RESIDENTIAL PROPERTY TRIBUNAL SERVICE

Southern Rent Assessment Panel
Leasehold Valuation Tribunal

Sections 27A and 20C, Landlord and Tenant Act 1985

Case Number:	CHI/21UF/LSC/2009/0075
Property:	Flat C, 16 Esplanade, Seaford, East Sussex BN25 1JL
Applicants:	Mr. Alex Gladwell and Mrs. Leanne Gladwell
Respondent:	Cleargreen Limited

Appearances

For the Applicants:	In person
For the Respondent:	Mr. Ray Foster
Date of Directions:	18th May 2009
Date of inspection:	31st July 2009
Date of Hearing:	31st July 2009
Date of Decision:	11th September 2009

Members of the Tribunal

C.H.Harrison Chairman
N.I. Robinson FRICS
T.W.Sennett MA MCIEH

Background

1. On 30th April 2009, the Applicant applied to the tribunal for a determination under sections27A and 20C of the Landlord and Tenant Act 1985 in respect of their liability to pay certain service charges under their lease of flat C at 16, Esplanade, Seaford, East Sussex.

2. The Respondent is the Applicants' landlord.

3. The Application refers to eight service charge issues as being in dispute. This decision refers specifically to each of them below. The application also lists certain questions which the Applicants wish the tribunal to determine relating, on each of the eight issues, to:
   a) a breakdown of the charges;
   b) the proportion of the overall costs which the Applicants are obliged to pay. That question relates to the Maintenance Charge, which is referred to below under the description of the Applicants' lease. It is the key question in this case;
   c) lack of documentation;
   d) the carrying out of additional work without consultation; and
   e) arithmetic errors in the invoices which the Respondent has produced.

4. During 2008, the Applicants wished to replace some windows forming part of their flat. Having obtained an estimate, the Applicants ultimately agreed with the Respondent that the Respondent would carry out the work. The work was duly implemented and the Respondent also carried out other work to the exterior of the building. The issues in dispute revolve around the totality of that work.

5. On 10th May 2008, the Respondent produced an interim invoice for a total of £6,662.18. It related in part to the windows replacement and, as to the balance, to the other work undertaken, or to be undertaken, by the Respondent. The Applicants promptly paid that invoice which is referred to below as the 'First Invoice'.

6. On 21st September 2008, the Respondent produced a second invoice which is referred to below as the 'Second Invoice'. The Second Invoice repeats the amounts stated in the First Invoice and, opposite each amount, sets out the actual cost of the relevant item. In some cases, the amounts are the same. In other cases, the actual cost is higher than was stated in the First Invoice. The aggregate actual cost on the Second Invoice is £8,892.04, representing an excess over the First Invoice of £2,229.86.

7. On the same date, the Respondent wrote to the Applicants requesting a payment of £3,236. That amount comprised (i) the additional cost as per the Second Invoice but over stated by £100 i.e. an amount of £2,329 and (ii) other service charge amounts which the application to the tribunal did not list as being in dispute, even though the Applicants queried some of

them during the hearing. This letter is referred to below as the 'Third Invoice'. The amount of £3,236 remains unpaid by the Applicants.

The Applicants' lease

8. The lease, which is for a term of 125 years from 1st January 1999, is dated 2nd March 1999 and made between (1) the Respondent (2) Carol June Cox, of whom the Applicants are successors in title.

9. The premises demised by the lease comprise the second floor flat at 16 Esplanade which the lease refers to as the Building. In particular, the premises include the internal plaster work, the internal non-structural walls, the doors, door frames, windows and window frames. It is clear from the lease as a whole that the demised premises do not extend to external structural parts, apart from the window frames.

10. The lease grants the tenant the right to use the Common Entrance which is described in paragraph 13 below.

11. The lease requires the tenant to pay what the lease refers to in Part I of the fourth schedule as a Maintenance Charge in respect of expenditure (which the lease refers to as Total Expenditure) incurred by the landlord, during any Accounting Period, in compliance with various obligations set out in Part II of the schedule and other costs. Those costs include an amount equal to 15% of the aggregate of that expenditure incurred by the landlord during any period when the landlord has not engaged the services of a managing agent. The Respondent has not engaged a managing agent. Unless the landlord specifies otherwise, Accounting Period means each calendar year.

