SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case Number:	CHI/00HA/LIS/2003/0006
Re:	3 Cleveland Walk Bath.

Between:

Mrs J Uter and Mrs M Jartelius	Applicants
And	
Mr E Lusardi	Respondent

Reasons for decision

Hearing:	4th February 2004
Date of Issue:	4th March 2004
Tribunal:	Mr R P Long LLB (Chairman) Mr S J Hodges FRICS Mr J Reichel MRICS

Application

1. As part of proceedings before Bath County Court, the Court ordered that the Leasehold Valuation Tribunal should determine the reasonableness of service charges in respect of the subject property. An application was made to the tribunal on 30th April 2003 to this effect. There was some delay following the application. This arose because it was apparent that the application was of such a nature that the tribunal might not have jurisdiction to deal with all of the matters that it was intended that it should determine following the decision in Daejan Properties Limited v London Leasehold Valuation Tribunal.

2. Following a pre trial review on 6th November 2003, after which the applicants withdrew their original application and substituted for it another, made on 9th January 2004 (the form erroneously shows 2003), under section 27A of the Landlord & Tenant Act 1985 ("the Act") which had by then come into effect. That section was inserted by the Commonhold and Leasehold Reform Act 2002. The particular effect of this was that the inhibition upon the tribunal's jurisdiction arising under the Daejan case mentioned above had been removed, enabling the tribunal to look at the whole of the matters in dispute between the parties. Those involve the determination of the reasonableness of the service charges for the period from 1996/97 to 2002/2003.

3. The tribunal's decision on the all of the matters that were before it is summarised in paragraph 64, at the end of this note.

Inspection

4. The tribunal inspected the property on 4th February 2004, prior to the hearing, in the presence of the applicants, the respondent and of Mr Andrew Uter, who represented the applicants both at the inspection and at the hearing.

5. We saw a substantial dwelling house on three floors, built upon a large plot and dating from around the turn of the last century. The house has been converted at some time into three flats, one on each floor, and a substantial single storey flat-roof extension to form a sitting room and conservatory has been added to the ground floor. Our papers suggest that the conversion to flats had occurred, and the extension was added, by 1975, when Mrs Uter's lease of the ground floor flat was granted. Subject to some defects mentioned in paragraphs 7 and 61 below, the property gave a general impression of having been satisfactorily maintained.

6. The parties particularly drew our attention to the condition of the paintwork, of the guttering and of the gutter boxes. We were also shown some water marks and signs of damp penetration in the sitting room of the ground floor flat (part of the extension) that it was agreed had occurred following a burst drain from Mr Lusardi's top floor flat that runs above that room. We saw an area of the garage soffit where paint had blistered. We noted that this was an area that appeared to be regularly in contact with the edges of a small tree, and that this may have been material in causing the effect. Finally we were shown the porch, that we were told had been rebuilt as part of the work that had been

carried out at the property in 2001. We could see some rough edges on some of the timber parts of it.

The Leases

7. We were provided with copies of the leases of both Mrs Uter's flat and of Mrs Jartelius' flat. Although they were granted six years apart, Mrs Uter's lease of the ground floor flat (Flat 1), and Mrs Jartelius' lease in 1981 of the first floor flat (Flat 2) are, with one material exception mentioned below, in substantially the same form for purposes relevant to this application. Each is granted for a term that expires in September 2105 at an initial annual rent of £25 that is increased, subject to certain limitations, by 20% after the expiration of each period of twenty years of the term. The outer walls are excluded from the lettings except to the extent of the inside plaster coating in the flats, but the windows are part of the demise. Mrs Uter's lease includes the gardens and fences that belong to the property, so that the garden is her exclusive responsibility, and the cost of its maintenance does not feature in the composition of the service charge.

8. Mrs Uter's lease includes an obligation in Clause 2(23) to "keep tidy and to clean at least once in every week the ground floor hall and entrance hall". Such a provision does not appear in any form in Mrs Jartelius' lease.

9. The obligation to pay service charge appears in paragraph 2(3)(i) of each lease. It consists of an obligation upon the leaseholder to pay a stated proportion of all expenses incurred by the landlord in complying with obligations placed upon him by the terms of clause 3(1) of the lease. The term "expenses incurred" is stated to include all monies expended or properly charged by the landlord including an amount for administration expenses of twelve and one half per cent per annum of such monies. In order to avoid a difficulty of definition encountered at the hearing, we have used the expression "administration charge" in this note to refer to that percentage addition. The landlord is stated to be entitled to charge his "normal and reasonable charges (including profit) for work of repair redecoration or renewal required by any of the covenants".

