

**CHI/29UL/LSC/2008/0016**

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

Address: Flats 14, 19, 26, 56 & 92 Pavilion Court, Marine Terrace,  
Folkestone, Kent, CT20 1QB

Applicants: Mr D Webber & Others

Respondents: (1) Pavilion Court Limited (2) Pavilion Court  
RTM Limited

Application: 27 October 2008

Inspection: 1 June 2009

Hearing: 1-2 June 2009

Reconvene: 1 July 2009

Appearances:

**Tenants**

Miss Etiebet	Counsel
Mr and Mrs Webber	Leaseholders
Mr Hammond	Leaseholder
Mrs Fitzpatrick	Observer of behalf of Mr Snow
Deanstone Ltd	Leaseholder
Mr Heasman	Leaseholder
Mrs Lippiet	Leaseholder

For the Applicants

**Landlord**

Miss Hallett	Solicitor
Mr Price	Director of the Second Respondent
Mr Jones	Director of the Second Respondent
Mrs Torrens	Director of the Second Respondent
Mr Burns	
Mr McCallion	Caretaker

For the Respondents

Members of the Tribunal

Mr I Mohabir LLB (Hons)  
Mr R Athow FRICS MRIPM  
Ms L. Farrier

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**CHI/29UL/LSC/2008/0016**

**IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT 1985**

**AND IN THE MATTER OF PAVILION COURT, MARINE TERRACE,  
FOLKESTONE, KENT, CT20 1QA**

**BETWEEN:**

**MR DAVID WEBBER & OTHERS**

**Applicants**

**-and-**

**(1) PAVILION COURT LIMITED  
(2) PAVILION COURT RTM LIMITED**

**Respondents**

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**FULL DECISION OF THE TRIBUNAL**

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***Introduction***

1. On 3 August 2009 the Tribunal issued a summary decision ("the summary decision") setting out the factual background this application and is to be read together with this Decision. The summary decision was issued for the reasons set out therein. It dealt with the general submission made by the Applicants regarding the recoverability of service charge costs prior to 4 April 2008, when the First Respondent was in administration. The summary decision also set out the Tribunal's findings on the majority of service charge costs in issue. This decision is intended to set out the basis on which the Tribunal made those findings and to deal with those service charge costs not dealt with in the summary decision.

2. Unless stated otherwise, the references in this Decision to those documents contained in the Applicants' (AB) and Respondents' (RB) bundles and also, where appropriate, by reference to the relevant volume, tab and page numbers.

***The Relevant Lease Terms***

3. It is the Tribunal's understanding that the leases presently held by the Applicants were variously granted on the same terms and made between (1) Pearl Property Ltd ("the Landlord"), (2) Pavilion Court Ltd ("the Company") and (3) the Lessee for a term of 125 years ("the leases"). The contractual liability to pay a service charge contribution under the leases arises in the same way. From the specimen lease provided<sup>1</sup>, the relevant lease terms can be set out as follows.

4. Clause 1 of the leases provides the following definitions:

*"(e) The Service Obligations means the obligation or obligations to provide those services and other things hereinafter covenanted to be so provided by the Company.*

*(f) The Service Charge means the total cost of the service obligations.*

*(g) Specified Proportion means the proportion of the Service Charge specified in Part 5 of the Third Schedule...".*

5. By clause 5(c)(i), the tenant covenanted to pay to the Company in advance, on 25 March and 29 September in each year, the sum specified in Part 10 of the Third Schedule (£150) or such greater sum on account of the specified proportion as the Company or its agents may reasonably consider sufficient to meet the cost of the Service Obligations. The Third Schedule provides that the specified proportion as 1/100th of the total cost of the service obligations.
6. Clause 6 of the leases sets out the repairing, maintaining and other obligations it covenanted with the tenant to perform as part of the service obligations, the costs of which are recoverable under the leases as relevant service charge expenditure. It is

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<sup>1</sup> see RB1/1/14

not necessary to set out here those obligations. Where any point is taken by the Applicants regarding the scope of those obligations and their liability to pay for any costs incurred, the relevant contractual term is referred to in the body of this Decision.

