

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**DECISION OF THE SOUTHERN LEASEHOLD VALUATION  
TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE  
LANDLORD AND TENANT ACT 1985**

**FLAT 4 CARILLON HOUSE, 18 EVERSFIELD ROAD, EASTBOURNE**

Applicant: S Naish (Flat 4)

Respondent: Longmint Ltd (Freeholder)

Date of hearing: 1 November 2006

Date of inspection: 1 November 2006

Appearances: Applicant in person

Mr Kilbane (solicitor) of Juliet Bellis & Co and  
Mr Paul Charlton of Dunlop Haywards (surveyor) for the  
respondent

Members of the Leasehold Valuation Tribunal:

Mr MA Loveday BA(Hons) MCI Arb  
Mr BHR Simms FRICS MCI Arb  
Mr R Athow FRICS MIRPM

## **BACKGROUND**

1. This is an application under section 27A of the Landlord and Tenant Act 1985 in respect of service charges for a block of flats in Eastbourne. The applicant is the joint leasehold owner of flat 4, Carillon House, 18 Eversfield Road. The respondent is the reversionary owner. The application is dated 3 August 2006. On 22 August 2006, the Tribunal gave directions for the determination of the following issues:
  - (a) In respect of fire precaution works incurred in 2006, whether the respondent landlord complied with the consultation requirements of s.20 of the Act;
  - (b) In respect of the relevant cost of those works, whether the costs were or will be reasonably incurred in accordance with s.19(1) of the Act and whether (to the extent that the relevant costs have not been incurred) whether they are reasonable under s.19(2) of the Act.
  - (c) In respect of the relevant cost of £3,528.26 for surveyors incurred in 2005, whether those costs were reasonably incurred in accordance with s.19(1)(a) of the Act.
  - (d) In respect of the relevant cost of £1,992.63 for insurance whether those costs were reasonably incurred in accordance with s.19(1)(a) of the Act.

There is no dispute that the costs are recoverable under the terms of the applicant's lease dated 21 December 1989.

2. The Tribunal inspected before the hearing. The subject premises are located in a residential area of central Eastbourne overlooking a park. They comprise an end of terrace 4 storey house c.1900 with a lower ground floor and a 3 storey bay to the front. Construction is of brick under a pitched replacement tile roof and the front elevation is rendered in cement and painted. There are timber sash windows. To the side is an external staircase giving access to the main door and common parts. The house is lower to the rear with 5 storeys and a rear addition. On the day of inspection, cabling work was being carried out in the common parts which evidently related to fire precaution work. On the ground floor was

a small electrical intake cupboard. The whole has been divided into 7 flats, the applicant's flat being on the upper ground floor. The living room windows of the flat overlook the light well to the side of the rear addition and the rear bedroom windows overlook the rear garden. Both are at first floor height.

3. The Tribunal was provided with a bundle from the applicant that included his statement of case. At the hearing, the respondent produced a statement in reply with various attachments. The applicant did not object to this or seek an adjournment.

#### **The fire precaution works**

4. The first issue is whether the respondent complied with the consultation requirements of s.20 of the 1985 Act (as amended) and the Service Charges (Consultation Requirements)(England) Regulations 2003 ("The Consultation Regulations").
5. The facts are not really in dispute and can be taken from the applicant's statement of case. The landlord's agents are Haywards Property Services Ltd whose principal office is in Croydon. On 28 January 2004, Eastbourne Borough Council served a 'minded to' notice under Part III of the Housing Act 1985 which required fire precaution works to be carried out within six months. Messrs Haywards successfully appealed this notice on the ground that it should have been served on the leaseholders as well as the reversionary owner. As a result, further similar 'minded to' notices were served on the respondent and each leaseholder on 9 November 2004 – again requiring the fire precaution works to be completed within six months. These notices specified an external fire escape staircase from the rear bedroom window of flat 4 to the garden.
6. On 16 November 2004, Messrs. Haywards served on each leaseholder a notice under paragraph 8 of Schedule 4 to the Consultation Regulations. This described the works as "*Fire safety works as per Notice issued by Eastbourne Borough Council on 09 Nov 04.*" The notice invited

observations “*within 30 days of this Notice i.e. by 17<sup>th</sup> December 2004*”.

