LVT/SC/024/210/98

LEASEHOLD VALUATION TRIBUNAL under the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 - SECTION 19 2(A) AND 20C

Property: 98/1 00 Crystal Palace Park Road, London SE26 6UP

Applicants: Sandra Stepanyenko
Michelle McDonald
Gina Bane
George Hall
Julien Fasoranti
Denise Rogers
Doran Fanning

Represented by: Mr B R Maunder Taylor FRICS MAE
of Maunder Taylor Chartered Surveyors

Respondent: Longmint Ltd

Represented by: Mr A Bruce (counsel)
instructed by Ms J Bellis of Juliet Bellis & Co Solicitors

Appearances: Miss C Cummings (Managing Director)
Mr J Nash ARICS of John Nash Associates
Mr D R Toogood FRICS IRRV ACIArb of Hardings
Chartered Surveyors

Joined Parties: Sheena Leng
Scott Englefield
Marlene Allinson

Date of Application: 8 December 1998

Date of Hearing: 11 May 1999
Date of Inpsection: 12 May 1999

Members of the Leasehold Valuation Tribunal:

Mrs V T Barran BA (Oxon)
Mrs E Flint DMS FRICS
Mr P S Roberts DipArch RIBA

98 and 100 Crystal Palace Park Road

1. The Applications

1.1 The Tribunal accept the request of Sheena Leng, Scott Englefield and Marlene P Allinson to be joined as parties to the applications which were originally made by seven tenants of flats at 98/100 Crystal Palace Park Road.

1.2 Applications were made for determinations under section 19(2A), section 19(2B) and section 20(C) of the Landlord and Tenant Act 1985 as amended ("the Act"), but at the hearing it was agreed by the parties and the Tribunal that the application under section 19(2B) was no longer applicable. The passage of time since the applications were made meant that the two service charge years in question (1/3/1997 - 28/2/1998 and 1/3/1998 - 28/2/1999) had now ended and therefore costs were no longer to be incurred but had been incurred.

1.3 It may be useful here to summarise the relevant statutory provisions of the Act including those under which the Tribunal has jurisdiction:

Section 18 Meaning of 'service charge' and 'relevant costs'

(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) 'costs' includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 Limitation of service charges: reasonableness

(2A) A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a leasehold valuation Tribunal for a determination-

(a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,

(b) whether services or works for which costs were incurred are of a reasonable standard, or

(c) whether an amount payable before costs are incurred is reasonable.

Section 20 Limitation of service charges: estimates and consultation

(1) Where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified in subsection (3) *(£1, 000* or *£50 per* unit) the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirement have been either-

(a) complied with, or .....

(4) The relevant requirements .....are .

(a) At least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.

(b) A notice accompanied by a copy of the estimates shall be given to each of those tenants concerned or shall be displayed in the one or more places where it is likely to come to the notice of all those tenants.

(c) The notice shall describe the works to be carried out and invite observations on them and shall state the name and the address in the United Kingdom of the person to whom the observations may be sent and the date by which they are to be received.

(d) The date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b).

(e) The landlord shall have regard to any observations received in pursuance of the notice; and unless the works are urgently required they shall not be begun earlier than the date specified in the notice.

Section 20(C) **Limitation of service charges: costs of proceedings**

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation Tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

.....

(3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

1.4 At the hearing the Applicants were given further time to submit written representations on the standard of the accountants service, because this was a matter

thought not to have been in dispute. The representatives of both parties were invited to submit written closing statements.

2. Inspection (12 May 1999)

2.1 The block comprises two detached houses, connected in the centre by a late 1980's 'bridge', on five floors including lower and upper ground floors. It is situated on a sloping site at the junction of Crystal Palace Park Road, a busy main road, and Charleville Circus, a quiet side road with unrestricted parking. There are gardens to the front and rear and a good sized car park accessed from Charleville Circus.

2.2 The external condition of the block is good, the Tribunal noted the new roof and recent external decorations. There are ten steps up to the double entrance doors, access to the block being via video entry phone which did not appear to be fully functional at the time of our inspection.

2.3 The entrance hall had a thermoplastic tiled floor and there was evidence of water penetration on the ceiling below the bathroom of flat 10. The walls and ceilings in the common parts are painted plaster, all in need of redecoration. The walls on the staircase abutting the flats were in very poor condition: the plaster was perished and blown to a significant degree and in need of renewal in parts,

2.4 The Tribunal were unable to see any evidence of repairs to the windows in the common parts, all of which were at the rear and situated in the modern 'bridging'

section of the building. Nor could the members see any evidence of repairs to the bracket of the canopy over the rear door.