### ***The Issues***

7. The Applicants contend variously that either they have no liability, whether contractually or otherwise, to pay the service charge cost in issue and/or that the cost is unreasonable. Where either or both point is taken by the Applicants, it is dealt with under each of the heads of claim set out below.

### ***The Relevant Law***

8. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

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

- (a) the person by whom it is payable,*
- (b) the person to whom it is payable,*
- (c) the amount which is payable,*
- (d) the date at or by which it is payable, and*
- (e) the manner in which it is payable.*

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

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

9. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

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

- (a) only to the extent that they are reasonably incurred, and*
  - (b) where they are incurred on the provision of services or the carrying out works, only if the services or works are of a reasonable standard;*
- and the amount payable shall be limited accordingly."*

***Decision***

10. The hearing in this matter commenced on 1 June 2009. The Applicants, Mr Webber and Deanstone Ltd, were represented by Miss Etiebet of Counsel. Although a number of other Applicants attended the hearing, they were not represented and did not address the Tribunal. It is the Tribunal's understanding that their position in this matter was identical to that of Mr Webber and Deanstone Ltd and, essentially, they were content for these two parties to advance the same case on their behalf. The First Respondent was represented by Miss Hallett, a solicitor.

***Caretaker/Block Manager (Both Years)***

11. These were the direct and associated costs of employing Mr MacCallion as the resident caretaker and/or block manager and could, therefore, be considered together by the Tribunal. They included his salary, national insurance, rent, light, heat and holiday cover.

12. Mr MacCallion is the full-time resident caretaker and/or block manager for the building. His main duties are set out in a job description dated April 2008<sup>2</sup>. The Applicants accept that some of the general services provided by Mr MacCallion are required. However, it was submitted that a proportion of the direct and associated costs of employing Mr MacCallion had not been reasonably incurred for the following reasons:

- (a) that a residential caretaker and/or block manager is not reasonably necessary for the adequate supervision and performance of the First Respondent's service obligations.
- (b) to the extent that a block manager was necessary, it is not reasonable to incur the cost of a residential block manager.
- (c) if it is reasonable to incur the costs of a residential block manager, the costs claimed are unreasonable.
- (d) there is an element of double recovery in that it is not reasonable to employ other personnel to undertake additional services, for example, a cleaner/odd job man and management fees.

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<sup>2</sup> see RB1/1/6

13. Mr Schreiber was called as a witness by the applicants. He is the Director of Deanstone Ltd, which owns 16 flats in the building. It is an experienced landlord and property owner that currently owns in excess of five hundred other properties throughout London and Kent.
14. Mr Schreiber's evidence was that a residential caretaker and/or block manager was not required because the block manager duties performed by Mr MacCallion should properly be carried out by a suitably experienced and qualified managing agent. By comparison, Mr Schreiber referred to a similar block, Marine Crescent, in Folkestone in which his company owned 91 flats. He said that in that property the managing agent, Fell Reynolds, have competently managed this block for the last four years without the necessity for a residential caretaker and/or block manager. Any out of hours emergency services required were dealt with by providing emergency contact numbers. He said that this property also suffered from a degree of vandalism and this was largely dealt with the tenants policing the building themselves. Any damage caused by the vandalism was reported by the tenants to the managing agent and repairs were dealt with on an ad hoc basis. In cross-examination, Mr Schreiber did not resile from this position and insisted, for example, that a resident caretaker and/or block manager would not prevent vandalism taking place.
15. The First Applicant, Mr Webber, gave evidence that he was not satisfied with the services provided by Mr MacCallion generally. In particular, he complained that he had a problem with a leak in his flat last year and when he asked Mr MacCallion to deal with this matter, he was told that he would not do so unless Mr Webber had paid all of his outstanding service charge arrears. Mr Webber said that eventually he had to instruct a plumber himself to deal with the leak. He confirmed that he had reported Mr MacCallion's behaviour to Mr Price.
16. It was submitted on behalf on the First Respondent that the employment of Mr MacCallion as a full-time resident block manager and/or caretaker was necessary and, therefore, both the direct and associated costs of doing so were reasonably incurred. Emphasis was placed on the opinion of the Kent Fire & Rescue Service contained in a letter stating that a resident caretaker was "advisable in this case" and "due to the recent incident history... the building would benefit from having an on-site

responsible person". It was further contended that it is a requirement to have at least one nominated person to greet the Fire Service, reset the fire alarms and provide keys as required. This out of hours service could not be provided by a managing agent.

