**TRAFALGAR HOUSE, 261 NELSON ROAD,
WHITTON, TW2 7BJ**

THE APPLICATION

1. The Applicants are eight of the nine leaseholders at Trafalgar House, 261 Nelson Road, Whitton, TW2 7BJ. The application is made under section 27A and section 20C of the Landlord and Tenant Act 1985. The application was heard on 9th/10th August 2004 and 7th October 2004. The Applicants sought a determination of the reasonableness of the charges relating to the cyclical repair and redecoration works carried out at Trafalgar House in late 2003/early 2004 and the reasonableness of service charges for the years 2002/3, 2003/4 and 2004/5.

SUMMARY OF STATUTORY PROVISIONS RELEVANT TO THIS APPLICATION

2. The Landlord and Tenant Act 1985 as amended is herein after referred to as "the Act". All references are to the Act.

Section 18 – meaning of "service charge" and "relevant costs"

(1) "Service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.

(3) For this purpose –

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 – Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 27A – Liability to pay service charges: jurisdiction

(1) An application may be made to a Leasehold Valuation Tribunal for a determination on whether a service charge is payable and, if it is, as to
   (a) the person by whom it is payable
   (b) the person to whom it is payable
   (c) the amount which is payable
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) Sub section (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold Valuation Tribunal for a determination of whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
   (a) the person by whom it would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application under sub section (1) may be made in respect of a matter which
   (a) has been agreed or admitted by the tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C – 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 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.

(2) The application shall be made
   (b) in the case of proceedings before a Leasehold Valuation Tribunal to the Tribunal before which the proceedings are taking place or if the application is made after the proceedings have concluded to a Leasehold Valuation Tribunal.

(3) The Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

DIRECTIONS

3. A Pre Trial Review was held on 11th May 2004 when directions were issued and the hearing date was set.

INSPECTION

4. The Tribunal inspected the property on 9th August 2004 in the presence of Ms Alison Wright the lessee of Flat 1. The property is a substantial double-fronted detached Victorian property consisting of lower ground, ground, first and attic floors. It has steps up to the front door. The property is located on a corner site and set in a plot of land which slopes from the front to the rear. It has provision for car parking at the front. The construction is conventional with painted brick surfaces and some painted rendering. The roof is slated. The property is divided into eight flats with a separate maisonette, being Flat 9. Flats 1 and 9 have their own entrances; access to the other flats is through the main front door. The Tribunal inspected the communal parts which had been decorated, and the exterior of the building. The Tribunal also inspected the interior of Flat 8 including the balcony and door to the balcony, and the interior of Flat 2. The Tribunal noted a number of defects in the exterior paintwork and saw a leaking gutter at the front of the house. The Tribunal noted that a cherry picker could only be used to paint the high parts of the building at the front and part of the right hand side of the building. The Tribunal also inspected the standard of cleaning and gardening.

THE HEARING

5. The hearing commenced at 1.30 pm on 9th August 2004 and continued on 10th August 2004 and 7th October 2004. The Applicants were represented by Ms Susan Brough of Flat 2. The Respondents were represented by Mr Howard Dawson of the Home Ownership Unit. Ms Wright (Flat 1), Ms Brough (Flat 2), Mr Jack (Flat 4) and Ms McEvoy (Flat 7) and Mr Mullin (Flat 8) gave evidence for the Applicants. Mr Richard Hazard (Property and Asset Management Department) and Ms Emma De Burgh (Leasehold Management Department) gave evidence for the Respondents. Not all of the above were present throughout the hearing.

THE LEASES

6. The Tribunal was provided with a copy of the draft generic lease for the eight flats. The parties agreed that the sealed leases for the flats took the form of this generic lease and that they both wished to rely on the draft lease which was in the bundle. The leases were all completed in or about 1998 and reference will be made to the relevant covenants and obligations below.

7. The Tribunal considered liability to pay the service charges which have been challenged. The lessor's covenant to maintain, repair and redecorate the building and to clean and to light the common parts is at clause 5 of the lease and the lessees' covenant to pay the service charge is at clause 7 of the lease. Both parties agreed that the consultation procedure set out in the Act had been carried out and the Tribunal is satisfied that where it was necessary there had been compliance with section 20 of the Act. The lessees of Flats 1 to 8 were each liable for one-eighth of the service charges

in respect of the converted house, and one-ninth of the service charges in respect of the estate.

