SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case Nos:	**CHI/29UL/LSC/2008/0117** **CHI/29UL/LIS/2009/0045**
Property:	**24 Radnor Park Road** **Folkestone** **Kent** **CT19 5AU**
Applicants:	**Executors of Mrs. P.G. Dobbins** **Mr. K. Broderick** **Mr. D. Shackle**
Respondent:	**Mercia Investment Properties Limited**
Dates of Hearing:	**18th May 2009** **4th September 2009**
Members of the Tribunal:	**Mr. R. Norman (Chairman)** **Mr. C. White FRICS** **Mr. T.J. Wakelin**
Date decision Issued:	**16 October 2009**

RE: 24 RADNOR PARK ROAD, FOLKESTONE, KENT, CT19 5AU

Decision

1. Taking into account the sums paid, the position is that the executors of Mrs. P.G. Dobbins are entitled to a refund of £2,250.58, Mr. K. Broderick is entitled to a refund of £4,725.17 and Mr. D. Shackle is entitled to a refund of £692.15.

2. Within 28 days of this decision being issued, the landlord Mercia Investment Properties Limited ("the Respondent") is to pay to the executors of Mrs. Dobbins c/o Piggotts Solicitors, 10 Victoria Crescent, Dover CT16 1DU £2,250.58, to Mr. Broderick £4,725.17 and to Mr. Shackle £692.15.

3. No reimbursement of fees is ordered as on the making of the application, fees were waived.

4. An order under Section 20C of the Landlord and Tenant Act 1985 ("1985 Act") is made in the terms that all the costs incurred, or to be incurred, by the Respondent in connection with proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any

service charge payable by Mr. K. Broderick, Mr. D. Shackle and the executors of Mrs. P.G. Dobbins (collectively referred to as "the Applicants").

5. No order is made as to costs.

Background

6. The Applicants made an application for a determination of liability to pay service charges under Section 27A of the 1985 Act. In that application the name of the landlord was given as "Martin Paine T/as Mercia Investment Properties Ltd".

7. On 5th December 2008 a Pre-trial Review hearing was held and at that stage the Respondents were named as "1) Mercia Investment Properties Ltd 2) Webber Steinbeck & Co 3) Circle Residential Management Ltd". There was no appearance by anyone on behalf of the Respondents but draft directions were submitted by Mr. Martin Paine on their behalf and the Tribunal took those into consideration. Mr. Paine made no suggestion that the jurisdiction of the Tribunal to deal with these matters was or would be disputed.

8. As a result of that Pre-trial Review hearing, directions were issued. They included directions that the Respondents prepare a statement of case and a bundle of documents and send copies to the Tribunal and to the Applicants by 20th April 2009.

9. The Applicants complied with the directions but the Respondents did not.

10. The Tribunal was informed that although Mrs. Dobbins was deceased there had been a number of claims commenced against her in the County Court in respect of various sums including ground rent and service charges. In those proceedings the Claimant was stated to be Mercia Investment Properties limited and it appeared that Mr. Paine had been dealing with the cases on behalf of the Claimant. In none of those cases had the Claimant been successful. In respect of three of those cases (8QT12903, 8QT12948 and 8QT12911) which were before the Ashford County Court, judgement was set aside, charging orders were discharged, costs were ordered to be paid by the Claimant and the claims were transferred to the Leasehold Valuation Tribunal.

11. There was a hearing by the Leasehold Valuation Tribunal on Monday 18th May 2009 attended by Mrs. Palmer, one of the executors of Mrs. Dobbins, Mr. Broderick, Mr. Shackle and Mr. Paine who on Friday 15th May 2009 had notified the Tribunal office that he would be attending the hearing but not the inspection. He stated that he was representing the landlord Mercia Investment Properties Limited as an employee of Circle Residential Management Limited, the managing agents. He said he intended to rely solely on the papers submitted by the Applicants. From the Applicants' bundle he had prepared a summary of the charges in respect of 24 Radnor Park Road Folkestone ("the subject property") for the eight years in question.

