RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Certificate pursuant to regulation 10(2) of the Rent Assessment Committee (England & Wales) Regulations 1971 (SI 1971/1065)

RE: DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 27A and 20C of the LANDLORD AND TENANT ACT 1985

Case No:	**CHI/21UF/LSC/2004/0058**
Property:	**57 Stratheden Court, 1-9 The Esplanade, Seaford, East Sussex, BN25 1JP**
Applicant:	**Professor C S Sharma (tenant)**
Respondent:	**Stratheden Residents Seaford Ltd (landlord)**

I certify pursuant to the above-mentioned regulation that there are three errors in the notice of the Tribunal's reasoned decision in this matter dated 12 October 2005. Accordingly the amendments attached to this Notice should be substituted for paragraphs 25, 26, and 28 of the Decision.

Dated 11 November 2005

Signed.....
Ms J A Talbot
Chairman

AMENDMENTS

The corrections, which are all clerical errors, appear in bold type.

25. Although the level of the costs may appear high, the Tribunal decided that they were reasonably incurred. The invoices from Rix & Kay are properly broken down and show the solicitor's charging rate, which is not excessive. The number of hours work reflects the complexity of the case. In due course, if the Respondents are successful in their legal action, the costs may be recovered by way of a court order. The Tribunal therefore determined that £34,647.07 including VAT relating to Rix & Kay's fees were recoverable **of which 2/170 is** payable by the Applicant.

26. Similarly, the Tribunal concluded that the costs of HTP structural engineers, totalling £3574.36, including VAT were reasonably incurred for the purposes of the prospective litigation, were recoverable under the terms of the lease **of which 2/170 is** payable by the Applicant.

28. These were recoverable under the terms of the lease. The Tribunal decided that Swindell and Gentry's fees of £1,434 for 2003 were not unreasonable, despite the fact that they had made an arithmetical error, which was corrected. The sum of £1,434 is therefore recoverable of which **2/170** is payable by the Applicant.

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/21UF/LSC/2004/0058

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 27A of the LANDLORD AND TENANT ACT 1985

Property:	Stratheden Court, 1-9 The Esplanade, Seaford
Applicant:	Professor C S Sharma (tenant of Flat 57)
Respondent:	Stratheden Residents Seaford Ltd (landlord)
Appearances:	For the Applicant: Prof Sharma in person For the Respondent: Mr J Gregory Mr I Young Directors of Stratheden Residents Seaford Ltd
Date of Application:	20 September 2004
Date of Hearing:	5 July 2005
Date of Deliberation:	20 July 2005
Decision:	12 October 2005

Tribunal

Ms J A Talbot MA
Mr A I Mackay FRICS
Mr N J Cleverton FRICS

Ref: **CHI/21UF/LSC/2004/0058**

Property: **Stratheden Court, 1-9 The Esplanade, Seaford, East Sussex**

Application

1. This was an application by the Applicant, Professor Sharma, tenant of flat 57 Stratheden Court, on 20 Sept 2004, under S27A of the Landlord and Tenant, Act 1985 in relation to service charges at Stratheden Court for the accounting years 2000 to 2004. There was also an application under S.20C in respect of the landlord's costs.

Background

1. An oral Pe-Trial Review was held on December 2004, when directions were made. A first Hearing took place on 15 March 2005, which was adjourned with further Directions ordering further documents to be produced. In particular, a Specification of Works and Contract for works to replace the windows, an early report from fenestration expert Mr Rougier, and letters from chartered surveyor, Mr Tupper, were produced. Quotations from Ellis Builders and Kayvex, a recent report from Mr Rougier, and drawings of Archibald Shaw, were not produced.

Jurisdiction

2. The tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money payable by a tenant to a landlord for the costs of services, repairs, some improvements, maintenance or insurance or the landlord's costs of management, under the terms of the lease (S.18 LTA 1985). The LVT can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

Issues in dispute

3. The Application concerned service charge items in the accounting years 2000 to 2004. The main item was the cost of major works and additional works to windows. Also disputed were some legal and professional costs, accountants costs, and a payment to former agents Sussex Management in 2002.

