RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property
TRIBUNAL SERVICE

S.27A LANDLORD & TENANT ACT 1985

DECISION

Case Number:	CHI/00ML/LIS/2007/0020
Property:	Flat 2, 11 Kings Gardens Hove BN3 2PF
Applicant:	Andrew & Helen Smith, Flat 2, 11 Kings Gardens
Respondents:	(1) Visionclever Limited (2) R W Chamberlain, Flat 2, 10 Kings Gardens (3) Mrs S David, Flat 6, 11 Kings Gardens
Members of the Tribunal:	Ms H Clarke Barrister (Chair) Mr N Robinson FRICS Ms J Morris
Date of Hearing:	25 September 2007
Date of Decision:	11 October 2007

APPLICATION

1. The Application concerned the reasonableness and payability of service charges for the years ended 2005 and 2006.

2. The Applicants objected to paying a contribution to the following items:
Item 1: Major works/ damp proofing Flat 9/11 £4,135.89
Item 2: Major works, 10 Kings Gardens £2,938.68
Item 3: Major works, 11 Kings Gardens hallways £12,616.63
Item 4: Legal costs £5,272.98
Item 5: Directors' liability insurance £580.50
Item 6: Duplicate specification of works £235
Item 7: Major works, 10 Kings Gardens £6,254.57
Item 8: Major works, 11 Kings Gardens hallways £10,000.

3. The Applicants also sought an order under s 20C Landlord & Tenant Act 1985 that the Respondent's costs of these proceedings should not be recoverable as service charge.

DECISION

4. *Item 1:* Major works/ damp proofing Flat 9/11 £4,135.89
The Tribunal determined that consultation under s20 Landlord & Tenant Act 1985 ought to have been carried out but was not with regard to work costing £2,385.13 under this item. The contribution due from the Applicants could therefore not exceed £250. The contribution demanded from the Applicants was £220.92. The Applicants' contribution to the balance of the sum under this item was payable.

5. *Item 2:* Major works, 10 Kings Gardens £2,938.68
The Tribunal determined that the Applicants had not been and would not be asked to contribute to this sum, and that consequently it was neither a service charge nor a relevant contribution within the meaning of s18 or s20 Landlord & Tenant Act 1985.

6. *Item 3:* Major works, 11 Kings Gardens hallways £12,616.63
The Tribunal determined that the Applicants' contribution to this item was payable.

7. *Item 4:* Legal costs £5,272.98
The Tribunal determined that this sum was neither a service charge nor a sum payable within the meaning of s18 or s27A Landlord & Tenant Act 1985, and that the Tribunal therefore had no jurisdiction over this item.

8. *Item 5:* Directors' liability insurance £580.50
The Tribunal determined that the Lease did not permit the Respondent to claim this sum as part of the service charge.

9. *Item 6:* Duplicate specification of works £235
The Tribunal determined that the Applicants' contribution to this item was payable.

10. *Item 7:* Major works, 10 Kings Gardens £6,254.57
The Tribunal determined that the Applicants had not been and would not be asked to contribute to this sum, and that consequently it was neither a service charge nor a relevant

contribution within the meaning of s18 or s20 Landlord & Tenant Act 1985.

11. *Item 8:* Major works, 11 Kings Gardens hallways £10,000
The Tribunal determined that the Applicants' contribution to this item was payable.

THE BACKGROUND

12. The Applicants are the current Lessees of Flat 2, 11 Kings Gardens. Their Landlord is Visionclever Limited, the First Respondent, a tenants' management company established to own and manage the freehold interest of 10 and 11 Kings Gardens. All 12 relevant lessees, including the Applicants, are shareholders in the First Respondent.

THE INSPECTION

13. The Tribunal inspected the hallways and common parts of 10 and 11 Kings Gardens immediately prior to the hearing. Ms Spurgeon for the First Respondent, accompanied by Mrs David, attended to give the Tribunal access. The Applicants were not present at the Inspection.

