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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, AS AMENDED – SECTIONS 27A AND 20C

REFERENCE: LON/OOAE/LSC/2010/0298

Properties:	**Block C, Flats 14 to 19 Clifford Court, Tanfield Avenue, London NW2 7RY**
Applicants:	**Mrs T Mavani (Flat 14)** **Mr A Blyskosz (Flat 15)** **Mr N Iqbal (Flat 16)** **Mr M Cohen (Flat 17)** **Mr J McHale (Flat 19)**
Respondent:	**ASB Property Management Ltd.**
Appearances:	**Mr M Cohen (Flat 17)** **Mr A Shah (representing the tenant of Flat 14)** **For the Applicants** **Mr S Bowry, Director, ASB Property Management Ltd.** **For the Respondent**
Date of inspection:	**1 September 2010**
Dates of hearing:	**1 and 2 September 2010**
Date of Tribunal's Decision:	**15 September 2010**
Members of the Tribunal	**Mrs J S L Goulden JP** **Mr M A Mathews FRICS** **Mrs G V Barrett JP**

REFERENCE: LON/00AE/LSC/2010/0298

PROPERTY: BLOCKC, FLATS 14,15,16,17 and 19 CLIFFORD COURT, TANFIELD AVENUE, LONDON NW2 7RY

Background

1.The Tribunal was dealing with the following applications dated 24 April 2010 which were received by the Tribunal on 28 April 2010.

(a) an application under S27A of the Landlord and Tenant Act 1985, as amended ("the Act") 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

(b) an application for limitation of landlord's costs of proceedings before the Tribunal under S20C of the Act.

2. The application relates to 5 (of 6) flats in Block C, Clifford Court, Tanfield Avenue, London NW2 7RY ("the property").

3.The Applicants. Mrs T Mavani, Mr A Blyskosz, Mr N Iqbal, Mr M Cohen and Mr J McHale, are the lessees of Flats 14,15,16,17 and 19 all in Block C. The lease of Flat 17, a copy of which was provided to the Tribunal, is dated 1 December 1981 and made between Basinggrove Properties Ltd. (1) Clifford Court Management Co. Ltd.and Maurice Cohen (3) and is for a term of 125 years from 25 December 1971 at the rents and subject to the terms and conditions therein contained. The Tribunal was advised that all the leases were in essentially the same form. The Respondent is ASB Property Management Ltd.

4. The service charge year runs from 25 June to 24 June in each year. The service charge years in dispute are 2007/2008 and 2008/2009. The estimate for 2009/2010 was withdrawn at the Pre Trial Review held on 26 May 2010, but at the substantive hearing the Applicants said that this had been on the basis of the absence of the estimated budget. The Respondent said that the estimated budget for 2009/2010 was in the bundle and therefore the Applicants had had notice of the same. It was agreed on behalf of the Applicants that no further objection would be raised, and the Tribunal confirmed that, if necessary, the actual expenditure could be challenged by the tenants in due course.

Inspection

5.The property was inspected by the Tribunal on 1 September 2010 before the commencement of the hearing in the presence of Mr M Cohen and Mr A Shah. The property, Block C, was one of four blocks each comprising 6 flats. Blocks A, B and C were off Tanfield Avenue and Block D was off Cairnfield Avenue. There was no

access between Blocks A,B and C and Block D. The blocks, which were built in 1938, were 3 storeys with a tiled mansard top floor and flat roof and part brick and part rendered external walls. Each block had one central main entrance and comprised six flats, two per floor. External decorations were poor. Tanfield Avenue was on a bus route and the entrance to the blocks was by pedestrian/vehicular access. At the entrance to the estate was a low brick wall behind which were three open paladins without covers. There was rubbish to one side of the paladins including a mattress. There were limited parking facilities, although these did not appear to be allocated. To one side of Block C there were two blocks of 4 poorly maintained garages and a (locked) pram shed which the Tribunal was advised originally gave access to Block D. The Tribunal noted a mattress which had been discarded in front of one of the garages.

6.The communal gardens were laid mainly to lawn with some shrubs and trees. The gardens were unkempt and the shrubs were sparse in places. The pathways were pitted and cracked. There were cracked and broken fences around the estate.

7.The Tribunal was invited into Block C, which had an entryphone. It was noted that some of the glass panes in the door had been replaced with painted plywood sheets (as were Blocks A and B). The common parts were tired, basic and shabby. There was lino laid to the floor and steps to the upper levels. In several places the nosings were missing, as were light fittings. The walls and flooring were grubby. Although apparently swept, there were small pockets of dust in the corners of some of the floors.

