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LEASEHOLD VALUATION TRIBUNAL for the
EASTERN RENT ASSESSMENT PANEL
Landlord and Tenant Act 1985 – Section 27A
CAM/22UJ/LSC/2010/0083

Property	:	**240 Willowfield, Harlow CM18 6SA**
Applicants	:	**Ian Townshend and Vanessa Townshend**
Represented by	:	**Mr & Mrs Townshend In Person**
		:
Respondent	:	**Harlow District Council**
Represented by	:	**Ms Sarah Bradford HDC Legal**
		Ms Lynn Potter HDC Home Ownership
		Mr Jeffrey Driscoll Kier Harlow
		Mr Tony Dalton Graham Ellis & Associates
Date of Application:		**23 June 2010**
Date of Hearing	:	**19 October 2010**
Date of Decision	:	**18 November 2010**
Tribunal	:	**Mr John Hewitt Chairman**
		Ms Marina Krisko BSc (Est Man) FRICS
		Ms Cheryl St Clair MBE BA

Decision

1. The decision of the Tribunal is that:

   1.1 The sum payable by the Applicants to the Respondent in respect of the roof repair carried out in the year 2008/9 is £61.82, being 25% of £247.28.

   1.2 The major works were unreasonable in scope and specification as originally drawn and have been modified by further discussion between the parties. Our particular comments on the

scope and specification of those works are set out in paragraph 31 below.

1.3 By consent an order shall be made (and is hereby made) pursuant to s20C of the Act that no costs incurred by the Respondent in connection with these proceedings before this Tribunal shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants; and

1.4 The Tribunal requires that the Respondent shall by 4pm Friday 17 December 2010 reimburse the Applicants with the sum of £250 paid by the Applicants to the Tribunal by way of fees in connection with these proceedings.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

The Lease

2. The relevant lease is dated 13 June 1983 and was granted by Harlow District Council to David Frederick Plows and Linda Anne Plows [46]. Later the term granted by the lease was assigned to the Applicants. The Premises were demised for a term of 125 years at a ground rent of £10 per annum and on other terms and conditions therein set out.

3. Clause 7 of the lease imposes an obligation on the landlord to insure the Premises, to carry out repairs and redecorations and to provide other services as set out in the lease. The repairing obligation in clause 7(a) provides as follows:

"to repair

(a) to maintain and keep in repair the structure and exterior of the Flat and the Property (including drains, gutters and external pipes) and to make good any defects affecting the structure;"

The service charge regime is set out in Schedule G [63] and so far as material provides:

> *"(1) The Service Charge is payable for:-*
>
> *(i) ...*
>
> *(ii) repairs (not amounting to the making good of structural defects) carried out to the Property (including the Flat) by the Council in pursuance of its obligations under this Lease;*
>
> *(iii)- (x) ..."*

4. Clause 4 of the lease imposes an obligation on the tenant to contribute to the costs and expenses incurred by the landlord in carrying out its obligations. There is a provision for the tenant to pay sums on account of the liability which arises.
It was not in dispute that the sums so payable were service charges within the meaning of s18 of the Act.

5. The premises comprise a two-bedroom maisonette in a block containing two two-bedroomed maisonettes and two one-bedroom flats. Evidently one maisonette and one flat have been sold off on long leases and one maisonette and one flat are let on secure tenancies by the Respondent (the Council).

6. For some years the Council had assumed that the lease obliged the long lessees to contribute to the costs incurred in connection with the block of four dwellings and we were told that the Council's Treasurer had determined that the proportion of expenditure payable by the Applicants was to be 25%. However in preparation for these proceedings the Council has appreciated that the 'Property' as defined in the lease is not the block of four dwellings but one half of the block; that half containing numbers 240 and 214 Willowfield. This was confirmed by a colour copy of the lease plan which was handed to us during the course of the hearing.