2.5 The standard of cleaning was acceptable in view of the cleaning schedule, which could not be considered as more than adequate, however the carpet was stained and in need of in depth cleaning.

2.6 The car-park boundary walls have had expansion joints cut in and have been rebuilt/repaired in sections as necessary. The surface of the car park show signs of wear and weeds were growing at the junction with the boundary walls.

3. Agreed matters

The following matters were agreed before or at the hearing:

(a) the cost of electricity for the common parts

(b) the cost of recently completed external decoration and repair works (other than two items)

(c) the contingency fund for minor repairs.

(d) the amounts of the accountant's fee.

(e) the leases to the flats are in similar terms.

4. Matters in dispute (Service charge years ended 28/2/98 and 29/2/99)

These were narrowed at the hearing to:

(a) the cost of the insurance premium

(b) the fees and standard of service of the landlord's surveyor

(c) the cost and standard of the video entryphone system

(d) the cost and standard of the cleaning of the common parts

(e) the costs of repairs to the car park walls and of works to one or two windows

(f) the standard of service of the accountant

(g) the costs and standard of management.

5. Insurance

5.1 Mr Maunder Taylor, for the Applicants, argued that the building was over insured, but considered that the level of premium pro-rata was not unreasonable. However, the 20% commission, which the landlords admitted they obtained from the insurer (then General Accident), was unreasonable and in breach of trustee law.

5.2 At the hearing, following the expert evidence of Mr Togood, the landlord conceded that the building was over insured. This had been the consequence of a request from the mortgagee of a tenant in 1988 when a flat was sold. The level of insurance for reinstatement of the building would now be reduced from £1,730,000 to £1,200,000. Mr Bruce, Counsel for the Respondent landlord, stated that the policy was index linked, with a well known and reputable insurer and with standard excesses. The commission, common for block policies for landlords with substantial portfolios does not make the costs to the Applicants unreasonable. Insurance commission represents a quantification of the time and trouble associated with placing a large block policy. Economies of scale are obtained by the landlord maintaining a block policy.

5.3 In the light of Mr Maunder Taylor's concession that the premium rate per £1000 of rebuilding costs was reasonable and as there were no alternative quotations offered, the Tribunal accepted the level of premium rates charged as reasonable. Neither the leases nor the Act preclude the payment of commission out of the premium by an insurance company. Again, in the absence of alternative quotations and in the light of the landlord's evidence, the Tribunal do not consider that the receipt of a commission by the landlord, on the face of it makes the insurance premiums payable by tenants unreasonable.

5.4 We noted the landlord's concession to reduce the amount of cover and could not disagree with Mr Maunder Taylor and Mr Togood that the property had been over insured during the two service charge years in question. The landlord covenants in the leases at clause 6 (c)(iii) to

Arrange for the rebuilding and replacement costs to be professionally assessed in an endeavour to ensure that cover is at least the re-instatement value.

The Tribunal considered it would have been reasonable, when approached by a single mortgagee, to have had the level of cover professionally assessed. Following agreement that in the current service charge year (ie 1999/2000) the level of reinstatement value will be reduced to £1.2 million, the Tribunal considered that it was unreasonable for the Applicants to have been charged for insurance premiums based on reinstatement value exceeding that amount in the two previous service

charge years under consideration. Thus the amount of service charges payable for insurance premiums should be reduced pro-rata:

from £6,974.15 to £5,312.16 (ie less £1,661.99) for the year 1997/1998 and

from £6,600.24 to £4,833.96 (ie less £1,766.28) for the year 1998/99.

6. Surveyor

6.1 Mr Maunder Taylor questioned whether surveyor's charges should be incurred every year, although he appreciated that when major works were carried out a reasonable level of supervision fees should be charged by a surveyor. Mr Bruce contended that it was not, on the face of it, unreasonable to engage a surveyor both to supervise major works and also to investigate and report upon problems, such as damp penetration, which occurred from time to time.

6.2 The Tribunal found that the following fees and expenses (inclusive of VAT) had been charged by John Nash Associates:

1997/98: 0 (£242.50 & expenses of £28.40 and VAT)

This was for inspecting the property, preparing a report and specification and inviting builders to tender. 5½ hours were charged at £35 per hour and 2½ hours at £20 per hour. It was agreed by all at the hearing that these were at low rates.

