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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AU/LSC/2009/0759 and 0826

DETERMINATION OF LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A of The Landlord and Tenant Act 1985
12 Riversdale Road, London N5 2 JT

Applicant:	Raleigh Close Investments Ltd
Represented by	Mr B Mires FRICS of Trust Property Management PLC.
Respondents	Stocktonia Limited – represented by Ms J Tweedie
In Attendance	Drs Andrew and Luke Thillainayagam- represented by Dr Andrew Thillainayagam
On behalf of the Applicant In Attendance	Ms Anntoinette Griffiths Trust Property Management PLC
Hearing Date:	9 June 2010, 7 July 2010 and 21 July 2010
Tribunal:	Ms M W Daley LLB (Hons) Mr R Humphrys FRICS M E Goss
Date of Decision:	16 September 2010

The determination in the matter of 12 Riversdale Road, London N5 2 JT

The Application

1. This matter concerns two referrals from the Northampton County Court under claim no 9QZ24533, taken against Stocktonia Ltd and claim No 8QZ38088, brought against, Drs Andrew Thillainayagam and Luke Thillainayagam. By order of District Judge Allen, (made on 11 November 2009) the action was transferred to the Leasehold Valuation Tribunal.

2. On 26 January 2010 the Leasehold Valuation Tribunal held a Pre-trial review at which both cases were consolidated. The Respondents indicated that they wished to separately represent themselves rather than prepare a single statement of case in reply. The issues were the reasonableness and liability to pay service charges for the periods 2003-05 (Stocktonia only) 2007-08, 2008-09 and 2009-2010.

The Law

Section 18(1) of the Landlord and Tenant Act 1985 ("the Act") provides that, for the purposes of the relevant parts of the 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, 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) 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 or works are of a reasonable standard:

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that, 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 27A (1) 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 payable.

Section 27A(3) of the Act provides that an application may 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.

The Inspection

3. The Tribunal inspected the property on 21 July 2010. The subject property is a substantial double-fronted Victorian house arranged over two floors with dormer windows with zinc cheeks above in the shallow pitched tiled roof. Originally the house appears to have been end-of-terrace but a later addition makes it terraced. The brick facing to the

ground and first floors is interrupted by shallow bays to either side of the front door with decorative surrounds to the sash windows above. At the rear an extensive modern single storey extension covers most of the garden. The property appears to have been divided many years ago to form four flats.

4. In general the property is in a poor state of repair and requires substantial expenditure to put it in repair both externally and the internal common parts. The Tribunal's limited inspection suggests that the roof and dormers forming part of the top flat require a detailed survey to consider how best to put them into repair and to improve the insulation to comply with modern requirements. In this respect the Tribunal observes that the responsibilities and liabilities for the cost of these works will need to be carefully considered by all the parties and agreed or determined having careful regard to the terms of the lease.

5. The Tribunal inspected both the Respondents' flats but their observations in respect of these forms no part of this decision.

Preliminary matters

6. At the hearing on 9 June 2010 the Applicant was represented by Mr. B Mires FRICS . The Respondent Stocktonia Limited was represented by Ms Tweedie. Dr Andrew Thillainayagam represented himself and Dr Luke Thillainayagam.

7. There were a number of preliminary matters that arose at the hearing. The Applicant's representative Mr Mires was a member of the Southern Leasehold Valuation Tribunal. The members of the Tribunal hearing the matter indicated that none of them had any professional or personal dealings with Mr Mires, and that his membership of the Southern Tribunal was not considered to raise a conflict of interest. Both Respondents indicated that they were grateful for the Tribunal's statement concerning its neutrality.

8. Mrs Tweedie informed the Tribunal that she had received the bundles late, and given this she was prejudiced in dealing with some of the issues that had been raised. The Tribunal noted that the bundle had been served a week before the hearing. Given this the Tribunal did not consider that the Respondents suffered any significant prejudice in dealing with the issues raised.

