LEASEHOLD VALUATION TRIBUNAL
FOR THE SOUTHERN RENT ASSESSMENT PANEL

In the matter of Sections 19(2A) and 31C
of the Landlord and Tenant Act 1985

Leasehold Valuation Tribunal: Mrs T Clark (Barrister at Law) Chairman
W H Gater Esq FRICS IRRV

RE: IMPERIAL HOUSE, 48-56 TORWOOD STREET, TORQUAY

Landlord's application for determination of reasonableness of service charges

Applicants/Claimants **Imperial House Management Co Ltd**
and
Anton Frederick Lampo

Respondent/Defendant **Greta Noreen Howard**

A. BACKGROUND

1. This matter arose as a result of a referral from Birmingham County Court, (dated 12th March 2004), of the Landlord's claim for arrears of service charges allegedly payable by the tenant/leaseholder, Ms Howard.

2. The Leasehold Valuation Tribunal inspected the property on 16th June 2004, and held a hearing thereafter which was attended by the landlord and his representatives, and by several tenants of the building, but not by Ms Howard.

3. The Tribunal had previously visited the building in 1999, and had both assessed service charges and recommended methods of apportioning the same, which

were later adopted. It remains a building of mixed residential and commercial units, but the Tribunal noted a marked improvement in the general maintenance and state of repair.

4. A trial bundle was provided for the Tribunal which was made up of all relevant documentation from the Court proceedings, with correspondence, service charge accounts etc.

5. Whilst the "Particulars of Claim" document does not specify the years for which service charges are in dispute, the Tribunal was informed that previous Court proceedings had been taken against Ms Howard. It was not clear what period of arrears was covered by those proceedings, but judgement was given in the Landlord's favour in October 2001.

For the purposes of the current Application we were asked to determine whether charges were reasonable for the years:-

2000 – 2001
2002 – 2002
2002 – 2003
2003 – 2004,

but the "Service Charge Account" submitted at page 62 of the bundle runs from 30.09.99 to 30.09.03.

Adjustments may have to be made accordingly, but the Tribunal's rulings on 'reasonableness' will be applicable to those elements of the charges in dispute.

B. EXISTING SERVICE CHARGE SYSTEM

1. From the documentation and oral evidence given to the Tribunal, it appears that service charges were levied annually, in accordance with the terms of the leases, in advance, on the basis of "anticipated expenditure".

2. Annual General Meetings were held, following the issue of each year's Service Charge 'Budget' Schedules and Accounts, and all tenants had an opportunity

to express their views on proposed works and costs. (See Minutes of the 2001, 2002 and 2003 AGMs at pages 153-162).

3. Accounts were prepared and circulated in respect of each of the relevant financial years.

4. Evidence was given that proxy forms were sent to all tenants before the AGMs, and examples were enclosed at pages 178-184 of the bundle. It was said that Ms Howard did not either attend the AGMs or return her proxy forms. (Ms Howard denied receiving proxy forms).

5. "Statements of Account" were sent monthly, to Ms Howard for the entire period from September 30th 1999 to September 30th 2003. (pages 94-142).

All transactions on her running account were recorded in the schedule at (page 62) mentioned in A5 above.

6. In September 1999, Ms Howard was sent an invoice for service charges and ground rent for the year April 1999 – March 2000. (page 64).

7. Thereafter, Ms Howard was sent invoices on a monthly basis, from October 1999 to March 31st 2000, for specific items of expenditure. (pages 65-71).

8. On May 12th 2000, an invoice was sent for the period 2000-2001 (page 72). There was no information before the Tribunal to indicate whether or not a detailed "Schedule" of services was enclosed with the invoice.

9. From May 2000 – April 2001, monthly invoices were sent to Ms Howard, detailing only the interest amounts owing on her outstanding account.

10. On April 23rd 2001, Ms Howard was sent a service charge invoice for the period 2001 – 2002. (page 78).

At that time, both a schedule of service charges (described as a "Maintenance and Repair Budget for 48 Torwood Street") and a 'Revised' version of the same were produced. (pages 149 and 150).

