SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

In the matter of sections 27A and of 20C of the Landlord & Tenant Act 1985

Decision of the Leasehold Valuation Tribunal

Case Number:	**CHI/45UF/LSC/2005/0001**
The Property:	**16 Owl Beech Place Horsham RH13 6PQ**
The Applicant:	**Miss N Shunter**
The Respondent:	**Tower Homes Ltd**
Date of the Application:	**4th January 2005**
Date of the Hearing:	**21st June 2005**
Date Decision issued:	**19th July 2005**
Members of the Tribunal:	**Mr R.T.A.Wilson LL.B Chairman Mr A MacKay FRICS Ms J Dalal Lay Member**

The Applications

1. The Applications made in this matter by the Applicant are

   a. For a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("The Act") of the reasonableness and payability of the following charges (apportioned in accordance with the service charge provisions in the subject lease) in the Service Charge Accounts for the years ending 31st March 2003 and 31st March 2004.

	(£)
• Road re-surfacing works	174.28 118.20
• Balcony works	2598.07
• CCTV	25.00

   b. For an order pursuant to section 20C of the Act that the Landlord's costs incurred in these proceedings are not relevant costs to be included in determining the service charge for future years.

The Decision

2 The Tribunal has determined, for the reasons set out below, as follows: -

   a. The re-surfacing works were reasonably incurred and are recoverable in full.

   b. The balcony charges at £2,598.07 were reasonably incurred and are recoverable in full.

   c. The CCTV installation and maintenance charges were reasonably incurred and are recoverable in full.

3 The Tribunal makes an order under Section 20C of the Act that the Respondent is disallowed from adding the costs of and incidental to this hearing to the service charge for future years.

The Reasons

Inspection

4. The Tribunal inspected the estate prior to the hearing and observed that Owl Beech Place comprises of six blocks totalling 46 flats each arranged on ground, first and second floors and built between1974 to 1978. The subject property, 16 Owl Beech Place, is on the ground floor to the front, on a north east corner. There are balconies to the first and second floor flats. The first floor flats have their balconies at the rear of the block and the second floor flats have their balconies to the front of the block. The Tribunal inspected a sample balcony and saw that it was formed with absorbent tiles on top, beneath which there was insulation material. Surface water drained through a pipe onto the pitched roof. The Tribunal found as a matter of fact that the balconies formed an integral part of the roof to each block.

5. Following an inspection of the subject property, the Tribunal inspected the roadways serving the estate. There were three specific areas as follows: -

- Forest Road — Re-surfaced 2002-2003
- The Orchards — Re-surfaced 2003-2004
- 2 to 80 South Homes Road — Re-surfaced 2002-2003

The structure of the Lease in relation to service charges

6 The Lessor's Covenants

a) Clause 5 (4)(a) of the lease states in broad terms that the Landlords responsibility is "whenever reasonably necessary to maintain, repair, renew, redecorate or improve the roof, foundation and main structure of the building and all external parts thereof including .....the windows and doors on the outside of the flats within the building.

b) The Lessor is entitled to employ and pay solicitors, accountants and agents in carrying out its obligations under the fifth schedule and the general management of the property and all fees charges expenses and commissions incurred by the lessor can be included in the service charge (Para 8).

c) In addition the Landlord covenants with the leaseholders to maintain the common parts, which are defined to include the driveways and footpaths forming vehicular and pedestrian access to the premises and the gardens forming the estate. The Estate is defined by reference to the freehold land registered at the Land Registry under title number WSX158715.

7 The Lessee's Covenants

a) The Lessee covenants with the leaseholder

i) To maintain the interior of the flat.

ii) To repay to the landlord all costs charges and expenses incurred by it in repairing, renewing and reinstating any part of the building.

iii) To pay the service charge in accordance with clause seven of the lease.

iv) Clause seven of the lease contains the usual service charge provisions and define the service charge as any costs expended by the Landlord in complying with its obligations under the lease together with all reasonable fees charges and expenses, payable to a surveyor or any solicitor, accountant, architect or other person reasonably employed in connection with the management of the estate and if any such works should be undertaking by an employee of the Landlord then a reasonable allowance from the landlord for such work.

b) The Tribunal considered that on a proper construction of the lease, the balconies form part of the structure of the building and thus are maintainable by the Landlord with the costs being recoverable from the lessees in accordance with the service charge provisions.

