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**Residential  
Property**  
TRIBUNAL SERVICE

Ref: LON/00AU/LSC/2010/0301

**LEASEHOLD VALUATION TRIBUNAL**

**LONDON RENT ASSESSMENT PANEL**

**DECISION ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD  
AND TENANT ACT 1985 (AS AMENDED)**

**Property:** Flats 1, 2, 3 and 6, 1-7 Tysoe Street, London EC1R 4SA

**Applicants:** Mr R Cooke (Flat 1), Mr B Taub (Flat 2), Mr P Wakerley (Flat 3)  
and Mr A Grimes (Flat 6)

**Respondent:** KSR Investments Limited

**Hearing Dates:** 5<sup>th</sup> August and 29<sup>th</sup> September 2010

**Appearances:** Mr R Cooke (one of the Applicants)  
Mr M Barnett-Salter, director of FW Gapp (Management Services)  
Ltd, managing agents for the Respondent

**Members of Tribunal**

Mr P Korn (chairman)  
Mr L Jarero BSc FRICS  
Mrs J Dalal

## INTRODUCTION

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) ("**the 1985 Act**") for a determination of liability to pay service charges.
2. The Applicants are (between them) the leaseholders of Flats 1, 2, 3 and 6 of the building ("**the Building**") known as 1-7 Tysoe Street, London EC1 and the Respondent is the landlord in each case. Flat 3 is held under a lease dated 11<sup>th</sup> July 2001 and made between Crowntour Limited (1) and Simon Hipperson and Tara MacKenzie (2). A copy of that lease has been provided to the Tribunal. The leases of Flats 1, 2 and 6 are understood to be in the same form as the lease for Flat 3 for all purposes relevant to this application.
3. The Building is a block of 6 flats converted from a commercial property.
4. The dispute relates to specific service charge items in respect of the service charge years 2007 to 2010, the disputed items being as follows:-

### 2007

<i>Water leak in shop below</i>	<i>£105.75</i>
<i>Congestion charge</i>	<i>£705.00</i>
<i>Service charge adjustment for cleaning, insurance and bin hire</i>	<i>£3,317.00</i>
<i>Management fee</i>	<i>£3,878.00</i>
<i>Bin hire and collection</i>	<i>£521.00</i>
<i>Entry phone / aerial rental</i>	<i>£758.00</i>

### 2008

<i>Congestion charge</i>	<i>£705.00</i>
<i>Management fee</i>	<i>£4,699</i>
<i>Bin hire and collection</i>	<i>£810.00</i>
<i>Entry phone / aerial rental</i>	<i>£657.00</i>

### 2009

<i>Congestion charge</i>	<i>£705.00</i>
<i>Legal fees re Flat 1</i>	<i>£310.50</i>
<i>Management fee</i>	<i>£3,988.00</i>
<i>Bin hire and collection</i>	<i>£899.00</i>
<i>Entry phone / aerial rental</i>	<i>£646.00</i>

### 2010

<i>Management fee</i>	<i>£3,900.00</i>
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## APPLICANTS' CASE

### Water leak

5. Having been told by Mr Barnett-Salter that the £105.75 charge represented the plumber's fee for investigating a leak in the Budgens shop below, Mr Cooke said that the Applicants should not have to pay this charge as it had not been established that the leak had emanated from the Building. The leak had apparently caused damage to the shop, but as there was no evidence that the source of the leak was the Building it seemed only fair that Budgens themselves should have borne the cost of investigating it.

### Congestion charges

6. Mr Cooke considered that it was intrinsically unreasonable for congestion charges incurred by the managing agents to be put through the service charge. Whilst the managing agents appeared eventually to have accepted that it was unreasonable to add the congestion charge to the service charge and had reimbursed two amounts of £705 (relating to 2007 and 2008 respectively), in 2008 the managing agents recharged the sum of £705 as part of the management fees.

