SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case Number: CHI/OOHA/LSC/2006/0120

RE: Top (Third Floor) Flat, 4 Cleveland Place East, Bath, Somerset, BA1 5DJ.

Between:

Adrian Bowyer and Christine Bowyer

("the Applicants/Leaseholders")

and

Oval [765] Ltd

("the Respondent/Freeholder")

An application under sections 27A and 20C of the Landlord and Tenant Act 1985
(Liability to pay service charges)

Tribunal:

Professor D.N.Clarke, MA, LL.M, Solicitor
Mr S Hodges FRICS
Mr MR Jenkinson

DECISIONS AND STATEMENT OF REASONS

Nature of the applications

1. This is an application dated 6 November 2006 made under section 27A of the Landlord and Tenant Act 1985 for a determination of liability to pay certain items of service charges for the year 2006 together with an application under section 20C of that Act. Directions were given on 20 November 2006 to file bundles of documents and these were complied with. The matter proceeded on the Fast Track

2. By notice dated 25 November 2006, Dr H. A. W. El-Abiary, leaseholder of the middle, second floor flat, gave notice that he wished to be joined as a party to the application.

3. The Applicants appeared in person, with Dr. El-Abiary, though he did not choose to make any submissions of his own. The Respondent was represented by Mr Martin Perry and Mr Paul Perry, of West of England Estate Management Company Ltd.

Outline of the facts

4. The Property, 4 Cleveland Place East, is a Georgian terraced house now consisting of retail shop on the ground floor and three flats, one to each floor, above. The Property is situate at a busy main round junction and, together with the adjoining properties, has a curved frontage to the street. This means that all the rooms are of an unusual shape since the property narrows significantly from front to back. During the period 1998-2000, the Property was developed into its present configuration. The top floor flat is subject to a lease dated 28 March 2000 for a term of 999 years from 25 March 1998. We were told that the leases of the other two flats are in the same form.

5. The grantor of the lease, a Mr Christopher Hill, appeared to be the developer of the Property and he remained the freeholder until early in 2006 when the freehold was purchased by the Respondent. This is a corporate vehicle owned by the company appointed as agents since the purchase, namely West of England Estate Management Company Ltd ("WeemCo").

6. Mr Hill collected the service charges annually in arrear and did not employ agents. For the three years 2003-2005 inclusive the total service charge for the top flat was between £179.50p and £248. Apart from a small charge for "Attending to bills, correspondence, etc", the service charge was apparently entirely the due proportion of the costs actually incurred.

7. On 30 May 2006, WeemCo wrote to the Applicants, introducing themselves as agents for the Respondent. They indicated that they would normally seek to collect service charges monthly after providing a budget for the year and proposed interim arrangements for 2006. They also enclosed a copy of the result of a survey report that they had commissioned in the light of which they proposed to plan ongoing repairs and maintenance. The service charge budget revealed a service charge for the flat for 2006 of £1,046.

8. The Applicants were not happy with the service charge proposed. Subsequent correspondence between the parties ensued and our bundle of documents also included a letter of objection from the leaseholder of the bottom, or first floor, flat (we were told that this flat has subsequently changed hands). The correspondence ended after WeemCo offered to moderate their agent's charges for 2006, largely to reflect the fact of the freehold being transferred to them about one third of the way through the year. They also dropped for the time being collection of a sum to put into a reserve fund (permitted by the Lease). The revised charge of £671 remained unacceptable to the Applicants who chose to pay £573 on account but not the balance. These applications were then made. We were told that county court proceedings are pending and awaiting the outcome of this application, in respect of two leaseholders who have made no payments whatsoever in respect of 2006 charges. The leaseholder of the ground floor shop has very recently settled outstanding charges upon sale of the lease in the latter part of 2006.

9. We were provided with a copy of the Lease dated 28 March, though neither party chose to refer to it in detail or make submissions on its terms. Both parties accepted that the Lease authorised all the heads of charge levied; the only issue was whether they were reasonable. For this reason it is only necessary to briefly refer to the service charge provisions. In short, there are two parts to the service charge, the flats paying one fifth of the first part, covering items such as insurance and external repairs (the shop lease covering two-fifths plus an insurance surcharge to reflect the whole cost of any insurance uplift from the retail use) and one third of the other costs.

