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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AW/LSC/2008/0597

DETERMINATION OF LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A of The Landlord and Tenant Act 1985 CONCERNING ASBURNHAM MANSIONS

Applicant:	Mrs Elizabeth Riley
Represented by:	In person
Respondents	Asburnham Mansions Limited
Represented by:	Mr C Harniman Director Management Limited-Managing Agents
In Attendance On behalf of the Respondent	Mr C Graham (on 10 February 2010 pm)
Hearing Dates:	11 & 12 January 2010, 10 February and 11 March 2010 (for decision)
Tribunal:	Ms M W Daley LLB (Hons) Mr C Norman FRICS Mr L Packer

Date of Decision: 13 May 2010

The Application

1. This matter concerns an application under section 27A of the Landlord and Tenant Act 1985 for a determination in respect of service charges for the periods year ending 24 December 2004, 2005, 2006, 2007, 2008 and the estimated charges for 2009. The amounts in issue are as follows-:

2004-£2,069.52	2005-£2,924.24	2006-£2,824.24	2007-£2,924.24
2008-£3,022			

2. The estimated charges for 2009 were in the sum of £3022.

The Law

3. 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.

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

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 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.

The history of this matter in the Leasehold Valuation Tribunal, and current issues

4. The Applicant Mrs Riley's application dated 9 December 2008 was for a determination in respect of (a) Service Charges from 2001-24 December

2009 and (b) a set off for damages for disrepair under section 11 of the Landlord and Tenant Act 1985.

5. At the pre-trial review on 4 February 2009 it was noted that " *In large measure the Applicant's case is based on her assertion that she has actually paid many of the service charges that the Respondent claims is outstanding."* ; also that there was a long history of '*acrimonious litigation between the parties'*. It was also noted that the earlier service charge period appeared to be the subject of a consent order from the West London County Court dated 20 April 2005, ("the Consent Order") and at the pre-trial review the Applicant was invited to consider whether she wished to withdraw this part of her claim. A further hearing was set for the 15 April 2009 for a case management conference.

6. Prior to the case management conference set for the 15 April 2009, the Respondent applied for a dismissal of the Application on the grounds that the Applicant had not complied with the directions, in particular the Applicant was required to-: "*Disclose a copy of any document substantiating the payments that she says were made by her but not credited to her account".*

7. At the hearing on 15 April a determination was made by the Tribunal to dismiss the part of the Applicant's claim for a set off, in the sum of £22,704.64. (This sum was for work undertaken at the Applicant's premises, as alleged by her, because of the Respondent's breach of covenant). The Tribunal also determined that the service charges for the periods for 2001-2003, had been determined as a result of the consent order dated 20 April 2005.

8. The matter was set down for hearing on the 18 and 19 August 2009. Prior to the hearing the parties notified the Tribunal that an agreement had been reached and that the parties required an adjournment to finalise the agreement. This request was refused. Both the Applicant and the Respondent's representative attended the hearing on 18 August 2009, and although both parties indicated that they had almost reached a settlement of the matter, it was clear to the Tribunal that there was

considerable reluctance on Ms Riley's part to agree some of the terms of the 'settlement'.

9. The Tribunal does not have jurisdiction once an agreement is reached by the parties, and in the circumstances on the matter being settled, it would be for the Applicant to withdraw the proceedings. The Applicant did not withdraw the proceedings, and instead asked the Tribunal to re-list the matter for hearing.

10. The matter was re-listed and heard on 11 and 12 January 2010 and 10 February 2010. The Tribunal met to consider its determination on 11 March 2010.

11. The only issues initially before the Tribunal were (a) the reasonableness and liability to pay the service charges for 2004-2008 (b) the estimated charges for 2009 (c) whether any amounts claimed as outstanding by the Respondent were subject to any previous payments made by the Applicant (d) an Application for an order under s 20C of the Act. During the course of the hearing, the Applicant applied for (e) a costs order under Para 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 ('CLARA') and (f) reimbursement of her fees under the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 ('Fees Regulations').

The Inspection

12. Ashburnham Mansions are a substantial purpose built residential mansion block dating from the late 19th or early 20th Century and arranged on the ground and four upper floors. The building is of brick construction under pitched tiled roofs and the roof includes several large chimney stacks. The property is divided into three blocks each with a separate entrance hall and stairwell. Each stairwell contains a small elderly lift. The common parts are relatively spacious. There are 55 flats in total. The complex includes two large light wells north and south.

13. The property includes modestly sized front and rear gardens. To the rear is also an area used for car parking, access to which is controlled by an electronic gate. The Applicant's demise does not include use of the car park.

14. The building appeared from external viewing from the ground only to be in overall fair condition for its age although there is evidence of some historic neglect within the light wells in that there was a noticeable crack in the external brickwork at high level close to Flat 32. Some external cills were in poor condition. Although invited to view the loft space above Flat 32 we declined to do so on health and safety grounds because we were told that it was unlit and unboarded. We were not able to inspect the roof.

15. Ashburnham Mansions is situated in Chelsea and is very close to King's Road This is a mainly a high value residential area with significant retail shopping in Kings Road.

16. The subject flat, no 32 is situated on the fourth third floor of the building. This flat comprises entrance hall, living room, three bedrooms (one ensuite) kitchen and bathroom. There is gas central heating. The living room has a small balcony. At the time of our inspection we did not see current evidence of water ingress, but the flat had been recently redecorated throughout. However, we did note the following significant defects. Firstly we noted a significant crack on an inside wall in the second bedroom. Secondly, we noted that the exterior cill in that room was in a poor condition. Thirdly we noted that some of the timber window frames were rotten particularly those in the living room. It was no part of our function to carry out a structural survey so there may be defects other than those we identified.

The Hearing

Applications at the hearing

17. There was an application at the hearing, An Application from the Respondent to admit further documents. It was apparent at the hearing that there were very few documents that provided an explanation for the service charges. Mr Harniman stated that he had been served with the Applicant's bundle at a very late stage. He had become aware from the Tribunal prior to the hearing that a bundle had been served, although he had not been sent one directly by the Applicant. He stated that the Applicant had expanded her case, and in order to deal with it, he wished to adduce evidence in support of his client's case, and there was an application from him concerning adducing late evidence (which referred to the Human Rights aspects of being able to adduce evidence), which was opposed by the Applicant.

18. The Tribunal determined that save for the information described as the background to the dispute, and the documents that dealt with the attempt to settle the proceedings in August 2009, the documents supplied by the Respondent ought to be admitted in the interests of justice.

