

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL &  
LEASEHOLD VALUATION TRIBUNAL**

In the matter of an Application under Section 27A of the Landlord & Tenant Act 1985

Case No. CHI/21UD/LSC/2004/0078

Property: Marine Court, Marina, St. Leonards-on-Sea, East Sussex TN38 0DN

**Between:**

## Marine Court Residents Association

(“the First Applicant”)

Mr Norman Charles Strickland (Flat 176)

(“the Second Applicant”)

Miss Mary K. Henneberry (Flat 189)

(“the Third Applicant”)

Mr Anthony Glyne Pughe-Morgan (Flat 30)

(“the Fourth Applicant”)

**Mr Nigel Watts (Flat 150)**

(“the Fifth Applicant”)

and

**Rother District Investments Limited**

(“the Respondent”)

**Attendances:**

Mr Mark Sefton, Counsel for the First Applicant  
Mr Nigel Watts, Counsel for the Second Applicant

Mr Nigel Watts (the Fifth Applicant) in person

Mr Richard Hayes, Counsel for the Respondent

Hearing Dates:

26<sup>th</sup> September 2005 Inspection 10:00, Hearing 12 Noon  
27<sup>th</sup> September 2005 – Hearing

27<sup>th</sup> September 2005 – Hearing

**Members of the Tribunal:**

Mr J.B. Tarling, MCMI, Lawyer/Chairman

Mr J.N. Cleverton, FRICS

Lady Davies, FRICS

**Date of the Decision:**

28<sup>th</sup> October 2005

## DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

## 1. Background to the Application

The Application was dated 9<sup>th</sup> December 2004 and was originally made by the Marine Court Residents Association alone. It was signed by Mr N.C. Strickland, who was the Secretary of the Residents Association. Subsequently Mr Strickland and a number of other Lessees joined in the proceedings in their personal capacities as Lessees. The Application asked the Tribunal to make certain decisions relating to Service Charges alleged to be payable in respect of the Service Charge years of 2000, 2001, 2002, 2003 and 2004. Initially the

Application referred to the year 2005, but as no Service Charge Accounts were yet available, as the year had not concluded, no matters relating to that year were considered by the Tribunal.

2. Pre Trial Review Hearings took place on 27<sup>th</sup> January and 24<sup>th</sup> May 2005 as a result of which a number of matters were agreed. Directions were given for the disclosure of documents, the preparation and exchange of Witness Statements, the Preparation of Hearing Bundles and the exchange of skeleton arguments in respect of the remaining matters in dispute.
3. At the date of the first day of the Hearing the following matters remained in dispute:
  - (a) Charges for Payroll Administration and Staff supervision
  - (b) Miscellaneous administrative charges for the years 2002 and 2003
  - (c) Cleaning
  - (d) Electricity
  - (e) Insurance
  - (f) Staff costs

In respect of all other matters in the Service Charge Accounts for the years 2000 to 2004 they are recorded by the Tribunal as having been agreed or admitted and in accordance with Section 27A (4)(a) of the Landlord & Tenant Act 1985, they are outside the jurisdiction of the Tribunal. Following the conclusion of the Hearing both Counsel agreed to supply an "Agreed List of Concessions" which is set out in Appendix A at the end of this Decision.

4. Shortly before the Hearing the Tribunal received the Skeleton Argument from the Applicant's Counsel in which reference was made to a number of matters. Firstly it was observed that the Landlord was not proposing to call any Director of Rother Investments Limited, nor any witnesses regarding Insurance, nor the individuals who were responsible for the day to day management of the Building. The Applicants also complained that disclosure from the Landlord had been incomplete in relation to some of the aspects that had been challenged. In advance of the Hearing the Tribunal indicated that if the Applicants considered they were unable to properly pursue the application due to non-disclosure of various documents, or the failure of the Respondent to comply with the Tribunal's Directions, then they might apply for an adjournment.
5. **Inspection**

