2009 (when Mr Bulmer took over as manager) there was nothing left in the reserve fund accounts. The LVT stated:

"It is clear that the [appellants] have used all the money in the reserve funds accounts to fund current expenditure".

(3) The LVT noted the provisions of clause 8 and the power in clause 8.2 to use monies from the reserve fund to meet any temporary deficiency in monies available to meet certain expenditure. However the LVT concluded that the money in the reserve funds, which had all been spent by the appellants in providing services, had not been spent to meet a temporary deficiency. The totality of the LVT's analysis upon this point is contained in paragraph 24:

"On the evidence before the Tribunal, it is clear and we find as a fact that the use by the [appellants] of the Reserve Funds to meet other expenditure was not to meet a "temporary deficiency" – either when the Funds were so used or at any time thereafter."

(4) The LVT also went on to consider (presumably in case its last mentioned decision was wrong) whether the provision in clause 8.2 allowing the reserve fund to be spent to meet any temporary deficiency was a valid provision. The LVT concluded that the provision was of no effect for the following reasons:

"(i) It breaches Article 1 of the First Protocol in the European Convention on Human Rights and we must, therefore, disregard it – see Sections 6(1) and (3)(a) of the Human Rights Act 1988;

(ii) It is an "unfair term" – see Regulations 5(1) and 8(1) of the Unfair Terms in Consumer Contracts Regulations 1999.

Note that the Court of Appeal has decided that these Regulations apply to leases – *London Borough of Newham v Khatun* [2004] EWCA Civ 55)."

(5) In relation to this question regarding the reserve fund the LVT stated in paragraph 26 that for the sake of completeness there had been adduced in evidence the appellants' welcome pack which was sent to lessees. In respect of this the LVT set out the following quotation from the welcome pack:

"The objective of a reserve fund is to offset the costs of non-annual major work such as decorating so that when this work is carried out there is no massive increase in the service charge collection for that year. It is therefore forward spreading the costs of such work. As far as possible, we try to set the level of reserve fund collection so that very little extra payment – if any – is required when substantial building expenditure needs to be incurred.

The reserve fund is invested in an interest bearing account and the level of the fund and the interest earned, together with details of any expenditure from the fund are all shown as part of the annual audited account.

When you come to sell your property, you should tell your Estate Agent that reserve funds exist as this helps to allay fears that prospective purchasers may have, that there will be substantial increases in service charges, particularly if the building is due for decoration."

The LVT then stated:-

> "Accordingly, if there had been any doubt about the correct construction of Paragraphs 8.2 of the Leases – and in our view there is no doubt at all – reference could (and should) have been made to the passage quoted above – as part of the matrix of background facts (see the decision of the Lands Tribunal in *Leicester City Council v Master* LRX/175/2007)."

(6) The LVT then asked itself what should be done and concluded that the answer was clear, namely that the missing amounts should be reimbursed by the appellants. The LVT considered its powers, which it recognised were less extensive than those of the court, and concluded that it did not have power to order reimbursement of the amounts.

(7) However the LVT then went on to examine its powers under section 27A. It noted that it has thereunder power to determine the amount of a service charge, the person by whom it is payable and the person to whom it is payable. The LVT noted that the word "tenant" did not appear in section 27A. It therefore concluded that it did not have to limit its determination to the question of whether a service charge was payable by someone who was a tenant. The LVT therefore appears to have concluded that it could treat the monies which had been paid in respect of the reserve fund as a service charge and could conclude under section 27A that the landlords (namely the appellants) were liable to pay this service charge to Mr Bulmer. In respect of this analysis the LVT stated as follows:

> "Thus, we determine that we have the power (and indeed the duty) to determine the person by whom the missing reserve funds are payable and the person to whom they are payable – although if enforcement was required it would be a matter for the court to decide whether to grant or refuse permission for enforcement.
>
> On the wording of Clause 8.1 of the Lease (and in accordance with ordinary trust principles) it is arguable that the payee should be those persons who have made reserve fund payments to the Respondents. However, those persons would then be liable to repay the same sums over to Mr Bulmer and we consider that to adopt such an approach would be over-technical and contrary to the intention of Parliament in enacting Section 27A of the Act.
>
> Hence, we determine that the missing reserve funds are payable by the Respondents to Mr Bulmer."

(8) It is the foregoing line of reasoning which led the LVT the reach its decision C (see paragraph 9 above) and to conclude that the appellants were liable to pay forthwith to Mr Bulmer £67,264 –73 service charges missing from the reserve funds.

11. So far as concerns paragraphs A and B of its decision the LVT reached the conclusion that no service charges whatsoever were payable by any of the respondents for any of the service charge years upon the following basis:

(1) The LVT concluded that such end of year balancing charge demands (as opposed to demands in advance for payments on account) as had been issued by the appellants did not comply with section 20B of the Act. (There is no appeal by the appellants against this finding).

