

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/29UG/LSC/2007/0098

Property: 156B and 156C Milton Road
Gravesend
Kent
DA12 2RG

Applicants: Mr. Neil James
Mr. Mark Sugden

Respondent: Mr. Irfan Erdogan

Dates of Hearing: 23rd January 2008
11th June 2008

**Members of the
Tribunal:** Mr. R. Norman (Chairman)
Mr. R. Athow FRICS MIRPM
Ms. L. Farrier

Date decision issued: 18th July 2008

RE: 156B AND 156C MILTON ROAD, GRAVESEND, KENT, DA12 2RG

Background

1. No. 156 Milton Road, Gravesend, Kent (“the Building”) is a four storey middle terraced property near the centre of Gravesend. On the ground floor there is a shop and above that are three self contained flats.
2. The freeholder of the Building is the Respondent Mr. Erdogan (“the Landlord”) and he has retained the shop and the first floor flat. Mr. Sugden and Mr. James (“the Lessees”) are the lessees of the second floor flat 156B and the third floor flat 156C respectively (“the subject property”).
3. The Lessees applied for a determination of liability to pay service charges under Section 27A of the Landlord and Tenant Act 1985 (“the Act”). At a later stage in the proceedings the Lessees made an application under Section 20C of the Act for limitation of service charges arising from the Landlord’s costs of proceedings and the Landlord made an application under Section 20ZA of the Act for dispensation of the consultation requirements contained in Section 20 of the Act.

4. It was clear from the application initially made by the Lessees that they were concerned about whether or not the Landlord had complied with his obligation to insure the building and the lack of consultation in connection with major works. They were also concerned that they were each obliged to pay one third of the cost of insurance and service charges when the Building consisted of four units: the shop and three flats.

Inspection

5. The Tribunal inspected the subject property in the presence of the Lessees. The Landlord declined the invitation to be present.

6. We saw that the outside of the property appeared to have been decorated in the last few years and that one of the window frames needed repainting.

7. The steps up to the front door of the property were not in very good condition but were adequate.

8. There was a wood and glass front door with a Yale lock. The door was open. There was some intercom equipment but apparently it did not work.

9. We saw that the hall was reasonably clean and were told by the Lessees that it had been cleaned the day before our inspection.

10. The paint work in the hall and stairs was adequate and there was a reasonable carpet on the stairs.

11. We went into Mr. James' flat and were shown where he had removed a section of the roof and created a dormer section which increased the usable size of the flat. Mr. James told us that the roof had been rotten and needed repair so the work he had done relieved the Landlord of that responsibility.

The hearing 23rd January 2008

12. Present at the hearing were the Lessees and the Landlord and we heard evidence from them all. We informed the parties of what we had seen on our inspection. This was of particular importance to the Landlord as he had not been present at the inspection.

13. We have not been provided with a copy of Mr. Sugden's lease but he confirmed that it was in similar form to Mr. James' lease and that Mr. Sugden became liable for service charges only from 2007.

14. We explained to the parties:

(a) The way in which the service charges and sinking fund should operate.

(b) That this was not an application for a variation of the terms of the lease and that the Tribunal did not have jurisdiction to decide whether the Lessees should be liable for one third or one quarter of the service charges and cost of insurance. The lease provided for a one third contribution from each of the Lessees.

(c) That the parties could try to agree a variation and if they could not agree then in some cases an application could be made to a Leasehold Valuation Tribunal for a decision on whether there should be a variation.

(d) That we had jurisdiction to consider whether the charge for work carried out was reasonably incurred.

(e) That we could not make an order that the landlord should do certain work in the future.

(f) That our jurisdiction was to make a determination as to charges made by the Landlord for insurance and work carried out.

15. The parties agreed:

(a) That in respect of 2003 there were service charges of £1,000 and that Mr. James paid one third of that sum, £333.33 demanded of him. He also paid £315.27 demanded of him in respect of insurance.

(b) That in respect of 2004 there were service charges of £1,000 and that Mr. James paid one third of that sum, £333.33 demanded of him. He also paid £331.52 demanded of him in respect of insurance.