11. On April 1st 2002, Ms Howard was sent an invoice for the period 2002 – 2003 (page 81).

12. On April 16th 2003, Ms Howard was sent an invoice for the period 2003 – 2004 (page 83).

C. LEASE PROVISIONS

1. A Lease dated February 19th 1988 governs the covenants and liabilities in respect of Ms Howard's flat at No 5, 48 Torwood Street. The parties were agreed as to its provisions relating to payment of (ground) rent and service charges, under Clauses 1(2), 2(1) and 3(3).

(Lease: pages 38-61 of the bundle).

2. The parties further acknowledged the validity of an agreement between them dated 14th January 2000, which set out the tenant's liability for percentages of the total service charge costs of the building, payable to the Management Company.

D. RELEVANT LAW

1. Under Section 19(2A) of the Landlord and Tenant Act 1985, as amended, the LVT has power to determine:-

a) whether costs incurred for services, repairs, maintenance, insurance or management costs were reasonably incurred, and

b) whether services or works for which costs were incurred were of a reasonable standard.

2. Under Section 20 of the same Act, the Landlords are required to give notice to tenants of proposed works costing more than £1,000, and to obtain estimates therefore and invite comments before undertaking any such works.

3. Section 21 of the Act provides for supply of information/details of relevant costs to tenants.

4. Section 22 of the Act deals with tenant's requests to inspect supporting documentation.

5. The matter was transferred from County Court to LVT under the provisions of Section 31C of the 1985 Act.

Note: Although the Commonhold and Leasehold Reform Act 2002 contains new provisions as to notice to be given to tenants, consultation procedures etc., it was not in force at the time this Application was made.

E. THE ISSUES: CLAIMANT'S CASE

1. It was said that Ms Howard owed £2,993.14 on her service charge account, as at 30th September 2003. (page 62 and 63) and that the total as at the date of hearing, 16th June 2004, was £3,364.07, plus interest at 82 pence per day from 30th September 2003.

2. The Claimants/Landlords contended that all relevant charges had been reasonably incurred, that requirements of notice, consultation and information had been complied with, and that the building was now being managed in a proper and efficient manner, with budgeting and repairs up-to-date.

It was said that any works carried out had been to a good standard, at a reasonable cost.

3. It was also the Landlord's case that all other 14 leaseholders/tenants had paid their service-charges, and there were a number of statements of approval and support, expressing satisfaction with both costs and standard of works, attached to the bundle.

4. In addition, it was alleged that Ms Howard had failed to keep the flat in good and tenantable repair (Clause 3(4) of the Lease), in that she had allowed an external

overflow-pipe to discharge water onto a flat roof below over a period of several weeks.

F. THE ISSUES : DEFENDANT/TENANT'S CASE

Ms Howard denied that the service charges had been "reasonably incurred", for the following reasons:-

1. It was said that the service charges "were not compiled in accordance with the Landlords and Tenants Act (sic) and were not accompanied with proof". (Page 1 of her "Defence", Bundle page 28).

2. Ms Howard claimed that all requests for "paperwork, estimates etc" had met with "resistance and obstruction".

3. It was said that major works had been carried out, in some cases by the son of the Director (and Company Secretary) of the Imperial House Management Company, Mr P Gillard, without obtaining independent estimates first for comparison.

4. It was argued that the method of listing some items of expenditure as "Members' Costs" and others as "Community Costs" was inconsistently applied, and that some items had been listed in the wrong column.

5. Ms Howard objected to the fitting of curtains and poles over windows in the communal hallways, and to the expense thereof.

6. Ms Howard queried the necessity for a new entry-phone system, and objected to the charges arising from the installation.

7. The £2,142.97 charge for a new Fire Alarm system was also queried by Ms Howard, on the grounds that the majority of the expense related to protection for the commercial units, and that the alarm system in the residential hallways should be charged at the percentage applicable for "Communal expenses" rather than "Members expenses".