19. The reason for this is that following the adjourned hearing in August 2009, a new date was set for the hearing for January 2010, by which time it was clear that the Applicant's hearing bundle had not been served on the Respondent. The Tribunal consider that in the absence of further directions(which the Tribunal accept would have assisted the parties), then the Parties should have attempted to prepare a joint bundle as set out in the directions dated 4 February 2009. The Tribunal accept that communication between the parties ceased, and Mr Harniman was not provided with the Applicant's hearing bundle. as a result of which there were some issues that he was unaware of until a very late stage. The Respondent was not able to address all of the issues set out in the Applicant's statement of case. Given this the Tribunal accept that it is in the interest of justice to enable the Respondent's documents to be served late. The Tribunal note that because of the adjournment of the

January hearing part heard, Mrs Riley was subsequently provided with the documents and had sufficient time to consider then before the resumed hearing on 10 February 2010.

20. Mrs Riley was unhappy about this and made an Application under schedule 12 paragraph 10 of CLARA in relation to costs, as in her view the Respondent had acted frivolously and vexatiously.

21. This application is dealt with in the penultimate paragraph of the decision.

22. In addition, Mrs Riley made an application for reimbursement of her application and hearing fees under the Fees Regulations.

The Background

23. The Applicant Mrs Riley provided the Tribunal with considerable background information, concerning the basis of her case. This provided additional information as to why the Applicant was concerned about the reasonableness and payability of the service charges.

24. Mrs Riley's evidence was that the freeholder Asburnham Mansion Limited was run by a Board of Directors, who in turn appointed the former managing agents Chelsea Property Management Limited.

25. Mrs Riley claimed that the Board of Directors were partial in the way in which facilities such as car parking space were allocated, and how work was commissioned and undertaken at the property. For example, the Applicant stated that decorations to the directors' common parts included pictures, which was not the norm or included in any other common parts. Mrs Riley also said that of the three lifts at the mansion block, the lift that serviced the block which included two of the directors was attended to under the service contract whilst the lift that serviced her block was neglected. Mrs Riley also stated that she was denied repairs to her windows whilst other leaseholders had their windows repaired.

26. Mrs Riley also criticised the manner in which contracts were awarded and the decisions taken over spending priorities at the premises. Mrs Riley also suggested mis-management on the part of the former managing agents Chelsea Property Management, who had managed the property for part of the period in issue until 2008 when Management Accountants Limited, had taken over the management of the premises.

27. Although Mrs Riley was far less critical of Management Accountants Limited, and acknowledged that they had made progress in the management of the building, she remained concerned about the overall condition of the premises, and the manner in which decisions on spending and the reserve fund were taken by the directors. Mrs Riley also considered that the value of her flat had been reduced because of the overall condition of Ashburnham Mansions and that this had adversely affected her ability to sell her property. .

28. Mrs Riley was also concerned that amounts that she had previously paid as service charges, as part of the Consent Order, had not been credited to her account. She indicated that she wanted the Respondent to account for amounts that she had paid and which were now claimed as overdue service charges.

29. Mrs Riley had previously been represented by the Service Charge Company, a professional advisor, who had prepared a Scott Schedule setting out her stated position on each element of the disputed service charges. The Tribunal indicated that they would work through the Scott Schedule, with supplementary evidence from Mrs Riley. Mr Harniman would then be given the opportunity to deal with each of the service charges that Mrs Riley challenged. (For the purpose of the written determination, where the Applicant raised the same issue for successive years, for example gardening, the determination deals with all of the years complained of.)

30. Mr. Harniman of Management Accountants Limited, the current managing agents, represented the Respondents. Whilst he was unable to comment on some of the matters raised by Mrs Riley, he had detailed

knowledge of the service charges from 2008 onwards and was able to comment based on his investigation/knowledge of the previous period. As stated above, he asked for leave to adduce further evidence and for reasons already stated leave was granted.

The Disputed Service Charges for 2004

32. The Applicant's share of service charges is 1.727%. ***The shareholders Supervisor – total £8,454; Applicant's share £146***

33. I cost of this item was £8,454, Mrs Riley's share being £146 (her percentage share was 1.725%). Mrs Riley queried this cost for two reasons, firstly was it recoverable as an expense under the lease; and secondly that the role of "*shareholder supervisor*" did not exist, and that it was in fact Mr Varley, Chairman of the Board, who had been appointed to control the work. Mrs Riley queried why this item should be charged as a service charge item.

34. In response Mr Harniman stated that he did not have all of the accounts for the year, however the leaseholders owned the freehold and his knowledge of the situation was that the shareholder supervisor was required to comply with the formalities of the Companies Act in relation to Ashburnham Mansions. The cost of £8,454 was to remunerate the Shareholder Supervisor for the time spent. This was confirmed by the witness statement of Carl Graham (see below).

The Decision of the Tribunal

35. The Tribunal having considered the copy lease find that the obligations to contribute to service charges are set out in clause 2(2) of the lease. *To pay to the lessor, a proportionate part*, this contribution is for the matters set out in clause 5, which is essentially a repairing covenant. The Tribunal have also considered the Applicant's lease variation , and are satisfied that nothing in the variation imposes an obligation on the Applicant to contribute to the company expenses of Ashburnham Mansion Limited. The Tribunal also consider that this expense is not a service charge item as defined in section 18 of the Landlord and Tenant Act 1985 because it is not a cost incurred in the freeholders capacity as

a landlord. Accordingly the Tribunal find that this item is not reasonable and not payable.

Repairs- total £11,606; Applicant's share £200

36. Mrs Riley stated that this was to pay a subcontractor, and there was no description of the work undertaken. The company who had undertaken the work was European Industries Limited. Mrs Riley stated that the company was not VAT registered and was owned by one of the leaseholders. Mr Harniman did not dispute this; he stated that the work related to the repairs of 5 chimney cowls. The cowls were causing leaking and as a result the work had to be undertaken. The amount payable was less than £250 per leaseholder and as a result there had been no need for statutory consultation with the leaseholders.

The Decision of the Tribunal

37. The Tribunal at their inspection had an opportunity to note the chimney cowls that were the subject of this service charge item, and the Respondent's representative Mr Harniman had pointed out the chimneys in question. The Tribunal accept that given the age of the building, and the structure of the roof, the chimneys will need routine maintenance and repair from time to time. The Tribunal find on a balance of probabilities that the work was necessary and having done so considered the cost. From our own knowledge and experience the Tribunal find that that the cost of this item is reasonable and payable.

Window Repairs – total £11,257; Applicant's share £194; and Security Camera - total £12,727; Applicant's contribution £220

38. Mrs Riley stated that she had paid for the cost of her own window replacement, as this had been her understanding of her obligations under the lease. At the hearing, Mr Harniman stated that the replacement had been to the upper level windows within both wells. The Board of Directors had felt that it was sensible to replace those which were beyond economic repair.

39. Mr Harniman stated that the lease did not cover the cost of window replacement as a service charge item; it was however covered in the deed of variation which had been signed by the Applicant on 30 June 2005. As the Applicant had borne the cost of her own window replacement he was prepared to concede this sum. Where this item is conceded for further service charge years it is set out below.

