SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/OOML/LSC/2004/0017
Re: 31C Albany Villas, Hove, BN3 2RT, E. Sussex (Athe Premises@)
BETWEEN

Bridgewater Investments Limited
(Athe Applicant/Landlord@)

and

Mr & Mrs T. Allan
(Athe Respondents/Tenants@)

Members of the Tribunal: Mr J.B. Tarling, Solicitor, MCMI (Chairman)
Mr R.A.Wilkey FRICS, FICPD
Ms J. Morris

Hearing: 22nd September 2004

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

1. **The Applications** were as follows:

   (a) By the Applicant/Landlord under Section 27A of the Landlord & Tenant Act 1985 for determination of liability to pay Service Charges for the 8 calendar years 1996,1997, 1998, 1999, 2000, 2001, 2002 and 2003
   (b) By the Respondents/Tenants under Section 20C of the Landlord & Tenant Act 1985 for an order limiting the landlords costs of the proceedings being charged through the Service Charge Account

2. **Inspection**
   The Tribunal inspected the property on 22nd September 2004 in the presence of the tenants Mr & Mrs Allan, Mr Donald Ideh, Counsel for the landlords and Mr R.J. Austin FRICS, from Austin Rees, the landlords Managing Agents. The property is a large semi-detached building in Albany Villas, Hove which is a road leading from Church Road to the Seafront. It had originally been one large house built in about 1850 and had more recently been converted into five self-contained flats. The subject flat was situated at the top of the Building and comprised the whole of the second and third floors. The third floor consisted of one turret room. The subject flat was approached through the common front entrance, through a hallway and then up stairs and landings to reach the front door of the Flat. The main items in dispute concerned the repairs to the exterior of the building and more specifically to the roof. The Flat was empty of furniture and had clearly been the subject of extensive repair work. Some

internal non-structural partitions had been erected and the flat appeared to be undergoing refurbishment. The Tribunal were shown recent repairs to the roof.

3. Hearing

A Hearing took place at Hove Town Hall on 22nd September 2004. The following people attended:

(a) For the Applicant/Landlord Mr Donald Ideh (Counsel) and Mr R.J. Austin FRICS, from Austin Rees, the landlords Managing Agents.

(b) The Respondents/Tenants, Mr & Mrs T. Allan

There were several bundles of correspondence and documents available to the Tribunal and these covered the matters in dispute over the eight years in question. Unfortunately the bundles were not all numbered or paginated in any logical or chronological order and this gave the Tribunal considerable difficulty in finding the appropriate documents as they were needed.

The Tribunal then went through each and every item of Service Charge Expenditure for the eight years in question. The following items were agreed by the parties and needed no further adjudication by the Tribunal:

AGREED ITEMS

The Tenants agreed that their share of all the Service Charge Accounts was in accordance with their Lease, namely 25% of all the Service Charge items for the eight years in question.

a) Year ending 31st December 1996

No final annual Service Charge Account appears to have been produced for this period but there was produced a document entitled "Estimated Demand" dated 24th December 1996 (document numbered 32 in one of the bundles of documents) This listed the following items all of which the Tenants agreed.

Insurance	£533.00
Common Hall Electric	£20.00
Survey fee & Specification	£1,000.00
Emergency & Minor Repairs	£500.00
Accountants Fees	£117.50
Fire Alarm Maintenance	£200.00
Management fees	£600.00
Total	**£2,970.50**

b) Year ending 31st December 1997

The Landlords Accountants produced a final annual Service Charge Account for this year and the tenants agreed the following matters:

Insurance	£548.22
Electric Common Ways	£31.28
Accountancy Fees	£117.50
Management fees	£600.00

The following matters were **not** agreed:

Major Works Notice	£2,350.00

c) Year ending 31st December 1998

The landlords Accountants produced a final annual Service Charge Account for this year and the tenants agreed the following matters:

Insurance	£445.28

Lighting of public ways		£9.94
Management fees		£600.00
Alarm Maintenance		£146.88
Major works:		
Fire precautions:		
Work carried out	£3,711.84	
Management fees	£315.90	
	£4,027.74	
Less Council Grant	£1,121.35	
	£2,906.39	£2,906.39
Accountancy		£235.00
	TOTAL	£4,343.49