8. Ms Howard queried the £760 per annum cleaning charge, and the £70 cost of cleaning materials.

9. An issue was also raised over the "new roof structure" and "Perspex cube" over the curtain shop. Ms Howard considered that other tenants should not contribute to repairs which, she felt, only benefited one commercial unit.

10. The cost of £1,200 for a "new front door" in the 2002 – 2003 accounts was contested by Ms Howard, who considered the glass-panelled replacement unnecessary and inappropriate.

11. Finally, Ms Howard queried why the same items were sometimes listed again in successive years' service charge accounts.

G. TRIBUNAL FINDINGS :

REASONABLENESS/STANDARD OF WORKS

So far as the various elements of disputed service-charge were concerned, the Tribunal findings were as follows:-

1. The Management Company have improved the maintenance and management of the property very considerably since they took over in 1999.

Whilst they may not have complied with every precise aspect of the requirements of Sections 20, 21 and 22 of the Landlord and Tenant Act Act 1985, the Tribunal was satisfied that the landlords/managers had acted in good faith, in compliance with the spirit of the said Act, and had done their best to maintain the building to the benefit of all occupiers.

2. Section 20(1) provides that any cost of works over £1,000 shall not be taken into account as a service charge unless the "relevant requirements" have been either:-

(a) complied with, or

(b) dispensed with by the court under Section 20(9), (which provides for a court to dispense with such requirements if the landlord acted reasonably).

3. It is worth noting that the Commonhold and Leasehold Reform Act 2002, although not in force at the relevant time, specifically confers this jurisdiction on the Leasehold Valuation Tribunal.

The Tribunal has, historically, considered whether or not any breach of the statutory requirements is sufficiently serious to render service charges arising from the particular works concerned "unreasonably incurred".

In the circumstances of the subject case, the Tribunal therefore considered whether or not there had been breaches of Section 20 in respect of each disputed element of service charge, and then determined whether or not such element was a cost "reasonably incurred".

4. Where "Budget" statements had been issued to the tenants, the Tribunal found that notice of proposed expenditure had duly been given, (setting out the relevant sums to be spent on each item), and the one month required to allow for comment and observation (Section 20(4)(d)) was represented by the month which elapsed before the AGM.

Whilst it was right to say that, in most (if not all) cases, the requisite two independent estimates had not been obtained, the Tribunal had to weigh this failure against the following factors:-

i) The unusual opportunity for tenants to attend at a meeting, as shareholders of the Management Company, and to require details/information of proposed works or to object/comment.

ii) The fact that Ms Howard apparently did not correspond with the landlords/managers in any way between October 2001 and October 2002, and only subsequently queried items relating to that period. None of the annual "invoices" were challenged at the time.

iii) The fact that there was substantial evidence (in the form of statements from tenants, including Matthew Bettesworth MRICS, a professional occupier) that the works were done for a reasonable price and to a good standard.

There was no evidence to the contrary, and the Tribunal members confirmed from their own observations that the internal decorations, (for example), were of good quality.

iv) Ms Howard's failure to attend meetings, make use of proxy forms, or present any case at the hearing (either in person or via an agent or representative).

v) The actual cost of individual items, as considered by the Tribunal: where such expenditure was found to be reasonable in all the circumstances, to the advantage of all tenants, it was difficult to conclude that Ms Howard had been prejudiced by any procedural failure on the part of the landlords. It would be inequitable to regard charges arising as "unreasonable", if alternative quotes were likely to have been greater.

5. **Internal Decorations**

The most substantial item of expenditure, £4,100 for internal decorations and new carpets, was charged as a "Communal Cost" because it related only to the common parts of the property.

In a letter dated September 16th 2003 (p.174), Mr Gillard explained to Ms Howard's solicitors that the majority of the cost related to labour, charged at £8 per hours over 3 months, comprising £443.5 hours, at a total of £3,548.

This represents approximately 7 hours per day over the 3 months, at a daily rate of £56.

