LVT/SC/007/169 & 170/02
LVT/SCC/007/089/02

Decision of the Leasehold Valuation Tribunal on an Application Under Sections 19(2A), (2B) and 20C of the Landlord and Tenant Act 1985

Applicants:	Mrs G M Green (Flat 2) Mr R S Duckworth (Flat 3) Mr M Finney (Flat 4) Mr & Mrs P Brown (Flat 5) Mr F Zoppas (Arrow Gross Ltd) (Flat 6) Mr L Forsyth (Flat 7) Mr & Mrs H Morris (Flat 8) Mr & Mrs J O'Brien (Flat 10)
Respondent:	South Coast Watch Fair Ltd
Re:	8-10 Culford Gardens, London SW3 2ST.
Hearing Date:	30 June 2003
Inspection:	1st July 2003
Appearances:	
For the Applicants:	Mr J O'Brien, Secretary of the Tenants' Association Mrs G M Green Mr R S Duckworth Mr M Finney Mr P Brown Mr L Forsyth Mr G Marks FRICS of Graham Marks Chartered Surveyors Mr P Bousfield FRICS
For the Respondent:	Mr J Harouni, Director of South Coast Watch Fair Ltd Mr D Bromilow of Counsel
Members of the Tribunal:	Mrs M Auld LLB Mr C Kane FRICS Mrs L Walter MA

1. The Application

The Application to the Leasehold Valuation Tribunal ("LVT") was made under both Section 19(2A) and (2B) of the Landlord and Tenant Act 1985 ("the Act") as set out in the Applicants' statement of case. The tenants applied for determination of the reasonableness of service charges both as to costs incurred and to be incurred and standard of services provided.

The Applicants also applied for an order limiting the inclusion of the landlord's costs of the proceedings in the service charge (section 20C of the Act).

The tenants disputed the costs incurred and standard of works/services for the years 2000 to 2001, 2001 to 2002 and the amount payable before costs incurred for 2002 to 2003.

2. The Law

It may be useful here to summarise the relevant statutory provisions of the Act and those under which the Tribunal has jurisdiction.

Section 18 Meaning of "service charge" and "relevant costs"

(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 repairs, maintenance 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 purpose –

(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 any earlier or later period.

Section 19 Limitation of service charges: reasonableness

2(A) A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a leasehold valuation tribunal for a determination-

(a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,

(b) whether services or works for which costs were incurred are of a reasonable standard, or

(c) whether an amount payable before costs are incurred is reasonable.

(2B) An application may also be made to a leasehold valuation tribunal by a tenant by whom, or landlord to whom, a service charge may be payable for a determination –

(a) whether if costs were incurred for services, repairs, maintenance, insurance or management of any specified description they would be reasonable.

(b) Whether services provided or works carried out to a particular specification would be of a reasonable standard, or

(c) What amount payable before costs are incurred would be reasonable.

Section 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 or Leasehold Valuation Tribunal, or the Lands 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 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.

3. The Inspection

The Tribunal inspected the premises on 1st July 2003

(a) Nos 8-10 Culford Gardens was originally built as two separate houses in about 1894 and subsequently

combined and converted to 9 flats including the caretakers flat.

The building is constructed in red brick with a tiled mansard roof, stone mullion windows with softwood sash windows and casements. Rainwater goods are cast iron. The exterior condition was generally good.

Flat 10 has the benefit of its own entrance off the street. Flat 2 to 8 are accessed via a main entrance door leading to communal hall and staircase. The caretaker's flat (No 1) is accessed via a stone staircase into the basement.

The entrance hall leads to an elegant staircase which had been well decorated and furnished with carpets and curtains but which was showing signs of tiredness. There was considerable water damage to the ceilings and walls, particularly to the 2nd and 3rd floors.

There was access to a private communal garden at the rear.

(b) Caretaker's Flat

This was a basement flat with a front door leading from the basement area and opening directly to the living room. This was a fair size with kitchen recess at one end. Natural lighting was very poor, the only daylight being through a very small window in the living room and a pavement light above an alcove.