7. Ms Bradford told us that the Council did not propose to adjust prior years service charges but that it would be necessary for the Treasurer to review his determination of the proportion payable going forward. In doing so he or she will have to take into account the fact that in the lease of 241 Willowfield [183] the 'Property' is defined as the four dwellings, being numbers 240, 241, 242 and 243 Willowfield. In such review we suggest that due consideration is given to differentiate the fair and proper proportion payable in respect of a two bed-room maisonette with a garden compared with a one-bedroom flat.

8. In the repairing obligations and in Schedule G which sets out the service charge regime in some detail there are several references to repairs and maintenance. There are no references at all to improvements.

9. The service charge year is the period 1 April to the following 31 March.

10. The lease terms were not in dispute.

Background and issues in dispute

11. There are two discrete issues for the Tribunal to determine:

    11.1 The amount of the contribution payable in respect of Repairs and Maintenance for the year 2008/9. The Council claimed to have incurred total costs on a minor roof repair in the sum of £723.62 and sought to recover 25% from the Applicants being the sum of £180.91; and

    11.2 The scope and specification of proposed major external works. Evidently the Applicants had a poor experience when major external works were last carried out in 2001 and were anxious that a similar experience should not occur in connection with the proposed works.

Inspection

12. On the morning of 19 October 2010 the members of the Tribunal had the benefit of an inspection of the block which comprises the subject Property in the company of the Applicants and several representatives of the Council.

The subject property is as described in the specifications [83 para 5.01]. It has replacement windows throughout. The common parts also had replacement windows except for two small timber framed windows on the ground floor rear elevation. Soffits, gutters and downpipes appeared to be in good order. The cladding to the rear elevation required some attention but generally the brickwork and decorative condition were in good order, albeit not well cleaned. There were four dated light fittings in the common parts.

The first issue - 2008/9 Repairs and Maintenance

13. During the course of the year 2008/9 the Council carried out a repair to a small area of the flat roof above the stairway. The Council were not able to explain in detail what work was carried but it was not in dispute that a repair was carried out.

14. The Council has entered into a long term contract with a company, Kier Harlow Limited, which is a joint venture between the Council and the Keir Group. Evidently under this contract Kier Harlow took over the Council's Direct Labour Organisation of some 400 personnel which included a full range of tradesmen. The intention was that Kier Harlow would provide an improved service beyond that which the Council had able to achieve.

15. Harlow Kier is responsible to provide a wide range of facilities management and civil engineering and building services to the Council including the routine repairs and maintenance to its housing stock, both the stock for its secure tenants and the long leasehold stock. We were told that a schedule of rates for the provision of a variety of services and equipment had been agreed at the outset and which were subject

to review and increase in line with an agreed (and complex) formula; part of which brought into account relevant indices. We were told that Kier Harlow is a profitable venture and that some of the profits are paid back to the Council. Representatives of the Council were unable to explain to us the means by which the relevant share of the profits is passed back to the long leaseholders, despite this point having been raised by a Tribunal in a previous case.

16. Evidently Kier Harlow maintains a call centre and office administration unit for the management and supervision of the various services it provides to the Council.

17. In the year-end account for 2008/9 [104] the Council claimed from Mr & Mrs Townshend the sum of £180.91 being 25% of the cost of the repair, which was then thought to have cost a total of £723.62. A breakdown of this sum is at [8] as follows:

Labour to effect the repair	£ 63.84
Scaffolding	£381.93
Supply of renewal cover flashing	£ 33.44
Uplift – overheads admin/call centre, management costs at	£244.44
Total	**£723.62**

The Council conceded that the arithmetic is not quite right. The differences are minor.

The base costs charged by Kier Harlow are at [113].

18. The two contentious items were the cost of scaffolding and the mark up of 54.89% for management overheads.

Mr & Mrs Townshend said and we accept that the scaffolding provided was in fact a tower and the whole job was carried out in less than one day. This appears to be confirmed by the very modest labour charge of £63.84 and the very modest materials charge of £33.44.

Mr Driscoll explained that that cost of the scaffold/tower was at the agreed rates and was a minimum charge based on use for 7 days

which meant that on small jobs where the scaffold is only used for 1 day the cost of it appears to be out of proportion but on bigger jobs the cost can be seen to be reasonable.