17. The First Applicant also relied on the numerous letters from various residents supporting the resident caretaker and/or block manager's role. Furthermore, given the number of criminal and antisocial incidents at the block, it was desirable to have an on-site presence either to reduce the number of incidents or to ensure a rapid response.
18. As part of his evidence on behalf of the First Respondent, Mr Jones, who is a Director of both Respondent companies, said that a full-time resident block manager and/or caretaker was required, for example, to issue security keys and to keep out trespasses. He referred the Tribunal to photographs of litter in the external areas when no holiday cover had been provided when Mr MacCallion was away. In addition, he said that a contract cleaner would not carry out the duties of partial cleaning to the ground and first floors, access control maintenance and gardening. These were duties carried out by Mr MacCallion on a 24-hour basis at a cheaper cost.
19. Mr Price, who is also a Director of both Respondent companies, gave evidence that Mr MacCallion was originally one of his tenants. He had employed him for approximately 8 years to look after his properties in the building and continue to do so through a company known as "Fawlty Flats". Mr Price said that the duties performed by Mr MacCallion in relation to his flats and the other flats were complimentary because there was a mutual benefit to each other. In cross-examination, Mr Price said that Mr MacCallion was employed by Fawlty Flats on a part-time basis mainly involving evening work. He maintained that he wanted the block to be properly maintained and for any problems to be dealt with at the time and not later.
20. The Tribunal, firstly, considered the issue of whether a full-time resident block manager and/or caretaker was required to discharge the First Respondents service obligations under the terms of the leases. Having carefully considered all of the evidence given in relation to this matter, the Tribunal concluded, on balance, that it was not necessary to employ a full-time resident block manager and/or caretaker. In particular, the Tribunal had regard to the evidence given by Mr Schreiber. It was

clear that he had extensive experience regarding the management of a portfolio of over 500 properties. Whilst he acknowledged the antisocial and other problems present in this property, he said that these were not unique and could be dealt with by a competent managing agent as, for example, was the case in one of his other properties at Marine Crescent in Folkestone. The Tribunal accepted Mr Schreiber's evidence.

21. The Tribunal, therefore, found that the various caretaker's tasks or duties performed by Mr MacCallion could be accomplished by an external contractor providing an employee working, say, 8 hours a day. The Tribunal also found that the supplying of keys and/or security fobs by Mr MacCallion and the various out of hours duties performed by him were all management functions that should be performed by a competent managing agent. It follows from these findings that the associated costs of national insurance, rent, light, heat and holiday cover were also not reasonably incurred because they would be included in the contract price if a contractor was employed and were, therefore, disallowed entirely by the Tribunal. It was, therefore, not necessary for the Tribunal to go on to consider the reasonableness of the costs that were disallowed and the other submissions made by the Applicants above in that regard.
22. The Applicants did not give any direct evidence as to what amounts should be allowed as reasonable in the event that their primary submission that a full-time resident block manager and/or caretaker was not required. Accordingly, the Tribunal, using its own expert knowledge and experience, allowed the sum of £15,000 and £16,000 as being reasonable for 2007/08 and 2008/09 respectively. For the avoidance of doubt, the amount of £16,000 allowed in relation to 2008/09 includes the sum of £8,000 claimed for the cost of the cleaner/odd job man in that year.

#### ***Sewerage and Water (Both Years)***

23. The Applicants appeared to contend that these costs were not reasonable as between individual lessees because of the different rates of consumption and usage as between the various flats in the building. The evidence of Mrs Lippiet was that when she was a previous Director of the First Respondent, the water company has indicated that each flat could be separately metered. However, in chief, she went on to concede that



the main water meter at the property is supplied on a commercial basis and, consequently, individual meters could not be fitted to each flat.

