RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case Number : CHI/00LC/LSC/2009/0101

Property: Flats A & B, No. 156 Richmond Road, Gillingham, Kent, ME7 1LNL

Applications:
(1) Section 27A of the Landlord and Tenant Act 1985 (Service Charges)
(2) Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (Administration Charges)
(3) Section 20C of the Landlord and Tenant Act 1985 (Landlords costs of the proceedings)
(4) Leasehold Valuation Tribunal (Fees)(England) Regulations 2003 (Re-imbursement of Fees)

BETWEEN:

Applicant: Fairfield Rents Limited

Respondents:
(1) Marcus Becker
(2) Personal Representatives of the Estate of David Thompson Deceased

Date of Application: 24th July 2009

Date of Hearing: 14th December 2009

Appearances for the Applicants:
Mr Ian Bell (legal adviser)
Mr Nasir Adnan (property accountant)
Both from Urbanpoint Property Management

Appearance for the Respondents:
Catherine Speirs from Quality Managed Homes

Members of the Leasehold Valuation Tribunal:
Mr H.D. Lederman (Lawyer/Chairman)
Mr J.B. Tarling MCMI (Lawyer/Member)
Mr B.R. Simms FRICS MCIArb (Valuer/Member)

Date of the Tribunal's Decision: 9th February 2010

THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL:

1. That the total Service Charges and Administration Charges payable by the Respondent Marcus Roger Becker to the Landlord for the service charge years 1999 to 2009 for both properties is £5,603.86. In addition Interest is payable by the Respondent Marcus Roger Becker to the Landlord under each Lease. The amounts payable as service charges sums were payable by the Respondent Marcus Roger Becker at the latest 21 days from the date of each demand of service charge.

2. The Tribunal Orders the Respondent Marcus Roger Becker to pay to the Landlord the Fees paid by the Landlord in these proceedings. Those Fees amount to a Total of £350.00. Such amount shall be paid to the Landlord within 21 days from the date of receipt of this Decision from the Tribunal.

3. The Tribunal makes an Order under Section 20C of the Landlord and Tenant Act 1985 to the effect that none of the costs incurred by the landlord in connection with these proceedings are to be regarded as relevant costs in connection with any service charges payable by the tenant.

REASONS FOR THE TRIBUNAL'S DECISION.

Preliminaries and scope of decision

1. This is a decision of a Leasehold Valuation Tribunal of the Southern Rent Assessment Panel on an application dated 24th July 2009 made by the Applicant under sections 18, 19 and 27A Landlord and Tenant Act 1985 (the "1985 Act"). The application also raised questions about administration charges and was treated by all parties present at the hearing as raising issues under Schedule 11 of the Commonhold & Leasehold Reform Act 2002 ("the 2002 Act"). The Tribunal also considered whether an Order under Section 20C of the 1985 Act should be made. The Tribunal was asked to make orders about specific items of service charges and administration charges for service charge years 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008 and 2008-2009 concerning sums alleged to be due under a lease of the lower ground floor flat Flat A, 156 Richmond Road Gillingham dated 12th May 1989 and a lease of Flat B (ground floor, first floor and rear garden) 156 Richmond Road Gillingham ("the property") dated 26th October 2009. Each lease is for a term of 99 years commencing on 12th May 1989. Each lease is in similar but not identical terms.

2. The Tribunal has reached a determination of all the service charge items that were put in issue by the application. Where the Tribunal has not mentioned the evidence about a particular item it was not challenged by the Respondent, or the subject of a request for a determination by the Applicant. For the year 1999-2000 the Applicant sought a determination that the Respondent was liable for service charges which fell due partly during the period the Leases were vested in the Respondent's predecessors in title but only those relating to audit accountancy fee, insurance premium and management fee: see page [29]. As neither predecessor in title was a Respondent to these proceedings, and because the invoices to the predecessors at pages [197] and [198] showed nil balances as at May 2000, the opening balance for service charge year 1999-2000 is taken as nil.

The parties to these proceedings

3. The Applicant was represented in correspondence and at the hearing on 14th December 2009 by Mr Ian Bell, legal adviser and Mr. Nasir Adnan (also known in some of the correspondence as Naz Adnan) both employees of Urbanpoint Property Management Limited ("UPM"), managing agents on behalf of Fairfield Rents Limited. The First Respondent was represented at the hearing by Catherine Speirs, an employee of Quality Managed Homes ("QMH") managing agents who acted on behalf of the First Respondent. Although QMH may have represented David Thompson in connection with the property in the past, it was common ground that QMH had no authority to represent the Estate of David Thompson at the hearing. Mr Thompson passed away at some point before late June 2006. Although UPM

said they had attempted to make contact with the solicitors for Mr Thompson's Estate previously at Rawlinson Hunter, there is no evidence that this application has been duly served upon or otherwise notified to Mr Thompson's Estate. This point was clarified with the representatives of UPM at the beginning of the hearing on 14th December 2009. UPM said they were content to proceed with the hearing on the basis that this decision would not bind or affect Mr Thompson's Estate. In particular UPM did not seek an adjournment to address this issue. The Tribunal was provided with Land Registry Office Copy Entries of each of the two Leasehold titles. They show David Ashley Thompson and Marcus Roger Becker are joint proprietors of each Lease, and likely to be joint tenants with joint and several liability. Despite this, given the age of the matters in issue the Tribunal decided to proceed. Accordingly all references to the Respondent in the Reasons and in the Determination below are only to Marcus Roger Becker.

Determination of service charges and administration charges payable by the Respondent

4. The only amounts payable for the property as a whole for the service charge years in issue are £5,603. 86 and interest thereon. Those figures are explained below:

Head of expenditure	**Amount payable £**
1999-2000	
Opening balance (Treated as nil)	00.00
Audit and accountancy	00.00
Insurance premium –see schedule page [98]	449.30
Management fee @ 6% of above	26.95
Subtotal	476.25
Less payments (excluding ground rent) from Whyte and Co of £1,771.34 and £558.82 pages [197-198]	
Balance service charges and administration charges payable 1999-2000	00.00
2000-2001	
Opening balance (Treated as nil)	00.00
Audit and accountancy	00.00
Insurance premium – page [84]	503.55
Legal and professional fee	00.00
Administration fees (page [200])	00.00
Legal and professional fees	00.00
Management fee limited to 6% of above	30.21
Balance service charges and administration charges payable (excluding interest) 2000-2001	533.76

2001-2002

Audit and accountancy	00.00
Insurance premium	582.71
General reserve	00.00
Management fee limited to 6% of above	34.96
Balance service charges and administration charges payable 2001/2002 (excluding interest)	617.67

2002-2003

Audit and accountancy	00.00
Insurance premium	611.85
Reserve fund credit: see page [32] £467.80	
Management fee limited to 6% of above (deducting reserve fund credit) 6% of £144.35	8.66
Balance service charges and administration charges payable (excluding interest) 2002-2003	152.71

2003-2004

Audit and accountancy	00.00
Insurance premium- see pages [101] and [84]	573.67
Management fee limited to 6% of above but only £29.38 claimed –see page [33]	29.38
Balance service charges and administration charges payable (excluding interest) 2003/2004	603.05

2004-2005

Audit and accountancy	00.00
Insurance premium- see pages [102] and [84]	595.60
Management fee limited to 6% of above but only £29.38 claimed –see page [33]	29.38
Balance service charges and administration charges payable (excluding interest) 2004/2005	624.98

2005-2006

Audit and accountancy	00.00
Insurance premium- see pages [103] and [84]	613.54
Repair and maintenance	170.00
Less Building surplus credit £63.61	
Management fee limited to 6% of above (deducting reserve fund credit – 6% of £719.93)	43.19
Balance service charges and administration charges payable (excluding interest) 2005-2006	763.12

2006-2007	
Audit and accountancy	00.00
Insurance premium- see pages [104] and [84]	699.18
Legal and professional fees	00.00
Management fee limited to 6% of above	41.95
Balance service charges and administration charges payable (excluding interest) 2006-2007	741.13
2007-2008	
Audit and accountancy	00.00
Insurance premium- see pages [105] and [84]	730.33
Less bank interest credit of £9.49	
Management fee limited to 6% of above (excluding opening balance but deducting reserve fund credit – 6% of £720.84)	43.25
Balance service charges and administration charges payable 2007-2008 (deducting credit)	764.09
2008-2009	
Audit and accountancy	00.00
Legal and professional fees	00.00
Insurance premium- see pages [106] and [84]	758.77
Less bank interest credit of £0.89	
Management fee limited to 6% of above (deducting reserve fund credit – 6% of £757.88)	45.47
Balance service charges and administration charges payable 2008-2009	803.35
Total service charges payable	**5,603.86**

5. The assignment to the Respondent of each Lease was registered on 25th May 2000 just before the end of the 1999/2000 service charge year. Accordingly in principle the Respondent became liable to pay a proportion of service charges as between himself and his predecessor in title. As between the Applicant and the Respondent the Respondent remains liable for the service charges due as the covenant in clause 3(2) runs with the land in each Lease.

Inspection of the property

6. The Tribunal inspected the property on 14th December 2009 immediately before the hearing. This is 3 storey terrace property about 100 years old divided into two flats at a later date, before the leases were granted. It is built of colourwashed brick under a concrete tiled roof. The entrance to the basement flat which had its own

external front door was by way of stone staircase leading down from street level. The only means of access to the rear garden from the property was (despite the terms of the Lease of Flat B which also demised part of the rear garden) from the basement flat the subject of the Lease of Flat A. It is possible there was some other means of access to the garden from rear of the garden from outside the property. Each flat had been sub-let to an individual tenant who resides in each flat. The entrance lobby accessed through the front door on the ground floor at street level only provided access to Flat B (ground and first floor) only. There is an external pathway leading to this door which also provides access to the basement stairs.

7. It was common ground and apparent from the inspection and the documents provided that neither flat at the property had been occupied by the Applicant or the Respondent or Mr Thompson.

Procedure at the hearing

8. A pre-trial review took place on 2nd September 2009. Directions were made inter alia for preparation of a bundle of documents to comprise the Applicant's Statement of Case by the Applicant. The Tribunal having considered the Applicant's bundle (192 pages) sent a letter dated 8th December 2009 inviting the Applicant to produce service charge demands and other documents at the hearing. On the morning of the hearing in response to that request UPM produced a further bundle (with pages numbered 193-234) of service charge demands and other documents. The Respondent's representative Catherine Speirs was asked whether she objected to any of those documents going into evidence or needed further time to consider. She was also given the opportunity to take instructions from QMH about them. Before the evidence was heard the Tribunal Chairman confirmed each representative had the same bundles of documents which were also available to the Tribunal. Each party's representative confirmed they had copies of the relevant bundles which the Tribunal was working from. Directions had been given for the Respondent to file a Statement of Case by 27th November 2009. Despite this after the hearing had finished (and after all final submissions had taken place) Catherine Speirs produced a document entitled "Statement of Case" on behalf of the Respondent which she said had been sent to the Tribunal in the days before the hearing. The Tribunal considered that document and took the view that it added nothing to the submissions which she had made earlier in the course of the hearing.

Relevant provisions in the Leases

9. Each Lease contains a covenant in clause 3(2) to pay "maintenance rent" being the "Tenants proportionate part of all moneys expended or contracted to be expended by the Landlord in complying" with the Landlord's covenants "(including the covenant as to insurance)". The same covenant provides that any sums due under this sub-clause if not so paid shall be "forthwith recoverable by action and carry interest at Fifteen Pounds per centum per annum until payment". The "Tenants proportionate part" for Flat A (lower ground floor) was one third. The "Tenants

proportionate part" in the same clause of the Lease of Flat B (ground floor and first floor) was two thirds. Broadly this equated to the parts of the property demised to each flat.