4. It was made clear the hearing on 15 March 2005 that the Tribunal would not deal with any allegations of criminal conduct or false accounting. The Tribunal did not doubt the good faith of the Directors of the Respondent company. The Tribunal would not make any determination on the service charges for years before 2000, as Prof Sharma only bought his flat in 2000, and was not liable for service charges incurred before the purchase. These matters were not within the scope of either the Application or the jurisdiction of the Tribunal.

Lease

5. The Tribunal had a copy of the lease of Flat 57, described as being on the fourth floor of the building. The Lease is dated 6 June 1985 and is for a term of 99 years from 11 March 1985 at a ground rent of £1 per year. Stratheden Court consists of a purpose built development of 75 self-contained warden-assisted retirement flats with communal lounge and other facilities.

6. The provisions relating to the calculation and payment of the service charge are to be found in the Fourth Schedule.

7. At paragraph 2A, the lessee is to pay to the lessor 2/170 of, inter alia, *"all costs and expenses incurred by the Landlord in relation to the following:*

1) the insurance of the Building ...
2) the maintenance repair renewal and replacement where necessary of the Retained Parts and the Common Parts ...
3) the painting and decorating of the Retained Parts and the Common Parts ...
4) the provision of a warden service ...
13) the fees and expenses of the Auditor and all other costs fees charges and expenses incurred by the Landlord in connection with the assessment collection and accounting of the Service Charge ...
14)the reasonable charges of the Landlord in connection with the management of the Development including fees and disbursements of any agents appointed by the Landlord
15)any costs and expenses incurred or paid by the Landlord in connection with or reasonably incidental to the operation management maintenance or repair of the Development which are not chargeable under any of the preceding sub-paragraphs ...

At Paragraph 2B of the Fourth Schedule, the lessee is to pay *"a proper proportion of all costs and expenses incurred by the Landlord in relation to the following: ...*
18)the costs fees charges or commission and expenses of any solicitor counsel accountant surveyor valuer agent or architect or other professional adviser whom the Landlord may from time to time employ in connection with the management repair and decoration and security of the Development including costs and fees incurred in legal proceedings against any other tenant ...
19)the provision of such additional services as the Landlord shall from time to time consider it appropriate to provide for the general benefit of the occupiers of the Flats or a class thereof

8. Paragraph 3 of the Fourth Schedule provides that *"the Landlord shall from time to time appoint .. an accountant .. who is.. a member of the Institute of Chartered Accountants .. to act as auditor for the purposes of this Schedule"*.

9. Paragraph 5 of the Fourth Schedule provides that *" the expression 'the costs and expenses incurred by the landlord' also includes (a) interest ... reasonably incurred by the Landlord in borrowing money to meet such costs and expenses"*.

10. The lessor's obligations to maintain the building are set out in clause 5 of the lease. In summary, they are to insure the building, and to clean, maintain, repair and where necessary renew, the "retained parts and common parts" of the building.

11. The "retained parts" are defined at clause 1(h)(i), to include the main structure, roof, and foundations. They also specifically include at (ii) *"the frames and opening and closing mechanisms of the exterior windows of the flats"*. The Flat is described in the First Schedule to include, at (a), *"the glass in all windows doors and sliding doors"* and at (b), *"the opening and closing mechanisms and hinges of the interior windows"*.

Inspection

12. The Tribunal inspected the property before the hearing on 5 July 2005. The members were accompanied throughout the inspection by the Applicant, Dr Sharma. Stratheden Court is a modern purpose built block of flats, constructed in the 1980's, situated in an exposed position on the seafront in Seaford. There are 75 flats in total of varying sizes, arranged over 5 storeys, with garages under at the rear. The development is designed for occupation by the elderly, with services including a manager and a shared lounge on the ground floor.

13. To the front elevation were enclosed balconies to the east and west flanks, cantilevered out from the main wall. There were replacement UPVC windows, of tilt and turn design, to all the front facing flats,

with evidence of ongoing remedial work and scaffolding in situ in the centre. To the rear facing flats, the Tribunal saw the original windows, in poor condition, and a replacement wooden main entrance door with entryphone, in good condition.

14. The Tribunal had access to the interior. The common parts, including lifts, were in good clean condition and decorative order. Flat 57, on the 4th floor, belonged to Dr Sharma. It was a small one bedroom flat, generally in good condition. As to the windows, there was a small replacement front window to the living room, with no obvious defects apart from being stiff to open. However, the replacement windows to the enclosed balcony, running from floor to ceiling, showed evidence of rusting, and a leak to the ceiling. The cills were dry at the time of the inspection, but water penetrated in wet weather.