The following items were **not** agreed:

Dry Rot Work:	
Work carried out	£9,563.06
Investigation fees	£1,000.00
Management fee	£779.79
TOTAL	£11,342.85

d) Year ending 31st December 1999

The landlords Accountants produced a final annual Service Charge Account for this year and the tenants agreed the following matters:

Insurance	£1,363.71
Lighting of public way	£36.94
Management fees	£600.00
Alarm Maintenance	£992.83
Major Maintenance	£783.75
Accountancy	£235.00
TOTAL	£4,012.23

The following item was **not** agreed:

Cleaning	£45.00

e) Year ending 31st December 2000

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Management fee	£875.00
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TOTAL	£6,603.06

The following items were **not** agreed:

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Supervision fees	£7,504.87	
	£64,541.87	£67,614.18

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Building insurance overcharged	(£723.84)	
Common Ways electricity	£20.60	£5.94
Surveyors fees	£141.00	
Fire Alarm maintenance	£722.37	
Legal fees	£58.75	
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Repairs to porch	£2,790.00

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Structural Engineers report	£269.20
Fire Alarm maintenance	£745.94
Audit fee	£178.37
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Surveyors fees	£176.25
Legal fees	£2,121.25

h) Year ending 31st December 2003

The landlords Accountants produced a final annual Service Charge Account for this year and the tenants agreed the following matters:

Building Insurance	£767.93 *(the figures in the original account were incorrect)*
Electricity commonways	£38.53
General Repairs	£75.00
Fire Alarm Maintenance	£318.26
Audit fees (2 years)	£366.37
Management fee	£875.00

The following matter was **not** agreed:

Inspection fee re structural repairs	£411.25

4. The disputed items

During the course of the Hearing the tribunal heard evidence from both sides regarding the disputed items and noted the following:

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This item related to the first stage of the Dry Rot Works. From the documents produced at the Hearing the position seems to have been as follows:

14th June 1997 A Meeting took place between the Managing Agent and the Tenants at which these and other works were discussed and the priority of the works agreed.

13th August 1997 A Section 20 consultation Notice was sent to the tenants giving details of the two independent estimates and the prices and inviting any comments from the tenants.

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16th December 1997 Managing Agents send Mr Allan another letter enclosing a breakdown of what he is being asked to pay.

24th December 1997 Managing Agents send Mr Allan another Estimated Demand.

The Tribunal reviewed the evidence it had read and heard and concluded that the Dry Rot had existed in the ceiling joists of the Basement Flat, between the Basement and the Ground Floor. Whilst they did not have before them a copy of the Lease of the Basement Flat, there was a copy of the lease of the subject Flat and this contained the usual clause confirming that similar covenants were to be included in the other flats in the Building. The Landlord was required to repair the structure of the Building which clearly included the main ceiling & floor joists in all the Flats. Indeed the Lease clearly confirmed in Clause 1 (c) that the main beams or girders were not included in the demise. It seemed there was no doubt that the Landlord had quite properly carried out these repairs and charged them to the Service Charge Account. The Tenants had failed to challenge the works when the original Section 20 Notices were served on them. The Tenants had made no efforts to communicate to the Managing Agents their dissatisfaction in clear terms and without any further clear evidence to

support the tenants case the Tribunal had no alternative but to approve this item of expenditure.

(b) Year ending 31st December 1998 Dry Rot Works Total £11,342.85
This item represents the continuing dry rot work from the previous year. Following the Tribunals decision on the previous year similar considerations applied. The documentary evidence for this year was rather sparse. A full set of Service Charge accounts was available for this year and these had been prepared by John Tuffin & Co, Chartered Accountants. Although the detailed supporting Receipts and Vouchers were not before the Tribunal, the fact that the Accounts had been prepared by a firm of Chartered Accountants gave the Tribunal reason to conclude that such supporting Receipts and Vouchers had been available at the time and the Tenants could have taken the opportunity to inspect them at the time if they had any queries. Without any clear evidence to the contrary the Tribunal concluded, on a balance of probabilities that the Landlord had acted correctly in carrying out these repairs and charging them to the Service Charge Account. The Tenants had made no effective challenge to the figures and all the items including the Investigation fees and Management fees were approved

