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Residential  
Property  
TRIBUNAL SERVICE

LON/OOAE/LSC/2009/0741

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER THE LANDLORD AND TENANT ACT  
1985 (as amended) SECTIONS 27A and 20C and the COMMONHOLD  
AND LEASHOLD REFORM ACT 2002 SCHEDULE 11 PARAGRAPH 5**

**PROPERTY: FLAT 60 CLARENDON COURT SIDMOUTH ROAD  
NW2 5HB**

**APPLICANT: TERMHOUSE (CLARENDON COURT) LIMITED**  
**Represented by: Messrs Maddersons**

**RESPONDENT: MS LUI-LI WOOD**  
**Represented by: BPP on the First, Second and Third hearings**

**Appearances:**

**For the Applicant: Ms S Wright (29<sup>th</sup> March 2010 and 19<sup>th</sup> May)  
Mr P Bush of Counsel (19<sup>th</sup> May, 3<sup>rd</sup> and 9<sup>th</sup> August  
2010)  
Mr J McGahy of Wood Management (29<sup>th</sup> March, 19<sup>th</sup>  
May and 3<sup>rd</sup> and 9<sup>th</sup> August 2010)  
Mr Y Pandor, Director of Applicant (29<sup>th</sup> March, 3<sup>rd</sup> and  
9<sup>th</sup> August 2010)**

**For the Respondents: Ms K James and Mr R Evans of BPP (29<sup>th</sup> March, 19<sup>th</sup>  
May 2010)  
Ms E Lanfear & Ms L Gerrard of BPP (3<sup>rd</sup> August 2010)**

**Dates of Hearings: 29<sup>th</sup> March, 19<sup>th</sup> May, 3<sup>rd</sup> August and 9<sup>th</sup> August 2010**

**TRIBUNAL**

**Mrs T I Rabin JP  
Mr C Kane FRICS  
Ms L Walter MA Hons**

**Date of Tribunal's decision: 21<sup>st</sup> September 2010**

## FLAT 60 CLARENDON COURT SIDMOUTH ROAD NW2 5HB

### FACTS

1. The Tribunal was dealing with an application by the Applicant, Termhouse (Clarendon Court) Limited, the manager appointed under the terms of the Lease of flats in Clarendon Court Sidmouth Road MW2 5HB ("the Building"), for a determination as to whether the service charges for service charge years 2006 to 2008 were reasonable and payable by the Respondent. The Willesden County Court 2010 referred the case to the Tribunal after the Applicant had issued proceedings for recovery of service charges due from the Respondent. The Respondent is the long leaseholder of Flat 60 Clarendon Court aforesaid ("the Flat"). The Flat was held under a lease ("the Lease") dated 1<sup>st</sup> October 1984. A copy of the Lease is in the file. The application is being considered under Section 27A (1) Landlord and Tenant Act 1985 as amended ("the Act") and Schedule 11 Paragraph 5 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").
2. The Building comprises 120 flats and some garages. All the long leaseholders are shareholders in the Applicant. The freehold was purchased by all the long leaseholders, with the exception of the long leaseholder of Flat 14 but a share in the freehold has subsequently been acquired by the current owner so that all the long leaseholders in the Building, including the Applicant, are shareholders in the freehold company, which is not a party to these proceedings. The Building is managed by Wood Management, taking instructions from the Directors of the Applicant.
3. The sum of £7,604.12 was stated to be outstanding in service charges for the Respondent as at 1<sup>st</sup> October 2009. The Respondent had paid only the sum of £1,228.44 from the time she purchased the Flat in January 2007 to 1<sup>st</sup> October 2009 and the Tribunal noted that no payment had been made since 21<sup>st</sup> February 2008 when the Respondent made a payment of £207.93.
4. The Tribunal made directions on 8<sup>th</sup> December 2009 which included a direction that the Appellant provide a Scott Schedule to the Respondent by 15<sup>th</sup> January 2010 listing each item and that the Respondent should by 26<sup>th</sup> February 2010 identify which items were still in dispute. Both parties were directed to provide statements of case.

### THE LAW

5. The relevant legal principles that the Tribunal has taken into account in arriving at its decision are set out in Schedule 1 below.

