# The Lands Tribunal
## Decisions

## See points 2, 30 and 31 of the decision

### LANDS TRIBUNAL ACT 1949

### LRX/37/2000

**Landlord and Tenant Act 1985 s.20C - Order to disregard litigation costs as relevant costs for service charge - Does not follow event of litigation - "just and equitable" criterion - Procedure on appeal from LVT under Landlord and Tenant Act 1985 s. 31A - Rehearing discretionary**

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL**

**BETWEEN** **THE TENANTS OF LANGFORD COURT (DR & MRS EL SHERBANI AND OTHERS)** **Appellants**

**and**

**DOREN LIMITED** **Respondent**

**Re: Langford Court Langford Place, London NW8 9DN**

**Before: His Honour Judge Michael Rich QC**
**Sitting at 48/49 Chancery Lane, London WC2A 1JR on Tuesday 13 February 2001**

The following cases are referred to in this decision:
*Trustees of the Eyre Estate v Saphir* [1999] 34 EG 71
*Iperion Investments Corporation v. Broadwalk House Residents Ltd* [1995] 2 EGLR 47
*Holding & Management Ltd v Property Holding & Investment Trust plc* [1989] 1WLR 1313
*Re Elgindata Ltd (No 2)* [1992] 1WLR 1207
*A.E.I. Rediffusion Music Ltd v Phonographic Performance Ltd* [1999] 1WLR 1507
*Stan Gallagher* instructed by Messrs Wood & Co, agents (surveyors), for the appellants
*Paul StJ Letman* instructed by Morgan Cole, solicitors, for the respondent

**DECISION**

**Factual Background**

1. This is an appeal against the decision of the Leasehold Valuation Tribunal ("LVT"), dated 16th June 2000, refusing to make an order under s.20C of the Landlord and Tenant Act 1985 that the costs incurred by the respondent landlord, in proceedings brought before the LVT by the appellant tenants for the appointment of a manager of the block of flats known as Langford Court London NW8, under s.24 of the Landlord and Tenant Act 1987, should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants of Langford Court. By the same decision the LVT did appoint the person proposed by them, in their application under s.24, as Manager of Langford Court for a period of two years. It did so after ten days of hearing in which it heard evidence as to ten separate complaints as to the landlord's management of the block over a period of some seven years, and in spite of finding that the tenants had succeeded in making out their case on, I think it can be said (although this would depend on how issues were defined), less than half the issues which they raised. There is no appeal from that substantive decision. The appeal is only in respect of the subsidiary application in respect of the costs incurred by the landlord in resisting the substantive application.
2. The two applications were made by the lessees of some 44 out of the "125 units (mainly one bedroom but with a few studio and two bedroom)" which the LVT noted were comprised in the block. Mr Gallagher, on behalf of the applicants, told me, although it is not otherwise clear, that the application under s.20C was intended to be that the order should be made in respect

of any service charge payable not only by the applicants for such order but also by the other tenants in the block.

3. S.20C requires that such an application in respect of proceedings before the LVT shall be made to the LVT, and by sub-s.(3) "the tribunal may make such order on the application as it considers just and equitable". By s.31A(6) leave either of the LVT or of this Tribunal is necessary in order to bring an appeal from the decision of the LVT, but by sub-s(7) "On any such appeal (a) the Lands Tribunal may exercise any power available to the leasehold valuation tribunal in relation to the original matter."
4. The LVT refused leave to appeal but by order of the President dated 2nd October 2000 leave was granted by this Tribunal. In granting leave the President required the parties to be informed that "the Tribunal has decided to grant leave because it considers that it is appropriate that it should consider whether no order under section 20C should have been made despite the fact that the landlord was only partly successful before the LVT; and what are the appropriate principles for deciding whether such an order should be made."
5. On the 20th October 2000, solicitors for the respondent landlord wrote to the Tribunal saying that they were "unclear as regards the basis on which the appeal is to proceed", and suggesting: "unless we have misunderstood the letter [in which the President's explanation of granting leave was set out], the appeal will go ahead on only one point alone; that being whether "no order" is the correct approach where a landlord is partly successful on the substantive issues."
6. There were included in the notice accompanying the Order granting leave, other directions including that the hearing should be completed in one day, that the submissions already made on the application for leave should stand as statements of case and no evidence should be called on either side. Finally directions were given as to the preparation of a trial bundle and lodging of skeleton arguments.
7. By 23rd November 2000 I had been appointed as the Member to hear this appeal and I gave the following directions: "1. The Member takes the directions given in the Tribunal's letter dated 18 October (directions which were given by the President) to have been made on the basis that the appellant tenants are limited to the grounds of appeal set out in paragraphs 10 to 21 of the application for permission to appeal, and that therefore if the Lands Tribunal is not satisfied that the grounds given by the LVT for refusing the Order under s.20C do not justify such decision, the decision should stand. 2. If the appellant does not accept such limitation then notice must be given to the respondent and to the Tribunal before 15 December 2000. 3. If the respondent wishes to assert that the decision was justified by other matters than those set out in the LVT's decision letter, then notice must be given to the appellant and to the Tribunal before 15 December 2000. 4. If either party gives such notice then a pre-trial review will be held on Tuesday 9 January 2001 at 10.00 am."

