

SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL

CASE No: CHI/43UK/LSC/2007/0020

B E T W E E N :-

CHATFIELD PROPERTY LIMITED
(on behalf of Blackacre Properties Limited)

Applicant/Landlord

AND

FREDA KASOLO
FRANSISCO & ANDREA RIBEIRO
MR J M & MRS S PARIS
LILLIAN GERA
VANWALL PROPERTY LIMITED

Respondents/Lessees

PREMISES: Flats 1, 1a, 3, 5 & 6
Mulberry Court
130 Croydon Road
Caterham
Surrey
CR3 6QD ("the Premises")

TRIBUNAL: Mr D Agnew LLB, LLM (Chairman)
Mr D Lintott FRICS
Ms J K Morris

HEARING: 21st June 2007

DETERMINATION AND REASONS

1. Background
- 1.1 On 6th March 2007 the Applicant made an application to the Tribunal under Section 27A of the Landlord & Tenant Act 1985 for a determination as to the liability for and reasonableness of service charges in respect of the Premises for the years 2004/5 and 2005/6 and in respect of the budget for the year 2006/7. However, by the time of the hearing the expenditure for the year 2006/7 was known and therefore the Tribunal agreed to deal with the actual figures for that year rather than the budget figures. All the parties who attended the hearing agreed to this.
- 1.2 The Applicant submitted a statement and some documentation on 29th March 2007. Witness Statements were subsequently received from Mr Paris and Ms Gera. The Applicant submitted further documentation in a bundle of documents for use at the hearing only a day or so prior to

the hearing. At the hearing the Respondents were given time by the Tribunal to consider the new documentation and to decide whether or not they would wish to seek an adjournment in view of the late service of the documentation. The Respondents decided to continue with the hearing.

2. The Premises

- 2.1 Mulberry Court was originally a block of six purpose built flats. Two "basement" flats were added in 2004/2005. More recently a further flat has been constructed at the top of the building so that there are now nine flats in all.
- 2.2 The Tribunal inspected the premises immediately prior to the hearing on 21st June 2007. They are set back a little way from a main road with a small area for shrubs and a parking area at the front. There are letter boxes for all flats and an entry system at the front door. The stairways were carpeted and kept reasonably clean. There was lighting in the hallways. The light switch to operate the lighting had been caged in to prevent manual operation. There was fire fighting equipment on the ground floor and there were smoke detectors.
- 2.3 The Tribunal was shown how some of the windows, particularly those in flat 3, had been spattered with builders' cement.
- 2.4 The Tribunal noticed that some of the doors to meter cupboards on the outside of the building were missing and other doors were open.
- 2.5 The Tribunal's attention was drawn to the lift which was small. This would feature in the evidence at the hearing.
- 2.6 The Tribunal was also asked to note the extent of the garden/shrubbery and its condition and also the condition of the basement area at the rear of the block where there were leaves and debris in standing water.
- 2.7 There was staining to the ceilings from water ingress into Flats 3, 5 and 6.
- 2.8 There was a balcony to the front of the building at first floor level which had an asphalt covering.

3. The Hearing

- 3.1 This took place at the Harlequin Centre, Redhill on 21st June 2007.
- 3.2 Present for the Applicants were:-
 - Mr Gunning, legal advisor to Chatfield Property Limited, the landlord's managing agent
 - Mr Kalunga of Chatfield Property Limited, the managing agent
- 3.3 Present for the Respondents were:-
 - Mr M Paris of Flat 3
 - Ms Gera of Flat 6
 - Mr Raj Tankari of Vanwall Property Limited for Flat 5

