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

In the matter of Applications under Sections 27A, 20ZA and 20C of the Landlord & Tenant Act 1985

Case Nos. CHI/00ML/LIS/2009/0044 &
CHI/00ML/LSC/2009/0109

Property: Marine House, 13/14 Marine Parade, Brighton, East Sussex BN2 1TL

Between:

Mr M.J. Green (Flat 10)
(Representing himself and the Lessees of Flats
1, 2,3,4,6,7,8,9,11,14,15,17,18,and 20)
("the Lessees")

and

Parade Properties Limited
("the Landlord")

Parade Properties Limited
("the Landlord")

and

Mr M.J. Green (Flat 10)
(Representing himself and the Lessees of Flats
1,2,3,4,6,7,8,9,10,11,14,15,17,18 and 20)
("the Lessees")

Attendances:	The Lessees:	Mr M.J. Green and other Lessees
	The Landlord:	Mr R. Packe (A Director of Parade Properties Limited) represented by Mr Simon Sinnatt (Counsel)
		Mr P. H. Overill, BSc,DipArch.FRICS,MCIArb (Chartered Building Surveyor)

Members of the Tribunal: Mr J.B. Tarling, MCMI, Lawyer/Chairman
Mr A.O. Mackay, FRICS
Mrs J.E.S Herrington

Date of the Decision: 5th October 2009

THE DECISION
OF THE LEASEHOLD VALUATION TRIBUNAL

1. **The Tribunal determines under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") that the following items of Service Charges are reasonable and are legally payable by Lessees to the Landlord :**
   - **(a) In the Service Charge Account for the year 2007/2008**
     - **(i) Under the item "Drains and Gutters cleared and improved the sum of £950 (inclusive of VAT)**
     - **(ii) Under the item "Asbestos Survey" the sum of £1,498.13 (inclusive of VAT)**
     - **(iii) Under the item "Fire Risk Assessment" the sum of £650 (inclusive of VAT)**
   - **(b) In the Service Charge Account for the year 2008/2009 under the item "Mains water conversion/associated asbestos survey/associated asbestos removal and disposal the sum of £19,477.99**
   - **(c) In the Service Charge Accounts for the year ending 25th March 2009 and also in the Accounts for the period 26th March 2009 to 26th May 2009 under the item Scaffolding for the side elevation, the sum of £987.00 (Inclusive of VAT)**

2. **The Tribunal determines under the provisions of Section 20ZA of the 1985 Act to dispense with the requirement in Regulation 8(3) in Schedule 4 Part 2 of the Service Charges (Consultation Requirements)(England) Regulations 2003 for the Section 20 Notice to invite each tenant to propose within the relevant period the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.**

3. **The Tribunal declines to make an Order under Section 20C of the 1985 Act that any costs or expenses incurred by the Landlord in connection with these proceedings shall not be chargeable through the Service Charge Account.**

REASONS FOR THE TRIBUNAL'S DECISION

1. **Background to the Application**

   The following Applications were before the Tribunal:
   - (a) Two Applications under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of the liability of the Lessees to pay to the Landlord certain Service Charges in the years 2006, 2007, 2008 and 2009 under the terms of the Flat Leases.
   - (b) An Application under Section 20ZA of the 1985 Act for dispensation with all or any of the consultation provisions of Section 20 of the 1985 Act
   - (c) Under Section 20C of the 1985 Act for an Order that any costs or expenses incurred by the Landlord in connection with these proceedings shall not be chargeable through the Service Charge Account.

The Applications had been made under the provisions of Section 27A of the 1985 Act. This provides that an application may be made to an LVT for a determination whether a service charge is payable and if it is, as to:

(a) the person by whom it is payable,
(b) the person to whom it is payable
(c) the amount which is payable
(d) the date at or which it is payable and
(e) the manner in which it is payable.

Section 19(1) of the 1985 Act

Section 19 (1) of the 1985 Act provides that relevant service charge costs shall be taken into account (a) only to the extent that they are reasonably incurred and (b) only if the works are of a reasonable standard.

Section 20ZA of the 1985 Act

Section 20ZA(1) of the 1985 Act provides that where an application is made to the Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works... the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Section 20C of the 1985 Act

Section 20C of the 1985 Act provides that a tenant may make an application for an order that all or any costs incurred or to be incurred by the landlord in connection with proceedings before the 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 tenant or any other person or persons specified in the application.

2. The Tribunal had made Directions as to the preparation and exchange of various documents with a view to preparing for a full Hearing of the Applications. The parties had prepared their own Bundles of documents and these had been exchanged and copies had been forwarded to the Tribunal prior to the Hearing.

INSPECTION

3. The Tribunal carried out an Inspection of the Property on the morning of 22nd September 2009 accompanied by Mr Packe, Mr Sinnatt, Mr Overill and Mr Green. The Building is a five-storey end of terrace Regency building on Brighton seafront which was formerly a Hotel, but more recently converted into 19 residential Flats. The entrance was on the frontage to Broad Street. The following matters relating to the items in dispute were inspected.

(a) Rainwater down-pipe. This was inspected from the lower ground floor rear yard. The pipe ran up the back of the Building to the roof. Evidence of four new black plastic fasteners could be seen. The bottom section of the pipe appeared to be loose. There were two overflow pipes which discharged near the vertical pipe. In addition some pigeon netting had been fixed over the rear yard.
(b) Mains Water Conversion. In the cupboard on the ground floor entrance hall new pipework could be seen serving the water supply for a number

of flats. There appeared to be three pipes supplying each flat. The pipework appeared to be of 15 mm diameter. This new pipework could also been seen in the cupboards on each landing. In addition there were Riser cupboards on each landing which housed the main water Riser pipes. Some of the Risers were insulated. There was evidence that the Riser cupboards had fire protection covers.