9. The matter was heard over three days, 9, June and 7 July , with one further day on 21 July 2010 being set aside for inspection of the property and consideration of the Applicant's closing submissions and to enable the Tribunal to consider its decision. The decision refers to the evidence given at the hearing and, although the Applicant's closing submissions were considered, the Tribunal noted that the submissions were largely a summary of the evidence given and has therefore not specifically referred to the closing submissions in the written determination (although the contents have been considered in the decisions reached).

The Hearing

10. At the hearing Mr Mire informed the Tribunal that the service charges for each of the years in question were as follows-:

2007/08	£3607.48
2008/09	£7708.20
2009/10	£5784.26

11. Mrs Tweedie also had issues with the service charges for 2003-2006. The Tribunal decided that these years should be dealt with separately. Ms Tweedie's percentage of the service charges was 41.08% and Dr Thillainayagam's share was 23.4%. Mr Mire's stated that by virtue of clause 2 iii (b) of the lease, the Applicant could set a service charge at 75 % of the previous year's actual service charge, and the service charge sum was payable in advance.

The service charges for 2007/08-£3607.48

12. The items which may up the service charges was as follows-:

Building Insurance	£2537.72
Health & Safety	£343.10
Management fee	£728.50

The Insurance

13. It was agreed by the parties that the issues raised concerning the insurance were the same for all of the years in question. Mr Mires informed the Tribunal that the Applicant insured its entire property portfolio of 7500 properties through Towergate (Insurance Brokers). The specific extensions to the policy were cover for pre-existing subsidence, cover for what was considered to be high risk groups such as long leaseholders who, without notifying the landlord, were absent from the property or who sublet their property without notification.

14. The cover also included leaseholders contract works, terrorism and home assistance cover. Mr Mires stated that it was usual for a freeholder with a portfolio of properties to insure them as such, rather than trying to obtain individual quotes. It was also his submission that it would be impossible to administer the insurance for all of the properties without a broker.

15. In the Directions the Tribunal had ordered that-: "the Landlord shall by 19th February 2010 use its best endeavours to send to the tenants (a) the relevant service charge accounts (both of the block and the running account for the individual tenants) for the service charge years from 2003-04 to 2009-10 inclusive, and (b) for the same years the insurance broker's presentations to insurers and reports back (or similar documents relevant to insurance) together with a copy of the insurance policies (as well as their relevant terms and excesses) and a statement of all commissions received in respect of insurance by the landlord or associated companies or persons.

16. The Tribunal noted that the Applicant had not fully complied with this, as the only additional documentation on the insurance was a letter from

Towergate dated 3.12.2010 which stated-: *"As the insurance is arranged on a block basis the information we provide to Insurers to re-market the policy is sensitive data for the freeholder and as such we will not be able to provide it..."*

17. Mr Mires in addition relied upon the case of *Berrycroft Management Co-v- Sinclair Garden Investments*(1997) 29 HLR . In response Dr Thillainayagam queried whether the portfolio arrangements benefited the Leaseholders or whether it led to the Leaseholders paying more than they might otherwise. Mr Mires reiterated the fact that it was not practical for the landlord to insure the properties individually.

18. Mrs Tweedie queried the fact that the insurance was payable a year in advance of the premium becoming due. In support of this, she referred the Tribunal to the fact that the total cost of the insurance was payable as part of the interim service charge. Mr Mires stated in answer, that in fact it was only 50% of the insurance, and the Applicant needed to collect the insurance before it was due. In each year's accounts only one year's insurance was due. Mrs Tweedie also submitted that the Applicant had not complied with the directions, and that the letter from Towergate was not sufficient and this had hampered the Respondents in obtaining comparative quotations.

19. Mrs Tweedie referred the Tribunal to an alternative quotation which had been received by one of the leaseholders. The quotation was for insurance from Axa Universal in the sum of £1,240.03. The rebuild value was £734,000.00. Given the availability of this insurance at almost half the price, the Respondents submitted that the cost of the insurance premium was excessive and not reasonable.