The Tribunal found that neither the rates of pay nor the total sum expended were unreasonable, and (as stated above), the works were completed to a good standard.

6. **New Roof Structure over shop**

The new roof structure, at a total cost of £3,162, and the new roof covering at £1,000 (both over the curtain shop) were substantial items of expenditure, correctly listed in the 'Members Costs' column because they related to the overall fabric and structure of the building.

i) As to Ms Howard's first objection to this item (that other tenants should not have to contribute to something which benefited only the curtain shop), the Tribunal were satisfied that, in circumstances such as these, it is entirely appropriate for all occupiers to contribute to structural repairs which may not affect them directly but are necessary for the maintenance of the building as a whole.

ii) As to Ms Howard's second objection, to the "Perspex cube" or roof-light inserted in the said roof, the Tribunal accepted Mr Gillard's evidence (in his letter of September 16th 2003 and orally at the hearing) that the 'acrylic dome' was a necessary replacement for the previous "ancient and faulty" structure, that it cost only £280, and that Ms Howard was given a credit of £50 in respect of this during the court proceedings in 2001 in any event, as a gesture of goodwill.

No issue seemed to be raised as to whether or not the total expenditure on this roof was "reasonable", but the Tribunal did not consider it excessive, although independent estimates should have been obtained.

7. **Fire-alarm system**

The Tribunal heard oral evidence, (as well as receiving further written details following the hearing), as to the installation of an advanced, "no wire" system of fire-alarms for the whole property.

The total cost for fitting the system in Ms Howard's part of the building, 48 Torwood Street, was budgeted at £2,160, but actually finalized at £2,124. We were told that this cost included £383 for emergency lighting.

The residential tenants were responsible for £1,185.62 as a "Member's Cost", representing £54.89% of the whole as per the Agreement of 14th January 2000.

The Tribunal members were satisfied that the installation of the system was of benefit to, indeed essential for, the building as a whole, in that any fire in the ground floor commercial units would logically have the potential to damage or even destroy the residential units above.

We were also informed that individual leaseholders had paid for the installation of alarms in flats which were sub-let, in accordance with fire regulations. Otherwise, the residents had merely a system of "buzzer" alarms in the hallways, linked to the system, to give warning of any fire below.

The Tribunal concluded that the total cost of the system was reasonable, and that it was a good system which benefited the whole building.

Only one independent estimate seemed to have been obtained, from Vance Briggs and Company Ltd in April 2000, but the system proposed by them would not have given adequate protection as it would not have warned residential tenants of any fire in the building below.

However, ample notice of the proposed expenditure was given in the "Budget" Schedule of 2001 – 2002 and Ms Howard made no representations at that time. Indeed, in the letter from her solicitors Hooper and Wollen of 29th October 2002, although other matters were raised to the Management Company, there was no reference at all to the Fire Alarm system.

The quotation from "Firesafe", dated 23rd March 2001, is for £3,304.17l, which gives a good comparison as it relates to the cost of a system for the office premises only.

8. **Front Door**

The only other item of expenditure which exceeded the £1,000 Section 20 limit was the fitting of a new front door, budgeted at £1,200 in the 2002 – 2003 schedule.

On requiring further information from Mr Gillard, it was established that the actual cost of the new custom-made door, with toughened laminated glass and hydraulic closer etc., was £770.31. Together with the costs of relocating the entry pad unit, the budget was £1,200, but there was no need for consultation or other estimates to be obtained because the actual cost of the door was not in excess of £1,000.

In any event, the budget for the door was agreed at the AGM on 17th May 2002.

The Tribunal were satisfied that the works and costs thereof were reasonable, and that there had been no failure to comply with Section 20. It was also accepted that the previous door was dilapidated and poorly repaired, that the work was necessary and that the external metal gates dealt with any security concerns Ms Howard might have.

9. **New entry phone system**

Although the cost of the new entry phone system, (budgeted at £700 in the 2003 – 2004 schedule) did not bring it within the provisions of Section 20, the Tribunal nevertheless considered whether or not any charges arising therefrom were "reasonably incurred".

