Y Tribiwnlys Eiddo Preswyl
Residential Property Tribunal Service (Wales)
Leasehold Valuation Tribunal (Wales)

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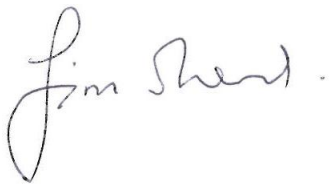
Premises:	1-227 Adventurers Quay, Cardiff Bay, Cardiff ("the premises")
RPT ref:	LVT/0019/07/14
Hearing:	13th January 2015
Order:	19th March 2015
Applicant:	Adventurers Quay Management Company Limited
Respondent:	Freehold Estates Limited
Tribunal:	Mr JE Shepherd – Legal Chairman Mr R Baynham MRICS

DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL

ORDER

1. The application is dismissed.

Dated this 19th day of March 2015



Lawyer Chairman

1. The tribunal held a preliminary hearing on 13th January 2015 in order to determine whether it had jurisdiction. The Applicant, Adventurers Quay Management Company Limited made an application to the tribunal in relation to premises at 1-227 Adventurers Quay, Cardiff Bay, Cardiff ("The premises") on 15th July 2014.

2. The Applicant is a management company which carries out management functions and is a party to the operative lease. This is a tripartite lease the other parties being the freeholder and the lessees. The Applicant is referred to in the lease as "the company". They do not have a legal interest in the premises. The Respondent, Freehold Estates Limited is the freeholder and lessor of the premises.

3. The Applicant sought a determination pursuant to the Landlord and Tenant Act 1985, s.27A in relation to insurance charges for 2012-2013 and 2013-2014. At the hearing the application was extended to include the current year's charge. The Applicant challenged the level of insurance premium being charged by the Respondent's nominated insurance company. They stated in their application dated 15th July 2014 that the charges for 2012-2013 and 2013-2014 were excessive and should be at much lower rates in accordance with comparable rates obtained by them. A letter before action sent to the Respondent was relied upon. In the letter dated 29th November 2013 the Applicant's solicitors attached a table showing a range of quoted insurance premiums for the premises. Amongst other things the letter stated:

> *We are instructed that you have in the past refused to allow our client , which is as you know, charged with the management of the entire site, to take out cover which is not through your agency and which is , as a consequence , considerably more expensive than our client could obtain on the market. Our client has undertaken a detailed exercise with regard to the premium which could be achieved when compared to those which are currently being charged. We have attached hereto a schedule which shows the various quotes and the terms applicable thereto. On current evidence our client's preferred option would be to proceed with the quotation from BM Property Insurance. This quotation is not the cheapest on the market but in our client's view, it offers the best terms. It will be seen that the terms offered provide for a premium of £31942, as opposed to the current premium of £45000 or more being charged by yourselves. As you will be aware the Tribunal has the power to make orders with regard to insurance matters. Our client takes the view that your refusal to allow insurance to be taken at a lower rate, but on no less beneficial terms as to cover and excess is unreasonable and unfair, and in that case, they say that you ought not to be able to recover from the leaseholders the whole of the premium payable and or/ought to allow a proper market exercise to be undertaken at each renewal.*

4. The Respondent challenges the tribunal's jurisdiction. In their submissions dated 24th October 2014 at para 7 they state that it is clear from the provisions in the lease that the Respondent does not receive directly or indirectly

payments of service charge from either the Applicant or indeed the lessees. Neither is the Respondent under any obligation to pay the Applicant any service charge. There is therefore no service charge passing between the parties to this application for the tribunal to determine and the tribunal does not have jurisdiction pursuant to the Landlord and Tenant Act 1985, s.27A.

