RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER THE LANDLORD & TENANT ACT 1985 (AS AMENDED) SECTIONS 19(2A) & 20C

Case Nos:	CHI/00HN/NSI/2003/003
Property:	Cedra Court 4 Westby Road Bournemouth BH5 1HD ("the Premises")
Applicant:	Long Term Reversioners Ltd
Respondents:	Miss L J Price & 14 other tenants
Date of Applications:	26 June 2003 (s.19 (2C) & 11 December 2003 (s.20 C)
Pre-trial review hearing:	22 October 2003
Members of the Tribunal:	L H Parkyn, Lawyer (Chairman) P Harrison FRICS P Boardman MA LLB
Date decision issued:	11th March 2004

1 Introduction

1.1 This was primarily an application to the Tribunal under Section 19(2A) of the Landlord and Tenant Act 1985 ("the 1985 Act") by Long Term Reversioners Ltd ("the Applicant"), the freeholder of the Premises, through DGA plc, the Applicant's managing agents ("the Managing Agents"). The application was to determine the reasonableness of service charges incurred during the years 2001 to 2003.

1.2 In 2002 the Tribunal had determined a similar application ("the 2002 Decision") between the Applicant and the tenants of the Premises again under Section 19(2A) of the 1985 Act but in relation to the cost of services provided for the year ended 6 April 2001. Two members of the Tribunal (L H Parkyn and P Harrison) had been members of that earlier Tribunal.

1.3 The Tribunal made directions for the conduct of the application on 22 August 2003 and 22 October 2003, the latter following a hearing on that date.

1.4 Also, there was an application to the Tribunal under section 20C of the 1985 Act by Miss A Kenny, adopted by the other Respondent tenants, concerning the Applicant's costs of the application.

2 Inspection

2.1 The Tribunal inspected the Premises on 22 October 2003 in the presence of Mr Richard Hall (a Senior Property Manager in the employ of the Managing Agents) and Miss L J Price (Flat 1), Mrs S Wall (Flat 2), Miss A Rippon (Flat 6) and Miss A Kenny (Flat 11) and others.

2.2 When inspecting the exterior of the Premises, the Tribunal was told or had drawn to its attention:-

- The rainwater gullies on the front left hand elevation were inclined to overflow
- The airbricks were at or below ground level
- The damp proof course was believed to be about 18 inches below ground level leading to an understanding that the ground levels would have to be reduced
- The left hand fascia for the hipped roof section bowed suggesting a sub-standard structure
- Some vertical and horizontal cracking in the rendering
- A belief that some of the wall ties could be corroding

- Water laid above the level of the damp proof course in a gully adjacent to the entrance to Flat 6
- The standard of rendering at ground floor level was poor
- The exterior of the Premises had not been redecorated for about 6 years
- The area around the soil vent pipe at the rear of the Premises had not been pointed
- Caps from the extractor vents were missing
- The flat roof over the front entrance lobby was cracking allowing ingress of water
- There were no areas of garden requiring cultivation.

2.3 At the request of individual tenants, the Tribunal also inspected the interior of the following flats:-

Flat 1: This was found to be vacant, it being explained to the Tribunal that it was unfit for habitation due to its general state of dampness. The flat had a musty smell and it was noted that the bedroom floor was "springy" by the windows and the bathroom floor noted to be in a similar condition.

Flat 2: Damp-proofing works had been completed in March 2003 which included the renewal of a number of floor joists. The tenants had redecorated throughout to a good standard.

Flat 6: Previously the tenant had suffered what she believed to be from rising damp under the living room and bathroom windows. She also believed she had suffered from damp penetration from the front porch area.

Flat 11: The flat continued to suffer some ingress of water above the front bay. Also, it was said that the decorations had not been made good following previous works and although the carpets had also been damaged the Applicant had offered no recompense.

3 The Hearing-the Applicant's Case

3.1 The hearing was opened on 22 October 2003 when the Applicant was represented by Mr Hall: the Respondents were not represented.

3.2 The Tribunal established that the main cost of the works for the years under consideration had been incurred for major works for which the Managing Agents had served a total of five notices under Section 20 of the 1985 Act ("the Section 20 Notices"). However, in response to the Tribunal's enquiries as to

the efficacy of these notices, Mr Hall admitted that he was neither qualified nor able to address these issues for the benefit of the Tribunal and would need to seek legal advice. As it was clear that Mr Hall was not sufficiently prepared to present the Applicant's case to the Tribunal (he had said that he had not previously presented a case to a Leasehold Valuation Tribunal) and the Tribunal was concerned that, as a result, the hearing might not be fair to all parties, the Tribunal made certain further directions and adjourned the hearing to a later date.

3.3 The hearing was held on 7 December 2003 with the Applicant then represented by Mr Mark Warwick of Counsel: the Respondents continued to appear in person. Miss L J Price (F1), Mrs S Wall (F2), Mrs B Garn (F3), Ms A Rippon (F6), Miss A Kenny (F11) and Miss W Morrell (F12) were the main participants amongst the Respondents.

3.4 The Tribunal established that the parties had, in the main, complied with the Tribunal's Directions, at least sufficiently for the purposes of the hearing and that copies of all relevant documents, reports and statements had been provided for all parties prior to the hearing.

3.5 In their written representations, some of the Respondents had suggested that the leases of the flats at the Premises were not in common form although it was clear to the Tribunal some were relying on incomplete copies, drafts etc. In the face of this challenge, the Applicant had caused the matter to be investigated and had found that there were differences although, having heard Mr Warwick's submission on this issue, the Tribunal accepted that the differences were not material to the matters arising under the applications before the Tribunal.

3.6 The Applicant urged the Tribunal to find that the service charge payable to the Applicant for the periods 7 April 2001 to 6 April 2002, 7 April 2002 to 31 July 2002 and 1 August 2002 to 31 July 2003 were reasonable.

3.7 Mr Warwick informed the Tribunal that he would deal with the efficacy of the Section 20 Notices for the major works in his submissions. Also he confirmed that he was not expecting the Tribunal to consider matters relating to:-

- The construction of the leases or
- The validity of the demands for payment of service charges.

as these were matters outside the Tribunal's jurisdiction under the 1985 Act.

3.8 Mr Warwick acknowledged that he was not putting before the Tribunal a comprehensive expert's report but intended the Tribunal to hear oral evidence from John Harris, a Consulting Structural Engineer and Richard Hall.