20. In reply Mr Mires stated that the Applicant had complied with the directions as far as they were able to and referred to the fact that the information was commercially sensitive. He stated that the gross premium was £1.3 million and the 700 properties, equated to 7000 units.

21. In considering the specific comparable quotation, Mr Mires stated that it was not comparable as-:

- The policy did not provide for pre-existing subsidence.
- The rebuild cover was wrong it should be £883,000.
- The "comparable" policy only provided cover for 30 day absence from the property
- There was no cover for un-notified absence.
- The policy did not provide for unauthorised sub-letting.

22. In answer Ms Tweedie stated that Gemma Jones the leaseholder who had obtained the comparable quotation had obtained a survey which indicated that there was no significant risk of subsidence and no need for subsidence cover. The re-build value was as a result of a valuation which was obtained in 2009/10. Both Respondents reiterated that the properties were residential and not sub-let, although Dr Thillainayagam had stated that he was currently not in occupation of the property. The quotation had been obtained by answering the questions posed by Axa. Given this there had been a proper consideration (by Axa) of the risks.

The decision of the Tribunal on the insurance premium

23. The Tribunal was referred by the Applicant's representative to the decision of Berrycroft, and also considered the lease terms and the additional information given by Mr Mires in the closing submissions in some detail.

24. The Tribunal in considering the case of Berrycroft, noted that there was extensive evidence given about difference between the various policies and somewhat in the same way, Mr Mires sought to distinguish the insurance used by the Landlord and those put forward by the leaseholder.

25. The Tribunal accepts that there were justifiable differences, and that in general, the terms of the lease which states in clause 3 (2) " *To insure and keep insured unless such insurance shall be vitiated by any act or default of the Lessee the Building against loss and damage... as the Lessor may determine in its absolute discretion in some insurance office of repute as the Lessor may nominate...* " In the Tribunal's view this

gave the Applicant absolute discretion in their choice of the type of cover to be obtained.

26. However the Tribunal considered with some concern the fact that the Applicant had not complied with the directions, and referred to the directions quoted above. Given this no information was produced about the amount of commission received by the landlord or the managing agents and, more importantly, what functions were carried out by them (if any) if such commission is paid.

27. The brokers stated in their letter-: " *I can confirm that we earn 25% commission from the current insurers Axa; we are entitled to earn commission for arranging/administering the policy. If we choose to pay away a proportion of our earnings to a third party such as a freeholder or Property Managing Agent it is a matter between those parties involved.*"

28. Mr Mires did not provide information on whether or not commission was paid to the Applicant or managing agents and if so, the percentage. Given this the Tribunal although accepting the right of the Applicant to obtain a more enhanced policy, does not accept that the cost of the insurance inclusive of the commission is reasonable, and has determined that, in the absence of justification of the considerable commission and the failure to provide the evidence requested as part of the directions, that the part of the insurance which relates to commission should be reduced. **The Tribunal is not satisfied on a balance of probabilities that the cost of the insurance is reasonable. The Tribunal has determined that the insurance premium cost should be reduced by 10% for each of the years in question.**

The Health and Safety Report in the sum of £343.10

29. Mr Mires stated that this report had been necessary because the common parts were classified as a place of work in accordance with the Health and Safety at Work Act 1999. The Report had been a Fire Risk Assessment under the 2005 Fire Regulations. Mr Mires accepted that the common parts were not extensive however the report was necessary to

comply with the act. The company chosen to carry out the assessment was 4site. This was a specialist company who carried out risk assessments and other safety compliance reports. Mr Mires stated that the advantage of such a company was that they could up date the report and enable amendments to be made on line. This meant that if the Health and Safety Executive asked to see the latest report, it could be up dated with up to the minute details of the responsible/designated officers.

