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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/11UE/LSC/2015/0013**
Property	:	**69,70 and 71 Cliveden Gages, Taplow, Maidenhead, Berkshire SL6 0GB (The Property)**
Applicants	:	**Kerima Cooper (69)** **Malcolm Neal Barker (70)** **Linda Scott (71)**
Respondent	:	**The National Trust for Places of Historic Interest or Natural Beauty (the National Trust) and Cliveden Village Management Co Ltd**
Represented by	:	**Mr Sean Middleton of Counsel**
Date of Application	:	**23rd January 2015**
Type of Application	:	**Sections 19 and 27A of the Landlord and Tenant Act 1985 (the 1985 Act).**
Date and Venue of Hearing:		**19th May 2015 at the Elva Lodge Hotel, Maidenhead, SL6 4AD**
Tribunal	:	**R. T. Brown FRICS** **Judge Bright** **L Hart**
Dated	:	**4th September 2015**

DECISION

DECISION

1. The Tribunal determines that the amount charged for insurance in the year ended 13th August 2015 (£531.98) is reasonable and payable.

2. The Tribunal makes no order under Section 20C of the 1985 Act preventing the Applicant from recovering its costs (incurred in these proceedings) by way of the service charge, in so far as such costs may be recoverable under the Lease.

3. The Tribunal makes no order for the reimbursement of application and hearing fees.

REASONS FOR DECISION

The Application and Introduction

4. This application dated 23rd January 2015 seeks determination by the Tribunal of one single issue namely the liability to pay and reasonableness of insurance premiums for the subject properties for the year 14th August 2014 to 13th August 2015.

5. The application also seeks an order under section 20C of the Act preventing the Respondents from recovering the costs of these proceedings by way of the service charge provisions in the Lease.

Directions

6. Directions were issued on 16th February 2015.

7. Further Directions issued on 22nd May 2015 seeking further information, submissions and documentation from the Respondent and allowing the Applicant the opportunity to respond. Both Parties complied substantially with those Directions.

The Property and the Tribunal's Inspection

8. The members of the Tribunal inspected the Property on 19th May 2015 in the presence of the Applicants.

9. The Estate known as Cliveden Gages, Taplow, Berkshire (The Estate) has been developed with houses and apartments specifically designed for occupation by the over 55s.

10. The Estate is nearing completion but not yet fully occupied. On completion it is understood there will be some 135 units which will be a mix of houses and apartments. Each subject property is a house.

11. The lessees all contribute to a service charge for the running of the Estate and the service charge includes payment of the buildings insurance premium.

12. The Freeholder is the National Trust and Cliveden Village Management Company Ltd (CVMC Ltd) (a company limited by guarantee) is responsible for the management and running of the Estate. The Tenant of each property will be a member of CVMC Ltd on the basis of one property one vote (as provided by

the Leases). On completion of the Estate a board will be elected to run the Estate. At present, the Tribunal was informed, Countryside Properties (Southern) Ltd (the Developer) holds 51% of CVMC Ltd. CVMC Ltd have appointed HML Shaw to undertake day to day management. HML Shaw and Countryside consult informally with the Residents' Committee.

The Law

13. The relevant law is set out below:

Landlord and Tenant Act 1985

Section 18 Meaning of "service charge" and "relevant costs"

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-

(a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.

(3) for this purpose

(a) costs includes overheads and

(b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

Section 19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

(a) only to the extent that they are reasonably incurred; and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20C Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration 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.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Lands Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

The Lease

14. Following the further Directions the Tribunal was provided with a copy of the Leases dated 30th June 2014 (No 69), dated 7th July 2014 (No 70) and 30th June 2014 (No 71). The leases are all for a term of 125 years from 1st January 2007 at rising grounds rents.

15. The contractual obligations of the Parties are not rehearsed here as there is no dispute between the Parties as to the requirement to pay the insurance by way of service charge.

16. Insurance is the responsibility of the CVMC Ltd. Mr Barker did at one point raise the issue of whether he could 'self insure' his house but it is clear that this is not permitted under the Lease.

