Residential Property
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL**
**DECISION OF LEASEHOLD VALUATION TRIBUNAL**
**ON APPLICATIONS ON AN 27A & 20C OF THE**
**LANDLORD AND TENANT ACT 1985**

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**Ref: LON/00AE/LSC/2004/0148**

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| **Property:** | Flats 3 & 4, 9 Mapesbury Road, London , NW2 4HX |
| **Applicant:** | Bruce Maunder Taylor |
| **Respondent:** | Mr Bilesh Joshi |
| **Date of Hearing:** | 18 April 2005 |
| **Appearances:** | Bruce Maunder Taylor **for the Applicant** |
| | Mrs Trupti Joshi<br>Mr Bilesh Joshi **for the Respondent** |
| **Further Representations Received by Tribunal:** | 10 May 2005 |
| **Reconvened Tribunal Meeting:** | 23 June 2005 |
| **Members of the Tribunal:** | Mr S Shaw LLB Hons MCIArb<br>Mr F Coffey FRICS<br>Mrs S Friend MBE JP |

**Preliminary**

1. This case involves an application by Mr Bruce Maunder Taylor ("the applicant") dated 11 February 2005, for a determination as to liability to pay service charges, pursuant to the provisions of Section 27A of the Landlord and Tenant Act 1985. By order of the Leasehold Valuation Tribunal dated 27 January 2003, the applicant was appointed as manager of the property at 9 Mapesbury Road, Willesden, London, NW2 ("the building") pursuant to the provisions of Section 24 of the Act. The appointment was for a period of 2 years from the date of that order. However, prior to expiry of the appointment, an application was made for extension of that appointment by certain leaseholders of the flats within the building. The result of that application (which was dated 28 July 2004) was that by further order, which was signed on 23 December 2004, the earlier order made on 27 January 2003 was varied so as to extend the period of the management order until the 21 January 2007.

2. The building referred to above is a large detached double-fronted house, originally built around 90 years ago, and now converted into 6 flats. Four of the flats (Numbers 1-4) are in the main four-storey part of the building and two (Numbers 5 & 6), are in the side two-storey former coach house. The respondent to this application is Mr Bilesh Joshi, who holds the leases, from his wife Mrs Trupti Joshi (who is the freeholder of the building), of the ground floor flat No 3 and the basement flat No 4. Flats 3 and 4 will be referred to hereafter as ("the property").

3. By Directions Order dated 26 January 2005, it was noted that this case was originally transferred from the Hertford County Court by order of the District Judge, dated 18 October 2004. At that time the issue between the parties was the reasonableness of and liability to pay the service charges for the service year ended 31 March 2004. However, by the time the matter reached the stage of Directions, the parties had agreed (and indeed this was the case when the matter came before this Tribunal) that, in addition, the reasonableness of the service charge budget for the service charge year to 31 March 2005 should also be determined by the Tribunal. The applicant has not been able to recover the full service charges from the respondent in respect of these two years because the respondent challenges, as he is entitled to, certain items of expenditure in respect of these two service charge years. The particular heads of challenge will be referred to below in this decision, coupled with the findings of the Tribunal in respect of each challenge.

4. The matter initially came before the Tribunal on 18 April 2005. During the course of the morning the Tribunal conducted an inspection of the building externally, in the presence of both the applicant and the respondent. The hearing was resumed in the afternoon and continued until 4.30 pm at which stage the hearing was adjourned. After some discussion with the parties, it was resolved, by consent, that there was no satisfactory way of concluding the hearing on that day, and that the best way to proceed would be for the parties to summarise their submissions by way of written representations to the Tribunal, within a particular time frame. In the event, their submissions

were served sequentially and the final submissions were received by the Tribunal on 10 May 2005. It was necessary thereafter for the members of the Tribunal who had heard part of the case to reconvene, in order to consider the further written submissions. The further meeting took place, in the absence of the parties, on 23 June 2005. This decision is given consequent upon that meeting.

**Inspection**

5. As indicated above, the members of the Tribunal inspected the building of which the property forms part on 18 April 2005. On that occasion, the respondent took the opportunity of drawing the attention of the members of the Tribunal to various matters which were causing him concern, some of which went specifically to the issues raised by him in his statement of case (which he has headed "Defence") made pursuant to the Directions order and in response to the application. Other matters were drawn to the attention of the Tribunal which we took to be simply illustrations of his general allegations of unsatisfactory management on the part of the applicant, which the respondent contended was relevant to his liability to pay service charges. In summary, these matters concerned unauthorised parking of commercial vehicles in the driveway to the building, some alleged flooding from a rainwater gulley, a fence and gate in disrepair replacement of the lock alleged outstanding roof repairs, and some other matters relating to previous dry rot repairs to which reference will be made below.