1998/99	£444.50)	calls to individual flats to inspect damp penetration
	)	and reporting and advising thereon
	£256.44)	
	£1,670.38)	preparation of specification, re-tendering and supervision
	)	of external repairs and redecoration, agreeing final account
	)	at 15% of cost
	£ 984.35)	
	£3,355.67	

6.3 Mr Maunder Taylor accepted that the surveyor's percentage fee of 15% of the final costs of the external repairs and redecoration was reasonable, (although as will be seen below, he considered it unreasonable that the landlord in addition charged 15% for management fees) but he argued that the fee of £242.50 (+ VAT) charged in 1997/8 should be deducted from that charged in 1998/9 which was based on the final account figure. Mr Maunder Taylor further contended in his closing submission, that in accordance with the lease, the cost of the surveyor inspecting for damp penetration caused from within flats, should fall to individual lessees. However, inspection had revealed that the damp penetration badly affected the common parts and furthermore Mr Nash had reported that some damp had emanated from the roof. The landlord has overall responsibility for the building (including the common parts) and the Tribunal therefore considered it reasonable to employ a surveyor to investigate these problems. Some of the costs of rectification of damp penetration may be claimed on the insurance policy or may fall on individual lessees, should it be proved that any individual tenant has not complied with his or her repairing obligations. Evidence on this was not put before the Tribunal and in any event questions of recoverability are unlikely to fall within our jurisdiction.

6.4 The Tribunal considered that Mr Nash could perhaps have charged slightly less for the visits and reports on the damp penetration, because there was an element of repetition involved. We noted however that the costs of the external repairs and redecoration had come in under budget and inspection had revealed that the works had been carried out to a good standard. However we agreed with Mr Maunder Taylor that the fee of £242.50 (+ VAT) charged in 1997/8 was duplicated in the year 1998/9 and we determined that this amount should be deducted. In other respects we did not consider that the surveyor's fees for the two years in question were unreasonable, nor that the standard of service provided by John Nash Associates was unreasonable.

7. The costs and standard of the video entry phone system.

7.1 This had remained constant at £1,250 plus VAT for each of the two years in question. The contract with Knighthood Securities Limited who were the successor firm of the original installers, had been charged at £954 plus VAT in 1993. At the time of Mr Maunder Taylor's inspection, the connection to flat 2 was not functioning and from the evidence of complaints from tenants, it is clear that from time to time there are problems with the system. Although at the time of the Tribunal's own inspection, the system appeared to us not to be fully functioning, the landlord had stated that in October 1997 the system was in working order and it appeared to us from the evidence that Knighthood Securities Limited respond well to call-outs. Mr Togood

considered that it might be cost effective to renew the system in the future if the tenants wished to replace it.

7.2 The alternative quotations from the Applicants were not "like for like" and could have been for an entryphone system as opposed to a video entryphone system. In the absence of evidence of comparable quotations, we felt unable to determine that the annual charge was unreasonable.

8. The costs and standard of cleaning of the common parts

8.1 Mr Maunder Taylor explained that the tenants had made complaints over a number of years, about the standard of cleaning. On inspection he had found the carpets engrained with dirt, the vinyl floor tiles in the entrance hall dirty and long term rubbish and weed growth in the car park.

8.2 Mr Bruce explained that cleaning of the common parts is undertaken on a weekly basis by Mums Cleaning Service, a firm recommended by a former tenant. The charges of £22.50 per week have not risen since 1995, when the contract had been won by competitive tender and was by far the lowest quotation obtained. An additional charge of £70 had been made for steam cleaning the carpets in September 1997. Mr Togood considered that at the time of his inspection the cleaning to the common areas was carried out to an adequate standard.

8.3 On inspection the Tribunal found that the internal common parts and the front area were reasonably clean, especially given problems of the flaking paintwork caused by damp and the problems of tenants' storage of furniture in the hall and a bicycle outside one of the flats. The Tribunal noted that the interior redecoration has not yet been carried out, at the request of the tenants. We considered that the cost of cleaning was reasonable, in view of the extent of the schedule of work produced at the hearing, which schedule was also considered to be reasonable. The external areas at the rear were unkempt and could well be better maintained, although the tenants would have to bear additional costs in this respect. The Tribunal noted that the two rear gardens, belonging to individual tenants, were also unkempt with overgrown hedges and nettles; these of course were not the primary responsibility of the landlord under the leases.

9. The costs of repairs to car park walls

9.1 Repairs to the car park walls had been carried out on five occasions between March and July 1997 and the total costs were £2,304 plus VAT. According to the evidence given by the landlord, this represented some 86½ hours of a bricklayer and some 68 hours of a labourer, plus the cost of materials (£195) and skip hire (£102). Evidence was given that the landlord had initially budgeted £750 for repair to the car park wall, with a contingency of £1,000 for all minor repairs.

