Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985, as amended

Sections 27A

Ref: LON/00AP/LSC/2005/0091

Property:	Flat 1, 35 Mount Pleasant Road, London, N17 6TR
Applicant:	Hyde Lane Investments Limited
Respondents:	Mr Chuba Ifeanyi Obiora Obi Mrs Ann Ngozi Obi
Appearances:	Mr Charles Battersby (Messrs Rayners, Managing Agents) Mr Robert Sawyer BSc (Hons) (Messrs Rayners) Mrs Wendy Geal (Property Manager) (Messrs Rayners) For the Applicant Mr C Obi (on behalf of himself and Mrs Obi) For the Respondents
Date of Hearing:	21/22 September 2005
Date of Inspection:	2 November 2005
Date of Decision:	22 December 2005
Members of the Tribunal:	Mr S Shaw LLB (Hons) MCIArb Mr J Avery FRICS Mrs G Barrett JP

DECISION OF THE TRIBUNAL

1. Introduction

This case involves an application by Hyde Lane Investments Limited ("the Applicant") for a determination of liability to pay service charges in respect of Flat 1, 35 Mount Pleasant Road, London, N17 6TR ("the property"). Mr C I O Obi and Mrs A N Obi ("the Respondents") are the long leaseholders of the property, having taken an assignment of the lease in June 1994. The lease is dated 26 October 1979 and is a for a term of 125 years from 25 March 1979. The unexpired term is thus 99 years.

2. The property comprises a one bedroom flat in a converted terraced property in Tottenham, North London. The contention on the part of the Applicant is that the Respondents have paid no service charges at all since having taken the assignment of the lease in June 1994, although ground rent has been paid. It is the Applicant's contention that no or no significant service charges were incurred until the service charge year ending 31 March 1998, and it is for this year and each subsequent year to date that the Applicant seeks a determination. A pre-trial review took place on 8 June 2005 and, in consequence of the directions given on that occasion, written Statements of Case were prepared both by the Applicant and the Respondents, and the Applicant has prepared three bundles of documents for the Hearing (which were incorporated into a single file) and which bundle was substantially used during the course of the Hearing together with other documents submitted by both parties and a further bundle prepared by the Respondents. During the course of the Hearing, as a result of some confusion which will be referred to briefly, it became apparent that although the first named Respondent (who represented himself and his wife at the Hearing) had made detailed representations in respect of many matters arising in the Applicant's claim, he had not made representations in respect of some major works which took place and were charged during the service charge year ending March 2002. These works were very much in issue and accordingly the Tribunal afforded the Respondent the opportunity of making further representations in this respect in writing. Those further representations were received by the Tribunal and were dated 26 September 2005. The Applicant replied to those representations, again in writing, in a document dated 12 October 2005. There were some further representations submitted by the Respondent, for which no direction had been given, and which in any event do not

add greatly to that which he had already advanced very fully during the oral Hearing. The members of the Tribunal inspected the property on 2 November 2005.

Application for Adjournment

3. At the start of the Hearing on the 21 September 2005, Mr Obi (who will be referred to simply as "the Respondent" hereafter) applied to have the Hearing adjourned because he said that there was further material which he had been requesting from Mr Battersby of Messrs Rayners, the Managing Agents, to supply, but which had not yet been supplied. The material requested was essentially related to claims which the Respondent contended either could or should have been made pursuant to insurance policies for various works carried out and which, if made, would mean that the Applicant was seeking double recovery. He had also sought details as to the commission received by Messrs Rayners for insurance cover placed but none had been supplied. In addition, he wished further to investigate how it came about that a sum of £2,287.00 had previously been paid to the Applicant by the Respondent's mortgagees (Royal Bank of Scotland) several years previously but, on the Respondent's evidence, without the Respondent's permission. Finally he said that he wished to cross-examine certain contractors about their work but that these contractors had not responded to his correspondence.

