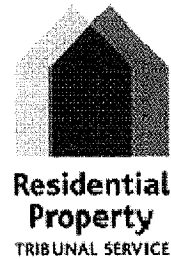


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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



Case 1: Section 27A of the Landlord and Tenant Act 1985 (Service Charges)

Case 2: Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (Administration charges)

Case 3: Section 20C of the Landlord and Tenant Act 1985 (Limitation of the Landlord's costs of the proceedings)

DECISION AND REASONS

Case Number: CHI/00HH/LSC/2010/0147

Property: Flats 32 and 35 Clarendon Court
Stitchill Road, Torquay, Devon, TQ1 1QA

Applicant: Mr H Oztoplu and others

Respondent: Codesurf Ltd

Date of Application: 6 September 2010

Date of Hearing: 6 January 2011

Tribunal Members: Mr T Dickinson BSc FRICS (Valuer Chair)
Mr J McAllister FRICS (Valuer Member)
Mr I M Arrow (Lawyer Member)

Date of Decision: 29 March 2011

SUMMARY OF DECISION

BACKGROUND

1. Applications were made by Mr Oztoplu on 6th September 2010 to assess the reasonableness of service charges for years 2005/2006 – 2010/2011 and also on 8 September 2010 for the liability to pay and the reasonableness of a variable administration charge. Mr Oztoplu also made two Section 20 (c) applications for the Tribunal to make an order to the effect that the Landlord's costs in these proceedings are not to be treated as relevant costs and included in the service charges payable by the Applicants. Mrs B Crews of Flat 34, Clarendon Court was named as a Co-Applicant.

2. Directions were issued by a Chairman of the Leasehold Valuation Tribunal on 22nd September 2010 setting out a timetable and conditions for the Applicant and the Respondent to observe.

3. Prior to the hearing the following parties were joined in as Applicants. Mr and Mr D Godfrey of Flat 16, Ms A Canning of Flat 20, Loraine Skalding of Flat 4.

THE LAW

Case 1:

4. In respect of the service charge issues the Tribunal's jurisdiction is contained in section 27A of the Act. Section 27A is set out below.

Liability to pay service charges: jurisdiction

(1) 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.*

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Case 2:

5. In respect of administration charges the Tribunal's jurisdiction is contained in part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as set out below:

Liability to pay administration charges

- 5 (1) 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 –
- (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
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of a matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which –
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or it to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

Case 3:

6. In respect of costs of proceedings, the Tribunal's jurisdiction is contained within Section 20C of The Landlord and Tenant Act 1985.

20C Limitation of Service Charges: Costs of Proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the Landlord in connection with proceedings before a Court, [Residential Property Tribunal], or Leasehold Valuation Tribunal, or the [Upper Tribunal], or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application

(2) The application shall be made-

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

[(aa) in the case of proceedings before a residential property tribunal, to a Leasehold Valuation Tribunal;]

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the [Upper Tribunal], to the tribunal;

(d) in the case of arbitration proceedings, to the Arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court;

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

INSPECTION

7. On the morning of 6 January 2011, the Tribunal inspected the Common parts of the buildings and grounds in the presence of the Applicant Mr Oztoplu and the Respondent's representatives Mr Stokes, Mr Holmes and Ms Hoare all of TMS South West Ltd, the Landlord's appointed managing agents for the block.

8. The property was found to be a 3 storey block of 36 residential flats originally built as holiday flats around 1957. The building appeared to be of traditional cavity blockwork construction with rendered elevations having a shallow pitched roof covered with mineral feltwork. The flooring throughout the building was found to be of concrete construction and the windows and doors are replacement PVCu double glazed units.

9. The Tribunal members were also able to inspect the common parts including the long corridors at lower ground, ground and first floor levels. The Tribunal were able to inspect recently installed fire doors and emergency lighting together with new electrical installations situated in the Ground Floor lobby cupboards.

10. The Tribunal inspected the exterior of the building and grounds and noted the gardens and parking areas to have been maintained in a satisfactory state although there is evidence of cracking/deterioration to the tarmac service adjacent to the large Monterey Cypress tree to the northern side of the block. Some deterioration was also noted to the exterior joinery on the garage block to the south side including peeling paintwork to the fascia boards. Peeling paint and bare woodwork was additionally noted to the barge boarding at the western end of the block.

11. Finally, on inspection the Tribunal noted the quality of the aluminium signs with one large sign adjacent to the entrance off Stitchill Road and four smaller signs of fixed to the building.

12. The Tribunal went onto the highway via the driveway and had the opportunity to inspect the visibility splay from the drive and highway.

HEARING

13. The hearing took place at the Livermead House Hotel immediately after the inspection of the property. The Chair introduced the members and stated that Mr Michael Hasler was attending as an observer. The parties had no objection to Mr Hasler being present.

14. Mr Oztoplu would represent the Applicants and Mrs Cruse of Flat 34 also attended the hearing.

15. The list of co-applicants was confirmed as follows: Mr and Mrs Godfrey Flat 15, Ms Canning, Flat 20, Ms Skalding Flat 24.