24. In the light of the admission made by Mrs Lippiet, it is not necessary to set out the First Respondent's position on this issue. There is nothing in the leases that requires these costs to be metered and apportioned individually as proposed by Mrs Lippiet. No specific argument was advanced by the Applicants as to the reasonableness of these costs and they were, in any event, a statutory sum. The Tribunal found these costs can be reasonably incurred and reasonable in about and were allowed as claimed for both service charge years.

***Light in Public Areas (Both Years)***

25. These costs of £1,809.40 were agreed by the Applicants as being reasonable and payable.

***Buildings & Directors' Insurance (Both Years)***

26. In relation to 2007/08, the Applicant submitted that there was no documentary evidence that the premium paid had been reasonably incurred and represented value for money for the tenants. In relation to 2008/09, it was submitted that provide insurance cover for the Directors was unnecessary and, in any event, the sum should be reduced to £4,278.90, being the actual costs incurred for this year.
27. The Applicants' evidence was limited to the evidence given by Mr Schreiber. He said that insurance for the Directors was unnecessary. In addition, he said that a larger managing agent what be able to obtain a cheaper premium for the buildings insurance and he referred to the premium that was paid for Marine Crescent.
28. The Tribunal did not accept the Applicants' general submission that the failure on the part of the First Respondent to provide documentary evidence that the premium paid in 2007/08 inevitably meant that it had not been reasonably incurred. The Applicants had used no evidence in support of this submission and, therefore, it was rejected by the Tribunal. In relation to both years, The Tribunal found that this additional cost of providing insurance cover for the Directors was reasonably incurred because it was necessary for the officers of the Respondent companies to be protected from being

personally liable in the discharge of their duties. The Applicants did not challenge the actual cost for providing this cover. Therefore, the sums claimed in respect of both years were allowed as being reasonable. It should be noted that the Tribunal's finding in relation to the estimated sum of £4278.90 for the 2008/09 year does not prevent the Second Respondent from being able to recover any greater amount actually incurred in that year. For the avoidance of doubt, the Tribunal plays no reliance on the premium paid by Mr Schreiber in relation to Marine Crescent. A valid comparison between the respective premiums could not be made because it was clear that they were not on a "like-for-like" basis.

#### ***Telephones (Both Years)***

29. It was simply submitted on behalf of the Applicants that this cost had not been reasonably incurred because the Directors do not need to be contactable by telephone where there is a website and the block manager/odd job man is also contactable by telephone and also where the managing agents are on 24-hour call.
  
30. It is not necessary to set out the First Respondent's submissions on this issue because it could not demonstrate any compelling requirement for the provision of mobile telephones to the Directors. The Tribunal accepted the Applicants' submission that these costs had not been reasonably incurred because the directors and the caretaker were each sufficiently contactable by the use of a landline telephone. Therefore, these costs were disallowed for both years.

#### ***Management Fees (2008/09 only)***

31. There was no evidence, either from the service charge account or otherwise, before the Tribunal that any management fees had been incurred in 2007/08 and, therefore, no sum is recoverable in relation to this year. The Applicants limited their challenge to the reasonableness of the cost of management for the 2008/09 year.
  
32. It seems that after April 2008, the First Respondent entered into a rolling contract with DJ & HA Price Partnership to manage Pavilion Court at a cost of £2,000 per month until such time as statutory consultation under section 20 of the Act was completed. Thereafter the management contract with terminate upon either party

giving one month's notice to the other. It seems that the consultation process has been delayed as a result of these proceedings.