The small bedroom was entered directly off the living room and was also dark with one small window. There was a corridor leading to a very small shower room with a wash hand basin and wc and several exposed pipes.

The kitchen area was fitted with a stainless steel sink unit, a washing machine (non functioning), a dishwasher and a free standing fridge/freezer. There was an electric oven with a gas hob (but no gas supply). The gas supply to the boiler had been disconnected for several months and heating was provided by free standing electric convector heaters.

There was a hot water cylinder fitted with an immersion heater to provide hot water.

4. Preliminary

A copy of the headlease of Nos 8-10 Culford Gardens dated 2nd February 1984 made between the Honourable Charles Gerald John Cadogan commonly called Viscount Chelsea (the lessor) Cadogan Estates Limited (the Company) and Timegrade Limited (the lessee) was provided to the LVT.

Copies of the standard form of flat lease made between Timegrade Ltd and the lessees of the subject flats were also provided.

The landlord covenants under Clause 3 of the standard form of lease to observe and perform the covenants set out in the 7th Schedule of that lease and contained in Clause 2(11)(c) of the headlease.

The tenants covenant under Clause 2 of the standard form of lease to observe and perform the obligations set out in the Sixth Schedule of that lease. Under paragraph 15 of that Schedule they also covenant to pay by way of further and additional rent a service charge consisting of the tenants' proportion of the actual or anticipated expenses and outgoings incurred by the landlord in meeting the expenses set out in the Eighth schedule to the standard form leases.

Under paragraph 4(a) of the Eighth schedule the expenses include the costs incurred or to be incurred of employing a caretaker at the property on a full time basis to reside in the caretaker's flat rent free as a licencee on a service basis (as provided in clause 2(11) C of the headlease).

Paragraph 4(b) of the Eighth schedule also includes as expenses "an annual sum (payable to the landlord) equivalent to the fair rent of the caretaker's flat", subject to revision at intervals of not less than two years.

Under paragraph 7 of the Eighth schedule expenses also include "the reasonable and proper fees and disbursements of the landlord's managing agents or other professional advisers and surveyors in connection with the collection of rents and the general management of the property".

5. The Issues

The Applicants Stated that:

5.1 The service charges in relation to the caretaker were unreasonable as to cost and as to the standard of services for the years 2000, 2001 and 2002 and to date.

5.2 The "notional rent" for the caretaker's flat in the service charge years 2000, 2001 and 2002 and to date was unreasonable as to amount.

5.3 The managing agent's fees were unreasonable.

5.4 An Application under Section 20C of the Act for an Order limiting the landlords costs being added to the service charges as relevant costs had been submitted to the Tribunal.

6. Evidence, Submissions and Decisions

The Decision will deal with the issues listed in paragraph 5 in order:-

6.1 Caretaker – Costs incurred and to be incurred and standard of services

(a) Applicants' Case

The Caretaker failed to perform the duties required by the headlease and the Respondent had not ensured that these duties and its instructions to the caretaker had been carried out. The service charges were unreasonable as to amount and standard of services because:

(i) The caretaker was not full time as required by the lease and provided services for approximately 5-6 hours per week. She was not at the premises in the afternoons. Full time meant a full working week of 35 hours. Services were limited to cleaning common parts, polishing brass badly and putting delivered post, sometimes a day late, through individual letter boxes.

Since the carpets were only hoovered once a week, they became ingrained with dirt and as a result a further charge for carpet shampooing had been incurred.

(ii) There was no cleaning cover when the caretaker was on holiday and no cover was provided for 7 weeks in 2002 due to the absence of the caretaker caused by illness and holiday leave.

(iii) There was no security provision to prevent unauthorised persons from entering the premises.

(iv) Rubbish was only collected from Flat 2 on the ground floor. The outside stairs to the garden had not been cleaned for 2 years.

