# Southern Rent Assessment Panel & Leasehold Valuation Tribunal

**Case No.CHI/43UH/NSI/2003/0007**

**Re: Flat 5, Fairfields, 15 Broadwater Road, Worthing, West Sussex**

**Between:**

**J H Watson Property Investments Ltd (landlord/applicant)**

**And**

**Mrs Ann Russell (tenant/respondent)**

## DECISION OF THE TRIBUNAL

**Appearances:**

Mr Peter Petts, Counsel, for J H Watson Property Investments Ltd
Ms David Courtnell, Surveyor, of J H Watson Property Investments Ltd

Mr Buckingham in person for Mrs Ann Russell
Mrs Ann Russell

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| **Hearing:** | 30 September 2003 |
| **Tribunal:** | Ms J A Talbot MA Cantab.<br>Mr B Simms FRICS<br>Ms J Dalal |
| **Date of Issue:** | 22 October 2003 |

## Introduction

1. On 24 December 2002 J H Watson Property Investments Ltd commenced proceedings in Bradford County Court against Mrs Ann Russell for arrears of ground rent and service charges in the sum of £1391.10. Mrs Russell put in a defence and on 19 February 2003 the case was transferred to the Tribunal by the District Judge at Worthing on the basis that the defence disclosed allegations of unreasonableness in relation to service charges. Accordingly the Tribunal was charged with the task of determining the question of reasonableness of service charges incurred at the property.

2. On 21 July 2003 Mrs Russell added a further application for a determination under Section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act") that the landlord's costs in connection with these proceedings were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants.

## The Statutory Provisions

3. The relevant statutory provisions were as follows:

In relation to service charges:

***Section 192A Landlord and Tenant Act 1985 (as amended)***
***Limitation of service charges: reasonableness***
*(2A) A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a leasehold valuation tribunal for a determination-*

*(a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,*
*(b) whether services or works for which costs were incurred are of a reasonable standard, or*
*(a) whether an amount payable before costs are incurred is reasonable.*

*(2B) An application may also be made to a leasehold valuation tribunal by a tenant by whom, or a landlord to whom, a service charge may be payable for a determination-*

*(a) whether if costs were incurred for services, repairs, maintenance, insurance or management of any specified description they would be reasonable,*
*(b) whether services provided or works carried out to a particular specification would be of a reasonable standard;*
*(c) what amount payable before such costs are incurred would be reasonable.*

In relation to the application to limit the inclusion of the landlord's costs of the proceedings:

***Section 20C Landlord and Tenant Act 1985***
***Limitation of service charges: costs of proceedings***
*(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.*

**The Inspection**

4. The members of the Tribunal inspected the property on 30 September 2003 before the hearing. Also present at the inspection were Mr Courtnell, the applicant's surveyor and managing agent, Mr Petts, Counsel for the applicant, and Mrs Russell's representative, her son-in-law Mr Buckingham. The property consisted of a 4-storey block of 20 flats, partly converted and with a modern extension, constructed of rendered and painted brick under a mixture of flat, felt-covered roofs and pitched tile-covered roofs. The block is situated on the busy A24 Worthing to London main road. The flats are all small, one-bedroomed units of similar layout and design. All are sold on long leases. About one third are occupied by owner-occupiers and the rest are sub-let. We did not inspect the interior of any of the flats.

5. We saw that externally the property had parking spaces to the front and rear. The yard surface had broken up in places. There was a covered communal bin area containing several green plastic wheeled bins. This area appeared clean and tidy. The communal garden area consisted largely of small front lawn area and high hedge, and rear borders approximately 5 metres deep containing large mature trees and undergrowth. The property was bordered by a wooden fence to the rear (west) and stone wall to the side (north).

6. Internally we saw that the hallway, stairs and landings were carpeted and the walls painted. The walls were somewhat grubby and in need of redecoration. The carpets were in satisfactory condition and reasonably clean, having been cleaned the previous day. The front doors to the flats were approached from small lobby areas divided from the main landings by fire doors.