10. By clause 3(3) of each Lease the lessee covenanted to "contribute to the landlord or the Landlord's Managing Agents by way of administration expense the reasonable fees of the Landlord or his Managing Agents being an amount not exceeding six per centum if the payments due under Clause 3(2) due under clause 3(2) and such fee to be paid in accordance with clause 3(2)".

11. The Landlord's covenants in clause 4 of each Lease are prefaced by the following words which were the subject of some discussion at the hearing and in correspondence: "The Landlord HEREBY COVENANTS with the Tenant but so that so far as the performance of the covenants herein contained involved the expenditure of any money by the Landlord the liability of the Landlord hereunder shall be conditional upon the Tenant paying to the Landlord the moneys covenanted to be paid by the Tenant to the Landlord under clause 3(2) hereof". In clause 4 there are a number of clauses requiring the landlord to keep various parts of the property in good repair and condition. Clause 4(4) requires the landlord "To keep [the property] adequately insured ...".

Service charges and Administration charges

12. "Service charges" are the name given by Acts of Parliament such as the 1985 Act to monies payable under a lease of a dwelling for services and works provided to the lessee (the Applicant) by the landlord. In the Leases the phrase "maintenance rent" or similar phrases are used to refer to service charge. "Administration charge" is defined by the 2002 Act to include an amount payable by a tenant of a dwelling as part of or in addition to the rent payable directly or indirectly "in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is a party to his lease otherwise than as landlord or tenant". Further explanation of an Administration charge is given below.

Relevant legislation

13. Sections 18–30 of the 1985 Act refer to restrictions on "Service Charges". The relevant provisions are:

> "18— (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a (dwelling) as part of or in addition to the rent—
> (a) which is payable directly or indirectly for services ... or insurance or the landlord's cost of management and
> (b) the whole or part of which varies or may vary according to the relevant costs.

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

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

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

and the amount payable shall be limited accordingly ...

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

Section 20B of the 1985 Act provides in effect that if a demand for payment of service charge is made more than 18 months from the date of incurring of costs, the tenant will not be liable unless within that period the tenant was notified in writing that he would later be required to contribute to the payment.

Section 21B of the 1985 Act provides a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. Section 21B(3) states a tenant may withhold payment of a service charge demanded from him if that information did not accompany the demand.

Where a tenant withholds a service charge under section 21B, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it: see section 21B(4) of the 1985 Act. With a small exception, section 21B takes effect in relation to service charge demands served on or after 1st October 2007.

Section 27A(1) of the 1985 Act provides the Tribunal with jurisdiction to determine 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.

Subsection 27A(2) of the 1985 Act provides that jurisdiction applies whether or not any payment has been made.

Section 27A(3) of the 1985 Act provides:

> "An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
>
> (a) the person by whom it would be payable,
> (b) the person to whom it would be payable,
> (c) the amount which would be payable,
> (d) the date at or by which it would be payable, and
> (e) the manner in which it would be payable"

Section 27A of the 1985 Act only came into force on 30th September 2003.

Paragraph 2 of the 11th Schedule to the 2002 Act provides "A variable administration charge is payable only to the extent that the amount of the charge is reasonable" . Paragraph 1(3) of the 11th Schedule to the 2002 Act defines "variable administration charge" to mean an administration charge payable which is neither (a) specified in [the] lease, nor (b) calculated in accordance with a formula specified in [the] lease. Paragraph 5 of the 11th Schedule to the 2002 Act gives the Leasehold Valuation Tribunal jurisdiction to determine the payability of administration charges in the same way as for service charges under section 27A of the 1985 Act. The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 ("the Administration Regulations 2007") require a summary of rights to accompany any demand for an administration charge made on or after 1st October 2007. Paragraphs 4(3) and 4(4) of Schedule 11 to the 2002 Act enable the tenant to withhold payment of an administration charge in the same manner and with the same consequences as he could withhold payment of service charge demand which was not accompanied by a demand.

Service Charge demands

14. In the course of the introduction to the hearing before the detailed items of service charge were considered, Catherine Speirs was asked whether she accepted the Respondent had been sent the invoices contained in the bundle from pages 195-234. Apart from those addressed to their predecessors in title at pages 195-198 inclusive, she accepted unconditionally those documents had been received by the

Respondent. In any event, the correspondence which the Tribunal has seen evidence of service of service charge demands (as well as evidence of service of service charge statements) by the Applicant upon the Respondent at the QMH's address. Service of service charge demands was not an issue challenged by Catherine Speirs. In any event Tribunal finds the following letters in the bundle, evidence the service of demands, and where appropriate, service of notice under section 21B(b) of the 1985 Act that the Respondent would be charged for sums which formed the demands for the service charge years itemised below:

Date of demand and page reference [ ]	Letter in bundle and page reference [ ]	Service charge year
24 12 1999 and 20 12 2000 [197-198]	02 02 2001 [107-108] [110]	1999-2000
20 12 2000 [199-200]	28 6 2001 [109] and 11 03 2002 [110-111]	2000-2001
02 07 2001 [201-202]	28 6 2001 [109] and 11 03 2002 [110-111]	2000-2001
09 04 03 [113-114] and various demands [198-208]	09 04 03 [113-114]	2000-2001, 2001-2002, 2002-2003
16 12 2003 [211-212]	23 02 2004 [120] and 14 12 2004 [124 see reference]	2003-2004
31 08 2004 [213-214]	25 07 2005 [125] – see reference to statements	2004-2005
01 08 2005 [217-218]	25 07 2005 [125]	2005-2006
28 07 2006 [221-222]	28 0 2006][141]	2005-2006 2006-2007
03 12 2007 [227-228]	08 07 2007 [144]	2007-2008
03 12 2007 [227-228]	25 06 2008 [148-149][151-153]	2007-2008
12 08 2008 [229-230] 27 11 2008 [231-232]	06 11 2008 [158] 09 03 2009 [165-168]	2007-2008 2008-2009
29 07 2009 [233-234]	30 10 2009 [187-192]	2009-2010

The Tribunal accordingly concludes that each of the demands for the above service charge years were served within 18 months of the date of the date the costs were incurred, or if not, the statements of account served from time to time between 1999 and 2009 amounted to notification to the Respondent that he would later be required to contribute to the payment for the purpose of section 20B of the 1985 Act.

Summary of information accompanying service charge demands

15. The evidence of Mr Adnan of UPM was that the service charge demands served after 1st October 2007 were accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. An example of such a summary was at page [194]. This was not challenged by Catherine Speirs of QMH on behalf of the Respondent.

Individual heads of service charge expenditure

16. **Audit and accountancy fees**. In each service charge year which is the subject of this application an amount has been claimed for audit and accountancy charges. There is no express justification in clause 4 of either Lease which requires the landlord to incur such charges. There is no express provision in the lessee's covenants in clause 3(2) of either Lease which requires the lessee to contribute to such a cost or charge. When asked about the Applicant's justification for this head of claim, Mr Adnan referred to the provision in clause 3(2) of the Lease of Flat A (lower ground floor) of the property which enables the lessee to request a certificate from the landlord "of all sums included in the maintenance rent". He was unable to identify any specific request for such certificate from the Respondent. The reference to such a certificate does not appear in clause 3(2) (or any other clause) of the Lease of Flat B. Neither party was able to explain why such a difference in the provisions of the leases might have been inserted.

17. It was then said by UPM that the sums claimed for accountancy and audit fees were "small" and incurred for the benefit of the lessees to enable them to ascertain the amounts expended or to be expended. The Tribunal has no reason to doubt that funds were expended on appointing an accountant to examine the service charge vouchers and reconcile the various items of income and expenditure. One example of an invoice from such an accountant is at page [42]. There is no evidence that such costs were incurred at the request of the Respondent.

18. It is common ground that management fees were claimed by UPM for each service charge year under clause 3(3) of each Lease in addition to accountancy and audit fees. It follows that accountancy and audit fees were not claimed as part of those "administration expenses". UPM confirmed the Applicant sought to recover the sums claimed as audit and accountancy fees in addition to management fees.

19. The Tribunal is in no doubt that the costs incurred for accountancy and audit fees were not payable by the Respondent as lessee under the terms of either Lease. No certificates had been requested by the tenant under clause 3(2) of the Lease of the Lower ground floor and there was no other provision for payment of such sums under either Lease. In addition, in relation to those costs incurred before September 2003, those sums were not reasonably incurred. If the sums were not payable under the Leases it was not reasonable to incur those fees which were of little if any benefit to the lessees.

Legal and professional fees

20. For service charge years 1st July 2000 to 30th June 2001, 1st July 2006 - 30th July 2007 and 2008-2009, separate sums are claimed under the heading of "legal and professional fees" (including survey fee in the latter year). When these heads of claim were examined at the hearing by reference to the spreadsheet analysis of service charge expenditure dated 30th October 2009 at page [84] it became clear these were professional fees of one kind or another but not legal fees. Fire risk assessments and health and safety assessment costs appear to have been incurred in the 2008-2009 service charge year. UPM through Mr Adnan disclaimed any attempt by the Applicant to charge the costs of Mr. Bell (their legal adviser) as part of service charges under these or other heads of expenditure.

21. UPM were asked how these fees were to be justified by reference to the Leases. The best that could be done was (with the Tribunal's help) to point to clause 4(3)(b) of each Lease which might enable the landlord to employ persons reasonably necessary for the performance of the landlord's covenant to decorate in clause 4(3)(a) of each Lease.

22. The Tribunal took each item listed under this head of expenditure in turn. The first was a surveyor's fee of £293.75 incurred on or about 22nd June 2001. This was supported by reference to a pro forma invoice which appeared to have been rendered by "Urbanpoint 2007 old" to Urbanpoint Management Limited at page [44]. The copy invoice contained no indication that invoice had in fact been paid (as opposed to simply amounting to a book entry within the internal accounts of UPM or its associated companies). The narrative on the invoice reads "professional services in relation to instructing a surveyor to prepare a condition surveyor report and advise the reinstatement cost for building insurance purposes; providing copy lease(s) previous reports (where applicable) and surveys in relation to the building leaseholder details for address and associated information". The sum claimed comprised £250 plus 43.75 VAT. The Tribunal was not able to consider the survey report to assess whether this report was for compliance with landlord's covenants under the Leases. There was no indication of the identity of the surveyor or his qualifications, although the Tribunal were told by Mr Adnan who was not employed by UPM at the time it would have been carried out on or before 22nd June 2001 by a firm called "Hamlin Able and Grange". In evidence Mr Adnan of UPM said that this sum was an apportioned part of a "global" invoice incurred by UPM for building insurance purposes.

23. Further evidence about the nature of this survey report might be contained in the UPM letter of 28th June 2001 at page [109] which refers to a "condition survey" and "surveyor's condition survey report" which it was said had been provided to QMH on behalf of the Respondent. Unfortunately there was no evidence from the author of that letter. There is no confirmation that the report referred to in that letter is the report for which the charge is made. It is apparent that Mr Becker queried excess service charges claimed on 30th June 2001 in a letter dated 28th February 2002

which is not in evidence. In UPM's response dated 11th March 2002 page [110] there is reference to that excess service charge including "£97.92 in respect of surveyor's report as required per your lease and so we could better improve the health of your property". There was no evidence from the author of that letter. There is no confirmation that the report referred to in the letter at [110] is the report for which the charge is made.

24. The Tribunal is not satisfied from the materials now available that such a survey report had been carried out which fell within the terms of clause 4(3)(b) or any other provision of either Lease. In addition, even if such a report might have been justified by the terms of either Lease, the Tribunal was not satisfied that the sum of £250.00 plus VAT was reasonably incurred for the purpose of carrying out such a valuation for building insurance purposes or other purposes under the terms of either Lease. The insurance schedule at page [99] of the bundle suggests when taken with the other schedules in the bundle that the Applicant changed insurers from the 2000-2001 service charge year to new insurers at Lloyds and Groupama for the service charge year on or about 24th June 2001. The Tribunal has been given no explanation why such a change took place or if the survey report was in any way associated with such a change. No witness evidence about this has been adduced and the Tribunal is left in the unsatisfactory position of having to speculate about whether the sum charged was reasonable for the services rendered or whether it was reasonably incurred, some 8 years later. Given the age, the state of the evidence and absence of witnesses who have any knowledge about this, the Tribunal is unable to reach a finding the sum claimed for this survey report is payable.