## THE HEARINGS

6. This matter has been fraught with difficulties. The case was set down for two days on 29<sup>th</sup> and 30<sup>th</sup> March 2010 but on the morning of the hearing, as Counsel was unable to attend due to illness an adjournment was sought. This was refused as two days of Tribunal time had been set aside and there were a number of representatives for the Applicant present and the Respondent was present with Ms James and Mr Evans of BPP who were representing her. Ms Wright of Maddersons arrived at 12.15 and the Tribunal attempted to clarify the issues that were outstanding. This proved to be impossible and the Respondent was directed to identify the areas of complaint and give her reasons. The hearing was adjourned to 19<sup>th</sup> May 2010.
7. On 19<sup>th</sup> May five bundles of documents were produced by the Applicant, including virtually all the invoices for the service charge years in question. Some further evidence was taken but there was still a lack of clarity as to the extent of the Respondent's complaints and which of the numerous invoices she was querying. During the hearing the Respondent accepted that some of the amounts claimed were reasonable and the Tribunal noted these. Further directions were given by the Tribunal requiring the Respondent to identify precisely which of the invoices she disputed and give her reasons. She was also asked to provide copies of the disputed invoices from those supplied by the Applicant and include them in a separate bundle. The Tribunal adjourned the hearing to 3<sup>rd</sup> August 2010.
8. The hearing resumed on 3<sup>rd</sup> August when the Tribunal heard evidence on behalf of the Applicant. There was insufficient time to complete the hearing on that day and the matter was adjourned yet again to 9<sup>th</sup> August 2010 when the Respondent gave evidence and both parties made submissions.
9. Ms S Wright represented the Applicant on 29<sup>th</sup> March 2010 and Mr Peter Bush of Counsel represented them at all the remaining hearings. The Tribunal heard evidence from Mr J McGahy of Wood Management, Mr Y Pandor, a director of the Applicant and the Respondent. At the end of the hearing submissions were made by Mr Bush and the Respondent. Ms James and Mr Evans of BPP accompanied the Respondent on 29<sup>th</sup> March and 19<sup>th</sup> May and they told the Tribunal that they were there to represent the Respondent and they questioned Mr McGahy after he had given evidence. They were not present at the hearings on 3<sup>rd</sup> and 9<sup>th</sup> August but two other BPP students. Ms Lanfear and Ms Gerrard, accompanied the Respondent and they clearly stated their role was to support the Respondent but they were not there to represent her. The Tribunal questioned them on this in view of the fact that BPP students had

represented the Appellant at the earlier hearings but they were clear about their role. They did not attend the hearing on 9<sup>th</sup> August.

10. The Tribunal had been provided with five bundles of documents by the Applicant early on in the proceedings. The Respondent did not comply with the Tribunal's directions but did eventually produce a bundle with a statement of the issues that remained outstanding and references to the invoices referred to, although no copies were provided. A further supplemental bundle was produced on 9<sup>th</sup> August in which the invoices identified by the Respondent were produced. The Tribunal carefully considered all the documents provided before coming to their decision and took careful note of the evidence given by the witnesses on behalf of the Applicant and by the Respondent.
11. The Respondent submitted that she was at a disadvantage as she was not legally trained and English was her second language. She felt that she had been forced to agree with some figures at the first hearing and she had not had sufficient time to look through the five files that had been provided. The Applicant had not addressed her concerns voiced over a number of years.
12. The Tribunal had regard to the fact that the Respondent did not have English as a first language and were at pains to ensure that she understood all the evidence. As far as the Tribunal was aware, the Respondent was represented at the hearings on 29<sup>th</sup> March and 19<sup>th</sup> May 2010. She was accompanied by two people at the hearing on 3<sup>rd</sup> August 2010 but they stated they were not representing her. However they were there to protect her interests and give her support and did not indicate that the Respondent was prejudiced in any way or that she did not fully understand the proceedings. Although she was not represented at the hearing on 9<sup>th</sup> August 2010, the Tribunal, as is its practice, made sure that the Respondent was comfortable with the proceedings and assisted her in giving evidence and submissions.

### EVIDENCE AND DECISION

13. The Tribunal noted that the Respondent was generally unhappy with the manner in which the Building was managed. After she purchased the Flat in January 2007 she learned that there were balancing charges due and she considered that the Building was badly managed and that the charges were unreasonable. She had raised a number of issues with the managing agents, Wood Management Ltd, as well as with the directors of the Applicant, Mr Pandor and Mr Edwards. She had complained about the lack of consultation with the long leaseholders and she pointed out a number of errors in the demands. The managing agents and the Applicant had ignored all her enquiries. She complained that any withholding of

service charges whilst waiting for an explanation of figures resulted in a demand being issued and debt recovery agents being instructed. She queried every one of the items in the service charges for the service charge years in question, although some of these were agreed at the hearing on 19<sup>th</sup> May 2010.

14. Mr McGahy gave evidence on behalf of the Respondent. He was the property manager from Wood Management, the managing agents, who had responsibility for the Building. He pointed out that there had only been one other resident who had withheld service charges during the time he had been responsible for the Building. Whilst Mr McGahy accepted that the Respondent had the right to question the service charges, there are limits and the basis of her objections appear to be that she was not happy with the contractors appointed. She had suggested that she could provide people who would undertake the work at a lesser cost. Mr McGahy understood that these people were her friends and were not contractors.
15. The Respondent had been to Mr McGahy's offices to inspect the invoices on 4<sup>th</sup> May 2010 when all invoices for the service charge years in question were made available to her. She remained in the offices for over three hours and spoke at length to Mr McGahy and the appointed account manager for the Building who explained the procedures they employed and the steps taken prior to the accounts being prepared by the Applicant's auditors. The Respondent requested copies of a number of invoices and explained that she was checking whether the contractors actually existed.
16. Mr McGahy then went through the items listed in the Scott Schedule, a copy of which is annexed as Schedule 2 ("the Schedule") and the comments by the Applicant are listed in the fourth column of the Schedule with the Respondent's points are set out in the sixth column. During the course of the hearings the Respondent accepted that a number of demands were reasonable, after a further explanation, but there were a number of issues that were still disputed and the Tribunal will deal with these below.