10. The mechanism for collecting the service charge appears in Clause 3(2)(ii). It requires the landlord to deliver annually a demand for an amount to reflect the estimated cost (as to which the landlord is to be the sole judge) of services of a regular and recurring nature for the following year. That demand is payable on 25th December. The landlord is then to deliver an account as soon as possible after 4th June in each year certifying each lessees liability for service charges for the previous year, and any balance is then either to be paid or refunded, although the landlord may elect to retain any amount repayable to a leaseholder against the estimated liability for the following period.

11. Mrs Uter is obliged to pay 40% of these costs; Mrs Jartelius pays a further 31% because her flat is smaller. The remaining 29% falls upon the top floor flat (Flat 3), and is presently borne by Mr Lusardi because he occupies that flat.

12. The costs that the landlord may recover pursuant to paragraph 2(3)(i) are (in summary), those of insuring the whole of the building, of rates and taxes on those parts of the building that are not let, of maintenance of those parts of the building that are not let and of repainting exterior wood and iron, of redecorating common parts, or maintaining the entrance drives paths and ways, of employing anyone requisite for these purposes, and of keeping books of account of expenses and costs incurred. In addition, the landlord is required to "ensure that the common halls staircases and landings (if any) in the building are kept clean and suitably lighted".

Hearing and Determinations

13. The hearing of the matter in Bath on 4th February 2004 was attended by Mrs Uter and Mrs Jartelius, accompanied by Mr Uter who represented them, and by Mr Lusardi. It was agreed that it would be simpler to hear each side's case in respect of the charges other than those for the 2001 works separately from the material relating to the 2001 works, and we did that first. Then we heard the cases concerning the works. In this note we have followed that pattern. We have recorded first the evidence that we heard and our findings in respect of the charges other than those for the 2001 works. Thereafter we have set out the evidence that we heard and our findings in respect of the 2001 works themselves. As previously indicated, we have summarised all the findings at the end of this document.

14. We understand that a further bundle of papers was received by the office from Mr Lusardi after the hearing had taken place. We make it clear that we have not considered them in reaching this decision. We were of the view that we had sufficient information before us to reach the decision that we have recorded here. Furthermore, it was in our view inappropriate to re-open the matter after a lengthy hearing lasting some four and a half hours to what may well have amounted to further trial by correspondence. There is already a very large amount of correspondence in our papers, and to have done so may well have occasioned a further substantial delay.

The matters other than the 2001 works

The Applicants' Case

15. Although we had no copy of the service charge accounts or demands for the years in question, we established that the amounts levied were those set out in the copy of a letter from Mr Lusardi to Mr Uter dated 13th February 2002. This appeared at page 45 in the bundle of copy documents sent to us by the applicants as part of the application.

16. On behalf of the applicants, Mr Uter said that the charge for cleaning was excessive. He contended:
    a. that Mr Lusardi did no such work
    b. that Mrs Uter's lease required her (at clause 2(23)) to keep the hall clean and tidy

c. that Mr Lusardi's obligation under (clause 3(4) of that lease) was merely to ensure that the cleaning was done, and that this was consistent with the wording of Mrs Uter's obligation.

Mr Uter continued that there were no receipts or accounts to show that the cleaning had been done. There was no menu of such charges. Paragraph 2(6) of the Service Charge Residential Management Code issued by the RICS ("the Management Code") indicated that it would be good practice to issue one.

17. Flat 1 had contributed £877-15 to the so cost of cleaning in the six years from 1996 to 2001 inclusive. In addition there had been an administration charge element of £109-64 so that the total sum paid was £986-79. Mrs Jartelius had paid £264-44 for the period 1999-2001 together with £33-05 administration charge. Mr Uter said that none of these amounts was reasonable, and in Mrs Uter's case none was payable, whether or not reasonable, in any case because her lease required her to deal with the cleaning of the hallway outside of her flat.

18. There could be no argument that Mrs Uter and Mrs Jartelius had acquiesced in the amounts that Mr Lusardi had required for cleaning by paying them until 2001. They had had no reason to mistrust him. His accounts had always referred to cleaning and maintenance, and although the applicants contended that no cleaning was being carried out, they believed that occasional maintenance was being done, and that they were paying for it within the sums he demanded. It was only in 2001 that they had realised that this was not the case.

19. The applicants did not dispute the charges for electricity, but said that the administration charge should not be added. They considered that a 12.5% charge for administration was unreasonable. The tribunal pointed out that it was within its knowledge as an expert tribunal that charges of between 10% and 15% were usual in such matters in Bath and Mr Uter replied that he would accept that such a charge was reasonable where a very good service was provided, but that such was not he case here. He added that Mr Lusardi would see the condition of the hall and stairs every time he walked through so that a charge for supervising as clause 3(4) of the lease required was hardly appropriate. A letter written once a month or so might attract a small charge of no more than £10, and a Bath agent might be involved in attending once a month or so for the purpose were one instructed so to do at a charge pf perhaps £30.