4. Each of the allegations was disputed on behalf of the Applicant and both Mr Battersby (the proprietor of Messrs Rayners) who are the Managing Agents – and also a director of the freeholder applicant company and Mr Robert Sawyer BSc (Hons), a building surveyor employed by Messrs Rayners, stated that they were available to deal with those issues. In response to them, the Respondent indicated that he also wished to approach other leaseholders in the building of which the property forms part, possibly to support his case. After having considered this application, the Tribunal concluded that it would not be in the interests of justice and the overriding objective to adjourn the matter at this stage. Most of the matters raised by the Respondent seemed to the Tribunal to have been capable of having been dealt with prior to the Hearing, and given the further time and costs involved in adjourning the two day Hearing set aside, coupled with the fact that witnesses were available before the Tribunal to deal with the contentions made by the Respondent, the application was refused.

Limitation and Strike Out Issues

5. During the course of the Hearing, two other matters arose which are perhaps appropriately dealt with also at the outset, since they affect the issues later to be considered by the Tribunal. In both written and oral submissions, the Respondent raised the fact that proceedings for alleged arrears of ground rent and service charges had previously been commenced on behalf of the Applicant in the Edmonton County Court under Claim No ED007451 on 6 September 2000. In those proceedings the sum of £2,400.72 was claimed in respect of such arrears alleged due as at that date. A series of orders was made in the context of those proceedings, which orders had variously to be amended under the slip rule, since they apparently contained inaccuracies. However, the final order of 16 October 2001 (page 115 in the third bundle of the Applicants) provided that:-

> "Unless the Claimant makes an application to the Leasehold Valuation Tribunal under Section 19 of the Landlord and Tenant Act 1985 to determine whether the service and maintenance charges claimed in this action are of a reasonable amount and/or for works and services that were carried out to a reasonable standard by 4pm on 12 November 2001 the Claim will be struck out."

6. It is common ground that no such application was made to the Leasehold Valuation Tribunal. The Applicant's representations in writing through its solicitors, namely Messrs Kenwright, Walker & Wyllie, are to the effect that the application was not made because it was hoped that the position might be compromised as between the parties. In the event no such settlement was reached. It is conceded in the letter dated 30 September 2005 from the Applicant's solicitors to the Tribunal that the result of this is that the claim was struck out. However, on behalf of the Applicant it is contended that a procedural strike-out of this kind would not preclude the institution of fresh proceedings either in the County Court or before this Tribunal, there having been no determination of the matter on the merits. The Respondent contends, to the contrary, that the effect of the Order made by the County Court on 16 October 2001 is that any claim for service charges which were the subject matter of the earlier County

Court proceedings (that is to say service charges for the period up to the end of the service charge year for 2000 and the beginning of the year 2001) is now incapable of being pursued, in the light of the aforesaid strike-out.

7. The view of the Tribunal on this matter is that, as a matter of law, the contentions made on behalf of the Applicant are correct. It seems to the Tribunal that the effect of the automatic strikeout of the proceedings before the County Court was to bring those particular proceedings to an end. However, it does not seem to the Tribunal that the effect of a procedural strike-out of that kind would have been to preclude the issue of any fresh proceedings for the monies previously claimed (certainly before this Tribunal), there having been no determination of the issue on the merits and thus no issue estoppel. Subject to questions of limitation of action, therefore, the Tribunal finds that it does indeed have jurisdiction to deal with the claims for determination of liability to pay service charges for the years set out in the application.

8. The related issue is one of limitation. In his written statement of a case dated 27 July 2005 at page 105 of the Applicant's third bundle, the Respondent contends that the appropriate period of limitation in this case is six years. The effect of this would be (as the Tribunal understands the Respondent's case) that insofar as the Applicant seeks a determination for any service charge year prior to 1999, the claim would be statute barred by virtue of Section 5 of the Limitation Act 1980. It seems to the Tribunal that the limitation issue is fairly academic in this case since in fact determinations are only sought from the service charge year ending 31 March 1999, but in any event the Tribunal accepts the submissions made in writing in the Applicant's statement of case dated 18 July 2005 at page 84 of the third bundle. The lease in this question is in the form of a Deed made under seal. The service charges are not reserved as rent, and therefore the special provisions relating to rent and limitation do not apply to them, and as a result the appropriate limitation period under Section 8 of the 1980 Act is 12 years, bringing all the matters upon which determinations are sought within the appropriate limitation period.