Mr Driscoll also explained that the 54.89% uplift was in accordance with the agreement between the Council and Kier Harlow and reflected management and overhead costs of providing the services.

Mr Driscoll maintained that the cost of the repair in the region of £720 was not an unreasonable cost.

19. Mr & Mrs Townshend submitted that no uplift was justified because they paid for routine management in their annual service charges. The Tribunal noted that in the 2008/9 year-end account [104] the Council claimed a management charge of £219.04. Ms Bradford submitted that the cost of management of Kier Harlow was different and separate to the costs of the Council in the management of its long leasehold estate.

20. We find that it was reasonable for the repair to be carried because this was not in dispute. On any view the repair was a modest repair in extent. This was not in dispute.

We have no hesitation in concluding that a cost of £720 or thereabouts for this modest repair cannot possibly be considered to be reasonable in amount. We have no doubt that if instead of entrusting the work to Kier Harlow the Council had engaged a small local contractor to carry out the repair the cost incurred would have been much, much lower than £720.

The two elements which stand out as being wholly unreasonable and disproportionate are the cost of scaffolding and the management uplift.

The witnesses for the Council were unable to persuade us that the costs incurred were reasonable in amount.

21. Drawing on the accumulated experience and expertise of the members of the Tribunal we find that it was unreasonable of the Council to incur

a cost of greater than £150 for the scaffolding/tower which was provided.

We find that the carrying out of such small routine repairs and maintenance is part and parcel of the managing agent's role and is covered by the annual management charge. In the present case the annual management charge of £219 is at the upper level of the range for the management of a small block of four units where the range of services provided is very modest. In these circumstances we were not persuaded that it was reasonable to incur a further and additional management charge of £244.44.

22. We therefore find that it was unreasonable to incur a cost for the subject repair greater than £247.28 made up as to:

Labour to effect the repair	£ 63.84
Supply of renewal cover flashing	£ 33.44
Scaffolding	£150.00
Total	£247.28

Mr & Mrs Townshend's share at 25% thus amounts to £61.82.

The proposed major works

23. Mr & Mrs Townshend told us that in 2001 when major works were last carried out they had a very poor experience and were keen that it should not be replicated when they learned that the Council proposed another cycle of major works. They therefore took great interest in the paperwork they received.

24. By letter dated 20 December 2006 [114] the Council gave Mr & Mrs Townshend formal notice that it proposed to carry out major works comprising:

- External decoration including internal common parts;
- Repairs to brickwork, cladding and concrete;
- Repairs/replacement of rain water goods;
- Repair/replacement of fascia and soffit boards;

- Repairs to sheds and drying areas surfaces, and drying posts, fencing, stairs.

25. By letter dated 4 January 2007 [116] the Council gave Mr & Mrs Townshend formal notice that it proposed to carry out:
    - Replacement of door/windows where required.

    Mr & Mrs Townshend submitted detailed comments on the first notice and these were received by the Council on 22 January 2007 [119] and the Council responded by letter dated 31 January 2007 [122].

    Mr & Mrs Townshend submitted comments on the second notice and these were received by the Council on 8 February 2007 [126]. By letter dated 13 December 2007 [129] the Council said that these works were to be postponed due to budget limitations.

26. By letter dated 28 July 2009 [130] the Council gave Mr & Mrs Townshend formal notice that it proposed to carry out major works:
    - Window and Door replacement;
    - External decoration including internal common parts;
    - Repairs to brickwork, cladding and concrete;
    - Roof repairs;
    - Repairs/replacement of rain water goods;
    - Repair/replacement of fascia and soffit boards;
    - Repairs to sheds and drying areas surfaces, and drying posts, fencing, stairs.

    Mr and Mrs Townshend submitted detailed comments on the notice and these were received by the Council on 20 August 2009 [131].