3.9 The service charges comprised, in part, the usual recurring items of expenditure for the management of the Premises and, as to the remainder for the cost of major works.

3.10 Concerning the major works, the Managing Agents had served on the Respondents Section 20 Notices as follows:-

3 August 2001 : for emergency scaffolding at £6,462.50 inc VAT

17 September 2001 : for further emergency works to ensure that the front pitched roof of the Premises was structurally stable at £32,800.78 inc VAT

23 April 2002 : for replacing the rear flat roof and works to the lead flashings in the middle part of the roof at £20,239.37 inc VAT

4 November 2002 : for emergency roof repair works at the Premises at £20,210.00 inc VAT.

27 February 2003 for emergency damp proofing and fungal decay treatment works at £2,820.00 inc VAT.

The Tribunal noted that in only two instances (i.e. 23.4.02 & 27.2.03) the addressees of the notices were given the statutory period of one month to make observations in reply, the remainder either giving no such period or an abridged period due to the alleged urgency for carrying out the works in question.

3.11 **Mr John Harris CEng., MIStruct. E** of John Harris Associates, Structural Engineering Consultants of Bishops Waltham, Hampshire said he had been in practice for 43 years, and had, throughout the period of the major works at the Premises, been instructed by the Managing Agents. In giving his evidence he relied on a series of inspection reports and other documents sent to the Managing Agents. The main elements of Mr Harris's evidence can be summarised as follows:-

3.11.1 He first inspected the Premises on 13 June 2001 in a report limited to a structural engineering inspection with particular reference to the damage to the roof timbers due to ingress of rainwater from the roof.

3.11.2 The main focus of his attention was Flat 11, where part of the ceiling had been removed to expose the roof structure and supporting timber beam, which showed that a number of the timber members had rotted.

3.11.3 The main problem was that the timber beam supporting both the flat felted internal gutter and the ends of the rafters to the pitched roof had rotted at one end and had split at its bearings causing the beam to drop approximately 75 mm at one end requiring urgent need of support to prevent the risk of collapse. He also made recommendations for remedial work, with a brief specification of the works.

3.11.4 He re-inspected on 1 August 2001 limiting his report to a structural engineering re-inspection of the the seating to the rafters with a proposed new beam and inspecting the suspended ceilings to Flats 11 and 12 and of the floor of the construction.

3.11.5 In his report, Mr Harris noted in respect of Flat 11 that the ends of the rafters had been poorly connected, the original ceiling was poorly supported and had dropped on to the newer suspended ceiling, the construction of which was totally inadequate for the spans. Also he noticed reasonably large cracks in the chimney which he categorised as "serious" damage in accordance with the Institution of Structural Engineers publication Subsidence in Low Rise Buildings (2nd edition).

3.11.6 In relation to Flat 12, he noted a similar failure to the main beam as that found in Flat 11 and inadequate support for the central studwork wall between the front room and the bathroom.

3.11.7 In his recommendations, Mr Harris stated that due to the dangerous condition of the roof and ceilings the front rooms of Flats 11 and 12 "must not be used by the respective occupants". In making his recommendations he warned that they might need to be revised and extended in scope as works progressed when part of the roof structure above the flats was uncovered.

3.11.8 Subsequently he put the works out to tender and prepared a tender list for the Managing Agents from which it appeared that Heritage Property Maintenance Services Ltd of Bishops Waltham, Hants ("Heritage") was the most competitive and the preferred contractor listed in the Section 20 Notice dated 17 September 2001.

3.11.9 Following an inspection on 19 October 2001 Mr Harris identified the need for additional works mainly affecting Flats 10 and 11 including the removal of a second brickwork chimney, which was "leaning alarmingly out of vertical", providing a new fire check wall in the roof space, an inner single skin leaf to the gable wall above the eaves level and ancillary works.

3.11.10 In or about March 2002 Mr Harris invited tenders for flooring works in Flat 4, insulation to studwork walls to the front bedroom in Flat 12, and for the central lower flat roof area and walls above a large flat roof area, recommending a tender received from Heritage as appeared in the Section 20 notice served on 23 April 2002. He explained that the defective floor in Flat 4 probably arose from a breach of the damp proof course or a blocked cavity. The roofing works would not have been apparent until close inspection was possible following the erection of the scaffolding. However, in the event it was found that the flat roof area was in a state of virtual collapse so the flat roof structure needed to be reconstructed: it was not a simple case of re-felting a flat roof.

3.11.11 Following an inspection of 24 September 2002 Mr Harris revised his Schedule of Works although due to the ongoing costs of the hire of the scaffolding and the potentially dangerous condition of the roof, recommended that Heritage be instructed to carry out the scheduled work. This additional work formed the basis of the Section 20 notice served on 4 November 2002.

3.11.12 He also obtained tenders for the works to the floor of Flat 2 and due to the apparent urgency, as the floor seemed to be in a dangerous state, recommended that BWT of Salisbury, Wilts be instructed to carry out the works as a matter of priority. The need for these works led to the service of the Section 20 notice dated 27 February 2003.

3.12 More generally, Mr Harris observed that during the course of the various works at the Premises he had established a good working rapport with the tenants to the extent that on occasions he felt "like a guardian angel".

3.13 In answer to questions raised in cross-examination Mr Harris observed:-

- Initially, his brief was to investigate matters relating to Flat 11. In the event, as problems arose, they were dealt with in turn.
- He was first contacted by the Managing Agents concerning damp on the ground floor in December 2001 and had recommended that the footpaths be lowered and air bricks inserted although these works had not been carried out.
- Lowering the pathways, which would also involve lowering manholes and possible drainage runs, could be very expensive.
- A major cost of the works was in erecting and dismantling the scaffolding for the flat roof and this aspect of the works took time to put together.
- The weekly scaffolding charge could amount to about £1,000.

- The beam over Flats 11 and 12 would have rotted over a period of time (which he estimated at between 10 and 15 years) due to damp.
- A contributory factor was probably the poor design and/or construction of the Premises.
- His firm were structural engineers regularly employed by the Managing Agents. Also he knew and worked well with Heritage.
- He carried out work as instructed although by the Managing Agents who generally seemed to accept his advice.
- Overall he doubted that the works could have been managed more cost effectively.
- He acknowledged that during the progress of the works other areas requiring attention in the future had also been noted.
- Even if the Premises had been fully surveyed about the time the Applicant's purchased, it was unlikely that a number of the major items would have been detected as they were in areas that were not open to inspection.