Asbestos and other survey reports

25. A further survey report was apparently carried out at a total cost of £293.75 (inclusive of VAT) on or about 23rd June 2007 and charged to service charge account – see page [74] and [84]. The principal evidence about this survey available to the Tribunal is contained in an invoice dated 6th July 2007 at page [74] which contains the following narrative "Review of previous condition survey and report". The invoice was apparently rendered to UPM by a company called Management Services (HR) Limited whose address is given in Hall Green in Birmingham. No copies of that report or the earlier report referred to in the invoice have been provided to the Tribunal. In answer to why such a report was payable by lessees under the Lease UPM said that it was for their benefit. No particular provision in either Lease was relied upon. It is far from clear precisely what work or services Management Services (HR) Limited, let alone that they were qualified to provide such a report.

26. Separately, the UPM letter addressed to QMH of 28th July 2006 at [141] stated that the service charge estimate (budget) for the year ended 30th June 2006 contained the following narrative "In accordance with our earlier letter an amount of £395 has been included towards the costs of inspection and reports for communal electricity and asbestos survey as explained in the letter. The fee also includes an amount for

inspecting the building and preparing a condition survey report that will cover a work plan for the building over the next 5 years and a revaluation of the sum insured for the building insurance purposes". It is unclear which earlier letter was referred to in the letter of 28th July 2006. The Tribunal was not told whether this further survey report was intended for any of those purposes.

27. An Asbestos Survey and Report was said to have been carried out at a total cost of £346.63 (including £51.63 VAT) on or about 23rd June 2007 and charged to service charge account – see page [73] and [84]. The principal evidence about this "survey and report" available to the Tribunal is contained in an invoice of 6th July 2007 at page [73] of the bundle which only says "Asbestos Survey and report's" (sic) for the property. No copies of the survey or report referred to in the invoice have been provided to the Tribunal. In answer to why such a report was payable by lessees under the Lease UPM said that it was for their benefit and in compliance with legislation. No particular provision in either Lease was relied upon. The only legislation of potential relevance which the Tribunal could contemplate might have been in the minds of the person commissioning such a report was The Control of Asbestos Regulations 2006/2739 which came into force in November 2006 and the Management of Health and Safety at Work Regulations 1999 (as amended). Generally speaking these regulations only apply to non-domestic premises. Leaving aside whether common parts of the property qualify as non-domestic premises, the Tribunal is completely unpersuaded that there were any common parts to which these regulations might apply at the property. As far as the Tribunal could tell there is no common access or a common hallway which might contain asbestos for example. The Tribunal is NOT saying that these Regulations do not apply to this Property. Nor is the Tribunal saying that there is no asbestos at the property. Nor is the Tribunal saying that such a report was not advisable or prudent. The Tribunal's task is to determine whether the sums claimed are payable under the Leases and whether they were reasonably incurred. On the incomplete materials available The Tribunal is unpersuaded that such a report was required or permitted under the terms of either Lease, or the sum said to have been paid for such a report were reasonably incurred.

28. Similarly under this head of service charge the Tribunal has seen invoices from Management Services (HR) Limited dated 24th February 2009 and 20th February 2009 at pages [81 and 82] of the bundle which indicated that a charge for services was claimed for "Health and Safety Assessment Report" and "Fire Risk Assessment and Training Fire Instruction & Training". These items were charged to service charge accounts for the respective service charge years. No copies of any of the reports or assessments said to have been supplied by Management Services (HR) Limited have been supplied to the Tribunal. UPM were unable to adduce any evidence of any training or instruction which may have alleged to have been given. Catherine Speirs of QMH had no knowledge of such training or assessment. The UPM letter of 9th July 2007 at page [144] contained the following narrative in relation to Service Charge estimate (Budget) for the year ending 30th June 2008 "Due to new legislation which came into force in October 2006 we are required to

carry out a Fire Risk Assessment on all properties and have included an amount of £150 in the budget for the upcoming period".

29. UPM's letter of 25th June 2008 [page 148] suggested that legislation had changed with regards to assessments at "residential apartment blocks". It was there said that "health and safety legislation places a direct responsibility with [UPM] as managing agents to ensure on your behalf that that the common areas are safe and free of any risk or danger from fire and health and safety to anyone using those areas.....In addition no smoking signs are to be erected in the communal areas... Failure to undertake various risk assessments relating to the above could mean that insurance cover is negated". The Tribunal has already found that there are no significant communal areas at the property. There are no employees or working people and it is difficult to see how risk assessments could be required at the property under the Management of Health and Safety at Work Regulations 1999 or similar legislation. No evidence has been adduced that any of the reports or assessments or training were required by any of the buildings insurers or other insurers.

30. The only legislation that the Tribunal can contemplate might be of potential relevance to these invoices is the Regulatory Reform (Fire Safety) Order 2005/1541. UPM was unable to demonstrate under which provisions of either Lease the costs of these reports, assessments or training might be recoverable. Even if such reports, assessments or training could be justified under the terms of each Lease, the Tribunal is not satisfied on the evidence available that the sums paid were reasonably incurred. In particular there is no evidence that the alleged benefit of these reports or training have been in any way passed on to the Respondent, or applied for his benefit. UPM asserted that the Respondent benefited but there is no evidence to substantiate that assertion.

31. The Tribunal is NOT saying that the Regulatory Reform (Fire Safety) Order (or any other legislation) is inapplicable to the property. The Tribunal is not in a position to say whether such reports, assessments or training were advisable or prudent. Nor can the Tribunal determine whether a fire detection system is required at the property. This question is for the Applicant and the managing agents of the property to consider. QMH may also need to give consideration to this issue. They should investigate and take advice about this issue. The Tribunal's task is to determine whether the sums claimed are payable under the Leases and whether those sums were reasonably incurred. The Tribunal has insufficient evidence to be satisfied on either account.

Repairs and maintenance

32. There is an invoice dated 19th March 2006 (at page [68]) from Martin Jaarman for £170 (no VAT) which indicates that 2 workers on his behalf carried out cleaning and checking works to the drains/gulleys and gutters at the property on 13th March 2006. In addition it appears they took photographs of the boundary wall which was said to have required re-rendering and painting. The photographs referred to in that

invoice were not in evidence. That figure of £170 was included in the service charge statement of account for the property dated 27th July 2006 at pages [64-65].

33. The Tribunal accepts the invoice at page [68] was an accurate account of the work carried out. Although Catherine Speirs did not accept that invoice on behalf of the Respondent she was not able to put forward any ground for suggesting that it was not a correct account. Unlike some other invoices before the Tribunal, it also bears a stamp indicating that it had been paid on 25th March 2006. The Tribunal finds that this work falls within the kind of work to the gutters and pipes which the Applicant is required to carry out by clause 4(1) of each Lease. The Applicant is entitled to recover the cost of such works from the Respondent in accordance in accordance with clause 3(2) of each Lease. The Tribunal did consider whether the total sum paid for this work was unreasonably high. Having seen the property and the need to have ladders with two men attending (at the front and the back) to carry out this work, the Tribunal does *not* consider £170 was unreasonably incurred. It is payable.

34. The breakdown of repairs and maintenance at page [84] suggests that two sums of £170.00 were incurred on the same date. If that was the case the Tribunal is unable to find any other evidence of such additional work. The service charge statement of account for the property dated 27th July 2006 at pages [64-65] only charged one amount of £170 and no further sums were explicitly claimed for such repairs in service charge statements issued after that date. Accordingly on the evidence available the Tribunal cannot be satisfied that the additional sum of £170 was actually incurred, let alone which works were the subject of that charge.

35. The breakdown containing the reference to the additional sum of £170 at [84] only appears to have been served upon the Respondent in preparation for this hearing after September 2009. Even if there was another invoice for such work from the same contractor, the Applicant's failure to make a demand of the Respondent within 18 months of the date when the cost was incurred in March 2006 means that it is now too late to claim this sum by virtue of section 20B of the 1985 Act.

36. At the hearing UPM only contended there was one sum of £170.00 due for repairs and maintenance. The Tribunal so finds.

Insurance premiums

37. The refusal of the Respondent to pay insurance premiums appears to have been a principal point of dispute between the Applicant and the Respondent since 2003. As early as 30th October 2003 [115-116] QMH then representing the Respondent and Mr Thompson were disputing the Applicant's claim to payment of insurance premium under the terms of the Leases saying that the property had been insured by QMH and for a cheaper premium. The Respondent's earlier correspondence referred to in that letter was not in evidence. Initially the Respondent through QMH approached this issue on the footing that he had obtained a quotation which was

cheaper and provided more cover, that he (the Respondent) had an option or choice whether or not to insure the property through the landlord and in any event the Respondent had paid for other insurance to effect his interest in the property: see QMH's letters of 12th January 2004 [118], 14th December 2004 [124] and 5th September 2005 [126-127].

38. The Respondent appears to have been a partner in QMH which according to its headed notepaper carried on business in "Lettings and Property Management" at the relevant times.

39. By letter of 23rd February 2006 [131-132], Catchunit Debt recovery wrote on behalf of the Applicant drawing attention to clauses 4(4) and 3(2) of each Lease. For the first time Catherine Speirs of QMH on behalf of the Respondent alleged that the covenant in clause 4(4) only applied - "here the liability of the Landlord is conditional upon the Tenant paying to the landlord the moneys covenanted to be paid": see QMH's letter of 23rd March 2006 [133-135] (there was no page 134]. When this proposition was examined at the hearing it emerged that QMH had not taken any legal advice about its interpretation of either Lease.

40. The opening words of clause 4 of each Lease are set out below (emphasis added by the Tribunal):

> "The Landlord HEREBY COVENANTS with the Tenant but so that so far as the performance of the covenants herein contained involves the expenditure of any money by the Landlord *the liability of the Landlord hereunder shall be conditional* upon the Tenant paying to the Landlord the moneys covenanted to be paid by the Tenant to the Landlord under clause 3(2) hereof".

The emphasised words are quite clear that it is the landlord's liability which is conditional if it decides not to expend funds on an item which is the subject of a covenant in clause 4. The *rights* of the Applicant landlord to recover expenditure are not affected by or conditional upon payment or non-payment by the Tenant.

41. The Tribunal considered whether in effect the Respondent was saying that the sums incurred for insurance premiums were unreasonable. Accordingly it heard evidence from Mr Bell of UPM about the nature of the insurance policy taken out on behalf of the Applicant landlord which covered the property. In summary his evidence (which was unchallenged in this respect) was that the policy taken out for the property was part of a block policy with the Axa insurance company by or for the benefit of companies in the G & O Group of companies. This had been the case for some 6-7 years. This part of his evidence was supported by the insurance schedules relating to the property from and including the service charge years 2003-2004 to 2008-2009 at pages [101-106]. The advantages of such a block policy including the

following features. The Applicant or its agents did not have to notify insurers of changes of occupants at the various properties, transient occupiers and residents in receipt of state benefits were also covered, sublet properties were covered. There were also relaxed provisions for notifying insurers if properties entered the portfolio but were not notified immediately. Mr Bell's evidence was that the Applicant was the owner of some 20-30 properties but that the G & O group as a whole had some 1700 units covered by the policy.

42. The gist of the Respondent's case on this point was that a cheaper quotation with more revenue protection could and was obtained from year to year since 2001.