I also repeated the directions as to the preparation of a trial bundle and lodging of skeleton arguments. Neither party gave notice in accordance with my directions by 15th December 2000, but at the hearing on 13th February, 2001, the appellants sought leave to invite this Tribunal to exercise its discretion afresh in accordance with s.31A(7)(a)of the Act of 1985.

**Scope of Appeal**

8. Although paragraph 1 of the President's Directions accompanying the Order granting permission to appeal is not explicitly expressed as a condition upon which such permission was granted, it was, I think so intended. As is made clear in paragraph 8 of the Lands Tribunal Direction 2/00, the effect of such condition may alter the ordinary rule that an appeal to the Lands Tribunal will be by way of a complete rehearing of all relevant issues: "The Lands Tribunal will treat the appeal as a fresh hearing of the issues to which the application to the LVT gives rise, except where leave has been granted on conditions which limit the appellant to particular grounds" [my emphasis]
9. Even, however, if I am wrong, on the true construction of the President's direction, or because the direction did not form part of the Order itself which gave the leave to appeal, to treat such leave as conditional, I do not think that I am obliged, on this appeal, to exercise my own discretion as to whether an order under s.20C should be made, as opposed to considering whether the LVT could properly exercise its discretion as it did.
10. I, of course, accept the decision of Mr Norman Rose FRICS in *Trustees of the Eyre Estate v Saphir* [1999] 34 EG 71, referred to in the Practice Direction, that an appeal against a decision of the LVT under the Leasehold Reform Act 1967 granted by paragraph 2 of Schedule 2 to the

Housing Act 1980 "gives rise to an appeal by way of a rehearing" (see p 71 K). That paragraph was however applied to this jurisdiction of the LVT by s.83(3) of the Housing Act 1996, which added s.31A to the Landlord and Tenant Act 1985 as "Supplementary Provision" to the provisions concerning service charges. Sub-section (7) provides for the Lands Tribunal's powers on any such appeal as follows:
"(a) The Lands Tribunal may exercise any power available to the leasehold valuation tribunal in relation to the original matter .." [I have in repeating this provision added my emphasis].
The sub-section does not, therefore, require the Lands Tribunal in determining an appeal in respect of a s.20C matter to exercise its own discretion. If the Lands Tribunal is of the opinion that the LVT's exercise of its power was within the power granted to the LVT by s.20C, even though the Lands Tribunal might have exercised its discretion differently, it has no obligation to substitute its own discretion for that of the LVT, if it thinks that it would be in the interests of justice not to do so.