(2) Accordingly the LVT proceeded upon the basis that, while there had been demands in respect of each of the service charge years for the payment of service charges on account, there had not been any final demands for the final service charge. In short, although sums had been demanded in advance on account by demands to which no objection was taken as to their validity, no final demand for an adjusted final payment complying with section 20B had been made in respect of any of the service charge years.

(3) The LVT then considered the significance of this. The LVT noted that the High Court has decided in *Gilje v Charlgrove Securities Limited* [2003] EWHC 1284 (Ch) that, where interim payments have been made, section 20B only has effect if (and to the extent) that a subsequent demand exceeds the interim payments.

[Note: applying that to the present case, it might be thought that the correct conclusion was that section 20B was of no effect because the appellants had only made demands for interim payments in advance on account and were not seeking to recover anything further. The appellants of course accept that if the application of the section 19 tests indicated that the demand in advance was for more than was ultimately properly payable then they are limited to this lesser sum, but the appellants also accept that in so far as the amounts properly recoverable under section 19 would have been more than the amounts demanded on account, then they are limited to the original on account demand and are unable to claim any further payment by way of balancing charge.]

(4) However the LVT gave detailed consideration to the *Gilje* case. The LVT commenced its analysis by saying:

> "We say straightaway that we disagree with the judgment in *Gilje*"

(5) The LVT then went on to consider the matter in some detail including examining speeches in the House of Lords upon the debate on the Bill and making reference to *Pepper v Hart* [1993] AC 593. The ultimate conclusion the LVT reached was expressed in paragraph 80 as follows:

> "As no valid section 20B Notice has been served, it follows that costs incurred by the [appellants] over 18 months before demands based on final account are not payable by the [respondents]."

(6) As no valid demands based on final accounts had been served in respect of any of the service charge years, it followed from this, so the LVT concluded, that nothing was payable by way of service charge for any service charge year. This explains how the

LVT reached paragraphs A and B of its decision (see paragraph 9 above). Paragraph D of the decision is the consequence of paragraphs A and B.

12. However having reached its decisions in paragraphs A –D the LVT recognised that, in case its conclusions were held to be wrong, it was appropriate for it to determine the reasonableness of the service charges on the basis that the law was as it was held to be in *Gilje* rather than as held to be by the LVT. The LVT therefore did consider each service charge year for the new buildings and also for the listed building. It considered the service charges under several separate categories of expenditure. In summary it reached the following conclusions as regards the new building:

- 2005/6: £54,031.25 in total was determined to be reasonable. As regards the car park charges £12,961.28 was determined to be reasonable;
- 2006/7: £89,169.48 was determined to be reasonable. As regards the car park £14,997.30 was determined to be reasonable;
- 2007/8: £69,664.10 was determined to be reasonable. As regards the car park £10,955.64 was determined to be reasonable;
- 2008/9: £87,140.27 was determined to be reasonable. As regards the car park £16,972.75 was determined to be reasonable.

As regards the listed building the LVT reached the following conclusions:

- 2007/8: £19,627.65 was determined to be reasonable;
- 2008/9: £15,742.66 was determined to be reasonable.

13. In reaching these conclusions the LVT noted that in respect of certain items for certain of the years the amount which it had concluded was reasonable was in fact higher than the figure which had been included in the estimate for that year. The LVT's decision appears to have proceeded on the basis that rather than the appellants being limited to recovering the smaller of (a) the amount globally demanded on account for the year in question as an interim payment and (b) the total sum decided as the reasonable amount for the services for that year, a different exercise should instead be performed, namely by limiting the appellants separately in respect of each individual head of expenditure to recovering the smaller of (a) the amount demanded on account for that head of expenditure for that year and (b) the amount found to be reasonable for that head of expenditure for that year.

14. So far as concerns costs (which of course were limited to £500) the totality of the LVT's analysis was as follows:

> "102. We accept Dr Holden's evidence that the late submission of documents by the Respondents (in breach of the Tribunal's Directions) led to him incurring extra costs of well over £500.

We consider that the late submission of thousands of pages of documents by the Respondents was both vexatious and unreasonable."

15. Permission to appeal to this Tribunal was refused by the LVT. However the President of the Upper Tribunal (Lands Chamber) granted permission to appeal in the following terms on 19 January 2011:

> "In the light of my decision in *Holding & Management (Solitare) Ltd v Sherwin* (LRX/67/2009, 10 December 2010) it is clearly right that permission to appeal should be given on the applicants' ground 3 (the application of section 20B of the Landlord and Tenant Act 1985). There also appears to me to be good prospects of success on grounds 1, 4 and 5 and reasonable prospects on ground 2 on the basis that the LVT may have gone beyond the degree of intervention recognised as appropriate in *Swanlane Estates Ltd v Woods*.
>
> The appeal will be by way of review."