### **Insurance**

17. The Respondent pointed out that the insurance demands in the accounts and in the service charge accounts were inconsistent. She accused Mr McGahy of lying in his statement where he had said he had shown the Respondent any details of the insurance.
18. The Applicant explained that the insurance premium amount in the accounts excluded the terrorism and lift insurance. The Tribunal was referred to the breakdown of the amounts paid under each heading of

service charge summary and the audited accounts and the Applicant submitted that the invoices tallied with the amounts actually expended.

### **Tribunal's decision**

19. It is quite clear that insurance was in place for the Building, lift and terrorism and that the sums expended were properly accounted for in the final accounts. The Respondent has provided no evidence that the insurance premiums are excessive and the Tribunal is aware that a landlord can select the insurer as long as he has acted reasonably. The Respondent gave no evidence to the contrary, simply limiting her complaint to the lack of consistency in the invoices and the accounts. The Tribunal found that the allegation of lying by Mr McGahy was malicious and unfounded.
20. **The amount demanded for insurance is reasonable and payable by the Respondent. It is overdue and payable immediately.**

### **Insurance claims**

21. The Respondent pointed to a number of invoices and complained that these were items that should have been covered by insurance and that claims should have been made. Mr McGahy explained that some of the invoices referred to related to items of repair that would not have been covered by insurance. In addition, where there was a bill for £500 or less, no claim would be made as the excess was £500 and the Applicant would receive no benefit. He pointed out that one invoice in 2006 was for £528 but considered that the sum was so little over the excess that it was not worth making an insurance claim.

### **Tribunal's Decision**

22. In the Tribunal's view the Respondent does not clearly understand the process of making insurance claims. Claims can only be made for costs incurred as a result of damage to the Building by an insured risk. This does not include the cost of remedying damage not covered by insured risks or the cost of undertaking repairs of worn or broken items.
23. The Tribunal agrees that there is no merit in making claims where the cost of repair for an insured risk would be below or close to £500. There was no credible evidence that there had been any failure to make claims when appropriate where the cost exceeded £500 or close to that.
24. **The disputed invoices for items of repair, not covered by insurance and those covered by insurance limited to £500 or not too much above are reasonable and payable by the Respondent. These sums are overdue and payable immediately.**

## **Audited accounts**

25. The Respondent queried a number of items in the accounts and accordingly questioned that these gave a true reflection of the accounts. She was also concerned that the accounts of the service charge year 2009 were not available. This was her reason for withholding some of the amount due. She also had queries for the figures in service charge years 2007 and 2008.
26. Mr McGahy explained that the 2009 accounts were still in the course of preparation but that budgets for service charge year 2009 had been submitted to all long leaseholders and copies of the audited accounts for 2007 and 2008 had been provided. He pointed out that the Respondent had been given the opportunity to inspect all the invoices.

## **Tribunal's Decision**

27. The Tribunal is aware that the accounts for a service charge year can take some time to prepare. This is because the managing agents cannot start to reconcile the figures until after the end of the year and then all the invoices have to be verified by the auditors. The accountants had issued audited accounts for 2007 and 2008, which had been certified that these are the final say as to whether the sums referred to have been paid. There is no question that the sums referred to in audited accounts have not been properly included. The Respondent appears to be insinuating that the accounts are not an accurate reflection but there is no credible evidence to support this contention.
28. **The Tribunal finds that the accounts have been properly prepared and audited by a firm of accountants and that they reflect the sums paid during the relevant service charge years.**

## **Electricity**

29. The Respondent was of the opinion that the electricity bills for the common parts were excessive and that the electricity for some of the flats was included in the demands for the common parts. She also queried the high cost of electricity for the caretaker's flat and an invoice relating to electrical work in Flat 4, which seemed beyond a normal cost for repairs in a flat.
30. Mr McGahy explained that he had checked the meters and identified which part of the Building each of them related to. There are 21 meters that cover all the communal lighting in each of the blocks comprising the Building, all the lifts, the garage lighting and the external lights. None of the flats receive electricity from these meters. He had also checked the

electricity charges to Flat 4, which is the caretaker's flat and found this was correct; the cost is high because the flat is large with 3/4 bedrooms and is heated by electricity, rather than gas. Finally, the electrical work to Flat 4 was undertaken as part of the refurbishment when the electrical supply was brought up to modern standards and the additional costs were for bringing the supply from the rising main into Flat 4.

