



Case Number: CHI/40UB/LSC/2008/0021

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

PROPERTY: St Peters Terrace & St. Pauls Mews, Shepton Mallet, Somerset,
BA4 5BH

Applicants: Mr S. Nash (Flat 11 St Peters Terrace)
Mr S. Nash & Mr D. Lainton (Flat 3 St Peters Terrace)
Mr D. Lainton (Flat 9 St Peters Terrace)
Mr K. Jackson (Flats 4 & 13 St Peters Terrace)
Ms Beal (4 St Pauls Mews)
("the Applicants/Tenants")

and

Respondent: Westlea Holdings Limited
(Meridian Limited)
("the Respondent/Landlord")

In The Matter Of

Section 27A and 20C of the Landlord and Tenant Act 1985
(Liability to pay service charges)

Tenants' application for the determination of reasonableness
of service charges for the years 2003/2007.

Tribunal

Mr A Cresswell (Chairman)
Mr T E Dickinson BSc FRICS
Mr J S McAllister FRICS

Hearing: 20 August 2008 at Indictment Room, Town Hall, Wells, Somerset

DETERMINATION

The Application

1. On 29 February 2008, the first 3 applicants, the owners of the leasehold interest in Flat 11, 3, 9, 4 and 13 at St Peters Terrace, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of the service charge costs claimed by the landlord for the years 2003 to 2007. Subsequently, at the Pre Trial Review on 14 April 2008 Ms Beal of 4 St Pauls Mews asked to be added as an applicant.

Inspection and Description of Property

2. The Tribunal inspected the property on the morning of 20 August 2008. Present at that time were all 4 applicants and their representative, Mr David Sillitoe, together with Mr Simon Heal and Ms Nicola Arden, a Director and employee of Westlea Holdings Ltd respectively and their representative, Mr James Pearce-Smith of counsel. The Tribunal made it clear that the purpose of the inspection was not to receive evidence, but rather to inspect relevant features of the property. The Tribunal inspected the outside of the flats in question and noted that the premises were connected within the same structure (2–10 Town Street, St Peters Terrace, St Pauls Mews and 1-2 Market Street) and by party walls to other structures (3-7 Market Place). Beneath the flats were a gymnasium, shops and a public library; at the rear of the flats were more flats; and beyond the shops to the east were a building which had been a Boots shop with flats above (3-4 Market Place) and a building known as The Centre (5-7 Market Street). The premises were of a concrete construction with open and closed walkways and “gardens” and were served by 2 lifts. The whole series of structures formed an “L”, pointing north and east.

Summary of the Tribunal’s Decision

3. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has determined that, subject to limited

exceptions, the landlord has not demonstrated that the charges in question were all reasonably incurred, and so, parts of those charges are not payable by the applicants. The Tribunal lists below the charges originally requested and those which we have found to be reasonable and, therefore, payable. The cross hatching indicates that the charges were not in issue from the outset or that Mr Sillitoe indicated there was no issue at the hearing. We noted that Mr Sillitoe and the applicants had only received a body of supporting documents from the respondent at the beginning of the week of the hearing, the respondent having had to seek those documents from an earlier title holder.

YEAR	TO	2003	2004	2005	2006	2007
SEPTEMBER						
		£	£	£	£	£
CARETAKING						
SOUGHT		2,871.55	2,660	2,410.49	2,890	See Para 13 below
PAYABLE		2,871.55	2,660	2,410.49	2,890	Minus £750
GARDEN MAINTENANCE		XXXXX				
SOUGHT		XXXXX				
PAYABLE		XXXXX				
REPAIRS						
SOUGHT		XXXXX	XXXX	XXXXX	XXXXX	
PAYABLE		XXXXX	XXXX	XXXXX	XXXXX	
WINDOW CLEANING						
SOUGHT		884.83	243		XXXX	
PAYABLE		NIL	NIL		XXXX	
ELECTRICITY						
SOUGHT		XXXX	1,154	653.20	XXXX	See Para 13
PAYABLE		XXXX	989.38	653.20	XXXX	Minus £105.36
HEALTH + SAFETY						

SOUGHT	XXXX	XXXXX	XXXXX	XXXX	
PAYABLE	XXXX	XXXXX	XXXXX	XXXX	
MANAGEMENT FEES					
SOUGHT	XXXX	XXXX	XXXXX	6,110	5,200
PAYABLE	XXXX	XXXX	XXXXX	4,582.50	4,582.50
SERVICE CHARGE					
SOUGHT	XXXX	XXXX		1,300	
PAYABLE	XXXX	XXXX	NIL	NIL	NIL
LEGAL AND PROFESSIONAL FEES					
SOUGHT	XXXX	XXXX		XXXX	
PAYABLE	XXXX	XXXX		XXXX	
INSURANCE					
SOUGHT	8,169	9,568	7,100.24	7,850	??????
PAYABLE					
	2003	2004	2005	2006	2007

Each tenant is liable to pay 4.013% of the above service charges.