11. Accordingly, when application was made on the first day of the hearing, to enlarge the scope of the appeal, I considered it appropriate to consider the effect of permitting such enlargement. Mr Gallagher conceded that if his application were granted, the respondents would be entitled to any costs thrown away, and, if necessary, to an adjournment. He proposed however that this Tribunal should exercise its own discretion as to whether to make an order under s. 20C on the basis of the findings of the LVT, as set out in its Decision. If that had been an acceptable basis for my substituting my discretion for that of the LVT, I would have been content, even at so late a stage of the proceedings, to accede to Mr Gallagher's application, on the terms which he accepted. After all, if I were to allow the appeal because I was satisfied that the grounds given by the LVT did not justify its decision, I would have to exercise the power, as fairly as I might, on the material before me, for once leave is given, if the Lands Tribunal concludes that the LVT's decision was wrong it must allow the appeal. That would, in my judgement, involve not merely deciding to make an order, but also considering matters not put to the LVT by either party, namely whether such order should apply for the benefit of all lessees, and not merely of the appellants, and whether to all costs or part of them. It appears that the LVT thought that some costs had been incurred on the substantive issue because the appellants took points which were not merely unsuccessful but were actually unreasonable. It can, however, readily be seen how difficult it would be for this Tribunal to assess such matters without the advantage enjoyed by the LVT of hearing the witnesses and reviewing all the documents.
12. Mr Letman, for the landlord was therefore not content with my exercising a discretion on the basis proposed by Mr Gallagher unless I was first satisfied that the LVT's grounds did not justify its decision on the subsidiary issue. He wished to be able, if the Lands Tribunal was to consider the matter afresh, to refer to the evidence that had been given to the LVT and not merely to the LVT's summary of it. Certainly he wished to be able to identify the time spent on the issues upon which the landlord was successful, which would itself, require, at any rate, some evidence at least of record of the hearing which might well not be agreed. I came to the conclusion that if I was to proceed directly to exercise my own discretion, without being satisfied that the LVT had erred in principle, I could not fairly exclude material relevant to such exercise which either party wished to adduce.
13. Had the application been made to me when invited, that is before 15th December 2000, it might have been possible to make directions which might have satisfied the concerns of both sides. It appears however that the directions given on 23rd November, were entirely ignored by the appellants or those representing them. No attempt was made to comply with the directions as to the lodging of a trial bundle or the exchange of skeleton arguments, and I concluded that there was little likelihood of fruitful cooperation between the parties with a view to limiting the material that the Lands Tribunal would be asked to consider. In the circumstances, there seemed to be no reasonable likelihood of my being able to allow submissions as to how I should exercise a discretion, rather than as to the propriety of the LVT's exercise of its discretion, without permitting a quite disproportionate enlargement of the material to be placed before the Lands Tribunal involving proceedings of much greater length than the President had envisaged when he granted permission.
14. For these reasons, I decided to determine this appeal by considering whether the grounds given by the LVT justified their decision to refuse to make an order under s.20C, as asked.
15. At the conclusion of the hearing, which was on that basis, I was told that Mr Wood, who was acting for the appellants, had instructed Mr Gallagher that he had not received a copy of the letter to the solicitors to the respondent containing my direction dated 23rd November 2000, although the Tribunal's file showed that a copy had been sent to him, and he had had a copy in his possession which he sent to counsel at the end of January 2001. Mr Letman told me

that he was instructed that his solicitor (who would seem to be the only other source of such a copy) had not sent a copy to Mr Wood. As my decision, taken at the beginning of the hearing, not to extend the scope of the appeal, had been based in part on the failure to make application before 15th December 2000, I said that I would delay issuing this decision until the opportunity to investigate the matter further and to decide whether to make a further application, supported by evidence that the copy of the directions which they clearly received came not from the Tribunal in November 2000, but, as Mr Wood instructed counsel, from the respondent's solicitors reaching Mr Wood only at the end of January. By letter dated 2nd March 2001 Mr Wood informed the Tribunal that the appellants did not wish to make a further application to widen the scope of the appeal.