27. By letter dated 21 September 2009 [136] the Council gave Mr & Mrs Townshend formal notice that it proposed to carry out major works:
    - Window and Door replacement;
    - Cavity Wall & Loft Insulation;
    - External decoration including internal common parts;

- Repairs to brickwork, cladding and concrete;
- Roof repairs;
- Repairs/replacement of rain water goods;
- Repair/replacement of fascia and soffit boards;
- Repairs to sheds and drying areas surfaces, and drying posts, fencing, stairs.

Mr & Mrs Townshend submitted comments which were received by the Council on 21 October 2009 [137]. Following issues raised at a surgery the Council wrote detailed letters to Mr & Mrs Townshend on 29 October 2009 [138] and 11 November 2009 [140].

28. By letter dated 4 May 2010 [143] the Council gave Mr & Mrs Townshend formal notice that in respect of the proposed major works referred to in the notice dated 21 September 2009 the estimated cost to them was £5,655.78 plus a 10% surveyor's management fee. A helpful summary of the estimate is at [159].
The notice went on to explain that four tenders were submitted, one of which was by Kier Harlow, but that it was proposed to let the contract to T & B Contractors Limited which had submitted the lowest tender. The priced specification is at [67-93].
A helpful summary of the proposed works is at 162-164]

29. Detailed correspondence passed between the Council and Mr & Mrs Townshend. Copies are at [150 – 161] and [172-175]. A useful meeting was held between representatives of the Council and Mr & Mrs Townshend on 29 September 2010 which enabled matters in issue to be narrowed. Agreed minutes are at [176].

30. Before commenting on the specific items of proposed works it may be helpful to make a few general comments about the contract which the Council has entered into in respect of the major works. First it is helpful to keep in mind that the subject building is a small building containing 2 two-bedroom maisonettes and 2 one-bedroom flats. The Property, as defined in the lease is one half of that, being 1 two-bedroom

maisonette and 1 one-bedroom flat. On any view this is a small development without any sophisticated services or plant and equipment. The proposed major works which are relatively modest do not comprise a substantial project. Rather than carry out a small project on its own the Council had decided to include the subject property in a much larger project and enterprise to carry out a wide variety of works to a wide variety of properties across its Willowfield and Kingsland Estates. In so doing the contract is complex because it must cover a range of issues and permutations of issues. The contract thus includes matters which are wholly irrelevant to and inappropriate to the subject property yet it appears that the Council will seek to recoup some of the costs incurred from Mr & Mrs Townshend. We draw attention to the Preliminaries at [77] and give as examples:

3.02	provision of a compound area	£ 500;
5.01	completing the contract	£ 1,000;
5.02	a full time agent	£18,000;
6.08	provision of temporary utilities	£ 2,688;
6.09	office and messing facilities	£ 4,940;
8.43	provision of temporary barriers	£6,000;

Further examples will be found in the Daywork rates [68-71] which include proposed expenditure on Security Guards.

Mr Driscoll and Mr Dalton acknowledged that it would be a challenge to allocate such costs accurately block to block. Ms Bradford told us that the question of how to allocate such overhead costs fairly and reasonably was still under consideration. Thus at present it seems that the Council has not yet decided what proportion of such costs (if any) will be apportioned to the subject Property.

31. With regard to the scope of the proposed works [83] the following matters arise:

31.1 **Roof tiling to match existing complete with underlay as H65/115 (All Provisional)** [83]

The Council confirmed that this was a provisional item and that if on opening-up it was found that works were not required they would not be carried out.

For the avoidance of doubt we wish to make it plain that if it were found that works were not necessary and if they were nevertheless carried out we would regard such works to be an improvement and not a repair such that the Council would not be entitled to recoup a contribution to the cost incurred from Mr & Mrs Townshend.

31.2 **PVC eaves and verge boarding as H20/150A** [84]

Mr Driscoll and Mr Dalton both said that the existing timber is to be replaced with 20mm thick pvc as a matter of policy because pvc is low maintenance and this should reduce costs going forward. Whilst repainting might not be required in the future washing down will be required from time to time and it was not obvious to the Tribunal that real cost savings will be made by the change to pvc.