20. Mrs Jartelius added that she had made payments in good faith but that there had been no regular cleaning. Mr Uter added that Mrs Uter's cleaners and garden staff had done the hall floor cleaning.

The Respondent's Case

21. Mr Lusardi drew attention to a letter from Mrs Jartelius to him dated 7th January 2002 (Page 55 in Mr Uter's bundle) in which she stated:

"The only cleaning that was ever done consisted of the occasional cleaning of the inside staircase."

He contended that he cleaned the stairs every week with a Hoover, and that every year on or about 25th December as the lease required he sent a demand for advance service charges pursuant to clause 2(3)(ii) that included cleaning costs. These were always paid, and then suddenly the applicants had refused to pay them any longer. The implication of those payments, taken with Mrs Jartelius' letter, was that he did the work; otherwise no payment would have been made.

22. The arrangement that he operated had been that adopted by his predecessor before Mr Lusardi bought the property in 1996. He had continued to charge what his predecessor had charged in the past, increased a little for inflation in each year. As to the terms of the lease, Mrs Uter was obliged to keep her hallway clan and tidy but there was no such clause in Mrs. Jartelius' lease. He contended that the terms of the lease obliged him to keep the stairway clean, and the leaseholders had acquiesced in that view by paying him to do so. Mrs Uter had refused to clean up dirt that she said had been left by Mr Lusardi's builders, and had left large packages in the hall for four months despite requests to remove them. It was necessary for him to clean if Mrs Uter did not.

23. Mr Lusardi added that he did small jobs himself but got estimates where he could not undertake the work personally. The terms of clause 3(2) of the lease were that the landlord is the sole judge of what to demand in respect of payments in advance for work of a regular and recurring nature.

Determination

24. Bearing in mind that this application was made after 30th September 2003, and so is governed by S. 27A of the Act, the tribunal's first task was to determine the extent of the obligation to contribute to the reasonable cost of any cleaning that may have been done. The leases are less than satisfactorily worded on this aspect, and it must endeavour to give commercial effect to the wording used if that can properly and reasonably be done.

25. The wording shows that intention fairly clearly. The occupant of Flat 1 (Mrs Uter's flat) is to keep the hallway outside that flat clean and tidy. That is the hallway that leads from the front door of the building to the front door of her flat. The stairs start immediately outside of her front door. The landlord is to "ensure that" the common halls staircases and landings are kept clean and suitably lighted. There is no obligation on anyone else to clean any part of that area except for the hallway outside of Mrs Uter's flat, so that he can only discharge that function arranging for it to be cleaned. He chose to do the work himself. The wording also implies a supervisory function over the cleaning of the hallway outside of Mrs Uter's flat, but such a function would in any case exist since the occupant has covenanted in the lease of that flat to carry out such work.

26. Apart from the obligation to clean the ground floor hallway, the lease of Flat 1 is in just the same terms as that of Flat 2 in these respects. In particular, it includes an obligation to contribute to all of the costs incurred by the landlord in carrying out his functions set out in clause 3(1), and those include the obligation that arises, for the reasons given above, to clean the remainder of the common halls staircases and landings. For this reason the tribunal has concluded that Mrs Uter is liable with Mrs Jartelius to pay her share of any reasonable charges that arise under clause 3(1)(iv) of the leases.

27. Mr Lusardi's function under clause 3(1) (iv) of the leases is to 'ensure' that the common halls staircases and landings were kept clean and suitably lighted. The only other obligation that the leases contain in this connection is the obligation upon the lessee for the time being of Mrs Uter's ground floor flat contained in clause 2(23) of her lease to keep tidy and to clean at least once in every week the ground floor hall and entrance hall. It is open to the landlord under clause 3(vii) of the leases to employ such persons as may be requisite to perform his functions, but there appears to be nothing to prevent the landlord from carrying out works under the lease himself.

28. We have no difficulty in determining that the charges that Mr Lusardi made for the cleaning work are reasonable if that work had been done adequately. We are told, and accept, that he went on charging what his predecessor had charged, with uplifts from time to time to allow only for the rate of inflation. In any event, we are quite satisfied from our own knowledge and experience that the cost of cleaning the stairs that are the landlord's responsibility would be markedly greater if the work was done in any other way.

29. There was a conflict of evidence about whether or not Mr Lusardi had actually done the cleaning work. Mrs Uter had said that she did not believe he had, Mr Lusardi said he did it frequently and Mrs Jartelius' letter of 7th January 2002 (page 55) accepts that there was "occasional" cleaning of the inside staircase. Having inspected the property, we can see that Mrs Uter may not have been aware when cleaning work to the staircase was being done both because the living areas of her flat are largely further from the staircase, and in any event she would not regularly have needed to use more than the hallway that is her responsibility.