On 18 November, Haywards wrote to the lessees suggesting that works to the individual flats (including the fire escape to his flat) should be carried out by the individual leaseholders with the respondent’s surveyors merely overseeing the works. However, on 23 and 25 November 2004, the applicant wrote to Haywards proposing that the respondent should carry out the fire precaution works and recover the cost by way of the service charges. On 1 December 2004, Haywards replied stating that on legal advice they considered the new external staircase was the landlord’s responsibility. They suggested that the lessees could nominate contractors and carry out the works to their individual flats themselves, but that the respondent needed a surveyor to be involved with the staircase and automated fire system in the common parts. Haywards asked the lessees to sign a form of waiver from the provisions of s.20 of the 1985 Act – otherwise they would have to comply with the 60 day notice period under the s.20 notice. On 5 December 2004, the applicant nominated 5 contractors which included Secure Systems of Brighton and a surveyor Messrs Heynes of Eastbourne. On 15 January 2005, Eastbourne Borough Council followed up the ‘minded to’ notice with a notice requiring the fire precaution works under s.352 of the Housing Act 1985. Insufficient waiver forms were returned to the agents. On 17 July 2006, Haywards therefore sent to each lessee a paragraph (b) statement and a notice accompanying the statement of estimates. The former gave details of five estimates for the works from contractors which included Secure Systems (who were stated not to have submitted a tender) and the firms of Knapman & Sons and Barrett Bros (who had). The lowest estimate was from Knapman & Sons for £59,339.84. The notice accompanying the paragraph (b) statement included the following words:

*“We invite you to make written observations in relation to any of the estimates by sending them to **Kim Shoesmith, Haywards Property Services, Phoenix House, 11 Wellesley Road, Croydon CR0 2NW**. Observations must be made within the consultation period of 30 days from the date of this notice. The consultation period will end on Tuesday 14<sup>th</sup> August 2006.”*

The notices were posted by ordinary post.

7. On 20 July 2006, Dunlop Haywards Ltd, a building consultancy associated with the agents, wrote to the lessees stating that it had been instructed to proceed with the works and that the works would start on 31 July 2006. On 21 July, the applicant wrote to the agents querying the cost of the surveyor, asking for copies of the estimates from the contractors and complaining that he had been allowed insufficient “consultation time”. On 16 August 2006, Knapman & Sons wrote to the lessees to say they had been instructed to carry out the fire precaution works. According to the applicant, works commenced on 31 July 2006 (the date referred to in Dunlop Haywards letter of 13 July). According to the respondent, works commenced on 5 September 2006 (as per a letter from Knapman & Sons dated 18 August 2006).
  
8. In their submissions, both parties relied on their statements of case supplemented by oral submissions at the hearing. The Tribunal invited the parties to go through the consultation requirements in the regulations in some detail. They were also asked to comment on the words of the notice accompanying the paragraph (b) statement of 17 July 2006 – the Tribunal taking judicial notice that 14 August 2006 was a Monday and that the 30<sup>th</sup> day after 17 July 2006 was Wednesday 16 August 2006. The Tribunal also invited submissions on the principles in Mannai Investment Co v Eagle Star Life Assurance Co [1997] AC 749.
  
9. The applicant submitted that insufficient time had been allowed for consultation after the notices of 17 July 2006. The lessees had been informed only 3 days later that the works were about to start. The applicant relied on the mistakes in the notice accompanying the paragraph (b) statement which he submitted did not comply with paragraph 11(10)(c)(iii) of the consultation requirements. The applicant stated that he was given no proper opportunity to inspect the estimates since the estimates were in Croydon – some distance from Eastbourne. He should not be required to go all the way to Croydon to inspect the estimates and the landlord had ignored his offer to pay for the cost of

postage. Although he had agreed to truncate the consultation period, he had not agreed to dispense with the consultation requirements. Finally, no-one looked inside his flat. Any proper consultation would have involved an inspection given the issue of the external fire escape.