43. As a matter of interpretation of clause 4(4) of each Lease the Applicant is not required to obtain the cheapest insurance available for the property. That is not what the covenant says. It is also well settled that whether sums expended for insurance premiums are reasonably incurred does not necessarily depend upon whether the cheapest quotation has been accepted. Mr Bell gave evidence that the G and O group had sought low premiums. Although Catherine Speirs on behalf of the Respondent did not accept this, she was not able to demonstrate from the documents available that the premiums obtained were excessive or (for example) that the Applicant or its agents had not undertaken a reasonable process to obtain quotations. Although cheaper quotations were said to have been obtained by the Respondent for the property, it was unclear whether they provided the same level or extent of cover. She did not allege breaches of provisions of the relevant RICS Code or of any provisions of the 1985 Act concerning insurance. Catherine Speirs did not contend that the valuations for which the property was insured were inappropriate.

44. Not all of Mr Bell's evidence (as the Tribunal understood it) could be accepted. The "Important Notes" on page [193] which were said to accompany service charge demands suggested that "insurers must be notified if the property is to remain unoccupied for a period of 30 days or more". Such a clause in principle at least might be an unfavourable clause in a block policy.

45. The Tribunal was unable to reach the conclusion that the premiums charged by the Applicant were excessive or otherwise unreasonably incurred because it had insufficient evidence to reach such a conclusion. The Respondent had not produced evidence of the market rates from year to year. The Tribunal was unable to reach any conclusion about whether the premiums incurred by the Applicant were unreasonably incurred from the premium charged by the Respondent's insurer as there were no details available confirming the type of cover, its terms, how many properties it related to and other premiums or types of cover available in the various service charges years in issue.

46. It is worth emphasising that the Tribunal was handicapped in considering this issue by the fact that neither party had adduced evidence relevant to a proper consideration of this issue. Accordingly this decision should not be taken as

applicable to service charges for insurance for the property as it might affect any other parties or to any other service charge years.

47. There is no copy of the insurance summary in the bundle for the year 2000-2001. The amount claimed in the application is £582.71: page [30]. However from the schedule at page [99] and the spreadsheet at page [84] it is apparent the figure of £582.71 relates to the premium for 2001-2002. Accordingly the Tribunal has taken the higher of the 2 figures on page [84] for the insurance premium cost on 15th June 2000 namely £503.55.

Management fees

48. The reasonable fees of the Applicant's managing agents are recoverable under clause 3(3) of each Lease subject to a limit of 6% of the payments due under clause 3(2) of each Lease. UPM argued that its fees were reasonable and moderate compared with market fees. Even if that was correct, the Tribunal finds that clause 3(2) of each Lease limits the amount of fees recoverable. Catherine Speirs on behalf of the Respondent argued that the service provided by UPM was poor and the amount should be reduced. She pointed to the fact that initially the proportions of the service charges between each flat had been transposed in the service charge demands. She could also draw attention to the fact that (as the Tribunal has found) UPM demanded sums which were not due under the terms of each Lease and where reports have been obtained relating to the property do not always appear to have passed those reports on to the Respondent. This appears to be the position in relation to reports obtained relating to asbestos, health and safety, fire instruction and risk assessments. If so and these reports have not been passed to the Respondent, this would be a cause for serious concern and possibly a breach of their duties under the Service Charge Residential Management Code (1st and 2nd editions). However the amount of managing agents' fees is limited to 6% of expenditure for sums incurred on behalf of the landlord in each service charge year by clause 3(3) of each Lease. On the findings the Tribunal has made, this means the sums payable for management fees will be very modest for the property as a whole and considerably below current and past market rates for managing these units during the relevant service charge years. This was the effect of the evidence given by Mr Adnan and part of his explanation of why UPM charged higher fees for its fees from time to time during these service charge years. Accordingly although the service provided by UPM may have been lacking in some respects, the Tribunal finds the residual value of the services provided is not less than the sums payable under clause 3(4) of each Lease. There is no evidence that any breaches of duty or failures on the part of UPM have caused the Respondent loss.

49. The Tribunal finds that the services provided by the managing agents before and after September 2003 were of a basic standard. No menu of services provided or details of services contracted to be provided have been produced to the Tribunal. In the circumstances, the Tribunal finds that if and insofar as the Applicant has paid UPM in excess of the sums which it is entitled to recover under each Lease, those

costs were not reasonably incurred. The value of the services provided was not in excess of that sum.

Reserve fund contributions

50. These were claimed in the service charge years 2001-2002 (see page [48] £500 claimed), but credited in the year 2002-2003: see page [32]. A further credit was given of £63.61 in the service charge year 2005-2006: see page [36]. This is of no material effect except perhaps for the purpose of calculating interest and management charges payable. The Tribunal finds there is no provision enabling the landlord to demand such a reserve fund in this Lease. Accordingly no amount was payable under this head in the 2001-2002 service charge year.

Limitation of actions

51. The Tribunal raised with the parties before the hearing the application of the provisions of the Limitation Act 1980 ("the 1980 Act"). In particular there is a 6 year limitation period which applies to an action to recover arrears of rent by section 19 of the 1980 Act. The Tribunal's view is that this is not an action to recover rent. It is an application under section 27A of the 1985 Act. In addition the service charges are not properly described as rent as they are not deemed to be rent or recoverable as rent, even though they may be described as "maintenance rent": see *Escalus Properties Ltd v Robinson* [1995] 3 W.L.R. 524. Like other Tribunals in the past, this Tribunal rejects the possibility that application under section 27A of the 1985 Act is an action to recover any sum by virtue of an enactment to which the 6 year limitation period in section 9 of the 1980 Act applies. The "action" (if that is how these proceedings can be described) is not to recover sums due by virtue of an enactment but under each Lease.

52. The nearest possible limitation period might be section 8(1) of the 1980 (action on a specialty – a contract under seal such as the Leases) which provides for a 12 year limitation period. The word "action" is defined (unless the context otherwise requires) to include any proceeding in a court of law: see section 38 of the 1980 Act. This definition is not exhaustive and it is arguable that the term "action" could be taken to include Leasehold Valuation Tribunal proceedings. The Tribunal concludes that the issue of whether some or all of the service charges would be barred if an action to recover them were brought in a Court of law, is not before the Tribunal. On balance the Tribunal concludes that for the purpose of these proceedings the sums claimed as service charges are not barred by the provisions of the 1980 Act. The Tribunal expresses no view about whether any of the ground rents claimed are barred because the Tribunal has no jurisdiction over liability to pay ground rents.

Administration Charges (including interest)

53. Unpaid administration fees (excluding interest) were included in service charge demands for relevant service charge years as follows:

Service charge year	Date claimed	Amount claimed £	Page number
2000-2001	09 11 2000	23.50 (first reminder)	199
2000-2001	09 11 2000	23.50 (first reminder)	200
2000-2001	27 11 2000	58.75 (2nd reminder	199
2000-2001	27 11 2000	58.75 (2nd reminder	200
2001-2002	25 02 2002	23.50 (first reminder)	205
2001-2002	25 02 2002	23.50 (first reminder)	206
2001-2002	13 06 2002	58.75 (2nd reminder	206
2002-2003	20 11 2002	23.50 (first reminder)	207
2002-2003	20 11 2002	23.50 (first reminder)	208
2002-2003	07 02 2003	58.75 (2nd reminder	209
2002-2003	07 02 2003	58.75 (2nd reminder	210
2003-2004	03 11 2003	23.50 (first reminder)	211
2003-2004	03 11 2003	23.50 (first reminder)	212
2003-2004	23 02 2004	23.50 (first reminder)	213
2004-2005	26 08 2004	23.50 (first reminder)	214
2004-2005	07 10 2004	58.75 (2nd reminder	215
2004-2005	03 12 2004	117.50 (final reminder)	215
2004-2005	03 12 2004	50.00 (debt recovery fee)	215
2004-2005	09 12 2004	23.50 (first reminder)	216
2004-2005	14 02 2005	58.75 (2nd reminder	218
2004-2005	15 03 2005	117.50(final reminder)	218
2004-2005	15 03 2005	50.00 (debt recovery fee)	218

54. The totality of these charges only became apparent at the hearing itself but the intention to impose charges from time to time was indicated in the correspondence in the bundle which both parties had well before the hearing: see page [120] (UPM's letter of 7th April 2004). It was apparent from early on that QMH disputed administration charges on behalf of the Respondent: see their letters of 7th April 2004 (page [121]) and 25th November 2005 (page [129-130]) for example. The dispute as to these fees was recognised by the Debt Recovery Agency in its letter of 23rd February 2006 [131-132]. The Tribunal finds the payments claimed to the debt Recovery Agency are administration charges within the meaning of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

55. The only provision which conceivably might justify payment of these Administration charges in the Leases is clause 3(3) which refers to the managing agents' "administration expenses". There is no other evidence that the Respondent has entered into an agreement under which these charges might be payable with the Applicant or UPM. Clause 3(3) limits the managing agents' fees recoverable to 6% of the sums payable under clause 3(2) of each Lease. Accordingly none of these sums are recoverable under either Lease in addition to the 6% the calculation of which the Tribunal has determined above.

56. There is no provision for recovery of debt collection agency fees by the Applicant under either Lease over and above clause 3(3). Accordingly the Tribunal finds the above administration fees are not payable under each Lease. The Tribunal does not have jurisdiction to decide whether any of those sums are recoverable as costs of any Court proceedings and does not reach any finding about that.

Interest claimed – Administration charges

57. Clause 3(2) of each Lease provides for payment of interest at £15 per centum per annum from 21 days after each demand outstanding until payment. Interest has been demanded regularly on the full sums claimed. The claim to interest amounts to an Administration Charge within paragraph 1(c) of Schedule 11 to the 2002 Act. That provision reads as follows:

> "(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly— .....
>
> (c) in respect of a failure by the tenant to make a payment by the due date to the landlord"

58. Paragraph 4 of Schedule 11 to the 2002 Act provides:

> "(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
> (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
> (3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
> (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it."

59. The Administration Charge Regulations 2007 apply to any demand served on or after 1st October 2007. Service charge demands served after that date which included claims for interest past and future interest commenced with the demands dated 3rd December 2007 and are set out in paragraph 14 above above. The Applicant has adduced no evidence of service of the summary of rights required to accompany any demand for an administration charge by the Administration Charge Regulations 2007. Accordingly, the Tribunal finds that no interest is payable under clause 3(2) of the Lease on sums which are found to have been due from 1st October 2007 (the first date when such a summary should have been served) until a demand complying with the 2002 Act and the Administration Charge Regulations 2007 has been served.

60. However for the period until 1st October 2007 the Tribunal finds that interest is payable as an administration charge at the rate of 15% per annum. As this is not a variable administration charge the Tribunal has no jurisdiction to consider whether it is reasonable. Under each Lease interest is calculated on a simple basis (i.e. without compounding or capitalising over any period) from 21 days after the date of each relevant demand.

61. The Tribunal will consider the amounts payable as interest under each Lease as an Administration Charge if the parties are unable to agree the sums payable.

Reimbursement of fees

62. Under paragraph 9(1) of the Leasehold Valuation Tribunal (Fees)(England) Regulations 2003, the Tribunal "may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings". The Applicant applies for reimbursement of fees by the Respondent. The provisions contains no indication of the criteria to be regarded by the Tribunal and there is no longer any requirement that notice must be given that such an application will be considered. However, the Applicant had to bring these proceedings to obtain any declaration of entitlement to payment of service charges. Even though some sums have been declared not payable the Tribunal considers it just that the application fee of £200 and the Hearing Fee of £150.00 (Total £350.00) are to be reimbursed by the Respondent to the Applicant.

Section 20C of the 1985 Act application

63. Section 20C of the 1985 Act provides in its material parts (immaterial amendments omitted):

"(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into

account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application."

.....

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

64. The Respondent sought an order that no costs incurred by the Landlord in connection with these proceedings are charged to service charge in respect of each Lease. This order was not opposed by the Applicant. The Tribunal makes an order that none of the costs incurred by the Landlord in connection with these proceedings are charged to service charge.

