LVT/00AW/LAM/2004/0014

Residential Property
TRIBUNAL SERVICE

DECISION BY THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE ON APPLICATIONS UNDER:

- SECTION 24(1) OF THE LANDLORD AND TENANT ACT 1987
- SECTION 27A & 20C OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Applicant:	Ms Manuela Vila-Real da Graça
Respondent:	Mr Avtar Nandhra
Re:	Flats 5 & 9, 2 Penywern Road, London, SW5 9ST.
Application date:	19th August 2004
Hearing dates:	18th – 19th November 2004
Appearances:	Ms M Vila-Real da Graça Mr J Graham C.A - Lay representative For the Applicant
	Mr A Nandhra Mr R Davern - Counsel Mrs E Carr - Red Carpet Managing Agents For the Respondent

Members of the Residential Property Tribunal Service:

Mrs F Burton LLB LLM MA
Mr F Coffey FRICS
Mrs G Barrett JP

LON/00AW/LAM/2004/014
LON/00AW/LSC/2004/065

FLATS 5 and 9, 2 PENYWERN ROAD, LONDON SW5 9ST

BACKGROUND

1. This was an application under s 27A of the Landlord and Tenant Act 1985 for determination of liability to pay service charges, together with an application under s 24 of the Landlord and Tenant Act 1987 for the appointment of a manager, by the Lessee of two 2 bedroom flats in the subject property, a converted Victorian house comprising 10 flats. A further application under s 20C of the 1985 Act sought a direction that no costs of the proceedings were to be applied to any service charge. The flats were held by the Applicant Lessor as assignee of Leases between the Respondent freeholder, Avtar Singh Nandhra and Brightsize Limited and a copy of the Leases of Flats 5 and 9 were provided to the Tribunal.

2. On 14 September 2004 Directions were issued by the Tribunal following an oral pre-trial review on 13 September 2004, at which the Applicant was present and the Respondent was represented by Mrs A Cook of Pinkerfields, Solicitors. The Respondent also attended in person. The following issues were identified to be determined:

- whether there were grounds justifying a management order, in particular whether the landlord was in breach of obligations under the Leases and/or whether unreasonable service charges had been demanded
- whether it was just and convenient to make such an order
- whether the Applicant's notice under s 22 of the 1987 Act was adequate within the meaning of s 24(7) of that Act
- whether there was a suitable person/company to be appointed as manager and the terms (if any) of such appointment

A determination was sought for service charge years ended 31 December 1999-2004. The service charges to be disputed had not yet been identified.

3. The Tribunal issued its standard Directions supplemented as follows:

The Applicant to amplify her case to the Respondent , by providing

- identification of the proposed manager
- statement of the proposed manager's proposed management plan including fees
- identification of the grounds for such appointment by reference to the six alleged breaches of covenant as set out in the s 22 notice
- identification on a year by year basis in the audited service charge accounts or the current year's estimate of the service charge items in dispute (conveniently in schedule form)
- details of any comparable estimates obtained.

The Respondent to reply by providing

- identification of the landlord prior to 5 November 2001, details of contractual arrangements in respect of service charges on assignment, information as to the relationship of the present freeholder to the previous landlord, and identification of the managing agents for the 6 service charge years in question
- service charge statements showing sums demanded/paid during the 6 years in question
- copies of s 20 notices, with enclosures and estimates, for any major works incurred during the 6 relevant years
- detailed comments on the Applicant's amplified case, in respect of the s27A application on a year by year basis in relation to the service charge accounts.

The case was set down for hearing from 1.30 pm on 18 and 19 November 2004 with a time estimate of 6-7 hours, and an inspection at 10 a.m. on 18 November 2004.

INSPECTION

4. The Tribunal inspected the subject property on 18 November 2004. There were present the Applicant, her counsel, Mr Ray Davern, and Mrs Edell Carr, the managing agent. The property was found to be an end terrace stuccoed Victorian house in a road of similar properties, on 4 floors over a basement, and in reasonably good order. Internally the common parts were in only fair condition, being somewhat tired, not entirely clean, generally uncared for, and with a non-functional landing light on the attic floor. The rear terrace, accessed from a landing, had broken ironwork on the balustrade, a down pipe unconnected to any drain (and which therefore discharged onto the flat roof). The entire terrace area was untidy with cigarette butts and other rubbish left uncollected. The Tribunal also inspected the top floor (attic) flat where windows in the two bedrooms were difficult to open and access to the gutters carrying away rainwater was inconveniently sited under the window sills (thus clearly causing, through such design fault, considerable difficulty and likelihood of flooding if these gutters became blocked and could not be quickly and easily cleared).

THE HEARING

5. The hearing duly commenced at 1.30 pm on 18 November 2004. It was immediately apparent that there was no agreed bundle and that despite the Directions no attempt had been made by the Applicant to agree any of the service charges, all of which apparently remained in dispute despite the Respondent's extensive replies to the Applicant's statement of case. It further appeared that the Applicant had not arranged representation or availed herself of any form of secretarial or other basic office support so that all her voluminous papers were handwritten. Ultimately, the Tribunal was grateful for the assistance of Mr J Graham, a regular observer of the LVT proceedings, who, it transpired, had offered his services to the Applicant at very short notice, albeit that this last minute acquaintance with the case meant that there was occasional delay in the conduct of the hearing while he familiarised himself with the Applicant's bundle and took her instructions.

THE S.22 NOTICE

6. Mr Davern requested that the issue of the adequacy of the Applicant's s 22 Notice should be considered as a preliminary point. He said that the Notice had been dated on 18 August 2004 and issued on 19 August 2004. The Notice had duly specified a

period of 28 days within which the breaches of covenant complained of might be remedied, but since the Applicant had then also made application to the Tribunal for determination of the liability to pay the service charges, and at the same time for the appointment of a manager on 18 August 2004, it went without saying that the Respondent had not had the opportunity to remedy any such breaches, either within the 28 days allowed by the Notice, or alternatively within a reasonable period, although the alleged breaches were in fact capable of remedy. Mr Davern said that the Applicant's witness statement at page 53 of the bundle expressly admitted that the notice period had not expired. He submitted that the issue was in fact subject to a pure point of law, due to the application to the present case of s 23(1) (which provides that no application for appointment of a manager shall be made unless the period of notice specified in the s 22 Notice had expired, or when the provisions of paragraph (ii) of s 23(1) did not apply). He said that this was a point of law to which the Applicant could have no answer, unless the Tribunal waived the s 22 Notice; however, in that a Notice had already been served this was not open to the Tribunal since s 22(1)(b) permitted dispensation with such service only where the Tribunal was satisfied that it was not reasonably practical to serve the landlord. The Act did not confer a general power to dispense with a s 22 Notice which was defective, as he contended this one was.

7. The Applicant submitted that the Directions hearing had expressly referred to the adequacy of the s 22 Notice and the Procedural Chairman had still accepted jurisdiction, to which Mr Davern responded that any such reference at the Directions appointment did not bind the final hearing. In view of his late acquaintance with the case, and lack of prior opportunity to familiarise himself with the Applicant's papers, the Tribunal granted a short adjournment while Mr Graham considered the submissions on behalf of the Respondent.

8. Upon resumption of the hearing Mr Graham sought to persuade us that time was not of the essence, that the Applicant had relied on the LEASE booklet as any member of the public might reasonably do and, against a background of County Court litigation, had wished to apply to the Tribunal as the County Court had no managers' jurisdiction. An advantage of making the applications to the Tribunal on 18 August 2004 was that both might be presented under one application fee. Mr Davern did not

agree with this approach and submitted that we should dismiss the application, since to appoint a manager under the present circumstances would mean that the decision was a nullity. In particular the Applicant had claimed to be an experienced property investor and qualified property manager, and should not have acted as she had.

9. Having conferred briefly, the Tribunal determined that it was convenient that the matter of the service charges should be heard first, since the proposed manager was not present and (especially in the context of the voluminous handwritten papers presented by the Applicant) it would initially be desirable to see whether there were any grounds for the appointment of a manager, and if so, in the interests of expedition and avoidance of delay and unnecessary costs, to determine at that stage how that application should be progressed.

THE SERVICE CHARGE ISSUES

10. Mr Davern again had a preliminary point to raise. He said that it was apparent from the applicant's voluminous papers that she had reviewed every possible matter in connection with the service charges back to 1997, and while he did not wish to dispute her right to do so against an appropriate respondent, the Respondent before the Tribunal was not such a person, against whom she could only proceed in respect of items arising since November 2001 when he had become the relevant landlord, and prior to which he had not claimed a penny from her. Moreover, he submitted, the Directions specifically referred only to the years 1999-2000. The Tribunal accordingly proceeded to hear the Applicant's case in relation to those years.

THE APPLICANT'S CASE

11. Mr Graham said that there were a number of items in respect of which the Applicant did not consider that the service charge demands were reasonably made.

(1) Buildings Insurance. Mr Graham said that the Applicant contended that she had never had a proper invoice for this item, nor any schedule of the insurance cover provided although this had been requested by her solicitor. Asked by the Tribunal if she had ever asked for this in writing over the 5 years before them, as the RICS

Residential Management Code provided a lessee might do, the Applicant said she had not, though she had obtained alternative quotations herself. Mr Graham said that her quotation (from insurance brokers John Lampier & Son Limited for a similar property with a similar value (75 Eardley Crescent) in 2002 had represented £1.47 per £1,000 insured, whereas the landlord's equivalent had been £2.36 per £1,000. The landlord's index linked quotation had been on the basis of £860,000 indexed in 2001. Mr Graham said that it was appreciated that insurance premiums appreciated annually, but he considered from his own researches that £2 per £1,000 insured was the "going rate", and suggested that there should therefore be a 15% reduction in the amount allowed. He said that in his experience landlords "shopped around" once the premium reached £2 per £1,000. To this Mr Davern replied that more evidence was required to support this than Mr Graham's submissions, that the onus was upon the Applicant to show some unreasonableness in the premiums charged, and that those which had been charged were within a band of reasonableness, whereupon Mr Graham invited the Tribunal, as an expert Tribunal, to apply their own knowledge to determining the correct amount.