As ordered by the President, the matter proceeded before me by way of review. At the hearing no evidence was called. Mr Bates represented the appellants. Dr Stephen Holden, the first respondent, was present and represented himself and the other respondents. Certain of the other respondents, namely Mr Philip Harrison, Mr R C Dykes and Mr A Lang were also present as observers (and Mr Harrison briefly addressed me to supplement certain points Dr Holden had made).

Appellants' submissions

16. On behalf of the appellants Mr Bates advanced the following arguments. He accepted that, as the present appeal is proceeding by way of a review, he cannot ask this Tribunal to reach final conclusions reversing the decisions reached by the LVT. He made clear that the remedy which the appellants sought was that there should be a remittal for a fresh hearing before the LVT.

17. As regards the reserve fund issue Mr Bates advanced the following arguments:

(1) There was no proper basis upon which the LVT was entitled to conclude that the reserve funds had been spent on anything other than a temporary deficiency. Mr Bates pointed out that the evidence had shown that the service charge account was overdrawn and that there were arrears of service charge owed by various of the tenants. He asked rhetorically if this was not a temporary shortfall then what was it. He also submitted that the LVT had not given any legally sustainable reasons for concluding that the reserve funds had not been spent to meet a temporary deficiency. The totality of the LVT's reasoning is contained in paragraph 24 of its decision (see paragraph 10(3) above). This is insufficient reasoning to meet the test required for reasons as analysed in *English v Emery Reimbold & Strick Limited* [2003] 3 All ER 385 at paragraphs 18-20.

(2) The RICS Service Charge Residential Management Code states in paragraph 9.1

"A reserve fund also helps to spread costs between successive tenants and can, if the leases/tenancy agreements allow, be used, on a temporary basis, to fund the cost of routine services, avoiding the need to borrow money."

(3) The reference to the welcome pack which was sent to lessees and the passage therein regarding reserve funds could not properly be used by the LVT to assist it to reach the conclusion it did, namely that the appellants were not entitled to use the reserve fund to meet a temporary deficiency. He submitted that in effect the LVT were finding, based upon the welcome pack, an implied term which contradicted the terms of clause 8.2 of the lease.

(4) There is nothing even arguably contrary to paragraph 1 of the First Protocol to the ECHR in a leasehold valuation tribunal (which he accepted was a public authority) giving effect to a contractual term. Such conduct could not be incompatible with any convention right. Also the LVT had given no or no legally sufficient reasons for its conclusions under the First Protocol.

(5) As regards the LVT's reference to the Unfair Terms in Consumer Contracts Regulations 1999, Mr Bates pointed out that no reasons were given as to why or how Clause 8.2, anyhow as far as it dealt with what could be done in times of a temporary deficiency, was unfair.

(6) The LVT did not have jurisdiction under section 27A (or under any other provision) to reach any decision that the appellants were liable to repay monies which had been in the reserve fund to Mr Bulmer.

(7) In effect the LVT was embarking upon a breach of trust claim in which a restitutionary remedy was being sought. The LVT did not have jurisdiction to do so or, if it did have jurisdiction, it should have declined exercising it and should have left the matter to be dealt with, if at all, in the county court.

(8) Mr Bates emphasised that the appellants had made clear to the LVT (see paragraph 48 of their closing submissions) that it was never the appellants' intention that the reserve fund monies should be appropriated permanently or never reimbursed. The appellants recognised there was always an ongoing obligation to account for reserve fund contributions held (and expended) and that once arrears were collected the funds would be reimbursed. He pointed out there was no suggestion, let alone any findings by the LVT, that the appellants had in some way improperly converted these reserve funds for their own use.

18. As regards the LVT's decision regarding section 20B Mr Bates advanced the following arguments:

(1) Section 20B has no application to on account payments. It only bites on balancing payments, where the correct approach is to ascertain:

(i) The date at which the advance payments had been exhausted;

(ii) The date of the demand for the balancing payment; and

(iv) To disallow only those charges that were both incurred after the date in (i) and more than 18 months earlier than the date in (ii).

See *Holding & Management (Solitaire) Limited v Sherwin* [2010] UKUT 412 (LC) applying *Gilje v Charlgrove Securities.* This case also makes clear that the LVT was bound and should have followed *Gilje* (the case concerned a similar appeal as the present from the same LVT in which the LVT had again declined to follow *Gilje).*

(2) Instead of proceeding as it should, the LVT erred in law in concluding that nothing was payable by way of service charge in respect of any service charge year and in concluding that all sums which had previously (validly) been claimed on account became re-payable if no final demand based on final accounts was made within the relevant 18 months period.