The Tribunal allows the tenant's application under Section 20c of the Landlord and Tenant Act 1985 in part, thus precluding the landlord from recovering more than 25% of its costs in relation to the application by way of service charge.

Directions

4. Directions were issued on 14 April 2008 following the pre trial review.
5. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. Unfortunately, the preparation of papers appears to have been conducted later than requested and in a far from systematic manner. Little or no effort appears to have gone into the vexed issue of apportionment, which, as we will explain, remains yet unresolved in respect of insurance charges.

6. This determination is made in the light of the documentation submitted in response to the directions and the oral submissions made by the parties' representatives.

The Law

7. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
8. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

Relevant Lease Provisions

9. We were provided with a copy of the under lease of Flat 11, one of the flats, which the parties agreed was a representative lease ("the lease"). The lease provides that the tenant should pay a service charge, which is defined in Paragraph 2 of the Fifth Schedule to the lease:

TENANT'S COVENANTS

The Tenant HEREBY COVENANTS with the Lessors and as a separate covenant with and for the benefit of the Flat Owners that throughout the Term the Tenant will:-

4.4 To pay Service Charge

Pay the Interim Charge and Further Interim Charge (as appropriate) and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto.....

5. LESSOR'S COVENANTS

The Lessors with the intent to bind itself and its successors in title HEREBY COVENANT with the Tenant as follows:-

5.4 Expenditure of Service Charge

Subject to and conditional upon payment being made by the Tenant of the Interim Charge the Further Interim Charge (as appropriate) and the Service Charge at the times and in the manner herein provided (provided nevertheless that the obligation contained in sub-clause 5.4.3 of this sub-clause shall be absolute and not conditional and subject as aforesaid):-

5.4.1 *To maintain and keep in good and substantial repair and condition:-*

- (a) the main structure of the Building including the principal internal timbers the exterior walls the foundations the roof and all window frames thereof (including those external window frames of the Demised Premises) with its main water tanks main drains gutters and rain water pipes (other than those included in this demise or in the demise of any other flat in the Building)*
- (b) all such gas and water mains and pipes drains waste water and sewage ducts and electric cables and wires as may by virtue of the terms of this Lease be enjoyed or used by the Tenant in common with the owners or tenants of the other flats in the Building*
- (c) the Common Parts*
- (d) the boundary walls and fences of the Building*
- (e) all other parts of the Building not included in the foregoing subparagraphs 5.4.1(a) to 5.4.1(d) and not included in this demise or the demise of any other flat or part of the Building*
- (f) the Estate Common Parts (including the cutting and cultivating of the grassed areas the garden grounds and landscaped areas)*

5.4.2

- (a) As and when the Lessors shall deem necessary but at least once in every fifth year of the Term to paint the whole of the outside wood iron and other work of the Building (including the external window frames of the Demised Premises) heretofore or usually painted and to grain and varnish such external parts as have been heretofore or are usually grained and varnished*
- (b) As and when the Lessors shall deem necessary but at least once in every fifth year of the Term to paint paper varnish colour grain and whitewash such of the interior parts of the Building (including the*

external surface of the entrance door of the Demised Premises and its frame) as have been or are usually painted papered coloured grained and whitewashed (other than those parts which are included in this demise or in the demise of any other flat in the Building)

- (c) As and when the Lessors shall deem necessary to paint paper or varnish colour grain and whitewash such of the parts (both internal and external) of the Bungalow or any other accommodation occupied or used by any caretaker maintenance staff or other persons employed by the Lessors in accordance with the provisions of clause 5.4.6 hereof as have been or are usually painted papered varnished coloured grained and whitewashed*

5.4.3 To ensure that the insurance policy referred to in clause 6(4) of the Headlease or an equivalent policy is kept in force