9. As indicated above, the Respondent has raised various matters in respect of the service charge made for each accounting year from the year ending 31 March 1999 to date. It is proposed therefore to deal with these matters in the context of each service charge year, to give a brief account of the nature of the challenge and the evidence

supporting such challenge, the reply to the challenge from the Respondent and then the finding of the Tribunal. Very helpfully, from the point of view of the Tribunal, the Respondent prepared computer-produced spreadsheets which correlated to the service charge account for each particular year, and stipulated the items disputed giving the appropriate reasons for dispute. These spreadsheets were used during the course of the Hearing, and will again be employed below in analysing the issues.

Service Charge Year Ending 31st March 1999

10. The first item challenged this year was the sum of £80 in respect of a repair to the answerphone at the property, of which the Respondents contribution was £13.33. He challenged the charge on the basis that he did not understand what the charge was for and also contended that his lease made no provision for him to pay for such work. In response the Applicant produced the relevant invoice (page 13, first bundle) from P G Upton, Building and Decorating Services, which explains that the work is for rewiring electrics to the answerphone, the door entry system and main lighting to the stair and hallway for which the charge has been made. In addition, the Applicant points out that at Clause 3(b) the Landlord covenants amongst other things to maintain repair, redecorate and renew the service conduits and that these service conduits include by way of definition in the recitals to the lease *"any electrical or mechanical door opening system from time to time installed in the building"*. In the circumstances, the Tribunal is satisfied that this charge has been sustained by the Applicant, and is both reasonable and recoverable.

11. A charge for hire and clearance of wheeled bin was challenged by the Respondent, of which his proportion was £56.67. He contended that the relevant bins were or should have been supplied gratuitously by the Council. The Applicant in response pointed to the relevant invoice from the London Borough of Haringey (page 14, bundle 1) which clarified that the charge was for the hire of a 1,100 litre wheeled bin and also for the clearance of this bin during the year. It seems that a larger than usual wheeled bin was provided in order to serve all of the six flats within the building and this coupled with the relevant documentary evidence again, so far as the Tribunal was concerned, appeared to be a reasonable explanation for the charge. The Tribunal finds that this charge is accordingly established by the Applicant.

12. A further small charge for £183.30 (of which his proportion was £30.55) was challenged by the Respondent in respect of a charge for unblocking a gulley waste pipe. He wished to have more evidence in relation to the charge which he conceded might potentially be genuine. The relevant invoice was indeed supplied by the Applicant (page 15 of bundle 1). The Respondent having seen the invoice again queried it on the basis that it was for a clearance of kitchen waste which may not have emanated from his own flat but from one of the other flats in the building. He further suggested that this may have been covered by domestic insurance. The Tribunal was informed that the insurance cover was not effective for maintenance jobs of this kind (which the Tribunal accepted) and the further challenge that the blockage may not have come from the Respondent's own flat did not seem to be to the Tribunal a good reason for disallowing this charge, which is a legitimate and reasonable charge within the terms of the statute and the Respondent's lease.

13. The Respondent challenged a further small sum of £105.75 (his proportion was £17.63) for the preparation and review of the annual accounts. This was not one of the most vigorous challenges of the Respondent who simply indicated that he challenged it because it had not previously been charged in other years. He indicated that if it was a charge recoverable under the lease he would accept it. Upon examination, the Tribunal does not in fact think that the lease is especially well drafted for recovery of this sum, but that it is just about recoverable pursuant to the provision at Clause 2(f)(i) which requires the tenant

> "to contribute and pay the due proportion of the costs and expenses of the service obligations ..."