30. We were not told of any complaints at any time from either Mr Uter or Mrs Jartelius that the stairway was dirty. We accept that none of the parties was seeking to be untruthful, but recognise that each may have wished to present his or her aspect of the matter in the best light. From all of that we have concluded that Mr Lusardi cleaned the staircase sufficiently often to keep it in a reasonably clean and tidy state, at least so that its condition did not provoke any complaints from the lessees.

31. We were driven however to the conclusion that a strict interpretation of the terms of clause 2(3)(1) of the lease does not allow Mr Lusardi to recover the expense of work done by him (as opposed to others) for more than "work of repair redecoration or renewal required by any of the covenants". This is a quite explicit term of the lease and it is apparent that cleaning does not fall

within that definition. The use of the word "ensure" in the obligation to clean the staircase also suggests that the lease does not envisage that the landlord will do this work. It follows from the view that we have taken that Mr Lusardi is not able to recover the administration charges on those costs either.

32. We saw no reason to suggest that Mr Lusardi should not recover the cost and the administration charges of the other expenses that fall within this section of this decision. The work seems to have been done or the expense incurred as the case may be and there is no material complaint about it. That being so he is also entitled to the administration charge in respect of it as a matter of contract. The question whether or not we have the jurisdiction in any case to interfere with administration charge is discussed at paragraph 61 below.

33. We did not have the benefit of full technical argument upon the matter but it appeared to us on the facts and arguments before us that it was unlikely that Mr Lusardi could succeed in a claim that the applicants were estopped from denying the arrangement. We were not, however, convinced by the applicants' arguments that they only ceased paying for the cost of cleaning when they discovered that it was not in recompense for various costs of minor repairs. It seems to us that because all of this occurred at much the same time as the arguments over the redecoration contract arose it is more likely that not that a strong element in that decision arose from those arguments.

34. We were not furnished with a full set of accounts to show what had been charged and what had been paid and when although we received some evidence upon the point. We are unable to determine what amount such amount as the applicants may be able to recover from Mr Lusardi under this head because it may also depend on matters in the parallel County Court action, and aspects of limitations may possibly arise. Those are aspects that we must leave to the County Court who we believe will have more information about them than do we. We have however given leave for those matters to be referred back to us if the parties so require, as to which see paragraph 65 below.

35. Our decision on this aspect of the matter reflects our understanding of the terms of lease, which is the contract between the parties. It produces the unfortunate result for all of the parties that Mr Lusardi appears to be able, by its terms, to recover the expense incurred in employing cleaners to carry out what we find to be his obligation to ensure that the staircase is kept clean but not a lesser sum for doing that work himself. The result may well be an additional cost in future for everyone. The parties may possibly feel that some variation of the terms of the lease may be beneficial for all of them.

The 2001 Works

The Applicants' Case

36. Mr Uter told us that the works carried out to the property were essentially those of repainting the wooden parts of the building and of the garage. This commenced around August 2001. At some point the applicants were told that

other work was necessary. Thereafter tiles were replaced on the roof, and so was a certain amount of woodwork. Some work to the gutters was also carried out and some additional gutter boxes were provided. In the end the total cost of all of the work was about £15000.

37. The applicants contended that the administration charge aspect of that cost was frivolous and vexatious in terms of value for money, and that the work was not supervised adequately. Furthermore, the work was not of an adequate standard. They considered that a sum of £3403-7 should be repaid to them from the service charge.

38. Mr Uter itemised a number of examples of situations where he said that Mr Lusardi had failed to comply with the terms of the Management Code. Some of these related to a dispute concerning a burst pipe taking waste from Mr Lusardi's flat that had caused water penetration into Mrs Uter's flat, and to the fact that an insurance claim had not yet been made in respect of it, to noise, to correspondence addresses used, to unfamiliarity with legal aspects of management and to alleged incorrect accounting practices. He aid that all of this went to the value received by the leaseholders for the administration charge.

39. The tribunal understood from Mr Uter that he had a number of further examples of breaches of the Management Code of this sort that he was ready to give. It indicated that it was content to accept in respect of matters of the Management Code not otherwise relevant to the issue of the works that it was Mr Uter's intention to show that the property had been less well managed than it should have been and that this went to the reasonableness of the overall 12.5% administration charge. It did not consider that further such examples would materially assist it in its task.