16. Appearing on behalf of the Respondent Codesurf Ltd were the following: Mr A Stokes, Ms L Hoare and Mr J Holmes all of TMS (South West) Ltd.

17. A former employee of TMS (South West) Limited Mr Luke Chittendon was also present as an observer and the Applicant did not raise any objections.

18. The Chair explained to the parties the Law relating to the Hearing, gave an indication of the order of proceedings, indicated which documents had been seen and considered by the Tribunal and explained that a decision would not be announced on the day but a decision and written reasons would follow within a maximum of 42 days.

19. For the Applicant's Mr Oztoplu asked the Tribunal if the application under the Schedule 11 of the Commonhold and Leasehold Reform Act 2002 could be dealt with first. The Members of the Tribunal, however, observed that no written representations had been received from the Applicants with regard to this particular application. It was therefore decided that the matter would be dealt with by way of written representations after the hearing with the Applicant's to provide four copies of a written statement to the Tribunal within 28 days of the hearing date. It was also decided that the

Respondent should be allowed a further period of 28 days to submit comments and observations on the Applicants statement. Finally, the same timescale should be applied in respect of any submissions relating to Schedule 11 matters with regard to the application under Section 20C.

20. There then followed the Applicants statement in relation to the application made under Section 27A. By way of background Mr Oztoplu explained that he had first bought a flat at Clarendon Court in 2000 when he considered the block to be in poor condition. He stated that he set out to challenge the then Directors and applied to the Tribunal for the first time in 2003. His application was however subsequently withdrawn. Following that withdrawal, however, the building had improved, for example, new carpets had been installed in the common areas during 2003/2004 and an entry phone system had also been installed. Mr Oztoplu referred to the freeholder's earlier proposals to form five additional flats on the top of the building with a new pitched roof and additionally erect four flats within the grounds at Clarendon Court. These proposals had apparently not been pursued any further.

21. With regard to current proposals for improvements to the building, however, Mr Oztoplu stated that the freeholders Codesurf Limited were trying to get many works completed within a very short period of time and not all of the leaseholders could afford to pay for the works. For example the works recommended by the Fire Risk Safety Assessment could have been spread over a longer period say 5 to 6 years. With regard to individual items that the Applicants had complained about Mr Oztoplu commenced with the building insurance premiums. The application related to the premiums paid in the five financial years commencing 2005/2006 and the budgeted figure for the 2010/2011 year. Mr Oztoplu emphasised that in his opinion the buildings insurance premiums had always been very high. For example this year's budgeted figure was £7,750.

22. Mr Oztoplu explained to the Tribunal that he had been assisted by his own brokers Seaway Insurance Brokers of Preston, Paignton. They had obtained three different quotations for buildings insurance with figures as follows: Fortis £2,357, Alliance £3,278, Rentguard £2,324. Seaway Insurance

Brokers had recommended Fortis who would provide adequate cover. The Freeholder's managing agents had apparently obtained a bulk policy for 120 blocks of flats. Mr Oztoplu emphasised that his quotes were less than a third off the Landlords.

23. With regard to the claims history reference was made to Flat 32 and Mr Oztoplu stated that he couldn't remember any damage having been occasioned to his own apartment. Mr Oztoplu stated that he understood that the most recent claims had not yet been settled. Fortis had however been advised of the claims experience and had seen evidence of the claims as outlined on page 33 of the bundle. Mr Oztoplu also advised that his brokers were aware that the first claim made on the 28th April 2005 was now over 5 years old.

24. When questioned on the subject of occupation of the flats, Mr Oztoplu stated that his brokers were aware that some of the flats were let and this had been considered by the Insurance Company. His own brokers had in fact inspected the building and were therefore aware of its type of construction.

25. Mr Oztoplu emphasised that there was indeed a huge difference between the Fortis quote and the premium that was payable to Aviva over the last six years Mr Oztoplu stated that there might have been savings of approximately £26,700.

26. For the Respondent Mr Holmes referred the Tribunal members to page 7 of the lease and under paragraph 6C(1) there was a clear obligation on the part of the Landlords to keep the building comprehensively insured. Mr Holmes referred to competitive tendering and in a letter of 20 October 2010 to TMS (South West) Ltd, the Landlords Brokers Torbay Insurance Services stated that "although the scheme had been underwritten for some years by Aviva (Norwich Union) the brokers do look at other markets but have not found another insurer with the financial strength of Aviva who could deliver the same policy cover, rates or service."

27. Mr Holmes then directed the Tribunal members to page 13 of the Applicant's bundle and thought that the Tribunal may have been misled. Mr

Scott of Torbay Insurance Services noted that in the Fortis quotation dated 27 August 2010, the policy wording was subject to no losses within the last five years. In Mr Stott's opinion, the Fortis quotation was really meaningless if it was based on a claim free risk. Failure to disclose any material facts affect under writer's assessment of the risk and such serious non disclosure of five claims in the last five years would most likely mean withdrawal of the quote and termination of the policy if cover had commenced.

28. Mr Holmes went on to say that anyone could provide an alternative quote although one couldn't compare them unless the quotes were on a like for like basis. There were further claims pending at the present time and in Mr Holmes' view the claims history might have a significant impact on the premium payable.

