Leasehold Valuation Tribunal **LON/00AW/LSC/2006/0289**

London Rent Assessment Panel

Landlord and Tenant Act 1985 sections 27A and 20C

Address: 19A Queen's Gate, London SW7 5JE.

Applicants: Ms Jan Moir, not present but represented by Mr John McGowan

Respondent: Chalfords Ltd, represented by Mr Ivan Taylor of Techton Services

Also present: Mr Nick Rosenthal (2nd day only)

Tribunal members:

Mr T J Powell LLB (Hons)

Mr C Kane FRICS

Mrs A Moss

Application dated: 17th August 2006

Oral pre-trial review: 7th September 2006

Hearing: 27th November 2006

Decision:

Decisions of the Tribunal

(1) The Tribunal is satisfied that the service charges demanded in respect of cleaning, utility charges, health and fire safety, entry phone and insurance (the objection to water monitoring charges having been withdrawn) in each of the service charge years 2002 to 2005 were reasonable and that these costs were reasonably incurred and are payable by the Applicant;

(2) The Tribunal is satisfied that the interim service charges demanded in respect of professional fees and major works in each of the service charge years 2002 to 2004 were reasonable and that these interim charges are payable by the Applicant;

(3) The Tribunal is not satisfied that the full amount of the managing agents' charges were reasonable in amount or reasonably incurred; they should be reduced by 50% for the years 2002 to 2005 and the Applicant's service charge account should be credited with £293.37 within 28 days of the service of this Decision;

(4) The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985 and no order in relation to the refund of fees paid by the Applicant.

Background

1. This is an application made by the Applicant Ms Jan Moir under section 27A and section 20C of the Landlord And Tenant Act 1985 (as amended) ("the 1985 Act") for a determination of the reasonableness of certain service charges for the 4 years ending on 31st December 2005 and of interim service charge demands relating to redecoration and damp proofing works.

2. The issues in dispute were set out in the Applicant's statement of case and included numerous service charge costs in 2002, 2003, 2004 and 2005. In addition, the Applicant disputed the reasonableness of interim service charge demands from 2003 relating to the proposed cost of damp proof works to the basement and other major works to the building.

3. The Applicant did not appear at the hearing but she was represented by her partner Mr John McGowan. The Respondent was represented by Mr Ivan Taylor. Previously Mr Taylor had been the managing director of Mandells, chartered surveyors, the managing agents for the property but he had now left Mandells and acted as a consultant for them. When asked by the Tribunal Mr Taylor confirmed that he had full authority to act for the Respondent at the hearing.

Inspection

4. 19 Queen's Gate is a period terraced property with a painted stucco elevation, comprising basement, ground and 4 upper floors. The building has an imposing entrance porch and a separate entrance to the 2 basement flats by way of a front basement area, some 13 steps down. The building is situated on a busy main road.

5. The Applicant occupies the front basement flat, known as 19A Queen's Gate. The 2 basement flats are accessed by an internal lobby/hall, which also leads on to 2 basement storage vaults, beneath the front entrance steps and pavement. There was considerable evidence of dampness in the plasterwork of the lobby/hall, up to about 1 metre from floor level. Opposite the entrance door to the basement lobby/hall was a cupboard, which enclosed the communal electricity meter. However, electricity for the 3 ceiling pendant lights in the basement lobby/hall was supplied from the Applicant's front basement flat.

6. Access to the common parts on the ground floor and upper floors was via entrance steps covered with mosaic tiling. The ground floor entrance hall had a marbled tiled floor and there was a carpet on the staircase to the upper floors. The decorative state was fair, but the common parts were not very clean at the time of the inspection. There were internal postal letterboxes in the ground floor hall. There was also evidence of damp on the wall and ceiling above the front door, where the wallpaper was peeling.

The Lease

7. The Lease to the front basement flat is dated the 19th August 1977. It runs for a term of 99 years from 25th March 1976. By clause 4(4) the Tenant covenants with the Lessors to pay the interim service charge and the service charge at the times and in the manner provided in the Fifth Schedule of the Lease. The Fifth Schedule contains the detailed service charge provisions. The Tenant is liable for the Lessors' total expenditure in any accounting period in carrying out their obligations under clause 5(4) of the Lease and any other costs and expenses reasonably and properly incurred in connection with the building, including the cost of employing managing agents.