5.4.4 To keep clean and where appropriate lighted the Common Parts and to keep clean the windows in the Common Parts and if the Lessors shall deem it appropriate to furnish and carpet the Common Parts in such style and manner as the Lessors shall from time to time in their absolute discretion think fit

5.4.5 To pay and discharge any rates (including water rates) taxes duties assessments charges impositions and outgoings assessed charged or imposed on the Building and the curtilage thereof as distinct from any assessment made in respect of any flat in the Building

5.4.6 For the purpose of performing the covenants on the part of the Lessors herein contained at their discretion to employ on such terms and conditions as the Lessors shall think fit such caretaker maintenance staff gardeners cleaners or such other persons as the Lessors may from time to time in their absolute discretion consider necessary and in particular to provide accommodation either in the Building or elsewhere (free from payment of insurance rents rates taxes duties assessments charges impositions and outgoings assessed charged or imposed on such accommodation and any other services considered necessary by the Lessors) for them whilst in the employ of the Lessors

5.4.7

- (a) To employ at the Lessors' discretion a firm of Managing Agents and Chartered Accountants to manage the Building and discharge all proper fees salaries charges expenses payable to such agents or such other person who may be managing the Building or any part thereof including the cost of computing and collecting the Rent and Service Charge in respect of the Building or any parts thereof*

- (b) To employ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Development or any part thereof*

5.4.8 To maintain alter and renew where necessary (if and when installed by the Lessors at their discretion) any communal television aerial communal satellite dish serving the Building and to pay all expenses in connection with the installation and maintenance thereof

5.4.9 *Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Lessors may be considered necessary or advisable for the proper maintenance safety amenity and administration of the Building*

5.4.10 *To set aside (which setting aside shall for the purposes of the Fifth Schedule hereto be deemed an item of expenditure incurred by the Lessors)*

- (i) *such sums of money as the Lessors shall reasonably require to meet such future costs as the Lessors shall reasonably expect to incur on a regular basis of replacing repairing maintaining and renewing those items which the Lessors have hereby covenanted to replace repair maintain or renew*
- (ii) *a fund to be utilised for the cost of meeting such large costs of replacement and maintenance which are not likely to occur on a regular basis*

THE FIFTH SCHEDULE

The Service Charge

1. *In this Schedule the following expressions have the following meanings respectively:-*

- 1.1 *“Total Expenditure” means the total expenditure incurred by the Lessors in any Accounting Period in taking action to enforce covenants entered into with the Lessors in accordance with clause 5.3 of this Lease and in carrying out their obligations under clause 5.4 of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing*
 - 1.1.1 *the cost of employing Managing agents in relation to the Management of the Development and the computing and collecting of the Rent and Service Charge in respect of the Development or where such tasks or its obligations under clause 5.4 of this Lease are carried out by the Lessors a reasonable charge for the Lessors in relation thereto such charge in any event not being less than 10% of the Total Expenditure*
 - 1.1.2 *the cost of any Accountant or Surveyor employed to determine the Total Expenditure and amount payable by the Tenant hereunder and*
 - 1.1.3 *an annual sum equivalent to the current market fair rent of any accommodation owned by the Lessors and provided by them rent free to any of the persons referred to in clause 5.4.6 of this*

Lease and all other incidental expenditure in relation to such employment including:-

- (a) National Insurance Pension and Welfare contributions*
- (b) the provision of uniforms and working clothing*
- (c) the provision of vehicles tools appliances cleaning and other materials fixtures fittings and other equipment for the proper performance of their duties and a store for housing the same*
- (d) the cost of service utilities and telephones*
- (e) the cost of entering into any contract for the carrying out of all or any of the services and other functions and duties that the Lessors deem desirable or necessary*
- (f) the cost of insuring the accommodation*

1.2 *"the Service Charge" means:-*

1.2.1 *4.013% of the total expenditure arising from*

- (b) the Lessors obligations under clause 5.4.1(f) 5.4.2(c) 5.4.6 and 5.4.7 of this Lease and*
- (d) the remainder of the Lessors obligations under clause 5.4 of this Lease or (in respect of the Accounting Period during which this Lease is executed) such proportions of such percentages as are attributable to the period from the date of this Lease to the last day of such Accounting Period*

3. *The first payment of the Interim Charge (on account of the Service Charge for the Accounting Period during which this Lease is executed) shall be made on the execution hereof and thereafter the Interim Charge shall be paid to the Lessors by equal payments in advance on the First day of January and the First day of July in each year and in case of default the same shall be recoverable from the Tenant as rent in arrear*

