Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AF/LSC/2007/0034

Landlord and Tenant Act 1985 sections 19 and 27A

Applicant:	Mr Gordon Lambsdale
Respondent:	Fair Acres Management Ltd
Premises:	Flat 23 Handel Lodge, Fair Acres, Bromley Kent BR2 9BN
Appearance for Applicants:	Mr G Lambsdale, accompanied by Mr Bickford and by Mr Hobson
Appearance for Respondent:	Mr Brian Parker, director of Parkgate-Aspen Ltd, managing agents
Tribunal members:	Mr T J Powell LLB Mr M Cairns MCIEH Mrs G Barrett JP
Date of Application:	30 January 2007
Oral Pre-trial Review:	21 February 2007
Hearing:	24 May 2007
Decision:	19th June 2007

Decisions of the Tribunal

(1) The Tribunal determines all service charge issues in favour of the Respondent, save for the following:

(a) The Tribunal determines that the legal fees of £209.62 should be refunded to the Applicant;

(b) The Tribunal determines that £2,234.05 of the insurance premium costs are unreasonably incurred and that the Applicant is entitled to a refund of his proportion of that sum, namely £11.93;

(c) The Tribunal determines that the Applicant's share of the cost of major works for the years to 30/6/05 and 30/6/06 is capped at £250 and that he is entitled to a refund of his share of the surplus, namely £170.56.

(2) The Tribunal determines that it is just and equitable in the circumstances of this case to make an order under section 20C of the Act that none of the Respondent's costs should be passed through the service charge;

(3) The Tribunal requires the Respondent to refund to the Applicant half of the £250 fees paid in this case, namely the sum of £125, within 28 days of the date of this Decision.

Application

1. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether certain service charges between the year to 30/6/01 and the year to 30/6/06, and for the current year to 30/6/07, are payable and reasonably incurred.

The property

2. 23 Handel Lodge is one flat of 210 flats set in four blocks, built around large rectangular gardens and a pond, altogether comprising the Fair Acres estate in Bromley, Kent.

3. The freeholder is a company called Halsey Ltd, which apparently took over from the Freshwater group in the 1980s. The Head Lessor and Respondent to this application is Fair Acres Management Ltd. The managing agents are Parkgate-Aspen Ltd, who will remain in that role until 24 June 2007, when the management of the estate will be taken over by a Right to Manage ("RTM") company, Fair Acres Bromley Ltd.

4. The bulk of the Applicant's complaints are historical in nature. The Tribunal did not consider that an inspection was necessary and neither party requested one.

The lease

5. The Tribunal was provided with a specimen underlease in respect of a different flat, no.80 Holst Lodge, Fair Acres, which the Tribunal understood to be in identical or near-identical terms to the Applicant's lease.

6. By clause 2 of the lease the Lessee covenants with the Lessor to pay the service charge as defined in the Second Schedule. Clause 4 of the lease contains the Lessor's covenants, which included external decoration of the blocks, keeping the gardens tidy and in good order, arranging for the disposal of household refuse, keeping the common hallways and staircases clean and tidy and properly lighted, and insuring in an insurance office or with underwriters of repute.

7. The Second Schedule of the lease specifies the proportion of the service charge which the Lessee is to pay. In the case of the Applicant this was said to be 0.534% of the annual service costs, defined as the sums actually expended or liabilities incurred by the Lessor. The annual service cost includes the performance of the Lessor's covenants "including the cost of providing and maintaining accommodation on the property for a porter..." and all reasonable fees payable to the porter.

8. The service charge is to be paid by the Lessee quarterly in advance in the reasonable interim amount certified by the Lessor's surveyor.

The law

9. Service charges and relevant costs are defined in Section 18 of the Landlord and Tenant Act 1985 (as amended) ("the Act"). The amount of service charges which can be claimed against leaseholders is limited by a test of reasonableness which is set out in Section 19 of the Act. Under Section 27A an application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable.

10. In addition, the amount of service charges can be capped if the Lessor does not follow prescribed consultation requirements set out in section 20 of the Act and in the Service Charges (Consultation Requirements) (England) Regulations 2003.