**Justification for LVT's Decision**

16. The LVT's decision on the application under s.20C is quite short. Out of the 32 pages of their decision, only four are headed "Determination of the Tribunal on application under section 20C of the Landlord and Tenant Act 1985 (as amended)". Of these more than half were occupied by reproducing the whole of the Section of which I have already set out the material provisions, but adding thereto by, as I imagine, inadvertent transposition from an earlier part of their Decision, where they reproduced s.24(1) of the Act of 1987, some sub-sections which belong to that Section and not to s.20C of the 1985 Act. Mr Gallagher, however, very properly did not rely upon this error as indicating that the LVT had failed to consider the relevant provisions of the Section as amended.
17. The LVT said at p.31 of their Decision:
"Whilst the Tribunal has found failings in the Respondent [landlord] as set out above such that it considers it is just and convenient, in all the circumstances, to make an order under Section 24(1) of the 1987 Act to appoint a manager, the Tribunal considers that some culpability must lie with the Applicants who have, by their words and actions over a long period of time, had the avowed intention of removing the present managing agents from their position. Indeed, as stated above, at the Hearing itself, when Miss Marshall [the Chairman of the Residents' Association] was asked by the Tribunal whether there would be any purpose in her having a discussion with Mr Wolbrom [of the managing agents] after he had expressed a desire to start a fresh dialogue with the Applicants and make significant changes, her reply was immediate in its rejection.
As the Tribunal has stated before, the present managing agents have been starved of funds, necessitating protracted litigation against some tenants. This litigation was only commenced after some years of these tenants' refusal to pay, and contrasts sharply with the intention of the Applicants' choice of manager of "zero tolerance" in respect of non-payment of service charges.
In some respects therefore, the Tribunal considers the existing managing agents were acting under great difficulty in managing a block where some of the tenants were patently obstructive and where funds were severely limited.
Mr Gallagher argues for the Applicants that 'whatever the substantive decision, there were good grounds for having brought the application [that is under s.24 of the 1987 Act].' Mr Golstein [for the landlord] argues that 'the costs involved in rebutting this [s.24] Application are substantial and well beyond the Landlord's net rental income for this block for many years to come. The Landlord has already committed vast sums of its own money to fund the service charges which the Applicants are not paying ..'
In the Tribunal's view, in the circumstances of this particular case, and in that its determination on the substantive application was only reached after considerable deliberation and not without difficulty, it is just and equitable that the costs incurred by the Respondent in connection with proceedings before this Tribunal are to be treated as relevant costs to be taken into account in determining the amount of any service charge payable."
18. I would express the LVT's reasons as explained in that final paragraph as being that they reached their conclusion that it was just and convenient to accede to the substantive application to appoint a manager only with difficulty, after taking into account as is apparent from their reasons for that decision (at p27) that
"Miss Marshall, for her part, showed intransigence and a reluctance to start any form of dialogue with the managing agents."
That intransigence which made it convenient to appoint a new Manager, militated against its being equitable to deprive the landlord of its contractual right to recover as costs, reasonably and properly incurred in connection with the Building, the costs of resisting the substantive application. Indeed the LVT, reversing the burden, held that it was just and equitable that such costs should be taken into account in determining the service charge. They clearly recognised the difference in the criteria relevant to the two applications.

