SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case Number: CHI/OOML/LAM/2007/0001

In the matter of sections 20 and 27A of the Landlord & Tenant Act 1985 (as amended) and in the matter of Part II of the Landlord & Tenant Act 1987 (as amended)

Re: Flat 2, 45 Brunswick Place, Hove, East Sussex ("the property")

Between:

Mr I M Caffoor Ms A Swift and Ms L Brown Applicants

and

Mr E Jensen Respondent

Correction to Reasons for decision

Date of Issue: July 2007

Tribunal:

Mr R P Long LLB (Chairman)
Ms H Clarke
Mr R A Wilkey FRICS FICPD

Case Number: CHI/OOML/LAM/2007/0001

Re: Flat 2, 45 Brunswick Place, Hove, East Sussex

The Tribunal's attention has been drawn to a clerical error contained in its decision in this matter that was issued on June 2007.

It issues this corrective certificate pursuant to the provisions of regulation (18(7)) of the Leasehold Valuation Tribunal (Procedure) England) Regulations 2003 (SI 2003/2099) (as amended).

The references to "Ms Jones" in paragraphs 3, 8, 18 and 32 of the decision should have been references to "Ms Brown". Therefore at each point in those two paragraphs in the Tribunal's decision where the name "Jones" appears it is to be read as "Brown".

Dated 20th July 2007

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Robert Long
Chairman

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In the matter of sections 20 and 27A of the Landlord & Tenant Act 1985 (as amended) and in the matter of Part II of the Landlord & Tenant Act 1987 (as amended)

Re: Flat 2, 45 Brunswick Place, Hove, East Sussex ("the property")

Between:

Mr I M Caffoor Ms A Swift and Ms L Brown Applicants

and

Mr E Jensen Respondent

Reasons for decision

Hearing: 12th June 2007

The hearing was also attended by the Applicants, the Respondent, and by Mr M Surman and Mr M Clark of Messrs Parsons Son & Basley, by Mr Heaton the lessee of the basement flat and Mr Magnusson the lessee of the top flat at the property and by Mrs Jensen

Date of Issue: 22nd June 2007

Tribunal:

Mr R P Long LLB (Chairman)
Ms H Clarke
Mr R A Wilkey FRICS FICPD

Decision

1. The Tribunal has decided for the reasons set out below:

   a. that until such time as there is in place a metering arrangement that will enable the precise cost of the electricity used to supply the four lights and the fire alarm in the hall and stairs at the property, it is reasonable for the lessees of the five long leases at the property each to pay their due proportions (referred to in paragraph 32 below, where the amounts payable are set out) of one third of the amount of the electricity bills delivered to the landlord for the whole of the common parts at the property,

   b. that it is just and convenient to appoint Mr Geoffrey P Holden FRICS to be the manager and receiver of the property for a period of two years from 18th June 2007 in the terms set out in the form of Order annexed to this document, and

   c. that all or any of the costs incurred by the landlord in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by them

   To the extent (if any) that there may be any conflict between the terms of the Tribunal's decision as described in this paragraph and those set out in the reasons for decision set out below then those contained in the reasons prevail.

Reasons

Applications

2. Mr Caffoor and Ms Swift initially made three applications to the Tribunal. They were:

   a. an application ("the service charge application") to determine the amount of service charges payable for the provision of electricity to the common parts of the property made pursuant to section 27A of the Landlord & Tenant Act 1985 (as amended) ("the 1985 Act"). The application referred to the amount payable in 2007, but during the course of the hearing it became apparent that the amount in question was that for a period starting on 1 January 2005; as appears below, the Tribunal has treated the matter on that basis. There was no other dispute over amounts payable for specific items of service charges, but a major issue exists over service charge accounts, and was dealt with when the Tribunal considered the application to appoint a manager,

   b. an application ("the manager application") to appoint Mr Holden to be the manager and receiver of the property made pursuant to section 21 of the Landlord & Tenant Act 1987 (as amended) ("the 1987 Act"), and

c. an application for an Order that all or any of the costs incurred by the landlord in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by them made pursuant to section 20C of the 1985 Act.

3. Ms Jones was joined as an applicant at her request during the progress of the application. Directions given in the matter on 12th March 2007 implied that the two applications would be heard together and they were in fact heard consecutively in the order mentioned in the preceding paragraph.

