RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Ss 27A & 20C Landlord & Tenant Act 1985 (as amended)

Residential Property
TRIBUNAL SERVICE

DECISION & REASONS

Case Number:	CHI/21UD/LIS/2007/0019
Property:	1 & 1A Castledown Terrace Hastings East Sussex TN34 3RQ
Applicants (Tenants):	Mrs Rowley Mr and Mrs Bio Mr Cotman Mr Wabey Mr and Mrs Miles Mr Arnold
Respondent (Landlord):	G&O Investments Ltd
Appearances:	Mr J Donegan of Osler Donegan Taylor – for the Applicant Mr Gossain of Urbanpoint Property Management – for the Respondent
Date of Hearing:	16 October 2007
Date of Reconvene:	19 November 2007
Date of Decision:	16 January 2008
Tribunal Members:	Mr B H R Simms FRICS MCIArb (Chairman) Mr C Harrison (Legal Member) Mr R Wilkey FRICS FICPD (Valuer Member)

DECISION

1. The Tribunal determines that in accordance with S.20 of the Landlord & Tenant Act 1985 as amended (the Act), both in connection with the major repair works and the fire precaution works, the notices were properly served and the consultation procedures were properly undertaken. The amounts payable are therefore not reduced to the statutory limit.

2. As there is no provision for the payment of audit and accountancy charges, or for the payment of management fees, the amounts are not to be considered as relevant costs in calculating the service charge payable for any of the years in issue.

3. As there is no provision for the payment of legal and professional fees, the amounts are not to be considered as relevant costs in calculating the service charge payable for any of the relevant years except only to the extent that such fees were reasonably incurred and were wholly, exclusively and necessarily incurred as an inevitable part of a service within the Fourth Schedule for which a service charge is payable.

4. There is no provision for the lessees to pay the cost of undertaking the new installation of fire precaution detection/warning systems and the cost of this work is not to be regarded as a relevant cost for the calculation of the service charge payable.

5. Regarding other relevant service charge costs in each of the three years, the Tribunal determines as follows:-

Year Ended 31 May 2001

6. The amount of £32,779.62 for repairs and maintenance in the account is to be adjusted to take account of those items which the Tribunal determines were not completed to a proper standard, (see Paragraph 75) namely £1,850. The amount payable is therefore reduced to £30,929.62.

7. Legal and professional fees for this year include an amount of £1,374.75 payable to Countrywide Surveyors in connection with the fire precaution work which is not payable. The total amount therefore payable for legal and professional fees is reduced to £3,896.70 made up of Countrywide's invoice for £3,561.35 (£3,030.90 plus VAT) and £335.35 for structural design but only as part of the total cost of repair and maintenance work. This item should properly be shown in the service charge accounts not as a separate heading but as part of the repairs and maintenance heading.

Year Ended 31 May 2002

8. The amount of £14,727.97 for repairs and maintenance includes a sum of £2,616 plus VAT for the repair of windows and doors. The Tribunal determines that sum is not recoverable by the Respondent (see paragraphs 57 and 58). Accordingly, the item for repairs and maintenance which is payable is reduced by £3,073.80 (£2,616 plus 17.5% VAT) to £11,654.17.

9. Within legal and professional fees is included an amount of £2,405.20 relating to fire precaution work which is not payable. The remaining amount payable is £817.00 made up of Building Regulation fees of £119.98 and the balance of the contract administration fee payable to Countrywide Surveyors of £697.02. This latter amount is calculated at 10% of the VAT exclusive contract sum. The Tribunal has reduced the allowable VAT inclusive contract sum to £42,583.79 (£30,929.62 – *see para. 6* plus £11,654.17 – *see para. 8*) being £36,241.52 net of VAT. The total fee payable is therefore 10% of this amount £3,624.15 less £3,030.90 paid in 2001 (see para. 7) leaving £593.21 plus VAT a total of £697.02 payable in 2002.

10. The landlord's administration fee at 10% is payable only on the total amount otherwise properly chargeable for the year. That total is £12,471.17. The payable amount at 10% is, therefore £1,247.12.

Year Ended 31 May 2003

11. The amount for repairs and maintenance in this year relate entirely to fire precaution works which are not payable.

12. The amount charged under the heading legal and professional fees relates only to a managing agent's supervision fee which is not payable.