The Hearing

17. The hearing was held after the inspection.

18. Mr Barker appeared in person and, assisted by Mrs Scott, represented himself, Mrs Scott and Mrs Cooper.

19. Mr Sean Middleton of Counsel appeared on behalf of CVMC Ltd and called witnesses: Mr D Jackson, Head of Property Management at HML Shaw, Mr M Lee BSc Hons MRICS, Managing Director of both HML Shaw and Shaw and Co Chartered Surveyors and Mr G Crutchlow, Insurance Manager at Alexander Bonhill Ltd.

20. The National Trust was neither present nor represented.

21. The Tribunal indicated at the hearing that following compliance with further Directions it did not intend to re open the hearing but to convene in private to consider the submissions and evidence. The Tribunal met on 25th August 2015 to consider these issues.

The Applicant's Case

Insurance

22. The Applicant's position is that the premium charged by CVMC Ltd is unreasonably high.

23. The 3 houses in the application are all substantially the same, each extending to an external floor area of 2,200 square feet.

24. The Applicant disagrees with the reinstatement values; The RICS Building Cost Information Service quoted to Mr Barker a range of rebuilding costs for this size of property as at January 2015: 'The rebuilding costs is estimated to be £265,000.00' ..... 'while an excellent quality house might cost £340,000.00 to rebuild'.

25. The Applicant had obtained alternative quotes to support his argument as follows:

    Instasure £251.50
    Dial direct Insurance £264.30
    Intelligent Finance £407.65 (with previous accidental damage)
    Versatile Insurance Professionals £452.00

26. In obtaining quotes the Applicant specified a rebuilding cost of £400,000.00 (which is higher than that proposed by the Respondents) based on 100% flat roofs using Sika-Trocal membranes on a plywood, insulation and felt base. The original building costs included substantial foundations which it is considered would not be necessary were the house to be completely rebuilt.

27. The premium requested by HML Shaw for the period 14th August 2014 to 13th August 2015 is £531.98. The certificate issued incorrectly stated that the policy is for a residential flat occupancy with the Building Sum Insured £757,492.00 and a Building Insured Value of £582,686.00. HML Shaw say that 30% should be added to the rebuild values but the Applicant understands that this is not the case for individual detached houses.

28. The premium quoted by HML Shaw was twice the premium paid for Copperkins (Mr Barker's previous home) even though the subject property has 44% less floor area than Copperkins and Copperkins also had substantial flat

roofs extending to 1,800.00 square feet and its insurance policy included £71,000.00 contents cover.

29. A table of comparison of the cover shows that the cover provided for Copperkins and the subject property is similar.

30. The Applicants had been very disappointed with the Respondents lack of response to their inquiries with regard to the level of premium over the preceding months leading up to this application.

Section 20C, application and hearing fees

31. The Applicants further seek on behalf of themselves and all the other residents (Applicants' Bundle A96) of Cliveden Village protection from any costs (section 20C of the Act) incurred by HML Shaw. HML Shaw have informed the Residents Group that they will seek repayment of the costs incurred in the sum of £180.00 per hour in defending the application.

32. The Applicants also seek a refund of the application (£65.00) and hearing fees (£190.00).

The Respondent's Reply

Insurance

33. The Respondents position is that HML Shaw are appointed to manage the estate on its behalf.

34. Shaw and Company Chartered Surveyors were appointed by Countryside to carry out an insurance reinstatement valuation and this was carried out by Mr Lee and dated 14th July 2014. This was undertaken using the RICS Building Cost Information Service model. Adjustments were made to bring the model into line with the subject property: solar panels, additional adjoining garage, variable ceiling heights, style of building, additional fixtures and fittings. Allowances were also made for external grounds, fences, paving, walls, brick built stores, storm porch and location.

35. The resulting assessment was £466,000.00 plus VAT (£559,200.00).

36. Since the policy was incepted 4.2% has been added to the Building Declared Value (£582,686.00) at renewal on 14th August 2015 (sic). The premium is based on the Building Declared Value.

37. The 'Declared Value' is the total cost to rebuild the property (including all fixtures and fittings, car parks and pavements) at inception or renewal of policy. It should also include an allowance for professional fees and removal of debris.

38. The 'Sum Insured' is the Declared Value plus an allowance for inflation (30% under this policy although the figure can vary with insurer to take into account inflation costs during the time taken to rebuild the property).

39. VAT is not applicable where there is a total rebuild. However, it does apply where there is partial rebuild. Insurers have confirmed that in the event of a partial rebuild being required where VAT had been knowingly excluded from

the overall Building Declared Value then insurers would not make any payment for VAT on the costs incurred.