**The Hearing**

6. At the hearing, the applicant represented himself and the respondent also represented himself, assisted by his wife Mrs Trupti Joshi. Both parties had prepared substantial documentation for the consideration of the Tribunal. The applicant had prepared a bundle running to 298 pages; and the respondent had prepared his own bundle running to 477 pages. The respondent had prepared a seven page statement of case setting out his challenges and his further submissions dated 9 May 2005 run to 21 pages, each document containing several appendices. The further written submissions of the applicant run to 16 pages and also attach various appendices. Both of the bundles and each of these sets of submissions have been carefully considered by the Tribunal. In an effort to deal with this application with a degree of proportionality, it is proposed to analyse and make determinations in respect of the various points challenged by the respondent and set out in his original statement of case or "Defence" documents. Although each and every matter raised in the very detailed submissions may not be specifically dealt with in this decision, they have nonetheless been taken into account by the Tribunal in viewing the position overall.

**The Issues**

**The service charge year ending 31 March 2004.**

7. At page 47 of the applicant's bundle, there is a statement of expenditure for the service charge year ending 31 March 2004. In fact, although the respondent challenges the expenditure during that year, he has paid the bulk of the charges leaving arrears in the relatively modest sums of £403.89 and £262.03 respectively in relation to flats 3 and 4. A similar statement has been prepared in respect of the expenditure for the service charge year ending 24 March 2005 and this appears at the attachment marked "P" to the applicant's written submissions dated 25 April 2005. The statements of account in respect of the property can be found at the attachments marked "M" and "N" and show outstanding sums of £4,148.46 for flat 4 and £5,638.62 for flat 3. As understood by the Tribunal, a determination is sought in respect of these sums in the context of this application. The bulk of the expenditure relates to the contribution alleged to be due from the respondent for dry rot remedial works carried at the building and the written representations prepared by the respondent tend to confirm that it is substantially in respect of this expenditure that the challenges are made. These challenges in any event will be dealt with separately below.

8. The first challenge is in respect of a fee of £1938.75 (inclusive of VAT) paid to Arun Associates Ltd, Chartered Surveyors and Property Consultants pursuant to their invoice dated 27 April 2004, which appears at page 326 of the

respondent's bundle and page 121 of the applicant's bundle. The report itself appears at pages 10 – 32 of the respondent's bundle and, as indicated, was prepared by the firm, Arun Associates. The original quotation for the report appears at pages 146 – 154 of the same bundle and it was given by a different firm of surveyors, namely OPM (UK) Ltd. The Tribunal understands that, as a result of a conflict of interest, the work was ultimately carried out by Arun Associates, in accordance with the original quotation.

9. The first complaint made by the respondent in respect of this charge, is that in the original quotation it is stated that the fee will include a joint inspection with the timber damp specialist contractor, to agree a programme to complete the current work of the two upper floors, and establish the extent of dry rot in the common parts and associated areas. When the report was ultimately prepared it contained a statement to this effect (page 12 of the respondent's bundle): *"following a joint survey carried out by Arun Associates and Kenwood Plc (damp-proofing, woodworm and dry rot specialists) on 17 July 2003, a detailed specialist specification of works was prepared by Arun Associates. The dry rot remedial works are to be carried out as a separate contract and are therefore not detailed within this report"*. The respondent therefore complains that the report is *"incomplete in content"*.

10. It does not seem to the Tribunal that there is any significant substance in this complaint. The quotation given by the surveyors was to include an inspection by them together with a specialist in damp proofing and dry rot. This is not, in the experience of the Tribunal, an unusual course. The subsequently

prepared specification contains both 'preliminaries' and 'works' sections, which make express provision for dry rot remedial works to be carried out in the accordance with a quotation given by Kenwood Plc (who were the specialist contractors). There are in fact specific quotation documents and a survey report prepared by Kenwood contained within the respondent's bundle, at pages 178 - 184. It does not appear that any separate charge has been made in this regard (at any rate no complaint is so made). A concession was made by the applicant at the hearing before the Tribunal on 18 April 2005, to the effect that a sum of £400 has in fact been paid by way of overpayment to the surveyors, which sum it is expected, will be recovered from the surveyors, or at any rate will not be charged to the respondent. On this basis, the Tribunal is satisfied that the general survey report, when read together with the other documentation produced or obtained by the surveyors, is adequate for the required purpose, and accordingly does not uphold the complaint made by the respondent in this regard.