(v) As the caretaker was rarely at the premises the tenants usually reported faults for themselves.

(vi) Mr Harouni had tried to enforce the performance of the caretakers duties specified in the list dated January 1994. The Applicants did not have a real complaint about the standard of the work but about the costs made for the work. In their view many people would be happy to take the job of caretaker in return for a free flat irrespective of any additional wage.

The problem was in the requirements of the headlease. The Applicants would now support the Respondent in approaching the Cadogan Estate with a view to the employment of a non-residential caretaker.

(b) Respondent's Case

Mr Harouni stated that he had purchased the premises late in 2001. He had checked the 1994 list of caretakers duties which he had inherited. He had written to each leaseholder for their opinions on employing a non-resident caretaker with a view to a joint approach to the Cadogan Estate. There had been only three responses, all of them in favour of keeping the caretaker.

He had approached the Estate but it had insisted upon the retention of a resident caretaker.

As to the periods of absence of the caretaker, he had employed a replacement as soon as he was aware of the caretaker's illness. Unfortunately, one of the residents spoke abruptly to the replacement caretaker who refused to work in Culford Gardens as a result.

Mr Harouni stated that he attended the premises about once a month and the cleaning was satisfactory. Mrs Walker had been the carekater for the past 14/15 years. In reply to the Tribunal he considered a full time caretaker would cost at least £1000 per month.

Mr Bromilow of Counsel stated that the caretaker was paid £325 per month (£75 per week) and the issue for the Tribunal was the reasonableness of the standard and cost of the services and not what other services should have been provided in accordance with the head lease. In his view it was reasonable to pay under £80 per week, for the 8-10 hours worked which was not a subsistence wage even with accommodation.

The fact that the caretaker was provided with a flat was required by the Lease and the Respondent's hands were tied.

The issues raised by the Applicants as to payment of £150 to the substitute cleaner were not material to the LVT. The cost of

shampooing the carpet once a year which was subject to heavy use, being in the common parts, was not unreasonable.

(c) Decision

The LVT takes the view that the sum of £75 per week is not unreasonable, even though the caretaker apparently only works approximately 10 hours a week. Having inspected the premises the common parts were kept clean, although they were in a poor state of repair.

6.2 The "notional rent" for the caretaker's flat (Flat 1, basement) payable as service charge under the Leases.

(a) Applicants' Case

Mr Graham Marks FRICS gave evidence on behalf of the Applicants.

He had inspected the front basement flat on 17 February 2003 to give the lessees his professional opinion of a fair rent determined in accordance with Section 70 of the Rent Act 1977.

He referred to clause 2(11)(c) of the headlease which imposed an obligation on the head lessee to provide a full time caretaker who should reside in the caretaker's flat rent free as a licencee on a service basis. Under the terms of the underleases the lessees were obliged to contribute to the lessor an annual sum equivalent to the fair rent of the flat to be certified by the lessor's surveyors as the amount which they considered would be found to be a fair rent under the terms of the Rent Act.

Mr Marks then described the basement flat which was approached down 10 steps to the front entrance door. There was a small hallway with restricted (6 feet) ceiling height leading directly into a living room which incorporated an open plan kitchenette at one end. There was a small bedroom and shower room leading off this room. The whole flat was very dark. Whilst located in a good central location the very limited natural light, no full bathroom or separate kitchen and its small size were drawbacks.

Mr Marks was of the view that these improvements would fall to be disregarded by the Rent Officer if he was assessing a fair rent (being tenants improvements) and so should be disregarded in assessing a notional fair rent.

The rent had been charged as a separate item up until May 2000 when the repairs and decorations were undertaken at a

cost of £12,191.25 (incl VAT). The total cost of the works was to be paid for as part of the service charge.

Following the works the Headlessor appointed Messrs W A Ellis, Surveyors to assess a notional fair rent for the flat. In their view the appropriate fair rent as at 25 July 2000 was £12,375 per annum based upon a market rent of £340 per week with a scarcity factor of 30%.

