SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/45UH/LIS/2010/0011

IN THE MATTER OF SECTIONS 27A AND SECTON 20C OF THE LANDLORD AND TENANT ACT 1985

Between:

Laura Tapson
Katherine Trimble
Julia Ogden
John Lee
Jeremy and Katrina Harding (Applicants)

and

Winwood Estates (Sussex) Limited (Respondent)

Premises: 45 Wenban Road Worthing West Sussex BM11 1HY

Date of Hearing: 5 July 2010

Tribunal: Mr D Agnew BA LLB LLM Chairman
Mr R A Wilkey FRICS FICPD

Appearances: Applicants: in person
Respondent: Mr C Fain, Counsel

REASONS

Background

1. The Applicants have applied for a determination as to the reasonableness of service charges for the service charge years 2007/8 and 2008/9 and also as to the reasonableness of the proposed service charge for the year 2009/10 under section 27A of the Landlord and Tenant Act 1985 ('the Act"). They have also made an application under Section 20C of the act for an order that the landlord's costs of the Tribunal's proceedings should not be included in any future service charges levied.

2. At a pre-trial review on 29 March 2010 various directions were issued requiring statements of case to be filed and served. The Respondent's statement of case signed by Mr James Harwood a director of the

respondent company was made on 4 May 2010. The Applicants' undated statement in reply was duly served which solicited a further statement of case from the Respondent and submissions in respect of the application under Section 20C of the Act dated 16 June 2010.

Inspection

3. The Tribunal inspected 45 Wenban Road Worthing ("the premises") immediately prior to the hearing on 5 July 2010. The premises are situated in a residential road close to the centre of Worthing. It was constructed about three years ago in the style of a Victorian villa and occupies the site of a demolished Victorian house. There are three floors to the front of the building, two floors to the middle of the building and a single storey to the rear. There are six flats in all: three two bedroom apartments, two one bedroom flats and one flat is in the single storey part of the building at the rear which has its own individual entrance. The common parts of the main building are compact and are carpeted with light coloured carpet in good condition although somewhat stained particularly near to the front entrance doorway. On the day of inspection the common parts were clean and tidy. There is a small garden to the rear of the property comprising a lawn and some decking. There is one tree or shrub. The access to the garden from the public road at the front of the property is via a paved pathway which was in good condition. The building comprising the premises is constructed of brick with a painted cement render. There are some hairline cracks in the render. One particularly serious crack running in a vertical line near to the front entrance door to the full height of the building has been repaired.

   The property has UPVC window frames and plastic gutters and down pipes. The external condition of the premises is good.

The Leases

4. Clause 1.5.3 of the lease (which the Tribunal was informed was in a similar form in respect of all flats in the premises) provides for the tenant to pay by further or additional rent from time to time a set proportion of the sums that the lessor shall expend in respect of repair or maintenance of the building in accordance with the lessor's covenants contained thereafter.

5. By clause 4.1 of the lease the tenant covenants with the landlord to pay his proportion of the costs expenses and outgoings and matters referred to in sub-clause 4.4 of that clause.

6. By clause 4.4 of the lease the costs outgoings and matters referred to in sub clause 4.1 of the lease are stated to be the total of "all sums actually expended by the lessor in connection with the management and maintenance of the building to include without limiting the generality of the foregoing the matters set out in sub-clauses 4.4.1 to

4.4.5 of the lease". Clause 4.4.4 relates to "all fees charged and expenses payable to any solicitor accountant estate agent surveyor valuer or architect or other professional or competent advisor who, the lessor may from time to time reasonably employ in connection with the management and/or maintenance of the building..."

7. Clause 4.4.5 of the lease authorises a reserve fund as reasonable provision for such of the costs expenses and outgoings and other matters referred to in sub-clause 4.4 but which are not of a regularly recurrent annual nature.