19. So far as concerns the decision reached by the LVT in the alternative, i.e. supposing that its conclusions under section 20B were wrong, regarding the amount of service charge which was reasonable within the section 19 test and properly payable, Mr Bates advanced the following arguments. He submitted that, regarding the overwhelming majority of items, in so far as any reduction was made from the amount in the "on account demand" no reason was given by the LVT for doing so. He contrasted certain items where the LVT had made a reduction because for instance of a missing invoice (he accepted that here a reason was given) and items where no such reason was given. During the course of argument it appeared that the principal items with which the appellants were concerned were the management fees and the contributions to the common services. By way of example for the new building for the year 2006/7 the estimate for contribution to the common services was £14,145.30 but the amount allowed was £13,324.26 with no reason being given for the reduction. So far as concerns the management fees the amount estimated and spent was £15,012.77 (plus VAT) whereas only £9,800 (plus VAT) was allowed. Mr Bates indicated in argument that if the Tribunal was not with the appellants on the question of management fees and the contribution to the common services, then the Tribunal would not be with the appellants on other points of detail. In summary the argument was that no sufficient or legally sustainable reasons had been given for the reductions in the management fees or the contribution to common services for this year or for other years.

20. So far as concerns the award of costs, Mr Bates said the appellants realised that this only involves £500, but it was a point with which they were particularly concerned. He pointed out that the LVT did not expressly refer to the jurisdiction under which it was awarding costs, but he assumed it must be taken as being under Schedule 12 paragraph 10 to the Commonhold and Leasehold Reform Act 2002 which allows costs (limited to £500) to be awarded if a person has in the opinion of the leasehold valuation tribunal "acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings." Mr Bates referred to the decision of the Lands Tribunal in *Halliard Property Company v Belmont Hall & Elm Court RTM Company Limited* (LRX/130/2007) which applied *Ridehalgh v Horsefield* [1994] 3 All ER 848:

"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"… 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."

21. Mr Bates pointed out that the appellants had apologised to the LVT for the late supply of documents and had explained in a witness statement that they had been severely hampered in producing the documents by reason of the conduct of their previous accountants and auditors. There is no suggestion in the LVT's decision that these explanations, namely that the delays were caused by the difficulties with the previous auditors, had been disbelieved by the LVT. Accordingly the LVT should have concluded that the appellants were let down by third parties. In consequence it could not be said that the appellants' behaviour did not have a sensible explanation or was designed to harass. Mr Bates further complained that the LVT had not given any or any legally sustainable reasons for its decision upon costs. Mr Bates submitted the LVT further erred, even if in principle it was entitled to award costs, in omitting to remind itself of the principles in *Sisu Fund Limited v Tucker* [2005] EWHC 2321 (Ch) which decides that a non-solicitor litigant in person, even if a professional, cannot recover costs in respect of their time spent, other than in respect of time spent on matters within their own professional expertise and requiring the attention of an expert. In the present case Dr Holden is indeed an expert (namely a medical doctor) but no such expertise was needed in the presentation of the present case. Accordingly he could not charge for costs in respect of his time as a professional. Therefore an award of costs (if any) should have been based on the current hourly rate for litigants in person prescribed by the Civil Procedure Rules, see *Re Edward Pryor* [2009] UKUT 131 (LC). Accordingly the order for costs should be limited to £9.25 per hour.

22. As regards the respondents' application under section 20C, Mr Bates asked the Tribunal not to make such an order. He submitted that the question of whether on the merits such an order should be made would depend upon the outcome of the appeal. But he in any event asked the Tribunal not to make such as order on the basis of him stating in open court that the appellants will not seek to recover the costs of these proceedings before the Upper Tribunal from the tenants.

Respondents' submissions

23. On behalf of the respondents Dr Holden pointed out that before the LVT the respondents did raise the point that section 20B had not been complied with and that the reserve funds had been improperly used. He submitted that the LVT had the jurisdiction to embark upon the inquiries that they did. He drew attention to a statement made by Sullivan J (as he then was) at first instance, which was approved in the Court of Appeal in *Sinclair Investments (Kensington) Limited v The Lands Tribunal* [2005] EWCA Civ 1305 which indicated that the underlying purpose of the scheme for dealing with service charges under the 1985 Act was to remove such disputes from the

court and dispose of them simply, expeditiously and inexpensively by a hearing before a specialist tribunal, the LVT, with a limited right of appeal to the Lands Tribunal.

24. So far as concerns the reserve funds issue Dr Holden advanced the following arguments:

(1) He accepted that the LVT had decided that the contributions that were demanded by the appellants as payments to be made into the reserve fund were reasonable contributions. He did not seek to dispute this finding. However he pointed out that the respondents' concern was that the reserve funds had been routinely used for general expenditure.

(2) When there was the change of management in 2009 it was discovered that the reserve funds were empty. They had been emptied without the respondents or other tenants being consulted upon the use of the reserve funds in the way which the appellants had used them.

(3) He noted the appellants' argument that the reserve funds had been drawn upon because of arrears from various tenants in paying their service charges which had led, so the appellants contended, to the service charge account being overdrawn. However Dr Holden argued that the fact that the service charges were in arrears reflected the very poor level of management provided by the appellants. Debt recovery was inadequately performed by the appellants as a consequence of which ordinary and responsible tenants, who had hitherto been paying service charge contributions, began to withhold service charges in protest against dire management at the development. If there was a shortage of funds for the payment of day-to-day management expenses, this was due to mismanagement by the appellants.