Specific Matters in Dispute

8 Re-surfacing costs

a) Applicants Evidence

Miss Shunter contended that it was unreasonable for the cost of the estate roads to be shared equally between users. In particular she considered that the costs of maintaining the South Homes part of the estate should be accounted for separately from Owl Beech Place. This was because the residents of Owl Beech had no cause to use South Homes Road and vice versa. A publicly adopted road separated the two roads.

b) Respondents Evidence

The Landlords referred the Tribunal to the documents contained within their bundle. These documents confirmed that the works were undertaken with the appropriate consultation and then charged according to the leases proportionately across all the residents on the estate. Their bundle provided maps, details of the specification, tenders and the work carried out. They were satisfied that the Applicant's lease contained the appropriate charging clauses and that the work represented value for money. The charge was therefore recoverable.

c) The Tribunal's view

Having considered the evidence, the Tribunal was satisfied that the appropriate consultation had been carried out; that the works had been put to tender; and that the lowest tender accepted. In accordance with the repairing covenants in the lease, access roads were maintained on an estate basis and were captured by the service charge provisions enabling the Landlord to charge proportionately across all residents on the estate. Nothing in the Applicant's lease required the Respondent to divide up the road charges as suggested by the Applicant and indeed to do so would result in the management of the estate becoming unworkable. The Tribunal also considered that the costs had been reasonably incurred and represented fair value for money. This being the case no reduction was merited and the charge was payable in full

9 CCTV Installation

a) Applicant's Evidence.

The Applicant confirmed that she had no quarrel with the installation of the CCTV system, and she accepted that the costs of maintaining this system should be shared equally between all the residents on the estate. However, she questioned the cost of maintenance, which she considered to be very high. She calculated that the running cost on an annual basis was approximately £13,000, which seemed very high bearing in mind the basic maintenance contract was only £8000.

b) Respondents Evidence.

The Landlord refuted the figure of £13,000 and referred the Tribunal to the annual accounts which showed that the actual cost for the system for the year 2003 -2004 amounted to £9,204.26. This equated to approximately £25 per annum per resident, which they considered represented good value for money. It was mentioned to the Tribunal that there were further costs associated with the system relating to the fibre optics, which had been placed on a seven-year contract, and these costs were not being charged to the lessees.

c) The Tribunals view

The Tribunal accepted the figures put forward by the Landlord and considered that the estate benefited greatly from the extra security afforded by the system and that the Landlords were obtaining good value for money. In the circumstances no reduction was merited.

10 Balcony Work

a) Applicant's Evidence

i) Miss Shunter began her evidence stating that the costs of the balcony works represented her biggest complaint. To start with the balconies were not specifically mentioned in her lease and her lease plan suggested that

the balconies were included within the lease demise and accordingly the repair of them should be down to the individual leaseholder. Moreover her flat did not have a balcony and therefore she should not have to contribute towards the costs of maintaining them.

ii) Her second cause of concern was that she had not been properly consulted about the work and that the costs of replacing the balconies had escalated very considerably. What started off as a figure of just under £1,000 ended up at nearly £2,500.

iii) In March 2002 she had received consultation papers showing the cost of the work, which included balcony repairs and door and window repairs, to be £182,000 exclusive of VAT. Following a residents' meeting it had been agreed that there was no need to replace the doors and windows. Thus in August 2002 there had been further consultation showing the overall contract price to be £94,000 exclusive of VAT and fees. However, by the time the work had been completed this final cost had risen to just under £140,000.

iv) She considered the final cost to be totally unreasonable and not justifiable for the work done, and certainly the work did not represent value for money.

b) The Respondent's Evidence

i) The Landlord started their evidence by stating that works to the balconies were undertaken because there was serious water ingress into flats both with and without balconies, which was as a consequence of the balconies weatherproofing beginning to fail. They considered that the balconies formed part of the structure of the building and were an integral part of the building. They had obtained legal advice, which confirmed that the balconies formed part of the structure, and accordingly they were under a duty to repair them and were able to recover the costs from the leaseholders.