### Service charge adjustment

7. Mr Cooke said that the insurance premiums were accepted; i.e. there was no dispute in relation to the insurance charges. However, the Applicants did have major concerns in relation to the cleaning and bin hire charges. The managing agents had demanded payment but had not provided any evidence to show that it was properly due. The explanation given was that the Respondent had previously incorrectly charged Budgens' part of the cost of cleaning and bin hire but had been unable to substantiate this or explain the figures. Mr Cooke had requested the relevant information by email on 20<sup>th</sup> October 2009 but the managing agents' response had been unhelpful.
8. The information on the Budgens' contribution to cleaning (including bin area cleaning) that had been reimbursed had now been provided and the figures were as follows:-

*2001 - £113.29*

*2002 - £217.74*

*2003 - £64.28*

*2004 - £109.92*

*2005 - £109.92*

*2006 - £119.15*

*2007 - £191.01*

9. Mr Cooke also argued that, as the service charge adjustment was aimed at correcting an alleged mistake that went back (so it seemed) as far as 2001,

some of the cost fell foul of Section 20B of the 1985 Act. To the extent that the service charge adjustment demand related to costs incurred more than 18 months prior to the demand the relevant proportion of the amount demanded was not payable by virtue of the provisions of Section 20B.

10. Furthermore, Mr Cooke argued that the Applicants should not be liable to reimburse any sums which fell due prior to the relevant Applicant buying his flat. *[Note: it was agreed between the parties later in the hearing that Mr Cooke had acquired Flat 1 on 2<sup>nd</sup> May 2006, Mr Taub had acquired Flat 2 on 10<sup>th</sup> January 2006, Mr Wakerley had acquired Flat 3 on 18<sup>th</sup> April 2006 and Mr Grimes had acquired Flat 6 on 5<sup>th</sup> July 2001.]*
11. As regards the cleaning costs, Mr Cooke took the Tribunal through the relevant paperwork in the hearing bundle and argued that the arithmetic was significantly inaccurate for the years 2002, 2003, 2006 and 2007.

#### **Management fees**

12. Mr Cooke said that the Applicants had done some research and had found that they could get a better service elsewhere at a lower cost. In particular, Mr Cooke referred to a quote of £300 + VAT per unit from Islington Properties Ltd.
13. The Applicants were unhappy with the standard of management. There had been an ongoing argument regarding the level of the reserve fund, which the Applicants considered to be unnecessarily high. Whilst the landlord and the managing agents had indicated the possibility of agreeing a cap they had still not agreed to this clearly in writing and the matter had simply dragged on. In relation to the redecoration of the common parts, this had taken 18 months, which was a surprisingly long time. There had been a damp problem which had taken 10 months to sort out, even though the problem was simply a plastic bottle blocking the drain. Mr Cooke also referred the Tribunal to the written complaints from Mr Wakerley, Mr Taub and Mr Grimes in the bundle.
14. In relation to concerns raised by the Applicants on a range of issues, the managing agents were very slow to respond, and then when they finally did respond the answers were either unhelpful or incomplete. The managing agents had complained that the amount of correspondence received from the Applicants had given them a heavy workload, but in the Applicants' view the extra workload was a direct result of the managing agents' failure to deal with long outstanding issues.

#### **Bin hire and collection**

15. The bin charges had gone up to £899 in 2009, but Mr Cooke's submission was that bin collection should be free and that bin hire was an unnecessary ongoing expense as it was possible to buy a bin for a relatively modest

outlay. Mr Cooke referred the Tribunal to copy documents in the bundle which indicated that a 1100 litre wheeled bin could be purchased for just under £275 inclusive of VAT.

**Entry-phone / aerial rental**

16. Mr Cooke argued that the contract for this equipment was very expensive and contained an extremely heavy penalty for early termination and that therefore it was an unreasonable contract. The entry-phone equipment was very simple and the Applicants' own research indicated that it could be purchased outright for £611 from ASI or could be rented from The Entryphone Company for £56.80 + VAT per year. Part of the package was a 'Sky' dish, but the quality was so poor that nobody used it and the leaseholders had installed their own dishes. He conceded that he had not sent the managing agents a written complaint about this issue, his explanation being that he had previously raised various other points and had despaired of receiving a constructive response.