(c) Scaffolding on Side Elevation From street level the Tribunal was referred to the rendering on the triangular parapet wall on the roof on the Broad Street frontage. There was evidence that some of the rendering had been removed. There was no scaffolding in situ at the time of the inspection but the Tribunal were shown the extent of the scaffolding. This appeared to be the area around the bay on the Broad Street frontage. The Tribunal then inspected the roof in the presence of Mr Packe and Mr Sinnatt. Mr Green was invited to accompany the Tribunal, but declined. The parapet wall on the Broad street frontage appeared to be leaning outwards to a small degree. There was evidence that some recent work had been carried out to fill in and cover a crack on the top of the triangular parapet.

4. HEARING

A Hearing took place at the Holiday Inn Hotel, Kings Road, Brighton on 22nd September 2009. This was attended by Mr Green, and a number of other Lessees. Mr Packe attended and was represented by Mr Simon Sinnatt of Counsel. Mr Peter Overill attended as the Landlord's expert witness.

5. The matters in dispute

At the date of the Hearing the matters remaining in dispute were as follows:

(a) In the Service Charge Accounts for the year 2007/2008 the item of "Drains and Gutters cleared and improved" amounting to £950.00 (including VAT)

(b) In the Service Charge Accounts for the year 2007/2008 the item of "Asbestos survey" amounting to £1,498.13 (including VAT)

(c) In the Service Charge Accounts for the year 2007/2008 the item "Fire risk assessment" amounting to £900.00 (including VAT)

(d) In the Service Charge Accounts for the year 2008/2009 the item "Mains water conversion/associated asbestos survey/associated asbestos removal and disposal" amounting to a total of £20,431.27 (including VAT)

(e) In the Service Charge Accounts for the year ending 25th March 2009 and also the Accounts for the period from 26th March 2009 to 26th May 2009 (the date on which the Right to Manage Company took over management) the item "Scaffolding for side elevation" amounting to £987.00 (including VAT)

These items were all listed in a document prepared by the Lessees and contained in the Landlords Bundle at Page B2

At the date of the original Application by the Lessees, a number of other items of Service Charge had been challenged by the Lessees, but by the date of the Hearing the remaining items had been agreed. In so far as those items had been agreed, the Tribunal had no jurisdiction to make any determination regarding them

6. **The Documents before the Tribunal**
Following the Tribunal's Directions both parties had produced their own Bundles of documents which together amounted to a total of over 500 pages. The Landlord's Bundle had been separated into sections A to J and had the pages numbered consecutively. The Tribunal refers to documents in this Decision by way of reference to the section and page number in the Landlords Bundle.

7. **The Leases**
Copies of the Leases were before the Tribunal and the parties had agreed that they were in the same form. The Leases contained the usual Service Charges clauses and the parties had agreed that the items in dispute came within the Service Charge provisions of the Leases. The issue of liability to pay was not in dispute, merely the amounts being claimed.

8. **Service Charge Demands**
At the beginning of the Hearing the Tribunal enquired whether the Service Charges in dispute had been properly demanded. During the course of the Hearing copies of the Service Charge Demands were produced and the Tribunal was satisfied that such Demands complied with the necessary statutory provisions.

As the items in dispute were all items upon which both parties had submitted documents the Tribunal decided, with the consent of the parties, to deal with each and every item one by one. In each case the Lessees were invited to make their oral submissions on each point first and the Landlord then replied to the matters which the Lessees had raised.

9. **Drains and Gutters £950 (including VAT)**

The Lessees case

(a) The amount of £950 was broken down as follows:
(i) Unblock gutters on roof and clean and clear roof gullies - £70. This was an Invoice from N.J. Baker dated 10th February 2007 (E73) The Lessees agreed with this amount.
(ii) The balance of £880 was in respect of the work set out in the Invoice dated 7th April 2007 from N.J. Baker (E74) It was headed "Emergency call out to Marine House" The narrative on that Invoice described the work done. It included hire and erection of scaffold, remove bird netting, remove downpipe and unblock it, supply and fit new length of downpipe and brackets, clear debris from roof, rod pipework from roof level, dismantle scaffold and bag up rubbish and clear from site.

(b) The Lessees' objection was that the amount charged was too much. They had included in their bundle of documents their own Estimate (C3) in the total of £358.56. However this did not include any cost of scaffold or removal of the bird-netting. In that Estimate the labour charge was £135

per day and they had allowed for just one person to do the work. At the Hearing Mr Green agreed that on reflection the work needed an extra man to erect the scaffold and for health and safety requirements, and he said that the most he could agree was a total of £670 instead of the £880 that had been charged.

The Landlord's case

(a) Mr Packe gave evidence and reminded the Tribunal that this was an emergency repair carried out in the winter months when there was heavy rain and the work needed to be done urgently as the downpipe was blocked. The scaffolding had cost £170 per week. It was short length scaffold as it had to be carried through the building to the rear yard in a confined space. He had employed Nigel Baker before and he was a good general builder who was able to do the work quickly.
(b) In support of his case Mr Packe had obtained advice from Mr Overill, a Chartered Building Surveyor, and referred to Mr Overill's written Report which was before the Tribunal. Mr Overill gave evidence to the Tribunal and referred to Paragraph 3.13 of his report (J8). His opinion was that the Lessees figure of £135 per day is too low and his view was that a figure of £185 per day is a reasonable average alternative. Using that figure Mr Overill had calculated the cost of this work at £1,020 exclusive of VAT.

