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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A AND 20C OF THE LANDLORD AND TENANT ACT 1985 & SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference:	LON/00AQ/LSC/2011/0568
Premises:	Flat 3, Stanmore Towers, 2-16 Church Road, Stanmore, Middlessex HA7 4AW
Applicants:	**Mr A Bathija & Mrs S Bathija**
Representative:	**Leasehold Property Solutions**
Respondent:	**Birchworth Ltd**
Representative:	**Oakwood Estates**
Date of hearing:	**Wednesday 11 January 2012**
Appearance for Applicant(s):	**Mr John Galliers, Leasehold Property Solutions**
Appearance for Respondent(s):	**Mr Benjamin Mire**
Leasehold Valuation Tribunal:	**Ms L Smith** **Dr H Carr** **Mr H Geddes JP RIBA MRTP**
Date of decision:	**13 February 2012**

Decisions of the Tribunal

The Tribunal determines that the demands for service charge for the years 2008, 2009 and 2010 are valid and payable (insofar as not already paid by the Applicants)

(1) The Tribunal determines however that the Respondent is not entitled under the Lease to charge additional management charges in relation to the provision of electricity

(2) The Tribunal determines that the management fee for 2010 in the sum of £251.92 should be reduced by 50% to £125.96

(3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 and declines to order a refund of fees under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (if applicable) administration charges payable by the Applicants in respect of the service charge years 2008,2009 and 2010.

2. The legal provisions relevant to this Decision are set out in Appendix 1 to this decision.

The hearing

3. At the hearing, the Applicants were represented by Mr John Galliers and the Respondent was represented by Mr Benjamin Mire.

4. In addition to the agreed bundle of documents produced by the Applicants for the Tribunal and lodged in accordance with the directions order, immediately prior to the hearing the Respondent handed in further documents, namely:-

   - The Lands Tribunal/Upper Tribunal decisions in *Schilling and Canary Riverside Development Ptd Ltd [LRX/26/2005; LRX/31/2005; LRX/47/2005]* and *Staunton and Taylor [2010] UKUT 270 (LC)*
   - Additional correspondence in relation to service charge demands
   - A bundle of correspondence in relation to electricity charges
   - A bundle of documents in relation to planned maintenance dated 2009
   - Practice direction CPR 6A

   In the course of the hearing, in response to issues which arose and questions from the Tribunal, the Respondent produced further documents relating to service charge demands.

5. It was evident to the Tribunal from the bundle lodged with the Tribunal prior to the hearing that there was a difference between the figures set out in the application notice and the Directions Order on the one hand and the amounts stated in the Applicants' Statement of Case on the other. Although Mr Galliers

made no formal application to amend the application, he stated the Applicants' case by reference to the latter amounts and asked the Tribunal to determine the case on that basis.

The background

6. The application relates to Flat 3, Stanmore Towers, 2-16 Church Road, Stanmore, Middlessex, HA7 4AW (the Property). The Property is a one bedroom flat on the third floor of a purpose built, mixed use building with commercial use on the first and second floors and residential use of floors 3 to 8 ("the Building").

7. The Respondent company is the successor in title to the head leasehold interest in the Building and therefore the Applicants' Landlord ("the Landlord"). The Landlord is represented in these proceedings by Oakwood Estates.

8. The Applicants are Mr and Mrs Bathija who are the successors in title to the leasehold interest in the Property ("the Tenants"). The leasehold interest in the Property is contained in a lease dated 21st August 2001 made between Wynfield Estates Ltd and Chihwen Lai for a term of 125 years from 1st January 2000 ("the Lease"). The provisions of the Lease relevant to this application are set out in Appendix 2 to this Decision.

9. The Applicants made this application on 17 August 2011. The Applicants also made an application under s.20C of the Act.

10. The Tribunal held a pre-trial review on 20th September 2011 which was attended by both parties.

11. At the pre-trial review, the parties agreed that it might be possible to resolve some or all of the issues by negotiation or mediation once the parties' cases had been particularised but directions were given for the exchange of cases in the event that settlement were not possible. It had not proved possible for the case to be settled by mediation (see below in relation to the 20C application).

The issues

12. At the start of the hearing the Tribunal with agreement from the parties identified the relevant issues for determination as follows:

(i) The validity of service charge demands for the 3 years in question in particular

- Whether the service charge demands complied with s47/s48 of the Landlord and Tenant Act 1987 and s21B of the Landlord and Tenant Act 1985
- If the demands did not comply whether later demands would allow the Landlord to recoup those charges or whether the Landlord was precluded from making those demands by virtue of s20B of the Landlord and Tenant Act 1985

(ii) The interpretation of the Lease in particular

- Whether the Landlord is entitled to recover administration charges in relation to accountancy fees and whether these are reasonable

- Whether the Landlord is entitled to recover administration charges in relation to electricity charges and whether these are reasonable
- Whether the Landlord's management charge for the 2010 service charge year is reasonable

(iii) The Applicants' Section 20C application

13. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Validity of service charge demands
Tribunal's decision

- The service charge demands served in 2007-2010 did not, with limited exceptions, comply with s47 LTA 1987 and/or s21B LTA 1985. However, this has now been rectified.