12. We explained that the Tribunal could only deal with matters within its jurisdiction and could not, for example, make a decision on payment of ground rent.

13. We heard evidence from those present on 18th May 2009 about the majority of the charges and about the remainder we heard evidence from those present on 4th September 2009.

14. We considered all the oral and documentary evidence supplied by the parties and those representing them and made findings of fact on a balance of probability.

15. On 18th May 2009, asked why the Respondent had not complied with the directions and responded to the Applicants' statements, Mr. Paine stated that they were not statements of case but just posed questions. There were no alternative estimates and they did not give any range of reasonableness. Mr. Paine made no suggestion that the jurisdiction of the Tribunal to deal with these matters was or would be disputed.

16. Mrs. Palmer made it clear that everything was challenged from the right of first refusal notice with a clause that the present managing agents be retained for at least 5 years, through claims for the wrong items and non service of notices to charges for administration and sums charged under building repairs and charges for serving notices under Section 20 of the 1985 Act.

17. Mrs. Palmer stated that Mr. Broderick had paid everything demanded of him and that Mr. Shackle had paid all service charges asked of him from November 2005 when he purchased Flat 3 to 31st March 2008. Mrs. Palmer had asked Circle Residential Management Limited and the Respondent for details of payments made in respect of Flat 1 but no information had been given. As a result on the 18th May 2009 she was not sure what had been paid in respect of Flat 1.

18. Mr. Paine said that Mr. Broderick was possibly up to date but he was not certain, that Mr. Shackle was up to date to mid 2008 and that as to Flat 1 Mr. Paine was not certain but the executors of Mrs. Dobbins had not paid service charges or Ground Rent.

19. The files in respect of the three cases (8QT12903, 8QT12948 and 8QT12911) which had been transferred from the Ashford County Court to the Leasehold Valuation Tribunal were received at the Tribunal office on Friday 15th May 2009 and the Tribunal had little opportunity to consider them on the 18th May 2009.

20. At the hearing on 18th May 2009 Mr. Paine stated that the County Court claims were in respect of interim service charges and that as the application to the Leasehold Valuation Tribunal was in respect of actual service charges, he expected that once the Leasehold Valuation Tribunal made a decision as to the actual service charges the claims as to interim service charges would fall away.

21. After the hearing on 18th May 2009 further directions were issued. Those directions included a proposal that the cases transferred be consolidated with the application already before the Tribunal (Case No. CHI/29UL/LSC/2008/0117) and invited any party who objected to such consolidation to write to the Tribunal. No objection was received and the matters were consolidated. Directions were also made as to the provision of documents but the Respondent Mercia Investment Properties Limited (the Claimant in the County Court) did not comply with those directions.

22. The target date for the adjourned hearing was within the three weeks commencing 17th August 2009 and a direction was made that the parties must notify the Tribunal by 6th July 2009 of any working days that they wished to avoid during the three weeks commencing 17th August 2009. No such notification was received and the hearing was listed for 4th September 2009. The parties were notified of that date.

23. On 25th June 2009 the Clerk to the Tribunal wrote to Mr. Paine at the address provided: West One House, St. Georges Road, Cheltenham. On 29th June 2009 a fax was received at the Tribunal office from Mr. Paine notifying a change of address to 8 Rockfield Business Park, Old Station Drive, Leckhampton GL53 0AN. That fax was in connection with another case but having been notified of the change of address further letters were sent to that address and must have been received as replies to them were received. On 7th July 2009 a letter was written to Mr. Paine at the new address 8 Rockfield Business Park notifying him of the date, time and venue of the hearing. Further letters were written to him on 20th and 30th July and 17th August 2009 reminding him of the directions but no response was received until a letter from Mr. Paine was received on 26th August 2009 asking for the hearing to be adjourned. The Tribunal was not minded to grant that adjournment when in relation to this hearing there had been no notification of dates to avoid, Mr. Paine had been notified of the hearing date, and the hearing date was so close.