(c) That in respect of 2005 there were no service charges but that Mr. James paid £308.38 demanded of him in respect of insurance. He also paid £1,328.33 demanded of him, being one third of the cost of decorating the internal communal walls and ceiling.

(d) That in respect of 2006 there were no service charges but that Mr. James paid £2,330.42 and £50 demanded of him, being one third of the cost of external decoration and the replacement of the stair carpet and one third of the cost of work to the fire alarm respectively. He also paid a sum demanded of him in respect of insurance. The Landlord's recollection is that that sum was £308.38 but Mr. James' recollection is that the sum was £315.10. However, in his application, Mr. James had amended the figure of £315.10 to £308.38 and we therefore found that the correct figure was £308.38.

(e) In respect of 2007 the Landlord asked for £333.33 service charges plus £330.37 insurance from each lessee and from Mr. James an additional £256.20 for an electrical equipment check for the whole building and fire alarm. None of these sums have been paid.

16. The Landlord's evidence was that the service charges he demanded were for the cost of cleaning from the entrance of the Building to the top floor. He stated that he carried out this work of vacuum cleaning and dusting the hall and stairs once a week and that if anything was wrong he repaired it at no extra cost to the Lessees. He had no records of work done or any expenses incurred until 7th May 2007 from when Cleanaway were employed to clean.

17. The Landlord's view was that if he employed agents to manage the Building he would have to pay them or the Lessees could manage the Building and he would pay them. He had obtained a letter dated 9th October 2007 from Caxtons about managing the Building. Mr. James said that he would not consider managing the Building himself.

18. As to insurance the Landlord's evidence was:

(a) That in 2003 insurance was with Barclays to cover the Building and the contents of the whole Building except the shop. There was separate insurance for the shop. He produced a schedule of insurance (p19 of the Lessees' evidence bundle) dated 9th October 2003. This had been enclosed with a letter dated 9th October 2003 from Barclays (p18 of the Lessees' evidence bundle). The contents cover was from 23rd July 2003 to 22nd July 2004 and the buildings cover was from 15th August 2003 to 22nd July 2004. The total of 12 monthly premiums is shown as £945.81. A third of that sum is £315.27 which was the sum paid by Mr. James. In the letter it was stated that the new schedule replaced any previous schedules and that if the Landlord was satisfied with the cover he need take no further action and the premium would be processed as detailed in the Premium and Payment Instructions. There was no evidence of payment of the premium but the Landlord said he could apply to his bank for a record of payment. Under the terms of the leases the Landlord was entitled to charge for buildings insurance but not for insurance of the contents of the three flats, which was included in this insurance.

(b) That in 2004 insurance was again with Barclays and a schedule of insurance (p24 of the Lessees' evidence bundle) showed buildings and contents cover from 23rd July 2004 to 22nd July 2005. The total of 12 monthly premiums is shown as £994.56. A third of that sum is £331.52 which was the sum paid by Mr. James. Again there was no evidence of payment of the premium and again the insurance of contents was included.

(c) In respect of insurance from 23rd July 2005 to 22nd July 2006 the Landlord produced a letter from Ragarfield Limited, Insurance and Mortgage Brokers dated 18th August 2006 inviting renewal in September 2006. No insurance contract was produced. There was no evidence of payment of the premium and no proof of continuity of cover. In earlier years the insurance expired on 22nd July and therefore it would appear that the Landlord had allowed the Building to be uninsured for a period.

(d) In respect of insurance from 23rd July 2006 to 22nd July 2007 there was a letter to the Landlord (p32 of the Lessees' evidence bundle) from Ragarfield Limited referring to the Landlord's recent enquiry about insurance and providing details of buildings cover. The letter asks the Landlord to provide instructions and a cheque for the full premium or arrangements for payment by monthly instalments. It is noted that the letter is dated 28th July 2006 and as in earlier years the insurance expired on 22nd July it would appear that the Landlord had allowed the Building to be uninsured for a period. The premium quoted is £925.12. A third of that sum is £308.37 which is almost exactly the sum which the Landlord says Mr. James paid. Again there is no evidence of payment of the premium.

