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

Re: Section 27A Landlord and Tenant Act 1985
Application to determine service charges for the years 2001/02 and subsequent years

Case Number:	CHI/00HG/LIS/2007/0040
Premises:	24 Claremont Street, North Road West, Plymouth PL1 5AQ and other flats
Applicant:	Plymouth City Council ("the Council")
Respondent:	Mr Paul Bailey and other members of the Claremont Leaseholders Association
Representation:	Mr M Dors, Counsel, for the Applicant: Mr Paul Bailey, for the Respondent:
Panel:	Mr Alan Strowger, M A (Cantab.), Chairman Mr T Dickinson BSc FRICS Mr R Batho MA BSc LLB FRICS

DECISION

1. This is an application by the Plymouth City Council for the determination of payability of service charges under section 27 A of the Landlord and tenant Act 1985 in respect of 24 Claremont Street North Road West Plymouth PL1 5AQ for the financial years 2001/2002 onwards. It is a representative application in that the Council have indicated by their letter of 25th April 2007 that the Tribunal's determination in respect of flat 24 will be applied to the other 82 flats in the seven blocks of which the subject flat forms a part.

2. The Respondent provided a page numbered and indexed bundle of agreed documents for the Hearing on 16 October 2007.

3. The Tribunal made a tour of inspection of the premises in the presence of the parties and Mr Dors. Mr Bailey pointed out the various defects that were referred to in the witness statements and illustrated in the photos in the bundle of documents

4. The Tribunal heard oral evidence from the Council's witnesses, Mr Franck Corbridge, Leasehold Services Manager and Mr M De'ath, Principal Accountant, from Mr P Bailey, the Respondent and Mr G Speed of Monk and Partners, the single surveyor expert jointly appointed by the parties. Messrs R Wherry, R Clark, M Riches from the Council were also in attendance on either or both days. Mr and Mrs Hamilton and Mr T Carter, Lessees, attended as observers.

5. At the end of the first day's hearing, on 18 October 2007, the Tribunal adjourned and made directions that the Council provide a supplementary statement annexing reconciled accounts for the service charge year 2004/2005 exhibiting all the relevant invoices, and other supporting documents to substantial those figures. This supplementary bundle was duly served on the Respondent and the Tribunal in accordance with directions prior to the resumed hearing on 19 November 2007. The Tribunal agreed that Mr De'ath should be heard as an additional witness to give evidence as to service charge calculations.

6. The Respondent Mr Bailey, as a representative Lessee, is the Lessee jointly with his wife of flat 24. A copy of that lease and a copy of the lease of flat 20 are in the main bundle at pages 128 and 106 respectively. The liability of the Lessee to pay service charges to the Lessor Council arises at clauses 15 and 16 of the fifth schedule of the leases. The Council's repairing obligation, as Lessor, is set out clause 4 in the sixth schedule; further at clause 9 (a) the Lessor "shall so far as it thinks practicable equalise the amount from year to year of its costs and expenses in carrying out its obligations under this schedule in such manner as it thinks fit within its existing accounting practices for its housing stock".

7. The Tribunal notes that there is a difference in the leases in that at clause 7 of the sixth schedule in the lease of flat 24 the repairing and maintaining responsibility of the Lessor has been amended to include 'the drives paths lawns open spaces communal areas halls stairs landing and passages 'on the Estate' and a responsibility in respect

of lighting etc 'on the Estate', whereas in the unamended lease of flat 20 the liability to maintain is limited to the Reserved Property. The difference is that the Reserved Property is defined as the remainder of the Block (excluding the individual demised flat) whereas the Estate refers to the whole area known as North Road West Estate.

8. The Council's letter accompanying the application sets out the background that led to the application being made. It refers to Mr P Bailey being the representative of the Claremont Leaseholders Association which represents the views of 12 of the 23 leaseholders in the 7 blocks. The remaining 60 flats are council tenancies and the Council is the freeholder of the Blocks.

9. The service charge demands fall into two categories. The first relates to what may be described as routine expenditure such as caretaking, maintenance and the like whilst the second, particularly arising in the financial year 2004/2005, relates to a major scheme of refurbishment undertaken in association with the Single Regeneration Budget Challenge Fund Grant Scheme. The tender figure accepted was in excess of £1.637 million.

The refurbishment works

10. With regard to the refurbishment costs, it is accepted by the Council that the amounts which they seek to recover were such that, prior to the commencement of work, they were required to serve notice on the tenants under the provisions of section 20 of the Landlord and Tenant Act 1985. Those notices were given by individual letters addressed to the tenants and, by the evidence, both dated and hand delivered on 11th September 2002.