40. There is no claims history on the Property and no commission is paid to the Landlord, the Landlord's Agent or any associated individual or company.

41. Alexander Bonhill insurance brokers are appointed to carry out a full marketing exercise and obtain quotations from A rated composite London Market Property Insurers. The Respondent's position is that the companies quoted by the Applicants are not A rated composite London Market Property Insurers.

42. The Tribunal did not receive formal witness statements from Messrs Lee, Jackson and Crutchlow. At the hearing they were, however, questioned by both Mr Middleton and Mr Barker about their roles and actions in obtaining insurance.

Respondent's submissions following Further Directions:

Lease

43. The Tribunal received a certified copy of the Leases for all three of the subject properties with confirmation that they are substantially the same.

44. Each Lease makes provision for the inclusion of the insurance (paragraph 12 of the Fifth Schedule) in the service charge provision and includes: 'the property the estate and the buildings therein (including the Management Company's fixtures and Fittings and the furnishing of the common parts thereof but not the contents of any property on the estate)'.

45. The clause includes for insuring against loss or damage by fire lightening explosion earthquake storm flood escape of water riot civil commotion subsidence heave or landslip and such other risks as the management Company shall think fit.

46. The clause requires the insurance to be placed with an office of repute through such agency as the Management Company shall in its discretion decide.

47. Paragraph 13 of the Fifth Schedule provides for Third Party insurance against the liability of the Landlord and Management Company.

How the insurance premium is calculated for each property is split from the premium for the communal parts of the estate

48. The items which fall to the service charge are:

The Communal areas Premium inc IPT	£48.78
The Electric Truck Premium inc IPT	£92.53
The Estate Office Premium inc IPT	£141.94

49. The premium for each of the subject properties (including 6% IPT):

Buildings Including Property Owners and Employers Liability	£470.22
Terrorism	£61.76
Total	£531.98

50. Property Owners Liability covers the whole Estate and Aviva have confirmed that they attribute 20% of the buildings premium for this cover - £94.04 inc IPT.

Terrorism Cover

51. The Respondents position is that the insurance requirements of the Lease includes terrorism cover under the overall definition of 'explosion' (*Qdime Limited v Bath Building* [2014] UKUT 261 (LC)). Further the Management Company has exercised reasonable discretion in accordance with the RICS code in placing terrorism cover.

Full cost of VAT

52. In response, explaining why it is necessary to include the full cost of VAT in the calculations for the building sum insured, the Respondent refers to The RICS Practice Standards, UK Reinstatement Cost Assessments of Building (2nd Edition) section 8.4: 'It is advisable for assessments to take into account the building and trading position of the insured and consider each case individually with the client and the broker before the finalisation of the assessment to determine which elements, if any, VAT needs to be applied to. It is advisable to carry out this exercise even though many policies include a free allowance for VAT over and above the sum insured, because this may not always be the case. Surveyors should also be aware that property owners can elect the VAT status of individual properties within their ownership and that the VAT status of their properties may not be consistent'.

53. The Aviva, AXA, Allianz and NIG policies include VAT.

Definition of integral garage

54. The BCIS defines how garages should be assessed - integral and semi integral garages should be included with the gross floor area of the house.

55. Mr Lee says that the term integral is not defined but from the distinction between attached and detached referred to by BCIS it is fair to assume that an integral garage is an attached garage that is built within the walls of the main structure. Mr Lee says at 11.3.1 of his report: 'The subject garages are attached to the buildings but do not have any accommodation or structure above them and are therefore attached. The sales brochure for the houses describes the garages as being "integrated' however this refers to the garage being accessible from the interior of the house'.

Section 20C, application and hearing fees

56. Mr Middleton made submissions on behalf of the Respondents as to why the Tribunal should not make an order in favour of i) the applicants; ii) the remaining leaseholders of Cliveden Village. These submissions were on the assumption that the Tribunal would find wholly or partially in favour of the Respondents.

