MIDLAND RENT ASSESSMENT PANEL

CASE NO: BIR/41UK/LIS/2005/0002

Landlord and Tenant Act 1985 as amended by Commonhold and Leasehold Reform Act 2002

DETERMINATIONS OF THE LEASEHOLD VALUATION TRIBUNAL

In the matter of

Roy Jackson and Others **(the Applicant)**
and
Tamworth Borough Council **(the Respondent)**

on the Applicant's applications:

(1) under section 27A for a determination of liability to pay service charges for the years 2004-2005 and 2005-2006; and

(2) for an order, under section 20C, that the Respondent's costs in connection with these proceedings shall not be part of any service charge

Property: 10, Quince, Amington, Tamworth, Staffordshire B77 4NE

Heard at: The Panel Office
On: 13 October 2005

APPEARANCES:
For the Applicant: Mr Roy Jackson in person
For the Respondent: Mr Andrew Barratt, the Respondent's Assistant Director of Asset Management

Tribunal members:
Mr T F Cooper BSC FRICS FCIArb (Chairman)
Mr A P Bell MA LLB, Solicitor
Mrs N Jukes

Date of determination:

The application:

1 By an application (the '**Application**') dated 25 April 2005 Mr R Jackson, Mrs W Jackson, Mr D Hanson and Mrs C Hanson (the '**Tenants**') apply to us to determine their liability to service charges for the year 1 April 2004 to 31 March 2005 (subsequently amended, with leave, to include the year 1 April 2005 to 31 March 2006) for 10, Quince, Amington, Tamworth, Staffordshire B77 4NE (the '**Property**') under section 27A Landlord and Tenant Act 1985, inserted by section 155 Commonhold and Leasehold Reform Act 2002, (the '**Act**'); and for an order that the costs of Tamworth Borough Council (the '**Landlord**') in connection with these proceedings shall not be part of any service charge under section 20C of the Act.

The Property:

2 The Property is a ground floor flat estimated to have been built in the 1970s in a two storey purpose built building (the '**Block**') of two flats (the Property and the flat above) with a garden area at the rear.

Pre-trial review:

3 A pre-trial review was held on 14 June 2005 at which the member, appointed by the Lord Chancellor, of the panel of persons to act as chairmen of rent assessment committees allowed the Tenants' application to amend the Application (originally seeking a determination for service charges for 2004-2005) to include service charges for 2005-2006; after which procedural directions 15 June 2005 were given.

Inspection and hearing:

4 We inspected the Property and relevant parts of the Block and immediate areas on 13 October 2005 and the hearing was held on the same day at which Mr Roy Jackson appeared in person and on behalf of the other three Tenants. Mr Andrew Barratt, the Respondent's Assistant Director of Asset Management, appeared for the Landlord.

Jurisdiction:

5 Our jurisdiction is not contested and we are satisfied that we have the jurisdiction to determine the Application.

The Lease:

6 The Tenants' lease (the '**Lease**'), as assignees of the Lease dated 16 November 1992 made between Tamworth Borough Council (1) and Steven Gordon Rattigan (2), of the Property is for a term of 125 years from 1 January 1993 at a fixed rent of £10 pa. The Lease includes service charge provisions.

The Landlord's service charges for 2004-2005 and 2005-2006:

7 The Landlord calculates the service charge for the Property for each of the two years at £376.11 (see para 10 below). This is made up as an annual maintenance charge, contributions to a reserve fund and a management fee.

Common ground:

8 It is common ground:

(a) that a service charge is payable;

(b) that it is payable by the Tenants to the Landlord;

(c) that, as demanded for both years, it comprises (i) annual maintenance, (ii) a contribution to a reserve fund for future repairs, and (iii) a management fee;
(d) that the Block does not extend to any adjoining dwelling(s) to the side of the Property;
(e) that, for both years, the Tenants' liability and the amount payable by the Tenants for insuring the Block are not contested; and
(f) that the service charge is not subject to the addition of VAT.

Disputed matters:

9 We set out the disputed matters below with the parties' contentions and our decision.

Whether the service charge provisions in the Lease permit the Landlord to recover items as contributions to a future repairs fund ('**Sinking Fund**')

10 For each of the years in question the Landlord's service charge calculation relies on a report (the '**Report**'), commissioned by the Landlord, from Michael Dyson Associates Limited, Consultants for Housing dated 27 September 2005 which recommends a Sinking Fund strategy over the next 30 years based on the repair of the Landlord's leasehold properties and the Landlord's planned maintenance liabilities.