The Tribunal inspected the Building on the morning of the first day of the Hearing in the presence of Counsel for both parties and others. Marine Court is a large purpose-built Block of 168 residential Flats, with commercial premises on the ground floor. The Building stands on the Seafront at St. Leonards-on-Sea and was built in the 1930s. It was designed in the shape of a Ship and is not uniform. Above the ground floor are eleven floors (and a penthouse) of residential flats to which access is reached through four separate entrances at ground floor level. There are 12 floors reached from Entrance A and B, 11 from Entrance C and 10 from Entrance D. Each entrance has an Entrance Hall leading to a Lift. There are four Lifts.
6. The Tribunal inspected the exterior of the property, which was in need of external decoration and paint was flaking from the main walls. The Tribunal viewed Entrance Hall C as a sample. This seemed clean and tidy and the internal decorations were in a satisfactory condition. At the time of the Inspection, Cleaners were on duty. One of the matters originally in dispute

- was the cost of constructing five fireproof cupboards. The Tribunal inspected two of those cupboards, but subsequently those items were agreed not to be payable by the Service Charge Account as they related exclusively to the electrical apparatus serving the commercial units on the Ground Floor.
7. The Tribunal members then took the Lift to the Eleventh Floor and walked around the common passageways, stairs and landings which formed the Common Parts. These seemed to be clean and tidy and in a satisfactory state of decoration. In respect of electricity supply to the Flats, the Tribunal was shown a cupboard on the Ground Floor, which contained no meters. The electricity supply came into the cupboard from below the Ground Floor and then appeared to continue up the Building without any meters being available to record the amounts being used for the Common Parts.
8. **Hearing**  
The Tribunal had before them six volumes of an agreed Hearing Bundle comprising approximately 3,200 pages. At the commencement of the Hearing the Chairman asked the Applicants Counsel, Mr Sefton, if he wished to apply for an adjournment for the reasons set out in his Skeleton Argument (i.e. absence of disclosure of documents or witness statements) He said he did not wish to apply for an adjournment but wished the Hearing to proceed. Mr Hayes, Counsel for the Respondent then applied for an adjournment. He said the Applicants themselves had produced no evidence in support of their claim. The Applicants had challenged the Insurance Premiums but had produced no alternative quotations themselves. In respect of the Additional Staff costs, this refers to the dismissal of a Mr Stone, the Night Porter, and a Claim for Unfair Dismissal was made, a finding was made by the Employment Tribunal that he had been unfairly dismissed, but that Decision was currently under appeal. The Appeal had not yet been heard and he wished to have the current proceedings adjourned until after the Appeal had been heard by the Employment Tribunal.
9. Mr Sefton, Counsel for the Applicants, opposed the Respondent's Application for an adjournment, saying the burden of proof was neutral and it was not for the Applicants to produce evidence where the Landlord was able to do so himself. The Tribunal retired to consider the Respondent's Application for an adjournment and decided it would be unreasonable to delay the proceedings. The Landlord has had plenty of opportunity of presenting evidence and calling witnesses. In respect of the Employment Tribunal Appeal, the Tribunal concluded it could decide what, if any, additional staff costs were reasonable and the liability to pay them could be decided conditionally on the result of the Employment Tribunal Appeal. If the Appeal of the Employment Tribunal case succeeded then they would have been quantified and payable.
10. **The Applicants Case**  
The following Witnesses were then called to give evidence in support of the Applicant's case:
- Mr N.C. Strickland
  - Mr G. Fanslau
  - Mr P. Barrett
  - Mr L.N. Ereira

They had all made written Witness Statements, apart from Mr Ereira who gave evidence about two Reports that he had assisted Mr Bendel in preparing and which were included in the Hearing Bundles.

11. **The Respondents Case**

The only witness called to give evidence at the Hearing on behalf of the Respondent Landlord was Mr D. Harrod-Edwards who was a Director of Seaford Property Management Company Limited (SPMC) which had been the Managing Agents since 2002. None of the employees of SPMC who had dealt with the day-to-day management of Marine Court made Witness Statements or were called to give evidence. No-one from the Landlord, Rother District Investments Limited (Rother), nor John Bray & Sons Limited (John Bray), the previous Managing Agents, attended the Hearing or gave evidence by way of Witness Statements. Mr Jackson, a Director of D. Barnett the Insurance Brokers, had submitted a Witness Statement but did not attend the Hearing.