40. The issue concerning the security cameras was whether the Respondent could, within the terms of the lease, provide items which were improvements.

41. Mr Harniman was willing to accept that the original lease did not provide for improvements, and that Security Cameras were arguably an improvement, and as such he conceded this item.

The decision of the Tribunal

42. The Tribunal note the Respondent's concession on both items, and determine that where conceded, for the various service charge years, the service charge items relating to the cost of window replacement and security cameras are not payable by the Applicant.

Upgrading the Common Parts-total £9,461; Applicant's share £163

43. The Applicant stated that this item of work was for upgrading the floor covering from linoleum to marble The Applicant objected to this work for two reasons-: (1) she believed that this work was an improvement and as such was not covered under the terms of her lease.(2) she considered it inappropriate to initiate such an upgrade when more fundamental repairs were needed to the building.

44. Mr Harniman accepted that work had been undertaken to upgrade the flooring; however he stated that this particular work was carried out as a result of a fire at the building which meant that the entrance lobby to flats 1-15 needed redecorating. He also accepted that he did not have all of the invoices for the periods when the premises were managed by Chelsea Property Management; there were at least £5,000 worth of

invoices that could not be traced. Mrs Riley did not accept that this item related to fire damage.

The Decision of the Tribunal

45. The issue for the Tribunal was whether the amount claimed was reasonable and payable, and whether this was part of the upgrade works or related to necessary refurbishment. At the hearing in January, Mr Harniman produced invoices from European Industries Limited. The invoices supplied by them were for works to the entrance lobby to flats 1-15. Both Mr Harniman and Mrs Riley agreed that work had been carried out to the entrance lobby as a result of a fire,. However there was some disagreement about when the fire occurred.

46. The Tribunal, having had sight of the invoices, accept that the work to the entrance lobby was occasioned by a fire, and that the invoices provided evidence the carrying out this work. Mrs Riley did not raise any issues concerning the standard of the work or put forward any alternative figures for the cost of this work. The Tribunal accept that the work was carried out and find on a balance of probabilities find that the cost is reasonable and payable.

The Cost of Gardening-total £1,522; Applicant's share £26

47. Mrs Riley stated that the position with the Gardening was that it had in the past been undertaken by Mr Box who was the general handyman / building manager, with lessee undertaking gardening of a small area of the front. At some stage Mr Nash Newton, (lessee of flat no 55 at the premises) was engaged to undertake gardening. Mrs Riley had not seen a copy of the contract, and was concerned that this was another example of the board acting preferentially to a lessee.

48. Mrs Riley also queried whether the work had been undertaken to a reasonable standard, for the cost incurred.

49. Mr Harniman did not accept the suggestion that the work had been originally undertaken by Mr Box, and relied upon minutes of a

leaseholder meeting in which it was acknowledged that the standard of gardening had improved since Mr Nash had taken over.

50. Mr Harniman also provided copies of invoices to the Tribunal, one of the invoices dated 25 September 2004 (supplied in a supplemental bundle) was *"for supplying 45 geraniums and planting and supplying compost and plants for 2 pots."*

51. Mr Harniman accepted that it was an informal contract, in the sense that it was entered into informally and without a specification. He did not accept that as a result of this the cost associated with the garden was not reasonable and payable. He cited the minutes as indication that not everyone shared Ms Riley's view, and he also relied upon the inspection carried out by the Tribunal.

The Decision of the Tribunal

52. The Tribunal did not have the benefit of alternative figures from Ms Riley to support her contention that the cost of the gardening was not reasonable, nor the benefit of a comprehensive knowledge of the condition of the garden from 2004 to the date of the inspection, when the beds appeared in a tidy condition .

53. The Tribunal noted that the agreement was informal, and that whilst this may not be desirable from Mrs Riley perspective, it is not in the Tribunal's experience uncommon, neither does it automatically indicate something untoward.

54. On a balance of probabilities the Tribunal accepts that the work was carried out, and that the cost was within the range of what would be expected given the nature of the work and locality of the premises, being an expensive residential area of Central London . The Tribunal consider that the cost of the gardening for 2004, and the subsequent years was reasonable and payable.

The Management Fees – total £7,755; Applicant's share £134

55. The Applicant's objection to these charges was as set out in the schedule to her claim-: " *...it is believed that the quality of management services provided was manifestly sub-standard."* The Applicant then

cited, as an example her general complaints, the fact that not all invoices could be provided.

56. Mr Harniman accepted that there was missing paper work. By way of background he stated that Chelsea Property Management had been managed by a lawyer who was registered with the Law Society. The other director was a surveyor. This company had been appointed by the Board of Directors. There was no connection between this company and the current managing agents. The Tribunal were not provided with copies of a management agreement.

The Decision of the Tribunal on management fees for 2004

57. The Tribunal noted that there was a large degree of informality in the manner in which Chelsea Property Management Company operated, and that there were missing invoices. The Tribunal also noted the comments made by Carl Graham, Partner of Simpson Wreford in his witness statement in paragraph 10 he stated "*It is correct to say that my firm's fees increased partly due to the additional work necessarily incurred as a result of the lack of proper book-keeping and recording by the managing agents, Chelsea Property Management Limited...*"

58. We consider that a more robust approach to management would have resulted in the managing agents dealing with some of the issues that have arisen in this case, and that the managing agents would have been alive to the need for contracts and work specifications when using lessees as contractors and proper record keeping which would provide an audit trail.

59. The Tribunal is aware that a management fee of £134 is at the low end of the spectrum. Nonetheless the evident shortcomings are material, and the Tribunal have determined that the fee should be reduced by 30% for each of the years in question that the property was managed by Chelsea Property Management Company.

The Disputed Service charges for 2005

60. The items challenged in the service charges for this year were -:

- ***The management fees*** **– total £16,779; Applicant's share £290**
- ***The gardening*** **- total £2,491; Applicant's share £43.)**
- ***Window repairs*** **- total £2,399 Applicant's share £41**
- ***The cost of tiling the entrance Hall-*** **total £11,656; Applicant's share £201**
- ***The upgrade of the common parts*** **- total £14,055; Applicant's share £243**

61. As stated above in this decision, the issues raised by the Applicant concerning the **management fees** was consistent throughout the period that the premises were managed by Chelsea Property Management Company ("CPM"). The Tribunal accept that the quality of management was consistent throughout the period that CPM managed the premises and according reduce the management fee by 30%.

62. The Tribunal note that the **gardening** was carried out by Mr Nash Newton, and on a balance of probabilities accept that his fee was reasonable and payable for 2005 on the same basis as for 2004.

63. The Tribunal noted that Mr Harniman conceded that the cost of repairs to the windows, as for 2004, on the basis that Mrs Riley had not been provided with window replacements in the same way that other lessees had and accordingly should not be required to contribute to the cost of this item. The Tribunal accepts this concession.

