RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL & LEASEHOLD VALUATION TRIBUNAL

(1) Case No: CHI/23UB/LIS/2008/0024 ("Case 24")

In the matter of section 27A of the Landlord & Tenant Act 1985 (as amended)
and
In the matter of Flat 3, Longville, Pittville Circus Road, Cheltenham, Gloucestershire, GL52 2PZ ("the Property")

BETWEEN
Brian Weaver, Paul Brian Weaver, Peter Crawford Harris & Sarah Jane Harris, the Applicants ("the Landlords")
and
Terence Robert Croft, the Respondent ("the Tenant")

(2) Case No: CHI/23UB/LIS/2008/0036 ("Case 36")

In the matter of section 27A of the Landlord & Tenant Act 1985 (as amended) ("the 1985 Act")
and
In the matter of sections 21 -24 of the Landlord & Tenant Act 1987 (as amended) ("the 1987 Act")
and
In the matter of Flat 3, Longville, Pittville Circus Road, Cheltenham, Gloucestershire, GL52 2PZ ("the Property")

BETWEEN
Terence Robert Croft, Applicant, ("the Tenant")
and
Brian Weaver, Paul Brian Weaver, Peter Crawford Harris & Sarah Jane Harris, Respondents ("the Landlords")

(3) Case No: CHI/23UB/LIS/2008/0026 ("Case 26")

In the matter of section 20ZA of the Landlord & Tenant Act 1985 (as amended)
and
In the matter of Flat 3, Longville, Pittville Circus Road, Cheltenham, Gloucestershire, GL52 2PZ ("the Property")

BETWEEN
Brian Weaver, Paul Brian Weaver, Peter Crawford Harris & Sarah Jane Harris, the Applicants ("the Landlords")
and
Terence Robert Croft, the Respondent ("the Tenant")

Appearances:

For the Landlords: Mr Mark Lynham, Gillanders, Solicitors.
For the Tenant: Mr Carl Brewin, Barrister.

Attending the hearing:
Mr Brian Weaver, Mr Paul Weaver and Mr Peter Harris (three of the four persons constituting the Landlords).
Mr Terence Croft, the Tenant.
Ms Marilyn June Harvey, proposed manager.

1. The Applications

1.1 In Case 24, the Landlords applied on 9 May 2008 to the tribunal under the 1985 Act to determine whether the item in the service charge levied in respect of the Property for the year 2007 relating to 25% of the costs of repairs to the building known as "Longville", Pittville Circus Road, Cheltenham, Gloucestershire, GL52 2PZ ("the Building") is payable by the Tenant as leaseholder of the Property and, if it is, the amount that is payable. Provisional Directions were made on 19 May 2008. Following the application made by the Tenant in Case 36, the hearing scheduled for

September 2008 was postponed and Additional Directions were made on 4 September, including a direction that both cases be heard together.

1.2 In Case 36, the Tenant applied on 7 August 2008 to the tribunal under the 1985 Act to determine whether a service charge is payable in respect of the Property for the years 2002 to 2007 inclusive and, if it is, the amount that is payable in respect of the Property. No dispute has been raised concerning the identity of the person by whom such a service charge would be payable, the person to whom it is payable or when it is payable. The dispute relates to all the service charges for the years in question. The Tenant's application was also made to the tribunal under the 1987 Act for the appointment of Marilyn June Harvey of Countrywide Property Managers, 5 Tivoli Walk, Cheltenham, Gloucestershire GL50 2UX to be the receiver and manager of the Property. There is no current receiver and manager of the Property

1.3 In Case 26, the Landlords applied on 16 September 2008 under section 20ZA of the 1985 Act (as amended) for dispensation from the consultation requirements contained in the Service Charges (Consultation Requirements) (England) Regulations 2003/1987 (the "Consultation Regulations"). Directions were given on 26 September 2008 that, inter alia, all three applications should be heard together.

1.4 The applications were heard in Cheltenham on 10 December 2008 by a tribunal consisting of Professor David Clarke MA, LLM, (Lawyer Chair), Ms Cindy Rai LLB (Lawyer Member), and Mr Paul Smith FRICS (Valuer Member) ("the Tribunal"). The Tribunal inspected the Property and the Building prior to the hearing.