8. By clause 5 of the lease the landlord covenants with the tenant as and when necessary to maintain repair cleanse repaint redecorate and renew inter alia the main structure of the building, the common parts and boundary walls. By clause 5.2 the landlord is required to insure and keep insured the building to its full replacement value in such insurance office of repute as the lessor may select against loss or damage by fire and such other risks as are normally covered by a policy of comprehensive insurance.

The Hearing

9 The hearing took place at Worthing Town Hall on 5 July 2010. Those present were as follows:- for the Applicants Miss Trimble (Flat 2) Mr John Lee (Flat 5) Mrs J Ogden (Flat 4) and Mr Stephen Lee attended as an observer. For the Respondent Mr Fain of Counsel Mr J Harwood and Mr D Winter directors of the respondent company and Mrs J Harwood who is the executive manager of Worthing and District Estate Management Limited who are the landlord's managing agents. It emerged during the hearing that Mr Harwood and Mr Winter are both directors of Worthing and District Estate Management Limited.

10 Some preliminary matters were dealt with before the substantive hearing got under way. First, the Tribunal assured the parties that a letter marked without prejudice save as to costs which had been wrongly included in the hearing bundle had not been read by the Tribunal members and it had been removed from the bundle. Secondly, Mr Fain pointed out that Jeremy and Katrina Harding were not the registered owners of 45a Wenban Road but Mr Harding's parents were. It was accepted, however, that Jeremy and Katrina Harding were in occupation of 45a that they paid the service charges and that Mr and Mrs Harding senior were well aware of the proceedings and that their son and daughter in law were in effect their agents. The most contentious preliminary issue concerned the late service of an insurance quote that the Applicants had obtained from Allianz. Mr Fain told the Tribunal that the Respondent first saw this document on or about 25 June 2010 and they had not had the opportunity of investigating it properly. In response to a question from the Tribunal he said that his clients had not spoken to their insurance broker about this evidence. Miss Trimble, who was the principal

spokesperson for the Applicants, told the Tribunal that this document was served as soon as possible after it had been received. She had also sought a second quotation but this had not yet arrived. The Tribunal decided that although this document had been served relatively late in the day there had nevertheless been sufficient time for the Respondent to have contacted its brokers for their comment upon the document but they had not taken this step. The Tribunal decided that adequate time had been given to the Respondent so that it had not been unduly prejudiced. The Tribunal would therefore allow the document to be adduced in evidence.

The Applicants' Case

11. The Applicants' challenge to the service charges were as follows:-

For the year 2007/8:	£
Cleaning	564.00
Gardening	180.00
Insurance	1,139.76
Maintenance and repairs	400.90
Fire Alarm maintenance	406.70
Professional fees	285.53
Management fees	1,945.80
For the year 2008/9	
Cleaning	933.62
Gardening	250.00
Insurance	1,095.82
Maintenance repairs	1,056.54
Fire Alarm maintenance	419.54
Professional fees	1,600.95
Management fees	2,105.65
Door Entry system	161.00

12. In summary the Applicants' challenge to the above items was on the following grounds:-

a) Cleaning. They would have no argument with the cost of cleaning if the work were carried out to a reasonable standard. Instead of 1.5 hours per fortnight which the cleaning contractors were contracted to provide they were actually at the property for less than a quarter of an hour each time. Miss Trimble made a point of writing down the times on four occasions and she had observed the situation on further occasions. All the cleaners ever did was to hoover the carpets in the common hallways. They do not attempt to remove the stains from the carpet. Originally there were two cleaners, a man and a woman, now there are two men. One sits in the car looking out for traffic wardens whilst the other takes the hoover into the building and completes the vacuuming in about six minutes. The banisters window ledges and windows are never cleaned and the front door glass and door panels are smeared with dust and with handprints as are the doors to the

flats. Walls and doors are never cleaned of scuff marks. After complaints the Respondent proposed a more durable carpet in the entrance hallway but it never materialised.