12. Part II of the fourth schedule includes the following obligations:

    a. At paragraph 1, *to maintain and keep in good and substantial repair and condition the main structure of the Building (including the exterior walls the foundations and the roof thereof) ... the Common Entrance the Common Parts and all other parts of the Building (except insofar as the foregoing are included within the Demised Premises or within the demise of any other residence in the Building).* The tribunal takes that last exception to qualify '*and all other parts of the Building*', because no other part of the fabric covered by paragraph 1 is included within the premises demised by the lease.
    b. At paragraph 2, *as and when the Landlord shall reasonably deem necessary to paint varnish or otherwise treat the whole of the outside wood iron and other parts of the Building previously or which ought to be so treated.*

13. The Common Entrance referred to in paragraph 12 a. above is defined by the lease to mean *all main entrances hallways passages landings staircases (internal and external) yards and footpaths and means of escape in case of fire ... necessary or otherwise provided by*

the Landlord to give access to the Demised Premises and used or capable of being used in common with other occupiers of the Building.

14. The Maintenance Charge, which as stated in paragraph 3 above is crucial in this case, is the service charge proportion payable by the tenant. It is the aggregate of:

    a. an equal proportion among all tenants of the Building who are entitled to use the Common Entrance of various costs associated with its use, maintenance, repair, renewal and decoration; and

    b. in respect of all other Total Expenditure, what the lease refers to as the 'Due Proportion', which it defines to mean *the proportion which the net internal floor area of the Demised Premises bears to the aggregate net internal floor area of the Demised Premises ant the other residences from time to time comprised the Building.* The lease does not record any such floor area.

15. Part III of the fourth schedule to the lease sets out the mechanics for paying the Maintenance Charge:

    a. the tenant is obliged (by clause 3.3 of the lease) to pay the Maintenance Charge:

        (1) by interim payments on account ('Interim Charge') as and when estimated by the landlord as it specifies in its discretion as being a fair and reasonable. These payments 'on account' are service charges for the purposes of the 1985 Act and are covered by section 19(2) of that Act as referred to in paragraph 19 below; and

        (2) any balance of the Maintenance Charge which remains due, over and above the interim payments on account, is payable within 28 days after production to the tenant of the certificate described in paragraph (b) below. Any such balancing payment is also a service charge for the purposes of the 1985 Act.

    b. the Certificate is to be provided by the landlord's managing agent or accountant (acting as an expert), certifying:
        (1) the amount of total Expenditure for the Accounting Period;
        (2) the amount of interim charges paid and any carried forward surplus; and
        (3) the amount of the Maintenance Charge and of any excess or deficiency in respect of (*2*) above.

The law

16. Section 27A(1) of the 1985 Act provides, so far as is material to this case, that an application may be made to a leasehold valuation tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. However, section 27A(4)(a) provides that no such application may be made in respect of a matter which

has been agreed or admitted by the tenant; but section 27A(5) states that mere payment does not, of itself, amount to agreement or admission. It follows that the tribunal has no jurisdiction to determine a matter which has been agreed; but it does have jurisdiction to determine a matter which is not agreed or admitted as such, even though the amount has been paid.

17. Section 18(1) of the 1985 Act defines a service charge as an amount payable by a tenant of a dwelling, as part of or in addition to the rent:
(a) which is payable ... for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies according to the relevant costs (which are defined by section 18(2) as the costs or estimated costs incurred or to be incurred by or on behalf of the landlord ... in connection with the matters for which the service charge is payable).

18. Section 19(1) of the 1985 Act provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
(a) only to the extent that the costs are reasonably incurred, and
(b) where the costs are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.

19. Section 19(2) of the 1985 Act provides that service charges payable before relevant costs are incurred, such as the Interim Charges in this case, must be no greater than is reasonable.

