

LON/00AG/LSC/2008/0253



LANDLORD AND TENANT ACT 1985 SECTION 27A & 20C

**LEASEHOLD VALUATION TRIBUNALS (PROCEDURE) (ENGLAND)
REGULATIONS 2003.**

Correction Certificate under Regulation 18(7) of the above Regulations:

Flat 25, 45 New Compton Street, London WC2H 8DF

As Chairman of the Leasehold Valuation Tribunal which decided the above mentioned case, I hereby correct a clerical error in the decision of the Tribunal, dated 13th January 2009:

At paragraph 9.12, first line, the word "Applicant's" should be substituted for the word "Respondent's".

Chairman: S.SHAW



Date: 21st January 2009



**Residential
Property**
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 Section 27A

LON/00AG/LSC/2008/0253

Property: Flat 25
45 New Compton Street
London
WC2H 8DF

Applicant: Mr David A. Roberts

Respondent: The London Borough of Camden

Appearances: The Applicant in person
Mrs K C Monk
(Treasurer of Tenants Association)
for the Applicant
Mr K Schooling – Housing officer
Mr P Couper –
Management Accountant
Ms Jayananthi Heitarachi –
Service Charge Manager
for the Respondent

**Dates of Hearing/Inspection and
Consideration of Tribunal:** 27, 28, 29 October, 16th December 2008

**Date of Receipt of further
Documents/Submissions:** 10th and 12th November 2008

Date of Decision: 13th January 2009

Tribunal Members: Mr S Shaw LLB (Hons) MCRIArb
Mr C White FRICS
Mr E Goss

DECISION

1.0 INTRODUCTION

- 1.1 This case involves an application by Mr David A Roberts ("the Applicant") in respect of Flat 25, 45 New Compton Street, London WC2H 8DF ("the Property"). The Applicant is the long leasehold owner of the property and the application is made against the London Borough of Camden ("the Respondent"), which is his immediate landlord and the head lessee of the property. The application is made pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act"), for a determination as to the payability of certain service charges.
- 1.2 The application is dated 9 June 2008 and puts in issue the charges made during the 8 service charge years from 2001/02 – 2008/09. Directions were given in the matter on 15 July 2008. A three day hearing of the matter took place between 27-29 October 2008; on 27th and 28 October the Tribunal heard evidence and submissions from the parties and on 29 October the Tribunal inspected the property and was able to consider later that day some of the evidence and submissions in the absence of the parties. However, there remained one issue upon which the parties were requested to make further representations in writing (relating to certain overheads charges which will be referred to below). These submissions were received on the 10th and 11th November 2008 and the Tribunal was able to reconvene to consider the case in its totality on 16th December 2008.
- 1.3 At the inception of the hearing, this long running matter, covering as indicated, very many service charge years was discussed generally between the Tribunal and the parties. It was agreed with the parties that the Tribunal should consider the sample service charge year 2005/6 and make findings on each of the issues raised by the Applicant, and that the parties would thereafter liaise with each other to establish the impact, if

any, of those findings upon the service charge for the several years in issue. It is on this basis that the Tribunal proceeds.

- 1.4 It should also be mentioned that strictly, this application is made by Mr Roberts, the leasehold owner of Flat 25 only. However, Mrs Christine Monk also attended the hearing. She is the secretary of the Residents' Association at the property and confirmed to the Tribunal that she and her Association, representing other occupiers at the property, were fully supportive of the Applicant and the specific challenges he makes within the context of his application.
- 1.5 There is a description of the property in the Applicant's application, which is not controversial. The Applicant's particular flat is a top floor studio property of about 30 sq. metres. 45, New Compton Street is a four floor residential block built in 1971 and comprising 24 flats in all. Thirteen are privately owned under long leases, and the remaining occupiers are council tenants. The Applicant's contention (which was rejected by the Respondent) was that the property had been badly neglected by the Respondent over many years and treated as somewhat of a "poor relation" in the context of its housing stock. He speculated that the reason for this was the preponderance of long leaseholders within the block, as compared with council tenants.
- 1.6 As indicated above, it is proposed to separate and deal specifically with each of the issues raised by the Applicant, which issues recur for most of the years in issue.