The Respondent's case was that the cleaning was being carried out satisfactorily. On receipt of the lessees' complaints Mr Harwood had spoken to the cleaners and had on a subsequent occasion inspected the property to judge the effectiveness of the cleaning for himself. He had concluded that the cleaning was satisfactory. He accepted that the carpet in the entrance hallway was badly stained due to the fact that the carpet is flush with the bottom of the entrance door. It is not part of the cleaners' responsibility to carry out a deep clean. The carpet in the entrance hallway had not been replaced because he had received a call from one of the lessees asking him to put the replacement of the carpet on hold. He had chased this up with a letter but has received no reply. There had been a meeting between Mr Harwood, Miss Trimble and Mr Lee. The matter of the carpet was one of the items to be discussed. There was disagreement as to the cause of and responsibility for it but that meeting had ended with no progress being made to resolve various matters in dispute of which the carpet was one. Mr Harwood produced a statement from the proprietors of the cleaning contractors setting out the work that their contract covers and confirming that their visits to the premises are on average for one and a half hours.

b) Gardening. Again the Applicants' complaint was as to the quality of the service that was provided and not the cost. If a reasonable job of the gardening was carried out then they would be content to pay what they are being charged. It is, however, a very small piece of garden which the contract gardeners deal with in a matter of minutes. All they have to do is cut the grass and there is only one small tree or shrub which might require attention. Again the four occasions on which the gardeners' attendance was timed averaged at approximately fifteen minutes per visit.

The Respondent's reply was that the gardening was satisfactorily carried out. In response to lessees complaints they had changed the gardener. The Respondent produced a statement from the proprietor of the original gardening contractors and also a statement from the current gardening contractor setting out the work that they carry out under the contract and the charge per visit. The monthly charge is £20.

c) Insurance. It is the Applicants' case that the insurance premium they pay is too high. They have obtained a quote from the same insurance company that currently insures the building which they say is on a like for like basis. This has resulted in a quotation of £705.38 rather than the £1,139.76 premium for the year ended 2008 and £1,095.82 for the year ended March 2009 which the lessees have been charged. The Applicants note that originally the landlord had insured

the property with another much older property for which a claim had been made under the policy. The premises had also been described as having been built in 1950 and this wrong information may have adversely affected the amount of the premium.

The Respondent's response was that the quotation obtained by the Applicants was not on a like for like basis with that of the existing policy. The quotation obtained was for a policy to start in August 2010 whereas the existing cover was for the period from August 2009 and on the basis of the documents contained in the bundle (although this was disputed by Miss Trimble) the Applicants' quotation did not include legal expenses insurance cover. In any event, there was only a difference of approximately £300 in the premium and case law has determined that provided the landlord seeks advice from a broker and places insurance in the ordinary course of business in the market and that the premium is within a reasonable range of comparable quotations then the landlord is not obliged to insure with the cheapest insurer.

d) Maintenance and Repairs: £400.98 for year ended 2008 and £1,056.54 for year ended 2009.
The 2008 charge was made up as follows:

	£
Repair to front entrance door	35.25
Supply/fit new lock and keys	170.00
Adjust door closer	29.37
Repairs to communal lights	114.72
Repair to communal hallway light	51.64
	400.98

For the year ended 2009 the breakdown was as follows:-

	£
Two keys cut	12.00
Clear rubbish from bin store	35.00
Repair passage security lights	51.94
Expose crack in render	235.75
Fire precaution works	470.00
Install emergency lights	251.85
	1,056.54

The nub of the Applicants' case was that this was a new building which should either have been handed over in perfect condition or any of the "defects" which manifested themselves within the first two years following construction should be put right as "snagging" by the builder. Consequently the managing agents should have seen to it that the builder should have been called back to rectify the matters for which they had been charged and they should not have been repaired at expense of the lessees through the service charge. They claim, however, that the managing agents were reluctant to do this and ir

effect took the easy option by simply charging the work to the service charge.
The Applicants also contended that under the NHBC certificate the builder was liable to remedy any "defect" which occurred during the first two years after completion of the build. The Applicants interpreted this as meaning that if anything at all went wrong in the building in that two year period the builder could be made liable to put it right under the terms of the NHBC agreement. The Tribunal asked for a copy of the NHBC agreement which was produced by the Applicants during the short adjournment. Under the terms of this agreement a defect is defined as: "A breach of any mandatory NHBC requirement by the builder or anyone employed by him or acting for him". Under a definition headed "NHBC requirements" the document states that the mandatory requirements are published in the NHBC Standards which are in force either: a) when the concreting of the foundations of a newly built home or, if applicable, the common parts is begun; or b) when conversion work affecting the home or common parts is started". The Applicants were unable, however, to produce a copy of the NHBC requirements which were in force at the appropriate time.