64. The Applicant objected to the cost of the **tiling of the entrance hall**, and queried whether the expense had been reasonable and payable in accordance with the provisions of the lease. Mrs Riley contended that there was no provision in her lease which enabled improvements to be made and changing the flooring was an improvement, and questioned the basis on which the decision had been made, taking into account the other repairs necessary at the property. She also considered that the works ought to have been the subject of statutory consultation.

65. Mr Harniman said that a section 20 notice had been served on all of the leaseholders. Mrs Riley denied that she had been served with a notice

and Mr Harniman was asked to produce a copy. At the resumed hearing he stated that the notices had been sent out as a mail merge document. Whilst he could not produce a copy with Mrs Riley's name on it, he provided the Tribunal with a Notice of Intention addressed to another leaseholder, and said that a letter in the same terms would have been sent to Mrs Riley.

66. The Notice stated " ...*It is the intention of Chelsea Property Management Limited on behalf of Ashburnham Mansions Limited to carry out works in respect of which we are required to consult the leaseholder. The work to be carried out is the replacement of the existing entrance hall floors with marble...*"

67. Although the documents which dealt with the section 20 notice procedure were not specifically referred to individually at the hearing, the statement of estimates deals with the issue of whether the work is a repair or improvement. The penultimate paragraph states - " *In addition, the question has been asked by two flats as to whether the proposed works constituted an improvement as oppose to a repair*

Our response to this observation is that the carpets are worn and a decision has been made to replace with marble rather than renewing the carpet. I am instructed by the Directors that the matter has been discussed by the Board. We are informed that the original flooring in the three ground floors was marble and therefore these works will serve to reinstate these areas. A comparative carpeting quote has been obtained, and the cost differential between the methods is such that the works will not be considered an improvement for the purposes of the Landlord and Tenant Act."

68. The Tribunal in determining the reasonableness of the item in relation to the tiling must consider whether there was a duty to consult the leaseholder. The amount spent is just under the threshold of £250 per flat for major work in relation to the tiling; however from the evidence advanced there was additional work of sealing the flooring and polishing the floor, which appears as upgrading the common parts in 2006.

69. Mr Harniman accepted that some of the additional expense in 2006 was due to the fact that the flooring had not been correctly sealed in 2005, and that the invoices supporting the 2006 work were not available. On that basis, he indicated that he was prepared to concede the 2006 works (see below). However it is the total cost of the work which the Tribunal must consider.

70. The Tribunal are satisfied that there was a requirement to consult, and based on Mr Harniman's evidence concerning the mail merge letter which the Tribunal accepts on a balance of probabilities are satisfied that the Applicant was consulted, insofar as the notices were served. There may be reasons why the notice did not come to the Applicant's attention but it is not for the Tribunal to speculate what these may have been. The Tribunal, in considering the Section 20 documentation, noted that other leaseholders have raised concerns about whether the work was an improvement or a repair.

71. It may have been that the actual difference between the cost of carpeting and tiling could have been explored in greater depth and more information given. Notwithstanding this we are satisfied that to reinstate the original marble flooring would not have been an improvement, and it is accepted that the economics of replacing the carpet with carpet were considered and that the use of marble may result in a long term saving to the leaseholders. The Tribunal are satisfied the cost of the tiling in 2005 is reasonable and payable.

72. The work of **upgrading the common parts** was believed by Mr Harniman (who was not the manager responsible for the building at the time) to relate to the work of painting the hallway and replacing some of the balustrades. He accepted that invoices were missing in relation to this work and as a result accepted that there were difficulties with confirming what had been undertaken. For this reason he was prepared to withdraw this item, and

73. the Tribunal find that without invoices or other supporting information, the cost of the upgrading of the common parts is not reasonable and payable.

The Disputed Service charges for 2006

74. The Applicant challenged the cost of the **management fees**(total £16,480; Applicant's share £285) for the same reasons as for earlier years. The Tribunal, for the reason given for previous years, have reduced the amount payable by the Applicant by 30%, the payable sum thus being £200.

75. The Applicant also queried the cost of the **gardening** (total £1,911;Applicant's share £33) on the same basis as before. The Tribunal find the whole cost of this item for reasons stated above to be reasonable and payable.

76. The Applicant also challenged the cost of the **tiling work** (total £7,309; Applicant's share £126) which was shown in the accounts as upgrading the common parts. As noted in paragraph 69 above, the Tribunal accepts the Respondent's concession, and find that the item is not payable.

Lift Repairs – total £14,000; Applicant's share £242; and the lift maintenance contract – total £2,183; Applicant's share £38

77. The Applicant said at the hearing stated that the lift was always breaking down, and that the Respondent had not been even handed in relation to call outs and maintenance of the lift. Mrs Riley also felt that the sum involved was a round amount, which she found surprising. Mr Harniman stated that there were management accounts which dealt with this item, and that he found it unlikely that the call out contractors discriminated in favour of particular leaseholders.

78. In support of this item Mr Harniman produced a witness statement from the accountants Mr Carl Graham who stated in paragraph 8 of his

statement, that the amount related to work carried out in the lifts and lift pit *comprising "Roche" for fire lining in the sum of £7,900, " Fitz" for work on the lift shaft in the sum of £1500. "Fitz" for plastering to fire lining in the sum of £3000. There were also work to the lift wall £600 and upgrade to the lifts in the sum of £1,000.* In his statement Mr Graham stated that he had sight of the invoice when he had audited the accounts.

The Decision of the Tribunal

79. The Tribunal, having considered the evidence and having inspected the premises, finds that given the old age and character of the lift, the Respondent acted reasonably in having the lift maintained and that the expenditure on lift repairs and the maintenance contract are reasonable and payable by the Applicant.

Pest Control – total £1,855; Applicant's share £32

80. Mrs Riley complained of the cost of pest control, because her premises were over run with mice and that she had only been provided with one paper box trap, and felt that this expense was not reasonable. Mr Harniman stated that the Respondent had a routine contract for pest control, and that this was a reasonable expense.

81. The Applicant did not provide any alternative figures to suggest that the amount spent on pest control was unreasonable, and indeed her evidence suggested that there was a need for pest control (albeit that she thought it was limited and ineffective). No evidence was provided to confirm that the pest control treatment was not reducing infestation at the premises. The Tribunal, using its knowledge and experience, consider that this expense is reasonable and payable.

Security Gates-Car park – total £1,476; Applicant's share £25

82. Mrs Riley stated that this item was for the cost associated with the gates to the car park and that she had not had any access to the car park and did not have a car parking space, Mr Harniman explained to the Tribunal that the management company owned the car park and derived an

income from it. Mr Harniman stated that the Respondent withdrew the item relating to the car park. The Tribunal find that the sum is not payable.