(e) In respect of insurance from 2007 to 2008 there was a letter from Ragarfield Limited (p61 of the Lessees' evidence bundle) dated 13th September 2007 reminding the Landlord that insurance was due for renewal on 19th September 2007. We pointed out to the Landlord that he was producing a quote for insurance and that again he was not producing a receipt for payment of the premium. Again there was doubt as to the continuity of the insurance cover.

19. As the Landlord had not produced documents in support of the matters which were clearly disputed he was shown a copy of the Directions issued 5th November 2007 which included a direction that by 9th January 2008 he was to send to the Lessees and to the Tribunal a bundle of documents setting out his case and that the bundle was to include a written statement of case, copies of all relevant documents i.e. any Section 20 notices, schedules of work, specifications, tenders, invoices, correspondence etc. The Landlord had provided some documents but many of the relevant documents which had been produced in advance of the hearing were produced by the Lessees. The Landlord said he could not find the Directions but he had seen them. He had taken them to his solicitor and with his help copies of correspondence had been sent in. The Landlord was given the opportunity during the lunch time adjournment to obtain and produce evidence of payment of insurance premiums and after lunch he produced a statement from Ragarfield Limited showing premiums 19th September 2005 to 18th September 2008 and a direct debit mandate for the premium in 2005. He stated that the direct debit was still going on and that if he could get all the money in from the Lessees at the right time he could pay the whole amount and save 11% interest. He had sent out demands in June and December which are the times when the Lessees should pay but they do not pay.

20. The Landlord was asked how he decided how much he should be demanding from the Lessees. He explained that when there was a big charge he did not charge the £333.33. No budget was prepared. He would be happy if one of the Lessees dealt with it or an agent was employed.

21. As to the fire alarm repair there is an invoice from G.E.M. Electrical Services dated 27th July 2006 for £150. (p46 of the Lessees' evidence bundle). The work is described as "To investigate and repair fault Test and commission".

22. The Landlord stated that the present position as to cleaning is that from May 2007 he has employed cleaners. They charge £90 per month and once a week they are responsible for vacuuming and cleaning all the communal area. There is a separate charge for cleaning the shop windows.

23. As to the charge of £256.20 in respect of an electrical service certificate in 2007, the Landlord stated that the contractor checked all the property; the flats and the communal area. Just by chance Mr. James was there, let the contractor in and Mr. James' flat was checked. The contractor says that the fire alarm system must be checked every six months. There is an invoice (p63 of the Lessees' evidence bundle) for carrying out testing of the electrical installation to flats 1, 2 and 3 at 156 Milton Road. There are four separate items on the invoice but not all these items are properly chargeable to the Lessees.

24. In respect of the redecoration of common parts there is (p52 of the Lessees' evidence bundle) one quotation in the sum of £3,985. One third of that sum is £1,328.33 which is the sum paid by Mr. James. The quotation is dated 19th August 2005 and is from Anthony Cranham. The Landlord's evidence is that he asked for quotations from a number of contractors whose names he had obtained from Yellow Pages but only Anthony Cranham provided a quotation. On 27th August 2005 the Landlord wrote to Mr. James (p28 of the Lessees' evidence bundle) enclosing a copy of the quotation. The Landlord stated that Anthony Cranham began the work by stripping off the wallpaper but then wanted 40% to 50% more money. The Landlord says that he told Mr. James about this and asked if he knew

another builder who would complete the work. Mr. James disputes this. The Landlord found some Turkish men from London who finished the work for the same sum £3,985 but he had no receipt from them.

25. In respect of the external redecoration and replacement of stair carpet the Landlord obtained just one quotation from W.S. Home improvements (p30 of the Lessees' evidence bundle). The quotation is dated 7th June 2006 and is in the sum of £5,950 plus VAT making a total of £6,991.25. One third of that sum is £2,330.42 which is the sum paid by Mr. James. The Landlord wrote to Mr. James on 16th June 2006 (p31 of the Lessees' evidence bundle) enclosing a copy of the quotation and informing him that as soon as the Landlord received £2,330.42 from Mr. James the Landlord would instruct the builders to begin work.