15. The Tribunal members were also given access to the interior of flats 56 and 43 by the respective tenants. Flat 56, adjacent to flat 57, had a larger frontage to the enclosed balcony. There had been serious water ingress since the windows were installed, causing damp and staining to the ceiling around the top of the window, and water pooling on the bottom cill. The cill was dry at the time of the inspection. There were signs of rust to the Windows. The ceiling had been replaced during recent remedial works 2 months previously, and no reports from the tenant of water ingress since that time.

16. Flat 43, on the 3rd floor, also had a long enclosed balcony. There was evidence of previous damp and staining to the ceiling, which had been opened up pending internal remedial works. The opening and closing mechanisms were difficult to manoevre. At the time of the inspection, the cills were dry. Some exterior remedial works had been carried out a few months previously, with the application of sealant to prevent further water ingress. So far this had proved successful.

The Hearing

17. A hearing took place in Seaford on 5 July 2005. It was attended by Dr Sharma in person, and Mr Gregory and Mr Young, Directors of the Respondent company. Both parties had prepared Statements and bundles of documents in accordance with previous Directions. Following the hearing, the Tribunal requested further documents to be produced, namely, a priced Specification of Works in relation to the major works to the windows. This proved to be unavailable. The Tribunal reconvened to deliberate and make its decision on 20 July 2005.

The Facts

18. On the basis of its inspection, the documents produced and submissions made by the parties at the hearing, the Tribunal found the following facts:

17.1 The Respondent landlord in this case, Stratheden Residents Seaford Ltd, is a management company, of which the tenants are members and shareholders. The Tribunal did not see the Memorandum & Articles of the Company. The current Directors, appointed by the members, include Mr Gregory and Mr Young, who whilst not resident themselves at the Development, are relatives of elderly tenants.

Major Replacement Window Works ("The Major Works")

17.2 There was a complex history in relation to the single largest item in dispute, the major works to replace the windows to the front of the block. In summary, the background was as follows. In 1999, following problems of water ingress, the then managing agents, Sussex Management Ltd ("SML"), instructed a chartered surveyor, Mr Tupper, to prepare a Report. He concluded that the original windows needed to be replaced. A structural engineering company, Archibald Shaw, produced design drawings. In June 2000, Mr Tupper prepared a Specification of Works headed "For Renewal of South Elevation Balcony Enclosures and Windows at Stratheden Court.

17.2 The Specification in fact included other works within its scope, to the roofs, groundwork, foundations, brickwork, pointing and flashings. The Respondents could not produce to the Tribunal a copy of the itemised priced Specification, though one must have existed in order for Sussex Management to produce the tender analysis. Some provisional sums were listed at Section 3 of the Specification. The sum in respect of the windows was stated to be £100,000 for the "design, manufacture and installation of UPVC windows, gable cladding, casings to steel sections to balconies and replacement insert windows to brick openings to be carried out by s specialist contractor".

17.3 On 8 August 2000, SML served Notice under Section 20 Landlord and Tenant Act 1985 on the tenants, together with a table showing a tender analysis. The cheapest quote was from Ellis Builders, in the sum of £265,896 (exclusive of VAT). analysis. Following the statutory consultation procedure, meetings took place between the residents and surveyors, as a result of which a decision was taken to proceed with the Ellis contract.

17.4 Ellis commenced the major works in November 2000. Work relating to the windows and cladding were sub-contracted to a specialist contractor, Kayvex. During the course of the works, in early 2001, further hitherto unknown defects were uncovered, reported in a letter from Tupper to SML dated 9 January. As a result additional works were found to be necessary. These were carried out at that time, without a further Section 20 Notice. The residents were kept informed in further meetings. Tupper supervised the project and certified completion in September 2001. The Applicant purchased his flat in December 2000, after the commencement but before the additional works.

17.5 From the Respondent's oral evidence and documents, the Tribunal found that the actual total cost of the major works was as follows:

Ellis	£324,577.50	plus VAT (includes Kayvex)
Tupper	£ 40,869.03	plus VAT
Archibald Shaw	£ 12,220.03	plus VAT
Total	£337.666.56	
VAT	£ 66,091.65	
Grand total	£443,758.21.	