4. The Lease

- 4.1 In the Particulars section at the start of the lease the "Service Charge Proportion" is stated to be "one eighth."
- 4.2 By clause 4.4 of the lease the lessee covenants to "pay the Maintenance Service Charge at the times and in the manner provided in the Fifth schedule hereto....."
- 4.3 By clause 6.2 of the lease the Landlord covenants:-
"Subject to and conditional upon payment being made by the lessee of the Interim Maintenance Charges and further Interim Maintenance Charges (as appropriate) at the time and in the manner hereinbefore provided
- 6.2.1 To maintain and keep in good and substantial repair and condition:
- 6.2.1.1 The main structure of the Building.....
- 6.2.1.2 All such gas and water mains and pipes drains waste water and sewage ducts and electric cables and wires as may by virtue of the terms of this lease be enjoyed or used by the lessee in common with the lessees or occupiers of the other residential units in the Building
- 6.2.1.3 The Common Parts of the Building (including re-carpeting redecorated and furnishing where necessary
- 6.2.2 In every third year of the term and in the last year.....to paint the whole of the outside etc
- 6.2.3 In every seventh year of the term and in the last year..... to paint paper varnish colour grain and whitewash such of the interior parts of the Building as have been or are usually painted" etc
- 6.2.4 At all times to keep the common parts adequately lit and cleaned."
- 4.4 By clause 6.3 of the lease it is the Landlord's obligation to insure the Building.
- 4.5 By clause 6.4 of the lease the Landlord is enabled to employ such maintenance staff, cleaners, Managing Agents, Chartered Accountants, surveyors, builders, architects engineers tradesmen or other professional parties as it considers necessary or proper in the maintenance safety and administration of the Building.
- 4.6 The service charge provision is to be found in the Fifth Schedule to the lease whereby the lessee is to contribute the proportion specified in the Particulars (i.e. 1/8th) of the "Total Maintenance Expenditure" such payments to be paid by way of the Interim Maintenance Charge and the further Interim Maintenance Charge. The "Total Maintenance Expenditure" is stated by paragraph 1.1 of this Schedule to "comprise the total expenditure incurred by the lessor in any accounting period in carrying out its obligations specified in Clauses 6.2, 6.3 and 6.4 of the lease.

5. The Law

- 5.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-
The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:
- (a) the person by whom it is payable
 - (b) the person to whom it is payable

- (c) the amount which is payable
- (d) the date at or by which it is payable
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- 5.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
- 5.3 By Paragraph 2 of Schedule 11 of CLARA "a variable administration charge is payable only to the extent that the amount of the charge is reasonable."
- 5.4 Paragraph 5 of the 11th Schedule gives jurisdiction to the Leasehold Valuation Tribunal to determine the reasonableness of administration charges in the same way as for service charges under Section 27A of the 1985 Act.

6. The Applicant's Case

- 6.1 The Applicant stated that the following payments were outstanding in respect of the Respondents:-

Flats 1a		Flat 6	
<u>Year 04/05</u>	£	<u>Year 04/05</u>	£
Interim service charge	100.00	Interim service charge	100.00
Management fees (28/2/05 to 23/6/05)	39.73	Management fees	101.78
Excess service charge	391.00	Excess service charge	391.00
	530.73		592.78
		Less payment	50.00
			542.78

The service charge and excess service charge being made up as to:-

Cleaning	373.45
Gardening	705.00
Insurance	2849.53
	3927.98

Of which the lessee's share is 1/8th = £490.99 (rounded up to £491.00)

<u>Year 05/06</u>	
Interim service charge	212.50
Insurance	402.74

Management fees	125.00
Excess service charge	49.69
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The service charge per flat being made up as to:-

Cleaning	155.06
Gardening	101.75
Repairs and maintenance	5.38
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Ms Gera of Flat 6 paid £500.00 during the year leaving a balance claimed from her of £289.93.