5. The Respondent further stated at para 8 of their submissions that the correct procedure would be for the lessees to issue an application against the Applicant as the Applicant would be regarded as the landlord under the 1985 Act. This proposition they say is supported by an extract from Service Charges and Management (Third Edition) Tanfield Chambers which states at para 28-004:

> *It has been held that where the terms of the lease provide for the management company to collect the service charge and do not provide for the landlord to take any part in the payment or receipt of the service charges, and the landlord has not done so, the landlord should not be a party to the proceedings in the appropriate tribunal. In such circumstances the correct respondent is the management company alone: Barton and Others v Accent Property Solutions Ltd and others LRX/22/2008.*

6. The Respondent also relied on the Upper Tribunal decision in *Barton* itself. In *Barton* the question facing the Upper Tribunal was whether a freeholder and managing agent had been properly joined by the LVT as Respondents to an application brought pursuant to s.27A Landlord and Tenant Act 1985.

7. The leaseholders were the Applicants at the original LVT hearing. There were three Respondents: Accent Property Solutions Limited, Eton Court (Harrogate) Management Company Limited (The management company) and Graycliffe Homes Limited (Graycliffe). Graycliffe had built the development at Eton Court and granted individual 999 year leases of each of the flats. They formed the management company and issued one share to the leaseholders of each flat. The original directors of the management company had resigned in favour of Mr Barton and Christopher Woodcock who were leaseholders. The leases were made between Graycliffe, the management company and the particular lessees. Graycliffe were not involved in the payment or receipt of the service charges and the lessees covenanted to pay the management company the service charge, in return the management company provided the services.

8. At paras 32 - 33 of the *Barton* decision the Upper Tribunal stated the following:

> *It is clear that the obligation to provide services is imposed on the management company. Graycliffe as landlord is under no obligation to become involved in the provision of services other than in the case of default by the management company and then only on the basis of specific conditions. There is no suggestion that Graycliffe had been asked to become involved in this way. For that reason, and also because Graycliffe took no part in the payment or receipt of service*

charges, Graycliffe should not have been added as a Respondent in the LVT proceedings.

I turn to Mr Barton's submission that the Lands Tribunal appeal should continue between the leaseholders and the management company. I consider that such an action would constitute an abuse of process. The position of both parties is identical, so there would be no dispute for the Tribunal to determine.

9. In its written response to the jurisdictional challenge dated 14th November 2014 the Applicant makes a number of points.

   a) It states that the Applicant and Respondent are parties to the lease-it is noted at this point that this is not in dispute and indeed does not advance this case beyond *Barton*.

   b) It states that if the lessee does not pay the appropriate portion of the insurance premium then the lessor has the ability to determine the lease pursuant to Clause 3 of the Sixth schedule of the lease – the forfeiture clause (see below). It seems likely that the relevant lease in *Barton* also contained such a forfeiture clause as leases ordinarily do but nothing turns on this.

   c) It states that in the present case the Respondent lessor can be and is involved in the provision of service charges. Clause 5 of the fifth schedule (see below) enables the lessor to direct the company to use their nominated insurer or agency and this direct involvement distinguishes the present case from *Barton.*

   d) It states that the extract from Service Charges and Management (Third Edition) (see para 5 above) does not apply to the present case because Clause 6 of the Sixth Schedule of the lease (see below) entitles the landlord to carry out the management company's duties in the event of default. It is noted here that the lease in *Barton* also had a default provision. In any event the Applicant states that the nomination clause distinguishes the present case from *Barton* and this clause allows the freeholder to take a part in the management of the development which directly affects the payment and receipt of the service charges.

   e) In conclusion the Applicant states: *To allow the Respondent lessor to interfere with the duties of the Applicant Company and enforce its will as to which insurance company is utilised, causing a cost to the Company which it directly passes on to Lessees in their increased Service Charge, without any mechanism to allow for the determination/reasonableness of the amount as the Respondent contends flies in the face of the purpose of the service charge provisions in the Act.*

10. The following clauses of the sample lease provided to the tribunal are relevant:

a) Clause 2.8 in which “service charge” is defined as the lessee’s contributions (by way of additional rent) towards the company’s or lessor’s costs throughout the term for the services described in the Fifth Schedule of the lease such contributions to be the lessee’s proportion of the company’s or lessor’s costs in Clause 2 of the Sixth Schedule of the lease.

b) Clause 4 – under which the lessee covenants with the lessor and the company and other lessees of the other parts of the development to observe and perform the obligations in the Third Schedule.