11. We were also provided with a copy of the Headlease dated 16 November 1999 between Vesplace Ltd and Northumberland & Durham Property Trust Ltd ("the Headlease"):

1. *In this Lease unless the context otherwise requires:*

- (C) "the Building" means the building of which the premises (as hereinafter defined) forms part and (where appropriate) includes the adjoining land appurtenant thereto*

- (D) *“the Premises” means the flats and (if applicable) gardens hereby demised as described in the First Schedule hereto*
2. *In consideration of the sum of YIELDING AND PAYING THEREFOR:*
(C) *The cost of insuring the Building as hereinafter provided such sum or sums to be paid forthwith on demand after expenditure*
5. *The Lessee HEREBY COVENANTS with the Lessor and as a separate Covenant with any owners and lessees of the remainder of the Building that the Lessee will at all times:*
(v) *contribute and pay on demand and in any event by Bankers order on or before 1st January in each year by way of service charge a fair and reasonable contribution of the costs and expenses mentioned in the Fifth Schedule hereto in accordance with the provisions of the Sixth Schedule hereto*
6. *The Lessor HEREBY COVENANTS with the Lessee (but not so as to bind the Lessor for the time being after it shall have parted with all its estate and interest in the Premises) as follows:-*
(iv) *That the Lessor will at all times during the said term....insure and keep insured the Building.....in an insurance office of repute and will make all payments necessary for the above purpose and to produce to the Lessee on demand the policy of such insurance and the receipt for the last such payment in respect of the same and....*

THE FIRST SCHEDULE

The Premises

ALL THAT Premises called St Peters Terrace and St Pauls Mews Shepton Mallett forming twenty six flats and one house forming part of Title number ST152359 all which premises are for identification purposes only edged in red on the plan annexed hereto save for the First and Second floors of 10 Town Street Shepton Mallett which shall be excluded and also excluded is the property known as the Fives more particularly outlined in blue on the plans annexed hereto

Service Charges In Issue

10. Apportionment

The only charge where it was suggested that apportionment would be of relevance was insurance, which we deal with as a discrete item. The parties had been asked to consider the question of apportionment at the Pre Trial Review and in the Directions which followed that review; disappointingly, the issue had not been progressed by the time of the hearing to a stage where there were substantive submissions by the parties.

11. **Sections 47 to 49**

The Applicants say that demands have not included the landlord's name and address in any of the years in dispute, so that no interest is due on any sums determined payable for those years, there being to date no valid demand in accordance with Sections 47–49 Landlord & Tenant Act 1987. Further, legal costs incurred in subsequent years attempting to obtain payment of invalid demands are not costs reasonably incurred.

The Respondent says amended service charge demands have now been served.

The Tribunal was satisfied that the landlord (we include the previous landlord in this description) had complied with its duty in 2003, when the two documents available were read together (letter and demand); the letters for 2004 and 2005 were not available from the previous holder of the title, but there was every reason to believe that a similar format to 2003 would have been used. The demands for subsequent years had been “re-invoiced” so as to comply with the statutory requirements. The Tribunal was given an assurance by Mr Pearce-Smith that the Respondent is not seeking to claim interest from the Applicants. Mr Sillitoe argued that to incur legal costs in relation to items not validly demanded was unreasonable, and he asked us to weigh the issue in the balance when the Tribunal considered the application under Section 20C of the 1985 Act.

12. **Sinking/Reserve Fund**

The Applicants argue that the sums of £1000 for each of the years ending 2001, 2002, 2003 should be within this fund. They query what has happened to this money and the interest accruing.

The Respondent says a sum of £3000 was paid to the Respondent upon completion of its purchase of the Headlease, and this money was used to pay outstanding debts in connection with its leasehold obligations.

The Tribunal was told that the Respondent accepted that these monies had been expended in a manner inconsistent with the terms clause 5.4.10 of the lease. The Tribunal cannot order the return of this

sum of £3,000, but note that it was held by the Respondent under a fiduciary duty on trust. Under Section 42A of the 1987 Act, those funds should have been held in a designated account. A failure to do so entitles a contributing tenant who has reasonable grounds to believe that the Respondent has failed to hold the sums in a designated account to withhold payment of a service charge in accordance with Section 42B (9). Clearly, apart from such action, the Applicants would be entitled, in any event, to expect the Respondent to find the first £3,000 and any interest accruing towards the costs of replacement repair maintenance and renewal of items envisaged by clause 5.4.10.