Insurance – total £8,082; Applicant's share £140

83. The Applicant was concerned about the cost of insurance and the fact that she had not had sight of the invoices or seen a copy of the policy; also that the property was under insured. In the circumstances, Mrs Riley considered that only 50% of the cost of insurance was reasonable.

84. Mr Harniman stated that the Respondent had commissioned a revaluation of the premises in 2009 by Harris Associates. There was an "all risk building insurance" with Norwich Union (Aviva) with coverage of £25,000, 000. As a result the premium had increased significantly.

85. Mr Harniman stated that the broker had tried to find alternative insurance quotes, but had been unable to find a provider prepared to provide alternative coverage because of the claims history. . Mr Harniman was also able to provide Mrs Riley with sight of the policy documents.

86. In the light of this, Mrs Riley withdrew her claim.

General Repairs – total £15,420; Applicant's share £266

87. The Applicant stated that she had not been notified of any work undertaken; that she had not been served with a section 20 notice, She also queried what work had taken place, as felt it was not apparent that over £15,000 worth of work had in fact taken place.

88. Mr Harniman stated that this related to the general upkeep of the building. No specific information was provided as to what was involved, however a common feature at the building had been problems with water penetration. There was therefore an excess for the insurance cover, as when repairs were undertaken the Respondent could not recoup all of the cost of the work from the insurance company. There were also problems with the water tanks.

89. In addition Carl Graham, Partner in Wreford & Co, confirmed that when the Audit was carried out all of the documentation save those items designated "*Unsupported Section 21 expenditure* " would have only appeared in the accounts if supported by documentation.

The Decision of the Tribunal

90. The Tribunal were concerned about the lack of evidence in the form of invoices or schedules of work, however we accept that given the age and character of the building it is usual and to be expected that repairs were carried out, and given the observations made by the Tribunal concerning the general repairs for 2007, we consider that on the basis that the figures were the subject of at arms length auditing the amount claimed is reasonably payable and recoverable for general repairs.

91. **Cleaning – total £10,647; Applicant's share £184** Mr Harniman indicated that this item should not have been charged and was prepared to credit it back to the Applicant's service charge account.

92. The Tribunal accepted Mr Harniman's concession and find that this sum is not reasonable and payable.

Repairs – total £7,063; Applicant's share £122
and General Repairs- total £14,140; Applicant's share £244

93. Mrs Riley referred the Tribunal to the accounts for 2007, where it had been noted that the sum of £7,063, was 'unsupported section 21 expenditure'. This meant that the accountant had been concerned that there were insufficient invoices to justify this item of expenditure. Mrs Riley asserted that as the Accountant was not satisfied that this work had been undertaken, this item should not be included in the service charge demand.

94. Mrs Riley also queried the general repair item, for the same reason as stated by her for rejecting the 2006 repairs.

95. Mr Harniman accepted that he could not account for every item of expenditure. Insofar as the works in the sum of £7,063 was concerned he was aware that this work had been necessitated by water damage to a flat within the premises, and in all probability represented an amount which was not recoverable under the insurance policy. As to the general repair item, Mr Harniman informed the Tribunal that 5 chimneys at the premises had been rebuilt as water had been coming through the ceiling in some flats. There had also been work to the lead-work and repairs to broken pipe-work and guttering.

96. Mr Harniman indicated that he was prepared to concede the smaller item of £7,063. Accordingly the Tribunal accepted this concession and finds that the sum not payable.

97. The Tribunal were concerned about the lack of evidence in the form of invoices or schedules of work. However, unlike the 2006 repairs, Mr Harniman on behalf of the Respondent had been able to give a credible account of the works involved in **General Repairs**, as well as the assurance from the audited accounts. Also, with the age, and character of a major building, it is usual and to be expected that repairs take place. The Tribunal accept, on the balance of probability, that the Applicant's share, being £244, is reasonable and payable.

Major works to the balcony – total £18,799; Applicant's share £325 and balcony supervision total £2,526; Applicant's share £ 44

98. These sums related to work undertaken to the balcony. The Applicant did not dispute that work had been carried out, but stated in her evidence that she had not been informed in advance of this work and had not been served with a section 20 notice. Mrs Riley had also been unaware of the work until she had seen the scaffolding at the premises.

99. Mr Harniman did not produce a section 20 notice in respect of this work. He stated that some of the cost may have related to a structural

engineer's invoice. There were, however, no records made available to the Tribunal at the hearing.

The Tribunal notes that the Applicant did not dispute that balcony work was carried out; her dispute concerned the failure to comply with the s 20 procedure. The Tribunal have determine that statutory consultation should have taken place; is not satisfied that the section 20 procedure was complied with; and dispensation has not been sought. Accordingly the statutory limit of £250 shall apply to the cost of the balcony work including the supervision. The Tribunal determine that the cost payable by the applicant is the statutory limit of £250.

Works undertaken to the Car Park – total £3,760; Applicant's share £65

100. Mr Harniman had indicated that he was not seeking cost in relation to any of the work to the car park and that he withdrew this item from the service charges sought. Mrs Riley had introduced a counterclaim in relation to clamping charges. The Tribunal noted that the service charge item was withdrawn. It followed that if Ms Riley had no right to park in the car park she could not counterclaim for the cost incurred as a result of her car being clamped.

The Accountancy fees – total £4,465; Applicant's share £77
And Audit Fees – total £4,700 Applicant's share £81 n

101. Mrs Riley noted that the cost of **accounting** had escalated during this period which she attributed to poor record keeping. Mr Harniman accepted that there were problems with the record keeping and the presentation of the accounts and accordingly was prepared to cap the figure for both of these items to £3,000.

102. Although this concession was made, Mrs Riley argued that no fee should be paid. The Tribunal do not agree with Ms Riley, and on the basis of Mr Harniman's reasonable approach to this matter the Tribunal accept Mr Harniman's concession. The Tribunal therefore determines

that the Applicant's share of the amount payable for accountancy and audit fees is £158.

Management fees – total £18,091; Applicant's share £312

103. The Tribunal find, for reasons set out above, that the management fee is reduced by 30%. The Applicant's share payable is therefore £218.

The Disputed Estimated Service charges for 2008

104. Mr Harniman informed the Tribunal that there were two budgets prepared for this year, the first having been prepared on behalf of the Respondent by Chelsea Property Management, the total budgeted expenditure being e £72,903.

105. Management Accountants Ltd had taken over the management of the building during this period, and as a result Mr Harniman had produced a revised budget estimate in the sum of £75,000, plus provision for a reserve fund contribution of £100,000.

106. The items, based on the first (Chelsea Property Management's) budget, which Mrs Riley challenged are as follows:

Gardening – total £3,000; Applicant's share £52

107. Mrs Riley queried gardening for the same reasons as in earlier years. On the basis of its observation of the building at its inspection, and its professional knowledge of gardening costs, the Tribunal concludes that £3,000 is a reasonable and payable sum.