THE REASONABLENESS OF THE CHARGES FOR THE CYCLICAL REPAIR AND REDECORATION WORKS CARRIED OUT TO TRAFALGAR HOUSE IN 2003/4.

8. Trafalgar House was converted from light commercial to residential use, the full rehabilitation works having been completed in 1998. In 2003/4 cyclical repair and redecoration works were carried out. The lessees of Flats 1 to 8 challenged the charge for the works, £10,569.77, the fees of Madlin and Maddison Surveyors, £1,468.69, and the management fee of the Respondents of £587.57, being a total of £12,626.03. The Applicants submitted that the works were incomplete and not carried out to a satisfactory standard, that the surveyors' charges were excessive and they questioned the Respondents' entitlement to raise a separate management fee when the works were contracted out to surveyors.

Cost Of Major Works

Evidence and Submissions of the Applicants

9. Ms Wright, Ms Brough, Mr Jack and Mr Mullin gave evidence in the form of written witness statements supported by oral evidence.

10. Ms Wright said she was at home for the duration of the works and that she had not seen the decorators carry out any preparatory work either rubbing down or undercoating. She said that they painted her front window while it was shut. She went on to say she only saw the decorators put one coat of paint on the building and the window frames. She explained there was no tap outside and she had not been asked for water so the walls could not have been washed down. She said no scaffolding had been erected and that a cherry picker had been used for some of the work and that a ladder had been used to decorate the left hand side of the building. She told the Tribunal that there was dampness showing below the bay window of Flat 2 and that salts were coming through the painting outside the entrance to Flat 1. She said the contractors had not completed the works as the top part of the window frame outside her bathroom had not been painted, nor the wall above. In addition she said the perimeter wall above the bin shed had not been painted. The window in the foyer remains broken despite the Respondents assurances that it would be repaired.

11. Ms Brough said that she was not present when the contractors were carrying out the work but that she could see that they had painted over the dirty window frames in her flat and that the paint was now flaking. She said the windows had been painted shut. She believed that the brickwork had been painted in a day as the work had started one morning when she had left and it had been completed when she returned. She also said that the gutters were still leaking and the downpipes were blocked which was causing discolouration to the brickwork. She had understood that these works were included in the contract.

12. Mr Jack confirmed that no scaffolding was used and that a cherry picker had been used on the front of the building and on the right hand side. He said he had witnessed the door of his flat being painted with one coat of gloss. The decorator had said there

was no need to rub it down or put on an undercoat. He said that after the windows of his flat had been painted they could not be opened.

13. Mr Mullin confirmed that a cherry picker was used for a maximum of five days. He said the door to his flat, the balcony door, window plate and railings to the balcony had not been painted. He said the window in his flat had been painted shut. He said that the works were not carried out in accordance with the schedule of works prepared by the surveyors and that he was very surprised that a certificate of completion had been signed.

14. Ms Brough's submissions on behalf of the Applicants were that there had been thirty-three breaches of the specification of works, the work was sub-standard and incomplete and that the maximum value of the cost of works was half that which had been claimed.

Evidence and Submissions of the Respondents

15. The Respondents had provided a written response to the Applicants' witness statements which was undated and unsigned. In addition Mr Hazard gave oral evidence. Mr Hazard explained that he had been employed by the Respondents for the last eighteen months and that he had inspected Trafalgar House on 5th August 2004, after the works had been completed. He said that practical completion of the works took place on 21st January 2004 and that there would be a twelve-month defects inspection and that no additional works would be carried out within that time unless it is necessary to comply with health and safety law. Mr Hazard conceded that scaffolding had not been used and that a cherry picker had been used instead. He said the cherry picker had been there for about one and a half weeks but he agreed that a lot of the work at high level must have been carried out from ladders contrary to the specification. He also conceded it was not acceptable for the windows to be painted shut. He said this would be looked at in the defects inspection. Mr Hazard was not able to give any direct evidence about the manner in which these works were carried out and he had no answers to the breaches of the specification. He said the work had been carried out by D.W. Contractors who were known to the Respondents and as far as he was aware there had never been problems with these contractors before. He explained that there had been a 2.5% retention which would be held back until the end of the defects period. He did not believe that one coat of paint would cover the white paint which had previously been used. He said the exterior was painted with Dulux Weather Shield and the interior was painted with Timatox which was fire resistant. He said the painting of the brickwork was satisfactory although he accepted that there was an area in the basement that needed attention. He said the walls were cleaned with a stiff brush and not water because cleaning with water would mean the walls could not then be painted. He said the lessees had not kept access arrangements and that the response to the questionnaire sent to the lessees had been varied and inconsistent.