2.0 TV AERIAL CHARGE

- 2.1 The Applicant's evidence in this regard was that the Respondent became the head lessee of the property in 1974. As from about 1972 all the flats in the building had internal linkage to an ordinary terrestrial television aerial situate on the roof. At some stage it was discovered that better reception could be obtained by increasing the height of the

aerial and so this adjustment was made. Thereafter for many years the occupiers of the building enjoyed perfectly satisfactory reception from this aerial. However, an item appeared one year (he thought in the late 1990's) in the service charge levied, referable to the TV aerial. This was queried at tenants' meetings, and for a while the charge disappeared but thereafter re-appeared.

- 2.2 The Applicant's case, as supported by the other leaseholders, is that although the charge is technically recoverable under the lease, they are getting no value for this charge at all. The explanation for the charge would appear to be that on some identified date, perhaps during the late 1990's some digital TV equipment was installed on the roof (for which the leaseholders were levied a charge) and thereafter this equipment has been the subject of a service contract and carrying an annual charge.
- 2.3 Mr Schooling on behalf of the Respondent seemed to confirm that this is the position. He referred to a sample year of service charge accounts, that is to say the charges made in 2004/05 (and also in fact in 2005/06) which were £80.64 for the whole building, which computed to £3.36 per unit. His explanation was that the Respondent engages borough-wide contractors to service this type of TV equipment. It may be that for some years nothing is required and nobody attends but on other occasions they may do so, and that in the long run it is cheaper to have such a contract. However, he was completely unable to explain how the charge of £80.64 had been calculated. He did not have a copy of the relevant service contract, and could not say whether or not anyone had in fact had occasion to go to the building at all.
- 2.4 The Applicant's position was that nobody had ever asked for or wanted this further equipment to be installed. The residents see no extra benefit from it and have always been perfectly content with the terrestrial aerial previously in-situ.

2.5 So far as the Tribunal is concerned, there is no evidence from the Respondent of the existence of this contract. The Respondent was unable to explain what the contract, assuming it exists, contains, and what benefit is enjoyed by the occupiers of the building. It appeared from the evidence that, ironically, the charge was being made not so much for the digital equipment but for the ordinary aerial, in respect of which the Applicant's evidence was that no attention to this aerial had ever been necessary or given. It was not at all clear to the Tribunal that there was a particular "value for money" being enjoyed by the Applicant under this head or, more accurately, that the sum was being "reasonably incurred" for the purposes of the Act. Although this is a small sum, it is typical of various other sums later to be dealt with in this Decision, and on balance the Tribunal considers it to be unreasonably incurred or levied, and disallows this sum.

3.0 REFUSE COLLECTION

3.1 The Applicant's evidence was that again, in the late 1990's, the leaseholders started getting a charge purportedly referable to the hire of paladins. He queried this charge and discovered that the leaseholders were being billed for the hire of 3 paladins. He again queried this because there were never 3 paladins but only 2. Apparently the Respondent thereafter made an adjustment. This in itself was unsatisfactory because the Applicant argued that those 2 paladins had always been part of the equipment of the building and had never been supplied by the Respondent. It appeared however that one disappeared and was replaced by a square or more modern paladin. Generally the Applicant contended that the original which it replaced had never required replacement and this further paladin, for which a charge is now being raised by way of rental, need never have been supplied. In principle and in any event he could not understand why the paladin was being hired rather than simply being bought outright.

3.2 Mr Schooling on behalf of the Respondent told the Tribunal that these charges are raised by the refuse service, which is part of the Local Authority Environmental Department. Charges have to be agreed by the council and then applied to all departments. The charge is designated "hire charge" but in some respects that was misleading. If for example a wheel comes off one of these paladins, then it is repaired or the Environment Department will replace it. It is simply a fixed charge raised annually in accordance with the Respondent's general policy.