29. Under the terms of the lease, the Landlords held a requirement to keep the building adequately insured and had also obtained a professional valuation from Barbets which had been included in the paperwork. The insurance policies were also index linked as part of best practice. The current buildings cover was in excess of £2,600,000 more than the figure stated in the professional valuation.

30. With regard to the recent claim, Mr Holmes for the Respondent explained that this was an escape of water claim affecting two apartments. The loss had not been quantified although Mr Holmes stated that he would be able to obtain further information.

31. In summary Mr Holmes stated that he did not believe that the quotations obtained by the Applicants were on a like for like basis. The Manager sat down on an annual basis to review the block policies and the current policy numbered 24204235 with Aviva included the Landlords Codesurf Ltd as joint policyholders.

32. Mr Holmes had additionally obtained advice that the proposed policy wording with Fortis was rather different. This referred to a roof covering having not less than 10% asphalt or felt, but the roof to the subject property was 100% felt. Mr Holmes explained that as a group they manage

270 blocks but he was struggling to find another block insured by Fortis. Indeed he was not familiar with Fortis Insurance.

33. On 16th December 2010 Aviva had provided an insurance renewal premium of £7,729.82, however, the broker Torbay Insurance Services had been able to renegotiate the figure downwards to the sum of £6,999 including insurance premium tax. Mr Holmes explained to the Tribunal that as part of the review by the managing agents they had been able to negotiate the renewal premium downwards which was in fact a reduction from the previous year.

34. With regard to Signage, Mr Oztoplu on behalf of the Applicants, stated that he could not find evidence of any deterioration to the old signs for the building and that the spending of £1,564 for renewal of Signage in the 2008/2009 year was too high. In Mr Oztoplu's opinion anything more than £934 would have been unreasonable and the balance should be refunded to the leaseholders.

35. Mr Oztoplu had obtained three estimates for similar signage between May and November 2010. The quotations obtained had been reproduced including £600 plus VAT from Riviera Signs, £835 plus VAT from Signs South West and £1,018.72 inclusive of VAT from Ace Signs. He stated that it had been very difficult to get an estimate for work already completed but there was indeed a big gap between the estimates he had obtained and the actual cost of £1,564. Mr Oztoplu finished on this subject by stating that he would have liked to have seen the money used for better purposes.

36. Mr Holmes for the Respondent referred the Tribunal to Section 6(b) of the Lease, the Landlord had an obligation under that clause to keep the common parts and the service conduits in the building in repair and to rebuild or replace any parts that require to be rebuilt or replaced. Mr Holmes stated that the main entrance sign was broken in bits and others were illegible. The Manager of the block, Mr Stokes stated that he had received a letter of complaint from the leaseholder of Flat 12a and a decision had been made to replace the signage in high grade aluminium at a cost of £1,564. It had not been necessary to enter into a consultation process with the

leaseholders, this was a straightforward replacement but no alternative quotations were requested.

37 Mr Holmes queried the quotes that had been obtained by Mr Oztoplu, they did not all state the material and did not all include labour and fitting costs. The estimate from Signs South West did not include a price for the design element, the estimate obtained from Touchwood Signs did state the word "allupanel" but no element had been included in the quote for design/labour charge.

38 Mr Holmes again stressed that there was no obligation on the part of the Landlord to competitively tender under the Landlord and Tenant Act and a Section 20 Consultation process did not apply. With regard to the procurement of the signs, this included quite an involved process, draft mock ups, considerable works on the design element etc. Finally, Mr Holmes stated that Mr Oztoplu's quotes were not obtained on a like for like basis.

39 Mr Oztoplu then queried the management charges for the 2009/10 year and the budgeted management charge for the 2010/11 year. In Mr Oztoplu's opinion Clarendon Court is a small building that presents little challenge to Codesurf Ltd. Mr Oztoplu did not find the management charges to be excellent value and thought that the fees should reflect market conditions and sentiment. Mr Oztoplu further stated that management fees had gone up from £4,865 in the 2008/09 year to a budgeted cost of £6,345 in the current year, an overall increase of 30.4%. This represented a large increase in the middle of an economic crisis where people were losing jobs and the Government were cutting back generally. Mr Oztoplu believed that their fees should be as they were in 2008/09 at £4,865 or £115 plus VAT per flat.

40 Mr Oztoplu went on to say that for a long time the Residents had asked for a meeting but the Managers had not obliged. The last General Meeting was 7 years ago and the Residents had wanted a General Meeting to discuss the Fire Risk Safety Assessment.

41. Mr Oztoplu explained that he had approached an Exeter Agent who had given a verbal quotation of £100 plus VAT per flat for the management, this was the only figure he had obtained in the current year. His letting agents, Haarer & Motts had previously stated that they would be prepared to do the management for a figure of £125 plus VAT per flat because they had previously let his flat. Those agents knew Clarendon Court well and were aware of the management issues.

