RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property
TRIBUNAL SERVICE

Section 27A Landlord and Tenant Act 1985 (as amended)
Application for a determination of liability to pay service charges

DECISION AND REASONS

Case Number:	CHI/00HH/LIS/2009/0049
Property:	4 Abbey Court 63 Abbey Road Torquay Devon TQ2 5NN
Applicant :	Henry Stuart Travis (Torbay Management Services Limited)
Respondent :	David McCabe
Date of Application:	26th May 2009 - by an order made by District Judge Tromans in the Plymouth County Court and pursuant to Schedule 10 Paragraph 3 of the Commonhold and Leasehold Reform Act 2002 the Applicants claim was transferred to the Leasehold Valuation Tribunal having jurisdiction relating to property in Torquay Devon to determine the question of liability for service charges.
Date of Hearing:	13th October 2009
Appearances:	Jonathan Holmes - Torbay Management Services ("TMS"); Lucy Hoare - AIRPM Property Manager of TMS for the Applicant Henry Stuart Travis - Applicant David McCabe – Respondent

In Attendance:	Mr Jim May (Clerk to the Tribunal)
Tribunal Members:	Cindy A. Rai LLB Solicitor (Chairman)
	Michael C. Woodrow MRICS (Valuer Member)
	Peter G. Groves (Lay Member)
Date of Decision:	12th November 2009

SUMMARY OF DECISION

1. The Tribunal decided that all of the service charges items payment in respect of which was disputed by the Respondent amounting to:-

   Items contained in the Estimated budget of Expenditure for the year ending 24th March 2009 "Estimated budget of Expenditure"

   (i) Management fees (including VAT) £1.763.00

   (ii) "One off" set up fee payable to managing agents £294.00

   (iii) Reserve fund payment £500.00

   (iv) Buildings Insurance premium £900

   Items contained in Statement of Account dated 24th March 2009 "Statement of Account"

   (v) Roofing works ref: Section 20 Notice £1500 being service charges budgeted for the year ending 24th March 2009 and sums payable on account of future identified expenditure in accordance with a Notice of Intention to Carry out Works dated 1st September 2008 (the Section 20 Notice") (and which had been sent to all the leaseholders at 63 Abbey Road, Torquay by TMS the managing agent employed by the Applicant to manage the block of seven flats in which the Property is located),

   are payable in full by the Respondent in respect of "the Property" (4 Abbey Court, 63 Abbey Road Torquay TQ1 1BJ and that it would not make an order that the costs incurred by the Applicant were not to be regarded as relevant costs for the purpose of determining the amount of any service charges payable by the Respondent.

INSPECTION

2. Prior to the Hearing the Tribunal accompanied by its clerk inspected the common areas of the Property. The Applicant was not present but both Jonathan Holmes and Rachel Mann of TMS together with the Respondent in person were present.

3. Access to the Property is gained through a door fronting Abbey Road. An entrance lobby opens into a hallway stairs and landing which serve the seven flats located within the building known as 63 Abbey Road, (hereinafter referred to as "the Building") which comprises a terraced property on two floors. At the rear of the Building is a small enclosed area to which there is no access other than through individual flats and which was not inspected.

4. Inside the Building the Tribunal saw the existing floor covering which consist of carpet tiles to the ground floor hall floor and different carpet covering the stairs and the upper landing off which the front doors to flats 5, 6 and 7 are located. The carpet showed some signs of wear and was ill fitting and was not properly secured to the stairs in places.

5. The Tribunal was taken into the yard of a neighbouring property from which at a distance it could visually inspect the rear elevation. It was shown the approximate locations of the three areas of flat roofing which were apparently the subject of the roofing quotations to be referred to at the Hearing and contained in the bundles of evidence. It was noted that the guttering around one of these areas appeared to have been recently renewed and this was confirmed at the time of the inspection as well as later at the Hearing.

BACKGROUND

6. The Applicant had submitted a claim to Northampton County Court for recovery of service charge ground rent arrears and administration costs in respect of the Property which was issued on the 8th January 2009 and served on the Respondent on the 13th January 2009.