11. The second complaint the respondent makes in respect of the general survey report is that it represents *"poor financial value".* He points to an alternative quotation he has obtained, after the event, from Ian Hyman and Co, Ltd Chartered Surveyors, dated 18 November 2004. Mr Hyman, of that company, indicates that *"whilst I do not know the precise amount of time spent by the surveyors, this would office would have charged in the region of £800 - £1000 plus VAT to provide a similar style report."* In closing submissions the applicant has indicated that preparation of the report involved a number of site inspections, both externally and internally, once with the applicant himself and

on other occasions with the dry rot specialists and the applicant's property manager. In his own written submissions the respondent appears not to dispute that there were indeed three site inspections although he does dispute that the applicant himself attended on the 20 May 2003 and points to a letter at page 157 in the respondent's bundle indicating that the attendance by the applicants firm was is in fact by Roy Cable rather than the applicant himself. The letter referred to indeed supports the suggestion that the applicant in person may not have attended, although there was a representative of his firm in attendance on that occasion. In the scheme of things it does not seem to the Tribunal that this disparity is of great significance. The important point is that there were several inspections, and the report was made in the light of such inspections and in accordance with the original quotation. The alternative quotation obtained approximately a year and a half after the event is extremely brief and, as was pointed out by the applicant, does not expressly refer to the extra investigations required in respect of dry rot matters. On balance, on the evidence, and applying the Tribunal's own knowledge of these matters, the fee of £1650 and VAT does not seem unreasonable in all the circumstances.

12. The third complaint made by the respondent in relation to this report is that there was a six month delay in the production of the report, and this delay should be reflected in some way in the recoverability of the whole or part of the charge made for the report.

13. It was not entirely clear how the respondent has calculated his six month period, but it is assumed that he takes it from the end of September 2003/beginning of October 2003, which was about the time that Kenwood Plc, the damp proofing and woodworm and dry rot specialists, reported on the property (see page 180, the respondent's bundle). It was then not until April of the following year that Arun Associates Ltd made their report which appears at pages 10-32 in the same bundle. It seems to the Tribunal that the respondent is correct in saying that this is a longer than usual time lapse between the supply of this information to the surveyors and the preparation of their eventual report. Whilst financial prejudice consequent upon this delay might not necessarily be a precondition for a finding of unreasonableness under the Act, it does seem to the Tribunal that the presence of such prejudice would provide a compelling reason for such a finding, and certainly for a finding that the sum to be recovered should be adjusted in some way. In this particular case, there is no evidence from the respondent that, regrettable though this time lapse may have been, it had any particular impact on the extent or cost of the works which had later had to be carried out. The report which was in due course prepared was in fact a very full report, and no doubt would have taken some time to prepare. It does seem to the Tribunal that though the report should have been prepared quicker than was the case, this does not impact in any significant way upon the reasonableness of the charge made for the report.

14. For the reasons indicated above, the Tribunal does not accept that there is any substantiated reason for finding that the sum of £1650 plus VAT has

either been unreasonably incurred or is unreasonable in terms of quantum, save in respect of the concession of £400 plus VAT which has been conceded by the applicant (and which should be reflected by him in some form of credit in the overall service charge, a proportion of which the respondent will benefit from in the next service charge year).

15. The second collection of complaints for this service charge year relates to what is described by the respondent as the *"Dry Rot Major Works Report".* Specifically, the complaint is in respect of a sum claimed within the service charges totalling £3215.12, and relating to an invoice from Arun Associates Ltd appearing at pages 276 -277 of the respondent's bundle. The first complaint in this regard is that there is a duplicated fee of £400 for joint reviews with the dry rot specialists. In brief, the applicant has accepted this and credit is to be given in the final account as referred to above, and as will be referred to at the conclusion of these reasons.

16. The second complaint is that the Specification of Works (for which Arun Associates Ltd has charged separately) itself contains a 10% profit under "attendance allowance" for Kenwood's portion of the works, and, since the surveyor's fees have been calculated at 15% of the contract value, it is asserted that there is duplication of payment here.

17. In fact however, the surveyors have prepared a specification of works, included within the tender documentation (see page 305 in the respondent's bundle). At page 310 it can be seen that a PC sum of £2458 has been

allowed for specialist works to be carried out by Kenwood PLC in accordance with their quotation (and this has been quoted for by Able Trades Ltd at £2458). An allowance for profit and attendance at 10% has been included in the specification. It seems that the respondent has concluded that this allowance is in some way payable to the surveyors. In fact, it is a payment to the main contractor. This is, in the experience of the Tribunal perfectly standard, and the 10% level is also within the usual range. It does not seem to the Tribunal that there is any substance in this aspect of the complaint.

18. A third compliant is that the surveyors have calculated their charge at 15% of the lowest tender sum. The respondent points to alternative quotations which he has obtained allegedly for similar work at rates ranging from 10% -12½%. Reference is again made by the respondent to the quotation obtained from Ian Hyman and Co Ltd referred to as above. It is accepted by the Tribunal that it would have been perfectly possible to obtain a fee quotation based on 12½% of the cost of the contract works. However, it further seems to the Tribunal that the issue in this case is whether or not 15% is outside the acceptable range. The Tribunal finds that it is not in fact outside the acceptable range and in the circumstances is reasonable.