Item	Element	Replacement time	Estimated cost
1	Roof	25	£ 2,180.00
2	Walls	30	£ 1,288.60
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4	Gutter	15	£ 50.00
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6	Soffit/Fascia	20	£ 306.00
7	External Decorations	5	£ 960.00
8	Damp Proof Course	14	£ 720.00
9	Hardstanding/Externals	15	£ 825.00
10	Maintenance	1	£ 750.00
	SUBTOTAL		£ 10,029.60
11	Management fee @ 12½%		£ 1,253.70
	TOTAL		£ 11,283.30
	Annual charge (divide £11,283.30 by 30 years)		£ 376.11

11 Mr Jackson refers us to Para 3. Seventh Schedule of the Lease which reads:

> '3. (a) To pay to the [Landlord] from time to time such part as shall be reasonably attributable to the property (*sic*) of the total cost of:
>
> (i) keeping in repair the Block
>
> (ii) making good any structural defects in the Block falling within [not defined in the Lease]
>
> (iii) ...
>
> (b) To pay to the Landlord from time to time such amounts as shall be certified by the [Landlord's] Chief Finance Officer ... as expended by the [Landlord] in ensuring that any services provided by the [Landlord] to which the Tenant is entitled in respect of the property (*sic*) are maintained at a reasonable level or to be the proportion attributable to the Property of ensuring that any services in respect of the Property in common with others are maintained at a reasonable level including ....'

He says the service charge payable is limited to amounts 'as expended' and, as a Sinking Fund (as a reserve fund) cannot possibly have been expended, the service charge payable should clearly exclude a Sinking Fund.

12 Mr Barratt distinguishes Para 3.(a) from Para 3.(b): saying Para 3.(a) relates to 'repairs' including future repairs by the use of the verb 'shall be' in the future tense; whereas Para 3.(b) relates to 'services'. He says the Sinking Fund is for repairs and is a reasonable part of the service charge payable.

13 We hold that the wording of Para 3.(b) is clear and plain to the effect that the service charge shall exclude any amount(s) not actually expended by the Landlord in relation to items falling within the meaning of Para 3.(b). As to the meaning of 'any services provided by the [Landlord] to which the Tenant is entitled' we find the Lease is poorly drafted to the effect that services are not defined with clarity. The only reference to 'services' in the Lease is 'any services' in Para 3.(b).

14 We hold the wording of Para 3.(a) does not clearly and plainly establish the Tenants' liability to contribute to a Sinking Fund and reading the Lease as a whole does not persuade us to take a different view. The words 'shall be' can reasonably be argued to refer to the part reasonably attributable to the Property (despite 'property' (without a capital 'p') in the Para) in contrast to referring to future costs to be incurred. Reading Para 3.(a) with Para 3.(b) (as part of the Lease), emphasis is placed on 'certified ... as expended' which, we hold, points to the uncertainty of Para 3.(a). Accordingly, applying the principle that on matters of uncertainty on construction, we should interpret (in this case) against the meaning claimed for it by the Landlord who seeks to rely on it (the *contra proferentum* rule), we hold that contributions to a Sinking Fund are not reasonable and not payable as part of the service charge.

The level of service charges 'reasonably attributable' to the Block

15 Mr Jackson says, and Mr Barratt accepts, that the service charge level sought by the Landlord is the same for all low-rise leasehold dwellings owned by the Landlord. Mr Jackson submits that, having regard to the different characteristics of the various dwellings especially communal areas and types of dwellings, it cannot be said that this 'pooling' method is reasonable and it does not satisfy the requirement, in Para 3.(a), of 'reasonably attributable to the [Property]'. Mr Barratt refers us to part of the Report in which the author says the costs of each element of work has been apportioned to each block of dwellings with a proportional percentage adjustment. We hold that for a service charge item to be reasonably attributable to the Property supporting evidence should be adduced to establish attributable certainty. We find the Report does not establish attributable certainty; 'pooling' is not reasonable; and only those items having attributable certainty are reasonable and payable as items in the service charge. In any event, we decide (at para 19 below) that only reasonable items 'as expended' are payable and there are none.

Whether the service charge provisions in the Lease permit the Landlord to recover a management fee

16 Mr Jackson submits the Lease makes no provision for a management fee to be included in the service charge and we should disallow it. Mr Barratt says the management fee of £1,253.70 (see para 10 above) is a project management fee (to include the fee of the Landlord's in-house project manager) associated with the Sinking Fund works, not a management fee for managing the Property. In reply, Mr Jackson refers us to 'Tamworth Borough Council's management fees' in a letter 28 January 2005 to him from the Landlord about intended service charges; Mr Barratt admits the wording is not clear.