### **Tribunal's Decision**

31. Mr McGahy has given a full explanation as to the electricity supply and related charges. It is clear that the electricity is supplied to the communal areas and not the individual flats as alleged by the Respondent.
32. **The charges for the supply of electricity and the related charges for Flat 4 are reasonable and payable by the Respondent. These sums are overdue and payable forthwith.**

### **Gas Supply**

33. Mr Y Pandor, a director of the Applicant gave evidence about the gas supply. Mr Pandor explained that he was a director of both the Applicant and the freehold company and that this was a voluntary position. He had been appointed as he was a quantity surveyor and he had been a director for 7 or 8 years. He was also a director of the freehold company and these were voluntary positions.
34. The Building had its heating and hot water supplied through an oil-fired boiler. The tanks were defective and the oil had to be siphoned out and placed in temporary tanks. This was not satisfactory and a decision had been made to replace the old oil fired boilers with a new gas fired boiler. A & G Heating gave the cheapest quote and the gas boiler was installed in 2007. As a result, there had been a need to upgrade the gas pipes to the Building and there was going to be a delay of three months before the gas suppliers were able to undertake the work, with no satisfactory supply of gas to the Building. The Applicant and the long leaseholder of Flat 102 agreed that, because the flat was unoccupied, the gas supply for the whole block could be routed through Flat 102 and the Applicant would meet the costs of the gas supply. The pipes have still not been laid and the arrangement with the owner of Flat 102 is still in place but to date, no invoice has been received for the supply of gas to Flat 102. Using the experience of the past, an allowance of £4,000 has been made in the accounts for 2009 to cover the bill when the gas suppliers finally issue the demand. Mr Pandor also explained that there were water tanks in the loft that needed to be checked and chlorinated and that A & G Heating attended to this as well.



35. Mr McGahy explained that the invoices for gas consumption had been made available to the Respondent. The Lease requires all the long leaseholders to contribute towards the communal boiler but half of them do not benefit from communal heating and hot water. There was an attempt to enter into a deed of variation, which would remove the obligation to contribute to the communal boiler from the people who did not benefit. This needed 100% agreement from all the parties affected and it was not completed partly because the Respondent was unwilling to enter into this

### **Tribunal's decision**

36. The Leases all require a contribution to the communal boiler, whether or not the long leaseholder has the benefit of communal heating and hot water. However this is a contractual obligation, binding on all long leaseholders, whether or not they benefit from communal heating and hot water. The Leases can be varied by agreement, provided all parties agree or, in some circumstances, the Tribunal can order a variation. However the proposed deed of variation was not entered into and any possible variation is not a matter before the Tribunal. The Respondent has provided no evidence to indicate that the gas charges are not properly incurred. As far as the contingency sum of £4,000 is concerned, whilst it is not satisfactory to have the gas supply to the Building on such an informal basis, the Tribunal can see that the routing of the supply through Flat 102 was a practical solution. The contingency sum is in line with the cost of gas supply for service charge years 2007 and 2008.

**37. The amount charged or estimate for the supply of gas is reasonable and in accordance with the terms of the Lease. The sums are overdue and are payable forthwith.**

### **General Repairs**

38. The Respondent questioned the existence and/or status of Kevin Reid, a contractor used to undertake a number of repairs to the building. She produced a copy of a search she had undertaken to check the VAT number given for Kevin Reid and the result was that there was no registration. She also produced the result of a company search showing Kevin Reid's address and produced a photograph that purported to be of the address given. This evidence, in her view, indicated that the invoices were either false or that a charge for VAT was included when none was payable. The Respondent pointed out that Kevin Reid had charged over £25,000 for the service charge years in question and that the Applicant had therefore entered into a long-term agreement with him.

39. Mr McGahy said that he checked all contractors before they were appointed. He ensures that they have PI insurance and that they are approved. Kevin Reid was a reliable contractor and popular with the long leaseholders and his services had been utilised on an ad hoc basis on a number of occasions. He had been unable to work for some time due to ill- health and this may explain why he is no longer registered for VAT. Generally work was undertaken when necessary and contractors in whom they had confidence were appointed. The Tribunal was referred to a number of other invoices from different contractors invoices that the Respondent queried. Mr McGahy explained what they related to and the Tribunal were referred to these in the service charge account summary.

### **Tribunal's decision**

40. The Tribunal was less than impressed with the Respondent's malicious allegations. She had no credible reason for questioning the probity of Kevin Reid. She was unable to identify the search engine which she had used to verify the VAT number but, in any event, the Tribunal has noted that Kevin Reid is unable to work any longer, due to ill-health. The Tribunal could not see the significance of the reference to the company search and photographs and have disregarded them. There is no reason to doubt the bona fides of any of the contractors appointed by the managing agents who have stated that they check the credentials of any contractor appointed.

41. The suggestion by the Respondent that Kevin Reid was employed under a qualifying long-term agreement has no merit. There is no evidence that there is an agreement in place for a period of twelve months or more as the appointment of Kevin Reid was intermittent on the basis of need for individual jobs and there was no agreement in place. The Tribunal is satisfied that there was no requirement for consultation as there was no formal agreement in place and the commissioning of Kevin Reid was demand led.