12. **THE ISSUES IN DISPUTE**

(a Summary of the Tribunal's Decision in respect of these matters is set out in Appendix B at the end of this Decision)

**Charges for Payroll Administration**

The following Charges had been made:

2000	£7,151.92
2001	£8,100.24
2002	£8,708.99
2003	£7,266.42
2004	£8,317.58

TOTAL     £ 39,545.15

The Charges were for work carried out on behalf of the Landlord in the preparation of the wages, national insurance, tax and other matters relating to the porters who were employed at Marine Court. The porters were employed directly by the Landlord, Rother, who was responsible for these matters. There was 24-hour cover for porters which meant that allowing for holidays, sickness etc, a staff of between 6 and 10 were employed at the Building.

13. The facts of the matter did not seem to be in dispute. The Applicants were challenging the Landlords right to make an additional charge for providing the Payroll Administration Service. The history to the matter was that the original Managing Agents were John Bray. That Company had a common Director with the Landlord, Rother, namely Mr R.T.Caine. Mr Caine was also a Director of a Company called Glengorse Business Services Limited (Glengorse). It was that Company which carried out the Payroll Administration work between the years 2000 and 2004.
14. Rother had first engaged Glengorse to deal with the Payroll in 1997. John Bray were the Managing Agents between January 2000 and May 2002 and thereafter SPMC were the Managing Agents. Neither John Bray nor SPMC queried the engagement of Glengorse the carry out the Payroll Administration. The Applicants set out in their Skeleton Argument the reasons why they challenged

this item of expenditure. In summary they maintained firstly that both Managing Agents should have included this work under the terms of their Management Agreements (as recommended by the RICS Residential Management Code). Secondly they maintained the charge of 7.5 % of the gross payroll is excessive. Thirdly no attempt was made to put the work out for tender in circumstances where the Landlord shared a common Director with the company, which was to carry out the work.

15. The Respondents in their skeleton argument said there was no written management agreement relating to the period when John Bray managed the property. John Bray did not provide a payroll service. They argued that the Landlord had to provide the service and had acted reasonably in obtaining external payroll services. When SPMC took over as managing agent they also did not provide a payroll service, even though their management agreement provided for them to do so. Mr Harrod-Edwards had given evidence to confirm this and had explained that the management agreement was their standard form agreement which related to over a hundred properties. It was an oversight that this had been included in the case of Marine Court, as this was the only property they managed which had directly employed staff. The Landlord merely continued the same annual rate for payroll services when the managing agent changed from John Bray to SPMC.
16. The Landlord relied upon the case of *Forcelux v. Sweetman (2001) 2EGLR173* saying that the Landlord had acted reasonably in the circumstances in arranging the payroll service elsewhere and the cost that was incurred was also reasonable. The test was one of reasonableness and not whether the service has been provided at the cheapest possible cost.
17. **THE TRIBUNAL'S DECISION – Charges for Payroll Administration**  
The Tribunal accepted that the Landlord had acted reasonably in arranging for the Payroll to be handled by Glengorse, even though Glengorse had a common Director with the Landlord. However the Tribunal accepted the evidence of Mr. L.N. Ereira in that the amount of such charges are excessive. The Tribunal using its knowledge and experience as an expert Tribunal accepts the evidence from Mr Ereira that a percentage charge based on the amounts of payroll is not the usual way that payroll businesses usually charge for their services. Mr Ereira suggested in Mr Bendel's two Reports that the usual charge was per employee per week and not as a percentage. He gave two suggestions as to the correct rate varying from £2.50 to £5 per Employee per week. The Tribunal considered that the correct rate should be the higher of those two amounts, namely £5 per employee per week. It accepted that the maximum number of employees was likely to have been 10 for the five year period in question and accordingly finds that a reasonable amount for this service should be £5 X 10 X 52 = £2,600 per annum for each of the five years in question. These amounts are reduced accordingly.