Hearing

8.The hearing took place on 1 and 2 September 2010. The Applicants were represented by Mr M Cohen (Flat 17) and Mr A Shah who was representing his mother in law, Mrs T Mavani (Flat 14). The Respondent company was represented by a Director, Mr S Bowry.

9.The Tribunal permitted an adjournment in order to see if the issues between the parties could be resolved or narrowed. This proved unsuccessful.

10.The issues in dispute which remain to be determined by the Tribunal are as follows:-

- Gardening
- Cleaning grounds
- Refuse collection
- Fence repair
- Repairs
- Accountancy
- Management fees
- Limitation of landlord's costs of proceedings
- Reimbursement of fees

11.The burden is on the Applicants to prove their case with such relevant evidence as is sufficient to persuade the Tribunal of the merits of their arguments. The Tribunal is not permitted to take into account the personal circumstances of the parties when

making its decision. It should also be pointed out that the absence of invoices in themselves is no bar to the Tribunal finding that costs had been reasonably incurred.

12.The contract between the parties is the lease between them and both sides are bound by the contractual terms contained therein.

13.The salient points of the evidence presented, and the Tribunal's determinations are given under each head, but the Tribunal considers that it might be helpful to the parties if it sets out the basis on which its considerations are made.

14.The Tribunal has to decide not whether the cost of any particular service charge item is necessarily the cheapest available or the most reasonable, but whether the charge that was made was **"reasonably incurred"** by the landlord i.e. was the action taken in incurring the costs and also the amount of those costs both reasonable.

15.The difference in the words "reasonable" and "reasonably incurred" was set out in the Lands Tribunal case of **Forcelux Ltd -v- Sweetman and Parker (8 May 2001)** in which it was stated, inter alia,

> *"....there are, in my judgment, two distinctly separate matters I have to consider. Firstly the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market. It has to be a question of degree...."*

Gardening

16.The amounts in issue under this head were £2,775 (2007/2008) and £2,600 (2008/2009). The costs were charged to Blocks A, B and C only. Block D was charged separately. The Applicants' challenge was as to cost and quality of service provided

17. Mr Cohen said that he had complained to Mr Bowry *"for months, verbally"* He confirmed that he had now sent written complaints, but had also complained to the council and a counsellor had come to inspect the garden and, he thought, had written to the Respondent. Mr Cohen said that he had never seen two gardeners in the back garden at any one time. He considered the cost exorbitant and the quality had deteriorated. The present gardener was *"slow and bad"*. He said *"our back garden was not dealt with until last Sunday"*.

18.Mr Shah said that two alternative quotations had been obtained, copies of which were produced by firms who had made an inspection of the gardens. One quotation was for £960 (to include litter picking) and the other £1800. Copies of the quotations were provided. He also said *"Mr Bowry brought people in his car to do the gardening"*. He doubted whether the invoices produced were correct.

19.Mr Bowry said that he had invited tenders from several gardeners and had just asked for a verbal quotation. The contractors chosen, JB Gardening Service, sent one, two or three people to carry out gardening works which, in the year 2007/2008, included clearing rubbish and tidying the bins as well as gardening. In the year 2008/2009 the contractors only carried out gardening and cleaning was charged separately. He said *"we visited most Sundays"* and he was happy with the results. The gardening cost was £110 per day and the cleaning cost (in 2007/2008) was £20 per day. The gardeners had been paid in arrears. Mr Bowry thought that in the summer months the gardens were tended twice a month sometimes more, and in the winter months less. The contractors no longer carried out the gardening. Mr Bowry said that they had not been dismissed, but had ceased working because *"they complained of harassment"*. He said the scope of work had now increased and included tree cutting and the quality had improved. . Mr Bowry said that the invoices had been paid in cash because he wished to save bank charges which would also have to be added to the service charges. He said that he was trying to keep service charges down to prevent complaints from the tenants.

20.There was no specification of the work to be carried out or indeed when the work was to be carried out. There was no contract. The Tribunal rejects Mr Bowry's evidence that the contractors worked for a whole day and/or that he carried out regular inspections. The Tribunal prefers Mr Cohen's evidence that for three days before the Tribunal's inspection there was a sudden increase in gardening. The gardening was of poor quality. The weeds and general lack of maintenance over a period of time had been obvious at inspection. The garden had not been cared for.