11. Section 20C of the Act provides that a Tribunal can make an order preventing the Lessor recovering its costs of proceedings through the service charge, if the Tribunal considers it to be just and equitable.

12. Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 allows a Tribunal to order a party to reimburse the whole or part of any fees paid by another party.

Background to the application

13. There is a considerable history of dispute between the parties. Between 1985 and 1994 the Applicant was the chairman of the Fair Acres Residents Association ("FARA"). According to the Respondent, at the end of the 1980s or beginning of the 1990s the Applicant had led what was described as a "service charge strike", which led to the Applicant issuing proceedings in the Bromley County Court in 1992 against a predecessor of the Head Lessor, under case number 9210200. Those proceedings resulted in a settlement in April 1994. Although the Respondent supplied the Tribunal with a copy of the consent order, the Tribunal does not need to repeat the details here, especially since the terms of settlement were expressly stated to remain confidential as between the parties.

14. The Applicant stepped down as chairman of FARA following the litigation against the Head Lessor, though he has remained closely involved with the association and with the monitoring of services on the estate at different levels since then.

15. In relation to the current application, it was noteworthy that the Applicant was the only one of 210 leaseholders to complain about the service charges arising since 2000. The Respondent's evidence was that this was the first-ever challenge to the service charges, which had been brought before the Tribunal.

16. The trial bundle also contained a letter from the current chairman of FARA dated the 6 May 2007 which, although strongly criticised by the Applicant, stated in explicit terms that FARA did not support the Applicant's claim and it was not aware that the claim was supported by any of its members. In addition, the letter stated that FARA had been consulted on the service charges being challenged by the Applicant, that it had scrutinised the expenditure and was satisfied that the service charges were acceptable. The letter went on to say that FARA considered that the porter Mr Buckingham was entitled to all of his remuneration and the association did not support the challenge made by the Applicant on the subject of gardening.

17. Although the Applicant criticised this letter for various reasons, he accepted that the residents association did not support his claim, but maintained that this factor did not affect his right to challenge the service charges if he was unhappy with them.

18. At the pre-trial review, the Applicant indicated that his preference would be for mediation of the current dispute, but the Respondent expressly rejected this.

19. The Applicant produced a very detailed statement of case and a 32-page witness statement, together with a lever arch file of documents and other witness statements in support. For the Respondent's part, its reply, in the form of two witness statements from Mr Unsdorfer and Mr

Parker, directors of Parkgate-Aspen Ltd the managing agents, had been broad-brush and had not fully grappled with the issues raised by the Applicant.

20. The main witness statement on behalf of the Respondents came from Mr Sol Unsdorfer, a director of Parkgate-Aspen Ltd. Shortly before the Tribunal hearing he had written requesting an adjournment because he had had to leave the country at short notice due to a family crisis. That postponement request was refused on the grounds that the managing agents could be represented by somebody else and, indeed, Mr Brian Parker another director of the managing agents attended the hearing. Mr Parker was possibly a better representative on the basis that he had a very close connection with the estate in question.

21. Mr Parker for the Respondent accepted that there was a great deal of "bad blood" between the Applicant and the managing agents, which no doubt played some part in the lack of communication in previous years. Another major reason why the managing agents did not deal with the Applicant's concerns appears to have been because he owed several thousands of pounds in the service charges. This was despite the fact (which the Respondent conceded at the hearing) that the Applicant had set up a standing order arrangements to repay those service charges by instalments over a number of years and that he had done so, eventually clearing the arrears altogether by the 10 October 2006.

22. The Tribunal needs to record its view that Applicant's case was far too detailed, that at times it was difficult to follow and that documents were not well organised. Indeed, at the hearing the Applicant himself had trouble finding documents upon which he wished to rely.

23. Certain additional evidence was requested by the Tribunal at the end of the hearing and this was supplied by the Respondent by fax on the day following. The Applicant was invited to comment and the Tribunal took into account his response.

Evidence and the Tribunal's findings

Cost of porterage

24. In September 1997 Mr and Mrs Buckingham were appointed as resident porter and cleaner respectively for the estate. They lived in the porter's flat in one of the blocks. While there was one contract for the porterage services, Mr and Mrs Buckingham were separately employed for tax reasons.