(4) Clause 8.2 of the lease did not make it clear that the reserve funds could be used for an indefinite period of time to address monetary deficiencies arising from the appellants' failures to recover debt. At best the provision was ambiguous as to whether the concept of "any temporary deficiency" could be extended for an indefinite period – and in these circumstances the provision should be construed contra proferentem.

(5) Dr Holden drew attention to the passage in the welcome pack and to the decision of the Lands Tribunal in *Leicester City Council v Master* (see paragraph 10(5) above) and he submitted that the LVT's analysis on these points was sound and represented further reasons to support the LVT's ultimate conclusion. The appellants were not entitled to use the reserve fund as a permanent easy and invisible solution to the problem arising through their own inefficiency in getting in the payment of service charges from all of the tenants.

(6) Accordingly upon the proper construction of the lease the LVT was entitled to conclude, as it did in paragraph 24 of its decision, that it was clear that the reserve funds had been used to meet other expenditure and were not used to meet a temporary deficiency.

(7) If the foregoing were correct, then it was not necessary to consider the LVT's analysis of the position under Article 1 of the First Protocol to the ECHR or to consider the Unfair Terms in Consumer Contracts Regulations 1999. If however, apart from these two last mentioned matters, the appellants were entitled to spend the reserve funds as they did on the basis that they were spending them in circumstances of a "temporary deficiency", then the LVT was entitled (and perhaps bound) to raise these legal points for itself, bearing in mind that the respondents were not legally represented, see *Swanlane Estates v Woods* (LRX/159/2007).

(8) As regards the ECHR, Dr Holden submitted that the reserve funds were held on trust for the respondents for the purpose of upgrading the property; the funds were not used for this purpose; they were therefore mis-used; and in consequence there was a breach of Protocol 1.

(9) As regards the Unfair Terms in Consumer Contracts Regulations 1999, Dr Holden submitted that Clause 8.2 is an unfair term because it represents a significant imbalance in the rights between the parties because (if the respondents' argument that there was not here a temporary deficiency is rejected) then the effect of the clause was to enable the appellants to use the reserve funds for an indefinite period to fund ongoing deficiencies in the accounts, including deficiencies arising from their own failings. In consequence the clause benefitted the appellants to an excessive degree.

25. So far as concerns whether the LVT had power to consider the point and to reach the decision it did in paragraph C of its determination (see paragraph 9 above) Dr Holden advanced the following arguments. He submitted that the LVT has, in effect, determined that the sums missing from the reserve funds were not payable by the respondents to the appellants. Further or alternatively he argued that the LVT was correct in concluding that it fell within its powers under section 27A to treat the amounts which had been paid by the respondents to the appellants in respect of the reserve funds as being payment of a service charge and for the LVT to be entitled in consequence to treat the reserve funds, when in the hands of the appellants, as still constituting a service charge – such that the LVT had jurisdiction under Section 27A to decide that a service charge (namely the reserve funds which had been received by the appellants) should be paid by a certain person (namely the appellants) to a certain other person (namely the respondents or Mr Bulmer).

26. So far as concerns the issue under section 20B and the case of *Gilje v Charlgrove Securities Limited* Dr Holden recognised that this was a point of law upon which the respondents, as lay people without legal representation, could not make any substantial submissions. Dr Holden indicated that the respondents left the decision on this point to the Tribunal. He pointed out that there were substantial management failures and that there may be a no easy way to deter a landlord from acting in such a manner unless there is some punitive sanction.

27. As regards the LVT's decision upon the merits of the various service charge years and its decision as to the reasonableness of the various amounts in question, Dr Holden submitted there was no basis upon which this Tribunal could properly interfere with the LVT's decision. Dr

Holden submitted that sufficient reasons for the determination on all aspects of reasonableness had been given. He pointed out that during the hearing a lot of points regarding the reasonableness of sums were either agreed or left to be dealt with in post-hearing written submissions. As regards the reasonableness of the level of contribution towards common services, Dr Holden drew attention to paragraph 90 of the LVT's decision and to the fact that it was conceded before the LVT that extra charges for direct debits were unreasonable. Thus by way of example, at page A31 of the bundle the LVT allows as a contribution to common services only £14,039, whereas the amount sought was £15,625, see page L19 of the bundle. However the reason for this deduction is to be found in paragraphs 89 and 90 of the LVT's decision and in the final column on page L19 dealing with this particular point. So far as concerns management fees Dr Holden pointed out that the LVT was an expert Tribunal and came to a conclusion on the evidence before it, with there being a legal chairman and a expert valuer on the panel. The LVT was entitled to find that £100 per unit was a reasonable sum.