13. **Section 20B**

Under Section 20B of the 1985 Act, if any of the costs taken into account in determining the amount of the service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, the tenant is not liable to pay those costs, unless during the 18 month period the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

The Applicants argued that this provision was applicable to demands for the years 2004, 2005, and 2007. We were not able to say from our own examination of the demands for 2004 and 2005 that Section 20B was a real issue, and no specific payments were brought to our attention. So far as 2007 is concerned, we identified a number of charges which were outside the 18 month period, and accordingly not payable. In respect of these payments, we were not directed by Mr Pearce-Smith to any evidence that there had been appropriate notice in writing during the 18 month period. He drew our attention to a copy of a letter enclosing the budget for the year 2006 to 2007; we noted that the letter was not dated, so had no evidence as to when it was sent, the items on the budget appeared to us to be estimates, and **London Borough of Islington v Abdel-Malek** LRX/90/2006 guides us that the notification required under Section 20(2) is in respect of costs that have been incurred and not costs that are to be incurred. “This

requires the appellant to prove two things in order to show that the LVT reached a wrong decision. Firstly, that such relevant costs had been incurred by the date of the notice and, secondly, that the notice itself stated this to be the case." In this case neither of those propositions have been established by the Respondent by the letter brought to our attention. The items not payable are Electricity in the sum of £105.36 (22/11/06) and Caretaking of £750, being for October, November and December 2006, the demand for these items having been made on 8 July 2008.

14. The Applicants have asked the Tribunal to determine their liability to pay under a number of heads identified in the service charge presented by the Respondent for the periods 2003 to 2006, which we itemise below. The Applicants detailed their concerns in a Statement of Case and the Respondent detailed its response in its Statements of Case. We accept that the Respondent had had some difficulty in obtaining documentation from its predecessor in title, and that Mr Sillitoe was, consequently, hampered in being able to advise the Applicants timeously; the result was that, having seen the documentation, Mr Sillitoe was able to withdraw some of the objections to individual charges and so further define the issues. The Applicants were requested to indicate specific items in issue for the year to September 2007, but no specific items were brought to the attention of the Tribunal.

15. Caretaking.

The Applicants argue that the sums of £2871.55 and £2660 and £2140 in years 2003 and 2004 and 2005 were either not incurred by the landlord, as they believe that this service was not performed, or that the figures are not reasonable ones as it was not performed to a level commensurate with the sums charged. For the year 2006, the Applicants seek clarity as to the basis of the charge of £2890.

The Respondent says it has no paperwork to support the charges for the years 2003, 2004, 2005. There has been no evidence provided of complaints to the Head Leaseholder regarding lack of caretaking, and

so it should be assumed that caretaking was undertaken and the charge was reasonable. There is no caretaker's flat provided; the caretaker does not live on the premises. The caretaking costs for 2006 show 18% (now 20%) which is tax-deductible from a sub-contractor; the Respondent deducts the tax from the invoice and pays it to HMRC. The actual cost of caretaking to the Respondent was £250 plus additional materials for each invoice. The audited accounts show the cost of caretaking as £2890 in 2006 and £3,000 in 2007.

The Tribunal accepts that there is documentary evidence to show that this service was performed. No actual evidence was brought to our attention that it had not been performed or that it was below standard. We found that the charge itself of 50 hours at a small hourly rate was a reasonable one to make for premises of the type that we inspected. So far as the tax deduction is concerned, we agreed with Mr Pearce-Smith that whether it was the Respondent who took tax out of the sum in question and paid it to the Revenue or whether that action was taken by the provider of the service made no difference to the actual sum charged, and so did not increase the cost for the Applicants. With the exception of the specific findings in relation to Section 20B in 2007, we find the charges for caretaking to be reasonable and payable.

16. Garden Maintenance.

The Applicants withdrew this challenge.

17. Insurance.

The Applicants contend that they have been required to pay for the insurance of the premises and the structures attached and a further building which is completely separate to the premises structure and that this is unreasonable.

