LON/00AN/LAM/2005/0003

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTIONS 27A & 20C OF
THE LANDLORD AND TENANT ACT 1985, AS AMENDED.
SECTION 24 OF THE LANDLORD AND TENANT ACT 1987

Address	58 & 116 West Kensington Court, Edith Villas, London W14 9AA
Applicants	Ms A Petropoulas Mr C V De Chantilly
Respondents	West Kensington Court Ltd
The Tribunal	Mr I Mohabir LLB (Hons) Mr C Kane FRICS Mrs S E Baum JP
Hearing:	18th – 22nd July 2005
Date of Decision	3rd October 2005

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AN/LAM/2005/0003

IN THE MATTER OF 58 & 116 WEST KENSINGTON COURT, CROMWELL ROAD, EDITH VILLAS AND NORTH END ROAD, LONDON, W14

BETWEEN:

(1) ANNA PETROPOULOS
(2) CLAUDE VAULBERT de CHANTILLY

Applicants

-and-

WEST KENSINGTON COURT LIMITED

Respondent

THE TRIBUNAL'S DECISION

Background

1. The page references in bold in this Decision are, where appropriate, to the pages contained in the Applicants bundle of documents **[AB]** or the Respondent's bundle of documents **[RB]**.

2. This is an application made by the Applicants pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of their liability to pay and the reasonableness of service charges incurred during the service charge years between 1997-2005. The disputed service charge costs for each of the service charge years is considered below. The Applicants also made a

further application under s.20C of the Act to disallow in whole or in part the Respondent's entitlement to any costs incurred in these proceedings.

3. At the hearing, the Tribunal explained to the Applicants that many of the complaints made by them concerned alleged breaches of covenants by the Respondent and that the Tribunal had no jurisdiction to consider these matters.

4. The Applicants are, respectively, the leaseholders of Flats 58 and 116 in the subject property. The First Applicant occupies her premises by virtue of an underlease dated 23 March 1981 granted by Metropolitan Property Holdings Limited to Catherine Ivy Lambert for a term of 99 years commencing from 24 June 1978 **[RB1/138]**. The First Applicant became the registered proprietor on 4 January 1994.

5. The Second Applicant occupies his premises by virtue of a lease dated 2 September 1997 granted by the Respondent for a term of 999 years commencing from 24 June 1997 **[RB1/171]** on substantially the same terms as the First Applicant's underlease. On 11 July 1997 the Respondent acquired the freehold interest in the property and, upon surrender of their existing 99 year underleases, the majority of the lessees were granted 999 year leases, of which the Second Applicant's lease was one. One of the terms of the 999 year lease was that the lessee would also become a shareholder of the Respondent company, who comprise the Board of Directors.

6. By clause 2(2)(a) of her underlease **[RB1/141]**, the First Applicant covenanted to:

"...pay to the Lessor without any deduction by way of an additional sum (payable and recoverable as rent) in respect of every financial year of the Lessor an annual service charge (hereinafter called "the Service Charge") of an amount determined as hereinafter provided and payable at the times and in the manner hereinafter mentioned."

7. Clause 2(2)(b) defines the lessor's financial year as being from 1 April in each year to 31 March of the next year and also gives the lessor a discretion to change the annual service charge period. Clause 2(2)(c)(i) provides that the First Applicant's service charge liability is 0.63% of the aggregate costs incurred by the lessor in any financial year pursuant to the Fourth Schedule **[RB1/164]**. The Second Applicant's service charge liability arises in substantially in the same way **[RB1/174]**, save that his contribution is placed at 0.56% of the aggregate costs are those costs incurred by the Respondent pursuant to the Third Schedule **RB1/201]**.

Inspection

8. The Tribunal inspected the subject property on 18 July 2005. I is a 1930s purpose built seven storey block of flats comprised of 157 one and two bedroom flats. The windows to a number of flats had been replaced with uPVC double glazing. The remaining flats retained the original Crittal windows. The ground floor flats had their own front doors and front gardens. The communal gardens were located in the central courtyard of the block.

Several commercial premises were located on the ground floor of the West Cromwell Road side of the block.

Decision

9. The hearing also took place on 18 July 2005. The First Applicant appeared in person and was assisted by Ms Yin and Ms Khimich. The First Applicant was also the authorised representative of the Second Applicant, who did not appear. The Respondent was represented by Miss Taskis of Counsel.

10. At the commencement of the hearing, the Tribunal found itself confronted by 8 bundles of documents filed by the parties. Approximately half of the bundles had been filed by the Applicants on the morning of the hearing. The Tribunal told the parties that there had been two earlier pre-trial review hearings in this matter in an attempt to identify the issues and to give the appropriate directions. Directions 9 and 10 issued on 2 March 2005 dealt with the preparation and filing of an agreed bundle of documents. The number of bundles now faced by the Tribunal appeared to be disproportionate to the issues and quantum involved. In the circumstances, the Tribunal took the view that it would case manage the hearing from the outset.