(2) TV Aerial. Mr Graham next raised a payment of £182.13 for attention to an aerial, which the Applicant claimed benefited only Flat 1, and not either of her flats, although it appeared that she had expressed no dissatisfaction at the time. She ultimately accepted that although the cable renewed ran only to Flat 1 it was in fact a cable which was part of the property's communal aerial and as such reasonably charged.

(3) Sundry items. The first of these items concerned a charge of £293.75 for an inspection of the premises to prepare a schedule of repairs to the front of the property, which was ultimately accepted by the Applicant to be reasonably incurred and charged, although she contended at some length that the works for which the schedule was prepared should have covered the rear of the property as well, since works to the front did not directly benefit her flats which were on the rear, and that she had not understood that the rear was to be excluded and had not been properly consulted. A second item was for work in Flat 1 for £171.27. It appeared from the evidence of the Applicant and of Mrs Carr that the tenant of Flat 3 had complained of squeaking floorboards so the Applicant had sent her handyman to look at the problem. He had

inadvertently put a nail through a water pipe causing damage. Moreover works in Flat 5 had caused damage to Flat 1. Mr Davern pointed out that by placing the relevant costs into the service charge the burden on the Applicant had in fact been lessened, rather than increased, as the alternative would have been to charge her 100% of the repair costs. Ultimately, after some time had been spent on the matter, the Applicant conceded this item was reasonably incurred and charged.

(4) Maintenance item. This concerned a charge of £62.93 for general items including fitting a lock, staple and hasp. The Applicant ultimately accepted that this item was reasonably incurred and charged.

Having spent some considerable time on these relatively minor items the Tribunal indicated that it was minded to rise at the usual time at the end of the afternoon and in the interests of a fair allocation of the resources of the Tribunal to the Applicant's case and also of according the Respondent an efficient and cost effective disposal of the issues, requested that the Applicant should use the overnight adjournment to consult with Mr Graham, in order to consider which items, if any, from her lengthy list of disputed charges, thereby reducing the number of items for the Tribunal's determination in the second day of the hearing. The Tribunal pointed out that the Applicant had not, it appeared, availed herself of the opportunity afforded by the clear Directions to consider this point before the hearing and indicated that they would be willing to restart the hearing a little later on the morrow if it would assist the parties to agree some of the items, such as any on a par with those at (2) and (4) above, which had in effect occupied most of the afternoon.

12. Following the adjournment the hearing resumed on 19 November 2004 with consideration of the remaining items in the Applicant's list, which had unfortunately not been reduced by the suggested meetings between the Applicant and Mr Graham and between the parties' representatives; nor did the Applicant wish to agree to the Tribunal's suggestion that in the interests of the best use of time the major items of greatest financial consequence should be considered first and the minor items only after the more important and/or valuable items had been disposed of. She insisted that she wished to continue to follow the order in which her list of complaints was structured in her papers, even if this did not make the most cost effective use of the

available time. The Tribunal therefore proceeded to examine the further items in order, picking up at item (5) in the Applicant's list.

(5) Cleaning. The Applicant contended that there were 3 objections to the landlord's cleaners: (i) costs had increased by 50% over the years 1999-2004; (ii) she herself had obtained an estimate from Molly Maid for cleaning the building which was the same in 2004 as had been paid by the landlord in 1999; (iii) the landlord's cleaner had difficulties in parking his van so that in practice £30 was paid for a 20 minute attendance throughout which the cleaner was anxiously checking that his van was not receiving a parking ticket. Thus the higher levels of the staircase were not vacuumed. She reminded the Tribunal that they had seen the "grubby" state of the common parts and said that the way in which the staircase was neglected meant that no cleaning was done outside her flats. Asked by the Tribunal how Molly Maid would manage the parking problems, she said that they would park elsewhere, would charge no VAT and would do the job for £15 net (£10 per hour, for a recommended 1.5 hours weekly) including changing light bulbs on the stairs and landings, which was not done properly at present (as she said the Tribunal had seen) although she said that a large number of light bulbs appeared to be charged for. The Tribunal was surprised to hear that there would be no VAT on the Applicant's quotation, as cleaning was considered to be a VAT chargeable service and it seemed unlikely that Molly Maid, which they understood to be a franchise, would not be registered for VAT. To the Tribunal's inquiry as to whether the Applicant had shown Molly Maid a cleaning specification, she merely replied that they would do a good job, which the landlord's cleaner was not at present doing (and it was in fact confirmed that the landlord's managing agents did not have a cleaning specification). Mr Graham insisted that the Applicant was not satisfied with the current standard of cleaning and the Applicant added that one other lessee had complained. However, Mr Davern submitted that the landlord was entitled to choose a better operation than the basic service which the Applicant appeared to be suggesting, further that the landlord was not unresponsive to suggestions, for example previous cleaners used by the landlord had been replaced when found to be unsatisfactory so that the current cleaners were an improvement. He said that it was in any event the that the scuffing of the walls of the common parts was due to the Applicant's tenants (the turnover being high) with their luggage. He asked the Tribunal, who had inspected the property, to take a view

as to whether the cleaning was satisfactory for the price paid, and therefore the charge reasonably incurred. He added that Mrs Carr inspected the cleaners' work twice a week, in particular with regard to whether they had properly cleared rubbish, and that the Applicant had never lifted the telephone to complain to the managing agents. The Applicant however insisted that she had never seen Mrs Carr at the property although Mr Davern submitted that there was no proof to the contrary. The Tribunal considered it odd that the landlord had not prepared a specification of the cleaning duties, but did not consider that they could take this matter further, although they did note that there were no invoices for steam cleaning the carpets in the bundles, which it was claimed had been done, and noted that the Applicant considered that an overlarge number of light bulbs had been charged for. Mr Graham's submission was that a proper charge was £780 p.a. and that excess over this amount in the 4 years should be determined to be unreasonably charged..

(6) Sundry repairs and Lock Replacement and Keys. The Applicant next disputed a number of items for sundries, charged at £188.75 and £311.38, which it transpired were small items of repair effected by the managing agent's maintenance man, who it appeared was engaged on a salaried basis by the managing agents and was charged out at £35 per visit to each unit. This employee was stated to be a *bona fide* contracted member of staff who was supplied with a van and paid monthly, and had no connection with the agents other than as an employee. The Applicant considered that these items were not reasonably charged in that new locks had been fitted a short time before this work. However Mrs Carr stated that they were necessary as so many keys had been cut from a non-security lock (inter alia for the Applicant's tenants) that it was no longer appropriate merely to change the barrel as had been done before, since mail was being lost and it appeared that unauthorised persons were gaining access to the building. It appeared that no key deposit nor any charge for non return of a key had been sought by the landlord. The Tribunal considered that it would have to take a view on these items in its determination.

(7) External decorations. It was the Applicant's case that the sum of £7,988.75 was not properly recoverable by the landlord, as the requirements of s 20 of the Landlord and Tenant Act 1985 had not been complied with and accordingly the landlord was limited to a lower figure. She had gone into the matter in great detail in

her submissions, giving 6 reasons why she considered she should pay no more than the statutory limit of £1,000 where the statutory procedure of s 20 had not been complied with. She stated that her surveyor had said that the s 20 notice had given a brief description of the works but was not a specification, that the works as finally done did not match the original specification (a copy of which she apparently did not initially receive). She also complained of a lack of consultation and was concerned that the works had not covered the rear of the building as well as the front, and that the contractor who eventually carried out the works was not one of those who had originally quoted. Mr Graham submitted that the s 20 procedures had almost certainly not been followed properly. There was extensive examination of this item, Mrs Carr giving evidence on the s 20 procedure followed and explaining that the delay in eventually carrying out the works, and the fact that repairs needed to be done to the windows (including extra repairs once the extent of the work was discovered once the work commenced) as well as decoration had caused the change of contractor. She said that the work was in substance the same as had been quoted for, and that the Applicant had not made any observations on the original s 20 notice. Nor had any other tenant complained and in fact it appeared that the Applicant had consulted her solicitors and agreed in 2003 that the s 20 notice was valid. Mr Davern submitted that the fact that the rear of the building had not been included was for the practical reason that redecoration of the front benefited everyone, as this improved the profile of the building, and the landlord had had to start somewhere on a schedule of works which was financially manageable at that stage. He requested the Tribunal, if it was considered that the s20 notice served in 2002 was not valid because the works were not done until 2003 and then in slightly amended form and by a different contractor, to exercise their jurisdiction under s 20ZA of the Landlord and Tenant Act 1985 to dispense with any further consultation requirements.

Following this item the Tribunal adjourned for lunch, reminding the Applicant that the time allocation given at the Directions hearing was fast being used up due to the detail in which she had insisted on addressing every minor item, to the prejudice of consideration of items of greater value, and requested that she marshal her arguments carefully for the afternoon session. The Tribunal resumed after a short break in order to consider the remainder of the items.

(8) Work to the hopper head. This item was for £1,600 to enlarge a hopper head which had proved to be too small to cope with torrential rain: the cost broke down into £1,200 for scaffolding and £400 for the work to the hopper head. Mrs Carr gave evidence that this had not been done when scaffolding was up for the external decorations as the flooding which had caused the work to be considered necessary had not at that stage occurred. Water was backing up and causing damage to some flats (especially Flat 8): however it was the Applicant's case that this had been happening for some time (to Flats 3 and 6), that the gutters had not been regularly cleared, and the matter should have been included at a time when scaffolding was already up. She said that the cost meant that a s 20 notice should have been served in any case. Mrs Carr however said that the gutters *were* cleared, for example in January 2003 a dead pigeon had been found in the downpipe. Mr Davern submitted that the cost only exceeded the s 20 threshold if the VAT and professional fees were added to the actual cost of the work, bringing the total to slightly over £250 per flat, but that if this was considered to be in breach of the unit cost per flat of engaging s 20, he submitted that it was to such an extent *de minimis* and that he would request that the matter be dealt with in the same way as item 7, i.e. that the Tribunal should exercise its discretion to dispense with the s 20 procedure, especially as it was an innocent mistake. He added that this was not in fact an item in the Applicant's list of items to be determined but had been added in by the Applicant at the hearing. The Applicant agreed that this item should be left to the Tribunal to determine although she emphasised that it had caused her damage and she considered that the failure to address the matter at an earlier stage went to poor management.