17.6 All of these sums were paid, apart from a retention of £8,322.50 plus VAT to Ellis, which was the subject of a referral by Ellis under the terms of their contract with the Respondent. The adjudication decision, dated 9 August 2004, made certain rulings regarding sums due from the Respondent to Ellis. The remit of the Adjudicator under the contract was entirely separate and distinct from the statutory jurisdiction of Tribunal. For the avoidance of doubt, the Tribunal is not bound in any way by the adjudication decision.

17.7 At the Respondent's request, Mr Tupper had produced, in November 2001, a Summary of Additional Items. This was in table form, with a breakdown showing the items of work as per the Specification, the original contract price, and the extra cost attributable to the additional works. From this, the Tribunal found that the proportion of the cost relating to the "windows and works in connection" (item 10), was originally £100,000, with an extra cost of £1,412, making £101,412. The work to Z sections and extra flashings (item 11) was an integral part of this work, at an original cost of £7,106, no extra cost added. The total, based on this information, was therefore £108,518.

17.8 It was common ground between the parties, that the replacement windows were defective, in that there was severe water penetration into the building, causing leaking and damage inside many of the flats. The frames were also rusting. Indeed, by the date of the hearing, The Respondents were in dispute with Ellis, Kayvex and Mr Tupper, having instructed solicitors, Rix & Kay, to pursue legal action. Legal proceedings had not yet been issued, although a draft letter before action had been prepared in January 2005. The delay was partly caused by the adjudication process.

17.9 The Tribunal was not in a position, from its brief inspection and the documents supplied by the parties, to make any detailed findings on the nature and cause of the defects, or the scope of the further works necessary to remedy the problems. So far, only a preliminary report has been obtained from a Mr Rougier, fenestration expert, dated 15 July 2002, at the instruction of Mr Tupper, who was still involved at that stage. It appears that Mr Rougier has subsequently also been instructed by Rix & Kay on behalf of the Respondents, but by letter dated 17 May 2005, Mr Rougier confirmed that it was not yet possible to produce a further report because further investigations, including laboratory testing of the existing windows, would be needed first.

17.10 However, from the limited information available, it appeared to the Tribunal that the main problem lay in the whole design of the cladding system in which the windows are incorporated, along with uncertainty as to whether the frames themselves meet the performance standards required for such an exposed location. Other defects mentioned in the Rougier report (and also noted by the adjudicator) related to the number and positioning of drainage outlets, inadequate choice of waterproof membrane and method of fixing, lack of drainage and ventilation, lack of waterproofing of an exposed steel framework by cladding, and the choice of window. The design defects appeared to be more significant than workmanship defects.

Professional and Legal Fees

18.1 The Applicant challenged the reasonableness of legal and professional fees incurred in relation to the major works. The most significant of these were Rix & Kay's solicitors costs. The Respondent appointed the firm in June 2003. The fees, supported by invoices, were £300.00 in 2003, £20,481.81 in 2004, and £13,865.26 in 2005, up to the hearing date. The total was £34,647.07 including VAT. These costs related to legal advice and work in preparation for proposed legal action against Ellis, Tupper and Kayvex.

18.2 Professional fee in dispute were: 4 invoices totalling £3574.36 including VAT to structural engineers HTP, incurred between 21 March 2003 and 20 August 2004. The Tribunal did not see any reports produced, but accepted the Respondent's submission that the purpose of site visits, meetings and surveys referred to was to provide expert advice to the Respondents and their lawyers, in preparation for the proposed legal action.

18.3 Fees of Wynne Baxter Godfree, solicitors, of £1,179 including VAT. These costs related to legal advice considered necessary in relation to sending out service charge demands, and queries raised by prospective purchasers of some flats at that time.

18.4 Expenses of £240 charged on 31 October 2003 by Mr Young, Director of the Respondent company and by profession a chartered accountant, in connection with payroll services for 3 employees at Stratheden Court who provide services to the residents. The Applicant conceded at the hearing that this amount was no longer in dispute.