16. Mr Hazard told the Tribunal the final account would take into account damages to be recovered of £2,737.28 because the contract had overrun. In answer to cross examination as to why the steps were not painted he said this was not included in the specification but was now in the contingency sum. Mr Hazard pointed out that the surveyors had issued a certificate of practical completion and therefore must have

been satisfied with the work. Mr Hazard relied on a letter from Madlin and Maddison dated 9th August 2004 which stated "the work was supervised by Matthew Wyon-Brown and although the progress was slow, the standard of workmanship was acceptable and in accordance with our specification".

17. On the last day of the hearing the Respondents produced a report from Akzo Noble Decorative Coatings Limited which was undated but signed by Nigel Flower, Specification Consultant. This report stated that the paintwork at Trafalgar House had been inspected on an unspecified date and concluded that "the painting contractors have carried out the work in good faith and to any given specification. In addition, we would suggest that a specification was drafted with regards to the difficult condition of the building at the time". The report goes on "it is always most unfortunate when anything becomes subject to disrepair, especially so soon after a project has been completed. However, the disrepair has been due to the natural, or otherwise, deterioration of the substrates and/or the failure of the initial coats of paint. The aforementioned does not constitute a fault of the product or duties of any person."

Decision

18. The Tribunal was concerned that no one from Thames Valley Housing Association, or from Madlin and Maddison, had attended the hearing to give direct evidence about the way in which the works had been carried out and the standard of the works. The Tribunal found the report of Akzo Noble to be of no assistance as it was undated, the writer of the report had not attended the hearing and moreover Akzo Noble were one of the manufacturers of coating materials set out in the specification and therefore could not be considered to be independent. It was common ground that scaffolding had not been used for the repairs and redecorations to the exterior despite the requirement of the specification for scaffolding. From our own observations we could see that a cherry picker could only have been used at the front and part of the side of the building. Ladders must therefore have been used for the rest of the building and this would not have been a satisfactory way of decorating this property. The Tribunal is satisfied that more work will have to be done externally in less than five years because new paint had been used over old paint without proper preparation. On the other hand, we accept that works have been carried out at the property which will last for some time. Our view is that a reasonable sum for the exterior decorations, which were charged at £8,058 is half that i.e. £4,029. As far as the interior decorations are concerned, there seems to be general acceptance of these despite some evidence about lack of satisfactory preparation and the correct number of coats of paint. These decorations were charged at £2,470 and the Tribunal decided to allow this sum, with some reservations about the standard of work. The sum of £1,516 for repairs is considered reasonable by the Tribunal and in those circumstances the total sum we allow for these works is £8,015 plus VAT. In addition we emphasise that the lessees should have the benefit of any sum recovered by the Respondents in respect of a penalty and/or damages.

Fees of Madlin and Maddison Chartered Surveyors

Evidence and Submissions of the Applicants

19. The Applicants' case was that Madlin and Maddison had not supervised the work properly, had allowed the work to be carried out in an unsatisfactory manner and to an unsatisfactory standard and that they had issued a certificate of practical completion when the work was not completed nor carried out to a satisfactory standard. They submitted that the surveyors' fees were excessive. They had been told that six site inspections took place and the documentation showed that at only one inspection (on 28th October 2003) were the contractors on site. Similarly work stated as being outstanding on the last site inspection on 20th January 2004 was still outstanding. The surveyors made no contact with the lessees during the contract. The Applicants' case was that the fees of 12% were excessive and they objected to having to pay for travel when a local firm of chartered surveyors could have been appointed.