33. It was submitted by the Applicants that a proper reading of the management contract reveals that it is an indefinite contract terminable on one month's notice and is, therefore, caught by the provisions of section 20 as a qualifying long term agreement. As statutory consultation has not been completed, it was submitted that a cap of £100 per lessee or £10,000 in total is recoverable for 2008/09.
34. In the alternative, the Applicants rely on the evidence given by Mr Schreiber that a reasonable cost of management is £100 per flat, being the same management fee being charged for Marine Crescent.
35. The Tribunal, on balance, accepted the evidence of Mr Jones that the management agreement presently existing between the First Respondent and the DJ & HA Price Partnership was a rolling contract on a monthly basis as a temporary measure to enable the subject property to be managed until such time as the formal statutory process under section 20 of the Act is completed. If it was not intended to be so, then the First Respondent would not have embarked on the consultation process at all. Therefore, the Tribunal accepted the submission made by the First Respondent that this management agreement was not a qualifying long term agreement within the meaning of section 20ZA(2) of the Act because it did not exceed a term of 12 months in total. Consequently, there is no requirement on the part of the First Respondent to carry out statutory consultation in relation to this agreement. That said, it is hoped by the Tribunal that the statutory consultation process embarked on by the First Respondent is completed sooner rather than later in anticipation of formally appointing a managing agent. Any failure to do so on the part of the First Respondent may result in another Tribunal drawing an adverse inference regarding the status of the management agreement that presently exists between it and the DJ & HA Price Partnership. In the alternative, the contract could be set for a period of 12 months, renewable annually. This then avoids the need for Section 20 Consultation.
36. Turning to the matter of the management fee claimed, the Tribunal rejected the evidence of Mr Schreiber that a management fee of £100 per flat was reasonable.

There was clear evidence before the Tribunal that the managing agents instructed by Mr Schreiber in relation to Marine Crescent had quoted a management fee of £290 plus VAT per flat for this property. The Tribunal found that the sum of £24,000 paid to the managing agent, the Price Partnership, for 2008/09 to be eminently reasonable and allowed this sum without deduction.

***Secretarial Costs (2007/08 only)***

37. The Tribunal found that this cost had not been reasonably incurred because it related to a sub-tenant. It was not a secretarial but a management role and should be part of the management fee and was disallowed.

***Printing, Stationary & Postage (Both Years)***

38. The Applicants submitted that the amounts claimed should either be disallowed or reduced for both years on the basis that the costs had not been reasonably incurred and there was an element of double recovery. It was contended that postage, stationary and printing costs are recovered under petty cash.
39. The submission made by the First Respondent was only in relation to its contractual entitlement to recover these costs. This submission was not relevant because the Applicants did not contend that these costs were not contractually recoverable. No submission was made as to the reasonableness of these costs by the First Respondent.
40. The Tribunal found that all of these costs had not been reasonably incurred because they were still part of the management function to be performed by the managing agent and should be included as part of that cost. They were, therefore, entirely disallowed.

***Petty Cash (Both Years)***

41. The Applicant submitted that the sum of £4,600 in total should be allowed is reasonable for 2007/08 based on an extrapolation of the receipts for the period April to October 2008. Minor additional ad hoc payments for cleaning, gardening and odd jobs had not been reasonably incurred because these tasks should form part of the block manager's/odd job man's duties. In relation to 2008/09, it was simply submitted that the sum of £7,760.88 should be reduced because it was unreasonable.

42. The First Respondent effectively relied on the disclosure made for 2007/08 to prove the petty cash expenditure for the year and submitted, therefore, that the individual items of cost had been reasonably incurred. In addition, Mr Jones said in evidence that for both service charge years, it is necessary to pay someone on an ad hoc basis to assist the block manager/caretaker because of the level of work required from time to time. This would include, for example, the removal of a vehicle or a particularly large item which had been dumped. He also said that anything which is not considered to be prudent expenditure is disallowed by the directors.
43. The Tribunal accepted in principle that there should be a petty cash provision for the cost of minor repairs and for other ad hoc tasks to be performed. However, the Tribunal considered the budgeted sums of £10,000 in 2007/08 and £7,760.88 in 2008/09 to be excessive. The sums claimed by the First Respondent or in the nature of far more substantial expenditure that was required by a petty cash provision and, therefore, could not be said to have been reasonably incurred. The Tribunal allowed the sum of £2,000 as being reasonable for 2007/08 and the same amount for 2008/09, as an estimated figure. The latter figure would, of course, be subject to the actual some incurred when the final account for that year is prepared.