19. A further complaint is that in the tender report dated December 2003 prepared by the surveyors Arun Associates Ltd, there is a proposed timetable of works (at page 47 of the respondent's bundle) which, had it been followed would not have complied with the 'section 20' consultation procedure as now amended by the Commonhold and Leasehold Reform Act 2002. That point is conceded

by the applicant, who also points out that in the respondent's "Defence" document he concedes that after he (the respondent) had pointed out in a letter dated 15 January 2004 (page 282 of the respondent's bundle) that a notice of intent was required first to be served, the appropriate notice was indeed subsequently served. These notices have been particularised at page 5 of the Applicant's written submissions and it seems in the circumstances to the Tribunal that, however belatedly, the amended consultation procedure was complied with.

20. A third complaint is made under this head that there has been excessive delay in the production of the surveyor's dry rot major works report. This is because the first inspection took place in June 2004 but the report was not produced until the end of that year.

21. The Tribunal accepts that this is a long delay and that the report could and perhaps should have been prepared within a shorter time frame. However a detailed explanation has been provided by the Applicant at pages 5 and 6 of his written representations, to which reference can be made in so far as may be necessary and which will not be repeated verbatim herein. Suffice it to say that an original conflict of interest was disclosed by the first surveyor instructed, which caused some delay. Given that there were a number of different parties who had to liaise and consult in the preparation of this document, the Tribunal is satisfied that the charge made is reasonable and that although the period of delay is unsatisfactory, there is no evidence to

suggest that this caused any increase in the costs or other prejudice to the Respondent.

22. The final complaint in respect of the dry rot major works report is that the costs were incurred prior to the service of the notice of intent.

23. The third and final main item for complaint for this service year is in respect of a management fee charged by the Applicant. The Respondent's challenges in this regard are under four heads.

24. The first of these is that the applicant, in his Management Proposals, made prior to the Tribunal appointment of him as Manager, indicated (see page 61 of the respondent's bundle) that he would write to the leaseholders within a week of the appointment, and serve notices to deal with the dry rot repairs within a month. In the event it was not until 3 months after his appointment that he wrote to the leaseholders. It was six months before an inspection took place, a year to serve the appropriate notice and an additional year before completion of the works. This period of delay is not substantially disputed by the applicant, but it has been explained in the manner previously referred to above. In part, the applicant contends that some of the delay was caused by the respondent, and he also contends that there is no evidence that the delay itself has caused any further deterioration to the building fabric and finishes.

25. Whilst the fact of the delay is accepted, there is no persuasive evidence that the delay of itself increased the cost of the works. The delay does however raise questions concerning the management of the building. The Tribunal would have expected the applicant to have dealt with these issues in a more expeditious fashion. We will refer to this later below.

26. The second complaint is that, on a previous occasion, in response to directions from the Tribunal, and in a letter dated 1 November 2004 the applicant stated he had not been given access to the property in order to complete the specification. The respondent has pointed to correspondence showing that this is not in fact the case. He asserts that there has been deliberate dishonesty on the part of the applicant. The applicant by way of response, has indicated in his written submissions that he made a genuine mistake in this regard, and accepts now that he was in error. The respondent in his own written submissions refuses to accept that the information was supplied other than dishonestly. It is impossible for the Tribunal to resolve this kind of conflict as to fact on the basis of written submissions only (as has been requested by the parties). Suffice as to say this admitted error has not helped to improve the relationship between the parties and was certainly unfortunate.

27. The third allegation going to the management fee charged is for the period of time the building was left uninsured. This period appears to be September 2003 - May 2004. This failure is accepted by the applicant, and it seems to the Tribunal, that his omission here is indeed a serious one. The suggestion

that had there been any loss, this would have been covered by the Applicant's professional indemnity insurance does not seem to the Tribunal to be a satisfactory state of affairs. Once more, the Tribunal finds that there is some substance in the respondent's unhappiness in this regard.

28. The final complaint in respect of the management fee is that the respondent contends that there has been confusion over collection of previous years' arrears from other leaseholders prior to the applican'ts appointment. Initially he contended that he would start his management with a "clean sheet" and allow the respondent (who previously managed the building) to collect earlier arrears. However the respondent contends that he later changed his mind and assumed responsibility for such arrears. The applicant's explanation in this regard is at page 8 of his written submissions and is effectively that he did indeed initially intimate that he would not be pursuing such arrears. However, one of the other leaseholders made representations to the applicant concerning proceedings which had been brought against him by the respondent. The applicant on closer examination of the order of appointment, took the view that it was for him, the applicant, to pursue such arrears and invited the respondent to make whatever claim he had through the applicant. The result has been that some County Court proceedings have been adjourned and await the outcome of the respondent's application for permission to appeal this Tribunal's decision to extend the applicant's appointment.

29. It seems to the Tribunal this confusion has been, at the least, unfortunate, but does not really bear upon the recoverability of the management fee to a significant extent. However the allegation about lack of insurance, and delay in the processing of the dry rot repairs, do seem to the Tribunal to constitute legitimate complaints which we would propose to reflect in the management fee recoverable. This matter will be dealt with below, and in a composite manner in respect of both service charge years.