#### 18. Staff Supervision

The facts did not appear to be in dispute. The Head Porter Mr Brian Hart had retired in November 2002 and part of his job had been to supervise the other porters and staff. SPMC made the following charges for supervising the staff after Mr Hart had retired:

2002	£1,245.50
2003	£5,503.55

The Applicants said the Landlord was not entitled to make this charge. Mr Harrod-Edwards had given evidence to say that the staff had to be supervised after Mr Hart had retired and a rate of £600 per month plus VAT had been agreed with the Landlord and this was based on half a person's time. There had been no negotiations about the rate for the work. The Landlord maintained that this charge had been reasonably incurred and the amount was reasonable.

**19. THE TRIBUNAL'S DECISION – Staff Supervision**

The Tribunal accepted that the Landlord had acted reasonably and that the amounts charged were reasonable. The Landlord was under a duty to maintain 24-hour portage seven days a week, and it was reasonable for someone to continue the role of supervision following Mr Hart's retirement. The two amounts charged of £1,245.50 for 2002 and £5,503.55 for 2003 were accepted in full without any reduction.

**20. Miscellaneous Administrative Charges**

Three items of miscellaneous expenditure had been identified and which were in dispute at the beginning of the Hearing. These were:

- (a) The sum of £83.27 for "petty cash" in the year 2002.
- (b) The sum of £500.00 paid by SPMC to Tytam Ltd for preparation of Job Descriptions for SPMC Staff.
- (c) The sum of £112.00 for a TV Licence for the television used in the porter's rest room.

During the Hearing the Applicants agreed that the sum of £500 was used for the Job Descriptions for the staff at Marine Court and was reasonable. They also agreed the amount of £112 for the TV Licence. As those matters were agreed, the Tribunal was not asked to make a determination on them. In respect of the "petty cash" item of £83.27 the Landlord was unable to explain what this related to and the Tribunal was asked to make a determination limited to that item.

**21. THE TRIBUNAL'S DECISION in respect of the sum of £83.27**

The Tribunal expected the Landlord and its managing agent as Trustees of the Service Charge money to keep records of how Service Charge money was spent. They had failed to explain what this money was spent on and accordingly the Tribunal decided to DISALLOW this amount. The Service Charge Account for the year 2002 is to be reduced accordingly.

**22. Cleaning**

The amounts in dispute were as follows:

2003	£20,229.43
2004	£27,188.02

Among the Hearing Bundle were Witness Statements from Mr Strickland, Mr Fanslau and Mr Barrett. They all gave evidence to the Tribunal about the poor standard of cleaning in the Block. Complaints had been made over a number of years. Between 2003 and January 2004 the cleaning contractors were Speedclean. Then the cleaning was taken over by Primary Cleaning. Mr Harrod-Edwards was a Director of SPMC, the Managing Agents, and also of Primary Cleaning. In November 2002 a quotation had been received from Grimebusters for cleaning of the majority, but not all, of the Building at £160 per week (£693 per month).

23. The Landlord in his skeleton argument said the Applicants had failed to produce any cleaning quotations to challenge the charges made by the Landlord and that the Grimebusters quotation did not include all of the

Building. When the Speedclean contract ended, Primary merely continued at the same rate that had been charged by Speedclean (£2,400 per month). The Landlord had reacted to the complaints about Speedclean by terminating their contract and replacing them with Primary. The Landlord contended that it had acted reasonably and the charges were reasonable.

24. The Applicants said the standard of cleaning was poor as demonstrated by the complaints made by the Lessees and occupiers. The managing agents SPMC had not gone out to tender but had awarded the contract to Primary, which shared a common director with SPMC. They contended that the amount in the Grimebusters tender in 2002 was the correct figure.