21.Although, as stated in paragraph 11 above, absence of invoices do not necessarily mean that costs have been unreasonably incurred, the Tribunal has considered the invoices produced. They were vague. Most in 1998 did not indicate when or which work was carried out. Some were merely written out. None contained an invoice number.

22.In the circumstances of this case and in view of the paucity of evidence produced on behalf of the Respondent the Tribunal, using a broad brush approach, reduces the amounts claimed for gardening.

23.The Tribunal determines that, in respect of gardening, for Blocks A, B and C, the costs of £1,500 (to include litter picking) (2007/2008) and £1,200 (gardening only) (2008/2009) are relevant and reasonably incurred and properly chargeable to the service charge account.

Cleaning grounds

24.The amount in issue under this head was £1,060 (2008/2009). The cost was charged to Blocks A, B and C only. The challenge was as to the cost. There was no challenge as to standard.

25.Mr Bowry said that the original gardening contractors used to pick up litter when they came on Sundays, but the refuse bin collection was not until Tuesday by which time considerable litter had accumulated. Items which had been found included condoms and syringes as well as food waste. He said that there were *"hot spots"*

where people had left a considerable amount of litter, namely by the bus stop and also by the paladins. He said that the contractor was paid in cash since the company had not wanted to incur bank charges. There was no contract.

26.The Applicants accepted that most of the litter was by the bus stop, but said that the gardening costs had originally included picking up litter and therefore the cost of cleaning the grounds was too high. The Applicants were unhappy that the contractor was paid in cash.

27.The Tribunal accepts that litter has become an increasing problem over the years, particularly where an estate is on a main road and by a bus stop. Again the Tribunal notes that the Respondent has paid cash and the invoices are vague, hand written, and carry no invoice numbers. The Tribunal reduces the cost placed to the service charge account for this service.

28.The Tribunal determines that in respect of cleaning grounds for Blocks A, B and C, the cost of £750 (ie £250 per block) is relevant and reasonably incurred and properly chargeable to the service charge account.

Refuse collection

29.The amounts in issue under this head were £495 (2007/2008) and £990 (2008/2009). The costs were charged to Blocks A, B and C only.

30.The Applicants' challenge was as to liability and also that the costs were too high and a skip would have been cheaper at approximately £150. It was said that the landlord should have been aware that items such as refrigerators, televisions etc had come from specific flats and the tenants of those flats should have paid for their removal, rather than the cost being placed on the service charge account to be borne by all those persons paying service charges. Mr Shah accepted that the dumping of refuse could be a problem, but felt that the landlord should have been more vigilant. The Applicants had doubts as to the veracity of the invoices.

31.Mr Bowry said that previously the council had taken five items free of charge per unit, but this policy had changed and now the council refused to take items such as refrigerators and freezers. He thought that whereas a private individual could obtain free removal of large items by the council, Mr Bowry would be charged as a commercial concern. Mr Bowry had therefore paid private contractors to remove the refuse and had let it accumulate until it was bad in order to save costs. He paid the contractors in cash for the same reasons as set out in paragraph 19 above.

32.The tenants are liable within the service charge for removal of refuse within the estate. The landlord does not have to discuss or obtain agreement from tenants in respect of refuse collection in these circumstances and for this level of cost. There has, unfortunately, been an increase in large items of refuse being left in some London estates, and it is not felt that the landlord would have known which flat occupier (if any) had been responsible. From photographs supplied by the Applicants, it is clear that in this particular area, on a main road and by a bus stop, that the dumping of refuse may be more prevalent than in other areas. The cost of a skip as contended by

Mr Shah does not appear to include ancillary costs of travelling to and from the site and the cost of disposal of the contents of the skip.

33.In the view of the Tribunal, the Respondent should have been more pro active under this head and perhaps notified all of the tenants on the estate that they were not to dump refuse and if they did so they would be charged for its removal. It is not surprising that the tenants have suspicions in respect of the invoices which were all handwritten and somewhat vague. However the refuse was considerable and had had to be removed and the cost would have included haulage.

34.The Tribunal determines that, in respect of refuse collection, the costs of £495 (2007/2008) and £990 (2008/2009) charged to Blocks A, B and C are relevant and reasonable incurred and properly chargeable to the service charge account.