**The Hearing**

7. The hearing took place in Worthing on 30 September 2003. It was attended by Mr Petts and Mr Courtnell for the landlords, Mrs Russell, the tenant, in person, along with her representative Mr Buckingham.

8. Preliminary Directions had been given on 17 June 2003 requiring the tenant to prepare a written statement specifying, by reference to her defence filed in the county court action, various points supporting her allegations concerning unreasonable service charges and the landlord's alleged failure to follow proper procedures. The landlord then had to prepare a statement in response. These Directions were complied with, and in addition the landlord's solicitors had prepared a helpful, well-organised file bundle of numbered documents. The landlord produced some further documents, consisting of invoices, vouchers and receipts for service charge items at the hearing, and also, at our request, a copy of the audited accounts for the year ending 31 December 2002.

9. We stressed the Tribunal's independent and expert status and explained that we would approach the matter with an open mind, making our decision after carefully considering all the evidence, both written and oral. We further explained that we could only deal with those matters within our jurisdiction.

10. In this decision, a reference to a page number refers to the paginated bundle provided by the landlords. Although we have not set out the oral evidence in detail, we have of course given due weight to all of it in reaching our decision. We describe herein what appeared to us to be the salient points in evidence and argument.

**Service Charges**

11. We reminded the parties of the limits of our jurisdiction, namely, the reasonableness of the service charges in dispute. Any remaining matters would have to be disposed of by the county court within the legal proceedings referred to at paragraph 1 above. To the extent that we have expressed views on matters not technically within our jurisdiction, such as the validity of Notices under Section 20 of the 1985 Act, we have done so purely in an attempt to assist the parties and the court. We make it clear, however, that in the case of such matters, nothing in our conclusions will bind the county court in its subsequent disposal of the existing proceedings in which the referral to this Tribunal was made.

12. We took a further preliminary point in relation to our jurisdiction in relation to admissions made by the tenant, under Section 19(2C) of the 1985 Act. We noted that on 27 August 2002, in the course of correspondence dealing with various issues in dispute, the tenant had written to the landlord in the following terms (p162):

"In order that we may move forward I have enclosed with this letter a cheque for £414.10 being the amounts due that I consider no longer in dispute. The payment is made up as follows:-

| | |
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| Cleaning | £26.00 |
| Gardening | £30.00" |

13. We considered that this was a clear and unambiguous statement by the tenant amounting to an admission that the service charges demanded in relation to the cleaning and gardening costs were reasonable, and therefore, it was not within our jurisdiction to make a determination on these items.

14. The landlord's claim in the county court was for a money judgment supported by a statement of account (p47). It appeared to us that this statement was simply a computer printout of an ongoing statement of account recording interim service charge demands made of the tenant and crediting some payments made by her. The statement showed the state of the tenant's service charge account as at 5 November 2002 and a total amount outstanding of £1391.10. It did not show itemised expenditure on individual service charge items for the full period in question, namely, the accounting year ending 31 December 2002. It was not a matter for us to make a determination in relation to the total sum claimed of £1391.10, but only in relation to specific items of service charges as disputed by the tenant.

15. Mr Petts explained that the landlord had calculated the appropriate interim charge by reference to the estimated budget for the year ending 31 December 2002, prepared earlier that year, on 22 January (p175). Mr Buckingham explained that the tenant had prepared her written Statement in accordance with the Directions, after obtaining detailed information from the landlord in July 2003. This enabled the tenant to challenge individual items of expenditure. At our request, the landlord produced a copy of the certified accounts for the year ending 31 December 2002, giving essentially the same information. Although Mr Buckingham claimed that the tenant had not received this document, we noted that the copy produced to us, dated 6 March 2003, was addressed to the tenant at her home address and we accepted that it had been sent.