10. The respondent submitted that the initial notice of 16 November 2004 complied with the consultation requirements. The applicant had received the Eastbourne BC ‘minded to’ notices dated 28 January and 9 November 2004 and was therefore well aware of the works required. The words referring to the second statutory notice “*describe[d] in general terms the works proposed*” as required by paragraph 8(2)(a) of Schedule 4 to the Act. The landlord had also “*had regard to*” the observations made by the lessees as required by paragraph 3. The lessees had nominated more than one contractor, and the statement of estimates showed that the landlord had “*tr[ie]d to obtain an estimate ... from at least one person nominated by a tenant*” as required by paragraph 11(4) of Schedule 4. Mr Kilbane accepted there was a problem with the dates for the consultation specified in the notice accompanying the paragraph (b) statement of 17 July 2006. He submitted that the wording of the notice were an obvious error and should have read “Tuesday 15<sup>th</sup> August”. A consultation period of 30 days would have ended on 15 August 2006. In any event, no-one had challenged it. As to consultation, the respondent submitted that it had had “*regard to*” the observations on the estimates as required by paragraph 12 of Schedule 4. There was no time limit imposed on entering into the contract under the regulations. The respondent had chosen the lowest estimate and, according to the letter from Knapman & Sons of 18 September 2006, the works started on 5 September 2006. The applicant and the landlord had been happy to truncate the time limits.
11. The Tribunal finds that the notice of intention of 16 November 2004 satisfied the requirements of paragraph 8 to Schedule 4. The only possible issue here was whether the notice “*describe[d], in general terms, the works proposed to be carried out*” as required by paragraph 8(2)(a). The Tribunal considers that the words used (especially when coupled

with the specific reference to the detailed list of works set out in the 'minded to' notice which the applicant accepted he had received) were sufficient to bring the general nature of the works to the attention of the recipients. The Tribunal also finds that the respondent had regard to the applicant's observations in relation to the notice – Haywards did consider whether it was appropriate to allow lessees to manage the project and went to some lengths to explore this alternative as evidenced by letters dated 1 December 2004, 3 December 2004, 21 January 2005, 19 May 2005 and 6 June 2005.

12. As far as the notice of 17 July 2006 is concerned, the requirements of paragraph 2 of Schedule 4 are as follows:

*2-(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)-*

*(a) ...*

*(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out-*

*(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and*

*(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and*

*(c) make all of the estimates available for inspection.*

*(6) ...*

*(7) ...*

*(8) ...*

*(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by-*

*(a) each tenant; and*

*(b) the secretary of the recognised tenants' association (if any).*

*(10) The landlord shall, by notice in writing to each tenant and the association (if any)-*

*(a) specify the place and hours at which the estimates may be inspected;*

*(b) invite the making, in writing, of observations in relation to those estimates;*

*(c) specify-*

*(i) the address to which such observations may be sent;*

*(ii) that they must be delivered within the relevant period; and*

*(iii) the date on which the relevant period ends.*

*(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.*

The “*relevant period*” in paragraph 11(10)(c) is defined in regulation 2 as “*the period of 30 days beginning with the date of the notice.*”

13. To what extent did the admittedly erroneous dates in the notice accompanying the paragraph (b) statement comply with these requirements? First, the Tribunal considers that “*the date of the notice*” in paragraph 2 does not simply mean any arbitrary date which the landlord attaches to the notice. It must mean the date on which the notice is given. Otherwise, the length of the “*relevant period*” of 30 days (a limited period during which the lessees are permitted to make observations) becomes meaningless and open to manipulation. An unscrupulous landlord could frustrate the regulations by backdating a notice or by delaying service of a notice until 30 days after the notice is dated. In this case, the notice is dated 17 July 2006, and it appears that it was posted by ordinary post. Assuming the notice was delivered in the ordinary course of post, the earliest “*date of the notice*” would have been 18 July 2006. As a general rule (as submitted by the respondent), absent any contra indications in the statute or contract concerned, one excludes the last day of period specified by statute and includes the first: see 45(2) Halsbury 228. In this case, the landlord was required to specify the date on which the relevant period “*ended*”, namely the last date of the period of 30 days beginning on 18 July 2006. It follows that the date to be specified for a notice given on 18 July 2006 would be 17 August 2006. If the Tribunal is wrong about the commencement date (and the period is 30 days from the date in the notice irrespective of the date when it is in fact given) the date to be specified would be 16 August 2006. In this instance, the date in fact specified in the notice was ambiguous. The most obvious date was Monday 14 August – although the respondent did submit that the notice specified Tuesday 15 August. Whichever is correct, the Tribunal finds that neither date would in any event meet the requirements of paragraph 11 of Schedule 4 to the regulations.
14. As to Mannai Investment, the respondent submitted that the error in the dates was an obvious one, and that the meaning would be clear to any