Fence repair

35.The amounts in issue under this head were £80 (2007/2008) which was charged to Block C only and £450 (2008/2009) which was charged to Blocks A, B and C.

36.The Applicants' challenge in respect of the charge of £80 (2007/2008) was that no repair had been carried out and/or liability and in respect of the charge of £450 (2008/2009) was that the Applicants were not liable and/or the cost was deemed excessive.

37.With regard to the £80 charge, the Applicants said that a small part of the perimeter fence had broken and Mr Cohen had paid for its repair. He had never seen any repair to the fence referred to.

38. As to the £450 charge, this referred to a section of replacement fence following a fire. The Applicants did not think that this should be charged at all. Mr Cohen said that he had "*proof*" that it was the responsibility for the commercial unit who was responsible for the private alleyway between the commercial unit and the estate. The Tribunal was advised that a fire had taken hold in the open refuse bins situated in the alleyway and next to the boundary fence. Mr Cohen said that he did not see what had caused the fire, but he had seen the fence and bins on fire and he, together with other tenants, had been evacuated. He said Mr Bowry should have ensured that insurance had covered the loss. Mr Shah said that the cost was, in any event excessive but provided no alternative quotations.

39.Mr Bowry said that the £80 charged to Block C was in the back garden of that block (behind the gate which led to the back garden). He therefore felt that the cost should be borne by the tenants of that block. The fence which bordered on to the alleyway between the block and the shops was broken and the railings had come away. If not attended to, Mr Bowry said that it would have fallen down. The contractor had replaced the side rail and repaired the fence. An invoice was produced from LS Builders who had been paid in cash.

40.In respect of the £450 charged to Blocks A, B and C, Mr Bowry said that he had telephoned the insurers, AXA, but had been advised verbally that the fence had not been covered by insurance. He had nothing in writing. Mr Bowry said that he had

attended the site and spoken to the police who had advised him that it would be difficult to prove what had caused the fire. No approach had been made by him to the commercial unit. He said that the job was very difficult, since there were charred remains of the fence and the post had to be dug out. Mr Bowry produced a handwritten invoice which he had paid in cash.

41.There appeared to be some dispute as to which part of the fence had been repaired for £80 in the service charge year 2007/2008, and the Tribunal do not think that the parties are referring to the same part of the fence.The Respondent has produced an invoice typed in proper form and carrying an invoice number. The amount is within an acceptable band,

42.With regard to the cost of £450 in the service charge year 2008/2009, the Tribunal is critical of the Respondent in that Mr Bowry did not appear to be pro active and it is felt that greater effort should have been made in order to assess liability or put the insurers to proof that the insurance company was not liable. The invoice was again handwritten and difficult to read. However, it must have been a bad fire if the tenants were evacuated and part of the cost was to remove the burnt remains. Mr Bowry again paid in cash. There was no firm evidence produced as to the cause of the fire.

43.The Tribunal determines that, in respect of fence repair, the cost of £80 (2007/2008) chargeable to Block C only and £450 (2008/2009) chargeable to Blocks A, B and C (2008/2009) are relevant and reasonably incurred and properly chargeable to the service charge account.

Repairs

44.This related to a one off payment of £200 for Block C (only) in respect of replacement of two glass panels in the main entrance door by sheets of painted plywood in the service charge year 2008/2009.

45.The Applicants said that the cost was too high and should be in the region of £100 for labour and materials. In addition, they complained of the standard and Mr Cohen said that the plywood looked *"terrible"*.

46.The Applicants said that they would have been happy to pay for good quality workmanship but the Respondent should have obtained two or three quotations first. Mr Cohen said that this was the first time the glass panel had broken since 1938 and disputed the Respondent's claim that this had happened on previous occasions. Initially Mr Cohen said that there was just a little hole in the glass which should have been left, but he later conceded that the glass had shattered. He also said that he would have been willing to pay more for a replacement in glass, but not very much more.

47.Mr Bowry said that the damage was to Block C only and was therefore charged to that block. He said that when he had visited the estate, he noticed that the glass panels had been broken and it was therefore a health and safety issue. A template had been taken and the door fitted with plywood panels which had then been painted white. He said that the glass panels in the doors had broken regularly. He accepted that the standard of the plywood panels was a valid argument, but to replace the panels with glass would be prohibitively expensive since the glass was not square and had to be

specially cut after a wooden template had been used. He said that if replaced in glass, the cost would be in the region of £500. He thought that the contractor had been recommended by someone. The contractor had been paid in cash.