3.3 So far as the Tribunal is concerned, the relevant paladins are illustrated in some photographs which were supplied to the Tribunal, in this case, photographs numbers 6 and 7. On the evidence the Tribunal is satisfied that one of the two paladins has always been at the building, and is not subject to any hire charge. The evidence is not entirely clear but it appears that the other paladin may have required replacement through disrepair or obsolescence, and the Tribunal's finding is accordingly that the charge under "refuse service" for each of the relevant years should be reduced by 50% to reflect this finding.

4.0 DOOR ENTRY PHONE CHARGES

4.1 The evidence from the Applicant in this regard was that there had always been a particular door entry phone system from 1972. However, during the 1990's drug dealing became a problem in the area and the police suggested the doors be repositioned. He considered that to be a sensible move, but then a new system was put in at the cost of about £4,000. Unfortunately, from his point of view no CCTV system was installed and the new version was really not much of an improvement on that which had existed before. Up until 2001 no charge had been made but then the position suddenly changed and now a significant annual charge is made, which for the most recent year has risen to £926 per annum for the building. The Applicant's evidence was that this seemed an extraordinarily high figure, aggravated by the fact that the service

contract appeared to be geared to “fob” operated systems whereas the system in operation at the flats was an ordinary door lock.

- 4.2 The Applicant told the Tribunal that nobody in the block had seen any evidence of anyone attending to do any particular servicing and indeed the only servicing there could be would be in respect of the lock on the front door – which was not specifically covered by the agreement and would apparently, if requiring attention, attract a separate charge. For his part the service was worthless and he would much rather pay a charge for a CCTV camera to be installed, but that had never occurred. He told the Tribunal that at one stage there had been an agreement with the Respondent that they would not be charged for this “service” which agreement was put in effect for a period but then the charge was reinstated. His evidence was that in his experience (he carries out some property management of his own) contractors of this kind might charge between £100 - £200 for a call out. As in respect of other charges challenged, he contended that he and his fellow leaseholders were paying for a service which was really being supplied for other buildings in the borough but not their own.
- 4.3 Mr Couper on behalf of the Respondent confirmed that the contract price was agreed with contractors by reference to the number of unit blocks within an area designated by the Respondent, to cover a number of different properties owned by them – and the price was not “custom-priced” by reference to the particular buildings. So, as in this case, a “non-fob” system on a particular block, which operated by key only, could well be paying indirectly for a service given to other blocks of flats within the borough. He speculated that the Respondent may phase out this type of agreement for service in the future, but that at present it does indeed obtain.

4.4 The Tribunal's finding in respect of this challenge is that it is satisfied that the Applicant is in fact not getting value for money for the charge rendered. The "service" provided does not cover the type of lock system operating at this building and is geared for an entirely different system, which obtains at other blocks of flats within the portfolio of the Respondent, but not at this particular property. The Applicant, supported by Mrs Monk, told the Tribunal they would rather do without this service altogether, since they obtain no benefit from it. No particular criticism is made of the Respondent for putting in place this type of provision for other properties within its responsibility, but in this particular case the evidence was, and the Tribunal accepts such evidence, that the Applicant and his fellow leaseholders have always told the Respondent that this system is inappropriate for them, and it appears that indirectly the Applicant, no doubt unwittingly so far as the Respondent is concerned, is contributing to services provided to others within the borough. This charge is therefore reduced to £200 per annum to allow for an annual inspection and call outs.