Mr Marks had initially valued the flat rental at between £3,950 and £4,250 per annum based upon comparable fair rents. However, at the Directions Hearing of 27 February 2003 the Chairman had stated that the starting point to determine a fair rent was market rents and close market rent comparables were the best evidence. This should be the method to be adopted by the parties in determining a rent in accordance with Section 70 of the Rent Act 1977.

Mr Marks' valuation based upon this was approx £6000 per annum. The open market rents for similar basement flats in the area were £250-£275 per week. His starting point in this case was £220 as the flat fell short of these comparables. It was small, with not much light, with no proper kitchen, a bedroom directly off the sitting room and a small shower room off the back.

He then deducted 25% for the different tenancy terms of an assured shorthold tenancy and a regulated tenancy. The lessees were responsible for paying for all the repairs to the flat (in their service charge) as provided in the terms of their leases.

He deducted 30% for scarcity resulting in a fair rent of £6006 per annum (say £6000 per annum).

He then referred to a January 2003 fair rent determination for 1 Earls Terrace, W8. It was larger than the subject flat (400 sq ft as against 304 sq ft) and had use of half the garden. The Rent Officer had started at an open market rent of £14,400 (£276.92 per week) before deducting 35% for disregards and 25% for scarcity.

Mr Marks stated that he should have made a further deduction for the caretaker's flat as the gas boiler was not working in February at the time of his inspection and he had not taken this into account.

He found it difficult to comment on the rent assessed by Messrs W A Ellis in their letter of 14 September 2000 as it was almost three years old. It was not a "certificate" in accordance with the terms of the lease.

In answer to Mr Bromilow he agreed that he had not specified open market comparable lettings, but he had given his opinion on a fair rent.

Finally, he considered that the Rent Acts (Maximum Fair Rent) Order 1999 might apply in this case.

(b) Respondent's Case

Mr Harouni stated that his company had acquired the headlease on 14 November 2001. He stated that rents had peaked in late 2000 and had gone down a bit now. In his opinion the rent for the flat should be £12,375 per annum as specified by Messrs W A Ellis in their letter dated 14 September 2000. That rent had been charged to the tenants pursuant to the service charge provisions for the last three years.

The open market rent for similar properties was between £300 and £375 per week as specified by W A Ellis. A deduction had been made to reflect that the flat only had a shower room rather than a bathroom and that the kitchen was not separate. The market rental should, therefore, be £340 per week. W A Ellis stated that no deduction was made to reflect the regulated tenant's lack of repairing obligations as they were responsible for all the repairs and out goings. The scarcity factor was 30%.

Mr Bromilow of Counsel stated that tenants' improvements must be disregarded, but in this case the question was who was the landlord and who was the tenant. The landlord was entitled to payment in the form of the notional fair rent to compensate for not being able to let the flat.

The works to the caretaker's flat were carried out by South Coast Watch Fair Limited's predecessor in title and were repairs, not improvements. They should not be disregarded in assessing a fair rent.

Mr Bromilow then referred to the Rent Acts (Maximum Fair Rent) Order 1999. He argued that it would not apply as it came into force after the Leases were executed. Moreover, the maximum limit introduced by the Order only applied where the rent had previously been registered. No such registration had been made in this case.

(c) Decision

The law relating to the determination of a fair rent is contained in Section 70 of the Rent Act 1977. It provides that in determining a fair rent the Committee must have regard to all the

circumstances including the age, location and state of repair of the property. It must also disregard the effect of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property. (Section 70(3)(a)). It must also disregard any improvement carried out, otherwise, than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his (Section 70(3)(b)).