Accountancy Fees and Company Expenses

18.5 There was some confusion over these amounts. In the Service Charge Accounts for the year ended 31 August 2004, under "accountancy and audit fee" the figure of £1,434 was listed for 2003 and £250 for 2004. There was no invoice. The Respondents could not produce an invoice but assumed that £1,434 related to fees of Swindells and Gentry, accountants appointed by SML at that time, to prepare the service charge accounts.. This was consistent with a slight rise on the figure for 2002, of £1,287. of The Applicant had previously drawn attention in correspondence to arithmetical errors in accounts produced by Swindells. As a result, in the following year, Mr Young undertook the preparation of the account at a charge of £250.

18.6 The Applicant contended that company expenses, such as complying with company law requirements to make returns to Companies House, were not a service charge item and therefore

not recoverable. However, no specific expenses covering this could be found in the accounts. It was therefore impossible to identify any sums on which the Tribunal could make a determination.

Interest on loans

18.7 A figure appeared in the profit and loss account for the year ending 31 August 2003 of £3,796 "interest on promissory notes". The Respondents explained that it had been necessary to raise money to pay the major work contractors, as there was insufficient money in the service charge account. Accordingly, about 15 tenants had agreed to loan money to the company at an interest rate of 7%. £3,796 represented 7% of the amount borrowed in this way. This step had been authorised at a company EGM and the loans were repaid in September 2002.

Payment to Sussex Management Limited

18.8 A payment of £15,720 was made to SML in 2003, appearing on the year end accounts as "compensation payment". During 2002 the Respondent became increasingly dissatisfied with the standard of management provided by SML and sought to dispense with their services. However, the Respondent had entered into a 3 year contract with SML in September 2001 with no break clause. The contract could only be terminated early if SML were in liquidation or in breach of its obligations. The Respondent took the view that it would be expensive and time consuming to enter into a legal dispute as to whether SML were in breach of contract. Following residents meetings at which the general view was to get rid of SML, the Directors took the decision to pay one year's management fee to SML in settlement for early termination. A new managing agent, Park Lane, was subsequently employed at a much lower annual fee of £8.225.

Interior Redecoration and Replacement Entrance Door

18.9 A sum of £9,599 appeared in the 2004 service charge accounts for "cyclical decorating". The Respondents confirmed that £8,600 of this related to redecoration and carpeting of the common parts on the ground, 1st and 5th floors. No invoice was available. Local contractors were appointed by the managing agents. The quality of work was satisfactory. The cost of the new entrance door was £18,769. There was no Section 20 Notice served in relation to this. The new door was discussed at a residents meeting on 22 July 2003 and a hardwood door was approved.

Housing Ombudsman

18.10Two sums, of £94 and £76, appeared in the service charge accounts for 2001 and 2002 respectively, listed under the heading "Other Expenditure" and identified as "Independent Housing Ombudsman". It is not clear what these sums related to. The Respondents surmised that they must have been Sussex Management's costs either in dealing with a complaint the Applicant made to the Housing Ombudsman in February 2002, or their subscription as a member of the Ombudsman's scheme. In the event the Ombudsman declined to deal with the complaint, as Sussex Management was not the landlord.

The Decision

The Major Works

19. The nature and scope of the works fell within the landlord's repairing obligations under the lease and that the costs were chargeable to the service charge account under paragraph 2A of Schedule 4 to the lease. The Tribunal noted an anomaly, in that the glass in the windows and the interior opening and closing mechanisms, are stated to be part of the Flat, not the retained part of the building, and thus in theory the responsibility of the tenant. However, it was clear from the way the building was constructed that both the original and replacement windows and balconies were complete single units, and it was unrealistic to make any apportionment in relation to the cost of the glass.

20. It was part of the Applicant's case, that the additional works should have been the subject of further statutory consultation under S.20 Landlord and Tenant Act 1985, and that therefore, the extra cost attributable to the additional works was not recoverable. The Tribunal did not agree. The Section 20 Notice served on 8 August 2000 (see 17.3 above) complied with the statutory requirements. The Tribunal concluded that no further consultation was required, because the additional works stemmed from the original Specification and the same contract, and were not different in nature. The Tribunal was satisfied that the problems could not have been identified until the work was in progress, and that it was sensible and necessary for the contractor on site to deal with the extra items at that time.

21. The Tribunal then had to consider how much was payable and reasonable, in relation to that part of the major works in dispute. In making its decision, the Tribunal therefore limited itself to addressing that part of the cost which related to the replacement windows, Z Sections and extra flashings. In accordance with its findings of fact explained at 17.7 above, the Tribunal took that sum to be a total of £108.518, including the additional works, as stated at items 10 and 11 of the Summary of Additional Works. The Applicant had given no evidence to dispute the other items of work, such as the foundations, repointing of brickwork and roof works. The Tribunal therefore made no determination in relation to the other items listed in the Summary.