28. Dr Holden recognised that the appellants were correct to concede through Mr Bates that, there being no valid demand for balancing charges, the appellants were limited in respect of any service charge year to recovering the smaller of (a) the amount globally demanded on account for the year in question as an interim payment and (b) the total sum decided as the reasonable amount for the services for that year. I asked Dr Holden whether the respondents sought to support a different limitation namely that the appellants should be limited to recovering separately in respect of each individual head of expenditure in any on account demand the smaller of (a) the amount demanded on account for that head of expenditure for that year and (B) the amount found to be reasonable for that head of expenditure for that year. Dr Holden indicated (in my view correctly) that he did not seek to support this further limitation.

29. As regards costs Dr Holden pointed out that large bundles of documentation were produced very late – about 48 hours before the proceedings before the LVT. A significant part of the costs incurred by the respondents were the costs of him personally having to take time off work. He did not have details of any out of pocket expenses or courier costs. However he submitted that it was clear that the loss to him was potentially more than £500. He suggested that bearing in mind the amount of time he had had to spend on the case, even at a rate of £9 an hour his costs would have been more than £500. He said that the late submission of the documents meant that the hearing took longer and was more confused than it should have been.

30. On behalf of the respondents Dr Holden made an application under section 20C of the 1985 Act regarding the costs of these proceedings before the Upper Tribunal.

Conclusions

31. It is important to note that the LVT concluded that the amounts which had been demanded by the appellants for the reserve funds were reasonable. Accordingly the sums demanded as payments towards the reserve funds, i.e. the sums demanded within the demands for the on account payments, were properly payable. The LVT does not suggest otherwise.

32. It is puzzling as to why the LVT considered in these circumstances that it should examine the reserve funds provision in the way it did. The LVT did not consider the reserve funds position for the purpose of deciding a question arising under Section 27A as to how much was payable as service charge in any given year. In another case it could theoretically become relevant, for the purpose of deciding how much was payable by way of service charge by a tenant in a particular year, to decide questions regarding the status of money in the reserve funds. For instance if in a particular year a tenant argued that less should be demanded for a particular heading of expenditure because reserve funds should have been drawn upon for some or all of that head of expenditure, then the situation regarding such reserve funds could become relevant to decide this question under Section 27A – including consideration (if the landlord's case was that there was no money in the reserve fund to draw upon) of the question of whether the landlord had improperly spent the reserve funds in some unauthorised manner. However in a hypothetical case such as that the situation regarding the reserve fund is something which needs to be decided for the purpose of deciding a question expressly within the LVT's jurisdiction, namely how much is payable by way of service charges by a tenant in a particular year. In the present case the LVT do not purport to suggest that any decision they reached in respect of the reserve funds impinged upon how much was payable by way of service charges in any of the years which were under consideration by them. Instead the LVT's consideration of this reserve funds position appears to have been an entirely separate consideration as to whether the trust funds held by the appellants had been wrongly depleted by them and whether the appellants should in consequence make good to the new trustee (i.e. the new manager, Mr Bulmer) any monies wrongly used from the reserve funds. This question was separate from and did not involve consideration of any question arising under Section 27A as to how much was payable by any tenant by way of service charges in any particular service charge year.

33. In my judgment the LVT had no jurisdiction to embark upon this breach of trust inquiry in circumstances where such inquiry was not necessary to decide a question arising under section 27A. I further conclude that the LVT was not entitled to find that it had jurisdiction to act in the manner it did by (i) categorising the reserve funds as held by the appellants as a service charge, (ii) finding that the appellants had committed a breach of trust by misusing the reserve funds; and (iii) finding that the appellants' obligation to make good the trust monies which had been wrongly spent could properly be categorised as an obligation to pay a service charge, such that the LVT could find that the appellants as debtors were obliged to pay this money as a service charge to Mr Bulmer as the creditor.

34. Accordingly I conclude the LVT should not have embarked upon the inquiry it did into the use of the reserve funds. Even if the foregoing were wrong, I conclude that the LVT was not entitled to reach the conclusions it did on the reserve funds issue. This is for the following reasons:

(1) Clause 8.2 of the lease entitles the appellants to use the reserve funds in order to meet any temporary deficiency in the monies available to meet expenditure upon service charge matters. There was a dispute between the appellants and the respondents, with the appellants saying that they had to draw upon these monies because the respondents (or some of them) were failing to pay their service charge bills such that the service charge account was overdrawn and such that there would not otherwise have been money available to provide necessary services. The respondents say that this shortfall in monies available in the service charge account was because of the appellants' own

fault through their bad management in, in particular, failing to collect monies due by way of service charge. There may be merit in either or both of these arguments. What is clear is that the LVT gave no proper consideration to the merits of these arguments and no legally sufficient reasons for its bald conclusion in paragraph 24 that the reserve funds were not used to meet a "temporary deficiency".