42. For the Respondent Mr Holmes referred the Tribunal members to page 8 of the Lease and the provisions set out in Clause 6 (i). Mr Holmes explained that TMS (South West) Ltd were members of The Association of Residential Managing Agents and all their property managers were properly qualified. With regard to management charges these could either be calculated on a percentage basis against expenditure or alternatively on a fixed fee basis as favoured by ARMA for transparency purposes. Historically the Managing Agents fee had been £125 plus VAT per flat but as a company TMS (SW) Ltd had carried out a strategic review which included an analysis of charges for both local and national competitors. Mr Holmes submitted that they were aware of the fee structure for other ARMA agents, but some of these provided a different service. TMS were unlike others in that they always employed dedicated property managers thereby providing a very personalised and specialist service, very different from their competitors. Mr Stokes and his assistant had sole responsibility for the management of this block.

43. Mr Holmes complained that Mr Oztoplu's quotes were entirely verbal, he should have obtained a proper specification in order that the quotes could have been made on a like for like basis. Mr Holmes therefore stated that he had little regard to the alternative quotes that had been obtained. Haarer & Motts were estate agents and letting agents not block management specialists, are not members of ARMA and are not regulated by the Financial Services Authority.

44. Mr Holmes went on to explain on behalf of the respondent that TMS had undertaken a strategic review of management charges in 2009. Local Managing Agents, Crown Property Management of Babbacombe were

charging a level of £125 plus VAT per flat, on the other hand, Carrick Johnson who were members of ARMA were quoting £135 plus VAT but did not have a dedicated block manager. At the higher end of the scale Peverell Management were charging £180 plus VAT per apartment. During the 2009/10 year management charges had amounted to £147.63 plus VAT with a budgeted charge of £150 plus VAT for the 2010/2011 year.

45. Mr Holmes further stated that TMS held a management contract relating to services to be provided at Clarendon Court. He could not recall sending a copy to the Lessees; there was no tripartite agreement and the requirement for meetings with the leaseholders was not within their terms of business. Mr Stokes was the dedicated manager for the block and knew the leaseholders and had held meetings with leaseholders for example the meeting on 22 July 2010 with Mr Oztoplu lasted 3½ hours.

46. In response to Mr Oztoplu's questioning, Mr Holmes stated that he thought TMS provided an excellent service for the remuneration received. The block had a dedicated property manager who was well trained and qualified to give the very best professional advice. For the 270 blocks of flats managed across the South West of England £150 plus VAT per apartment was the minimum fee charged.

47. When questioned about the auditing of accounts, Mr Holmes stated that he believed the freeholder was complying with the Landlord and Tenant Act, full auditing of accounts would cost an extra £2,500 to £3,000 plus VAT. The budget would need to be increased substantially to include full auditing costs.

48. In response to further questioning concerning the management, Mr Holmes stated that TMS currently employed 12 dedicated property managers, this would shortly be going up to 14. Mr Stokes had a personal responsibility to manage 28 blocks of flats.

49. When questioned about the lack of regular meetings, Mr Holmes stated that there was no requirement for Annual General Meetings to be held and no specific requirement on their Client's instructions for general meetings.

With regard to Southern Accounting Services Limited they were an independent company and not part of TMS Group. It was, however, correct that Mr N Scholey was an Officer of both. Southern Accountancy Services however, were independently owned and not part of either Codesurf Ltd or the TMS Group.

50. With regard to emergency lighting, Mr Oztoplu on behalf of the Applicants claimed that the figure of £4,382 for emergency lighting in the 2009/2010 year was unreasonable. The recommendations in the Fire Risk Safety Assessment could have been spread over a longer period of time. Mr Oztoplu brought to the Tribunal a sample LED light he had obtained in Turkey. The cost of the lighting, in his estimation, would be £2,600 plus VAT and transport costs. Using his own calculation, the overall costs would be £3,300 inclusive of VAT and Mr Oztoplu would allow a further £400 for the consumer units.

51. When questioned by the Tribunal Mr Oztoplu confirmed that he did not investigate compliance of these lights with regard to emergency lighting requirements.

52. Mr Holmes for the Respondent referred to the paperwork in the bundle including the revised quotation of 10 January 2010 from Kevin Hurley, Electrical Contractor and the Fire Risk Safety Assessment completed by Mark Evans of Fire Master (South West) Ltd. The Freeholder had simply adhered to the professional report obtained, its recommendations and to work through all priority works. There was no requirement to consult with the leaseholders under the Landlord and Tenant Act, although an earlier quotation had been obtained from Westcountry Fire Protection which had been on file for a year or so. Westcountry had provided a higher quotation. Mr Holmes further stated that Mr Oztoplu had not provided an alternative quote from a suitably qualified NICEIC approved electrical contractor. The revised quotation from Kevin Hurley included confirmation that the installation would conform with both BS7671 and BS5266-1 and that the completed works would be verified for conformance by Mark Evans of Fire Master Limited.