(9) Works to the boundary wall and railings. This was an item costing £3,988.75 for lowering the flank wall of the building. The total cost had been £8,988.75 but there had been a grant from Kensington and Chelsea Borough Council of £5,000. The Applicant "strongly" disputed these charges, contending there should have been a s 20 notice. Mrs Carr gave evidence that some of the extra works, over and above those originally intended (which had caused the work to be protracted and the cost to escalate) had been requested by other tenants and Mrs Carr had thought that in any case the s 20 procedure did not apply as the work was grant aided. The works (lowering the flank wall and installing railings as a security measure) had been undertaken at the request of the Council to discourage "winos" from congregating

behind the area walls and constituting a nuisance to the residents of the building and adjacent buildings in the road. Mr Davern again requested the Tribunal to exercise its discretion to dispense with the s 20 procedure if necessary since the excess per flat over a sum which would not have required such a procedure was so small and the work had been of benefit to the building. However the Applicant remained discontented, stating that no one, neither Mrs Carr nor the other tenants, had consulted her or asked her to any meetings, or involved her in any way.

(10) Certification fee of the landlord's accountants.

This item was for £175 + VAT (£205.63) for each of the 3 years 2001-2003. The landlord's accountants, Robertson Craig & Co, had apparently certified the accounts "in accordance with statute". Earlier, in February 2000, a different firm had prepared a "Report to the Lessees" labelled "pursuant to s 21(6) Landlord and Tenant Act 1985" (which Mr Graham considered was actually a misprint for s. 21(5), and cover pages for later years with a similar rubric were produced at the hearing). Mr Graham said that this was actually his area of expertise as he had an accountancy background and was therefore in a position to know personally how the accounts should be dealt with and had so advised the Applicant. He said that the purpose of s 21(5) was to alert lessees paying the service charge to costs in the pipeline. He said that his point on this matter was one of principle, in that if accountants say they are complying with statute they should actually do so, or the lessees were being short changed. He therefore submitted that the certificates did not "tie in" with the accounts, were not in the form required by the Landlord and Tenant Act, did not include the form of statement taken from the RICS Code booklet and were for these reasons not "useful documents"; he said the going rate for chartered accountants in outer London was £50 per hour for a trainee and £100 for a partner and the proper charge was therefore about £25 p.a. He added that the accounts were incomplete and pointed out that the Schedule to the 1987 Act had added extra responsibilities on to accountants (who were likely to be fined by their professional body in instances of unprofessional practice in such matters). He invited the Tribunal to delete the certification fees completely or to allow a nominal £50 per year plus VAT since all the accountants had to do was to scrutinise a maximum of 34 invoices in 2001, and only 23 in 2002, and many of these were recurring, such as for cleaning, and thus not requiring a great deal of time or analysis. In reply Mr Davern said that the work had

been done, the accounts were checked against the vouchers, Mrs Carr had supplied the information for the accounts and the accountants had duly used the figures to prepare the accounts. He added that the real question was whether the work charged for could have been obtained at a lower rate and requested the Tribunal to take a view on this, with which Mr Graham acquiesced.

(11) Legal fees. This item was claimed by Mr Graham to be in the amount of £352.50, although Mr Davern referred us to an invoice in the bundle for £705; these legal fees were incurred for litigation against the Applicant for proceedings under s 146 of the Law of Property Act 1925 in respect of which the tenant's obligation to pay is set out in clause 2(9) of the Lease. The Applicant disputed both the need for these charges and their amount, and claimed that the proceedings could have been avoided by better communication on the part of the management. Mr Graham queried whether legal fees were covered by the Lease at all. Mr Davern submitted that the proceedings were a plausible action on the part of the landlord, within the provisions of the lease, and the amount of the invoices (for counsel's fees) was not unreasonable.

(12) Emergency Call Out for Maintenance (Clearing Gutters). This was an item charged at £130 on an occasion (when there had been heavy rain) and which was duly permitted by covenants in the lease but which the Applicant contended was unnecessary because it had been the fourth such occasion within one year. Moreover it had involved breaking into her flat when that had not been necessary because she was readily available and in any event the tenants were usually available so there was no need to break in. Mrs Carr disputed this, also contending that there was never any key left or even a mobile telephone number for contact when the Applicant was away from London (as it appeared she frequently was, including overseas). Mr Davern requested the Tribunal to decide whom to believe in this instance.

(13) Pest control. This item was for £476 which the Applicant contended should be provided, free. It was necessary due to rats in the basement following works by Thames Water. Mrs Carr gave evidence that the Council's pest control department had said that the responsibility was Thames Water's. She had spent a whole morning with each of these authorities, neither of which accepted responsibility, and had finally employed a private contractor, as the Council had insisted that they would only

bait a single unit and not an entire building comprising several flats. She said she had experienced the same problem elsewhere when attempting to deal with an infestation of bedbugs. The Applicant ultimately indicated that she was satisfied with this explanation.

(14) Security system. This item was charged at £135.13 for moving the dummy CCTV camera in 2003 following the works to the boundary wall. There had been a previous charge in 2002 of £435.75 for installation. The Applicant considered that the charges were high, that the dummy camera was not necessary, and moreover that the money could have been better spent elsewhere. Accordingly she disputed the entire amounts charged on both occasions. Mr Davern submitted that the smaller charge must stand or fall with the Tribunal's decision in relation to the works on the wall and railings, and requested the Tribunal to take a view.

(15) Management fees.

This item amounted to £1,363.42, charged on the basis of 10% of the total disbursements. Mr Graham therefore submitted that if any of the disbursements were reduced or disallowed, then logically the management fees should be correspondingly reduced, especially as the RICS Code recommended that managing agents should charge a set fee per unit rather than on a percentage basis. Mr Davern did not address us on this matter.

Finally, the Applicant contended that she had paid sums which had not been credited. However she said she was unable to provide details for which she needed time. The Tribunal pointed out that she had already had more than sufficient time to point them to any such detail and that the volume of her handwritten paperwork had in fact militated against, rather than assisted, their resolution of the disputed items. Indeed, she had occupied the major part of the time allocated to consideration of the case, allowing Mr Davern very little opportunity in the remainder of the afternoon in which to put his case for the landlord. Mr Davern asked the Applicant whether she was able to dispute the schedule of payments as no trace could be found of an alleged £2000 not credited. Mrs Carr was able to point the Applicant to various acknowledgements of payments made but without further identification by the

Applicant of actual payments (of which Mr Davern required strict proof) it was not possible for the Tribunal to consider the Applicant's contention that she had not been credited with sums paid. The Tribunal therefore declined to entertain this item, especially as the Applicant sought to add it at the last minute having already engaged their attention for virtually the whole of the one and a half days hearing and not given prior and precise notice of her case on this point.

THE CASE FOR THE RESPONDENT

13. Owing to the time constraints dictated by the Applicant's detailed examination of so many items, in response to which he had already indicated the landlord's answers to her complaints, Mr Davern said it was not necessary to retrace steps in relation to all the items raised. He added that he had the landlord present to give evidence if required, but that his case had in essence already been presented in the preceding day and a half of evidence in reply to the Applicant's case, so that unless the Tribunal wished to hear from the landlord, he would not call any evidence and would rely on his final submissions to draw the Tribunal's attention to the salient points of what they had heard, especially as the Tribunal had already indicated that, as the normal hearing day had already run over by more than an hour, final submissions should be presented to them in writing, and that these final submissions should also address each party's representations on the issues of the s 20C application and any application for an order for costs or reimbursement of the Tribunal's fees.

14. Mr Graham similarly indicated that he too had nothing further to add or on which to question the Respondent, and would reserve any further comment which might assist the Tribunal to his own final written submissions. The Tribunal indicated that those final written submissions should be received by Friday 3 December in preparation for the reconvene that would be necessary, in the absence of the parties, in order to make the Tribunal's decision. The Tribunal directed that no further evidence should be submitted other than these final written submissions. In particular, the Tribunal indicated that the written final submissions should not reopen any matter which had already been well rehearsed in the oral hearing before the Tribunal.

THE S. 24 APPLICATION

15. Upon consideration of the oral and written evidence which had been received during the hearing, the Tribunal determined that it would be appropriate, and in the interests of justice, to dismiss the s.24 application , rather than to adjourn it as requested by the Applicant. Should the Applicant consider that she had established any basis for the appointment of a manager she would naturally be at liberty to make a further application, this time in accordance with the provisions of the Act.