3.14 **Mr Richard Hall** in giving his evidence relied on his witness statement which he supplemented with oral evidence. Together his evidence can be summarised as follows:-

3.14.1 Save for an absence from May to December 2002, he had worked for the Managing Agents from June 2000 and had responsibility for managing a total of some 70 properties, including, since early 2001, the Premises.

3.14.2 The Applicant bought the Premises in about July 1999, as part of a portfolio of properties, from Holton Homes Ltd. He believed the freehold value was c£5-10,000.

3.14.3 He believed that until about 1995, the Premises were occupied as a hotel but were then converted to give 6 flats on the ground floor, 6 on the first floor and 3 on the second floor to the rear.

3.14.4 Late in 2000, following a complaint from the tenants of Flats 11 and 12 of ingress of water, a Section 20 notice was served dated 13 January 2001 which had formed the basis of the 2002 Decision.

3.14.5 A sequence of works followed as Mr Harris had outlined in evidence.

3.14.6 During the period that he was not employed by the Managing Agents his colleague, Mr Sanjay Thakrar had responsibility for the Premises and had continued for a time after his (Hall's) return.

3.14.7 The Respondents would each have received the service charge certificates for the periods in issue although, with some exceptions, the tenants had not paid any of the service charges the subject of those certificates. However, as he was uncertain as to which items were challenged he had produced for those Respondents participating in the hearing a bundle containing all of the invoices the subject of those service charge certificates.

3.14.8 Although the format on some of the invoices appeared to show that VAT may have been added twice, he confirmed this was not so.

3.15 In answer to questions from the Respondents Mr Hall observed:-

- He believed the cleaners had carried out the contract cleaning works as invoiced although it was suggested that no work had been done.
- Whilst replacement light bulbs seemed to be relatively costly, contractors had to attend the Premises to carry out the work.
- Gardening works were carried out as invoiced, conceding that there was no grass to cut, although this appeared to be so from the invoices, which were obviously erroneous.
- He believed the fire alarm had been tested as invoiced although the Respondents believed it had only been tested once in two years.
- No additional expense would have been incurred through a delay in paying bills for water services.
- The balancing charge shown on the invoices represented the over-spend on the Premises due to the cost of the major works.
- Building works were carried out as quickly as could be arranged even though it might have appeared that time passed after the erection of scaffolding before works commenced. He did not "currently" have the day to day responsibility for managing the Premises but had done so when most of the major works were carried out.
- He visited the Premises twice in 20 months and, although it was suggested that this was not sufficiently frequent in view of the extent of the building problems, he did not share this view confirming he was content to have left that side to Mr Harris.
- He had no answer to the suggestion that he was not fully prepared for the Tribunal hearing.
- He agreed that the Landlords had not created a reserve or sinking fund noting that in the copy of the lease upon which he relied, this was not stated

to be mandatory. It was only as a result of preparing for the Tribunal hearing that he had come to realise that the leases were not all in common form.

- The charge for the door entry system of £269.66 shown in the service charge period for the year ending 6 April 2002, was an annual charge based on call out.
- The general repairs item in the same account for £6086.29, on analysis, possibly represented a mix between general repairs and major works.
- Although he could not explain why the damp proofing works for Flat 2 were carried out within the ambit of the service charge, Flat 6 had not been treated in this way as he did not believe there was an existing damp proof course so the proposed works would have represented an improvement.
- The Section 20 Notices could not always have been served to give the prescribed period for observations, due to the structural condition of the Premises.
- In response to a suggestion that the Respondents did not expect to pay for bad workmanship, Mr Hall denied that any of the works were defective.
- The cost of his general visits to the Premises were covered by the management charge but when inspecting 18 properties within the Managing Agents Bournemouth portfolio during March and May 2001, with Mr Simon Cooper, that was deemed a special visit and invoiced accordingly.
- Heritage invoiced on 25 October 2002 for a payment of £1039.87 to replace monoflex scaffold sheeting destroyed by gales although he was uncertain why this had been invoiced specifically.

3.16 In answer to questions from the Tribunal Mr Hall observed:-

- He held a BSc Degree (Hons) in land management
- He had been working in the field of property management since 2000.
- He was inclined to maintain a reactive, rather than proactive, style of management.
- He was not familiar with RICS's Service Charge Residential Management Code approved by the Secretaries of State.
- He had received few responses to the Section 20 Notices and none of particular substance.

- There was no set scale for the management charge which was set for each individual property managed by the Managing Agents but this was dependent on the anticipated volume of work.
- "Overrun" represented the excess of actual cost over the estimated figures given in the Section 20 Notices.

3.17 As it was apparent that Mr Hall was not sufficiently familiar with these figures, particularly in relation to the major works, and as it was time to do so, the hearing was adjourned to the first available date. Mr Warwick confirmed that an analysis of the figures would be prepared and circulated.

(The Hearing resumed on 13 January 2004)

3.18 Mr Hall continued his evidence having prepared a supplementary witness statement with further copy documents all of which had been circulated.

3.19 Although the additional information purported to clarify the accounts and expenditure in tabular form (i.e. in the form of a Scott Schedule) it was not presented in this way but attempted to provide cross references for expenditure to copy documents supplied. However, when commenting orally, Mr Hall observed

- All invoices had been certified by the Managing Agents' Accountant.
- Mr Harris did not certify the invoices for the works with which he was concerned, but did see them and had raised queries.
- Generally he assumed that when he received invoices from contractors the work had been done: it was not his practice to check specifically with the tenants or otherwise
- Invoices for all the Section 20 works were not available so had not been included with the documents copied for the Tribunal
- Whilst acknowledging that the cost of the work did overrun the original estimates, this was due to the scale of the works required. However, as the whole roof was taken off, more problems were found and it was not realistic to stop the work in progress as any delay would have added to the cost.