The Respondent's case was that they had contacted the builder to get him to rectify certain problems. They did not accept that the matters making up the maintenance and repairs part of the service charges were "snagging" items which the builder was liable to rectify. They did not accept that these were "defects" within the definition set out in the NHBC agreement which would have obliged the builder to rectify them. Mr Fain accepted that the case of Continental Property Ventures Inc v White LRX/60/2005 was authority for the proposition that if as a matter of fact the landlord could have had the works carried out by a third party at no charge to the lessees then it was open to the Tribunal to find that the costs of those works was not reasonably incurred. However, that was not the case here because there was no evidence that the items referred to would come under the NHBC mandatory requirement and therefore constitute a defect for which the builder was responsible to rectify. The Respondent produced invoices for all the items of expenditure making up the maintenance and repairs section of the service charge account and maintained that they were reasonable.

e) Fire Alarm maintenance.
For the year ended 2008 this came to £406.70 and for the year ended 2009 the figure was £734.38 for fire precaution work and £1,047.39 for fire alarms. The first point the Applicants made was that the invoice from Brighton Fire Alarms Limited for fire alarm maintenance during the first year was dated 14 June 2007 whereas not all the flats were sold until after that date and they therefore queried why they should be expected to pay for services that they had not received in advance of them moving in. In answer to a question from the Tribunal, however, completion of the first flat was in May 2007 and the Tribunal pointed out that the evidence from the documents was that the Fire Alarm maintenance contract started on 2 June 2007. The Applicants' major

concern about the maintenance contract however was that this included a weekly visit by the alarm company to test the alarms. The Applicants accepted that the annual testing needs to be carried out by a qualified person but the weekly testing can be carried out by the lessees themselves at no cost. This would save them about £200 a year in total.

Mr Harwood responded by saying that it was a statutory duty on the part of the landlord to ensure that the fire alarm equipment was properly tested. Experience had shown that where lessees had been permitted to take over the weekly testing themselves things had started conscientiously but over time testing occasionally got overlooked and the record not kept up to date. As it was the landlord's responsibility he felt it reasonable to include this in a contract whereby the responsibility for the weekly testing rested with the alarm company and the landlord could then be assured it was being carried out.

With regard to the year ended 2009 the Applicants contended that the building should have complied with fire safety regulations at the time the property was first let and that the installation of fire safety equipment at a cost of £470.00 should not therefore have been the lessees responsibility.

The Respondent's reply to this was that the building did comply with building regulations with regard to fire precautions when it was signed off by the local authority. Thereafter a statutory fire risk assessment was carried out which resulted in certain recommendations being made. The fire risk assessment looks at matters from a different perspective under the Regulatory Reform (Fire Safety) Order 2005 than the building regulations. For example, it looks at who is at risk and their location which the building regulations do not necessarily do. The landlord is statutorily obliged to carry out the recommendations of the fire risk assessment and the Respondent claimed that it is therefore reasonable for it to have added the cost of the work carried out consequent upon the fire risk assessment to the service charge account.

f) Professional fees.
For the year ending 2008 these amounted to £285.53 which was solely managing agents' fees in relation to its site inspections relating to various issues which had arisen at the property. The Applicants had various objections to these charges but in view of the Tribunal's findings with regard to managing agents' fees generally dealt with later in these reasons it is not proposed to set out those objections in detail.