FINAL SUBMISIONS

16. In his final submissions, Mr Graham drew attention to the fact that his task in assisting the Applicant had been made more difficult by the quantity of her written submissions, by the fact that they were mostly handwritten and by the further fact that he had chanced to be able to offer his services at the last minute and then only on a limited basis because of prior engagements which could not be broken. The Tribunal was nevertheless extremely grateful to him for his efforts, without which they considered that the hearing would have been most difficult to conduct despite the assistance which are sure they would also have received from Mr Davern, who would but for Mr Graham have been in the unenviable position of a professional advocate appearing against a litigant in person, with all the burdens which this routinely places on counsel who find themselves in this position. Mr Graham went on to say that he had prepared a spreadsheet (attached as Appendix 1) setting out the amounts claimed, accepted and disputed in relation to the service charge years 2001, 2002 and 2003. He also reminded the Tribunal that the Applicant had made some small concessions both immediately prior to the hearing, following discussions with him, and during the hearing when receiving explanations for some items disputed. He said that his final submissions (which were in essence a helpfully elaborated summary of his submissions at the hearing) addressed only the items which remained disputed. The Tribunal has therefore treated any other items, raised at the hearing, but not reverted to in the final submissions, as accepted by the Applicant. His conclusion was that it was clear that all was not as it should be at the subject property and offered the explanation that the Applicant had made the honest mistake of latching her s 24 application to that under s 27A because she was concerned at the standard of management at the property and considered that she could not deal with Mrs Carr in

relation to whom she had referred him to "a barrage of criticism, continued intimidation and total lack of recognition" in Mrs Carr's dealings with her. He added that in these circumstances the Applicant should be forgiven for going to the LVT on a s. 27A application instead of persisting in trying to obtain explanations from the managing agents, despite her being an "experienced flat owner and investor" (which her written material before the Tribunal had already placed great emphasis).

17. Mr Davern's final submissions pointed out that the Applicant had within a month of the landlord's issue of forfeiture proceedings against her in the County Court issued her own application to the LVT although she had made no contemporaneous challenges to the service charges over the years, and had also made no contributions towards defraying the arrears on her service charge account since March 2002. She had not complied properly with the LVT's Directions but had taken the opportunity indiscriminately to challenge everything since 1999. He submitted that this thoughtless approach went both to her plausibility and to costs, in respect of which he had already made the point at the hearing that she had burdened the landlord entirely unnecessarily in not focusing on the salient issues. In summary he then helpfully drew the Tribunal's attention in order to the issues which had been aired at the hearing.

DECISION

18. Items 2, 3, 4 and 13 having been accepted by the Applicant as reasonably incurred, charged and payable, the Tribunal was left to determine the remaining items.

(1) The buildings insurance. In relation to this matter, the Tribunal agreed with the Respondent's counsel that the insurance premiums for the relevant years were within the range of those which could be considered reasonable, and determined that they are reasonably charged and payable in full.

(5) Cleaning. The Tribunal considered that the amounts charged were not much for even the most minimal cleaning, although they found it difficult to evaluate the standard of cleaning due to the condition of the common parts and the interior

decorations as a whole. On balance the Tribunal.considered that the amounts charged were reasonable, reasonably charged and duly payable.

(6) Sundry repairs, lock replacement and keys. These items were considered to be reasonably charged and duly payable.

(7) External decorations. The Tribunal considered the issue of the validity of the s.20 notice procedure and noted that if the managing agents had retained the original contractor, that contractor would have been paid a total of £405 less than that ultimately charged for the extra work done by the replacement contractor. However the Tribunal considered that there was a threshold of triviality below which it was not in anyone's interests to interfere in practical decisions made by agents operating at the coal face of property management, when a reasonable job appeared to have been done for the cost charged. That said, the Tribunal did not consider that in general additional works should be dispensed from the s 20 procedure since a reasonable landlord would always tell the lessees about the extra work that it intended to carry out. However the Tribunal also noted that despite the issue made of this matter by the Applicant at the hearing, Mr Graham did not return to it in his final submissions. Accordingly in this instance the Tribunal considers that the s 20 notice should be considered valid and to any extent to which it might not be, would consider it just and convenient to dispense with the s20 procedure in relation to the additional works occasioned on this building. This item is therefore duly payable as reasonably charged.

(8) Hopper heads. The Tribunal considered that the element of this charge attributable to scaffolding should not be payable since it was not reasonable to incur a further (expensive) cost for this within the same half year as the building had been scaffolded for the external decorations. The Tribunal would therefore disallow the £1,200 attributable to the scaffold as not reasonably charged, but the remaining £400 for the work to the hopper should be allowed and paid in full.

(9) The boundary wall and railings. This item for £8,401.25 was not a repair but an improvement and the excess over the Council grant of £5,000 should not be allowed, as not reasonably included in the service charge.

(14) Security systems (CCTV camera). While the Tribunal considered it reasonable to charge for the installation of the dummy CCTV camera, they did not consider that moving it as part of the flank wall and railings project (at a cost of £135.13) was reasonable, since the project, as set out above, was one of improvement and not repair. This item is therefore disallowed.

(15) Management fees. The Tribunal considered that this item should be reduced by the amount of the total deductions as set out above. This total amounted to £1200 (hopper heads), £3988.75 (boundary wall works), £135.13 (moving dummy CCTV camera) and legal fees (£352.50), in total £5,676. The deduction from the management fees should therefore be £567.60, making total deductions under all heads £6,243.98. The Tribunal therefore determines that this amount is unreasonably charged and should not be collected through the service charge.

THE S.20C APPLICATION, REIMBURSEMENT OF LVT FEES AND COSTS

19. In his final submissions Mr Graham requests the Tribunal to grant a s 20C order in the event of the Applicant being substantially successful in relation to the items raised. Out of the 15 separate heads under which the Applicant had proceeded against the Respondent landlord she had finally accepted that the charges were reasonably incurred, or the Tribunal had determined the matter against her, in the case of all but 5. The Tribunal considered that this did not therefore constitute a substantial success on a numerical basis, being only one third of the items raised. In relation to the value of the items, she had achieved a reduction of just over £6,000 of the monetary total recorded as disputed on Mr Graham's spreadsheet. Accordingly, she is not substantially successful on the basis of value either. In the circumstances, the Tribunal determines that the Applicant has not in relation to her own involvement in the proceedings before them made out a *prima facie* case for a s 20C order. Additionally, there is no ground for refunding her LVT fees, in particular because she could have made use of the RICS Code provisions for obtaining much of the information elicited at the hearing directly from the landlord or his managing agent, and as a professional landlord herself should have known that it is sometimes necessary to insist, or to go to the landlord personally, if information is not

immediately forthcoming from an agent. However it is also necessary to look at Mr Davern's submissions in this regard and to consider to what extent the landlord and his agent could have cooperated more fully without the need for the Applicant to come to the LVT. In his final submissions Mr Davern has suggested that the landlord be entitled to enforce one half of his costs of the tribunal proceedings, and also asks for the maximum £500 which the Tribunal is empowered to order against the Applicant by way of a costs order under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 ("CLARA"). He asks this on the basis that the Applicant's application under s 24 of the Landlord and Tenant Act 1987 (for appointment of a manager) had been dismissed; he had also more than once at the hearing referred to the fact that her pursuit in such detail (and with such persistence and lack of willingness to negotiate) of the application under s 27A of the Landlord and Tenant Act 1985 had imposed onerous burdens on the landlord. He submitted that it would be fair if the landlord was substantially successful in defending the application under s 27A that the s 20C order should be refused in its entirety, but in any other case he should receive the maximum £500 from the Applicant towards his costs and have the option of seeking a contribution towards the rest of his costs from the tenants on a *pro rata* basis. He argued that otherwise the whole cost of the proceedings would fall on the other tenants in the building.

20. The Tribunal is of the view that the parties, neither of whom was substantially successful in monetary terms (although the Respondent successfully defended the largest number of items numerically) should share the cost of application to the Tribunal. The Tribunal is not minded to order any reimbursement of LVT fees. With regard to a s 20C and/or a CLARA costs order. Mr Graham, in his final submissions, states (quoting paragraph 10) that the CLARA power to award costs requires a party against whom such an order is made to have had an application dismissed or to have acted "frivolously, vexatiously, abusively, disruptively, or otherwise unreasonably in connection with the proceedings": he then claims that the Applicant's s 24 application, for appointment of a manager, was not dismissed but "not heard" because of a "procedural failure", so that it was impossible to know whether that application would have succeeded or not. He further submitted that the Applicant had not acted at any time in the manner which would justify a CLARA costs order.

21. The Tribunal does not in fact agree with Mr Graham in this respect, and considers that the Applicant has not made a proper use of the Tribunal's services. She has insisted on taking up all the time allocated to the hearing of the case in arguing up hill and down dale about the a good deal of relative trivia, refused to make more than the tiniest concessions except when compelled to do so by the force of argument against her, buried the Tribunal and the Respondent in voluminous handwritten papers, bringing in more paper on the second morning of the hearing and even attempting to raise further issues when the hearing was over. She has abused the patience of both the Tribunal and the Respondent and arrogated to herself a disproportionate share of the Tribunal's resources. But for the timely intervention of Mr Graham this abuse would have had a worse impact on all concerned than was in fact occasioned.

22. While a tribunal is in existence for members of the public to access determination of their disputes in a timely and cost effective manner, the Applicant neither availed herself of the *pro bono* representation service provided to the LVT by the College of Law (which is advertised prominently in Reception) nor even arranged for her papers to be typed by an office support service, but was yet entirely willing for the Respondent to be put to the expense of employing solicitors and counsel who were expected to deal with her amateur documentation. In the circumstances the Tribunal considers that this is hardly "professional" in a landlord such as she who claims great experience in property management, and determines that the Applicant has satisfied the conditions for the award of a costs order against her, makes that order in the amount of £250. The Tribunal further considers it just and convenient (and in particular fair to the other tenants in the building) to make a s 20C order to the effect that the Respondent landlord shall not apply half his net costs, after deduction of the amount of £250 to be paid to him pursuant to the costs order made against the Applicant, to the service charge account, thus leaving him at liberty, as Mr Davern suggests, to seek contribution *pro rata* from all the tenants in the building.

23. The Tribunal determines accordingly and directs that the £250 in costs ordered against the Applicant be paid to the Respondent within 28 days of the issue of this Decision.

Chairman.....