4 The Hearing-the Respondents' Case

4.1 **Miss L Price (Flat 1):** the main points of which were:-

- The flat remained damp and uninhabitable
- She purchased the flat on 24 May 2002 as a first time buyer

- The pathway along the side of the flat appeared to have been constructed above the damp proof course which she believed to be the cause of the problem
- The Managing Agents did not respond to telephone calls and letters
- It was never disclosed to her that there were serious structural problems which, later, she found had existed long before her purchase
- If the Applicant did not attend to the damp problems quickly, the damage could become much more serious and the cost extremely high
- The maintenance charges were high for properties in the area
- If the Applicant and/or the Managing Agents had carried out the works properly and urgently, the overall costs would have been less
- She had noticed no evidence of maintenance cleaning etc to the communal areas and considered the whole building gave the appearance of being very neglected

Under cross-examination, Miss Price confirmed that Flat 1 had been surveyed on the occasion of her purchase and this had referred to some dampness but the surveyor had made no comment on the level of the ground outside or made observations on the rest of the building. She was not aware of any unnecessary works having been specified by Mr Harris but her main concern was the damp in her flat.

4.2 **Mrs S Wall (Flat 2) :** she had sold her flat with completion on 5 December 2003 so her evidence was taken in support of that given by Miss Price and is summarised as follows:-

- The charge for gardening was too high as there was virtually none
- As the Premises were insured and paid for as a part of the service charge, the cost of some of the works should have been covered by insurance
- The scaffolding was put up around the Premises at least 3 months before work was started
- The charge for cleaning was excessive particularly as the cleaners did not come to the Premises from the end of September 2002 until March/April 2003.
- The copy accounts supplied by the Managing Agents were not complete
- The Managing Agents had failed to provide a breakdown of the shortfall charges despite numerous requests

- Southern Electric and Wessex Water had threatened to disconnect the electricity and water services due to non-payment by the Managing Agents
- A requirement that the Respondents should pay the Applicant's costs of the previous Leasehold Valuation Tribunal hearing did not appear to be justified
- A repair to the window in the communal hall had not been carried out although a charge of £164.50 was shown
- The poor state of the roof was first reported as far back as 1997
- Notwithstanding a charge for servicing the fire alarm system, no fire certificate was displayed at the Premises

In answer to points made in cross-examination, Mrs Wall confirmed she bought the flat on 23 August 2001 for £54,000 with the benefit of a building society survey and sold in December 2003 for £82,000. She had lived there throughout, received the Section 20 Notices and understood them. She had written to the Managing Agents stating that it would be better for them to buy back the leases and demolish the Premises. She had found it difficult to object to the emergency works as, in principle, she accepted the need for them but not at a cost of £172,000. No quotations were obtained or consultations undertaken when works were carried out without service of Section 20 Notices. She did not consider obtaining alternative quotations when the Section 20 notices were served. From her observations, the job took 4½ months to start.

4.3 **Mrs B M Garn (Flat 3) :** whose evidence can be summarised as follows:-

- The bell system did not work properly
- She had personally cleaned the communal areas
- She was concerned with the way the accounts were presented as important invoices appeared to be missing
- Requests for information had been ignored. Had it been supplied she would have felt no need to participate in the hearing.

In reply to cross-examination, she confirmed she had not paid the service charge for the major works for the year 2002-2003; she did not say the works were not needed but they were not given much time to consider; she did receive the Section 20 Notices but felt there was no time to respond; she had no connection with the building trade; the scaffolding was standing for some 3 months waiting for works to start although she had relied on the Agents to progress matters; she no longer lived in the flat but her son did.

4.4 **Mrs Feist (Flat 6) :** gave evidence for Miss Alison Rippon, her daughter, and owner of the flat, summarised as follows:-

- When purchasing she was assured that there were no outstanding repairs and there were no obvious signs of a need for repair
- She became aware of the problems in March 2000 although the first scaffolding was not erected until August 2001
- Negotiations concerning the damp in Flat 6 started with the Managing Agents around October 2000 although, to date, no work had been done as they were suggesting that the necessary works would be classed as an improvement and, as such, did not come within the service charge
- Progress with the building works appeared to have been punctuated by delay
- The Managing Agents did not appear to provide copy quotations for allegedly urgent work
- If the Applicant had created a reserve fund, as the lease required, the immediate cost to the tenants would have been cushioned
- The Section 20 Notices did not satisfy the statutory requirements
- The Managing Agents had been extremely inefficient and slow to discover the full extent of the problems and the delays led to further damage and had increased the overall costs.

Under cross-examination, Mrs Rippon confirmed her daughter had bought the flat in 2001 with the aid of a mortgage; the mortgage company carried out a valuation survey which was wrong although they had not realised this until later; they were assured by the seller that all works had been done; she had not previously been involved with the purchase of a flat but would have expected those advising to draw attention to any significant matters; she believed the works would not have been so great if the agents had got on with matters especially after Mr Harris identified the structural problems.

4.5 **Miss A Kenny (Flat 11) :** whose evidence can be summarised as follows:-

- She was unable to sell her flat as there was still water leaking into her lounge
- The leases were not all in the same form
- The Managing Agents took too long to respond to the need for major works
- The Managing Agents failed to respond to her correspondence and telephone calls

- Mr Hall did not appear competent to deal with all the questions raised
- The window in the communal area had not been repaired
- The hallways had been in total darkness for more than a month towards the end of 2003 as the cleaners were no longer replacing bulbs
- She was very concerned at the risk of the Applicant's costs of the Tribunal hearing again being added to the service charge costs and, for this reason, had issued the Section 20C Application
- She also raised a number of issues relating to the ongoing management of the Premises which were outside the period covered by the application

In answer to cross-examination, Miss Kenny confirmed she bought her flat in November 1997 as a first time buyer from Holton Homes. She believed the conversion to flats had been finished in 1996 and she was one of the first occupiers. Her survey/valuation identified a problem with the roof but the builder assured her that this would be "sorted out" and she believed this had been done before she moved in. She had dealt with the problems on her own until Mr Harris had advised her that she must move out as her flat was unsafe although, in the event, she could not afford to do so.

4.6 **Miss K Vanderwolf (Flat 14) :** confirmed she had bought as a first time buyer. She had received the Section 20 Notices but could not afford independent advice : she had trusted and relied on the Managing Agents. She believed she had agreed a sale of her flat but this had fallen through although she did not know the reason.

4.7 **The Hearing-Submissions**

4.8 Although invited so do to, none of the Respondents wished to make a closing submission.

4.9 In his closing submission Mr Warwick confirmed that the main focus of the Applicant's case was that the costs incurred under Section 19(1) of the 1985 Act were reasonably incurred stating that the Tribunal had to weigh the conflicting demands of the tenants and, also, could look to the improved value of the asset. It was for this reason that he asked Mrs Wall the terms of her then recent sale of Flat 2 as they would help the Tribunal to assess that the cost of the works were reasonably incurred. He submitted that there was no issue that the cost of the works had not been within the service charge obligation.