recipient. The Tribunal does not accept this argument. The date by which observations were to be made was not clear to the recipient. On the face of the document, a reasonable lessee could not know whether the landlord was specifying this date as being Monday 14 August 2006 or Tuesday 15 August 2006. However, for the reasons given above, neither date complied with the consultation requirements.

15. In addition, paragraph 5(b)(ii) requires the paragraph (b) statement to “set... out ... a summary” of the observations already given and any replies to them. The paragraph (b) statement in this case did not give such a summary. The statement that such a summary was available on inspection does not comply with the requirement to set out the summary in the paragraph (b) statement itself. There is also the requirement in paragraph 11(10) to specify the “place” and “times” where estimates could be inspected – and again no place is so specified.
16. The applicant also relied on the point that the estimates themselves were only available for inspection in Croydon – whereas the property and lessees were over 50 miles away in Eastbourne. The requirement here is in paragraphs 10(10)(a) and 10(11) of Schedule 4. Paragraph 10(11) states that in relation to estimates made available for inspection, paragraph 2 of Schedule 4 applies. In turn, paragraph 2 states:

***“Inspection of description of proposed works***

*2-(1) Where a notice under paragraph 1 specifies a place and hours for inspection-*

*(a) the place and hours so specified must be reasonable; and*  
*(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.*

*(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.”*

17. The effect of this provision is that a notice which (unlike this notice) specifies a place for inspection, has to specify a “reasonable” place. In the Tribunal’s view, an office in Croydon (some 50 miles from

Eastbourne) was not a reasonable “*place*” for inspection. There was no evidence that the respondent adopted the alternative procedure under paragraph 2(2) - whereby the estimates and other required documents were provided free of charge to the lessees.

18. The Tribunal has also considered the contention that the applicant waived the consultation requirements in writing as part of what was described as a “bypass” procedure. No copy of the applicant’s waiver was provided to the Tribunal, but this argument is in any event rejected. Even it were possible to contract out of the regulatory requirements, there are letters from Haywards dated 16 November and 1 December 2004 which expressly state that the waivers sought from lessees would only become effective if 100% of them consented to the “bypass” procedure. The landlord did not gain consent from all the leaseholders, and expressly stated that it was pursuing the s.20 procedure. It is difficult to see how an individual waiver (in whatever terms) could apply in such circumstances. It should be noted that the landlord and its agents had a more conventional route available – namely an application under s.20ZA of the Act to dispense with the consultation requirements. For some reason which is not altogether clear, it chose to adopt the “bypass” procedure instead.
19. Finally, there is the applicant’s submission that the period of consultation after 17 July 2006 was effectively a sham, because the surveyor was by 20 July 2006 instructed to proceed with the works. Some discussion took place as to the landlord’s obligations during this period. The regulations do not specifically state that the landlord may not enter into a contract until after expiry of the relevant period specified in a notice accompanying a paragraph (b) statement. By paragraph 12, the landlord is under an obligation to have regard to observations made during this period. Furthermore, under paragraph 13(1) it must, within 21 days of entering into a contract, send a summary of the contract together with a summary of observations received during the consultation period. It would therefore be impossible for a landlord ever to comply with the

obligation under both paragraphs 12 and 13(1) if it entered into a contract less than 7 days after the paragraph (b) statement. It would also be impossible for the landlord to comply with both paragraphs if it entered into a contract less than 30 days after the paragraph (b) statement and a lessee made observations. The Tribunal does not consider the words of the regulations are clear enough to deprive a landlord of its contractual right to a service charge if it enters into a contract before expiry of the “*relevant period*” of 30 days.