30. Both Dr Thillainayagam and Ms Tweedie queried why a report had been obtained which had not been complied with. For example there was no signage at the buildings or fire extinguishers. The Leaseholders stated that the common parts were insignificant and given this they did not accept that it amounted to a place of work under the act. In any event there had been a total failure to implement any of the reports recommendations.

31. They also queried why there had been no discussion concerning the reports recommendations with the Leaseholders. Mr Mires stated that in general terms the managing agents would not report back to the leaseholders, as this was not the sort of relationship that the managing agents had with them, by and large matters would be taken up with the freeholder.

The Decision of the Tribunal on the Health and Safety Report

Health and Safety

32. The Tribunal has set out its decision on this report and the other reports that were obtained relating to this property below.

33. The Tribunal having seen a copy of the report, and having considered the invoice and the evidence from Mr Mires concerning the responsibility of the Applicant **find that the cost of the Health and Safety and Fire Risk Assessment Report in the sum of £343.10 was reasonable** and that the amount claimed was payable by the leaseholders. The Tribunal noted that the Respondents were concerned that no action was taken on the report and given this they had reservations about the cost of the report. This was noted by the Tribunal and should a further report be

commissioned for the same work, this may raise an issue about the reasonableness of that future sum.

The management fee for 2007

34. The management fee for this year was £728.50. Mr Mires explained to the Tribunal that this equated to £150 per flat plus VAT (£600 for the property). Within the fee was a £5.00 per property allowance for postage. Mr Mires was asked by the Tribunal to set out the duties entailed in managing the property. Mr Mires stated that this included managing the property in accordance with the RICS: *Service Charges Residential Management Code.* This involved carrying out an Annual inspection, undertaking regular repairs and day to day maintenance, budget setting and sending service charge demands to the leaseholders and paying contractors' invoices. Mr Mires stated that; " *...it was a basic fee for a basic service."* Additionally it was considered to be below the current market level and give this, it was planned to gradually bring it up to market level. Mr Mires stated that there was no charge to the leaseholder from the managing agents for the work of commissioning reports on their behalf.

35. The leaseholders disputed the work undertaken by the managing agents in relation to managing repairs, and the fact that there were regular inspections as Mrs Tweedie stated that on each occasion when someone came to the property it was necessary to let them into the building.

36. Mr Mires was asked by the Tribunal to set out the schedule of visits that had been carried out at the premises. In answer he stated that this was delegated to the specialist surveyors who carried out inspections at the premises. So, for example, the surveyors would inspect the property and would make notes that would be passed to the managing agents. (Mr Hewson attended the property in 2007, Mr Putney in 2008 and Mr Henry in 2009).

37. The Tribunal's decision on this issue is as follows-:

38. The Tribunal was concerned to note that there was no Management Agreement in compliance with 2.1 of the Service Charge Residential Management Code, which states-: " *Management agents and their clients should enter into written management contracts. The basis of fee charging and duties should be contained in the agreement.*

39. The Tribunal also noted that there were no details of additional charges and the circumstances in which they would arise.

40. The Tribunal was also concerned about the lack of clarity in the relationship between Trust Property Management and Benjamin Mires Chartered Surveyors. The Tribunal noted that although the managing agents stated that annual visits were carried out, these were, according to the evidence, delegated to Benjamin Mires Chartered Surveyors. This meant that rather than the managing agents being aware of maintenance issues and then commissioning a more detailed report, the "awareness" was coming from the surveyor who was instructed to prepare the report. This is not right.

41. Although no criticism is levelled at Trust Property Management for using surveyors with whom they have a business relationship, when this occurs the procedures followed and the approach adopted should be subject to the utmost probity. Although Mr Mires states that there has been benchmarking the Tribunal was not provided with details of how and when this occurred. The Tribunal consider that this ought to be made available on request to the Leaseholders.