20. Ms Brough submitted that a reasonable fee to pay to the surveyors was 6% of the net cost of the contract.

Evidence and Submissions of the Respondents

21. Mr Hazard said that the Respondents put out their surveying works to tender some four years earlier. When asked if any local surveyors were asked to tender Mr Hazard said that Madlin and Maddison had produced the best system at the best price. He said the Respondents had to try to achieve consistency and as they had a number of properties in different areas they could not appoint local surveyors each time works were required in a particular property. He said that travel was part of the costs that Madlin and Maddison put forward and that this had to be allowed for. When asked why the surveyors had issued a certificate of practical completion when some of the work was clearly not satisfactory, Mr Hazard said that the surveyors must have been satisfied with the work. When asked why there was no representative from Madlin and Maddison at the hearing Mr Hazard said that he felt that the documentary evidence showed that the work had been completed to a satisfactory standard. He confirmed that the surveyors' fee was 12% of the total contract sum including VAT plus disbursements such as photocopying, photographs and travelling to and from the sites. This was the fee which had been negotiated with Madlin and Maddison approximately four years ago.

Decision

22. The Tribunal was extremely concerned that there did not appear to have been a professional level of supervision of these works. The problems in relation to the external repair and redecoration would not have occurred if Madlin and Maddison had prepared a proper specification and included all the repairs which were required and had carried out adequate supervision. The report form showed that the site visits were grossly inadequate and that Madlin and Maddison did not react to the problems they found on the site. The letter from Madlin and Maddison dated 9th August 2004 was clearly misleading. They had issued a certificate of practical completion when, in our view, they should not have done as some parts of the building had not been painted at all and other parts to an unsatisfactory standard. In the Tribunal's experience, a fee of 12% of the contract price usually includes all tenant liaison meetings, sending out section 20 notices and general administrative work. In this case, this work was done by Thames Valley Housing Association. The Tribunal concluded that a fee of 12% of the cost of the contract and VAT, and then charging disbursements in addition, was

excessive. Our decision is that a reasonable fee is 9% of the net sum exclusive of VAT of the contract and that the leaseholders should not be liable to pay any disbursements.

Management Charge of the Respondents

Evidence and Submissions of the Applicants

23. The Applicants were concerned that they were being charged twice for the administration and supervision of the contract. They had been charged for Madlin and Maddison's fees and also by the Respondents, whose charges were 8% of the contract sum. The Applicants challenged the Respondents' entitlement to raise a separate management charge where the organisation and supervision of the works had been delegated to chartered surveyors. The Applicants submitted that if such a charge was justified, in view of the unsatisfactory manner in which the cyclical repair and redecorations works had been carried out that an appropriate fee to pay the Respondents would be 4% of the contract price.

Evidence and Submissions of the Respondents

24. Mr Hazard said that the Respondents' fee was for the technical aspect of the works and that it was separate from the fee which was paid to surveyors for managing the contract. When asked why the Respondents had not arranged for the work to be done which had not been carried out, Mr Hazard said he thought it was better to deal with this at the end of the defects period. Mr Hazard said that the Respondents had sent out the section 20 notice and that they had made six inspections of the property while the works were being carried out (at different times from the surveyors) and had also held four contract review meetings in the office. The Respondents dealt with all queries and complaints and with tenant liaison generally, before during and after the contract. He said that he considered 8% was a reasonable fee and this was the standard charge for major works on all the Respondents' properties.

Decision

25. The Tribunal was satisfied that clause 7(5)(c) in the lease enabled the Respondents to charge "a reasonable allowance" for the work they carried out in connection with the contract for repairs and redecoration. Our determination relates only to this contract and in this case we consider the sum of 6% of the net contract sum exclusive of VAT is adequate for the administrative work involved in this type of contract.

REASONABLENESS OF SERVICE CHARGES FOR 2002/3, 2003/4 AND 2004/5

26. The service charge year runs from 1st April to 31st March. The service charge accounts for the years ending 31st March 1999 to 2004 were available to the Tribunal as well as the estimated service charge for 2004/5.