14. 10 and 11 Kings Gardens form part of an imposing Victorian/Edwardian sea-front mansion block. The exterior of both buildings was partially covered with scaffolding and work was under way. The hallway interior of 10 Kings Gardens was decorated to a high standard with fittings of commensurate expense. This hallway gives access to the occupiers of Flats 1 & 2, 10 Kings Gardens. The hallway and stairs of 11 Kings Gardens gives access to the occupiers of 13 flats including some which are located in 12 Kings Gardens. The hallway had clearly been decorated in the recent past and was fitted with carpet suitable for the relatively heavy level of foot traffic. Some scrapes and marks were visible to the decorations consistent with the level of expected use. The Tribunal noted that some areas, particularly the skylight at the top of the staircase, would have been difficult to access.

15. The Tribunal also observed the arrangement of the roof of Flat 9 to the rear of the building.

THE HEARING

16. The hearing was attended by Ms Spurgeon, Company Secretary and Director of the First Respondent, and Mrs S David. Mrs David expressed a wish to be joined as the Third Respondent. She did

not in the event give evidence but associated herself with the First Respondent.

17. The Applicants did not attend the hearing but had submitted a detailed response to the Respondent's case. No message had been received and the case manager was unable to contact the Applicants on the number they had supplied.

18. Ms Spurgeon and Mrs David submitted that the matter should go ahead, Ms Spurgeon told the Tribunal that she had turned down freelance work in order to prepare and to attend. The Tribunal noted that Regulation 14(8) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 provides:
"If a party does not appear at a hearing, the tribunal may proceed with the hearing if it is satisfied that notice has been given to that party in accordance with these Regulations".
The Tribunal was satisfied that due notice had been sent to the Applicants and accordingly proceeded with the hearing in their absence.

THE LAW

19. The relevant law is found in the Landlord and Tenant Act 1985:
"s18. Meaning of "service charge" and "relevant costs":
(1) In the following provisions of this Act "service charge" 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 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.
(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable"

"s19 (2A) A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a leasehold valuation tribunal for a determination–
(a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,
(b) whether services or works for which costs were incurred are of a reasonable standard"

"s20 Limitation of service charges: consultation requirements:
(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7)(or

both) unless the consultation requirements have been either—
(a)complied with in relation to the works or agreement, or
(b)dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement".

THE LEASE

20. The relevant parts of the Lease governing Flat 2 provided that the Lessee must contribute a proportion (determined according to rateable value) of *"all costs and expenses incurred by the (Landlord) in carrying out its obligations under and giving effect to the provisions of the Seventh Schedule hereto"* and shall make payments on account towards that contribution. The Seventh Schedule of the Lease imposes obligations on the Landlord to pay rates and to insure the building, to contribute to party wall repairs, to maintain a remote door-opening system, to keep books of account, and other appropriate obligations. The Landlord is responsible for the main structural parts of the building, the roofs foundations and exterior, the common hallways, lifts and stairways, and pipes and drains. In particular the Seventh Schedule requires the Landlord to:
"keep the (common parts, structure & exterior) in a good and tenantable state of repair decoration and condition and shall from time to time renew or replace such fixtures fittings or part thereof as may be necessary as a result of the same becoming worn out broken or damaged beyond repair or otherwise serviceable PROVIDED THAT nothing herein contained shall prejudice the Lessor's right to recover from the Lessee or any other person the amount or value of any loss or damage suffered by or caused to the Lessor or the (common parts) by the negligence or other wrongful act or default of the Lessee or such other person"
and to:
"keep the halls lift stairs landing and passages...properly carpeted cleaned and in good order and ...adequately lighted..."

21. The Landlord is permitted by the Lease to *"employ and engage such servants agents and contractors as it considers necessary or desirable for the performance of its obligations under this Schedule and pay their wages commissions fees and charges"*

PARTIES' SUBMISSIONS

22. In the absence of the Applicants the Tribunal heard the submissions and evidence of Ms Spurgeon for the First Respondent, and read the written submissions and evidence presented by the Applicants and the First Respondent.

23. The evidence and statements submitted by both parties exceeded 500 pages of documents.

24. It was part of the First Respondent's case that all of the documents relied on by it had either been sent to the Applicants in the past or had specifically been made available to the Applicants for their inspection before the hearing, and where they pre-dated the Application, before the Application was made.

25. ***Item 1:*** **Major works/ damp proofing Flat 9/11 £4,135.89:** The Applicant contended that this entire sum was charged for work in connection with damp affecting Flat 9 and showed an account which had been provided under cover of a letter dated 30 November 2006. The Applicants objected that the value of the works brought them within the scope of the consultation procedures under s20. They also submitted that Flat 9 had suffered from damp problems arising from work which the previous occupier had carried out, and contended that they were being asked to contribute to the cost of work for which the Landlord was not liable.