8. The interim service charge is defined as "such sum to be paid on account of the service charge in respect of each accounting period as the Lessors or their managing agents shall specify at their discretion to be a fair and reasonable interim payment." The interim charge is to be paid to the Lessors by equal instalments in advance on the 24th June and 25th December in each year and in case of default it is recoverable from the Tenant as rent in arrear. There are provisions for the managing agents to serve a certificate of the total expenditure at the end of each accounting period and for the Tenant to pay any excess of the total expenditure over the interim charge.

9. Once the total expenditure has been determined, the Fifth Schedule provides that the Tenant's share is 8.5%. The front page of the Lease suggests that the interim service charge is "£75 per annum", but this is at variance with the detailed provisions for the calculation of the interim service charge in the Fifth Schedule. The Respondent argued that the £75 charge was simply the initial interim service charge payable on the granting of the Lease. Mr McGowan for the Applicant was happy to accept that the interim charge was not limited to £75 per annum, confirming that pending this dispute the Applicant had been paying £225 every 6 months on account of the interim service charge and that the Applicant would have no dispute in paying higher interim sums, if she was satisfied that work for the damp proofing of the basement was carried out.

10. The Tribunal therefore determined that reference to "£75 per annum" at the front of the Lease should be interpreted as meaning an initial interim service charge payment of £75 on the granting of the Lease and that it was necessary for business efficacy for the more detailed interim service charge provisions of the Fifth Schedule to prevail.

11. The Lessors covenants are contained in clause 5 of the Lease. The obligation to maintain and keep in good and substantial repair and condition the main structure of the building and the common parts is stated to be expressly "subject to and conditional upon payment being made by the Tenant of the Interim Charge and the Service Charge at the times and in the manner" provided in the Lease.

12. Other obligations on the part of the Lessors will be referred to later in this decision where they are relevant.

The law

13. The relevant provisions of the law are contained in the Landlord and Tenant Act 1985, as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002, and are set out below:

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purposes -
(a) "costs" includes overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) 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.

Evidence and the Tribunal's findings

Cleaning charges 2002, 2003, 2004 and 2005

14. The Applicant challenged all of the cleaning costs in the annual statements of expenditure for these years. She accepted that the weekly cleaning had been carried out to the ground and upper floors every week in each service charge year; but her complaint was that there was a total lack of cleaning to the basement communal areas. Her share of the utility charges for the respective years was £136.54, £146.66, 127.54 and £153.95.

15. The Respondent claimed that it did not have a key to the basement area, but the Tribunal accepted Mr McGowan's evidence that he had provided a key to Mr Taylor in 2001. If the Respondent had mislaid that key there was no evidence in the papers before the Tribunal that the Respondent had made requests for a replacement at any time. The Tribunal therefore did not accept the lack of a key to be a valid excuse for the Respondent not to have carried out cleaning of the communal areas.

16. While he was unable to confirm the exact terms of the cleaning contract, Mr Taylor did say that the cleaners would not have cleaned the basement communal areas, first because they had no access and secondly because they had not been asked to clean those areas. Mr Taylor confirmed that no costs for cleaning the basement areas had been included in the service charges, which only related to the costs of cleaning the upper floors. He also said that the Respondent had agreed to activate cleaning in the common parts of the basement area, once a replacement key had been received.

17. Mr McGowan said that the Applicant had no objection to paying her share of the upstairs' cleaning costs. Her complaint was that the basement had been ignored and that the job of cleaning the communal areas was incomplete for this reason. This was the reason why the Applicant had withheld payment, namely to draw attention to the issue.

18. Mr McGowan said that he had tried speaking to the cleaners, to ask them why they were ignoring the basement but they did not speak English and he was not able to communicate with them. He also pointed to the failure to clean the communal areas during the past 5 years to support the Applicant's argument that the managing agents Mandells had neglected their duties in relation to the property.

19. The Tribunal noted that the Lease obliges the Applicant to pay 8.5% of the allowable service charges, which include the cost of cleaning the communal parts. There was no evidence that cleaning had not been carried out to the upper floors and had cleaning been

carried out to the basement, the charges would almost certainly have been higher. The fact that the basement had not been cleaned did not absolve the Applicant of her obligation to pay her share of the costs which were incurred. The Tribunal is satisfied that those cleaning costs were reasonable and that these costs were therefore reasonably incurred and are payable by the Applicant.

Utility charges for 2002, 2003, 2004 and 2005.

20. The Applicant challenged her liability to pay for the communal electricity supplied to the upper floors of the building, on the grounds that she paid for the electrical lighting in the basement hallway. Her share of the utility charges for the respective years was £10.37, £614, £7.43 and £8.77.