24. In response to the refusal of an adjournment Mr. Paine wrote a letter dated 2nd September 2009 stating that he had not been notified of the hearing date and enclosing submissions that the Tribunal did not have jurisdiction to determine the application made by the Applicants because in their application he had been named as the respondent and the landlord and he had never owned the freehold interest in the subject property. He enclosed a copy of a decision of the Lands Tribunal (LRX/22/2008).

25. On 4th September 2009 the hearing resumed and was attended by Mr. Broderick, Mrs. Palmer and Mr. Shackle (for part of the hearing).

26. The Tribunal considered Mr. Paine's submissions but came to the conclusion that the Tribunal did have jurisdiction to determine these matters and that the hearing scheduled for that day should proceed.

27. The decision of the Lands Tribunal concerned a complicated set of circumstances and is of little assistance in this case. Here the situation is much simpler. There are many occasions when the Tribunal receives an application in which the managing agent is incorrectly named as the landlord. In this case a director of the landlord was named as the landlord. When the identity of the landlord became clear the case proceeded with the landlord correctly identified. Mr. Paine is an experienced managing agent and was fully aware of the position. At the hearing on 18th May 2009 he made it clear that he was representing the landlord Mercia Investment Properties Limited as an employee of Circle Residential Management Limited, the former managing agents. In the Lands Tribunal decision referred to, the Leasehold Valuation Tribunal had no jurisdiction to include Accent Property Solutions Limited as a respondent and its decision was not binding on that company.

In this case that situation will not arise. The decision made by the Tribunal will be in respect of the Applicants as lessees and Mercia Investment Properties Limited as landlord.

Inspection

28. On 18th May 2009 the Tribunal inspected the subject property in the presence of Mr. Broderick and Mr Shackle.

29. The property had been converted into 3 self contained flats. Flat 1 on the ground floor, Flat 2 on the first floor and Flat 3 on the second floor. At the front of the property is a forecourt used as a parking area and at the rear a garden which could be accessed only through Flat 1. The garden was very overgrown. The only way to gain access to the rear of the property is through Flat 1. At the time of our inspection Flat 1 was unoccupied. The common parts consisted of the hall and stairs which we were told had been decorated in 2005. In the common parts there were 5 electric light bulbs and a fire alarm system. There was also a door entry system which we were told did not operate in respect of Flat 2.

30. We saw in Flat 3 there were damp patches on the wall near the chimney and we were told that those patches appeared after work had been done to repair the chimneys which had been damaged in the earthquake in 2007. Also pointed out to us were places in the entrance and in the bedroom, bathroom and lounge of Flat 3 where there was a gap between the wall and ceiling. We were told this gap had appeared as a result of the earthquake. The lounge window in Flat 3 we were told had been repaired but a piece of wood used to effect the repair was not properly secured and came adrift if the window was opened quickly.

31. Year ended 31st March 2001

Insurance £499.80

The Respondent purchased the freehold of the subject property on 19th October 2000. Mrs. Palmer considered the insurance premium should have been apportioned part as to the previous freeholder and the rest to the Respondent. The previous insurance lapsed 30th Sept 2000. The Respondent should have paid the premium on 19th October 2000. Mr. Paine's evidence was that the insurance came into force 1st October 2000. The Respondent agreed to renew. It was explained that liability to pay falls due on the renewal date. The sum paid for the premium would be claimed in the year in which it was paid with no need for apportionment. Mrs. Palmer said there was no evidence of payment, and that neither such evidence nor the policy had been produced although requested. Mr. Paine could not find a letter requesting production but the Applicants had produced an insurance schedule. We found that because a schedule had been produced and that a claim had been paid in 2007 that supported Mr. Paine's evidence that a policy was in force.