7. A defence was filed by the Respondent on the 26th January 2009 and the claim (numbered 9TO1647) was transferred to Plymouth County Court (being the area where the Respondent lives or carries on business). Following a stay of the proceedings, granted to enable the

parties to engage in an alternate dispute resolution process, which if it was engaged upon, did not result in settlement, District Judge Tromans ordered that the claim be transferred to the Leasehold Valuation Tribunal, with jurisdiction for Torquay, to determine the question of liability for service charges. A pre trial review took place on the 6th July 2009 following which directions dated 7th July 2009 ("the Directions") were made by John Tarling, a Chairman of the Residential Property Tribunal Service and issued to both parties which set out the items of service charge the Respondent disputed. These are the following items (which are also listed in paragraph 2 of the Directions):-

a. Items contained in the Estimated Budget of Expenditure of the year ending 24th March 2009:

(i)	Management fees (incl. VAT)	£1,763.00
(ii)	One off set up fee (incl. VAT)	£294.00
(iii)	Reserve Fund for replacement carpets (£1,000.00 over 2 years)	£500.00
(iv)	Buildings Insurance	£900.00

b. Items contained in Statement of Account dated 24th March 2009.
Roofing Works (Section 20 Notice) £1,500.00 per flat.
(£10,500.00 for the Building)

THE HEARING

8. Prior to the commencement of the Hearing the Chairman explained that since District Judge Tromans had transferred the county court case to the Tribunal to determine the liability of the Respondent to pay service charges she would offer him first opportunity to explain why he considered he was not liable to pay the service charges. Furthermore in relation to the charges claimed by the Respondents with regard to the proposed roofing works, as he was disputing the validity of the section 20 notice the Applicant would be offered an opportunity to complete a section 20ZA application for the Tribunal to dispense with the consultation procedure in relation to these proposed works. The Tribunal would then consider such an application (if made) together with the application already before it. This was

without prejudging the Tribunal's decision, but simply to enable both matters to be disposed of together. The Applicant however declined to make such an application. It said that if it was determined that the consultation process had been flawed it would recommence the process.

9. Under terms of reference by District Judge Tromans it is the liability of the Respondent to pay the disputed service charge items which is disputed.

Respondent's case

10. The Respondent referred to each of the disputed items in turn explaining why he did not consider he was liable to pay the amount claimed.

11. The Estimated Budget of Expenditure refers to a Reserve Fund and a contribution of £500 (from the tenants) a year over two years towards a reserve fund of £1000 stated to be for the replacement of communal carpets. The Respondent stated that the carpeted communal area is very small. He said that he obtained various quotations (for replacement carpet) and had produced in his bundle a letterhead from Komet Carpets of Newton Abbot Devon on which was hand written "Mr McCabe 5 x samples enclosed £4 m2 Regards Adam". When questioned further Mr McCabe said that he had only obtained the one quote. He had not brought the samples referred to in the "Komet Carpets" letter to the Hearing. He said that "contract cord carpet" would cost £4 a square metre and would take half a day to fit. In his written evidence he referred to a cost of £75 for the fitting and a total cost for replacing the carpet on the stairs and top landing of £123. He gave no clear evidence as to how the figure had been calculated.

12. **Building insurance** - He had produced a quotation in his bundle submitted to the Tribunal. He said that he notified the insurer or the broker (it was not clear which had provided the quotation) of the claims history as referred to in the Applicant's bundle and it was on the basis of that information that the quotation was given.

13. **Management Fees** - Mr McCabe has already produced a letter from southernhay living who from the information on its notepaper appear to be Estate Agents. It appears that the letter dated 17th September

2009 was provided by southernhay living in response to a telephone call from Mr McCabe. It provides a quotation for the management of the block of 7 flats at the Building "for the sum of £200 plus VAT", in respect of obtaining quotes of any ongoing maintenance issues, organising contractors sending out letters in respect of collection of ground rents etc." It states that "this special reduced annual fee is based on the above and does not include any other services". Later the letter somewhat confusingly refers to the collection of rent from tenants. It was not immediately apparent why this is referred to since the 7 flats appear to be owned by different individuals, none of whom would be represented by the management company, but the Respondent explained that the flats are not necessarily owner occupied. The letter refers to additional services which southernhay living could provide, such as the production of both domestic and commercial Energy Performance Certificates. No other evidence was offered as to the precise nature of the services Mr McCabe had asked southernhay living to include within its quotation. Mr McCabe stated that that company had listed most of the duties it would need to undertake.