20. The effect of section 20 of the 1985 Act in the context of this case is that:
b) the Applicants' service charge contribution towards relevant costs (see paragraph 17(b) above) on works to the Common Entrance, where the costs exceed £750, is limited to £250; and
c) the Applicants' service charge contribution towards relevant costs on other work to the building (not being work to the Common Entrance), where the amount of the relevant costs would result in any tenant having to pay more £250, is limited to £250,
unless, in either case, certain important consultation requirements have either been complied with by the landlord or, on an application to a leasehold valuation tribunal, dispensed with. Such an application may be made under section 20ZA of the 1985 Act. On any such application being made, a tribunal may determine that all or some of the consultation requirements should be dispensed with if it is satisfied that it is reasonable to do so.

21. Section 20C of the 1985 Act provides that a tenant may apply to a leasehold valuation tribunal for an order that costs incurred, or to be incurred, by a landlord in connection with proceedings before the tribunal are not to be regarded as relevant costs for the purpose of determining the amount of any service charge.

Other provisions within sections 18 to 30 of the 1985 Act and within Part VI of the Landlord and Tenant Act 1987 contain important statutory requirements associated with service charge demands.

Inspection

22. The tribunal inspected the property during the morning of 31st July 2009 in the presence of the parties. The property comprises a mid terrace house originally built at about the beginning of the 20th Century as a single house and subsequently converted into four flats. The lower elevations are rendered/stipple finished, with flat c, the subject property, being created within the roof, with a large square bay window serving the living room and a smaller window serving the kitchen.

23. The kitchen window is within the roof tile hanging. The living room bay is formed as a protruding structure from the roof, rather like a large dormer window, with tile hanging to the cheeks and the section under the front facing window.

24. A small balcony has been constructed above the main entrance door to the property to serve the first floor flat and this is supported on timber clad columns coming down either side of the front entrance.

25. Access to the subject property is obtained through the main front door entrance, a second locked, inner door and the internal common way and staircase shared with the ground and first floor flats. The actual entrance to Flat C is at first floor level with the stairs from first to second floor level therefore being within the demise. The basement flat has its own access from the rear of the property only and does not use the front entrance.

26. The rear of the property was inspected from the rear common area and it was noted that the ground and first floor flats have the benefit of a good sized rear extension with hipped and pitched roof. Flat C simply has a small rear extension forming part of the mezzanine bathroom.

Net Internal areas

27. The tribunal refers to paragraph 14 b. above; and understands that the parties may have adopted 25% as the Due Proportion applicable to Flat C; although there is no evidence that 25% has been formally adopted as the Due Proportion. Mr Foster referred to a letter which the Applicants had written in August 2007 referring to an approximate 25% share; but the tribunal does not take that as an agreement or admission by the Applicants of the precise Due Proportion.

28. Whilst the other flats in the building were not inspected, it does appear unlikely that Flat C equates to 25% of the net internal floor area of the four flats. The three lower flats have

the benefit of the large rear extension and, whilst the ground and first floor flats lose some area to accommodate the common staircase, from visual inspection this appears to be considerably less than the extension size. Flat C does have additional floor area because the stairs between first and second floors are within the demise and there is a small bathroom extension. However, the Flat's floor area at second floor level may be less than below due to the premises being constructed within the roof.

29. In the absence of any agreement as to 25%, of which the tribunal had no evidence, it considers it would be unsafe, for the purposes of this decision, to ascribe any specific percentage to the Due Proportion which is referred to further in paragraph 52 below.

Issues and evidence on them

30. **The first item stated in the application to the tribunal to be in dispute** is *Replacement of windows to bay and kitchen - £2,997.00.* That was the amount shown on the First Invoice and, with no increase, on the Second Invoice.

31. The Respondent's repairing obligation at paragraph 1 of Part II of the fourth schedule to the Applicants' lease expressly excludes liability to repair (or replace) any part of the building which is included as part of the lease. The windows and window frames are expressly included in the lease. They cannot, therefore, be within the landlord's obligations under paragraph 1 of the fourth schedule. Nor is replacement of the windows covered by any other head of service charge expenditure. The replacement of the windows was a private matter, agreed between the parties and going beyond the scope of the contractual arrangements of the lease. The cost of the replacement is not a service charge and the tribunal has no jurisdiction to determine any question concerning this item. It also follows that the provision for a 15% charge calculated by reference to the amount in question, under paragraph 2.3 of Part I of the fourth schedule to the lease, is not payable as a service charge item.