- The 2007 service charge was properly demanded under s47 LTA 1987 by service of the Service Charge Budget Certificate on 19 December 2007

- The validity of the demands for the purposes of those sections did not prevent them being valid for the purposes of s20B LTA 1985.

- The demands served in 2011 did comply with s47 and s48 LTA 1987 and s21B LTA 1985 and were valid to require payment of the service charges which remained unpaid for the years 2008, 2009 and 2010.

- The Applicants are therefore required to pay the following service charges (as yet unpaid):-

2008	£425.38
2009	£299.35
2010	£734.28

Reasons for Tribunal's decision

14. Mr Galliers argued that the various service charge demands made by the Landlord's agents were not valid as they did not include the name and address of the Landlord at which notices could be given and did not therefore comply with s47 of the Landlord and Tenant Act 1985 ("LTA 1985"). Neither did they include a summary of the rights and obligations of the tenant and did not therefore comply with s21B LTA 1985. Details of the various demands for each year with the challenges thereto are set out below.

Service Charge year 2008

- Invoice dated 19 December 2007 from Strettons (then managing agent) in the sum of £734.28 for service charge from 1 January - 30 June 2008 in the sum of £734.28. No details of the Landlord of the Property.

- Invoice dated 15 January 2008 for buildings insurance from Strettons (marked as paid on 22 January 2008). No details of the Landlord of the Property.

- Invoice dated 3 June 2008 in the sum of £734.28 for service charge from 1 July 2008-31 December 2008 from Strettons. No details of Landlord of Property (invoice marked as paid on 12 June 2008).

- On 30 June 2009, Strettons sent a letter to the Applicants purporting to be a notice under s20B of the Landlord and Tenant Act 1987 ("LTA 1987") setting out the Applicants' liability for service charge for the year to 31 December 2008. That letter states:-

  "We are hopeful that we will receive final figures from the accountants appointed to undertake the audit in the very near future, and shortly thereafter will be able to provide you with a definitive charge for your exact liability"

- On 11 November 2009, Strettons sent a "Service Charge Reconciliation Letter" enclosing a service charge statement, Accountant's report and Service Charge Transaction Listing (although it is not clear if this latter was part of the enclosures to that letter). The Service Charge Transaction Listing does bear the name and address of the Landlord. The other documents do not.

<u>Service Charge Year 2009</u>

- Invoice dated 16 December 2008 in the sum of £250 for ground rent and £734.28 for service charge from 1 January – 30 June 2009 from Strettons. Invoice states the name of the Landlord (then Wynfield Estates Ltd) but not the address for notices (even though there is a box on the invoice for these purposes).

- Invoice dated 30 January 2009 for buildings insurance (noted as paid on 13 February 2009). Invoice states name of Landlord but not address.

- Invoice dated 10 June 2009 for service charge from 1 July - 31 December 2009 from Strettons. Invoice states name of Landlord but not address.

- Letter dated 11 November 2010 from Oakwood Estates (then managing agents) enclosing the accounts for the service charge year 2009. Letter gave a name and address for queries (via the Residents Association) but that is the accountant's name and address and not that of the Landlord.

The accompanying service charge reconciliation did not state the name and address of the Landlord; neither do the accompanying accounts.

Service Charge Year 2010

- Invoice dated 29 January 2010 in the sum of £250 for ground rent and £734.28 for service charges from 1 January – 30 June 2010 and £425.38 for balancing charge from previous year sent by Trust Property Management Ltd ("TPM") (then the managing agent). Invoice stated the name of the Landlord, (by then Birchworth Ltd) and an address for notices which was a PO Box address.

- On 1 February 2010, TPM sent a further "Statement" in relation to payment towards a sinking fund in the sum of £432.75 (for the period 1 January - 30 June 2010).

- Invoice dated 16 June 2010 in the sum of £331.82 for insurance from 1 January – 31 December 2010, £734.28 for service charge for 1 July – 31 December 2010 and £432.75 for sinking fund for 1 July – 31 December 2010 sent by Oakwood Estates (who had by then taken over as the Landlord's managing agent). That invoice is annotated to the effect that the service charges were paid on 5 October 2010 and that the insurance had already been paid by the date of the invoice. Invoice did not contain any statement of the name and address of the landlord.

15. In relation to the service charge years 2008 and 2009, Mr Galliers argues that none of the above demands complied with s47 LTA 1987. He argues that since the demands were not valid for the purposes of s47, they could not be valid demands either for the purposes of s20B. He also argues that insofar as the Landlord seeks to rely on the letter of 30 June 2009 to comply with s20(B)(2) LTA 1985 and therefore put time at large for the purposes of demanding the service charge validly at some later date in relation to the service charge year 2008, it cannot do so because the notice was not served within 18 months from the date when the charges were incurred because the date of service would be the second day after posting, therefore 2 July 2009. Since the service charge year runs from 1 January 2008, that is not within 18 months from the date when the charges were incurred.