17 We hold that to the extent that the 'management fee' is a fee for managing the Property, it is not reasonable and, as an item in the service charge, is not payable by the Tenants as there is no provision for it in the Lease.

Whether the service charge is limited to amounts 'as expended' by the Landlord

18 Mr Jackson submits items in the service charge should be limited to those actually incurred and expended by the Landlord. For his reasons we refer to in para 12 above, Mr Barratt submits items falling within Para 3.(a) Seventh Schedule of the Lease do not have to have been expended as a condition precedent to being an item in the service charge.

19 For the reasons we give at para 14 above we apply the *contra proferentum* rule; to the effect that it is a condition precedent that items payable in the service charge shall have been expended, meaning actually paid as distinct from incurred or to be incurred.

Whether surfaced footways/forecourt areas ('**Areas**') (between the road and the Property and to the rear garden of the Property) are part of the Block

20 Helpfully, both Mr Jackson and Mr Barratt have responded to our invitation to make further representations in writing (after the hearing) to clarify this issue. Mr Barratt, in support of his contention that maintenance of the Areas is part of the service charge, provides a plan showing areas adopted by the highway authority and Areas he describes as 'circulation areas', deemed to be 'general rate fund land' in the ownership of the Respondent. Mr Jackson submits 'general rate fund land' means it is maintainable by the Respondent out of its Council Tax (formerly general rates) and rates revenue; stressing the wording of the definition of 'The Block' in the Lease (at para 1(g)), which reads:

> ' "The Block" means the building (including the Property) of which the Property forms part and includes all gardens paths and courts and similar amenities maintained by the [Respondent] for the use of inhabitants of such building and all fences walls drains sewers gutters pipes chimneys ducts vents and other similar structures or things provided in connection with such amenities'

Mr Jackson accepts that drains and sewers are 'for the use of inhabitants' but says the Areas are for the use of the general public, are not restricted to the use of 'inhabitants' and are not maintainable as an item in the service charge.

21 For the reasons we give at para 14 above we apply the *contra proferentum* rule; to the effect that, while it is clear - and accepted by Mr Jackson - that maintenance of drains and sewers is part of the service charge, it is uncertain, as a matter of construction, whether maintenance of Areas is part of the service charge. We hold that maintenance of Areas is not reasonable and not payable as part of the service charge.

Whether there are any exterior parts of the Block which have been decorated or will require decoration

22 Helpfully, both Mr Jackson and Mr Barratt have responded to our invitation to make further representations in writing (after the hearing) to clarify this issue. Mr Jackson accepts there are exterior decorated fascias and soffits at the Block.

23 We, therefore, find and hold that maintenance of decorated exterior parts of the Block is reasonable and payable as part of the service charge but only to the extent that such items in the service charge shall have been expended, meaning actually paid as distinct from incurred or to be incurred.

Whether the PVCu windows are part of the Property or part of the Block

24 Relying on the 'definitions' in the Lease, Mr Jackson says the PVCu windows are part of the Property and maintainable by the Tenants and, therefore, cannot be an item in the service charge. In further support of his contention, Mr Jackson says the existing PVCu windows are a replacement and

improvement at the previous tenant's expense. Mr Barratt says the windows are part of the external fabric of the building (meaning the Property and the flat above it), as part of the Block, and were considered to remain part of the Council's responsibility when Mr Jackson acquired his interest in the Property; accordingly, repair of them is a service charge item.

25 The definition of the Property in Clause 1(a) of the the Lease is:

> ' "the Property" means [the ground floor flat and part of the rear garden] which shall include ...
> (i) the inner half of any internal boundary wall
> (ii) the floor joists but not the ceiling below
> (iii) the ceiling (...)
> (iv) ...
> (v) all pipes gutters cables and things serving the Property and no other dwelling'

26 In reply to our question on the effect of the words: 'and things serving the Property and no other dwelling' (in para 25(v) above) Mr Barratt says he is not persuaded that the windows are part of the Property.

27 We hold the windows and their frames are part of the Property. In so doing we find their replacement and the Council's opinion when Mr Jackson acquired his interest are not persuasive; we rely on our interpretation of 'and things serving the Property and no other dwelling' having a persuasive meaning to include the windows and their frames to the rooms of the Property.