(c) Year ending 31st December 1999 Cleaning £45.00
During the course of the Hearing an Invoice for £45 from Calories UK was produced by the Landlord. The narrative on the Invoice read, "Clearing away and dumping of business rubbish from the above property on the dates as listed below. The date was 13th July 1999. When the Tribunal queried the reference to "business rubbish" the Landlords said this was just a mistake and the rubbish was actually domestic rubbish. The Tenants were unable to give any evidence as to this item, but merely said they did not think they had to pay it. In the absence of any evidence to the contrary, the Tribunal concluded that the Landlords had acted reasonably in clearing away rubbish and the amount involved did not seem to be excessive. The work done appeared to be within the Landlords covenants contained in the Lease.
Clause 5 (iii) of the Lease requires the Landlord to keep cleansed ... and in tidy condition *.the common parts*" The Tribunal decided to allow this item in full.

(d) Year ending 31st December 2000 Major Works etc £64,541.87
During the morning of the hearing the Tenants had originally agreed this amount. When the Tribunal reconvened after lunch the Tenants had changed their minds. They failed to explain clearly why they had changed their minds but said they were confused at the time when they originally agreed this item. The Tribunal reviewed the documentary evidence and the sequence of events seem to be as follows:

8th January 2000 Managing Agents serve a consultation Section 20 Notice on the Tenants. This includes details of two independent Estimates and invites observations from the Tenants.

13th January 2000 Managing Agents serve a second consultation Section 20 Notice on the Tenants. This includes

details of two independent Estimates and invites observations from the Tenants.

5th May 2000 Managing Agents write a letter to the Tenants explaining that further works are needed and enclosing a further consultation Section 20 Notice. This includes details of two independent estimates and invites observations from the Tenants.

17th May 2000 Managing Agents write another letter to then Tenants. This refers to work to the windows (which is the Tenants responsibility) and refers to the arrears of Service Charge.

22nd May 2000 Mr Allan replies to the Managing Agents. The letters refers to Buildings Insurance, rainwater damage to his Flat and the conduct of the workmen. It fails to object to the works and it fails to dispute the liability to pay.

23rd August 2000 Further letter from Mr Allan in which he refers to an insurance claim. Whilst the letter disputes liability to pay the whole amount demanded, it fails to contain a clear objection to pay and the reasons why he does not agree to pay.

The Tribunal concluded that the Tenants had made no effective challenge to this item of the claim. The works had clearly been within the Landlords covenant to repair. Section 20 Notices had been served and the Tenants had failed to object or reply to those Notices at the time. The Tribunal was satisfied that the Landlord had acted reasonably and allowed this item in full. The Supervision Fees of £7,504.87 were also allowed in full. The amount was reasonable and the Landlord was entitled to have the works supervised.

(e) Year ending 31st December 20001 – Repairs to porch £2,790

The Managing agents had served a consultation Section 20 Notice on the tenants in March 2001. This included details of two independent Estimates and invited observations from the Tenants. Stuart Radley, a Chartered Building Surveyor, had supervised the works. There appeared to be no letters from the Tenants objecting to this work. The works were clearly within the landlords repairing covenant as it was part of the main structure of the building and the entrance porch was clearly part of the common parts. This item would be allowed in full.

(f) Year ending 31st December 2002 Surveyors fees £176,25
Legal fees £2,121.25

In respect of the Surveyors fees, an Invoice was produced at the Hearing from Stuart Radley, Chartered Building Surveyor. The narrative read as follows: "Correspondence with Mr & Mrs Allan, inspection of Flat C on 22nd April 2002 and issuing report to Dean Wilson Solicitors" Clearly Mr Radley was acting on behalf of the Landlords and Clause 4 (5) (c) of the Lease clearly allowed the Landlord to seek advice from Surveyors and other professionals "in connection with the management or maintenance of the building.." The amount of these fees seemed fair and reasonable. The Tenants had made no effective challenge to this amount. They just objected to having to pay any money to Mr Radley who they seemed to blame for