Date.....5. 3 05

APPENDIX 1

2 PENYWERN ROAD, LO

	PI ACCC	TOTAL PER ACCOUNTS	TOTAL AGREED	TOTAL DISPUTED
EXTERIOR COMMON PARTS		5,732.71	4,872.80	859.91
Buildings Insurance	2	182.13	182.13	-
Aerial repairs		293.75	293.75	-
Surveyors' fees		62.93	62.93	-
Bin store/pavement vaults		569.88	-	569.88
Security system		249.45	249.45	-
Drain clearance/plumbing		130.00	-	130.00
General maintenance		476.06	476.06	-
Pest control		66.13	66.13	-
Refuse		8,988.75	1,000.00	7,988.75
Exterior decoration/supply of pigeon deterrent				
INTERIOR COMMON PARTS		3,146.77	2,385.00	761.77
		461.48	461.48	-
Cleaning		360.02	171.27	188.75
Lighting		311.38	-	311.38
Sundry repairs		10.00	10.00	-
Lock replacement & Keys		65.98	65.98	-
Bulbs & lighting repairs		110.00	110.00	-
Supply of hall shelf & bins				
Pigeon boxes for post				
SUNDRY		616.89	176.25	440.64
		352.50	-	352.50
Certification fee				
Legal fees				
	—	22,186.81	10,583.23	11,603.58
TOTAL DISBURSEMENTS		2,606.94	1,243.52	1,363.42
MANAGEMENT FEE (10%+VAT)				
	-	24,793.75	11,826.75	**12,967.00**
TOTAL EXPENDITURE				

LVT/00AW/LAM/2004/0014

Residential Property
TRIBUNAL SERVICE

DECISION BY THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE ON APPLICATIONS UNDER:

- SECTION 24(1) OF THE LANDLORD AND TENANT ACT 1987
- SECTION 27A & 20C OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Applicant:	Ms Manuela Vila-Real da Graça
Respondent:	Mr Avtar Nandhra
Re:	Flats 5 & 9, 2 Penywern Road, London, SW5 9ST.
Application date:	19th August 2004
Hearing dates:	18th – 19th November 2004
Appearances:	Ms M Vila-Real da Graça Mr J Graham C.A - Lay representative For the Applicant
	Mr A Nandhra Mr R Davern - Counsel Mrs E Carr - Red Carpet Managing Agents For the Respondent

Members of the Residential Property Tribunal Service:

Mrs F Burton LLB LLM MA
Mr F Coffey FRICS
Mrs G Barrett JP

LON/00AW/LAM/2004/014
LON/00AW/LSC/2004/065

FLATS 5 and 9, 2 PENYWERN ROAD, LONDON SW5 9ST

BACKGROUND

1. This was an application under s 27A of the Landlord and Tenant Act 1985 for determination of liability to pay service charges, together with an application under s 24 of the Landlord and Tenant Act 1987 for the appointment of a manager, by the Lessee of two 2 bedroom flats in the subject property, a converted Victorian house comprising 10 flats. A further application under s 20C of the 1985 Act sought a direction that no costs of the proceedings were to be applied to any service charge. The flats were held by the Applicant Lessor as assignee of Leases between the Respondent freeholder, Avtar Singh Nandhra and Brightsize Limited and a copy of the Leases of Flats 5 and 9 were provided to the Tribunal.

2. On 14 September 2004 Directions were issued by the Tribunal following an oral pre-trial review on 13 September 2004, at which the Applicant was present and the Respondent was represented by Mrs A Cook of Pinkerfields, Solicitors. The Respondent also attended in person. The following issues were identified to be determined:

- whether there were grounds justifying a management order, in particular whether the landlord was in breach of obligations under the Leases and/or whether unreasonable service charges had been demanded
- whether it was just and convenient to make such an order
- whether the Applicant's notice under s 22 of the 1987 Act was adequate within the meaning of s 24(7) of that Act
- whether there was a suitable person/company to be appointed as manager and the terms (if any) of such appointment

A determination was sought for service charge years ended 31 December 1999-2004. The service charges to be disputed had not yet been identified.

3. The Tribunal issued its standard Directions supplemented as follows:

The Applicant to amplify her case to the Respondent , by providing

- identification of the proposed manager
- statement of the proposed manager's proposed management plan including fees
- identification of the grounds for such appointment by reference to the six alleged breaches of covenant as set out in the s 22 notice
- identification on a year by year basis in the audited service charge accounts or the current year's estimate of the service charge items in dispute (conveniently in schedule form)
- details of any comparable estimates obtained.

The Respondent to reply by providing

- identification of the landlord prior to 5 November 2001, details of contractual arrangements in respect of service charges on assignment, information as to the relationship of the present freeholder to the previous landlord, and identification of the managing agents for the 6 service charge years in question
- service charge statements showing sums demanded/paid during the 6 years in question
- copies of s 20 notices, with enclosures and estimates, for any major works incurred during the 6 relevant years
- detailed comments on the Applicant's amplified case, in respect of the s27A application on a year by year basis in relation to the service charge accounts.

The case was set down for hearing from 1.30 pm on 18 and 19 November 2004 with a time estimate of 6-7 hours, and an inspection at 10 a.m. on 18 November 2004.

INSPECTION

4. The Tribunal inspected the subject property on 18 November 2004. There were present the Applicant, her counsel, Mr Ray Davern, and Mrs Edell Carr, the managing agent. The property was found to be an end terrace stuccoed Victorian house in a road of similar properties, on 4 floors over a basement, and in reasonably good order. Internally the common parts were in only fair condition, being somewhat tired, not entirely clean, generally uncared for, and with a non-functional landing light on the attic floor. The rear terrace, accessed from a landing, had broken ironwork on the balustrade, a down pipe unconnected to any drain (and which therefore discharged onto the flat roof). The entire terrace area was untidy with cigarette butts and other rubbish left uncollected. The Tribunal also inspected the top floor (attic) flat where windows in the two bedrooms were difficult to open and access to the gutters carrying away rainwater was inconveniently sited under the window sills (thus clearly causing, through such design fault, considerable difficulty and likelihood of flooding if these gutters became blocked and could not be quickly and easily cleared).

THE HEARING

5. The hearing duly commenced at 1.30 pm on 18 November 2004. It was immediately apparent that there was no agreed bundle and that despite the Directions no attempt had been made by the Applicant to agree any of the service charges, all of which apparently remained in dispute despite the Respondent's extensive replies to the Applicant's statement of case. It further appeared that the Applicant had not arranged representation or availed herself of any form of secretarial or other basic office support so that all her voluminous papers were handwritten. Ultimately, the Tribunal was grateful for the assistance of Mr J Graham, a regular observer of the LVT proceedings, who, it transpired, had offered his services to the Applicant at very short notice, albeit that this last minute acquaintance with the case meant that there was occasional delay in the conduct of the hearing while he familiarised himself with the Applicant's bundle and took her instructions.

THE S.22 NOTICE

6. Mr Davern requested that the issue of the adequacy of the Applicant's s 22 Notice should be considered as a preliminary point. He said that the Notice had been dated on 18 August 2004 and issued on 19 August 2004. The Notice had duly specified a

period of 28 days within which the breaches of covenant complained of might be remedied, but since the Applicant had then also made application to the Tribunal for determination of the liability to pay the service charges, and at the same time for the appointment of a manager on 18 August 2004, it went without saying that the Respondent had not had the opportunity to remedy any such breaches, either within the 28 days allowed by the Notice, or alternatively within a reasonable period, although the alleged breaches were in fact capable of remedy. Mr Davern said that the Applicant's witness statement at page 53 of the bundle expressly admitted that the notice period had not expired. He submitted that the issue was in fact subject to a pure point of law, due to the application to the present case of s 23(1) (which provides that no application for appointment of a manager shall be made unless the period of notice specified in the s 22 Notice had expired, or when the provisions of paragraph (ii) of s 23(1) did not apply). He said that this was a point of law to which the Applicant could have no answer, unless the Tribunal waived the s 22 Notice; however, in that a Notice had already been served this was not open to the Tribunal since s 22(1)(b) permitted dispensation with such service only where the Tribunal was satisfied that it was not reasonably practical to serve the landlord. The Act did not confer a general power to dispense with a s 22 Notice which was defective, as he contended this one was.

7. The Applicant submitted that the Directions hearing had expressly referred to the adequacy of the s 22 Notice and the Procedural Chairman had still accepted jurisdiction, to which Mr Davern responded that any such reference at the Directions appointment did not bind the final hearing. In view of his late acquaintance with the case, and lack of prior opportunity to familiarise himself with the Applicant's papers, the Tribunal granted a short adjournment while Mr Graham considered the submissions on behalf of the Respondent.

8. Upon resumption of the hearing Mr Graham sought to persuade us that time was not of the essence, that the Applicant had relied on the LEASE booklet as any member of the public might reasonably do and, against a background of County Court litigation, had wished to apply to the Tribunal as the County Court had no managers' jurisdiction. An advantage of making the applications to the Tribunal on 18 August 2004 was that both might be presented under one application fee. Mr Davern did not

agree with this approach and submitted that we should dismiss the application, since to appoint a manager under the present circumstances would mean that the decision was a nullity. In particular the Applicant had claimed to be an experienced property investor and qualified property manager, and should not have acted as she had.

9. Having conferred briefly, the Tribunal determined that it was convenient that the matter of the service charges should be heard first, since the proposed manager was not present and (especially in the context of the voluminous handwritten papers presented by the Applicant) it would initially be desirable to see whether there were any grounds for the appointment of a manager, and if so, in the interests of expedition and avoidance of delay and unnecessary costs, to determine at that stage how that application should be progressed.

THE SERVICE CHARGE ISSUES

10. Mr Davern again had a preliminary point to raise. He said that it was apparent from the applicant's voluminous papers that she had reviewed every possible matter in connection with the service charges back to 1997, and while he did not wish to dispute her right to do so against an appropriate respondent, the Respondent before the Tribunal was not such a person, against whom she could only proceed in respect of items arising since November 2001 when he had become the relevant landlord, and prior to which he had not claimed a penny from her. Moreover, he submitted, the Directions specifically referred only to the years 1999-2000. The Tribunal accordingly proceeded to hear the Applicant's case in relation to those years.