40. The original quotations for the works varied. No specification had been prepared so that it was difficult to try to compare like with like. The quotation obtained from Dreamworks, the contractor eventually chosen to do the works, turned out not to have included several of the items that the leaseholders had believed to be included. It was obtained in 2000, and by the time the works were carried out in 2001 the cost in it had escalated by some 55%. These aspects were mentioned in his letters to Mr Lusardi of 6th and 8th August 2001, which appeared at pages 123-127 of the bundle had provided to the tribunal, in the first of which Mr Uter had described the price as having reached an unacceptable level. The letter shows that by that time Dreamworks had erected scaffolding. On 8th August Mr Uter drew attention to the fact that Dreamworks had removed tiles and left woodwork exposed to heavy rain that had occurred and, amongst other things, asked for the problem to be rectified immediately.

41. The leaseholders were told that a further £1540 was required in order to fit the ridge tiles. Messrs Brooks, chartered surveyors whom Mrs Jartelius had instructed to advise the leaseholders upon the matter, said in the letter of 10th February 2003 accompanying their report that they could not believe that the whole roof was included in a quotation of 24th May 2000. No copy of that quotation was produced to us, and the tribunal has been left to infer that it

referred to the sum of £1540 that Mr Uter mentioned. Mr Uter says that twenty or thirty tiles were involved.

42. Mr Uter said that the applicants did not object to the cost of the interior damp proofing work. However, when it became plain to Mr Lusardi that costs were escalating he should either have called in a surveyor or appointed a manager of the works.

43. Mr Lusardi did not arrange for any contract in respect of the first phase of the works, said Mr Uter. The quotation to repair gutter boxes on page 130 of the bundle was ambiguous in that it was not plain if the original quotation related to all of the gutter boxes or not. Mr Uter continued by saying that Mr Lusardi had not properly supervised the contract. Thus a large section of roof that had been stripped of tiles was left exposed to rain for four days. The builders had taken down the fascia and guttering before they were instructed to do further work requiring those actions. The front left gutter boxes leak, and the porch had collapsed whilst work was being done to it, although he accepted that the applicants had not had to pay for its reinstatement.

44. Mr Uter continued by saying that Mr Lusardi had not known when the work was to be finished. This had caused some increase in cost. The scaffolding had been up for fifteen weeks, but work using it had been carried out in only four of those weeks. The carpenter had left the site when Mr Lusardi had shouted at him, and that caused further delay. He agreed that Mr Lusardi had sent a letter with 5 quotations for the work to the leaseholders before starting the work, inviting their comments, in 2000. The work had been carried out in 2001. In Mr Uter's view the contractor was not suitable for the work that had to be done. He was only a painting contractor, and a builder should have been brought in for the other work. There had been no guarantee for the work, and if Mrs Jartelius' comments (we understood this to be a reference to her letter to Mr Lusardi dated 9th September 2001 at page 117 of the bundle) had been followed up the work could have been done within a reasonable time.

45. Eventually the leaseholders had instructed Norton Masonry to make good the work that Dreamworks had started. It was Mt Uter's contention that the whole service charge should be reduced by the amount of the contribution that they had made to this work. That was because this was the work that needed to be done to complete the work in Dreamworks' original specification, and it cost £3403-71.

46. If the tribunal felt that the whole of the £3403-71 was not allowable then it might make a reasonable deduction from that for doing works not specified. There was a cost of £2475 for putting right some of the work, excluding paintwork as evidenced by a quotation from Taylor dated 18th November 2002 in the additional un-numbered bundle submitted by Mr Uter on the Friday preceding the hearing, and a percentage for painting the garage and the rear of the property.

The Respondent's Case

47. Mr Lusardi said that the work was primarily work of decoration. He had obtained quotations by inviting the contractors to the property to see what was required. They could see that two gutter boxes were dilapidated from the ground. He asked all of them to quote for the work to those two so that all quoted on a like-for-like basis. The other boxes were found to be ineffective after the scaffolding was erected. Only then could they quote for additional work to the gutter boxes as it was only at that time when the extent of the further work required could be established.

48. The porch had been found to be rotten when the builders came to work upon it. It had collapsed, and eventually had been replaced at no charge. Mr Uter accepted that no cost fell on the applicants in this respect. The work to the ridge tiles on the roof had necessitated no new scaffolding.

49. Mr Lusardi said he had brought in Messrs Mann Williams on two occasions when problems began to arise over the quality of the work. However he met with opposition when he did so. It was thus outrageous to suggest that he had not called in supervision when he should. He had charged back Mann Williams' costs and had had to go to Court to recover them. Five weeks of the additional scaffolding charges were attributable to the time Norton Masonry took to do their work. They had contracted to do the work in two weeks but took seven (Mrs Jartelius contested this, and said they took four weeks), and despite the fact that they were under a formal contract produced by Mr Uter they suffered no adverse consequence following this breach.

Determination

50. There is no question in this instance but that Mr Lusardi is entitled by the terms of the lease to recover the reasonable cost of the 2001 works. The issues for the tribunal, as Mr Uter put the applicants' case, were first whether the cost of the work was reasonable in all of the circumstances, and secondly whether the administration charge was reasonable.