5.0 ESTATE LIGHTING / LIGHTING MAINTENANCE

5.1 A charge is made each year under one or other of these heads (most recently the latter). The Applicant informed the Tribunal that there were 32 internal lights in the building and that from about 2002/03 some new system of maintenance charge in relation to this lighting had been "foisted" upon the leaseholders. Apparently there was some form of service contract, and for 3 years the Applicant and the other leaseholders were charged on the basis of there being 116 lights in the building. During those 3 years the billing was for three times more than the actual electricity usage and the Applicant and Mrs Monk informed the Tribunal that so far as they were concerned on such occasion as the internal lights required replacement, it was the Caretaker who did so rather than any external contractors. They were also troubled by the fact

that when the new system was installed, it was carried out without installing any time switch so that the lights were on 24 hours a day and the electricity bill escalated dramatically. In summary, once again the Applicant's evidence was that this service contract in relation to lighting maintenance gave the Applicant and his fellow leaseholders no benefit at all.

- 5.2 Mr Schooling on behalf of the Respondent referred to paragraphs 33 – 38 of his Statement of Case on behalf of the Respondent, and in oral evidence, referred to "Annexure 7" and "Annexure 8" for examples of how the calculation of the charge to the Applicant had been made and a "Reactive repairs to estate lighting/electrical installations" report showing how the particular contractors were appointed. He told the Tribunal that the service provided involves, amongst other matters, the contractor being liable to repair or renew all faulty light fittings to the block including the replacement of faulty lamps to fittings above 3 metres. However, the Applicant's evidence was that there were no lights above 3 metres. This evidence was confirmed by the Tribunal upon inspection, with exception, perhaps, of a ceiling light in the entrance hall. Mr Schooling frankly conceded that if it is the case that there is nothing above 3 metres in this particular building, then perhaps the charge should not be made.
- 5.3 So far as the Tribunal is concerned, as indicated, the members of the Tribunal inspected the property and our finding was that internally there are no more than 32 lights, only one, perhaps, of which, is above 3 metres and which could be reached fairly easily by a Caretaker using a step ladder. In so far as the charges referable to "estate" lighting", this particular building is not part of an estate. The building stands alone and the only relevance such a charge could have is, possibly, to the car park area where there are a few lights, but it did not appear to be any part of the Respondent's case that this was the basis upon which the charge was made – and in any event the Applicant's evidence was that nobody was ever seen from the Respondent changing these lights. Again, the view of the Tribunal is that this type of charge is one which may have

some relevance to other properties within the Respondent's housing stock, but is of no relevance to this particular block of flats. The Tribunal considers that the charge is unreasonable in relation to this block and should be deleted from the service charge account in its entirety.

6.0 MOBILE SECURITY

6.1 This matter can be dealt with shortly, because it was conceded, very sensibly by the Respondent, that this is a charge referable to properties on an estate and should not have been made in relation to this building. The Respondent conceded that this charge should be removed, and the Tribunal records this fact. It is however illustrative and indicative of the fact that this building has historically, and in some cases erroneously, been treated as if it is a typical block on an estate within the Respondent's housing stock, whereas it is in fact atypical.

7.0 CLEANING

7.1 Each year a charge is made in the service charge account for "caretaking services". It is common ground between the parties that these caretaking services are essentially cleaning services carried out at the property and in respect of the common parts. The Applicant's evidence was that the building has had the same cleaner/caretaker for several years, and he and the other leaseholders are perfectly content with the person concerned, who does a very satisfactory job. Their challenge is not in respect of the quality of his work but in respect of the charge made for it by the Respondent. Since the service charge year 2003/04 there has, on the evidence of the Applicant been an uplift in the charge made for these services in the order of 40%. The total charge for the building in 2007/08 is £13,364.88 and the estimate for the year ending 31 March 2009 is £16,729.68. The Applicant's evidence was that these charges have "gone through the roof" and he had been unable to extract from the Respondent an explanation for this beyond the suggestion that the caretaker's "overheads" had been the cause. Given