"The service obligations" are defined in the lease as *meaning "the obligations to provide services (if any) and other things undertaken hereunder"*. It seems to the Tribunal under the preparation of these accounts arguably do fall within the category of the provision of a service or *"other thing"* undertaken pursuant to the lease and are therefore recoverable.

14. The Respondent challenged his proportionate contribution (£123.38) of the management fee charge of £740.25 for this service charge year. He argued that because there had been no particular works carried out that year, the charge should

recoverable under Clause 2(1)(ii) of the lease. Again, the Tribunal accepts this

17. Accordingly for this service charge year, the Tribunal finds that each of the sums raised are indeed recoverable subject to reduction of the management charge from £123.38 to £111.62.

18. **Service Charge Year Ending 31 March 2000**

With two exceptions the challenges made by the Respondent to the service charges for this accounting year are the same as those for the preceding year. The figures are of course slightly different (and can be found in the service charge statement at page 25 of the first bundle) but the principle of the challenge in each case is the same and the manner in which the Applicant has responded to the challenge is also identical to these particular heads under the preceding year. Specifically the similar matters are the charges in relation to the preparation of the accounts, the management fees and surveyor's fees and the reserve fund request for future expenditure. For the same reasons as indicated in respect of the preceding year, the Tribunal finds that these charges, respectively, are established by the Applicant. The two remaining items are for one very small and one much larger charge.

19. The small disputed charge is the cost of £172.90 (of which the Respondent's share is £28.82) for the cost of replacing a lock and keys for the security external door. It is in fact conceded on behalf of the Applicant in its written statement of case dated 18 July 2005 that this charge has been levied in error in that it relates to works carried out at another flat in the building exclusively and that the charge should not have been allocated to the Respondent. It follows that his proportionate contribution in the sum of £28.82 is irrecoverable and must be credited to him.

20. The much larger figure disputed is that in respect of major Section 20 works for which an overall sum of £11,342.75 appears in the service charge account for this year. However, the works were not in fact proceeded with that year and credits were applied in the same service charge account for that year effectively neutralising the claim for this sum. Accordingly, this dispute does not arise specifically in this year but will be dealt with later on, when the charge does appear in a later account.

21. The only other matter arising in relation to this service charge year is that the Applicant has purported to increase the management fee from £95 per annum plus VAT to £115 per annum plus VAT. In ordinary circumstances, this would not be

particularly exceptional; however, after having inspected the property, the view of the Tribunal was that the level of management appears not to have been very high at this property (in a manner which will be explained later in this decision) and in the circumstances we did not consider that any uplift was justified. Accordingly the sum of £95 plus VAT, totalling £111.62 is allowed as being reasonable for management during this service charge year as opposed to the figure of £129.25 originally claimed.

22. **Service Charge Year Ending 31 March 2001**

A number of items charged are disputed for this year. First, the sum of £630 of which the Respondent's proportion is £105 has been charged for an item headed "Guttering Works". The Respondent disputes this both in terms of quantum and necessity. In response the Applicant directed the Tribunal to an invoice from Reyno Construction at page 47 of the first bundle. In fact, on examination, this invoice covers works to two gullies in the sum of £340 and a further £290 (making the total of £630) in respect of the rebuilding of a front wall which had become dangerous. The Tribunal inspected the property on 2 November 2005 and was unimpressed with the state of external decorations generally. The front wall is not in a good state of repair as is illustrated in photographs taken by the Respondent and seen by the members of the Tribunal on our inspection. If this work was indeed done in June 2000 (as is suggested by the payment authorisation date on the invoice), it would appear to have been poorly carried out as is demonstrated by the crumbling bricks and poor pointing coupled with discolouration, to a degree which one would not have expected within a five year period. In the circumstances the Tribunal does not consider that the £290 element of this invoice has been in respect of works carried out to a reasonable standard and would allow only that £340 in respect of the gutter work. This would reduce the Respondent's proportionate contribution to £56.67 (from the £105 demanded).