11. The Tribunal told the First Applicant that Direction 5 made on 2 March expressly stated that the Applicant had to file and serve a statement of case setting out what service charge costs were being disputed and the reasons why. The statement of case filed and served pursuant to this direction was prepared by a Mr Walton **[RB1/369]**, a Consultant Auditor, having carried out an

inspection of the relevant accounts and records. Direction 5 also expressly stated that no issues not raised in this statement of case may be raised at a later stage without the permission of the Tribunal. The Tribunal made it clear that it intended to restrict the Applicants to their pleaded case, as set out by Mr Walton, and that it did not give permission to raise any other issues at the hearing. The Tribunal also indicated to the parties that, as the Applicants were unrepresented, it intended to deal with this matter by way of submissions and by reference to the available documentary evidence.

Year ending 31 March 1997

(a) External Concrete Works - £15,234

12. The Applicants disputed these costs on the basis that no s.20 notice had been served by the Respondent and that, in any event, the works had not been carried out. The Applicants challenge was not on the basis that the costs were unreasonable, only as to recoverability.

13. At paragraph 5 of his witness statement, Mr Robinson who is the Property Manager employed by the present managing agents Canbury Management, stated that the concrete works did not require a s.20 notice as they were carried out on a piecemeal basis. The cost of the works, therefore, did not exceed the financial threshold that required a s.20 notice to be served on the leaseholders.

14. Miss Taskis stated that the relevant records of the concrete works in the possession of the managing agents at the time, Parkgate Aspen, had been destroyed. No invoices for the work carried out were available. Miss Taskis

argued that Parkgate Aspen were in the habit of serving s.20 notices when required. An example of this was a s.20 notice served on the leaseholders on 13 February 1997 concerning the removal of asbestos lagging of pipes **[RB2/680]**.

15. On balance, the Tribunal accepted the evidence of Mr Robinson that the concrete works had been carried out on a piecemeal basis thereby not requiring a s.20 notice to be served for any of the work. His witness statement was supported by a statement of truth. The Applicants' assertion that a s.20 notice was required and not served was completely unsupported by any evidence. There was also no evidence to suggest that the work had not been carried out by the Respondent. Accordingly, the Tribunal found that the works had reasonably been incurred and that the total cost was reasonable.

(b) Energy Management Costs - £34,278 & Insurance Costs - £18,108

16. The Applicants did not contend that these costs were unreasonable. They were simply seeking an explanation as to why the commercial units contributed only £382 and £833 respectively towards these costs. In reply, they stated that their breakdown demonstrated that the contribution paid by the commercial tenants had in fact been reducing from 10.7% to 6.25% until 24 December 2000 **[AB2/394]**. It was submitted that the commercial premises was a greater insurance risk and should pay a higher contribution towards the premium. It was further submitted that the Respondent wanted to keep the contributions paid by the commercial tenants low because it had wanted to renew the leases at the time.

17. The explanation given by Miss Taskis was that there was limited provision in the commercial leases to recover these costs. The proportion of the costs that can be recovered is at the discretion of the landlord's surveyor: see clause 3(3) of the commercial lease **[RB3/729]**. The same clause applied to all of the commercial units because they had been let on one lease. The single letting point taken by the Applicants, therefore, did not make any sense. Apparently the contribution paid by the commercial units has always been calculated using the same formula since 1998 **[RB2/531]**. The arguments were the same in relation to the insurance costs. Miss Taskis submitted that the Respondent is a commercial company and would have sought to recover commercial amounts from leaseholders of the commercial units.

18. The Applicants only sought to challenge the contribution paid by the tenants of the commercial units of 1.11% and 7.5% respectively of the total expenditure for energy and insurance costs. The contractual position under the commercial leases is that the landlord's surveyor has an absolute discretion to assess the contribution paid by the commercial tenants. In theory, that contribution could be determined as nil. The Applicants contended that the contribution paid by the commercial tenants was unreasonably low because the Respondent wanted to let the commercial units and charge higher rents. There was a direct financial benefit to the Respondent in doing so. However, the Applicants adduced no evidence to support this assertion or that the exercise of discretion by the landlord's surveyor was unreasonable. The evidential burden was on the Applicants to do so.