2. The Facts

2.1 All three cases relate to the Property, Flat 3, which is the upper floor flat (consisting of the three rooms on the second floor and an attic room on the third floor) of Longville, Pittville Circus Road, Cheltenham, Gloucestershire, GL52 2PZ ("the Building"). Longville is a substantial Georgian semi detached house. The lease of the Property is dated 17 February 1980 for a term of 99 years from 25 December 1979 ("the Lease"). The documents filed suggest that the Tenant has extended his lease

under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 but the Tribunal was given no details on such extension and nothing turns on that fact. There is no good copy of the Lease (at least, none could be supplied) and no detailed plan of the Property but the parties are agreed as to the extent of the Lease, which excludes the roof space in the Building

2.2 There are a number of unusual features of the property arrangements, which were described by Mr Lynham as peculiar.

1. There are no other long leases of any other part of the Building – at least, no details of any were produced to the Tribunal. The Landlords occupy the remaining parts of the Building, apparently in their capacity as freeholders or under arrangements not disclosed to the Tribunal.
2. One of the individuals constituting the Landlords occupies a maisonette consisting of the ground floor and basement. The rear garden of the Building is part of this maisonette and the Tenant has no right of access to the rear garden.
3. The first floor rooms are not a self contained flat and open directly onto the communal staircase and are, or have been, used as guest bedrooms by the Landlords.
4. The Landlords also own the adjoining semi-detached property. Access to the roof space of Longville is apparently possible from that adjoining house. The front gardens and driveways serving the two properties are joined and are not divided by a fence or wall; together they consist mainly of an access way and a car park with hard surfaces but also a small amount of lawn and a few shrubs to the front and side.
5. Access to the Property is gained via a communal hall and stairway that is carpeted and which, apart from accumulated dust on a difficult-to-access level area, appeared to be clean and well maintained on our inspection.
6. The Lease provides for a payment of a proportionate part of the expenses and outgoings reasonably incurred in the repair, maintenance renewal and insurance. The details of the expenses that may be properly charged are contained in the Third Schedule to the Lease. Clause 2(ii)(e) provides that the proportionate part is to be one quarter.

2.3 There has been a history of poor relationships between the Tenant and the Landlords that was chronicled in two large bundles of documents before the Tribunal. However what seems to have precipitated the applications before the Tribunal was the decision of the Landlords to undertake structural and decorating works to the rear and side elevations of the Building in the summer of 2007. The Tenant refused to pay the sum of £2,113.21 said to be his 25% contribution to the total cost of the works. The Tenant contended that not all the works were reasonably required, that the statutory consultation requirements had not been met, and that he had not had the opportunity to ask his own contractor to quote for the works to be done. When the Landlords issued their application (as Case 24) for recovery of the costs they alleged to be due, the Tenant responded with his own application (Case 36) raising the issue of whether the full amount of the service charges for the past six years, constituting of the insurance premiums and certified service charge costs (which he had paid, sometimes under protest), had been reasonably incurred, and for the appointment of a Manager The final application, by the Landlords, (Case 26) was for dispensation from the consultation requirements should it be the case that those consultation requirements had not been met.

2.4 The three applications raised six actual or potential issues; a seventh was the application by the Tenant under the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2004 made at the end of the hearing. Each issue was considered in turn.

3. The first issue – whether the consultation requirements were satisfied

3.1 As directed by the Tribunal, the Landlords had filed a statement on the issue of whether the statutory consultation requirements had been satisfied, since the value of the works claimed exceeded the limit set out in Regulation 6 of the Consultation Regulations. The filed statement contended that two letters in the correspondence, those dated 14 May and 14 June 2007, together satisfied the notice requirements contained in Part 2 paragraph 8 (notice of intention) and paragraph 11 (estimates) of the Consultation Regulations.

3.2 At the hearing, Mr Lynham argued that it was not necessary for the notice requirements to be contained in a single communication and that most of the requirements for content of such notices were satisfied, but at the end of his submission conceded that the omission in either letter of the invitation to the tenant to propose the name of a person from whom the landlord should try to obtain an estimate – indeed, the letter of 14 May asked the tenant to seek the estimate himself – meant that there was no valid notice to the tenant. That concession meant that the Tribunal did not have to decide the validity of a purported notice of intention that was otherwise constituted, it was claimed, in letters that gave no indication of the fact they were a notice, did not include a description in general terms of the proposed works but referred to earlier unspecified correspondence for the detail, and did not include a date as required for when the relevant period for a response ended (but gave two separate 30 day periods). The concession that there was no valid notice of intention was rightly and inevitably made. The statement submitted to the Tribunal also contended that the letters satisfied the requirements of paragraph 11(5) of the Consultation Regulations but this was only faintly argued at the hearing since the letters do not state the total cost of the proposed works, or make the estimates available for inspection, or supply a relevant period for the making of observations. Additionally, there was no document within paragraph 11(10) of the Consultation Regulations giving notice of where the estimates could be inspected.