Year 06/07 (applicable to all respondents i.e. flat 1, 1a, 3, 5 & 6)

Interim service charge	1291.59
Management fees	175.20
Excess service charge	1688.51
Insurance	360.31

The service charge and excess service charge per flat was made up as follows:-

Communal cleaning and windows	193.12
Electricity to common parts	42.57
Gardening	58.25
Entry phone system	158.63
Legal and professional fees	79.13
Health and safety fees	445.85
Communal carpeting	183.77
Repairs and maintenance	1495.35
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Repairs and maintenance in respect of all 8 flats comprised:-

Unblocking drains	1034.00
Supplying and installing water extinguisher	152.75
Investigations of electrical problem and	120.00

disconnect	
Repair main drain blockage	517.00
Electrical works	323.12
Bin area construction	969.37
Replace gas meter covers	1492.25
Install letter boxes	64.62
Investigation to fault on alarm	237.94
Repairs to bin area	410.12
Repair scuff marks to wall, fix electric	209.88
Install security lock to communal door	227.05
Call out to level ground, bin area	124.35
Install double socket	235.00
Decorate hall/lobby	1630.00
Asphalt works to balcony	2157.30
Emergency clearance of rubbish	215.00
Call out/investigation damp	293.75
Repairs to lift	728.50
Take down damaged brickwork and rebuild	293.75
Clear rubbish and replace bins	231.65
Investigate lift and carry our repairs	182.13
Call out to re-fix entry panel	113.26
	<u>11,962.79</u>

6.2 The Applicant's representatives explained that they had only been in post since March 2006 and they were unable to assist with regard to what might have occurred before then. They were aware, from correspondence with and talking to the lessees that there had been problems prior to March 2006 and they were doing all they could to deal with matters on a proper basis now. There were several matters that they had taken up on the lessees' behalf. They said that many problems had been caused by the developer of the top floor of the block and they were trying to hold the developer responsible for some of the costs which had been charged originally to the lessees under the service charge. As for the future budget Mr Kalunga invited the lessees to sit down with him and discuss this. Certain charges were conceded by Mr Kalunga and these appear in the detail of the Tribunal's decision later in these Reasons. The company which carried out the asphaltting to the balcony towards the end of 2006 had been contacted with a view to them revisiting the premises to rectify any faults there may be in the light of the damage which appears to be emanating from this part of the building into the common parts. Otherwise, the service charge accounts and copy invoices in support had been produced and they asked the Tribunal to determine that the costs were reasonable. Neither representative of the landlord's managing agents could explain the basis upon which

the developer had been allowed to enter the property and carry out his building works. As far as they were aware a lease had yet to be signed.

7. The Respondent's Case

- 7.1 Mr Paris of Flat 3 was the main spokesman for the lessees. He had purchased his flat in June 2006. This was at a time when there was scaffolding in place at the property in order for the new flat to be constructed at the top of the building. At the time of his purchase he was advised that on average the service charge would come to approximately £1,000 per annum to include insurance. In July 2006 he received a budget from the managing agents asking for approximately £1,000 for interim service charges not including the cost of insurance. He wrote to ask for an explanation which was not given until 20th February 2007. In the meantime the extensive building works to create a new flat at the top of the building were continuing. In fact the work had started in September 2005. Scaffolding was removed in December 2006 and the workmen finally finished in February 2007 although since then there have been problems with leaks from the central heating pipe work to the new flat into the floor below.. During this time Mr Paris constantly complained about the state of the premises and the fact that they were not being cleared or cleaned adequately.
- 7.2 Ms Gera (Flat 6) gave evidence as to how the property had been a building site from 2004 when the basement was converted into two flats until the top floor flat was completed in February 2007 with a gap of only about five months (from March to September 2005) when no building work was going on. She described how during the buildings works the property was in a dreadful state. Dirt and dust was everywhere, the communal parts were filthy, builders' debris was everywhere, windows were not cleaned and the lift was being used to transport heavy bags of builders' material up to the top floor. She had suffered an ingress of water into her flat from the building works as had flats 3 and 5. Ms Gera's decorations were not dealt with for about a year.
- 7.3 Mr Paris produced copies of copious emails he had sent to the managing agents as to the state of the premises as a result of the building works and the lack of cleaning and the builders' rubbish. Replies from the managing agents acknowledge that "communal hallways have been wrecked", "some people said that contractors were using the lift to lift cement" that hallways have not been cleaned as this would be a waste of lessees' money having to "constantly clean up after the builders".
- 7.4 Mr Paris said that the asphalt works were carried out before a Section 20 Notice was received and when it was received it did not contain any detail. Mr Paris disputed that the works had to be done as an emergency. Mr Kalunga conceded that the Section 20 procedure did not appear to have been followed by the Landlord and that in that case the Landlord would be restricted to recovering £250.00 per flat from the lessees for this item.
- 7.5 The lessees considered that many of the service charge items should properly have been charged to the landlord or the developer and they should not have to pay for cleaning which was either not done, done poorly or was a waste of time in view of the building works going on.