Management charges – total £18,500 ; Applicant's share £320

108. Again, Mrs Riley challenged the sum on the same ground as for the earlier years. The Tribunal notes that Chelsea Property Management Services were in charge for the first three months of 2008, and it determines that the same figure as for 2007 should be payable, pro rata for this period – that is to say, one quarter of £218 or £55. Management Accountants Limited then took over for the remaining nine months. The

Applicant agreed that they have provided a more professional service. The Tribunal concludes that the budget figure of £18,500 and the Applicant's share of £319 is within the normal range for management of a complicated building such as Ashburnham Mansions. The Tribunal determines that the figure of £319 pro rata for the final nine months of the year, being £240, is reasonable and payable as an estimate.

109. The aggregate amount payable by the Applicant as an estimate is therefore £55 plus £240 – a total of £295,

Audit fees – total £3,800; Applicant's share £66

110. Ms Riley stated that her objection to this charge was that the accounting and auditing were not of a reasonable standard and given this the cost, which the Applicant considered to be excessive was not justified.

111. Mr Harniman stated that Management Accountants Limited reduced estimate of £2,000 reflected the economies of scale which the company provided; and that the better presentation of the accounts would making auditing easier.

112. The Tribunal using its own knowledge and experience consider that the revised cost of £2,000 is reasonable and the Applicant's share of £66 is payable as an estimate.

Building Manager's Temporary Cover – total £1,500; Applicant's share £26

113. Mrs Riley did not consider this item to be reasonable and payable as she could not recall temporary cover when Mr Box was not available. Mr Harniman agreed that in the event no cover had been provided, there would be no charge to the Applicant. The Tribunal accepted this helpful assurance.

Lift repairs – total £1,750; Applicant's share £30

114. The Applicant stated that she did not know what this money was for. She was also concerned about whether there was a contract as the lift had been out of order for prolonged periods at a time, and this had affected a neighbouring leaseholder with cancer.

115. Mr Harniman reiterated what had been said concerning the lift contract and stated that the handyman would carry out adjustments in the lift room. If he was unable to fix the problem he would call out the lift engineer. Mr Harniman stated that the money spent on the lift was to fit three new car top controls, the cost of which was £1974. The lift contract was for £1,350 plus VAT and £1,000 had been incurred for a replacement part for the lift.

116. The Tribunal, having considered the submissions from both parties and based on its evidence gained from its inspection, considers that the service charges for the lift repair and the lift contact for 2008 were reasonable and payable.

Refuse collection– total £500; Applicant's share £8.63
And miscellaneous items

117. Mrs Riley queried the cost of the refuse collection as there was no invoice. Mr Harniman stated that this was in relation to the cost of the refuse removal the collection was by the local authority, it was for hire of the bins, and each was able to have two collections a week.

118. The Applicant also challenged other items of provision, namely **ground drains** (total £1,600; Applicant's share £27.63) on the grounds that she had not had sight of the invoice, and the **legal fees** (total £2,000; the Applicant's share £34.54), which she said should not have been included as the lease did not provide for the recovery of landlord's legal costs; and **petty cash** (total £750; Applicant's share £12.95), again because she had seen no invoices in support, and no information on what this item was for.

The decision of the Tribunal

119. On the basis of the information provided at the hearing, and on a balance of probability, the Tribunal find that the cost of the refuse removal, and of ground drains to be reasonable and payable. As to **legal fees**, the Tribunal noted that no explanation was given for the reason, or for the lease provisions relied upon. The Tribunal therefore find that this sum is neither reasonable nor payable.

120. As regards the provision of £ 750 for **petty cash,** the Tribunal determine that without detailed explanation of whether the expenditure was incurred under the terms of the lease, the Tribunal have determined that this sum is not reasonable and not payable.

Contingency fund for repairs and redecorations –total £100,000; Applicant's share £1,727

121. The Applicant's concern about the contingency fund was the fact that the sum of money proposed was large and the work had not been undertaken. She was also concerned about the size of the contingency fund and what it was being used for.

122. Mr Harniman accepted that work had not been undertaken as yet but considered that the provision made was reasonable as there were a number of major items that needed to be undertaken at the premises, including, what he described as "the water project". This was to enable a report to be obtained concerning the chlorination of the water tanks and undertake work on the pipes. There was concern about the standard of the tanks and the suitability of the water for drinking purposes. The contingency fund had also been used to put some anchor points in above the parapets, to enable window cleaning to be undertaken. The premises also had problems with broken pipe work and gutters estimated in the order of £66,000.

123. Mr Hariman also described work which was being considered for the balconies; this was going to be the subject of section 20 consultation procedure. The balcony work was estimated at £250,000.

The decision of the Tribunal

124. The Tribunal in considering the reasonableness of the reserve fund have considered (i) whether the lease/ or the deed of variation permit the Respondent to charge sum to the leaseholders for a reserve fund contribution and (ii) whether the Respondent has made a reasonable assessment of the likely need and size of such a fund.

125. The Tribunal have been provided with copies of the lease and the deeds of variation (the clause numbering of the differing deeds may vary as the Tribunal have not checked each deed separately). The deed of variation clause 3 A(a) replacing clause 2(2) of the lease states-: "(a) *The Lessor may set aside such sum or sums of money as it considers that it shall reasonably require to meet such further costs expenses and outgoings as it shall reasonably expect to incur in replacing repairing redecorating improving maintaining and renewing those items which it has hereby covenanted to or intends to replace repair redecorate improve maintain or renew and such setting aside shall for the purpose of this clause be deemed to be an expense and outgoing incurred by the Lessor which the Lessor is entitled to claim through the Management Expenses..."*

126. The Tribunal find that this clause enables the Respondent to collect service charges and establish a reserve fund. At the hearing Mr Harniman described the substantial items of work needed and Respondent's intentions. The Tribunal noted that the majority of these works would be subject to section 20 consultation which provides the necessary safeguards, given this, and in the context of the repairs to be expected in a major building now around 100 years old, we find that that the reserve fund amount for repairs is reasonable, and that Mrs Riley should contribute to those funds.

The 2009 budget estimate

127. The Tribunal reminded the Applicant that these were not actual expenditure , in that the auditing had not been completed and there were

no accounts and detailed invoices for the period. The Tribunal were therefore limited to considering whether the sums proposed in the budget were reasonable. Ms Riley had the option of adjourning this part of her claim and asking, if there was disagreement the Tribunal to determine the reasonableness of the actual service charges once the account had been prepared and the statement was available.

128. Mrs Riley stated that she wanted to have a determination of the reasonableness of the budget estimate to which she is entitled. Mr Harniman explained that unlike the budget for 2008 that had been inherited from Chelsea Property Management the 2009 budget was based on his experience of the actual for 2008.

129. The sums objected to by the Applicant are set out in the table below. Mrs Riley questioned these charges on the grounds that she was unaware of why the expenditure was necessary in some cases, and in other cases she objected to the increase in the budgeted amount against previous years.