14. **Roofing works** - Mr McCabe said that he does not understand which areas of the roof require replacement or for what works the various quotations obtained, cover. He thought that the quotation from A G Wilson was for the replacement of the whole roof. Further discussions regarding the roof works ensued following the presentation of the Applicants case.

15. **Section 20C application** – Mr Mc Cabe requested that the Tribunal make an order that the costs of this application and the hearing are not regarded as relevant costs recoverable by the Applicant as service charges. He does not think it would be justifiable for the freeholder to recover any of these costs.

Applicant's case

16. Mr Holmes presented the Applicant's case with the benefit of assistance from both the Applicant and Ms Hoare.

17. **Carpets** – He said that the Lease enables the Applicant to collect from the lessees sums on account by way of a reserve fund for programmed

expenditure future years No estimates have yet been obtained for the replacement of the carpet. Such estimates would include the costs of underlay and may provide for a better quality carpet than that which is currently laid and which would have a longer life span than that of the current carpet. The reserve fund would not be "ring fenced" to provide only for replacement carpet. It is even possible that if the proposed expenditure with regard to the carpets and refurbishment of the communal areas generally is extensive it would be necessary to comply with the consultation procedure prior to carrying out the works.

18. **Buildings insurance –** He said that he was unaware that the Respondent had requested information from the Applicant about the claims history. There is no evidence that the quotation which the Respondent obtained offers "like for like" replacement. The buildings insurance premium figure in the Estimated Budget of Expenditure is simply an estimate. Questioning from the Tribunal revealed that the calculation of the sum insured being £500,000 was based on the BCIS rebuilding costs for the square footage of the Building. (BCIS is the Royal Institution of Chartered Surveyors ("RICS") Building Cost Information Service.) There is no obligation within the Lease for the freeholder to place buildings insurance with the cheapest provider. Other material considerations, including the history of previous claims, would affect the amount of any quotation. Mr Holmes said that the Applicant's statement that he had passed details of the claim history to the company who had provided his quotation cannot be verified, on the basis of the information provided by the Respondent. The Applicant has actual documented evidence of the claims handling record of the company which had hitherto provided insurance cover.

19. **Management Fees –** southernhay living appear to lack any professional qualifications relevant to the management of a building such as Abbey Court. TMS are conscious of the requirements for the freeholder to adhere to the strict legislative provisions which protect lessees of such a property - TMS employees who manage property are members of the Association of Residential Property Managers ("ARMA"). In addition TMS comply with the provisions of the RICS

service charge code. They are regulated by the Financial Services Act to handle and process insurance claims and undertake non-investment business All senior managers are qualified as members of the Institute of Residential Property Management. The collection of service charges is in accordance with the requirements of the Lease and these are held in a separate account on trust for the lessees. All of this is in accordance with the statutory requirements and he is satisfied that TMS are able to demonstrate full regulatory compliance. TMS follow the procedure recommended by ARMA with regard to collection of unpaid service charges. Mr Travis told the Tribunal that being conscious that his statutory obligations as a Landlord were wide reaching, he considered it to be essential that he employed a professionally affiliated agent. In the absence of evidence from the Respondent that the agent from whom he has obtained a quotation is professionally qualified, the quotation is of limited value.