Arguably, if on inspection the timbers are found to be sound to then to replace them in pvc solely because that is the policy decided upon would lead the Tribunal to conclude that the works were improvements rather than repairs.

31.3 **Insulation to roof space** [84]

Neither party knew for certain what the extent of the current insulation (if any) was. An inspection will be carried out. We find that if the insulation is adequate then to add to it or to replace it would constitute an improvement and it would not be a repair. The fact that modern best practice or current regulations might suggest a higher specification is not of itself sufficient to constitute the work as being a repair within the meaning of the lease.

We note also the estimated cost of £261 + 10% surveyors' management fee. This compares unfavourably with an Energy

Efficient Scheme 2009 [205] promoted by the Council which offered loft insulation at £189 subject to survey. The witnesses for the Council were unable to explain to us why the proposed cost of loft insulation as part of a large scale project where one might think economy of scale was to be achieved was in fact a good deal higher than it could achieve in its 2009 Scheme.

31.4 **C40 Cleaning Masonry/Concrete** [85]

From our inspection we could not see any justification for this work and we find that it would not be reasonable for the Council to incur the expense of carrying out this work.

31.5 **C41 Repairing/Renovating/Conserving Masonry** [85]

The Council confirmed:

(a) that the quantities were firm but from a ground level inspection only;

(b) that the ivy had now been removed and this item would be omitted;

(c) that items 5.29 and 5.30 were provisional;

(d) that items 5.31 to 5.36 were all now omitted.

We considered that replacing the rear elevation cladding with pvc suitably insulated is required and constitutes a repair rather than an improvement because the present cladding appears to be in need of replacement.

31.6 **Cavity insulation to external walls as P11/230A** [87]

The parties considered it unlikely that any of the wall cavities were insulated. The members of the Tribunal agree that this is a reasonable assumption having regard to the age and design of the Property.

Mr Dalton explained that the Council had decided as a matter of policy that this work should be included. None of the witnesses for the Council were able to explain the reasoning behind the decision save that there was a general view that it was sensible

to do the work for environmental reasons and to save on heating costs. Mr Townshend was sceptical that savings would be achieved. He highlighted the estimated cost of £1,900 + 10% surveyors' management fee for the block and again compared this unfavourably with the Council's 2009 Scheme [205] which offered cavity wall insulation for £189 per dwelling subject to survey. Mr & Mrs Townshend would prefer not to have cavity wall insulation at the Council's price since it would take too long to recoup the expenditure.

Again we make the comment that on a large contract where economy of scale was to be expected it is unsatisfactory that the very large estimated cost is neither explained nor justified.

We find that the installation of cavity wall insulation into this Property constitutes an improvement and is not a repair within the meaning of the lease. As such if the work is carried out the Council is not entitled to recoup a contribution to the cost from Mr & Mrs Townshend.

Moreover even if the installation did amount to a repair we are far from satisfied that it would be reasonable for the Council to incur a cost whereby the 25% proportion payable by Mr & Mrs Townshend amounts to over £400. We find that such a cost is substantially above market rates and something appears to have gone very wrong in the contract negotiations on this item of work.

31.7 **Raising height of existing steel balustrades as L30/110A in mild steel with welded joints ground to a smooth finish** [88]

This related to a short length of balustrade on the top floor landing. On inspection we found the existing to be perfectly sound and in good order.

The witnesses for the Council were unable to give a coherent justification for incurring the expense save that the existing balustrade may not comply with current Building Regulations in that it is a little too low. We find this to be unsatisfactory

particularly as the parapet wall has no guard rail at all. We find that the proposed work constitutes an improvement and not a repair to which Mr & Mrs Townshend are obliged to contribute. Even if the proposed work were held to be a repair we find that it would not be reasonable for the Council to incur the cost of carrying it out at this time since it was not disputed that the present balustrade is perfectly serviceable.

31.8 **Clean down existing uPVC doors and frames** [88]
It was agreed this item would be omitted.

31.9 **Carefully take out existing timber ... door ... and frame to bin store...** [88]
It was agreed this item would be omitted.