42. The Tribunal also noted that the fabric of the property including the roof and internal common parts was in a poor condition, and the schedule of work did not reflect the repairs, which in our view, (without expert building surveying knowledge) we considered to be necessary. The Tribunal fully accepts the Respondents' concerns regarding the state of repair and the difficulties they have had over many years in trying without success to have the property put into repair.

43. There were also other issues which relate to the accounts and the electricity, which although set out in the relevant paragraphs concern a

lack of pro-activity in management. Taking all of these factors into account, **the Tribunal finds that no more than £75.00 including VAT per property is reasonable and payable for all of the years in question.**

The service charges for 2008/09 and 2009/10

44. The two years dealt with similar issues and the charges for each of the years are set out in the table below.

Service charge items	*2008/09*	*2009/10*
Building Insurance	£2743.80	£3019.00
Electricity	£289.50	£305.00
Gardening	£230.00	£230.00
Management Fees	£829.80	£956.78
Accountancy Fees	£184.00	£184.00
Asbestos Survey	£434.75	-
Surveyors fees	£2937.50	-
Repairs and Maintenance	-	£1089.48

45. The Tribunal has considered the Building Insurance and, as stated in the decision for 2008/09, considers that the issues for all of the years in question are identical.

The Electricity

46. The Tribunal was informed that the lighting at the building consisted of lighting to the hallway which was on a push button timer switch. The Applicant's representative presented the charges as reasonable as the amounts payable were based on actual bills. The provider was British Gas Business. The Tribunal was referred to page 149 of the bundle.

47. The Respondent's complaint was that the bulk of the charge £264.05 was for the standing charge. The actual cost of the electricity was £8.67 for 2008. Mrs Tweedie noted by comparison that the bill for the whole of Ms Jones flat for the year was less than the bill for the common parts.

48. In answer Mr Mires stated that the cost of supplying electricity to a flat could not be compared with the common parts as the supply to the

common parts was deemed a commercial supply and was dealt with by a different team in British Gas and it was a part of the Applicant's portfolio. The leaseholders disputed whether it was necessary to place this contract as part of a portfolio. They stated that it would be cheaper to change the supply so that one of the leaseholders had it connected. Mr Mires stated that he had contacted the supplier by telephone and had been informed that it could not be considered a domestic supply.

49. The Tribunal asked Mr Mires whether this telephone conversation had been followed up in writing. Mr Mires confirmed that it had not been.

The decision of the Tribunal on the service charges for electricity for 2008/09 and 2009/10

50. The Tribunal carefully considered the evidence on this issue and noted the actual cost of the electricity used by the leaseholders for the common parts. The Tribunal noted that the actual cost of electricity for 2006/07 was £10.00. Mr Mires stated that it was not possible to achieve a reduction on the considerable standing charge as the premises were considered to be business premises.

51. No written evidence in support of this was produced. There was some evidence produced by one of the leaseholders (who was not party to these proceedings) which supported the Respondents' case that the electricity supply could be deemed a domestic supply. Notwithstanding this, the Tribunal's decision is primarily based on the Tribunal's considerable knowledge and experience of numerous other properties which enjoy a domestic supply to the common parts upon which our findings are based.

52. We find that the amounts payable for the electricity bill in the sum of £289.50 and £305 is not reasonable, and that **the reasonable amount payable for both years is £75.00 per year.**

Gardening cost of £230 and the decision of the Tribunal

53. The leaseholders accepted that there had been a charge in 2008/09 for the removal of a hedge. This had been necessary as the hedge was positioned in such away that it had the potential to cause or had caused actual damage to a neighbouring property. The Respondents queried why, given this one off expense, the charges were identical for both years. Mr Mires confirmed that the amount for 2009/10 was a budgeted amount which meant that the actual cost would not necessarily be incurred. He referred to the provisions of the lease which enabled the advance service charges to be calculated on ¾ of the previous year's service charges.