The lessees went through each item of expenditure contained within the service charge items and identified each item they disputed which was in most cases due to the building work. The lessees did acknowledge that things had improved of late. They were however concerned that the budget for 2007/08 which has just been received, if based on the budget for 2007/08 or the actual expenditure put against the service charge for 2006/07, will be based on unreasonably high figures.

8. The Determination

- 8.1 The Tribunal had no hesitation in finding that the lessees had suffered greatly in some cases for an almost continuous period from 2005 through to February 2007 with a respite of only five months from substantial building works. The Tribunal saw for itself some of the blocked drains and water staining to walls and ceilings that still exist. The works to create the top flat in particular must have been very extensive as it involved building up the brick walls to form new gables at both the front and rear of the building and the corresponding reconstruction of a significant part of the roof. All this was done without any consultation with the lessees and seemingly no restrictions or control being placed on the developer of the top flat by the Landlord. In the Tribunal's view there should have been clear and tight provisions as to what the developer had to do to protect the lessees' property and to ensure that the work caused the minimum of disruption and inconvenience to them. Materials should not have been transported up through the building at all let alone in the lift. The contractors should have been made to clear up regularly and at the end of each working day. It is intolerable to expect the lessees to have to pay for the cleaning of the common parts and windows whilst all this work was going on. If the Landlord has failed in advance to ensure that the developer was required to attend to such matters then he cannot expect the lessees to foot the bill and he must bear the cost claimed in the service charge but properly attributable to the building works itself. The Tribunal was surprised to learn that there does not seem to have been any legal document in place giving the developer the right to do what he has to the building and that his occupational lease is not yet signed.
- 8.2 It is most important that the lessees establish at an early date what the responsibility for the owner of the new flat (flat 9) is to be for service charges and from what date. That flat has now been completed and there is apparently someone in occupation, although (as stated above) there does not appear to be a proper lease in place. The apportionment of future service charges will need to be established quickly and, if necessary, the current leases will need to be varied accordingly.
- 8.3 The parties will see from paragraph 9 below which service charge items have been allowed by the Tribunal as being reasonable and which have been reduced or disallowed. Where management fees have been reduced this is to reflect the fact that little management was done during the period when the landlord's managing agents might have been expected to have been most active: that is during the building works. Where cleaning has been reduced it is because for a certain period of the year in question the building works would have rendered

any cleaning useless. Where gardening costs have been reduced this is because the Tribunal considered the amount charged for gardening to be excessive. There is very little gardening that needs to be done at the premises. There are a few shrubs that need attention and paths to be cleared occasionally. Where "repairs and maintenance" has been reduced this is in the main due to the building works. The work to the bin store has been disallowed: this is, first, because the lessees were not consulted about it, (then) when it was constructed it was totally inadequate for the purpose, and it was then demolished by the builders' lorry. The Tribunal was satisfied that the lessees should not have to bear any of the costs related to this item. The costs of installation of smoke detectors and lights and sensors has been reduced because the Tribunal considered that much of this work had been necessitated by wiring up the new flat to the alarm system and that the other lessees should therefore not have to bear the whole cost. The electricity charge has been reduced to reflect the fact that there was evidence from the lessees that the builders had used the communal electricity supply for the work on the top flat. The survey for the schedule of works had been reduced to reflect the fact that the new flat will have the benefit of that survey as well as the other lessees. One fee for repair to the lift has been allowed but the second had been disallowed as the need for this visit was due to the mistreatment of the lift. The evidence of the lessees was that it was the builder's workmen who had misused the lift in carrying materials in it and prising the doors open. Although the maximum of £250.00 has been allowed for the asphaltting work to the balcony (it having been conceded that the Sec 20 procedure had not been followed) this has been allowed on the basis that the managing agents will ensure that the contractor is called back on site to remedy any defect in that work under the guarantee or defects period.