4. The second issue – dispensation

4.1 Since the Landlords ultimately accepted that there had been no compliance with the consultation requirements, the crucial issue then became the application of the Landlords for dispensation for non-compliance with the consultation requirements under section 20 of the Landlord and Tenant Act 1985.

4.2 Mr Lynham argued that the letters of 14 May 2007 and 14 June 2007, when considered in the light of the later letter of 18 July 2007 substantially satisfied the consultation requirements and that the omissions that he had conceded were only technical. He contended that the Tenant had no suffered detriment or prejudice. In particular, he contended that the Tenant had consistently maintained that the work was unnecessary – so that he would not have nominated a contractor anyway. It was

said that, looked at as a whole, the correspondence demonstrated that the required information had been given, even though it was not in one letter or document.

4.3 He referred to the authorities set out in his clients' statement that the notice requirement was not intended to be punitive and that dispensation should be given for minor errors (*Eltham Properties Limited v Kenny* (LRX 161/2006) and *Royal York Mansions (Margate) Limited v Mossman* (CHI 29UN/LDC/2008/0016). He argued that in relation to provision of the information under paragraph 11, it was not necessary for it all the information to be in one document. He argued that the later letter of 28 June clarified the works that were being done and that of 18 July showed the costs in detail of two of the contractors selected for scaffolding and decoration. Finally, he asked the Tribunal to have regard to the parties' prior experience of the section 20 procedure; that the value of the amount sought from the tenant was relatively low; and the peculiar nature of the property in question, which would suggest that a greater degree of informality was acceptable.

4.4 The Tribunal determines that none of the final points put forward by Mr Lynham assist in any way. The fact that the parties were aware of the section 20 procedure might equally suggest that there is less excuse for non compliance; the value of the amount claimed is irrelevant, for regulation 6 of the Consultation Regulations makes it clear that the consultation requirements apply whenever the contribution sought from any tenant is more than £250 and that is the upper limit above which the consultation procedures apply; and while the property arrangements are indeed unusual, the long history of acrimony between the parties would suggest that a strict adherence to the requirements and the required degree of formality was prudent.

4.5 In response, Mr Brewin took us through the earlier correspondence. He demonstrated, convincingly as it appeared to the Tribunal, that:

1. The omissions in the letter of 14 May 2007 could not be regarded as technical. The reference in the letter of 14 May only referred to two structural reports and two quotations for work to be done by JM Weston and Aaron Newell. But the former included work that was not required and not done; and the latter included scaffolding costs even though there was a later quotation from another scaffolding contractor for more extensive scaffolding; and the

decorating works were not referred to in that letter at all. The details of the decoration works only came with the letter of 14 June and had to be clarified in a letter of 28 June.

2. His client, and, he suggested, any reasonable tenant, at no point in time before the work commenced had been provided with sufficient information to enable him to understand of the full nature of the remedial works that were finally proposed in their totality, given that the structural works and the decorative works were referred to in different letters. Nor was it possible to ascertain, certainly in time to respond with comments or an alternative estimate, the total cost of the works proposed. It is relevant in this context that the tenant clearly requested, in his letter of 20 June, for details of the entirety of the work, the estimates from the actual contractors proposed to be used and full descriptions of the work to be done by those contractors since some of the estimates supplied lacked detail. This was no evidence before the Tribunal that this information had been supplied.

4.6 Mr Brewin's submission was that there was a lack of clarity and his client had been prejudiced. He also urged that there was no suggestion that the works had to be done urgently and that was a factor which suggested that the consultation requirements should not be dispensed with.

4.7 The Tribunal also took note of the fact that, following the letter of 20 June from the Tenant, Gillanders, the Landlord's solicitors, wrote on 22 June in response referring only to the structural works and ignoring the decorating works and claiming their clients had fully complied with the provisions of section 20 of the Landlord and Tenant Act 1985. So it is clear that the Landlords had the benefit of legal advice at a crucial time; that it would have been easy at that stage to comply with the clear request in the letter from the Tenant of 20 June, draw up a more formal notice of intention covering all the work that was planned and comply with the requirements of the Consultation Regulations; and although there would have been a short delay, the works could still have been completed in early autumn.