26. The evidence from Mr. James was as follows:

(a) As to insurance, the first time he had seen any evidence that the premiums had been paid was at the hearing. He did not know until the hearing that the contents of his flat had been insured by the Landlord from 2003 to 2005.

(b) As to the electricity service certificate, it was purely by chance that Mr. James was at home when the contractors called. He let them in and they looked at the distribution box.

(c) As to the decoration of the hall and stairs, Mr. James does not accept that the Landlord told him about the problems he was having with Anthony Cranham or asked if he knew another builder who would complete the work.

(d) As to the external decoration and new carpet Mr. James stated that it was nice to have a new carpet and decorating but the next thing was a demand to pay. There were no notices, just the letter of 16th June 2006.

(e) There had been no lock on the front door for nearly a year and that was not safe. A photograph of the front door with no lock was produced.

(f) Any questions put to the Landlord were met with an abusive aggressive response.

(g) The fire alarm was not repaired for some time and it was important to have the alarm in working order.

(h) Until recently, the Landlord had failed to keep the porch and communal parts clean. A photograph of the porch area showing it to be dirty was produced. A photograph showing the condition of the roof inside Mr. James' flat was produced. He had had a dormer created which increased the usable size of his flat. The Landlord said that the photographs were taken at the time Mr. James was having this work done and that his workmen left everything dirty. The Landlord queried why he should charge other people for the cleaning which resulted. Mr. James was not sure of the dates the photographs were taken but disputed that his workmen had left anything dirty. His builders had scaffolding outside so there was no need to bring in anything through the hall. It is agreed that the Landlord did not charge for cleaning in the two years when there were major works but it is not agreed that the Landlord still cleaned during those two years or at any time. There was no cleaning, the porch and the carpet were dirty. If the Landlord was cleaning then he was not doing a good job.

(i) On one occasion, apparently because the electricity bill in respect of the shop had not been paid by the lessee of the shop, bailiffs attended the Building and changed the lock on the front entrance door to the flats. As a result Mr. James was unable to gain access to his flat and had to stay in London for the night. The Landlord knew of the bailiffs' actions and was given one key for the new lock. He put a note on the door about the change of lock and the next day Mr. James was able to have a key cut. The Landlord should have provided a key straight away but his view was that it was not his fault and therefore why should he pay for replacement keys.

(j) The Landlord had failed to provide books of account so the Lessees could not see how the money was spent. There was no sinking fund. There had been no thorough consultation. The Lessees did not refuse to pay but wanted to see accounts.

(k) The cost of major works was excessive and Mr. James was expected to pay promptly. The Landlord's Solicitor's letters just said to pay or there would be charges, bailiffs and he would lose the flat. His solicitor wrote letters on his behalf disputing the costs but he paid because he did not know his rights.

27. The evidence from Mr. Sugden supported the evidence of Mr. James in general and in particular:

(a) As far as the lack of cleaning was concerned, Mr. Sugden stated that soon after he bought his flat he had white goods delivered and pieces of foam plastic polystyrene packing came off them in the hall and stairs and that packing was still there three months later. He considered that little work was required to clean the communal areas.

(b) He considered that the service charges should go into some kind of fund.

(c) He considered that the electrical service certificate should be included in the service charge rather than being an additional cost.

(d) He believed the insurance was excessive because it included the shop.

28. It was clear that the Landlord had not complied with the consultation procedure under Section 20 of the Act in relation to the major works, namely: the decoration of the common parts in 2005 and the external decoration and renewal of the stair carpet in 2006. We explained that if the consultation procedure were not complied with then the Landlord could recover from each lessee only £250 as a contribution towards the cost of each of those works. We made it clear that as the Landlord had not followed the consultation procedure and if he wished to claim more than £250 per lessee in respect of each of the major works then he would have to apply to the Leasehold Valuation Tribunal for the requirements to be dispensed with. There was no guarantee that the Leasehold Valuation Tribunal would grant a dispensation but if an application were made it would be considered on its merits.