9. The Tribunal concluded that the following service charge items are reasonable:-

Year 2004/05 Per Flat

	Flat 1a	(Flat 6)
Management charge	39.73	101.78
Cleaning	6.46	6.46
Gardening	51.70	51.70
Insurance	356.19	356.19
	<hr/>	<hr/>
	454.08	516.13

Therefore Flat 1a owes £454.08. Flat 6 owes £516.13 less £50.00 paid = £466.13. However, all service charge arrears for Flat 1a were discharged in April 2007.

Year 2005/06 Per Flat For both flat 1a and 6

Insurance	402.74
Management fees	125.00

Cleaning	39.36
Gardening	22.88
Repairs and maintenance	5.38
	595.36

Therefore Flat 1a owes £595.36 and Flat 6 owes £95.36 (£595.36 less £500.00 already paid).
However, the service charges for Flat 1a were discharged in April 2007.

Year 2006/07 Per Flat for Flat 1, 1a, 3, 5, and 6

Insurance	360.31
Management fees	105.75
Cleaning and windows	38.05
Entry phone system	100.00
Gardening	29.13
Health and safety: smoke detectors	106.73
Lights	146.88
Anti vandal sensor	19.18
Extinguishers	34.52
Fire alarm test	11.75
Electricity	28.38
Legal and professional fees	70.33
Repairs and maintenance: unblock drains	-
Investigate electrics	- (conceded)
Water extinguisher	19.09
Repair drain blockage	-
Electrical works to landlord	-
Bin area construction	-
Gas meter covers	- (conceded)
Letter boxes	8.08
Fault on alarm	29.74
Repairs to bin area	-
Scuff marks to wall	-
Security lock	28.38
Clear ground and bin	-
Install double socket	- (conceded)
Decoration to hallway	- (conceded)
Asphalt to balcony	250.00
Emergency clear rubbish	-
Call out re damp	-

Lift repairs	91.06
Damaged brickwork	-
Clear rubbish	-
Lift repair	-
Entry panel	14.15
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	1078.22

Flats 1a and 3 have paid the insurance premium to the landlord and therefore they owe £717.91 for the year 2006/07. Flats 1 and 5 owe £1078.22 for that year. Flat 6 owes £478.22 (i.e. £1078.22 less £600.00 paid on account).

10. Summary

Flat 6 owes £466.13 for service charges for the year 2004/05, £95.36 for the year 2005/06 and £478.22 for the year 2006/07.

Flat 1 and Flat 5 owe £1078.02 for service charges (including insurance) for the year 2006/07.

Flats 1a and 3 owe £717.91 for the year 2006/07.

Dated this 17th day of July 2007

Signed

.....

D Agnew LLB, LLM
Chairman

AMENDED UNDER REGULATION 31(7) OF THE RESIDENTIAL PROPERTY TRIBUNAL
PROCEDURE (ENGLAND) REGULATIONS 2006

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1.2 The Applicant submitted a statement and some documentation on 29th March 2007. Witness Statements were subsequently received from Mr Paris and Ms Gera. The Applicant submitted further documentation in a bundle of documents for use at the hearing only a day or so prior to the hearing. At the hearing the Respondents were given time by the Tribunal to consider the new documentation and to decide whether or not they would wish to seek an adjournment in view of the late service of the documentation. The Respondents decided to continue with the hearing.

