

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

Case No. CHI/29UL/LSC/2010/0086

Property: Flat 3
25 Manor Road
Folkestone
Kent
CT20 2SA

Applicants: Mr. C.G. Furneaux and
Mr. G.I. Furneaux

Respondent: Mrs. E.L. Burrell

Date of Hearing: 22nd October 2010

Members of the Tribunal: Mr. R. Norman
Mr. R. Athow FRICS MIRPM

Date Decision Issued: 23rd NOVEMBER 2010

FLAT 3, 25 MANOR ROAD, FOLKESTONE, KENT CT20 2SA

Decision

1. The following service charges are payable by Mrs. E.L. Burrell ("the Respondent") in respect of the following years:

(a) 29th September 2007 to 28th September 2008 (actual)

	£
Sums accepted by the Respondent as payable:	1137.42
Determined by the Tribunal as payable:	<u>6255.02</u>
Total:	7392.44
Less surplus brought forward:	<u>273.97</u>
	7118.47
20% lease apportionment:	1423.69
Less payments on account:	<u>600.00</u>
Balance payable:	823.69

(b) 29th September 2008 to 28th September 2009 (actual)

Sums accepted by the Respondent as payable:	894.86
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Determined by the Tribunal as payable:	<u>19102.17</u>
Total:	19997.03

20% lease apportionment:	3999.41
Less payment on account:	<u>372.00</u>
Balance payable:	3627.41

(c) 29th September 2009 to 28th September 2010 (estimated)

Sums accepted by the Respondent as payable:	1135.00
Determined by the Tribunal as payable:	<u>2735.00</u>
Total:	3870.00

20% lease apportionment:	774.00
Balance payable:	774.00

2. An order is made that all or any of the costs incurred or to be incurred by Mr. C.G. Furneaux and Mr. G.I. Furneaux (“the Applicants”) in connection with these 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 Respondent.

3. The Tribunal noted the agreement by Mr. Mitchell on behalf of the Applicants to send the contractor back to Flat 3, 25 Manor Road, Folkestone, Kent CT20 2SA (“the subject property”) to paint the window frames at no cost to the Respondent.

Background

4. 25 Manor Road Folkestone (“the building”) is a detached property which has been converted into five self contained flats. The subject property is one of those flats. The Applicants are the freeholders of the building and the Respondent is the lessee of the subject property. The other four flats are retained by the Applicants and are let on short term tenancies.

5. An application under Section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination of liability to pay and reasonableness of service charges has been made in respect of the service charges for the following years:

29th September 2007 to 28th September 2008 (actual)
29th September 2008 to 28th September 2009 (actual)
29th September 2009 to 28th September 2010 (estimated)

6. At the hearing the Respondent made an application under Section 20C of the 1985 Act for an order that all or any of the costs incurred or to be incurred by the Applicants in connection with these 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 Respondent.

7. On 28th July 2010 a Pre-Trial Review was held and was attended by Mr. Mitchell of Smith-Woolley & Perry representing the Applicants and by the Respondent. Also present was Miss Burrell the Respondent's daughter.

8. At that Pre-Trial Review the following matters were noted:

(a) The Respondent accepted that under the terms of the lease the Applicants have a duty to carry out works for which service charges in those years were demanded and that she has a duty to pay service charges calculated at 20% of the total cost.

(b) The Respondent stated that she does not dispute the following items and accepted that she is liable to pay 20% of them. Credit to be given as set out in the application for surplus sums from previous years brought forward and payments made by the Respondent:

2007/2008	£
Fire precautions	129.26
Buildings insurance	578.91
Fire risk assessment and periodic electrical inspection	<u>429.25</u>
Total:	1137.42

2008/2009	
Accounts certification	101.25
Fire precautions	127.88
Buildings insurance	<u>665.73</u>
Total:	894.86

2009/2010	
Accounts certification	110.00
Common parts electricity	95.00
Fire precautions	190.00
Buildings insurance	<u>740.00</u>
Total:	1135.00