13. The landlord's administration fee is therefore charged at 10% only on the cost of electricity of £209.36, the amount payable being £20.94.

Section 20C

14. The Tribunal Orders that all or any of the costs incurred or to be incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

BACKGROUND

15. This is an application made under S.27A by various lessees being tenants of long leasehold flats at the property. The Tribunal is to decide the liability of the lessees to pay certain items of service charges incurred during the financial years ended May 2001, May 2002 and May 2003.

16. The Hearing was convened and held at the Horntye Park Sports Complex, Bohemia Road, Hastings. Prior to the Hearing the Tribunal inspected the property generally. The property comprises two adjoining end of terrace, Victorian houses subsequently converted into self-contained flats. It is situated in an exposed position on steeply sloping ground. The accommodation is arranged at lower ground, ground, first and second floor levels. The external walls are of solid brick or block, partly cement rendered and partly painted, under a pitched roof covered with interlocking concrete tiles.

17. During the first day's Hearing, the Tribunal received oral evidence from the parties' representatives and from an expert witness on behalf of the Respondent. There was insufficient time to complete the Hearing on that day and the parties agreed that the Hearing would continue by way of written submissions on the remaining legal issues which were then identified and agreed.

18. Further Directions were issued on 16 October 2007 for the conduct of the case and the parties' representatives submitted written representations generally in accordance with the Directions. The Tribunal reconvened without the parties or their representatives in order to consider the evidence received at the oral Hearing, the documents submitted and written submissions made subsequently.

19. An application is also made by the tenants under S.20C of the Act for an Order that all or any of the costs incurred by the landlord in connection with the proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants.

RELEVANT LAW

20. The Tribunal's jurisdiction derives from the Landlord & Tenant Act 1985 as amended. In coming to our decision The Tribunal has had regard to the Act in full but includes a summary here for the assistance of the parties.

21. S.18 defines the meaning of a service charge as being "*an amount payable by a tenant ... 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*".

22. S.19 limits the relevant costs to be taken into account in determining the amount of service charge only to the extent that they are reasonably incurred and only if the services or works are of a reasonable standard.

23. S.27A provides that a Leasehold Valuation Tribunal may determine whether a service charge is payable and if it is, the Tribunal may also determine 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 determinations can (with certain exceptions) be made for current or previous years and also for service charges payable in the future.

24. S.20C provides that the Tribunal may make an order that all or any of the costs incurred or to be incurred by the landlord in connection with proceedings before it are to be ignored in determining the amount of any service charge payable by the tenant. The order may be made if the Tribunal considers it just and equitable in the circumstances to do so.

LEASE

25. The Tribunal was provided with a photocopy of the lease relating to flat 1 on the ground floor of the building dated 12 April 1990. The parties accepted that other leases in the building were generally in accordance with the terms of this lease which is therefore taken as a sample and taken to include the clauses relevant to this case.

26. The definition of the property is contained within Clause 1 of the lease being, "*ALL THAT Flat ... including the ceiling of the flat together with the boards or other surface of the floors of the flat, the windows, window frames, doors and door frames and the linings and surfaces of the interior of all walls ...*".

27. By Clause 3 of the lease, the lessee covenants at sub-clause (i) to, "*keep the flat (other than the parts thereof comprised and referred to in paragraph 4 of the Sixth Schedule hereto) ... in good and tenantable repair and condition ...*". Paragraph 4 of the Sixth Schedule refers to various specific parts which the lessor will maintain specifically, "*...the main structure and foundations and in particular the roof, chimney stacks, gutters and rainwater pipes of the Building and the service pipes, sewers, drains, tanks, cisterns, wires and cables used by the lessee in common with others and the boundary walls and fences and all communal areas.*".