With regard to the year ended 2009 the professional fees were made up as follows:-
Brighton Fire Alarms for periodic inspection report £70.50
and for the fire risk assessment £235.00.
Philip Goacher Associates for two reports concerning cracks to the

rendering £489.16 and £587.44.
In addition, the managing agents had charged £70.50 for a fee in respect of the fire risk assessment and £148.35 for a "survey including inspection fees".

It was the Applicants' case that responsibility for these costs should lie with the builder and that these are matters that should have been resolved before the flats were first let. The Respondent maintains that all these professional fees were reasonably incurred and were reasonable in amount.

g) Management fees.
For the year ended 2008 the management company charged for eight months at the rate of £110 per annum per flat plus fees at an hourly rate making the total for that year £1,945.80 or £322.63 per flat for the eight months of that year. For the year ended March 2009 the basic fee was £120 per annum per flat plus fees at an hourly rate for additional services bringing the total to £2,105.65 or £351.00 per flat for the year.

It was the Applicants' case that these fees were higher than they should be for the service they received. They did not put forward evidence of other managing agents' charges but asked the Tribunal to apply its own knowledge in that regard.

The Respondent produced a copy of the contract with the managing agent. Mr Fain stated that the contract complied with the recommendations of the RICS management code and that the fees were reasonable. Mr Haywood said that although the fees might seem higher than normal this was because of the heavy demands on the managing agents' time which had been occasioned by these particular lessees.

13 As far as the budget for 2009/10 was concerned Mr Harwood explained that this had been based on the previous year's actual costs. The detail was as follows:-

General repairs and renewals	£400.00
Public ways cleaning/lighting	£940.00
Door porter repairs/rental	50.00
Insurances	1,075.00
Fire alarm testing	420.00
Building surveys/reports	195.00
Management fees	850.00
Gardening	240.00
Accountants fees	205.00
Miscellaneous (bank charges interest etc)	100.00
	4,475.00

In addition the landlords propose a figure being put to reserves for exterior decoration of £800 and for interior redecoration of the common parts £250. This makes a total service charge demand which the landlord is able under the lease to make in advance of £5,525.00. The Applicants accepted that with the exception of the insurance they did not object to the charges being claimed on the basis that they would expect the services to be supplied to be of a satisfactory standard. If that was the assumption on which the Tribunal would make its determination then they would accept this and if it turned out that the quality of the service rendered for those fees turned out to be unsatisfactory then they would have to challenge the costs when actually charged at the end of the service charge year.

DETERMINATION

14. The Tribunal made the following determinations:-

Cleaning. There was a direct conflict of evidence here. The Applicants were adamant that the cleaners attend for a maximum of fifteen minutes a time and do not do a satisfactory job. The landlords maintain that the cleaners are there for the 1.5 hours that they are contracted to work at the premises and that the standard is satisfactory. The Tribunal accepts the Applicants evidence that the cleaners are in attendance for short periods of time at the premises. The common parts are not extensive and the Tribunal can well understand that the work is completed within a much shorter time than the contract allows. The Tribunal does not accept that normal cleaning would involve deep cleaning of the carpets at the entrance door. That is a separate matter for which a separate charge would be claimable. The common parts were clean and tidy on the day of the Tribunal's visit but that does not mean to say that the Tribunal casts any doubt on the veracity of the Applicants in that regard. It is very difficult for the Tribunal to resolve this direct conflict of evidence. What the Tribunal does find is that a charge of £30.00 per fortnight for the cleaning of the common parts is not an unreasonable sum to pay and is probably the minimum that any cleaning contractor would charge. This company will have overhead costs and it is difficult to see how they could charge any less. On balance, therefore, the Tribunal accepts the cleaning charges for both the 2008 and 2009 years to be reasonable and for the budget figure of £940.00 (inclusive of VAT) for the year 2009/10 to be reasonable also.