16. Whilst Mr Galliers was bound to accept that the invoice dated 29 January 2010 in relation to the service charge year 2010 did give the name of the Landlord, he argued that a PO Box address was insufficient to comply with s47 and particularly s48 LTA 1987, since the Civil Procedure Rules provided for personal service on a company and personal service was not possible on a PO Box address. He accepted in response to questions from the Tribunal that personal service would in most cases be optional but argued that it was mandatory in some circumstances, for example in relation to service of a statutory demand. He gave as an example of when a tenant might need to serve a statutory demand on a landlord, a case when a tenant was challenging disrepair of his property. It seemed to the Tribunal that this would be a case where ordinary

County Court proceedings would be instituted and that it would be a very unusual circumstance where a tenant would need to personally serve his landlord.

17. Mr Galliers also argued that the Lease provided for service charges to be paid annually in advance on the 1st of each year and therefore demands made on an interim and final basis were not in accordance with the Lease and therefore invalid.

18. Mr Mire argued that the demands did comply with s20B. He pointed out that there was no formula in s20B for what constituted a demand. Insofar as such demands were required to contain the name and address of the Landlord in compliance with s47 in order to comply with s20B, he argued that, nonetheless, the demands were capable of fulfilling the notice requirements of s20B(2). The demands which did not contain the name and address of the Landlord would still be a notification to the Tenant of the amount of the cost incurred and those costs could subsequently be claimed from the Tenant by way of service charges. Those amounts would then be payable at such time as a notice complying with s47 were served.

19. If the Tribunal did not accept that argument, Mr Mire argued that the Landlord had now rectified the position in relation to each of the 3 years in dispute. There had therefore been a notification which was valid for s20(B)(2) and a later demand which complied fully with both s47 and s48.

20. In relation to the 2008 service charge year, Mr Mire relied on the letter of 30 June 2009 referred to at paragraph 14 above. Even if it were assumed that service meant that the demand was not made until 2 July 2009, this would only preclude the Landlord from recovering any costs incurred earlier than 18 months before that date ie on 1 January 2008. As this was a Bank Holiday, it was most unlikely that any of the costs would have been incurred on this date. He did not understand Mr Galliers to be arguing to the contrary. In the view of the Tribunal this is a correct analysis. That is put beyond doubt by the Upper Tribunal's decision in *Holding & Management (Solitaire) Limited and Sherwin [2010] UT 412 (LC)* where the Tribunal said as follows [21]:-

> *"Each of the amounts to which each of these demands related (whether advance payment or balancing charge) was a service charge within the meaning of section 18, and the application of s20B(1) has to be considered therefore, in relation to each of the demands. The section would apply so as to limit the tenant's liability to pay if any of the relevant costs taken into account in determining the amount of the service charge to which the demand related were incurred more than 18 months before the demand"*

21. Although Mr Galliers indicated in the Applicants' statement of case that he sought to distinguish the decision in Sherwin from the instant case he did not pursue this argument at the hearing. The letter of 30 June 2009 was therefore a valid demand for payment of the 2008 service charge.

22. In any event, Mr Mire pointed out that a service charge demand complying with both s47 and s20B was sent out. On 19 December 2007, Strettons sent out a service charge budget certificate for the 2008 service charge (in relation to the whole year) which clearly bears the name of the Landlord and an address for the Landlord. That appears to have been sent out at the same time as the invoice referred to at paragraph 14 above.

23. Mr Mire also argued in the alternative that it was not necessary for the service charge demands to be valid under s47 in order for the service charge to be properly demanded since the Tenant would be well aware of who the Landlord was given that the Landlord occupied an office in the same building. It was disputed by the Tenant that he did in fact know who the Landlord was. In any event, the Tribunal does not accept this argument. Section 47 is quite clear and unambiguous as to the requirements of a valid demand. Mr Mires's other alternative argument that the otherwise invalid demands were validated by being claimed on notepaper headed with the name and address of the agents similarly fails. What is required is the name and address of the Landlord.

24. In relation to the 2010 demands and whether a PO Box address could constitute an address for the purposes of s47 and s48, whilst Mr Mire indicated that this argument had caused his company to change its practice in this regard, the Tribunal does not accept Mr Galliers' argument as correct. The Civil Procedure Rules from where Mr Galliers sought to draw his analogy do not apply directly and, even if they did, there is nothing to prevent a Defendant in proceedings from providing an address which does not permit of personal service eg a Document Exchange address. Personal service is optional. Furthermore, section 47 does not specify that the address is one which allows for personal service and relates to the information which is required to be included in a demand and not for the purposes of proceedings. Section 48 does not require the demand itself to include an address at which proceedings may be served; simply that at some stage such a notice must be served.