H Lederman
Legal Chairman
9th February 2010

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case Number	:	CHI/00LC/LSC/2009/0101
Property:		Flats A & B, No. 156 Richmond Road, Gillingham, Kent, ME7 1LN
Applications:		(1) Section 27A of the Landlord and Tenant Act 1985 (Service Charges) (2) Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (Administration Charges) (3) Section 20C of the Landlord and Tenant Act 1985 (Landlords costs of the proceedings) (4) Leasehold Valuation Tribunal (Fees)(England) Regulations 2003 (Re-imbursement of Fees)
BETWEEN:		
Applicant:		Fairfield Rents Limited
Respondents:		(1) Marcus Becker (2) Personal Representatives of the Estate of David Thompson Deceased
Date of Application:		24th July 2009
Date of Hearing:		14th December 2009
Appearances for the Applicants:		Mr Ian Bell (legal adviser) Mr Nasir Adnan (property accountant) Both from Urbanpoint Property Management
Appearance for the Respondents:		Catherine Speirs from Quality Managed Homes
Members of the Leasehold Valuation Tribunal:		Mr H.D. Lederman (Lawyer/Chairman) Mr J.B. Tarling MCMI (Lawyer/Member) Mr B.R. Simms FRICS MCIArb (Valuer/Member)
Date of the Tribunal's Decision:		9th February 2010

THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL:

1. That the total Service Charges and Administration Charges payable by the Respondent Marcus Roger Becker to the Landlord for the service charge years 1999 to 2009 for both properties is £5,603.86. In addition Interest is payable by the Respondent Marcus Roger Becker to the Landlord under each Lease. The amounts payable as service charges sums were payable by the Respondent Marcus Roger Becker at the latest 21 days from the date of each demand of service charge.

2. The Tribunal Orders the Respondent Marcus Roger Becker to pay to the Landlord the Fees paid by the Landlord in these proceedings. Those Fees amount to a Total of £350.00. Such amount shall be paid to the Landlord within 21 days from the date of receipt of this Decision from the Tribunal.

3. The Tribunal makes an Order under Section 20C of the Landlord and Tenant Act 1985 to the effect that none of the costs incurred by the landlord in connection with these proceedings are to be regarded as relevant costs in connection with any service charges payable by the tenant.

REASONS FOR THE TRIBUNAL'S DECISION.

Preliminaries and scope of decision

1. This is a decision of a Leasehold Valuation Tribunal of the Southern Rent Assessment Panel on an application dated 24th July 2009 made by the Applicant under sections 18, 19 and 27A Landlord and Tenant Act 1985 (the "1985 Act"). The application also raised questions about administration charges and was treated by all parties present at the hearing as raising issues under Schedule 11 of the Commonhold & Leasehold Reform Act 2002 ("the 2002 Act"). The Tribunal also considered whether an Order under Section 20C of the 1985 Act should be made. The Tribunal was asked to make orders about specific items of service charges and administration charges for service charge years 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008 and 2008-2009 concerning sums alleged to be due under a lease of the lower ground floor flat Flat A, 156 Richmond Road Gillingham dated 12th May 1989 and a lease of Flat B (ground floor, first floor and rear garden) 156 Richmond Road Gillingham ("the property") dated 26th October 2009. Each lease is for a term of 99 years commencing on 12th May 1989. Each lease is in similar but not identical terms.

2. The Tribunal has reached a determination of all the service charge items that were put in issue by the application. Where the Tribunal has not mentioned the evidence about a particular item it was not challenged by the Respondent, or the subject of a request for a determination by the Applicant. For the year 1999-2000 the Applicant sought a determination that the Respondent was liable for service charges which fell due partly during the period the Leases were vested in the Respondent's predecessors in title but only those relating to audit accountancy fee, insurance premium and management fee: see page [29]. As neither predecessor in title was a Respondent to these proceedings, and because the invoices to the predecessors at pages [197] and [198] showed nil balances as at May 2000, the opening balance for service charge year 1999-2000 is taken as nil.

The parties to these proceedings

3. The Applicant was represented in correspondence and at the hearing on 14th December 2009 by Mr Ian Bell, legal adviser and Mr. Nasir Adnan (also known in some of the correspondence as Naz Adnan) both employees of Urbanpoint Property Management Limited ("UPM"), managing agents on behalf of Fairfield Rents Limited. The First Respondent was represented at the hearing by Catherine Speirs, an employee of Quality Managed Homes ("QMH") managing agents who acted on behalf of the First Respondent. Although QMH may have represented David Thompson in connection with the property in the past, it was common ground that QMH had no authority to represent the Estate of David Thompson at the hearing. Mr Thompson passed away at some point before late June 2006. Although UPM

said they had attempted to make contact with the solicitors for Mr Thompson's Estate previously at Rawlinson Hunter, there is no evidence that this application has been duly served upon or otherwise notified to Mr Thompson's Estate. This point was clarified with the representatives of UPM at the beginning of the hearing on 14th December 2009. UPM said they were content to proceed with the hearing on the basis that this decision would not bind or affect Mr Thompson's Estate. In particular UPM did not seek an adjournment to address this issue. The Tribunal was provided with Land Registry Office Copy Entries of each of the two Leasehold titles. They show David Ashley Thompson and Marcus Roger Becker are joint proprietors of each Lease, and likely to be joint tenants with joint and several liability. Despite this, given the age of the matters in issue the Tribunal decided to proceed. Accordingly all references to the Respondent in the Reasons and in the Determination below are only to Marcus Roger Becker.

Determination of service charges and administration charges payable by the Respondent

4. The only amounts payable for the property as a whole for the service charge years in issue are £5,603. 86 and interest thereon. Those figures are explained below:

Head of expenditure	**Amount payable £**
1999-2000	
Opening balance (Treated as nil)	00.00
Audit and accountancy	00.00
Insurance premium –see schedule page [98]	449.30
Management fee @ 6% of above	26.95
Subtotal	476.25
Less payments (excluding ground rent) from Whyte and Co of £1,771.34 and £558.82 pages [197-198]	
Balance service charges and administration charges payable 1999-2000	00.00
2000-2001	
Opening balance (Treated as nil)	00.00
Audit and accountancy	00.00
Insurance premium – page [84]	503.55
Legal and professional fee	00.00
Administration fees (page [200])	00.00
Legal and professional fees	00.00
Management fee limited to 6% of above	30.21
Balance service charges and administration charges payable (excluding interest) 2000-2001	533.76

2001-2002

Audit and accountancy	00.00
Insurance premium	582.71
General reserve	00.00
Management fee limited to 6% of above	34.96
Balance service charges and administration charges payable 2001/2002 (excluding interest)	617.67

2002-2003

Audit and accountancy	00.00
Insurance premium	611.85
Reserve fund credit: see page [32] £467.80	
Management fee limited to 6% of above (deducting reserve fund credit) 6% of £144.35	8.66
Balance service charges and administration charges payable (excluding interest) 2002-2003	152.71

2003-2004

Audit and accountancy	00.00
Insurance premium- see pages [101] and [84]	573.67
Management fee limited to 6% of above but only £29.38 claimed –see page [33]	29.38
Balance service charges and administration charges payable (excluding interest) 2003/2004	603.05

2004-2005

Audit and accountancy	00.00
Insurance premium- see pages [102] and [84]	595.60
Management fee limited to 6% of above but only £29.38 claimed –see page [33]	29.38
Balance service charges and administration charges payable (excluding interest) 2004/2005	624.98

2005-2006

Audit and accountancy	00.00
Insurance premium- see pages [103] and [84]	613.54
Repair and maintenance	170.00
Less Building surplus credit £63.61	
Management fee limited to 6% of above (deducting reserve fund credit – 6% of £719.93)	43.19
Balance service charges and administration charges payable (excluding interest) 2005-2006	763.12

2006-2007	
Audit and accountancy	00.00
Insurance premium- see pages [104] and [84]	699.18
Legal and professional fees	00.00
Management fee limited to 6% of above	41.95
Balance service charges and administration charges payable (excluding interest) 2006-2007	741.13
2007-2008	
Audit and accountancy	00.00
Insurance premium- see pages [105] and [84]	730.33
Less bank interest credit of £9.49	
Management fee limited to 6% of above (excluding opening balance but deducting reserve fund credit – 6% of £720.84)	43.25
Balance service charges and administration charges payable 2007-2008 (deducting credit)	764.09
2008-2009	
Audit and accountancy	00.00
Legal and professional fees	00.00
Insurance premium- see pages [106] and [84]	758.77
Less bank interest credit of £0.89	
Management fee limited to 6% of above (deducting reserve fund credit – 6% of £757.88)	45.47
Balance service charges and administration charges payable 2008-2009	803.35
Total service charges payable	**5,603.86**

5. The assignment to the Respondent of each Lease was registered on 25th May 2000 just before the end of the 1999/2000 service charge year. Accordingly in principle the Respondent became liable to pay a proportion of service charges as between himself and his predecessor in title. As between the Applicant and the Respondent the Respondent remains liable for the service charges due as the covenant in clause 3(2) runs with the land in each Lease.

Inspection of the property

6. The Tribunal inspected the property on 14th December 2009 immediately before the hearing. This is 3 storey terrace property about 100 years old divided into two flats at a later date, before the leases were granted. It is built of colourwashed brick under a concrete tiled roof. The entrance to the basement flat which had its own

external front door was by way of stone staircase leading down from street level. The only means of access to the rear garden from the property was (despite the terms of the Lease of Flat B which also demised part of the rear garden) from the basement flat the subject of the Lease of Flat A. It is possible there was some other means of access to the garden from rear of the garden from outside the property. Each flat had been sub-let to an individual tenant who resides in each flat. The entrance lobby accessed through the front door on the ground floor at street level only provided access to Flat B (ground and first floor) only. There is an external pathway leading to this door which also provides access to the basement stairs.

7. It was common ground and apparent from the inspection and the documents provided that neither flat at the property had been occupied by the Applicant or the Respondent or Mr Thompson.

Procedure at the hearing

8. A pre-trial review took place on 2nd September 2009. Directions were made inter alia for preparation of a bundle of documents to comprise the Applicant's Statement of Case by the Applicant. The Tribunal having considered the Applicant's bundle (192 pages) sent a letter dated 8th December 2009 inviting the Applicant to produce service charge demands and other documents at the hearing. On the morning of the hearing in response to that request UPM produced a further bundle (with pages numbered 193-234) of service charge demands and other documents. The Respondent's representative Catherine Speirs was asked whether she objected to any of those documents going into evidence or needed further time to consider. She was also given the opportunity to take instructions from QMH about them. Before the evidence was heard the Tribunal Chairman confirmed each representative had the same bundles of documents which were also available to the Tribunal. Each party's representative confirmed they had copies of the relevant bundles which the Tribunal was working from. Directions had been given for the Respondent to file a Statement of Case by 27th November 2009. Despite this after the hearing had finished (and after all final submissions had taken place) Catherine Speirs produced a document entitled "Statement of Case" on behalf of the Respondent which she said had been sent to the Tribunal in the days before the hearing. The Tribunal considered that document and took the view that it added nothing to the submissions which she had made earlier in the course of the hearing.

Relevant provisions in the Leases

9. Each Lease contains a covenant in clause 3(2) to pay "maintenance rent" being the "Tenants proportionate part of all moneys expended or contracted to be expended by the Landlord in complying" with the Landlord's covenants "(including the covenant as to insurance)". The same covenant provides that any sums due under this sub-clause if not so paid shall be "forthwith recoverable by action and carry interest at Fifteen Pounds per centum per annum until payment". The "Tenants proportionate part" for Flat A (lower ground floor) was one third. The "Tenants

proportionate part" in the same clause of the Lease of Flat B (ground floor and first floor) was two thirds. Broadly this equated to the parts of the property demised to each flat.