21. The Respondent accepted that this was the case and offered the Applicant a £20 annual rebate on her service charge liability to cover these costs, a sum which he said and the Tribunal accepted was greatly in excess of her likely expenditure on the 3 ceiling pendant lights in the basement communal hallway for any given year. Although the Applicant pressed for changes to be made to the electrical wiring in the basement, so that the basement hall lighting was connected to the Landlord's supply, the Tribunal considered that the managing agents' offer was reasonable; it was a simple and practical approach to the problem and the Tribunal recommends that the Applicant accept it.

22. As with the challenge to the cleaning costs, the Lease includes an obligation on the part of the Applicant to pay her 8.5% share of the allowable service charges; these include the communal electricity supplied to the upper floors. The Tribunal is satisfied that the utility charges are reasonably incurred and payable by the Applicant.

Charges for health and fire safety in 2002 and 2003

23. The Applicant challenged the reasonableness of the charges, of which her share in 2002 was £24.97 and in 2003 was £32.77. She complained that no one had ever checked the basement communal areas and that those areas had not been supplied with a fire extinguisher, unlike every other floor in the building.

24. On its inspection the Tribunal had examined one of the fire extinguishers in the ground floor entrance hall and found on the face of its maintenance certificate that it had last been checked in 1997. Mr Taylor on behalf of the Respondent accepted that if this was accurate then the fire extinguisher was probably of little use now. He said that the question of providing fire extinguishers and fire prevention methods generally were under review by the Respondent.

25. Mr Taylor then went on to clarify that the charges for health and fire safety were not in respect of the provision and maintenance of fire extinguishers, but rather were for the preparation of fire safety/ general risk assessment reports by a company called Ark Health and Safety Ltd in 2002 and 2003 and for the preparation of an asbestos survey by AMS Management Ltd in 2003.

26. Mr Taylor produced a copy of the initial 2002 risk report from Ark Health and Safety Ltd for the Tribunal to consider. This report contained various recommendations in relation to the distribution of electricity, maintenance of gas supply, building security and fire emergency at the property, amongst other things. With regard to fire extinguishers, the

report stated that appropriate means of fire fighting must be provided and equipment should be suitably maintained. While the report did not indicate that the existing fire extinguishers were in need of maintenance, it did advise the installation of extinguishers in the emergency escape routes, where there were none.

27. Having considered the report the Tribunal is satisfied that the service charges for health and fire safety were reasonably incurred and payable by the Applicant, who had clearly misunderstood the reason why these charges had been raised.

Entry phone charges for 2002, 2003, 2004 and 2005

28. The Applicant disputed her liability to pay for the entry phone which operated on the ground floor entrance door and which only served the upper floors of the 19 Queen's Gate. She complained that Mandells had refused to install an entry phone at basement level. Her share of the entry phone charges for the respective years was £22.01, £22.67, £23.35 and £24.06.

29. The basis of the Applicant's complaint was that no entry phone had been provided for the basement. The Tribunal noted the provisions of clause 5(4)(o) of the Lease by which the Lessors covenanted "to maintain if and when installed a rented electric porter system serving the main entrances to the building" (emphasis added). The Tribunal considered that this clause did not place an obligation on the Lessors to install an entry phone at basement level. However, having said this Mr Taylor did state that the Respondent had recently obtained a quotation for the provision of an entry phone system to the basement and this appears to have been a direct response to the complaints made by the Applicant.

30. Mr McGowan stated that the Applicant accepted her obligation to pay for the entry phone system which was installed at ground floor level, but only if an entry phone was installed in the basement as well.

31. The Tribunal did not accept that the provisions of the Lease allowed the Applicant to withhold payment on this ground and found that the charges made in respect of the entry phone system currently in existence at the building were reasonably incurred and payable by the Applicant.

Water monitoring charges in 2002 and 2005

32. The Applicant argued that no work had been carried out in relation to water monitoring in the basement. Her share of the service charges was £25.97 in 2002 and £24.97 in 2005.

33. Mr Taylor for the Respondent confirmed that this service charge item related to the testing of water tanks in the roof space to comply with health and safety legislation. He provided a copy of the report which had been prepared in 2004. Upon seeing this report Mr McGowan on behalf of the Applicant withdrew this objection.

Insurance premiums for 2003, 2004 and 2005

34. The Lease provides in clause 5(4)(c) that the Lessors are to insure and keep insured the building against the usual risks "and such other risks (if any) as the Lessors think fit in some insurance office of repute..."