25. There were a number of concerns about the performance of Mr Buckingham (not his wife), which came to a head in about December 2000 and then became steadily more acute. The Buckinghams left the estate, when they were transferred by the managing agents elsewhere on 13 March 2004

26. Mr Buckingham's job description states that he was to report to Parkgate-Aspen and two named FARA representatives, one of whom was the Applicant. Monitoring was also to be carried out by an unnamed FARA representative, though in evidence the Applicant stated that he was appointed as one of the monitors for the performance of Mr Buckingham in his porterage duties. The Applicant made numerous complaints that Mr Buckingham variously failed to pick up litter on the estate, did not always clean the windows, disposed of rubbish in an unacceptable way, failed to carry out his to daily patrols of the estate (at specified times of the day), was often absent on Saturdays (when he should have been working two hours in the morning), that he was abusive at times and that (in an unsubstantiated and unproved allegation) that he had damaged the Applicant's door.

27. The Applicant said that Mr Buckingham was only on duty for 50% of the time and therefore he should only have to pay 50% of his wages, which were otherwise charged to leaseholders through the service charge. There was clearly animosity between the Applicant and Mr Buckingham. As a result of complaints by the Applicant and by Mr Ken Murray, the new chairman of FARA between 1995 and 2004, the managing agents wrote some 8 letters to Mr Buckingham admonishing him as to his performance and urging improvements.

28. There was evidence of a bonus scheme whereby Mr Buckingham would receive £250 twice a year, if approved by the residents association. Due to concerns about Mr Buckingham's performance no bonuses were approved or paid and, eventually, the scheme was abandoned because it was not working as an incentive. As part of his preparations for the Tribunal hearing the Applicant spent some 4 days in the managing agents' offices reviewing invoices and vouchers. He found that 3 payments for £202 on 15/6/01, for £302 on 15/12/01 and for £388 on 15/6/02 had been made to Mr Buckingham, despite the fact that FARA had declined to approve any bonuses. The Applicant claimed that these were bonus payments: he alleged that Mr Unsdorfer had admitted this to him verbally, though the Tribunal noted that Mr Unsdorfer's witness statement did not make such admissions.

29. Mr Parker gave evidence for the Respondent. He had been a residential property manager for the past 20 years and he has been the assigned property manager for the Fair Acres estate for nearly the whole time. He manages a portfolio of 18 other properties, which have 13 porters between them. He considered that Mr and Mrs Buckingham were good porters. He agreed that he had written the 8 letters admonishing Mr Buckingham as to his performance, but said that this was always at the behest of Ken Murray, the FARA chairman. Mr Parker said that he agreed with some but not all of the complaints about Mr Buckingham. Overall, he thought that Mr and Mrs Buckingham were good at their job but because of the animosity between them and the Applicant, he had moved them to another estate. He said that he had no reason to dismiss Mr Buckingham.

30. Mr Parker said that the Applicant's over-zealous monitoring of Mr Buckingham's performance amounted to "harassment"; a charge that the Applicant strongly denied. The Applicant was supported in his denial by his successor as FARA chairman, Mr Ken Murray, whose witness statement also says "that if close supervision of Mr Buckingham was carried out and therefore compliance was reached then results were good, but this was not always the case."

31. Having heard detailed evidence of the alleged failings of Mr Buckingham and considered the numerous letters in the Applicant's bundle, especially the letters written by Parkgate-Aspen to Mr Buckingham, the Tribunal preferred the evidence of Mr Parker. The Tribunal felt that Mr Parker had a broader view of the porterage service on the estate and he had relevant knowledge and experience of similar services in the wider world.

32. The Tribunal accepted Mr Parker's evidence that despite shortcomings, Mr Buckingham's performance was 90 to 95% of what one would expect. The Tribunal also accepted his evidence that the 3 payments in 2001 and 2002 made to Mr Buckingham were not "performance bonuses" but were payments for time off in lieu and/or reimbursement of petty cash and/or payment of an annual Christmas bonus. The Tribunal's conclusion was reinforced by the fact that none of the payments were for the agreed £250 for good performance. In addition, the Applicant had seen the invoices during the 4 days at the managing agents' office, but had failed to copy these particular vouchers for the Tribunal. The Applicant was not able to confirm that they were indeed "performance bonuses". Since neither party could prove exactly what the payments were, the Tribunal gave the benefit of doubt to the Respondent.