31.10 **Carefully take out existing timber ... door ... and frame to flat entrance...** [89]
It was agreed that both of these items would be omitted.

31.11 **Clean down existing uPVC glazed windows** [89]
It was agreed that all of these items would be omitted.

31.12 **Carefully take out existing timber glazed windows ... etc** [90]
It was agreed that these items would be omitted.

31.13 **Provisional Sums** [92]
The witnesses for the Council accepted that the estimated cost of £750 was overly cautious given that only three or four communal lights needed to be tested. They said that a more realistic estimate was £50-£100.

32. In the light of the several concessions made both at the meeting on 29 September 2010 and during the course of the hearing the Council agreed that it would prepare a revised specification of works together

with a revised estimated cost of work and submit them to Mr & Mrs Townshend for comment. Ms Bradford conceded that the letter dated 6 October 2010 [161] to Mr & Mrs Townshend giving a revised estimate of cost of works of £5,704.22 was inaccurate because it failed to take into account the several concessions agreed at the meeting held on 29 September 2010.

Representatives of the Council also agreed to consult regularly with Mr & Mrs Townshend when opening-up works were undertaken in order to discuss the findings and the nature and extent of the repairs required to be carried out.

33. In conclusion on this issue we wish to stress that our findings on the reasonableness of the scope of works and the estimated cost of works are based on the information before us. In due course when the works are carried out and the final costs are ascertained it will be open to either party to make an application under s27A of the Act to seek a determination of the amount of service charges actually payable in respect of the works.

The section 20C Application – limitation of landlord's costs of the proceedings

34. An application was made under s20C of the Act with regard to the landlord's costs incurred or to be incurred in connection with these proceedings and an order was sought that those costs ought not be regarded as relevant costs in determining the amount of any service charge payable by Mr & Mrs Townshend.

35. The application was not opposed and Ms Bradford said that the Council did not propose to pass through the service charge any costs which the Council may have incurred in connection with the proceedings. Accordingly and for the avoidance of doubt and with the consent of both parties we have made an order pursuant to s20C of the Act.

Reimbursement of Fees

36. An application was made for the reimbursement of fees of £250 paid by Mr & Mrs Townshend in connection with these proceedings. The Application was opposed. The Tribunal decided that it would require the Council to reimburse to Mr & Mrs Townshend the sum of £250 because it preferred and accepted the submissions made by Mrs Townshend that they had tried to resolve matters with the Council but could not achieve a satisfactory outcome. The Council refused to make any concessions with regard to the 2008/9 roof repair and the Council did not make any significant concessions with regard to the major works until the meeting on 29 September 2010 by which time the hearing fee had been paid. We also bear in mind that the Council failed to satisfy us on a number of issues raised during the course of the hearing. We thus find that it was reasonable for Mr & Mrs Townshend to have issued and pursued the application to a hearing. Mr & Mrs Townshend succeeded in large measure and it would be unjust not to require the Council to reimburse the fees incurred.

The Law

37. Relevant legal matters we have taken into account in arriving at our decision are set out in the Schedule below.

The Schedule

The Relevant Law

Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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 the landlord's costs of management, and

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

Section 19(1) of the Act provides that 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 are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that 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 of subsequent charges or otherwise.

Section 20C(1) of the Act provides that 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 leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Section 20C(3) of the Act provides that the tribunal may make such order on the application as it considers just and equitable in the circumstances.

Section 27A of the Act provides that an application may be made to a leasehold valuation 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.

Section 27A(3) of the Act provides that an application may be made to a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9(1) provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

Repairs and Improvements

The differences between a repair and an improvement can sometimes be subtle. Generally all repairs will bring about an improvement in the once repair has been carried out it will have improved the situation which pertained before the repair was carried out. Often the test is one of fact and degree. We have taken careful note of the discussion on the subject set out on *Dowding and Reynolds: Dilapidations: The Modern Law and Practice* Fourth edition [2008], particularly chapter 11, and the relevant passages in Chapter 13 of *Woodfall: Landlord and Tenant.*

John Hewitt

Chairman

18 November 2010