20. **Roofing project –** It was confirmed by Mr Holmes in response to a question raised by the Tribunal at the inspection that only two areas of flat roof are now in need of re-roofing as works had recently been carried out to the third area. In fact when a copy of the invoice for these works was eventually produced to the Tribunal, it was dated the 31st August 2009, and the Applicant agreed that the works had been carried out just prior to the issue of the invoice to stop water ingression into flat 2. In terms of the consultation process, the Notice of Intention had been sent to all the lessees and subsequently three estimates had been obtained. Mr Holmes suggested that the Respondent might not have fully understood the consultation procedure; all he had needed to do was to nominate a contractor or contractors and advise TMS, who would then ask the nominees to provide quotations. As far as he was aware Mr McCabe had not done this. Enquiry from the Tribunal revealed that TMS had not commissioned a detailed survey of the roof on account of the costs of so doing, notwithstanding that these costs could properly be passed on to the tenants. Instead, in reliance of the fact that historical works had been carried out prior to their appointment by Sherwell Valley Builders, that firm had been asked to provide a quotation. Their

quotation which was included at page 94 of the Applicant's bundle was used as a template for a specification which was then sent to other contractors. Thompsons did not cost this specification but produced their own detailed quotation. Anchorage Roofing Company produced a detailed quotation in addition to costing the specification. Later upon the recommendation of the freeholder, a quotation was obtained from a fourth contractor A. G. Wilson. In the meantime correspondence had been received from and exchanged with the Respondent and TMS even attempted to obtain a drawing or plan from the company (presumably the originally architects but this was not clarified) Christopher Curtis Associates. (This letter appears at page 108 of the Applicant's bundle) No plan appears to have been produced. The Respondent suggests that he could have drawn up a plan himself to enable someone to pinpoint the roof areas in need of repair or replacement. It was not apparent to the Tribunal how he might have done this. It was very difficult to visually appraise even the approximate locations of all the three flat roofs and no examination of their state of repair was possible without access to the individual flats. In the absence of any further nominated contractors and in accordance with the consultation requirements TMS advised all owners on the 27th January 2009 that it proposed to instruct A. G. Wilson. At the same time it issued an invoice to each lessee for a payment of £1,500 on account of the cost of the proposed roofing works. TMS accepted, that ideally a detailed specification for the roofing works, should have been prepared. However Mr Holmes and Ms Hoare suggested that in order to enable a proper inspection of the roofs of the Building scaffolding would have had to be erected. Therefore a decision had been taken to minimise the lessees exposure to additional cost by utilising the knowledge of Sherwell Valley Builders combined with an invitation from each of the firms to inspect the roof which each had prior to producing quotations. The Landlord suggested that as A. G. Wilson were well known to him and had carried out work for him that company was more likely to offer a competitive quotation. TMS accepted that the quotations were difficult to compare directly. It expressed a willingness to comply fully with the consultation procedure with regard to the fourth

quotation. The works that had been carried out in August of this year were done out of necessity. The Landlord stated that the tenant of Flat 6 had threatened to take proceedings against the Freeholder if the works were not carried out. Whilst it was accepted that on the day of the Hearing no leaks were apparent or could be verified, it should be noted that this was a dry fine day and that the weather had been more temperate during both the current month and preceding month than it was in the July or August.

The Lease

21. A copy of the lease of Flat 4, the Property, dated 24th January 1991 and made between Derick Coles Property Investments Limited (1) Abbey Court (Torquay) Management Limited (2) and Paula Antoniou (3) ("the Lease") is included in the bundles. Clause 7(2)(i) of the Lease obliges the Lessee "to pay to the Management Company one seventh of the expenditure incurred by the Management Company on the matters specified in the Fifth Schedule and in carrying out its obligations under Clause 6 hereof in respect of the Building...." Clause 7(2)(vii) of the Lease states that "the expenditure incurred by the Management Company in any financial year may if the Management Company in its absolute discretion thinks fit be deemed to include not only the actual expenditure incurred during the financial year of the Management company but also such reasonable anticipated expenditure of a periodic or recurring nature as the Management Company or the Managing agents shall in its or their sole discretion allocate to the financial year in question as being fair and reasonable in the circumstances" The Fifth Schedule refers to the costs expenses outgoings and matters in respect of which the Lessee is to contribute and includes (amongst other things) the expenses of maintaining repairing redecorating and renewing:-