26. The Respondent denied that the Applicants were wrongly being asked to contribute, and denied that the full amount represented a single item. Ms Spurgeon submitted that the account relied upon by the Applicants had only come into existence because the earlier accounts had taken the wrong year-end date and had to be redrawn. This was precipitated by the Applicants withholding payment. She produced the earlier accounts which showed 5 entries under the heading 'Major Works' which together totalled £4,135.89.

27. Damp proofing works at Flat 9 and subsequent redecoration cost respectively £2,015.13 and £370, a total of £2,385.13. The Respondent produced a report by Dominion Timber dated 21-04-05 which identified water damage due to water penetration around the windows and their invoice dated 6-10-05 for remedying that work at the cost of £2,015.13. The Respondent also produced the invoice for the decorating dated 27 November 2005. The Respondent also produced to the Tribunal documents dated from April-March 2005 which showed that the tenant of Flat 9 had

arranged and been invoiced in her own name for damp-proofing works to Flat 9. It was the Respondent's case that none of the damp-proofing works were to be invoiced to the service charge.

28. The Respondent admitted that no consultation process under s20 had been carried out in respect of the £2,385.13. However, the Respondent submitted that the amount of the Applicants' contribution to that amount was £220.92.

29. The remainder of the entries under the 'Major Works' heading comprised charges for specifications of works. One item was a duplicate. Moore Salmon Associates had charged £287.88 twice. They had refunded this amount. Stuart Radley Associate charged £1,175 for a lengthy specification of external works.

30. ***Item 2:*** **Major works, 10 Kings Gardens £2,938.68**
Item 7: **Major works, 10 Kings Gardens £6,254.57**
The work under both these items consisted of decorations to the hallway of 10 Kings Gardens which gives access exclusively to the occupiers of Flat 1 and Flat 2. Item 2 appeared in the accounts for year end 2005 and Item 7 in the year ending 2006. The Applicants contended that each of these items was qualifying work on which a consultation should have taken place with the occupiers of 11 Kings Gardens as well as 10 Kings Gardens. Moreover, the work went beyond maintenance and was an upgrade which was not necessary. Whilst the lessees of 10 Kings Gardens made a contribution to the costs of redecoration they were not charged for their normal contribution to the reserve fund that year. The costs of the Landlord's managing agents in overseeing and running the project should not be borne from the service charge account.

31. The Respondent submitted that these works were never intended to be paid for by anyone other than the lessees of Flat 1 and Flat 2 10 Kings Gardens. Those lessees were consulted. They made payments totalling £10,081.50 into the reserve fund, which were subsequently drawn down to pay for the redecorations. They were also charged the appropriate amount towards the reserve fund for the other outgoings of the year. The Respondent produced the schedule of reserve fund demands for 2005 and 2006 which showed that the lessees of 10 Kings Gardens were required to pay sums commensurate with other occupiers. The cost of managing the work was built into the cost which those lessees paid. There had been no charge to the Applicants or any other lessee, and so no need to consult them.

32. ***Item 3:*** **Major works, 11 Kings Gardens hallways £12,616.63**
Item 8: **Major works, 11 Kings Gardens hallways £10,000**
These items related to charges in years ending 2005 and 2006 for redecoration work and the provision of carpet to the communal hallways. The Applicants' case was that the consultation process was mismanaged and the contractor who secured the work, Peter Dawes, was appointed outside the process. The Applicants relied on a sequence of documents including the specification dated 19 March 2004 and the Response to Tender document dated by Peter Dawes on 14 December 2005. The Applicants also stated that the directors of the First Respondent had made a misleading statement about how much money would be saved if Peter Dawes got the job. The Applicants also alleged that the work was mismanaged, took longer than it should, and was not up to standard. An extra £1,000 had been charged beyond the contract price by Peter Dawes for dealing with wallpaper that in the event could not be painted over. The Applicants relied on the contents of a later specification prepared by Stuart Radley Associates which included provision for internal redecoration just a year after it had been completed by Peter Dawes. Specifically the Applicants alleged that "trailing wires, loose balustrades and poor lighting are verging on being a health and safety hazard".