The Tribunal members were satisfied that the replacement was necessary, that the work was carried out by an electrician who had been familiar with the building since the 1980s, and that (particularly as there was no charge for VAT) the cost was reasonable. There was no suggestion that the work done was anything other than "of a reasonable standard".

10. **Curtains and poles**

Ms Howard had objected to the addition of these to windows in the common hallways. (Budget schedule 2002 – 2003 £450).

The Tribunal found that this item should, indeed, have been charged as a "Communal Cost" rather than as a "Member's Cost", as it benefited only those units with access to the said hallways. It was also arguable that, although the hallways looked better as a result, these fittings were unnecessary and therefore any associated expense was not "reasonably incurred".

However, Ms Howard had been refunded/credited with £48 in September 2003 to represent her share of the cost, and therefore any determination was academic.

11. **Cleaning**

Ms Howard's objections to cleaning costs were not found to be valid, as the annual budget of £762.67 for all the common parts of the building 48 represents just £14.66 per week. Materials (total £70 per annum) cost £1.30 per week.

The statement of Kenneth Williams, the cleaner concerned, points out that the job takes two hours to complete.

The Tribunal found that these costs were entirely reasonable, and noted particularly that cleaning costs for the year, ending March 1998, for the whole building, were said to be £48 per week. The Tribunal hearing the previous application was told that building No 48 paid one-third of this cost, i.e., £16 per week.

£14.66 per week, 5 years later, seems very reasonable by comparison.

12. **General objections**

As to Ms Howard's criticisms of the Landlord/Management Company's failure to produce paperwork or estimates on request, there was no evidence before the Tribunal to that effect.

So far as the repeated listing of the same items in successive years' budget schedule was concerned, it was clear to the Tribunal that the Accounts clarified what was "proposed expenditure" and what was actual outlay, with credit being given for surpluses where appropriate, and with no repeat or duplicate charges being made.

4. SUMMARY AND CONCLUSIONS

As stated above, the Tribunal found that the Management Company were running and maintaining the building to a good standard, and that they had acted to the benefit of all occupants/tenants of the building.

1. **Service charges 2000 – 2001**

The Tribunal concluded that Ms Howard's service charges for this year were reasonable, the costs were "reasonably incurred" and relevant works were carried out to a reasonable standard.

Ms Howard's liability to pay £1,721.18 for the period was therefore confirmed.

2. **Service charges 2001 – 2002**

The Tribunal made the same findings in respect of this year as in (1) above, and Ms Howard's liability to pay £1,436.64 for the relevant period was confirmed, subject to any 'credit' for the Perspex roof.

3. **Service charges 2002 – 2003**

The Tribunal also found the charges reasonable as in (1) and (2) above, and Ms Howard's liability to pay £2,052.35 for this year was confirmed; subject to any credit given for curtains and poles.

4. **Service charges 2003 – 2004**

Finally, the charges for this period were found to be reasonable as in (1), (2) and (3) above, and Ms Howard's liability to pay £1,445.43 for the relevant period was confirmed.

Any outstanding sums are to be paid within 28 days of receipt of this document by Ms Howard.

Note:

In future, estimates and notices and relevant paperwork must be supplied to tenants in accordance with Sections 20, 21 and 22 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, otherwise tenants will be entitled to withhold payment until the provisions have been complied with. (Section 21A of the new Act).

6. **Interest**

Interest is payable by Ms Howard at the rate claimed in respect of all items of service charge not in dispute but remaining unpaid. As to those items disputed in the "Defence", interest runs on unpaid sums as from the date of the Tribunal's decision.

7. **Costs**

The Tribunal determined that Ms Howard should pay the Landlord's costs of the Court proceedings at £200.

Any other costs may be recovered from the tenant in the form of service charges where provided for in the Lease.

Tessa C. Clark

T CLARK (Chairman)

Dated 13 August 2004