(c) The Respondent stated that she contests the following amounts claimed:

2007/2008	£
Accounts certification	105.75
Cleaning common parts (including gardening)	1,929.70
Major works including redecorating internal common parts, fire detectors and electrical	3,272.37
Managing agents fees	705.00
Miscellaneous repairs	519.70

2008/2009	
Cleaning common parts	

(including gardening)	690.00
Common parts electricity	88.95
Major works including redecoration/repair of external common parts	24,320.40
Managing agents fees	747.50
2009/2010 (estimated)	
Cleaning/gardening common parts	1,450.00
Miscellaneous repairs	500.00
Managing agents fees	785.00

(d) The amounts are contested on the basis that the sums claimed are excessive for the work carried out and/or that the work was not done to a reasonable standard. The Respondent had prepared a statement which she presented to the Chairman with a copy for Mr. Mitchell. In her statement she set out some of her concerns.

(e) The consultation process under Section 20 of the Act was explained and Mr. Mitchell was asked about consultation in respect of the following:

2007/2008	£
Cleaning common parts (including gardening)	1,929.70
Major works including redecorating internal common parts, fire detectors and electrical	3,272.37
2008/2009	
Major works including redecoration/repair of external common parts	24,320.40

(f) As to cleaning common parts (including gardening) in 2007/2008 Mr. Mitchell did not think there were any long term contracts which would require consultation.

(g) As to major works including redecorating internal common parts, fire detectors and electrical in 2007/2008 Mr. Mitchell stated that although the figure for this work had been presented as £3,272.37 under one heading the work was carried out in four separate jobs and he did not think consultation would have been required.

(h) As to major works including redecoration/repair of external common parts in 2008/2009 Mr. Mitchell said the consultation procedure had been carried out. The Respondent did not recall such procedure. Mr. Mitchell anticipated, correctly, that the Tribunal would be requiring a specification of the work carried out and explained that at the same time as this work was being done the Applicants were having work carried out to the other four flats.

9. Directions were issued and Mr. Mitchell and the Respondent submitted statements of case and other supporting documents which were well prepared by both

parties and were considered by the Tribunal.

Inspection

10. On 22nd October 2010 the Tribunal, in the presence of Mr. Mitchell and the Respondent inspected the exterior of the building, the common entrance hall, stairs and landing, the interior of the subject property and the garden. The exterior of the building appeared to be in good general repair except that the window frames of the subject property were in need of decoration. The common parts namely the entrance hall, stairs and landing were in good general repair and were in a clean and tidy condition, as was the garden. The Respondent told us that there had been a significant improvement in the state of the garden since the time when the photographs of it produced by her in evidence had been taken.

The Hearing

11. The hearing was attended by Mr. Mitchell and the Respondent who both gave evidence and made submissions by reference to the statements and documents which they had supplied. Also present was Mr. Foster, a trainee from Mr. Mitchell's office, and Miss Burrell, the Respondent's daughter.

12. Mr. Mitchell referred to the numbered paragraphs of the Respondent's statement where she had set out her objections to the service charges claimed.

13. Paragraph 2. This concerns the increase in the interim service charge in September 2008 and the Respondent's doubt that the Applicants are paying their full share of the service charges in respect of the four retained flats. Mr. Mitchell stated that he can vouch for the accounts back to 1993 and that the landlord pays and continues to pay the service charges for all the other flats.

14. Mr. Mitchell explained that during the first half of the year the expenses were outstripping the budget and the Applicants required that he recast the budget to take account of this. Having done this Mr. Mitchell issued a supplementary invoice for £600 but then realised that there was no provision in the lease for issuing a supplementary budget. Any additional expenditure could be collected only after the certified accounts were prepared. Therefore no attempt was made at that stage to collect the sum in the supplementary invoice. As to the suggestion that the Applicants do not pay their share of the service charges in respect of the retained flats, the certified accounts show all charges on all the retained flats are paid.