THE APPLICANT'S CASE

11. Mr Graham said that there were a number of items in respect of which the Applicant did not consider that the service charge demands were reasonably made.

(1) Buildings Insurance. Mr Graham said that the Applicant contended that she had never had a proper invoice for this item, nor any schedule of the insurance cover provided although this had been requested by her solicitor. Asked by the Tribunal if she had ever asked for this in writing over the 5 years before them, as the RICS

Residential Management Code provided a lessee might do, the Applicant said she had not, though she had obtained alternative quotations herself. Mr Graham said that her quotation (from insurance brokers John Lampier & Son Limited for a similar property with a similar value (75 Eardley Crescent) in 2002 had represented £1.47 per £1,000 insured, whereas the landlord's equivalent had been £2.36 per £1,000. The landlord's index linked quotation had been on the basis of £860,000 indexed in 2001. Mr Graham said that it was appreciated that insurance premiums appreciated annually, but he considered from his own researches that £2 per £1,000 insured was the "going rate", and suggested that there should therefore be a 15% reduction in the amount allowed. He said that in his experience landlords "shopped around" once the premium reached £2 per £1,000. To this Mr Davern replied that more evidence was required to support this than Mr Graham's submissions, that the onus was upon the Applicant to show some unreasonableness in the premiums charged, and that those which had been charged were within a band of reasonableness, whereupon Mr Graham invited the Tribunal, as an expert Tribunal, to apply their own knowledge to determining the correct amount.

(2) TV Aerial. Mr Graham next raised a payment of £182.13 for attention to an aerial, which the Applicant claimed benefited only Flat 1, and not either of her flats, although it appeared that she had expressed no dissatisfaction at the time. She ultimately accepted that although the cable renewed ran only to Flat 1 it was in fact a cable which was part of the property's communal aerial and as such reasonably charged.

(3) Sundry items. The first of these items concerned a charge of £293.75 for an inspection of the premises to prepare a schedule of repairs to the front of the property, which was ultimately accepted by the Applicant to be reasonably incurred and charged, although she contended at some length that the works for which the schedule was prepared should have covered the rear of the property as well, since works to the front did not directly benefit her flats which were on the rear, and that she had not understood that the rear was to be excluded and had not been properly consulted. A second item was for work in Flat 1 for £171.27. It appeared from the evidence of the Applicant and of Mrs Carr that the tenant of Flat 3 had complained of squeaking floorboards so the Applicant had sent her handyman to look at the problem. He had

inadvertently put a nail through a water pipe causing damage. Moreover works in Flat 5 had caused damage to Flat 1. Mr Davern pointed out that by placing the relevant costs into the service charge the burden on the Applicant had in fact been lessened, rather than increased, as the alternative would have been to charge her 100% of the repair costs. Ultimately, after some time had been spent on the matter, the Applicant conceded this item was reasonably incurred and charged.

(4) Maintenance item. This concerned a charge of £62.93 for general items including fitting a lock, staple and hasp. The Applicant ultimately accepted that this item was reasonably incurred and charged.

Having spent some considerable time on these relatively minor items the Tribunal indicated that it was minded to rise at the usual time at the end of the afternoon and in the interests of a fair allocation of the resources of the Tribunal to the Applicant's case and also of according the Respondent an efficient and cost effective disposal of the issues, requested that the Applicant should use the overnight adjournment to consult with Mr Graham, in order to consider which items, if any, from her lengthy list of disputed charges, thereby reducing the number of items for the Tribunal's determination in the second day of the hearing. The Tribunal pointed out that the Applicant had not, it appeared, availed herself of the opportunity afforded by the clear Directions to consider this point before the hearing and indicated that they would be willing to restart the hearing a little later on the morrow if it would assist the parties to agree some of the items, such as any on a par with those at (2) and (4) above, which had in effect occupied most of the afternoon.

12. Following the adjournment the hearing resumed on 19 November 2004 with consideration of the remaining items in the Applicant's list, which had unfortunately not been reduced by the suggested meetings between the Applicant and Mr Graham and between the parties' representatives; nor did the Applicant wish to agree to the Tribunal's suggestion that in the interests of the best use of time the major items of greatest financial consequence should be considered first and the minor items only after the more important and/or valuable items had been disposed of. She insisted that she wished to continue to follow the order in which her list of complaints was structured in her papers, even if this did not make the most cost effective use of the

available time. The Tribunal therefore proceeded to examine the further items in order, picking up at item (5) in the Applicant's list.

(5) Cleaning. The Applicant contended that there were 3 objections to the landlord's cleaners: (i) costs had increased by 50% over the years 1999-2004; (ii) she herself had obtained an estimate from Molly Maid for cleaning the building which was the same in 2004 as had been paid by the landlord in 1999; (iii) the landlord's cleaner had difficulties in parking his van so that in practice £30 was paid for a 20 minute attendance throughout which the cleaner was anxiously checking that his van was not receiving a parking ticket. Thus the higher levels of the staircase were not vacuumed. She reminded the Tribunal that they had seen the "grubby" state of the common parts and said that the way in which the staircase was neglected meant that no cleaning was done outside her flats. Asked by the Tribunal how Molly Maid would manage the parking problems, she said that they would park elsewhere, would charge no VAT and would do the job for £15 net (£10 per hour, for a recommended 1.5 hours weekly) including changing light bulbs on the stairs and landings, which was not done properly at present (as she said the Tribunal had seen) although she said that a large number of light bulbs appeared to be charged for. The Tribunal was surprised to hear that there would be no VAT on the Applicant's quotation, as cleaning was considered to be a VAT chargeable service and it seemed unlikely that Molly Maid, which they understood to be a franchise, would not be registered for VAT. To the Tribunal's inquiry as to whether the Applicant had shown Molly Maid a cleaning specification, she merely replied that they would do a good job, which the landlord's cleaner was not at present doing (and it was in fact confirmed that the landlord's managing agents did not have a cleaning specification). Mr Graham insisted that the Applicant was not satisfied with the current standard of cleaning and the Applicant added that one other lessee had complained. However, Mr Davern submitted that the landlord was entitled to choose a better operation than the basic service which the Applicant appeared to be suggesting, further that the landlord was not unresponsive to suggestions, for example previous cleaners used by the landlord had been replaced when found to be unsatisfactory so that the current cleaners were an improvement. He said that it was in any event the that the scuffing of the walls of the common parts was due to the Applicant's tenants (the turnover being high) with their luggage. He asked the Tribunal, who had inspected the property, to take a view

as to whether the cleaning was satisfactory for the price paid, and therefore the charge reasonably incurred. He added that Mrs Carr inspected the cleaners' work twice a week, in particular with regard to whether they had properly cleared rubbish, and that the Applicant had never lifted the telephone to complain to the managing agents. The Applicant however insisted that she had never seen Mrs Carr at the property although Mr Davern submitted that there was no proof to the contrary. The Tribunal considered it odd that the landlord had not prepared a specification of the cleaning duties, but did not consider that they could take this matter further, although they did note that there were no invoices for steam cleaning the carpets in the bundles, which it was claimed had been done, and noted that the Applicant considered that an overlarge number of light bulbs had been charged for. Mr Graham's submission was that a proper charge was £780 p.a. and that excess over this amount in the 4 years should be determined to be unreasonably charged..

(6) Sundry repairs and Lock Replacement and Keys. The Applicant next disputed a number of items for sundries, charged at £188.75 and £311.38, which it transpired were small items of repair effected by the managing agent's maintenance man, who it appeared was engaged on a salaried basis by the managing agents and was charged out at £35 per visit to each unit. This employee was stated to be a *bona fide* contracted member of staff who was supplied with a van and paid monthly, and had no connection with the agents other than as an employee. The Applicant considered that these items were not reasonably charged in that new locks had been fitted a short time before this work. However Mrs Carr stated that they were necessary as so many keys had been cut from a non-security lock (inter alia for the Applicant's tenants) that it was no longer appropriate merely to change the barrel as had been done before, since mail was being lost and it appeared that unauthorised persons were gaining access to the building. It appeared that no key deposit nor any charge for non return of a key had been sought by the landlord. The Tribunal considered that it would have to take a view on these items in its determination.

(7) External decorations. It was the Applicant's case that the sum of £7,988.75 was not properly recoverable by the landlord, as the requirements of s 20 of the Landlord and Tenant Act 1985 had not been complied with and accordingly the landlord was limited to a lower figure. She had gone into the matter in great detail in

her submissions, giving 6 reasons why she considered she should pay no more than the statutory limit of £1,000 where the statutory procedure of s 20 had not been complied with. She stated that her surveyor had said that the s 20 notice had given a brief description of the works but was not a specification, that the works as finally done did not match the original specification (a copy of which she apparently did not initially receive). She also complained of a lack of consultation and was concerned that the works had not covered the rear of the building as well as the front, and that the contractor who eventually carried out the works was not one of those who had originally quoted. Mr Graham submitted that the s 20 procedures had almost certainly not been followed properly. There was extensive examination of this item, Mrs Carr giving evidence on the s 20 procedure followed and explaining that the delay in eventually carrying out the works, and the fact that repairs needed to be done to the windows (including extra repairs once the extent of the work was discovered once the work commenced) as well as decoration had caused the change of contractor. She said that the work was in substance the same as had been quoted for, and that the Applicant had not made any observations on the original s 20 notice. Nor had any other tenant complained and in fact it appeared that the Applicant had consulted her solicitors and agreed in 2003 that the s 20 notice was valid. Mr Davern submitted that the fact that the rear of the building had not been included was for the practical reason that redecoration of the front benefited everyone, as this improved the profile of the building, and the landlord had had to start somewhere on a schedule of works which was financially manageable at that stage. He requested the Tribunal, if it was considered that the s20 notice served in 2002 was not valid because the works were not done until 2003 and then in slightly amended form and by a different contractor, to exercise their jurisdiction under s 20ZA of the Landlord and Tenant Act 1985 to dispense with any further consultation requirements.