ii) Only about 50% of the flats had been inspected as there had been a problem with access to the remainder of the flats. The inspection report concluded that the buildings were in excess of 30 years old and that the balcony coverings were approaching the end of their useful life. It was considered that the replacement of all the balcony coverings under one contract would achieve greater economies of scale than replacing only the defective ones piece meal. Tenders were therefore issued for the replacement of balcony coverings and also renewing of windows and doors at Owl Beech Place. Consultants Calford Seadon were appointed to oversee the works. During this process Section 20 notices were issued to all the lessees. On the return of the tender and following the consultation period provided by section 20, a meeting was held with leaseholders and it was decided that there was no necessity to replace the windows and doors. Accordingly revised tenders were issued to the same contractors and their revised pricing obtained. Section 20 notices were then issued again. At

this stage the contract price was approximately £94,000 exclusive of Vat and fees.

iii) Work began on site on the 4th November but by early December an unforeseen problem had come to light. It was found that there was a lightweight insulation screed beneath the asphalt of the balconies and that this was breaking up when the old asphalt was being stripped. A new insulation was necessary which would involve extra work and result in a cost overrun. As soon as the overrun became apparent the leaseholders were informed in writing and advised of the possible extra cost due to the extra insulation works. Once the alternative insulation was agreed work restarted and concluded to the satisfaction of the consultant. The additional work had cost approximately £49,000.

iv) The Respondents accepted that some of the delay in completing the contract was down to their own office, which resulted in the contract extending over the Christmas period. They calculated that the cost attributable to their own delay was approximately £12,000 and this cost was therefore borne by themselves and not passed onto the leaseholders.

v) In conclusion they felt they had acted reasonably at all times and carried out the appropriate consultation procedure as required. They accepted that the consultation procedure had not been followed in respect of the extra works but they contended that further consultation was not required considering the nature of the extra works.

c) The Tribunals Findings

i) The Tribunal carried out a detailed examination of the Respondent's evidence and concluded that the correct section 20 consultation procedure was carried out for the main specification of works. The Works had been issued to competitive tender and the contract issued to the lowest tender.

ii) The Tribunal found as a matter of fact that the original specification relating to the works remained unchanged and that these works had been executed to a reasonable standard and to the satisfaction of the independent consultant. Although the Applicant had produced her own quotation for a much lower figure, this quotation had been generated on a desktop basis with no site inspection. Furthermore the Applicant's quotation was not comparable as it did not provide for scaffolding and it had not been costed against the original tender document generated by the consultant. Accordingly in the absence of any other figures the Tribunal concluded that the original tender price of £94,00 exclusive of vat and professional fees was reasonable.

iii) The Tribunal found as a matter of fact that no consultation or section 20 notices had been served in respect of the additional works carried out in replacing the insulation. The additional work had not been specifically identified in the section 20 notices and therefore the question was whether a further notice under section 20 should have been served and if so

whether the overrun in cost is irrecoverable. The Tribunal was in no doubt that the additional work had to be done and that it would not have made sense for any person other than the contractor already on site to deal with it. A decision clearly had to be made promptly if the work was not to be seriously delayed with adverse cost repercussions for the leaseholders. Whilst the additional cost was a significant percentage of the original contract it would be spread amongst all the lessees proportionately. Bearing in mind the essential nature of the works the Tribunal concluded that it was not unreasonable for the work to proceed without prior information being given to the tenants. The Tribunal had regard to the fact that when it became apparent that there would be a cost overrun, the Respondents had written to each of the lessees to advise them of this fact.

iv) The Tribunal noted that additional works had not been the subject of a fresh contract but were documented as an addendum to the original contract. Furthermore having considered the tender documentation accompanying the Section 20 notice, the Tribunal concluded that the specification and description of the works were wide enough to encompass the extra work which still amounted to replacing the balconies. In these circumstances the Tribunal concluded that further consultation whilst desirable, was not mandatory.

v) In the circumstances the Tribunal is satisfied that the Landlord acted reasonably in commissioning the works. Furthermore the Tribunal is satisfied that the Landlord obtained reasonable value for money and that the works had been completed to a reasonable standard. Having regard to the above, the Tribunal concluded that no reduction in the costs of the balcony works was merited.