10. By clause 3(3) of each Lease the lessee covenanted to "contribute to the landlord or the Landlord's Managing Agents by way of administration expense the reasonable fees of the Landlord or his Managing Agents being an amount not exceeding six per centum if the payments due under Clause 3(2) due under clause 3(2) and such fee to be paid in accordance with clause 3(2)".

11. The Landlord's covenants in clause 4 of each Lease are prefaced by the following words which were the subject of some discussion at the hearing and in correspondence: "The Landlord HEREBY COVENANTS with the Tenant but so that so far as the performance of the covenants herein contained involved the expenditure of any money by the Landlord the liability of the Landlord hereunder shall be conditional upon the Tenant paying to the Landlord the moneys covenanted to be paid by the Tenant to the Landlord under clause 3(2) hereof". In clause 4 there are a number of clauses requiring the landlord to keep various parts of the property in good repair and condition. Clause 4(4) requires the landlord "To keep [the property] adequately insured ...".

Service charges and Administration charges

12. "Service charges" are the name given by Acts of Parliament such as the 1985 Act to monies payable under a lease of a dwelling for services and works provided to the lessee (the Applicant) by the landlord. In the Leases the phrase "maintenance rent" or similar phrases are used to refer to service charge. "Administration charge" is defined by the 2002 Act to include an amount payable by a tenant of a dwelling as part of or in addition to the rent payable directly or indirectly "in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is a party to his lease otherwise than as landlord or tenant". Further explanation of an Administration charge is given below.

Relevant legislation

13. Sections 18–30 of the 1985 Act refer to restrictions on "Service Charges". The relevant provisions are:

> "18— (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a (dwelling) as part of or in addition to the rent—
> (a) which is payable directly or indirectly for services ... or insurance or the landlord's cost of management and
> (b) the whole or part of which varies or may vary according to the relevant costs.

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

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

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

and the amount payable shall be limited accordingly ...

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

Section 20B of the 1985 Act provides in effect that if a demand for payment of service charge is made more than 18 months from the date of incurring of costs, the tenant will not be liable unless within that period the tenant was notified in writing that he would later be required to contribute to the payment.

Section 21B of the 1985 Act provides a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. Section 21B(3) states a tenant may withhold payment of a service charge demanded from him if that information did not accompany the demand.

Where a tenant withholds a service charge under section 21B, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it: see section 21B(4) of the 1985 Act. With a small exception, section 21B takes effect in relation to service charge demands served on or after 1st October 2007.

Section 27A(1) of the 1985 Act provides the Tribunal with jurisdiction to determine 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.

Subsection 27A(2) of the 1985 Act provides that jurisdiction applies whether or not any payment has been made.

Section 27A(3) of the 1985 Act provides:

> "An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
>
> (a) the person by whom it would be payable,
> (b) the person to whom it would be payable,
> (c) the amount which would be payable,
> (d) the date at or by which it would be payable, and
> (e) the manner in which it would be payable"

Section 27A of the 1985 Act only came into force on 30th September 2003.

Paragraph 2 of the 11th Schedule to the 2002 Act provides "A variable administration charge is payable only to the extent that the amount of the charge is reasonable" . Paragraph 1(3) of the 11th Schedule to the 2002 Act defines "variable administration charge" to mean an administration charge payable which is neither (a) specified in [the] lease, nor (b) calculated in accordance with a formula specified in [the] lease. Paragraph 5 of the 11th Schedule to the 2002 Act gives the Leasehold Valuation Tribunal jurisdiction to determine the payability of administration charges in the same way as for service charges under section 27A of the 1985 Act. The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 ("the Administration Regulations 2007") require a summary of rights to accompany any demand for an administration charge made on or after 1st October 2007. Paragraphs 4(3) and 4(4) of Schedule 11 to the 2002 Act enable the tenant to withhold payment of an administration charge in the same manner and with the same consequences as he could withhold payment of service charge demand which was not accompanied by a demand.

Service Charge demands

14. In the course of the introduction to the hearing before the detailed items of service charge were considered, Catherine Speirs was asked whether she accepted the Respondent had been sent the invoices contained in the bundle from pages 195-234. Apart from those addressed to their predecessors in title at pages 195-198 inclusive, she accepted unconditionally those documents had been received by the

Respondent. In any event, the correspondence which the Tribunal has seen evidence of service of service charge demands (as well as evidence of service of service charge statements) by the Applicant upon the Respondent at the QMH's address. Service of service charge demands was not an issue challenged by Catherine Speirs. In any event Tribunal finds the following letters in the bundle, evidence the service of demands, and where appropriate, service of notice under section 21B(b) of the 1985 Act that the Respondent would be charged for sums which formed the demands for the service charge years itemised below:

Date of demand and page reference [ ]	Letter in bundle and page reference [ ]	Service charge year
24 12 1999 and 20 12 2000 [197-198]	02 02 2001 [107-108] [110]	1999-2000
20 12 2000 [199-200]	28 6 2001 [109] and 11 03 2002 [110-111]	2000-2001
02 07 2001 [201-202]	28 6 2001 [109] and 11 03 2002 [110-111]	2000-2001
09 04 03 [113-114] and various demands [198-208]	09 04 03 [113-114]	2000-2001, 2001-2002, 2002-2003
16 12 2003 [211-212]	23 02 2004 [120] and 14 12 2004 [124 see reference]	2003-2004
31 08 2004 [213-214]	25 07 2005 [125] – see reference to statements	2004-2005
01 08 2005 [217-218]	25 07 2005 [125]	2005-2006
28 07 2006 [221-222]	28 0 2006][141]	2005-2006 2006-2007
03 12 2007 [227-228]	08 07 2007 [144]	2007-2008
03 12 2007 [227-228]	25 06 2008 [148-149][151-153]	2007-2008
12 08 2008 [229-230] 27 11 2008 [231-232]	06 11 2008 [158] 09 03 2009 [165-168]	2007-2008 2008-2009
29 07 2009 [233-234]	30 10 2009 [187-192]	2009-2010

The Tribunal accordingly concludes that each of the demands for the above service charge years were served within 18 months of the date of the date the costs were incurred, or if not, the statements of account served from time to time between 1999 and 2009 amounted to notification to the Respondent that he would later be required to contribute to the payment for the purpose of section 20B of the 1985 Act.

Summary of information accompanying service charge demands

15. The evidence of Mr Adnan of UPM was that the service charge demands served after 1st October 2007 were accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. An example of such a summary was at page [194]. This was not challenged by Catherine Speirs of QMH on behalf of the Respondent.

Individual heads of service charge expenditure

16. **Audit and accountancy fees.** In each service charge year which is the subject of this application an amount has been claimed for audit and accountancy charges. There is no express justification in clause 4 of either Lease which requires the landlord to incur such charges. There is no express provision in the lessee's covenants in clause 3(2) of either Lease which requires the lessee to contribute to such a cost or charge. When asked about the Applicant's justification for this head of claim, Mr Adnan referred to the provision in clause 3(2) of the Lease of Flat A (lower ground floor) of the property which enables the lessee to request a certificate from the landlord "of all sums included in the maintenance rent". He was unable to identify any specific request for such certificate from the Respondent. The reference to such a certificate does not appear in clause 3(2) (or any other clause) of the Lease of Flat B. Neither party was able to explain why such a difference in the provisions of the leases might have been inserted.

17. It was then said by UPM that the sums claimed for accountancy and audit fees were "small" and incurred for the benefit of the lessees to enable them to ascertain the amounts expended or to be expended. The Tribunal has no reason to doubt that funds were expended on appointing an accountant to examine the service charge vouchers and reconcile the various items of income and expenditure. One example of an invoice from such an accountant is at page [42]. There is no evidence that such costs were incurred at the request of the Respondent.

18. It is common ground that management fees were claimed by UPM for each service charge year under clause 3(3) of each Lease in addition to accountancy and audit fees. It follows that accountancy and audit fees were not claimed as part of those "administration expenses". UPM confirmed the Applicant sought to recover the sums claimed as audit and accountancy fees in addition to management fees.

19. The Tribunal is in no doubt that the costs incurred for accountancy and audit fees were not payable by the Respondent as lessee under the terms of either Lease. No certificates had been requested by the tenant under clause 3(2) of the Lease of the Lower ground floor and there was no other provision for payment of such sums under either Lease. In addition, in relation to those costs incurred before September 2003, those sums were not reasonably incurred. If the sums were not payable under the Leases it was not reasonable to incur those fees which were of little if any benefit to the lessees.

Legal and professional fees

20. For service charge years 1st July 2000 to 30th June 2001, 1st July 2006 - 30th July 2007 and 2008-2009, separate sums are claimed under the heading of "legal and professional fees" (including survey fee in the latter year). When these heads of claim were examined at the hearing by reference to the spreadsheet analysis of service charge expenditure dated 30th October 2009 at page [84] it became clear these were professional fees of one kind or another but not legal fees. Fire risk assessments and health and safety assessment costs appear to have been incurred in the 2008-2009 service charge year. UPM through Mr Adnan disclaimed any attempt by the Applicant to charge the costs of Mr. Bell (their legal adviser) as part of service charges under these or other heads of expenditure.

21. UPM were asked how these fees were to be justified by reference to the Leases. The best that could be done was (with the Tribunal's help) to point to clause 4(3)(b) of each Lease which might enable the landlord to employ persons reasonably necessary for the performance of the landlord's covenant to decorate in clause 4(3)(a) of each Lease.

22. The Tribunal took each item listed under this head of expenditure in turn. The first was a surveyor's fee of £293.75 incurred on or about 22nd June 2001. This was supported by reference to a pro forma invoice which appeared to have been rendered by "Urbanpoint 2007 old" to Urbanpoint Management Limited at page [44]. The copy invoice contained no indication that invoice had in fact been paid (as opposed to simply amounting to a book entry within the internal accounts of UPM or its associated companies). The narrative on the invoice reads "professional services in relation to instructing a surveyor to prepare a condition surveyor report and advise the reinstatement cost for building insurance purposes; providing copy lease(s) previous reports (where applicable) and surveys in relation to the building leaseholder details for address and associated information". The sum claimed comprised £250 plus 43.75 VAT. The Tribunal was not able to consider the survey report to assess whether this report was for compliance with landlord's covenants under the Leases. There was no indication of the identity of the surveyor or his qualifications, although the Tribunal were told by Mr Adnan who was not employed by UPM at the time it would have been carried out on or before 22nd June 2001 by a firm called "Hamlin Able and Grange". In evidence Mr Adnan of UPM said that this sum was an apportioned part of a "global" invoice incurred by UPM for building insurance purposes.

23. Further evidence about the nature of this survey report might be contained in the UPM letter of 28th June 2001 at page [109] which refers to a "condition survey" and "surveyor's condition survey report" which it was said had been provided to QMH on behalf of the Respondent. Unfortunately there was no evidence from the author of that letter. There is no confirmation that the report referred to in that letter is the report for which the charge is made. It is apparent that Mr Becker queried excess service charges claimed on 30th June 2001 in a letter dated 28th February 2002

which is not in evidence. In UPM's response dated 11th March 2002 page [110] there is reference to that excess service charge including "£97.92 in respect of surveyor's report as required per your lease and so we could better improve the health of your property". There was no evidence from the author of that letter. There is no confirmation that the report referred to in the letter at [110] is the report for which the charge is made.

24. The Tribunal is not satisfied from the materials now available that such a survey report had been carried out which fell within the terms of clause 4(3)(b) or any other provision of either Lease. In addition, even if such a report might have been justified by the terms of either Lease, the Tribunal was not satisfied that the sum of £250.00 plus VAT was reasonably incurred for the purpose of carrying out such a valuation for building insurance purposes or other purposes under the terms of either Lease. The insurance schedule at page [99] of the bundle suggests when taken with the other schedules in the bundle that the Applicant changed insurers from the 2000-2001 service charge year to new insurers at Lloyds and Groupama for the service charge year on or about 24th June 2001. The Tribunal has been given no explanation why such a change took place or if the survey report was in any way associated with such a change. No witness evidence about this has been adduced and the Tribunal is left in the unsatisfactory position of having to speculate about whether the sum charged was reasonable for the services rendered or whether it was reasonably incurred, some 8 years later. Given the age, the state of the evidence and absence of witnesses who have any knowledge about this, the Tribunal is unable to reach a finding the sum claimed for this survey report is payable.