4.8 It is undoubtedly the case that the statutory requirements for consultation are detailed and technical and it is easy for a landlord, acting quite naturally for himself in

a property with just two dwellings, to fall foul of the detail. A tribunal must pay regard to that fact and the direction of the Lands Tribunal that the notice requirements are not punitive. For that reason, we might have been prepared to dispense with the statutory requirements had we been satisfied that the tenant had received substantially the information required by the regulations and if we had been satisfied that he had been given clarity in what he was required to do in response and had been given time to consider nominating his own contractor. Such an approach is also in accord with the test for statutory notices set out by the House of Lords in *Mannai Investment Co Ltd v Eagle Star life Assurance Co Ltd* [1997] AC 749. In short, if Mr Lynham's own test had been satisfied – that this Tenant had suffered no detriment and had not been prejudiced - there would have been a case for dispensing with the consultation requirements. But that is not the case here. This Landlord had the benefit of legal advice at a critical time; at no time was it made clear exactly the totality of the work that was being done; and so it was impossible for the tenant to have time to get his preferred contractor(s) to quote for the full works proposed. For these reasons the Tribunal determined not to dispense with the consultation requirements. Therefore it was unnecessary to consider the disputed evidence of the parties as to whether the Tenant's contractor was unable to obtain access between 20 and 22 June 2007.

5. The third issue – whether the works were reasonably incurred

Our decision on the second issue made it unnecessary to decide whether the cost of the works that were done was reasonably incurred. It seemed very unlikely that the matter would need to be resolved on a future occasion. Since the Tribunal had announced the decision on the second issue to the parties after the lunch adjournment, we therefore declined to take evidence on this issue.

6. The fourth issue – reasonableness of service charges and amount payable

6.1 The Tenant sought determination of whether a service charge is payable in respect of the Property for the past six years, 2002-2008, and, if it is, the amount that is payable.

6.2 Clause 2(2) of the Lease provides for the tenant to pay a proportionate part of the expenses and outgoing reasonably incurred (and the word incurred is important in this case) by the Landlords in the repair maintenance and renewal and insurance of the Building and the provision of services and the other heads of expenditure set out in the Third Schedule to the Lease. The Tenant's application asked the Tribunal to determine the reasonableness of, and liability for, both the insurance premiums and service charge levied by the Landlords and paid by the Tenant, often under protest, for the last six years (2002-2007 inclusive).

Insurance premiums

6.3 The Tenant claimed that the insurance premiums were too high. The Tribunal was satisfied on the evidence that the Landlords had engaged the services of an independent insurance broker and that he had sought to find the best deal. In fact, the insurance for 2007 was placed with the same insurance company from whom the Tenant had secured a lower quotation for the premium. However it was clear to the Tribunal that this was primarily due to a difference in the proposed "sum insured". Without the benefit of any expert evidence, it was not possible to decide what an adequate rebuilding cost would be for the Building of which the Property formed part. Since no evidence was offered by the Tenant that the amount of cover obtained by the Landlord was excessive, the Tribunal determined that the insurance premiums had been reasonably incurred and that the Tenant is liable to pay the share of the premium indicated by the Lease in each of the disputed years.

Other elements of the service charge

6.4 The pre-trial review directions sought copies of the service charge certificates for the six years 2002-2007. We were only supplied with six single-page certificates, one for each year. Each certificate as signed by 'Griffins', but there was no indication of what this firm was, since there was no headed notepaper. The certificates, on their face, raised serious factual questions. There was no indication as to how the expenditure to which they purportedly referred had been incurred or calculated. The accompanying statement revealed that no outside contractors or manager were employed but (for example) the cleaning of the communal entrance way was done by the Landlords themselves or their staff, as was the gardening and cleaning of the front garden and parking area.