Gardening. Again there was a direct conflict of evidence as to the quality of the gardening carried out. It is certainly true that there is not much gardening to be done at the premises and it should not take a gardener long to carry out the work. The quality of the gardening that the Tribunal saw on inspection was reasonable. Again, without in any way casting doubt on the veracity of the Applicants the Tribunal resolves the conflict of evidence with regard to gardening on the basis

that this only costs the lessees £20 per month and it would be difficult to find a gardener who would charge less. The Tribunal therefore finds that the amounts charged for gardening for 2008/ 2009 and the interim service charge for 2009/10 to be reasonable.

Insurance It is always a difficult task for lessees to produce evidence of alternative insurance quotes on a like for like basis. In this case, the Applicants only have one alternative quotation although it is from the same company as currently insures the premises. The Applicants have done their best to obtain a quotation on a like for like basis. The Tribunal does not consider that legal expenses cover would add very much if anything to the amount of the premium. However, in the Tribunal's experience Insurance Companies are fickle when it comes to quoting for business. The fact that the alternative quote obtained by the Applicants is for the year commencing August 2010 (for understandable reasons) and is not for the same period as insurance that was quoted for the year commencing August 2009 does make the comparison unreliable. Premium rates can and do go down from time to time and it may be that when the landlord comes to place his insurance for 2010 the premium will be lower than for the current year. The Tribunal accepts that the landlord is not in any event obliged to seek the cheapest insurance cost and in this case the landlord does appear to have acted on broker's advice. There is no evidence that the mistake in describing the premises as being constructed in 1950 as opposed to three years ago has affected the premium although it is possible that it did. If it did, the Tribunal has no evidence as to the amount by which the premium would have been affected by this misinformation. Accordingly, the Tribunal finds that the premiums claimed by the landlord for 2008, 2009 and for the proposed interim service charge for 2009/10 to be reasonable.

Maintenance and repairs. The individual items comprising maintenance and repairs are relatively small. The Applicants were unable to produce evidence that they would come under the description of "defects" as defined by the NHBC Buildmark scheme. Accordingly the Tribunal cannot find as a fact that these items would have been matters for which the builder would have been responsible under that scheme to put right at its own expense within the first two years after completion of the build. The cost of each of the items making up the maintenance and repairs section of the service charge account are not individually unreasonable and the Tribunal therefore finds that the charges under this heading for the year ended 2008 and 2009 and for the proposed interim service charge of £400 are all reasonable.

Fire Alarm maintenance. The Tribunal can well understand the landlord's concern about relying upon lessees to carry out the weekly testing of the fire alarms and to log those tests. With the best will in the world these things can slip the mind or get missed when people are on holiday or are ill and it is reasonable for the landlord's peace of mind

for him to include this in the contract with the fire alarm company. It is in any event a statutory requirement that the fire alarms are tested annually and the weekly service costs less than £4.00 per week. The Tribunal considered that this expenditure was reasonable and is reasonably incurred under the service charge.

Professional fees. The Tribunal considers that the managing agents fees of £285.53 claimed under this head for the year ended March 2008 are unreasonable and should be included under the general heading management fees which will be dealt with below. For the year ended March 2009 the Tribunal finds that the professional fees of Brighton Fire Alarms Limited for periodic inspection in the sum of £70.50 and for the fire risk assessment in the sum of £235 are reasonable and reasonably incurred. The Tribunal accepts that these were incurred as a result of statutory requirements. The Tribunal also finds that the Philip Goacher Associates fees of £489.16 and £587.44 for two reports with regard to the cracking in the rendering at the premises were reasonably incurred and are reasonable in amount. The Applicants' evidence was that the Philip Goacher Report was used to assist the lessees in getting the NHBC to require the builder to carry out repairs to the vertical crack adjacent to the front door of the premises and therefore the lessees have had the benefit of those reports. The Tribunal does not find that the managing agents fees of £70.50 and £148.35 levied under this heading for 2009 were reasonably incurred and therefore will not be allowed but the Tribunal refers to the determination with regard to managing agents fees below.

Management fees.

