

Ms Siobhan McGrath
President, LVT
Leasehold Valuation Tribunal
10 Alfred Place
London WC1E 7LR

Ms N K-Dit-Rawé
(Please use my work address)

(Delivery by bike)

London 6 September 2003

cc. Ms Mira Bar-Hillel, Evening Standard
Rt Hon John Prescott MP, Deputy Prime Minister

Dear Ms McGrath

LVT Report – Ref: LVT/SC/007/120/02

I recently wrote to Ms Mira Bar-Hillel, property correspondent at the Evening Standard that: *“When I opted to challenge the landlord’s action in the LVT I thought I would end-up with a decision. Instead, I have an open-ended £28,000.00 report over which I am battling with CKFT”*. She suggested I contact you. (I am also copying the Deputy PM as he was copied on my letter to Ms Bar-Hillel).

A. I need your Tribunal to provide me with a summary of its decision, stating exactly what it has determined and the resulting impact on the global sum demanded

The report I received from your Tribunal, dated 17 June 2003, does not provide a global view of the impact of its decision on the *“global sum demanded”* – which is what your Tribunal was asked to do – and is the whole point of going to the LVT: *to get a decision*.

To try to make sense out of the report I had to get my surveyor to assess it (and relative to the Applicant’s own interpretation of it). This cost me an additional £1,800.

I am at the point of battling over the report with CKFT in County Court. This is where we are at:

1. My surveyor calculated that the LVT **disallowed the sum of £129,958.00 (or 23% of the global sum demanded)** (excluding VAT and management fee). This amount has been taken into consideration by the Claimant in their ‘revised price’ they sent me in July.

They have since given me – and County Court - a list of all 35 flats for which they have reduced the sum demanded by 24.19% ¹ (for verification of this, please see the list produced by MRJ for the 24 June 2003 County Court hearing where they have stated the ‘original’ and ‘revised’ amount ²). In the attached spreadsheet, I have applied the same percentage reduction to the rest of the flats ³. (As you will see, relative to the global sum originally demanded by the Claimant, the **reduction** amounts to **£178,074.13** (£736,216.82 - £558,142.69). This sum includes VAT, 11% management fee plus VAT which residents have to pay on top of the cost of the works.)

2. There were a number of items for which the Tribunal said to be unable to make a decision due to lack/ insufficient specification e.g.

Page 7 of the LVT report, point 46 (in relation to the specification overall): *“The Tribunal was frustrated by the lack of detail in the specification and in Mr Gale’s evidence. Works were not clearly identified, were not measured where they clearly could have been, and there was some elements of duplication. Some items were not specified at all e.g. the types and capacity of the boilers”*

¹ MRJ’s revised list of ‘Major works apportionment 24th June 2002’

² MRJ’s ‘Major works apportionment 24th June 2002 revised – Outstanding at 24 June 2003’

³ My spreadsheet applying the same 24.19% reduction to the remaining flats

My surveyor, Mr Brock, calculates that, in total, these items amount to **£144,745.87 (or 25.6% of the global sum demanded)** (excluding VAT and management fee). Mr Brock, calculates that, in their July 'revised price' specification, the Claimant has reduced the cost down to **£109,896.87** i.e. a **reduction of £34,849.00**. However, as highlighted by Mr Brock: *"There is no explanation from Killby and Gayford for this reduction, or what directions they have followed from the Tribunal's decision. This reduction still does not change the fact that it is possible that further cost reduction would occur if the works were correctly specified"*.

In fact, to this I would add: how, as a lessee, can I determine whether or not the items of work are actually required? They may not be necessary. Indeed, take the example of the boiler (c. £80,000):

Point 38 of the LVT report – *"Mr Gale also accepted that there was no boiler specification in the tender document, which merely stated "to remove and replace with new the boiler plant and all associated pipework", and*

Point 21 – *"Mr Jones (of Michael Jones & Associates, Engineering Consultants) confirmed that the boilers were also about 20/25 years old, were working, were being maintained, and were not defective at the moment, but were starting to fail more regularly"*

Hence, without specification it cannot be determined what, if anything of the £144,745.87 worth of items needs to be replaced.

Furthermore, lack/insufficiently detailed specification prepared by Mr Gale means that proper quotation for the works has not been obtained – and must therefore be obtained. In my view, not doing this deprives me (and, indeed, other lessees) of my right under the Landlord & Tenant Act to get an independent view of both the works and their costs - as detailed under Section (4) (c) *"The notice shall describe the works to be carried out and invite observations on them and on the estimates..."*. Both these requirements must, in my view, be complied with in the context of these items. (Hence, my current position in Court that, until this is done, I cannot be asked to pay for any of these items).