33. The Tribunal considered that the Applicant had allowed animosity and his sometimes obsessive attention to detail (which was reflected in the documents in the trial bundle) to affect his view of Mr Buckingham and the overall effectiveness and quality of the porterage service. The Tribunal therefore determines that the wages paid to Mr and Mrs Buckingham were reasonably incurred and payable by the Applicant in the proportion specified in his lease.

Porter's accommodation

34. The Applicant sought a 50% reduction in the cost to leaseholders of maintaining the Porter's accommodation to reflect the reduction that he sought in respect of the Porter's wages.

35. As indicated above, the lease includes a covenant by the lessees to pay for the cost of providing and maintaining accommodation on the property for a Porter. The Tribunal therefore considers that it has no jurisdiction to reduce those costs as part of the service charge.

Relief porterage/ cleaner

36. In his statement of case the Applicant sought to challenge the costs of relief porterage and relief cleaning, which had been incurred during the 2002/03 to 2004/05 service charge years.

37. In evidence, the Applicant concentrated on the charge to leaseholders to cover the authorised absences of Mr and Mrs Buckingham from the estate in March 2001. He used this as an example to show how the relief staff (then and later) had been paid for more than the "eligible hours" of what he called "the Fair Acres working week of 39.5 hours."

38. The Applicant's case was based on the fact that the cleaner had been paid for 44 hours for the week in question, and not the 39.5 hours that Mrs Buckingham was contracted to work. In addition, the Applicant complained that the relief porter was on duty from 8am on Monday until 6pm on Sunday, whereas Mr Buckingham's porterage duties finished at 11am on Saturday. The basis of the Applicant's challenge was that the hourly rates were too high and the hours worked by the relief staff too many, and that therefore the leaseholders were being overcharged.

39. Unfortunately the Applicant only supplied the Tribunal with copies of one or two of the relevant invoices for the period of his challenge, though the Tribunal did consider the detailed schedules in his statement of case, which gave full breakdowns of the hours worked by the relief staff, the amounts that they were paid and the amounts that the Applicant felt they should have been paid.

40. For example, during 2003 the Applicant not only sought to reduce the hours worked from 44 to 39.5 per week, but he also wanted to reduce the hourly rate for relief cleaning staff from £6 per hour to £4.50 per hour. In relation to the relief porter, the Applicant complained that a great many invoices contained claims for work carried out outside of the normal working hours, when he said only emergencies should have been dealt with. Similar arguments were raised for the relief hours worked in 2004 and 2005.

41. For the Respondent Mr Unsdorfer's witness statement explained that relief hours were needed from 2003 onwards to cover Mrs Buckingham's illness and from 2004 onwards when the couple left the estate. He challenged the Applicant's workings and stated that the hourly rate applied was even below the national minimum wage. He emphasised that all engagements of relief staff were agreed with FARA as were their rates of pay and there had been no dissent from any of the other 209 paying lessees.

42. Giving evidence, Mr Parker said that the charges to the relief porter and for the relief cleaner were very low: £7.80 per hour and £6 per hour respectively. Those rates were reasonable because if he had engaged agency staff on the open market as temporary replacements, that would have cost £10 per hour or more, plus VAT. In addition, an

agency porter would have been off-site after 5pm, whereas the relief porter actually employed remained on site in the evenings and was therefore available for emergency call outs. He also said that a cleaner who was not used to the estate was bound to take a little longer than a cleaner who knew the job very well.

43. The Applicant made no complaint about the quality of work undertaken by the relief porter and cleaner. The Tribunal preferred the Respondent's evidence and determined that the costs of the relief porter and cleaner for all periods were reasonably incurred and payable by the Applicant in accordance with his lease. The Tribunal considered this to be an entirely misconceived challenge to the service charges.