The Tribunal's determination

The Tribunal reviewed all the evidence provided by both parties. Mr Green had conceded at the Hearing that it would need two men to erect and dismantle the scaffolding. So far as the hourly rates provided by both parties were concerned the Tribunal preferred the figures provided by Mr Overill to those provided by Mr Green. In the Tribunal's knowledge and experience as an expert Tribunal they thought the figure of £135 per day per person for this kind of work was too low. The Tribunal accepted the evidence of Mr Packe that these were emergency repairs and the Lessees had received the benefit of the work having been carried out quickly. No evidence was produced by the Lessees to say that the work that had been carried out had not been of a reasonable standard. In all the circumstances the Tribunal considered that the amount of £880 (inclusive of VAT) was a fair and reasonable amount for the work that was carried out. This amount would be allowed in full. The Lessees had already agreed the balance of £70, so the total of £950 (inclusive of VAT) was allowed in full.

10. Asbestos Survey £1,498.13 (inclusive of VAT)

The Lessees case

(a) The Landlords Asbestos Survey was at Page C6 onwards in the Landlords Bundle. It was prepared by Pass Consulting and was dated 6th January 2007. The Invoice for the cost of the Report is on Page E141 of the Landlord's Bundle and shows the cost being £1,274 plus

VAT at 17.5% (£223.13) making a total of £1,498.13. The Report was a lengthy document with accompanying photographs and plans of the building. The Lessees objection was that it was too elaborate for what the law required and hence too expensive. The Lessees had no issue with the quality of the survey. Mr Green said that it had not been necessary to prepare new drawings as there were already plans of the building on the Leases.

(b) In the Lessees Bundle Volume 2 at Folio 2, the Lessees had submitted an alternative Quotation from Artisan Surveyors Limited dated 4th August 2009 in the sum of £300 plus VAT. The work described in that Quotation was "Type 2 (Standard sampling, identification and assessment) Asbestos Survey based on HSE Guidance Notes MDHS 100" Mr Green said that this type of survey was all that was needed to comply with the Regulations. He agreed that asbestos was highly dangerous and it should not be disturbed if at all possible. A later Type 3 survey of part of the building has subsequently become necessary but he said this would have merely required the marking up of the existing drawings.

The Landlord's case

(a) Mr Packe gave evidence and disagreed with Mr Green about the need for new drawings. He said the existing drawings on the Leases were not suitable and there were omissions. The drawings had to be accurate to make sure the asbestos was clearly identified. Accurate drawings of the Building were now available for the future. Mr Packe had used Pass Consultancy for the majority of his work and had found Mr Pass very thorough. For a typical 2 unit building Mr Pass would charge in the region of £300 plus VAT. However Marine House was an old building converted into 19 Flats. Marine House was also a Listed Building and was likely to contain some asbestos in view of the age of the building and type of construction. A subsequent Type 3 Report had subsequently become necessary and the cost of that report had been just £330 plus VAT (making a total of £387.75) (E172)

(b) Mr Overill gave evidence and referred the Tribunal to paragraphs 3.15 to 3.25 of his report (J8 toJ10). He said there were a lot of "cowboys" in this field of work and in his experience there was a huge difference in fees being charged. He concedes in Paragraph 3.24(b) of his report that the report contains more detail than would normally be expected, but at 3.26 he refers to the need for a subsequent Type 3 survey and the fees for that report are fairly low and the Type 2 account may offset the Type 3 account.

The Tribunal's determination

The Tribunal reviewed all the evidence from both parties. Mr Green had agreed that asbestos was highly dangerous and needed to be handled carefully. It was a specialist job to remove it in accordance with the statutory guidelines and without causing any risk to occupiers or the operatives. Whilst it agreed

with Mr Green that the work could have been done for a cheaper price, the Tribunal could find no evidence that the Landlord had acted unreasonably. In addition there were now in existence full scale and accurate plans of the Building which would be available for any future work. The Tribunal took the view that whilst the preparation of these plans was not an essential requirement; the Landlord had not acted unreasonably in having them prepared. The subsequent need for the Type 3 survey did indeed make the preparation of the plans a reasonable requirement. It is possible that the work could have been done for a cheaper price, but taken overall the Tribunal concluded that the amount charged was fair and reasonable. The Tribunal accepted the view of Mr Overill that the fee of £387.75 inclusive of VAT for the Type 3 survey is fairly low and to some extent the Type 2 account may offset the Type 3 account. For these reasons the Tribunal allows this amount in full.

11. Fire risk Assessment £900.00 (inclusive of VAT)

The Lessees Case

(a) The Landlord's Invoice from Mr J. Baker dated 6th May 2008 (E163) was for £950 but only £900 had been charged to the Lessees (£450 per year for two years). Mr Baker's Report commenced at E13 of the Landlord's Bundle. It was a comprehensive Report and identified a number of matters that required attention.