25. Mr Mire also pointed out that since the Landlord had become aware of the disputed validity of the service charge demands, further demands had been served. Those demands complied with all of s47, s48 and s21B. They were served on 16 February 2011, 29 September 2011 and 28 October 2011 and covered all amounts due from all 3 service charge years in dispute (insofar as not paid). Mr Mire accepted that the Landlord had not served demands for the full amounts stated in the Applicants' statement of case since some of those amounts had already been paid and could not therefore be properly demanded.

26. In relation to s21B LTA 1985, the position in relation to compliance was very unclear. The Applicants took the point in the application notice and their statement of case that the Landlord's various managing agents had failed to comply with s21B. The Respondent took no steps to address that point by, for example, producing the actual office copies of the demands to show that the requisite summary had been served nor any witness statement from the person(s) responsible for sending out the demands as to the Agents' practice. The Tribunal heard witness evidence without a statement from Strettons' agent,

Mr Iliffe, as to their practice and his view that they would have complied. However, given the Applicants' very clear challenge to the non-receipt of the summary coupled with Stretton's failures to give very basic information in the demands which would have ensured compliance with s47, the Tribunal was not satisfied that the earlier demands did comply with s21B.

27. In relation to the interaction of s47 and s20B, Mr Mire referred the Tribunal to the decision of the Upper Tribunal in *Staunton* (see reference above). In that case, a demand had been sent to the tenant which did not state the name of the landlord. The tenant did not pay the amount demanded and the landlord issued proceedings in the County Court for payment. The tenant argued that the demand was invalid as it did not contain the name and address of the landlord as required by section 47 LTA 1987 and because the consultation requirements of s20 LTA 1985 had not been complied with. The Upper Tribunal in that case decided that, although the LVT had found that there was no compliance in the initial demand, by the time of the LVT hearing (indeed by the time of the County Court hearing) the tenant had been given notice of the landlord's name and address and therefore there was a valid demand. However, in that case, no issue was raised as to whether a demand which did not comply with s47 or indeed s48 could nevertheless be valid for the purposes of s20B or whether, as Mr Galliers contended, the Landlord would now be precluded from serving any further notice.

28. Turning then to the effect of the above, the Tribunal finds that there was compliance with s47 LTA 1987 In relation to the 2008 service charge year by reason of the Service Charge Budget Certificate of 19 December 2007 referred to at paragraph 22 above. Further, there was in any event, a valid demand by the letter of 30 June 2009 of costs incurred from 2 January 2008. The Tribunal does not accept though that there is likely to have been compliance with s21B for that year for the reasons stated at paragraph 26 above.

29. The service charge for 2009 was not validly demanded in 2008/9 (for the purposes of s47/s21B) but notices were given which would meet the requirements of s20(B)(2). In relation to the 2010 service charge year, the Tribunal accepts that the demands dated 29 January 2010, and 1 February 2010 were valid but the demand dated 16 June 2010 was not. Mr Mire indicated at the hearing that TPM served its demands with the summary of rights on the reverse of the demands and that did not appear to be disputed by the Applicant. The demand of 16 June 2010 is however disputed also for failure to comply with s21B.

30. In relation to Mr Galliers' primary argument in relation to the effect of demands which are invalid under s47 LTA 1987 on the Landlord's ability to subsequently demand payments in a valid form thereafter, the Tribunal does not accept that those provisions are interrelated in the way Mr Galliers contends. The effect of a failure to provide the requisite information for the purposes of s47 LTA 1987 or for that matter failure to provide the requisite notice complying with s48 LTA 1987 has the effect that payment of the amounts demanded as rent, service charge or administration charge are not due before that information is provided.

Similarly if a landlord fails to provide the necessary summary for the purposes of s21B LTA 1985, the effect of that is that the tenant may withhold payment. Thus, a tenant cannot be deprived of his property by way of forfeiture of his lease for example if he does not know his rights or how to contact and challenge his landlord.

31. Section 20B however is directed at a wholly different purpose namely to ensure that tenants are told promptly how much they will have to pay by way of service charge so that they may make provision for it and should not be faced with large demands years after the event and at a time when they may be in difficulties in mounting any challenge to the amount claimed. Section 20B does not specify any requirement for the form or content of a service charge demand save that it must indicate the costs incurred and that those costs must not have been incurred earlier than 18 months before the date of the demand. In any event, the Tribunal accepts Mr Mire's argument that the demands would still amount to a notification in writing that those costs had been incurred and that the Tenant would subsequently be required under the terms of the Lease to contribute to those costs by the payment of a service charge. There is no provision once notification is given for a subsequent demand to be given within a particular period (see *Mayor and Burgesses of the London Borough of Brent and Shulem B Association Ltd [2011] EWHC 1663 (Ch)* at paragraph 60 for authority for that proposition).

32. The demands that are held to be invalid for the purposes of s47,48 and s21B would therefore suffice for notification under s20(B)(2) and the demands served in 2011 have now complied with all of s47, 48 LTA 1987 and s21B LTA 1985. Those demands relate only to the amounts unpaid (the Applicant having in fact paid some of what was demanded in the demands which he asserts are invalid). It would remain open to the Respondent to demand again those amounts which the Applicant has paid insofar as the Applicant continued to dispute those sums.