that the Applicant's evidence was that there was simply 2 internal corridors to maintain, he argued that the charges were excessive and more in keeping with a full time concierge. His evidence was that about 6 hours work a week would be sufficient (say 1 hour a day for 6 days). The building was an easy building to maintain or clean and the contention was that £18 per hour would be a perfectly reasonable hourly charge using current rates. When the Respondent had been asked for a breakdown as to how this figure had been arrived at, a document was supplied listing all manner of constituent parts to the charge which, in keeping with many of the other charges levied, had no relevance to this particular building. Examples were the provision of a "Patch Manager" and "Mayor's Allowance" – the Applicant and the other leaseholders have never met or seen any such "Patch Manager", nor could they understand why an allowance for the Mayor was included in the costs for cleaning in relation to their block (see page 118 of the Respondent's Bundle), despite, apparently, a request for a meeting to elicit such an explanation.

7.2 So far as the Respondents were concerned, both Mr Schooling and Mrs Jayananthi Heitarach took the Tribunal through the charge levied in relation to each service charge year and explained how it was made up of an element relating to the "block" and another element relating to the "estate". Mrs Jayananthi Heitarach in particular, carefully explained the accounting process by which the Respondent lists all the caretaking expenses in an area designated as "Holborn District" and divided by the total hours of all the caretakers in this Holborn District. She also took the Tribunal to a standard job description, but the Applicant and Mrs Monk told the Tribunal that again, this was of no real application to their particular block because the cleaner concerned (in respect of whom once again no complaint was made) simply swept and mopped up the entrance hall and other communal corridors and checked and returned the communal rubbish bins. He carried out various other daily and weekly duties, but nothing of a particularly sophisticated kind.

7.3 The finding of the Tribunal is that the calculation of these costs has been carried out by the Respondent in a manner inappropriate for this particular block. There are no "estate" costs as property so described. There is simply a small car park area. It appears that the costs have been calculated by reference to service contracts with contractors covering the "Holborn District" and not by reference to this particular block of flats. Doing the best it can on the information before it, applying its own experience and knowledge of such cleaning charges as ventilated with the parties, the Tribunal takes the view that 5 hours a week for the block itself and 1 hour a week to deal with the car park would be sufficient for cleaning purposes; this would mean 312 hours a year at £18 per hour (which the Tribunal considers reasonable). This would compute to £5,616 per annum for the current year, inclusive of materials. The Tribunal considers that this is the appropriate sum to be substituted for the current year. In respect of the sample year examined during the hearing (2005/06) the hourly rate would have been slightly less, say £17 per week. This would compute to £5,304 per annum, say £5,500 per annum to include materials. It is a matter for the parties but it may be simplest to use this rate across the board for the relevant service charge years challenged than to start a fresh on current rates for subsequent years.

8.0 CERTIFICATION OVER ANNUAL SERVICE CHARGE ACCOUNTS

8.1 The Applicant's lease (or under-lease) in this case entitles him to a copy of a certificated service charge statement upon written request (clause 2 (3)(c)). By virtue of clause 2 (3)(a) this certificate should be signed by the appropriate council officer "*so soon after the end of the Corporation's financial year as may be practicable.....*" It is the Applicant's case that he has repeatedly requested both orally and in writing these accounts duly certified, but that they were not so supplied until very shortly before he issued his application. In some cases these certificates relate to accounts many years before the date of the certification. Indeed the accounts produced before the Tribunal are in the main dated 7 March 2008, and do indeed appear to have been supplied together, some years after the event.

8.2 Mr Schooling on behalf of the Respondent conceded that this was indeed the case, but said that there were no penalty provisions within the lease in this regard, and that the provision of such certificates was not a pre-condition to the liability to pay the service charges – he relied in particular upon clause 2(3)(i) of the lease. The Tribunal agrees with Mr Schooling in this regard, but comments that the late provision of such material has only served to feed the complaint that there is a lack of “transparency” made by the Applicant and other leaseholders against the Respondent. The Tribunal says no more in this regard since it has no particular financial repercussions, but it is hoped that, for the future, this position can be improved, so that the working relationship between the parties generally can be rendered more satisfactorily.

