RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985 : SECTION 19(2B)

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	CHI/21UD/NSP/2002/01
Property:	**69 Church Road** **St Leonards-on-Sea** **East Sussex TN37 6EE**
Applicant:	Miss J Slidel Mr T Harland Ms F Clifford
Respondent:	Upfront UK Ltd
Date of Application:	9 July 2002
Date of Hearing:	19 February 2003
Members of the Tribunal:	Mr P B Langford MA LLB (Chairman) Mr J N Cleverton FRICS Mr T W Sennett MA MCIEH
Date decision issued:	

69 CHURCH ROAD, ST LEONARDS ON SEA

1. The Application

This is an application under Section 19(2B) Landlord and Tenant Act 1985 by Miss J Slidel and by Mr Harland and Ms Clifford to determine the reasonableness of costs proposed to be incurred in the year 2000, the standard and specification of the works proposed in that year and the amount required to be paid before costs were actually incurred. Miss Slidel is the leaseholder of the second floor flat at 69 Church Road, St Leonards on Sea. Mr Harland and Ms Clifford are the leaseholders of the garden (basement) flat at 69 Church Road. The Respondents to the application are the Landlords of 69 Church Road, Upfront UK Ltd.

2. Inspection

We attended at the property on 19 February 2003 and inspected it in the presence of representatives of the Applicants and Mr P G Cole ABEng MaPS. We saw an end of terrace house built in around 1880 which provided accommodation on four floors, including the basement floor. The house had been converted into four self-contained flats. From the outside we observed that the rendering and window frames appeared to have been painted relatively recently but there were already signs of flaking paintwork. We noted also some cracking in the rendering and in the lintels. A pipe was loose and unfixed. On entering the Premises, we were shown up to the second floor flat (Miss Slidel's flat). The communal stairways and landing had again apparently been redecorated fairly recently and the decorations were in good order. A fairly new carpet on the stairway was in good order although was loose on some of the lower treads, immediately above ground floor level. In Miss Slidel's flat, we observed that there were cracks in the plasterwork in several rooms. In a large room at the rear of the Premises the ceiling was being supported by five accrow props. This room was clearly not being used by Miss Slidel and was not usable.

3. **The Hearing**

At the hearing, which followed immediately after the inspection, the Applicants were represented by Mr Leighton of Counsel. Mr Leighton indicated that he considered that he had been formally instructed only by Miss Slidel. Miss Slidel was present in person, together with Mr Harland and Mr J E Stockley MIMgt, MCIArb, ABEng, ACIOB, who had received instructions from the Bexhill Citizens Advice Bureau on behalf of the Applicants. There were also in attendance Miss Hattori, the Leaseholder of the ground floor flat, and Mr and Mrs Rockell and their daughter from the first floor flat. The Landlords were not formally represented but Mr Cole indicated that he had received instructions from a company which he understood to be the new freeholders of 69 Church Road, namely 69 Church Road Ltd, to attend the hearing as an observer. He was also willing to answer any questions which the Applicants might have in relation to the specification he had prepared for Upfront UK Ltd dated 14 January 2000.

4. **Preliminary Point**

The Tribunal had received a letter dated 13 January 2003 from Upfront UK Ltd to say that the freehold of 69 Church Road had been sold. Letters and telephone calls to Upfront UK Ltd had failed to elicit the date of the sale and the name and address of any new freeholder. Correspondence had been forwarded to the Leaseholders' representatives. Mr Leighton produced to us an office copy of the registered title of the freehold which showed that at 31 January 2003 Upfront UK Ltd were still the freeholders. He also produced a service charge statement dated 31 January 2003 which had been sent to the Leaseholders by Honesty (UK) Ltd as agents for Upfront UK Ltd. None of the Leaseholders had received notification of any sale and there was no direction to pay future ground rents to any other company. In those circumstances Mr Leighton said that he did require the declarations as to reasonableness, which he said would be binding on any

successor in title to Upfront UK Ltd, if indeed the freehold had been transferred after 31 January 2003. Mr Cole said that he was not able to confirm from his own knowledge the sale of the freehold. He was relying on what Mr Sulc had told him.

5. **Consideration**

We accepted Mr Leighton's submission. The documents he had produced threw doubt on the truth of the statement made by Upfront UK Ltd. Accordingly the hearing would proceed.