25. **THE TRIBUNAL'S DECISION – Cleaning**

The Tribunal accepted that the Landlord had acted reasonably in engaging Primary Cleaning to replace Speedclean, but using its knowledge and experience as an expert Tribunal and in the absence of any comparative quotation, decided the amounts charged by Primary Cleaning were excessive. At the Inspection of the Building on the morning of the first day of the Hearing the Tribunal had seen the small lobbies leading off the staircases outside the Flats and considered these to be a very small additional area to be cleaned. Indeed in the Cleaning Schedule before the Tribunal these areas were only listed as being cleaned once a month by Primary Cleaning. The only other matters which were not included in the Grimebuster's quotation were the cellars and WC in the Basement. Accordingly the Tribunal used the Grimebusters quotation as the starting point for considering what a reasonable amount would be. The Tribunal reviewed the alternative comparables for other Blocks and did not find them persuasive. Marine Court is a unique Block and can not be compared with other smaller and less complicated Blocks.

26. So far as weekly charging rates were concerned the charges that had been made were £389 per week for 2003 and £522 per week for 2004. These amounts seemed excessive to the Tribunal. They appreciated that Marine Court was a unique building and there might be only a limited number of cleaning contractors who would be prepared to carry out the work. However, allowing for this and using their expert knowledge and experience and in the absence of any satisfactory equivalent independent estimate, the Tribunal considered a proper weekly rate would be in the region of £300 per week. This was above the £160 per week quoted by Grimebusters in 2002, but adjusting this for an increase due to inflation and adding on something to take into account the small additional cleaning of the lobbies and the cellars and WC in the basement, a fair figure would be £300 per week. To this VAT would have to be added, making a total of £352.50 per week. The calculation is therefore:  $£352.50 \times 52 = \text{£18,330 per annum}$ . This amount applies to both years 2003 and 2004.

27. **ELECTRICITY CHARGES**

The amounts in dispute were as follows:

2000	£4,109
2001	£1,913
2002	£7,122
2003	£3,659
2004	£2,240

The electricity charges related to *un-metered* charges. All of the residential Flats had their own meters. Parts of the common parts of the residential area of

- the Building were metered and the charges which were in dispute were the balances paid to the electricity supply company for those areas which were unmetered. The Landlord in its skeleton argument maintained that the only unmetered parts of the Building were the common parts of the residential area of the Building and hence the whole of these amounts were payable by the Service Charge Account.
28. The Applicants case was that there is a disparity between the number of units charged and the number of units metered as having been consumed. The meters are read by the employees of Rother, the Landlord. In some quarters of a year more units are metered than are billed as having been supplied. More often fewer units are metered as having been used than are metered as having been supplied. The Applicants maintained that the meters are inaccurate and have never been serviced. Accordingly they request that these additional amounts for unmetered electricity are removed from the Service Charge Accounts for these years.
29. The Landlord, Rother, was responsible for recording the meter readings through its employees. No-one from Rother was available to give any evidence to the Tribunal or explain the discrepancies in the meter readings. Mr Harrod Edwards was unable to assist, as SPMC had nothing to do with the meter readings or the preparation of the Electricity accounts.
30. **THE TRIBUNAL'S DECISION – Electricity charges**  
The Tribunal accepted the arguments put forward by the Applicants and decided that the additional charges for all five years should be **DISALLOWED**. The Schedule of electricity units used which, is annexed to the Service Charge Accounts, show very large fluctuations in the number of unmetered units used. By way of example, on Page 1036 of the Hearing Bundle (Vol 2), for one quarter in 2001 the unmetered common ways units used are shown as (5,721) – (a minus figure), whilst the following quarter they are shown as 57,051 – (a plus figure) Similarly on Page 1043, in 2002 the first quarter is shown as 79,998 and the second quarter as 18,758.
31. The Tribunal accepted the evidence that there did not seem to be any electrical plant in the common ways of the residential parts of the Building that could possibly use such large amounts of electricity. No explanation of exactly what apparatus was using these large amounts of electricity was given. The Tribunal took the view that the burden of proof which initially is neutral, falls on the Landlord to explain these charges for electricity. The Tribunal should consider all of the evidence that is available. This follows the principles set out in the Court of Appeal case of *Yorkbrook Investments Ltd v. Batten* (1985) 2 EGLR. The Tribunal finds that the Applicants have established a prima facie case for challenging these electricity charges. The Applicants have no control of the matter and have no power to investigate. It is for the Landlord to meet those allegations by producing evidence to explain them. It is the Landlord who has the control of the electricity meter readings through its staff and the calculations of the unmetered charges, which it has invoiced to the Service Charge Account. No evidence has been produced by the Landlord to explain how these charges were incurred and accordingly the Tribunal **DISALLOWS** all of these unmetered electricity charges for all five years. The Service Charges for those years are to be altered accordingly.