(b) Mr Green said this was too expensive. He provided an alternative Quotation from Brighton Fire Alarms for £150 plus VAT (C14). He also produced an Invoice dated 4th August 2008 (E182) from that Company for the adjoining property Alric House, 35 Marine Parade in the sum of £250 plus VAT. That property was a building converted into 10 Flats. The fees of £900 charged to the Lessees had included the Report from Spectrum. The Spectrum Report is found at Page H43 in the Landlord's Bundle. It is a detailed Report and contains a number of essential requirements.

The Landlord's Case

(a) Mr Packe gave evidence and said that he had engaged the service of Mr Baker for a number of his company's properties. He was sufficiently qualified to undertake the work and his Report was most comprehensive. As he had areas of concern a subsequent specialist Report had been obtained from Spectrum.

(b) Mr Overill gave evidence and referred the Tribunal to paragraphs 3.26 to 3.30 of his report (J10/J11) He took the view that the Lessees Quotation from Brighton Fire Alarms was not realistic. They were not independent as they might have an interest in tendering for the work. That Company also has a current maintenance contract for the existing fire alarm and emergency lighting system. At paragraph 3.29 Mr Overill concludes that in his opinion a reasonable amount would be £400 to £700 plus VAT with a further charge of £150 to £300 plus VAT for reassessment and review in a subsequent year. He is of the

opinion that the charge of £900 (inclusive of VAT) for the two years is reasonable.

The Tribunal's determination

The Tribunal reviewed all the evidence produced by both parties. So far as the alternative quote obtained by the Lessees from Brighton Fire Alarms (BFA) is concerned, the Tribunal agreed with the Landlord that this is not an arms-length independent quote. BFA had an existing service contract for the fire alarm and emergency lighting and they could not be seen as independent. The amount that had been charged was for two years at £450 per annum (inclusive of VAT) The Tribunal took the view that whilst the first year's report might have taken some time to prepare, the second year would not normally have required as much preparation and work. In all the circumstances the Tribunal considered that the cost of the first year's report should be at the figure charged by the Landlord for that year namely £450 (inclusive of VAT) and the fees for the second year should be a lower figure of £200 (inclusive of VAT) The Tribunal accepted the evidence of the Landlord's expert witness, Mr Overill in reaching these figures. These two amounts together makes a total of £650 (inclusive of VAT) instead of the figure of £900 (inclusive of VAT) charged by the Landlord. For these reasons the Tribunal finds that the amount of £650 (inclusive of VAT) is payable in place of the amount of £900 (inclusive of VAT)

12. Mains Water conversion £20,431.27 (inclusive of VAT)

A. Application under Section 20ZA Landlord and Tenant Act 1985 (the 1985 Act) (Application for dispensation with some of the Consultation requirements of Section 20 of the 1985 Act)

(i) As these were major works the Landlord had served the Lessees with a Section 20 Notice dated 27th July 2007 (E104). It had subsequently become clear that due to an error with the printer some words in that Notice had been omitted. The words omitted were "If you wish to nominate a contractor then please let us have the details, in writing within 30 days from the date of this Notice." At the Hearing Mr Packe said that some Lessees had received the correct Notice but some had received the Notice with the words omitted. He was unable to say how many had received the correct Notice and how many had not.

(ii) At the Hearing the Landlord's Counsel made an application for dispensation with the part of the Consultation Regulations relating to the invitation by the landlord to the tenants for them to nominate their own contractor.

(iii) The Lessees objected to the application on the grounds that the Section 20 Notice did not have attached to it any Notes such as those at page E105 in the Landlords Bundle. They also said that the scope of the works had been varied after the Notice had been served and they had not been consulted about those changes.

B. This item was broken down as set out in a document prepared by the Lessees at Page B6 in the Landlord's Bundle. The amount was calculated as follows:

Asbestos Survey	**£387.75**
Asbestos Removal and disposal	**£4,208.03**
Mains Water Conversion	**£15,835.49**
TOTAL	**£20,431.27**

The Lessees case

(a) Mr Green gave evidence to the Tribunal and said he and the other Lessees had received the Section 20 Notice dated 27th July 2007. He had been abroad for a period of 6 weeks at the time when it was received. When he returned he had not replied to the Section 20 Notice. The Landlord had subsequently sent a second letter to all the Lessees dated 1st November 2007 (E112). That letter referred to the 3 estimates that the landlord had obtained and invited the Lessees to make written observations within 30 days (as required by the Consultation Regulations). Mr Green said that he and the other lessees had received the second letter dated 1st November 2007. On 29th November 2007 Mr Green wrote to Mr Packe (E132) His letter refers to him examining the files regarding the proposed works and he raised concern at the plumbing estimates. He took the view the work could have been done in a more cost-effective way at a cheaper cost. Mr Packe obtained advice from Nathan Williams of NDdesign in a letter dated 2nd December 2007 (E134) and sent a copy to Mr Green by letter dated 5th December 2007 (E136). Mr Packe welcomed a response from Mr Green to the various points made by Mr Williams in his letter. Mr Green replied by letters dated 12th December 2007 (E137), 18th December 2007 (E139) and 27th December 2007 (E140).

(b) One of the major objections by Mr Green was that the wrong size pipework had been used. Only 15 mm pipework had been used and not 22mm. Mr Green had prepared pipework plans (C87/88/89) showing the differences in the work which he alleged had changed following the original specification. These mainly involved the removal of 2 of the 3 risers. He alleges that such work was not done, and hence the amount should be reduced.