Summary of our decisions:

28 (a) The service charge provisions in the Lease do not permit the Landlord to recover items as contributions to a Sinking Fund;
(b) Items not having attributable certainty to the Block are not reasonable and not payable in the service charge;
(c) The service charge provisions in the Lease do not permit the Landlord to recover a management fee;
(d) It is a condition precedent that items payable in the service charge shall have been expended, meaning actually paid as distinct from incurred or to be incurred;
(e) The Areas (surfaced footways/forecourts) are not part of the Block but drains and sewers serving the Property are part of the Block;
(f) There are exterior parts of the Block which have been decorated or will require decoration and reasonable costs expended on the maintenance of such parts is payable as part of the service charge; and
(g) The PVCu windows in the rooms of the Property are part of the Property.

[continued]

The service charges payable:

29 Applying our decisions, the amounts of the service charge payable by Mr Jackson are:

Year 2004-2005: Other than the uncontested amount payable by the Tenants for insuring the Block, £Nil as we have no evidence that any amount has been expended.

Year 2005-2006: Other than the uncontested amount payable by the Tenants for insuring the Block, £Nil as we have no evidence that any amount has been expended up to the date of this determination but with liberty to apply in respect of a reasonable future service charge for the year ending 31 March 2006 as shall have been certified by the Respondent's Chief Finance Officer or other appropriate officer as expended by the Respondent.

Section 20C order:

30 Mr Jackson applies to us to order that all of the costs incurred, or to be incurred, by the Landlord 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 Tenants. Mr Barratt confirms it has been agreed that each party shall bear their/its own costs of the application.

31 Our discretion to make the order sought is what we consider to be just and equitable in the circumstances. We find that it is just and equitable to make the order and Mr Jackson's application is allowed.

Date: 13 NOV 2006

T F Cooper
Chairman

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(b) that it is payable by the Tenants to the Landlord;

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Disputed matters:

9 We set out the disputed matters below with the parties' contentions and our decision.

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(iii) ...

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The level of service charges 'reasonably attributable' to the Block

15 Mr Jackson says, and Mr Barratt accepts, that the service charge level sought by the Landlord is the same for all low-rise leasehold dwellings owned by the Landlord. Mr Jackson submits that, having regard to the different characteristics of the various dwellings especially communal areas and types of dwellings, it cannot be said that this 'pooling' method is reasonable and it does not satisfy the requirement, in Para 3.(a), of 'reasonably attributable to the [Property]'. Mr Barratt refers us to part of the Report in which the author says the costs of each element of work has been apportioned to each block of dwellings with a proportional percentage adjustment. We hold that for a service charge item to be reasonably attributable to the Property supporting evidence should be adduced to establish attributable certainty. We find the Report does not establish attributable certainty; 'pooling' is not reasonable; and only those items having attributable certainty are reasonable and payable as items in the service charge. In any event, we decide (at para 19 below) that only reasonable items 'as expended' are payable and there are none.

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16 Mr Jackson submits the Lease makes no provision for a management fee to be included in the service charge and we should disallow it. Mr Barratt says the management fee of £1,253.70 (see para 10 above) is a project management fee (to include the fee of the Landlord's in-house project manager) associated with the Sinking Fund works, not a management fee for managing the Property. In reply, Mr Jackson refers us to 'Tamworth Borough Council's management fees' in a letter 28 January 2005 to him from the Landlord about intended service charges; Mr Barratt admits the wording is not clear.

17 We hold that to the extent that the 'management fee' is a fee for managing the Property, it is not reasonable and, as an item in the service charge, is not payable by the Tenants as there is no provision for it in the Lease.

Whether the service charge is limited to amounts 'as expended' by the Landlord

18 Mr Jackson submits items in the service charge should be limited to those actually incurred and expended by the Landlord. For his reasons we refer to in para 12 above, Mr Barratt submits items falling within Para 3.(a) Seventh Schedule of the Lease do not have to have been expended as a condition precedent to being an item in the service charge.

19 For the reasons we give at para 14 above we apply the *contra proferentum* rule; to the effect that it is a condition precedent that items payable in the service charge shall have been expended, meaning actually paid as distinct from incurred or to be incurred.