11 The Costs of these Applications.

a) The Respondents confirmed to the Tribunal that even if they were successful in relation to section 27A application, it was not their intention to charge their costs of and incidental to this application in the future service charge account. In the circumstances they did not object to the Applicants application that the Tribunal make a section 20C order.

b) Having regard to the above and the circumstances of the application, the Tribunal considered that it was just and equitable to make an order under section 20C of the Act.

Robert Wilson
Chairman

Date: 19th July 2005.

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

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The Applications

1. The Applications made in this matter by the Applicant are

   a. For a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("The Act") of the reasonableness and payability of the following charges (apportioned in accordance with the service charge provisions in the subject lease) in the Service Charge Accounts for the years ending 31st March 2003 and 31st March 2004.

	(£)
• Road re-surfacing works	174.28 118.20
• Balcony works	2598.07
• CCTV	25.00

   b. For an order pursuant to section 20C of the Act that the Landlord's costs incurred in these proceedings are not relevant costs to be included in determining the service charge for future years.

The Decision

2 The Tribunal has determined, for the reasons set out below, as follows: -

   a. The re-surfacing works were reasonably incurred and are recoverable in full.

   b. The balcony charges at £2,598.07 were reasonably incurred and are recoverable in full.

   c. The CCTV installation and maintenance charges were reasonably incurred and are recoverable in full.

3 The Tribunal makes an order under Section 20C of the Act that the Respondent is disallowed from adding the costs of and incidental to this hearing to the service charge for future years.

The Reasons

Inspection

4. The Tribunal inspected the estate prior to the hearing and observed that Owl Beech Place comprises of six blocks totalling 46 flats each arranged on ground, first and second floors and built between1974 to 1978. The subject property, 16 Owl Beech Place, is on the ground floor to the front, on a north east corner. There are balconies to the first and second floor flats. The first floor flats have their balconies at the rear of the block and the second floor flats have their balconies to the front of the block. The Tribunal inspected a sample balcony and saw that it was formed with absorbent tiles on top, beneath which there was insulation material. Surface water drained through a pipe onto the pitched roof. The Tribunal found as a matter of fact that the balconies formed an integral part of the roof to each block.

5. Following an inspection of the subject property, the Tribunal inspected the roadways serving the estate. There were three specific areas as follows: -

- Forest Road — Re-surfaced 2002-2003
- The Orchards — Re-surfaced 2003-2004
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The structure of the Lease in relation to service charges

6 The Lessor's Covenants

a) Clause 5 (4)(a) of the lease states in broad terms that the Landlords responsibility is "whenever reasonably necessary to maintain, repair, renew, redecorate or improve the roof, foundation and main structure of the building and all external parts thereof including .....the windows and doors on the outside of the flats within the building.

b) The Lessor is entitled to employ and pay solicitors, accountants and agents in carrying out its obligations under the fifth schedule and the general management of the property and all fees charges expenses and commissions incurred by the lessor can be included in the service charge (Para 8).

c) In addition the Landlord covenants with the leaseholders to maintain the common parts, which are defined to include the driveways and footpaths forming vehicular and pedestrian access to the premises and the gardens forming the estate. The Estate is defined by reference to the freehold land registered at the Land Registry under title number WSX158715.

7 The Lessee's Covenants

a) The Lessee covenants with the leaseholder

i) To maintain the interior of the flat.

ii) To repay to the landlord all costs charges and expenses incurred by it in repairing, renewing and reinstating any part of the building.

iii) To pay the service charge in accordance with clause seven of the lease.

iv) Clause seven of the lease contains the usual service charge provisions and define the service charge as any costs expended by the Landlord in complying with its obligations under the lease together with all reasonable fees charges and expenses, payable to a surveyor or any solicitor, accountant, architect or other person reasonably employed in connection with the management of the estate and if any such works should be undertaking by an employee of the Landlord then a reasonable allowance from the landlord for such work.

b) The Tribunal considered that on a proper construction of the lease, the balconies form part of the structure of the building and thus are maintainable by the Landlord with the costs being recoverable from the lessees in accordance with the service charge provisions.