20. In this instance, the applicant sent written observations by recorded delivery to Haywards Property Services on 21 July 2006. There is no evidence that the respondent or its agents considered these observations before entering into the contract for the works. There is no acknowledgement or reply from the agents, no diary to show that the applicant’s observations were considered, and no other evidence that the observations were accepted or rejected. This can be contrasted with the evidence referred to above that the landlord took into account the pre-estimate observations. On the contrary, the precipitate letter of 20 July 2006 suggests that the respondent had no intention of having regard to observations which might have been made before expiry of the relevant period. It follows that paragraph 12 of Schedule 4 to the regulations is not satisfied in this instance.
  
21. Absent any application by the landlord under s.20ZA of the 1985 Act to dispense with the consultation requirements, the Tribunal finds on a number of grounds that the respondent did not comply with the Consultation Regulations. By virtue of section 20(6) of the Landlord and Tenant Act 1985, the relevant contribution by the applicant for fire precaution works is therefore limited to £250.

### **The cost of the works**

22. It is unclear whether all or part of the costs have already been “*incurred*” within the meaning of s.19 of the Landlord and Tenant Act 1985, in that the works were in progress at the date of the Tribunal inspection. However, the applicant sought a determination that the total cost of the works amounting to £39,742 as shown in the tender by Knapman & Sons dated 3 October 2005 was not reasonable under s.19 and asked the Tribunal to limit the amount payable accordingly.
23. The respondent called Mr Paul Charlton of Dunlop Haywards. Mr Charlton took the Tribunal through the process of preparing a detailed contract specification, tender and tender evaluation. Mr Charlton considered it was more cost effective to employ a single contractor than to use several contractors as proposed by the applicant. Even if it led to a cost saving (which was not accepted), there were sound reasons why cheapest did not always mean best when dealing with multiple contractors. Mr Kilcane submitted that the applicant had not provided any real alternative costings. He criticised the alternative estimates provided by the applicant which were based on the works set out in the original ‘minded to’ notice, were out of date, were in some instances unsigned, and which did not correspond to the works being carried out by Knapman & Sons. The contract specification was much more comprehensive. Mr Charlton was cross-examined in some detail about the need for various elements of the specification of works.
24. The applicant submitted that the respondent had used a single contractor based some way away from the property as opposed to a group of local contractors whose costs would have been much more reasonable. He produced estimates from Cavendish Iron Works of Eastbourne for supplying a metal fire escape at £2,793 + VAT, G&S Brickworks Ltd of Eastbourne for creating anew doorway for the fire escape at £2,600 + VAT, Secure Systems of Selsdon Cliffs for a fire protection system and emergency lighting at £4,655 and from AJ Beckett for carpentry at

£1,835 + VAT. This amounted to £13,147.90 – a third of the cost of the contractors chosen by the landlord.

25. In *Forcelux v Sweetman* [2001] 2 EGLR 173 and *Veena SA v Cheong* [2003] 1 EGLR 175, a two stage process for determining s.19 issues was developed. Whether a cost is “*reasonably incurred*” primarily involves consideration of the landlord’s decision making process. However, if that process is considered to be a reasonable one, the Tribunal must then consider whether the costs are so out of line with the market norm so as not to be reasonable.
26. In this case, the landlord prepared a full specification of works and sought estimates from a range of contractors, deciding that it would be better to place all the work with a single contractor. As far as the first stage of the test is concerned, a landlord would have been aware that costs from local contractors and from several small firms may have been cheaper. Against this, the reliability and stability of larger contractors already known to the agents and involving only a single point of contact would have been material considerations. The same applies to the use of a specification of works, which made the contract much easier to administer, albeit that the cost was increased for the lessees. The Tribunal cannot say that these considerations were irrelevant, and it therefore finds that the first stage of the test is satisfied.
27. The real difficulty here is with the second stage of the test. It may be that at first glance a cost of just under £40,000 for fire precaution works to a small block (exclusive of professional fees) appears high. However, the tenant has not provided reliable evidence that this is the case. As Mr Kilcane observed, the estimates from local contractors were not based on the works in the specification, and they were all either old, unsigned or both. On the face of the estimates produced, the Tribunal is satisfied that the landlord has discharged the burden to show a *prima facie* case that the costs were reasonably incurred, and that the applicant has not discharged the burden of showing that they were not reasonably incurred. Even as an

expert Tribunal, the Tribunal cannot substitute its own assessment of reasonable costs without specific evidence adduced by one of the parties.