33. In relation to Mr Galliers' argument that all demands were invalid as they failed to comply with the Lease, the Tribunal is of the view that this argument fails. It is true that clause 2 of the Lease provides for payment of rents annually on 1st January in each year in advance and that service charges are payable as additional rent. However, the provisions of the Sixth Schedule permit the Landlord to demand payments of service charge on an interim payment "from time to time" and to recover any balance as rent in arrear.

34. In relation to the amounts in dispute as stated in the application which are the amounts which the Tribunal understands are those unpaid, the Applicants are therefore liable to pay:-

2008	£425.38
2009	£211.55
2010	£734.28

Interpretation of the Lease

Accountancy Charges

35. The Applicants accepted that there were no additional charges in relation to the accountancy fees claimed and did not maintain their application in this regard. The Tribunal did not therefore need to make any determination in this regard. The Applicants will clearly be required to make payment of the accountancy charges in dispute insofar as not already paid.

Electricity Charges

Tribunal's decision

36. The Tribunal accepts that the amounts charged in addition to the cost of electricity are by way of additional management charges and not administration charges. The Tribunal determines however that the Lease does not permit recovery of these additional charges. Even if the Respondent were entitled to recover these charges as part of the overall management fee, the Tribunal determines that any increase to the management fee to reflect these amounts would not be reasonable.

Reasons for Tribunal's decision

37. Mr Mire explained to the Tribunal the nature of the sums in issue in this regard. These are charges which the Applicants describe as "administration charges" but are in reality charges raised by the Landlord's managing agents for dealing with readings of individual meters within the Building, apportioning utility bills received from suppliers between the various commercial and residential users and negotiating with suppliers as to rates and dealing with suppliers. It was also clear from what Mr Mire said that the item "electricity" included in the service charge accounts included also the cost of water as well as what are in reality management charges for handling both supplies.

38. Mr Mire relied on clause 22 of the Lease as permitting recovery of these sums. He submitted that these charges fall within the words "*general management maintenance safety convenience and administration of the Building.*"

39. Clause 17 of the Lease undoubtedly permits the Landlord to reclaim the cost of electricity to the common parts of the Building. Clause 18 contains a slightly narrower permission in relation to water (only in relation to the overall heating and hot water system).

40. The Applicants' complaint was both in relation to whether the Lease permitted recovery but also that the amounts charged for additional administration were hidden in the description "electricity" so that it was difficult to ascertain whether those amounts were reasonable.

41. It was not entirely clear what amounts were being charged in this way and the Tribunal agrees with the Applicants that it is very unsatisfactory for what are in reality additional management charges to be disguised in this way under the heading "electricity". At one point, Mr Mire appeared to indicate that the figure

charged for this additional administration was £425 + VAT per quarter therefore £1700 + VAT per annum of which the Applicants would be obliged to pay 4.64%.

42. The Tribunal agrees with Mr Mire that these are not administration charges. It is clear that they do not fall within the definition in paragraph 1, schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("CLARA").

43. Clause 17 of the Lease does not permit the Landlord to recover these additional charges as part of the cost of supplying electricity to the common parts. In relation to clause 22, however, the Tribunal considers that, if it had been intended that administration in relation to the cost of providing electricity should be recoverable from the Tenant then clause 17 would have been worded in such a way as to permit that. It is not.

44. Even if the Landlord were permitted to include administration as part of its management charges, the Tribunal takes the view (as indicated below) that its management fee is already at the high end of what is reasonable and that the charges for these additional services should form part of what is already charged as a management fee.

45. Since it is unclear what the relevant charges were for the 3 years in question and it is not clear what the Applicants have and have not paid in this regard, the Tribunal directs that the Applicants are not liable for these charges and, insofar as already paid, those should be refunded or set off against the Applicants' liability for service charges identified above.

Management Fee for Service Charge Year 2010

Tribunal's decision

46. The Tribunal accepts that the overall management fee is reasonable albeit at the high end of what is reasonable. However, in light of the failings of the previous managing agents in the first half of 2010 as admitted by the Respondent in the letter dated 6 April 2010 from Oakwood Estates to the lessees of the Property, the Tribunal determines that the amount of the management fee for 2010 should be reduced by 50%. The Applicants' share is therefore £125.96 instead of £251.92

Reasons for Tribunal's decision

47. Mr Galliers explained that the management fee for the residential part of the Building in 2010 was £5429.35. This was comprised of £1067.40 which was the share payable by the residential parts in relation to the overall management charges for the Building and £4361.95 which was charged only to the residential tenants of the Building. The Applicants' share of this was 4.64% or £251.92.