When Mr. Shackle purchased Flat 3 details of cover were produced and Mrs. Palmer said more than was necessary was included in the schedule. Mr. Paine explained that insurance had been with Norwich Union. It was a new policy with a similar premium to the previous year. If the items in the schedule to which Mrs. Palmer objected were

removed from the schedule it would not result in a reduction in premium. Later insurance was with AIG and was specifically negotiated to include heads of cover. It is a package but not a block. Each building is individual but is insured at a good premium because many properties are being insured. The premium in 2001 was not very different from the figure for insurance paid in the year before the Respondent bought the freehold. It was just a few pounds different from the previous year.

We were satisfied that no apportionment was necessary and, in the absence of satisfactory evidence that the premium was unreasonable, we found that this sum was payable by the lessees in possession at the time.

It must also be borne in mind that the landlord is not obliged to insure with the company providing the lowest premium. There may be other considerations.

Interest £21.08

The Applicants' case was that the leases did not provide for interest to be charged. Mr. Paine accepted this and stated that all claims for interest were waived.

We agreed with the Applicants that the leases did not provide for interest to be charged and found that this sum was not payable by the Applicants.

Disbursements £75.00

The Applicants asked for details of these disbursements. Mr. Paine could not provide details and waived that claim.

We were not satisfied that disbursements had been incurred and found that this sum was not payable by the Applicants.

Audit and accountancy fees £135.25

Mr. Paine's evidence was that although under Section 21 (6) of the 1985 Act in respect of the subject property there is no statutory obligation to have a summary of relevant costs certified by a qualified accountant, the production of a certificate showing that the accounts have been audited is part of management and the cost can be recovered from the lessees. The production of externally prepared certified accounts is of help if a lessee is selling, especially now that there are Home Information Packs. It was Mr. Paine's decision whether to do the work in house or to employ accountants and he could charge for either.

Mrs. Palmer's case was that the leases did not state that a chartered accountant could be employed. The service charge accounts for the year ended 31st March 2001 were signed by Mr. Paine in 2001 and then apparently in 2003 were signed by Mr. Foley a chartered accountant. She believed the sum charged was excessive. Mr. Foley told her he checked there were statements but never saw the leases. All he did was sign the accounts. Mrs. Palmer had no evidence of what the cost should be. The expense had not been incurred until 2003.

We found that it was reasonable to have the accounts certified and that the charge of £135.25 was reasonable.

Management charges £375

Mrs. Palmer's view was that nothing had been done for the £375 claimed and that that sum was too much.

Mr. Paine's evidence was that for the charge he executed the Landlord's responsibilities under the leases. He arranged insurance. He operates on a fixed fee basis which is preferred by the RICS Code rather than charging a percentage. He had collected money and started to pursue Mrs. Palmer for money owed. He had inspected the subject property at an early stage after purchase. This was just an external "drive by" inspection and he would not necessarily advise the lessees he was doing this. He accepted that without contacting the Applicants he would be unable to inspect the back of the subject property or the common parts. He said that when he called he was unable to contact the Applicants. When he called there was nobody in occupation in Flat 1 and there was a substantial amount of post which he could see through the window. However, Mr. Broderick stated that there was a venetian blind at that window and all that could be seen through the window was the back of a settee. Flats 2 and 3 were occupied.

Mr. Paine stated that he had never arranged a cleaner for the common parts because many tenants in small blocks would rather not incur the cost of a contractor for little benefit. When he became aware of the door entry system problem he sent an engineer.

He accepted that he received commission on insurance but pointed out that he did not increase management charges even when there was substantial work to be done because of the earthquake. The managing agents had to be regulated by the FSA and there was the cost of fees and compliance. He received 20% commission in respect of the insurance premium except terrorism and IPT. He received nearly £100 in commission.

Considering all these matters we came to the conclusion that although little had been done by the managing agents their charges were lower than would be charged by many managing agents in relation to the management of this type of property and we found that the charges were reasonable.

32. Year ended 31st March 2002

Building works £5,158.88

We were not satisfied on the evidence produced to us that the consultation procedure required in pursuance of Section 20 of the 1985 Act had been carried out and consequently only £1,000 may be charged to the Applicants.