(c) Another issue raised by the Lessees was that the Tender Breakdown (C86) appeared to include work done within the Flats. Mr Green and Mr Wallis (Flat 6) both gave evidence to say that no work had been done to the inside of their respective Flats. Mr Green had refused to allow the contractors access to his Flat. Mr Wallis said he had not been asked for access. The amounts involved in the alleged works inside each Flat are shown in the Tender Breakdown (E111) . Item, 2.0 is costed at £850 and Item 6.0 is costed at £1,750.00

(d) Mr Green agreed the Lessees had no challenge to the 10% of the contract sum for administration and supervision charges (D16/17)

The Landlords case

(a) Mr Packe gave evidence and said that the result of the water main conversion had been a complete success and he had received no complaints at all from any Lessee. The change in the size of pipework originally specified was to enable water meters to be fitted by those Lessees who wanted them.

(b) Mr Packe agreed that some of the lagging had not been done, but the 3 main risers had been lagged as required by the NDDesign Specification(E97). He agreed there had been small changes in the specification and revised Drawings had been sent to the contractors (E161) He had not issued a new consultation notice as such changes had been relatively small and the Lessees had not been charged for any additional work. He referred to a site meeting to which he had invited Mr Green by letter dated 7th August 2008 (E184). In a subsequent Fax dated 8th August 2008 (E185) Mr Green had said "the water supply to the front flats has been good and an improvement." The Final account from the contractors dated 14th August 2008 (E186) had made a deductions of £1,804.25 in costs and an allowance for Flat 10 of £109.85

(c) So far as the matter of work inside the flats is concerned Mr Packe believes that work was done in some flats but not all of them. He believes that pressure tests were made by the contactors and it is likely that those tests would have been carried out inside some flats.

(d) Mr Overill referred the Tribunal to paragraph 3.56 of his report (J15) which gave the breakdown of the cost of the work at £15,835.49. At paragraph 3.57 he refers to the overall cost of the work as having included the demolition of the tanks and housings, cutting up of tanks and removal from site, making good and supervision of the contract. Mr Overill gives his conclusions on the water main conversion at paragraphs 4.8/9 of his Report (J27)

(a) Decision on Application under Section 20ZA of the 1985 Act

(i) The Tribunal reviewed the law relating to the granting of dispensation under Section 20ZA of the 1985 Act. This Section gives the Tribunal a discretion. That discretion must be exercised judicially. The Tribunal only has to be satisfied that it is reasonable to dispense. It does not have to be satisfied that the Landlord acted reasonably. Neither party had referred the Tribunal to any case law and the Tribunal reviewed the guidance before making a decision. In the Lands Tribunal Decision in the case of *Eltham Properties v. Kenny & Ors (LRX/161/2006)* it was held that the question of reasonableness is not to be approached on the basis that the legislation is to be applied as a punishment to punish landlords who fail to comply with the consultation requirements. Regard must be had to the purpose for which the consultation requirements were imposed, and that the most important consideration is likely to be the degree of prejudice that there would be to the tenants in terms

of their ability to respond to the consultation if the requirements are not met.

(ii) In this case the dispensation applied for was in respect of the omission of one sentence in the Section 20 Notice. It seemed that some of the Lessees had received the correct form of Notice and some had not. Both parties agreed that the only Lessee to raise objection at the time the Notice was served was Mr Green. The Landlord received no communications from any of the 19 Lessees until he received the first letter from Mr Green dated 29th November 2007. This was four months after the date of the Section 20 Notice dated 27th July 2007. Indeed the letter from Mr Green dated 29th November 2007 did not refer to the omission of the words in the Section 20 Notice. As one of the main matters which the Tribunal should look at is any prejudice to the Lessees, it could not fairly be said that Mr Green had been prejudiced by the omission of the words in the Section 20 Notice.

(iii) In respect of Mr Green's complaint that the scope of the work had changed during the contract and that the Landlord should have stopped the work and consulted the Lessees again is concerned, the Tribunal rejects this argument. It was clear that the extra work caused by the discovery of asbestos was relatively small compared with the major works contract. It would have been quite unreasonable for the Landlord to stop work and re-consult the Lessees. The matter was rather urgent as the water supply to the Flats was critical and any delay in completing the work might have caused some Lessees to be inconvenienced.

(iv) For these reasons, the Tribunal had no hesitation in granting the dispensation applied for and makes an order accordingly. So far as Mr Green's point about any notes being attached to the Section 20 Notice, this is not a statutory requirement and whilst such notes are always helpful, they are not fatal to the validity of the Notice.

(b) Determination on the Mains Water conversion contract

(i) This contract involved major works to change the existing water system supply in the building to a mains supply. The result of the contract was that all Lessees now had a satisfactory water mains pressure to their Flats. At the end of the contract various deductions and allowances had been made in the final account.

(ii) In respect of Mr Green's complaints about the size of the pipework is concerned, the Landlord had given a very reasonable explanation, namely that the smaller size pipework would allow any Lessee to fit a water meter if they wanted to. This seems an entirely reasonable explanation and the Tribunal finds that the Landlord acted entirely reasonably in making that decision. After looking through the various documents which

were before it, the Tribunal came to the conclusion that the Landlord had made various deductions and allowances in the final account and these had taken care of all the work which was not done, including the removal of the two water main risers.

(iii) The total cost of the contract included the removal of the old water tanks. Mr Overill, the Landlord's expert witness, says in Paragraph 4.8 of his Report at Page J27 in the Landlord's Bundle that he is of the opinion that costs totalling £15,835.49 appear to have been reasonable incurred. The Tribunal are inclined to accept this figure on the basis that this is a reasonable figure for the plumbing work that was carried out and deductions and allowances have been made from the original estimated figure.