54. The Tribunal note that the Leaseholders accept that the work was undertaken by the Applicant, and that the only query was the level of the charges and the proposed sum in the budget. We noted that no alternative evidence has been produced by the leaseholders to substantiate the fact that the charge was excessive. **Given this we find that the cost of the gardening, although on the high side, is reasonable and payable**.

55. The Tribunal refers to paragraphs 27-33 of the decision, which deals with the **Management fees for 2008/09 and 2009/10**.

Accountancy Fees in the sum of £184

56. Mr Mires informed the Tribunal that up until 2007 there had been no charge for the accounting as this function had been carried out by the managing agents. However from 2008 the managing agents had used an accountant and as a result the leaseholders had been presented with more detailed accounts. Ms Tweedie accepted that there was greater accuracy in the level of information. Ms Tweedie noted that the Applicant had not complied with section 21 of the Landlord and Tenant Act 1985. Mr Mire confirmed that this was not mandatory where the building contained less than four flats.

57. The Tribunal asked for more information about who prepared the accounts and why there was no accountant's certificate. Mr Mires

informed the Tribunal that the accounts were prepared by the managing agents, who now provided a more enhanced service, which provided a more detailed statement of accounts..

The decision of the Tribunal

58. The Tribunal noted that the accounts were not certified, and neither were any details given of the professional qualifications of the accountant who prepared the reports. We noted that the arrangement entered into was a private arrangement with the managing agent, and that the accounts were not held out as having been certified.

59. The Tribunal considers that unless the accounts are held out as being certified in accordance with provisions in the lease, the accounts that have been produced were produced as a delegation of the management functions of the managing agents.

60. We find that the accounts were prepared as part of the normal functions of the managing agents. In support of this finding, the Tribunal refers to Part 2: 2.4 c) e) and f) *Appointment and charges of managing agents* set out in The Service Charge and Residential Management Code, which summarises the duties of the managing agents in producing statements and accounts. Accordingly we find that the cost in the sum of £184 for each of the years in question is not reasonable and not payable.

The surveys and surveyor's fees

61. Mr Mires informed the Tribunal that there was an Asbestos Survey in the sum of £434.75. The invoice in relation to this was dated 20.11.2008, which was payable to 4Site. The invoice stated that the Survey was a "Type 2" survey. The Tribunal were referred to a copy of the survey. Mr Mires stated that the decision had been made to carry out a "type 2 survey" as, given the period when the conversion was carried out, it was suspected that the doors were lined with asbestos and the soffits and fascia boards.

62. The Survey stated that a visual inspection had been carried out and the level of identification of asbestos material was recorded as "presumed". There was a further recommendation that a follow up survey be carried

out a year later. The Tribunal queried why this was necessary as it had been a visual inspection only. Mr Mires stated that he was not trained to deal with asbestos and could not verify what type of material was used. Mr Mires pointed out that management of the risk meant that if contractors needed to carry out roof repairs, then the managing agents had a duty to inform the Contractors of the likely presence of asbestos.

63. Mrs Tweedie queried how the survey could have been undertaken when she had not been asked to provide access to the building for the purpose of the inspection. It was also noted by Dr Thillainayagam that there was a hole in the ceiling and although this might present a very real danger of asbestos being present this area had not been inspected. Given this they both queried the validity of the report that had been produced, and the reasonableness of the cost.

64. In respect of the other surveys that had been undertaken, they were the building condition surveys and the specification of work. The first survey was carried out in 2003. The Tribunal was referred to an invoice from Benjamin Mire Chartered Surveyors for £2937.50. The Tribunal wanted to know about the relationship between the managing agents and the surveying firm. Mr Mires confirmed that they were sister companies with separate identities. Mr Mires stated that as managing agents every three years Trust Property Management carried out a benchmarking exercise, and by reference to this exercise, the managing agents were able to say that Benjamin Mires represented good value for money. Mr Mires stated that if Trust Property appointed their own in- house surveyor this would cost more as the management charge would be higher. Mr Mires was asked about whether there had been Section 20 Consultation under The Landlord and Tenant Act 1985 in view of this appointment. He stated that there had been no consultation on the appointment of the surveyors, which he did not view as a long-term contract. He also accepted that there had been no independent evaluation of the benchmarking exercise.