32. **The second item stated in the application to the tribunal to be in dispute** is *Scaffolding to front of house – 50% of £850 - £425.* That was the amount shown on the First Invoice and, with no increase, on the Second Invoice.

33. Paragraph 4 of the Applicants' statement of case submits that they believe they should have been charged 25% or the Due Proportion, not 50%. However, the Applicants also put in evidence to the tribunal a copy of their letter to the Respondent dated 6th March 2008 in which they wrote "We would like to confirm that we are happy to pay 50% of the £850 scaffolding costs." That is an agreement or admission by the Applicants for the purposes of section 27A (4)(a), as referred to in paragraph 16 above. Consequently, the tribunal has no jurisdiction to determine any question concerning this item.

34. **The third item stated in the application to the tribunal to be in dispute** is *Tile hanging to both bay windows – 33.3% X £1,100 - £733.33.* The item was so described on the First Invoice. Despite the reference to 33.3%, the Respondent charged two thirds to the Applicants on the First Invoice. The Second Invoice states an increased actual cost of £2,484.86, that is more than double the overall cost stated on the First Invoice, and it charged two thirds of that increased cost, £1,656.57, to the Applicants.

35. The Applicants submitted to the tribunal that the work involved the replacement of tile cladding below their bay window at the front elevation of the building, a submission not disputed by the Respondent. The conflict in the submissions by the parties was that:

    a. according to the Applicants, the tiles themselves were not in poor condition. It was more that the way the tiles were fitted made them loose and water penetration was occurring before the windows above were replaced. The Applicants were uncertain whether water ingress had occurred only around the old window frames or through the tiles. They believe it could have been either;

    b. whereas the Respondent submitted that had it not been for the window replacement, the tiles could have been left untouched. Nevertheless, Mr Foster also told the tribunal that he could not be certain whether the former water penetration came through the former windows or possibly through the tiles or possibly a combination of both. He stated that the tile hanging was suffering from rusting fixing nails to the battens and that the felt was brittle. Mr Foster confirmed that the tile cladding work had been carried out by his own employees.

36. **The tribunal determines the following matters is respect of the third item in issue:**

    a. the repair and replacement of the tile cladding was an item of repair, irrespective of the cause giving rise to the need for repair or replacement, under paragraph 1 of Part II of the fourth schedule to the Applicants' lease;

    b. there is no basis under the contractual arrangements of the lease for the Respondent to seek to charge two thirds of the cost to the Applicants;

    c. subject to paragraph d. below, the correct proportion of the cost payable by the Applicants is the Due Proportion once it has been determined;

    d. however, having regard to the amount of the overall costs associated with the work, there is a possibility, to put it no higher, that the Respondent ought to have complied with the consultation requirements under section 20 of the 1985 Act, either before or during the execution of this work. The Respondent did not do so. If there was a duty to comply with the requirements, which cannot be established until the Due Proportion is determined, the Applicants' service charge contribution in respect of

this work would be limited to £250, in the absence of a successful application by the Respondent under section 20ZA of the 1985 Act. See paragraph 20 above; and

e. consequently, until the Due Proportion is determined for the purposes of establishing precisely what the Applicants' Maintenance Charge is (subject to the possible limitation under section 20) and until the tribunal knows whether, if appropriate, the Respondent intends to apply under section 20ZA, the tribunal has not considered whether the amount of £2,484.86 are relevant costs for the purposes of section 19(1) of the 1985 Act (see paragraph 18 above). It would be appropriate for the tribunal to deal with that and consider whatever further evidence it may require on the matter, in the knowledge of the Due Proportion and of the consultation position under sections 20 and 20ZA. See paragraph 55 below.