Inspection

4. The Tribunal inspected the hall and stairway at the property on 12 June 2007 in the presence of Mr Caffoor, Mr & Mrs Jensen, and Mr Surman and Mr Clark from Messrs Parsons Son & Basley. So far as is relevant to the present proceedings, they saw that the area had relatively recently been redecorated and that new carpet had been laid in the hall and on the staircase. The hall and staircase were clean. They were shown the location of the five flats let on long leases subsequently referred to and of the rooms that are let by the Respondent. The flats are in the basement, and on the ground and first floor, on the mezzanine between the first and second floors, and on the fourth floor. They saw the separate toilets and shower rooms on the second and third floors where the rooms let on a short-term basis by the Respondent are located. The shower rooms have electric showers in them.

The Leases

5. The Tribunal had before it a copy of a lease dated 27th August 1986 made between Maroonacre Limited (1) and David Ingram Radford and Susan Jane Hancock (2). That lease is the lease of flat 2 (the first floor flat) that is now vested in Mr Caffoor and Ms Swift, and grants a term of ninety-nine years from 11th January 1985 at an initial annual rent of thirty pounds per year. The rent doubles after the expiration of each period of twenty-five years of the term, and so reaches two hundred and forty pounds per annum for the last period of twenty-four years of the term. The Tribunal understands that the other leases of the five flats held on long leases are, for the practical purposes of the matters that were before it, all in substantially the same form. The lessees of those five flats are where referred to together called "the lessees", and the five flats where referred to together are called "the flats".

6. So far as is relevant to the matters that were before the Tribunal, the lessees covenant to pay a service charge equal to a specified proportion of the annual costs expenses and outgoings incurred by the landlord in complying with obligations set out in the fourth and the fifth schedules to the lease. For present purposes those obligations include the usual repair and insurance obligations and in particular require, in paragraph 2 of the fifth schedule, that the lessee shall contribute to:

"the actual cost of the supply of electricity or other energy for lighting the common parts and the rates in respect of the common parts of the building."

7. The lease contains no definition of "common parts", but so far as is relevant to these proceedings paragraph 3 of the third schedule confers the right:

"to use such steps staircases halls forecourts landings paths and passageways forming part of the Building as afford access to and egress from the Flat".

The expression "the Building" is defined in the first recital to the lease as:

"the freehold property known as 45 Brunswick Place Hove in the County of East Sussex..... registered at HM Land Registry under Title Number SX142616".

The lease does not include a demise of any part of the toilets and shower rooms on the second and third floors of the property, nor does it confer upon the lessees any right to use them.

8. The undisputed evidence before the Tribunal was that the flats in the basement and on the ground, first and fourth floors all pay seventeen and a half per cent of the total of the recoverable service charge expenses described in paragraph 6 above, and that the lessee of the mezzanine flat (presently Ms Jones) pays a further ten per cent. The balance of twenty per cent is borne by the landlord as, in effect, the contribution for the rooms on the second and third floors that he lets.

9. Clause 3 of the lease contains the covenant by the lessees to pay the service charge and deals with the proportion payable. Clause 3(2) sets out the mechanism for its collection. For practical purposes, this provides for the collection of an estimated sum on account of the service charge by two instalments to be paid on 25th March and 29th September in each year. An account is to be taken as soon as possible after 29th September in each year, and any shortfall in payment or any overpayment is forthwith to be paid or refunded, as the case may be, when this has been done. It is material to the present proceedings that clause 3(2)(d) provides that the liability of the lessee under these provisions is to be certified by a chartered accountant appointed by the lessor. The fifth schedule provides (inter alia) for the accountant's fees to be recoverable as part of the service charge.

The Law

10. As to the service charge application, section 27A of the 1985 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 the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable, and the manner in which it is payable. These provisions apply whether or not any payment has already been made. The items comprising a service charge are defined in section 18 of the 1985 Act and there is no issue but that the cost of electricity the subject of the

present application falls within that definition and so is a relevant cost. There is no issue in this case either as to the identity of the payers or the payee of the service charge.

11. Section 19 of the 1985 Act provides that relevant costs shall be taken into account in determining the amount of a service charge only to the extent that they are reasonably incurred, and that where they are incurred for carrying out works those works are to be of a reasonable standard. To the extent, if at all, that the point is not covered by the statutory definition, the Court of Appeal determined in Finchbourne v Rodrigues [1976] 3 All E R 581 CA that, in order to be recoverable, a service charge cost must be reasonable in amount.