15. Paragraph 3. The Respondent enclosed a copy of a letter dated 11th November 1993 from Smith-Woolley & Perry in which there was a reference to collection of ground rent. Mr. Mitchell said this was a standard letter at the time and was not correct. Smith-Woolley & Perry do not collect ground rent for the Applicants in respect of the subject property. When they do collect ground rent they charge the landlord commission and so that makes no difference to the service charges.

16. Paragraph 4. 2007-2008. Item 2. The Respondent was concerned about the state of the common parts, the garden and the car parking area and considered that the charges for cleaning and gardening were too high. Also that the fact that the other

flats are tenanted sometimes means that the occupiers do not take care of the common parts and the garden as an owner-occupier would do and extra work is created in repairing and redecorating when they leave.

17. As to the garden, Mr. Mitchell stated that the condition of it will vary according to the season, the weather and the level of maintenance contracted. The garden is not ornamental but is a working garden requiring relatively low level low cost maintenance to keep it in order. The photographs produced by the Respondent do not show it at its best but Mr. Mitchell could trace from 2007 to date only two occasions when complaints had been made: 21st March 2009 and 5th August 2009. In March 2009 there were a lot of major works and the general cleanliness and state of the garden were bound to be affected. The remedy would be more cleaning and tidying but that would mean more expense which would add to the service charges. On 5th August 2009 there was clearly a problem with the tenant of Flat 1. Some of the photographs produced by the Respondent were relevant to Flat 1. Mr. Mitchell looked at the situation, action was taken and the problem was resolved. Such incidents occur and will occur and depend upon the tenants but the problem was dealt with and has not occurred since. At page 76 of the Applicants' bundle of documents Mr. Mitchell had explained that notice had been given to the original contractor who carried out the cleaning and gardening and a new contractor (K.A.P.) had been appointed. There had been a small increase in the charge but that was considered reasonable in that the new contractor undertook to provide a higher quality service and this had been seen to be the case.

18. In paragraph 4 Item 4 the Respondent mentioned the insurance but this had not been disputed at the Pre-Trial Review and at the hearing the Respondent confirmed that the charge for insurance was reasonable.

19. In paragraph 4 Item 5 the Respondent had mentioned the major works including redecorating of common parts, fire detectors and electrical amounting to £3,272.37.

(a) Mr. Mitchell explained that this sum was the total of four separate jobs (details at pages 84-89 and 102 of the Applicants' bundle). The Respondent had suggested a link between the expenditure and the rented flats but the copy invoices produced showed that there was no such link to any of the flats, including the subject property. All the work concerned the structure and common parts. The work needed doing; it was required by the lease and was done at a reasonable cost. The Applicants by using a contractor known to them got it cheaper than using another contractor but no comparable quotes were obtained and there was no consultation.

(b) The Tribunal accepted that the invoices were for four separate jobs but the invoice at p 85 of the bundle for one of the jobs, redecorating common areas, came to a total of £1,527.50 which resulted in a charge to the Respondent of £305.50; £55.50 more than could be claimed in the absence of consultation or a dispensation. Mr. Mitchell stated that the Applicants had not realised it would cost so much and decided not to make an application for dispensation subsequently. He accepted that the Applicants could not claim the extra £55.50 from the Respondent.

(c) The invoice at p 87 of the bundle from Godden-Allen-Lawn, Chartered Building Surveyors, for £881.25 was for preparing a specification and obtaining tenders for the proposed external works. Smith-Woolley & Perry do not have building surveyors in their practice and therefore, when required, a building surveyor is appointed and the surveyor's fee is passed on to the service charges. Mr. Mitchell submitted that the fee charged was on the low side and made the point that Smith-Woolley & Perry make no further charge in respect of that work or on consultation. It is part of their overall fee.