Following this item the Tribunal adjourned for lunch, reminding the Applicant that the time allocation given at the Directions hearing was fast being used up due to the detail in which she had insisted on addressing every minor item, to the prejudice of consideration of items of greater value, and requested that she marshal her arguments carefully for the afternoon session. The Tribunal resumed after a short break in order to consider the remainder of the items.

(8) Work to the hopper head. This item was for £1,600 to enlarge a hopper head which had proved to be too small to cope with torrential rain: the cost broke down into £1,200 for scaffolding and £400 for the work to the hopper head. Mrs Carr gave evidence that this had not been done when scaffolding was up for the external decorations as the flooding which had caused the work to be considered necessary had not at that stage occurred. Water was backing up and causing damage to some flats (especially Flat 8): however it was the Applicant's case that this had been happening for some time (to Flats 3 and 6), that the gutters had not been regularly cleared, and the matter should have been included at a time when scaffolding was already up. She said that the cost meant that a s 20 notice should have been served in any case. Mrs Carr however said that the gutters *were* cleared, for example in January 2003 a dead pigeon had been found in the downpipe. Mr Davern submitted that the cost only exceeded the s 20 threshold if the VAT and professional fees were added to the actual cost of the work, bringing the total to slightly over £250 per flat, but that if this was considered to be in breach of the unit cost per flat of engaging s 20, he submitted that it was to such an extent *de minimis* and that he would request that the matter be dealt with in the same way as item 7, i.e. that the Tribunal should exercise its discretion to dispense with the s 20 procedure, especially as it was an innocent mistake. He added that this was not in fact an item in the Applicant's list of items to be determined but had been added in by the Applicant at the hearing. The Applicant agreed that this item should be left to the Tribunal to determine although she emphasised that it had caused her damage and she considered that the failure to address the matter at an earlier stage went to poor management.

(9) Works to the boundary wall and railings. This was an item costing £3,988.75 for lowering the flank wall of the building. The total cost had been £8,988.75 but there had been a grant from Kensington and Chelsea Borough Council of £5,000. The Applicant "strongly" disputed these charges, contending there should have been a s 20 notice. Mrs Carr gave evidence that some of the extra works, over and above those originally intended (which had caused the work to be protracted and the cost to escalate) had been requested by other tenants and Mrs Carr had thought that in any case the s 20 procedure did not apply as the work was grant aided. The works (lowering the flank wall and installing railings as a security measure) had been undertaken at the request of the Council to discourage "winos" from congregating

behind the area walls and constituting a nuisance to the residents of the building and adjacent buildings in the road. Mr Davern again requested the Tribunal to exercise its discretion to dispense with the s 20 procedure if necessary since the excess per flat over a sum which would not have required such a procedure was so small and the work had been of benefit to the building. However the Applicant remained discontented, stating that no one, neither Mrs Carr nor the other tenants, had consulted her or asked her to any meetings, or involved her in any way.

(10) Certification fee of the landlord's accountants.

This item was for £175 + VAT (£205.63) for each of the 3 years 2001-2003. The landlord's accountants, Robertson Craig & Co, had apparently certified the accounts "in accordance with statute". Earlier, in February 2000, a different firm had prepared a "Report to the Lessees" labelled "pursuant to s 21(6) Landlord and Tenant Act 1985" (which Mr Graham considered was actually a misprint for s. 21(5), and cover pages for later years with a similar rubric were produced at the hearing). Mr Graham said that this was actually his area of expertise as he had an accountancy background and was therefore in a position to know personally how the accounts should be dealt with and had so advised the Applicant. He said that the purpose of s 21(5) was to alert lessees paying the service charge to costs in the pipeline. He said that his point on this matter was one of principle, in that if accountants say they are complying with statute they should actually do so, or the lessees were being short changed. He therefore submitted that the certificates did not "tie in" with the accounts, were not in the form required by the Landlord and Tenant Act, did not include the form of statement taken from the RICS Code booklet and were for these reasons not "useful documents"; he said the going rate for chartered accountants in outer London was £50 per hour for a trainee and £100 for a partner and the proper charge was therefore about £25 p.a. He added that the accounts were incomplete and pointed out that the Schedule to the 1987 Act had added extra responsibilities on to accountants (who were likely to be fined by their professional body in instances of unprofessional practice in such matters). He invited the Tribunal to delete the certification fees completely or to allow a nominal £50 per year plus VAT since all the accountants had to do was to scrutinise a maximum of 34 invoices in 2001, and only 23 in 2002, and many of these were recurring, such as for cleaning, and thus not requiring a great deal of time or analysis. In reply Mr Davern said that the work had

been done, the accounts were checked against the vouchers, Mrs Carr had supplied the information for the accounts and the accountants had duly used the figures to prepare the accounts. He added that the real question was whether the work charged for could have been obtained at a lower rate and requested the Tribunal to take a view on this, with which Mr Graham acquiesced.

(11) Legal fees. This item was claimed by Mr Graham to be in the amount of £352.50, although Mr Davern referred us to an invoice in the bundle for £705; these legal fees were incurred for litigation against the Applicant for proceedings under s 146 of the Law of Property Act 1925 in respect of which the tenant's obligation to pay is set out in clause 2(9) of the Lease. The Applicant disputed both the need for these charges and their amount, and claimed that the proceedings could have been avoided by better communication on the part of the management. Mr Graham queried whether legal fees were covered by the Lease at all. Mr Davern submitted that the proceedings were a plausible action on the part of the landlord, within the provisions of the lease, and the amount of the invoices (for counsel's fees) was not unreasonable.

(12) Emergency Call Out for Maintenance (Clearing Gutters). This was an item charged at £130 on an occasion (when there had been heavy rain) and which was duly permitted by covenants in the lease but which the Applicant contended was unnecessary because it had been the fourth such occasion within one year. Moreover it had involved breaking into her flat when that had not been necessary because she was readily available and in any event the tenants were usually available so there was no need to break in. Mrs Carr disputed this, also contending that there was never any key left or even a mobile telephone number for contact when the Applicant was away from London (as it appeared she frequently was, including overseas). Mr Davern requested the Tribunal to decide whom to believe in this instance.

(13) Pest control. This item was for £476 which the Applicant contended should be provided, free. It was necessary due to rats in the basement following works by Thames Water. Mrs Carr gave evidence that the Council's pest control department had said that the responsibility was Thames Water's. She had spent a whole morning with each of these authorities, neither of which accepted responsibility, and had finally employed a private contractor, as the Council had insisted that they would only

bait a single unit and not an entire building comprising several flats. She said she had experienced the same problem elsewhere when attempting to deal with an infestation of bedbugs. The Applicant ultimately indicated that she was satisfied with this explanation.

(14) Security system. This item was charged at £135.13 for moving the dummy CCTV camera in 2003 following the works to the boundary wall. There had been a previous charge in 2002 of £435.75 for installation. The Applicant considered that the charges were high, that the dummy camera was not necessary, and moreover that the money could have been better spent elsewhere. Accordingly she disputed the entire amounts charged on both occasions. Mr Davern submitted that the smaller charge must stand or fall with the Tribunal's decision in relation to the works on the wall and railings, and requested the Tribunal to take a view.

(15) Management fees.

This item amounted to £1,363.42, charged on the basis of 10% of the total disbursements. Mr Graham therefore submitted that if any of the disbursements were reduced or disallowed, then logically the management fees should be correspondingly reduced, especially as the RICS Code recommended that managing agents should charge a set fee per unit rather than on a percentage basis. Mr Davern did not address us on this matter.

Finally, the Applicant contended that she had paid sums which had not been credited. However she said she was unable to provide details for which she needed time. The Tribunal pointed out that she had already had more than sufficient time to point them to any such detail and that the volume of her handwritten paperwork had in fact militated against, rather than assisted, their resolution of the disputed items. Indeed, she had occupied the major part of the time allocated to consideration of the case, allowing Mr Davern very little opportunity in the remainder of the afternoon in which to put his case for the landlord. Mr Davern asked the Applicant whether she was able to dispute the schedule of payments as no trace could be found of an alleged £2000 not credited. Mrs Carr was able to point the Applicant to various acknowledgements of payments made but without further identification by the

Applicant of actual payments (of which Mr Davern required strict proof) it was not possible for the Tribunal to consider the Applicant's contention that she had not been credited with sums paid. The Tribunal therefore declined to entertain this item, especially as the Applicant sought to add it at the last minute having already engaged their attention for virtually the whole of the one and a half days hearing and not given prior and precise notice of her case on this point.

THE CASE FOR THE RESPONDENT

13. Owing to the time constraints dictated by the Applicant's detailed examination of so many items, in response to which he had already indicated the landlord's answers to her complaints, Mr Davern said it was not necessary to retrace steps in relation to all the items raised. He added that he had the landlord present to give evidence if required, but that his case had in essence already been presented in the preceding day and a half of evidence in reply to the Applicant's case, so that unless the Tribunal wished to hear from the landlord, he would not call any evidence and would rely on his final submissions to draw the Tribunal's attention to the salient points of what they had heard, especially as the Tribunal had already indicated that, as the normal hearing day had already run over by more than an hour, final submissions should be presented to them in writing, and that these final submissions should also address each party's representations on the issues of the s 20C application and any application for an order for costs or reimbursement of the Tribunal's fees.

14. Mr Graham similarly indicated that he too had nothing further to add or on which to question the Respondent, and would reserve any further comment which might assist the Tribunal to his own final written submissions. The Tribunal indicated that those final written submissions should be received by Friday 3 December in preparation for the reconvene that would be necessary, in the absence of the parties, in order to make the Tribunal's decision. The Tribunal directed that no further evidence should be submitted other than these final written submissions. In particular, the Tribunal indicated that the written final submissions should not reopen any matter which had already been well rehearsed in the oral hearing before the Tribunal.