51. The tribunal considered the total cost of the work carried out by both Dreamland (the contractors instructed by Mr Lusardi) and by Norton Masonry, the contractors subsequently instructed by him at the insistence of the applicants. Neither party could tell us exactly the amount of the total cost of the work carried out by these two companies, and there was again an absence of appropriate accounting information. However, Mr Uter said that it was nearly enough £15000, and Mr Lusardi did not dissent from that view. We have therefore proceeded upon that basis.

52. It had appeared to us on our inspection, bearing in mind that the work had been carried out almost two years ago, that the paintwork was in generally satisfactory condition for its age, although subject to one or two blemishes like the blistering on the garage soffit. The property gave an impression of being generally in satisfactory decorative repair. We accept that there are one or two places where the gutters require some attention. It did not appear that this work is such that scaffolding will be required to enable it to be carried out.

53. Mr Uter contended that the cost of the works carried out to the roof were too high. We were told that they cost £1540. In particular he referred to the comment of Mr Goodman from Messrs Brooks in a letter of 10th February 2003 (page 192) to Mrs Jartelius where he says "With regard to the (estimate) of 27th May I am not actually sure what this refers to – is it the whole roof – I cannot believe it is for that sum of money". Mr Uter says that only 20 or 30 ridge tiles were involved and, as we understood him, invited us to read Mr Goodman's comment as one of surprise that the cost was so high. However, the work seemed to have involved stripping a large section of roof of tiles at one point, (Mr Uter complained that this work was left exposed for several days) and seems to have been rather more extensive than replacing a few ridge tiles. On the information that we have we find it difficult to conclude that the cost of the work to the roof was unreasonable.

54. When it became apparent that there were problems with the works at roof level Mr Lusardi properly called upon the services of Messrs Mann Williams to advise upon the condition of the roof. That seems to us to have been appropriate and there is nothing before us to suggest that the level of their fees is unreasonable. That was an expense properly incurred, and we can see no reason why the lessees should not pay their proper share of it.

55. Norton Masonry, who were a company nominated by the lessees but instructed by Mr Lusardi, finished the work. There was some argument before us about the time that they took, but it does seem that they took longer than had originally been anticipated. On the understanding that they were the last to deal with it, they seem on the face of Messrs Brooks' report to have left some of the guttering choked with builders' rubble.

56. The porch had collapsed during the work done by Dreamworks. Their quotation of 27 June 2000 makes it clear that the porch was rotten. Mr Uter accepts that the porch was replaced without cost to the lessees, though he says that the replacement is inferior to the original. On inspection the replacement to us to be reasonably in keeping with the property and if not perfect to be of an acceptable standard. Since the replacement was provided without cost to replace a porch that was described in 2000 as being rotten, the lessees have in our judgment no real ground for complaint in this respect.

57. We concluded that the work that appeared to have been done in 2001 by way of decoration and to the gutter boxes was such that it might reasonably have been expected to cost in the region of £15000. It was less that perfect and it no doubt took longer than it might have done. That fact seems to have been attributable at least in part to the disagreements between the parties. However, it is the sort of cost that one might have expected for work of this standard at that time for so large a house as this. Indeed we understood Mr Uter to accept that this was probably the case. Professional supervision might have produced a rather better job, but that would have been achieved at a material additional cost that would have fallen upon the parties. The primary thrust of his case for the applicants was that it would be unreasonable to allow Mr Lusardi to recover the administration charge on that figure, and perhaps on the services

generally, because of the various breaches of the RICS Management Code (Service Charges) that he enumerated.

58. It is apparent that Mr Lusardi has been in breach of the code at a number of points. We bear in mind that this is a voluntary code (despite the fact that it has statutory sanction under section 87 of the Leasehold Reform Housing and Urban Development Act 1993). It is aimed primarily at professional managers, although Mr Uter made the quite valid point that a lessee may expect conformity with it by a landlord who manages his own property as Mr Lusardi does.

59. Mr Lusardi could have done better in some ways, not least in his handling of the insurance claim, and of the accounting and financial requirements. Similarly, a professional manager might have prepared some sort of written specification for the work done in 2001 rather than having simply showed the property to those whom he asked to tender. That is the primary cause, we think, of the fact that the lessees assumed that all of the gutter boxes were to be repaired for the price quoted by Dreamworks, whilst Mr Lusardi says it was clear to him that only the front gutter boxes were included. We strongly suspect that the root of the differences between the parties lies in that misunderstanding, coupled with the fact that Mr Uter made it plain to us that the applicants expected the whole of the work to all the gutter boxes to be done for the price quoted by Dreamworks, and appear to have been willing to pay no more for this reason. This appeared to us to be at the root of their dissatisfaction, and if that is so it seems too us that they might in turn have verified just what the quotation covered when considering it. As matters stand they appear to seek to rely on the assumption that they made.