42. The Building is multi-occupied and is not modern. This means that there will be repairs and refurbishment required on a regular basis. The amounts charged for general repairs during the service charge years in question are at a level to be expected in a block of flats such as the Building

**43. The amounts charged for general repairs in the service charge years in question are reasonable and payable by the Respondent. The amounts are overdue and payable forthwith**

**J & G Contractors**

44. The Respondent pointed out that a firm called J & G Contractors had been paid over £20,000 in service charge year 2006. She queried whether there had been consultation under Section 20 before the work was undertaken.
45. Mr Pandor informed the Tribunal that there was a problem with the roof of Block 1-20 in the Building in November 2005. The problem could not be identified until scaffolding had been erected and an inspection undertaken. There was a problem with the roof and, once the roof had been inspected, the guttering was also found to be defective over an extensive area. The work of repair of the gutters was undertaken at the same time as the roof repairs whilst the scaffolding was up as this seemed to be the sensible approach, rather than take the scaffolding down and obtaining competitive quotes. The original cost for repairing the roof was anticipated to be considerably lower than the final cost, which included the guttering, but the bulk of the expense was the scaffolding. There has been no problem with the roof or the guttering since then.
46. Mr Pandor is aware of the requirements of Section 20 of the Act. The cost to each flat would be £346, rather than £250. He does not know why no application was made under Section 20ZA of the Act but he kept the long leaseholders informed of the situation and they were aware that there would be additional costs involved. There were no objections by any of the long leaseholders who were content for the additional work to be undertaken at the same time as the roof repair and take advantage of the scaffolding being in place. The previous owner had paid all sums due for the work undertaken as demanded and had raised no objection.

### **Tribunal's decision**

47. The Tribunal noted that there were payments to J & G Contractors amounting to £20,774 in November and December 2005. This was prior to the Respondent acquiring the Flat and the previous owner had made no objection to the additional costs and had paid what was demanded. Section 20 of the Act provides that, where the consultation requirements for qualifying work have not been met, the amount payable for such work is capped at £250 per flat, unless the Tribunal makes a determination under Section 20ZA of the Act that the consultation requirements can be dispensed with. No application under Section 20ZA has been made thus far in view of there being no dissent. However, there is no bar to such an application being made by the applicant at this stage.
48. In view of the evidence given by Mr Pandor, the Tribunal is satisfied that the decision to extend the scope of the work to be undertaken when the condition of the guttering was identified was a proper course of action to take. The additional costs of removing the scaffolding and obtaining

competitive quotes would have resulted in additional costs to the long leaseholders and a delay in remedying the defects on the roof and gutters. Had an application been made under Section 20ZA of the Act the Tribunal has no doubt that it would have been granted and if such an application was made now it would be granted. This would be a waste of money, both public funds and the leaseholders funds. The Respondent has not paid for the work as her predecessor in title funded this and the additional cost over and above the statutory £250 is not excessive. In all the circumstances the Tribunal finds that it would be reasonable to dispense with the consultation requirements and that it would be a waste of public funds to require the Applicant to make an application under Section 20 ZA.

49. **The sums payable to J & G contractors are reasonable and payable by the Respondent, insofar as there is any part outstanding. It is reasonable to dispense with the consultation requirements of Section 20ZA of the Act. The amount due from the Respondent is overdue and payable forthwith.**

#### **Caretaker's flat and cleaning costs**

50. The Respondent queried the large sums of money spent on the caretaker's flat. She also pointed out that there were sums of money paid for appliances and materials that appeared to have been purchased by Mr Pandor who had been repaid from the service charges. She noted that many of the items had been purchased from DIY shops and was concerned that these were personal items for Mr Pandor's use. She also queried the cost of cleaning that should have been undertaken by the caretaker.
51. Mr Pandor explained that the caretaker retired after thirty years service and the flat required updating before the new caretaker was installed. The new caretaker undertook much of the refurbishment work himself and Mr Pandor purchased materials for the work at B & Q, which was competitive. There was a cash flow problem at the time of the refurbishment of the caretaker's flat and, because the directors were anxious for the work to progress the directors paid for the materials and the appliances, which they purchased over the Internet in order to obtain the keenest prices. They were re-imbursed from the service charge. Any appliances he purchased were for the caretaker and not for him. He had made payments on behalf of the Applicant where money had to be paid before work could be undertaken, such as the installation of a new entryphone system, locks and keys. He had also spent money on window repairs, which were urgent and nobody wanted to spend the money. He thought that this was in the best interest of the Building for the windows to be repaired. Any money he spent was supported by invoices and appeared in the Applicant's accounts.

52. The caretaker normally undertook cleaning of the common parts and grounds but an agency had to be employed for the short period between the retirement of the first caretaker and the appointment of the new.