(i) the roof foundations main structure and the exterior of the Building and boundary walls stairways pathways fences gutters and rainwater pipes of the building

(ii) the gas and water pipes drains and electric cables and wires in under or upon the Building enjoyed or used by the Lessee in common with the owner and lessees of the other flats

(iii) the entrance halls passages landings staircases and grounds and all other facilities and amenities (if any) of the Building so enjoyed by the Lessee in common with the lessees of the other flats in accordance with the Management Company's covenant contained in Clause 6 hereof

It is not disputed that the obligations of the Lessee to the Management Company as so defined in the Lease are also due to the Landlord. Nor is it disputed that the covenants of the Management Company with the Lessee and the Lessor severally can be undertaken by the Lessor (the Applicant and the freeholder in this application).

Clause 6 of the Lease contains a covenant by the Management Company as follows:-

(1) Subject to payment of the maintenance charges as hereinafter provided and to the performance and observance by the Lessee of all the covenants agreements and obligations on the part of the Lessee to be performed and observed the Management Company will maintain redecorate and keep in good and substantial repair

(i) the roof foundations main structure boundary walls pathways fences gutters and rainwater pipes and grounds of the Building

(ii) the gas and water pipes drains and electric cables and wires in under or upon the Building enjoyed or used by the Lessee in common with the owner and lessees of the other parts of the Building

(iii) the entrance halls passages landings and staircases and all other facilities and amenities (if any) of the Building so enjoyed or used by the Lessee in common with the lessees of the other flats

(2) Subject as aforesaid the Management Company will so far as practicable use its best endeavours to light and clean the entrance hall staircases external surface of the windows and landings so enjoyed or used by the Lessee in common as aforesaid

(3) Subject as aforesaid the Management Company will so often as reasonably required decorate the exterior of the building and in particular will paint wash varnish grain and otherwise properly treat the exterior parts of the Building usually so treated with materials of the highest quality once every four years computed from the Twenty-fifth day of March One thousand nine hundred and ninety

(4) That the Management Company will forthwith insure and at all times during the said term keep insured against two years' loss of rent receivable by the Lessor in respect of the Building and ....." [The clause goes on to state the risks to be insured and the conditions of such insurance with regard to the lessees]

(5) Subject as aforesaid the Management Company will take all reasonable steps to enforce the observance and performance by the lessees of the other flats in the Building of the covenants and conditions in the Leases of the other flats which fall to be observed and performed by the Lessee

22. The Lessee's covenants are contained in Clause 7 of the Lease. In addition to covenanting to repair and maintain the flat the lessee convents to pay one seventh of the expenditure incurred by the Management Company in carrying out its obligations specified in the fifth schedule of the lease and in carrying out its obligations under Clause 6. The lessee was originally obliged to pay the yearly sum of £300 or "such revised sum as shall be calculated in accordance with the provisions of paragraph (x) of this sub-clause. That paragraph (x) states "it is further specifically provided that he Management Company may if it thinks fit revise and adjust the advance contribution for any of the Management company's financial years to such amount as it

shall deem necessary in the light of expenditure reasonably anticipated for that year....."

23. Clause 7(3) states the Lessor may perform the Management Company's obligations and collect sums referred to in the lease as being payable to that company. No Management Company as originally constituted now exists to manage the Building and the Applicant as freeholder undertakes the management function and is therefore able to enforce the covenants of the lessees in the Lease and collect the sums due.

The Law

24. The relevant legislation is contained in the Landlord and Tenant Act 1985 (as amended) "LTA 1985"

S18 Meaning of "service charge" and "relevant costs".