19. The Tribunal had been told by Miss Taskis that the calculation of the contribution paid by the commercial tenants had remained the same since 1998 and had not been challenged by any of the lessees as being unreasonable until now. The residential leases had been granted after the commercial leases. It can be inferred that all of the residential tenants purchased their leasehold interest, after the proper pre-contract enquiries had been made, with full knowledge of what their service charge liability would be, including the contribution that was recoverable from the commercial premises. The Tribunal bore in mind that it was effectively dealing with a Respondent company, where most of the tenants were also in fact shareholders. If commercial amounts for energy and insurance costs were not recovered from the commercial tenants, there was potentially a direct financial penalty to most of the leaseholders. The Tribunal, therefore, found that the contributions paid by the lessees of the commercial units to be reasonable.

(c) T V Aerial - £3,182 & Professional Fees - £8,176

20. The Applicants simply submitted that these costs appeared to be unreasonably high.

21. Miss Taskis stated that there was no documentary evidence to prove this expenditure because it formed part of the records of Parkgate Aspen, which had been destroyed.

22. The Tribunal took the view that, in the absence of any documentary or other evidence regarding this service charge expenditure, it was not open to it to make a finding that the costs were unreasonable otherwise it would be an entirely arbitrary decision. The amounts were, therefore, allowed as reasonable.

(d) Maintenance of Common Parts - £22,955

23. The Applicants simply asserted that there had been no maintenance of redecoration of the common parts of the building for several years.

24. Miss Taskis submitted that the expenditure was supported by audited accounts **[RB2/560],** where a breakdown of these costs had been provided, and should be allowed as reasonable.

25. Again, in the Tribunal's view, the Applicants had adduced no evidence that these costs were unreasonable. They argued that the property had not been redecorated for several years, but it appears from the breakdown of the costs that they have not been charged a significant amount for redecoration, which is placed at £916. Having regard to the size of the property, the cost of completely redecorating the common parts would have cost significantly more. The actual amount charged to the lessees was consistent with minor redecoration having been carried out. As to the total amount of maintenance costs for the common parts, the Tribunal found that the final cost of £22,955 did not deviate sufficiently from the estimated figure of £20,000 for it to conclude that the former was unreasonable.

(e) Electricity - £11,117

26. This was conceded by the Applicants as reasonable.

Year Ending 31 March 1998

(a) Concrete works - £13,914

27. The arguments relied on by both parties were the same as for the preceding year above. The Tribunal allowed these costs as reasonable for the same reasons set out above.

(b) Replacement Windows - £24,273

28. These costs were incurred during the tenure of the previous managing agents, Parkgate Aspen. The Applicants relied on the apparent failure of Parkgate Aspen to serve the relevant s.20 notice or notices in relation to these costs and put the Respondent to strict proof on this point. It was not argued that the work had not been reasonably incurred or that the cost was unreasonable.

29. Miss Taskis relied on the evidence of Mr Kennedy, the Company Secretary of the Respondent, on this point **[RB2/415]]**. He stated in his witness statement that individual lessees were allowed to replace their windows on an individual basis because the Respondent did not have sufficient finds to finance the replacement of all of the windows in the block. Apparently, the windows were in a state of disrepair. It was agreed that provided the work was carried out by a contractor approved by the Board, the cost of the windows would be reimbursed to each lessee. The individual cost of replacement was usually

less than £3,000 and when the total cost was expended over 7-8 years, it meant that no s.20 notice was required to be served by the Respondent **[RB3/748-749]**. Indeed, the Second Applicant's windows were replaced in October 1995 on this basis.

30. Miss Taskis said that the Respondent's repairing obligation to maintain the building in 99 year leases is imposed by clause 5(1)(a) **[RB1/155]**. Although the 99 year leases were not express about this matter, Miss Taskis submitted that, by extension, the Respondent obligation to maintain the building not only applied to the window frames but also the glass within. It seems that this position was remedied in the 999 year leases **[RB1/191]**.

31. The Tribunal accepted the submission made by Miss Taskis that the Respondent's repairing obligation to maintain the building under the 99 year leases not only included the window frames but, by extension, the glass within the frames. The Applicants did not contend otherwise. In fact, complained that her windows were in disrepair and need replacing also. The Respondent was, therefore, entitled to recover any such amounts expended through the service charge account.

32. The fact that individual lessees commissioned the replacement of their own windows is irrelevant. They were entitled to seek an indemnity from the Respondent for the cost of doing so. Each lessee was in effect acting as the Respondent's agent in the matter. The cost of replacing the windows of each lessee had to be regarded as an individual contract of works and would only be

subject to the consultation requirements imposed by s.20 of the Act if, in this instance, the financial threshold of £7,850 (£50 x 157 flats) was breached by any of the contracts. It is plain that this was not the case **[RB3/748]**. The average cost per lessee to replace windows was £2,000. Accordingly, the Tribunal found that there was no requirement on the Respondent to serve a s.20 notice or notices for the replacement of windows generally. It follows that, as the Applicants accepted that the windows were in disrepair and did not contend that the cost was unreasonable, the Tribunal allowed the sum of 24,273 as being reasonable.