35. The insurance charge increased from £2,856.00 in 2002 to £4,702.70 in 2003 and to £4,921.12 in 2005. The Applicant's share of the insurance charges was £399.73 in both 2003 and 2004 and £418.30 in 2005. The Applicant had already paid £200 in each of the 3 years in respect of the insurance charges, but challenged her liability to pay the rest, believing that the insurance policy acquired by Mandells was overpriced. Mr McGowan also complained that the Applicant had received no explanation for the large increase in the insurance premium in 2003. The Applicant relied upon an alternative quotation that she had obtained from Endsleigh Insurance in August 2006 in the total sum of £1,698.43. This quotation did not cover damage arising from acts of terrorism, which Mr McGowan advised (having spoken to Endsleigh on the telephone) would cost a further £350.

36. The Respondent's case was that the Endsleigh quotation was not like-for-like and that the quotation had been obtained with no consideration to the claims history for the building. Mr Taylor also said that the Landlord insured the building directly on a block policy, currently with Zurich Insurance, through its brokers Reich Insurance. Mr Taylor claimed that so long as insurance was obtained by the Respondent as a normal, arm's-length business transaction, the premium was an allowable and reasonably incurred service charge item. He also submitted that the Landlord need not use the cheapest quote, so long as any insurance was placed with "some insurance office of repute" as required by the Lease.

37. In the present case, Mr Taylor explained that the Respondent had a portfolio of properties which it insured altogether in a block policy. As a result, the claims history of other properties could affect the premium for 19 Queen's Gate, although to the best of his knowledge there were no significant claims in respect of this building. Mr Taylor relied upon the decisions in Havenridge Ltd v Boston Dyers [1994] 2 EGLR 73 and in Berrycroft Management Co Limited v Sinclair Gardens Investments (Kensington) Ltd [1997] 1 EGLR 47 in support of his submissions.

38. Mr Taylor was unable to say whether or not the Respondent was in receipt of any commission from the insurers. However, he submitted that the Landlord does not have to "shop around" when arranging insurance, but under the Financial Services Authority (FSA) rules brokers do have an obligation to test the market annually. He stated that Reich Insurance as brokers were FSA-registered and would have tested the insurance market as part of their service to the Respondent in arranging the annual block policy.

39. The Tribunal considered that superficially the cover provided by the Endsleigh quotation was broadly similar to that provided by the Zurich certificate of insurance, at least in respect of the risks covered and the buildings sum insured (both in the region of £1.3 million). However the Tribunal's attention was drawn to a number of differences, namely the cover for loss of rent (Zurich: £1,350 for 24 months; Endsleigh: nil) and the limit of property owner's liability (Zurich: £5 million; Endsleigh: £2 million), as well as the lack of terrorism cover mentioned above.

40. In addition, it was accepted that the Endsleigh quotation did not take into account the claims history of the building (or of course the portfolio of the Respondent's properties). Mr McGowan, who had obtained the Endsleigh quotation on the half of the Applicant agreed that he was unable to disclose the claims history of the building to Endsleigh, though he had asked Mandells for details to enable him to do; but all that he had received in reply had been the briefest of letters from the Respondent, which simply confirmed the premium payable in respect of 19 Queen's Gate.

41. The Tribunal accepted that it was normal business practice for Landlords with a portfolio of properties to insure them under a block policy and that often premiums were higher in such

situations, than if properties were insured individually. In the present case the Tribunal was satisfied that the Zurich Insurance was an "insurance office of repute" and that the alternative quotation obtained by the Applicant was likely to be on the low side because it did not take into account the relevant claims history.

42. The Tribunal also accepted that the Respondent had satisfied the tests in Havenridge and Berrycroft finding that the Landlord had procured insurance in the normal course of business. There was no evidence to challenge the genuineness of the transaction or the fact that the contract was negotiated at arm's length and in the market place. In the light of this finding, it did not matter that a lower premium could have been obtained elsewhere, because it was not incumbent on the Landlord to "shop around." Although the Tribunal was cautious not to apply this test mechanistically, in a fashion that would defeat the protection for leaseholders afforded by section 19 of the Landlord and Tenant Act 1985, on balance, the Tribunal determined that there was insufficient evidence to show that the premiums charged by the Respondent were not reasonably incurred. It follows from this that the balance of the service charges in relation to the insurance premiums are payable by the Applicant.