37. **The fourth item stated in the application to the tribunal to be in dispute** is *Half cost of lead - £375.* The item was so described on the First Invoice and was not increased by the Second.

38. The tribunal understands that the work involved the replacement of the lead flashing to the Applicants' bay window at the front elevation of the building. Again, there was a difference in approach between the parties:

a. the Applicants consider the lead flashing may form part of the structure of the building and they query the 50% proportion;

b. the Respondent submitted that the lead work was, again, directly connected with the window replacement. Mr Foster produced a letter he had written to the Applicants on 10th February 2008, drawing their attention to his intention to obtain a firm price for the lead work. Whereas that letter recorded the Applicants' agreement to bear 50% of the scaffold cost, it did not do so in respect of the lead work cost.

39. **The tribunal determines the following matters is respect of the fourth item in issue:**

a. the lead flashing forms part of the structure of the building and is not an intrinsic part of the windows which are included in the Applicants' lease. Consequently, the strict position under the lease is that the lead work was a an item of repair under paragraph 1 of Part II of the fourth schedule to the Applicants' lease;

b. there is no basis under the contractual arrangements of the lease for the Respondent to seek to charge one half of the cost to the Applicants; although the tribunal understands the Respondent's position to have been to recognise that the work may have been six of one and half a dozen of the other. Whilst that approach may be reasonably based, in the absence of the Applicants having agreed or admitted a 50%

responsibility the legally correct proportion of the cost payable by the Applicants is the Due Proportion;

c. the tribunal received no evidence that the overall cost of £750 plus VAT was unreasonably incurred or that the work had been done to less than a reasonable standard. Nor could the tribunal itself determine that the cost appeared inappropriate. Accordingly, that amount represents relevant costs for which the Applicants, in the absence of any agreement or admission by them pointing to a different proportion, are liable for their Due Proportion once it has been determined.

40. **The fifth item stated in the application to the tribunal to be in dispute** is *Repairs to tile hanging charged at 100% to Applicants - £250.* The item was substantially so described on the First Invoice, coupled with a reference to the amount being refunded if not used. The Second Invoice states an increased actual cost of £844.29, that is more than three times the overall anticipated cost stated on the First Invoice, and it charged the whole of that increased cost to the Applicants.

41. There was very little evidence before the tribunal concerning this item. The Applicants query the increase reflected in the Second Invoice and the 100% charge to themselves. The Respondent asserts this is, again, repair work directly connected with the exterior of the Applicants' flat. It is, at any rate, common ground between the parties that the work involved external repair.

42. **The tribunal determines the following matters is respect of the fifth item in issue:**

a. this was an item of repair to the external tiling of the building. It was, inescapably, a repair under paragraph 1 of Part II of the fourth schedule to the Applicants' lease;

b. there is no basis under the contractual arrangements of the lease for the Respondent to seek to charge the whole of the cost to the Applicants. The regime under the lease for recovering landlord's expenditure on Part II fourth schedule matters is that the Applicants are required to pay their Due Proportion of the expenditure, unless it relates to the Common Entrance in which case the proportion for which the Applicants are liable is one third;

c. the tribunal received no evidence that the overall cost of £844.29 plus VAT was unreasonably incurred or that the work had been done to less than a reasonable standard. The Respondent produced in evidence a hand written note of various amounts of money totalling £844.29; but the note had no heading or other title or evidence of its provenance. The Respondent asserted to the tribunal that this was the billed cost of this item of work. In the circumstances and in the absence of evidence to the contrary from the Applicants, the tribunal determines that £844.29 represent the relevant costs, to which the Applicants are liable for their Due Proportion, once determined.

43. **The sixth item stated in the application to the tribunal to be in dispute** is *Labour at 33.3% X £450 - £150.* The item was described in the First Invoice as relating to the painting of the timber clad columns supporting the first floor flat balcony, involving anticipated three days work at £150 per day. The Second Invoice states an increased actual cost of £848.26, and it charged one third of that increased cost to the Applicants.