28. The real difficulty however is that the works in the specification of works may well not be those which it is intended to carry out. Both parties accepted that further discussions were taking place about whether the external fire escape staircase from the applicant's flat was necessary, and that substantial modifications might be made to the specification which might well reduce the cost. The scope of works has already been significantly revised at least once – see letter from Dunlop Haywards to Knapman & Sons dated 13 July 2006. This suggests to the Tribunal that it is being invited to make a somewhat artificial determination that costs are reasonable before the actual amount of those costs is known. It cannot be right that the Tribunal is being asked to do this when another Tribunal may later be asked to consider exactly the same issues of reasonableness once the scope of the works is known and after the final bill for the works has been paid.
29. The Tribunal considers that the answer to this lies in the Tribunal's jurisdiction under s.19. In this instance, the landlord has not (as yet) sought to recover the costs of the works by way of a service charge. When it does so, and if a party applies to the Tribunal for a determination, the criteria in s.19(1) may have to be considered. Until then, the only jurisdiction that the Tribunal has is under s.19(2), which applies to charges "*payable before the relevant costs [we]re incurred*". This limits the costs payable to "*no greater amount than is reasonable*" – a rather different test to s.19(1). However, there is no evidence that the respondent has as yet made any such 'on account' charge in respect of the cost of the works. The applicant did at one point suggest that the respondent may have included a demand for such costs as part of the half yearly demands for service charges dated 22 November 2005 and 16 May 2006, which were included in the bundle. However, the amount of these estimated charges differs little from previous years and it therefore seems unlikely that the landlord has demanded anything on account of the major

works. No copies of specific demands for payment on account of the cost of the works were produced. The Tribunal therefore has no evidence that costs within s.19(1) have arisen.

30. It follows there are no relevant costs for the Tribunal to take into account under either s.19(1) or s.19(2) and the Tribunal declines to limit any charges payable on this basis at this stage. Whether such a limit will be made in the light of any future demand for a service charges is a matter for another Tribunal.

### **Surveyors**

31. The relevant cost of surveyors in 2005 was the sum of £3,528.26. This was shown in the certified service charge summary of expenditure for that year dated 5 April 2005. It was accepted by the respondent that Dunlop Haywards had carried out work for the landlord, that the landlord had paid this bill and that such a cost was properly recoverable under the lease. The sole question was whether the cost was reasonably incurred in accordance with s.19(1)(a) of the Act.
32. The respondent relied again on the evidence of Mr Charlton, who had supervised the work. Mr Kilcane stated that the surveyor's fee was calculated at 15% of the estimated works contract price of £39,749 derived from the tender report dated October 2005 (although the fees of £3,528.26 incurred in 2005 were plainly only part of this figure). He submitted that the fee proposal by Messrs. Heynes relied on by the respondent was not so different from the Dunlop Haywards fee. However, this omitted any fee for planning work, which was included within the Dunlop Haywards fee.
33. The applicant suggested that Dunlop Haywards was associated with the managing agents and that it was not independent. The surveyor had never visited the site. The surveyor had not accepted any of the nominations of contractors put forward by the lessees. A fee of 15% compared unfavourably with the fee of 12.5% proposed by Messrs. Heynes dated 1

September 2006 – particularly since Heynes were proposing to supervise a number of contractors – whereas Dunlop Haywards only had to supervise a head contractor. There was no need for a specification of works and no surveyor was necessary.

34. The Tribunal had the opportunity of hearing Mr Charlton, whose work appeared professional and independent. It is satisfied that the process of tender and tender appraisal was carried out properly. Proper consideration was given to the applicant's nominees (as evidenced by the paragraph (b) notice). A specification of works was entirely reasonable, since the 'minded to' notice was wholly inadequate for tender or production purposes. It was entirely reasonable to employ a qualified surveyor for a project of this size and complexity. However, the Tribunal does face a particular difficulty with the surveyor's fee. The applicant did not produce any evidence of instructions to the surveyor, fee note or any other means of establishing precisely what the fee comprised. As stated above, the figure of £3,528.26 relied upon by the applicant in 2005 is not 15% of the contract price, and it is therefore difficult for the Tribunal to establish whether it is reasonable or not.
  