Gardening

44. The Applicant sought a 70% reduction of the gardening costs incurred between 1 January 2005 and 30 June 2006, because he said the gardening service had not been of a reasonable standard. He contended that the only service provided was the cutting of the grass and that the remainder of the gardens (in his view 70%, consisting of flower beds) had not been maintained. The Applicant gave evidence that he other leaseholders had laid black plastic membranes covered with bark chippings on the flowerbeds, in order to retain moisture and to suppress weeds. The Applicant said that the employed gardeners had not dealt with those weeds, which still appeared and they had not kept the black membrane covered with bark, which was an eyesore.

45. The Applicant referred to a number of photographs comparing the state of the flowerbeds between June 2005 and March 2006. He said that people higher up in the blocks had no complaints about the garden, but they did not see what the Applicant saw at ground level.

46. The evidence was that FARA had made the choice of gardening contractor, although the actual contract itself was with the Head Lessor Respondent. In his bundle, the Applicant provided the Tribunal with a garden maintenance work specification from Foliage Gardens Ltd, dated 23 September 2004. This specification set out 12 numbered tasks, a frequency of service and an estimate of cost. Item 5 on specification referred to "digging and hoeing of flowerbeds as and when necessary." However, this did not expressly require the removal of the existing membrane (which was torn in places) and replacement with new. Nor did it cover the work involved in the periodic covering of membranes with fresh bark chippings.

47. The Applicant made no suggestion that the gardeners had not carried out their contractual hours. There were very few (and only minor) specific complaints about the other gardening work. Indeed, the photographs provided by the Applicant showed the rest of the garden to be in fair to good condition and otherwise very attractive: the hedges

and shrubs appeared to have been trimmed, some weeding appears to have been carried out, the paths were free of weeds and litter and the lawns had been cut.

48. The annual estimate from Foliage Gardens Ltd quoted a cost of £6,292.12 for the estate of which the Applicants proportion at 0.534% would be £33.60. The Tribunal considered that that was a very modest charge indeed.

49. Mr Parker pointed out that in order to involve the residents much as possible in the maintenance of the garden, FARA had been given the power to appoint the gardening contractors, to specify the amount of work it wanted done and to agree the cost. Because of complaints by leaseholders and by FARA the contract with Foliage Gardens Ltd was ended and a new contract with Martin Hooper - once again selected by FARA - was entered into.

50. The Tribunal understood that the Applicant was now seeking for the flowerbeds to be covered by additional bark chippings, or for the membrane and chippings to be removed and replaced. While the Tribunal could see from the photographs that the flower beds were in need of relaying, it found that this work was not expressly in the garden maintenance contract specification. Mr Parker said that that work would entail additional expense: it would be extra work which would have to be required and authorised by the residents association, which it had not done, because all he did was pay the bills which FARA presented to him.

51. The Applicant complained that Martin Hooper did not live up to initial expectations - but it appeared that Martin Hooper had been engaged on very similar terms and apparently that firm is still engaged.

52. The Tribunal accepts that there is an element of delegation by the managing agents to the residents association of the gardening maintenance contract and the Tribunal approves of this. However, the Tribunal determines that the work actually carried out for the price charged was of a reasonable quality and in accordance with the specification. Therefore, the Tribunal determines that the gardening charges are reasonably incurred and payable by the Applicant in accordance with the terms of his lease.

Unanswered letters

53. The Applicant sought to reduce the managing agents' fees by £20 for every letter that he had written and which they had not answered. He based this £20 on the penalty incurred by British Gas when it failed to attend to correspondence. By way of example, the Applicant claimed to reduce his share of the management fee for the year to 30/6/04, some £159.15 including VAT, by £60, to reflect 3 letters which had not been answered.

54. Mr Parker explained the reason why replies had sometimes not been sent to the Applicant. The first reason is that the Applicant had owed significant arrears of service charges and while he was in arrears the managing agents' services were being funded by other leaseholders. In addition, he cited the volume of letters received from the Applicant and the fact that their legal advisers had told him not to enter into any more correspondence with the Applicant, when no one else on the estate was complaining.

55. Notwithstanding those comments, the Tribunal noted that the managing agents had written a significant number of letters back to the Applicant in response to his service charge enquiries and complaints, especially in the early years.