(c) Energy Management Costs - £37,810 & Insurance Costs - £17,552

33. The arguments relied on by both parties were the same as for the preceding year above. The Tribunal allowed these costs as reasonable for the same reasons set out above.

(d) Water Ingress - £1,633 & Plumbing - £3,267

34. The Applicants submitted that these costs appeared to relate to individual flats and should not be recoverable through the service charge account.

35. Miss Taskis said that there were no invoices for this expenditure as they had been destroyed as a result of a flood whilst in the possession of Parkgate Aspen. Nevertheless, it was supported by the evidence of Mr Robinson that the costs related to roof light repairs. Reference was also made to this expenditure in the audited accounts and there was no reason to look behind those accounts.

36. The only evidence before the Tribunal in relation to these costs was that of Mr Robinson. The Tribunal accepted his evidence. On inspection, it saw historic water staining to the carpets in some of the communal area on the top floor of the property. The Tribunal found that these costs appeared to relate to works carried out to the common parts of the building and were recoverable through the service charge account. The Tribunal also had regard to the fact that these costs had been the subject of an audit by a firm of accountants and it can be inferred that these costs would not have been allocated to the service charge account if they had been the responsibility of an individual lessee. The Tribunal, therefore, allowed these costs as reasonable.

Year Ending 25 December 1998

37. The Respondent's annual service charge period was altered during this year so as to commence on 1 January until 31 December of each year. The Respondent is granted that discretion by the relevant leases, as set out in paragraph 7 above.

(a) Replacement Windows - £19,313

38. The arguments relied on by both parties were the same as for the preceding year above. The Tribunal allowed these costs as reasonable for the same reasons set out above.

(b) Energy Management Costs - £30,922 & Insurance Costs - £10,913

39. The arguments relied on by both parties were the same as for the preceding year above. The Tribunal allowed these costs as reasonable for the same reasons set out above.

(c) Fire Protection - £1,114

40. These costs were challenged by the Applicants on the basis that they appeared to be excessive. Mr Robinson, in evidence, confirmed that there had been fire protection throughout the building at the time. Miss Taskis offered by way of explanation that fire regulations might have resulted in the increase of this expenditure for this year.

41. The cost of this item of expenditure had effectively doubled from the preceding year. There was no evidence that the reason for the increase was as a result of fire regulations. There was no direct evidence before the Tribunal on this matter. However, it had regard to the fact that certified accounts had been prepared by accountants and the inference to be drawn was that the expenditure had been incurred. In 1996 the cost of this item of expenditure was higher at £1,477 **[RB2/561]** and in this regard the cost in this year appeared to be reasonable and allowed by the Tribunal.

(d) Cleaning Materials - £1,492

42. Ms Yin, for the Applicants, was prepared to concede that these costs were reasonable on the basis that they had not been duplicated elsewhere in the service charge account.

43. Upon perusing the relevant statements and accounts, the Tribunal could find no evidence that these costs had been duplicated and, therefore, allowed them as reasonable.

Year Ending 25 December 1999

(a) Lightning Conductor Repairs - £7,943

44. The only challenge made by the Applicants was on the basis that no s.20 notice had been served by the Respondent and therefore that section limited the recoverability of these costs.

45. Miss Taskis argued that the actual expenditure for this service charge item was £7,708: see p.160 of the Appendix to Mr Robinson's witness statement. As such it was below the financial limit of £7,850 applicable in this instance. The remaining service charge cost of £235 related to the annual inspection cost performed by J W Gray: see p.130 of the Appendix to Mr Robinson's witness statement.

46. On the basis that the Respondent had evidentially met the point taken by the Applicants, the Tribunal allowed these costs as being reasonable and recoverable by the Respondent.

(b) Energy Management Cost - £22,796 & Insurance Costs - £16,092

47. The arguments relied on by both parties were the same as for the preceding year above. The Tribunal allowed these costs as reasonable for the same reasons set out above.

(c) Security Keys - £2,636

48. It was argued by the Applicants that the porters had sold these keys to the tenants of the block at the time and that no proper bookkeeping had taken place regarding this income **[AB3/672]**. Accordingly, these costs should not have been allocated to the service charge account.

49. Miss Taskis argued that the description used by Mr Walton in relation to these costs was wrong. In the service charge account these costs actually related to additional security equipment **[RB2/551]**. Some of the invoices relating to the additional security work carried out appear at p.162 onwards in the Appendix to Mr Robinson's statement. A summary of the expenditure appears at p. 167. It was accepted by the Respondent that there was a shortfall in the revenue collected for the sale of the security keys by the porters and the then managing agents, Boyle & Co, agreed to make good the shortfall of £185.51: see p.165 of the Appendix to Mr Robinson's witness statement.