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance[, improvements] [FN1] or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purposes—

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.[...] [FN2]

[FN1] word inserted by Commonhold and Leasehold Reform Act (2002 c.15), Sch 9 Para 7

[FN2] word inserted by Commonhold and Leasehold Reform Act (2002 c.15), Sch 9 Para 7

Section 19 Limitation of Service Charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

[...] [FN1]

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.[...] [FN2]

[FN1] and [FN2] repealed subject to savings specified in SI 2004/669 Sch.2 para.6 by Commonhold and Leasehold Reform Act (2002 c.15), Sch 14 Para 1

S20C "Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Lands Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.".] [FN1]

[FN1] substituted subject to savings specified in SI 1997/1851 Sch.1 para.1 by Housing Act (1996 c.52), Pt III c I s 83 (4)

S27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.[...] [FN1]

[FN1] inserted subject to savings specified in SI 2004/669 Sch.2 para.6 by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 155 (1)

Decision

25 Having considered the evidence of both parties both in their written submissions and at the Hearing, and the relevant provisions of the Landlord and Tenant Act 1985 (as amended) "The LTA 1985" the Tribunal determined that:-

(i) and (ii) Management fees

the provisions of the Lease (in particular clause 8 of the Fifth Schedule) enables the Applicant to recover management charges; The charges proposed by the Applicants management company both in terms of the management fees and the "one off" set up fee appear to the Tribunal to be reasonable in terms of the services provided. None of the evidence put forward by the Respondent demonstrates that his alternative quotation from southernhay living is for services that could be properly compared to the service currently provided the Applicant's management company.

(iii) Reserve Fund payment

The provisions of the Lease, (in particular clause 7(2)(vii)), enable the Applicant to invoice service charges in advance of expenditure and by way of a reserve fund. The Respondent has indicated that such

recovery, is not intended to ring fence the sums collected, but to provide a reserve so that when an appropriate appraisal of the necessary expenditure is made, either the funds reserved, can be utilised or if necessary an appropriate consultation process embarked upon.

(iv) Building insurance premium

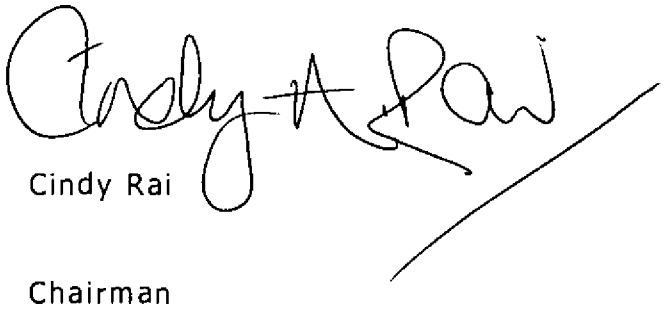
The provisional amount to be collected appears to be reasonable and whilst it might be possible to obtain a cheaper quotation no evidence has been supplied that the Respondent's quotation has been obtained on a directly comparable basis. Even if it was, it is not a requirement that the Applicant accepts the cheapest quotation as long as the quotation it does accept is reasonable and in terms of the amount of cover provided.

(v) Roofing Works

Whilst both the parties agreed that water was not ingressing the Building when the inspection was carried out prior to Hearing, the Respondent had not actually disputed that works were necessary. What he had disputed was the extent of the works needed. However neither party had been able to demonstrate this factually. The Applicant had however in obtaining quotations relied upon a specification from a company which had inspected the roof, albeit in the past. The Applicant had also stated that it would consider engaging in further consultation with the lessees and had declined to make an application to circumvent this requirement. The Applicant had told the Tribunal that one of the lessees had threatened proceedings against the Applicant for breach of his obligations (under the lease). He provided evidence of an insurance claim with regard to works which had, since the institution of the proceedings result in the application now before the Tribunal, been carried out to one area of flat roofing. The evidence before the Tribunal was that the Management Company had embarked upon a consultation procedure and was aware of the statutory requirements with which it had to comply prior with incurring major expenditure for which the lessees would be charged. The Tribunal therefore determines that the sum which the Applicant is seeking to recover on account of roofing works

is payable by the Respondent and is in the context of the information provided "reasonable".

Finally the Tribunal does not believe that, on the basis of the evidence produced at the Hearing, and in writing prior to this date, that the application made by the Respondent for the costs of the application not to be regarded as relevant costs, to be taken into account in determining the amount of service charges payable by the Respondent and recoverable by the Applicant as service charges would be just and equitable in the circumstances. It therefore makes no order under Section 20C of the LTA 1985.



Cindy Rai

Chairman