23. The next item challenged is £195 (Respondent's contribution £32.50) in respect of legal fees. The Respondent totally disputes this sum and puts the Applicant to full proof. In the event, though requested by the Tribunal, the Applicant was unable to point to an invoice in any of the bundles explaining this charge. The lease does make provision for recovery of legal costs incurred in or in contemplation of proceedings under Section 146 of the Law of Property Act 1925 – but it was not suggested on

behalf of the Applicant that this was such a charge. In the absence of any clear explanation for this charge, the Tribunal disallows it in its entirety.

24. The Respondent disputed a claim for £39.46, being his proportion of the charge made by Rentokil for dealing with a rodent problem which had apparently emanated from Flat 2 in the building. The Respondent argued that this was an individual problem emanating from a particular flat and was not a communal problem chargeable to the service charge account. It is correct that the invoice makes reference to Flat 2 at the building and it is difficult for the Tribunal to make a finding in relation to this claim in the light of the fact that the Applicants contends that this was indeed a communal problem. The Tribunal takes cognisance of the fact that very often rodent infestation may emanate from one particular part of the building, but becomes a wider problem, and on balance we take the view that this sum is recoverable.

25. Two invoices from a company called Trinity Construction Services Limited in the sums of £88.13 and £329.00 (Respondent's contributions £14.69 and £54.83) have been charged to the account in respect of roof works and repair of gutters. The first charge is for attending at the property following a request to repair guttering at the rear. The attendance proved to be abortive because insufficient equipment had been brought to reach the higher level and it was felt that the scaffolding was necessary. It seems to the Tribunal that this could have been ascertained beforehand by reference to the Applicant, or the Applicant could have informed the contractor. It does not seem to the Tribunal that this sum has been reasonably incurred and is therefore disallowed. The second sum is for rectifying a leaking roof by replacing missing tiles at high level. No evidence was forthcoming from the Respondent upon the basis of which he could seriously challenge this claim either in terms of liability or quantum. His only real attack upon it was that it was a repair which could or should have been covered by insurance. He produced his own domestic Sainsbury's insurance policy as a reason for suggesting that this type of cost is recoverable under such a policy. On behalf of the Applicant it was explained that the comparison with an ordinary domestic home insurance policy is not especially helpful in the context of insurance of a tenanted multi-occupied property, and that different premiums and different conditions will apply. The Tribunal accepts this submission, and in the absence of

any firm evidence that the invoice is not bona fide or other expert evidence to the effect that the repairs were not required, the claim as to £329 is allowed.

26. **Service Charge Year Ending 31 March 2002**

During this service charge year there are some minor disputes and one major challenge. The minor disputes are in respect of sums of £25.46 and £141.00 in relation to the review and preparation of accounts and management fee charged respectively. The Tribunal is of the view that the charge made for the review and preparation of accounts is reasonable and has been reasonably incurred for the same reason indicated in respect of previous years. So far as the management fee is concerned, the sum charged has been calculated on the basis of a unit charge for each flat of £120 per annum plus VAT, coming to a total of £846.00, in respect of which the Respondent has been charged a one-sixth proportion in the sum of £141.00. Again, for the reasons indicated above, the Tribunal is of the view that a sum in principle is recoverable but that, given the extent of management and the conditions as viewed by the Tribunal on inspection, a more reasonable fee would be £95 per annum plus VAT amounting to £111.62.

27. The major challenge, in respect of which further representations in writing were invited (and received), is in relation to the major works which were carried out during 2001/2002 and which feature in the statement of income and expenditure for this year in the total sum of £11,130.19. In fact the Respondent did not make any previous submissions in relation to this because (as understood by the Tribunal), as a result of earlier demands made on-account, and sums demanded in respect of the reserve fund, (which latter sums have been allowed by the Tribunal), there was no net claim made against the Respondent for this year. However, of course, the cumulative effect is that he is being charged his proportionate sum for these works, and for this reason the Tribunal invited the further written representations referred to above, and inspected the property.