57. Mr Middleton refers to the fact that the Tribunal must base its decision on what is just and equitable. In particular Mr Middleton refers to the Deputy President in *SCMLLA (Freehold) Ltd v A number of Lessees of Southwold and Cleveland Mansions* [2014] UKUT 58 (LC) at paragraph 19: 'It is clear from section

20C(3) that the LVT has a wide discretion to make....such order on the application as is just and equitable in the circumstances'. In the Tenants at *Langford Court (Sherbani) v Doren Ltd* LRX/37/2000 Judge Rich identified "the only principle upon which the discretion should be exercised" as being "to have regard to what is just and equitable in all the circumstances".

58. From *SCMLLA (Freehold) Ltd* at paragraph 27: 'An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all those affected by it and all other relevant circumstances'.

59. Mr Middleton states that it is a generally accepted principle of English law that the Courts expect parties to seek redress in front of them once all other alternatives have been exhausted (exhaustion of remedies doctrine).

60. Mr Middleton states that 20C does not automatically preclude contractual rights and obligations and refers to Woodfall Landlord and Tenant (7.172): ' Where a lease provided for payment by the tenant of' ....."the costs of employment of any managing agents legal or professional advisers or of any company or person for the collection of [service charge] rent of the flats in the block of flats or in connection with the general management or maintenance thereof....." It was held that legal costs incurred by the Landlord in defending applications made by the Tenant to the Leasehold Valuation Tribunal seeking to challenge service charges were recoverable - *Staghold v Takeda* [2005] 3 E.G.L.r.45. The applications to the Tribunal had been largely unsuccessful and the Tribunal declined to make any order under section 20C of the Landlord and Tenant Act 1985.

61. Mr Middleton states that the Applicants have not tendered any evidence that they speak for, have the support of and are entitled to litigate on behalf of all the whole complex. There is not even a letter of support from the ad hoc owners committee in this matter.

62. Mr Middleton submits that 'the Appeal Tribunal has found that it is insufficient to make an application on 'behalf of all the other tenants/owners' and refers to *SCMLLA (Freehold) Ltd v A number of Lessees of Southwold and Cleveland Mansions* [2014] UKUT 58 (LC) and *Conway v Jam Factory Freehold Ltd* [2013] UKUT 0592.

63. Mr Middleton states that CVMC Limited is in itself a shell and that the complex will be handed over to a formal residents committee when it is completed. HML Shaw say that they were only aware of the hearing a week before it took place and were not in a position to engage with the applicant at an earlier stage seeking resolution other than court action. The first respondent is the National Trust from whom the land on which the complex is built is leased and they will not bear any of the legal costs and are named in the hearing for the sake of completeness.

64. CVMC Ltd has no other business or source of income and therefore cannot practically pay the legal costs arising out of defending this application. Should it be made to shoulder the costs, it can only do so via income from the collective homeowners. It would need to use any surplus monies already collected by way of service fees, and if barred from doing so Cliveden Management Limited would for all practical purposes be in a state of insolvency.

65. Mr Middleton submits that Mr Barker's demonstrated a vexatious and aggressive attitude and an attitude of non-cooperation.

66. Mr Middleton supplied the Tribunal with a without prejudice letter that had been sent to the applicants prior to the hearing, to be opened once the final determination as to the merits has been made.

Applicants' response following Further Directions

How the insurance premium is for each property is split from the premium for the communal parts of the estate

67. The Applicants say the premiums charged for their houses is disproportionate to other houses on the Estate. A two bedroom house, for example, have a current premium of £153.52 whereas the premium for the Applicants properties is 3 & 1/2 times greater.

68. Aviva say that 20% of the premium is attributed to Properties Owners liability across the whole estate. This should have been divided equally across all units resulting in a premium reduction of £50.00 to £60.00.

Insurance Tender Report

69. The Applicant's say that 3 quotes is not evidence that the market has been fully tested.

Terrorism Cover

70. Having seen the *Qdime* decision the Applicants, being unrepresented, were unable to comment further however there may be cases that support the Applicant's position.

Full cost of VAT

71. The Applicants submitted a number of articles on VAT.

72. The Applicant's continue to contest the way in which the garage is defined and the insurance value determined.

Section 20C, application and hearing fees

73. The Applicants' position (including the other residents of the Estate) is that an order should be made preventing the Respondents from recovering the costs of the application and for reimbursement of the application and hearing fees.

74. The Applicants have sought to deal with the matter without legal representation to keep costs to a minimum and recognising the very modest nature of the claim.