60. Similarly we accept that Mr Lusardi has not apparently dealt with the monies he held on behalf of the lessees for these works as he should have done, but although Mr Uter indicated that he thought the lessees may have incurred loss as a result of this, no evidence that was placed before the tribunal that shows that this was the case. We accept that Mr Lusardi should have dealt with the claim over the burst pipe above Mrs Uter's flat more quickly than he did. He told us that he will now do so, and whilst we accept that feelings may have grown inflamed over this aspect on both sides, it does seem to us that the parties ought now to deal with it in a businesslike fashion.

61. We are asked to decide whether the administration charge is reasonable. The amount of the charge is a contractual sum payable under the lease, and there is some authority in a decision of the Lands Tribunal on 26 May 2000 in the matter of *98/100 Crystal Palace Road* the LVT has no authority to interfere with a fixed contractual sum of that sort. That decision has been called into question in a subsequent decision of the London Leasehold Valuation Tribunal upon an application for leave to appeal in *Re 126 Anerley Road London SE 20* dated 5th June 2003. The amount payable here is a variable sum dependent on the initial cost and so may fall within the definition of a service charge in section 18 of the Landlord & Tenant Act 1985 (as amended).

62. In the present case the tribunal has concluded that it need not reach a view upon these matters. The parties have had work done at a reasonable cost for what they received. The differences between them seem to have arisen from the initial misunderstanding over what was included in Dreamworks' initial estimate, and the delay that occurred has been, it seems to us, caused at least in part by the arguments between them. A professional manager may have gone about the matter rather differently from the way in which Mr Lusardi approached it, but the result of everyone's efforts has been a job that is less than perfect but which (apart from some defects in the guttering that remain and require attention, the matter of the burst pipe and the fact that the flat roof over the ground floor flat requires recovering) still give the property the overall impression of being satisfactorily maintained.

63. That being so it would not be appropriate for us to interfere with the contractual arrangement to pay the administration charge, even if it is within our power to do so. There is no doubt that the cost to Mr Lusardi of everything that he has had to do in connection with the work must have well exceeded that figure. Mr Lusardi has fallen short of the requirements of the management code in matters largely not associated with the 2001 works. They are not shown to have resulted in any loss to the lessees although they have undoubtedly caused them irritation.

Summary

64. (a) We find that of the charges other than those for the 2001 works, Mr Lusardi is not entitled under the terms of the lease to recover the charges for cleaning that he has made or the administration charge in respect of those sums. We are not in a position from the information we have to determine what amount of the sums paid may be recoverable by the lessees, but we believe that the County Court may have the information to enable it to establish that figure in the proceedings before it. Otherwise the service charges and administration charges for the years the subject of the application other than those for the 2001 works are reasonable.

(b) We find the charges for the 2001 work and the administrative charges associated with that work to be reasonable.

Computation

65. The parties have leave to refer any of the unresolved questions of computation arising from this decision to the tribunal, if they wish to do so, within three months after the date of this decision. The tribunal will however in such case wish to have a full account of costs and payments over the relevant period placed before it in such a case together with any information that may be relevant to enable it to decide the period in respect of which the lessees are entitled to recover the charges for cleaning paid by them to Mr Lusardi.

Robert Long
Chairman
4.3.2004

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case Number: CHI/00HA/LIS/2003/0006

Re: 3 Cleveland Walk Bath.

Between:

Mrs J Uter and Mrs M Jartelius — Applicants

and

Mr E Lusardi — Respondent

Decision upon Mrs Jartelius' application for leave to appeal

Date of application for leave: 23rd March 2004

Date of Issue of this decision: 21st May 2004

Tribunal:

Mr R P Long LLB (Chairman)
Mr S J Hodges FRICS
Mr J Reichel MRICS

Decision

1. By a letter to the tribunal dated 23rd March 2004, Mrs Jartelius, one of the applicants, sought leave on behalf of herself and Mrs Uter, the other applicant, to appeal to the Lands Tribunal against the decision of the tribunal issued on 4th March 2004. The application is limited in that the leave is sought only in respect of that part of the decision that relates to the external decoration works, that is to say to the second of the matters addressed in the decision of 4th March 2004.

2. For the reasons that appear below the tribunal has decided not to allow that application, but it is of course now open to Mrs Jartelius and Mrs Uter to apply within the statutory period for such leave to the Lands Tribunal itself.