28. The arrangements for the service charge are also included in Clause 3 at (ii) where the lessee is to, "*Contribute and pay one-seventh of the costs, expenses and outgoings and matters mentioned in the Fourth Schedule*". The Fourth Schedule to the leases is quite short and for convenience is reproduced here in full:

29. *Costs expenses outgoings and matters in respect of which the Lessee is to contribute*

    1. *The expense of maintaining repairing redecorating and renewing:*

        (a) *the main structure and in particular the roof foundations chimney stacks gutters and rainwater pipes of the Building*

        (b) *all service pipes wires and cables used in common with the other flats*

        (c) *the boundary walls and fences*

        (d) *the communal pathways staircases and landings and any other common parts of the Building*

    2. *The cost of decorating the exterior of the Building*

    3. *All rates taxes and outgoings if any payable in respect of any common part of the Building*

    4. *The cost of lighting and cleaning the common parts of the Building*

    5. *An addition of 10% shall be added to the costs expenses outgoings and matters referred to in this Schedule for administration expenses*

ISSUES

30. At the oral pre-trial review, a general list of financial items from the three years accounts was identified. Subsequently on receipt of further documentation, the amount of the accountants/audit fee was added as an issue in dispute. Therefore the headings and relevant amounts in dispute for each of the years in question are as follows:

31. Year Ended 31 May 2001

Audit and accountancy charges	£150.00
Repairs and maintenance	£32,779.62
Legal and professional fees	£5,271.45
Management fee	£82.25

32. Year Ended 31 May 2002

Audit and accountancy charges	£150.00
Repairs and maintenance	£14,727.97
Legal and professional fees	£3,451.82
Landlord's fee	£5,141.41
Management fee	£411.25

33. Year Ended 31 May 2003

Audit and accountancy charges	£176.25
Repairs and maintenance	£19,294.05
Legal, professional and survey fees	£616.88
Landlord's fee	£2,229.78
Management fee	£82.25

34. The Applicants identify various reasons why these specific items should not be payable as any part of the service charge.

35. In the case of the audit and accountancy charges, management fees and some of the legal and professional fees, it is argued that the lease does not allow these to be recovered as part of the service charge.

36. In respect of repairs and maintenance, the Applicants argue that the work has not been completed to a proper standard and that the cost has increased because of the landlord's neglect to undertake repairs at earlier dates.

37. Part of the repairs and maintenance charges relate to fire precaution works and the Applicants argue that the lease does not allow recovery of these costs as service charges.

38. Part of the costs of repairs and maintenance relate to repairs and decorations of the windows and window frames which the Applicants argue are not items that the lease allows to be recovered as service charges and are in fact costs chargeable to individual lessees.

39. If the landlord's fee mentioned in the accounts is the 10% charge recoverable under item 5 in the Fourth Schedule of the lease, then the Applicants agree that this sum should be varied if other costs are varied.

40. In the case of the substantial items of repairs and maintenance, the Applicants argue that the Notices served under S.20 of the Act were not properly served and the consultation requirements are therefore not satisfied. In each case the amount recoverable should be limited to £1,000.

EVIDENCE AND CONSIDERATION

41. The Hearing bundle ran to just over 700 pages and in addition the Applicants' solicitor presented a Bundle of Authorities of some 80 pages. Following the initial oral Hearing at which additional evidence was taken and cross-examination of witnesses pursued, the solicitor for the Applicants made detailed written submissions with an additional case report and the Respondent made written submissions supported by solicitor's, advice from their architect expert witness and some other documents.

42. The Tribunal considered all this evidence in detail. During the course of the Hearing some minor concessions were made.

43. The Respondent agreed that the amount of the insurance premium should not be included within the list of items for which the 10% administration charge (Para 5 Fourth Schedule) is payable and an adjustment is required in respect of that calculation.

The S.20 Notices

44. In September 2000, the Respondent wished to carry out certain works to the building. They were qualifying works for the purposes of section 20 of the Landlord and Tenant Act 1985 which required the Respondent to consult with the Applicants about for the works.

45. At that time, section 20(4), so far as material to this case, provided:

(b) A notice accompanied by a copy of the estimates shall be given to each of [the] tenants or shall be displayed in one or more places where it is likely to come to the notice of all [the] tenants.

(c) The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state ..... the date by which they are to be received.

(d) The date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b).

46. The only copy notice adduced in evidence to the Tribunal was not dated but was apparently enclosed with the Respondent's agents' covering letter dated 26th September 2000 to one of the Applicants and, for the purposes of S.20(4)(d), specified the date for making observations as 27th October 2000. The Respondent submits, and the Applicants do not deny, that each of the Applicants was served with the same notice under cover of a letter, in the same terms, dated 26th September. The copy letter is marked "Posted 1.00pm on 26.9.00 1st class".