Buildings Insurance

27. The buildings insurance for 2002/3 was £564.17, for 2003/4 was £720.43 and the estimate for 2004/5 was £822.

Evidence and submissions of the Applicants

28. The premium for the buildings insurance has increased from £317.49 for 2000/1 to an estimated figure of £822 for 2004/5. The Applicants submitted that they were not satisfied that the sum charged for buildings insurance represented value for money. They had not been able to obtain alternative quotations. The Applicants did not accept the assurance from the insurance brokers, Farr Plc, that the premium it had obtained was competitive. Ms Brough said that the Applicants would like the opportunity of having Trafalgar House insured separately as a single unit rather than as part of a block policy.

Evidence and submissions of the Respondents

29. Mr Hazard explained that Farr Plc were employed by the Respondents to arrange buildings insurance for all the Respondents' properties. He was not able to say when this contract was last tendered or how much Farr Plc were paid by the Respondents. However he did tell the Tribunal that the Respondents were re-tendering this work in 2005/6. He explained that the Respondents have one policy for all their properties. He was satisfied that Farr Plc had obtained the best price possible. Mr Dawson explained that it was the lessor's responsibility under the lease to insure and that this was effected by a block policy. He accepted that the cost of insurance had gone up significantly. He said it was a tough market and that for the current year each lessee was being asked to pay just over £90. He said that each year Driver Jonas carry out a valuation for each of the Respondents' buildings to ensure that the buildings are fully and properly insured.

Decision

30. The landlord's obligation to insure is at clause 5(2) of the lease and the tenant's obligation to pay is at clause 7(5) of the lease. The Tribunal acknowledges the concern of the Applicants at the ongoing increases of the premium for buildings insurance each year. However in the absence of any expert evidence from an insurance broker, we were satisfied that the amount charged for buildings insurance was reasonable. We know from our own knowledge and experience that buildings insurance premiums have increased substantially over the last two years and we are satisfied that the letter from Farr Plc dated 13th July 2004 explains and justifies the increases in the insurance premium.

Cleaning and Gardening

31. The service charge for cleaning in 2002/3 was £506, in 2003/4 it was £558.50 and the estimated sum in 2004/5 is £533. The sum charged for gardening in 2002/3 was £393.50, in 2003/4 £1,063.50 and the estimated sum in 2004/5 is £403. The Applicants are each liable for one-eighth of the cleaning costs which are for the common parts of the main building, and one-ninth of the gardening costs.

Evidence and Submissions of the Applicants

32. The Applicants were dissatisfied with the quality of the cleaning of the common parts and the gardening. The witness statements of Ms Wright and Ms Brough set out the Applicants' complaints about the standard of cleaning in the communal areas. Ms Brough wrote to the Respondents on 6th March 2003 expressing her dissatisfaction with the standard of cleaning in the communal areas. Further complaints were made by the residents culminating in a letter on the 14th of January 2004 recording their concerns regarding the "unacceptable standard of cleaning and gardening". Subsequently BMS Services were contracted to carry out cleaning and gardening at £145.83 per month. This contract commenced in March 2004 and it was the Applicants' case that BMS had provided less service at extra cost and that the common parts inside the house were not being cleaned properly and neither was the refuse area. Ms Brough also raised concerns about the failure to cut the grass and the dumping of grass on the verge outside Trafalgar Square. The residents sought a 50% reduction in BMS Services' fees. In relation to the additional gardening costs in 2003 the Applicants disputed the fee of £460 for extra works which consisted of excavation around trees in the car park area, removing and disposing of excess and filling with cobble stones, planting of shrubs in back garden and re-seeding lawn. The Applicants said they had not been consulted about the cobbles and they thought they were unnecessary and possibly dangerous as they could be used by vandals to damage Trafalgar House and the residents' property and the cost was excessive and disproportionate.