I need your Tribunal to:

- (a) Detail items for which it concluded having insufficient information to make a decision – and the financial amount demanded by the Applicant for each of these items**
- (b) To make a determination as to what the next step(s) must be i.e. under leasehold property law, what must the Applicant do? (This must be within the remit of the LVT rather than County Court's)**

3. In relation to the **contingency fund of £141,977.00 (or 25% of the global sum demanded)** which the Applicant was refusing to use, your Tribunal stated: *"The wording of the clause relating to the contingency or reserve fund in the lease is unambiguous....the Tribunal considers it inequitable that this fund should not be used in part to fund the works"*. As the Tribunal does not say how much of the contingency fund should be used, the Claimant is not taking this into consideration.

As my Counsel argued at the Tribunal hearing, *"Given the extent of the works proposed, why is there a need to keep such a large contingency fund?"* As he said, *"Surely there will be little maintenance required for many years to come"*. In addition (to his comments), there is still, currently, a very *significant amount of provisional sums and quantities in the specification* which, it seems, are more than ample to cover unforeseen requirements.

Given these factors and the fact that the Tribunal:

- had a surveyor as a panel member, who
- visited the site, and
- can draw on the LVT's database of hundreds, if not thousands of previous cases to formulate an informed opinion

– **surely, the Tribunal can make a determination on this. This is not a reasonable proportion of the reserve fund to be kept under these circumstances.** (And, since the hearing, more money has been paid into the fund through the half-yearly service charge in June).

Can you please ensure that this issue is also addressed in the addendum to the report.

Can you please, provide me with the addendum to your report **by 15 September** as I need it, not only for the County Court action, but also for a 20C order application to your Tribunal

B. Unbelievably, your Tribunal has agreed to the Applicant's request for a hearing in relation to my 20C order application ⁴

On the last day of the hearing my Counsel told the Tribunal I requested that the landlord be prevented from putting their costs on the service charge, Mr Ladsky's Counsel replied *"my client will not charge Ms K-Dit-Rawé for costs, but intends to charge the other residents"*. At this point, the Chair of the Panel said: *"Oh well I don't know, I am not sure, I'll have to check on this"*. After the recess she declares: *"This will require another day of hearing"*. She then turned to my Counsel and said: *"How does your client feel about this?"*

Given all the evidence the Panel had been presented with, I was in a state of disbelief. Nonetheless, as the Tribunal's decision would be issued a few weeks later, there was no point arguing on this at the time.

But, for the Tribunal to *now* consent to CKFT's request *"...we would also ask you to confirm that the application will be dealt with at a hearing, rather than on paper"* ⁵ is absolutely beyond belief given the Tribunal's findings. To these, I would also add the following:

- On several occasions over the last few weeks the Applicant has made me an offer *"to discuss"*. I have replied (by copying the Applicant on my 9 August letter to the Court) that the LVT's decision affects *ALL* the lessees in the block – not just me. Indeed, in its 21 July 2003 reply to CKFT, your Tribunal stated: *"It is not the duty of the Tribunal to assess the particular contribution payable by any specific tenant but only to determine the reasonableness, or otherwise, of the service charges..."*.

As a result of emphasising this, including saying in my letter that *"there are no side deals to be made with the Claimant: the nature of the works and their associated costs must be totally clear and transparent - to ALL lessees"*, the Applicant issued the attached 'Major works apportionment 24th June 2002'.

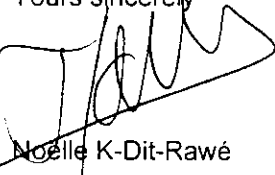
Hence, the Applicant admits my point (as it should). It follows from this that, when it admitted to the Panel that it *"would not charge me for their costs"* (thereby admitting liability), it is, by implication, also recognising liability vis-à-vis the remainder of the lessees in the block i.e. it cannot put its costs on the service charge.

- Another factor for consideration is the attitude of the Applicant. In particular: over a six-month period I asked **seven times** (in writing) for a copy of the priced specification. This included **four** occasions over a three-month period when I asked your Tribunal for its assistance in obtaining, from MRJ, a copy of the priced specification (22 October 2002, 25 November 2002, 18 December 2002 and 12 January 2003). The specification was eventually hand-delivered to my door... *36 hours before the 5th February hearing!* (Your Tribunal's directions included the Applicant meeting residents' requests by 17 December 2002 so that residents could have their own advisers review the specification).

Your Tribunal has the power to make an order preventing a landlord from putting their costs on the service charge. I hope you agree with my view that, in this particular instance, this order can be issued by correspondence i.e. without the need for a hearing, and I therefore trust that the appropriate steps will be taken to stop this hearing from taking place.

Thank you in anticipation of your assistance.

Yours sincerely



Noëlle K-Dit-Rawé

⁴ LVT's notice of hearing on 8 October 2003

⁵ CKFT' letter to the Mr D. Stewart, LVT, dated 22 August 2003