(d) The invoice at p 89 of the bundle is in respect of work required consequent on the fire risk assessment. There is a statutory duty to carry out such an assessment and the details of that assessment are at pp 90 – 101 of the bundle. The assessor makes recommendations and the landlord has a duty to deal with those recommendations in a reasonable way. The Applicants decided that smoke detectors, emergency lighting and signs should be provided and that was done, at a reasonable cost using a known contractor.

(e) The invoice at p 103 of the bundle is in respect of an electrical inspection and remedial work. There is no statutory duty to carry out such an inspection but at least once in five years the common parts should be inspected. This is required by the insurers. The Electrical Installation Certificate is at pp 104-108 of the bundle.

20. Paragraph 4. Item 6. The Respondent considers the managing agents fees to be very high in relation to what she gets. Mr. Mitchell stated that the managing agents' fees are chargeable in accordance with the terms of lease. He could not provide the original agreement but the contract was renewed annually and determinable by six months notice. In the year 2007-2008 he had been engaged in managing the building for 20 ¾ hours. The charge was therefore less than £29 per hour. The Respondent is liable for 1/5th of that and the remaining 4/5th is paid by the Applicants in common with all the other service charges.

21. Paragraph 4. Item 7. The Respondent thought the fire assessment was very expensive and queried whether this was because the property is used for letting. Mr. Mitchell reminded us that at the Pre-Trial Review the Respondent stated that she did not challenge the charge of £429.25, which included the cost of the fire assessment and the electrical inspection. The cost of the fire assessment was about £250. Because a large number of units were assessed, the cost per unit was low.

22. Paragraph 4. Item 8. The Respondent was concerned that miscellaneous repairs could mean anything and £500 was a lot for not knowing what it is and as an addition to the major works. Mr. Mitchell produced three invoices which totalled £519.70. The first for £75.55 was for fire stopping works carried out as a consequence of the fire risk assessment. The second for £387.75 was for cutting down a large tree in the garden, removing the stump, making good and clearing the site. The third for £56.40 was for routine maintenance to the fire escape door.

23. Page 8 of the application. 2008 – 09. Item 1. The Respondent objected to the claim for £690 for cleaning common parts and gardening because the garden was a mess and she produced photographs in support of that. Mr. Mitchell produced in the bundle invoices in support of these charges. He accepted that the photographs produced by the Respondent showed the garden in a poor state but the Respondent

agreed that the garden had since improved considerably. Mr. Mitchell was satisfied that the contractor had carried out the works he was contracted to do but it is a fact that even if the contractor does absolutely everything he is supposed to do and then a tenant makes a mess the garden will be a mess until the contractor's next visit.

24. Item 2. The Respondent had stated that the electric lights in the hallway would not go off as they were supposed to do and she had had to go downstairs to try and switch them off during the early hours of the morning and at 10.00 pm. She had done this for about four years and complained to Mr. Furneaux, the father of the Applicants but he had done nothing about it and for this reason the charge for electricity was more than it should have been. Mr. Mitchell stated that there are two lights and that there was no record of a complaint about the switches. He assumed that had Mr. Furneaux received a complaint then he would have referred it to Smith-Wooley & Perry. The cost of the electricity is very low. The Respondent's 1/5th share being 34p per week. Smith-Woolley and Perry obtain the best deal they can for leaseholders since the electrical market has been privatised. They employ a manager consultant who deals with all their energy procurement.

25. Item 5. The Respondent confirmed that she did not dispute the charge for insurance.

26. Item 6. Major external works including painting. The Respondent is of the opinion that this was made up. The hall walls were painted because so many tenants were moving in and out and marking them but she was not consulted and the figure (£24,320) like all the other figures, is utterly wrong and should not be permitted. A man from Hungary was employed to do the work and probably a different rate would have been obtained from a local painter. There were no major redecorating works to the communal parts and, like all the other charges it was to maximise the money the Applicants want from the Respondent.