Service Charge Item	***Amount payable***	***The Applicant's objection***
Accounting fees	Total £2,000(Applicant's share £34.54)	The applicant objected on the grounds that the work was not of a reasonable standard
Building manager Temporary cover	£500 (£8.63)	No Temporary cover had been provided
Electricity Common parts	£3,000(£51.81)	This sum had gone up and was almost double the amount
Gardening	£2,250 (£38.85)	Disputed on the same ground as before
Uninsured Claims	£3,000 (£51.81)	The Applicant queried whether this sum was payable under the lease
Insurance Premium	£12,250 (£211.55)	The Applicant queried the reason for the increase in the premium

Lift Maintenance	£3,750 (£64.76)	The Applicant queried this on the same basis as previous years
Refuse Removal	£250 (£4.31)	The Applicant queried the necessity for this item
Managing Agents fee	£21,000 (£362.67)	The applicant queried the increase in these fees
Marble floor cleaning	£500 (£8.63)	The Applicant queried whether this had taken place
Security	£250 (£4.31)	The Applicant queried the necessity for this item
Water Chlorination	£1,000 (£17.27)	The Applicant queried the necessity for this item
Window Cleaning	£1,250 (£21.58)	The Applicant queried whether this had taken place
Contingency	£5,000 (£86.35)	The Applicant queried whether this sum was payable under the lease
Repairs	£100,000 (£1,727)	The Applicant queried whether this had taken place and why it was a round amount

The Respondent's reasons for the budget provisions

130. In reply Mr Harniman stated that the amounts claimed under these headings were reasonable and payable. He stated that the fee for the **accounting** represented a reduction, secured because the managing agents had a better presentation of the accounts, enabling easier auditing. The fee itself represented two full days work of part accounting and part auditing at £150 per hour plus VAT.

131. In relation to the **temporary cover**, Mr Harniman stated that Mr Box had been off since May, and then retired as a result of a compromise agreement. Given this, Mr Harniman considered that it was reasonable

for the provision to be in place. If the provision had not been used this would be reflected in the actual service charges.

132. The **electricity** cost had increased by £500 from the previous year; the percentage increase was based on the electricity company's published increase. Again the amount would be adjusted once the actual figure was known.

133. The **gardening** fee was for the work carried out by Nash Newton; the work was undertaken on two weekly cycles March to October and then a winter cycle which was limited and mainly clearance work. The Tribunal were invited to consider the previous representations.

134. The **uninsured claims** were in relation to the insurance excess amount; this figure was reasonable based on Mr Harniman's experience (which was based on the excess in the policy and his knowledge of the claim history of the building. that the normal cost for this was from £1,500-£3000 per year).

135. Mr Harniman accepted that the cost of **insurance** had risen. His explanation was that this was due to the revaluation of amount of cover (which the Applicant had been concerned about), and the inclusion of terrorism cover. The actual amount for insurance was £15,528.92 however the cover straddled 2009/10 as a result only 80% was payable in the period.

136. The figure for **lift maintenance** was for the cost of maintenance plus call out charges. Mr Harniman reiterated that he had never prevented a call out and in the event that a call out was necessary the notice board stated that Mr Dantry the caretaker should be informed and he would undertake to call the contractors.

137. **Refuse removal** was a provision to enable removal of refuse in the common parts and any additional leaf clearance.

138. Mr Harniman acknowledged the increase in **management fees** and stated that these had been agreed by the Board as he had been able to demonstrated that the management was more intensive than had been envisaged, and that it was not possible to continue to provide

management on the same basis for the same fee. Mr Harniman acknowledged that there had been problems and was prepared to offer a reduction of 15% of the fees.

139. The sum for **marble floor clearance** was to enable a clean to be carried out for each of the blocks. This had been spread out over 10 days. Mrs Riley stated that she did not recall this being done.

140. The item for **security** related to the door entry system they had brought the door entry system and had a loose style maintenance contract.

141. There was also a problem with pigeon infestation and this meant that it was urgent for the test to the water quality; there was also concern that some of the pipes may have been wrongly connected in the tanks. These were the reasons for the **water chlorination** report.

142. Mr Harniman stated that the **windows** were cleaned in two- monthly cycles. This was the window over the canopies there were 6 canopies and 24-26 windows. It was his view that although this may not have occurred in the past it was a normal and reasonable expense for premises in this location.

143. The **Contingency** sum had been prior to obtaining the insurance renewal, when it had been clear that it was likely that the premium would need to include terrorism cover.

144. Mr Harniman referred to the cost of the anticipated repairs, and stated that this was the reason for the £100,000 provision.

The Tribunal's determination

145. Having heard the representations of the Applicant and on behalf of the Respondent, the Tribunal conclude that the following sums are reasonable and payable as estimates of 2009 expenditures.

Service Charge Item	***Amount payable***	***The Tribunal's findings on reasonableness and payability***

Accounting fees	Total £2,000 (Applicant's share £34.54)	The Tribunal accept that the fee represents a reduction on the previous years and in the absence of alternative figures from the Applicant the Tribunal accept that the cost is reasonable and payable.
Building manager Temporary cover	£500 (£8.63)	The Tribunal find that provision for temporary cover is reasonable and payable
Electricity Common parts	£3,000 (£51.81)	The Tribunal accept that the cost of the budgeted sum for electricity is reasonable and payable.
Gardening	£2,250 (£38.85)	The Tribunal accept the cost of the Gardening as reasonable for the reasons outlined above.
Uninsured Claims	£3,000 (£51.81)	The Applicant queried whether this sum was payable under the lease
Insurance Premium	£12,250 (£211.55)	The Tribunal are satisfied that in the absence of alternative figures the cost of the provision for the insurance premium is reasonable and payable.
Lift Maintenance	£3,750 (£64.76)	The Tribunal find given the age and character of the lift that it is prudent to have a maintenance contract. The Tribunal have heard no evidence to suggest that the cost of the contract is out of kilter with what is reasonable and find the cost reasonable and payable.
Refuse Removal	£250 (£4.31)	The Tribunal find that the budget provision is

		reasonable and payable.
Managing Agents fee	£21,000 £ (362.67), less 15% reduction conceded by the Respondent.	The Tribunal's decision concerning this is set out below.
Marble floor cleaning	£500 (£8.63)	The Tribunal find that the budget provision is reasonable and payable. It is accepted that the cost of cleaning is reasonable and payable.
Security	£250 (£4.31)	The Tribunal find that the budget provision is reasonable and payable.
Water Chlorination	£1,000 (£ 17.27)	The Tribunal note the reason set out by the Respondent for the necessity for the Water Chlorination test. This was not disputed by the Applicant. The Tribunal determine that the cost of the treatment is reasonable and payable.
Window Cleaning	£1,250 (£21.58)	The Tribunal note that the Respondent is having bi-monthly window cleaning. The Tribunal having inspected the property accept that this expense is reasonable and payable.
Contingency	£5,000 (£86.35)	The Tribunal find that this was anticipated expenditure, defined in the deed of variation as "*further costs expenses*". In the circumstances the Respondent was entitled to set aside this

		sum. Accordingly this sum is reasonable and payable
Repairs	£100,000 (£1,727)	The Tribunal find that the cost of anticipated repairs is reasonable.