11. The requirement of section 20 is that at least two estimates for the work should be obtained, one of them from a person wholly unconnected with the landlord; that notices must be accompanied by copies of the estimates; that the notices must describe the works to be carried out and invite observations on them and the estimates by a date specified in the notice; that the date given in the notice shall be not earlier than a month after the date on which the notice is served; and that the landlord shall have regard to any observations received in pursuance of the notice.

12. In considering the issue of the section 20 Notice, the Tribunal has had regard to the Lands Tribunal case of *London Borough of Islington and Lucy Shehata Abdel-Malek* issued on 7 August 2007. At paragraph 30 the tribunal states "it was incumbent upon the appellant to provide to the respondent copies of all of the estimates it had obtained for the works to Brancaster House. It failed to do so. The appellant only provided details of the successful tenderer's bid in respect of such works and did so by means of its own summary rather than by copying the estimate (tender) itself. "The Act requires...that the landlord should copy the actual estimate obtained and not provide a summary". In the concluding sentence of paragraph 31 the tribunal continued, by referring to the purpose of section 20, as being to give a tenant sufficient information to compare and make observations on the estimates for those works for which he is liable to contribute by way of service charge..."Such information is required in respect of all, and not just the lowest, of the estimates that the landlord obtains and it is not relevant to this appeal that to provide the same would be contrary to the appellant's policy and would cause it administrative difficulties".

13. The letter which the Plymouth City Council sent by way of the purported section 20 Notice in this case explained that four reputable and specialist contractors had been invited to tender, three of whom had returned tenders, and it quoted the tender amounts but without identifying who the contractors were. Copies of the estimates were not attached but tenants were invited to put concerns or questions regarding the estimates to Mr Frank Corbridge, the Leasehold Services Co-ordinator, within one month of the date of the letters. The letters also said that it was intended to start work on Monday 14th October 2002.

14. Mr Bailey, the occupier of flat 24, says that by the time the notices were issued on 11th September, the tenants had not been provided with full details of what was being proposed in relation to concrete repairs, and that indeed it was not until after October 29th that full details of these, ventilation and roof renewal were received, and that had the notices been served in proper time the tenants would have challenged what was proposed. He also says that it was not until 20th September that the tenants eventually received details of the asbestos inspection, again rendering it impossible for any practical observation made.

15. The Council now says that in serving the notices it did not give the names of the contractors for reasons of commercial confidentiality, and that to provide full copies of the detailed estimates to each tenant would have been unreasonable or impractical in the circumstances. The notices as served gave a reasonable indication of what was intended and the reference to a proposed start date was an indication of intention rather than a firm commitment.

16. Whilst the Tribunal understands the desire to maintain commercial confidentiality, the contractors could have been identified without relating them to the amounts of their estimates, and notes that this would have satisfied the requirement of showing that there was at least one company not directly connected with the council, as the legislation requires. The Tribunal recognises the work involved in producing full copies of the estimates with the Notices, but notes that the legislation contains no saving provision in this respect and considers that the Council should have made some alternative arrangement in circumstances, such as offering to have copies available for inspection if required.

17. Further, the Tribunal finds the Council's argument that the proposed start date was a mere target unconvincing: the letter contains a clear statement of intention to start work on a specified date and with a contract of this size it would not, on such short notice, have been possible either to engage contractors who would have met the date or to change contractors. The letter implies a degree of commitment to one contractor beyond that to which the Council now admit.

18. With regard to the points raised by Mr Bailey, it does seem clear that the~~y~~ opportunity for comment was indeed rather less than the legislation envisages and, as he says, it was not until 29th October, five days after the contract start date specified in the Section 20 Notices, that full information was given.

19. It is not clear when the Claremont Leaseholders Association was formed. There is a letter from Housing for People addressed to the Association's secretary dated 27 September 2002 which predates the Section 20 letter of Notice by a few days. The consultation requirements are more stringent where the tenants are represented by a recognised tenants' association. However as the Tribunal was

not satisfied that evidence showed a recognised association to be in existence at the time, it has applied the less stringent criteria for consultation where there is no association.

20. On that basis, and taking all the circumstances into account, the Tribunal finds that the consultation requirements of section 20 were not met. Accordingly the amount that the Council can recover from the Lessee by way of contribution to service charges in respect of the costs of the qualifying works, being the refurbishment that was carried out, is limited to £250 in any one service charge year. Although it might be difficult to conclude that even if further details had been provided and the full consultation process followed, the outcome would have been any different, the Tribunal has no discretion in this matter; either the requirements are met or they are not. In finding that the consultation requirements have not been complied with, capping must apply. Given the dates when these various events took place, the Tribunal has no power to dispense with the consultation requirement in this case. It is for the Council, if it so wishes, to make application to the County Court for dispensation with the consultation requirements.