28. The Applicant made written representations under cover of a letter dated 12 October 2005, and in particular supplied the Tribunal with the specification for external decorations and repairs for which an overall sum of £11,130.19 was charged as appearing in the statement of income and expenditure for this year. This sum is made

up of the contractor's (Reyno Construction) final account of £8,022.50 together with Rayner's surveyor's fees of £1,450 (which would appear to be just over 18%) together with VAT. The figures produced by the Applicant indicate that from this sum is to be deducted £3,500 which had been accumulated in the reserve fund, and which had been demanded in previous years, leaving a balance of £7,630.19 in respect of which each leaseholder was demanded to pay £1,271.70 (one-sixth).

29. The Respondent's submissions in respect of these works fall into two main categories. The first are to the effect that the condition of the premises today demonstrates that the works were not carried out at all. He points to numerous heavily chipped and damaged sections of the brickwork at the front of the building, the unmaintained and uncleaned walls to the rear of the building, and the fact that the back garden has not been maintained for many years. His second main contention is that it is possible to obtain insurance cover for ordinary wear and tear of houses. He contends that the Applicant should have obtained such cover and that its failure to do so amounts to *"deliberate dereliction of duty, negligence and maladministration."*

30. The Applicant in its representations points out that the works were carried out over three and a half years ago, and there will inevitably be some deterioration in paintwork during such period - and otherwise contends that the sums incurred were reasonable and the works carried out to a reasonable standard.

31. As indicated above, the Tribunal inspected the property on 2 November 2005. It has to be said that the Tribunal was unimpressed by the condition of the property, which does not speak well for the quality of any works which may have been carried out during 2001/2002. The photographic evidence supplied by the Respondent to the Tribunal of disrepair and poor quality work was borne out by the inspection of the Tribunal. Such work as was carried out appeared to be to the front of the property only (although the specification does not make this clear). Certainly it appeared that no work had been done to the rear of the property, or that if it had been done, it had been very poorly carried out. Some paintwork had conspicuously not been carried out at the front of the property, and that paintwork which had been completed had been unprofessionally applied with paint splashes to the brickwork. Some of the work, especially the replacing or repair of brickwork and the re-pointing of the copings, again either seems not to have been done or done to a very poor standard. In general,

these photographs speak for themselves, and given that the work was done about three and a half years ago, the Tribunal would not have expected deterioration in the property to this extent over this period of time. All in all, whilst the Tribunal was prepared to accept that some work was carried out, it did not seem to the Tribunal that value has been obtained for money nor that the works have been satisfactorily supervised or overseen. In all the circumstances therefore the Tribunal is of the view that 50% of the cost of these works should be allowed with the result that the figure charged of £8,022.50 should be reduced to £4,011.25. Given the standard of works referred to, the Tribunal considers that surveyor's fees in the order of 10% are more appropriate (£401.12) bringing the total charge to £4,412.37 to which VAT should be added in the sum of £772.16. This produces a grand total of £5184.53. The Respondent's one-sixth contribution to these works should therefore be £864.08.

32. So far as the contention that these works could have been covered by some form of insurance policy is concerned, the only evidence put forward by the Respondent of such a policy was his own domestic insurance policy with Sainsbury's, to cover things like internal appliances and amenities. The Tribunal did not find this a helpful comparison, nor did it seem to the Tribunal, applying its own experience, that this type of repair and maintenance work (being in the nature of wear and tear) would normally be covered by landlord's insurance. An alternative to piecemeal repairs would have been some form of maintenance contract (as was adopted in the subsequent year) but this would of course have added to the overall service charge, and in all the circumstances, the Tribunal was not persuaded by the Respondent in respect of this particular challenge.

33. **Service Charge Year Ending 31 March 2003**

As mentioned above during this service charge year, the Applicant engaged the services of a company called Linaker Limited, to which company a sum of £124.00 per annum was paid in order to cover a preventative maintenance scheme. The Respondent in his spreadsheet indicates that he requires *"more information"* about this charge. It seems to the Tribunal that this information has now been supplied, that the charge is reasonable, (his proportion is £20.66) and is a charge consistent with the reduced management fee which the Tribunal has allowed for previous years and will be allowing for this year. The charge is therefore allowed.