65. Mr Mires stated that there was an obligation under Clause 3(3) of the lease to keep the premises in repair. He stated that in order to comply

with the obligation, the managing agents commissioned surveys. The first invoice raised by Baxter and Company Chartered Building Surveyors for £672+ VAT, this was for preparing a specification of external repairs and decoration, going out to tender and compiling the tender reports. There was a further report by Paul Henry (the original surveyor who had visited the property in 2006 with HR surveyors) and this was for updating the earlier report. The final report in the sum of £2500+ VAT was described as an interim payment for preparing a schedule of work and obtaining tenders.

66. In response Dr Thillainayagam stated that he took issue with the three surveys that were carried out. He noted that there were surveys in 2003, 2006 and 2009 and that they were all very similar. He wanted to know whether the second and third surveys had actually been carried out, or whether they were merely updating the earlier report without carrying out a further inspection. He also wanted to know why the leaseholders had been required to pay for surveys when no actual work had been undertaken at the property. Ms Tweedie also raised the issue that the 2003 and 2006 Surveys were almost identical, save that there had been errors in the 2006 report which had been pointed out by the leaseholders.

67. In reply Mr Mires stated that it had been the Applicant's intention to carry out the work. However the leaseholders had complained that the 2003 works were too expensive and, given the small number of leaseholders at the property, it was necessary to collect the service charges in advance before the work could be commissioned. The leaseholders disputed this and stated that they were more than happy to pay into a separate and independently administered sinking fund.

68. Mr Mires accepted that there had been errors in the later survey report. However these had been corrected. He also stated that there had been fresh surveys carried out. He noted that the cost of the last report was based on the cost of the total works, and noted that this covered to tendering process. Given this, there was an element of this work which had yet to be carried out.

The decision of the Tribunal

69. The Tribunal considered the evidence and the written and oral submissions made by both parties. The Tribunal is not satisfied with the reasonableness of the sums claimed. The Tribunal having considered the reports, agree with the Respondents that the reports were not satisfactory. The reports did not consider the specific lease terms which dealt with the repairing obligation. The Tribunal accepted the leaseholders evidence that the latest report contained many inaccuracies which needed to be corrected by the leaseholder.

70. The Tribunal accept that the reports were substantially updated rather than being re-written to reflect the substantial deterioration which has occurred within the property. It was clear on our inspection that the upstairs flat had a hole in the ceiling which extended to the rafters. There was also deterioration of the window frames. The Tribunal noted that in the interim between producing the reports there was no time-table or maintenance plan produced for the property. Given this we consider that it was unnecessary and unreasonable to produce the two reports and a further schedule. **The Tribunal has determined that the first report produced in 2003 was reasonable and the cost of this is payable by the Respondents. However the Tribunal finds that nothing is payable for the further reports.**

The cost of the Asbestos Report

71. The Tribunal noted that the Asbestos report came to no firm conclusions about whether or not asbestos was present and that the report noted at page 394 of the bundle "presumed asbestos". We consider that this is wholly unacceptable as a conclusion in a report which was specifically commissioned to deal with the issue of whether asbestos is present in the premises. We noted that the inspection carried out was a remote visual inspection of the roof and did not involve going up onto the roof to carry out an inspection or any sampling. We find that the report commissioned was wholly inadequate. We were informed that there was an earlier report commissioned in 2003, and that this later report did not provide any further conclusions. Given this we accept that whilst one such report

may have been considered necessary, the Applicant should have considered whether, given the format of the report, it was necessary to obtain a subsequent one.