The Respondent states that the Headlease defines the building and the premises. The Applicants' leases contain obligations in Clause 5.4.3 to ensure that the insurance policy referred to in Clause 6(4) of the Headlease or equivalent policy is kept in force. The Fifth Schedule refers to the "Total Expenditure" including the expenditure incurred by the lessors in carrying out their obligations under Clause

5.4 of the Lease. Accordingly, the Applicants are obliged to pay the cost of insuring the building. This interpretation was upheld by a District Judge at Trowbridge County Court. In respect of the year when the Headlease was acquired by the Respondent, the completion statement shows that the Respondent paid an apportioned sum towards the insurance. The Respondent has provided evidence that insurance was in force from 1 February 2005 to 30 September 2005 and produced a copy of the policy.

Copies of insurance details for the period 5 February 2006 to 25 March 2006 have been provided together with letters confirming the premium paid for the period of insurance to 25 March 2006.

The Tribunal noted that there was an obligation on the Applicants to reimburse the Respondent in respect of the insurance of the building, which is clear from the terms of the lease and the headlease. That such a wide responsibility fell upon the Applicants as tenants of flats, when there were shops, a gym, cafes and an exhibition centre included in what was asserted to be the building seemed to the Tribunal to be a very onerous term, which a subsequent application for variation of this term of the lease might address. However, the fact that it was onerous did not, by itself, mean that the level of charge was unreasonable or not payable in the face of clear terms in the lease or contract between the parties. Neither party was able to say with precision what the building was; Mr Pearce-Smith's position, effectively, was that if the landlord sent an account for insurance, the Respondent had to pay it, and, in turn, so did the Applicants. We set about an examination of what the building actually consisted of, but were hampered by the absence of any plan which showed the building as opposed to the premises.

The Headlease, at clause 1 says that:

"the Building" means the building of which the premises (as hereinafter defined) forms part and (where appropriate) includes the adjoining land appurtenant thereto, and "the Premises" means the flats and (if applicable) gardens hereby demised as described in the First Schedule hereto.

However, that really takes us no further when we know that there is a whole jumble of structures joined by party walls. The answer lies, we

find, in the First Schedule, which defines the premises by reference to what is contained within Title number ST152359 in the Property Register at the Land Registry. Neither party addressed the Tribunal in relation to this Title, and details of what is registered were not available to the Tribunal.

As the details of the Title number were identified after the hearing, we adjourn that aspect of this application so as to enable the parties to discuss whether, having themselves obtained a copy of the relevant Title and the building having been identified, they can agree what aspects of the claim in respect of insurance are still live and whether an agreement on insurance is possible between the parties. This aspect is, therefore, adjourned for a period of 28 days from the date of this decision. By the expiration of those 28 days, both parties must indicate to the Tribunal in writing whether it has been possible to resolve the issue without a decision by the Tribunal or not. In the event of a failure to agree, the parties shall have a further period of 28 days in which to make written submissions to the Tribunal with detailed arguments as to what the charge for the years in issue should properly be, together with and supported by relevant documentation in a paginated and indexed bundle not exceeding 40 pages in the absence of a reasoned argument for an increase in pages.

18. Repairs.

The Applicants withdrew this challenge.

19. Window Cleaning.

The Applicants argue that the sums of £884.83 and £243 in years 2003 and 2004 were either not incurred by the landlord, as they believe that this service was not performed, or that the figures are not reasonable ones as it was not performed to a level commensurate with the sums charged. Also, this cost is not chargeable under the lease and attention is drawn to clause 1.3, the First Schedule paragraph 1, clause 4.1 and clause 5.4.1.

The Respondent says it has no paperwork to support the charges for the years 2003 and 2004. There has been no evidence provided of

complaints to the Head Leaseholder regarding lack of window cleaning, and so it should be assumed that window cleaning was undertaken and the charge was reasonable. Under the lease, the tenant is responsible for window cleaning of the demised area and the landlord for common parts – clause 5.4.4. Mr Pearce-Smith suggested that there was some sort of moral duty upon the Applicants to pay for this service which had been undertaken on their behalf. He accepted, however, that it was not recoverable under the lease.

The Tribunal noted the concession by Mr Pearce-Smith, which corresponded with our own analysis of the lease. These sums are not payable.

20. Electricity.

The Applicants note invoices based on estimates only to support the charge of £653.20. The lack of any actual cost invoices raises concern. The Applicants understand the property's common parts are served by 2 meters, locked in cupboards to which the applicants have no keys.