56. The Tribunal considered the proposed £20 per letter to be an arbitrary choice. The Tribunal has no power to award compensation for unanswered letters and there is no provision for this in the lease. The Tribunal accepted Mr Parker's explanation and does not consider that unanswered letters in the present case to be any reason to reduce the management fees.

Legal fees

57. After discussion, Mr Parker accepted that the legal fees of £209.62 were incorrectly charged. He therefore conceded this challenge by the Applicant to the service charges. The Tribunal determines that the legal fees of £209.62 should be refunded to the Applicant.

Insurance

58. The Applicant made no complaint about the cost of the insurance, the extent of cover or the way the Respondent had procured insurance. He focused entirely on the discrepancy between the certificate of insurance from AXA Insurance UK plc dated 21 June 2005 for £32,373.95 and the insurance premium of £34,608 charged to leaseholders in the annual statement of service expenditure for the year ended 30/6/06. The difference was £2,234.05 and the Applicant complained that, in the absence of any explanation for the discrepancy, this difference was unreasonably incurred.

59. Mr Parker said that the annual statement of service expenditure had been certified by Kybert Carroll, chartered accountants who in their accompanying letter had stated "that the costs shown ... are sufficiently supported by accounts, receipts and other documents which have been produced to us." Mr Parker relied on that certification to say that the £34,608 figure must be correct. He said that there was an additional insurance policy, which had not been copied by the Applicant and included in the bundle of documents. He thought that the extra policy was for engineering insurance (for the breakdown of services on the estate), professional indemnity and employer's liability to employees.

60. The Tribunal was concerned that in his witness statement Mr Unsdorfer had not dealt with this obvious discrepancy, which the Applicant had highlighted in his statement of case. Mr Unsdorfer had merely said "the insurance figure is correct when including the separate cover for the lifts and insurance premium tax." However, the lift insurance was already shown as an additional item of £921 on the statement of service expenditure and insurance premium tax was included on the AXA quote: so this could not be the explanation.

61. Mr Parker promised to fax a copy of the additional premium invoice to the Tribunal by noon on the day after the hearing. The Applicant said that if this proved to explain the discrepancy, then he would accept it, but he complained strongly that the Respondent should have dealt with this before the hearing.

62. Mr Parker did not send a copy of the missing invoice to the Tribunal, but merely stated in a letter to the Tribunal on the day following the hearing "I am advised by Carroll & Co that the variation between the insurance schedule and the amount in the audited accounts is due to the 6% interest added for 10 staged payments of the premium." However, this still did not provide a clear explanation of the discrepancy since an application of 6% on the AXA certificate of insurance was lower than the figure in the audited accounts.

63. The Applicant having raised the discrepancy in his application, it was up to the Respondent to provide sufficient evidence to explain it. In the absence of sufficient evidence, the Tribunal determines that £2,234.05 of the insurance premium costs are unreasonably incurred and that the Applicant is entitled to a refund of his proportion of that sum, namely £11.93.

Major works

64. The Applicant complained that the cost of re-decorating and re-carpeting the common parts of the estate during 2005 was sufficiently high to require the Respondent to have invoked the statutory consultation procedures required by section 20 of the Landlord and Tenant Act 1985 and the relevant regulations made under that section. The Applicant said that he had been charged £427.50 for this work, an amount which exceeded the £250 consultation threshold. The Applicant was not the only leaseholder to have raised this issue: the Tribunal took note of a letter dated 21/9/05 from Mr G P Booth of 57 Vaughan Lodge on the estate who had made the same point.

65. The Applicant said that the various costs relating to the common parts should be viewed as one contract. He was supported in this assertion by a letter dated 4 June 2004 written by the managing agents and addressed to "all lessees" which clearly linked the contracts for re-decoration and re-carpeting.

66. The Tribunal was severely handicapped in understanding the allocation of costs to the contracts by the fact that the Applicant's copies of the statement of service expenditure, which he had provided in the trial bundle, cut off the left-hand margin, critically obscuring whether the major works were for "internal" or "external" work. In addition, there were no supporting invoices. The only guidance was the letter from Parkgate-Aspen of 4 June 2004, which referred to an estimate for both re-decoration and re-carpeting in the sum of £40,000.