4.10 Although accepting that some invoices/documents were missing, he maintained that those supplied broadly supported the Applicant's claims.

4.11 Concerning the major works, he submitted that the most important witness was Mr John Harris. From the tenor of his cross-examination, Mr Warwick sensed that Mr Harris was well regarded by the tenants. In answer to the question as to whether the works could have been carried out more cheaply Mr Harris had said that money was not wasted in the way that the work was done. The issue was whether the costs were unreasonably incurred and for this there was no challenge. Mr Harris followed a logical progression although had acknowledged that the work could have been completed more quickly in favourable conditions. However, there was no doubt that once works had started the condition of the building was much worse than Mr Harris had surmised. The Tribunal needed to assess the Premises as they were, and not as they might have been, and could not make allowances on the grounds of sympathy.

4.12 Concerning the Section 20 Notices, these seemed to have generated very little in the way of written representations in reply and, whilst this was understandable, the opportunity was there. The Tribunal had queried the efficacy of the notices relative to the terms of the Section and, particularly Section 20(4), when taking account of the fact that in two instances no time had been given for tenant's observations, and on a third, an abbreviated time limit had been given. In these cases, Mr Warwick submitted that it would be proper for the Tribunal to dispense with any of the requirements that had not been complied with pursuant to Section 20(9) of the 1985 Act, maintaining that "A landlord acting reasonably is simply a landlord doing what a reasonable landlord would do in all the relevant circumstances", per Blofeld J in Martin v Maryland Estates Ltd [1999] 2 EGLR 53 at p57, submitting that the Applicant had acted reasonably. However, in response to the Tribunal's suggestion that Section 20(9) did not give the necessary jurisdiction, Mr Warwick referred to Wilson v Stone [1998] 2 EGLR p155 giving authority for the proposition that a Leasehold Valuation Tribunal had this jurisdiction.

4.13 Concerning the Section 20C Application, for the limitation of the cost of the proceedings as an element in a service charge, Counsel emphasised that the Applicant had funded both the cost of the works at the Premises and the costs of the proceedings out of it's own resources. The Tribunal needed to consider the nature of the Landlord's application and the Tenants' response and particularly that the majority of the Tenants had not paid the service charges due which he maintained was a very significant factor in relation to Section 20C. He also

referred to Iperion Investments Corporation v Broadwalk House Investments Ltd [1995] 2 EGLR p47 to support the view that the Tribunal should look at each particular part of the costs. Particularly, Mr Warwick submitted:-

a. The application to the Tribunal was a proper use of the statutory procedure.

b. The landlord's conduct at the Tribunal hearings was open and proper.

c. The present application was not one within the mischief at which Section 20C was directed.

d. The general rule should be that the landlord should not lose its right to recover costs (akin to the Civil Procedure Rules r.48.4) and this general rule should apply to the application.

e. In view of the above matters, and all matters generally, it was appropriate to dismiss the application.

4.14 However, Mr Warwick did concede that if the Tribunal considered some costs had been incurred unnecessarily (e.g., say for the first day's hearing) it would be appropriate to discount the costs of that day.

5 Decision

5.1 The Tribunal made the following findings of fact:-

- The Premises comprised a purpose built block of 15 self-contained flats following conversion in our around 1995.
- The conversion was carried out to a poor standard.
- The Premises had needed major works of repair primarily affecting the whole of the roof structure and ancillary works arising.
- There were other areas of the Premises needing attention and repair particularly to address a continuing problem with damp experienced in the ground floor flats.
- The Managing Agents had served five Section 20 Notices (see para 3.10 above) although the Tribunal made no finding on the extent to which such notices complied with the relevant statutory procedures, or their general efficacy.
- Although not prepared precisely in accordance with the provisions of the lease (as to which the Tribunal made no finding) the Managing Agents' service charge expenditure statements for the period 7 April 2001 to 6 April 2002, 7 April 2002 to 31 July 2002 and 1 August 2002 to 31 July 2003,

prepared by the Managing Agents, together provided sufficient information for the Tribunal to make a finding as to the reasonableness of service charges incurred during the periods covered by those statements.

- Although the leases of the flats at the Premises were not entirely in common form, any differences were not material to the issues before the Tribunal for determination.
- There was no recognised tenants' association within the meaning of section 29 of the 1985 Act.

5.2 Relying on the copy of the lease dated 17 August 1995 made between Beaucroft Homes Investments Ltd (1) Nigel Wayne Perkins and Yolanda Perkins (2) and Cedra Court Management Ltd (3) ("the Lease") relating to Flat 1, the Tribunal noted that the Fifth Schedule of the Lease provided (inter alia):-

2. The landlords or managers must
   (a) keep a detailed account of service costs
   (b) have a service charge statement prepared for each period ending on the first day of July during the lease period, which:
      i. states the amounts spent on each major category of expenditure
      ii. states the amount of the final service charge
      iii. states the total of the interim service charge instalments paid by the tenant
      iv. states the amount by which the final service charge exceeds the total of the interim service charge instalments.....
      v. states the current balance of the reserve fund
      vi. is certified by a member of the Institute of Chartered Accountants England & Wales that (it) is a fair summary of the service costs, set out so that it shows how they are or will be reflected in the final service charge and is sufficiently supported by accounts receipts and other documents which have been produced to him.

5.3 The Sixth Schedule to the Lease set out the services to be provided by the manager (or the landlord in default) and to which the tenant was required to contribute in accordance with Clause 4.2 of the Lease, including:-

1. Repairing and maintaining the roof and roof void, grounds and common parts, main load bearing structure (internal and external) and foundations of the building.

4. Repairing and whenever necessary decorating and furnishing the common parts.

5. Lighting and cleaning the common parts.

7. Maintaining the ground of the building including:-

(a) providing signs and equipment to regulate vehicular traffic and parking

(b) planting and tending the gardens.

8. Providing within the building reasonable facilities and arrangements for:-

(a) security

(b) displaying at the entrance announcements of occupiers' names and locations

(c) rubbish disposal

9. Insuring against liability to anyone entering the common parts or grounds of the building and insuring against employers' liability to anyone employed to provide any of these services

10. Paying all rates and taxes assessed on or payable in respect of the common parts.

11. Obtaining insurance valuations.....

13. Keeping accounts of service costs preparing and rendering service charge statements and retaining accountant to certify those statements.