53. With regard to reserve funds, Mr Oztoplu had questioned the sum of £5,400 incurred in the 2009/2010 year together with the same figure budgeted for the 2010/2011 year. In Mr Oztoplu's view, the reserve fund estimates were totally wrong. Mr Stokes, the manager had drawn up a 10 year plan for Clarendon Court which, in Mr Oztoplu's opinion, was full of errors, discrepancies and misinformation. Reserve funds, past and future did not reflect the needs of the building or the leaseholders. Mr Oztoplu confirmed that he had no problem with the principle of a reserve fund and he thought that the sum of £3,000 per annum would be sufficient to cover anything not predictable. If there had been a meeting with the residents one could have discussed the 10 year plan in more detail, due to the absence of any consultation there had been a lack of available information regarding the new developments in Clarendon Court, it was only now as a result of the Tribunal case that Mr Oztoplu had had the opportunity to receive some information. Mr Oztoplu concluded by saying that the sum might be £5,000 per annum or might indeed be more it depended upon the time available to complete the outstanding jobs that is why it would have been better to have held general meetings.

54. Mr Holmes referred the Tribunal to Clause 5a (ii) of the Lease relating to provision for payments of tenants contribution, the wording was as follows: *"on the due dates to pay to the Landlords such sums on account of the Tenant's contribution as the Landlord or its Agents may reasonably consider sufficient to meet the service charge for the period until the next due date"*. Mr Holmes also referred the Tribunal to Clause 6 (j) of the Lease, it was believed that the ability to collect sums of money was incorporated within this clause providing an element of reserve for longer term maintenance. There was no sinking fund requirement under the provisions of the lease.

55. With regard to the 10 year plan, Mr Holmes explained that this was a management tool and not ordinarily prepared for distribution to the Lessees. Mr Holmes went on to say that they were about to commence a Section 20 Consultation process with regard to replacement felt roofing and there would be an insufficient accumulation of funds to cover the estimated cost of the proposed works. Apart from the roof, other works would need to be carried

out under the plan including external repairs and decorations, repairs to the car park and outstanding works from the Fire Risk Safety Assessment.

56. Mr Holmes concluded by stating that it was a question of affordability although the freeholder did have the right under the terms of the lease to collect reserves. The sum of £5,400 was an estimated calculation by the property manager. If, however, the roof were to have to be replaced in the present financial year the reserve fund would need to be more like £15,000 to £20,000.

57. Mr Stokes added that the Clarendon Court 10 year plan had been produced as a result of his training with ARMA. The plan was to be used as a management tool and to demonstrate to the freeholders a scheme of works over a planned period of time.

58. Mr Oztoplu queried the sum of £414 for the cost of an emergency line in the 2009/2010 year. He stated that Codesurf Ltd suddenly decided to part with this sum of money for a questionable service with such evidence that it will not be of any use or operable. Personally, Mr Oztoplu could not see any reason for this service, he could not see any evidence of need as most leaseholders knew a plumber or electrician that they could just call in. 66% of the flats were rented out, the views of other leaseholders had not been canvassed. Mr Oztoplu added that he thought the charges under the Cunningham Lindsay scheme were quite high, for example, an emergency out of hours rate for an electrician was £140 for the first hour.

59. Mr Oztoplu concluded by stating that the charges incurred in the 2009/2010 year of £414 and the budget of £450 for the 2010/2011 year were both unreasonable and should be refunded to the Leaseholders.

60. Mr Holmes responded by stating that the Cunningham Lindsay scheme was a genuine 24 hour emergency response. This scheme had been approved by ARMA and was widely used to take an extreme example say 3am in the morning on Christmas Day. Joining this scheme was the only way to guarantee a genuine 24/7 response service. Codesurf Limited had decided to adopt the scheme and all leaseholders had received a pack. The

freeholders relied upon Clause 6 (j) of the Lease in order to implement the scheme. Generally speaking, this was a growing service with Landlord clients.

61. Mr Holmes did concede that he was not aware the scheme had not yet been used. The scheme had generally, however, been welcomed on other managed blocks, the scheme costs had just been reviewed and would not be increased in the current year.

62. With regard to the costs of gardening and maintaining the grounds, Mr Oztoplu stated that he had no objection to the standard charges from Haleys: £166.23 per month was acceptable. What he objected to were the extras for example the sum of £397.80 was incurred for one job in June 2008 and a further £78.78 in July 2009. Long term service contracts should be, in Mr Oztoplu's opinion, at fixed prices, that should remove any misunderstanding. The need for supervising and should allow easier tendering. Mr Oztoplu had obtained an estimate from Devon Garden and Landscape Services for £2,100 and tip charges and that should be the maximum amount payable.

63. For the Respondent, Mr Holmes stated that the Manager had reacted to the request for competitive tenders and these were obtained in November and December 2010. The tender from Haleys appeared to be the most reasonable for general maintenance. With regard to the quotation of 8 November 2010, obtained from G W & E L Towler, no detailed specification had been obtained for the price. The correct way would be to give a detailed specification of works and for the contractor to tender otherwise any quotation would not be on a like for like basis. The two quotes recently obtained from Haleys were the most cost effective.

64. With regard to extra costs the work carried out in June 2008 at a cost of £397.80, this was a difficult job involving a team of workmen and proved to be more labour intensive because of traffic management. Mr Haley personally supervised the project which involved cutting back large shrubs over-hanging the curved section of Stitchill Road. Mr Holmes could not provide receipted invoices but volunteered to post 4 copies to the Panel

Office for consideration by the Members of the Tribunal. (These were subsequently received and distributed to the Members).