the problems they had experienced at the property. The Tribunal had no difficulty in agreeing that this item was fair and reasonable and properly incurred. It would be allowed in full.
In respect of the Legal fees of £2,121.25, Invoices and supporting time-cost print-outs were produced at the Hearing. They were from the Landlords Solicitors, Dean Wilson Laing. The tenants said their Solicitors had suggested that the amount was too large and should have been "about £500" There appeared to have been no fundamental objection to liability to pay them, just that they were too large. Clause 4 (5) (c) of the Lease contains the power to charge these fees to the Service Charge account. So far as the amount is concerned the Tribunal reviewed the details of the time-cost print-out. This gave details of the time spent by a Partner and other fee earners. The Partner had done most of the work and her charging rate was £160 per hour. From their knowledge and experience the Tribunal agreed that this was a suitable rate for a Partner in a central Brighton Firm of Solicitors. The next question was whether it was reasonable for a Partner to deal with the matter, or whether a lower-rated fee earner could have done the work. After consideration the tribunal thought the matter warranted a Partner's time. There were serious arrears outstanding and contentious correspondence with the tenants and subsequently their Solicitors. This item would be allowed in full.

(g) **Year ending 31st December 2003 – Inspection fee £411.25**
During the hearing an invoice was produced from Austin Gray, the newly appointed managing Agents. The narrative on the Invoice read: Inspection of property to assess maintenance requirements, Preparation of Specification of Works and obtaining competitive tenders. Clearly this was within the Landlords covenant in the Lease to instruct Surveyors and Managers. The Tenants had generously agreed that Mr Austin had been responsible for finally sorting out the problems with the roof of the Building. The Tenants made no effective challenge to this item. They just said they objected to paying it. The Tribunal allowed this item in full.

5. Summary of disputed items

The Tribunal had been through all of the individual items in dispute and had concluded that they had all been reasonably incurred by the Landlords. The Tribunal had some sympathy with the Tenants who had clearly suffered in the past from problems with the roof. As the Tenants' Flat was at the top of the Building they had been the most inconvenienced of all the Tenants of the Flats in the Building. There had been more than four Landlords since the original Lease was granted. There had been changes in Managing Agents over the years. This meant that there was a break in continuity which sometimes made clarification difficult. The Tribunal had considered the arguments put forward by the Tenants during the course of the proceedings but those arguments were not supported by any clear evidence from any expert or other witness who could give any evidence in support. The Tribunal had reviewed the Report by Mr. Clive S. Voller MRICS, Chartered Building Surveyor, which the Tenants had produced. Whilst this attempted to estimate the additional costs that might have been incurred in carrying out remedial work, the Report did not go far enough in establishing that the Landlords had acted unreasonably in carrying out the

case there was a complete absence of evidence on the part of the Tenants to persuade the Tribunal that the Landlords had behaved unreasonably. If the Tenants had responded in a more intelligent manner to the many consultation Section 20 Notices that had been served on them, the position might have been otherwise. The whole purpose of the consultation process was to give the Tenants an opportunity to object or comment on the proposed works. The Tenants had omitted to do so at the time and their failure to act promptly had caused them to fail in their challenge to the various items.

6. Section 20C Application

At the conclusion of the Hearing both parties made submissions. The Tenants said that the proceedings were totally unnecessary. They had always been willing to pay what was legally due and payable, but they and their Solicitors had been unable to establish exactly what that was.

Mr Ideh on behalf of the landlords said his Clients had no option but to bring these proceedings as all attempts to reach agreement had failed. He accused the Tenants of being obstructive and not willing to be reasonable. It was only fair to the other Tenants of the Flats in the Building that the costs of the hearing should be paid by Mr & Mrs Allan. The Lease allowed the Landlord to charge the costs of the Hearing to the Service Charge account and they intended to do so.

The Tribunal reviewed the matter and reached a number of conclusions. Firstly the Tenants had failed to effectively reduce any of the contested items of Service Charge. The Tribunal had found that the Landlords had acted entirely reasonably throughout the years in question. In respect of the current Landlords Managing Agents, Austin Rees, the Tenants had acknowledged that it was thanks to Mr Austin that the roof problems had now been solved. There was no evidence that the current Landlords or the current Managing Agents had acted unreasonably. The Landlords were entitled to make this Application and having been successful were entitled to be able to charge their costs of the proceedings to the Service Charge Account. It would be a matter for another Tribunal to decide if those charges were fair and reasonable, if any party makes an Application under Section 27A Landlord & Tenant Act 1985.