16. The tenant went though the items in dispute one by one, and the landlord had an opportunity to comment on each of them, following the structure helpfully set out in the Statement of Mr Courtnell.

a) **Door entry system handset repairs for flats 3 & 4: £104.99 plus £98.36**

Mr Buckingham claimed that the tenant should not be expected to contribute towards the cost of repairing handsets which are situated within the individual flats and damaged by other tenants. Mr Petts contended that, under the terms

of the lease, at clause 5(5)(i) (p20), the landlord was obliged to maintain and keep in good repair the electric entryphone system serving the main entrances to the building. As a question of fact the handsets were part of that system, without which it would not function. He further pointed out that if the handset in the tenant's own flat failed for any reason, then the repair costs would similarly be charged to the service charge account.

**b) Removal of rubbish: £26.44 per removal**

Mr Buckingham objected to this item on the basis that the invoices supplied by the gardener were not VAT receipts and that there was no copy of the tip fee levied by the council. In reply to our questions, Mr Buckingham conceded that the amount of £26.44 inclusive of VAT was the actual tip fee, and that the landlord had no control over the amount charged by the council. Mr Petts explained that the rubbish concerned was generally large items of non-household rubbish dumped in the communal bin area by some tenants. As a matter of good management and for health and safety reasons, these had to be removed as soon as possible, and the most expedient and cost-effective way to do this, was to utilise the services of the gardener, who was often on site, had a van, and was able to dispose of these items at the council tip. There were several invoices from the gardener itemising this as a disbursement. For example, at p92 an invoice described the removal of a 3 piece suite, TV, 2 bikes, 3 foot bed and kitchen boxes, with a labour charge of one hour at £15.00, and the tip fee of £26.44 including VAT, paid by the gardener to the council.

**c) Replacement of three lamps and one fitting: £167.47**

Mr Buckingham contended that the cost of £167.47 to replace three lamp bulbs, even exterior lamps including fittings, was excessive, because it was a straightforward job that should cost no more than £90.00 in total, although he offered no evidence to support this figure. Mr Petts said that the cost included tracing the electrical fault as well as supplying and installing the exterior bulbs and fittings, and that there was no separate call-out fee because the electrical contractors, who were reputable, were regularly instructed by the landlord to attend at the property as and when the need arose. He therefore considered the amount to be reasonable.

**d) Replacement of electrical socket in common parts: £37.22**

Mr Buckingham considered that it was unusual for an electrical socket to need replacement and that the fault may have been less serious. He did not dispute that the cost was reasonable for the work actually done, but felt that it might not have been necessary, although he had no direct evidence of this. Mr Courtnell said the contractors had traced the fault and considered the socket needed replacing, he was content with their judgment and the cost was

reasonable. He further explained that historically the overall standard of wiring to the common parts was poor, so that light bulbs frequently needed replacing, and upgrading of the electrical wiring would be included in future maintenance plans for the property.

**e) Internal water ingress repairs: £46.34**

As background to this item it was explained that major roof repairs had been carried out to the property during 2002, but that before this took place, holding repairs were carried out. One lessee had suffered water ingress through his ceiling and had carried out his own internal repair, charging the cost of materials to the service charge account, but making no charge for time or labour. The item appeared in the certified account and the lessee's covering letter enclosing till receipts was produced. Mr Buckingham said it was difficult to form a view on reasonableness because he did not know the extent of the work; the tenant's case was that this cost should have been the subject of an insurance claim. Mr Petts said the landlord considered the cost to be reasonable, and Mr Courtnell explained that the damage was not an insurable item, because it had been caused by the previous landlord's neglect and failure to maintain the roof. It was not a matter for the individual lessee's own insurance because the damage to the interior of his flat was caused by a defect to the roof. Moreover, the amount in question was below the excess sum of £250.00 applying to the insurance policy for the building.