***Legal & Professional Costs (Both Years)***

44. The sum of £20,000 is claimed for legal and professional costs by the First Respondent for the years 2007/08 and 2008/09. Its primary case is that these costs are contractually recoverable under clause 7(d) of the leases. In the alternative, the First Respondent relies on clause 6(j). The Applicant submitted that, as a matter of construction, neither of these clauses allows the First Respondent to recover these costs.
45. By clause 7(d) of the leases, the landlord covenanted with the tenant to:
- “At the reasonable request of and at the expense of the Tenant..... to use its best endeavours to enforce against other tenants in the Block covenants entered into by those tenants similar to those covenants entered into by the Tenant under this Police.”*

46. By clause 6(j) of the leases, the company covenanted with the tenant to:
- "Do such other acts and things as may be considered reasonably necessary or desirable for the maintenance of the Estate or the Block and the comfort and convenience of the occupiers."*
47. It is appropriate to, firstly, deal with the submission made by the First Respondent that this issue is *res judicata* and cannot be reopened by this Tribunal. In support of this submission, the First Respondent relies on an earlier decision made by the Tribunal dated 21 February 2006 in relation to this property.
48. The Tribunal did not accept the submission that the First Respondent's contractual entitlement to recover its legal and professional costs is *res judicata*. The Applicants correctly submitted that this point was not specifically considered in the earlier decision made by the Tribunal. At paragraph 31(e) of the decision, the Tribunal said they declined to make an order under section 20C of the Act to prevent the First Respondent from being able to recover all or part of its costs. However, the First Respondent's contractual entitlement to do so was not argued by the parties and was not specifically considered by the Tribunal. This Tribunal concluded that the issue was not *res judicata* and could be considered here.
49. As a point of general principle, the Applicant submitted that a clear and unambiguous term is required to recover these costs and neither of the clauses relied on by the First Respondent meet this requirement: see *St Mary's Mansions Ltd v Limegate* [2002] EWCA Civ 1491.
50. In relation to clause 7(d), it was submitted by the First Respondent that the cost of enforcing covenants against other leaseholders was recoverable under this clause at leaseholders' expense. It was contended that action was taken against non-payers at the request of leaseholders and, therefore, these costs were recoverable.
51. The submission made by the First Respondent was essentially incorrect because clause 7(d) is a covenant given by the landlord and not the company and, therefore, is not enforceable by the First Respondent. In any event, as the Applicants correctly

submitted, legal costs do not fall under the service charge. The service charge is the total cost of the service charge obligation. The service obligations, as defined under clause 1(e) means the obligation or obligations to provide their services that the company covenants to provide under clause 6 of the leases. Although it was not strictly necessary for the Tribunal to do so, it went on to consider the meaning and effect of clause 7(d).

52. The Applicants also correctly submitted that it had been intended that the landlord could recover its costs when a request had been made by a tenant to enforce one or more covenants against other tenants where a breach had occurred. It is clear that the liability for the cost of taking such action should fall on the tenant making the request and not on the general service charge liability of the leaseholders. To the extent that any such request was made by one or more of the other tenants, then the effect of this clause is that the cost must be recovered from those tenants alone.
53. Turning to clause 6(j), the First Respondent submitted that legal action was for the benefit of the leaseholders was undertaken because it is reasonably necessary and/or desirable for the maintenance of Pavilion Court and/all the comfort and convenience of the occupiers.
54. The Tribunal also did not accept the First Respondent's construction of clause 6(j) for two reasons. Firstly, the Tribunal agreed with the Applicants' submission that this clause was not sufficiently clear and unambiguous to allow for the recovery of legal and professional fees: see *St Mary's Mansions* (at paragraph 15). Secondly, and perhaps more importantly, a proper reading of clauses 6 and 7 in the leases reveals that it was clearly intended that the roles of the company and the landlord should be discreet and separate. The covenants given by the company under clause 6 solely concerned with the maintenance and upkeep of the property generally. As the Applicants correctly submitted, these relate to the physical maintenance of the building and the estate. This does not include any legal and professional costs incurred by the company, as is the case here.
55. Accordingly, the Tribunal found that the legal and professional costs claimed by the First Respondent in relation to both service charge years are not contractually

recoverable by it as relevant service charge expenditure. The Tribunal did not consider whether these costs are recoverable as administration charges because they are not claimed as such by the First Respondent (see paragraph 62 of the Respondent's closing submissions).