43. However, this does not mean that the Respondent can continue to place the insurance with the present company regardless. The Tribunal recommends that the Respondent should seek competitive quotes in the future, as well as a quote from the present insurer. In addition, the managing agents should in future produce the insurance schedule and relevant claims records to the Applicant as a matter of course, so that if the Applicant remains dissatisfied with the premiums charged she can obtain 2 comprehensive and fully comparable alternative quotations for the Respondent to consider, in order that any future disputes might be avoided.

Interim service charge demand for damp proofing works in 2002, 2003 and 2004

44. As mentioned above, when it inspected the property the Tribunal noticed extensive damp to the basement entrance, hallway and front vaults. The Respondent accepted that this was so and accepted that the damp problem in the basement needed to be resolved.

45. In her statement of case the Applicant stated: "at the heart of my five-year dispute with Mandells is their neglect of the communal basement area in general and refusal to address the serious problem of rising and penetrating damp in the communal basement area in particular."

46. At the hearing Mr McGowan on the behalf of the Applicant presented copies of 7 section 20 notices which had been served between January 2002 and April 2005 covering various different aspects of major works to the building. These notices showed that the Respondent initially intended to carry out internal refurbishment of the common parts, including the damp proofing works to the basement, but then decided after consultation with the Leaseholders to limit the works to redecoration of the upper floors and to deal with damp proofing works in the basement at a later date. The cheapest tender for the damp proofing work in January 2002 had come from Bryhill Technical Services in the sum of £9,264.00 excluding VAT.

47. On the 25th March 2003 the Respondent billed the Applicant for £2,288.27 being her share of the decoration works to the property and for the tanking and re-plastering of only the front section of the basement hallway. The letter from the managing agents of the same date required payment as soon as possible in order that work be commenced. The

Applicant replied that she had "no intention of paying for these items while the communal lower ground areas continued to be blighted by severe dampness and dry rot and no proviso is made for their repair."

48. On the 11th July 2003 the Respondent billed the Applicant for a further £762.90 being her share of the damp proofing work to the basement front vaults. Once again, the Respondent required immediate payment so that the works could commence. It appears that the Applicant did not reply to that letter and certainly she did not pay her share of the interim service charge.

49. The Lease provides in the Fifth Schedule for a variable interim service charge to be levied by the Lessors or their managing agents in an amount as they "shall specify at their discretion to be a fair and reasonable interim payment." Mr Taylor on behalf of the Respondent complained that without money from the Applicant the managing agents were unable to place the damp proofing contract, but he was at pains to stress that the Respondent was eager to do this work. He relied on the 7 section 20 notices between 2002 and 2005 as evidence of the Respondent's efforts to satisfy the Leaseholders' demands. He went on to say that had the interim service charge been paid, the work to the basement would have commenced. For his part Mr McGowan stated that the Applicant would have had no objection to paying the interim service charge if all of the dampness had been covered by the section 20 notices (not just the area around the basement entrance and the front basement vaults).

50. Clause 5(4) of the Lease expressly links the carrying out of the Landlord's obligations under the Lease "subject to and conditional upon payment being made by the Tenant of the interim charge and the service charge at the times and in the manner hereinbefore provided." While the Tribunal accepted the Respondent's submission that the non-payment by the Applicant had caused serious cash flow problems, it considered that the fact of non-payment of the interim service charge did not absolve the Respondent from complying with its covenant to repair under the lease.

51. The final section 20 notice was dated the 19th April 2005. That notice included all of the outstanding works to the basement which the Applicant had sought. Even so, in the 19 months since the service of that notice the Applicant has still not paid any contribution towards the cost of damp proofing works to the basement (or for that matter to the cost of the decoration of the upper floors, which has been completed). Mr McGowan complained that the Applicant had not received any further interim service charge bill after April 2005, but this did not explain her failure to pay the earlier interim demands from 2003. He went on to say that the Applicant had not paid her interim service charge because she had no confidence that the Respondent would fulfil its obligations to carry out damp proofing work to the basement.

52. Whilst the Tribunal has sympathy with the Applicant's concern that damp proofing works to the basement had not been carried out and her fear that they would not be carried out, these did not absolve her of the obligation under the lease to pay the interim service charge. Mr McGowan confirmed that the outstanding service charge at the date of the hearing was around £4,600 and the Tribunal accepted the Respondent's submission that this non-payment had caused cash flow problems and was an actual brake on the damp proofing works being commenced.

53. At the same time, it seems to the Tribunal that from at least April 2005 (if not earlier) the Respondent and/or the managing agents should have pressed the Applicant for access to the basement to start the damp proofing works, without waiting for payment; alternatively they

should have considered taking appropriate action to enforce payment of the interim service charge. Failure to do either, leaving the Applicant with a damp basement hallway for several years must reflect on the management of the building and the management charge, which is dealt with below.