27. Mr. Mitchell stated that the work had been carried out in accordance with the specification prepared by Godden-Allen-Lawn, Chartered building Surveyors. The hall walls were not part of these works which were part of the internal works carried out earlier. This sum of £24,320 was for external works. The Respondent had been consulted and evidence of this was at pp 33-73 of the bundle. The Respondent did not want the work done and did not want any other estimates. As to the reference to a man from Hungary, Mr. Mitchell had checked with the Applicants and confirmed that all the employees of KAP Building are PAYE registered and not sub contractors. Mr. Mitchell hoped that the consultation had been carried out correctly. It was not a case of KAP wanting to do the work. It was done because in the lease there is an obligation on the landlord to get the work done. At pp 33 and 34 of the bundle there is a notice of intention to carry out the works namely "...the redecoration and associated repairs of the exterior of the building." That notice was sent to the Respondent. She replied (p 39) outside the time limit but her reply was acknowledged. The specification is at pp 45- 70 including the repair schedule at pp 68-70. There are provisional sums for roof coverings and for lead flashing to the right flat roof. Copies of pp 68 and 69 were sent to the Respondent (p 35) and she confirmed that she had received them but made no observations at the time. The work was not supervised by Godden-Allen-Lawn or Smith-Woolley and Perry. The Applicants supervised the work. From p 126 onwards are invoices. The Tribunal

noted that there had been no notification of any changes to the specification. The bill at p 127 ties in with the tender document within about £7. At p 128 provisional sums and contingencies are removed and then extra work on the roof at a cost of £7,198.00 + VAT is added. Mr. Mitchell was asked if he had any other information about this additional work. He was not sure if there was any other documentation. The Applicants had instructed the contractors direct. At p 129 is the invoice for the additional roof work which was completed as per instructions. He had no knowledge of the problem as to why an extra £7,000 had been spent. Mr Mitchell explained that a surveyor cannot get close up when doing an inspection and often when the scaffolding is up other works are found and it is a natural progression to deal with them. The Tribunal pointed out that the legislation is tight and that once the work expands beyond the original specification, the additional work is not covered by the original consultation process and becomes part of a new consultation process. Either a new Section 20 consultation or a Section 20ZA application should have been made to the Leasehold Valuation Tribunal. Mr Mitchell confirmed that there had been no additional consultation and that there had been no application for dispensation under Section 20ZA of the 1985 Act. In the specification at p 57 there is a provisional sum of £1,000 and at p 68 there are provisional sums totalling £1,300 providing a total of £2,300 to use to do the extra work. The result is that none of this additional work is recoverable from the Respondent above the full sum of £19,102.17 shown in the consultation papers at p 43.

28. Item 7. Managing agents' fees. Mr. Mitchell made similar submissions as in paragraph 20 above with an increase of £50 on the total for the year which he considered reasonable in view of the low hourly rate (p 130).

29. Page 9 of the application. 2009-2010. Budget figures. Item 2. Cleaning of common parts and the gardening. The Respondent did not think that the Applicants paid their workers, especially in the other flats, fees that measured up to the charges being demanded of her. Mr. Mitchell made similar submission to those in paragraph 17 above.

30. Item 6 miscellaneous repairs. There are always likely to be some repairs required during the year and this figure ties in with insurance. There is a £250 excess and over that the insurers pay the claim. It is reasonable to provide for two repairs not over £250 and therefore not insurable.

31. Item 7. Managing agents' fees. Mr. Mitchell made similar submissions as in paragraph 20 above with an increase of £25.

32. The Respondent's comments on the statement of case of the Applicants.

(a) Paragraph 5. The letter dated 13th August 2008 from Smith-Woolley & Perry (p 15). It seemed to the Respondent that the landlord may impose any charges for work he sees fit and the leaseholder must pay, even though the leaseholder has expressed a wish not to and for the work not to be carried out as it appears unnecessary, but nevertheless is forced to pay and this could not be right. Mr. Mitchell said this was not the case and that the interim charges were reasonable.