Insurance £502.59

This sum was accepted by the Applicants.

Interest £425.01

As for 2001 and for the same reasons we found that this sum was not payable by the Applicants.

Audit and accountancy fees £135.25

The statement of landlord's expenditure was signed by Mr. Paine and dated 23rd April 2002 but was not signed by Mr. Foley the chartered accountant. Mr. Paine said there was an adjustment because some of the work had been done by the managing agents and the fees for audit and accountancy had been split between the managing agents and Mr. Foley. Mr. Paine was not sure who did what. He said that some of this sum was for work done by the managing agents and accepted that this was another source of income for them.

As Mr. Foley had not signed the statement we were not satisfied that this charge was payable in addition to the management charges.

Management charges £500

For the same reasons as above in relation to management charges for 2001 we found that these charges were reasonable.

33. Year ended 31st March 2003

Repairs £312.54

This the parties agreed was in respect of the maintenance of the fire alarm system. Mr. Paine believed that the Respondent had an obligation to maintain the fire alarm system but accepted that there was no express provision under the terms of the lease to charge the Applicants for maintenance of the fire alarm system.

We found that as there was no provision in the lease to charge the Applicants for the maintenance of the fire alarm system the Applicants were not obliged to pay for it.

Drainage £79.90

This charge was accepted by the Applicants.

Insurance £675.76

Mr. Paine explained that the premiums went up at that time. He stated that every year he resubmits the portfolio of properties to see if a better quote is obtainable and there was a reduction in later years. There was no evidence of other quotes.

On the basis of the evidence before us we found that there was not sufficient evidence that the sum was unreasonable and we found that it was payable by the Applicants.

Interest £39.53

As for previous years and for the same reasons we found that this sum was not payable by the Applicants.

Audit and accountancy fees £147.00

As Mr. Foley had not signed the statement we were not satisfied that this charge was payable in addition to the management charges.

Management charges £500

For the same reasons as above in relation to management charges for 2001 and 2002 we found that these charges were reasonable.

34. Year ended 31st March 2004

Repairs £1,782.08 and Admin Major Works £242.43

We were satisfied that these two items should be considered together in respect of major works and we were not satisfied on the evidence before us that the consultation procedure required in pursuance of Section 20 of the 1985 Act had been carried out. Consequently only £1,000 may be charged to the Applicants.

Fire Safety £321.58

We found that as there was no provision in the lease to charge the Applicants for the maintenance of the fire alarm system the Applicants were not obliged to pay for it.

Insurance £821.26

Mrs. Palmer stated that the brokers had told her that an increase of this size over the previous year would be as a result of an insurance claim but Mr. Paine stated that this was not the case. There had been no such claim. It was the insurance market at that time which caused the increase. He had no evidence to show that he had gone to the market in 2004 but the fact that the premium was lower the next year supported his evidence that he did go to the market to try to find a better premium. Buildings in the portfolio are insured on an individual policy but he negotiates the cost on the basis of many buildings insured. The premium in respect of the subject property is not affected by claims on other properties.

There was no evidence of other quotes and on the basis of the evidence before us we found that there was not sufficient evidence that the sum was unreasonable and we found that it was payable by the Applicants.

Audit and accountancy fees £147.00

As Mr. Foley had not signed the statement we were not satisfied that this charge was payable in addition to the management charges.

Management charges £500

For the same reasons as above in relation to management charges for 2001, 2002 and 2003 we found that these charges were reasonable.

35. Year ended 31st March 2005

Repairs £702.13

At the hearing on 18th May 2009 Mr. Paine produced invoices in respect of repairs which we found were reasonable.

Drainage £90.00

This charge was accepted by the Applicants.

Electricity £19.77

We would expect such a charge to be payable by the Applicants and we found it to be reasonable.

Fire Safety £328.66

We found that as there was no provision in the lease to charge the Applicants for the maintenance of the fire alarm system the Applicants were not obliged to pay for it.

Insurance £556.50

We noted that the premium was considerably less than in 2004 and less than in 2003.