9.2 Mr Maunder Taylor contended that the landlord had been seeking to avoid the procedures laid down in section 20 of the Act, by breaking down what should

essentially be one job, into a number of smaller jobs, carried out over a period of months. The Tribunal indicated at the hearing that it was primarily concerned with the question of reasonableness, not recoverability, and that arguably it has no jurisdiction to determine whether section 20 has or has not been complied with. This view is supported by the use of the words "alleged to be payable" in section 19(2a) and by the fact that a court (not LVT) is given power to dispense with the requirements in section 20(9).

9.3 The landlord contended that the costs of repairs to the car park walls were reasonable and that the awkward nature of the works had required ten days bricklaying work.

9.4 In this case, inspection had revealed that the walls had indeed been repaired in different places and expansion joints had been cut in and a pier partly rebuilt. The Tribunal agreed with Mr Maunder Taylor that it had been unreasonable to carry out the works on a number of different occasions, although on the last occasion the work was necessitated by vehicle impact, which happened just after the other works were finished. We considered that the works should have been carried out over two short time periods, totalling five days for both workman and that it would therefore be reasonable for the tenants to pay only £1,000 plus VAT for labour together with the costs of the materials (£195) and skip hire (£102).

10. The cost of joinery repairs to one or two windows

10.1 In the final account for the external repairs and redecoration the following extra items were included: £365 for various joiner-y repairs,

£3 10 for joinery repairs priced,

£ 40 for one pane of glass.

10.2 Mr Maunder Taylor claimed that these costs were for work to a window within demised premises and were accordingly the responsibility of an individual tenant, not the landlord. The Tribunal noted that the definition of demised premises in the leases (first schedule part I) clearly includes windows and window frames. Mr Maunder Taylor however did not indicate precisely which window had been repaired. We found the evidence of Mr Nash to be vague on this point. He referred to two windows "badly affected by wet rot" but thought they were in the central section of the front and rear elevations, primarily at second, third or fourth level. Inspection revealed that there was no "common" window in the front elevation and there was no visible evidence of extensive window repair to any window in the common parts at the rear, nor to the canopy support bracket.

10.3 In the absence of compelling evidence the Tribunal felt unable to make a determination on this issue.

11. The standard of service of the accountant

11.1 The costs of the accountant were £120 for the service charge year 1997/98 and £125 for the service charge year 1998199 (with no VAT apparently charged). These costs were not disputed by the Applicant, but following the hearing, Mr Maunder- Taylor submitted representations concerning the quality of service of the auditor. In the lease the landlord covenants at Clause 6 (e)(i) (to) *procure when requested by the tenant that the service charge shall be duly audited by professional auditors who shall certify the actual expenditure during each accountingyear and whose certificate shall be conclusive as to the expenditure.*

He considered that the accountant should have qualified the accounts in view of the insurance commission received by the landlord and in view of the over insurance. He questioned the independence of the accountant because he also audits the accounts of the landlord company. He argued that the 1997/1998 summary did not comply with Section 21 (5) of the Act.

11.2 Mr Bruce pointed out that both the lease and Section 21 (5) of the Act need to be triggered by a request from a tenant. In this case there had been no such request. The accountant had made clear that he merely inspected the records and vouchers retained by the landlord and certified that the expenditure summary was accurate.

11.3 The Tribunal noted that in the year 1998/99 that, as a matter of good practice, the format of the accounts summary has been revised to meet the criteria of Section 21 (5) of the Act. There was no evidence of a request by any tenant for a summary of relevant costs in alternative forms and the Tribunal agreed with Mr Bruce that neither the lease nor the Act require an audit without such a request. The quality of the

accountant's service in the year 1997/98 was perhaps minimal, but not unreasonable and the standard of service in the service charge year 1998/99 was reasonable.

12. The costs and standard of management

12.1 Clause l(d) of the lease states:

"The service charge " means the cost of the service obligations together with an additional sum equivalent to 15 per cent of such cost as a management fee chargeable by the landlord.

Clause 4(o) allows the landlord to collect VAT.

12.2 Mr Maunder Taylor contended that the sums charged in the accounts are both unreasonable as to cost and unreasonable as to quality of service and further that it was unreasonable to charge 15% on

(a) the 20% element of the insurance premium which was being paid back to the landlord by the insurer as commission and

(b) the cost of the major works, which were administered by the surveyor and

(c) on the fees charged by the surveyor to whom the landlord had delegated some management functions.

Moreover he considered that the landlord should maintain a separate trustee bank account.

