

Number 02

Leasehold Valuation Tribunals: Jurisdiction to Review Service Charges

The Court of Appeal has recently held that Section 19(2A) of the Landlord and Tenant Act 1985 (as amended) gave the LVT power to review only service charges that are still unpaid (subject always to payments made under an interim contractual arrangement for repayment if the charge is found excessive).

The Facts

A long leaseholder in a block of flats applied to the LVT seeking a determination that service charges including management fees incurred since 1989 by Daejan Properties Ltd were excessive.

The LVT held at the hearing of a preliminary issue that:

- (i) It had jurisdiction under Section 19 (2A) to determine whether service charges had been reasonably incurred by the Landlord, irrespective of whether or not those service charges had already been paid by the tenants.
- (ii) The LVT further determined that the time limit to bring such claims was 12 years.

Daejan applied for judicial review of the decision. At the hearing of the judicial review, not only did the Court uphold the LVT's decision but it also held that the Limitation Act 1980 had no application whatever to applications to the LVT under Section 19.

Court of Appeal

Daejan appealed to the Court of Appeal and on the 12th July 2001 the appeal was allowed.

The Court of Appeal said that it could involve a great waste of time and money if the LVT had to consider the reasonableness of charges going back many years.

A lot of time would be spent by the LVT deciding on the reasonableness of old service charges only to find that even if charges were unreasonable, the lessees were not entitled to repayment of any overpayment because of the Limitation Act and because of rules relating to restitution.

The Court therefore held that the LVT could only review **unpaid** service charges, or those paid under a contractual provision for interim payment.

If a tenant wanted to recover any monies paid to a landlord, restitution proceedings would have to be issued in the County Court.

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Comment

This is a helpful, practical interpretation of the legislation, providing clarity for the LVT's power to re-open service charges. The possibility of going back numerous years to re-examine paid service charges was clearly unattractive for landlords. This decision means that if tenants want to challenge service charge demands, they must do so promptly, before they are paid and whilst the landlord has the paperwork available. From the landlord's point of view this should make it easier to demonstrate the reasonableness of the service charges, although the need for tenants not to pay disputed charges, may adversely affect a landlord's cash flow. Well drafted interim service charge provisions should, however, avoid that problem.

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STOP PRESS

It is settled law that bailiffs may only use reasonable force to enter property. It has come to our notice that bailiffs have recently been reminded of the effect of this so that if there is anyone resisting re-entry aggressively the bailiff should withdraw, leaving the landlord to apply for a committal order. If such a problem is anticipated, legal advice should be sought and steps taken to minimise the possibility of a failed re-entry, including notifying the local police.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing. For further information on property disputes or litigation please contact:

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