12. As to the manager application, section 21 of the 1987 Act permits the Tribunal to appoint a manager and receiver of premises to which Part II of that Act applies. By section 24 of the 1987 Act the Tribunal may only make an order where it is satisfied that one or more of the grounds set out in section 24(2) exist. For the purposes of the present proceedings the relevant circumstances are those in sections 24(2)(a) and (ab).

13. Section 24(2)(a) provides that such an order may be made where the landlord is in breach of any obligation owed by him to the tenant under his tenancy, and relating to the management of the premises in question or any part of them. Section 24(2)(ab) similarly provides that an order may be made where unreasonable service charges have been made, or are proposed or are likely to be made. As well as establishing the existence of the ground or grounds in question before making such an order, the Tribunal must also be satisfied that it is just and convenient to make the order.

14. The statutory basis for the order pursuant to section 20C of the 1985 Act that the applicants also seek is that set out in paragraph 2(c) above.

The Hearing

15. There were statements before the Tribunal made by Mr Caffoor and by Mr Jensen. Each was accompanied by a bundle of documents. At the hearing the Tribunal heard representations from Mr Caffoor, Ms Swift and Mr Jenson.

The Service Charge Application

Evidence

16. The essential evidential basis of the service charge application was not in dispute. The issues between the parties arose from the interpretation that they respectively placed upon the facts. The Tribunal was therefore able to find a number of undisputed facts.

17. For some years the Respondent's managing agents of the property were a company called Packwood Property Services Limited ("PPS"). Amongst other functions, they collected the rents and the service charges and were responsible for dealing with the electricity bills payable (at least from 2005

onwards) to a supplier called Atlantic Electricity and Gas ("Atlantic"). PPS produced such a service charge account in 2006 expressed to be made up to 30 June in that year. The account contains references to sums carried forward from previous years. It appears therefore that they must also have produced accounts in preceding years.

18. Despite the fact that PPS had produced an account to 30 June 2006 (it was not explained why this date, rather than that of 29th September specified in the lease, was chosen). The Respondent states that he had dismissed them with effect from the end of 2005 and had at that time taken the management of the property back into his own hands. The evidence was that in that year he oversaw major works at the property that included renovation and redecoration of the hall and staircase, the creation of the mezzanine flat now demised to Ms Jones and certain other works. He appears to have asked the lessees for contributions to works for which they were responsible as a part of the service charge regime as he went along, and they appear to have paid them.

19. The Respondent appears simply to have asked the lessees for their relevant contributions to expenditure as and when it was incurred. They appear to have concurred in this, notably in respect of reimbursing their respective contributions to the cost of the works that the Respondent carried out in 2006.

20. A major problem that arose following PPS's removal as managing agents was the question of the electricity accounts for the common parts. Atlantic had been in the habit of sending accounts to PPS for payment. No one seems to have told Atlantic to send accounts after the beginning of 2006 to the Respondent instead of PPS, and PPS did not forward them. The Respondent says that as a result of this he did not become aware of an arrears situation that had built up until the latter part of 2006.

21. At that time he became aware of a demand from Atlantic for £1933-40. He telephoned them to discuss it, and was threatened with disconnection for non-payment. He was also informed of a further demand for additional arrears of £60-00 in respect of which disconnection was also threatened. In order to avoid this he paid those two amounts by credit card, together with a fee for payment by that means amounting to £30-00, a total of £2023-40. He then communicated with the lessees asking them to pay their relevant proportion (17.5% or 10% as the case may be) of that total sum following the practice that he had adopted for service charge collection described above.

22. The Applicants protested at this demand and drew attention to the fact that they were required only to pay the actual cost of the electricity or other energy provided to light the common parts. Only the staircase of the areas falling within that definition was lit (as the Respondent accepted). The Applicants in turn accepted that although a fire alarm had been installed since the leases were drawn up, it was reasonable for the lessees to bear their due proportions of the cost of power to it because it was of very material benefit to all occupants.

23. The Applicants adduced anecdotal evidence in Mr Caffoor's statement to the Tribunal to show that even if the four light bulbs in use on the stairs were left on all day and night, they would consume only very few units of electricity per day. They suggested that such usage would be far less than the consumption shown on the bill. It was common ground at the hearing that there is only one meter to measure the supply to all of the common parts. No-one was able to give a definitive account of the points to which that supply runs, but it appeared that the supply must at least also serve the showers in the two shower rooms on the second and third floors. It was agreed that, if this were so, it would tend materially to account for the considerable usage of electricity supplied through the meter in question that had occurred.