Accordingly for the reasons given above the Tribunal declines to make an Order under Section 20C

Dated this 14th October 2004

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John B. Tarling, Solicitor, MCMI
(Chairman)

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Hearing: 22nd September 2004

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(d) Year ending 31st December 2000 Major Works etc £64,541.87

During the morning of the hearing the Tenants had originally agreed this amount. When the Tribunal reconvened after lunch the Tenants had changed their minds. They failed to explain clearly why they had changed their minds but said they were confused at the time when they originally agreed this item. The Tribunal reviewed the documentary evidence and the sequence of events seem to be as follows:

8th January 2000 Managing Agents serve a consultation Section 20 Notice on the Tenants. This includes details of two independent Estimates and invites observations from the Tenants.

13th January 2000 Managing Agents serve a second consultation Section 20 Notice on the Tenants. This includes details of two independent Estimates and invites observations from the Tenants.

5th May 2000 Managing Agents write a letter to the Tenants explaining that further works are needed and enclosing a

further consultation Section 20 Notice. This includes details of two independent estimates and invites observations from the Tenants.

17th May 2000 Managing Agents write another letter to then Tenants. This refers to work to the windows (which is the Tenants responsibility) and refers to the arrears of Service Charge.

22nd May 2000 Mr Allan replies to the Managing Agents. The letters refers to Buildings Insurance, rainwater damage to his Flat and the conduct of the workmen. It fails to object to the works and it fails to dispute the liability to pay.

23rd August 2000 Further letter from Mr Allan in which he refers to an insurance claim. Whilst the letter disputes liability to pay the whole amount demanded, it fails to contain a clear objection to pay and the reasons why he does not agree to pay.

The Tribunal concluded that the Tenants had made no effective challenge to this item of the claim. The works had clearly been within the Landlords covenant to repair. Section 20 Notices had been served and the Tenants had failed to object or reply to those Notices at the time. The Tribunal was satisfied that the Landlord had acted reasonably and allowed this item in full. The Supervision Fees of £7,504.87 were also allowed in full. The amount was reasonable and the Landlord was entitled to have the works supervised.

(e) Year ending 31st December 20001 – Repairs to porch £2,790

The Managing agents had served a consultation Section 20 Notice on the tenants in March 2001. This included details of two independent Estimates and invited observations from the Tenants. Stuart Radley, a Chartered Building Surveyor, had supervised the works. There appeared to be no letters from the Tenants objecting to this work. The works were clearly within the landlords repairing covenant as it was part of the main structure of the building and the entrance porch was clearly part of the common parts. This item would be allowed in full.

(f) Year ending 31st December 2002 Surveyors fees £176,25
Legal fees £2,121.25

In respect of the Surveyors fees, an Invoice was produced at the Hearing from Stuart Radley, Chartered Building Surveyor. The narrative read as follows: "Correspondence with Mr & Mrs Allan, inspection of Flat C on 22nd April 2002 and issuing report to Dean Wilson Solicitors" Clearly Mr Radley was acting on behalf of the Landlords and Clause 4 (5) (c) of the Lease clearly allowed the Landlord to seek advice from Surveyors and other professionals "in connection with the management or maintenance of the building.." The amount of these fees seemed fair and reasonable. The Tenants had made no effective challenge to this amount. They just objected to having to pay any money to Mr Radley who they seemed to blame for the problems they had experienced at the property. The Tribunal had no difficulty in agreeing that this item was fair and reasonable and properly incurred. It would be allowed in full.

In respect of the Legal fees of £2,121.25, Invoices and supporting time-cost print-outs were produced at the Hearing. They were from the Landlords Solicitors, Dean Wilson Laing. The tenants said their Solicitors had suggested that the amount was too large and should have been "about £500" There appeared to have been no fundamental objection to liability to pay them, just that they were too large. Clause 4 (5) (c) of the Lease contains the power to charge these fees to the Service Charge account. So far as the amount is concerned the Tribunal reviewed the details of the time-cost print-out. This gave details of the time spent by a Partner and other fee earners. The Partner had done most of the work and her charging rate was £160 per hour. From their knowledge and experience the Tribunal agreed that this was a suitable rate for a Partner in a central Brighton Firm of Solicitors. The next question was whether it was reasonable for a Partner to deal with the matter, or whether a lower-rated fee earner could have done the work. After consideration the tribunal thought the matter warranted a Partner's time. There were serious arrears outstanding and contentious correspondence with the tenants and subsequently their Solicitors. This item would be allowed in full.