**f) Contingency fee for major works: £1,000.00**

The tenant's objection to this amount seemed to relate to the way in which this amount was expressed in the estimate for the major external works: Mr Buckingham considered that the tenant had not been credited with payment of this sum in the overall final cost. In response to careful questioning, we discovered from the landlord that when the major roof works were tendered for by Gilmartin, the contractors chosen to carry out the repairs, they had included in their tender a contingency figure of £1,000.00 in case unexpected extra work should become necessary. This was common practice. In the end it turned out that the total cost of major works for that year was £15,895.36, including 3 invoices from Gilmartin for the roof, and 1 from Wall Bros for carpeting (p191). Gilmartin had been paid in stages, as was common practice for major works, with stage payment invoices submitted, and the £1,000.00 contingency element had been duly adjusted and taken into account in the final calculations, although not showing as a separate item in the final accounts.

As part of this explanation it emerged, in response to questioning, that the landlord had in fact over-estimated the interim service charges for that year, to the extent that the accounts showed an excess of income over expenditure of £2,388.89. The landlord had decided to transfer £1,000.12 to the reserve

fund, as permitted under the terms of the lease, to defray future expenses, and the remaining £1389.00 has been divided and each tenant's service charge account credited by £69.45.

**g) Lack of Section 20 Notice in respect of roof works carried out 01/02/03**

Mr Buckingham considered that the landlord should have served a Notice under Section 20 of the Landlord and Tenant Act 1985 in relation to roof repairs carried out on 01 February 2003, because from the invoice from Gilmartin (p99) showed that the cost of the works was £1380.62, exceeding the statutory threshold of £1000.00. He therefore contended that the landlord should have consulted over the works and that any amount over £1000.00 was not recoverable. He did not claim that the cost was unreasonable or that the works were not carried out to a satisfactory standard.

The landlord's case was that the repairs needed to the roof at that time were urgent, because there was serious water penetration to three rooms in one of the flats through the leaking flat roof. For this reason it was not necessary to serve a Section 20 Notice as there is a specific exemption in the case of emergency works. Mr Courtnell said that he took the decision to proceed on an emergency basis because of the seriousness of the leak and the damage being caused to the affected flat. He was qualified to make this decision because of his skill and judgment based on many years of property management work in both the public and private sectors.

**h) Validity of Notice dated 21 March 2003 under Section 20 LTA 1985**

Mr Buckingham felt that the Notice served on the tenant by the landlord on 21 March 2003 pursuant to Section 20 of the Landlord and Tenant Act 1985 was invalid. His reasoning was not entirely clear, but as we understood it his point seemed to be that 2 Notices had been served and the first one had been wrong. These Notices concerned consultation on the major works mentioned in para. (f) above, eventually carried out by Gilmartin. The first Notice had been served on 5 March, but Mr Buckingham considered the estimated costs of 3 potential contractors too high, not because they were unreasonable with regard to the proposed works, but because he thought an element of the costs should be covered by an insurance claim. He drew this to the landlord's attention, and as a result, the second Notice was served, on 21 March, with the estimated costs adjusted and reduced by £2,900.00 to take account of the insurance element.

Mr Petts submitted that both Notices had been correct in form and content, and properly served, complying with the requirements set out in Section 20, and that under the circumstances, the landlord had done all that could be reasonably expected of it. He said that the tenant had not raised any points in

relation to consultation on the works until her letter of 1 May 2003, which was outside the statutory consultation period.

**i) Insurance claims**

Mr Buckingham considered that the costs of repairing damage caused water ingress to the roof and rendering should have been more fully covered by an insurance claim. He did not give any evidence to suggest that the cost of the works actually carried out, or the standard of those works, were unreasonable.

Mr Courtnell explained that he had approached the previous managing agents in this regard and an insurance payment of £2,900.00 was obtained. As the defects were probably due in large part to the neglect of the previous landlord and agents, and may not even have been an insured risk, he did not consider it prudent to press the matter further.

**j) Tenant's request for a summary of relevant costs under Section 21(5) LTA 1985 and for copy documentation**

Mr Buckingham said that the tenant had not received a satisfactory response to her request for a summary of costs and also had not received copies of insurance documents requested on 28 August 2002 to verify an insurance premium of £1091.44. He considered that the landlord's failure meant that service charge demands were not payable.