21. The Tribunal would comment that the consultation process is an important aspect of establishing proper service charge levels, and it is reasonable to expect the highest standards from a public sector landlord in complying with statutory requirements.

22. In the event, it is common ground that the works were not completed satisfactorily, and that is confirmed in the report prepared by Monk and Partners acting as joint experts. The Report is an appalling indictment of very poor building standards, poor design, the use of inappropriate materials, and, it would appear, an unacceptable failure in the supervision process. The result is that Lessees and tenants of the Council have had to endure unacceptable conditions over a period of some years. It is also regrettable that it has taken so long to for the Council to deal with the rectification of the innumerable faults – many still outstanding - identified in the excellent and comprehensive report of Monk and Partners.

23. As a part of their acknowledgement of that situation, the Council have made concessions over the sums that they would otherwise be seeking to recover from the Lessees under the service charge

provisions. However the Tribunal was not persuaded by the argument of the Council that because concessions had been made in respect of recovery of contributions for some of the works, this should be taken into account by the Tribunal in determining the payability of service charges. It is the case, however, that the Council has indicated that remedial works will be carried out at no further cost to the Lessees. The end result, therefore, should be that all works originally specified will be completed to a satisfactory standard, and on this basis the Tribunal concludes that the reduced sums which the Council seeks to recover are reasonable.

24. The Tribunal nonetheless notes that it has taken some five years to reach this point, and it appreciates Mr Bailey's concern at the difficulties in obtaining responses from the Council at various stages. It therefore concludes that although the sums which the Council seek to recover are reasonable and therefore payable, they should not be paid until the remedial work as specified to the cladding, guttering, down pipes and weep holes have been completed satisfactorily, and so certified by Monk and Partners as independent experts. The Tribunal considers that, in all the circumstances, it would be reasonable to expect the Council to meet the cost of that certification.

25. Until that stage has been reached the amount that the Council can recover from the Lessees in respect of the refurbishment works shall (subject to the removal of the capping limit by the County Court) be limited to £5500 per flat, to give some recognition to the substantial outstanding remedial works that remain to be done and the substantial inconvenience suffered by Lessees, and also some incentive for the Council to expedite the remedying of all outstanding defects.

The general service charge

26. With regard to the routine recurring general service charge costs, the Council has approached the apportionment of costs in two ways. Up to and including the financial year 2002/2003 service charges were calculated on a citywide basis, that is to say the costs in relation to each element of expenditure were aggregated across the city and then apportioned on a per flat basis. The result of such an approach is that the occupiers of some flats will have been subsidising, or will have been subsidised by, others rather than paying the cost of the

services which they actually receive. Unfortunately the Council has been unable to produce evidence to show beyond doubt what the situation in that respect was in relation to the subject flat for the relevant periods prior to the adoption of the new system.

27. However for the year 2003/2004 and onwards those costs have been dealt with on a block by block basis, which the Council say will give a fairer and more accurate result, thus implying that the apportionments made on the citywide basis may not have been reasonable. For all the years, however, demands are made on an estimated basis (as the leases provide may be the case) but the Council's financial arrangements are such that the adjustment between budget and actual costs is not made until two years later.

28. There is no evidential basis on which the Tribunal can assess the reasonableness of service charges prior to the new system being adopted. The burden is on the Council to show on the balance of probability that the service charges are reasonable. It has not produced evidence to demonstrate the reasonableness of its service charges prior to the new arrangement. Accordingly (but subject to what is said below) it is impossible to conclude that the citywide apportionment basis was in principle either fair or reasonable in the year 2003/2004 or in any of the years prior to that.

29. In view of the 2 year time lag in adjusting the final service charge for any year, the first year that can be assessed under the new system is 2004/2005. The parties agreed that this should be taken as a sample year on the basis that any general principle established by the Tribunal as to the reasonableness of the service charge for that year would be treated as the basis for considering the reasonableness of service charges in any other year under the new system.

30. Perhaps somewhat ironically, under the new accounting arrangement, applying for the first time to the year 2004/2005, it would appear that the Block at Claremont Street where the Respondent's flat is located was advantaged by an element of cross-subsidy in previous years rather than the reverse. For this reason alone, rather than on the basis of any clearer evidence, the Tribunal concludes that the amounts charged to the subject flat, on the citywide calculation basis, for the previous years are likely to have to reasonable, and so payable.

31. With regard to the operation of the new arrangement, with costs assessed on a per block basis, the Council had not previously provided any detail to the Lessees which would show a clear reconciliation between budget and actual costs and this information was provided only at the Tribunal's direction. Given the two year time lapse between demands being made and final figures being available it seems particularly important that proper justification should be given, although such justification should be provided as a matter of routine in any event.