**Legal fees re Flat 1**

17. This item was not part of the general service charge but was a specific item that had just been charged to Mr Cooke. It represented the legal costs incurred by the Respondent in chasing Mr Cooke for payment of the service charge arrears. Mr Cooke told the Tribunal that he had not withheld the service charge in order to cause problems, but rather he had done so as a last resort because he had not received adequate responses to the various concerns that he had raised and felt that he had no choice other than to withhold payment.
18. Mr Cooke also argued that £310.50 did seem to be a very high charge for the one chasing letter that he received from a firm of solicitors.

**RESPONDENT'S RESPONSE**

**Water leak**

19. Mr Barnett-Salter referred the Tribunal to his written statement in the bundle. In his view he had acted perfectly reasonably. He had raised the issue with Budgens who established to their own satisfaction that the leak was not emanating from their own premises. In the circumstances it was reasonable for the Respondent to carry out its own investigations and to charge the modest cost of doing so to the leaseholders.

**Congestion charges**

20. After much discussion, Mr Barnett-Salter conceded that the extra £705 that was recharged in 2008 should not have been re-charged and said that it would be refunded.

### **Service charge adjustment**

21. Mr Barnett-Salter was unable to explain the discrepancies between the cleaning charges for the years 2002, 2003 2006 and 2007 and the underlying paperwork that was available at the hearing on 5<sup>th</sup> August. At the reconvened hearing on 29<sup>th</sup> September Mr Barnett-Salter sought to adduce new documentary evidence. However, as the original assumption was that the hearing would finish on 5<sup>th</sup> August and as the reconvening of the hearing was understood to be on the basis that the only fresh information that could be provided by the parties was the limited information specifically requested by the Tribunal (in particular a full copy of one of the leases), the Tribunal declared Mr Barnett-Salter's further documentary evidence on this point inadmissible.
22. In relation to the Applicants' argument under Section 20B of the 1985 Act, Mr Barnett-Salter submitted that the increased costs (leading to the service charge adjustment) were only "incurred" for the purposes of Section 20B in July/August 2008 when it was established that the relevant costs should only be charged to the residential leaseholders and not in part to Budgens.

### **Management fees**

23. The managing agents' duties were extensive and the fees were reasonable in the circumstances. It was put to Mr Barnett-Salter that £350 per unit was a more normal charge; his response was that whilst there may well be managing agents who charged at this lower level they would only be able to afford to do so if a block such as this one was part of a much larger portfolio.
24. As regards the quality of the management, there had been an avalanche of emails from leaseholders, making it a very difficult block to manage, and Mr Barnett-Salter considered that the Applicants had unrealistic expectations regarding response times.
25. Specifically in relation to the reserve fund, the current level of the reserve fund was considered reasonable, particularly bearing in mind the level of service charge arrears and the cash-flow problems that this had created.

### **Bin costs**

26. Mr Barnett-Salter said that the bin had to be rented because it was not possible before April 2010 to purchase your own bin. Now that it was possible to do so, the Respondent was perfectly happy for a bin to be purchased. There was much discussion as to whether it really was necessary for residents of a block of flats to pay for bin collection, with Mr Barnett-Salter maintaining that his understanding was that it was necessary to pay.

**Entry-phone / aerial rental**

27. Mr Barnett-Salter acknowledged that it would be very expensive to terminate the existing contract, but the signing of that contract pre-dated his firm's involvement. As regards the quality of the aerial reception, the Respondent had not received any complaints from the Applicants prior to this application. In his view, the amounts being charged were reasonable and the alternative quotations obtained by the Applicants were not relevant because they were not for a combined entry-phone and aerial system.

**Legal fees re Flat 1**

28. Mr Cooke was withholding a considerable sum of money and the Respondent had to pursue the arrears. As regards the amount, the solicitors did more than just write a letter; they also read the papers and discussed the issues with the managing agents.

**NO INSPECTION**

29. The Tribunal members did not inspect the Building. Neither party requested an inspection and the Tribunal's view was that an inspection was not necessary in order for it to make a determination in the circumstances of the particular issues in dispute.