(b) Paragraph 6. The Respondent stated that when she and her husband took possession of the subject property Mr. D. Furneaux, the father of the Applicants, said that Smith-Woolley & Perry would look after all the flats but that did not continue as the agent informed the Respondent to the contrary and she thought this was probably why the place was neglected because they were not receiving the same fees as the Respondent was paying. Mr. Mitchell explained that Smith-Woolley & Perry do not deal with the letting of any of the flats but they look after the communal parts and the structure.

(c) Paragraph 7. As to the letter dated 30th September 2009 (p 26) the Respondent did not agree that this was “a relatively small” amount. As to p 38 of the statement of case, Item D.1.2 “Decorate all previously painted remaining timber framed windows to Flat 3”, the window frames were not decorated. As to the letter dated 12th May 2008 at p 41, the Respondent did not consider it right that KAP Builders should have been awarded the contract as it means that the Applicants’ company profits from the work. Also it is stated that windows should be in good repair – they were, but were not painted. As to the letter dated 12th May 2008 at p 43, the Respondent did not nominate a contractor as she saw no need for any work to be done. Mr. Mitchell explained that as to Item D.1.2. there had been a misunderstanding. The window frames were in need of repair and the painters were under the mistaken belief that the Respondent would be paying separately for that. This was the Applicants’ contractor’s problem and the Applicants would send the painter back to paint the window frames at no cost to the Respondent. There was no reason that KAP could not tender for the work.

(d) Paragraph 8. The Respondent was concerned that when letting tenants leave there are endless builders’ vans at the building from, she believes, KAP Builders and work is going on in the various four flats almost non stop until fresh tenants move in.

(e) Paragraph 9. The Respondent recalled asking Mr. Mullins from Smith-Woolley & Perry who had previously dealt with her if the freeholder paid what should be paid according to the lease and was told that “Mr. Furneaux claws money back” and that Mr. Mullins had also said “I feel sorry for you”. Mr. Mitchell again stated that the Applicants pay and continue to pay for their flats and that there is no clawing back if that is what is referred to.

(f) Paragraph 10.

(i) P 76 of the statement of case. 4.1.2. Cleaning common parts. The Respondent stated that the previous cleaner, with an assistant, did a very good job and that since he had gone the standard had deteriorated. Mr. Mitchell had nothing to add to his previous comments. At p 86 4.1.4. The Respondent considered that the survey fee was huge and questioned why it should be so much. Mr. Mitchell considered the amount reasonable and that it was a smaller percentage because the surveyor did not supervise the work. As to the hourly fee of £29 quoted at 4.1.7 on p 109, the Respondent thought this to be enormous in relation to the slum like conditions which often prevailed and left her too ashamed to receive visitors. Mr. Mitchell had nothing to add to his previous comments as to managing agents’ fees. As to the removal of the tree (4.1.9 on p 114) the Respondent did not wish to pay for that. Mr. Mitchell stated that damage was being caused to the building at ground level and the tree was

touching the building at high level. It may have contributed to damp in the ground floor flat. A large sum of money had been spent on work in connection with damp and condensation problems in the ground floor flat and the cost of that work had been borne by the Applicants. It had not been charged to the service charges although perhaps it could have been as it affected the structure of the building.

(ii) Pp 86 and 87 of the statement of case. 4.1.4. Mr. Mitchell's comments are at paragraph 19(c) above.

(iii) P 109 of the statement of case. 4.1.7. Mr. Mitchell's comments are at paragraph 20 above.

(iv) P 114. 4.1.9 of the statement of case. Mr. Mitchell's comments are at paragraph (f)(i) above.

(g) Paragraph 11. The Respondent considered that she should not have to contribute to many of the charges. As KAP is the building firm of the Applicants she considered there was a conflict of interest. She had always paid her bills promptly until recently when she had not done so because of the increases and all the various repairs which happen when there is a change of tenancy and that is not her responsibility. Mr. Mitchell had no further comments to make.