22. The Applicant contended that the replacement windows were no better, and in fact worse, than the original windows, so the tenants had therefore gained no benefit whatsoever from the cost of the major works. Essentially the Respondents did not disagree with this. It is possible that total replacement with a properly designed cladding system may be needed. This was indeed the preliminary conclusion of the Rougier report, although no detailed remedial works have yet been specified. The recent external sealant works were merely a temporary solution.

23. The Tribunal felt bound to conclude that the defects to the design of windows and the cladding system were fundamental. Without question, the major works fall well below a reasonable standard. The task of the Tribunal was to determine what would be the reasonable value of the works carried out. In the absence of any concrete information, the Tribunal took a broad brush view, and decided that the works were worth no more than 10% of the cost. Therefore the Tribunal decided that the amount payable in respect of the major works to the windows was **£10,518** of which 2/170 is payable by the Applicant.

Professional and Legal Fees

24. The Tribunal first had to consider whether the legal costs relating to Rix & Kay (see 18.1 above) were recoverable under the terms of the lease, and concluded that they were recoverable. It is settled law that a lease term permitting a landlord to recover its legal costs must be in clear and unambiguous terms. The relevant terms are to be found at Paragraphs 2A and 2B of the Fourth Schedule, as recited above. These provisions, at 2B(13) and (14), enable the landlord to recover costs in connection with the operation, management, maintenance or repair of the development. Legal costs, of "any solicitor counsel accountant surveyor" are specifically referred to at 2B(18), in connection with the management, repair and decoration and security of the development. The Tribunal took the view that costs of management could properly include the legal costs in issue, since these related to the cost of works chargeable to the service charge account, albeit done to a poor standard by the contractor.

25. Although the level of the costs may appear high, the Tribunal decided that they were reasonably incurred. The invoices from Rix & Kay are properly broken down and show the solicitor's charging rate, which is not excessive. The number of hours work reflects the complexity of the case. In due course, if the Respondents are successful in their legal action, the costs may be recovered by way of a court order. The Tribunal therefore determined that **£34,647.07** including VAT relating to Rix & Kay's fees were recoverable and payable by the Applicant

26. Similarly, the Tribunal concluded that the costs of HTP structural engineers, totalling **£3574.36**, including VAT were reasonably incurred for the purposes of the prospective litigation, were recoverable under the terms of the lease and payable by the Applicant.

27. In relation to Wynne Baxter Godfree's fees of £1,179 including VAT, the Tribunal decided that these costs were incurred in connection with the assessment and collection of the service charge, and were therefore recoverable under Paragraph 2(13), or alternatively under 2(15) as a cost reasonably incidental to the management of the development. The Tribunal therefore determined that **£1,179** including VAT is recoverable of which 2/170 is payable by the Applicant.

Accountancy Fees

28. These were recoverable under the terms of the lease. The Tribunal decided that Swindell and Gentry's fees of £1,434 for 2003 were not unreasonable, despite the fact that they had made an arithmetical error, which was corrected. The sum of **£1,434** is therefore recoverable of which 2.170 is payable by the Applicant.

29. The Tribunal had some concerns about Mr Young charging for the preparation of accounts. Although he is a chartered accountant, and the fee of £250 for 2004 is eminently reasonable in amount, he is a Director of the Respondent company and therefore not independent of the landlord. On balance, the Tribunal determined that this did not prevent the sum of **£250** being recoverable, of which 2/170 is payable by the Applicant. The Tribunal, whilst not doubting the good faith of any of the Directors, would observe that Mr Young may wish to reconsider his position, in the interests of independence and transparency, even if the cost to the service charge of independent accountants would be greater.

Company Expenses

30. The Tribunal noted some confusion here. It was unclear whether any costs, such as complying with Companies House requirements, had been charged to the service charge, because there was no clear heading in the accounts to identify such a cost. The Tribunal would observe, however, that this is a separate cost to the Company, and not a service charge item.