There was no evidence of other quotes and on the basis of the evidence before us we found that there was not sufficient evidence that the sum was unreasonable and we found that it was payable by the Applicants.

Interest £17.90

As for previous years and for the same reasons we found that this sum was not payable by the Applicants.

Audit and accountancy fees £147.00

As Mr. Foley had signed the statement we were satisfied that this charge was payable in addition to the management charges and that it was a reasonable charge.

Management charges £587.51

For the same reasons as above in relation to management charges for 2001, 2002, 2003 and 2004 we found that these charges, which by that date included VAT, were reasonable.

36. Year ended 31st March 2006

Repairs £89.30

Mr. Paine explained that this was a payment to a contractor to attend to the door entry phone system. It was challenged by the Applicants because the problem had not been cured. The Applicants did not know if the work had been done. Mr. Broderick stated that from the time he moved in the door entry system had not worked.

We accepted Mr. Broderick's evidence and as a result we were not satisfied that the work had been done at all or satisfactorily. Consequently we were not satisfied that the charge was payable by the Applicants.

Electricity £62.05

We would expect such a charge to be payable by the Applicants and we found it to be reasonable.

Fire Safety £658.69

As for previous years and for the same reasons we found that this sum was not payable by the Applicants.

Insurance £541.79

We noted that the premium was slightly less than in 2005.

There was no evidence of other quotes and on the basis of the evidence before us we found that there was not sufficient evidence that the sum was unreasonable and we found that it was payable by the Applicants.

Interest £1.97

As for previous years and for the same reasons we found that this sum was not payable by the Applicants.

Audit and accountancy fees £164.50

As Mr. Foley had signed the statement we were satisfied that this charge was payable in addition to the management charges and that it was a reasonable charge.

Management charges £587.49

For the same reasons as above in relation to management charges for 2001, 2002, 2003, 2004 and 2005 we found that these charges were reasonable.

37. Year ended 31st March 2007

Preparation of Section 20 notice of intention £293.75

We considered that £117.50 including VAT would be a reasonable figure to charge for this.

Electricity £79.46

We would expect such a charge to be payable by the Applicants and we found it to be reasonable.

Fire Safety £345.96

As for previous years and for the same reasons we found that this sum was not payable by the Applicants.

Insurance £585.71

There was no evidence of other quotes and on the basis of the evidence before us we found that there was not sufficient evidence that the sum was unreasonable and we found that it was payable by the Applicants.

Interest £98.47

As for previous years and for the same reasons we found that this sum was not payable by the Applicants.

Survey £110.16

We accepted that the survey had been carried out and found that this was a reasonable charge for it.

Audit and accountancy fees £164.50

As Mr. Foley had not signed the statement we were not satisfied that this charge was payable in addition to the management charges.

Management charges £528.73

For the same reasons as above in relation to management charges for 2001, 2002, 2003, 2004, 2005 and 2006 we found that these charges were reasonable.

38. Year ended 31st March 2008

Repairs £822.75

Mr. Paine accepted that there had not been compliance with the Section 20 consultation procedure and the charge is therefore limited to £750.

Electricity £230.25

We would expect such a charge to be payable by the Applicants. This was a high figure and possible explanations of unauthorised use were suggested as being the cause of this but we found that there was insufficient evidence to dispute that the

electricity had been used and had been paid for by the Respondent. This sum is payable by the Applicants.

Fire Safety £357.36

As for previous years and for the same reasons we found that this sum was not payable by the Applicants.

Gardening £150

This sum was charged to the service charges as the removal of a large amount of ivy was done to protect the structure of the building. The charge we found to be reasonable.

Insurance £618.23

We noted that the premium was higher than in 2007 but there was no evidence of other quotes and on the basis of the evidence before us we found that there was not sufficient evidence that the sum was unreasonable and we found that it was payable by the Applicants.

Interest £252.43

As for previous years and for the same reasons we found that this sum was not payable by the Applicants.