29. We also explained that the Lessees could make an application under Section 20C of the Act for an order for the limitation of service charges arising from the Landlord's costs of these proceedings.

30. The hearing was adjourned to give the parties the opportunity to make such applications and further directions were issued.

The hearing 11th June 2008

31. Present at the hearing were the Lessees and the Landlord and we heard evidence from them all.

32. After the hearing on 23rd January 2008 the Landlord made an application for the consultation requirements of Section 20 of the Act to be dispensed with and he enclosed with that application documents which we considered.

33. After the hearing on 23rd January 2008 the Lessees made an application under Section 20C of the Act for an order for the limitation of service charges arising from the Landlord's costs of these proceedings. We considered that application.

The Determination

34. We had a number of matters to determine. We considered the documents which had been produced by the parties and the evidence which they gave at the hearings and came to the following conclusions.

Dispensation with consultation requirements under Section 20 of the Act.

35. It was clear that the Landlord had not complied with the consultation requirements. Under Section 20ZA of the Act we may make a determination to dispense with all or any of the consultation requirements in relation to the decoration of the internal common parts of the Building in 2005 and the external decoration and renewal of stair carpet in 2006 if we are satisfied that it is reasonable to dispense with the requirements. We found that the Landlord's failure to consult arose out of ignorance of the requirements and while ignorance of those requirements is no excuse we accepted his evidence that he did try to obtain other quotes. He certainly did obtain one quote for each of the works and the final amount charged was within that quote. Work was done which it was within his obligations under the leases to have done and it is just and fair that he should be paid a reasonable sum for the work done. In all the circumstances we were satisfied that it was reasonable to dispense with the consultation requirements.

36. We must make it clear so that the Landlord can be under no doubt about this that the dispensation refers only to the decoration of the internal common parts of the Building in 2005 and the external decoration and renewal of stair carpet in 2006. It does not extend to any other works. If the Landlord wishes to carry out any qualifying works in the future he must comply with the consultation requirements or seek another dispensation and there is no guarantee that a dispensation will be granted in the future, especially as the Landlord is now aware of the requirements.

37. We must now proceed to deal with the sums charged for various matters. The Landlord's view as to the sums charged, except for the earlier charges for cleaning, was that all he was doing was demanding from the Lessees money which he had paid or was going to

pay to others for work done or insurance. That is not the end of the matter. The Lessees are only liable for costs which are reasonably incurred.

Decoration of internal common parts

38. Between the hearings on 23rd January and 11th June 2008 the Landlord had obtained a schedule of repairs from a Mr. Gilman of Aspray Property Services (Tunbridge Wells) whose name he had found from Yellow Pages (pp9 - 12 of The Landlord's evidence bundle). The total for the work was £15,880.76 including VAT which was far in excess of the quotation given by Anthony Cranham which was £3,985. The Landlord stated that Mr. Gilman visited the Building and quoted as if the work was to be done now. The card which Mr. Gilman left indicated that Aspray Property Services (Tunbridge Wells) were not builders but building services managers. The Landlord told Mr. Gilman that he wanted a statement to prove that what the Landlord had charged was right. He did not know why the Landlord (his name incorrectly given as "Erbogan") was described in the documents as "Insured Name". We noted that the schedule included artexing a ceiling and overboarding a ceiling which had not been included in the estimate from Anthony Cranham. The Landlord's explanation was that the ceiling was damaged and Chellebi and Son Builders who completed the work started by Anthony Cranham repaired it. The Landlord had explained to Mr. Gilman what work had been done but he did not know how Mr. Gilman arrived at his quote. The quote includes an item for removing and reinstating a radiator but the parties agreed that there is no radiator in the hall or on the stairs. There were two sums quoted for ceiling emulsion which gave the impression of duplication. The sum quoted for gloss works appeared to be excessive and it was not clear how the figure had been arrived at. There was a sum for hanging wallpaper but the Landlord stated that wallpaper had been replaced by paint. The Landlord produced the building schedule in an attempt to show that the work which had been carried out had been done very cheaply. The figures quoted were apparently at today's prices rather than 2005 prices. We came to the conclusion that the building schedule was neither competitive nor comparable and was of no assistance to us. However, at p15 of the Landlord's evidence bundle there was a document apparently signed on behalf of Chellebi and Son Builders which listed the work in the quote from Anthony Cranham and indicated that £3,985 had been received for the work. We had no evidence to show that that was an unreasonable figure for the work done and therefore one third of that sum, £1,328.33 paid by Mr. James was reasonably incurred.