75. Mr Barker refers to the correspondence from the various Applicants with HML Shaw commencing in October 2014. Having had no explanation about the level

of insurance premiums, Mr Barker advised Countryside Properties plc on 18 January that an application would be made to the Tribunal unless the Applicants could enter into a proper dialogue with HML Shaw. The application was made on 23 January 2015 having exhausted all other means of having their complaint addressed by the respondents and following the advice given by the Leaseholders Advisory Service to seek redress through the Tribunal.

76. The management company's directors and company secretary are employed by Countryside Properties plc. If liabilities are incurred by the Management Company they will have to be discharged by Countryside Properties plc before handover and so they will be met. HML Shaw hold substantial reserve funds on behalf of the Management Company.

77. The respondents had ample opportunity from the service of the papers on January 23 to engage with the applicants to come to an amicable settlement but did not do so.

78. The Applicants repudiate Mr Middleton's statement implying harassment.

79. The residents of Cliveden Village should not be penalised indirectly by having to pay costs through their service charges. If the section 20C order is not successful in full the applicants request that at least 50% of the Respondents' costs are not to be regarded as relevant costs to be taken into account in determining the service charge payable. They refer to *Conway v Jam Factory Freehold Ltd* [2013] UKUT 0592.

80. The Applicants believe the purpose of section 20C is to provide the tenants with a 'level playing field'.

81. The Applicants had taken comfort from Tribunal's Guidance Note T541 'The tribunal does not normally award costs.....'

82. At a meeting with other residents the Applicants were concerned to learn that HML Shaw were threatening to charge CVMC Ltd with the costs of these proceedings. This had led to the 20C application.

The Tribunal's Deliberations

83. The Tribunal considered all the relevant written and oral evidence (which is summarised above) in its deliberations. The Tribunal is grateful to the parties for the comprehensive and detailed documentation presented to assist it in making its determination.

Insurance

84. Terrorism: The Tribunal finds that the Lease requires insurance against '*explosion*' and following the *Qdime* case (above) 'explosion' includes terrorism. HML Shaw were therefore correct to include this in the overall cover.

85. VAT: It is evident to the Tribunal that there is a range of practice with regard to the application of VAT to sums insured. Given the nature of the Respondents responsibilities the Tribunal find that it was prudent and reasonable to include the full cost of VAT in the assessment of risk.

86. Garage: The Tribunal noted the different approaches to valuing and defining integral and attached garages. The Tribunal is however satisfied that the approach adopted by the Respondents was reasonable.

87. Commission: The Respondent states that no commission was paid. However, during the hearing it became apparent that Alexander Bonhill received a brokerage fee of 16.3% (5% on the terrorism cover). The Tribunal noted Mr Barker's comment about Alexander Bonhill being part of the HML group. This however does not negate the right to be paid for the professional services of tendering and recommending insurance cover to the Respondents through its agents. The Tribunal accepts that this level of fee is within the 'band of reasonableness' for such fees.

88. The principles for determining the reasonableness of insurance premiums are set out in a series of determinations:

Berrycroft Management Co Ltd and Other v Sinclair Gardens Investments (Kensington) Ltd [1997] 22EG 141: Insurance has been arranged in the normal course of business with an insurance company of repute.

Forcelux v Sweetman [2001] EGLR: Insurance has been reasonably incurred in accordance with terms of lease – the market has been regularly tested – and the costs themselves are not excessive.

Havenbridge Ltd v Boston Dyers Ltd [1994] 49 EG11: The premium charged does not have to be the cheapest available.

89. The Tribunal applied the first 2 principles (above) and came to the conclusion that they do apply in this case and the resulting premium was within the 'band of reasonableness' for such premiums. It was clear to the Tribunal that Alexander Bonhill had tested the market and the insurance had been arranged in the normal course of business.

90. The Tenders had been sent to 3 insurance companies of repute and the report recommended the cheapest of those quotes. The 3rd principle above does not require that the insurance premium is the lowest available. Although it was evident that Mr Barker had tried very hard to obtain insurance quotations, there was no truly comparable quote presented in his evidence.