In Spath Holme Ltd v Chairman of the Greater Manchester Committee (1995) 28HLR and Curtis v London Rent Assessment Committee (1999) QB9 the Court of Appeal emphasised:-

(a) that ordinarily a fair rent is the market rent for the property discounted for "scarcity" (ie that element, if any, of the market rent, that is attributable to there being a significant shortage of similar properties in the wider locality available for letting on similar terms – other than as to rent – to that of the regulated tenancy) and

(b) that for the purposes of determining the market rent assured tenancy (market) rents are usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

The Committee noted the evidence of Mr Marks for the Applicants which resulted in a fair rent of £6,000 per annum although no open market rent lettings had been specifically referred to as comparables. He had stated that open market rents for similar basement flats in the area were £250-£275 per week but that the drawbacks listed in paragraph 6.2(a) above resulted in his starting point rent of £220 per week.

The Respondent had submitted no open market rent evidence either. He had relied upon the figure of £12,375 per annum as a fair rent based on Messrs W A Ellis' out of date assessment made in 2000. That firm had started from an open market rent of £340 per week (£17,680 per annum).

The Committee, therefore, relied upon its own general knowledge of market rent levels in the area of Chelsea.

Thus, in the first instance the Committee determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition that is considered usual for such an open market letting. It concluded that such a likely market rent would be £250 per week.

However, the actual property is not in the condition considered usual for a modern letting at a market rent. The central heating was not working, the bathroom was unmodernised, much of the kitchen equipment (the washing machine and gas hob) was not working and there was evidence of damp in the flat. Moreover, the tenant's repairing obligations under the leases were onerous.

Therefore, it was first necessary to adjust that hypothetical rent of £250 per week to allow for the differences between the condition considered usual for such a letting and the condition of the actual property as observed by the Committee together with the different tenancy terms. The Committee considered that this required a total deduction of £50 per week a deduction of £20 per week to reflect the onerous tenancy terms and £30 per week to reflect the condition of the flat. It should be noted that this cannot be a simple arithmetical calculation but is the Committees estimate of the amount by which a landlord would have to reduce the rent to obtain a tenant.

No deduction was made for tenants' improvement, as section 70(3)(b) of the Rent Act 1977 provides such improvements should be disregarded unless carried out in pursuance of the terms of the tenancy. In this case, the tenants were liable to pay for the full costs of repairs and outgoings under their leases so that the improvements were carried out in pursuance of the terms of the tenancy.

Although not relevant to the decision for the reasons just stated "improvement" for the purpose of Section 70(3)(b) (contrary to the general rule) includes the replacement of any fixture and fitting (Section 70(4) of the Act).

In considering the allowance, if any, to be made for scarcity the Committee noted that neither party submitted any evidence on the point. It was decided that there is substantial scarcity of "similar dwelling-houses in the locality" available for letting and a deduction in accordance with Section 70(2) Rent Act 1977 would be made to reflect this. The Committee took the following matters into account:

(a) The Committee appreciates that it has to look at a wider locality than Chelsea. Metropolitan Property Holdings Ltd v Finegold (1975) indicates that what is relevant is "a broad, overall, general scarcity affecting a really substantial area". The Committee considered that it should look at a sufficiently large area which will show a fair appreciation of the trends of scarcity and their consequences. In the Committee's view the appropriate location for this purpose is Greater London, being a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease the rent.

(b) It was the Committee's view from their knowledge and experience of this area that there is still heavy demand for this type of accommodation. People seeking work opportunities are drawn to areas where they might find employment and this increases the pressure on the location indicated.

(c) Assessing a scarcity percentage cannot be a precise arithmetical calculation because there is no way of knowing either the exact number of people looking for a small basement flat in the private sector or the exact number of such properties available.

(d) The Committee, therefore, judged scarcity to be in the region of 30%.

This leaves a net market rent for the subject property of £140 per week (£7,280 per annum) (exclusive of council tax and water rates). The notional fair rent determined by the Committee, for the purposes of Section 70 is accordingly £140 per week.

It should be noted that this is a notional rent for the purposes of determining the reasonableness of the service charge contained in the leases and is not a fair rent for the purposes of registration by the Rent Officer.