### 32. **INSURANCE**

The amounts in dispute were the Insurance Premiums charged to the Service Charge Account which were as follows:

2000	£18,165.09
2001	£18,681.88
2002	£19,225.31
2003	£20,857.67
2004	£23,727.44

In addition to the above amounts, in two of the years additional amounts were paid to D. Barnett (Brokers) Limited who in turn passed these amounts on to a Company called Chase Longman (Jersey) Limited. These amounts were as follows:

2003	£7,375.36 (being the difference between £31,558.72 paid to the Broker and £24,182.64 paid to the Insurer Zurich)
2004	£9,447.95 (being the difference between £28,983.36 paid to the Broker and £19,535.41 paid to the Insurer Axa)

Towards the end of the Hearing the Respondent Landlord conceded that these two additional items of £7,375.36 and £9,447.95 were unreasonable and should be removed from the Service Charge Account. To the extent that these items were now agreed it was no longer necessary for the Tribunal to make a determination on them.

33. In respect of the premiums that had been paid to the Insurers during the five years in question the Tribunal was asked to make a determination. A helpful Schedule and calculations were produced by the Respondent on the last day of the Hearing showing how these amounts had been calculated. The Applicants had not produced any comparative estimates for insurance premiums but claim they are too high.

### 34. **THE TRIBUNAL'S DECISION – Insurance Premiums**

The Tribunal using its expert knowledge and experience find the amounts charged for Insurance Premiums to the Service Charge Account as fair and reasonable and ALLOW THEM ALL. In particular the Tribunal finds that the Applicants have not produced any evidence to challenge the way in which the premiums are calculated. The parties have agreed the amounts of cover, the risks covered and the identity of the Insurer, which leaves merely the rate per £1,000 which each Insurer has charged. In 2000 the rate was £0.95p/£1,000, in 2001 it is £0.91/£1,000, in 2002 the rate is £0.90/£1,000, in 2003 the rate is £1.37/£1,000 and in 2004 the rate is £1.07/£1,000. Using the Tribunal's expert knowledge and experience as these figures are all within the limits of around £1/£1,000 cover which is usual for Buildings of this kind, they find all these figures reasonable.

### 35. **ADDITIONAL STAFF COSTS (Following the dismissal of John Stone)**

Following the Hearing both Counsel agreed that the additional staff costs referable to the suspension and dismissal of Mr Stone are £13,152.55. This appears as item No. (8) of the Agreed List of Concessions set out in Appendix A to this Decision. What both Counsel did not agree in that Agreed List of Concessions was whether the additional staff costs were reasonably incurred

and whether they were to be paid by the Service Charge Account. Accordingly, as these matters were not agreed by the parties, the Tribunal was asked to determine those matters.

In deciding the question of whether or not the additional staff costs were reasonably incurred, the Tribunal considered the findings of the Employment Tribunal (ET). That Tribunal had gone through the evidence surrounding the dismissal from both the employer and the employee in some depth, and had concluded that the employee had been unfairly dismissed by the employer. The LVT had before them a copy of the Decision of the ET and had read the reasons for that Decision. Those reasons clearly showed that the ET had decided that the employer had acted unfairly in dismissing the employee. In as much as the employer (the Landlord) had been found to have acted unfairly by an independent ET after a Hearing and full consideration of all the evidence, the LVT concluded without much difficulty that these additional staff costs which flowed from the unfair dismissal were not reasonably incurred. The LVT concluded that it would be quite wrong for the Service Charge money, contributed to by the Lessees, to be used to pay out money where the Landlord had acted unreasonably.