91. The Tribunal determines that the premium proposed by the Respondent is both reasonable and payable.

Section 20C, Application and Hearing fees

92. The Tribunal notes the Applicants 'comfort' from the Tribunal's Guidance note stating that the Tribunal does not normally award costs against the losing side. This is not, however, the same as the issue under section 20C. Section 20C is not to do with making the losing party paying the costs of the other party but to do with whether the landlord or management company is able to recover its costs through the service charge mechanism in a lease. A section 20C order, if made, prevents such recovery.

93. The starting point for the Tribunal is whether or not it considers 'it just and equitable in the circumstances' (S 20C(3) above) for an order to be made.

94. The Tribunal confirms that the application is made on behalf of all of the lessees. This is evident from the Applicants Bundle: 'We would also like to apply for the repayment of our application costs and any hearing costs. In addition and very importantly, we request protection on behalf of all of the Residents of Cliveden Village from any costs incurred by the HML Shaw in defending this claim being passed on to them by way of service charges'. (p. A96 of the Applicants Bundle).

95. Further, Mr Middleton's submissions in response to the Further Directions refer expressly to the fact he is responding to the request for section 20C order in favour of both the Applicants and the remaining leaseholders of Cliveden Village. In *Flats 7& 9 Temperance* Hall LRX/119/2007, the President commented (at [8]) that 'provided that the applicant identifies such other persons the LVT may make an order in respect of them. What may well happen in practice is that the LVT, after determining that service charges were not reasonably incurred, will ask the successful tenant whether he or she asks for an order under section 20C and, if so, whether the order should extend to other tenants. Submissions can then be made by the landlord, knowing in respect of whom it is contended that the order should be made'.

97. The fact that stands out strongly to the Tribunal is that the Applicants had been raising the issue for several months before bringing this action, including writing to the Chief Executive of Countryside. They had received no substantive response, merely 'holding' type correspondence. This led them to make enquiry of LEASE who encouraged them to make the application to the Tribunal.

98. In *SCMLLA (Freehold) Ltd v A number of lessees of Southwold and Cleveland Mansions* [2014] UKUT (58 LC) Martin Rodger QC noted that it was important that the respondent has a full and proper opportunity to respond to the application. There can be no doubt that in this case the respondent is aware the application is made on behalf of all leaseholders.

99. In exercising the Tribunal's discretion on whether it is or is not just and equitable in the circumstances to make a 20C order the fact remains that the Applicants were not successful.

100. As the Applicants were unsuccessful there have to be 'unusual circumstances' (*Schilling v Canary Riverside Estate Management* LRX/26/2005) for the Tribunal to make an order.

101. In this case Mr Barker had tried repeatedly to obtain answers to his enquiries and had resorted to writing to the Chief Executive of Countryside but to no avail and had concluded the only course remaining open to him was to take the matter to the Tribunal.

102. The Tribunal has tremendous sympathy with Mr Barker's position however it must note that the Applicants are unsuccessful and consider whether the circumstances are unusual.

103. The Tribunal finds that the Respondent's agents had been dilatory in providing a proper explanation (to which he was entitled) behind the decisions made in respect of insuring the Estate.

104. The Tribunal is also required to consider the practical and financial impact of making an order. In *Conway v Jam Factory* [2013] UKUT 0592 (LC) Martin Rodger QC at [31] said that the purpose of s 20C: '.... is to give an opportunity to ensure fair treatment as between landlord and tenant in circumstances where even although the costs have been reasonably and properly incurred by the landlord, it would be unjust that the tenants or some particular tenant should have to pay them' and at [75] '....In any application under section 20C it seems to me essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding in the just and equitable order to make'.

105. There was limited evidence before the Tribunal as to the practical and financial consequences of making an order.

106. No submissions have been made as to whether the costs of representation before this Tribunal are recoverable under the terms of the leases. The Tribunal accordingly makes no determination on this point but observes that there is doubt as to whether recovery is allowed by the Leases.

107. The Tribunal notes that CVMC Ltd is a company limited by guarantee whose members are or will be lessees of the National Trust. If CVMC Ltd is unable to recover the costs this may have an effect on the solvency of the company as the only known income of the company is the money it collects by way of service charge.

108. Taking into account all of these considerations, it follows that in these particular circumstances, whilst the Tribunal is sympathetic to the Applicants, the Tribunal does not consider that it is just and equitable to make an order. Accordingly no section 20C order is made and similarly and for the same reasons no order can be made in relation to the application and hearing fees.

Robert T Brown
Chairman