Although Mr Fain asserted that the contract for the managing agents fees complies with the RICS management code the Tribunal queries this. The code states that "basic fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income". This method is considered to be preferable "so that tenants can budget for their annual expenditure". In this case although the basic fee is fixed and is relatively low, the contract provides for additional fees to be charged for items that would normally be included in the managing agents fixed fee. By charging for additional items on an hourly rate, the lessees cannot "budget for their annual expenditure" as they have no way of knowing what the annual managing agents' fee will be. Further, the management code recommends that for an annual fee the managing agent would normally carry out, amongst other things, periodic health and safety and fire risk assessments in accordance with the statutory requirements and, where necessary, in liaison with the relevant public authorities. This has been charged as an additional fee in this case. The code also recommends included in the managing agents' fixed fee the following: "visit the property to check its condition and deal with minor repairs to buildings plant fixtures and fittings". The lease at clause 4.4.3 requires that fees payable to "any agent or agents whom the lessor may from time to time employ for managing and maintaining the building" shall be "in accordance with commonly accepted scales or

commission rates in force from time to time". From the Tribunal's knowledge of management charges in the locality of Worthing the Tribunal considers that the managing agents' fees in this case are too high. They consider that for a modern block of this nature comprising six flats a fee of £250 plus VAT per flat would be appropriate. This will therefore be the amount that the Tribunal determines as reasonable for management fees for the years in question in this case.

CONCLUSION

15. From the forgoing the Tribunal determines that the following are reasonable sums for the landlord to claim by way of service charges:-

2008	
Cleaning	564.00
Gardening	180.00
Insurance	1,139.76
Maintenance and repairs	400.90
Fire Alarm maintenance	406.70
Professional fees	0.00
Management fees	881.28
(8 months @ £1762.50 per annum)	3572 .64

For the year 2008/9	
Cleaning	933.62
Gardening	250.00
Insurance	1,095.82
Maintenance repairs	1,056.54
Fire Alarm maintenance	419.54
Professional fees	1,382.10
Management fees	1,762.50
Door Entry system	161.00
	7061.12

16. The proposed interim service charge for 2009/10 comprises the following reasonable sums:-

	£
General repairs and renewals	400.00
Public ways cleaning/lighting	140.00
Door porter repairs/rental	50.00
Insurances	1,075.00
Fire alarm testing	420.00
Building surveys/reports	195.00
Management fees	850.00
Gardening	240.00
Accountants fees	205.00

There is no challenge to the reserves proposed for that year of £800 for external redecoration and £250 for interior redecoration to the common parts.

The Section 20C Application

17. The Respondent has succeeded in large measure in satisfying the Tribunal that most of the service charge items levied for the years in question are reasonable. Management fees have been reduced, but that is all. In those circumstances the Tribunal considers that it would not be just and equitable to make an order under Section 20C of the Act. However, the amount that the Respondent is seeking to charge to the lessees by way of legal costs under the service charge, according to the schedule of costs prepared by the Respondent's solicitors, in the sum of £8,948.69 including VAT and counsel's fees of £3,000 plus VAT, is wholly disproportionate to the amounts at stake in this case. That is considerably more than the total annual service charge. The Tribunal therefore proposes to cap the amount that the Respondent may claim for the cost of these Tribunal proceedings by way of service charge to £4,500 inclusive which would make the fees more proportionate.

18. As a final comment, the lessees mentioned during the hearing that they proposed to apply to acquire the right to manage and Mr Harwood for the Respondent responded that he would be delighted if the lessees did acquire the right to manage. This may well be the right solution for both parties in this case. Regrettably, although the lessees have succeeded in reducing their maintenance charge for past years slightly as a result of these proceedings the costs which they are going to have to bear have rendered the exercise counter-productive. With hindsight, the Applicants would have been well advised to have accepted the landlord's without prejudice save as to costs offer of settlement. If, however, they do decide to exercise the right to manage, the costs going forward will be within the Applicants' own control hopefully rendering any further applications to the Tribunal unnecessary

Dated this 15th day of July 2010

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D. Agnew BA LLB LLM
Chairman