### **The Tribunal's decision**

53. The Tribunal found that it was unusual for a director to expend so much of his own funds for the benefit of the Building. However, the Tribunal was satisfied that Mr Pandor was a credible witness and he had the best interest of all the long leaseholders in mind when he purchased items himself at a competitive price. There is no evidence to show that there was any irregularity in the expenditure undertaken by Mr Pandor and all sums are supported by invoices, which are reflected in the service charge account summary. The Applicant made a decision to bring the caretaker's flat up to modern standards and did its best to ensure that the cost was kept to the minimum by asking the caretaker to undertake some of the work himself and purchasing materials and appliances at competitive prices.
54. Cleaning was undertaken for the short period that the Building was without a caretaker and was at a reasonable level, bearing in mind that an agency was instructed
55. **The sums paid for refurbishment of the caretaker's flat are reasonable and payable by the Respondent. There is nothing to suggest any impropriety on the part of Mr Pandor. The sums are overdue and payable forthwith.**

### **Management fee**

56. The Respondent complained about the level of management fees. In her view, the managing agents were failing in their duties, as evidenced by the extent of her dissatisfaction. Her complaints were that the managing agents did not provide good value for money and was of the opinion that there was a cross over between the directors of the Applicant and the managing agents.
57. Mr McGahy stated that the management fee depended on the level of service provided. He outlined his duties, which included liaising with the directors of the applicant, financial accounting and preparation of service charge accounts, dealing with the porter/caretaker, monitoring external contracts, health and safety, carrying out site inspections on a regular basis, day to day communication with the residents about any issues they may have and collection of arrears of service charges. The managing agents take their instructions from the directors. The budget is prepared

with their assistance and this is circulated to the long leaseholders. The current fee is £174.75 per unit.

### **Tribunal's decision**

58. The Tribunal is aware that the fee charged by the managing agents is at the lower end of the scale of management charges. Mr McGahy has explained his duties and the Tribunal has noted that this is within the range of the managing agent services that would be expected.
59. **The managing agents fees are reasonable and payable by the Respondent. These sums are overdue and payable forthwith**

### **Other issues**

60. The Respondent initially questioned every one of the service charge items in the Scott Schedule. Although in her letter of 15<sup>th</sup> June 2010 the Respondent claims that she was "threatened" and "forced to agree" with some items, the Tribunal is satisfied that she accepted that a number of sums were properly due, once the charges were explained to her. At the Tribunal's direction the number of items which remained outstanding were reduced but a perusal of the schedule attached to the Respondent's letter of 15<sup>th</sup> June shows that she continues to question some of the figures claimed which the Respondent maintains are not backed up by invoices.
61. The Applicant produced an enormous amount of paperwork intended to address the Respondent's queries. She has also spent a considerable period of time at the managing agents' offices inspecting the invoices. At the hearing Mr Bush referred the Tribunal to many of the queried invoices and clearly identified the sums in the service charge account summaries and the audited accounts. The Tribunal particularly noted that the legal fees, questioned by the Respondent were normally less than £1,000 per annum, apart from 2006 when the fees were a little over £2,000. Mr McGahy said that, wherever possible, legal fees were recovered from defaulting long leaseholders.
62. The Tribunal reviewed the other sums queried by the Respondent at some length and on each occasion the Applicant's representatives were able to clarify and identify the payments. It was particularly noted that the legal fees were low, indicating a correspondingly low level of litigation.

### **Conclusion**

63. The Respondent purchased the Flat in January 2007. She acknowledged that the previous owner had discharged all service charges due up to the date of sale. Following her acquisition of the Flat, she was asked to pay a

balancing charge for years 2005 (£207.93) and 2006 (£412.23). It is on the basis of these payments, amounting to around £600 that the Respondent has chosen to query every invoice. The Tribunal has spent a considerable amount of time going through the substantial documentation provided by the Applicant and the overall conclusion reached is the Building is well managed and that reasonable steps are taken to ensure that competitive prices are obtained for all work undertaken. The Respondent has been benefiting from the services provided since she purchased the Flat but has not paid one penny towards these since February 2008, some 29 months ago and these payments were minimal. The Tribunal cannot believe that the Respondent was unable to agree any sums of money for services over this period of time, yet she has chosen not to make any contribution.

64. The long leaseholders, including the Respondent, all have a share in the freehold and in the management company. All the shareholders will want the Building to be efficiently and economically managed as they will be living there and will be paying the bills. The directors are elected by the shareholders and are charged with the strategic planning of the management, the appointment of the managing agents and the preparation of the budgets. This is on behalf of all the shareholders who have elected them, as volunteers, to take responsibility for the running of the Building on their behalf. This is a heavy responsibility for which they receive no remuneration. The directors and the managing agents cannot consult every shareholder before any decision is made. The Tribunal is satisfied that the directors properly run the Building and direct the managing agents and that the costs incurred are reasonable. Although the Respondent has made a number of unfounded allegations about the probity of the directors, Mr McGahy and Kevin Reid, these are no more than a cynical attempt to persuade the Tribunal that there is any merit in the Respondent's unfounded suggestions.

**65. The Tribunal finds that the full amount of service charges demanded for the service charge years in question are reasonable, properly charged and payable by the Respondent. All sums are well overdue and payable forthwith.**

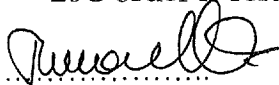
#### **SECTION 20C OF THE ACT**

66. An application was made by the Respondent for an order under Section 20C of the Act to the effect that the costs of these proceedings are not proper costs to be included in the service charges. The Tribunal noted that the Respondent has withheld payment of the service charges and has queried charges without any credible evidence in support of her objections. The Applicant has gone to considerable lengths to address the Respondent's concerns and she has had lengthy conversations with the directors and Mr McGahy. The Applicant had no alternative but to issue

proceedings to recover the sums owed. The low level of legal fees during the service charge years in question indicates that they are reluctant to seek payment through the courts.