Applicants' case

10. The Applicants contention was straightforward. In 2006, Mr Hill charged £206.30p for the service charge; the increase, now the freeholder had changed, to £671 was per se unreasonable. They proposed instead a sum of just under £400. When pressed on the details, they contested all the heads of charge; but during the hearing

they later accepted that the insurance premium and charge for electricity were reasonable.

11. It was contended that the cleaning contractor's charges were too high at £10 per hour with a minimum £15 per visit; that the accountancy charge was too high and so was the proposal for repairs and maintenance, especially since little had been done. The contingency was questioned and, above all, it was claimed that the agent's fees of £890 plus VAT were excessive.

Respondent's case

12. The contention was that all the charges were inevitably and reasonably incurred. The view was expressed that the original invoice was reasonable but the policy was always one that was receptive to consultation and the company had tried to make savings by charging for less than all the year and had dropped the proposed reserve fund for the time being. The correct comparison was not with the charges made by Mr Hill but with what a professional managing agent would reasonably charge – a service envisaged by the lease that permitted a reasonable charge. As professionals, they had had to do the initial survey and the legally required asbestos and electrical surveys.

13 On the specific heads of charge, it was said that:

(a) The cleaning contractor employed offered a very competitive price because they were employed to do all the properties managed by WeemCo. They had to provide insurance cover and a vehicle and cover transport. The Responents would be receptive to negotiating cleaning for 2007 on a less frequent basis to save costs. It was acknowledged that no cleaning had been done in 2006 because all leaseholders were withholding all or part of the payments due but payments received would, of course, be credited against future expenses.

(b) The property had to be kept in good repair and the estimates proposed were reasonable. The Respondent would be liable under the lease covenants if it did not do the repairs.

(c) Given the statutory requirements, the charge of £129 for the year was very reasonable.

(d) The agent fees were £450 for the building and £110 per unit. Small buildings required the same element of work in some areas as larger ones – the need for a separate bank account, staffing costs and so forth. Other costs did vary according to size. This explained the two-tier structure of charge. Their charges compared favourably with other managing agents for residential properties. Many tenants' managing companies chose to instruct them on the same fee structure.

Discussions and final submissions

14. In the course of cross questioning, Mr Perry stressed that a professional managing agent has to cover the insurances, costs of premises, and in return provided a service with staff on call by telephone and the ability to respond to urgent needs. He accepted that the cleaning costs in the revised account remained calculated on an annual basis and was willing to reduce these in 2006 by one third (£130).

15. In his closing submission, the Applicants stressed that they had purchased this flat on the basis of the then charges.

Decision on section 27A application

16. The decision of the Tribunal is that the service charge, as amended, is reasonable. The insurance and electricity items were eventually agreed. In respect of other matters:

(a) In cases such as this Property, the cleaning has to be done by a contractor. The tribunal members were actually somewhat surprised that such a competitive price had been obtained. The charges were eminently reasonable.

(b) The assessment for repairs and maintenance totalled £765. It was necessary for the Respondent to do a preliminary survey and the asbestos review; the repairs to the banister, stairs and vents also had to be done. A reasonable contingency is essential – as shown by the recent roof leak. The sum of £200 for this is certainly reasonable.

(c) The accountancy charge was competitive and reasonable; it would not be possible, in the view of the Tribunal, to do the work required for less.

(d) The basis of the agent's charge adopted by WeemCo conforms to accepted practice. The amounts were eminently reasonable. It is in the Tribunal's knowledge that some firms do not now undertake management of such small blocks and those that do can charge more.

17. It is understandable that the Applicants should compare the cost to the charges made by Mr Hill. He could have properly and reasonably charged more – indeed the lease permitted him to charge as if he employed an agent even if he did the work himself. The Applicants have had the benefit of the very low charges for over three years – and a service charge in arrear. Now that a professional firm is providing the service, the costs will inevitably be higher and will be collectable in advance based on estimates. They are certainly very reasonable in 2006.

18. In view of the concession on cleaning, the Tribunal finds that the service charge for 2006 is reduced by the £130 conceded; the Service charge B is reduced from £885 to £755 and from £295 per flat to £252 per flat. The total for each flat is therefore reduced to £628 from £671. In all other respects, the service charge is upheld.

Decision on section 20C application

19. All the leaseholders opposed the charges now found to be reasonable. The Respondent was willing to compromise and did so. The Respondent carefully explained the basis of the charges made. There are no grounds for making an order under section 20C of the 1985 Act.

Signed

Professor D.N.Clarke,
Chairman of the Tribunal.

29 January 2007.