The fair rent is not limited by the Rent Acts (Maximum Fair Rent) Order 1999 because there was not an existing registered fair rent.

The effect of this exercise in determining a notional fair rent under the terms of the leases is that the following sums are chargeable as being reasonable in accordance with Sections 19(2A) and (2B) of the Landlord and Tenant Act 1985:-

(i) Rent charged to the lessees for year ending December 2000 was £8,937.5 per annum. The Committee have determined a notional fair rent which is reasonable of £7,280 per annum so that £1,657.50 was unreasonably charged.

(ii) Rent charged to the lessees for year ending December 2001 was £12,375 of which £5,095 was unreasonable.

(iii) Rent charged to the lessees for year ending December 2002 was £12,375 of which £5095 was unreasonably charged.

6.3 The Managing Agents Fees

(a) Applicants' Case

Mr Jonathan O'Brien gave evidence on behalf of the Applicants. He stated that the fees had increased from £4,759 in 2001 to £4,870 in 2002. Such fees were unreasonable as to amount because the landlord did not retain a managing agent and, therefore, no managing agent's fees should be included in the service charge. South Coast Watch Fair Ltd and Springright Limited were, in their opinion, the same entity. Both companies were owned and run by Mr Harouni from his home address and he was the sole Director of SCWF and joint Director of Springright.

At the hearing Mr O'Brien acknowledged that South Coast Watch Fair Ltd and Springright Ltd were separate legal entities but felt that because there were common directors the management fee was an additional charge to the tenants and was, therefore, unreasonable.

In written submissions the Applicants referred to information from Mr P Bousefield Chartered Surveyor, relating to the reasonableness of the charges levied for management services.

This was to the effect that in the area of Culford Gardens it was common for managing agents to levy a charge based upon either £200 per unit per annum or 12%-15% of the service charges per annum.

On a unit basis this would amount to £1600 per annum for 8 units.

On the basis of a percentage of other service charges of £11,774 the cost would be £1,766 if the higher 15% charge was applied. The managing agent's charge and the notional rent for the caretakers flat had not been included in the figure of £11,774.

However, the actual charge demanded was £4,870.

Mr Bousfield gave evidence at the hearing that he, through his own company, managed four or five buildings of this type (80 units) in the Chelsea and Belgravia area. He had not seen a detailed specification of the management work in this case but he had seen the subject premises. He would charge a minimum of £200 to £275 per unit per year, the lesser sum if a caretaker was at the premises. If there were many works to be overseen he favoured a percentage basis.

For £1600 per annum he would prepare regular statements and send out invoices/demands. He would look at the insurance, minor works accounts, and would pay the caretaker (if in funds). He would check the cleanliness of common parts and visit once a quarter unless there were problems that needed immediate attention.

In reply to Mr Bromilow he stated that it was difficult to assess the time it would take per year to manage such a block of flats. He would certainly want a periodic insurance valuation and to have some quotations after talking to brokers. He would review his charges at the end of the first year of management.

When questioned by Mr Bromilow he confirmed that he had excluded the caretakers flat and that he would charge an additional fee as a "one-off" charge for extra work.

Mrs Green in summing up stated that £200-£250 per unit would be reasonable or 10%-15% on a percentage basis. Fees should not be charged on the rental element as the Lessees pay this.

(b) Respondents Case

Mr Bromilow of Counsel called Mr Harouni to give evidence. He stated that his policy on taking over the premises had been to keep the management fees to the level charged by the previous landlord.

He attended the premises once a month to check on the cleaning. This had resulted in shampooing the carpets and some repair works.

In answer to the Tribunal, Mr Harouni stated that the previous landlord's management fee was nearly 30%.

In summing up Mr Bromilow of Counsel took the view that the Applicants had tried to add to their case. They were disputing the quantum of management fees in addition to the issue of the identity of the managing agents. He was of the view that the written submissions of Mr Bousfield contained in the Applicants bundle of 24 June 2003 was late evidence which should be disallowed.