External decoration and replacement of stair carpet

39. The Landlord has now produced (p13 of the Landlord's evidence bundle) a document dated 30th January 2008 indicating that Mr. Stevens of WS Home Improvements received £6,991.25 for work done in 2006. At p16 of his evidence bundle the Landlord has produced a document from Chellebi and Son Builders giving a cost of £7,680 for work to be carried out namely external decorating and replacement stair carpets. Presumably the figure is as at today's prices rather than at 2006 prices and there is no detail. As a result it was of little assistance to us. The Landlord has also produced (pp7 and 8 of the Landlord's evidence bundle) a building schedule from Mr. Gilman of Aspray Property Services (Tunbridge Wells). This was of use as a guide and if the work were carried out today then £4,948.69 including VAT would not be unreasonable. However we had to bear in mind that our determination had to be based on prices prevailing in 2006 and to make a deduction to account for that. We appreciated that the stair carpet was not included in the figure of

£4,948.69 and we therefore had to increase the figure to take account of that. On the evidence we had before us we came to the conclusion that in respect of the external decoration of the front elevation and the renewal of the stair carpet we could not find that more than £5,000 including VAT was reasonably incurred. One third of £5,000 is £1,666.67 which should have been paid by Mr. James. In fact he paid £2,330.42 and therefore is entitled to a refund of £663.75.

Insurance

40. The Landlord had produced at the first hearing documents from Ragarfield Limited which we were satisfied showed that he had paid the insurance premiums for the years 2005, 2006 and 2007. Various documents had been produced in respect of the insurance for 2003 and 2004 and the Landlord stated he had paid the premiums by direct debit. Although the documents produced did not themselves provide proof of payment we found that they did support the Landlord's oral evidence of payment. There was a reference to a mortgage granted by Barclays and the insurance was also through Barclays. We could appreciate that the mortgagee would require insurance and that it was more likely than not that insurance was in fact arranged through Barclays and that the premiums were paid by direct debit. Sums are in the schedules and they refer to the policy document and the provision of a policy document is an indication of payment.

41. Although it did not have a bearing on the matters to be decided by us, we noted with concern that there was not complete continuity of insurance. The Landlord had not kept the Building insured at all times. There was correspondence which indicated that an insurance quotation was being obtained on a date which was a few days after the previous year's insurance had expired. Also the insurance originally had run from July to July but in later years ran from September to September. The Landlord at first did not provide an explanation for these apparent gaps in insurance but then did accept that he may have renewed late. He stated that his reason for doing was because Mr. James had not paid on time. Whether or not that was correct did not excuse the late renewal.

42. In 2003 and 2004 the Landlord had recovered from Mr. James one third of the cost of insurance. The Landlord was obliged to insure the Building and was entitled to recover one third of the cost of that insurance from Mr. James but the Landlord had no authority to insure the contents of the flats or to recover the cost of contents insurance from Mr. James.

43. In respect of 2003, deducting the cost of the contents insurance leaves £684.45. One third of which is £228.15 which should have been paid by Mr. James. In fact he paid £315.27 and therefore is entitled to a refund of £87.12.

44. In respect of 2004, deducting the cost of the contents insurance leaves £726.12. One third of which is £242.04 which should have been paid by Mr. James. In fact he paid £331.52 and therefore is entitled to a refund of £89.48.