48.Broken glass panels in a main entrance door (which did not, on inspection, appear to be a sturdy door) would be a health and safety issue and the Respondent had no alternative but to repair the same. The repair is unsightly, but the Tribunal has no doubt that to replace the shaped glass panels with new shaped glass panels which met current safety standards would have been far more costly and Mr Cohen did concede that he would have been unwilling to pay much more. Again Mr Bowry paid in cash and a scribbled hand written invoice (with no number) was produced which did not assist the Tribunal. However the work has been carried out and the Tribunal has used its own knowledge and experience as an expert Tribunal.

49.The Tribunal determines that in respect of the repair to Block C and which was charged to Block C alone, the cost of £200 is relevant and reasonably incurred and properly chargeable to the service charge account.

Accountancy

50.The accountancy fees were £600 (2007/2008) and £600 (2008/2009). The charge was in respect of Blocks A, B,C, and D.

51.The Applicants said it was not clear how the fees had been arrived at and the cost included company tax returns. They thought that the accountancy fees for the four blocks should not exceed £450 to £500 per annum.

52.Mr Bowry said that the actual accountants' fees were in excess of the amount charged to the blocks. The accountants had calculated what proportion should be attributable to the four blocks and the Respondent had relied on the professional advice. He thought that the accountants were undercharging in respect of the Clifford Court accounts. Invoices were produced.

53.The parties were not far apart in respect of the costs under this head. The amounts placed to the service charge account in respect of all four blocks were those allocated by the accountants and the Respondent was entitled to rely on professional advice. The amount attributable to each block was £150 and the amount payable by each flat owner in each block was £25 per annum, which is not considered excessive.

54.The Tribunal determines that in respect of accountancy fees for Blocks A, B,C and D, the costs of £600 (2007/2008) and £600 (2008/2009) are relevant and reasonably incurred and properly chargeable to the service charge account.

Management fees

55.The management fees were £740 for each of the service charge years 2007/2008 and 2008/2009. The fees of £740 were charged for each block. The Applicants' challenge was as to costs and standard.

56.The Applicants said that they had written to the Respondent in respect of water leaks to two of the flats but no action had been taken. Telephone calls made had not been answered or were cut off. There had been a number of parking issues and a permit system had been introduced, but the issues have not been resolved. The Respondent had not complied with legal requirements in respect of the service charge demands. There had been very poor management of the block and the communal cleaning was poor. The Applicants said *"there is no communication or involvement with the tenants"*. Mr Cohen said *"prior to 2007, we got a lot more. Before 2007, the landlord talked and discussed issues. The landlord knew what was going on in the blocks. If the present landlord knows, he does nothing about it"*

57.Mr Bowry said that the fees had been based on the time and effort in managing contractors, insurance and other issues raised. He said that Block C was a *"troublesome"* block and *"the residents want to challenge everything we do. It was a no win situation"* Mr Bowry said that his wife helped him by carrying out the administration. His wife prepared the books and the statements of account. They worked from home. He visited the site on average twice a week and the tenants were able to reach him on his mobile phone at any time, but they insisted on telephoning him at home on the land line. He confirmed that a separate bank account was held for Clifford Court, but he was only permitted to receive up to ten cheques a month and write no more than three cheques a month to operate the account at no charge.

58.In respect of the complaints of water leaks, the relevant flats had been visited several times and despite promises nothing had been done. Mr Bowry said he had to get the plumber (at no cost to the tenants) and had resolved the issue with the insurance company and delivered the cheque personally to the tenant. He said *"they don't see what happens behind the scenes"*.

59.Mr Bowry has not been proactive in management of the blocks and appears unsure of his responsibilities and/or the lease terms. He had never heard of the RICS Service Charge Residential Management Code which sets out in clear terms best practice for those managing leasehold residential properties (other than a public sector authority or registered social landlord).

60.The service charge demands served on the tenants had not been in the correct form, which resulted in the tenants withholding their service charge payments thus, presumably, causing cash flow problems. After the local authority had given Mr Bowry advice, the service charge demands had been corrected. Contractors had been paid in cash to save bank charges and Mr Bowry had been content with contractors' verbal quotations only. No estimates from contractors were produced within the hearing bundle. Arrangements had been more informal than should be expected.