c) Clause 5- under which the lessor covenants with the lessee to observe and perform the obligations in the Fourth schedule.

d) Clause 6 under which the company covenants with the lessor and the lessee to perform the obligations in the Fifth schedule and indemnifies them against any liability in respect of the same.

e) Third Schedule, Clause 1 under which the lessee covenants to pay the rent and service charges at the times and in the manner appointed for payment without any deductions whatsoever.

f) Fifth Schedule Part A, clause 5 under which the company covenants to insure or to procure the insurance of and to pay for the cost of insuring the insured risks with a reputable insurance office and if directed by the lessor with a company nominated by the lessor or through an agency of the lessor in that company (such insurance to be effected in the joint names of the lessor, the company and the lessee).

g) Fifth Schedule, Part B, clause 6 where the insurance clause is reproduced in respect of different parts of the development, similarly in Part D and Part E of the Fifth Schedule.

h) Sixth Schedule, clause 2(a) under which the lessee covenants to pay the company the service charge being the relevant proportions of the reasonable and bona fide costs and expenses of the company in performing its obligations as detailed in the fifth schedule (including the cost of insurance).

i) Sixth Schedule, Clause 3, a forfeiture clause allowing the lessor to re-enter the premises in the event of the rent or service charge being unpaid at the expiration of 21 days or if the lessee fails to observe any of the obligations under the lease.

j) Sixth Schedule, Clause 6, which allows the lessor to carry out work itself in the event of the company failing to perform its duties in which case the lessor will be entitled to collect the service charge directly from the lessee.

11. At the hearing of the preliminary issue on 13th January 2015 the Applicant was represented by Ms Davis and the Respondent by Mr Hoskin. Mr Hoskin was

invited to make his submissions first because he was challenging the jurisdiction of the tribunal. He said it was a straightforward matter. There was no service charge paid by the Respondent and there was no service charge passing between the parties. The insurance premium was not paid to the Respondent.

12. The insurance company was Zurich. A letter was sent to the Applicant by the Respondent notifying them of the insurance company that they wanted to nominate. In the present case Resident Insurance Services were the brokers. They appointed Leasehold Property Management to collect the premium. Mr Hoskin understood that the Respondents did not benefit by way of commission. He was unable to say whether there was any relationship between the Respondent and the insurance brokers but agreed to check this.

13. Mr Hoskin said that the management company was responsible for the management of the development. They were in a position to negotiate the insurance premium with the agents. The only difference was the right of nomination enjoyed by the Respondent. There was no reason for the Respondent to be involved in the management of the development unless the management company went bust or if they were not performing their duties. He could not see a situation where the management company would not perform its duties because it was made up of leaseholders. The Applicants had entered into the lease with their eyes open and the nomination clause had been in existence unchanged since then.

14. Mr Hoskin emphasised that it was between the brokers and the management company to negotiate the premium. The Respondent did not dictate what the premium was. There was nothing to stop the management company negotiating with the broker.

15. Ms Davis for the Applicant said that it was their understanding that the Respondents did obtain a financial benefit and that this is why the premium was enhanced. The landlord nominated the broker. There was no negotiation. The broker dictated the premium. The management company could not go to market but was stuck with whoever was nominated by the Respondent. She said it would be useful to know how the various entities in the insurance arrangements were connected.

16. In terms of the Applicant's standing in the present proceedings Ms Davis submitted that it was plain from the lease that the Applicant and Respondent are parties. She went through the relevant provisions in the lease and said that lease created covenants between all three parties, the lessor, the lessee and the company. The company paid the costs and recovered these sums from the lessees. If these sums are not paid the lessor has a right to determine the lease – see the forfeiture clause. The Respondent had an interest in getting the monies paid. There was also the direct involvement of the Respondent in the service charge. The Respondent dictated which broker the Applicant should use.

17. Ms Davis submitted that the present case was distinguishable from *Barton v Accent Solutions* LRX/22/2008. The fact that the Respondent was able to play a role in the choice of insurers was a key distinguishing aspect. The Respondent was taking part in the provision of services. It was the appropriate Respondent in the proceedings because it had made a decision to become involved in the process of nominating an insurer. The lease involves the landlord in terms and they have been so involved. Further at Clause 6 of the 6th schedule of the lease there is a mechanism which enables the Respondent to be involved in the provision of services in the event of default by the management company. The effect of the Respondent's involvement was to alter the amount of service charge being recovered. The purpose of the present application was to control the amounts being recovered.