(2) The LVT went on to find that, even if the reserve funds had been spent on a temporary deficiency, such expenditure was not permissible having regard to Article 1 of the First Protocol to the ECHR and having regard to the Unfair Terms in Consumer Contracts Regulations 1999. However as regards each of these separate strands of reasoning the LVT gave no or no legally sufficient reasons for reaching a conclusion adverse to the appellants. The LVT appears to have done no more than merely assert that for the appellants to have been entitled to rely upon the provision in clause 8.2 regarding "temporary deficiency" would have amounted to a breach of Article 1 and to reliance upon an unfair contract term. I can see no sustainable reason for concluding that it would be a breach of Article 1 for the LVT to give effect to clause 8.2 of the lease.

(3) Nor do I see anything in the terms of Clause 8.2 to attract a conclusion within Regulation 5 of the 1999 Regulations that:

> "…contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer"

It is clearly in the interest of tenants that services at their property are provided by those responsible for providing them. If there is temporarily a shortfall in the monies available, because other tenants have withheld their service charges, then I can see nothing in principle offensive to the 1999 Regulations for a landlord to be able to use monies held in a reserve fund in order to meet a "temporary deficiency". I consider it significant that the RICS Service Charge Residential Management Code contemplates that, if a lease so provides, reserve funds can be used on a temporary basis to fund routine service costs – thereby avoiding the need to borrow money.

(4) Thus the question of whether the appellants had misused funds in the reserve funds (supposing that was a question which the LVT should have been looking at all) would turn not upon anything in Article 1 to the First Protocol to the ECHR or in the 1999 Regulations, but instead upon the question of whether the appellants had in fact spent the monies in circumstances which could properly be described as a temporary deficiency. As already noted the LVT gave no or no sufficient conclusions upon this point.

(5) The LVT made reference to a passage in the welcome pack given to tenants and to the Lands Tribunal decision in *Leicester City Council v Master* as supporting the conclusions they had reached. They did not explain how this support was to be obtained. It is difficult to see how the contents of the welcome pack could be used to contradict a clear term in the contract to the effect that reserve funds could be drawn upon where there was a temporary deficiency.

35. If ever the question of whether the appellants acted in breach of trust in spending money out of the reserve funds is to be litigated, it would at present seem to me to be necessary to consider how the matter evolved historically and to conclude whether, when the appellants first dipped into the reserve funds, there existed a temporary deficiency – and if so whether at any stage thereafter the position changed so as to mean that there was no longer a temporary deficiency. The decision is not an all or nothing one (as the LVT appears to have treated it) but might perhaps involve a finding that the appellants were entitled to dip into the reserve funds when they first did so but that at some stage thereafter (which would have to be decided upon, with supporting reasons) what had originally started as a temporary deficiency ceased to be a circumstance that could be properly be so described any more. If this was so then the sums spent out of the reserve funds before this change of circumstances would have been properly so spent, but sums spent after the change of circumstances would have been spent in breach of trust. Even if it were proper for this Tribunal to consider this question (which in my judgment it is not – for the same reasons that it was not proper for the LVT to consider the point) it would not be possible for this Tribunal to consider such matters upon an appeal which has come before it by way of review. All that I can and must do is to find:

(1) that the LVT had no jurisdiction to decide the points it purported to decide upon the reserve funds issue; and

(2) that quite apart from (1) above, no proper or legally sustainable reasons were given by the LVT for its conclusion that the appellants had spent monies from the reserve funds in circumstances where such expenditure was not covered by the provisions in clause 8.2 of the lease regarding a temporary deficiency.

It follows therefore that I must quash paragraph C of the LVT's decision (see paragraph 9 above).

36. As regards the LVT's analysis regarding section 20B of the Act, the LVT was in my judgment plainly not entitled to disagree with and decline to follow the High Court decision in *Gilje v Charlgrove Securities*. The LVT was bound by this decision and should have followed it. I adopt and repeat what was said by this Tribunal in *Holding & Management (Solitaire) v Sherwin* [2010] UKUT 412 (LC) (a decision of the President).

37. It follows therefore that the LVT's decisions in paragraphs A, B and D of its decision (see paragraph 9 above) cannot stand and must be quashed.

38. In consequence of this the question arises as to what properly is recoverable by the appellants by way of service charges. As already recorded above the appellants have conceded that, bearing in mind there exist only the valid original demands for on account payments (there being no valid final demands for balancing charges) the appellants are limited to recovering the smaller of (a) the total amount demanded on account for the year in question as an interim payment and (b) the total sum decided as the reasonable amount for the services for that year.

39. Fortunately the LVT, having reached the conclusions it did regarding the reserve funds and regarding section 20B (both of which I have concluded were wrong and must be quashed), went on to consider the merits under section 19 of the 1985 Act of the amounts charged by way of service

charges for each of the relevant years in question for the new buildings and the car park and the listed buildings.

40. The appellants criticised the LVT's conclusions as to how much was properly and reasonably chargeable within the terms of the lease and section 19 of the Act. In particular the appellants contended that the LVT's decision on these points is fatally flawed for want of proper reasoning. However I am unable to accept the appellants' arguments upon these points.