5.4 The Manager's obligation to provided the services listed in the Sixth Schedule for all the occupiers of the building provides that:-

" (a) the Managers may engage the services of whatever employees, agents, contractors, consultants and advisors the Managers consider necessary" (Clause 5.2 of the Lease).

5.5 In addition to the terms of the Lease, the Tribunal had to have regard to the material provisions of the 1985 Act, namely:-

Section 19 Limitation of Service Charges: reasonableness

(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 provision of services or carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) .....

(2A) 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 the costs incurred for services repairs maintenance insurance or management were reasonably incurred

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

20 Limitation of service charges: estimates and consultation

(1) Where relevant costs incurred on the carrying out of any qualifying works exceed the limits specified in sub-section (3), the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirements have been either –

(a) complied with, or

(b) dispensed with by the court in accordance with sub-section (9)

and the amount payable shall be limited accordingly.

(2) In sub-section (1) "qualifying works", in relation to a service charge means works (whether on a building or on any other premises) to the costs of which the tenant to whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such charge.

(3) The limit is whichever is the greater of

(a) [£50]..... multiplied by the number of dwellings let to the tenants concerned, or

(b) [£1,000]....

(4) The relevant requirements in relation to such of the tenants concerned as are not represented by a recognised tenants' association are –

(a) at least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord

(b) a notice accompanied by a copy of the estimates shall be given to each of those tenants concerned or shall be displayed in one or more places where it is likely to come to the notice of all those tenants.

(c) the notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and the address in the United Kingdom of the person to whom the observations may be sent and the date by which they are to be received

(d) the date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b)

(e) the landlord shall have regard to any observations received in pursuance of the notice; and unless the works are urgently required they shall not be begun earlier than the date specified in the notice.

(9) In proceedings relating to a service charge the court may, if satisfied that the landlord acted reasonably, dispense with all or any of the relevant requirements

5.6 Section 20 of the 1985 Act is material in that it sets out the procedural requirements for service of a Section 20 notice. It was clear to the Tribunal both from the documents and the evidence that the Section 20 Notices dated 3 August 2001 and 4 November 2002 gave no opportunity for tenants' representations and that dated 17 September 2001 purporting to give the statutory period of one month, stated that works would commence within 14 days. Further the Section 20 Notices served did not purport to enclose at least two estimates for the works or that such had been displayed as the section provides (see s20(4)(b)), although the Tribunal did not investigate the procedural aspects of each of the Section 20 Notices. Further, it was clear that the cost of the works overran the tendered figures given in one or more of the Section 20 Notices.

5.7 Against this background, Mr Warwick invited the Tribunal to exercise discretion and dispense with the procedural requirements and, in so doing, relied on Section 20(9) of the 1985 Act and Wilson v Stone [1998] (see para 4.12).

5.8 The Tribunal was not persuaded by Mr Warwick that it had any jurisdiction to exercise discretion dispensing with the procedural requirements and therefore made no finding in this respect. In reaching this conclusion the Tribunal referred to Sections 20(1)(b) and 20(9) of the 1985 Act which together give only the court jurisdiction to dispense with all or any of the relevant requirements and, in the absence of any other statutory authority, of which the Tribunal was not aware, it had no power to assume a discretion. Thus, this issue is left for the parties to pursue through the courts, if so advised.

5.9 The Tribunal acknowledged the decision in Wilson v Stone but, as Mr Warwick fairly acknowledged, is not bound by it and, in consequence, decided not to follow it: in the absence of more detailed reasoning the Tribunal concluded the earlier decision might have been reached on pragmatic grounds.

5.10 The Tribunal next considered whether the costs, brought into account by the Applicant when calculating the amount of the service charge, fell within the provisions of the Lease, and did so find.

5.11 Whilst the Applicant submitted that the service charge for the periods in question was reasonably incurred, and that the services and works were of a reasonable standard, the Respondents challenged this view under a number of headings which the Tribunal summarised as follows:-

Major Works

(a)The Section 20 Notice procedures were not correctly followed.

(b)The Applicant had failed to create a sinking fund as the Lease provided.

(c)The demands for payment of the service charge were not certified as required in the Fifth Schedule to the Lease.

(d)The Applicant's delay in initiating the necessary works increased the cost.

(e)The Applicant's overspend was not properly accounted for.

(f)The cost of the works was disproportionate to the value of the building.

(g)Additional monoflex sheeting following storm damage should not have formed the subject of a separate charge.

(h)The cost of the major works shown in the service charge statement for the period 7 April 2002 to 31 July 2002 in the sum of £5816.25 had not been properly vouched.

(i)The cost of some of the works should have formed the basis of insurance claims.

(j)The scaffolding has stood idle for at least 3 months.

(k)Mr Hall was not the right man to manage the works.

Annual Costs

(l)The cost of replacing light bulbs was too great

(m)The window repair invoiced at a cost of £164.50 had never been carried out.

(n)The cleaners had not carried out any work during the main period of the major works contract

(o)The gardening costs could not be justified particularly as there were no grassed areas for cutting, as invoiced.

(p)The management fees were too high.

(q)The Auditor's fees were too high.

(r)The door entry system had not been effectively repaired.

(s)The Applicant's costs for the 2002 Decision should not have been included.

5.12 Before considering specific items, the Tribunal reviewed the evidence:-

5.12.1 It considered Mr Harris a reliable and credible witness who had established a good rapport with the Respondents and whose evidence was not seriously challenged. However he was retained by the Managing Agents as a Consulting Engineer as his reports to them were at pains to emphasise. He did not appear to have been retained as a Project Manager or in any other supervisory role. The responsibility for putting phases of the works out to tender was delegated to him although, as Mr Hall confirmed in his evidence, Mr Harris did not have

the responsibility of approving requests for payment or any other matters in connection with the general management of the major works contracts. The Tribunal accepted Mr Harris' evidence in its totality in relation to the need for the work, the specifications for repair and the cost of the works as tendered.

5.12.2 The Tribunal did not find Mr Hall either a persuasive or a reliable witness and clearly, he had not enjoyed the confidence of a majority of the Respondents. To be fair to Mr Hall, on his own admission, he had had no experience of property management before 2000 and, when the need for works at the Premises arose, had not previously had the experience of, or responsibility for, managing a relatively major building contract. In consequence, the Tribunal found that this lack of experience and knowledge almost certainly led to Mr Hall's failure to take a proper grip on the management of the major works contracts.