47. Mr Donegan, for the Applicants, submits that S.20(4)(d) requires the stated date for observations to be not earlier than one month after the date when the notice was deemed to have been served on the tenants, by introducing into the words "*on which the notice is given*" some element of receipt or deemed receipt. He applies Rule 6.7 of the Civil Procedure Rules which deems service of first class post on the second day after posting. Mr Donegan also refers the Tribunal to its previous decision on S.20 time limits as a useful commentary; although he fairly points out that the decision was made on different statutory language and, anyway, is not binding on the Tribunal.

48. Mr Donegan makes two further submissions. First, made at the Hearing, that there ought to be, and he submits the effect of the section does provide for, a clear period of one month during which the tenants may consider their observations. Second, that the date which should have been stated in the notices under S.20(4)(d) was, accordingly, not earlier than 28th October 2000, with the consequences that the requirement of the section was not followed and that the relevant service charge recovery is (without prejudice to the Applicants' other submissions on the true scope of the service charge) subject to the S.20 financial limit.

49. Mr Adcock, for the Respondent, in his written submission argues that the notices satisfied section 20(4)(d) on the assumption that they were sent to the Applicants on 26th September. No evidence was adduced to the Tribunal against that assumption.

50. The Tribunal determines:

(a) The Civil Procedure Rules have no application to the circumstances and cannot, therefore, be relied on.

(b) Having regard to the lack of judicial authority on the construction of "the date on which the notice is given" in the context of the section, the words should be given their natural, common sense meaning in the context in which they appear. That context includes these elements:

1) "given" is echoed in S.20(4)(b), which requires the landlord to "give" the notice. Plainly, that reference to "give" must mean "send" or words to similar effect. It stretches natural meaning too far to say that "give" in paragraph (b) implies "receive".

2) Even without the assistance of paragraph (b), the Tribunal considers that "given" naturally connotes the act of imparting or, under the section, "sending".

3) The landlord, in preparing the notice, needs to be able to calculate the date, which must be stated in the notice, by which observations are to be received. Knowing that date cannot be earlier than one month after the date on which the notice is given, the landlord must have something to go on in order to make the calculation. It appears to the Tribunal that he would naturally and in common sense say "given must mean sending, because how else can I work out when the return date should be"; and that it stretches natural construction too far to read into the paragraph the necessity for the landlord to build an additional time-lag for actual or deemed receipt. The fact that a prudent landlord might add on a few days to be on the safe side is a matter for him. It is not a matter which arises naturally from the wording of the section.

(c) Whilst noting and having some sympathy with Mr Donegan's submission that the tenants should have a clear month in which to decide their observations, the Tribunal cannot reconcile that strict result with the effect of the natural construction of the statutory language.

(d) Accordingly, the notices of September 2000 complied with S.20(4)(d).

51. Subsequently, the Respondent served further notices under section 20 on the Applicants in July 2001. They concerned proposed fire precaution works. As in the case of the previous notices, the Applicants do not deny that each received a fire precaution works notice.

52. There is an issue between the parties about when the notices were given. The evidence adduced to the Tribunal comprised, first, a copy letter in "model" form purporting to enclose the notice. It is dated 20th July 2001 and is marked "sent to all LH"; and, second, a copy of one notice which is dated 22nd July 2001 and states the return date for observations as 23rd August 2001.

53. Mr Donegan invites the Tribunal to find that the true date on which the notices were sent was 22nd July. The Tribunal agrees with him, finding that the "model" letter bearing an earlier date to be unsatisfactory evidence which, accordingly, should be discounted.

54. Mr Donegan further invites the conclusion that the notices were deemed to have been served on 24th July, so as to render the return date of 23rd August one day earlier than S.20(4)(d) required, with the result (again without prejudice to service charge scope) that the statutory requirement was not met and the S.20 financial limit applies. Mr Adcock submits it does not really matter whether the date was 20th or 22nd July because, in either case, the return date of 23rd August satisfied the section.

55. For the reasons explained in paragraph 50, the Tribunal determines that the notice put in evidence and dated 22nd July 2001 complied with S.20(4)(d).