31. In general, the Tribunal was concerned that the Directors seemed not to grasp the distinction between company matters and leasehold matters. For example, the Respondent's representatives at the hearing were unaware of the existence of the RICS Code of Management. They appeared to be under the impression that any expenditure incurred by the company would be recoverable through the service charge. This is not necessarily the case. The Respondent, as landlord, must at all times manage the property in accordance with the terms of the lease and the relevant statutory requirements, which are separate and distinct from company law requirements, such as holding an AGM and acting in accordance with its Memorandum and Articles.

Interest on loans

32. The landlord was permitted, under Paragraph 5(a) of the Fourth Schedule as recited above, to charge interest to the service charge account. The Tribunal decided that the Respondent had acted reasonably and in co-operation with the tenants in raising funds my way of promissory notes. The rate of interest was competitive. The sum of **£3,796** was therefore recoverable, of which 2/170 is payable by the Applicant.

Payment to Sussex Management Limited

33. The Tribunal was satisfied that the Respondent acted reasonably in its dealings with SML. It had lost confidence in SML and the professional relationship had broken down. It was a fair commercial decision to pay a settlement, after consulting with the residents, and all things considered the sum was not unreasonable. The Tribunal considered that the cost could be construed as a cost incidental to the management of the development, and was therefore recoverable under the terms of the lease. The Tribunal determined that **£15,720** was recoverable of which 2/170 is payable by the Applicant.

Interior Redecoration and Replacement Entrance Door

34. Both these items fall squarely within the landlord's repairing obligations and the service charge provisions. The Tribunal considered that they were separate items. Although there was no costs breakdown or invoices in support, the Tribunal accepted the Respondent's evidence that £8,600 was attributable to the interior works. The Tribunal concluded the cost was reasonable, saw from its inspection and that the works were of a reasonable standard. Therefore, the sum of **£8,600** was recoverable of which 2/170 is payable by the Applicant.

35. The cost of the replacement door was £18,769. The Applicant contended that, in view of the level of expenditure, the Respondent should have consulted the tenants in accordance with Section 20. The Tribunal agreed. It was not clear when the door was replaced, but the meeting to approve the work took place in July 2003. If the Respondent had consulted at that stage, Section 20 in its previous form would have applied as the total expenditure was over £3,750 (50 x the number of tenants liable to pay the service charge). As the Respondent failed to consult, the recoverable amount is capped. Therefore, the sum of **£3,750** is recoverable of which 2/170 is payable by the Applicant.

Housing Ombudsman

36. The Tribunal decided that these costs should have been borne by Sussex Management, as they related solely to the Ombudsman's scheme of which they were members. Any costs they incurred as a result were not management costs under the terms of the lease in relation to the property, even if the complaint was brought by the Applicant. The sums of f **£94** and **£76** were therefore not recoverable and not payable by the Applicant.

Section 20C

37. In his application the Applicant sought an order for limitation of costs, meaning in effect that the costs incurred by the Respondents in connection with the proceedings before the Tribunal should not be included as part of any future service charge account. The Respondents had not incurred legal costs, but put their costs at £1,430, calculated at 22 hours of Mr Young's time, as a Director of the company, at £65 per hour (with no VAT).

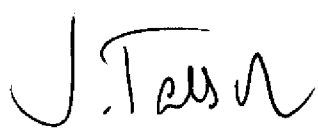
38. Section 20C of the 1985 Act provides that the Tribunal may "make such an order on the application as it considers just and equitable in the circumstances". In the circumstances of this case, the Tribunal decided that it would not be just and equitable to allow the Respondents to include their costs as part of any future service charge account, because the Applicant had succeeded on the most significant element of his application, namely, the cost of the major works to the windows.

39. Accordingly the Tribunal makes the requested order under Section 20C.

40. The Applicant further requested that his application and hearing fees should be reimbursed. Under the LVT (Fees)(England) Regulations 2003, reg.9, the Tribunal "may require any party to the proceedings to reimburse any other party to the proceedings for the whole pr part of any fees paid by him in respect of the proceedings". Applying the same test, as to whether it would be just and equitable to require reimbursement, the Tribunal decided that it would be appropriate to determine the request in the same way.

41. Accordingly the Tribunal requires the Respondent to repay the Applicant the whole amount of the application and hearing fees paid by him in connection with these proceedings.

Dated 12 October 2005
Signed .....



Ms J A Talbot
Chairman