67. The Respondent did not identify her specific concerns until very late in the proceedings by which time the Applicant had incurred extensive legal costs. These costs will have to be met by all the long leaseholders. The Lease allows the Applicant to employ professional persons as necessary for the safety and administration of the Building (Clause 6(h)(ii)). In the Tribunal's view they may also appoint solicitors to recover unpaid service charges within the scope of the Lease as this allows for the proper administration of the Building, which cannot be properly run if the service charges are unpaid.

68. In view of the Tribunal's findings and the enormous amount of work that the Applicant has been obliged to undertake, the application for a Section 20C order is refused.



Mrs T Rabin JP  
Chairman

Dated: 21<sup>st</sup> September 2010



## Schedule 1

### The Relevant Law

#### Law of Property Act 1925

**Section 62(1)** of the Act provides that a conveyance of land shall be deemed to include and shall by virtue of the Act operate to convey with the land all buildings, erections, fixtures, hedges, fences, water-courses and other matters and advantages whatsoever appertaining or reputed to appertain to the land at the time of conveyance, demised, occupied or enjoyed with the land or any part thereof.

#### Landlord and Tenant Act 1985

**Section 18(1)** of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

**Section 19(1)** of the Act provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

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

and the amount payable shall be limited accordingly.

**Section 20C(1)** of the Act provides that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

**Section 20 B** of the Act provides:

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant the (subject to subsection (2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred

- (2) Subsection (1) shall not apply if within the period of 18 months beginning with the day when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and the he would subsequently be required under the terms of his lease to contribute to them by payment of the service charge

**Section 21B** of the Act provides

- (1) A demand for payment of service charge must be accompanied by a summary of the rights and obligations of tenants of buildings in relation to service charges
- (2) The Secretary of State 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 a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

**Section 20C(3)** of the Act provides that the tribunal may make such order on the application as it considers just and equitable in the circumstances.

**Section 27A** of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

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

#### **Commonhold and Leasehold Reform Act 2002**

**Schedule 11 Paragraph 5** provides that an application can be made to a leasehold valuation tribunal for a determination whether and administration charge is payable and, if so, 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.

“Administration Charge” is defined by Paragraph 1(1) of Schedule 11

#### **Leasehold Valuation Tribunals (Fees) (England) Regulations 2003**

**Regulation 9(1)** provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

**Schedule 2**

**The Scott Schedule**

# Scott Schedule

The Following items/services apply to the Estate. There are 62 units on the Estate.

67

<u>Service Charge Item</u>	<u>Summary of Claimants case in relation to each item/why reasonable</u>	<u>Respondent's response to each item</u>
<p>Caretaker expenses 2006 - made up of Council tax, petty cash, staff wages and national insurance contribution (including temporary cover), utilities i.e. electricity, water, gas, phone, repairs, temporary staff, rent, telephone</p>	<p><u>Council tax</u> The utilities charges are set by the utility provided and are based on the actual usage. In relation to the Council tax the charges set by the local authority and are based on the local authorities calculation over which the Claimant has no control.</p> <p><u>Staff Wages</u> The costs are representative of the market rate. The costs to the Respondent are £0.57 pence per day</p> <p><u>Petty Cash</u> The cost to the Respondent £0.15 per day</p>	
	<p><u>Repairs</u></p> <p><u>Temporary staff</u></p> <p>There is no charge</p>	
<p>Utilities - 2006</p>	<p>The charges are set by the utility provider and are based on the actual usage.</p>	
<p>General repair and maintenance – 2006</p>	<p>This comprises electrical works, external masonry/brickwork repairs,</p>	

	<p>roof repairs/guttering, communal window repairs and redecoration, stair case repairs, gas and electrical appliance testing, roof covering, RWP drainage, grounds and external works, sundries, health and safety, entry firm, pest vermin control. The attached estimated service charges expenditure shows the percent applied in relation to each item above. The Claimant ensures that the services are provided in line with their obligation under the Lease.</p>	
<p>Boiler repair and maintenance – 2006</p> <p>Boiler/plumbing and heating repairs, water tank maintenance</p>	<p>The Claimant ensures that the services are provided in line with their obligations under statute and Lease. The charges represent the actual charges by the Applicant's contractors and/or their agents, which is representative of the market rate and which is reasonable and reasonably and necessarily incurred.</p>	
<p>Lifts – 2006</p> <p>Maintenance, repairs, lift telephones</p>	<p>The Claimant ensures that the services provided in line with their obligations under the Lease. The cost to the Respondent for each of these works is 18 pence per day</p>	
<p>Fees accounting fees for 2006 audit and accountancies, professional and legal fees, secretarial fees, management</p>	<p>The costs are representative of the market rates. The costs to the Respondent works out at 18 pence per day</p>	