2. The Premises

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2.2 The Tribunal inspected the premises immediately prior to the hearing on 21st June 2007. They are set back a little way from a main road with a small area for shrubs and a parking area at the front. There are letter boxes for all flats and an entry system at the front door. The stairways were carpeted and kept reasonably clean. There was lighting in the hallways. The light switch to operate the lighting had been caged in to prevent manual operation. There was fire fighting equipment on the ground floor and there were smoke detectors.

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Repair scuff marks to wall, fix electric	209.88
Install security lock to communal door	227.05
Call out to level ground, bin area	124.35
Install double socket	235.00
Decorate hall/lobby	1630.00
Asphalt works to balcony	2157.30
Emergency clearance of rubbish	215.00
Call out/investigation damp	293.75
Repairs to lift	728.50
Take down damaged brickwork and rebuild	293.75
Clear rubbish and replace bins	231.65
Investigate lift and carry our repairs	182.13
Call out to re-fix entry panel	113.26
	11,962.79

6.2 The Applicant's representatives explained that they had only been in post since March 2006 and they were unable to assist with regard to what might have occurred before then. They were aware, from correspondence with and talking to the lessees that there had been problems prior to March 2006 and they were doing all they could to deal with matters on a proper basis now. There were several matters that they had taken up on the lessees' behalf. They said that many problems had been caused by the developer of the top floor of the block and they were trying to hold the developer responsible for some of the costs which had been charged originally to the lessees under the service charge. As for the future budget Mr Kalunga invited the lessees to sit down with him and discuss this. Certain charges were conceded by Mr Kalunga and these appear in the detail of the Tribunal's decision later in these Reasons. The company which carried out the asphaltting to the balcony towards the end of 2006 had been contacted with a view to them revisiting the premises to rectify any faults there

may be in the light of the damage which appears to be emanating from this part of the building into the common parts. Otherwise, the service charge accounts and copy invoices in support had been produced and they asked the Tribunal to determine that the costs were reasonable. Neither representative of the landlord's managing agents could explain the basis upon which the developer had been allowed to enter the property and carry out his building works. As far as they were aware a lease had yet to be signed.

7. The Respondent's Case

- 7.1 Mr Paris of Flat 3 was the main spokesman for the lessees. He had purchased his flat in June 2006. This was at a time when there was scaffolding in place at the property in order for the new flat to be constructed at the top of the building. At the time of his purchase he was advised that on average the service charge would come to approximately £1,000 per annum to include insurance. In July 2006 he received a budget from the managing agents asking for approximately £1,000 for interim service charges not including the cost of insurance. He wrote to ask for an explanation which was not given until 20th February 2007. In the meantime the extensive building works to create a new flat at the top of the building were continuing. In fact the work had started in September 2005. Scaffolding was removed in December 2006 and the workmen finally finished in February 2007 although since then there have been problems with leaks from the central heating pipe work to the new flat into the floor below.. During this time Mr Paris constantly complained about the state of the premises and the fact that they were not being cleared or cleaned adequately.
- 7.2 Ms Gera (Flat 6) gave evidence as to how the property had been a building site from 2004 when the basement was converted into two flats until the top floor flat was completed in February 2007 with a gap of only about five months (from March to September 2005) when no building work was going on. She described how during the buildings works the property was in a dreadful state. Dirt and dust was everywhere, the communal parts were filthy, builders' debris was everywhere, windows were not cleaned and the lift was being used to transport heavy bags of builders' material up to the top floor. She had suffered an ingress of water into her flat from the building works as had flats 3 and 5. Ms Gera's decorations were not dealt with for about a year.
- 7.3 Mr Paris produced copies of copious emails he had sent to the managing agents as to the state of the premises as a result of the building works and the lack of cleaning and the builders' rubbish. Replies from the managing agents acknowledge that "communal hallways have been wrecked", "some people said that contractors were using the lift to lift cement" that hallways have not been cleaned as this would be a waste of lessees' money having to "constantly clean up after the builders".
- 7.4 Mr Paris said that the asphalt works were carried out before a Section 20 Notice was received and when it was received it did not contain any detail. Mr Paris disputed that the works had to be done as an emergency. Mr Kalunga conceded that the Section 20 procedure did not

appear to have been followed by the Landlord and that in that case the Landlord would be restricted to recovering £250.00 per flat from the lessees for this item.