33. The Respondent submitted evidence that an initial specification was produced and sent out for tender which resulted in quotes that were 'horrifyingly high'. The matter was discussed in a meeting of shareholders of the First Respondent company and the decision was there taken to commission a second, simpler specification. A preliminary indication of price was obtained from Peter Dawes. The specification was then sent for tender and 3 quotes including that of Peter Dawes were notified to lessees in accordance with s20. The Respondent could not account for why the Peter Dawes quote bore a later date on its face, but Ms Spurgeon was adamant that it was received and made known to the lessees in accordance with the s20 process. The Respondent stated that the Applicants were fully involved and supportive of the process and referred to a letter written at the time to Ms Spurgeon by the Second Applicant Ms Smith in which she said; "*what a great job you have done on keeping the costs down on the hallways and how although it's going to be quite plain and simple it will at least look clean...*".

34. The Respondent contended that internal redecoration was included in the later specification by Stuart Radley Associates in error, and produced a letter dated 2 August 2007 from the author of that specification explaining that:
"*I made the assumption that the lease required the redecoration*

of the commonparts to be carried out with the same cyclical frequency as the external redecoration and repair...the inclusion of the commonparts redecoration was not based upon the condition of the decorations.."

35. The Respondent had no knowledge about the Applicant's allegations of trailing wires, loose balustrades and poor lighting.

36. ***Item 4:*** **Legal costs £5,272.98**
This item related to money recovered in the settlement of an action brought by the First Respondent against contractors working on an adjacent building in 2001 who caused damage to the recent external redecoration. The action was settled on terms that the First Respondent received compensation of £15,926.13 inclusive of costs and interest. The costs of the action came to £7,334.36. Solicitor's fees were deducted, and the First Respondent paid the balance of £10,653.15 into the reserve account.

37. The Applicants submitted that as their lease does not permit the recovery of legal charges, the full amount of £15,926.13 should be credited to the service charge account and apportioned to the lessees. Other lessees in the building have leases which do permit the recovery of legal costs, and the Applicants submitted that the costs bill ought to have been apportioned between and debited to those lessees only.

38. The First Respondent submitted that the legal costs had not been charged to the lessees. The action had been instigated and continued by the First Respondent on its own account, and the net proceeds had been paid into the reserve fund in order to benefit the lessees (who are shareholders). In addition to the solicitor's fees, there had been costs of £2,060 which had been paid by the First Respondent from its own resources (the ground rent account). This sum had never been reimbursed, and the First Respondent sought the Tribunal's determination on whether it could now be repaid from the reserve account. In answer to the Tribunal's questions, the First Respondent gave evidence that the damaged areas of woodwork were not repainted or repaired any earlier than they would have been scheduled for cyclical redecoration (which was in progress at the time of the Inspection).

39. ***Item 5:*** **Directors' liability insurance £580.50**
This related to the personal liability of the Directors of the First Respondent company.
The Applicants' case was that this item had been paid for from

the service charge account but their Lease did not permit it to be charged to them.

40. The Respondent admitted that the Lease did not allow the insurance premium to be charged to the Applicants, but stated that the accounts bear a note that the money was to be refunded to the service charge account by the First Respondent.

41. ***Item 6:*** **Duplicate specification of works £235**
This related to a specification prepared by Estates Management Limited, the previous managing agents. The Applicants' case was that it related only to the communal front door, that it was subsequently found to be over-specified, the work was not carried out, and an earlier specification produced by Moore Salmon was adequate.

42. The case for the Respondent was that the Applicants were wrong about the document. The specification prepared by EML was the basis of the tenders which led to the redecoration work to the communal hallway challenged by the Applicants under item 3 above. The decision to commission that specification was a decision taken at a shareholders' meeting to which the Applicants were invited, and was a response to the 'horrifying' quotes provided under an earlier and more detailed specification.

CONSIDERATION AND REASONS FOR DECISION

43. ***Item 1:*** **Major works/ damp proofing Flat 9/11 £4,135.89**
The Tribunal accepted the evidence before it that this sum comprised several different charges for different items.The Tribunal observed that the letter dated 30 November 2006 described the accounts as being 'summarised', and the earlier set of accounts listed these items separately. Of the total, £287.88 was admitted by the Respondent to have been a duplicate charge, and the Tribunal saw evidence that it had been refunded. The Tribunal considered, based on its expert knowledge and experience, that the amounts of the two charges for specifications of works (less the duplicated item) were reasonable sums for the length and details of those specifications.