48. Mr Galliers referred to a letter sent by Oakwood Estates to all the lessees in the Building dated 6 April 2010. That letter stated as follows:-

" We have taken over the management of Stanmore Towers from TPM (Trust Property Management) as from 25th March 2010 following a series of mistakes and poor performance as Managing Agents. Before the mistakes are

compounded we felt it necessary to intervene and take this action as was explained in our previous letter. We will be grateful if you would cooperate with us to remedy some of the long standing issues... We hope to deliver a much better service including upgrading the building and reducing the service charges in the long run... We are drawing up a programme of scheduled works to be initiated as soon as we have resolved the outstanding matters detailed above and ask for your cooperation in this."

49. The Tribunal notes that this was the second change which the lessees of the Building had seen during the period in dispute in this application. It is therefore unsurprising that the Applicants should consider that they have been poorly served by the various managing agents particularly in light of such clear admissions of failings.

50. In the view of the Tribunal, a managing agent's fee of £250 per flat per annum is reasonable for a property of this nature. It is however at the high end of what is reasonable. In light of the clear admission of failure by the managing agent in place during the first few months of 2010 and the likelihood that it would take a little time for Oakwood Estates who took over the Building to remedy those failings, the Tribunal takes the view that it is reasonable to discount the management fee for 2010 by 50%, thus reducing the Applicants' liability to £125.96.

Application under s.20C and refund of fees

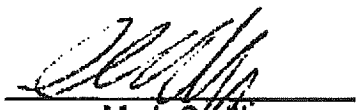
51. In the application form and at the hearing, the Applicants applied for an order under section 20C of the 1985. For the reasons stated above, although the Applicants have succeeded in part of their application, their main point and the one which took the majority of the hearing time was decided in the Respondent's favour.

52. Further, Mr Mire explained in relation to questions from the Tribunal about why mediation had not succeeded that the Landlord had in fact formally applied for mediation after the pre-trial review, the Applicants having resisted informal efforts to meditate. The Applicants had however refused to mediate. Mr Galliers indicated that he had not considered mediation to be appropriate in light of the fact that the Applicants' major point was legal in nature and could not be resolved by mediation.

53. In the view of the Tribunal, whilst mediation might not have succeeded in resolving the legal issue, that was of less importance to the Applicants than understanding in fact who was their Landlord, the interrelationship between the Landlord and the various managing agents and how the service charges were calculated and what it was reasonable for them to pay. So much was evident from a letter produced to the Tribunal by the Respondent written by TPM to the residents dated December 2009. The dispute might therefore have been successfully mediated without the need to resolve the technical legal issue on which Mr Galliers and the Applicants focussed.

54. Mr Mire also explained that Mr Galliers had been appointed by the residential tenants in the Building to look at the level of service charges. In that context, Mr Galliers had been given full access to all files held by the various managing agents, Mr Pankhania of Oakwood Estates and the accountants. All had been willing to discuss with him any issues arising from that inspection and this application could have been avoided altogether.

55. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that an order should not be made under s20C. For the reasons stated above, the Tribunal also declines to order that the Respondent should refund the fees paid by the Applicants (under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

Chairman: 

Ms L Smith

Date: **13 February 2012**

APPENDIX 1

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
(a) "costs" includes overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

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

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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

Section 21B

(1) 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.
(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such rights and obligations.
(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

Section 27A

(1) An application may be made to a Leasehold valuation tribunal 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 by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the Tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

LANDLORD AND TENANT ACT 1987
PART VI
INFORMATION TO BE FURNISHED TO TENANTS
Section 46
(1) This Part applies to premises which consist of or include a dwelling and are not held under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.
(2) In this Part "service charge" has the meaning given by section 18(1) of the 1985 Act
(3)....

Section 47
(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely –
(a) The name and address of the landlord
(b) .....
(2) Where –
(a) A tenant of any such premises is given such a demand, but
(b) It does not contain any information required to be contained in it by virtue of subsection (1),

Then (subject to subsection (3)) any part of the amount demanded which consists of a service charge (or an administration charge) ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or as the case may be administration charges from the tenant.
(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Section 48
(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.
(2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.
(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or as the case may be administration charges from the tenant.

SERVICE CHARGES (SUMMARY OF RIGHTS AND OBLIGATIONS, AND TRANSITIONAL PROVISION) (ENGLAND) REGULATIONS 2007
Paragraph 2
(1) Subject to regulation 4, these Regulations apply where, on or after 1st October 2007, a demand for payment of a service charge is served in relation to a dwelling.
(2) Subject to paragraph (3) these Regulations apply to dwellings in England which are subject to a lease.
(3) .....

Paragraph 3

Where these Regulations apply the summary of rights and obligations which must accompany a demand for the payment of a service charge must be legible in a typewritten or printed form of at least 10 point, and must contain—
(a) the title "Service Charges – Summary of tenants' rights and obligations"; and .
(b) the following statement — .
"(1) This summary, which briefly sets out your rights and obligations in relation to variable service charges, must by law accompany a demand for service charges. Unless a summary is sent to you with a demand, you may withhold the service charge. The summary does not give a full interpretation of the law and if you are in any doubt about your rights and obligations you should seek independent advice.
(2) Your lease sets out your obligations to pay service charges to your landlord in addition to your rent. Service charges are amounts payable for services, repairs, maintenance, improvements, insurance or the landlord's costs of management, to the extent that the costs have been reasonably incurred.