45. In respect of 2005, 2006 and 2007 the Landlord was paying the insurance premiums by instalments with the result that he was paying 11% interest. He gave as his reason for choosing to pay by instalments that Mr. James did not pay on time but whether or not that is correct it is not an acceptable reason. The Landlord should have paid the full premium and pursued Mr. James for his contribution. By choosing to pay by instalments the Landlord had

to pay interest and that payment was not reasonably incurred. He was entitled to recover from Mr. James one third of the premium but not one third of the interest. Therefore in 2005 the premium was £876.92. One third is £292.31. Mr. James paid £308.38 and therefore is entitled to a refund of £16.07. In 2006 the premium was £945.31. One third is £315.10. Mr. James paid £308.38. The Landlord is therefore entitled to an additional £6.72. In respect of 2007 the premium was £991.11. Mr. James and Mr. Sugden are each to pay the sum of £330.37 being one third of the premium.

Fire alarm work

46. The sum of £150 in respect of this work we found was reasonably incurred and properly paid by Mr. James.

Electrical equipment check

47. At p63 of the Lessees' evidence bundle is an invoice for £768.60 and the Landlord has demanded from Mr. James one third of that: £256.20. We have considered the various items set out in that invoice and have found that the Landlord instructed the contractor to carry out more work than could be charged to Mr. James under the terms of the lease. Mr. James is not liable for one third of the cost of providing measured readings and test results in respect of the individual flats but is liable for one third of the cost of providing measured readings and test results in respect of the common parts. We assess that £175 was reasonably incurred in respect of that work. As to the testing of the emergency lighting to all floors and testing the fire alarm system we found that the sums of £105 and £120 respectively were excessive and that £75 was reasonably incurred for that work. The charge of £18.60 for the replacement of the faulty break glass on the first floor we found was reasonably incurred. This produced a total cost of £268.60 and Mr. James is therefore liable for one third of that, namely £89.53.

Cleaning

48. The Landlord in each of the years 2003, 2004 and 2007 has made a charge of £1,000 in respect of cleaning the common parts of the Building. He had no records of that work until 7th May 2007. Up to that date he stated that he carried out the cleaning himself and from that date he employed Cleanaway and produced invoices from that company. The invoices give no information and we are not satisfied that they related to cleaning the common parts of the Building. We were not satisfied that there was reliable evidence of regular cleaning and accepted the evidence from the Lessees that either no regular cleaning took place or any cleaning which was done was to a very poor standard. Consequently we were not satisfied that the charges made for cleaning were reasonably incurred. Mr. James has paid £333.33 in 2003 and £333.33 in 2004. He is entitled to a refund of those sums. The Landlord is not entitled to charge either of the Lessees £333.33 in respect of cleaning for 2007.

Application for an order under Section 20C of the Act

49. There is before us an application for an order under Section 20C of the Act. We find that it is just and equitable in the circumstances to make such an order because the Landlord had failed to comply with his obligations under the leases and the consultation requirements

of Section 20 of the Act and the Lessees were justified in bringing these proceedings to clarify the position. We therefore make an order 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 Applicant.

Summary

50. In order to bring the service charges up to date to the end of 2007, within 28 days of the date this determination is issued the Landlord is to pay to Mr. James £1,096.46 and Mr. Sugden is to pay to the Landlord £330.37 calculated as follows:

Due to Mr. James from the Landlord	£	£
Excess payment re: external decorations and stair carpet:	663.75	
Excess payment re: insurance 2003:	87.12	
Excess payment re: insurance 2004:	89.48	
Excess payment re: insurance 2005:	16.07	
Excess payment re: cleaning 2003:	333.33	
Excess payment re: cleaning 2004:	<u>333.33</u>	
		1,523.08
Less:		
Underpayment of insurance 2006:	6.72	
Insurance 2007:	330.37	
Electrical equipment check:	<u>89.53</u>	
		<u>426.62</u>
		<u>1,096.46</u>
Due to the Landlord from Mr. Sugden		
Insurance 2007:		<u>330.37</u>



R. Norman
Chairman