



Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**ORDER ISSUED BY  
LEASEHOLD VALUATION TRIBUNAL for the  
MIDLAND RENT ASSESSMENT PANEL**

**Landlord and Tenant Act 1985 Section 20C  
Leasehold Valuation Tribunals (Fees)(England) Regulations 2003  
Commonhold and Leasehold Reform Act 2002**

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**BIR/00CN/LSC/2009/0021**

**Premises:** Westside One, 22 Suffolk St, Queensway,  
Birmingham B1 1LS

**Applicants:** Lessees of Westside One

**Represented by:** Mr D Barrington

**First Respondent:** Wenghold Limited

**Second Respondent** County Estate Management Ltd

**Respondents' agent:** Estates & Management Ltd

**Represented by:** Mr S Gallagher of counsel

**Tribunal:** Mr J C Avery BSc FRICS  
Mr N G M Elliott MA  
Mrs C L Smith

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## **Background**

1. On 13 September 2010 the tribunal issued its decision on the applicant's application under section 27A of the Landlord and Tenant Act 1985. The applicant had asked for an order under section 20C, viz that "*all or any of the costs incurred, or to be incurred, by the landlord in connection with the 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 tenant or any other person or persons specified in the application*". Counsel for the respondent requested that the parties be allowed to make written submissions after the 27A decision was issued and the tribunal directed as follows:

*Within seven days of the date of this determination the applicants shall notify the tribunal, with copy to the respondents (via Clarke Wilmott) whether they wish to revise their application. The parties are directed to send written submissions (or confirm those already submitted) within 28 days of the date of this determination. Each party shall send four copies to the tribunal and a copy to the other party. The tribunal will (as agreed at the hearing) determine the section 20C application on the basis of those written submissions and without a further oral hearing*

2. The applicants did revise their submissions and the parties exchanged documents on 11 October 2010.
3. The respondent, on 18 October 2010, submitted further representations with a request that they be admitted. Consent was given and the applicants were allowed to reply. That reply was received by the tribunal on 8 November 2010.
4. The parties have made representations on the following applications:
  - For an order under section 20C
  - For reimbursement by the landlord of fees paid by the applicants (Leasehold Valuation Tribunals (Fees)(England) Regulations 2003) Reg 9
  - For costs incurred by the applicants (Commonhold and Leasehold Reform Act 2002) Sch 12 Para 10

## Section 20C

5. In their revised submissions of 11 October the applicants founded their request for an order on the following:
  - The respondent had failed to supply all the necessary material to the new manager
  - The respondent consistently delayed in the provision of documents for the proceedings
  - Bundle C should never have been included
  - The respondent failed to properly manage the property
  - The respondent failed to issue demands and accounts
  - The respondent failed to communicate effectively
  - The respondent failed to adhere to the tribunal's directions
  - After many years trying to resolve the issues between them application to the LVT was the only avenue available to the applicants
  - The respondent refused to continue meetings in advance of the hearing
  - The applicants have substantially succeeded in their application.
  
6. The respondent in its submissions of the same date reminded the tribunal of the lessees' contractual liability for the costs of the proceedings and the decision of the Lands Tribunal in *The tenants of Langford Court v Doren Limited (LRX/37/2000)*.
  
7. The respondent's opposition to the making of an order was based on the following:
  - The deductions ordered by the tribunal was £31,502 from total service charges over the four years of £438,899
  - A further £24,895 deductions were agreed between the parties
  - The total deductions of £56,397 represented 12.8% of the total expenditure
  - The applicants had challenged an unreasonable number of items
  - The applicants had been intransigent in resisting attempts to settle at without prejudice meetings and in correspondence.
  - The applicants should have taken advice on the extent of their claim
  - The respondents enjoyed considerable success in opposing the application and the applicants were largely unsuccessful
  - The respondent was put to additional expense on account of the way the applicants made their case.
  - Any failings by the respondent have been reflected in the deduction from management fees and 20C should not be used as additional "punishment"

8. In its further submissions of 18 October the respondent additionally responded that:
- The respondent had understood the first without prejudice meeting to be a forum for decisions, not a "scoping" meeting
  - There was no evidence of whether any professional advice had been followed
9. In their reply to the respondent's further submissions the applicants, in their reply of 4 November say:
- Not all the costs of £438,000 were challenged
  - No consent is given for the disclosure of without prejudice offers. It was not agreed that the meetings were "without prejudice save as to costs"
  - Much time was spent considering which items to challenge
  - The applicants were hindered in the preparation of their case by the inadequate financial material available
  - Deductions of £56,000 constitute a considerable success.
  - Evidence was included that professional advice had been taken

#### **Tribunal's decision on 20C**

10. The tribunal recognises that its decision must be just and equitable in all the circumstances, and those circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings. The Tribunal is aware that the decision whether or not to make a section 20(C) order does not necessarily follow the event.
11. The tribunal does not accept that, because the applicants' success was a relatively small proportion of the total expenditure, they should not have made the application. Nor can the applicants be criticised for challenging a wide range of items for which they saw no evidence of expenditure, in the context of their perception (subsequently supported) of a poor quality of management. The total sum deducted is not insubstantial and amounts to some £900 per apartment.
12. The applicants' concerns were amplified by the consistent failure of the respondent to provide the information requested in time or at all. The respondent's complaint that the applicants' Scott Schedules were too elaborate and poorly structured is not accepted; the respondent's own failure to provide information made the task difficult for them.
13. Complaints about issues relating to the management of the premises by the new manager are outside the scope of this determination.

14. The respondent has now disclosed a number of offers previously kept confidential on the "without prejudice" basis, on the grounds that they were capable of disclosure in relation to costs. The tribunal does not consider it necessary to determine whether to have regard to that material as, in its opinion, discussions in June 2010 (not initiated by the respondent) were too late in the proceedings, which started some fifteen months earlier, to be likely to significantly alter the applicants' scepticism of the respondent's service charge claims, or to lead to a complete settlement.
15. It has been suggested that the lead applicant was on some kind of "crusade" against the management. Whilst it may be that some material published on a web site was not conducive to harmonious relations, it is the evidence on the issues and the outcome of the proceedings that is the determining factor.
16. In the tribunal's opinion the respondent could have avoided the proceedings if their management had responded properly to the applicants' concerns in an efficient and timely manner and it is appropriate to make an order that the landlord's costs of the proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

#### **Refund of fees**

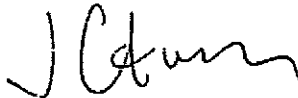
17. Each party founds its position on its respective assertion that it has been largely successful. In the light of its determination that the application was the only route available to the applicants to resolve its problems, the tribunal orders that the landlord refund to the lessees their costs of the application and the hearing – a total of £500.

#### **Applicants' costs**

18. The application for costs under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 is based on the applicants assertion that the respondent's behaviour was vexatious and unreasonable. The charge of vexatiousness is founded on the introduction of personal information about one of the applicants in a late bundle provided to the tribunal. The respondent has explained this as an inadvertent error. The charge of unreasonableness is based on this and, to some extent, on the lateness of delivery in accordance with Directions.

19. In the tribunal's opinion, in the context of the mutual antagonism that had developed over the period in dispute, the conduct of the respondent, whilst being reasonably challenged by the applicants falls short of a level that should be penalised as vexatious and unreasonable. No order is made for the landlord to pay the applicants' costs.

Chairman J C Avery



Date 15 November 2010

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