(3) You have the right to ask a leasehold valuation tribunal to determine whether you are liable to pay service charges for services, repairs, maintenance, improvements, insurance or management. You may make a request before or after you have paid the service charge. If the tribunal determines that the service charge is payable, the tribunal may also determine—
who should pay the service charge and who it should be paid to;
the amount;
the date it should be paid by; and
how it should be paid.
However, you do not have these rights where—
a matter has been agreed or admitted by you;
a matter has already been, or is to be, referred to arbitration or has been determined by arbitration and you agreed to go to arbitration after the disagreement about the service charge or costs arose; or
a matter has been decided by a court.
(4) If your lease allows your landlord to recover costs incurred or that may be incurred in legal proceedings as service charges, you may ask the court or tribunal, before which those proceedings were brought, to rule that your landlord may not do so.
(5) Where you seek a determination from a leasehold valuation tribunal, you will have to pay an application fee and, where the matter proceeds to a hearing, a hearing fee, unless you qualify for a waiver or reduction. The total fees payable will not exceed £500, but making an application may incur additional costs, such as professional fees, which you may also have to pay.
(6) A leasehold valuation tribunal has the power to award costs, not exceeding £500, against a party to any proceedings where—
it dismisses a matter because it is frivolous, vexatious or an abuse of process; or
it considers a party has acted frivolously, vexatiously, abusively, disruptively or unreasonably.
The Lands Tribunal has similar powers when hearing an appeal against a decision of a leasehold valuation tribunal.
(7) If your landlord—
proposes works on a building or any other premises that will cost you or any other tenant more than £250, or
proposes to enter into an agreement for works or services which will last for more than 12 months and will cost you or any other tenant more than £100 in any 12 month accounting period,
your contribution will be limited to these amounts unless your landlord has properly consulted on the proposed works or agreement or a leasehold valuation tribunal has agreed that consultation is not required.
(8) You have the right to apply to a leasehold valuation tribunal to ask it to determine whether your lease should be varied on the grounds that it does not make satisfactory provision in respect of the calculation of a service charge payable under the lease.
(9) You have the right to write to your landlord to request a written summary of the costs which make up the service charges. The summary must—
cover the last 12 month period used for making up the accounts relating to the service charge ending no later than the date of your request, where the accounts are made up for 12 month periods; or

cover the 12 month period ending with the date of your request, where the accounts are not made up for 12 month periods.
The summary must be given to you within 1 month of your request or 6 months of the end of the period to which the summary relates whichever is the later.
(10) You have the right, within 6 months of receiving a written summary of costs, to require the landlord to provide you with reasonable facilities to inspect the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them.
(11) You have the right to ask an accountant or surveyor to carry out an audit of the financial management of the premises containing your dwelling, to establish the obligations of your landlord and the extent to which the service charges you pay are being used efficiently. It will depend on your circumstances whether you can exercise this right alone or only with the support of others living in the premises. You are strongly advised to seek independent advice before exercising this right.
(12) Your lease may give your landlord a right of re-entry or forfeiture where you have failed to pay charges which are properly due under the lease. However, to exercise this right, the landlord must meet all the legal requirements and obtain a court order. A court order will only be granted if you have admitted you are liable to pay the amount or it is finally determined by a court, tribunal or by arbitration that the amount is due. The court has a wide discretion in granting such an order and it will take into account all the circumstances of the case."..

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1
(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

APPENDIX 2

CLAUSES OF THE LEASE RELEVANT TO THIS APPLICATION

Clause 1 (definitions)

"the Services " The Services referred to in the Fifth Schedule hereto

"the Service Charge" the rent secondly hereby reserved calculated in accordance with the Sixth Schedule and clause 5(d) hereunder

"the Managing Agents" Any Agents (including the Landlord itself or any other company or group of persons associated or in partnership with the Landlord) appointed by the Landlord from time to time to manage the Building

Clause 2

"IN CONSIDERATION of the Premium referred to in the Particulars now paid bythe Tenant to the Landlord... the Landlord HEREBY DEMISES unto the Tenant ALL THOSE the demised premises... TO HOLD the demised premises unto the Tenant for the term from and including the Date of Commencement of Term specified in the Particulars for the period specified as Length of Term in the Particulars YIELDING AND PAYING therefore yearly and proportionately for any fraction of a year from the Rent Commencement Date specified in the Particulars FIRSTLY the Initial Rent and thereafter the Subsequent Rents as specified in the Particulars by annual payments in advance on the 1st day of January in every year ....AND SECONDLY by way of further and additional rent the amount attributable to the Demised Premises in respect of the Service Charge and due from the Tenant in accordance with the Sixth Schedule hereto"

Clause 3

"The Tenant HEREBY COVENANTS with the Landlord as follows:-

(a) To pay by Bankers Order the rents hereby reserved at the times and in the manner aforesaid"

Clause 4

" TENANT'S FURTHER OBLIGATIONS

The Tenant HEREBY COVENANTS with the Landlord and separately with and for the benefit of the Flat Owners as follows:

....