44. There are two clear cut issues in respect of this item. First, the Applicants submit that the columns do not form part of the Common Entrance, whereas the Respondent submits they do. Second, the Applicants query the ultimate actual cost and assert that the work was not done to a reasonable standard because the work was carried out last year and the paintwork is already peeling.

45. **The tribunal determines the following matters is respect of the sixth item in issue:**

    a. The columns do not fall within the definition of the Common Entrance (see paragraph 13). They are not connected with the entrance to the building. The columns form part of the structure of the building as a whole. Consequently, the Applicants are liable to pay their Due Proportion, once determined, of relevant costs, not one third of them;

    b. the tribunal received no evidence that the overall cost of £848.26 was itself unreasonable. For its part, the tribunal does not consider the amount unreasonable. The tribunal saw evidence of paint peeling but, having regard to the fact that the columns face salt air and much 'weather', it recognises that more substantial work of decoration would be likely to have involved a higher cost; and

    c. consequently, the Applicants are liable for their Due Proportion, once determined, of relevant costs of £848.26.

46. **The seventh item stated in the application to the tribunal to be in dispute** is described as *Service charge at 15% - £739.55.* It is so described in the First Invoice, where it represents 15% of the total of all items charged by that invoice in respect of the first to sixth issues above. The 15% charge in the Second Invoice had increased to £987.09. The Third Invoice refers to an additional 15% charge, although Mr Foster confirmed at the hearing that this appears to be an error in description for what was intended as an insurance charge which is outside the scope of this case.

47. The Applicants seek an explanation of the amount. Mr Foster asserts in his statement of case that the charge was made on the basis that all the work the Respondent had organised was charged at cost, including a daily rate of £150 per employee engaged. The tribunal interprets that statement as the Respondent's justification for making a profit charge of 15%.

48. **The tribunal determines the following matters is respect of the seventh item in issue:**

a. The only justification for a 15% charge is pursuant to paragraph 2.3 of Part I of the fourth schedule to the Applicants' lease.

b. The 15% charges which have been made on the First, Second and Third Invoices have been wrongly computed.

c. The correct method of computation is that the 15% charge under paragraph 2.3 should be applied to the aggregate expenditure incurred by the landlord:

   i. in carrying out its obligations under Part II of the fourth schedule; and
   ii. on costs referred to in paragraph 2.1 of Part I of that schedule; and
   iii. on interest or bank charges under paragraph 2.2 of Part I of that schedule,
   iv. in each case, during the part (or whole) of the service charge accounting period during which a managing agent is not engaged; and
   v. finally, the tenant is obliged to pay its Due Proportion, once determined, of the resultant 15% charge pursuant to paragraph 3.2 of Part I of the fourth schedule.

d. If it is determined that relevant costs, for the purposes of section 19 of the 1985 Act, should be limited below the actual expenditure, there should be a corresponding rateable limitation to the 15% charge.

e. Accordingly, the 15% charge (and the Applicants' Due Proportion of it), in relation to the matters in issue in this case:

   i. does not apply to the window replacement cost which was privately agreed between the parties outside the terms of the lease;

   ii. applies to the relevant costs of £850 in connection with the scaffolding;

   iii. applies to whatever relevant costs may be agreed or subsequently determined in connection with the tile hanging; but would not apply at all if the service charge contribution falls to be limited to £250 pursuant to section 20 of the 1985 Act;

   iv. applies to the relevant costs of £750 in connection with the lead work; to the relevant costs of £844.29 in connection with tile repair; and to the relevant costs of £848.26 in connection with the column decoration.

49. **The eighth item stated in the application to the tribunal to be in dispute** relates to value added tax.

a. Clause 7.11 of the Applicants' lease provides that any reference to payment of a sum of money shall include a reference to payment in addition of value added tax payable in respect thereof. Clearly, that provision relates to supplies of good or services by the landlord to the tenant which are taxable for VAT purposes. Mr Foster told the tribunal that the Respondent is registered for VAT purposes. However, the Respondent's notepaper has no evidence of VAT registration. None of the invoicing to the Applicants constitutes a value added tax invoice. The Respondent had ample opportunity to furnish the tribunal with appropriate evidence of the VAT position pursuant to paragraph 4 of the Directions but has not done so. In those circumstances, it appears to the tribunal that VAT is not chargeable on the value of goods or services supplied by the Respondent. However, having regard to the adjournment of the hearing for the purpose of paragraph 36.3 above, the tribunal will delay so determining in order that the Respondent may provide the tribunal and the Applicants, by no later than 31st October 2009, with written confirmation addressed to the tribunal that the service charge supplies by the Respondent to the Applicants during the calendar year 2008 were liable to VAT.