Evidence and Submissions of the Respondents

33. Mr Dawson said that Ms Nath, Ms De Burgh's predecessor, had sought to address the complaints of the lessees about the standard of cleaning and gardening. After the meeting in January 2004 she had served a section 20 notice and gone out to tender for the cleaning and gardening services. In March 2004 the contract with the previous cleaners and gardeners was terminated and the contract was let to BMS for both gardening and cleaning services at Trafalgar House. There was then some discussions as to whether the lessees would carry out the cleaning themselves but they could not agree about this and so the new contract started. They then received further complaints from the lessees and two rectification notices were served. Mr Dawson explained that they had held back 15% of sums due to BMS but would release this if they complied with the rectification notices. Mr Dawson said that the Respondents were happy for the residents to take over the gardening and cleaning if they wished or to nominate a contractor of their choice. The current contract could be broken if there was a breach and in any event it was only a six-monthly contract which had commenced in March 2004. Ms De Burgh said that she did not tell BMS that the Tribunal would be inspecting and that she had found the standard to be very good when she had visited. She said that although the refuse area was the Respondents' responsibility it was the duty of the lessees to use the area responsibly and tidily. BMS charge £72 per visit and the Respondents' case was that this was reasonable and that the level of service was reasonable for this level of charge. The Respondents made it clear to the Tribunal that they were willing to work with the lessees to change the contractors if this was the lessees' wish. The Respondents admitted that they had not consulted about the additional gardening works at the cost of £460 in 2003/4 but considered that these works were reasonable and necessary and that they improved the appearance of the garden at Trafalgar House.

Decision

34. The Tribunal considered that the sums charged for cleaning and gardening for 2002/3 and 2003/4 were reasonable. These were not high charges and therefore the lessees could not expect a high level of service. Similarly the estimate for 2004/5 was reasonable in our view. The Tribunal considered the common parts to be adequately cleaned when we inspected. The lessees were being charged just over £2 per week each for cleaning and gardening which could not be said to be unreasonable. For 2003/4 there was a single charge of £460 for additional work which was described above. The Respondents admitted that they had failed to consult about these works but the Tribunal considers they were reasonable works to have carried out and that the charge was reasonable.

Maintenance of Fire Equipment

35. The service charge for maintaining fire equipment in 2002/3 was £422, in 2003/4 £562.25 (being a payment for thirteen months) and in 2004/5 the estimated sum is £424.

Evidence and Submissions of the Applicants

36. The Applicants challenged the reasonableness of the charges for the maintenance of fire equipment in view of the increases each year. In 2000/1 the cost had been £85.77. The Applicants submitted a quotation from Fire Protection Services dated 30th June 2004 which gave a quotation of £80 plus VAT and a cost of any remedial works and replacement parts. The Applicants were not satisfied that the Respondents had properly tendered this work. The Applicants' evidence was that the four inspections per year which were charged for did not take place and when the fire equipment in their flats was inspected it was a very cursory inspection which took a very short time.

Evidence and Submissions of the Respondents

37. Mr Hazard was not present at the reconvened hearing on 7th October 2004 but he submitted an unsigned statement dated 27th September 2004. He explained that the contract was tendered and won by Manchester Fire Group, now called Allied Protection Limited, to start on 15th January 2001 for three years with an extension of a further two years subject to a quality service being provided. This extension was given at the contract meeting in October 2003. He explained that Fire Protection Services did tender for the works in 2001 but they were not the cheapest and so the contract was awarded to Allied Protection Limited. He explained that the Respondents had a fully comprehensive cover for all its systems which resulted in a better service and this was a comprehensive contract so that charges for repairs were controlled.

Decision

38. The contract was tendered in 2001 and the Respondents entered into a fixed contract with an allowance for inflation. Safety is of paramount importance for the Respondents and the Tribunal acknowledges this is a specialist area of work. The Applicants did not give any evidence about maintenance of the fire equipment in the

common parts and the Tribunal concluded that the Applicants were satisfied with this. The Applicants did not provide an expert assessment of the needs of the building in respect of fire maintenance equipment. On the basis of the evidence before us the Tribunal was satisfied that the service charges for the maintenance of fire equipment for the building were reasonable.

Day-to-day Repairs

39. The sums in dispute were:

2002/3	-	£1,326.49 (house)
2003/4	-	£508.07 (house) and £1,051.28 (estate)
2004/5	-	Estimate £2,000 (estate and house)

Evidence and Submissions of the Applicants

40. The sum of £1,326.49 in 2002/3 comprises four invoices from Burfield Construction Limited. Each invoice itemises the work carried out and the time spent by the contractor. The Applicants submitted that the time taken was excessive, that there was some duplication of work and that some of the work carried out was unsatisfactory.