67. Looking at the statement of service expenditure for the year ended the 30/6/06 the only cost that the Tribunal was confident about was that the re-carpeting cost came to £25,859, which in itself would not require consultation. The cost of internal redecoration was not clear, but appeared to be £13,700 in the year to 30/6/05 and £36,260 (plus fees of £2,938) for the year to 30/6/06.

68. The problems encountered at the Tribunal hearing were relieved when the managing agents faxed a complete copy of the statement of service expenditure for the year ended 30/6/06 to the Tribunal on the day following the hearing. This confirmed what the Tribunal suspected, namely that the sum of "major works" for that year came to £65,057 (an amount which covered both internal re-decorations and re-carpeting), which if it were one contract would have required statutory consultation under section 20 of the 1985 Act.

69. Mr Parker in evidence said that the re-decorating and re-carpeting were two contracts not one. There were two different contractors. He had organised the first contract for the painting of the common parts in consultation with FARA. When that had concluded, FARA itself had organised the second contract: having seen the fresh paintwork in the common parts the association wanted new carpets as well. Therefore, FARA found a carpeting contractor, negotiated a price and arranged for the re-carpeting to be carried out, with the managing agents paying the bill and passing the cost through the service charge. Mr Parker said that as such neither contract required statutory consultation because each was below the threshold figure for the estate.

70. This evidence was at odds with the Parkgate-Aspen letter of 4 June 2004, which linked the two contracts in the minds of lessees, with nothing being sent later to suggest the contracts were separate and indicating that statutory notices and letters of consultation would follow.

71. The Tribunal found the evidence very unsatisfactory. Amongst the documents which the managing agents faxed to the Tribunal on the day following the hearing was a schedule in respect of the major works which appeared to confirm that there were two contractors involved: a company called Delta, which did the internal repairs and decorations, and a company called Tavistock, which carried out the re-carpeting. However, the Applicant's post-hearing submission was that the works were charged to leaseholders as one and the Respondent should not be allowed to avoid statutory consultation (which it indicated it would

carry out, but did not) simply by breaking up the constituent parts of such works.

72. It is a fine line between saying that the 2005 redecorations and re-carpeting of the common parts constituted one set of "works" or two distinct sets of "works". The Landlord and Tenant Act 1985 does not define "qualifying works" in these terms and therefore it is a question of fact in each case. As Robert Walker LJ stated in Martin v Maryland Estates (1999) 2 EGLR 53: "... since Parliament has not attempted to spell out any precise test [as to whether the section 20 limit applied to a complete course of works or two batches of work], a common-sense approach is necessary."

73. In that case the Court of Appeal held that the landlord was not entitled artificially to split up works into separate contracts, so as to avoid the section 20 limit for qualifying works and the need for statutory consultation.

74. Bearing in mind that the combined cost of major works for the years to 30/6/05 and 30/6/06 came to £78,757 (which would result in a charge to the Applicant of £420.56, an amount upon which he might expect to be consulted), and that the Applicant had raised the issue of a lack of statutory consultation, the burden of proof shifts to the Respondent to show either (a) that the contracts were separate and had not been artificially split to avoid consultation; or (b) that consultation had been carried out.

75. The Respondent's evidence at the hearing and the documents provided for the hearing and afterwards were insufficient to satisfy the burden of proof. The Tribunal finds that the combined cost of major works to re-decorate and re-carpet the common parts exceeded the threshold for statutory consultation, but that the Respondent did not comply with the consultation regulations. Accordingly, the Tribunal determines that the Applicant's share of the cost of major works is capped at £250 and that he is entitled to a refund of his share of the surplus, namely £170.56.

Unacceptable business practice/ management fees

76. The Applicant pointed to a letter from Parkgate-Aspen Ltd dated 1 November 2005 as evidence to show that the Respondent's managing agents had significantly underestimated future expenses for the year ended 30 June 2005 by some £44,240, i.e. by 17%, of which £25,228 was foreseeable, but had been "overlooked" or incorrectly stated in the preparation of the previous budget.