(iv) However in Paragraph 4.9 Mr Overill says that he does not have any invoice or description of works for the removal and disposal of the asbestos. The Tribunal have also looked through all of the paperwork provided by both parties and are unable to find any such Invoice or description of work. At page B8 of the Landlord's Bundle at Item 10 on that Page the Lessees refer to the work having been undertaken by Reliable Insulations at a price of £3,254.75. This differs from the Landlord's figure of £4,208.03. Without having seen an invoice or specification for the exact work that was carried out the Tribunal using its knowledge and experience and without sufficient evidence to be sure, has decided to give the benefit of the doubt to the Lessees. For these reasons the Tribunal substitutes the Lessees figure of £3,254.75 for the Landlord's figure of £4,208.03.

(v) In summary the Tribunal makes a determination that the following amounts are fair and reasonable under this heading:

Asbestos Survey (as previously decided Under Paragraph 10 hereof)	£387.75
Asbestos Removal and disposal	£3,254.75
Mains Water Conversion	£15,835.49
TOTAL	**£19,477.99**

13. Scaffolding for side elevation £980.00 (inclusive of VAT)

The Landlord had erected the scaffolding to investigate a crack on the render finish of the top perimeter wall which was affecting the structural integrity of the northern pediment. This was discovered during the course of routine works. The Landlord sent an initial letter to the Lessees on 1st October 2008 (C41) That letter enclosed a preliminary letter dated 17th September 2008 from Dixon Hurst Kemp, Consulting civil and structural engineers (C42). This was followed by a letter to the Lessees dated 13th October 2008 (E44) which set out quotations for scaffolding, and then a formal Section 20 Notice dated 11th November 2008.

The Lessees case

(a) The Lessees said that the scaffolding was unnecessary. They had obtained their own report form their own structural engineer, David F. Smith (C48) this said there was no sign of significant structural movement and that no significant rebuilding of the structure is required.
(b) On 24th November 2008 Mr Green wrote to the Landlord (C51). He enclosed a copy of the text, but not the identity of his structural engineers report. Mr Packe asked for a full copy of the report (C52) Mr Green replied on 27th November 2008 (C53) and said "I have not disclosed the name of the structural engineer ... and will not do so for reason of courtesy to both as professionals."
(c) On 8th December 2008 a Fax was sent by a number of lessees (C54) giving collective observations to the Section 20 Notice. In summary this said that the scaffolding works were unnecessary for the reasons set out in that Fax.
(d) Mr Green gave evidence to say that he had consulted Brighton Council and they had said the scaffolding could be removed. He was unable to produce any letter from Brighton Council or remember the name of the person he spoke to.
(e) The RTM Company would be erecting new scaffolding now and this would be used to carry out repairs to the roof.

The Landlords case

(a) Mr Packe gave evidence and said that once he received the Report from Dixon Hurst Kemp he decided he had no option but to erect the scaffolding so that the crack could be properly investigated. He took the view that if the parapet wall was leaning outwards it could become a serious risk of masonry falling on members of the public on the pavement below. The risk was huge and there might even be a criminal liability on him for corporate manslaughter if anyone was killed by falling masonry. It was always possible that there could be a sudden structural collapse at any time. In other words there were two reasons for the erection of the scaffolding, namely to investigate the crack and to give some protection against falling masonry. The main cost with a contract of this nature is the cost of erecting and removing the scaffolding. The Landlord maintains that the cost of £987.00 inclusive of VAT was perfectly fair and reasonable.
(b) Mr Overill gave evidence and referred the Tribunal to Paragraph 3.102 in his report (J24). He said "I am of the opinion that, in the light of the concerns expressed by DHK, the landlord acted perfectly reasonably in erecting the scaffolding whether for the purposes of providing structural support or for closer inspection or for carrying out temporary repairs.

The Tribunal's determination

The Tribunal reviewed all the evidence produced and given by both parties. It is quite often the case that experts disagree with each other. Here it is the

Landlord who is the person who has the responsibility for the health and safety of the Lessees and any passing member of the public upon whom falling masonry would be a very serious risk. It is easy for Mr Green to say that the scaffolding is unnecessary when it was not him who would be responsible if there was injury or even death as a result of falling masonry. The Tribunal noted that the new RTM Company was now going to re-erect the scaffolding to carry out repairs. The Tribunal accepted the evidence of the Landlord's expert witness Mr Overill when he said that the Landlord acted reasonably. For these reasons the Tribunal allows this amount in full.

14. Section 20C Application

(i) In the Lands Tribunal Decision Number LRX/37/2000 dated 13th February 2001 in the case of *Langford Court v Doren Limited*, helpful guidance was given by His Honour Judge Michael Rich QC at paragraphs 28 to 32. The principle established in that case (Paragraph 28) was that "the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise."