18. Ms Davis further submitted that the directors of the Applicant company are all tenants. There were 9 directors. There were 227 properties mostly flats. It was recognised that the decision of the Tribunal could not affect sums already paid for insurance by the management company but the application had been made in order to get a declaration for the future. A determination that the sums paid were not reasonable would encourage the Respondent to look at other options and find a reasonable policy. The Applicant's case was that they are unable to go to market. The lease is strict in this regard.

19. After a short adjournment having made enquiries the parties presented further information to the Tribunal. Mr Hoskin accepted that the brokers were connected to the Respondent. The Applicant's enquiries had revealed that Leasehold Property Management had the same registered address as the Respondent as well as the same directors and secretaries. Further the Applicant produced copies of demands which appeared to show that the Respondents were funding the insurance premiums themselves and demanding the money back from the management company. Ms Davis submitted that this illustrated even more control of the process by the Respondent. There was no opportunity for the management company to negotiate. The demand for payment from the management company also contained the former prescribed information which was required for the recovery of service charges. In other words it appeared at least as if the Respondent was demanding that the service charge be paid by the Applicant. In these circumstances it was submitted that the Applicant ought to have the ability to come to the tribunal in order to seek a determination.

20. Mr Hoskin maintained that despite this information there was no obligation under the lease for the Respondent to pay the insurance and seek to recover that sum. In any event there was still no service charge paid.

21. The tribunal raised the case of *Ruddy v Oakfern* [2006] EWCA Civ 1389 (see further below) and invited submissions by the parties on the case. Ms Davis said that the case was on different facts but relied on paragraph 82 of the decision – no restriction on the words in s.27A – the Applicant was entitled to make the application to the tribunal. In relation to the service charge issue in *Ruddy* Ms Davis accepted that the company had no legal interest and were

not tenants but sought to rely on the provision in s.18 extending service charges to sums paid directly or indirectly. Mr Hoskin maintained that the Respondent was not a tenant and therefore there was no service charge paid pursuant to s.18 Landlord and Tenant Act 1985.

22. In light of the fact that fresh evidence and law had been raised which both parties needed to consider the hearing was adjourned with directions for disclosure and final written submissions. The directions also made provision for any application to join the proceedings made by a lessee to be determined at the same time as the preliminary issue. To date no such application has been made.

23. The Respondent was asked in the directions to provide an explanation of the relationship between Leasehold Property Management, Resident Insurance Services and Freehold Estates Limited, including the respective shareholdings of each and confirm whether any financial benefit was received by any company within its group from the insurance premiums demanded. In response to this the tribunal and the Applicant were provided with a brief explanation dated 27th January 2015 stating the following:

    1. *As confirmed at the hearing the companies are members of the same group of companies. The shareholder of Freehold Estates Limited is Grays Inn Estates Limited. The shareholder of Leasehold Property Management Limited and Resident Insurance Services is Gray's Inn Operations Limited.*

    2. *It is understood that Residents Insurance Services and Freehold Estates Limited receive a financial benefit as a result of the insurance.*

24. The Applicant provided by way of disclosure, insurance documents for the relevant period. The disclosure was substantial. The tribunal considers that only the following documents are of direct relevance:

    a) A final notice sent from Leasehold Property Management to the Applicant dated 14th January 2014 requiring the payment of the insurance premium of £49,443.97. The letter states amongst other things the following:

    Note that under sections 47 & 48 of the Landlord and Tenant Act 1987 your landlord's (Freehold Estates Limited) address for service of notices (including notices in proceedings) is 353 Kentish Town Road, London NW52TJ.