Mr Petts said that the landlord had already supplied audited accounts for the period in question, the year ending 3 December 2001, and also a budget estimate for service charges to be incurred for the year ending 31 December 2002. Interim service charge demands were based on that estimate. This information in his view complied with the provisions of Section 21(5) as well as the provisions in the lease. As far as the insurance documentation was concerned, Mr Courtnell said this had been requested from the previous managing agents, but they had declined to provide it and it was therefore not in the possession of the current landlord. The letter from the previous managing agents (p113) was typically unhelpful and the management files relating to the property were generally in a poor state when handed over to him.

**Section 20C Application**

Mr Buckingham contended that the landlord should not be able to include the costs of the proceedings before the Tribunal in the service charge because it would be unfair for the tenant to have to meet these costs. If she had to do so it would limit her ability to bring the matters that concerned her before the Tribunal.

Mr Petts submitted that there was little merit in the tenant's arguments on the service charges and Notices; the tenant was raising technicalities rather than substantive points over the reasonableness of charges. He urged us to apply the normal rule that the loser should pay the winner's costs.

## Decision

17. As explained, our jurisdiction in reaching our conclusions is limited to the question of the reasonableness of the service charges, and is further restricted to considering those items disputed by the tenant. We have not made a determination about the full amount of £1,391.10 claimed by the landlord against the tenant in the county court proceedings which gave rise to the referral to this Tribunal. Furthermore, anything we say about the validity of notices, or recoverability of service charges, is said purely in the hope of assisting the parties, but is outside of our current jurisdiction. As a result, it is not in any way binding on the county court, but is merely an expression of the view we formed from the evidence before us.

### a) Door entry system handset repairs for flats 3 & 4: £104.99 plus £98.36

This item is allowed in full. We accept the landlord's argument that the handsets form part of the door entry system and thus the repair costs fall to be met through the service charge and not by individual lessees. The amount is reasonable.

### b) Removal of rubbish: £26.44 per removal

This charge was reasonable and thus all the tip fees charged during the accounting year would be recoverable. We considered that the landlord was sensibly dealing with the problem in the most expedient and cost effective way by using the services of the gardener in the manner described above. We further noted the gardener's labour charge of £15.00 was reasonable and that any external contractor employed solely for this purpose would probably charge more. The landlord had no control over the tip fee charged by the council and there was no reason at all to doubt the accuracy of the charge.

### c) Replacement of three lamps and one fitting: £167.47

This amount is allowed in full. We accept the landlord's explanation that the cost included tracing the electrical fault as well as replacing the items. We considered the amount to be fair and reasonable and there was no evidence to substantiate the tenant's proposal of £90.00.

### d) Replacement of electrical socket in common parts: £37.22

This amount is allowed in full. The tenant's assertion that the socket might not have been faulty or require replacement was entirely speculative. We accept the landlord's explanation, as with the previous electrical item, that the cost included tracing the fault as well as replacing the socket, and that replacement was reasonably considered by the reputable contractor to be the most sensible way of dealing with the problem. We consider the amount to be fair and reasonable.

**e) Internal water ingress repairs: £46.34**

This amount is allowed in full. The consequential damage caused to the interior of one of the flats as a result of exterior defects fell within the landlord's repairing obligations under the terms of the lease, so the cost of repair was therefore properly charged to the service charge account. The amount was probably the lowest possible, since the lessee concerned had only claimed the cost of materials and carried out the work himself, making no charge for his labour. There was nothing to suggest that the lessee had tried to ask for more than he had actually spent. The amount was therefore reasonable and we took the view that this was a sensible and pragmatic way of dealing with the problem.