Grounds of Appeal

3. The applicants did not itemise specific and individual grounds of appeal in their letter, but a reading of the letter indicates that the following grounds are advanced. We have changed the order of the first two of them from that which appears in the letter only in order to enable us to deal more clearly with point b.

   a. That there was a substantial procedural defect in the hearing.
   b. That the tribunal took account of irrelevant considerations and failed to take account of relevant considerations in reaching its decision.
   c. That the tribunal used the respondent's numbered bundle at the hearing and the applicant's correspondence and facts were disregarded.
   d. That the tribunal gave inadequate weight to certain pieces of evidence.
   e. That the hearing was not conducted in such a manner that the true reasons for the breakdown in communications between the applicants and the respondent could be shown.
   f. That the essence of the case was not the state of the building at first glance.

Reasons for decision

The Procedural Defect

4. The applicants suggest that there was a substantial procedural defect. As we understand the letter of 23rd March, this is said to lie in the fact that the applicants understood that the tribunal would have the Court's file before it, but it did not. There was before the tribunal a bundle of 200 documents provided (as the members of the tribunal understand the position) by the applicants with the application. There were further documents faxed to the tribunal within a very few days before the hearing amounting to about forty in all provided both by the applicants and by the respondent. The respondent brought two very large files with him to the hearing but made little reference to their contents and did not give them to the tribunal. He also submitted a further bundle of papers some days after the close of the hearing, which the tribunal did not consider, as recorded in paragraph 15 of the decision.

5. It is undoubtedly the case that the Court's file was not before the tribunal. The tribunal would not have expected to see it in a case like this, and in any event, it is plainly a matter for the parties to put before it such papers as they wish in order to make their case. Had the applicants wanted the tribunal to see the Court's file, and to make representations based upon its content, it would have been for them to seek to make arrangements for that to happen if that were possible. Alternatively they might have made other arrangements for the tribunal to see any relevant documents it may have contained. They did not do so, and their failure in that respect cannot in the tribunal's judgement constitute a valid ground upon which to seek leave to appeal.

Considerations

6. The applicants' letter does not particularise what are the irrelevant considerations of which the tribunal is said to have taken account, nor does it set out in terms what are the relevant considerations that it is said it should have taken into account.. However it implies that the tribunal should have taken into account :

a. Mr Lusardi's alleged failure to deal properly and promptly with the problems concerning the burst pipe above Mrs Uter's flat,
b. the reasons for the breakdown in communications between the landlord and the lessees, and
c. the fact that the lessees now face additional costs to get the building into a condition that they regard as acceptable.

7. These are matters for the Court and not for the tribunal. That is because they do not go to the reasonableness of the cost and standard of what was done, but to alleged matters of breach of general obligations owed by the landlord to the lessees. If such a breach has occurred it would sound in damages, and the tribunal has no jurisdiction at all to make findings of that sort. The tribunal properly took into account the matters placed before it that were required to enable it to form a decision on the matters within its jurisdiction.

The Bundle

8. The tribunal had some difficulty in understanding this ground. There was before it at the hearing an initial bundle of some two hundred papers (numbered 1 to 200) that it understood Mr Uter had submitted with his application. Another forty or so papers were submitted to it by fax shortly before the hearing by both Mr Uter and Mr Lusardi in roughly equal numbers. Mr Lusardi brought two large files with him to the hearing but made limited reference to them The only references in the decision note (seven of them, as far as we could see) are to the papers that Mr Uter provided in his original bundle.

9. To the best of the tribunal's understanding of the matter, therefore, the facts alleged appear to be inaccurate. Even if that were not so, there was no suggestion that the copy documents shown to the tribunal by either side were

not authentic, and the parties were able to refer at the hearing to copies of the documents that they asked the tribunal to see.

Weight of evidence

10. This ground is not particularised. It may refer to the absence of the Court's file, or to the matters mentioned at paragraph 7 above, coupled with the matters of breach of the RICS service charge code to which Mr Uter referred. There is nothing before the tribunal to suggest that it was not reasonably entitled to reach the conclusions it did on the evidence before it.

Breakdown in Communications between the parties

11. There may well have been a breakdown in communications between the parties at some point, but nothing in the matters put before the tribunal rendered the circumstances in which this occurred relevant to the decision that the tribunal had to make. It is however possible (without of course expressing any settled view upon the point) that those factors may be relevant to the issues in the County Court.

Essence of the Case

12. The essence of the case before the tribunal was whether or not the costs were or were not reasonable for the work of the standard that was performed. The County Court required that information in order to deal with the matters before it. The applicants' grounds of appeal suggest that perhaps they expected that the tribunal would have been able to consider a greater part of the issues between them and their landlord than was in fact the case.

Generally

13. The tribunal regrets that it has not been possible to issue this determination to the parties more quickly. One of its members was absent abroad for a substantial period following receipt of the application for leave, and it was unable to determine the application until his return.

Robert Long
Chairman
21st May 2004