50. The only evidence of the income produced from the sale of the security keys and the additional security work carried out in this service charge year is the summary of expenditure that appears at p.167 of the Appendix to Mr

Robinson's statement. This totals £2,245.46 and this is the amount the Tribunal allowed as being a reasonable amount for these costs.

(d) Cleaning - £1,607

51. The Applicants contended that the cleaning that had been carried out had not been done properly and therefore the amount claimed by the Respondent was excessive and unreasonable. If the cleaning had been done properly, the amount sought would have been reasonable. The Applicants offered half of the amount claimed.

52. Miss Taskis stated that the increased cost of cleaning for this year was due in part to the cost of £898.17 for palladin hire from the Council: see p.161 of the Appendix to Mr Robinson's witness statement. The actual cost for cleaning was approximately £700, which was significantly less than the preceding year. No complaints had been received from either the Applicants or any other lessee about the standard of cleaning.

53. The Applicants did not challenge the cost for the hire of palladins from the Council. The only challenge made was in respect of the standard of cleaning of the common parts of the building. The actual cost of cleaning for this year was £709, less than half the preceding year. It follows, that the Tribunal having already found that the cost of cleaning alone in the preceding year was reasonable, also found the cleaning costs this year to be reasonable.

(e) Asbestos Works - £6,149

54. The Applicants submitted that, as no s.20 notice had been served by the Respondent in relation to these works, the amount recoverable was limited by the effect of s.20.

55. By way of reply, Miss Taskis said that proof of this expenditure was evidenced by the invoices to be found at pp.120, 121 and 156 of the Appendix to Mr Robinson's witness statement. She submitted that a s.20 notice was not required because the cost of the work was below the financial threshold of £7,850 imposed by s.20.

56. The Applicants did not challenge either the necessity for the work carried out or the cost. The Tribunal accepted the submission made by Miss Taskis that, as a matter of law, no s.20 notice was required to be served by the Respondent in relation to this work and allowed the sum claimed as reasonable.

(f) General Repairs - £13,178

57. The Applicants simply put the Respondent to proof on this matter as to the work and the cost.

58. Miss Taskis referred to p.120 of the Appendix to Mr Robinson's witness statement as evidence of the general maintenance carried out and submitted that the costs had reasonably been incurred.

59. The Respondent evidentially met the point taken by the Applicants and, therefore, the Tribunal allowed these costs as being reasonable.

(g) Decorative Repairs to Porters Facilities - £6,537

60. The Applicants took the same point here as at paragraph 57 above and claimed that the building had not been painted for 21 years. In reply, the Applicants argued that piecemeal decoration was carried out to avoid consulting the lessees, as required by s.20. However, it was accepted that if the expenditure was documented, it would be accepted as reasonable.

61. Miss Taskis, again, referred to pp.120-121 of the Appendix to Mr Robinson's witness statement as evidence of the expenditure.

62. The Tribunal allowed this amount as reasonable for the same reasons set out at paragraph 59 above.

Year ending 25 December 2000

(a) Refurbishment of Water Tanks - £33,502

63. This sum was conceded by the Applicants at the hearing as being reasonable.

(b) Energy Management Cost - £21,477 & Insurance Costs - £19,035

64. The arguments relied on by both parties were the same as for the preceding year above. The Tribunal allowed these costs as reasonable for the same reasons set out above.

(c) Gardening - £1,470

65. The Applicants argued that these costs were unreasonable because there had not been any improvement in the gardens before late 2002. The ground floor tenants maintained the gardens to the front of the property. The actual garden maintained was not very large and so the costs should have decreased. It was submitted that the amount being charged by the previous gardener, Mr English, was reasonable.

66. Miss Taskis said that a new gardener, Mr Flood, had been employed in place of Mr English. There had been an upgrade in the level of gardening carried out and this had led to the increased cost for this year.

67. The Tribunal accepted the explanation given by Miss Taskis for the increased gardening cost for this year. It seems that part of the increase was due to the cost of advertising for a new gardener. The Tribunal considered that the increase in cost was modest having regard to the preceding year's costs of £1,075. The actual liability of each lessee for these costs was £10 per year or £0.18 per week and the Tribunal considered this to be reasonable. The total amount claimed of £1,470 was therefore allowed in full.

(d) Window Cleaning to Common Parts - £1,173

68. The Applicants argued that there had been no increase in the amount of window cleaning carried out. One cleaner attended once a month and cleaned the glass in the common parts. This process took no more than 2-3 hours per visit. It was submitted that the cost was unreasonable.