THE S. 24 APPLICATION

15. Upon consideration of the oral and written evidence which had been received during the hearing, the Tribunal determined that it would be appropriate, and in the interests of justice, to dismiss the s.24 application , rather than to adjourn it as requested by the Applicant. Should the Applicant consider that she had established any basis for the appointment of a manager she would naturally be at liberty to make a further application, this time in accordance with the provisions of the Act.

FINAL SUBMISIONS

16. In his final submissions, Mr Graham drew attention to the fact that his task in assisting the Applicant had been made more difficult by the quantity of her written submissions, by the fact that they were mostly handwritten and by the further fact that he had chanced to be able to offer his services at the last minute and then only on a limited basis because of prior engagements which could not be broken. The Tribunal was nevertheless extremely grateful to him for his efforts, without which they considered that the hearing would have been most difficult to conduct despite the assistance which are sure they would also have received from Mr Davern, who would but for Mr Graham have been in the unenviable position of a professional advocate appearing against a litigant in person, with all the burdens which this routinely places on counsel who find themselves in this position. Mr Graham went on to say that he had prepared a spreadsheet (attached as Appendix 1) setting out the amounts claimed, accepted and disputed in relation to the service charge years 2001, 2002 and 2003. He also reminded the Tribunal that the Applicant had made some small concessions both immediately prior to the hearing, following discussions with him, and during the hearing when receiving explanations for some items disputed. He said that his final submissions (which were in essence a helpfully elaborated summary of his submissions at the hearing) addressed only the items which remained disputed. The Tribunal has therefore treated any other items, raised at the hearing, but not reverted to in the final submissions, as accepted by the Applicant. His conclusion was that it was clear that all was not as it should be at the subject property and offered the explanation that the Applicant had made the honest mistake of latching her s 24 application to that under s 27A because she was concerned at the standard of management at the property and considered that she could not deal with Mrs Carr in

relation to whom she had referred him to "a barrage of criticism, continued intimidation and total lack of recognition" in Mrs Carr's dealings with her. He added that in these circumstances the Applicant should be forgiven for going to the LVT on a s. 27A application instead of persisting in trying to obtain explanations from the managing agents, despite her being an "experienced flat owner and investor" (which her written material before the Tribunal had already placed great emphasis).

17. Mr Davern's final submissions pointed out that the Applicant had within a month of the landlord's issue of forfeiture proceedings against her in the County Court issued her own application to the LVT although she had made no contemporaneous challenges to the service charges over the years, and had also made no contributions towards defraying the arrears on her service charge account since March 2002. She had not complied properly with the LVT's Directions but had taken the opportunity indiscriminately to challenge everything since 1999. He submitted that this thoughtless approach went both to her plausibility and to costs, in respect of which he had already made the point at the hearing that she had burdened the landlord entirely unnecessarily in not focusing on the salient issues. In summary he then helpfully drew the Tribunal's attention in order to the issues which had been aired at the hearing.

DECISION

18. Items 2, 3, 4 and 13 having been accepted by the Applicant as reasonably incurred, charged and payable, the Tribunal was left to determine the remaining items.

(1) The buildings insurance. In relation to this matter, the Tribunal agreed with the Respondent's counsel that the insurance premiums for the relevant years were within the range of those which could be considered reasonable, and determined that they are reasonably charged and payable in full.

(5) Cleaning. The Tribunal considered that the amounts charged were not much for even the most minimal cleaning, although they found it difficult to evaluate the standard of cleaning due to the condition of the common parts and the interior

decorations as a whole. On balance the Tribunal.considered that the amounts charged were reasonable, reasonably charged and duly payable.

(6) Sundry repairs, lock replacement and keys. These items were considered to be reasonably charged and duly payable.

(7) External decorations. The Tribunal considered the issue of the validity of the s.20 notice procedure and noted that if the managing agents had retained the original contractor, that contractor would have been paid a total of £405 less than that ultimately charged for the extra work done by the replacement contractor. However the Tribunal considered that there was a threshold of triviality below which it was not in anyone's interests to interfere in practical decisions made by agents operating at the coal face of property management, when a reasonable job appeared to have been done for the cost charged. That said, the Tribunal did not consider that in general additional works should be dispensed from the s 20 procedure since a reasonable landlord would always tell the lessees about the extra work that it intended to carry out. However the Tribunal also noted that despite the issue made of this matter by the Applicant at the hearing, Mr Graham did not return to it in his final submissions. Accordingly in this instance the Tribunal considers that the s 20 notice should be considered valid and to any extent to which it might not be, would consider it just and convenient to dispense with the s20 procedure in relation to the additional works occasioned on this building. This item is therefore duly payable as reasonably charged.

(8) Hopper heads. The Tribunal considered that the element of this charge attributable to scaffolding should not be payable since it was not reasonable to incur a further (expensive) cost for this within the same half year as the building had been scaffolded for the external decorations. The Tribunal would therefore disallow the £1,200 attributable to the scaffold as not reasonably charged, but the remaining £400 for the work to the hopper should be allowed and paid in full.

(9) The boundary wall and railings. This item for £8,401.25 was not a repair but an improvement and the excess over the Council grant of £5,000 should not be allowed, as not reasonably included in the service charge.

(10) Accountants. The Tribunal considered that the fees charged were within the range appropriate to the work. They were not inclined to reduce them merely due to the imprecise wording of the certificate since it was clear that the function of the certificate was effective even if the format was not precisely correct; the charges were in fact modest in relation to some which they had seen for similar work. In considering the decision on this matter the Tribunal noted that there was no legislative guidance on the format in which either the accounts or the certificate should be provided, although both must be clear in their intent as the certificate is a certificate of expenditure and must comply with the intent of the service charge provision of the lease. The Commonhold and Leasehold Reform Act 2002 had amended s 21 of the Landlord and Tenant Act 1985 as to certain details and the statement must in essence be a fair summary properly supported, and issued within 6 months of the end of the accounting period . It appeared to the Tribunal that the landlord had substantially complied with these requirements. This item is therefore reasonably charged and duly payable for all years.

(11) Legal fees. The freeholder is not entitled to pass on these costs for the services of solicitors and counsel in recovering arrears from an individual lessee to the service charge as the lease does not specifically mention "lawyers" but only "maintenance, safety and administration".. The whole sum in relation to the s 146 proceedings against the Applicant should be billed to her. A clear and unambiguous clause is required to recover such fees from all the lessees in the building. In the present case the whole bill should unarguably go to the Applicant since it would appear that these fees were incurred in pursuit of proceedings against her personally in s 146 proceedings.

(12) Emergency Call Out for Maintenance (Gutters). The Tribunal considered this item to be reasonably charged and duly payable, since it is for a service which is part of appropriate management. They Tribunal considered that the Applicant was mistaken that it was inappropriate to gain access to her flat in such an emergency, in which delay in looking for her, when she had not left a key or other urgent contact details to use in such emergencies, would have in all ikelihood only increased the costs of the operation to clear the gutters.

21. The Tribunal does not in fact agree with Mr Graham in this respect, and considers that the Applicant has not made a proper use of the Tribunal's services. She has insisted on taking up all the time allocated to the hearing of the case in arguing up hill and down dale about the a good deal of relative trivia, refused to make more than the tiniest concessions except when compelled to do so by the force of argument against her, buried the Tribunal and the Respondent in voluminous handwritten papers, bringing in more paper on the second morning of the hearing and even attempting to raise further issues when the hearing was over. She has abused the patience of both the Tribunal and the Respondent and arrogated to herself a disproportionate share of the Tribunal's resources. But for the timely intervention of Mr Graham this abuse would have had a worse impact on all concerned than was in fact occasioned.

22. While a tribunal is in existence for members of the public to access determination of their disputes in a timely and cost effective manner, the Applicant neither availed herself of the *pro bono* representation service provided to the LVT by the College of Law (which is advertised prominently in Reception) nor even arranged for her papers to be typed by an office support service, but was yet entirely willing for the Respondent to be put to the expense of employing solicitors and counsel who were expected to deal with her amateur documentation. In the circumstances the Tribunal considers that this is hardly "professional" in a landlord such as she who claims great experience in property management, and determines that the Applicant has satisfied the conditions for the award of a costs order against her, makes that order in the amount of £250. The Tribunal further considers it just and convenient (and in particular fair to the other tenants in the building) to make a s 20C order to the effect that the Respondent landlord shall not apply half his net costs, after deduction of the amount of £250 to be paid to him pursuant to the costs order made against the Applicant, to the service charge account, thus leaving him at liberty, as Mr Davern suggests, to seek contribution *pro rata* from all the tenants in the building.

23. The Tribunal determines accordingly and directs that the £250 in costs ordered against the Applicant be paid to the Respondent within 28 days of the issue of this Decision.

Chairman..... F. K. Brooks .....

Date..... 5. 3. 05 .....

LON/00AW/LAM/2004/0014

Residential Property
TRIBUNAL SERVICE

LANDLORD AND TENANT ACT 1985 SECTION 27A.

LEASEHOLD VALUATION TRIBUNALS (PROCEDURE) (ENGLAND) REGULATIONS 2003.

Correction Certificate under Regulation 18(7) of the above Regulations:

Flats 5 & 9, 2 Penywern Road, London, SW5 9ST

As chairman of the Leasehold Valuation Tribunal which determined the above application, I hereby correct clerical errors in the Decision dated 5 March 2005 as follows

Paragraph 1, line 5
"10 flats" should read "9 flats"

Paragraph 4, line 2
"her counsel" should read "the Respondents' counsel"

Paragraph 18(15) lines 5 and 6
The figure "567.60" should read "567.64 + VAT of £99.33" and the figure of "6,243.98" should read £6,343.35."

Chairman: Mrs Burton ..... F. R. Burton

Date: 16.4.05