(ii) The Tribunal reviewed the position in the light of its decisions. The Tribunal took the view that both parties had acted quite correctly in bringing the matters before the Tribunal. Many matters had been agreed since the proceedings had commenced. At the hearing Mr Green objected to the Landlord being able to recover his costs of the proceedings through the Service Charge Account. He believed the purpose of the Tribunal was so that Lessees could challenge unreasonable service charges without being at risk as to costs. He believed Mr Packe could have represented himself at the Tribunal without the need to instruct Counsel. In reply, Mr Sinnatt said that the Leases enabled the Landlord to recover the costs of the proceedings and it would be wrong to penalise him where the Lease provided for them to be recovered. The matters before the Tribunal had involved points of law and a large Bundle of documents had been produced by the Landlords Solicitors. In all the circumstances it would be unfair to make an Order under Section 20C

(v) The Tribunal retired to consider the arguments made by the parties. Whilst it was true that the Lessees had achieved some savings on the amounts originally claimed, these represented a very small proportion of the totals in dispute. The Landlord had prepared a helpful Bundle of documents which the Tribunal had used during the Hearing and for its deliberations. Whilst it sympathised with Mr Green's views about professional representation at the expense of the Lessees, these would be shared between the 19 Lessees. Against that, if the Tribunal made an Order then the whole amount would be the responsibility of the Landlord. Clause 7(e) of the Seventh Schedule to the Leases did allow the Landlord to recover "legal fees in connection with the Property or the management thereof." In the opinion of the Tribunal this would almost certainly include the costs of these proceedings.

(vi) Taking all things into consideration and for the reasons set out above, the Tribunal decided not to make an Order under Section 20C. However in reaching its decision, as the precise amount of the Landlords costs are not known at present, the Tribunal is unable to make a decision that the amount

of the Landlords costs of these proceedings is reasonable. If and when the Landlord seeks to recover its costs of these proceedings through the Service Charge account, it shall first of all attempt to agree the amount with all the Lessees. If this can not be agreed then either party shall be at liberty to make a separate application under Section 27A of the 1985 Act for a determination as to reasonableness. For the avoidance of doubt the Tribunal approves of the use of Counsel and the attendance of the expert Witness, Mr Overill at the Hearing. All other matters shall be left to the discretion of the Tribunal that subsequently deals with any Section 27A Applications as to the reasonableness of the amount of the Landlords costs of these proceedings.

Dated this 5th day of October 2009

J.B. Tarling

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John B. Tarling,MCMI Lawyer/Chairman
A member of the Panel appointed by the Lord Chancellor

RESIDENTIAL PROPERTY TRIBUNAL
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case Number: CHI/OOML/LIS/2009/0044 &
CHI/OOML/LSC/2009/0109

Re: Marine House, 13/14 Marine Parade, Brighton, East Sussex BN2 1TL ("the Premises")

Between:

Mr M.J. Green (Flat 10) & other Lessees
("the Applicant/Tenants")

And

Parade Properties Limited
("the Respondent/Landlord")

In the matter of Application for Permission to Appeal the Tribunal's Decision dated 5th October 2009

THE DECISION
OF THE LEASEHOLD VALUATION TRIBUNAL

The Tribunal refuses permission to appeal

REASONS FOR THE DECISION

By a document dated 26th October 2009 ("the appeal lette and signed by Mr M.J. Green ("Mr Green") Mr Green applied to the Tribunal requesting permission to Appeal its decision dated 5th October 2009. None of the other 14 Applicant /Tenants have requested permission to appeal.

2. The Grounds of the appeal are set out in an attachment to the appeal letter. These may be summarized as follows:
(A) The Decision of the Tribunal is deficient.
(b)The Reasons for the Tribunal's decision are deficient.

3. The narrative of the Grounds for Appeal then goes on to refer to a number of specific items of comment on the wording of the Tribunal's Decision. In each case Mr Green comments on matters of great detail about the wording of the Decision but does not say in what way the Decision is deficient, other than to say that he does not agree with the wording of the Decision. By way of example in Paragraph 3 of the Decision the Tribunal comments that "the bottom section of the rainwater down-pipe appeared to be loose." Mr Green says that "the bottom section was in fact shown to be loose." This is not a "deficiency" in the Decision or the reasons. It is simply a difference in wording. The Tribunal is entitled to choose its own words in its Decision and these comments are not valid grounds for appeal.

4. In respect of the more specific maters referred to in the appeal letter the Tribunal replies as follows.

5. Paragraph 3 Inspection
The matter of the Rainwater down-pipe is referred to above.
Mains water conversion. Item (b) of Paragraph 3 of the Decision contains the words "This new pipework could also be seen in the cupboards on each landing. Some of the Risers were insulated." The Tribunal has recorded what it saw. Mr Green's comments are not valid grounds for appeal merely because they do not reflect what he wants the wording to be.
Scaffolding to Side Elevation
The reasons why Mr Green declined to accompany the tribunal to inspect the roof are irrelevant. The fact is that he was invited to accompany the Tribunal and declined.

Mr Green's comments do not raise any matters which would give rise to a valid ground for appeal.

6. Paragraph 8 - Service Charge Demands
This matter was raised by the Tribunal and not by Mr Green. The Service Charge Demands had been served on the Tenants but they did not have copies of them at the Hearing. Copies of the Demands were handed to the Tribunal by the Landlord after the lunch-break. Mr Green was invited to comment on them but chose not to do so.

Mr Green's comments do not raise any matters which would give rise to a valid ground for appeal.