**The service charge year ending 31 March 2005**

30. There are essentially three matters raised by the respondent in respect of the service charge for this year. These matters are listed at page 5 of the respondent's "Defence" document and relate to (a) the dry rot works (b) insurance matters (c) the applicant's management fee. Each of these matters will be dealt with in turn below.

31. Within the context of his objection in relation to the dry rot works costs, the respondent raises three discreet matters. First, the respondent contends that it is inappropriate for all of the costs in respect of the dry rot remedial work to Flats 1 and 2 in the building to be charged to the service account. He contends that at an earlier Tribunal hearing, which took place on 11 and 12 November 2002, the Tribunal concluded that leaking pipe work at Flat No. 1 was one of two possible causes for the dry rot. On this basis, the respondent contends that it is unreasonable for the entirety of the costs to be placed on the service charge

account for the whole of the building and, inferentially, that the leaseholders of these particular flats should pay more, since presumably (so it would be contended) they carry a greater proportionate responsibility for the damage caused. The precise apportionment is not suggested by the respondent in his initial Defence document, but in the subsequent submissions made in writing to the Tribunal he contends that half of the liability for the dry major works should be apportioned to the leaseholder of flat 1 (for the leaking pipe work) and half should be made referable to the service charge (in respect of the defective roof covering).

32. The applicant in his response to this contention, points out that in fact the Tribunal on the earlier occasion made no specific finding to the effect that leaking pipe work was one of two possible causes for the dry rot. It seems to this Tribunal that the applicant's contention is correct in this regard. The Tribunal on the earlier occasion (see page 89 of the respondent's bundle; paragraph 12 of its decision) simply made reference to investigations carried out by Mr Dyan (a Chartered Surveyor) and also made reference to some recommendations of Mr Hyman, another Chartered Surveyor referred to earlier in this decision. The various submissions were recorded but no substantive findings made as to which was the more preferable, nor was such a finding required for the purposes of that Tribunal's hearing. This Tribunal has heard no evidence from any expert but there are some reports in the bundles, and in particular the report of Mr G Dyan FRICS at page 150 of the Applicant's bundle and Mr Hyman's report at page 398 of the respondent's bundle. It seems to this Tribunal that both of these reports put forward various possible explanations for the outbreak of the dry rot, but with

no substantive suggestion that the outbreak was referable exclusively to negligent conduct or some other wilful act on the part of the leaseholders of either Flats 1 or 2. In the circumstances, the primary contention made by the respondent in this regard, to the effect that there is some greater culpability referable to those leaseholders, does not seem to this Tribunal to be made out on the evidence before it.

33. In any event, it seems to this Tribunal that there is a strong argument that if works of repair coming within the landlord's obligations under the terms of the lease are required to be carried out, it is for the landlord to discharge his obligation in that regard, and he is not required to make fine distinctions as to which of the various leaseholders may be proportionately more responsible for the carrying out of those works. For example, the lessor's obligation in the lease governing Flat 4, at clause 5(5), is generally to repair the roofs, structure, walls, foundations and main structure of the building of which the demised premises form part (see page 18 applicant's bundle). It is often the case that in a large building divided into several flats, some leaseholders may obtain greater benefit from the works than others, and indeed the need for the works may have been generated by causes emanating more from one part of the building than another. It does not seem to this Tribunal that that this factor of itself is a reason for other leaseholders not to pay their due proportion of the service charge claim, (although it may give rise to separate causes of action or contribution as between the leaseholders themselves provided some form of breach of duty or obligation can be established).

34. For these reasons, the suggestion that the cost of the dry rot works should be apportioned in some manner other than that provided for in the respective leases, is not accepted by the Tribunal.

35. The next objection made by the respondent in respect of the dry rot works for this year, is that there were failures to comply with the new consultation regime which came into force after 31 October 2003. He contends that the lowest priced quotation was not accepted, and that little regard was given to the views of the leaseholders. There is a degree of overlap here with a similar objection made in relation to the previous service charge year, which has already been dealt with above. However in his subsequent submissions to the Tribunal the respondent has contended that the fact that the correct statutory notices were in due course served, does not itself amount to satisfactory compliance with the Section 20 consultation process. He contends for the detailed reasons set out at pages 11 to 13 of his subsequent submissions, that his own observations were not properly taken into account by the applicant.

36. Of course, it is difficult to make a determination in this regard, on the basis of the written representations which the parties have now invited the Tribunal to work with (rather than oral evidence) in order to determine this matter. However, it is noteworthy that the respondent does not appear forcefully to be putting forward some other quotation or contractor whom he suggests could or should have done the job for a lesser sum or in some different way. No disrespect is meant to the respondent by our not providing a written analysis of each and every point made by him in the pages referred to (which have been carefully

considered) but it does not seem to this Tribunal that those matters seriously call into question whether or not the Section 20 consultation procedure was properly followed to the extent that the applicant ignored the respondent's suggestions. Moreover, there is no real evidence to support any contention that the applicant could or should have adopted and instructed some other contractor at some other specific figure.