34. Apart from the recurrent challenges in respect of the charges made for the preparation of accounts, management fee, surveyor's fees and reserve fund (all of which are rejected save for the adjustment in respect of the management fee to £95 plus VAT), the only other main challenge for this service charge year is a significant challenge in relation to Section 20 works carried out to the chimney stacks at the property. There were some initial works followed by some additional works in relation to these chimneys and the charges fall within this service charge year and the following service charge year ending 31 March 2004. So far as this service charge year is concerned, a charge of £3,950 plus VAT of £691.25 totalling £4,601.25 has been made in accordance with the tender analysis set out at page 149 of the third bundle and given by the contractors, Chequers Building Services. To this sum a total of £394.50 to cover management and surveyor's costs plus VAT has been added giving a total of £5,035.75 which is the figure appearing in the statement of account for this service charge year. That figure has been further broken down and explained in the analysis at page 80 in the first bundle and also by Mr Sawyer in his statement dated 30 August 2005 appearing at page 130 in the third bundle.

35. The Respondent's essential challenge to this charge was that he had spoken to a builder who had told him that although there was damage to these chimney stacks, it was caused by wind and therefore should be covered by insurance. He questioned whether the Applicants had referred the matter to the insurers and argued that they had failed in their duty by not doing so. He conceded that he had no evidence that the work had been poorly carried out, nor did he have any alternative quotations to put before the Tribunal for an alternative cost of work.

36. Mr Sawyer on behalf of the Applicant said that he had himself mounted a ladder and looked at the state of the chimneys to the best of his ability from that vantage point, after having been alerted to damage by another leaseholder in the building. Although he was not prepared to leap from the top of the ladder onto the roof, he was satisfied from what he could see that the disrepair was not sudden storm damage but was in the nature of deterioration over a period of time, and fair wear and tear. In addition, he inspected the work after completion and was satisfied that it had been properly carried out.

37. On the balance of the evidence therefore before the Tribunal, the Tribunal was prepared to accept that the work was not of a kind which would have been covered by insurance and that the works were carried out to a reasonable standard. On our inspection it was possible to see that some work had been done to the chimney although it was not easy to get a clear vantage point, nor clear view, so as to form any sensible independent conclusion. As indicated, the balance of the evidence is in favour of the Applicant in respect of this matter and certainly the pre-repair photographs suggest wear and tear rather than traumatic damage. Accordingly the Tribunal is of the view that this work was reasonably incurred and that the cost is also reasonable, save that there are some corrections to be made to the arithmetic appearing in the breakdown of figures at page 80 in the first bundle. The figures for the final account summary have been miscalculated and the original estimate figure of £5,035.76 should be adjusted to £4,977.01 and the additional works there referred to amount to £2,804.72 rather than £2,617.73. The addition of £4,977.01 in respect of the main works and £2,804.73 in respect of the additional works amounts to £7,781.74 for these works in total. The Respondent's respective proportion is £1296.95, made up of £829.50 in 2003 and £467.45 in 2004.

38. **Service Charge Year Ending 31 March 2004**

Apart from the additional works to the chimneys (which have been dealt with in the context of the preceding service charge year), a number of relatively small items are challenged in this service charge year. In particular, there are three invoices from Chequers Contract Services at pages 83-85 of the first bundle involving sums of £176.25, £223.25 and £258.50 (Respondent's contributions £29.37, £37.21 and £43.08) in respect of various gardening services and disposal of rubbish. The Respondent challenges these invoices on the basis that there has been no work carried out at the gardens for over five years. Mrs Geal of Messrs Rayners informed the Tribunal that the agents had been asked by the tenants not to carry out regular gardening services but to tend the garden "*as and when*" – presumably, when the state of the garden became unacceptable to the tenants. Certainly when the Tribunal visited the premises, the garden was in a very poor state, was overgrown and littered with rubbish and discarded furniture. However, these invoices are in respect of works carried out in the summer of 2003. The Tribunal was told that the work was certainly

done at that time and there are receipted invoices before the Tribunal. The Tribunal is of course unable to comment usefully upon the standard of work which may have been carried out at that time but, doing the best we could, and bearing in mind the relatively small sums concerned, we were not prepared to say that these invoices were in any way fabricated or unreflective of the actual work carried out and in the circumstances these charges are allowed.