    The letter also contained a summary of tenant's rights and obligations in relation to service charges.

b) Letters dated 22nd November 2013, 21st November 2014 and 28th November 2014 from Leasehold Property Management to the Applicant which state amongst other things the following:

In accordance with the lease the insurance covering the above mentioned property has been effected by the landlord as follows…..details were provided as to the insurance cover. Again a summary of the tenant's rights and obligations was provided in relation to service charges.

c) A letter from Close Premium Finance to the Applicant which states in a note at the bottom of the letter that Close Premium Finance pays Residents Insurance Ltd a commission in connection with the account.

25. The Respondent's further submissions dated 16th February 2015 stated that although the demand issued by Leasehold Property Management appeared to seek payment of the insurance premium which had been effected by the Respondent this was misleading. The Respondent had nominated Resident Insurance Services as their chosen agency in accordance with the lease (letter dated 19th November 2013 attached to the Respondent's submissions). The Applicant had failed to comply with this requirement. Accordingly in order to ensure insurance cover Resident Insurance Services took out insurance in the name of the Respondent and Applicant and asked Leasehold Property Management to raise a demand to the Applicant. The Applicant then paid the insurance within the credit terms of the insurers- *No premium was therefore paid by the Respondents* (Para 5). In any event the mere presence of a demand did not mean that a service charge was payable as a matter of law.

26. The Respondent further submitted that the Applicant has no interest in the premises insured and pays no rent accordingly it pays no service charge, therefore the tribunal does not have jurisdiction under section 27A or section 19 of the 1985 Act (Para 8).

27. In its further written submissions dated 17th February 2015 the Applicant highlighted the fact that the disclosure showed amongst other things that the Respondent had effected the insurance policy itself and through Leasehold Property Management had demanded the payment of these sums as though they were service charges. This showed that the Respondent was directly involved in the provision of service charges. The disclosure also showed that a commission was paid to Residents Insurance Services and that both the Respondent and the agency benefitted financially from the insurance provisions.

28. The Applicant submitted that this direct involvement of the Respondent by paying for the insurance and collecting the service charge further distinguished the present case from *Barton* and the extract from Service Charges and Management (Third Edition) cited above. In summary the Applicant stated the following at para 23 of its further submissions:

To have a situation where the Respondent has acted in a manner , usurping the management duties of the Applicant company contained in the lease, enforcing its will as to which insurance company is utilised, demanding payment to itself (and receiving that payment), causing a cost to the company which it directly passes on to their lessees in their increased service charge, without any mechanism to allow for the determination/reasonableness of the amount as the Respondent contends flies in the face of the purpose of the service charge provisions in the Act. The Applicant's firm submission is that the Tribunal plainly can be rightly seized of this matter.

Relevant legislation

29. The Landlord and Tenant Act 1985,s.18 states the following:

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, improvements or insurance or that landlords 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" include overheads, and
(b) Costs are relevant costs in relation to a service charge whether they are incurred , in the period for which the service charge is payavble or in an earlier or later period.

30. Landlord and Tenant Act 1985,s27A states the following

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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

31. Under Landlord and Tenant Act 1985,s.30 “landlord” includes any person who has a right to enforce payment of a service charge and “tenant” includes a statutory tenant and where the dwelling or part of it is sub-let the sub tenant.

Conclusions

32. The tribunal considers that it does not have jurisdiction to decide the application in the present case.

33. Under the lease the Respondent is entitled to direct the Applicant to use a company nominated by them or direct that insurance is obtained through an agency of the Respondent in the company chosen (5th Schedule Part A, clause 5). Further the insurance is to be effected in the joint names of the lessor, the company and the lessee.

34. On its face therefore there is nothing objectionable at least as far as the lease is concerned in the Respondent requiring the Applicant to insure in a company of its choice through its agent, Residents Insurance Services Limited. The fact that Resident Insurance Services Limited is connected to the Respondent is not surprising indeed the lease appears to envisage such a connection.

35. Of potential importance is the question of whether the Respondent’s involvement in the provision of insurance has gone beyond mere nomination and whether in fact the Respondent is actually involved in the collection of a service charge from the Applicant?