6. **Further Preliminary Point**

The correspondence before us showed that the Leaseholders had served a notice under Section 22 Landlord and Tenant Act 1987 and that there was some discussion in the correspondence between the Leaseholders' representatives and the Tribunal to indicate that this hearing might be used as a directions hearing relating to the appointment of a manager for the property. However such correspondence presupposed that the Leaseholders would be lodging an application under Section 21 of the 1987 Act with the Tribunal prior to this hearing, and that had not happened. Accordingly we could not see that we were in a position to give any directions relating to the hearing for the appointment of a manager. Mr Leighton confirmed that this was the case and that the proceedings would be purely concerned with the application under Section 19 (2B) Landlord and Tenant Act 1985.

On the morning of the hearing, immediately before the start of proceedings, we were handed a bundle of additional documents under cover of a letter dated 12 February 2003 from the Bexhill & Rother Citizens Advice Bureau. There was insufficient time for a careful study of the documents but it seemed on a cursory examination that the Citizens Advice Bureau, on behalf of the Leaseholders, was arguing that the Landlords had been misleading the Tribunal when they claimed

that they had sold the freehold of the property. We did not at the time notice (and our attention was not drawn to) the fact that the Citizens Advice Bureau purported to enclose an application under Section 22(3) Landlord & Tenant Act 1987 requesting that service of the Section 22 notice be dispensed with. In fact the application form was not in the papers provided to us, although the supporting documentation, in the form of search results from Companies House, was in the bundle. In an earlier letter dated 17 January 2003 to the Tribunal, the Citizens Advice Bureau had said quite simply – *"We have served a Section 22 notice and schedules on the landlord giving a one month time limit to reply"*. By implication the Citizens Advice Bureau on behalf of the Leaseholders appear to accept that they now did not serve a Section 22 notice, because they are asking for a dispensation to serve that notice. Notwithstanding the fact that no formal application to dispense with service was before the Tribunal at the hearing, it may be useful for us to indicate that on the basis of the information provided we would not have felt able to have made an order for the dispensation of the service of a Section 22 notice. Section 22(3) provides as follows – *A leasehold valuation tribunal may (whether on the hearing of an application for an order under Section 24 or not) by order dispense with the requirement to serve a notice under this section in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the landlord....)* The company search documents provided by the Citizens Advice Bureau showed that between 13 September 2001 and 5 February 2003, a period of over 16 months, there had been four changes of address of the company office. The frequency of changing the company office address was not such that in our view it would not be reasonably practicable to serve the company.

7. **Reasonableness of Costs Proposed to be Incurred**

Mr Leighton called on Miss Slidel to give evidence. She confirmed that the contents of the statement which she had made in support of the application were true. The demand that had been made of her by the Landlord's agents, Property

Direct, was for £62,745. This was based upon an estimate from Budget Roofing for £52,287.50 and to that figure had been added estimated surveyor's fees at 10% - £5,228.75 and further estimated administration fees calculated at 10% - £5,228.75. It was this figure which she and the other Lessees claimed to be unreasonable. There were two grounds on which this figure was challenged. In the first place Miss Slidel's evidence was that the Landlords had not properly complied with the procedure laid down in Section 20 Landlord and Tenant Act 1985 in that they had failed to obtain two estimates for the proposed works of repair and redecoration, of which one could come from a person wholly unconnected with the landlord. One estimate for £47,000 plus VAT dated 19 January 2000 had been submitted by Hastings Building Co, which operated from the same address as the Landlords at that time i.e. 57 Kings Road, St Leonards on Sea. Another estimate had been submitted by Battle Building Co dated 19 January 2000 in the sum of £57,000 inclusive. The telephone number of that company (01424 – 830301) was the same as the telephone number for Hastings Building Co. The third estimate, and the one which the Landlords proposed to accept, came from Budget Roofing in the sum of £44,500 plus VAT. This was dated 18 January 2000. Mr Marcel Sulc had been observed by Miss Slidel driving a van with the "Budget Roofing" sign painted on it and Mr Marcel Sulc was the man who effectively ran the Landlord Company, Upfront UK Ltd. The second ground upon which the Applicants challenged the reasonableness of the proposed expenditure was that they had themselves in May 2001 obtained much lower estimates from three building firms – D Carter in the sum of £31,989, J F Littlejohn in the sum of £31,725 and Fuller's Roofing in the sum of £18,372. These figures were inclusive of VAT. However, in view of the lapse of time, Miss Slidel had obtained more up-to-date estimates from D Carter and Fuller's Roofing. Mr Carter submitted a detailed estimate dated 24 April 2002 in the total sum of £45,194.02 whereas Fuller's Roofing put forward a detailed estimate dated 10 May 2002 in the sum of £31,901.25. Mr Stockley had sought an evaluation of these estimates by an independent surveyor, Mr David Foster FRICS. Mr Foster had considered these two estimates, as well as the earlier estimate dated 15 May

2001 from Mr J F Littlejohn (trading as General Builder and Roofing Specialist) in the sum of £31,725. He dismissed Mr Littlejohn's estimate as being extremely vague whereas the other two estimates were detailed and included the works which were necessary to the roof. He considered that the estimate from Fuller's Roofing in the sum of £31,901.25 was reasonable. The estimates put forward by the Landlords he dismissed as not being worthy of consideration as they did not address the main problems with the building.