<p>fees and company house fees</p>		
<p>Insurance – 2006  Building insurance, directors liability, lift (engineering) insurance, emergency cover</p>	<p>The Claimants believe that the quotes for insurance are representative of the market rate. The Claimants do not believe that the Respondent can obtain a more competitive price elsewhere. The sum to the Respondent is £563.70 per annum . This works out at £0.54 Pence per day.</p>	
<p>Caretaker expenses 2007 - made up of Council tax, petty cash, staff wages and national insurance contribution (including temporary cover), utilities i.e electricity, water, gas, phone, repairs, temporary staff, rent</p>	<p><u>Council tax</u> The utilities charges are set by the utility provided and are based on the actual usage. In relation to the Council tax the charges set by the local authority and are based on the local authorities calculation over which the Claimant has no control.</p> <p><u>Staff Wages</u> The costs are representative of the market rate, costs to the Respondent are £0.65per day.</p> <p><u>Petty Cash</u></p> <p><u>Repairs</u> Cost to the Respondent £0.15 per day.</p>	

	<p><u>Temporary staff</u></p> <p>There is no charge</p> <p><u>Rent as above for 2006</u></p>	
Utilities - 2007	The charges are set by the utility provider and are based on the actual usage.	
General repair and maintenance – 2007	<p>This comprises electrical works, external masonry/brickwork repairs, roof repairs/guttering, communal window repairs and redecoration, stair case repairs, gas and electrical appliance testing, roof covering, RWP drainage, grounds and external works, sundries, health and safety, entry firm, pest vermin control. The attached estimated service charges expenditure shows the percent applied in relation to each item above. The Claimant ensures that the services are provided in line with their obligation under the Lease.</p> <p>The % increase is set out in the attached expenditure sheet, which the Applicant believes to be reasonable</p>	
Boiler repair and maintenance – 2007	The Claimant ensures that the services are provided in line with their obligations under statute and Lease. The charges represent the	
Boiler/plumbing and heating		



repairs, water tank maintenance	actual charges by the Applicant's contractors and/or their agents	
Lifts – 2007 Maintenance, repairs, lift telephones	The Claimant ensures that the services provided in line with their obligations under the Lease. There has been no increase on the 2006 charges	
Fees accounting fees for 2007 audit and accountancies, professional and legal fees, secretarial fees, management fees and company house fees	The costs are representative of the market rates. The costs to the Respondent £100.00 more than 2006	
Insurance – 2007 Building insurance, directors liability, lift (engineering) insurance, emergency cover,	The Claimants believe that the quotes for insurance are representative of the market rate. The Claimants do not believe that the Respondent can obtain a more competitive price elsewhere. The overall cost is £1.10 per day	
Caretaker expenses 2008 - made up of Council tax, petty cash, staff wages and national insurance contribution (including temporary cover), utilities i.e electricity, water, gas, phone, repairs, temporary staff, rent	<p><u>Council tax</u> The utilities charges are set by the utility provided and are based on the actual usage. In relation to the Council tax the charges set by the local authority and are based on the local authorities calculation over which the Claimant has no control.</p> <p><u>Staff Wages</u> The costs are representative of the market rate</p>	

	<p><u>Petty Cash</u> See the comments above</p> <p><u>Repairs</u> See comments above</p> <p><u>Temporary staff</u> There is no charge</p> <p><u>Rent</u> Please see as above</p>	
<p>Utilities - 2008</p>	<p>The charges are set by the utility provider and are based on the actual usage.</p>	
<p>General repair and maintenance – 2008</p>	<p>This comprises electrical works, external masonry/brickwork repairs, roof repairs/guttering, communal window repairs and redecoration, stair case repairs, gas and electrical appliance testing, roof covering, RWP drainage, grounds and external works, sundries, health and safety, entry firm, pest vermin control. The attached estimated service charges expenditure shows the percent applied in relation to each item above. The Claimant ensures that the services are provided in line with their obligation under the Lease.</p>	

<p>Boiler repair and maintenance – 2008</p> <p>Boiler/plumbing and heating repairs, water tank maintenance</p>	<p>The Claimant ensures that the services are provided in line with their obligations under statute and Lease. The charges represent the actual charges by the Applicant's contractors and/or their agents</p>	
<p>Lifts – 2008</p> <p>Maintenance, repairs, lift telephones</p>	<p>The Claimant ensures that the services provided in line with their obligations under the Lease. The cost for lift maintenance and repairs is £0.35 per day. There is no charge for the lift telephone.</p>	
<p>Fees accounting fees for 2008 audit and accountancies, professional and legal fees, secretarial fees, management fees and company house fees</p>	<p>The costs are representative of the market rates. The costs to the Respondent less than previous years</p>	
<p>Insurance – 2008</p> <p>Building insurance, directors liability, lift (engineering) insurance, emergency cover</p>	<p>The Claimants believe that the quotes for insurance are representative of the market rate. The Claimants do not believe that the Respondent can obtain a more competitive price elsewhere. The cost has decreased by 49.6% than the previous year. The cost to the Respondent is £0.55 per day.</p>	