77. Mr Parker agreed that these were "sloppy" estimates, but emphasised that they were just estimates and the leaseholders had benefited by delayed payment. He said that this was an isolated year and indeed there had been a surplus in the following year.

78. The Applicant said that this was a result of poor management and it should be reflected by a reduction in the management fees.

79. Mr Parker said that Parkgate-Aspen Ltd had been the managing agents for the past 18 years and this was the only application to the Leasehold Valuation Tribunal in all that time. Naturally, the managing agents had received grumbles from leaseholders from time to time but, as managing agents, these were dealt with as they arose. He considered that the complaints raised by the Applicant before this Tribunal were vexatious, concentrating on minutiae, and that many of the issues could easily have been resolved if the Applicant had only contacted him and asked to look at relevant invoices.

80. The Applicant's contention was that the managing agents were paid a fee and had to earn it. He felt that he had provided enough in the application to show that management was wanting.

81. Overall, the management fees for 2003 and 2004 were £31,831 (including VAT), of which the Applicant's share was £169.98, rising to £31,916 in 2006.

82. The Applicant criticised the quality of the management by Parkgate-Aspen as one reason, if not the reason, why leaseholders on the estate had created an RTM company to take over the management of the estate from the Respondent. However, the Tribunal noted that, once established, the RTM company had then gone on to invite Parkgate-Aspen to quote for future management, after it took over on 24 June 2007. This suggested to the Tribunal that the management had not been so bad, after all: had the management being as bad as it was painted by the Applicant, the Tribunal would not have expected Parkgate-Aspen Ltd to have lasted so long in their role and they would have expected to have seen more expressions of dissatisfaction from leaseholders, including applications to the Tribunal and active support for this application.

83. The Tribunal did not agree that the management services provided by Parkgate-Aspen Ltd amounted to "unacceptable business practice." Overall, the Tribunal considers that the unit cost for management of flat is not at all high. In all the circumstances, the Tribunal determines that the management fees have been reasonably incurred and are payable by the Applicant in accordance with his lease, and there should be no reductions.

Estimated management fees for year ended 30 June 2007

84. The Applicant concluded his challenge to the service charges by seeking a reduction of £20 from the £36,252 estimated service charge for the year, because a letter dated 30 November 2006 to the Respondent had not been answered.

85. For reasons already given, the Applicant is not entitled to this deduction for unanswered correspondence.

Applications for refund of fees and costs

86. The Applicant had paid £250 in Tribunal fees.

87. There had been a clear breakdown in communication between the parties, with faults on both sides. Many of the issues raised by the Applicant were unsuccessful and time-consuming for both the Respondent and the Tribunal. However, those that were successful could have been resolved without a hearing and the Tribunal notes that the Applicant had stated clearly at the pre-trial review his preference for mediation - but this was rejected out of hand by the Respondent's representative Mr Unsdorfer.

88. The Tribunal felt that the Applicant's claim had been made more complex than was necessary and the paperwork the Applicant produced had been disproportionate to the issues raised and the sums claimed. However, the Respondent had dealt with the matter in an unnecessarily dismissive and broad-brush way, probably reflecting the history of the case, but making the hearing inevitable.

89. The Tribunal therefore determines that the Respondent shall refund half of the Applicant's fees, namely £125 within 28 days of the date of this decision.

Decision under section 20C

90. The Respondent sought to recover up to £2,000 including VAT through the service charges for the managing agents' costs of dealing with the Tribunal proceedings. The Tribunal was surprised that the Respondent's costs could be so high. Once the application had been made, the Respondent through its managing agents should have made a greater attempt to answer the issues raised by the Applicant. Although many of them were without merit, some of them were successful. The Respondent's approach displayed a lack of effort and the evidence in response to the application was poor: indeed the Respondent seemed to rely largely on the existence of certified accounts and allegations that the Applicant was a nuisance.

91. On balance, the Tribunal determines that it would be just and equitable to make an order under section 20C that the Respondent's costs should not be passed to leaseholders through the service charge.

Chairman: T. Powell
Timothy Powell

Dated: 19th June 2007