69. Miss Taskis submitted that the increase cost for this year was not unreasonable having regard to the size of the block. Apparently, the previous contractor had gone out of business and the new contractor may have charged slightly more.

70. The actual cost per lessee for this item of expenditure was £0.62 per month. The cleaning carried out concerned the glass windows to be found in the common parts to the building. On inspection, the Tribunal found the common parts to be extensive. The Applicants made no complaint about the standard of the cleaning carried out. The only complaint made was that the work could have been carried out more cheaply, but they adduced no evidence of this. The Tribunal took the view that the preceding year's costs appeared to be low for a property of this size and it follows that the modest increase in costs for this year was reasonable and allowed in full.

(e) Legal & Professional Fees - £3,734

71. These costs were only challenged by the Applicants as to whether they should have been allocated to the service charge account. The bills appear to relate to work carried out on behalf of the Residents Association: see p. 340 of the Appendix to Mr Robinson's witness statement.

72. Miss Taskis said these costs had been paid at the time to the firm of Guy Clapham & Co, solicitors, and related solely to work carried out by that firm regarding the administration of the block.

73. Having regard to the documentary evidence and the narrative contained within the bills of cost (see pp.340-355 of the Appendix to Mr Robinson's witness statement), the Tribunal was satisfied that the work carried out by Guy Clapham & Co did in fact relate to service charge matter generally and were, therefore, recoverable through the service charge account. As the Applicants did not contend that the amount claimed was unreasonable, it was allowed as reasonable.

(f) Survey Fees - £5,493

74. The Applicants submitted that if the Respondent could prove that the work had been carried out, the amount claimed was reasonable. The works recommended in the surveys never appear to be carried out.

75. Miss Taskis said that evidence of the expenditure could be found at pp.110-111 of the Appendix to Mr Bryce Robinson's witness statement. The surveys carried out related to the concrete bands around the property.

76. The Tribunal considered that the survey costs were large but this had to be balanced by the fact that the subject property is extensive. The survey carried out was a safety survey concerning the concrete bands around the building and was investigative in nature. The survey would not have necessarily resulted in work being carried out by the Respondent. The Applicants did not complain about the cost being unreasonable *per se*. They only argued that the cost was unreasonable because any recommended work was not carried out, but this does not follow. On the face of the documents available, the survey appeared

to have solely investigative and would not have necessarily resulted in any work being carried out. The purpose of the survey was to enable the Respondent to form a view as to whether any works were in fact required to the concrete bands around the property. Accordingly the Tribunal allowed this amount as reasonable.

Year Ending 25 December 2001

(a) Boiler Repairs - £8,809, Boiler Installation - £21,150, Temporary Boilers - £17,438 & Insurance Claim - £11,949

77. All of these costs can be taken together as they are all related and derive from the same factual background.

78. The point taken by the Applicants was that the Respondent does not appear to have served the appropriate s.20 notice or notices in relation to these costs and recovery of the costs was therefore limited. The Applicants also put the Respondent to proof as to whether the appropriate level of insurance cover was in place, which they said, went to the reasonableness of the lessees' eventual liability for these costs. It is important to note here that the Applicants did not contend that the necessity and extent of the works were unreasonably incurred.

79. Miss Taskis explained that, at the time, the property had two central heating boilers and one hot water boiler. On 15 November 2001, the hot water boiler failed because it had effectively come to the end of it's useful life. It was recommended by the heating engineer that the boiler be replaced: see p.303 of

the Appendix to Mr Robinson's witness statement. On 19 November 2001, two temporary boilers were installed at an intial cost of £3,059.57: see BR/321 & 332. The temporary boilers remained until early 2002. In the interim, the ancillary costs associated with the installation and maintenance of the temporary boilers totalled some £17,438 **[RB1/274]**. It seems that during this period repairs were carried out to either the central heating boilers and/or the temporary hot water boilers at a total cost of £8,809: see BR/278, 319, 321 & 332. Miss Taskis submitted that the total cost was comprised of several smaller amounts, all of which fell below the s.20 financial threshold. Therefore, no s.20 notice was required to be served by the Respondent.

80. The Tribunal accepted the submission made by Miss Taskis because, as a matter of law, she was correct. There was no requirement under s.20 of the Act for the Respondent to consult the lessees in relation to the cost of repairs or the cost of the temporary boilers. Each of the individual costs incurred had to be considered when deciding whether the Respondent was required by s.20 to consult the lessees. As each item of expenditure did not exceed the financial threshold of £7,850 applicable in this instance, there was no obligation on the Respondent to consult the lessees before incurring those costs. The approach taken by the Applicants to aggregate those costs was incorrect. Accordingly, the Tribunal allowed the amounts for boiler repairs and temporary boilers of £8,809 and £17,438 to be reasonable.