44. The Tribunal also accepted the Respondent's evidence that the work to Flat 9 for which the charges were made was the result of water penetration around the windows, which fell within the Landlord's repairing obligations under the Lease and to which the Tenants were obliged to contribute. There was no evidence to the contrary. The Tribunal accepted the evidence from the documents that work done on Flat 9 in connection with damp proofing had not been charged to the service charge account, but

had been paid for by the tenant of Flat 9. Again, there was no evidence to the contrary.

45. The invoices for remedying the damp penetration and redecorating did fall within the scope of s20 Landlord & Tenant Act 1985 and the Applicants ought to have been consulted. However in the absence of consultation the statute provides that the contribution of any tenant shall be limited to £250. In the present case, the amount of the Applicants' contribution was £220.92. The Landlord was therefore entitled to recover that amount and it was payable by the Applicants.

46. ***Item 2:*** **Major works, 10 Kings Gardens £2,938.68**
Item 7: **Major works, 10 Kings Gardens £6,254.57**
The Tribunal was satisfied on the evidence that the costs of this project were borne exclusively by the lessees of Flat 1 and Flat 2, 10 Kings Gardens. Indeed the Applicants stated that they had been told this by the Respondent and the managing agents. The Tribunal also found on the facts that the costs of managing the project had been incorporated into the budget for the work and had not been charged to the service charge account. It follows that this work was not qualifying work within the scope of s20 Landlord & Tenant Act 1985, and indeed the cost of the work did not amount to a 'service charge' as between the Applicants and the Respondent, because it was not payable or alleged to be payable by the Applicant. There was no duty to consult the Applicants. The question of whether it was reasonable to carry out this work, or whether it amounted to an 'upgrade', was not within the scope of this application because no service charge was payable for it by the Applicants.

47. ***Item 3:*** **Major works, 11 Kings Gardens hallways £12,616.63**
Item 8: **Major works, 11 Kings Gardens hallways £10,000**
The Tribunal first considered the process of consultation. The documents produced by the Respondent clearly showed the 3 named contractors, including Peter Dawes, who was identified as the Landlord's nominated contractor. The figure for works quoted by Peter Dawes and advised to the lessees in the consultation document was identical to the figure which appeared on the disputed quote dated in 2005. The Tribunal took the view that it was most likely that the date was simply an error. In any event, it was difficult to see what probative value it could have. The Respondent's evidence, which the Tribunal accepted, was that it had obtained a speculative quote from Peter Dawes prior to carrying out the consultation procedure. The letters of consultation produced to the Tribunal complied with the statutory requirements. No evidence of any response to the consultation was relied upon by either party. The quote from Peter Dawes was significantly smaller than the other figures quoted. The

difference in price was obvious on the face of the consultation documents, and it could not reasonably be said that any person would have been misled by a comment made by the directors about saving money. This remained true even when the additional sum of £1,000 was added for the extra work dealing with the wallpaper. It was noted that no contingency sum had been allowed in the initial price. This would have been a sensible provision. The sum tendered would still have been the lowest quote. There was no evidence that the extra £1,000 was excessive for the work carried out, and no evidence of bad faith. It was impossible to see that any injustice or wrongful process had taken place.

48. The Tribunal next considered the quality of the work, in order to determine whether it was of a reasonable standard. The view of the Tribunal, based upon the inspection and the expert knowledge and experience of the Tribunal members, was that the standard of the work was reasonable. Some parts of the paintwork displayed a perfunctory finish but the Tribunal considered the standard to be adequate bearing in mind that the Respondent through its shareholders had been concerned to keep costs down. The hallways to 11 Kings Gardens experience a relatively high degree of traffic, including occupiers from adjoining 12 Kings Gardens, and the paintwork showed some scuffs and marks consistent with normal use. In addition there were some marks where a light fitting had been removed after the work was completed. None of these items denoted that the work had been done to less than a reasonable standard. It followed that the question of whether the work had been adequately supervised had no real merit. The Applicants had submitted that the work was unnecessarily prolonged and had inconvenienced the occupiers, but there was no evidence before the Tribunal on this point. Some telephone cabling was visible where the cover of a junction box appeared to have come away, but the Tribunal was unable to see on the Inspection any evidence of trailing wires, loose balustrades, or poor lighting.