9.0 OVERHEADS

- 9.1 A major item of dispute between the parties, debated before the Tribunal orally and in the correspondence passing between the parties, has been the question of “Overheads”. In each of the service charge years the sums charged for the various services supplied are in respect of the actual cost of the service but also an element, included within the charge, to cover the Respondent’s “Overheads”. Upon these accumulative figures a further “administration charge” is charged at the rate of 10% in accordance with the lease. The essential case of the Applicant (which is set out very fully in his response to the Respondent’s Statement of Case, pages 8 and 9), is that there is no entitlement under the lease to charge this “overheads” cost. The Respondent for its part argues to the contrary, and it is appropriate that the Tribunal should examine the respective arguments before indicating its conclusion.
- 9.2 The starting point in respect of this matter is of course the under-lease itself. At the Third Schedule to the lease the various items of expenditure and outgoings in respect of which the tenant is to pay a proportionate part by way of service charge are set out. Nothing in

particular turns on these specific items. At the end of the schedule at paragraph 13 it is provided that the tenant is required to pay:-

"The Corporation's management charges for the building and for general management of the estate in which the building is situated in an amount equal to 10% of all other items included in the service charge".

- 9.3 It is observed by the Tribunal that this would appear to be a standard form lease used by the Respondent and it makes reference to charges for *"the building"* and *"of the estate of which the building is situated"*. As has already been observed above, there is in fact no *"estate"* in which this building is situated. It is a stand-alone building, and is perhaps unique within the Respondent's housing stock. The Tribunal was told something of the background to the Respondent acquiring this building, which was originally privately constructed and only subsequently acquired by the Respondent by purchase of an intermediate head lease, perhaps in the expectation that the freehold could thereafter be acquired. In the event the Applicant (whose father had been a director of the development company which had constructed the building) outbid the Respondent in the competition for the freehold, and so the Respondent has remained, perhaps a little unusually, the intermediate landlord in this case and – with one hat is the Applicant's landlord, but with another hat is his tenant.
- 9.4 There is no issue as far as the Respondent is concerned that it has indeed added an overhead element to most of the service charge claims made. The basis upon which it justifies this addition is set out in 4 lines at paragraph 43 of its Statement of Case but in more detail in "Annexure 10" to which that paragraph refers. Annexure 10 is a 4 page document headed "Overheads – General Explanation for Officers/Leaseholders". This is the document with which leaseholders are provided when they ask for an explanation of what overheads they are being charged for.

Where appropriate a proportion of costs are re-charged against CDC (corporate or democratic core) or strategy headings, as such they do not form a part of the direct costs of services and do not form any part of the re-charge to leaseholders. The remaining costs are re-charged against front line services”.

“Reasonableness/method of allocation

All commercial providers of services incur overheads, which are built into charges that they charge to clients for the services provided. Camden seeks to construct its service charges on the same basis and include similar charges. If Camden contracted out any of its front line services, the rates charged would cover many overhead costs similar to those charged to the services. Any organisation letting a contract will incur costs relating to the tendering, payment and control of those contracts.... these costs are considered to be service supervision and are only incurred because we provide the service involved. Camden therefore considers it is reasonable for such charges to be considered a direct cost of the service”.

- 9.7 Other parts of the document explain various ways in which these costs are allocated and calculated. As understood by the Tribunal the Respondent's case is that these costs have to be recouped from leaseholders because they are overheads incurred by the Respondent in providing the services and are recoverable as part of the cost of service, rather than an administrative charge applied to the essential unit cost.
- 9.8 So far as the Applicant is concerned, he argues that his liability is governed by his lease. To this extent the Tribunal is certainly in agreement with him. He further argues that if one goes through a schedule of the type of cost upon which “Overheads” have been included (see page 118 of the Respondent’s Bundle) one finds all manner of costs which have been incurred, no doubt perfectly legitimately within the Respondent Local Authority, but which are nothing