- 7.5 The lessees considered that many of the service charge items should properly have been charged to the landlord or the developer and they should not have to pay for cleaning which was either not done, done poorly or was a waste of time in view of the building works going on. The lessees went through each item of expenditure contained within the service charge items and identified each item they disputed which was in most cases due to the building work. The lessees did acknowledge that things had improved of late. They were however concerned that the budget for 2007/08 which has just been received, if based on the budget for 2007/08 or the actual expenditure put against the service charge for 2006/07, will be based on unreasonably high figures.

8. The Determination

- 8.1 The Tribunal had no hesitation in finding that the lessees had suffered greatly in some cases for an almost continuous period from 2005 through to February 2007 with a respite of only five months from substantial building works. The Tribunal saw for itself some of the blocked drains and water staining to walls and ceilings that still exist. The works to create the top flat in particular must have been very extensive as it involved building up the brick walls to form new gables at both the front and rear of the building and the corresponding reconstruction of a significant part of the roof. All this was done without any consultation with the lessees and seemingly no restrictions or control being placed on the developer of the top flat by the Landlord. In the Tribunal's view there should have been clear and tight provisions as to what the developer had to do to protect the lessees' property and to ensure that the work caused the minimum of disruption and inconvenience to them. Materials should not have been transported up through the building at all let alone in the lift. The contractors should have been made to clear up regularly and at the end of each working day. It is intolerable to expect the lessees to have to pay for the cleaning of the common parts and windows whilst all this work was going on. If the Landlord has failed in advance to ensure that the developer was required to attend to such matters then he cannot expect the lessees to foot the bill and he must bear the cost claimed in the service charge but properly attributable to the building works itself. The Tribunal was surprised to learn that there does not seem to have been any legal document in place giving the developer the right to do what he has to the building and that his occupational lease is not yet signed.
- 8.2 It is most important that the lessees establish at an early date what the responsibility for the owner of the new flat (flat 9) is to be for service charges and from what date. That flat has now been completed and there is apparently someone in occupation, although (as stated above) there does not appear to be a proper lease in place. The apportionment of future service charges will need to be established quickly and, if necessary, the current leases will need to be varied accordingly.

8.3 The parties will see from paragraph 9 below which service charge items have been allowed by the Tribunal as being reasonable and which have been reduced or disallowed. Where management fees have been reduced this is to reflect the fact that little management was done during the period when the landlord's managing agents might have been expected to have been most active: that is during the building works. Where cleaning has been reduced it is because for a certain period of the year in question the building works would have rendered any cleaning useless. Where gardening costs have been reduced this is because the Tribunal considered the amount charged for gardening to be excessive. There is very little gardening that needs to be done at the premises. There are a few shrubs that need attention and paths to be cleared occasionally. Where "repairs and maintenance" has been reduced this is in the main due to the building works. The work to the bin store has been disallowed: this is, first, because the lessees were not consulted about it, (then) when it was constructed it was totally inadequate for the purpose, and it was then demolished by the builders' lorry. The Tribunal was satisfied that the lessees should not have to bear any of the costs related to this item. The costs of installation of smoke detectors and lights and sensors has been reduced because the Tribunal considered that much of this work had been necessitated by wiring up the new flat to the alarm system and that the other lessees should therefore not have to bear the whole cost. The electricity charge has been reduced to reflect the fact that there was evidence from the lessees that the builders had used the communal electricity supply for the work on the top flat. The survey for the schedule of works had been reduced to reflect the fact that the new flat will have the benefit of that survey as well as the other lessees. One fee for repair to the lift has been allowed but the second had been disallowed as the need for this visit was due to the mistreatment of the lift. The evidence of the lessees was that it was the builder's workmen who had misused the lift in carrying materials in it and prising the doors open. Although the maximum of £250.00 has been allowed for the asphaltting work to the balcony (it having been conceded that the Sec 20 procedure had not been followed) this has been allowed on the basis that the managing agents will ensure that the contractor is called back on site to remedy any defect in that work under the guarantee or defects period.