Mr Sillitoe argued that the Respondent had paid too much VAT in the years 2003 and 2004 (17.5% rather than 5%) and should have claimed back on behalf of the Applicants the sum of £118. He raised a similar argument in respect of the Climate Charge Levy, which ought to have been nil for a residential property rather than the £46.62 claimed.

The Respondent argues that this charge is fair. In 2007, the amount for common parts was £462.83. There was an error in the addressing of the invoices for the lifts, and the Respondent has now paid for approximately 2 years.

Mr Pearce-Smith conceded that the sums of £118 and £46.62 should have been reclaimed by the Respondent and were not payable by the Applicants.

The Tribunal noted the concession of Mr Pearce-Smith and determined that the sums of £118 and £46.62 were not payable (£164.62).

The electricity charge has been levied on the basis of estimated bills for far too long. There needs to be certainty here, which can only help

to establish a more confident relationship between the Applicants and Respondent. We urge the Respondent to arrange for an early reading of the meters and for that to be the norm rather than the exception for future accounts.

21. Health and Safety

The Applicants withdrew this challenge.

22. Management Fees

The Applicants believe that the charges of £1140.80 and £6110 in 2005 and 2006 were either never incurred by the landlord, or if they were incurred, the quality of the service provided was so poor that the charges are not reasonable. No accounting function was provided by the managing agent; the Accountants' Report to the Proprietors for 2006 makes it clear the Accountants compiled the unaudited accounts. There is also a query about the charge of VAT, as the landlord is not a VAT registered company.

The Respondent argues that this charge is fair in 2005 as no management fees had been charged for the previous 2 years. In 2006, these were charged at £200 per unit following the meeting of a working party on 29 November 2005 between Meridian and the working party. This information had previously been disclosed to the Applicants. These were charged at £200 a unit in 2007, a total of £5,200 for all 26 units. Meridian Property Management which took over as managing agent for the Respondents on 30 November 2005, is VAT registered.

The Tribunal heard oral submissions by both representatives. Mr Pearce-Smith pointed to the Fifth Schedule which enabled the Respondent to levy a charge of not less than 10% of the Total Expenditure. Mr Sillitoe conceded his challenge to 2005 on that basis.

So far as 2006 is concerned, whilst noting the concern of the Applicants that the service provided was below expectations, there was very little real evidence before the Tribunal of a failure by the Respondent to provide a management service. Equally, there was no evidence to support the Respondent's contention that the sum of £200 had been agreed by a Working Party; there was evidence to the

contrary. The Tribunal decided that £200 plus VAT was not a reasonable charge for 26 flats configured as we found them to be at inspection. Using our own knowledge and experience we have determined that a reasonable charge would be £150 plus Vat per unit, or a total charge of £4582.50 for 2006 and subsequent years.

23. Service Charge

The Applicants, for the year 2006, seek clarity as to the basis of the charge of £2890.

The Respondent states that this is the charge payable by the Respondent under its lease with the freeholder.

The Tribunal decided that this was neither reasonable nor payable. The Respondent could not point to any service which was provided to it or to the Applicants, and Mr Pearce-Smith was unable to identify any requirement in the lease for the Applicants to make this payment. He suggested that the Fifth Schedule "*and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing*" would permit the charge to be passed on to the Applicants, but, as we have said, that cannot be the case as there is no evidence that any service was provided at all.

24. Legal and Professional Fees

The Applicants withdrew this challenge.

Section 20c Application

25. The Applicants have made an application under Section 20C Landlord and Tenant Act 1985 in respect of the Respondent's costs incurred in these proceedings. The relevant law is detailed below:

Section 20C Landlord and Tenant Act 1985: 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 ... leasehold valuation tribunal, ... 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.

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

26. The Tribunal allows the tenant's application under Section 20c of the Landlord and Tenant Act 1985, thus precluding the landlord from recovering more than 25% of its costs in relation to the application by way of service charge. The reason for this is that the Applicants have sought certainty about their service charges for some considerable time. Some documents supporting charges were received as late as 2 days before the hearing. A number of charges has been found to have been levied at too high a rate or inappropriately, the "sinking fund" found to have been spent otherwise than in accordance with the lease, and electricity meters were still not read. We also took account of the difficulties faced by the Respondent as a "new" title holder having to seek the co-operation of a predecessor in title, and the genuine difficulty about the insurance payments.



Andrew Cresswell (Lawyer Chairman)

Date: 2 September 2008

**A member of the Southern Leasehold Valuation Tribunal
Appointed by the Lord Chancellor**