81. Turning to the cost of £21,150 for the cost of replacing one of the central heating boilers, it appears that on 14 January 2002, the then managing agents,

Boyle & Co, wrote to the lessees advising them, *inter alia*, of the need to also replace one of the failing central heating boilers **RB2/685]**. This course of action was advised by the heating engineer consultants retained, Oscar Faber. This work was carried out in January 2002 at a cost of £21,150: see BR/275. Apparently, repair of the central heating boiler was not appropriate because the parts had become obsolete.

82. It was accepted by Miss Taskis that a s.20 notice was required to be served on the lessees for the cost of replacing the central heating boiler and this was not done by the Respondent. She submitted that, having regard to the fact that it was winter when the work was carried out, the Respondent had to act swiftly and it did so on the advice of its heating engineer consultants. Miss Taskis accepted that the Tribunal did not have jurisdiction to dispense with the consultation requirements in this instance. Nevertheless, she invited the Tribunal to make a finding as to whether or not it would have been minded to dispense with the consultation requirement in the event that it had a discretion to do so.

83. In the absence of a s.20 notice having been served on the lessees for the replacement of one of the central heating boilers, the Respondent is only entitled to recover the sum of £7,850 from the total cost of £21,150 by operation of s.20(1) of the Act. The Tribunal has not discretion to dispense with the consultation requirements as only a court has that discretion under s.20(9). However, had the Tribunal been granted the discretion to dispense with the consultation requirements of s.20, it would have done so without any difficulty. In the exercise of that discretion, the Tribunal would have had

(a) Plumbing

90. It was submitted by the Applicants that some of these costs appeared to be wrongly allocated to the service charge account, for example, an item of £139.24 appeared to relate to an individual flat.

91. The invoice produced by Miss Taskis made no reference to these costs relating to an individual flat and the Tribunal dismissed this argument.

(b) Insurance Excess

92. The Applicants argued that it was not entirely clear if the buildings insurance excess of £500 for any claim by an individual lessee should be allocated to the service charge account. Again, the Tribunal dismissed this argument as there was no evidence of any such claim having been made or that the excess in relation to any such claim had been allocated to the service charge account.

(c) Lease Valuations - £705

93. This was conceded by the Applicants as reasonable and payable.

(d) Legal Costs of Sinclair Taylor Martin - £3,259

94. The Applicants simply put the Respondent to proof on these costs.

95. Miss Taskis said that these legal costs concerned work carried out in relation to the management and administration of the property and specifically advice regarding the porters and the dismissal of Boyle & Co as managing agents. Clause 5(5) of the lease required the Respondent to provide porters

[RB1/158]. Paragraph 5, 15 and 16 of the Fourth Schedule allowed the Respondent to recover these costs **[RB1/164 & 166]**. Miss Taskis submitted that these costs were reasonable and properly recoverable through the service charge account. The Tribunal agreed with that submission and allowed these costs in full as being reasonable.

(e) Garages

96. The Applicant submitted that the cost of painting the garages should not have been allocated to the service charge account because some of the garages had been let commercially. When asked to identify the relevant garages by the Tribunal, Ms Petropoulos was unable to identify them.

97. Miss Taskis stated that none of the garages had in fact been let commercially. They had been let to some of the tenants on long 99 year leases. The Respondent had a repairing liability for the garages under the terms of the leases. Indeed, there was no evidence to support the assertion made by Mr Walton about the garages being painted, as there was nothing in the service charge account to this effect.

98. There was no evidence before the Tribunal that the garages had been let commercially or any rent having been collected by the Respondent. The Tribunal therefore dismissed this argument by the Applicants.

(f) Pest Control - £1,298 & 1,484

99. These costs were challenged by the Applicants that they were unable to reconcile to invoices available with the sums claimed in the service charge account. Miss Taskis too the Tribunal to relevant invoices and said that the figure of £1,484 also included the cost of refuse removal **[RB2 534 & 538]**.

100. On the basis that it was common ground that there was a cockroach infestation in the property **[AB1/135] and that** the amounts claimed were not challenged as unreasonable, the Tribunal allowed them in full.

(g) Refuse Removal Costs - £2,081.26 (both years)

101. These costs have already been dealt with at paragraph 98 above by way of explanation. The Applicants raise an accounting query and do not challenge the reasonableness of the costs. The Tribunal, therefore, allowed these costs.

(h) Porters Telephone Bills

102. These costs were not challenged by the Applicants. They simply make a criticism that tighter controls should be put on the porters personal use of the mobile telephones and especially calls made to India. By way of explanation, Mr Kennedy said that many of the lessees lived abroad and it was necessary on occasion to make call to them.