56. Those determinations leave entirely open the Tribunal's determination of the other issues between the parties under S.27A(1) of the Landlord and Tenant Act 1985 which are now considered.

Windows & Window Frames

57. The Applicants have identified that within the cost of repairs and maintenance charged to the accounts for the year ending May 2001 was an item of £2,616 plus VAT for door and window repairs. Repairs to doors and windows within the flats are the responsibility of the individual lessees and these repairs are therefore not a service charge item. The Respondent accepts this assertion which it says has never been disputed, however the work was being undertaken at the same time as the major works and it was acknowledged that the cost would be included within the major works total and divided equally amongst the leaseholders.

58. It is clear to the Tribunal from the description of the premises in the lease that the windows and the window frames form part of the lessees' flats and it is further clear from the lease that the lessees are responsible for the maintenance of those windows and window frames. It might be practicable for work of this sort to be carried out at the same time as other major works in order to make use of, for example, scaffolding that might have been erected at the property. However, in the Tribunal's view this work is quite clearly not a service charge item and this is acknowledged by the landlord Respondent. The cost of this work cannot be a relevant cost recoverable under the terms of the service charge. If some other agreement has been reached between the landlord and the tenant then this would be a separate matter but is not for the decision of this Tribunal.

59. Audit & Accountancy Fees

The Applicants argue that there is no provision for the lessees to contribute towards any professional fees and further there is no sweeping up clause to allow for other general expenses. The lease is silent in respect of accountancy fees and the general rule is that unless the lease authorises the expenditure, the landlord cannot expect to recover it from the tenants. The Respondent, however, believes that the accountancy charge relates to the provision of a statutory obligation on a landlord to have the accounts certified and as there is a statutory obligation on the landlord the cost must be recoverable.

60. The Tribunal found this a relatively straightforward matter to decide. The lease is silent with regard to the recovery of accountancy fees or for that matter any professional fees. If we were to accept the Respondent's proposal then the express wording of any service charge provision would be meaningless. Audit and accountancy fees cannot be recovered as part of the service charges.

Fire Precaution Work

61. Mr Donegan for the Applicants submits that this cost is not recoverable as a service charge under the terms of the lease. The Fourth Schedule only requires the lessees to contribute to expenses of maintaining, repairing, redecorating and renewing the items listed in the Schedule. The fire precaution works are an improvement in that it is a new installation. There is evidence from the Applicant lessees that there was no fire detection/warning system installed at the property previously so the work cannot be maintenance, repair or renewal and must be improvement. Although there is an obligation to contribute to the cost of lighting in the common parts, the installation of new emergency lighting where none existed previously is an improvement rather than a repair. This service charge item relates to the usual electricity charges and the cost of replacing light bulbs.

62. Mr Gossain for the Respondent submits that these fire precaution works are maintenance and repair and therefore recoverable under the terms of the Fourth Schedule. His interpretation of the Schedule is that repairs and maintenance would include works of a statutory nature. He believes that it could never have been the intention of the parties that communal works for the benefit of the building would not be a recoverable expense as otherwise the value of individual flats would be enhanced at the expense of the landlord which would not be fair or reasonable. The works were carried out at a requirement of the Local Authority.

63. When considering the matter the Tribunal again referred to the detailed wording of the Fourth Schedule. It is established law that unless there is a clear obligation under the service charge provisions to recover an amount then the interpretation must be construed against the landlord. The Tribunal considered whether the work could be repairs and maintenance but following the evidence of the individual lessees there was clearly no fire protection/warning installation at the property so the work is to provide something completely new rather than to maintain, repair or renew something that existed.

64. Although the Tribunal accepts that the landlord is under an obligation to comply with statute it is the recovery of the cost under the terms of the service charge clauses that is to be determined not the landlord's obligation to undertake the work whether or not his work enhances the value of the flats.

65. In the absence of any provision in the Fourth Schedule, the Tribunal has no alternative but to disallow this cost and any associated fees.

Major Work of Repair

66 The Applicants are dissatisfied with the quality of the work undertaken by the building contractors. The Tribunal received evidence on the detail of the work and was able to inspect the condition of the building. The Applicants produced a report of Mr Overill who said that there should be deductions in the cost of the repairs totalling £2,400 plus VAT as it was unacceptable for defects to appear within 18 months of completion of the work. It is argued that other works were not completed at all.