24. There followed meetings between the Applicants, the Respondent and a firm of managers whom it was intended to appoint as the new managing agents of the property. Ultimately that new intended firm withdrew because of differences that existed between the parties that it considered would make management impractical. As part of those discussions, however, the parties agreed that because there was no means of measuring what was the actual cost of the electricity supplied to the lights and the fire alarm there should be an informal apportionment whereby one third of the total electricity bill derived from the one meter should be deemed to apply to the cost of lighting and the fire alarm, and the remainder should be deemed to apply to the Respondent's retained areas. For reasons that seem, in part at least, to have been related to the withdrawal of the proposed new managing agents that agreement was not implemented.

25. In subsequent discussions with Atlantic the Respondent was able to satisfy them that the earlier bill had been charged at a commercial rate when it should have been charged at a domestic rate. This apparently had occurred because Atlantic decided that the commercial rate must be applicable because bills were sent to the business premises of PPS, despite the fact that they clearly stated that they related to 45 Brunswick Place. They sent the Respondent a refund of £332-82, and a revised demand on 14th March 2007 for £1600-59 to cover charges there calculated for the period from 1st January 2005 to 22nd November 2006. The revised account still seems to take no account of the payment of £60-00 that the Respondent made earlier in 2006, and he accepts that the £30 payment for use of the credit card is a matter for him and that he will not recover it.

26. The Respondent says that he has since received an estimated electricity account for the period November 2006 to March 2007 for £495-00, and that he considers this to be an overestimate. He is arranging to let Atlantic have an actual reading so that it can be recalculated. The Tribunal is not required as part of these proceedings to reach any conclusion about that account.

27. The Tribunal bore in mind when making its decision that there is presently no means of establishing the actual cost of lighting the staircase. A separate meter dealing only with those lights would be necessary for that actual cost to be established. If it is to also to deal in the long term with the fire alarm (and the

Applicants' concession in that connection seems a very proper one to have made) then variation of the leases to deal with the point may be appropriate.

28. It appeared to the Tribunal to be appropriate at in the present circumstances to seek to give commercial effect to the intention of the parties since the precise terms of the lease cannot accurately be complied with. In that sense the parties are in a better position than anyone else to know what is a reasonable apportionment. They agreed that one third of the cost of the electricity passing through the meter in question for lighting the stairs and for power to the fire alarm should be divided between them as to 17.5% of that amount attributable to each of the four larger flats, 10% to the mezzanine flat and 20% to the Respondent. The remaining two thirds is the responsibility of, and to be borne by, the Respondent. The established cost is £1600-59 for the period 1st January 2005 to 22nd November 2006.

29. No issue has been taken before the Tribunal in respect of a potential point that may have arisen under section 20B of the 1985 Act as to the recoverability of any sums incurred more than eighteen months before demand. The Tribunal considered that aspect for completeness, and has concluded from the facts before it that, however narrowly, the issue does not in fact arise. The omission to raise it may well have been deliberate for the reasons here mentioned.

30. Mr Caffoor was by his own account aware from the account prepared by PPS in June 2006 (presumably circulated to all lessees at the same time, although the respondent says he did not see it until much later) of an electricity bill for £218-02 for the period January to April 2005 that PPS indicate that they paid. The nature of the account produced by PPS is that it purported to account for what was due at that time by way of service charge, so that it satisfied section 20B in terms of electricity charges incurred (as far as was then known) between January and April 2005.

31. The Respondent informed the lessees of the bill for £2023-40 in his e-mail of 9 October 2006 (page 42 of the Applicant's bundle) and intimated that it would be payable by them as service charge when he had the receipt (following the procedure described in paragraph above that they had adopted at that time. He appears thereby narrowly to have met the eighteen-month requirement (in this case from April 2005) imposed by section 20B.

32. For the moment, the Tribunal is able to say that of the bill for £1600-59 a sum of £533-53 (namely, one third) is chargeable to the service charge account on the basis of the above finding. Of that sum the four larger flats are each responsible for 17.5%, or £93-37. Miss Jones is responsible for 10%, or £53-35. The Respondent is responsible for the remaining 20%, or £186-74, as well of course for the remainder of the sum being the two thirds attributable to the remainder of the use of the electricity supplied.