Year Ending 25 December 2004

(a) Electricity - £4,724

103. Miss Taskis said that this was the actual amount being claimed and it was conceded by Ms Petropoulos as being reasonable and payable.

(b) Mario's Security - £984

104. Miss Taskis said that these costs did not deal solely with the provision of keys but locks also **[RB1/326]**. The Tribunal allowed this amount as being reasonable. The discrepancy of £520 raised by Mr Walton was explained by the fact that the service charge amounts were only estimated figures. Mr Walton had simply raised an accounting query and did not challenge the estimated figure itself.

(c) Fire Inspection - £692

105. This was conceded by Ms Petropoulos as being reasonable and payable.

(d) Ward Aerials - £111.63

106. This was conceded by Ms Petropoulos as being reasonable and payable.

(e) Unbloc Costs

107. Of the 6 invoices claimed, it was conceded by Miss Taskis that the invoices dated 30.09.04 and 5.10.04 in the sum of £152.75 and £162.15 were duplicated figures and not payable by the Applicants. The remaining invoices were then conceded by Ms Petropoulos as being reasonable and payable.

(f) Insurance & Fuel Costs

108. It was agreed by Ms Petropoulos that the final draft of the service charge accounts did separate these costs and she conceded that they were reasonable and payable.

(g) Professional/Management Fees

109. The Applicants challenged the total cost of management generally. On the draft accounts provided **[RB1/313]** the year to date figure stated was £42,623 with an estimated total figure of £57,291. It was submitted by Ms Petropoulos that a reasonable amount for the total management/professional costs should be approximately £31,000.

110. Of the total amount of the management/professional fees incurred, a significant amount of those costs (£9,400) was attributable to Mr Kennedy, who acts as the financial manager and company secretary for the Respondent company. Mr Robinson, of Canbury Managements, deals with the day-to day management of the property. Mr Kennedy lives in Belfast. His travelling costs for 2004 were £2,286 **[RB2/486]**. The Tribunal was of the view that his travelling costs should not be allocated to the service charge account. Those costs should form part of the overheads of the Respondent company. It is open to the Respondent to instruct a more local Company Secretary at a lesser cost. There are no compelling reasons why Mr Kennedy should be the Company Secretary. The Tribunal, therefore, disallows Mr Kennedy's travelling costs of £2,286 from the total management/professional costs for this service charge year.

Section 20C & Reimbursement of Fees

111. The Tribunal then considered the application made by the Applicants to disallow in whole or in part any costs incurred by the Respondent in these proceedings and recoverable through the service charge account.

112. Ms Petropoulos submitted that there was no need for the Respondent to employ solicitors and other professionals to deal with this matter. By contrast, the Applicants dealt with this matter on their own and their largest cost was employing Mr Walton to prepare his report. She further submitted that the necessity for a hearing could possibly have been avoided if the Respondent had provided a lot of the requested information that had not been supplied.

113. Miss Taskis submitted that the Tribunal's exercise of the discretion granted by s.20C ought to be exercised sparingly and will to a large extent depend on the outcome of this matter. To deprive the Respondent of it's costs would result in serious financial problems for the remaining lessees. Only two lessees had made this application.

114. Miss Taskis further submitted that the Tribunal ought to have regard to the Applicants conduct in this matter. Their demands for information were not proportionate. They had originally made five applications, two of which were misconceived and two were adjourned. The Applicants did not attempt to specify the issues or narrow them. The Respondent's attempts to do so were

unsuccessful. Instead, the Respondent had to respond to a new case or issues advanced by the Applicants.

115. It is clear that the costs incurred by the Respondent in this matter are significant. The hearing took 3 days and Counsel represented the Respondent. Having regard to the extensive disclosure, documentary evidence and witness statements, the time taken to prepare this case by the Respondent's legal representatives would have been significant.

116. The Tribunal does not grant the Applicants s.20C application. It's reasons for doing so are that, having regard to this Decision, the Respondent has succeeded on the substantive issues. It would be inequitable to deprive the Respondent of it's costs. The Tribunal was mindful of the fact that to do so would financially prejudice in costs the vast majority of the other lessees. The Tribunal agreed with Miss Taskis' submission in this regard. The Respondent is a largely tenant owned company. However, it should be made clear that by not granting this application, the Tribunal does not remove the Applicants right to challenge the Respondent's costs once they have been quantified and they consider them to be unreasonable. It also follows that, the Applicants having not succeeded in this application, are not entitled to have the fees incurred by them in these proceedings reimbursed pursuant to Regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003.

CHAIRMAN..... J. Mahaffey .....

DATE..... 3/10/05 .....