67. The Tribunal received evidence, which was not disputed in general terms, that the building had been neglected and that, any repairs that might have been

required including redecoration had been delayed. The Applicants submit that this delay has increased the cost of the work. Also, if the works had been carried out when they were first brought to the attention of the landlord in 1995/1996, the cost would have been 29.3% lower, and this would mean that the overall cost should be reduced by that amount to reflect the delay.

68. Mr Gossain for the Respondent did not deny that there had been a delay in carrying out the work. In part he lays this at the door of the lessees who were not responding to correspondence and not making appropriate contributions. There is mention of the landlord not being in funds because of the lack of payment by the lessees and this delayed the completion of the work. By carefully administering the contract the final cost of the work was reduced. There was regular supervision and the contractors were asked to return to carry out snagging works which so far as the landlord is concerned meant that the work was completed satisfactorily.

69. In the written submission Mr Johnson for the Respondent does not generally disagree with the Applicants' surveyor's calculation in terms of the overall cost of the work but he pointed out that if cyclical decoration works had been carried out in the interim period the lessees would have been charged a much greater amount. Mr Johnson does not consider the cumulative cost of repair and maintenance is higher than would have been the case if the works had been carried out earlier or more frequently.

70. The Lands Tribunal considered a similar situation in **Continental Property Ventures Inc v White and A N Other [2006] EGLR85**. Mr Donegan submits that the lessees are entitled to set off their entitlement to damages for breach of covenant against the cost of repairs and this supports his argument that a lower cost should be allocated to the service charge accounts.

71. The Respondent relies on the expert opinion of Mr Johnson, an Architect, who, although advised at the Hearing that the question of **Continental** would have been addressed by the Applicant does not deal with the case. His submission looks at costs in particular rather than the application of those costs to the case in issue.

72. The decision in **Continental** is quite clear. In his Decision Judge Michael Rich QC says that there is no doubt that breaching of the landlord's covenant to repair would give rise to a claim in damages. If the breach were to result in further disrepair imposing a liability upon the lessees to pay service charge that is part of what may be claimed by way of damages. There was no mention of adjusting costs to take account of the date when the works were carried out.

73. The Tribunal was then faced with considering the evidence before it in this case. The parties agreed that there was a delay to a greater or lesser extent but no evidence was before the Tribunal to show the element of damages that might be regarded as set off to compensate the lessees for breach of covenant. Applying a common sense approach it seems to the Tribunal that if the landlord had carried out the required work at the appropriate time there would in any case have been a need to redecorate the exterior for example once or twice during the period under consideration. This would have necessarily involved the erection of scaffolding and a not insignificant cost to the service charges. The lessees have

benefited by not having to pay out these charges. The Tribunal considers that there would have been an opportunity to identify areas of work that might not have been required if repairs and decorations had been carried out more timely but there was no detail of this given in evidence to the Tribunal. The experts have identified some areas where work was either not carried out properly or not carried out at all and detailed figures have been provided to allow for these. The Tribunal makes various adjustments having considered the detailed evidence and these are set out below.

74. On balance therefore the Tribunal considers that the work was reasonably incurred at a reasonable cost subject to the adjustments mentioned.

75. To deal with the specific adjustments Mr Overill for the Applicant has put spot figures for adjustments and Mr Johnson has taken a more technical approach using detailed quantity surveyor calculations. Although given as expert opinion the figures are wildly different and the Tribunal has had to take its own view using its own knowledge and experience. The Tribunal has used as a point of reference Mr Overill's letter to Mr Donegan dated 9 October 2007 and having considered the individual items determines that the following amounts should be deducted from the final account.

a)	Removal of roof tiles	£ 250.00
b)	Flashings	£ 150.00
c)	Clean guttering	£ 150.00
d)	Rendering	£ 300.00
e)	Railings	£1,000.00
TOTAL		**£1,850.00**

76. With regard to those matters which have allegedly not been carried out to a proper standard the Tribunal found no evidence to support adjustments in these areas and nothing further is to be adjusted in respect of asphalt repairs, the bay roof or exterior decorations.