Accordingly, for the reasons set out above, none of the additional staff costs would be payable by the Service Charge Account during the years under scrutiny. The Tribunal orders that the amounts that have been paid by the Landlord out of the Service Charge Account for these additional staff costs be repaid as set out below.

It was noted that the Landlord had appealed the Decision of the ET. In the event of the Landlord successfully succeeding in this appeal at some time in the future, and if the Landlord subsequently recharges any of these amounts to the service charge account, any Lessee would have the opportunity of making a further application to the LVT under section 27A of the Landlord & Tenant Act 1985 for the year in which such payments were made.

**36. REPAYMENT TO THE SERVICE CHARGE ACCOUNT**

The Tribunal reminded itself of its extended powers under section 27A of the Landlord & Tenant Act 1985 and considered whether it should make an Order requiring the amount of any deficit in the Service Charge Account to be reimbursed by the Landlord. Following its Decision the Tribunal calculated the Total Balance, which owed by the Landlord to the Service Charge Account. This amounts to £97,154.01 in respect of the four years in question. The Service Charge balance has been reduced by this amount and as Trustee the Landlord should be required to make good this deficit. Any delay in reimbursement will lose interest to which the Lessees are entitled. Accordingly as the Tribunal has found against the Landlord to the extent of £97,154.01, it is right and proper that the Landlord be ordered to repay this amount. The Tribunal **HEREBY ORDERS** the Landlord Rother District Investments Limited to repay the sum of £97,154.01 to the Service Charge Account within 28 days from publication of this Decision.

**37. S. 20C APPLICATION**

The Applicants had made an Application to the Tribunal under Section 20C of the Landlord and Tenant Act 1985 for an Order that the Landlord's costs of these proceedings shall not be charged to the Service Charge Account. Counsel for both parties agreed that all Ten types of Leases of the various Flats in the Building did not allow the Landlord to charge any costs of these

proceedings to the Service Charge Account. However during the course of the Hearing it had become clear that certain charges for photocopying documents for these proceedings (Page 3207 of the Hearing Bundle Vol. VI) in the sum of £447.91 had been invoiced by Holmes Property Group (which had a common Director with the Landlord). The Tribunal accordingly ORDERS in accordance with its powers under Section 27A (1) of the Landlord & Tenant Act 1985 that any such payments made from the Service Charge Accounts shall be reimbursed by the Landlord to the Service Charge Account within 28 days from publication of this Decision. Following the Hearing both Counsel agreed that there shall be an Order under Section 20C of the Landlord and Tenant Act 1985 and accordingly the Tribunal so Orders.

**38. Reimbursement of Application/Hearing Fees**

The Applicants have paid a Total of £500 to the Tribunal in respect of a £350 Application Fee and a Hearing Fee of £150. Following conclusion of the Hearing the Tribunal retired to consider its Decision and also considered whether they should make an order for reimbursement of these fees. The Applicants had succeeded in raising a number of matters, which required the Tribunal's consideration and had largely succeeded in making substantial reductions in the amounts, which the Landlord had charged to the Service Charge Accounts. One matter, which particularly concerned the Tribunal, was the unhelpful attitude of the Landlord and his managing agent. In particular the failure by the Managing Agents to fully answer the Applicants questions and supply copy documents to explain matters, made these proceedings inevitable. Indeed, some explanations of some of the items (e.g. Insurance) were only available from the Landlord on the last day of the Hearing.

**39. THE TRIBUNAL'S DECISION – Reimbursement of fees**

For the reasons set out above the Tribunal HEREBY ORDERS in accordance with its powers under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 that the Landlord, Rother District Investments Limited, shall within 28 days from the date of publication of this decision reimburse to the Marine Court Residents Association the sum of £500 in respect of the fees they have paid to the Tribunal.