33. Since the lease imposes no limitation on the date of recovery of any over or under payment, those amounts are payable now upon appropriate demand being made.

The Manager Application

34. The Applicants based their application for appointment of a manager on three grounds. One of those, that the Respondent had been in breach of his obligation to clean the common parts on 2006 during the continuation of the works (and perhaps for additional periods) was properly abandoned by them at the hearing since the Applicants accept that the obligation is once more being honoured, and that a historic breach since cured does not, on the wording of section 24(2)(a), constitute a sufficient ground to enable the Tribunal to make an appointment.

35. The Applicants' second ground was that unreasonable service charges have been demanded. The Respondent had agreed that he had originally asked for payment of the relevant shares of the whole of the £2023-40 for the inaccurate electricity bill and included in that his credit card payment fee. That would for example have required a payment of £354-09 from each of the larger flats by comparison with the sum of £93-37 that the Tribunal finds is actually payable. In the Tribunal's judgement, that amounted to a demand for unreasonable service charges. However, it would not have seen one isolated incident of that nature in the circumstances of the present case, and in the absence of a wider problem, as necessarily affording grounds for it to conclude that an appointment would be just and convenient.

36. The Applicants' final ground was that the Respondent was in breach of an obligation to the lessees in that he had failed to keep proper books of account in accordance with the requirements of his obligation contained in paragraph 8 of the fourth schedule in the leases.

37. It was a matter of common ground between the parties that in 2005 a Leasehold Valuation Tribunal had found upon the information then before it that a sum of £811-96 claimed at that time from the Applicants was not payable. Accounts thereafter prepared by PPS to June 2006 had shown that a sum of £8526-25 was due by the Respondent to the service charge accounts, although that figure included a disputed fee charged by them of £1175 for appearing on the Respondent's behalf at the earlier LVT hearing that plainly did not belong in the service charge account.

38. The Respondent said that a total of some £4900 was in practice being claimed from him, of which he accepted that some £2800 was owed by him to the service charge account and contested the other £2100. He had paid the £2800 to the intended new managers as an "escrow" sum but it had been returned to him when they declined to proceed in the matter. Since then he had met payments as they arose, and had sought to credit those amounts from time to time to the lessees. He had produced accounts in February 2007 (pages 48-49 of the Applicants' bundle) and in May 2007 (page 26 of his own bundle) showing amounts that he said were due from lessees against sums received from them. He accepted that those accounts did not show the amounts actually paid by him, nor were they audited. He said they did not pick up any balances from the PPS accounts because the PPS accounts were wrong. He did not

understand why PPS had purported to prepare accounts to June 2006 when he had dismissed them in December 2005.

39. Since January 2006 the Respondent had managed the building himself. He had made whatever payments were required and had required contributions when they were needed. This had all been done through his own bank account. There was no separate account for the property. He had sought to set off in those dealings what he thought he owed the service charge account, but had been able to do no more to clear up the disputed £2100. He accepted that there was no clear basis on which to carry accounts forward and had been seeking to reach a clean sheet situation from which everyone could start again. He reluctantly accepted that the responsibility for this situation eventually lay with him, since on his account of the matter the accounting difficulties had been caused by his agents.

40. The Respondent said that he would be content to see Mr Holden appointed manager save that he would wish to retain responsibility for managing major works. He said that he understood the fundamental difference between a manager and receiver on the one hand and a managing agent on the other as the Tribunal had briefly explained it to him.

41. The Tribunal concluded from the facts that were before it that a number of accounting failures had occurred. On the basis of the allegation of failure to keep books of account it did indeed appear that for 2006 at least such a failure had occurred and was continuing. On the other hand the PPS accounts to June 2006 showed that they had maintained records whilst they were in office, whether or not the interpretation of what they had done otherwise was subject to dispute.

42. More important in the Tribunal's judgement was the fact that the Respondent was unable to produce any sort of accounts upon which the parties could rely. None of the statements of sums due were certified by a chartered accountant as the lease required, and it was unlikely in all the circumstances that any kind of accurate record of a sort capable of such certification would now be capable of being produced covering the years when PPS were managing agents. Such accounts as the Respondent himself had produced (page 24 in the Applicants' bundle and page 26 in his bundle) fell far short of what the lessees were entitled to expect. All of that amounted to a serious breach of the Respondent's obligations to the Applicants. It was irrelevant in the context whether the failure was attributable to him or to the agents he appointed to act on his behalf, or in what proportions any blame was to be apportioned between them.