32. The Tribunal is unable to accept Mr Bailey's contention that the Council should only charge for services once the costs have been established beyond doubt. The leases allow the Council to make charges on account and that is a normal provision and practice in leases. Nevertheless, the Council clearly need to ensure that fair and reasonable practices are followed in all circumstances. The Tribunal would make the observation that the two year time lag is unacceptably long and the Council should look to establishing accounting procedures that enable an earlier reconciliation to be made between estimates and costs actually incurred, as private sector landlords, even of large estates, normally succeed in doing.

33. Helpfully Mr De'ath and his team from the Council had prepared, as directed, a very detailed breakdown and analysis of the costs incurred under the various heads of expenditure and which the Council seeks to recover under the service charge provisions. The charges are supported by documentary evidence – invoices etc. The heads of charge are window cleaning, laundries, bulk bins, TV aerials, lighting and ground maintenance. Under each of these heads there is an explanation and breakdown of the relevant charges, showing direct charges and an apportionment of overheads based in some cases on nationally set guidelines.

34. In the case of the four smallest items (the largest of which was lighting at £20.56) the 'final'cost was the same as the estimated figure. Caretaking was adjusted downwards from £221.02 to £169.62, laundries upwards from £56.54 to £77.10 and bulk bins from £15.42 to £25.70. From its expert knowledge, the Tribunal found the attributed overhead figure for caretaking as within an acceptable range. It is provided in the lease at clause 8 of the sixth

schedule that the Lessor may employ and engage servants, agents and contractors. The Tribunal takes the view that under these provisions the Lessor can include an overhead charge for work done 'in house' or managed 'in house'. The calculation of laundry cost seems eminently reasonable. Bulk bins charges appear to be a simple arithmetical calculation although there was an element of uncertainty arising from Mr Bailey's evidence that the number of bins was incorrect. However even accepting his figure the difference would be small and Mr Bailey accepted it as a reasonable charge. Mr Bailey also accepted the TV aerial charge and that for ground maintenance as being reasonable.

35. The Tribunal finds the new system to be a more fair and reasonable way of attributing costs to the service charge account than the previous system. However it does not find the method adopted by the Council of adjusting the 'final' figure by applying a charge code and banding as set out on page 2 of the supplementary bundle to be justified. There is no basis in the lease for raising this charge. In the Tribunal's view the 'final' cost should be the final cost. It does not accept the practice of applying a final charge code to the 'final' cost is a fair and reasonable one. Accordingly the Tribunal disallows this additional cost component applied to each head of charge.

36. Mr Bailey wished to explore the issue of the garages which the Council rents out commercially. He maintained that the cost of maintaining the garages and lighting and cleaning the forecourts and parking areas fell on the Lessees under the service charge provisions. However the Tribunal was satisfied from the evidence that the cost of maintaining the garages was not being shared amongst the Lessees. It also considered that the cost of lighting and cleaning the forecourt and entrance areas is properly recoverable under the service charge provisions of flat 24 and the other flats that incorporate the same amendment, incorporating 'the Estate' as referred to above under paragraph 5 of this decision. However there may be a need to consider variation of the leases to ensure conformity and fairness. That is, however, not a matter to be considered under this application.

37. Mr Bailey also contended that there had been double billing in respect of electricity charges, but after looking at the figures carefully,

and hearing the explanation of the Council, the Tribunal found this not to be the case.

Summary of Decisions

38. The Tribunal finds the charges for the major works of refurbishment which the Council actually seeks to recover to be reasonable, on the basis that the Council will bear all the cost of remedying the faults identified by Monk and Partners in their report. The sum recoverable from the Respondent (and by agreement with the Council) from each the other Lessees is £8036.95, but the amount payable shall be limited to £5500 until the specified remedial work, to the cladding, guttering, down pipes and weep holes has been completed satisfactorily, and so certified by Monk and Partners as independent experts.

39. The on account payment of £5,500, and subsequent payment of the balance, is in each case subject to the decision of the County Court on any application which the Council may make seeking dispensation from complying with the consultation requirements of section 20 of the Landlord and Tenant Act 1985. In the absence of any such decision in the Council's favour, recovery is limited to £250 per flat for any service charge year in respect of which the Council seeks to recover any such costs.

40. The Tribunal finds the general service charge account claimed for 2004/2005 to be reasonable except to the extent that a charge code is applied to each head of charge. The Tribunal disallows this charge code.

Signed.....Dated: 3 December 2007

A L Strowger
Chairman and Member of the Southern Leasehold Valuation Tribunal