65. In relation to communal electricity charges, Mr Oztoplu confirmed that this had been an issue for a long time in Clarendon Court - all of the communal lights had been kept on for 24/7. This was considered to be totally unethical and unnecessary and a waste of the Leaseholders money. Mr Godfrey of Flat 16 had also pointed out problems with the lighting in correspondence. Mr Oztoplu queried the Budget for the 2010/2011 year and wondered why communal electricity charges were budgeted to be as high as £2,500.

66. Mr Oztoplu acknowledged that the Management were now looking into an alternative and noted that a quotation had been obtained from Sherwoods Electrical and Mechanical Engineers on 30 June 2010. The price for the installation of movement sensors to provide control of the lighting to the corridors amounted to £2,935 excluding VAT.

67. Mr Holmes stated that the average cost of communal electricity over recent years amounted to £1,823. In Clarendon Court were long hallways with no windows which for Health and Safety reasons were lit on a 24/7 basis. The Freeholder was not objecting to the cost savings which would be made in the longer term, the provision of sensor lighting however, was just not a priority at the present time.

68. Mr Stokes stated that historically single ladies in the block had asked for the corridor lights to be kept on 24/7, all of the current lights had been renewed in 2005 to save on running costs. Exercises had also been carried out on unit rates with various suppliers, the current suppliers were EDF.

69. At the conclusion of the hearing it was agreed between parties that the Section 20C application would be dealt with by way of written representations. The Applicants were granted a period of 28 days to submit their representations to the Tribunal. The Respondent would then have a further period of 28 days to reply.

DECISION –Case 1

70. Following the hearing further correspondence from Mr and Mrs Godfrey of Flat 16 dated 29 December 2010 had been received at the Panel Office on 11 January 2011. The Tribunal having examined the correspondence found that the letter of 8 January 2010 from Mr and Mrs Godfrey to Mr Stokes of TMS had already been included in the bundle, Mr Stokes' letter of 30 March 2010 to Mr and Mrs Godfrey was similarly worded to the letter of reply to Mr Oztoplu. Furthermore the letter of 17 November 2010 from Mr and Mrs Godfrey to Mr Stokes had also been included within the bundle and the emailed reply of 22 December 2010 did not raise any relevant service charge issues.

71. With regard to the annual buildings insurance premiums, the applicants had queried the costs incurred over a total of 6 years including the estimated premium for the 2010/2011 year. The Tribunal analysed the various income and expenditure accounts and noted the insurance premiums to be somewhat different from the invoiced figures as shown in the schedule below.

| Financial Year | Actual Charge in Accounts | Invoiced Figure |
|-----------------------|----------------------------------|------------------------|
| 2005/2006 | £5,250.00 | £5,538.84 |
| 2006/2007 | £5,515.00 | £5,871.17 |
| 2007/2008 | £5,991.00 | £6,311.51 |
| 2008/2009 | £6,489.00 | £6,816.42 |
| 2009/2010 | £7,220.00 | £7,157.24 |
| 2010/2011 (budgeted) | £7,750.00 | £6,999.00 (actual) |

72. The Tribunal acknowledge that the Landlord's agents had only used one broker and consider it would be preferable to be provided with at least two alternatives in the future. The Tribunal did, however, conclude that the alternative quotations obtained by the Applicants were not cover on a like for like basis. The Respondent had taken the time and trouble to go back to Mr Stott of Torbay Insurance Services and a detailed explanation had been provided in an email from Mr Stott to Mr Stokes and Mr Holmes dated 22 December 2010. The Tribunal accepts the comments of Mr Stott concerning

the Fortis quotation of 27 August 2010 which was subject to "no losses within the last 5 years". The Tribunal also accepts that it would not be possible to switch policies in any event until the pending claim had been settled. It would seem that Seaway Insurance Services were not armed with all the necessary information and were therefore unable to obtain competitive quotations on a like for like basis. The Tribunal have noted in particular the wording in the Fortis Property Owners Commercial quotation of 27 August 2010 "the buildings being only constructed with incombustible materials with less than 10% of the roof being felt or asphalt on combustible decking".

73. On the basis of the information provided, this Tribunal therefore concludes that the insurance premiums paid over the 5 years 2005/06 onwards and the actual figure for the 2010/2011 year are not unreasonable.

74. In relation to the Signage costs of £1,564 incurred in the 2008/2009 year Mr Oztoplu originally suggested that a figure of £705 would be appropriate, Mr Oztoplu explained to the Tribunal the difficulty in obtaining quotations retrospectively but did obtain 3 quotations from Ace Signs, Signs South West and Touchwood Signs. Those quotations were obtained during the period May – November 2010 whereas the Signage was completed and erected during the 2008/2009 year. No alternative quotations were obtained by the Management and no consultation was undertaken with the Leaseholders although this was not required by law. The Tribunal acknowledges that Mr Oztoplu did email detailed measurements and a specification to the sign companies and the specification from Signs South West refers to all trays having 50mm returns being of powder coated burgundy with lettering applied in gold. The Sign South West quotation amounted to £981.13 inclusive of VAT. Furthermore, the Touchwood Signs specification referred to all trays finished in burgundy allupanel with allupanel defined as a composite sheet of aluminium and polypropylene. Finally the Ace Signs quotation does refer to finished burgundy and gold and aluminium posts and caps. That quote amounts to £1,018.72 inclusive of VAT.