41. In 2003/4 the sum of £508.07 comprises two invoices from R.E. Services, £355.32 on 8th May 2003 (gutters) and £152.75 on 16th June 2003 (drains). The Applicants submitted that the first invoice was excessive because the gutters had already been cleaned in September 2002 and the cost of hiring the ladder was too high. They offered £134.78. They submitted that in relation to the second invoice the primary liability lay with the NHBC. The sum of £1,051.28 was made up of four invoices from R.E. Services and one invoice from B.J. Landscape Service Limited (£7.50). The invoices from R.E. Services were for renewing fireproof slates, repairing the gates, supplying and fitting private parking signs, heating and electrical works. The Applicants argued that the charge was excessive, some of the work was not carried out and that some of the work should have been covered in the cyclical repairs. Ms Brough also asked for reimbursement of the sum of £176.25 which she had to pay to Drainrod when the drains blocked in June 2003. The total amount offered by the Applicants for 2003/4 repairs was £212.78 plus £176.25 already paid to Drainrod if not recovered from NHBC or the insurance. The invoice for £7.50 was not disputed.

42. No evidence or submissions were made in relation to the budget figure of £2,000 for 2004/5.

Evidence and Submissions of the Respondents

43. Mr Dawson submitted that all the works had been carried out because they were necessary in order to comply with the landlord's obligations under the lease, they had been carried out at a reasonable cost and to a reasonable standard. Where necessary the works had been competitively tendered. He conceded that the work had not been done to the gate and that £278.80 plus VAT would be credited to the service charge account. He had only just been made aware of the allegation that no timer for the light at the entrance of the building had been provided and he said that he would investigate this.

Decision

44. **2002/3**: The Tribunal decided that the costs incurred by the landlord were reasonable. The invoices had been supplied. The landlord had an obligation under the lease to carry out the repairs and their decision to carry out those repairs is reasonable.

2003/4: The dispute about recovery of the costs from NHBC is not within the Tribunal's jurisdiction. Again the Tribunal accepts that the landlord carried out repairs for which it was liable under the leases. The Tribunal's view is that the repairs to the roof slates should have been carried out as part of the cyclical works but as no scaffolding was erected this was not possible. However the Tribunal has already made a deduction to reflect this in its decision in relation to the major works. On balance the Tribunal decided that the charges for repairs were reasonable taking into account that the charge for the gate had been conceded.

2004/5: The Tribunal made no decision in respect of budget costs for repairs as no evidence or submissions were put forward by either party.

Management Fee

45. The sums in dispute were:

2002/3	-	£1,513.26
2003/4	-	£1,557.00
2004/5	-	£1,570.50

Evidence and Submissions of the Applicants

46. The Applicants submitted that the management fee should be reduced to £900 per annum (being £100 per flat) for each of the years in question. Ms Brough, Ms McEvoy and Ms Wright gave evidence. Ms McEvoy said there had been a water leak from the roof into her flat since 1998 and that despite numerous complaints to the landlord and contractors being called out, the situation continued. Ms Wright said that although a recognised association of tenants had been formed there was still a lack of communication from the landlord. Complaints had been made and they had received no response from the Stage 1 and 2 complaint procedures and when they had reached Stage 3 they had been told the complaints procedure had been changed. Ms Wright referred to a letter from Ms Nath dated 30th April 2004 which left the Applicants feeling angry and frustrated because they had not been given any answers to their concerns. She accepted that Ms De Burgh was very pleasant and polite but she said she felt frustrated because no progress was being made in respect of the lessees' complaints. Ms Brough said that she was dissatisfied at the lack of response to complaints she had made about water trickling into the well in front of the bay window in her flat, that numerous requests had been made for the trees to be pruned and that she had become scared to ask for repairs to be carried out because money was being spent on repairs being carried out time and again unsatisfactorily.