43. The Applicants accepted that in all the circumstances it was unlikely in the extreme that detailed accounts for the whole period could be produced given the unco-operative attitude that the Respondent said in evidence that PPS were adopting. The Tribunal reluctantly accepts that, in practical terms, that is likely to be the case. It bore in mind the period of some years over which certified accounts would now have to be prepared, the problems of obtaining

accurate records over that period and the likely cost of preparing accounts for those years even if that could be done.

44. The Applicants further accepted that the best that might now be hoped for is that accountants might be asked to prepare accounts showing the as accurately as may be the state of financial affairs that now exists between the parties as they were are able to prepare from the information that exists or that might reasonably be capable of being obtained.

45. That being the case, the Tribunal concluded that the appropriate course to adopt to resolve the problems that exist at the property would be to appoint a manager and receiver for an initial period of two years. He should have particular instructions to arrange for the preparation of accounts as a basis for future accounting in the terms of the lease, and to collect whatever was shown to be due. He should also have a specific function to investigate the provision of a separate meter for the lighting of the staircase, and perhaps the power to the fire alarm. If in all the circumstances it was reasonably practicable to do so at a cost that is proportionate to the problem, he should arrange for its installation.

46. It would of course be open to the parties or any of them (including the receiver and manager appointed) to seek an extension of that term if the problems at the property have not been fully solved by that time, or a variation of the order if it appears that other powers are reasonably required to enable that to be achieved. It is equally important that once the problems are solved, the property shall thereafter be run in accordance with the terms of the leases, which represent the contract between the parties and which have in many material respects been ignored for some time past.

47. On behalf of Mr Holden, Mr Surman had provided details of Mr Holden's qualifications and experience. He told the Tribunal that Mr Holden had the benefit of professional indemnity insurance that extended to cover risks he may incur as a manager and receiver appointed by the Tribunal. He had provided details of the terms upon which Mr Holden would seek to be remunerated, and subject to determining a limit on the amount that may constitute "major works" those were acceptable to the parties who by this stage of the hearing were effectively in agreement that Mr Holden should be appointed. The Respondent accepted that it was unlikely on present information that major works would be required in the next two years, and that the point might be re-examined in the event of any request to extend the period of the appointment.

48. The Tribunal accordingly determined, in reliance upon the ground that the Respondent has been in breach of obligations owed by him to the lessees under the terms of their leases and in connection with the management of the property, that it is just and convenient to appoint Mr Holden to be the receiver and manager of the property. The insurance falls for renewal on 18th June so that is a convenient date for the appointment to commence. The terms of the appointment are set out in full in the form of Order attached. The additional ground that unreasonable service charges have been demanded has been made

out but, as previously indicated, the Tribunal would not have considered that it was just and convenient to appoint a receiver and manager had that been the only ground. The Respondent has addressed the issue, and the unreasonable demand has been withdrawn.

49. It was agreed by the parties at the hearing that it should on present information be possible to overcome the problems that exist at the property in a period of two years.

The section 20C Application

50. This application was not greatly canvassed at the hearing because it appears that the terms of the leases are such that the Respondent would not be entitled to recover any costs he has incurred in connection with these proceedings as part of the service charge in any event. However to such extent as that may not be the case, and because the point is in any event before the Tribunal, it has determined that it will make the Order requested.

51. It has reached that decision because it is satisfied that the Respondent did not take the steps that he properly should have taken to remedy the problems that arose following the dismissal of his agents. The problems were caused, he says, by their failure to carry out his instructions. He was instead content to leave his lessees to bear the risk of disputed funds that the agents' accounts said should be repaid by the Respondent to the service charge fund, and which he failed to repay because he disputed them. He entirely failed to appreciate the need to deal with service charges in accordance with the terms of the leases and of the law when he took the management back into his own hands. His initial approach to the question of the electricity accounts was cavalier, and he only began to remedy it when the Applicants drew his attention to the major faults in his approach.

52. The Applicants were accordingly justified in bringing the present applications as the only way in which they might succeed in bringing order back into the matter once it was apparent that other managers would not take the matter because of the issues that existed.

53. Accordingly, all or any of the costs incurred by the landlord in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by them.

Robert Long
Chairman

21st June 2007