(g) To promptly pay to the Landlord the Service Charge at the times and in the manner provided in clause 5(d) and in the Sixth Schedule hereunder"

Clause 5

THE LANDLORD HEREBY COVENANTS with the Tenant as follows:

....

(d) Subject to the Tenant paying to the Landlord a proportionate part of the cost of insuring the Landlord's Estate and comprised as part of the Service Charge to insure and/or procure the Superior Landlord to insure and keep insured the Building against

the Insured Risks in the name of the Landlord and/or Superior Landlord in some insurance office ore repute....
(e) Subject to the Tenant paying to the Landlord the rent firstly and secondly hereinbefore reserved to use all reasonable endeavours ain accordance with the principles of good estate management to carry out provide manage and operate the Services PROVIDED NEVERTHELESS that:-
(i) in performing their obligations hereunder the Landlord shall be entitled at their reasonable discretion to employ agents contractors or such other persons as the Landlord may from time to time reasonably think fit....."

"THE FIFTH SCHEDULE
The Services in respect of which the Tenant shall make a contribution

.....
7. Employ at their discretion a firm of Managing Agents to manage the Building and discharge all proper fees salaries charges and expenses payable to such agents such other persons who may be managing the Building (including such reasonable management fee) including further the cost of computing and collecting the rents on behalf of the Landlord in respect of the Building or any part thereof and the Landlord shall be entitled to delegate to the Managing Agents all matters referred in this Lease to be carried out or done or decided upon by the Landlord hereunder that the Managing Agents shall have complete discretion in connection with the services to be provided to the Tenant hereunder.

8. Employ all such .....accountants auditors or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the building

....

17. The cost of the oil gas electricity or other fuel required for the supply of the heating serving the Building and for the lighting of the entrance halls stairways and other common parts of the Building

...

22. All costs whether or not referred to above incurred by the Landlord (including Surveyors fees and legal fees) as the Landlords shall deem necessary or advisable in the general management maintenance safety convenience and administration of the Building...

"THE SIXTH SCHEDULE

1.2 "Total Expenditure" means the total expenditure incurred by the Landlord in any Accounting Period in carrying out its obligations under this Lease and any other costs and expenses reasonably incurred in connection with the Building including without prejudice to the generality of the foregoing (a) the cost of employing Managing Agents (b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the tenant hereunder and
1.3 "the Service Charge" means such proportion of Total Expenditure relating to the Building as are specified in the Particulars....
1.4 "the Interim Charge" means such sum or sums to be paid on account of the Service Charge in respect of each Accounting Period as the Landlord or their

Managing Agents shall from time to time specify at their discretion to be a fair and reasonable interim payment.....

....

3. The first payment of the Interim Charge....shall be made by the Tenant to the Landlord on the execution hereof and thereafter the Interim Charge shall be paid by the Tenant to the Landlord from time to time on demand and in case of default the same shall be recoverable from the Tenant as rent in arrear

4. If the Interim Charge paid by the Tenant in respect of any Accounting Period exceeds the Service Charge for that period the surplus of the Interim Charge so paid over and above the Service Charge shall be carried forward by the Landlord and credited to the account of the Tenant in computing the Service Charge in succeeding Accounting Periods as hereinafter provided

5. If the Service Charge in respect of any Accounting Period exceeds the Interim Charge paid by the Tenant in respect of that Accounting Period together with any surplus from previous years carried forward as aforesaid then the Tenant shall pay the excess to the Landlord within twenty eight days of service upon the Tenant of the Certificate referred to in the following paragraph and in case of default the same shall be recoverable from the Tenant by the Landlord s rent in arrear

6. As soon as practicable after the expiration of each Accounting Period a certificate shall be prepared and served upon the Tenant by the Landlord or the Managing Agents containing the following information:

- The amount of the Total Expenditure for that Accounting Period
- The amount of the Interim Charge paid by the Tenant in respect of that Accounting Period together with any surplus carried forward from the previous Accounting Period
- The amount of the Service Charge in respect of that Accounting Period and of any excess or deficiency of the Service Charge over the Interim Charges

.....

8. If in the opinion of the Landlord it should at any time become necessary or equitable to do so ....for any reason whatsoever the Landlord or its Surveyor shall be at full liberty to recalculate the proportion of the Tenants Share of the Service Charge in such manner as the Landlord shall reasonably determine and shall notify the Tenant accordingly and in such case as from the date of such event the new proportion of the Tenants Share of the Service Charge notified to the Tenant in respect of the Demised Premises shall be substituted for that or those previously notified...."

" PARTICULARS
TENANTS SHARE OF TOTAL EXPENDITURE UNDER SIXTH SCHEDULE
"SERVICE CHARGE"
A fair and reasonable proportion to be determined by the Landlord or the Landlord's Surveyor