Specific Matters in Dispute

8 Re-surfacing costs

a) Applicants Evidence

Miss Shunter contended that it was unreasonable for the cost of the estate roads to be shared equally between users. In particular she considered that the costs of maintaining the South Homes part of the estate should be accounted for separately from Owl Beech Place. This was because the residents of Owl Beech had no cause to use South Homes Road and vice versa. A publicly adopted road separated the two roads.

b) Respondents Evidence

The Landlords referred the Tribunal to the documents contained within their bundle. These documents confirmed that the works were undertaken with the appropriate consultation and then charged according to the leases proportionately across all the residents on the estate. Their bundle provided maps, details of the specification, tenders and the work carried out. They were satisfied that the Applicant's lease contained the appropriate charging clauses and that the work represented value for money. The charge was therefore recoverable.

c) The Tribunal's view

Having considered the evidence, the Tribunal was satisfied that the appropriate consultation had been carried out; that the works had been put to tender; and that the lowest tender accepted. In accordance with the repairing covenants in the lease, access roads were maintained on an estate basis and were captured by the service charge provisions enabling the Landlord to charge proportionately across all residents on the estate. Nothing in the Applicant's lease required the Respondent to divide up the road charges as suggested by the Applicant and indeed to do so would result in the management of the estate becoming unworkable. The Tribunal also considered that the costs had been reasonably incurred and represented fair value for money. This being the case no reduction was merited and the charge was payable in full

9 CCTV Installation

a) Applicant's Evidence.

The Applicant confirmed that she had no quarrel with the installation of the CCTV system, and she accepted that the costs of maintaining this system should be shared equally between all the residents on the estate. However, she questioned the cost of maintenance, which she considered to be very high. She calculated that the running cost on an annual basis was approximately £13,000, which seemed very high bearing in mind the basic maintenance contract was only £8000.

b) Respondents Evidence.

The Landlord refuted the figure of £13,000 and referred the Tribunal to the annual accounts which showed that the actual cost for the system for the year 2003 -2004 amounted to £9,204.26. This equated to approximately £25 per annum per resident, which they considered represented good value for money. It was mentioned to the Tribunal that there were further costs associated with the system relating to the fibre optics, which had been placed on a seven-year contract, and these costs were not being charged to the lessees.

c) The Tribunals view

The Tribunal accepted the figures put forward by the Landlord and considered that the estate benefited greatly from the extra security afforded by the system and that the Landlords were obtaining good value for money. In the circumstances no reduction was merited.

10 Balcony Work

a) Applicant's Evidence

i) Miss Shunter began her evidence stating that the costs of the balcony works represented her biggest complaint. To start with the balconies were not specifically mentioned in her lease and her lease plan suggested that

the balconies were included within the lease demise and accordingly the repair of them should be down to the individual leaseholder. Moreover her flat did not have a balcony and therefore she should not have to contribute towards the costs of maintaining them.

ii) Her second cause of concern was that she had not been properly consulted about the work and that the costs of replacing the balconies had escalated very considerably. What started off as a figure of just under £1,000 ended up at nearly £2,500.

iii) In March 2002 she had received consultation papers showing the cost of the work, which included balcony repairs and door and window repairs, to be £182,000 exclusive of VAT. Following a residents' meeting it had been agreed that there was no need to replace the doors and windows. Thus in August 2002 there had been further consultation showing the overall contract price to be £94,000 exclusive of VAT and fees. However, by the time the work had been completed this final cost had risen to just under £140,000.

iv) She considered the final cost to be totally unreasonable and not justifiable for the work done, and certainly the work did not represent value for money.

b) The Respondent's Evidence

i) The Landlord started their evidence by stating that works to the balconies were undertaken because there was serious water ingress into flats both with and without balconies, which was as a consequence of the balconies weatherproofing beginning to fail. They considered that the balconies formed part of the structure of the building and were an integral part of the building. They had obtained legal advice, which confirmed that the balconies formed part of the structure, and accordingly they were under a duty to repair them and were able to recover the costs from the leaseholders.

ii) Only about 50% of the flats had been inspected as there had been a problem with access to the remainder of the flats. The inspection report concluded that the buildings were in excess of 30 years old and that the balcony coverings were approaching the end of their useful life. It was considered that the replacement of all the balcony coverings under one contract would achieve greater economies of scale than replacing only the defective ones piece meal. Tenders were therefore issued for the replacement of balcony coverings and also renewing of windows and doors at Owl Beech Place. Consultants Calford Seadon were appointed to oversee the works. During this process Section 20 notices were issued to all the lessees. On the return of the tender and following the consultation period provided by section 20, a meeting was held with leaseholders and it was decided that there was no necessity to replace the windows and doors. Accordingly revised tenders were issued to the same contractors and their revised pricing obtained. Section 20 notices were then issued again. At

this stage the contract price was approximately £94,000 exclusive of Vat and fees.