The Managing Agents fees 2009

146. The Tribunal have now had sight of the Managing Agents agreement and note that this document comprehensively deals with all aspects of the management of the premises and specifically provides for the setting up of account systems, and for Mr Harniman to undertake a role in the company secretarial work.(The Tribunal make no finding about the effect of this on the charge as it is considered *de minimus).* It was clear that the managing agents had managed to reduce the cost of the accounting and the Tribunal noted Mr Harniman's obvious knowledge and understanding of the building.

147. The Tribunal also noted that Mrs Riley made little complaint about Mr Harniman's management, she accepted that Management Accountants Limited was not the source of her dissatisfaction, and that matters had improved since the company had taken over. Given this the Tribunal find that the estimate made by Management Accountants Limited, subject to the 15% reduction offered by Mr Harniman, reasonable and payable as an estimate, meaning that the estimated sum payable by the Applicant is £308.27.

The Terms of the Consent Order and the effect on sums paid to discharge the Applicant's liability to pay service charges

148. The Tribunal was asked by the Applicant to determine what had been paid by her. The Tribunal's jurisdiction to do so is found in the wording of Section 27A which under (c) includes reference to *the amount payable.* Clearly this means that a Tribunal can consider whether a previous sum has been paid to discharge an obligation to pay service charges, as if it

has been already paid or is a legitimate set off it will affect the amount payable.

149. It was on this basis that the Tribunal indicated that it would consider the consent order and the issues raised by Mrs Riley concerning sums paid by her to discharge her service charge obligation.

150. It was the Applicant's understanding of the consent order dated 20 April 2005, (signed by herself and another leaseholder Ms Widdicombe) that it had discharged arrears of service charges that she was now being asked to pay. The Applicant stated that she had paid £22,500 for her lease extension and that the sum of £17,500 was for arrears of service charges and cost. The Consent Order was not considered to be as detailed and helpful as the Tribunal expected, other than stating the sum of £17,500 to be paid by or for each of Defendant to the Claimant within 14 days. It provides no further assistance as to what obligations are discharged by reason of payment of the sum of £17,500.

151. Paragraph 3 of the Consent Order states in the last sentence *The Defendants agree to meet the service charge demands for the year 2004-2005 as if they were bound for the whole of the service charge year by the provisions of the Deed of Variation... upon signing the deed of variation or when demanded if later."*

152. This does not echo the terms of the "Without Prejudice" correspondence from the Respondent's solicitors Piper Smith Watton dated 8 March 2005 which states-: " ...*We are instructed to indicate that they will accept in full and final settlement of the claims and counterclaims herein a total sum of £80,000 made up of the full and final settlement of the claims and counterclaims herein. I) a total sum of £80,000 made up of the arrears, and lease extension values plus a token payment towards cost/interest in the current County Court action."*

153. There is a further letter from the Respondent's solicitors dated 25 May 2005 which states-: "... *you will recall that for 2002/2003 £2,884.99 is due forthwith upon demand by each client..".*

154. It would appear to the Tribunal that further confusion was caused by an email from Debbie Pearce of Simpson Wreford (the accountants) dated 14 April 2009 which stated that £10,000 was allocated to the lease extension premium, £12,739.77 to the service charge arrears and £17,260.23 for legal cost. Clearly Debbie Pearce's allocation is not supported by the Consent Order, but on reading this Mrs Riley may have formed the impression that £10,000 was unaccounted for.

155. It appears to the Tribunal that there is a genuine ambiguity as to whether the service charges for 2002/2003 were included in the Consent Order, likewise whether it was in the contemplation of the parties that the 2004 arrears were included. However the Tribunal consider that the view held by Mrs Riley that she paid £10,000 which was unaccounted for is not substantiated by the documentation as the Consent Order clearly states that £22,500 represented her share of the lease extension.

156. The Tribunal cannot determine this matter, as in the Tribunal considers that if the meaning of the order cannot be agreed this would need to be the subject of an Application for a Declaration as to the meaning of the terms, and such application is within the Jurisdiction of the County Court.

The Application for costs of £500 under schedule 12 paragraph 10 of CLARA 2002.

157. It was clear from Mrs Riley's letter dated 17 February 2010 that she had a longstanding sense of grievance concerning the difficulties with the service charges and the manner in which the premises had been managed by the Respondents prior to 2008, including many matters which are not before this Tribunal concerning the car parking arrangements and issues concerning the water supply.

158. Mrs Riley asserts that many of the claims for service charges were 'groundless'. The Tribunal have made findings that certain sums were not reasonable or payable, and to his credit Mr Harniman readily conceded a number of items without putting Mrs Riley to prove her case.

159. The Tribunal noted that there was poor record keeping and have reduced the management fee as a result of this. However this does not mean that the claim for payment of service charge was without foundation or that in making the claim the Respondents acted *"frivolously or vexatiously"*.

160. The Tribunal have considered the accounts and noted that the majority of items were supported by invoices. Given this the Tribunal do not consider that the Respondent's conduct within these proceedings has acted *frivolous or vexatious abusively or otherwise disruptively in connection with these proceedings* and dismiss the application.

The Section 20C Application

161. Having considered all of the circumstances in this case including the large number of service charge items that have been conceded by the Respondent the Tribunal consider it reasonable to make the order sought by the Applicant restricting the Respondent's recovery of costs in connection with the proceedings before this the Tribunal.

162. The Tribunal therefore Orders that no part of the Respondent's costs in preparing for or bringing this case to Tribunal should be considered relevant costs for the purposes of service charge provisions under the lease or deed of variation.

163. This Order should not be construed as a finding that legal costs would otherwise be recoverable by the Respondent under the terms of the lease/deed of variation.

Reimbursement of the Applicant's Tribunal Fees

164. In light of the concessions made by the Respondent during the hearing and in all the circumstances of the case, the Tribunal determines that the Applicant was justified in bringing the case.

165. The Tribunal orders that the application and hearing fees should be refunded by the Respondent or set off against the service charges found due.

166. **The Respondent shall within 28 days of this decision produce a revised schedule of charges outstanding for each of the periods in issue reflecting each of the above findings. Within 28 days thereafter the parties shall seek to agree the revised calculation and the amount payable.**

167. **If the parties are unable to agree the revised calculations, they may apply to the Tribunal for the method of calculation to be approved and any further Directions that may be required.**

Signed: ***Ms M W Daley***

Dated 13.5.2010