Evidence and Submissions of the Respondents

47. Emma De Burgh the leasehold management officer since March 2004 gave evidence. She said she took over the management of Trafalgar House in mid May and could

only give direct evidence from that date. She explained that she managed 550 units and said that she invested a lot of time and effort in trying to address the issues at Trafalgar House. She explained that if consultation took place then matters would take longer to resolve but she hoped that the lines of communication were open now. She explained that she currently was visiting Trafalgar House every month although every six weeks was the requirement. Mr Dawson said that the landlord was a non-profit making organisation. Trafalgar House was a refurbished property and sometimes properties of this type required a higher level of management than new build. The landlord had an obligation to maintain the property, all contracts went out to tender and there was a real willingness on the part of the landlord to work with the tenants. He explained that the landlord charged a flat rate fee for management. The sum was calculated by adding up all the costs and then dividing them by the total number of units managed by the landlord. He explained there was a voluntary group of twenty registered social landlords in London and that they had worked out the average benchmark for management was £165 per unit. In this case the figure was £175 which he thought was reasonable taking into account this was a refurbished property.

Decision

48. The Tribunal looked at whether the management fee represented value for money and was reasonable. The Tribunal accepted the manner of the calculation, and that a refurbished building required a higher level of management. In those circumstances £175 per unit per annum was reasonable but it was at the high end of the scale. The Tribunal had heard a lot of evidence about the poor level of service over the last two years and the frustration of the lessees was evident. However the lessees did accept that there had been an improvement since Ms De Burgh became responsible for management of the property. The Tribunal concluded that the level of service in 2002/3 and 2003/4 was not as good as it might have been and decided that there should be a 20% reduction of the management fee in each of those years. However Ms De Burgh impressed the Tribunal and the Tribunal was satisfied that the level of service in 2004/5 had already improved and that in those circumstances the estimate of £1,570 for 2004/5 was reasonable.

SUMMARY OF TRIBUNAL'S DECISION IN RESPECT OF APPLICATION UNDER SECTION 27A OF THE ACT

49.	Cost of Major Works 2003/4	-	£8,015 plus VAT less any sum recovered by the Respondents in respect of a penalty and/or damages.
	Fees of Madlin and Maddison Chartered Surveyors	-	9% of the final figure of the cost of major works plus VAT.
	Landlord's Management Charge for Major Works	-	6% of the final figure of the cost of major works.
	Buildings Insurance	-	£ as claimed by landlord.

Cleaning and Gardening	-	£ as claimed by landlord.
Maintenance of Fire Equipment	-	£ as claimed by landlord.
Day-to-day Repairs (Taking into account the landlord's concession in respect of the repair to the gate of £278.80 + VAT)	-	£ as claimed by landlord.
Management Fee	-	2002/3 - £1,210.60
	-	2003/4 - £1,245.60
	-	2004/5 - £1,570.50

APPLICATION UNDER SECTION 20C OF THE ACT

50. Mr Dawson confirmed that the landlord would not include all or any of the costs incurred or to be incurred by the landlord in connection with the proceedings before the Tribunal as relevant costs to be taken into account in determining the amount of any service charge payable by the lessees at Trafalgar House. In those circumstances there was no need for the Tribunal to make a decision in respect of the application.

APPLICATION UNDER SECTION 31B OF THE ACT

51. The Applicants asked the Tribunal to make an order requiring the landlord to reimburse to the Applicants the hearing fee of £150. Mr Dawson on behalf of the Respondents submitted to the Tribunal that the landlord had spent a considerable amount of time dealing with this application but would leave the decision to the Tribunal.

Decision

52. The Tribunal was satisfied that this was not a frivolous application and was very much a last resort. The Tribunal was satisfied that the Applicants had tried to use other routes including the landlord's complaints procedure but had been unable to obtain a satisfactory response. The Applicants had gone to considerable trouble to prepare the documentation for the Tribunal and although they had not been wholly successful the Tribunal had found for the Applicants on a significant number of the issues raised in their application. Whilst the Tribunal acknowledged that the landlord had made every effort to assist the Tribunal and had thoroughly prepared its case, on balance the Tribunal decided that the landlord should reimburse to the Applicants the hearing fee of £150.

.....Jane Dowell.....

Jane Dowell
Chairman

Dated the 12 day of November 2004