61. Mr Bowry appears to be a reluctant landlord and has other work related commitments. He confirmed that he only wanted to collect the ground rents and had no experience as a managing agent. On the other hand, the Applicants held a wholly unrealistic expectation of their right to involve themselves in management of the block, although Mr Bowry expected the tenants to make their own arrangements, presumably to save costs.

62.The management fees charged, although at the lower end of the scale at £123.33 per flat, are too high for the level of service provided. In view of the criticisms made above, the Tribunal considers that the management fees should be reduced.

63.The Tribunal determines that in respect of management fees, the sum of £500 (2007/2008) and £500 (2008/2009) for each block is relevant and reasonably incurred and properly chargeable to the service charge account. In making this determination, the Tribunal wishes to make it quite clear that its decision is based on the quality of service provided for those two service charge years in issue. If either the quality of service improves or the Respondent decides to instruct a firm of managing agents, the tenants should expect to pay more for management of the blocks. This is of particular importance since works of maintenance are clearly required to the fabric of the building.

Limitation of landlord's costs of proceedings

64. Mr Bowry wished to place the sum of £200 on the service charge account to cover travelling expenses and photocopying charges. He identified the clause in the lease on which he wished to rely.

65.Mr Shah said that the Applicants were not in arrears although he accepted that two of the Applicants' mortgagors had paid the arrears. The Applicants had not wanted to make an application, but had been forced to seek assistance from the LVT since the Respondent had failed to respond to queries raised.

66.Mr Bowry said that the Respondent had tried to resolve matters and explain details which had been troubling the Applicants, some of whom were in arrears. A county court case against one of the Applicants had been put on hold pending the determination of the Tribunal He offered them the opportunity to take over the management, purchase the freehold or appoint managing agents, all of which had been refused. He said that he was in a difficult position and *"if the service is not provided they go to Brent Council and if it is provided they challenge the costs"*

67.S20C of the Act states:-

"(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 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."

68.In the view of this Tribunal, the lease permits such costs to be placed on the service charge account. The question for the Tribunal is whether it is reasonable to allow the Respondent to do so.

69.In applications of this nature, the Tribunal endeavours to view the matter as a whole including, but not limited to, the degree of success, the conduct of the parties and as to whether, in the Tribunal's opinion, resolution could or might have been possible with goodwill on both sides.

70.Although the amount which was sought to be placed on the service charge account was modest, in the view of the Tribunal, the Respondent has, to some extent , brought this problem on to itself. Mr Bowry clearly does not understand or appreciate the company's rights and obligations under the lease in connection with maintenance of these blocks.

71.The Tribunal determines that it is just and equitable that the costs incurred by the Applicant in connection with proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable. The sum of £200 therefore is not to be placed on the service charge account.

Reimbursement of fees

72. On behalf of the Applicants, Mr Shah requested that the Tribunal consider making an order for the Respondent to reimburse to the Applicants the application fee of £100 and the hearing fee of £150. The arguments from both sides were as for the application under S20C of the Act.

73.The Tribunal considered whether to exercise its discretion under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

74.The Tribunal acknowledges that both sides may have incurred costs which are irrecoverable. However, it is felt that, in the particular circumstances of this case, to make an order for the Respondent to reimburse any part of the application and/or hearing fees would be punitive.

75.The Tribunal does not intend to exercise its discretion under this head and declines to make an order for reimbursement by the Respondent to the Applicants of the application and/or hearing fees or any part thereof.

76. As a general point, in the circumstances of this case, the Tribunal feels that the problems between the parties stem from a lack of understanding of each sides' rights and responsibilities under the lease. Mr Bowry appears to be out of his depth in some aspects and it is unacceptable that all contractors are paid in cash in order to save bank charges. On the other hand, whilst it is understandable that the lessees wish to keep costs down, this is at odds with the type of service which they require.

77. Although the Tribunal made it clear at the hearing that it is not within the Tribunal's remit to tell a landlord how to run its own property, it does seem to this Tribunal that the present situation cannot continue. The Tribunal noted the difficulties Mr Bowry had with the management and during the course of the hearing commented on how this might be addressed in future.

78.The lack of communication and transparency in the past has exacerbated the problems between the parties and will do so again unless addressed. The parties are urged to communicate with each other in order to reach a more harmonious relationship and the Tribunal hopes that both sides are able to resolve their different needs and expectations in the future.

The Tribunal's determinations as to service charges are binding on the parties and may be enforced through the county courts if service charges determined as payable remain unpaid.

CHAIRMAN.....

DATE.....15.. September.2010.....