Asbestos and other survey reports

25. A further survey report was apparently carried out at a total cost of £293.75 (inclusive of VAT) on or about 23rd June 2007 and charged to service charge account – see page [74] and [84]. The principal evidence about this survey available to the Tribunal is contained in an invoice dated 6th July 2007 at page [74] which contains the following narrative "Review of previous condition survey and report". The invoice was apparently rendered to UPM by a company called Management Services (HR) Limited whose address is given in Hall Green in Birmingham. No copies of that report or the earlier report referred to in the invoice have been provided to the Tribunal. In answer to why such a report was payable by lessees under the Lease UPM said that it was for their benefit. No particular provision in either Lease was relied upon. It is far from clear precisely what work or services Management Services (HR) Limited, let alone that they were qualified to provide such a report.

26. Separately, the UPM letter addressed to QMH of 28th July 2006 at [141] stated that the service charge estimate (budget) for the year ended 30th June 2006 contained the following narrative "In accordance with our earlier letter an amount of £395 has been included towards the costs of inspection and reports for communal electricity and asbestos survey as explained in the letter. The fee also includes an amount for

inspecting the building and preparing a condition survey report that will cover a work plan for the building over the next 5 years and a revaluation of the sum insured for the building insurance purposes". It is unclear which earlier letter was referred to in the letter of 28th July 2006. The Tribunal was not told whether this further survey report was intended for any of those purposes.

27. An Asbestos Survey and Report was said to have been carried out at a total cost of £346.63 (including £51.63 VAT) on or about 23rd June 2007 and charged to service charge account – see page [73] and [84]. The principal evidence about this "survey and report" available to the Tribunal is contained in an invoice of 6th July 2007 at page [73] of the bundle which only says "Asbestos Survey and report's" (sic) for the property. No copies of the survey or report referred to in the invoice have been provided to the Tribunal. In answer to why such a report was payable by lessees under the Lease UPM said that it was for their benefit and in compliance with legislation. No particular provision in either Lease was relied upon. The only legislation of potential relevance which the Tribunal could contemplate might have been in the minds of the person commissioning such a report was The Control of Asbestos Regulations 2006/2739 which came into force in November 2006 and the Management of Health and Safety at Work Regulations 1999 (as amended). Generally speaking these regulations only apply to non-domestic premises. Leaving aside whether common parts of the property qualify as non-domestic premises, the Tribunal is completely unpersuaded that there were any common parts to which these regulations might apply at the property. As far as the Tribunal could tell there is no common access or a common hallway which might contain asbestos for example. The Tribunal is NOT saying that these Regulations do not apply to this Property. Nor is the Tribunal saying that there is no asbestos at the property. Nor is the Tribunal saying that such a report was not advisable or prudent. The Tribunal's task is to determine whether the sums claimed are payable under the Leases and whether they were reasonably incurred. On the incomplete materials available The Tribunal is unpersuaded that such a report was required or permitted under the terms of either Lease, or the sum said to have been paid for such a report were reasonably incurred.

28. Similarly under this head of service charge the Tribunal has seen invoices from Management Services (HR) Limited dated 24th February 2009 and 20th February 2009 at pages [81 and 82] of the bundle which indicated that a charge for services was claimed for "Health and Safety Assessment Report" and "Fire Risk Assessment and Training Fire Instruction & Training". These items were charged to service charge accounts for the respective service charge years. No copies of any of the reports or assessments said to have been supplied by Management Services (HR) Limited have been supplied to the Tribunal. UPM were unable to adduce any evidence of any training or instruction which may have alleged to have been given. Catherine Speirs of QMH had no knowledge of such training or assessment. The UPM letter of 9th July 2007 at page [144] contained the following narrative in relation to Service Charge estimate (Budget) for the year ending 30th June 2008 "Due to new legislation which came into force in October 2006 we are required to

carry out a Fire Risk Assessment on all properties and have included an amount of £150 in the budget for the upcoming period".

29. UPM's letter of 25th June 2008 [page 148] suggested that legislation had changed with regards to assessments at "residential apartment blocks". It was there said that "health and safety legislation places a direct responsibility with [UPM] as managing agents to ensure on your behalf that that the common areas are safe and free of any risk or danger from fire and health and safety to anyone using those areas.....In addition no smoking signs are to be erected in the communal areas... Failure to undertake various risk assessments relating to the above could mean that insurance cover is negated". The Tribunal has already found that there are no significant communal areas at the property. There are no employees or working people and it is difficult to see how risk assessments could be required at the property under the Management of Health and Safety at Work Regulations 1999 or similar legislation. No evidence has been adduced that any of the reports or assessments or training were required by any of the buildings insurers or other insurers.

30. The only legislation that the Tribunal can contemplate might be of potential relevance to these invoices is the Regulatory Reform (Fire Safety) Order 2005/1541. UPM was unable to demonstrate under which provisions of either Lease the costs of these reports, assessments or training might be recoverable. Even if such reports, assessments or training could be justified under the terms of each Lease, the Tribunal is not satisfied on the evidence available that the sums paid were reasonably incurred. In particular there is no evidence that the alleged benefit of these reports or training have been in any way passed on to the Respondent, or applied for his benefit. UPM asserted that the Respondent benefited but there is no evidence to substantiate that assertion.

31. The Tribunal is NOT saying that the Regulatory Reform (Fire Safety) Order (or any other legislation) is inapplicable to the property. The Tribunal is not in a position to say whether such reports, assessments or training were advisable or prudent. Nor can the Tribunal determine whether a fire detection system is required at the property. This question is for the Applicant and the managing agents of the property to consider. QMH may also need to give consideration to this issue. They should investigate and take advice about this issue. The Tribunal's task is to determine whether the sums claimed are payable under the Leases and whether those sums were reasonably incurred. The Tribunal has insufficient evidence to be satisfied on either account.

Repairs and maintenance

32. There is an invoice dated 19th March 2006 (at page [68]) from Martin Jaarman for £170 (no VAT) which indicates that 2 workers on his behalf carried out cleaning and checking works to the drains/gulleys and gutters at the property on 13th March 2006. In addition it appears they took photographs of the boundary wall which was said to have required re-rendering and painting. The photographs referred to in that

invoice were not in evidence. That figure of £170 was included in the service charge statement of account for the property dated 27th July 2006 at pages [64-65].

33. The Tribunal accepts the invoice at page [68] was an accurate account of the work carried out. Although Catherine Speirs did not accept that invoice on behalf of the Respondent she was not able to put forward any ground for suggesting that it was not a correct account. Unlike some other invoices before the Tribunal, it also bears a stamp indicating that it had been paid on 25th March 2006. The Tribunal finds that this work falls within the kind of work to the gutters and pipes which the Applicant is required to carry out by clause 4(1) of each Lease. The Applicant is entitled to recover the cost of such works from the Respondent in accordance in accordance with clause 3(2) of each Lease. The Tribunal did consider whether the total sum paid for this work was unreasonably high. Having seen the property and the need to have ladders with two men attending (at the front and the back) to carry out this work, the Tribunal does *not* consider £170 was unreasonably incurred. It is payable.

34. The breakdown of repairs and maintenance at page [84] suggests that two sums of £170.00 were incurred on the same date. If that was the case the Tribunal is unable to find any other evidence of such additional work. The service charge statement of account for the property dated 27th July 2006 at pages [64-65] only charged one amount of £170 and no further sums were explicitly claimed for such repairs in service charge statements issued after that date. Accordingly on the evidence available the Tribunal cannot be satisfied that the additional sum of £170 was actually incurred, let alone which works were the subject of that charge.

35. The breakdown containing the reference to the additional sum of £170 at [84] only appears to have been served upon the Respondent in preparation for this hearing after September 2009. Even if there was another invoice for such work from the same contractor, the Applicant's failure to make a demand of the Respondent within 18 months of the date when the cost was incurred in March 2006 means that it is now too late to claim this sum by virtue of section 20B of the 1985 Act.

36. At the hearing UPM only contended there was one sum of £170.00 due for repairs and maintenance. The Tribunal so finds.

Insurance premiums

37. The refusal of the Respondent to pay insurance premiums appears to have been a principal point of dispute between the Applicant and the Respondent since 2003. As early as 30th October 2003 [115-116] QMH then representing the Respondent and Mr Thompson were disputing the Applicant's claim to payment of insurance premium under the terms of the Leases saying that the property had been insured by QMH and for a cheaper premium. The Respondent's earlier correspondence referred to in that letter was not in evidence. Initially the Respondent through QMH approached this issue on the footing that he had obtained a quotation which was

cheaper and provided more cover, that he (the Respondent) had an option or choice whether or not to insure the property through the landlord and in any event the Respondent had paid for other insurance to effect his interest in the property: see QMH's letters of 12th January 2004 [118], 14th December 2004 [124] and 5th September 2005 [126-127].

38. The Respondent appears to have been a partner in QMH which according to its headed notepaper carried on business in "Lettings and Property Management" at the relevant times.

39. By letter of 23rd February 2006 [131-132], Catchunit Debt recovery wrote on behalf of the Applicant drawing attention to clauses 4(4) and 3(2) of each Lease. For the first time Catherine Speirs of QMH on behalf of the Respondent alleged that the covenant in clause 4(4) only applied - "here the liability of the Landlord is conditional upon the Tenant paying to the landlord the moneys covenanted to be paid": see QMH's letter of 23rd March 2006 [133-135] (there was no page 134]. When this proposition was examined at the hearing it emerged that QMH had not taken any legal advice about its interpretation of either Lease.

40. The opening words of clause 4 of each Lease are set out below (emphasis added by the Tribunal):

> "The Landlord HEREBY COVENANTS with the Tenant but so that so far as the performance of the covenants herein contained involves the expenditure of any money by the Landlord *the liability of the Landlord hereunder shall be conditional* upon the Tenant paying to the Landlord the moneys covenanted to be paid by the Tenant to the Landlord under clause 3(2) hereof".

The emphasised words are quite clear that it is the landlord's liability which is conditional if it decides not to expend funds on an item which is the subject of a covenant in clause 4. The *rights* of the Applicant landlord to recover expenditure are not affected by or conditional upon payment or non-payment by the Tenant.

41. The Tribunal considered whether in effect the Respondent was saying that the sums incurred for insurance premiums were unreasonable. Accordingly it heard evidence from Mr Bell of UPM about the nature of the insurance policy taken out on behalf of the Applicant landlord which covered the property. In summary his evidence (which was unchallenged in this respect) was that the policy taken out for the property was part of a block policy with the Axa insurance company by or for the benefit of companies in the G & O Group of companies. This had been the case for some 6-7 years. This part of his evidence was supported by the insurance schedules relating to the property from and including the service charge years 2003-2004 to 2008-2009 at pages [101-106]. The advantages of such a block policy including the

following features. The Applicant or its agents did not have to notify insurers of changes of occupants at the various properties, transient occupiers and residents in receipt of state benefits were also covered, sublet properties were covered. There were also relaxed provisions for notifying insurers if properties entered the portfolio but were not notified immediately. Mr Bell's evidence was that the Applicant was the owner of some 20-30 properties but that the G & O group as a whole had some 1700 units covered by the policy.

42. The gist of the Respondent's case on this point was that a cheaper quotation with more revenue protection could and was obtained from year to year since 2001.