**THE LAW**

**A. The 1985 Act**

30. Section 19(1) of the 1985 Act provides:

*"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 shall be limited accordingly."*

31. "Relevant costs" are defined in Section 18(2) of the 1985 Act as:

*"the costs or estimated costs incurred or to be incurred by or on behalf of the landlord...in connection with the matters for which the service charge is payable."*

and "service charge" is defined in Section 18(1) of the 1985 Act as:

*“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 cost of management, and (b) the whole or part of which varies or may vary according to the relevant costs.”*

32. Section 20(B) of the 1985 Act provides as follows:

- (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, then (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 date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.”*

33. Section 27A of the 1985 Act gives a leasehold valuation tribunal jurisdiction to determine (on an application made to it):

*“whether a service charge is payable and, if it is, as to...the amount which is payable... .”*

## **B. CLARA**

34. Sub-paragraph 1(1) of Part 1 (“**Part 1**”) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“**CLARA**”) defines an “administration charge” as including *“an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly ... in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or ... in connection with a breach (or alleged breach) of a covenant or condition in his lease”*.
35. Sub-paragraph 1(3) of Part 1 defines a “variable administration charge” as *“an administration charge payable by a tenant which is neither (a) specified in his lease, nor (b) calculated in accordance with a formula specified in his lease”*.
36. Paragraph 2 of Part 1 provides that “a variable administration charge is payable only to the extent that the amount of the charge is reasonable” and paragraph 5(1) of Part 1 provides (inter alia) that *“an application may be made to a leasehold valuation tribunal for a determination whether an*



*administration charge is payable and, if it is, as to ... the amount which is payable”.*

## APPLICATION OF LAW TO FACTS

### Water leak

37. It is noted that the managing agents made some attempt to persuade Budgens to investigate the water leak themselves. However, on being told by Budgens that the leak was not emanating from Budgens' shop the managing agents employed a professional to investigate the position at the entire cost of the leaseholders, despite a failure to establish that it was likely that the leak was emanating from the Building. Whilst the total cost was relatively modest, it is considered that it would have been fairer to at least split the cost with Budgens, given that the problem was Budgens' own problem. Therefore, on balance, the Tribunal considers that only 50% of the cost of instructing the plumber – namely £52.88 – is properly payable.

### Congestion charges

38. The Tribunal was unimpressed by the Respondent's managing agents appearing to accept that the congestion charge should not be passed on to leaseholders, only for them seemingly to try to re-charge it in 2008 as part of the management fees. On the evidence before it, the Tribunal does not consider that it was reasonable to charge the congestion charge as part of the service charge and it also considers that the increase in the management fees of £705 in 2008 was a disguised re-charging of the congestion charge for that year.

39. Whilst it is common ground between the parties that the congestion charge for 2007 has since been refunded, for the avoidance of doubt the congestion charge is not payable by the Applicants as part of their service charge (or otherwise) for the years 2007, 2008 and 2009, nor will it be payable for 2010. Equally, it is not reasonable for the managing agents to increase the management fees to off-set the congestion charge costs for any of these years.

### Service charge adjustment

40. The insurance element of the service charge adjustment is not disputed but the remainder of the adjustment is disputed in part. A lot of time was spent on this subject and Mr Cooke took the Tribunal through the arithmetic of the calculation for the different years. However, on considering the practical consequences of Mr Cooke's arguments the Tribunal has come up against a difficulty, namely that **apart from** the Budgens contribution element – which is set out for each year and can be aggregated – the Tribunal simply does not have sufficient information to make a judgment as to how much of the balancing adjustment is properly payable.