49. ***Item 4:*** **Legal costs £5,272.98**
The Tribunal considered the Applicants' claim that they had wrongly been deprived of (a share of) this sum.

50. The Tribunal noted that the Lease places an obligation on the First Respondent to maintain and repair the exterior. It appeared on the evidence that the area damaged by the contractors had recently been redecorated by the First Respondent. There did not appear to be any covenant in the Lease obliging the First Respondent to take action against the contractors for causing damage to the building. The Tribunal accordingly took the view

that the First Respondent was entitled but not obliged to take the proceedings.

51. The Tribunal noted that no charge had been made to the service charge account in respect of the damage to the exterior woodwork, until the current specification of works. The specification for the current work (a document provided by the Applicants) was drawn up in accordance with the First Respondent's cyclical obligations under the Lease, and did not identify any additional work made necessary by the damage caused by the contractors. Therefore the Tribunal found as a fact on the evidence that no additional expense had been caused to the Applicants as a result of the damage. If any additional expense had been caused, then the First Respondent might reasonably be expected to offset such an amount against the proceeds of its claim. A demand for a service charge contribution to the cost of repairing the damage caused by the contractors might well be susceptible to a challenge on the grounds that it was not reasonable. However, that had not happened in this case. No such demand had been made. Instead, the lessees had benefited from the decision of the First Respondent to place the sum into the reserve account and apply it for the benefit of all lessees. This was effectively a bonus for the lessees, including the Applicants, who would otherwise be expected to meet the full cost of the cyclical repairing and redecorating works.

52. It followed that the deduction by the First Respondent of a sum necessary to meet its solicitor's costs did not comprise a charge to the lessees by way of service charge.

53. The First Respondent sought the Tribunal's determination as to whether it could now withdraw from the service charge account the sum of £2,060 to reimburse itself for the legal costs it had incurred (other than solicitor's fees). The Tribunal took the view that it had no jurisdiction over this matter, having determined that the proceeds of the action were not a sum payable by way of service charge. However the Tribunal observed that the accounts for the year ending 2006 had been closed and certified, with the full amount of £10,653.15 showing in the reserve account.

54. ***Item 5:*** **Directors' liability insurance £580.50**
There was no real dispute on this item. The Respondents admitted that the Applicants should not be charged for it and proposed to refund it to the service charge account. The Tribunal observed that it was undesirable to manage the accounts in this way and the First Respondent's obligations as trustee of the service charge funds should not be overlooked. Whether it was reasonable for the First Respondent's directors to protect

themselves in this way, and the need for the First Respondent to be in funds, were not matters for the service charge or for the Tribunal.

55. ***Item 6:*** **Duplicate specification of works £235**
The Tribunal examined the documents produced by the parties and was satisfied on the evidence that the specification prepared by Estates Management Limited dated 19 March 2004 was the document for which the charge of £235 had been made. That document plainly contains no provision for work to the front door. The Tribunal accepted the Respondent's evidence of how and why the specification was commissioned, because it was clearly documented by contemporaneous records. The Tribunal considered on the basis of its expert knowledge and experience that the amount charged was reasonable for a basic specification of that type and length.

COSTS OF THE PROCEEDINGS

56. The Applicants sought an order under s 20C Landlord & Tenant Act 1985 that the Respondent's costs of these proceedings should not be recoverable as service charge.

57. The First Respondent stated that it had not incurred any legal costs, and therefore no attempt to recover any costs through the service charge would be made.

58. In the event that such a charge was to be made, the Tribunal took the view that the Applicants had not secured any obvious advantage as a result of the proceedings. They were not better off under any of the items challenged. In respect of item 6 (duplicate specification) the Tribunal's determination was made by looking at a document which the Applicants had themselves produced, and it should have been obvious on its face what the specification referred to. In respect of Item 1 the Applicants' contribution was below the level permitted by law to be recovered in any event. The Tribunal did not have the benefit of assistance from the Applicants at the hearing, and the Applicants' documents were not paginated (although they were numbered, but some of the documents themselves consisted of 40 or more pages). The process had therefore been made more difficult and time-consuming for both the First Respondent and the Tribunal. In the circumstances the Tribunal would not make an order under s20C.

Signed----------Chair

Dated---------14/10/07----------