Survey £470.01

On the evidence before us we found that this was an inadequate report which served no useful purpose, the cost of it was not reasonably incurred and the Applicants were not obliged to pay for it.

Audit and accountancy fees £176.25

The copy of the statement provided to us was not even signed by anyone from Circle Residential Management Limited on behalf of the landlord and as Mr. Foley had not signed the statement we were not satisfied that this charge was payable in addition to the management charges.

Management charges £528.77

For the same reasons as above in relation to management charges for 2001, 2002, 2003, 2004, 2005, 2006 and 2007 we found that these charges were reasonable.

39. We were not satisfied that any of the demands for service charges included the address of the landlord as required by Section 47 of the Landlord and Tenant Act 1987. The result of that is that the sums were not properly demanded and did not have to be paid until properly demanded.

40. Charges have been made for chasing payments and serving Section 146 Notices. On the evidence before us we were not satisfied that any of them were justified because they were based on sums which had not been properly demanded and in some cases on sums which were not payable at all.

41. On 18th May 2009 Mr. Paine was asked if he was aware of the requirement under Section 21B of the 1985 Act, as amended, that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges, as the demands received by the Applicants were not accompanied by such a summary. He stated that he was aware of that statutory requirement but did not include the summary unless lessees objected. He said this was "to save trees".

42. Consequently, we were not satisfied that sums for service charges demanded after 1st October 2007 when that requirement came into force were properly demanded. Such sums did not have to be paid until properly demanded.

43. The operation of time limits on the making of demands may mean that even if proper demands were made now the sums may not be payable.

44. Mr. Broderick, Mr. Shackle and Mrs. Palmer provided the Tribunal with details of sums paid and drew our attention to documents which had been presented in evidence which, for example, showed that on a particular date the account in respect of Flat 1 was in credit. We did not take into account payments made before 2001, payments of ground rent and charges in connection with Mr. Shackle's purchase of his flat which were outside our jurisdiction. We found as a fact that over the period from the year ending 31st March 2001 to the year ending 31st March 2008 the sum of £7,062.08 had been paid in respect of Flat 1 and the sum of £9536.67 had been paid in respect of Flat 2. In respect of Flat 3, Mr. Shackle's responsibility for service charges arose on his purchase of Flat 3 in November 2005 and therefore the period under consideration for Flat 3 is from the year ending 31st March 2006 to the year ending 31st March 2008. We found as a fact that over that period he had paid £2,208.54 in respect of Flat 3.

45. We found as a fact that the total sums payable by the lessees for the following years were as follows:

Year ended 31st March	£
2001	1,010.05
2002	2,002.59
2003	1,255.66
2004	2,321.26
2005	2,102.91
2006	1,355.83
2007	1,421.56
2008	2,277.25
Total	13,747.11

46. Flats 1 and 2 are each liable for 35% of those charges and Flat 3 for 30%.

47. The total liability of each Flat for the periods in question is therefore:

	£
Flat 1	4,811.50
Flat 2	4,811.50
Flat 3	1,516.39

48. Taking into account the sums paid the position is that the executors of Mrs. Dobbins are entitled to a refund of £2,250.58, Mr. Broderick is entitled to a refund of £4,725.17 and Mr. Shackle is entitled to a refund of £692.15.

49. Although the Tribunal found that many of the sums claimed by the landlord were not payable, other sums were payable and the Tribunal was not satisfied that the making of an order for costs was justified. Therefore no such order is made.

50. However, the Tribunal did find that the making of an order under Section 20C of the 1985 Act was justified. Demands were made and Mr. Paine on behalf of the Respondent accepted that the terms of the leases did not provide that the Applicants were liable to pay some of them and that other demands were not made in accordance with statutory requirements. It would be unjust if the landlord were now in a position to claim from the Applicants the Respondent's costs of contesting these matters. We find that in the circumstances of this case it is just and equitable that all the costs incurred, or to be incurred, by the Respondent in connection with proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Signed

R. Norman
Chairman