38. The Respondent also challenged an invoice for £141 (his proportion £23.50) in respect of some work carried out by Chequers, the invoice for which appears at page 86 in the first bundle and involved unblocking a downpipe and replacing a hopper head and re-pointing around a window and arch. Again the Respondent queried whether the work had been done, (although he had no evidence in this regard) and also said that it could have been covered by insurance (but showed the Tribunal no evidence of a properly corresponding insurance policy). Again, and on the balance of probabilities, the Tribunal was satisfied that this work was done and that the charge is reasonable. In addition, a sum of £505.25 (Respondent's contribution £84.21) has been charged for a temporary roof repair carried out in January 2004 (see page 87 of the first bundle). Some detritus had to be cleared from the roof and general flat roof repairs carried out. No alternative quotation was submitted by the Respondent and again the Tribunal is satisfied that this was a reasonable charge.

39. The next challenged item, was a charge of £822.50 (Respondent's contribution £137.08) being the cost of repairs after water damage at Flat 6. The Respondent challenges this charge on the basis that if it was internal water damage within Flat 6, there is no reason why he should be charged for the work. If it was external damage then it should have been covered by insurance. The Tribunal does not have a great deal of information upon which to act in relation to this charge because the invoice itself contains no narrative as to the nature of the water damage repairs. We were informed on behalf of the Applicant that a claim had been made upon the buildings insurance policy but that it had been refused on the basis that there had been a lack of maintenance. It seems to the Tribunal that the burden is with the Applicant to satisfy the Tribunal that this charge is recoverable. At present there is inadequate information in relation to the charge. If the damage was indeed internal at Flat 6, then

it does seem that this should not be a charge levied against other leaseholders. If the damage was external, and was refused under the insurance policy because of poor maintenance, then it seems to the Tribunal that this maintenance is something which should have been picked up either by the main managing agents who are charging a management fee, or the preventative maintenance service (Linaker) for which again the leaseholders are being charged an annual fee. On balance, the Tribunal does not consider that it has sufficient evidence to sustain this charge and it is accordingly disallowed.

40. The Respondent finally challenged another small amount of £352.63 (to which his contribution was £42.11) for electrical repairs again by Chequers Building Services (see invoice at page 89, bundle 1) involving the replacement of a time-lag switch and some bulbs and the testing and leaving in full working order of the system. The Respondent felt that the charge was excessive and that since his maisonette does not share the staircase, he should not have to pay for this service. The latter complaint is obviously unsustainable; as to the quantum, although the charge is on the high side, the Tribunal did not take the view that it was unreasonable and in the absence of any alternative documentary evidence, we were satisfied that this was a reasonable charge.

41. <u>Summary and Conclusion</u>

During the course of the hearing, at the request of the Tribunal, the Applicant produced a document, under cover of a letter dated 21st September 2005, from its accountants (Elliot and Partners), setting out a summary of the gross costs, and the Respondent's share of the costs on an annual basis, since 1999. The Applicant has abandoned the request for a determination for the current year (no figures yet being available) and so the addition of the various credits and debits on the accountant's schedule for the years 1999-2004 produces a total sum claimed from the Respondent of £7130.49. The Applicant limited its claim to this figure (although on the Tribunal's calculations it is slightly less than the cumulative sums derived from the Annual Statements). The Tribunal has therefore adopted this figure, and the effect of the above findings can be seen set out in detail in the schedule attached to this decision. The result is that, from this figure of £7130.49, deductions totalling £1377.90 should be made, leaving a sum due of £5,752.59.

Legal Chairman: S.SHAW 

Dated: 22 December 2005