41. As pointed out by Dr Holden, the LVT is an expert Tribunal and included an expert valuer. The LVT was entitled to reach a conclusion as to a reasonable sum to be charged by way of management fee for a property such as the present – the LVT was able to inspect the present premises and have much experience of dealing with service charges in relation to other premises. It may be noted that the LVT did not merely apply £100 per annum for each unit for each year – instead the LVT expressly noted that there had been particular problems of management during one year such that £90pa was appropriate per unit for that year and £100 pa for the other years. Also the LVT was in my judgment entitled to have in mind the substantial criticisms of the standard of management provided by the appellants at this property which had been made by the same LVT (albeit differently constituted) in an earlier decision which had led to the appointment of a new manager Mr Bulmer. The LVT's decision was directed towards the parties in these proceedings, who can be assumed to have had knowledge of these background matters. I conclude that this Tribunal should not interfere with the LVT's decision that the management charges should be set in the way decided by the LVT, namely £100 pa per unit for all of the years except for the one year in respect of which £90 pa per unit was appropriate.

42. So far as concerns the separate criticism regarding the contribution to the common services, I accept Dr Holden's submissions on this point. Paragraphs 89 and 90 of the LVT's decision, read in the light of what had happened at the hearing and what had been submitted in the post hearing submissions (see in particular for instance page L19 of the bundle), demonstrated the reasons for the reduction in the contribution to common services – which was based upon the fact that extra charges for direct debits were unreasonable.

43. Mr Bates on behalf of the appellants accepted that if this Tribunal was not with the appellants on the question of management fees and the contribution to common services, then the Tribunal would not be with the appellants on other points of detail – and no separate or sustained argument was advanced by way of criticism of the LVT's decisions upon or reasoning relating to the other items of service charge.

44. Accordingly I dismiss the appeal by the appellants against the LVT's decisions as to the amounts determined to be reasonable as summarised in paragraph 13 above. In respect of each relevant service charge year the appellants are limited to recovering service charges from the respondents calculated on the basis that the total sum properly recoverable is the smaller of (a) the total amount demanded on account for the year in question as an interim payment and (b) the total sum decided as the reasonable amount for the services for that year.

45. So far as concerns the appellants' appeal against the award of £500 costs, I remind myself that this Tribunal should be slow to interfere with a decision upon costs made by the LVT. However I have concluded that the LVT's decision cannot stand. My reasons for so concluding are substantially those advanced in argument by Mr Bates and are as follows:

(1) The appellants had made clear that they had had substantial difficulties in obtaining the appropriate documentation from their previous accountants. The LVT in its decision does not make any reference to this nor does the LVT analyse whether the appellants' behaviour "permits of a reasonable explanation".

(2) The LVT has made no analysis and given no finding as to what were the consequences for the respondents in general or Dr Holden in particular of the late submission of the documents. They have merely stated that they accept Dr Holden's evidence that the late submission of the documents led to him incurring extra costs of well over £500. There is no finding as to what out of pocket expenditure (if any) the respondents would have been spared if the appellants had not acted in the manner they did nor any finding as to the amount of additional hours work Dr Holden was put to as a result of this. Nor is there any consideration as to what is the appropriate hourly rate at which the appellants should be required to recompense Dr Holden for such wasted time.

(3) An adverse costs order can only be made under the Commonhold and Leasehold Reform Act 2002 Schedule 12 paragraph 10 if the person against whom the costs order is made has in the opinion of the LVT "acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings." Thus an adverse finding on this point involves a finding that there has been conduct justifying criticism at this high level. I do not consider that the LVT has given any legally sufficient reasoning for its adverse conclusion upon costs.

46. As regards the application by the respondents under section 20C Mr Bates submitted that such an application was unnecessary and that an order should not be made for the reasons summarised in paragraph 23 above. However there remains before the Tribunal the respondents' application for an order under section 20C and I am required to consider and rule upon this application. While the appellants will doubtless honour the statement made in open court on their behalf that they would not seek to recover the cost of these proceedings before the Upper Tribunal from the tenants, this statement was not made in the form of some formal undertaking to the Tribunal. As in my judgment the respondents are entitled to an order under section 20C I consider I should make such an order rather than requiring them to rely solely upon the statement made in court. For the avoidance of doubt I consider that it is just and equitable in all the circumstances of the present case that this Tribunal should order (and I do so order) that all of the costs incurred by the appellants in connection with these proceedings before the Upper 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 respondents.

47. In the result this Tribunal:

(1) Quashes paragraph C of the LVT's decision.

(2) Quashes paragraphs A, B and D of the LVT's decision.

(3) Quashes paragraph F of the LVT's decision.

(4) Dismisses the appellants' appeal against the LVT's decision regarding how much was determined by the LVT to be reasonable in respect of each service charge year for each category of property.

(5) Makes an order under section 20C regarding the costs of the proceedings before the Upper Tribunal.

Dated 10 April 2012

His Honour Judge Nicholas Huskinson