75. This Tribunal concludes that through competitive tendering the Managing Agents would have been able to obtain a lower quotation even taking into account the design costs and therefore concludes that a figure of £1,000 including VAT would have been reasonable. It is therefore determined that the Applicants shall be entitled to a refund in the sum of £564.

76. In relation to management fees, these amounted to an actual figure of £6,278 during the 2009/2010 year and Mr Oztoplu has suggested that a lower figure of £5,510 would be more reasonable. Management costs are estimated at £6,345 for the 2010/2011 year and Mr Oztoplu has suggested that a more reasonable figure should be £5,785. With regard to the management generally, the Tribunal feels that it would be good practice to offer a general meeting for the Residents and there does appear to have been some lack of informal contact in the past. The Managing Agents have, however, taken the trouble to undertake a complete review of these during 2009 and this Tribunal accepts the findings of that review. The alternative quotations obtained by the Applicants were not found to be comparable. The Tribunal therefore finds that the management fees incurred in the 2009/2010 year were not unreasonable and that the budgeted figure for the 2010/2011 year is also not unreasonable.

77. With regard to emergency lighting, works were completed by Kevin Hurley in the sum of £4,382 as per the quote of 10 January 2010. Mr Oztoplu's own calculations amounted to £3,300 including VAT and a sum of £400 for consumer units. The alternative lighting scheme would not comply with British Standards. There was no issue concerning the lease and the works completed conformed with both British Standards and Mr Evans' report. Furthermore, the works completed were all priority 1 in the executive summary i.e. to be completed as soon as is reasonably practicable – 0-3 months. Mr Holmes did advise that another higher quotation had been obtained, although no copy was available for inspection. Having regard to the nature and extent of the works and compliance issues, this Tribunal has concluded that the costs incurred for wiring including installation of emergency lighting and fitting consumer units were not unreasonable.

78. With regard to the level of annual provision for reserve funds, the Respondent did distinguish between reserve funds and a sinking fund and helpfully referred the Tribunal to Clause 5(a) (iv) of the Lease "within 14 days of demand to pay to the Landlord 1/36th part of any sum of sums actually expended by the Landlord for which it might be necessary to expend in performance of the service obligations which expenditure the Landlord cannot meet from funds in hand".

79. Mr Oztoplu suggested a contribution of £3,000 per annum, but this only related to non predictable expenses. The Respondent stated that they were about to commence a Section 20 Consultation procedure with regard to proposed replacement felt roofing and the reserve funds would be insufficient to cover the cost. There would therefore be a shortfall. The 10 year plan also refers to external redecoration, internal redecoration, carpets and new sensor lighting. Reference is also made to tree surgery and tarmac renewal. The funds provision total on the plan amounts to £61,195 although the emergency lighting has now been completed which leaves a balance of £56,813. The Tribunal therefore concludes that it would be prudent to maintain a reserve fund level of at least £5,400 per annum and that that sum already charged in the 2009/2010 year was not unreasonably incurred.

80. With regard to the emergency line under the provisions of Clause 6 (j) the Landlord is permitted to do such other acts or things as may reasonably be necessary or desirable for the maintenance of the building and the estate and for the comfort and convenience of the occupiers. Whilst there would appear to have been a general lack of informal consultation with the Leaseholders there was on the other hand no legal requirement to consult. The Tribunal did consider that if a flat in the scheme was sub-let it would be important to have such a facility. The Tribunal have considered the call out rates which do, on the face of it, appear rather high however, this is a nationally approved scheme supported by ARMA and the Landlord has chosen to join this reputable scheme with this nationally known firm. Although no one has actually used the scheme to date, the Respondent did make a good point in that this would be the only way to guarantee a genuine 24 hour call out service 365 days a year. The Respondent did concede that should a sufficient number of Leaseholders object, the scheme would be withdrawn.

However, this Tribunal does find that the sum of £10 plus VAT per flat per annum has not been unreasonably incurred. The Tribunal has also noted the nil increase in costs for 2011 and has noted that the scheme has been welcomed on other blocks taking part.

81. With regard to gardening the Applicants raised no objections to the standard monthly costs but did object to the extras. Following the Hearing, the Tribunal received copies of invoices for costs incurred with Hayleys Ground Maintenance and Contract Cleaning. Invoice number 10878 dated 30 June 2008 amounted to £338.55 plus VAT. This invoice, however, included the sum of £120 paid to a tree surgeon, the labour cost therefore amounted to £218.55 plus VAT, a total of 16 hours of labour were charged for in order to cut overhanging branches and cut and remove shrubs from the blind spot on Stitchill Road. That amounts to an hourly rate of £13.66 plus VAT which is not considered by the Tribunal to be unreasonable.

82. Invoice 12620 dated 31 July 2009 relates to trimming hedges and removing clippings from the site in the sum of £68.50 plus VAT. Tipping charges however amounted to £12.50. The 4 hours of labour were charged out at £14.00 plus VAT per hour which the Tribunal did not find to be unreasonable.