(h) Paragraph 12. One tenant had left rubbish in the common parts and garden and the tenant's dog had taken over the garden so that the Respondent was unable to use the garden. Mr. Mitchell said that this referred to one of two reported complaints about the garden and the tenant of one flat.

(i) Pp 15 and 16 of the Respondent's statement of case concern a powered access vehicle being left on the forecourt of the building and planning permission. The Tribunal was satisfied that this was not relevant to the present proceedings.

(j) Paragraphs 13 and 14 were considered by the Tribunal but added nothing to the matters dealt with above.

(k) Paragraph 15. In 2001 the Respondent had paid in advance for the painting of the building and this included a charge for scaffolding as "ladders were not to be used". In fact ladders were used. Mr. Mitchell confirmed that the Respondent was quite right that in the event scaffolding had not been used and the Respondent was credited with £201.64 on 21st October 2002 as shown at p 2 of the Respondent's statement of case.

(l) Paragraph 16 and the photographs were considered by the Tribunal but Mr. Mitchell had no further comments to make about them.

(m) It was noted by the Tribunal that at p 25 of the Respondent's statement of case there is a copy of a letter which the Respondent had written to Mr. Mitchell on 4th August 2009 informing him of the problems with cleaning, the garden, rubbish, the wheelie-bin and the front door being left open. Mr. Mitchell had no further comments to make.

(n) Paragraphs 17, 18 and 19 were noted by the Tribunal but Mr. Mitchell had no further comments to make.

(o) Pp 29-31 of the Respondent's statement of case Mr. Mitchell considered to be a simplistic calculation comparing budgets for 1994 and 2011. Insurance had increased since 1994 but with the increase in property values and the increase in the cost of rebuilding over the years the sum insured had had to be increased from £300,000 to £500,000. There had been inflation over the past sixteen years and the change in the insured sum he considered reasonable. As an example of inflation, the certification of accounts had cost £70.50 in 1998/1999. Over twelve years an increase to £110 is a small increase really. Also the service charges had benefited because there had been insurance in respect of earthquake damage.

33. Mr. Mitchell pointed out that as the Applicants have to bear 80% of the costs they do try to keep costs down.

34. The Respondent had no questions for Mr. Mitchell and had nothing to add to her statement of case and to the comments she had made during the hearing.

35. The provisions of Section 20C of the 1985 Act were explained to the Respondent and she made an application for an order under that Section.

Reasons

36. The Tribunal considered all the documentary and oral evidence and submissions received from Mr. Mitchell and the Respondent and made determinations on a balance of probabilities about the sums challenged.

37. 29th September 2007 to 28th September 2008 (actual)

(a) The sum of £105.75 is a reasonable sum to pay for certification of accounts and the Respondent's proportion: £21.15 is payable.

(b) We were satisfied that although the common parts and the garden were not kept clean and maintained at all times to a high standard, the charge was reasonably incurred and was reasonable. The Respondent's proportion of the charge of £1,929.70 which is £385.94 is therefore payable.

(c) As to the major works amounting to £3,272.37 we were satisfied that this charge was the total of four separate matters and that the consultation requirements under Section 20 of the 1985 Act applied only to one of them because a sum in excess of £250, namely £305.50 was being demanded of the Respondent.

(i) The invoice is at p 85 of the Applicants' statement of case and was for the redecoration of the common parts which is required by the terms of the lease. Mr. Mitchell accepted that there had been no consultation or dispensation. It was simply that the work had cost a little more than expected and all that the Respondent could be asked to contribute was £250. Subject to that, the Tribunal was satisfied that the charge was reasonably incurred and was reasonable. Of the total cost of £1,527.50

only £250 is payable by the Respondent. This produces a notional total cost of £1,250 (£250 x 5).