#### ***Accountancy Fees (Both Years)***

56. It was accepted by the Applicants that these costs were recoverable as relevant service charge expenditure under the terms of the leases. However, it was submitted that the amounts claimed in respect of each service charge year was unreasonable because they were substantially greater than the original budget figures and the lack of transparency meant that an element of double recovery could not be discounted. They contended for a figure of £500 per annum.
57. The First Respondent submitted that the accountancy fees, in particular for the 2007/08 year, were reasonable because the actual fees incurred were significantly greater than the amounts being claimed through the service charge account. Mr Jones explained that the increase was largely as a consequence of the administration and the necessity of having to put right the accounts.
58. The Tribunal had considerable difficulty in attempting to ascertain how the actual accountancy fees had been comprised and what work had in fact been carried out. No proper explanation had been provided by the First Respondent and, consequently, the figures remained at large. The Tribunal accepted that greater accountancy work would have been required in the 2007/08 year to regularise the service charge accounts when the First Respondent came out of administration. Using its own expert knowledge and experience, the Tribunal considered the accountancy fees in the round. The Tribunal allowed the sum of £3,000, as being reasonably incurred for the 2007/08 year and an estimated figure of £1,750 for the 2008/09 year.

#### ***Provision for Financial Inspection (Both Years)***

59. The Respondents conceded that these costs have not been incurred in either year and were not recoverable.



### ***Bank Charges***

60. This item of expenditure had not been specifically challenged by the Applicants and, therefore, it was not necessary for the Tribunal to make a determination on this matter. It simply expresses the view that these costs would normally form part of the managing agent's fees.

### ***Essential Building Maintenance (2007/08 only)***

61. This cost was not challenged by the Applicants and not addressed in their closing submissions. Accordingly, the Tribunal made no determination on this matter.

### ***Sinking Fund (2007/08 only)***

62. A provision of £5,852 is claimed by the First Respondent only in relation to the 2007/08 year. However, it seems that no documents are available in relation to this matter as a result of the administration. The Applicants submitted that this item should be disallowed on the basis that the capital projects envisaged had been separately accounted for and, therefore, this cost had not been reasonably incurred.
63. The Tribunal considered that a sinking or reserve fund provision of this kind was reasonable having regard to the age of the subject property. Inevitably, there are going to be various works requiring capital expenditure and a provision for a sinking or reserve fund is good practice and is, in any event, recommended by the RICS Code of Management Practice. Accordingly, the Tribunal found this one to be reasonably incurred and allowed as claimed.

### ***Fire Risk Assessment (2008/09 only)***

64. The Applicants submitted that this cost should be disallowed because the leases did not make provision for the recovery of a separate fee relating to a fire risk assessment. However, the Tribunal accepted the First Respondent's admission that this cost was recoverable under clause 6(g) because it was "*for (the) security and safety of the Block and its occupiers...*".
65. In the alternative, the Applicants submitted that the cost was unreasonable because it had been incurred by Mr Price in his capacity as a Director. In addition, the report

prepared by Mr Price was minimal and a figure of £80 was proposed as being reasonable.

66. The Tribunal found that this cost had not been reasonably incurred because it had been carried out by Mr Price who was not suitably qualified to do so. Indeed, Mr Price did not hold himself out as being so qualified. Therefore, this cost was disallowed.

***Fire Safety Measures/Flat Doors (2008/09 only)***

67. It seems that on the Friday preceding the hearing representatives from the fire service, three police officers including a crime prevention officer and two environmental health officers attended the property in relation to this matter. A report arising from this inspection was pending from the fire officer. He said that, in addition, the intention was to install a sprinkler system. The Applicants simply submitted that this sum should be reduced/disallowed because there is no report to indicate that the sum sought is reasonable.

68. The Tribunal considered that the implementation of any fire prevention or safety measures was desirable. However, it was conceded by Mr Price in evidence that discussions with the fire officer were still ongoing. The scope of the works required was, therefore, at large at the time of the hearing. It follows from this that any sum determined by the Tribunal would be entirely speculative. There was no suggestion that the recommended works were urgent and, no doubt, once the scope of the works had been confirmed, a more informed estimated sum could be included in a subsequent budget. Therefore, the Tribunal disallowed the estimated figure for this year.