43. As a matter of interpretation of clause 4(4) of each Lease the Applicant is not required to obtain the cheapest insurance available for the property. That is not what the covenant says. It is also well settled that whether sums expended for insurance premiums are reasonably incurred does not necessarily depend upon whether the cheapest quotation has been accepted. Mr Bell gave evidence that the G and O group had sought low premiums. Although Catherine Speirs on behalf of the Respondent did not accept this, she was not able to demonstrate from the documents available that the premiums obtained were excessive or (for example) that the Applicant or its agents had not undertaken a reasonable process to obtain quotations. Although cheaper quotations were said to have been obtained by the Respondent for the property, it was unclear whether they provided the same level or extent of cover. She did not allege breaches of provisions of the relevant RICS Code or of any provisions of the 1985 Act concerning insurance. Catherine Speirs did not contend that the valuations for which the property was insured were inappropriate.

44. Not all of Mr Bell's evidence (as the Tribunal understood it) could be accepted. The "Important Notes" on page [193] which were said to accompany service charge demands suggested that "insurers must be notified if the property is to remain unoccupied for a period of 30 days or more". Such a clause in principle at least might be an unfavourable clause in a block policy.

45. The Tribunal was unable to reach the conclusion that the premiums charged by the Applicant were excessive or otherwise unreasonably incurred because it had insufficient evidence to reach such a conclusion. The Respondent had not produced evidence of the market rates from year to year. The Tribunal was unable to reach any conclusion about whether the premiums incurred by the Applicant were unreasonably incurred from the premium charged by the Respondent's insurer as there were no details available confirming the type of cover, its terms, how many properties it related to and other premiums or types of cover available in the various service charges years in issue.

46. It is worth emphasising that the Tribunal was handicapped in considering this issue by the fact that neither party had adduced evidence relevant to a proper consideration of this issue. Accordingly this decision should not be taken as

applicable to service charges for insurance for the property as it might affect any other parties or to any other service charge years.

47. There is no copy of the insurance summary in the bundle for the year 2000-2001. The amount claimed in the application is £582.71: page [30]. However from the schedule at page [99] and the spreadsheet at page [84] it is apparent the figure of £582.71 relates to the premium for 2001-2002. Accordingly the Tribunal has taken the higher of the 2 figures on page [84] for the insurance premium cost on 15th June 2000 namely £503.55.

Management fees

48. The reasonable fees of the Applicant's managing agents are recoverable under clause 3(3) of each Lease subject to a limit of 6% of the payments due under clause 3(2) of each Lease. UPM argued that its fees were reasonable and moderate compared with market fees. Even if that was correct, the Tribunal finds that clause 3(2) of each Lease limits the amount of fees recoverable. Catherine Speirs on behalf of the Respondent argued that the service provided by UPM was poor and the amount should be reduced. She pointed to the fact that initially the proportions of the service charges between each flat had been transposed in the service charge demands. She could also draw attention to the fact that (as the Tribunal has found) UPM demanded sums which were not due under the terms of each Lease and where reports have been obtained relating to the property do not always appear to have passed those reports on to the Respondent. This appears to be the position in relation to reports obtained relating to asbestos, health and safety, fire instruction and risk assessments. If so and these reports have not been passed to the Respondent, this would be a cause for serious concern and possibly a breach of their duties under the Service Charge Residential Management Code (1st and 2nd editions). However the amount of managing agents' fees is limited to 6% of expenditure for sums incurred on behalf of the landlord in each service charge year by clause 3(3) of each Lease. On the findings the Tribunal has made, this means the sums payable for management fees will be very modest for the property as a whole and considerably below current and past market rates for managing these units during the relevant service charge years. This was the effect of the evidence given by Mr Adnan and part of his explanation of why UPM charged higher fees for its fees from time to time during these service charge years. Accordingly although the service provided by UPM may have been lacking in some respects, the Tribunal finds the residual value of the services provided is not less than the sums payable under clause 3(4) of each Lease. There is no evidence that any breaches of duty or failures on the part of UPM have caused the Respondent loss.

49. The Tribunal finds that the services provided by the managing agents before and after September 2003 were of a basic standard. No menu of services provided or details of services contracted to be provided have been produced to the Tribunal. In the circumstances, the Tribunal finds that if and insofar as the Applicant has paid UPM in excess of the sums which it is entitled to recover under each Lease, those

costs were not reasonably incurred. The value of the services provided was not in excess of that sum.

Reserve fund contributions

50. These were claimed in the service charge years 2001-2002 (see page [48] £500 claimed), but credited in the year 2002-2003: see page [32]. A further credit was given of £63.61 in the service charge year 2005-2006: see page [36]. This is of no material effect except perhaps for the purpose of calculating interest and management charges payable. The Tribunal finds there is no provision enabling the landlord to demand such a reserve fund in this Lease. Accordingly no amount was payable under this head in the 2001-2002 service charge year.

Limitation of actions

51. The Tribunal raised with the parties before the hearing the application of the provisions of the Limitation Act 1980 ("the 1980 Act"). In particular there is a 6 year limitation period which applies to an action to recover arrears of rent by section 19 of the 1980 Act. The Tribunal's view is that this is not an action to recover rent. It is an application under section 27A of the 1985 Act. In addition the service charges are not properly described as rent as they are not deemed to be rent or recoverable as rent, even though they may be described as "maintenance rent": see *Escalus Properties Ltd v Robinson* [1995] 3 W.L.R. 524. Like other Tribunals in the past, this Tribunal rejects the possibility that application under section 27A of the 1985 Act is an action to recover any sum by virtue of an enactment to which the 6 year limitation period in section 9 of the 1980 Act applies. The "action" (if that is how these proceedings can be described) is not to recover sums due by virtue of an enactment but under each Lease.

52. The nearest possible limitation period might be section 8(1) of the 1980 (action on a specialty – a contract under seal such as the Leases) which provides for a 12 year limitation period. The word "action" is defined (unless the context otherwise requires) to include any proceeding in a court of law: see section 38 of the 1980 Act. This definition is not exhaustive and it is arguable that the term "action" could be taken to include Leasehold Valuation Tribunal proceedings. The Tribunal concludes that the issue of whether some or all of the service charges would be barred if an action to recover them were brought in a Court of law, is not before the Tribunal. On balance the Tribunal concludes that for the purpose of these proceedings the sums claimed as service charges are not barred by the provisions of the 1980 Act. The Tribunal expresses no view about whether any of the ground rents claimed are barred because the Tribunal has no jurisdiction over liability to pay ground rents.

Administration Charges (including interest)

53. Unpaid administration fees (excluding interest) were included in service charge demands for relevant service charge years as follows:

Service charge year	Date claimed	Amount claimed £	Page number
2000-2001	09 11 2000	23.50 (first reminder)	199
2000-2001	09 11 2000	23.50 (first reminder)	200
2000-2001	27 11 2000	58.75 (2nd reminder	199
2000-2001	27 11 2000	58.75 (2nd reminder	200
2001-2002	25 02 2002	23.50 (first reminder)	205
2001-2002	25 02 2002	23.50 (first reminder)	206
2001-2002	13 06 2002	58.75 (2nd reminder	206
2002-2003	20 11 2002	23.50 (first reminder)	207
2002-2003	20 11 2002	23.50 (first reminder)	208
2002-2003	07 02 2003	58.75 (2nd reminder	209
2002-2003	07 02 2003	58.75 (2nd reminder	210
2003-2004	03 11 2003	23.50 (first reminder)	211
2003-2004	03 11 2003	23.50 (first reminder)	212
2003-2004	23 02 2004	23.50 (first reminder)	213
2004-2005	26 08 2004	23.50 (first reminder)	214
2004-2005	07 10 2004	58.75 (2nd reminder	215
2004-2005	03 12 2004	117.50 (final reminder)	215
2004-2005	03 12 2004	50.00 (debt recovery fee)	215
2004-2005	09 12 2004	23.50 (first reminder)	216
2004-2005	14 02 2005	58.75 (2nd reminder	218
2004-2005	15 03 2005	117.50(final reminder)	218
2004-2005	15 03 2005	50.00 (debt recovery fee)	218

54. The totality of these charges only became apparent at the hearing itself but the intention to impose charges from time to time was indicated in the correspondence in the bundle which both parties had well before the hearing: see page [120] (UPM's letter of 7th April 2004). It was apparent from early on that QMH disputed administration charges on behalf of the Respondent: see their letters of 7th April 2004 (page [121]) and 25th November 2005 (page [129-130]) for example. The dispute as to these fees was recognised by the Debt Recovery Agency in its letter of 23rd February 2006 [131-132]. The Tribunal finds the payments claimed to the debt Recovery Agency are administration charges within the meaning of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

55. The only provision which conceivably might justify payment of these Administration charges in the Leases is clause 3(3) which refers to the managing agents' "administration expenses". There is no other evidence that the Respondent has entered into an agreement under which these charges might be payable with the Applicant or UPM. Clause 3(3) limits the managing agents' fees recoverable to 6% of the sums payable under clause 3(2) of each Lease. Accordingly none of these sums are recoverable under either Lease in addition to the 6% the calculation of which the Tribunal has determined above.

56. There is no provision for recovery of debt collection agency fees by the Applicant under either Lease over and above clause 3(3). Accordingly the Tribunal finds the above administration fees are not payable under each Lease. The Tribunal does not have jurisdiction to decide whether any of those sums are recoverable as costs of any Court proceedings and does not reach any finding about that.

Interest claimed – Administration charges

57. Clause 3(2) of each Lease provides for payment of interest at £15 per centum per annum from 21 days after each demand outstanding until payment. Interest has been demanded regularly on the full sums claimed. The claim to interest amounts to an Administration Charge within paragraph 1(c) of Schedule 11 to the 2002 Act. That provision reads as follows:

> "(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly— .....
>
> (c) in respect of a failure by the tenant to make a payment by the due date to the landlord"

58. Paragraph 4 of Schedule 11 to the 2002 Act provides:

> "(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
> (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
> (3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
> (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it."

59. The Administration Charge Regulations 2007 apply to any demand served on or after 1st October 2007. Service charge demands served after that date which included claims for interest past and future interest commenced with the demands dated 3rd December 2007 and are set out in paragraph 14 above above. The Applicant has adduced no evidence of service of the summary of rights required to accompany any demand for an administration charge by the Administration Charge Regulations 2007. Accordingly, the Tribunal finds that no interest is payable under clause 3(2) of the Lease on sums which are found to have been due from 1st October 2007 (the first date when such a summary should have been served) until a demand complying with the 2002 Act and the Administration Charge Regulations 2007 has been served.

60. However for the period until 1st October 2007 the Tribunal finds that interest is payable as an administration charge at the rate of 15% per annum. As this is not a variable administration charge the Tribunal has no jurisdiction to consider whether it is reasonable. Under each Lease interest is calculated on a simple basis (i.e. without compounding or capitalising over any period) from 21 days after the date of each relevant demand.

61. The Tribunal will consider the amounts payable as interest under each Lease as an Administration Charge if the parties are unable to agree the sums payable.

Reimbursement of fees

62. Under paragraph 9(1) of the Leasehold Valuation Tribunal (Fees)(England) Regulations 2003, the Tribunal "may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings". The Applicant applies for reimbursement of fees by the Respondent. The provisions contains no indication of the criteria to be regarded by the Tribunal and there is no longer any requirement that notice must be given that such an application will be considered. However, the Applicant had to bring these proceedings to obtain any declaration of entitlement to payment of service charges. Even though some sums have been declared not payable the Tribunal considers it just that the application fee of £200 and the Hearing Fee of £150.00 (Total £350.00) are to be reimbursed by the Respondent to the Applicant.

Section 20C of the 1985 Act application

63. Section 20C of the 1985 Act provides in its material parts (immaterial amendments omitted):

"(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into

account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application."

.....

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

64. The Respondent sought an order that no costs incurred by the Landlord in connection with these proceedings are charged to service charge in respect of each Lease. This order was not opposed by the Applicant. The Tribunal makes an order that none of the costs incurred by the Landlord in connection with these proceedings are charged to service charge.

H Lederman
Legal Chairman
9th February 2010