**f) Contingency fee for major works: £1,000.00**

It appeared to us that the dispute over this amount arose from a misunderstanding by the tenant of the nature and purpose of a contingency sum. We accepted the landlord's explanation the contingency figure was properly included in the contractor's estimate for the major works to the roof, as is standard practice where the full extent of the necessary remedial works cannot be known until the works have commenced. We further accepted the landlord's explanation of the end of year accounting procedure, where the contingency amount had been included in the final cost of the works, and had been properly charged for additional work carried out by the contractors. Indeed, we were satisfied that the landlord had sensibly and correctly identified the surplus in the service charge account at the end of the year by crediting some to the reserve fund and the remainder to the individual lessees.

**g) Lack of Section 20 Notice in respect of roof works carried out 01/02/03**

We consider that the landlord acted entirely reasonably in treating these roof repair works as an emergency. Therefore it was not necessary for a consultation Notice to be served. Indeed had the landlord not acted quickly, the problem might well have got worse and the final repair costs may have been higher, to say nothing of the ongoing inconvenience to the tenant of the affected flat. In any event we consider that, even if the works had not been as

urgent as the evidence suggests, the tenant would still be liable to pay her share of the cost within the service charge because there was no reason to believe that the amount was unreasonable or that the work was not carried out to a reasonable standard.

**h) Validity of Notice dated 21 March 2003 under Section 20 LTA 1985**

Again it appeared to us that this dispute arose from a misunderstanding on the tenant's part. The challenge appeared to be a technicality rather than a disagreement about the reasonableness of service charge costs involved. Whilst we accepted that the tenant had objected to the first Notice because the estimated sums had not included a reduction reflecting the amount to be met by the insurers, this was essentially a question of adjustment of the figures, and the landlord subsequently, and promptly, served a fresh Notice. There was no evidence that the amounts of the estimates, the final cost of the works or the standard of the works, were unreasonable. We accept the landlord's submission that the Notice served on 21 March 2003 complied with the statutory requirements and was not defective.

**i) Insurance claims**

The tenant's observations about insurance claims suggested to us that there was a misunderstanding about the concept of insured risks. We accept the landlord's point that where a defect or damage arises from neglect or failure to carry out routine maintenance, as had unfortunately been the case in the past in relation to this building under a former owner and agents, this is not an insured risk. Therefore there was no obligation on the landlord's part to make an insurance claim for the roof repair works. However, at the tenant's suggestion they had approached the former managing agents and an insurance payment of £2,900.00 was obtained. Under the circumstances we consider that the landlord took all reasonable steps in this regard and that service charge account was properly credited.

**j) Tenant's request for a summary of relevant costs under Section 21(5) LTA 1985 and for copy documentation**

From the documents supplied we accept that the landlord produced audited accounts in accordance with the lease requirements and that a copy was sent to the tenant on 6 March 2003. The relevant information was therefore correctly provided. We further accept the landlord's explanation in relation to previous insurance documents. The landlord's agents cannot be expected to provide copies of documents which they do not have.

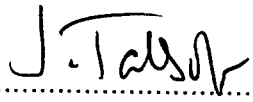
**Section 20C Application**

We reviewed the arguments put forward by both sides. We reminded ourselves that the matter had been referred to us by the district judge in the county court to deal with the issues arising over reasonableness of service charges, within the context of legal proceedings brought by the landlord to recover service charges being withheld by the tenant. To that extent, neither party had chosen to make an application to the Tribunal, although it would have been open to either party to do so. It was not therefore, in our view, a question of restricting access to justice.

The tenant has not succeeded on any of the points before us, in that we find all the costs incurred for the service charge items in dispute to be reasonable and there is nothing before us to suggest that the works for which the costs were incurred were not of a reasonable standard. It is unfortunate, in our view, that the technical points taken by the tenant in relation to insurance claims and the contents and service of statutory Notices, were to a large extent misconceived.

We therefore find no reason why the usual principle should not apply, namely, that costs should follow the event. We therefore do not allow the tenant's application.

Dated 22 October 2003



Ms Jane Talbot
Solicitor

Chairman