36. The Applicant argues that the service charge demands sent to them by the Respondent demonstrate that the Respondent is directly involved in the

collection of a service charge and that this distinguishes the present case from *Barton*. It certainly appears to be true that the Respondent's involvement in the provision of and payment for insurance has gone beyond mere nomination. The demands demonstrate that the Respondent has effected insurance and its agent has then sought to recover payment from the Applicant. This illustrates a level of involvement in the provision of services by the freeholder beyond that which was involved in *Barton*. The Respondent maintains that no money was passing to them, the insurance was effected by the agent in order to ensure continued cover but no premium was paid or recovered by the Respondent. It is clear nonetheless that the Respondent has benefitted financially under the insurance arrangements, indeed this was conceded.

37. The mechanics of the insurance provisions in the present case unfortunately remain unclear. The tribunal has not been assisted in this regard by the Respondent who has provided the bare minimum in terms of disclosure and whose evidence has varied as the case has progressed.

38. On the assumption that the Applicant is correct and the present case is distinguishable from *Barton* by virtue of the direct involvement of the Respondent in the receipt of the insurance premium does that necessarily mean that the tribunal has jurisdiction?

39. The answer must be no. The Applicant accepts that it does not have any legal interest in the premises. It is a management company managing property on behalf of the lessees. In these circumstances the payment over of an insurance premium to the Respondent by the Applicant is not a service charge. Section 18 of the LTA 1985 defines a service charge as an amount payable by a *tenant of a dwelling*. The Applicant is not a tenant of a dwelling and the sums challenged are the insurance premiums payable under the lease by a management company. The fact that those sums are recovered from the lessees by way of service charge does not alter the position. The lessees have not sought to join the present proceedings. Even if they did it is difficult to see that they would be able to challenge the amount of the premium being paid by the management company.

40. In *Ruddy v Oakfern Properties Ltd* [2006] EWCA Civ 1389 [2007] Ch 335 the Court of Appeal dealt with a case in which the upper floors of a building , which comprised 24 separate residential flats, were let on a long lease to a company, the mesne landlord , which sublet the flats to individual tenants. Under the head lease the mesne landlord was obliged to pay the freeholder a maintenance charge, and under the subleases each subtenant was obliged to pay the mesne landlord one twenty-fourth of that maintenance charge. The Claimant who was one of the subtenants, applied to the LVT, under section 27A LTA 1985, for a determination as to the amount of service charge that was payable, on the ground that the amount charged by the Defendant was unreasonable. The freeholder, Defendant sought to argue that the maintenance charge paid to it was not a service charge and that the Claimant had no locus to make an application to the LVT under s 27A.

41. The Court of Appeal in *Ruddy* decided that the words *tenant of a dwelling* in s.18 would include a tenant who had sublet and in the circumstances of that case even though the mesne landlord was not in occupation and was a tenant of other dwellings he was a tenant for the purposes of s18(1) and therefore an amount payable by him was a service charge for the purposes of section 27A .

42. The difference in the present case is that the Applicant company is not a tenant. They have no legal interest in the premises. Accordingly even if the insurance premiums have been paid directly to the Respondent (which as indicated above is still very unclear) these premiums are not service charges and therefore neither section 18 nor section 27A applies – or at least the latter only applies to the extent of a determination that a service charge is not payable. The fact that the Applicant was sent what appeared to be service charge demands from the Respondent's agent does not alter the legal position. Moreover for the same reason even if the lessees were to join the present action it is doubtful that they could challenge the premiums paid by the Applicant notwithstanding the fact that they are in turn recovered from them as part of the service charge.

43. Accordingly the tribunal decides that it does not have jurisdiction to deal with the application and the application should be dismissed.

44. The Respondent has made a request for costs pursuant to paragraph 12 of Schedule 13 of the Housing Act 2004.

45. The Respondent has not provided any detail as to the costs that they have incurred and therefore the tribunal is unable to assess the level of those costs. In any event the tribunal does not consider that the Applicant's litigation behaviour has gone beyond what is considered acceptable. The Respondent itself has not assisted the tribunal by giving limited disclosure and by altering their evidence. Accordingly the tribunal will not award costs in this case.

46. In its application the Applicant sought an order pursuant to LTA 1985,s.20C. Such an application can only be made by the tenant. Accordingly the application is refused.