(g) **Year ending 31st December 2003 – Inspection fee £411.25**
During the hearing an invoice was produced from Austin Gray, the newly appointed managing Agents. The narrative on the Invoice read: Inspection of property to assess maintenance requirements, Preparation of Specification of Works and obtaining competitive tenders. Clearly this was within the Landlords covenant in the Lease to instruct Surveyors and Managers. The Tenants had generously agreed that Mr Austin had been responsible for finally sorting out the problems with the roof of the Building. The Tenants made no effective challenge to this item. They just said they objected to paying it. The Tribunal allowed this item in full.

5. Summary of disputed items

The Tribunal had been through all of the individual items in dispute and had concluded that they had all been reasonably incurred by the Landlords. The Tribunal had some sympathy with the Tenants who had clearly suffered in the past from problems with the roof. As the Tenants' Flat was at the top of the Building they had been the most inconvenienced of all the Tenants of the Flats in the Building. There had been more than four Landlords since the original Lease was granted. There had been changes in Managing Agents over the years. This meant that there was a break in continuity which sometimes made clarification difficult. The Tribunal had considered the arguments put forward by the Tenants during the course of the proceedings but those arguments were not supported by any clear evidence from any expert or other witness who could give any evidence in support. The Tribunal had reviewed the Report by Mr. Clive S. Voller MRICS, Chartered Building Surveyor, which the Tenants had produced. Whilst this attempted to estimate the additional costs that might have been incurred in carrying out remedial work, the Report did not go far enough in establishing that the Landlords had acted unreasonably in carrying out the work in the first place. The Tribunal took the view that merely because subsequent remedial work becomes necessary in the future, it does not necessary automatically follow that the original work was defective or poorly carried out. Certainly in this

case there was a complete absence of evidence on the part of the Tenants to persuade the Tribunal that the Landlords had behaved unreasonably. If the Tenants had responded in a more intelligent manner to the many consultation Section 20 Notices that had been served on them, the position might have been otherwise. The whole purpose of the consultation process was to give the Tenants an opportunity to object or comment on the proposed works. The Tenants had omitted to do so at the time and their failure to act promptly had caused them to fail in their challenge to the various items.

6. Section 20C Application

At the conclusion of the Hearing both parties made submissions. The Tenants said that the proceedings were totally unnecessary. They had always been willing to pay what was legally due and payable, but they and their Solicitors had been unable to establish exactly what that was.

Mr Ideh on behalf of the landlords said his Clients had no option but to bring these proceedings as all attempts to reach agreement had failed. He accused the Tenants of being obstructive and not willing to be reasonable. It was only fair to the other Tenants of the Flats in the Building that the costs of the hearing should be paid by Mr & Mrs Allan. The Lease allowed the Landlord to charge the costs of the Hearing to the Service Charge account and they intended to do so.

The Tribunal reviewed the matter and reached a number of conclusions. Firstly the Tenants had failed to effectively reduce any of the contested items of Service Charge. The Tribunal had found that the Landlords had acted entirely reasonably throughout the years in question. In respect of the current Landlords Managing Agents, Austin Rees, the Tenants had acknowledged that it was thanks to Mr Austin that the roof problems had now been solved. There was no evidence that the current Landlords or the current Managing Agents had acted unreasonably. The Landlords were entitled to make this Application and having been successful were entitled to be able to charge their costs of the proceedings to the Service Charge Account. It would be a matter for another Tribunal to decide if those charges were fair and reasonable, if any party makes an Application under Section 27A Landlord & Tenant Act 1985.

Accordingly for the reasons given above the Tribunal declines to make an Order under Section 20C

Dated this 14th October 2004

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John B. Tarling, Solicitor, MCMI
(Chairman)

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