6.5 The concern of the Tribunal was how such relatively large sums had been incurred or calculated. No receipts were filed in evidence nor was any evidence in the paperwork as to the hours worked on cleaning or gardening or at what chargeable rates. Its concerns were compounded by the presence of a number of curious features apparent from the certificates themselves. For three years (2004-6), the total sum incurred was £3751, then £3,750 and again £3,750, notwithstanding the fact that the six listed items adding up to these totals varied considerably. So legal and professional fees over the three-year period went down from £1,470 to £800 and then to £250; while drains and sundry maintenance went up from £296 to £750 and then to £950. It looked suspiciously as if the person compiling the figures had decided the total and then manipulated the component parts to fit. Then in 2007 the total went to £3860 and this time each component part went up by a small percentage except one that stayed the same. Finally, the certificates for the last two years each spelt 'stationery' as 'stationing', indicating that the same template had been used.

6.6 Rather than permit Mr Brewin to complete his submissions on this issue, the Tribunal sought oral evidence from the Landlords on the details of these certificates and the basis for calculation of the amounts. The following facts came to light:

1. The certificates were complied by the accountants employed by the Landlords in connection with their hotel business and they had left the matter to them.
2. No information could be given or evidence supplied about how each element in the service charge had been calculated, such as the number of hours spent cleaning or gardening or the notional hourly rate applied.
3. The charge for heat light and power (£720 in 2007) related solely to the communal hall and staircase but it was conceded that neither electricity nor gas was separately metered for these communal areas. Details could not be given of the total bills for the maisonette and communal parts together or how the apportionment between them had been done.
4. There were no details of, or invoices for, the legal and professional fees charged. The statement in our bundle dealt only with legal costs up to 2004 when it was claimed they related to the contemplation of the service of a section 146 notice. There was no evidence as to what the legal costs incurred in 2005-7 related to and the Tribunal has its doubts as to whether the lease

terms would justify the recovery by the Landlord of any other legal costs except those relating to the contemplated service of a section 146 notice.

5. The charge for gardening and cleaning was £1,290 in 2007 yet the Landlord's statement conceded that this was for work done by themselves and consisted of occasionally hosing the parking surface, mowing the lawn and trimming the shrubs outside and cleaning and dusting inside. The inspection had revealed a front 'garden' that consisted of a miniscule piece of lawn and just a few shrubs bordering the large car parking area and access drive at the front of the Building.
6. The charge for drainage and sundry maintenance was £980 in 2007. The Landlords said that a professional firm had cleared and cleaned out the drains in November 2007 but conceded such work had occurred only twice in six years and that such work could not account fully for the amount claimed for 2007 (£980) – let alone for earlier years (£950 in 2006 and £750 in 2005) when such expense had not occurred. When asked therefore what was the 'sundry maintenance' that had been incurred, they could not provide an answer. Their filed statement only refers to light bulbs and supplying doormats, the inspection of boundaries and servicing the boiler (and that Landlords' statement also included replacing light bulbs in the charge for heat light and power).
7. Finally, each year's service charge certificate included an administration charge (£465 in 2007) said to 'include' stationing (sic) postage and telephone. It is clear to the Tribunal that such a level of charge cannot be justified by stationary, postage and telephone alone (even given the voluminous amount of correspondence between the parties). Though the provisions of the Lease, in the Third Schedule, permit recovery within the service charge of 'the fees of the Lesssor's managing agents', this would not extend to a general administration charge by the Landlords of an unspecified amount when managing agents were not employed.

6.7 In the light of the above and on the evidence supplied in the bundle of documents and at the hearing, the Tribunal found that it could not determine that the service charges had been reasonably incurred within section 19 of the Landlord and Tenant Act 1985 for any of the six years 2002-2007 – indeed, it was

not satisfied that much of what was claimed had been incurred at all. (In this context, it should be noted that the fact that the Lease provides for the certificates to be 'conclusive evidence' is not decisive in the light of the statutory provision. It may be that the Landlords were under the misapprehension that they could rely on that clause, especially since, much to our astonishment, the Landlords' statement put forward by Mr Lynham submitted that the 'binding' nature of this clause should be taken into account).

6.8 In the absence of evidence of what had been actually incurred, except for the insurance premiums (which had been reasonably incurred), the Tribunal determined within section 27A of the 1985 Act that the service charges as certified by the Landlords over the last six years were not reasonably incurred. The Tribunal could not determine what the service charge for any year between 2002 and 2007 should be. Of course, expenses that were actually incurred and fall within the provisions of the Third Schedule of the Lease can be claimed. Thus, for the six years 2002-2007, the Landlords may recover expenses actually and reasonably incurred falling within the heads of recoverable costs within the Third Schedule of the Lease but a tribunal can only determine the amount that would have been payable if it is given evidence of actual expenditure or the chargeable basis for actual hours of work done. From the evidence of the Landlords, it seems unlikely that such evidence is available; if it could be produced, the parties may be able to agree the proper level of service charge for the years 2002-7 inclusive.