The two companies South Coast Watch Fairs Ltd and Springright Limited were two wholly distinct legal entities and the former was entitled to charge management fees for employing the latter.

If the LVT decided to consider quantum, he referred them to Mr Bousfields evidence that the management fee of £200 per annum was subject to review after the first year. In reply to his cross examination Mr Bousfield had agreed that he had not included the caretakers flat. Mr Bromilow stated that the work involved in that flat would take management time. The Respondent had not charged an additional fee for this work. It was included in the Managing Agents fee.

The charge which Springright had made for the year ended 24 December 2003 was just over £100 above the charge of £4,759 made in 2001. It represented 15% approximately of the total expenditure which was in line with common practice.

With regard to the management of the property generally he pointed out that the landlords had maintained and repaired any exterior/main structural repairs and maintenance and were reviewing any work that was outstanding.

(c) Decision

The Tribunal considered the evidence of both the Applicants and the Respondent. It accepts the view that Springright are employed as managing agents and that in accordance with the Eighth Schedule para 7, the Respondent is entitled to "reasonable and proper fees and disbursements".

The Tribunal noted that the Applicants supported a fee of between £200-£250 per annum per unit or 10% to 15% on a percentage basis and that the Respondent relied upon 15% of the total expenditure as being in line with common practice. The LVT considers that it has power to determine whether the amount (if any) charged as management fees was reasonable. It takes the view that because this was a leasehold property with added complications with the freeholder a fee of £275 per unit would be reasonable. As there are 8 units the net fee (exclusive of VAT) is £2,200 per annum.

6.4 Additional Items

At the hearing the remaining points in dispute itemised by the Applicants in written submissions were dealt with by Mr Bromilow of Counsel. He contended (and the LVT agree) that the LVT has no jurisdiction to alter the terms of the Lease. Similarly, the LVT confirms that it has no power to order the checking of the accounts.

6.5 Estimated Service Charge Account for the year ending 24 December 2003

The Respondent, in correspondence with the Applicants (letter to Mrs Green dated 28 February 2003) informed them that it intended to hold service charges for the current year to the same level as 2002.

The LVT's decisions as to the Section 19(2B) Application are, therefore, the same as for Section 19(2A) of the Act.

A summary of the service costs chargeable to the service charge account is attached to this decision (Appendix A).

7. Limitation of Service Charges – Cost of these proceedings: Section 20C of the Act.

In considering the request on behalf of the Applicants for an Order to be made by the LVT under Section 20C of the Act to prevent the Respondent from recovering his costs thorough the service charge account, the LVT has had regard to the representations of the parties. Mr Bromilow of Counsel stated that he did not wish to address this because it was for the LVT to exercise its discretion depending upon the substantive issues.

Section 20C (3) provides that the Tribunal may make such an order as it considers just and equitable in the circumstances. The purpose of Section 20C is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even though costs have been reasonably and properly incurred by the landlord, it would be unjust that the tenants should have to pay them.

Based upon the evidence presented at the hearing and the written submissions of both parties the LVT has considered the following facts as relevant in reaching their decision on the tenants' Application. There was a lack of transparency and poor management on the part of the Respondent in dealing with the issues of a notional fair rent and management fees.

Much of the problem in the case has been caused by the confusion as to how these costs were arrived at and a general lack of confidence in the Respondent's management.

The LVT's consideration leads it to the conclusion that it is just and equitable to make an Order under section 20C of the Act. Therefore, the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the lessees.

CHAIRMAN ..... F Mary Ford .....

DATE ..... 21 August 2003 .....

Appendix A

Summary of the Service Costs chargeable to the Service Charge Account as determined by the Tribunal

1.	Caretaker's Wages	£75 per week
2.	"Notional fair rent" for Caretaker's flat	£7,280 per annum
3.	Managing Agents	£275 per annum per flat (exclusive of VAT)
	For 8 units	£2,200 per annum (exclusive of VAT)