b. Paragraph (a) above applies only to the supply of goods or services by the Respondent to the Applicants. If the Respondent is able to establish with the Applicants that the Total Expenditure, as defined in Part I of the fourth schedule to the lease, includes VAT incurred by the Respondent, the Applicants' Maintenance Charge will extend to an indemnity for the appropriate proportion of that VAT.

Other issues

50. During the hearing, the Applicants referred to their concerns about the installation of a new entrance door, the cost of which is mentioned on the Third Invoice. However, this item was not referred to as an issue in the application to the tribunal. The principal issue between the parties appears to be the proportion of the cost payable by the Applicants. In the tribunal's opinion, the correct proportion is one third because the door forms part of the Common Entrance. The tribunal makes no determination of relevant costs or on whether the section 20 consultation requirements applied to the work so as to limit the contribution payable by the Applicants if those requirements were not complied with. Any such determination should be the subject of a further application.

51. The tribunal notes the Applicants' other concerns about the property as referred to in their statement of case but, as the tribunal pointed out during the hearing, they do not relate to service charge matters and are therefore not within the tribunal's jurisdiction.

52. The above determinations of relevant costs and of the appropriate service charge proportions have been made by the tribunal in response to the application. The parties will no doubt appreciate the importance of determining the Due Proportion either by agreement between themselves or by an agreed form of third party measurement, in order that the Due Proportion may be appropriately recorded for the purposes of the good management of the parties' respective obligations under the lease. Until the Due Proportion is so determined, it

will not be possible for the Respondent to procure compliance with the landlord's annual service charge accounting obligations under the lease.

53. The parties will no doubt form their own views about the wisdom of obtaining professional advice concerning compliance with the statutory requirements associated with the submission of any form of service charge demand, requirements which have, substantially, not been complied with by the Respondent on the invoices which have been submitted to the tribunal in this case. Although the tribunal has determined relevant costs and service charge proportions so far as possible, the appropriate amounts are not, or may not be, due for payment by the Applicants until there is compliance with those statutory requirements and with the accounting provisions of the lease.

Section 20C of the 1985 Act

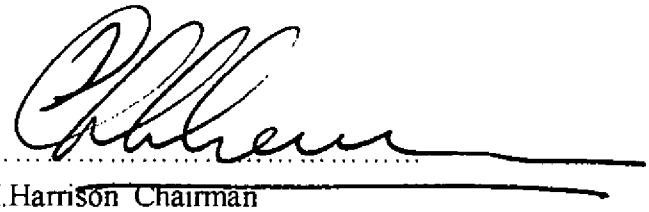
54. The Applicants have applied for an order under section 20C of the 1985 Act. The tribunal refers to paragraph 21 above. The tribunal has not considered whether the Respondent's costs associated with these proceedings might be recoverable under the service charge provisions of the Applicants' lease. However, the tribunal considers that it is just and equitable in all the circumstances that the costs incurred by the Respondent in connection with the proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants. The tribunal so orders.

Adjournment

55. The tribunal refers to paragraph 36.e. above. The hearing in respect of the third item in issue stands adjourned pending determination of the Due Proportion; and either party may apply to the tribunal in writing before 1st November 2009 for the determination of the application in relation to the relevant costs, referred to in that paragraph, and the amount of the service charge contribution payable by the Applicants to those costs.

56. The tribunal also refers to paragraph 49.a. above. The hearing in respect of the eighth item in issue stands adjourned pending the provision of the VAT confirmation referred to in that paragraph by before 1st November 2009.

Dated 11th September 2009



C.H.Harrison Chairman