5.12.3 So far as the Respondents were concerned, the Tribunal found that, individually, they were reliable and sincere witnesses greatly worried by the service charge demands being made of them but, being unfamiliar with building matters, were, perhaps, not able seriously to challenge the course the major works contracts had taken. However, the Tribunal found that the substance of their concerns was well founded, calling for the cost of the major works and the regular annual costs to be critically reviewed.

5.14 Analysing the issues in relation to the major works the Tribunal found as follows:-

5.14.1 No finding could be made in relation to the Section 20 Notices as the Tribunal had no jurisdiction to do so for the reasons already given.

5.14.2. The Applicant's failure to create a sinking fund was a matter relating to the interpretation of the Lease so the Tribunal could make no finding in this respect as it was outside the scope of it's jurisdiction.

5.14.3. Similarly, the Tribunal could make no finding in relation to the legality of the service charge demands as these again related to the interpretation of the Lease which was outside its jurisdiction.

5.14.4. It was suggested that the delay in executing the works had significantly increased the costs. The Tribunal did not accept this view. Mr Harris was clear in his evidence that the majority of the building defects probably arose from the poor construction/conversion of the Premises and from rot in the main structural timbers which would have taken 10 to 15 years for the failure to

develop (i.e. from a period well before the Premises were bought by the Applicant).

5.14.5. The Tribunal accepted the Respondents' concerns on the apparent overspend which, relying on the Applicant's calculations, amounted to some £58,909.85. The Applicant's evidence could not properly vouch or explain the extent of this overspend which, significantly, had not formed the subject of any further Section 20 notices. Accordingly, the Tribunal found that this overspend, in its entirety, was not reasonably incurred. Further, the Tribunal was not persuaded by Mr Warwick's argument that the tenants "could look to the improved value of the asset". The Tribunal accepted the Respondents' evidence that most, if not all, the tenants were totally unaware of the condition of the Premises when they bought and that the general condition of the Premises, with the apparent liabilities for substantial service costs, would make individual flats difficult to sell for a fair price : the fact that Mrs Wall had sold her flat did not persuade the Tribunal to the contrary. Although the Applicant had carried out substantial works, primarily, they were to make the Premises structurally sound and weatherproof rather than to make general improvements which might have enhanced the value.

5.14.6. Whilst the Tribunal had some sympathy with the view that the cost of the building works had become disproportionate to the value of the Premises, no evidence was given to support this argument on value and, taken over the Premises comprising 15 flats, the Tribunal doubted that this approach would have produced a tenable argument. Accordingly, the Tribunal found that it was reasonable for the Applicant to start a programme of works to bring the Premises into a proper state of repair.

5.14.7. The invoice dated 25 October 2002 for new monoflex perimeter sheeting to replace existing material destroyed in the gales over the period 17 & 18 October 2002 in the sum of £1039.87 could not, in the Tribunal's view, reasonably be justified as any properly negotiated contract with scaffolding contractors would have included the cost of ordinary repairs and adjustments, whether by contingency item or otherwise. For example, the Tribunal noted that Mr Harris's specification and schedule of works for Flats 4,5,14 and 15 specified that: "The Contractor will provide all necessary coverings and protection to prevent damage to the building due to inclement weather to stop any damage which will be made good at the Contractor's expense".

Accordingly the Tribunal did not consider this item to be reasonable and found accordingly.

5.14.8. The service charge statement for the period 7 April 2002 to 31 July 2002 showed an item for the cost of major works in the sum of £5816.25. Of this amount, the Applicants could, on analysis, only explain and vouch £940 so the Tribunal found that the remainder was not reasonable and disallowed it thus analysing the amount:-

Cost of major works 7.4.02 - 31.7.02			£5816.25
Less			
25.10.01	Heritage invoice to supply labour and materials to undertake remedial works to the main communal door to the property (inc VAT)	129.25	
17.5.02	Heritage invoice to supply labour part and materials to carry out the removal and disposal of ceilings, reference JB/SO/2686.001 dated 17.04.02 (inc VAT)	810.75	940.00
	Disallowed		£4876.25

5.14.9 Although it was understandable that the Respondents considered certain of the works should have been covered by insurance claims, no detailed evidence was given on this issue. However, the Tribunal considered it unlikely that the cost of the major works, which, in essence were building repairs, would have formed the basis of any viable insurance claim so decided they would take no particular account of this factor.

5.14.10 The Tribunal considered that the fact that the scaffolding may have stood idle for some periods of time was a symptom of the general lack of management control applied to the major works contracts reflected in the general item disallowed (see below) rather than specifically.

5.14.11 The Tribunal accepted the Respondents' views that Mr Hall did not have sufficient experience to manage effectively the major works contracts necessary for the works at the Premises and found accordingly.

5.15. General Service Charges

In relation to the issues raised in relation to the general service charges the Tribunal found as follows:-

(a) Whilst it might have been more cost effective to make alternative arrangements for the replacement of defective light bulbs, the amounts

charged by the cleaners for providing this additional service was relatively small and not one with which the Tribunal wished to interfere.

(b) The Tribunal accepted the Respondents' evidence that the fire alarm system had not been properly certificated and that the automatic opening system to the communal hall window had either not been carried out or had not been carried effectively and accordingly disallowed the invoice dated 6 March 2003 in the sum of £164.50 (inc VAT).

(c) The Tribunal did not consider it reasonable to disallow the whole cost of cleaning for the full accounting period under consideration but only those items not vouched, analysing each year in turn:-

7.4.01 – 6.4.02 charged	£1,454.71
Less vouched	1,141.63
Disallowed as not reasonable	£ 313.08

1.8.02 – 31.7.03 charged	£1149.00
Less vouched	585.00
Disallowed as not reasonable	£ 564.00

The Tribunal saw no reason to interfere with the cost of the cleaning shown in the service charge statement for the period 7 April to 31 July 2002. In effect, the Tribunal found it unreasonable for the Respondents to be charged with the cost of cleaning for the period from 1 October 2002 to 30 April 2003 at a time when the main contractors might reasonably be expected to have been under a contractual obligation to keep the communal areas reasonably clean.