12.3 From the evidence of Miss Cummings, the Tribunal were satisfied that in fact during the two accounting years in question there were no surplus funds. Miss Cummings

further explained that Cambridge Property Services (the trading division of the landlord) does maintain a separate, but general, client account. Mr Bruce also argued persuasively that the LVT has no jurisdiction to deal with questions arising out of Section 42 of the Landlord and Tenant Act 1987. The landlord does not pay a managing agent and the property requires a considerable amount of time to be spent on its management. The lease clearly states that the landlord can employ a surveyor, which it had done in order to obtain the benefit of his experience in identifying maintenance and repair problems. The surveyor was then able to prepare proper specifications, obtain tenders which in turn enabled effective consultation with the lessees and then supervise the works. These are tasks which should be carried out by a qualified surveyor. Mr Bruce contended that 15% is a reasonable charge for the significant management services provided by the landlord, nor was it unreasonable to engage a surveyor and to maintain an entitlement to a landlord's management percentage.

12.4 Mr Bruce argued that the Tribunal has no jurisdiction to vary the express terms of the leases. We accept that. However he further contended that this was not a case where clause l(d) of the lease is unclear or requires interpretation. We disagree with this contention. We consider that the words *"as* a *management fee"* should be construed so that the additional 15% can only be charged on top of the costs of the service obligations (as defined by the lease) where there is an element of management. As stated above, we considered it reasonable for the landlord to employ a surveyor to manage the major works contract. Mr Nash did not simply prepare specifications and obtain tenders, he supervised the works on site and agreed the final accounts. His

expertise and professional responsibility meant that the landlord could and did delegate its management function for the major works, to the surveyor.

12.5 The management fees for the two years in question were as follows:

1997198: 22533.88 per annum (inclusive of VAT)

ie $140.77 per flat (inclusive VAT)

1998199: $5608.53 per annum (inclusive of VAT)

ie £3 11.58 per flat (inclusive of VAT)

Thus it can be seen that the management charge more than doubled in the year when the major works were carried out. The management work of the landlord had not significantly increased. We determined therefore that it was unreasonable for the landlord to charge 15% on top of the cost of the works and on the fee of 15% already charged by the surveyor.

12.6 The evidence from Miss Cummings was that the problem of damp penetration from bathrooms adjoining common parts at various levels had been recurring since 1993, with the most recent occurrence in 1998. Mr Nash, as explained above, had inspected some flats internally but the Tribunal considered that it would be reasonable for the landlord to insist on internal inspection of all flats causing damp problems. The leases provide for this (clause 3 (d)(e)(g)). The condition of the common parts is clearly deteriorating and the Tribunal do not consider the standard of this part of the management service to be reasonable.

12.7 As has been explained above, the building has been over insured for a number of years, including those in question in this application and the Tribunal consider this also to be indicative of a lack of a proper standard of management.

12.8 In conclusion the Tribunal determine that the costs incurred for management were not all reasonably incurred and the management services were not all of a reasonable standard. The management fees for the two service charge years in question should be reduced in accordance with the reduction detailed above in paragraph 5.2 (insurance premiums) and paragraph 9.4 (car park wall repairs). Furthermore management fees should be not be charged on the costs of the major works (£ 17,645.13 inclusive of VAT) nor on the surveyor's fees charged in connection with those major works.

Application under section 20C of the Act

13. The Applicants have asked that the Respondent's costs incurred in responding to these proceedings should not be passed on to them in service charges. As can be seen above the Applicants had reasonable cause to make the application and the Tribunal has determined in their favour on a number of substantial issues. Also the Respondent landlord had conceded the over insurance as a result of the application. In these circumstances the Tribunal consider it is just and equitable for the Respondent to bear its own costs for responding to the proceedings. The Tribunal accordingly determine that the respondents costs in connection with these proceedings are not to be regarded

as relevant costs to be included in any service charge payable by any of the Applicants.

Summary of Decision

The following amounts, inclusive of VAT where appropriate, were unreasonably incurred and should be refunded to the service charge account:

Year ended 28.2.98

(a)	Insurance premium	£1,661.99
(b)	Repairs to car park wall	£1,235.20
(c)	Management on (a) + (b) + VAT	£ 510.63
	Total	£3,407.82

Year ended 28 February 1999

(d)	Insurance premium	£1,766.28
(e)	Surveyors fee	£ 284.94
(f)	Management on (d), major works costs (£17,645.13), Surveyors Fees (£2,654.73)	£3,889.16
	Total	£5,940.38

CHAIRMAN ..... Veronica Rowan .....

DATE ..... 16th August 1999 .....