41. This will be a frustrating conclusion from the Applicants' perspective, particularly as the Tribunal's inability to make a finding in large part stems from the Respondent's failure to provide a detailed breakdown of the balancing adjustment itself. However, in the absence of a breakdown of the balancing adjustment itself the Tribunal has reluctantly concluded that it is not in a position to state that the amount as a whole is unreasonable. Admittedly the Applicants have brought evidence in respect of the arithmetic for the years 2002, 2003, 2006 and 2007, but unfortunately for them their application is limited to the years and the matters set out in paragraph 4 above.
42. As regards the Budgens contribution element and the Applicants' Section 20B argument, the Tribunal does not accept their argument. Section 20B, in the Tribunal's view, is aimed at situations in which payment simply has not been demanded within the period of 18 months from the date on which the costs were incurred. In this case, payment **was** demanded at the correct time but it was demanded incompetently or at least (with hindsight) incorrectly. It does not seem likely to the Tribunal that Section 20B is intended to catch demands that are made in time but which subsequently turn out to contain errors.
43. However, the Tribunal does agree with the Applicants, with particular reference to Section 23 of the Landlord and Tenant (Covenants) Act 1995, that none of the Applicants are liable to reimburse any part of the Budgens contribution element **to the extent that** it relates to a period prior to the relevant Applicant becoming a leaseholder. Therefore, Mr Cooke (Flat 1), Mr Taub (Flat 2) and Mr Wakerley (Flat 3) are not liable to reimburse any amounts that relate to the period prior to 2006 whereas Mr Grimes (Flat 6) is liable for the whole of **his share** of the Budgens' reimbursement.

#### **Management fees**

44. In the Tribunal's view, based on the evidence seen and heard, the standard of management has been poor, as has the quality of communication from the managing agents to the Applicants. On the other hand, the Tribunal does not consider the management to have been quite as poor as Mr Cooke suggested in his submissions; it is not always easy to manage a small block in a cost-efficient manner and the managing agents will have been juggling their responsibilities in respect of this Building with their responsibilities in respect of the rest of their portfolio.
45. As regards the charges themselves, in the Tribunal's view, based on its expert knowledge of the market, these charges would be on the high side even if the managing agents were doing a good job. The charges have ranged from £646 to £783 per flat per year (inclusive of VAT), but a more

realistic charge – assuming good management – would be £400 + VAT (£470) per flat.

46. Taking all of the above into account, the Tribunal considers that it would be reasonable to take £400 + VAT as a starting point for each year and to deduct £75 + VAT for poor management, giving a total charge per year (and a reasonable estimated charge for 2010) of £325 + VAT.

#### **Bin costs**

47. The Tribunal has heard conflicting opinions as to whether a bin could have been purchased outright several years ago and as to whether the occupiers of a block of flats should have to pay for bin collection. On the basis of the evidence provided and the Tribunal's own knowledge and experience, the Tribunal agrees with the Applicants on both points and considers that as a result of high ongoing bin rental costs and unnecessary charges for collection the bin costs have been unreasonable. As they are obliged to pay Council Tax the leaseholders should not also have to pay for the collection of their waste. The information provided by the Applicants as to the cost of purchasing a bin is considered to be credible, and the Tribunal considers that a reasonable **aggregate** charge for the period 2007-2009 in respect of the bin service is £300 (not £2,230), this being its assessment as to what would have been the reasonable cost of purchasing a suitable bin.

#### **Entry-phone / aerial rental**

48. There is no evidence that the poor quality of the service was raised by the Applicants, although Mr Cooke's explanation for this is noted. Also, the Tribunal agrees with Mr Barnett-Salter that the comparable evidence obtained by the Applicants is not genuinely comparable, as the Respondent was providing a combined entry-phone and aerial rental system (albeit one that Mr Cooke now says is of poor quality). As regards the penalty clause in the contract, arguably it was for the Applicants and their respective solicitors to look into the underlying documentation when the Applicants purchased their flats and the existence of the penalty clause does not itself render the ongoing charges unreasonable. Nevertheless, the Tribunal does consider the charges for the combined service to be on the high side and – using a broad-brush approach – considers that it would be appropriate to reduce the charges for each of the years 2007 – 2009 to £500.

#### **Legal fees re Flat 1**

49. These have been described in the course of the hearing as a service charge. Technically they constitute a 'variable administration charge' under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (see paragraphs 34 to 36 above). However, this technical distinction will not be of much interest to the parties, as it is still possible to challenge the reasonableness of the charges.