(d) The Tribunal could not see that the cost of gardening during the period of contract works could reasonably be justified for the period 7 April 2001 to 6 April 2002 as it would have expected the main contractor to be responsible for keeping the site swept clean and tidy, particularly a site which was mainly laid with tarmac or concrete and one which would not require particular gardening skills to keep it in tidy order. Accordingly, the Tribunal did not find the charge of £74 made reasonable.

(e) The Respondents challenged the level of management fees charged for the year ended 6 April 2002 at a total of £1938.76 (i.e. £1650 plus VAT representing the equivalent of £110 per flat, plus VAT) with the charge made for the other two accounting periods under consideration calculated on a broadly similar basis. In the absence of any specific evidence to assist, and the Tribunal did not consider this to be an unreasonable level of charge.

(f) Similarly the Respondents had challenged the accountancy fees charged for the year ended 6 April 2002 at £258.50, for the period 7 April to 31 July 2002 at £117.50 and, as auditors fees, for the year ended 31 July 2003 at £470.00. Again, the Tribunal did not consider any of these charges unreasonable.

(g) The Tribunal accepted the Respondents' evidence that the door entry phone system had either not been repaired effectively or at all and, accordingly, did not consider the amount shown for the three invoices dated 18 April, 4 June and 19 September 2001, together totalling £269.66 and shown in the service charge statement for the year to 6 April 2002, to be reasonable.

(h) As the Respondents had not made a Section 20C application in relation to the 2002 Decision, the Tribunal found that it was not unreasonable for the Applicant to include an item (which, in fact, only represented the application fees) for the costs of those proceedings, as part of the service charge.

5.15 Next, the Tribunal analysed the Applicant's cost of the major works as claimed in the service charge statements and shown in the Managing Agents' building works reconciliation statements for the periods to April 2002 and to July 2003 as follows:-

Service charge period 7.4.01 to 31.7.02		5816.25
Reconciliation to April 2002		65,396.78
Reconciliation to July 2003		122,862.33
Total cost of major works, as claimed		194,075.36
Less total overspend :		
Reconciliation to April 2002	22,156.51	
Statement 7.4.01-6.4.02	1463.83	
Statement 7.4.02-31.7.02	5816.25	
Reconciliation to July 2003	29,473.26	58,909.85

		135,165.51
Less		
Disallowed @ para 5.14.7	1039.87	
Disallowed @ para 5.14.8	4876.25	5916.12
Total cost of building works		129,249.39
Add contingency sum at 15% (see below)		19,387.41
Total cost of major works found to be reasonable by the Tribunal		£148,636.79

Thus, out of the total cost of the major works claimed by the Applicant, the Tribunal found a total of £45,438.54 to be unreasonable.

5.16 In reviewing the cost of the major works, not only did the Tribunal consider the individual items but also the totality of the cost of the works. On the basis of the Tribunal's analysis, and notwithstanding Mr Harris's observations on the overall costs of the works, the Tribunal could not accept that an overspend of some 43.58% on the Applicant's figures (i.e., £58,909.85 ÷ £135,165.51 x 100) was reasonable particularly:

- When considered as a percentage of the whole
- When taking into account that the overspend was not covered by any Section 20 notice thus denying the Respondents any opportunity of consideration and/or challenge. However the Tribunal accepted that with a major works contract such as that in this case, it would have been prudent to allow, as a contingency item, for an overrun or overspend of say 10% of the tendered price but, taking account of the particular difficulties with the construction of the Premises and the building defects found, the Tribunal considered it reasonable to allow a total of 15% as a contingent sum on the adjusted cost of the works, as shown in the analysis above.

5.17 In simple terms, the Tribunal considered that the major works contracts were allowed to run out of control which probably stemmed from Mr Hall's general lack of experience and the fact that Mr Harris was primarily retained in the capacity of a consultant structural engineer and not as a project manager or supervising consultant.

5.18 The Tribunal found it singularly unfortunate, for all parties, that the Managing Agents did not keep the Respondents properly informed through regular

consultation and periodic meetings, not only to deal with the works, but also, to establish a relationship of mutual confidence and trust for the management of a major works contract which, by its very nature, was likely to create great difficulties (both practical and financial) for those in residence.

5.19 Finally, the Tribunal considered the Section 20C Application which the remaining Respondents had adopted and supported. The relevant parts of this section provide as follows:-

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,..... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made –

(a)....

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

(c)-(d)....

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

5.20 In his submission, Mr Warwick argued that the Respondent to this Application (i.e. the Landlord) should be entitled to its costs.

5.21 The Tribunal started from the premise that applications before a leasehold valuation tribunal were intended to be on a "no costs basis", that is, neither party should be at risk for paying the other party's costs. Then it examined Mr Warwick's submission and whilst accepting that the Applicant's application was a proper use of the statutory procedure, the Tribunal was not particularly impressed with the way in which the Applicant had conducted the hearings both in terms of the poor quality of Mr Hall's evidence and the unsatisfactory way in which the substantial bundles of documents were presented, making it difficult for those familiar with such cases to co-relate accounts and vouchers: for those unfamiliar with such matters, the task was rendered difficult if not impossible. Also, contrary to Mr Warwick's submission, the Tribunal found that the present case was one containing the "mischief" to which Section 20C was directed, as if the Tribunal made no order, the Respondents, who had been

successful to a substantial degree, would be disadvantaged if the Landlord's costs of the Application were included within a future the service charge.

5.22 Again, contrary to Mr Warwick's submission the Tribunal did not accept that it was fair to draw a parallel between applications considered by a court (to which the Civil Procedure Rules applied) and one before a tribunal (where they did not).

5.23 Further although Mr Hall may not have been familiar with the Tribunal's proceedings, the Managing Agents were, having previously made an application in respect of the Premises (i.e. leading to the 2002 Decision) during which Mr S Room, then the Managing Agents' Senior Property Manager, conceded, (inter-alia) that the freeholder's case had not been as fully prepared as, with hindsight, he would have wished to have seen. Thus, the Tribunal considered that the Applicants and the Managing Agents should have been aware of how to present the Applicant's case.

5.24 Taking all aspects into consideration, the Tribunal considered that the 20C Application was successful and ordered that none of the costs incurred, or to be incurred, by the Landlord in connection with the proceedings before the Tribunal were to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the tenants of the Premises.

5.25 The Tribunal considered all other matters raised but there were none that outweighed those upon which this Decision is based and equitable in the circumstances.

L H PARKYN (Chairman)