**APPENDIX A  
AGREED LIST OF CONCESSIONS**

1. The Marine Court Residents Association makes the following concessions:
  - (1) The invoice from Tytam Limited for £500.00 in the 2002 accounts is recoverable under the service charge
  - (2) The invoice for £112.00 for the television licence in the 2003 accounts is recoverable under the service charge.
2. Rother District Investments Limited makes the following concessions:
  - (1) The charge by SPMC of £756.95 for administration fees on minor works in the 2003 accounts is not recoverable under the service charge (see paras.11-13 of the landlord's statement of case)
  - (2) The sums of £1,071.01 and £517.93 for miscellaneous administrative charges in the 2002 and 2001 service charge accounts are not recoverable under the service charge (see para.18 of the landlord's statement of case)
  - (3) The invoice from Holmes Corporate Service Limited in respect of photocopying charges (at 6/3207) is not recoverable under the service charge.

- (4) The invoice from Regent SPMC Contracts Limited for £5,449.65 in respect of the installation of fire-proof cupboards (as 4/1885) is not recoverable under the service charge.
- (5) The bank charges and interest in the sums of £508.90 in the 2000 accounts and £1,482.62 in the 2001 accounts are not recoverable under the service charge.
- (6) In respect of the insurance for June 2003 to June 2004 with Zurich and June 2004 to June 2005 with Axa, no part of the difference between the actual insurance premium and the sum debited by D. Barnett (Brokers) Limited is recoverable under the service charge.
- (7) There shall be an order under S. 20C of the Landlord and Tenant Act 1985 in respect of all of the costs incurred in connection with these proceedings.
- (8) It is agreed that the costs referable to the suspension and dismissal of Mr Stone are £13,152.55

#### APPENDIX B


##### **Summary of Tribunal's Decision (including items agreed by the parties)**

The Services Charge Accounts for the years 2000 to 2004 shall be amended as follows:

<u>Job Descriptions (Tytam Ltd)</u>	<u>S/C Accounts</u>	<u>Tribunal's Decision</u>
2002	£500.00	£500.00
<u>TV Licence</u>		
2003	£112.00	£112.00
<u>Bank Charges and Interest</u>		
2000	£508.90	Nil
2001	£1,482.62	Nil
2002	£515.31	Nil
<u>Administration fees (Minor works)</u>		
2003	£756.95	Nil
<u>Miscellaneous administrative charges</u>		
2000	£1,071.01	Nil
2001	£517.93	Nil
<u>Fireproof Cupboards</u>		
2004	£5,449.65	Nil
<u>Payroll Administration</u>		
2000	£7,151.92	£2,600.00
2001	£8,100.24	£2,600.00
2002	£8,708.99	£2,600.00
2003	£7,266.42	£2,600.00
2004	£8,317.58	£2,600.00
<u>Staff Supervision</u>		
2002	£1,245.50	£1,245.50
2003	£5,503.55	£5,503.55
<u>Petty Cash</u>		
2002	£83.27	Nil
<u>Cleaning</u>		
2003	£20,229.43	£18,330.00
2004	£27,188.02	£18,330.00

<u>Electricity</u>		
2000	£4,109.00	Nil
2001	£1,912.00	Nil
2002	£7,122.00	Nil
2003	£3,659.00	Nil
2004	£2,240.00	Nil
<u>Insurance Premiums</u>		
2000	£18,165.09	£18,165.09
2001	£18,681.88	£18,681.88
2002	£19,225.31	£19,225.31
2003	£20,857.67	£20,857.67
2004	£23,727.44	£23,727.44
<u>Insurance Brokers fees (Barnett's Fees)</u>		
2003	£7,375.36	Nil
2004	£9,447.95	Nil
<u>Additional Staff Costs</u>		
<u>(Mr Stone's dismissal)</u>		
2003 & 2004	£13,152.55	Nil
<u>S. 20C Application</u>		
Costs of Photocopying	£447.91	Nil
Any other costs of the Proceedings charged to the Service Charge Account		Nil
<u>TOTALS</u>	£254,220.45	£157,066.44
<b>BALANCE</b>		<b><u>£97,154.01</u></b>
	<b><u>£254,220.45</u></b>	<b><u>£254,220.45</u></b>

Dated this 28<sup>th</sup> day of October 2005

  
 .....  
 John B. Tarling, MCMI Lawyer/Chairman  
 A member of the Panel appointed by the Lord Chancellor