37. The last point made by the respondent in this context is under the heading **"Additional works necessitated by two year delay in dealing with problem".** In this regard it is speculated in the original Defence document of the respondent that *"there may be additional costs which had to be incurred which rightly are now the liability of BMT (Applicant) for his own account and not for the leaseholders".* In the applicant's response to this contention he points out that no positive case has been made out under this heading, and indeed in the subsequent submissions of the respondent he concedes that *"it is probable that BMT's delay in dealing with the problem did not adversely affect the final outcome ….".*

38. In all the circumstances it would seem to the Tribunal that this assertion of possible additional works is speculative, and certainly not made out on the evidence.

39. The second main category of complaint, as mentioned above is in respect of the failure to effect insurance cover for the building, and the fact that first insurance policy was to cover a period from 7 May 2004 to 25 June 2005. As pointed out by the respondent this is a period in excess of 12 months, and is accordingly a

*"long term agreement"* requiring proper compliance with the new consultation regime introduced by the Commonhold and Leasehold Reform Act 2002. The respondent points out that there was no such compliance, nor was there an application to dispense with the requirements by virtue of Section 20Z of the amended Landlord and Tenant Act 1985.

40. In his response, the Applicant seems not to deny the failure to comply with the statutory procedure, or at any rate does not deal with the assertion, and it seems to the Tribunal that there has indeed been a failure in this regard. The question raised however, is how this failure is to be dealt with in the present context. There could be no benefit to the leaseholders by suggesting that the premium should not be payable, thereby possibly jeopardising the insurance cover on the building. However, the second point made by the respondent is to the effect that the applicant should be denied the commission which he has received (in the sum of £654.10) because he has already received remuneration pursuant to the terms of the Tribunal appointment order, and he should not enjoy this further commission particularly in the light of the dilatory arrangements made in relation to insurance. The applicant contends that he has a separate department employing three people who deal with all the necessary administrative work relating to assessment of reinstatement values, and other matters relating to quotations, and that in all circumstances the commission is standard and reasonable.

41. The Tribunal accepts that this contention would in the usual course of events carry some weight, but in the particular circumstances of this case there has

been a regrettable failure to ensure that the building was properly covered by insurance for a protracted period, and the Tribunal considers that there is some force in the contention made by the respondent to the effect that this should in some way be reflected in the management fee recoverable by the applicant, and which will be dealt with below.

42. The third and final item of challenge for the service year ending 24 March 2005 is in respect of the management fee charged by the applicant. The recoverability of such fee is not in principle challenged by the respondent, but for five reasons listed in his "Defence" document, the respondent challenges the fee. It is not clear from his "Defence" whether it is asserted that the fee should be reduced to nothing, or simply modified in the way considered appropriate by the Tribunal. In any event, the Tribunal has scrutinised these fees both in terms of their reasonableness in respect of the work done and the charging rate.

43. For the year ending 2004, the applicant charged fees of £2154.21 and for the year ending 2005, he has charged fees of £2418.12. The proportionate contributions affecting the respondent are £461.87 and £345.97 for Flats 3 and 4 respectively for the year ending 31 March 2004; for the year ending 24 March 2005 the respective contributions for Flats 3 and 4 are £518.45 and £388.35.

44. First, the respondent contends that the applicant has made false statements *"to pervert the course of justice"*. One of the false statements asserted by the respondent is contained within the applicant's letter of 1 November 2004 to the Tribunal, in which it is asserted by the applicant that there have been difficulties

in obtaining access from the respondent to his two flats in order to complete the specifications. The applicant now accepts that was not in fact the case. On the basis of a paper determination of these rival contentions, it is not easy for the Tribunal to conclude that the false statement was made intentionally to mislead the Tribunal, rather than being an innocent error. For present purposes, the Tribunal is not prepared to conclude, in the absence of a testing of this evidence under cross examination, that it was a deliberate falsehood.

45. The next concern expressed by the respondent is the two year delay in dealing with the dry rot. This point has already been dealt with above and it is to be noted that, to some degree, there is acceptance by the applicant that the matter has not progressed as speedily as should have been the case - not all of which delays are referable to the respondent.

46. The respondent thirdly complains about some parking problems on the forecourt of the flats. The Tribunal itself witnessed an incident of the type complained of by the respondent when inspecting the premises. The respondent complained that a builder's van should not have been parked on the premises. This seemed to be a little unreasonable to the Tribunal, given that the vehicle was there in connection with works in the maintenance of the property. Parking problems can often be a difficulty within the common parts of a block of this type but the Tribunal does not consider that this of itself constitutes a reason for reducing the management fee recoverable.