(ii) The fees of £881.25 in respect of the building surveyors' work in preparation for the external decoration and repair (p 87) is in line with charges made for such work. It is a reasonable sum, reasonably incurred for the work which was required to be done in accordance with the terms of the lease. The Respondent's proportion of £881.25 is £176.25 and is payable.

(iii) It was prudent to carry out the fire risk assessment works (p 89). They were reasonable and necessary and the charge was reasonably incurred. The Respondent's proportion of £722.62 is £144.52 and is payable.

(iv) It was prudent to carry out the electrical inspection (p103). The work was reasonable and necessary and the charge was reasonably incurred. The Respondent's proportion of £141.00 is £28.20 and is payable.

(d) The managing agents' fees of £705.00 are in fact at the lower end of the fees generally charged in such circumstances. They were reasonably incurred and were reasonable. The Respondent's proportion of £705.00 is £141.00 and is payable.

(e) Miscellaneous repairs:

(i) The fire precaution works to the electricity cupboard (p 112 and 113) were necessary from a safety point of view and were reasonably incurred. The Respondent's proportion of £75.55 is £15.11 and is payable.

(ii) As to the cost of removal of the tree (p 115) we accepted the evidence from Mr. Mitchell that the removal was required for the safety of the building. The cost was reasonably incurred and was reasonable. The Respondent's proportion of £387.75 is £77.55 and is payable.

(iii) The work to the fire escape door (p 117) we accepted was required for the safety of the occupants of the building, including the Respondent. The cost was reasonably incurred and was reasonable. The Respondent's proportion of £56.40 is £11.28 and is payable.

38. 29th September 2008 to 28th September 2009 (actual)

(a) As for the previous year, we were satisfied that although the common parts and the garden were not kept clean and maintained at all times to a high standard, the charge was reasonably incurred and was reasonable. The charge of £690.00 is lower than in other years because only six months was accounted for in the invoices produced. The Respondent's proportion of the charge of £690.00 which is £138.00 is therefore payable.

(b) The invoices at pp 122-125 for electricity show that the cost of the electricity is very low. The Respondent's 1/5th share is about 34p per week. We accepted the evidence of Mr. Mitchell as to obtaining the best deal for leaseholders in the energy market. We can understand the Respondent's concern about having to switch off

lights but that would have had only a very small effect on the charge which itself is small. The charge for electricity was reasonably incurred and was reasonable. The Respondent's proportion of the charge of £88.95 which is £17.79 is therefore payable.

(c) As to the major works we were satisfied that all, except the additional roof works, were reasonably incurred as required by the terms of the lease and the costs were reasonable. The gross cost of those works as shown in the invoice at p 128 is £24,320.40. However, the consultation figure shown in Smith-Woolley and Perry's letter dated 12th May 2008 (p43) gives the sum of £19,102.17 and this is the maximum recoverable. The Respondent's proportion of the charge is £3,820.43 and is payable.

(d) For similar reasons to those in paragraph 37(d) above we found that the managing agents' fees, including the small increase, were reasonably incurred and reasonable and that the Respondent's proportion of the charge of £747.50 is £149.50 and is payable.

39. 29th September 2009 to 28th September 2010 (estimated)

(a) On the basis of previous charges and from the Tribunal's knowledge and experience of sums which should be included in a budget, we found that the following figures were reasonable figures to include in the budget for the following matters

- (i) £1,450 for cleaning and gardening.
- (ii) £500 for miscellaneous repairs.
- (iii) £785 for managing agents' fees.

(b) The total of those sums is £2,735. The Respondent's proportion is £547 and is payable.

40. As to the application for an order under Section 20C of the 1985 Act, for the following reasons and for the avoidance of doubt we decided to make an order. We find that it is just and equitable in the circumstances to make an order because the Respondent was justified in contesting these proceedings to clarify the position and the result is a reduction in the sum payable.

(Signed) R. Norman

R. Norman
Chairman