8. **Consideration**

We were quite satisfied on the unchallenged evidence put forward by the Applicants that the Landlords had not properly complied with the Section 20 procedure, in that all the companies which had submitted estimates to the Landlords appeared to be connected with the Landlords. The Tribunal were however not considering whether a large proportion of expenditure, in excess of the £1,000 threshold, should be disallowed in accordance with the provisions of Section 20. The Tribunal had no power to consider that point and in any event the Applicants were not putting forward an application under Section 19(2A) of the 1985 Act in relation to expenditure actually incurred. The only way in which the non compliance with Section 20 was relevant in the context of reasonable proposed expenditure was that the Landlords, by failing to comply, were throwing away a shield which they would otherwise have against a challenge by the Leaseholders, namely the argument that a genuine tendering process was likely to produce a reasonable figure and one which it would be reasonable to the Landlords to accept. That argument was not available now to the Landlords in the present case.

The really decisive argument put forward by the Applicants was that the estimates which they themselves had obtained and in particular the estimate from Fuller's Roofing indicated that the estimates put forward by the Landlords were unreasonably high. There is the additional point made by Mr Foster that the

Landlords' estimates were addressed to a specification which only covered part of the necessary work. It is not necessary for us to comment on the surveyor's fees and administration fees since these were percentage charges based on the repairing contract. In our view, if the Landlords were to incur expenditure of £62,745, it would not be reasonably incurred in connection with this one repairing contract.

9. **Reasonableness of the Standard and Specification of Works Proposed**

The Applicants' grounds for saying that the Landlords' Schedule of Works was inadequate were in the first place that the Landlords Schedule of Works did not correspond with the works needed to comply with a notice served by Hastings Borough Council under Section 189 (1A) Housing Act 1985. Secondly the Landlords' Schedule did not cover the works recommended in an independent report obtained from Mr Malcolm Tree, a Chartered Structural Engineer, in 1993, that report being updated by a letter from Mr Tree in July 2001. Thirdly, neither the Landlords' Building Engineer, Mr P G Cole, nor the three building contractors who had tendered estimates to the Landlords, had inspected the interior of the roof space and they would not have had adequate information from which to provide an appropriate specification and to assess the costs of complying with that specification. We were provided with the report of Mr Malcolm Tree in 1993, when he had concluded that the ceiling of the large rear living room in Miss Slidel's flat needed to be propped, as it was near to failure and collapse. He had been informed that the roof had been changed from slates to interlocking concrete tiles in 1985 and in his view this would have doubled the self-weight of the roof. The 1987 hurricane and the 1990 severe storm would have exacerbated the problem caused by the overloading, with the result that the roof was spreading due to the lack of effective ties to the feet of the rafters on the rear slope. Mr Tree, after an inspection in July 2001 confirmed that without strengthening the roof, and without the propping that was still in place, the roof would collapse. The Landlords' Schedule of Works, whilst suggesting that work had to be done,

did not provide sufficient detail to allow the works to be priced. Mr David Foster, in his report dated 19 December 2002 pointed out that the Landlords' schedule did not include repairs to arches and lintels to the external walls.

10. Mr P G Cole stated that in November 1999 he was instructed by the Landlords' agents, Property Direct, to prepare a scope, specification and schedule of works. At the time of preparation of these documents, access to all parts of the building was denied, and in particular access to the top floor flat. What he termed "invasive examination" was not authorised. High level examination was not possible and no specification or report of the local authority was made available to him. He had been instructed to receive tenders from three contractors who had been nominated by the Landlords' agents. These three nominated contractors had submitted estimates which had already been referred to at the hearing. In answer to questions, he said that the Landlords had informed him that he could not have access to the top flat and he was not in a position to say whether the Landlords had made any requests to Miss Slidel or not. Miss Slidel intervened to say that she had never been asked for access to her flat by the Landlords or their agents or by Mr Cole in person. Mr Cole said that Mr Sulc had advised him that access to the house was still not available on 11 February 2003 when he received his instructions to attend the Tribunal as an observer. Mr Cole said that he was not surprised the three estimates received from the Landlords' agent's nominated contractors were fairly close to one another. He had previous dealings with one of those nominated companies, Hastings Buildings Company, and he had been completely satisfied by their performance on that occasion. With regard to the companies selected by the Applicants, he had no knowledge of Mr Carter, who was outside his area. He did know of Fuller's Roofing but could not express any opinion about their standards.