Managing Agents' Fees

77. The Applicants argue that there is no reference to the payment of managing agents' fees in the amounts to be recovered as part of the service charges. The Respondent's representative identifies the entitlement at paragraph 5 of the Fourth Schedule for the landlord to recover 10% of the costs, expenses, outgoings and matters referred to in the Fourth Schedule for administration expenses and this allows the Landlord to recover managing agents' fees. He argues that if the Tribunal decided that management fees could not be charged in circumstances where the lease failed to provide for them, landlords would be at a disadvantage.

78. It is arguable that the landlord is not at a disadvantage in that the lease allows him to charge 10% on top of the costs expended in carrying out its obligations, under Paragraph 5 of the Fourth Schedule of the lease. But, irrespective of whether or not the landlord is disadvantaged, there is no provision in the lease for the recovery of management fees as such. In the absence of any provision for the recovery of managing agents' fees, the Tribunal determines that these are not recoverable as part of the service charges.

The 10% administration expenses charge

79. Paragraph 5 of the Fourth Schedule is clear in its expression. The Applicant submits that these expenses are a service charge within the meaning of S.18 of the Act and will vary according to the level of other permitted expenses and must be reasonable. It is submitted that in order to recover these amounts the landlord needs to show evidence to justify this level of administration charge.

80. Mr Adcock for the Respondent is not certain what question is being put, but he is quite clear the lease provides that, each year, 10% of the total expenses incurred by the landlord should be added for administration expenses.

81. There is, correctly, common ground that if this charge is payable as part of the service charge it should not be levied upon the insurance premium as this is not dealt with in the Fourth Schedule but elsewhere in the lease.

82. The Tribunal determines that it has no jurisdiction to upset what the parties have manifestly agreed. They have severally agreed, by the clear wording of the lease, that the tenants are to pay one seventh of the costs, expenses, outgoings and matters mentioned in the Fourth Schedule. One such matter (paragraph 5) states that an addition of 10% (not 'a reasonable proportion'; but 10%) "shall be added". The total, (of which 10% is to be applied) will of course vary from year to year and must satisfy the tests of reasonableness under the 1985 Act; but that fact does not alter the clear contractual obligation to pay the agreed proportion of 10%.

Professional Fees

83. Mr Donegan for the Applicant points out that the leases make no provision specifically for a contribution towards any professional fees and, because there is no express obligation, then fees should not be paid. There is no general sweeping up clause that might construe a different interpretation.

84. The Applicant accepts that the fees of Countrywide for the administration of the contract concerning works to the property can properly be included as part of the total cost of the work if the charges are reasonably incurred.

85. Mr Adcock for the Respondent does not make a submission on this issue but Mr Gossain believes that they are recoverable but deals only specifically with the fees for Countrywide in administering the building contracts.

86. The Tribunal considers that it is established law that reasonable fees incurred by a professional person in direct connection with the administration of a building contract are payable under the terms of a general service charge provision for maintenance and repair, so long as the fees are wholly, exclusively and necessarily incurred as part and parcel of doing the work. The Tribunal also considers that it is established law that other fees such as legal costs are not recoverable unless there is an express provision within the lease so to do. This is not the case here.

Interest and Charges for Arrears

87. It has been the habit of the managing agents to add interest charges and charges for late payment onto demands sent to the lessees. The Applicants ask the Tribunal to determine that these charges are not payable. In the Tribunal's view these amounts are not service charges but would (if they are payable at all by the tenants, which does not appear to be the case) be administration charges within Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and cannot therefore be considered under this application brought under S.27A of the 1985 Act.

SECTION 20C

88. The Applicant does not consider that costs relating to the Hearing are recoverable under the terms of the lease but this is not the issue before the Tribunal.

89. The Respondent does not address the point.

90. The Tribunal has to consider whether it is just and equitable to make an Order having regard to all the circumstances. In this complicated case it is clear that the Respondent has done little to assist the conclusion of the matter and the Applicant had no alternative but to pursue the case in front of the Tribunal. The Tribunal therefore makes an Order limiting the costs.

ORDER

91. The Tribunal Orders that all or any of the costs incurred or to be incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Dated 16 January 2008

Brandon H R Simms FRICS MCIArb
(Chairman)