19. It was, of course essential to found the LVT's jurisdiction to appoint a new Manager, that they should have found that the landlord was at fault and they did so at p.28 of their Decision, in giving their reasons for granting the substantive application:
"The Tribunal accepts the evidence put forward by the Applicants that the management fell short of reasonable standards and in particular that unreasonable service charges had been demanded and the Respondent had failed to comply with the appropriate code of management practice."
That, as I understand their reasoning on the application under s.20C, is why they refer to the "culpability" of the Applicants and the "great difficulty [of the agents] in managing a block where some of the tenants were patently obstructive and where funds were severely limited". They have taken the findings as to the landlord's fault into account and explain why such faults do not make it just and equitable to make the order under s.20C.
20. As noted by the LVT, Mr Gallagher's submission to them was that "whatever the substantive decision [that is on the application under s.24] there were good grounds for having brought the application". His final submission which was in writing, is before this Tribunal. He submitted that an order should be made by the LVT under s.20C, in order to overcome what he called the "inherent bias" that "the landlord cannot become liable to pay a successful tenant's costs whatever happens, yet has the prospect of recovering its own costs if the tenant is unsuccessful". This situation arises in the LVT because s.83 of the Housing Act 1996, from which s.20C of the Act of 1985 as amended derives, also added s.31A(4) to that Act to provide that:
"No costs incurred by a party in connection with proceedings under this Act before a leasehold valuation tribunal shall be recoverable by order of any court."
21. Although it is necessary to consider what may be just and equitable in all the circumstances, I do not think that s.20C can be construed as establishing a general rule, or even a presumption, that a landlord should be unable to recover costs incurred in proceedings before the LVT by way of service charge, or even that he should be able to do so only if the tenant has acted unreasonably. If that had been Parliament's intention when it allocated this jurisdiction to the LVT it would have so provided in the new s.31A of the 1985 Act and not merely amended s.20C, which had been added to the 1985 Act by the Landlord and Tenant Act 1987.
22. The mischief with which s. 20C, as originally enacted, was concerned was clearly explained by the Court of Appeal in *Iperion Investments Corporation v. Broadwalk House Residents Ltd* [1995] 2 EGLR 47, where a tenant who had successfully defended proceedings brought against him by his landlord and been awarded at any rate some of his costs of the action, sought an order under s.20C to relieve him of having to pay to the landlord under the service charge his proportionate share of the landlord's costs, including the costs to be paid to him by the landlord. Peter Gibson LJ said at p.49F:
"..the court has a discretion to direct that litigation costs be excluded from a service charge, even if the costs have passed the test of section 9 and have been reasonably incurred. The obvious circumstance which Parliament must be taken to have had in mind in enacting section 20C is a case where the tenant has been successful in litigation against the landlord and yet the costs of the proceedings are within the service charge recoverable from the tenant."
That, as Mr Gallagher points out, is exactly the situation with which the LVT was confronted in this case, at least in respect of the lessees of 44 out of the 125 units. The order for costs made in the tenant's favour, in the *Iperion* case, had been reduced because of the tenant's "reprehensible behaviour" and so in upholding the order made under s.20C the judgement continued at p. 49H:
"To my mind, it is unattractive that a tenant who has been substantially successful in litigation against his landlord and who has been told by the court that not merely need he pay no part of the landlord's costs, but has an award of costs in his favour should find himself having to pay any part of the landlord's costs through the service charge. In general, in my judgement the landlord should not "'get through the back door what has been refused by the front': *Holding & Management Ltd v Property Holding & Investment Trust plc* [1989] 1WLR 1313 per Nicholls LJ"
Precisely because the LVT has no power to award costs, there is no danger of its order being undermined by the landlord's contractual rights. It is however, in the context of the absence of any such power that the LVT has to exercise its discretion as to whether to make an order under s.20C.
23. It is, no doubt, for this reason that Mr Gallagher puts at the forefront of his submissions on this appeal that the LVT should exercise its discretion in accordance with the Rules of the Supreme Court as applied by the Court of Appeal in *Re Elgindata Ltd (No 2)* [1992] 1WLR

1207 where Nourse LJ set out these principles in regard to the award of cost in civil actions at p. 1214:

"(i) Costs are in the discretion of the court. (ii) They should follow the event except when it appears to the court that in the circumstances of the case some other order should be made. (iii) The general rule does not cease to apply simply because the successful party raises issues or makes allegations on which he fails, but where that has caused a significant increase in the length or cost of the proceedings he may be deprived of the whole or part of his costs. (iv) Where the successful party raises issues or makes allegations improperly or unreasonably, the court may not only deprive him of his costs but may order him to pay the whole or a part of the unsuccessful party's costs."

The principles (iii) and (iv) show how the Courts have found it necessary, in the interests of justice, to depart from a general rule which was laid down by the statutory instrument RSC O.62, r.3(3), which was itself repealed by the Civil Procedure Rules 1968. In spite of his reliance upon these principles Mr Gallagher maintained that since the LVT had no power to award costs, it should not even have restricted its order depriving the landlord of the right to recover service charges to a part only of his costs.

24. The statutory criterion for exercising discretion under s.20C is what is "just and equitable in the circumstances". In my judgement, it is not helpful to seek to apply rules based on a different criterion and constructed in the context of a power capable of being exercised against either party, to the exercise of a discretion so defined, in order to deprive one party to proceedings of a contractual right. It seems to me that to attempt to do so is to fall into the same error as the Court of Appeal identified in a decision on costs by the Copyright Tribunal which sought to apply such principles in its jurisdiction in *A.E.I. Rediffusion Music Ltd v Phonographic Performance Ltd* [1999] 1WLR 1507 where at p. 1517 Mummery LJ said:

"As the discretion [of the Tribunal] is not expressly subject to general principles .. or provisional statutory steer or fetter, it should be interpreted and applied as a wide discretion to be exercised judicially and reasonably by taking into account and giving due weight to, all relevant factors in a principled and proportionate fashion."