Whether surfaced footways/forecourt areas ('**Areas**') (between the road and the Property and to the rear garden of the Property) are part of the Block

20 Helpfully, both Mr Jackson and Mr Barratt have responded to our invitation to make further representations in writing (after the hearing) to clarify this issue. Mr Barratt, in support of his contention that maintenance of the Areas is part of the service charge, provides a plan showing areas adopted by the highway authority and Areas he describes as 'circulation areas', deemed to be 'general rate fund land' in the ownership of the Respondent. Mr Jackson submits 'general rate fund land' means it is maintainable by the Respondent out of its Council Tax (formerly general rates) and rates revenue; stressing the wording of the definition of 'The Block' in the Lease (at para 1(g)), which reads:

> ' "The Block" means the building (including the Property) of which the Property forms part and includes all gardens paths and courts and similar amenities maintained by the [Respondent] for the use of inhabitants of such building and all fences walls drains sewers gutters pipes chimneys ducts vents and other similar structures or things provided in connection with such amenities'

Mr Jackson accepts that drains and sewers are 'for the use of inhabitants' but says the Areas are for the use of the general public, are not restricted to the use of 'inhabitants' and are not maintainable as an item in the service charge.

21 For the reasons we give at para 14 above we apply the *contra proferentum* rule; to the effect that, while it is clear - and accepted by Mr Jackson - that maintenance of drains and sewers is part of the service charge, it is uncertain, as a matter of construction, whether maintenance of Areas is part of the service charge. We hold that maintenance of Areas is not reasonable and not payable as part of the service charge.

Whether there are any exterior parts of the Block which have been decorated or will require decoration

22 Helpfully, both Mr Jackson and Mr Barratt have responded to our invitation to make further representations in writing (after the hearing) to clarify this issue. Mr Jackson accepts there are exterior decorated fascias and soffits at the Block.

23 We, therefore, find and hold that maintenance of decorated exterior parts of the Block is reasonable and payable as part of the service charge but only to the extent that such items in the service charge shall have been expended, meaning actually paid as distinct from incurred or to be incurred.

Whether the PVCu windows are part of the Property or part of the Block

24 Relying on the 'definitions' in the Lease, Mr Jackson says the PVCu windows are part of the Property and maintainable by the Tenants and, therefore, cannot be an item in the service charge. In further support of his contention, Mr Jackson says the existing PVCu windows are a replacement and

improvement at the previous tenant's expense. Mr Barratt says the windows are part of the external fabric of the building (meaning the Property and the flat above it), as part of the Block, and were considered to remain part of the Council's responsibility when Mr Jackson acquired his interest in the Property; accordingly, repair of them is a service charge item.

25 The definition of the Property in Clause 1(a) of the the Lease is:

> ' "the Property" means [the ground floor flat and part of the rear garden] which shall include ...
> (i) the inner half of any internal boundary wall
> (ii) the floor joists but not the ceiling below
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> (v) all pipes gutters cables and things serving the Property and no other dwelling'

26 In reply to our question on the effect of the words: 'and things serving the Property and no other dwelling' (in para 25(v) above) Mr Barratt says he is not persuaded that the windows are part of the Property.

27 We hold the windows and their frames are part of the Property. In so doing we find their replacement and the Council's opinion when Mr Jackson acquired his interest are not persuasive: we rely on our interpretation of 'and things serving the Property and no other dwelling' having a persuasive meaning to include the windows and their frames to the rooms of the Property.

Summary of our decisions:

28 (a) The service charge provisions in the Lease do not permit the Landlord to recover items as contributions to a Sinking Fund;
(b) Items not having attributable certainty to the Block are not reasonable and not payable in the service charge;
(c) The service charge provisions in the Lease do not permit the Landlord to recover a management fee;
(d) It is a condition precedent that items payable in the service charge shall have been expended, meaning actually paid as distinct from incurred or to be incurred;
(e) The Areas (surfaced footways/forecourts) are not part of the Block but drains and sewers serving the Property are part of the Block;
(f) There are exterior parts of the Block which have been decorated or will require decoration and reasonable costs expended on the maintenance of such parts is payable as part of the service charge; and
(g) The PVCu windows in the rooms of the Property are part of the Property.

[continued]

The service charges payable:

29 Applying our decisions, the amounts of the service charge payable by Mr Jackson are:

Year 2004-2005: Other than the uncontested amount payable by the Tenants for insuring the Block, £Nil as we have no evidence that any amount has been expended.

Year 2005-2006: Other than the uncontested amount payable by the Tenants for insuring the Block, £Nil as we have no evidence that any amount has been expended up to the date of this determination but with liberty to apply in respect of a reasonable future service charge for the year ending 31 March 2006 as shall have been certified by the Respondent's Chief Finance Officer or other appropriate officer as expended by the Respondent.