***Maintenance Contracts (2008/09 only)***

69. It was conceded by the First Respondent that no maintenance contracts had as yet been entered into in the present service charge year. Given that there were only a few months remaining before the end of the current year, the Tribunal was of the view that no provision was necessary and this sum was disallowed.

***New Roof Sinking Fund (2008/09 only)***

70. Mr Jones gave evidence that this provision was made because it was anticipated that a new roof would be needed in the next 10-15 years. Mr Schreiber discounted this possibility completely. He said that the existing roof was only 10 years old and had, at the very earliest, a lifespan of another 15 years. He asserted that there was no requirement to establish a new roof sinking fund.
71. The Applicants accepted the principle of such a sinking fund but submitted that the estimate was too high in any event. The First Respondent submitted that the estimate was entirely reasonable having regard to the cost of £150,000 that had been incurred when the roof was replaced at the end of the 1990s. If this cost is indexed upwards, it is clear that in 10-15 years the cost of a new roof would be substantial and possibly in the region of £400,000.
72. The Tribunal accepted the First Respondent's arguments regarding the anticipated cost of replacing the roof in approximately 10-15 years. The Tribunal did not consider this a fanciful prospect given the age and complexity of the roof structure of the building. It, therefore, found that the provision of £10,000 claimed in the 2008/09 year to be reasonable. Accordingly, it was allowed in full by the Tribunal.

***Asbestos Removal (2008/09 only)***

72. The Applicants submitted that the provision of £20,000 is not reasonable and should be reduced because an accurate cost for this work could not be ascertained on the basis of the out of date reports available. The First Respondent's understanding was that the sum of £10,000, of the total, was being conceded by the Applicants. However, this is incorrect because the Applicants put the entire amount in issue.
73. This entire sum was disallowed by the Tribunal as not being reasonable. The report upon which the proposed work is based does not provide an estimate of the cost involved. In the absence of any such evidence, the provision of £20,000 was entirely speculative. The earlier estimates obtained in 2005 are out of date. Up-to-date estimates are required to quantify the cost. Accordingly, the Tribunal found the estimated cost not to be reasonably incurred and it was disallowed.

***CCTV (2008/09 only)***

74. The Applicant submitted that a CCTV system was not required because the existing security fobs used to gain entry to the building was sufficient. The cost of installing a CCTV system was, therefore, one reasonably incurred. Moreover, there was no clear indication of the approximate costs.
75. The First Respondent submitted that, given the history of criminal and antisocial behaviour at the property, the requirement to install a CCTV system was clear and the cost of doing so reasonably incurred.
76. The Tribunal found that this cost had not been reasonably incurred given that there was already a security system in place, which was, in its opinion, adequate. The installation of a CCTV system was unlikely overall to provide any significant additional security benefits for the lessees. It was, therefore, disallowed by the Tribunal.

***Section 20 & Fees***

77. In the light of the Tribunal's ruling above that the First Respondent is not entitled to contractually recover its costs in these proceedings or otherwise, the consideration of the Applicants' application under section 20 of the Act is largely irrelevant. Nevertheless, for the avoidance of doubt, the Tribunal does make an order preventing the First Respondent from recovering any of the costs it has incurred in these proceedings. The test to be applied when making the order under section 20 is that it must be just and equitable to do so having regard to all the circumstances of the case. Having regard to the overall outcome in this matter, the Applicants have succeeded on a number of the major issues and the Tribunal considered it would neither be just or equitable that they should have any liability, if at all, for the First Respondent's costs.
78. As to the fees paid by the Applicants in bringing this application, there is no particular statutory test to be applied by the Tribunal when considering this matter. Therefore, the Tribunal's approach was to take an overall view. On balance, the Applicants had succeeded on a majority of the issues. In other words, the merits of the application slightly outweighed the demerits. This did not provide a compelling reason for the

Applicants to be reimbursed by the First Respondent for the fees paid by them to the Tribunal and, accordingly, made no such order.

Dated the 9 day of September 2009

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CHAIRMAN..... *I. Mohabir*  
Mr I. Mohabir LLB (Hons) 