9. The Tribunal concluded that the following service charge items are reasonable:-

Year 2004/05 Per Flat

	Flat 1a	(Flat 6)
Management charge	39.73	101.78
Cleaning	6.46	6.46
Gardening	51.70	51.70
Insurance	356.19	356.19
	<hr/>	<hr/>
	454.08	516.13

Therefore Flat 1a owes £454.08. Flat 6 owes £516.13 less £50.00 paid = £466.13. However, all service charge arrears for Flat 1a were discharged in April 2007.

Year 2005/06 Per Flat For both flat 1a and 6

Insurance	402.74
Management fees	125.00
Cleaning	39.36
Gardening	22.88
Repairs and maintenance	5.38
	<u>595.36</u>

Therefore Flat 1a owes £595.36 and Flat 6 owes £95.36 (£595.36 less £500.00 already paid). However, the service charges for Flat 1a were discharged in April 2007.

Year 2006/07 Per Flat for Flat 1, 1a, 3, 5, and 6

Insurance	360.31
Management fees	105.75
Cleaning and windows	38.05
Entry phone system	100.00
Gardening	29.13
Health and safety: smoke detectors	106.73
Lights	146.88
Anti vandal sensor	19.18
Extinguishers	34.52
Fire alarm test	11.75
Electricity	28.38
Legal and professional fees	70.33
Repairs and maintenance: unblock drains	-
Investigate electrics	- (conceded)
Water extinguisher	19.09
Repair drain blockage	-
Electrical works to landlord	-
Bin area construction	-
Gas meter covers	- (conceded)
Letter boxes	8.08
Fault on alarm	29.74
Repairs to bin area	-
Scuff marks to wall	-

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Security lock	28.38
Clear ground and bin	-
Install double socket	- (conceded)
Decoration to hallway	- (conceded)
Asphalt to balcony	250.00
Emergency clear rubbish	-
Call out re damp	-
Lift repairs	91.06
Damaged brickwork	-
Clear rubbish	-
Lift repair	-
Entry panel	14.15
	<u>4078.22-1491.51</u>

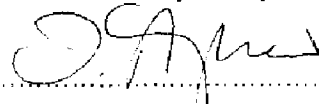
Flats 1a and 3 have paid the insurance premium to the landlord and therefore they owe £717.91 for the year 2006/07. Flats 1 and 5 owe £1078.22 for that year. Flat 6 owes £478.22 £819.51 (i.e. £1078.22 £1491.51 less £600.00 paid on account).

10. Summary

Flat 6 owes £466.13 for service charges for the year 2004/05, £95.36 for the year 2005/06 and ~~£478.22~~ £819.51 for the year 2006/07.

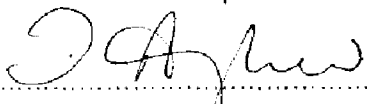
Flat 1 and Flat 5 owe ~~£4078.02~~ £1491.51 for service charges (including insurance) for the year 2006/07. Flats 1a and 3 owe ~~£717.91~~ £1131.20 for the year 2006/07.

Dated this 17th day of July 2007



 D Agnew LLB, LLM
 Chairman

Amended this 2nd April 2008



 D Agnew LLB, LLM
 Chairman

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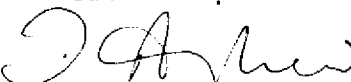
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D Agnew LLB, LL.M
Chairman

Amended this 2nd April 2008


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D Agnew LLB, LL.M
Chairman