Section 20C order:

30 Mr Jackson applies to us to order that all of the costs incurred, or to be incurred, by the Landlord 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 Tenants. Mr Barratt confirms it has been agreed that each party shall bear their/its own costs of the application.

31 Our discretion to make the order sought is what we consider to be just and equitable in the circumstances. We find that it is just and equitable to make the order and Mr Jackson's application is allowed.

Date: [illegible]

T F Cooper
Chairman

MIDLAND RENT ASSESSMENT PANEL

CASE NO: BIR/41UK/LIS/2005/0002

Landlord and Tenant Act 1985 as amended by
Commonhold and Leasehold Reform Act 2002

DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL

In the matter of

Roy Jackson and Others **(the Applicant)**
and
Tamworth Borough Council **(the Respondent)**

on the Applicants' application for reimbursement of their fees from the Respondent under para 9 Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 made pursuant to para 9 Schedule 12 Commonhold and Leasehold Reform Act 2002 following the Leasehold Valuation Tribunal's determination under section 27A Landlord and Tenant Act 1985 on the Applicant's liability to pay service charges for the years 2004-2005 and 2005-2006 and for an order under section 20C Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings shall not be part of any service charge

Property: 10, Quince, Amington, Tamworth, Staffordshire B77 4NE

Date of determination: 13 January 2006

Determination: Tenants' application for reimbursement of their fees dismissed

The application:

1 By an application (the '**Application**') dated 7 November 2005 Mr Roy Jackson, for himself, Mrs W Jackson, Mr D Hanson and Mrs C Hanson (the '**Tenants**' and '**Applicants**'), applies to us to require Tamworth Borough Council (the '**Landlord**' and '**Respondent**') the Landlord to reimburse the Tenants £200 being the fee paid by the Tenants in respect of the proceedings before the Leasehold Valuation Tribunal (the '**LVT**') in which it determined (on 3 November 2005) (the '**Determination**') the Tenants' liability to service charges for the year 1 April 2004 to 31 March 2006 for 10, Quince, Amington, Tamworth, Staffordshire B77 4NE (the '**Property**') under section 27A Landlord and Tenant Act 1985, inserted by section 155 Commonhold and Leasehold Reform Act 2002, (the '**Act**') and, by consent, made an order that the costs of the Landlord in connection with the LVT's proceedings shall not be part of any service charge under section 20C of the Act.

2 Mr Jackson's grounds are that the Tenants largely 'won' in the Determination and should not have had the expense of applying to the LVT for its Determination. He refers to a meeting with Mr P Weston (an official of the Landlord Council). Mr Weston says we should take no account of the meeting as it was without prejudice and is privileged. While we are not bound by rules of evidence we hold, as a matter of public policy, we should not rely on privileged material; we agree with Mr Weston. Mr Jackson points out that all the Landlord's tenants with similar leases will benefit from the LVT's Determination which has been achieved at the Tenants' expense.

3 Mr Weston says the LVT's Determination finally determines matters, other than an appeal, and does not refer to fees; so, we have no power to require reimbursement. He points out that the parties agreed that each side should pay its/their own costs of the proceedings.

4 We do not accept that, because the Determination does not refer to fees, Mr Jackson is barred from applying for reimbursement. We do not accept that the parties' agreement on its/their costs of the proceedings bars us from considering requiring reimbursement the Tenants' fees as provided for in the *Leasehold Valuation Tribunals (Fees)(England) Regulations 2003* at Regulation 9.

5 Mr Jackson and Mr Weston dispute the history of alleged payment/non-payment of service charges since December 2003 (when the Tenants acquired the Property) as matters we should take into account. We take them into account in deciding what is 'just and equitable' in para 6 below.

6 The Regulations do not provide for circumstances to be taken into account in the exercise of our discretion. While we accept it may be argued that the 'event' (namely, which party has been successful in the Determination) is the basis, we hold that what is just and equitable in the circumstances is the overriding consideration. Just and equitable includes whether the Landlord had an arguable case. If the Landlord's case was, say 'doomed from the start' we would have allowed Mr Jackson's application for fees. However, we find and hold the Landlord did have an arguable case; accordingly, we decide it would not be just and equitable to make the requirement sought by Mr Jackson..

7 For the reasons we give we dismiss the Tenants' application for reimbursement of their fees paid.

Date: 13 January 2006

T F Cooper
Chairman