47. Fourthly, the respondent asserts that there has been poor garden maintenance. The answer to this from the applicant is that he has been inhibited in instructing gardeners to maintain the grounds to the standard desirable, because of the lack of funds currently in the account (and referable largely to the respondent's own considerable arrears). On balance, based upon what was seen at the inspection and the material within the bundles made available by the parties, the Tribunal does not consider that this particular item of complaint warrants a reduction in management fee recoverable.

48. The fifth item of complaint is there have been lease contraventions by other leaseholders which have not been sufficiently rigorously pursued by the applicant. More particularly, the respondent complains that Flats 1 and 2 have not been carpeted in accordance with the terms of their leases. Further, that there is a vent above Flat 1 which trespasses upon the demise of the freeholder but which the applicant has done nothing about. Finally, it is alleged that there is a steel 'column' at the left hand side of the building which the lessee of Flat 2 has installed in connection with a separate water supply, but which is in breach of lease.

49. So far as the carpeting matter is concerned, this was dealt with on a previous hearing before the Tribunal and determined to be a relatively minor matter in the scheme of things; furthermore the same position obtained when the Respondent himself was managing the building and he also, failed to act upon it then. The two other matters again on balance do not seem to the Tribunal to be matters of

sufficient import to require reduction in the management fee recoverable and the Tribunal makes no such deduction in this case.

Other costs matters

50. There are three further cost matters put in dispute by the Respondent. The first is that of the recoverability of the professional fees claimed in the 2005 account. These fees appear on the end of year account at page B of the further submissions submitted by the Applicant, and in total amount to £4598.14 for the whole building, with the proportionate parts of that sum being payable by Flats 3 and 4 as illustrated on the account. The fees in question include legal fees charged by the firm of solicitors Messrs Gisby Harrison in respect of service charge recovery for the Respondent's own flats. Having seen the invoices and the descriptions of work which appears at pages G and L of the further submissions by the applicant, the Tribunal does not consider that there is anything unreasonable in this sum, in terms of its quantum.

51. However, the recovery of these sums by way of service charge does seem problematic to the Tribunal. The entitlement in this regard is governed by the leases of the two flats in question, and the provision for contribution to expenditure to be made by the tenants, is contained mainly at clauses 5(4) – 5(6). There is no provision here for recovery of such costs of litigation from the tenants collectively by way of service charge – although there is provision at clause 2(8) for the lessor to recover from the relevant individual tenant, costs associated with section 146 or 147 proceedings. There is also provision for the

lessor, at clause 5(3) to obtain an indemnity from other tenants against costs associated with litigation, as a precondition to the institution of proceedings.

52. Whilst therefore satisfied as to the quantum of these bills, we consider that the sum is more appropriately recoverable from the individual tenant concerned (in this case the respondent) rather than appearing in the service charge account. It should therefore be removed from the account, and the applicant may wish to consider the other means available to him for recovering these sums (i.e. the sums of £626.38 and £687.38), perhaps in the context of the County Court proceedings.

53. A further part of these fees, are the fes of the applicant himself in dealing with the various hearings before the Tribunal which have taken place. These fees amount to £3084.38 and are made up of two invoices. The first, dated 20 December 2004 amounts to £2115 and is based on an hourly rate of £200 for 9 hours work. The Tribunal does not consider this unreasonable either having regard to the amount of work generated by these applications or the rate used. The second part of that fee is £969.38 and involves 3 hours work at £275 per hour. The Tribunal does not criticise this charge in terms of the hours of work but the hourly rate does seem to be somewhat on the high side, coming just one month after the previous invoice and which used a charging rate of £200 rather than £275 per hour. In all the circumstances the Tribunal considers that the reasonable hourly rate should remain at £200 per hour which would mean that the second invoice dated 28 January 2005 should be reduced to £705, and that the overall fee charged by the Applicant should come down from £3084.38 to a

total of £2820. The other parts of the professional fees for this year have been scrutinised by the Tribunal and the Tribunal does not consider that any further changes are required.

54. Once again however, it seems to the Tribunal that these are costs which, though recoverable, should be recoverable from the respondent himself, rather than the tenants collectively. There is no provision in the leases for recovery of these costs as service charges. However, in the context of his appointment by the Tribunal, and by virtue of section 24(5) (c) of the Landlord and Tenant Act 1987, the applicant is entitled to be paid remuneration by *"any relevant person or by the tenants of the premises in respect of which the order is made or by all or any of those persons."* These costs should accordingly be removed from the service charge account, and subject to the adjustments made above, recovered from the respondent.

55. The second main further costs matter is in respect of an application in further submissions made by the Respondent to the effect that the Tribunal should make an Order under section 20C of the Landlord and Tenant Act 1985, precluding or reducing the recovery of the costs generated by this application and other applications within the general service charge. Again, the Tribunal has considered carefully the various submissions made in this regard by the Respondent and those of the Applicant in reply. The Respondent has made various contentions in respect of the preparation of the bundles and other matters all set out at pages 19-21 of his further submissions dated 9 May 2005.