35. However, the issue that arises is, 15% of what? The Tribunal has not allowed more than a small amount of the relevant costs of the fire precaution works by reason of s.20 of the 1985 Act. However, this does not render it unreasonable for the landlord to have incurred the costs of a surveyor to supervise the works. It is reasonable for the fees incurred in 2005 to have been based on the estimated contract price at that stage rather than what may be the eventual contract price. This fee is reasonable to cover the survey, preparation of the specification and schedule of work. All that is left for the surveyor to charge for in 2006 is the administration of the contract and the final account. When the balance of the fees is incurred in 2006, the total bill from the surveyor may be the subject of further consideration by another Tribunal, and it may or may not be reasonable for a global fee of 15% of the contract price to be



payable. However, for the time being, the Tribunal finds that the interim charge of £3,528 in 2005 was reasonably incurred.

36. The Tribunal therefore finds the relevant cost of £3,528.26 for surveyors incurred in 2005 to be payable.

### **Insurance**

37. A sum of £1,992.63 for insurance was included in the certified service charge summary of expenditure for 2005 referred to above. The applicant accepted that the landlord had laid out the moneys on insurance and that the insurance costs were properly recoverable under the terms of the lease. The issue was whether those costs were reasonably incurred in accordance with s.19(1)(a) of the Act.
38. Mr Kilbane produced a copy of the invoice from the brokers for the 2005/6 premium which amounted to £1,992.63. The insurance was provided by a reputable insurer (AXA) obtained through the brokers, Cadogan Hanover Park. The sum insured for 2005/6 was £820,821 at a rate of 2.42 pence per £1 of cover.
39. The applicant relied on two alternative estimates of the cost of insurance. The first, was for a premium of £1,229.76. The sum insured was £800,000 at a rate of 15.3 pence per £1 of cover. The second, from the brokers Alan Boswell, was for a premium of £1,224 on £800,000 of cover at a rate of 15.3 pence per £1 of cover. He submitted that the premiums paid by the landlord were grossly excessive and that no-one else in Eastbourne paid such premiums.
40. Adopting the above tests, the Tribunal is not satisfied that there is anything about the respondent's decision making process which renders these costs unreasonable. A broker was used, and the insurance was placed with a reputable insurer. Furthermore, the discrepancy between the quotations obtained by the applicant in 2006 and the premium charged to the respondent in 2005 does not show the latter is so excessive as to

render it unreasonable. The mere fact that cover may have been available at a cheaper rate is insufficient in itself to satisfy s.19.

#### **s.20C**

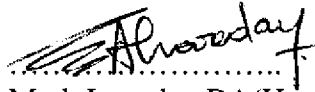
41. Having regard to the guidance given by the Lands Tribunal in *Tenants of Langford Court v Doren* LRX/37/2000 the Tribunal does not consider it just and equitable to make any order under s.20C of the 1985 Act. The applicant has succeeded in relation to the issue of the s.20C consultation procedure, but the landlord has succeeded in respect of the remaining issues. The landlord served its bundle and statement of case late, but there is nothing to suggest that this caused any additional legal costs to be incurred which would not otherwise have been payable. The landlord had to meet the detailed allegations made by the applicant and it was not unreasonable to employ a solicitor and call evidence to resist the application. It is plain that on some occasions the landlord has not replied to correspondence, but that is a matter which may (or may not) go to the reasonableness of the costs of the managing agents – not to whether the costs it has incurred before the Tribunal should be added to the service charges.

#### **Conclusions**

42. The respondent has not complied with Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2005 in respect of the cost of fire precaution works. There is no application by the landlord under s.20ZA of the 1985 Act to dispense with the consultation requirements. Under section 20(6) of the 1985 Act, the relevant contribution by the applicant for fire precaution works is therefore limited to £250.
43. The Tribunal has no jurisdiction to determine whether the same costs should be limited under s.19 of the 1985 Act.
44. The relevant costs of £3,528.26 for surveyors in 2005 are payable.

45. The relevant costs of £1,992.63 for insurance in 2005 are payable.

46. No order is made under s.20C of the 1985 Act.

A handwritten signature in black ink, appearing to read 'M. Loveday', written over a dotted line.

Mark Loveday BA(Hons) MCI Arb  
Chairman

Dated: 21 December 2006