83. With regard to the budgeted costs for electricity, Mr Oztoplu has disputed the reasonableness of the budget. The Respondent has stated that the average cost over recent years has amounted to £1,823 per annum, this Tribunal therefore finds that the increase to £2,500 is unreasonable and that the budget figure should be £2,000.

DECISION – Case 2

84. Reference is made at Para. 19 of these Reasons to the Decision at the Hearing that matters relating to administration charges and costs should be dealt with by way of written representations after the Hearing, with the Applicant to provide a Written Statement to the Tribunal within 28 days of the hearing date and the Respondent to be allowed a further period of 28 days to submit comments and observations on the Applicant's Statement.

85. Further correspondence (dated 2 and 5 February, 17 and 25 March 2011) from the Applicant and 23 February 2011 from the Respondent has duly been received by this Tribunal which has carefully considered the additional material supplied by the Parties.

86. The Commonhold and Leasehold Reform Act 2002 (Section 158 and Schedule 11) contains provisions relating to "administration charges" similar to those relating to payability of service charges. They apply to any administration charge payable after the 30th September 2003 and are intended to cover certain specified charges which would "or might" fall outside the definition of "service charge" in Section 18 of the Landlord & Tenant Act 1985. Charge must be provided for by the lease and must be "variable".

87. The Tribunal have duly considered the provisions of the lease and find that charges are provided for under Clauses 6(i) and 6(j). This Tribunal also finds that such charges are "variable".

88. The Tribunal have considered the additional representations submitted by the Applicant, Mr Oztoplu, and have noted in particular reference to Clause 6(h)(1) of the lease "procure that the service charge shall be duly audited by professional Auditors who shall certify the actual expenditure during each accounting year and whose certificate shall be conclusive as to the expenditure". Having considered the Applicant's further representations, the Tribunal have decided that this matter is not relevant to the reasonableness of expenditure, either under service charges or administration charges and importantly, the Tribunal has no jurisdiction to comment on that lease provision.

89. The Applicant in the further submissions has asked the Tribunal to make a determination under Schedule 11, Paragraph 5 of the Commonhold and Leasehold Reform Act 2002 if the administration charges of £60 and £10.65 interest per flat as demanded are payable and if payable, how much is payable.

90. Firstly, the Tribunal has had to consider whether a proper demand for payment of administration charges, accompanied by a summary, has been properly provided. In relation to this matter the Tribunal considers that all administration charges had been properly notified by both letter and statement and additionally that interest is chargeable under the terms of the lease at Clause 4(n).

91. The Tribunal have considered the interest calculations at Page 288 of the Respondent's submissions and find the sum of £10.65 to have been accurately calculated.

92. In all the circumstances, therefore, the Tribunal has decided that an administration charge of £20 on three separate occasions is reasonable and the interest of £10.65 is reasonable, totalling £70.65 per flat.

93. Finally, on the question of additional representations, that these should only relate to administration charges and the Tribunal has therefore not been able to consider any late representations relating to other matters previously aired at the Tribunal Hearing.

DECISION – Case 3

94. With regard to costs, applications have been made insofar as these are relevant to both Case 1 Service Charges and Case 2 Administration Charges.

95. The Tribunal has considered the Applicant's further submissions with regard to limitation of costs and has noted in particular the Applicant's request to the Tribunal to determine against Codesurf Ltd the inclusion of costs of attending the Tribunal Hearing in the Clarendon Court Service Charges. The Applicant specifically stated "I feel that they must bear the consequences of their own mistakes and intransigence".

97. With regard to costs generally, this Tribunal has exercised its discretion having regard to just and equitable in all the circumstances.

“Circumstances” include the conduct and circumstances of all Parties, as well as the outcome of the proceedings in which they arise.

98. The Tribunal has received copy documentation from the Respondents relating to costs incurred at the LVT Hearing in the sum of £2,532 inclusive of VAT and cost incurred relating to the preparation of the second LVT Bundle in the sum of £895.20 inclusive of VAT. The total costs claimed therefore amount to £3,427.20 inclusive of VAT.

99. The Tribunal has also been provided with a Timesheet relating to input from three Managers.

100. The Tribunal believes that the Applicants would be over-charged in terms of representation should the full sum be allowed. Mr Stokes, as a Professional Property Manager, and also as Dedicated Manager for this particular block, would have had personal knowledge of the day to day conduct of this case and would as the Manager have been familiar with all the issues. The Tribunal therefore finds that it would be more just and equitable for a charge of approximately 60% of the incurred costs to be made in this instance, i.e. £2,500 inclusive of VAT.

101. Finally, the Tribunal have noted the latest correspondence received from the Applicant dated 25th March 2011. The Tribunal concludes that whilst it has considerable sympathy with the Applicant relating to the further issues raised, these matters were outside the Tribunal’s remit as we have no jurisdiction to deal with these additional matters.

Signed:
T E Dickinson BSc FRICS IRRV (Hons)

A Member of the Leasehold Valuation Tribunal appointed by the Lord Chancellor

Dated: 29 March 2011