11. **Consideration**

We accepted that Miss Slidel's unchallenged evidence that she had never been asked to give access to Mr Cole or to any of the contractors nominated by the Landlords' agents to submit tenders. If access was being denied to the house and

in particular to the top flat, it was effectively the Landlords who had denied such access to Mr Cole. It followed that Mr Cole was working from a position of great disadvantage when he was called on to prepare his specification and schedule of works. Any such schedule needed to contain specific details regarding the faults with the roof structure and any satisfactory specification needed to meet the requirements of the specification prepared by Hastings Borough Council in issuing its notice under the Housing Act. The specification and schedule of works prepared by Mr Cole on behalf of the Landlords failed to include all the necessary remedial work and for that reason works carried out to that specification would not be of a reasonable standard.

12. **Reasonableness of Amount Payable before Costs are Incurred**

The Landlords had submitted demands to the Leaseholders for payment of 50% of their respective contributions towards the aggregate figure of £62,745. The Applicants did not address any specific arguments to us on the reasonableness of this demand.

13. **Consideration**

We have already decided that, if the Landlord were to incur costs of £62,745 in respect of the repairs and redecoration of the property, such sum would be unreasonable. We have further decided that work done to the Landlords' specification would not be of a reasonable standard. In view of these two findings, it would not be reasonable for 50% or any other percentage figure to be paid on account.

14. Mr Leighton made it clear in his submissions to us that, if we rejected the reasonableness of the Landlords' proposed charges as being unreasonable, he did not expect the Tribunal to fix any lower figure based upon the estimates obtained on behalf of the Applicants.

15. **Decision**

A. For the reasons we have given we have decided that:-

(i) If the Respondent Landlords were to incur costs in respect of the contract for the repair and redecoration of 69 Church Road in the sum of £62,745, such costs would not be reasonable.

(ii) If the works were carried out to the specification prepared by Mr P G Cole on behalf of the Respondent Landlords, such works would not be of a reasonable standard.

(iii) It would not be reasonable for any amount to be paid before costs were incurred until a satisfactory specification of work and a satisfactory estimate in respect of that work had been obtained.

B. Fees

The Respondent Landlords have not complied with the directions of the Tribunal by providing a written statement and they have not made any formal appearance at the hearing, although Mr Cole was instructed to attend as an observer and did volunteer certain evidence. The Applicants have been wholly successful in their application to us and, that being the case, we are considering requiring the Respondent Landlords to reimburse the Applicants with the fees of £500 paid by them to the Tribunal in respect of these proceedings. Pursuant to Regulation 11A Rent Assessment Committee (England & Wales) (Leasehold Valuation Tribunal) Regulations 1993 we invite the parties to submit any written representations on this issue to the Tribunal within 28 days from the date of issue of this decision. If either the Applicants or the Respondents would like to make oral representations to the Tribunal, then they should within the same period of 28 days notify the Tribunal of their wish to make oral representations, and the Tribunal will then arrange a date, time and place when such oral representations can be heard.

.....P B LANGFORD (Chairman)

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985 : SECTION 19(2B)
LANDLORD & TENANT ACT 1985: SECTION(20C)

SUPPLEMENTAL DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	**CHI/21UD/NSP/2002/0001**
Property	**69 Church Road St Leonards-on-Sea E.Sussex TN37 6EE**
Applicant:	**Miss J Slidel Mr T Harland Ms F Clifford**
Respondent:	**Upfront UK Ltd**
Date of Application:	**9 July 2002**
Hearing:	**30 October 2002**
Members of the Tribunal:	**Mr P B Langford MA LLB Mr J N Cleverton FRICS Mr T W Sennett MA MCIEH**
Date decision issued:	**5 June 2003**

Background

The Tribunal's decision in this case was issued on 14 March 2003. In paragraph 15B of that decision we stated that the Applicants had been wholly successful in their application and that being the case, we were considering requiring the Respondent Landlords, Upfront UK Ltd. To reimburse the Applicants with the fees of £500 paid by them to the Tribunal in respect of the proceedings. The parties were invited to ask for a hearing if they wished to make oral representations or alternatively to submit written representations on the point. The Respondent Landlords have not responded in any way and accordingly we can see no good reason why the Respondent Landlords should not reimburse the fees.

Decision

We hereby require Upfront UK Ltd, the Respondent in these proceedings to reimburse the Applicants with the sum of £500.

Signed. P B Langford

Chairman