iii) Work began on site on the 4th November but by early December an unforeseen problem had come to light. It was found that there was a lightweight insulation screed beneath the asphalt of the balconies and that this was breaking up when the old asphalt was being stripped. A new insulation was necessary which would involve extra work and result in a cost overrun. As soon as the overrun became apparent the leaseholders were informed in writing and advised of the possible extra cost due to the extra insulation works. Once the alternative insulation was agreed work restarted and concluded to the satisfaction of the consultant. The additional work had cost approximately £49,000.

iv) The Respondents accepted that some of the delay in completing the contract was down to their own office, which resulted in the contract extending over the Christmas period. They calculated that the cost attributable to their own delay was approximately £12,000 and this cost was therefore borne by themselves and not passed onto the leaseholders.

v) In conclusion they felt they had acted reasonably at all times and carried out the appropriate consultation procedure as required. They accepted that the consultation procedure had not been followed in respect of the extra works but they contended that further consultation was not required considering the nature of the extra works.

c) The Tribunals Findings

i) The Tribunal carried out a detailed examination of the Respondent's evidence and concluded that the correct section 20 consultation procedure was carried out for the main specification of works. The Works had been issued to competitive tender and the contract issued to the lowest tender.

ii) The Tribunal found as a matter of fact that the original specification relating to the works remained unchanged and that these works had been executed to a reasonable standard and to the satisfaction of the independent consultant. Although the Applicant had produced her own quotation for a much lower figure, this quotation had been generated on a desktop basis with no site inspection. Furthermore the Applicant's quotation was not comparable as it did not provide for scaffolding and it had not been costed against the original tender document generated by the consultant. Accordingly in the absence of any other figures the Tribunal concluded that the original tender price of £94,00 exclusive of vat and professional fees was reasonable.

iii) The Tribunal found as a matter of fact that no consultation or section 20 notices had been served in respect of the additional works carried out in replacing the insulation. The additional work had not been specifically identified in the section 20 notices and therefore the question was whether a further notice under section 20 should have been served and if so

whether the overrun in cost is irrecoverable. The Tribunal was in no doubt that the additional work had to be done and that it would not have made sense for any person other than the contractor already on site to deal with it. A decision clearly had to be made promptly if the work was not to be seriously delayed with adverse cost repercussions for the leaseholders. Whilst the additional cost was a significant percentage of the original contract it would be spread amongst all the lessees proportionately. Bearing in mind the essential nature of the works the Tribunal concluded that it was not unreasonable for the work to proceed without prior information being given to the tenants. The Tribunal had regard to the fact that when it became apparent that there would be a cost overrun, the Respondents had written to each of the lessees to advise them of this fact.

iv) The Tribunal noted that additional works had not been the subject of a fresh contract but were documented as an addendum to the original contract. Furthermore having considered the tender documentation accompanying the Section 20 notice, the Tribunal concluded that the specification and description of the works were wide enough to encompass the extra work which still amounted to replacing the balconies. In these circumstances the Tribunal concluded that further consultation whilst desirable, was not mandatory.

v) In the circumstances the Tribunal is satisfied that the Landlord acted reasonably in commissioning the works. Furthermore the Tribunal is satisfied that the Landlord obtained reasonable value for money and that the works had been completed to a reasonable standard. Having regard to the above, the Tribunal concluded that no reduction in the costs of the balcony works was merited.

11 **The Costs of these Applications.**

a) The Respondents confirmed to the Tribunal that even if they were successful in relation to section 27A application, it was not their intention to charge their costs of and incidental to this application in the future service charge account. In the circumstances they did not object to the Applicants application that the Tribunal make a section 20C order.

b) Having regard to the above and the circumstances of the application, the Tribunal considered that it was just and equitable to make an order under section 20C of the Act.

Robert Wilson
Chairman

Date: 19th July 2005.