56. Once again, for the reasons indicated above, it seems to the Tribunal that there is no direct provision in the lease for recovery of such costs by way of service charge. The applicant, by virtue of his appointment, is entitled to reasonable remuneration for his management services (section 24(5) of the Landlord and Tenant Act 1987) and will indeed be recovering them (subject to adjustment) as referred to below at paragraph 59. The particular further fees which the applicant would propose including within the service charge account are as itemised at page "O" in his further submissions and in the context of an invoice dated 2 April 2005. That shows fees charged at £275 per hour, and itemises 15 hours worth of work which, together with VAT produces a sum of £4846.87. Having considered the position, whilst the volume of work is not considered unreflective of the time which must have been necessary in the conduct of this case, the Tribunal again considers that the hourly rate itself is on the high side and would reduce this to £200 per hour plus VAT. The result of this is that the total fee recoverable should be £3525 rather than the £4846.87 referred to in that invoice. Further, the sum should be removed from the general service charge account, and recovered from the respondent only

57. Further, in his written submission, the Applicant invites the Tribunal to make an award for costs against the respondent by virtue of the provisions schedule 12 paragraph 10 (4), to the Commonhold and Leasehold Reform Act 2002. He contends that the respondent has been frivolous and vexatious, and that there should be some form of costs award against the Respondent (which can be up to maximum of £500) and also asks the Tribunal to determine that the Respondent should pay the Applicant's application fee of £200. Having considered the

position, the Tribunal is of the view that many of the challenges made by the respondent have indeed either been without substance or have generated disproportionate costs in the context of his dispute. We do consider that the case merits an award in favour of the applicant in the sum suggested, i.e. £200 to cover the Tribunal hearing fee.

Management fee

58. The respondent in this case has raised numerous allegations of mismanagement against the applicant which, in the main, the Tribunal has found were unmerited. However, in two regards, the Tribunal takes the view that there has been a degree of substance in the complaints. The two particular aspects of complaint which the Tribunal considers have some substance are first, the long delay, in the institution of the works, only part of which delay is referable to factors outside the control of the applicant. The second aspect which has some substance, is that there was a failure to arrange for insurance cover upon the building for period in excess of a year, which the Tribunal considers to have been regrettable to say the least, and for which there has been only a partial explanation. These matters are indeed of considerable concern. The Tribunal does consider that the applicant has taken on an extremely difficult job in this particular case, given all the management problems obtaining in respect of this block. However, in respect of these two particular matters, the position could have been covered and handled more efficiently and more appropriately. As mentioned in the findings set out above, we consider that there is some substance in these complaints,

which ought to be reflected in some way in the management fee recoverable. Overall, the Tribunal considers that a reduction in the order of 10% would be appropriate to reflect the lack of adequate management in this regard. As understood by the Tribunal the impact this would have upon the figures is that the sum within the accounts for the year being 31 March 2004 should be reduced from £2154.21 to £1938.79. Correspondingly the figure of £2418.12 in the accounts for the year ending March 2005 should be reduced to £2176.31. The amounts recoverable from the Respondent as leaseholder of Flats 3 and 4 should in turn proportionately therefore be reduced.

Conclusions

59. For all the reasons indicated above, the Tribunal finds that the service charge made by the Applicant for the years ending 31 March 2004 and 24 March 2005 are reasonable and have been reasonably incurred save only for the fact that:

(a) The legal fees of Messrs Gisby Harrison as referred to at paragraphs 50-52 should be taken out of the general service charge account

(b) The applicant's invoice dated 28 January 2005 should be reduced to an hourly rate of £200 rather than £275 per hour (thus reducing the overall sum referred to at paragraph 53 above from £3084.38 to £2820), and likewise the sum recoverable by way of costs of these proceedings as itemised in the bill dated 2nd April 2005 (page O of the further submissions) should be reduced from £4846.87 to

£3525. These costs should be taken out of the service charge account and recovered from the respondent personally, for the reasons indicated above.

(c) The overall management fees in each of the service years should be reduced by 10% for the reasons and in the manner set out at paragraph 58 above.

(d) The Tribunal finds that the sums otherwise claimed by way of service charges are recoverable and payable by the respondent – subject only to the proportionate reductions necessary in order to take in account the above reductions in the applicant's own chargeable rate and management fees.

(e) Further, the applicant should give credit for the £400 payment referred to at paragraph 10 above.

(f) Further, pursuant to the provisions of the Commonhold and Leasehold Reform Act 2002 and the Regulations made thereunder, and for the reasons indicated above, the Tribunal considers that it is appropriate that the respondent makes a payment of costs in the sum of £200.

CHAIRMAN: S Shaw

DATED: 8th August 2005