54. Taking into account all of the above, the Tribunal determined that the interim service charge for the proposed damp proofing works is reasonable and should be paid by the Applicant. However, since this is only an estimated interim service charge demand the Tribunal has not made any finding as to the reasonableness or payability of the final costs relating to the damp proofing of the basement. Indeed, it is very likely that these estimated costs will be subject to alteration when the final account is received.

Professional fees in 2002, 2003 and 2004

55. The Applicant's share of the professional fees in the respective years was £98.55, £304.68 and £121.14. The Applicant complained that these were surveyor's fees for works which either had not materialized (i.e. the basement damp proofing) or had not been overseen or completed properly (i.e. the redecoration of the common parts).

56. The Tribunal is satisfied that the professional fees, incurred in the drawing up of the various specifications, obtaining estimates and carrying out consultations in 2002, 2003 and 2004 were necessary. The Tribunal accepted the Respondent's evidence that these were not additional charges, but formed part of the surveyor's overall charges, which would be levied as a percentage of the cost of the proposed works.

57. The Tribunal therefore determined that the professional fees were reasonably incurred and should be paid by the Applicant.

Mandells' management fees for 2002, 2003, 2004 and 2005

58. The Applicant disputed half of the management fees that had been charged. The disputed share of the management fees in the respective years was £63.67, £74.90, £74.90 and £79.90.

59. Mr McGowan stressed that the reason why the Applicant did not pay her interim service charge demand was because the basement area was being neglected both in terms of major works and in terms of day-to-day services: so much so that the Applicant paid some £3,000 from her own money to re-plaster and redecorate the basement hallway, to improve the look of it.

60. He said that although the Applicant had complained about these issues over a number of years, the managing agent never attended to them. The Applicant had summarised her complaints by letter dated 12th February 2004 and had requested documents, which had not been provided.

61. The Tribunal noted that some of the problems at the property were caused by the managing agents claiming to have no access to the basement but, as indicated above, the Tribunal accepted Mr McGowan's evidence that a key had been provided to the managing agents early in 2001. Furthermore, the Tribunal saw no evidence of efforts by the managing agents to obtain a replacement key to gain access during the previous 5 years. This went a long way to generating the Applicant's mistrust of the Respondent.

62. Overall, the Tribunal considered that the managing agents had not grasped the issues and that this appeared to be one of those cases where a face-to-face meeting at an early stage may have resolved the problems. Consequently the Tribunal determines that the managing agents had neglected the management of the basement areas and the Applicant had not received value from the cost of management. The Applicant sought a 50% reduction of her share of the management charges and the Tribunal agrees that such a reduction should be made. Therefore, the Applicant's service charge account should be credited with £293.37 within 28 days of the service of this Decision.

Section 20C application and application to refund fees

The law

63. Section 20C of the Landlord and Tenant Act 1985 Act provides that a Tribunal can make an order preventing the Lessor recovering its costs of proceedings through the service charge, if the Tribunal considers it to be just and equitable.

64. Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 allows a Tribunal to order a party to reimburse the whole or part of any fees paid by another party.

Submissions

65. Mr Taylor said that the Respondent's costs relating to this application would be £1,533.38 including VAT, which the Respondent wished to reclaim through the service charge.

66. Mr McGowan urged the Tribunal not to allow these costs to be charged to Leaseholders, stating that the Applicant had been forced to come to the Tribunal by the Respondent's inaction: the Respondent had not carried out the basement works. To this Mr Taylor rejoined that had the Applicant paid her interim service charge, the works would have started and there would have been no need for the current application.

67. Mr McGowan also asked that the Respondent should have to reimburse the Applicant for the Tribunal fees that she had paid.

The Tribunal's decision

68. The Tribunal considered the application by the Applicant had been largely misconceived. However, by bringing the application, the Applicant did obtain certain documents previously requested but not provided by the Respondent: for example, the current insurance schedule, the health and safety risk assessment and the water monitoring report. Had these been provided earlier, some of the issues raised by the Applicant might have been resolved in advance. However, the Applicant's main concern was the Landlord's failure to carry out damp proofing work throughout the basement area, which in essence had stalled because of the Applicant's non-payment of the interim service charge.

69. Therefore, the Tribunal makes no order under section 20 C of the Landlord and Tenant Act 1985 and no order in relation to the refund of fees paid by the Applicant.

Chairman:

T. Powell

Timothy Powell

Date: 18/12/06