7. Paragraph 9 - Drains and Gutters
(A) The point about VAT appears to agree with the Tribunal that the sum of £950 included any VAT. This is not a valid ground of appeal.
(B) The comments about "The Lessees Case" and "The Landlords case" appear merely to comment on the evidence and do not say why these matters give rise to a ground for appeal.
(B) In respect of the comments about "The Tribunal's determination" on this matter Mr Green says the Tribunal "was incorrect" to prefer a rate of £185 per day, and to "conclude that these were emergency repairs as they were only for a rainwater pipe." The Tribunal as an expert Tribunal is quite entitled to use its own knowledge and experience and to prefer one daily charging rate to another. The Decision did not say "that these were emergency repairs as they were only for a rainwater pipe." The Tribunal's conclusion was that the sum of **£950** (inclusive of VAT) was allowed. Mr Green alleges that the Tribunal has allowed a figure of **£970** (inclusive of VAT) This is incorrect.

Mr Green's comments do not raise any matters which would give rise to a valid ground for appeal.

8. Paragraph 10 – Asbestos Survey

(A) The Lessees case. Mr Green says that the survey had been incorrectly commissioned. In Paragraph 10(a) of its Decision the Tribunal records that "The Lessees objection was that it was too elaborate for what the law required and hence too expensive. The Lessees had no issue with the quality of the survey." The question of whether or not the survey had been correctly commissioned was not raised by Mr Green at the Hearing.

(B) The Landlords case. None of the comments under this heading seem to raise any matter which is a valid ground for appeal.

(C) The Tribunal's determination. The Tribunal accepted the evidence of the Landlord give at the Hearing that there was a subsequent need for a Type 3 survey. The Tribunal is entitled to reach its own Decision on the evidence that is presented to it.

Mr Green's comments do not raise any matters which would give rise to a valid ground for appeal.

9. Paragraph 11 – Fire Risk Assessment

Mr Green raises the matter of VAT again under this heading. The point about VAT appears to agree with the Tribunal that the sum of £900 included any VAT. Mr Green has succeeded in getting this amount reduced from £900 to £650. This is not a valid ground of appeal.

10. Paragraph 12 – Mains Water Conversion

(A) Under the heading "The Lessees Case" Mr Green comments on what he alleges was said in evidence. His comments contain no matters which would give rise to a valid ground of appeal.

(B) Under the heading relating to the application under Section 20ZA Mr Green alleges that "in reaching its decision the tribunal has taken no account of omitted or unnecessary work." The Tribunal's reasons for granting the application under Section 20ZA are set out in full in Paragraph 12(a) on Page 11 of its Decision. The Tribunal's reasons in Paragraphs 12 (a) (i) to (iv) clearly explain why dispensation was granted. The Tribunal did take into account all matters including the matters alleged by Mr Green that they had failed to take into account.

(C) Under the heading "determination on mains water conversion contract" Mr Green now purports to give evidence which he did not give at the hearing, namely that water meters can readily be fitted into 22mm pipework. Mr Green did not give such evidence at the Hearing and it is too late for new evidence now to be introduced. The Tribunal's reasons for its determination are clearly set out in full in Paragraph 12 (b) on pages 12 and 13 of its Decision. In Paragraph 12(b) (ii) the Tribunal's decision reads "The Tribunal are inclined to accept this figure on the basis that it is a reasonable figure for the plumbing work that was carried out and deductions and allowances have been made from the original estimated figure." The Tribunal acting as an expert tribunal and using its knowledge and experience was entitled to reach this

conclusion.
Mr Green's comments do not raise any matters which would give rise to a valid ground for appeal.

11. Paragraph 13 – Scaffolding for side elevation
Mr Green comments that "the tribunal has not considered the adequacy of the report by Dixon Hurst Kemp.
The Tribunal's Determination commences at the foot of Page 14 of its Decision. It begins with the words "The Tribunal reviewed all the evidence produced and given by both parties. It is quite often the case that experts disagree with each other." The Tribunal then goes on to explain its reasons for making its determination on that point. From this it can be seen that the Tribunal did consider the report of Dixon Hurst Kemp as well as the evidence produced by Mr Green's consultant.
For these reasons the Tribunal rejects this ground of appeal.

12. Paragraph 14 – Section 20C Application
The only maters that might give rise to a ground of appeal are the last sentence of this section where Mr Green says "In fact the use of only the Landlords bundle in practice disadvantaged him since it was better prepared to use its own."
The Tribunal's determination on this matter is on Pages 15 and 16 of its Decision. In Paragraph 14 (v) there is mention of "The Landlord had prepared a helpful bundle of documents which the Tribunal had used during its Hearing and for its deliberations." This did not mean that the Tribunal had not looked at the Bundles prepared by Mr Green. Indeed there are references to Mr Greens Bundles in several places in the Tribunal's Decision. At no time during the Hearing did Mr Green say that he was disadvantaged. He had been supplied with a copy of the Landlords Bundle and appeared able to follow and find the documents when they were being discussed at the Hearing.
The Tribunal rejects this ground of appeal for these reasons.

13. Finally Mr Green has included a reference to "New evidence has come to light which may effect decisions as concerns work that should have been undertaken inside the Flats during the mains water conversion and events leading up to the erection of the scaffolding." He fails to say what that evidence is or why it should be valid grounds for appeal. Mr Green has had plenty of time to prepare his case and present his evidence at the Hearing. It is now too late to re-open the case for a further review.
The Tribunal rejects this ground of appeal for these reasons.
In the last paragraph of the appeal letter Mr Green raises the same matter he raised under paragraph 6 of this Decision relating to Service Charge Demands. The Tribunal repeats the contents of its reply in paragraph 6 hereof. This is not a matter which would give rise to a valid ground of appeal.

Dated this 18th November 2009

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John B. Tarling MCIM
(Chairman)
A Member of the Panel appointed by the Lord Chancellor

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