50. Mr Cooke's arguments on this issue are noted and the Tribunal accepts, on the evidence before it, that he had some grounds for frustration with the style and quality of management. However, it was open to him to make a common-sense assessment as to what proportion of the service charge was properly payable and to pay that proportion. It should have been apparent to him that withholding such a large amount would cause management problems and that the managing agents would feel obliged to chase the arrears.
51. As regards the level of the fees, the Tribunal does not accept that Mr Cooke should just have been charged for the cost of writing one letter. The solicitor concerned will have needed to read the lease and other relevant paperwork and discuss the legal and tactical issues with the managing agents. Based on the Tribunal's knowledge of solicitors' fees generally, £310.50 inclusive of VAT does not seem to be an unreasonable amount.

## **DETERMINATION**

52. **Water leak:** the leaseholders of the Building are between them only liable for £52.88 of the cost.
53. **Congestion charges:** these were not properly payable in respect of the years 2007 – 2009 and will not be properly payable in respect of the year 2010. Specifically, the sum of £705 that was re-charged in 2008 as part of the management fees was also not properly payable.
54. **Service charge adjustment:** this is payable in full save that the leaseholders of Flats 1-3 are not liable for what would otherwise have been their share of the Budgens contribution to cleaning and bin cleaning in respect of the years 2001 – 2005. The aggregate Budgens contribution for these years was £615.15 and therefore the leaseholders of Flats 1-3 are not liable for their service charge percentage of that amount of £615.15.
55. **Management fees:** these are reduced to £381.88 (£325 + VAT) per flat for each of the years 2007 to 2009, and the estimated management fees for 2010 should likewise be reduced to £381.88.
56. **Bin costs:** the bin costs for the Building for the period 2007 – 2009 are reduced from £2,230 in aggregate to £300 in aggregate.
57. **Entry-phone / aerial rental costs:** the entry-phone / aerial rental costs for the Building for the period 2007 – 2009 are reduced to £500 per year.
58. **Legal fees:** the legal fees in respect of Flat 1 of £310.50 are payable in full by Mr Cooke, the leaseholder of Flat 1.

59. **Section 20C costs:** the Applicants have applied for an order under Section 20C of the 1985 Act that none of the costs incurred by the Respondent in connection with these proceedings should be recoverable as service charge. Mr Barnett-Salter has stated that the Respondent does not intend to charge its costs through the service charge, but for the avoidance of doubt – in view of the significant failings on the part of the Respondent, without which this hearing may have been unnecessary - the Tribunal hereby makes an order under Section 20C that none of the costs incurred by the Respondent in connection with these proceedings are recoverable as service charge.
60. **Reimbursement of fees:** the Applicants have also made an application for reimbursement of their application fee of £350 and their hearing fee of £150 under paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. Under this provision the Tribunal is given quite a wide discretion to order the reimbursement by the respondent of a fee paid by the applicant in respect of the proceedings. The Tribunal has found largely in favour of the Applicants and this application may not have been necessary if it had not been for the Respondent's failings in its dealings with the Applicants. Against that, Mr Cooke has withheld the whole of his service charge without being able to justify this stance to the Tribunal's satisfaction. In the circumstances the Tribunal considers that the Respondent should reimburse half of each of these fees. Therefore, the Tribunal determines that the Respondent shall reimburse to the Applicants the sum of £250, being half of the aggregate of the application and hearing fees.
61. **Penalty costs:** the Applicants have also made an application for the Tribunal to order the Respondent to contribute towards the Applicants' own costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. Such a determination can be made where a party to proceedings has acted "frivolously, vexatiously or otherwise unreasonably in connection with the proceedings". This is quite an onerous test, and although the Tribunal agrees that the Respondent has not performed well it does not consider that the Respondent's performance has been so poor as to satisfy this test and the Tribunal therefore declines to make such an order.

CHAIRMAN.....  
Mr P Korn

1<sup>st</sup> November 2010