He went on to discuss some matters material to proceedings before the Copyright Tribunal.

25. There is, I think one aspect of the jurisdiction under s.20C which should not be overlooked. The breadth of the power which the appellant seeks to have exercised in this case on the principle that its exercise should "follow the event" was noted by Staughton LJ in the *Iperion* Case when he said at p. 49M:

"We were not asked to make any similar order under section 20C of the Landlord and Tenant Act 1985 in relation to other tenants and do not do so. Indeed it would be a disaster for the defendant, a company owned by residents of Broadwalk House, if such an order were made; the company would presumably be insolvent unless it could raise further capital."

Although the Respondent in this case is not owned by the residents, unlike the ultimate reversioner Limebroad Ltd, which I was told was owned by some of the present appellants and whose conduct the LVT thought fit to comment on, it does appear to me that the LVT was entitled to take into consideration the points which it recorded as being made by Mr Golstein on behalf of the landlord as to the effect of an order upon it. It may well have thought that the request for an order in respect of charges to other tenants than the successful appellants was an attempt to squeeze the landlord out of its property.

26. In order to determine whether I should be satisfied that the grounds given by the LVT for refusing the Order under s.20C do not justify that decision, I have considered firstly whether any of the grounds given was an inappropriate consideration. Mr Gallagher accepts that none can be so categorised. I have considered secondly whether there is any ground identified by the LVT, which it has improperly disregarded. Again Mr Gallagher has not suggested any such failure. He has had therefore to rely upon a failure to have regard to the principle, which, for the reasons which I have given, does not apply to the exercise of this discretion that costs should follow the event. Accordingly, I am not satisfied that the LVT erred in principle in the way in which it exercised its discretion, and I would therefore dismiss this appeal.

27. It does not follow that if I had been exercising my own discretion on the material as it appears from the LVT's Decision I would necessarily have arrived at the same conclusion as the LVT. It is likely that I would have made an Order in respect of some part of the costs in favour of the appellants, who had after all laid out their costs in support of a case where they were successful. However, it was within the power of the LVT, indeed it was their duty if not satisfied that it was just and equitable in all the circumstances to make an Order, to refuse to do so. Their consideration, as I have pointed out led them to the conclusion, having regard to the conduct of the appellants, that it was just and equitable that the landlord should recover its costs as part of the service charge.

**Principles upon which discretion should be exercised**

28. In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.
29. I think that it can be derived from the decision of the Court of Appeal in the *Iperion Case* that where a Court has power to award costs, and exercises such power, it should also exercise its power under s.20C, in order to ensure that its decision on costs is not subverted by the effect of the service charge.
30. Where, as in the case of the LVT, there is no power to award costs, there is no automatic expectation of an Order under s.20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs of defending such conduct.
31. In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under s.20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that make its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although 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.
32. Oppressive and, even more, unreasonable behaviour however is not found solely amongst landlords. Section 20C is a power to deprive a landlord of a property right. If the landlord has abused its rights or used them oppressively that is a salutary power, which may be used with justice and equity; but those entrusted with the discretion given by s. 20C should be cautious to ensure that it is not itself turned into an instrument of oppression.

**Costs**

33. It was agreed at the hearing that, subject to one matter, which, in the event does not arise, the costs of this appeal should follow the event.
34. I do none the less record that one matter. After hearing submissions I determined that if I had ordered costs in the appellants' favour, such costs would exclude the costs of Wood & Co, as opposed to counsel, because of their failure to comply with the directions as to trial given by the President on granting leave to appeal and repeated by me on 23rd November 2000.
35. I accordingly order that the appellants should pay the costs of the appeal to be assessed if not agreed.

    Dated: 5 March 2001

    (Signed) His Honour Judge Michael Rich QC