72. **The Tribunal find that the cost of the report is not reasonable and should not be recoverable as a service charge.**

Repairs and Maintenance in the sum of £1089.48 and the Tribunal's decision on the sum claimed

73. This was identified as a reasonable advance payment requested by the Applicant to cover rectifying hazards which had been identified in the fire risk report, and other small items of maintenance.

74. The Respondents position was that they did not 'trust' the Applicant to carry out this work and wanted to pay once such work was commissioned.

75. The Tribunal was not provided with any estimates to substantiate the amount claimed. Given this we were unable to decide whether the amounts set out for repairs were reasonable. The Tribunal has determined that it is for the Applicant to prove its case on the balance of probabilities. The Tribunal noted that no evidence has been provided to substantiate the amount claimed. Given this we find that the sum claimed is not reasonable and not payable. The Tribunal, in considering the history between the parties and the issues raised from inspection of the property, considers that it would not be unreasonable for the Applicant to produce a maintenance plan for the year along with the budget to support the amount demanded.

Issues of service charge amounts payable by Stocktonia since 2005

76. There was a separate issue raised by Ms Tweedie concerning the amount of service charges actually outstanding by Stocktonia Limited. The sum of £979.68 was due for the period 26.06.2005 - 25.12.2005. The sums in dispute were for Ms Tweedie's share of the communal lighting in the sum of £37.45. There was also a dispute concerning repairs to the communal lighting. There were three repairs carried out to the same

lighting, and Ms Tweedie considered that this was not reasonable as, in her view, the fault would have been rectified if the first repair was adequate. Given this she did not accept that more than £98.95 was payable. There was also a dispute concerning the reasonableness of the cost of an asbestos survey in the sum of £343.10. The final item related to court/admin fees in the sum of £448.50.

The findings in relation to these items are set out below.

77. The Tribunal find that the cost of the survey carried out in 2003 was reasonable and payable and refer to the decision made in paragraph 60.

78. The Tribunal repeats its findings in relation to the cost of communal lighting and notes that no more than £75.00 per annum is considered reasonable. The Tribunal also accepts Ms Tweedie's submission concerning the cost of the electrical repair and notes that Ms Tweedie queries the adequacy of the first repair. We accept her evidence and accordingly find that the total sum of £98.00 is reasonable and payable from her on account of the cost of the electrical repair.

79. In relation to the admin fee the Tribunal notes that the Respondent Ms Tweedie had set out her queries with the accounts, and until Mr Mires email dated 2nd July 2010, no adequate response was received. Given this and the Tribunal's findings concerning the electricity and the communal lighting, the Tribunal finds that the admin charges were not due and should not have been levied against the account. The Tribunal accordingly finds that the sum of £448.50 is not reasonable or payable.

80. The papers and accounts before the Tribunal are inadequate and incomplete for them to arrive at the actual sums due to be paid by both the Respondents. In these circumstances the Tribunal directs the Applicant to produce new service charge accounts for the property for each of the years in question taking into account our decision and then to incorporate these into the running account for each flat. In this respect the Applicant should have regard to the observations made by the Respondents to these matters during the hearing. The Applicant will within one month of this decision forward to the Respondents both the

service charge accounts and their running accounts. Hopefully, these will be agreed. If not, either party may in writing seek a further determination by this Tribunal either as a paper case or an oral hearing within a further two weeks.

The Respondent's Application under Section 20C of the Landlord and Tenants Act 1985

81. The Respondents have applied for an application under section 20 C in respect of these proceedings, and it was noted that the Applicant had taken County Court Proceedings and also made an application to the Tribunal. We consider that this represents a duplication of the cost of issuing. The Tribunal also considers the findings, and notwithstanding Mr Mires representations, we find that it is just and equitable to grant the Respondents an order under Section 20 C of the Landlord and Tenant Act 1985 in respect of the cost of the Tribunal hearing.

Signed Ms M W Daley

Dated 16 September 2010