7. The fifth issue – the appointment of a Manager

7.1 The final issue was the application of the Tenant for the appointment of a manager under the jurisdiction given by section 24 of the 1987 Act. However, after a recess, Mr Lynham advised the Tribunal that his clients would no longer oppose the appointment of a manger.

7.2 The Tenant proposed the appointment of Marilyn June Harvey employed by Countrywide Managing Agents through their local office at 5 Tivoli Walk Cheltenham. Mrs Harvey appeared before the Tribunal and responded to questions about her experience and qualifications. The Tribunal is satisfied that she is a

suitable and experienced manager for the Building with appropriate qualifications and that her firm has sufficient indemnity cover (evidence was supplied). The Landlords also indicated, through Mr Lynham, after receiving assurances on emergency out-of-hours cover, her past experience of the resolution of disputes, and how she would consult upon and identify contractors to carry out necessary works in the future, that they would accept Mrs Harvey as being a suitable manager.

7.3 The Tribunal therefore agreed to make an order that Mrs Harvey be appointed the manager on terms to be agreed between the parties and the proceedings should be adjourned for those terms to be agreed. If not so agreed, or if any powers not contained in the lease are required, either party is at liberty to restore the adjourned application for further hearing, such application to be made on or before 10 February 2009. Such application will be heard without an oral hearing unless either party requests a hearing. If no further application is made the Tribunal will treat the application for the appointment of a manager as having been concluded on the basis that there is no need for the Tribunal to make a further determination of the terms of the appointment (the parties having agreed how to proceed).

8. The sixth issue – Section 20C application

At the end of the hearing, Mr Brewin requested that an order be made under section 20C of the Landlord and Tenant Act 1985 that none of the costs incurred in any of the applications before the Tribunal be regarded as relevant costs in determining any future service charge. The Tribunal is of the opinion that the terms of the Lease would not permit such recovery, but, for the avoidance of doubt, makes such an order (which the Landlords did not oppose).

9. The seventh issue - application for a costs order

9.1 At the end of the hearing, Mr Brewin made an application under the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2004, paragraph 7, for an order that a sum of £500 should be paid

towards the Tenant's costs of the tribunal applications on the ground that the Landlords had behaved frivolously, vexatiously, abusively, disruptively or unreasonably in bringing or defending the various applications.

9.2 Mr Lynham opposed this application, pointing out that the Landlords had been successful in establishing that the insurance premium had been reasonably incurred and was recoverable as part of the service charge. There was also detailed argument on the dispensation issue.

9.3 The Tribunal determines that there was no case to answer on any other ground than unreasonableness; and after retiring to consider determined that the Landlords had not acted unreasonably within the meaning of those Regulations and advised both parties of their decision.

10. Determination

In summary, the Tribunal determined as follows:
10.1 On the Landlords conceding that there had been no compliance with the consultation requirements, the application of the Landlords for dispensation for non-compliance with the consultation requirements under section 20 of the Landlord and Tenant Act 1985 was dismissed. The Tenant is only liable to pay the statutory minimum payment of £250 towards the works incurred in 2007.

10.2 That part of the service charge relating to the insurance premiums in the six-year period 2002-2007 had been reasonably incurred so the Tenant is liable to pay the proportionate share of the premium indicated by the Lease in each of the disputed years.

10.3 That part of the service charge relating to the other expenses certified in the service charge certificates for each year in the six-year period 2002-2007 had not been reasonably incurred.

10.4 That Mrs Marilyn June Harvey of Countrywide Managing Agents, 5 Tivoli Walk Cheltenham, be appointed the manager of the Building on terms to be

agreed between the parties and the proceedings are adjourned for those terms to be agreed. Either party is at liberty to restore the adjourned application for further hearing, such application to be made on or before 10 February 2009.

10.5 That an order be made under section 20C of the Landlord and Tenant Act 1985 that none of the costs incurred in any of the applications before the Tribunal be regarded as relevant costs in determining any future service charge

10.6 That the Landlords had not acted frivolously, vexatiously, abusively, disruptively or unreasonably in bringing or defending the various applications within the meaning of the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2004, paragraph 7.

Signed
Professor David Clarke.

Dated 2 January 2009