whatever to do with this particular property. These costs may well be recoverable against leaseholders whose leases require them to make a contribution to such costs. For example in many Local Authority leases there is provision for a service charge partly calculated by reference to "the Building" and partly by reference to "the Estate" or some other wider area within the borough including other housing stock, of which "the Building" is part. However, in relation to this particular under-lease, there is no such division of service charge. Although there is reference to "*the estate in which the building is situated*" at paragraph 13 of the Third Schedule, there is no definition of "*the Estate*" within the body of the lease and the demise is exclusively of "*the Flat*" number 25 situated on the fourth floor "*the Building*".

9.9 At clause 2(3) of the lease the tenant is required:-

"To pay to the corporation without any deduction by way of further and additional rent a proportionate part of the reasonable expenses and outgoings including all VAT incurred by the corporation in the repair maintenance renewal declaration and insurance and management of the said building and the provision of services therein and other heads of expenditure as the same are set out in the Third Schedule hereto such further and additional rent (hereinafter called "service charge")"

9.10 "Service charge" is thus referable exclusively to "*the said building and the provision of said services therein*" as set out in the Third Schedule. There exists in this lease no reference to payment other than those costs so defined.

Also of interest is the passage at page 59 in the Respondent's Bundle, again part of the Respondent's note on Overheads, which reads:

"Reasonableness/Method of Allocation – Support Services

As indicated above, except where there is clearly better method easily available, Camden allocates costs on one of two bases AGE(Adjusted

9.5 The Tribunal has found this document difficult in some cases to decipher. It explains various items of overhead under the heading "Nature of the Expenditure", for example:

"Direct costs of a service, directly controlled by the budget holder, where there is no available cost efficient method of direct allocation to job (i.e. block/estate) level. Examples might include cleaning materials or direct use of machinery".

Another explanation is

"Indirect costs of a service not re-charged to the budget holder. These will be costs that remain on their originating cost centre and are not re-charged on to the relevant budget. An example might be a proportion of district manager's costs left on its original cost centre".

9.6 It is not clear what an average leaseholder would make of these explanations. As expanded in evidence to the Tribunal, we were told that for example, the Respondent council has many thousands of units in respect of which utility bills have to be processed and checked. This is a burdensome and costly exercise and involves the Respondent in costs over and above the charging of the actual consumption of, say, gas or electricity. The matter is explained further in another part of the document referred to:-

"Nature of the expenditure

Support services

Support services are a significant overhead on services. The allocations are complex and not easy to explain but the principle is common across all services. There are a number of cost centres that are categorised as CSS or HSS within the council's accounts. The costs of these services are re-charged to services in full. Such services may be broadly categorised as those that do not provide a direct service to the public.

Gross Expenditure) or FTE (Full Time Equivalents). It is an allocation rather than a precise determination of costs, so overall fairness and reasonableness rather than accuracy is perhaps the best concept to apply.”

Once again, however “reasonable” this approach may be in some cases, in this particular case, it seems to the Tribunal that this bears no relationship to the respective obligations of these parties as contained within the lease.

9.11 After some consideration, the Tribunal accepts and prefers the contention put forward by the Applicant. The Tribunal accepts that there may be an argument for some uplift in the service charge made in particular cases to cover an overhead which is so inextricably bound up with the provision of the service that it is in fact a proper part of the service charge. However, if that is the case, it seems to the Tribunal that the leaseholders are entitled to have explained to them what that uplift is (in financial terms) and how it has been calculated. There has been no such satisfactory explanation in this case, other than to say that (as recited in the document referred to) *“the allocations are complex and not easy to explain.....”* The Tribunal is not persuaded that this is sufficient.

9.12 Furthermore, the Tribunal accepts the Respondent’s argument that upon a proper construction of the lease, the Respondent is restricted to a 10% recoverable administration charge and no more. The inclusion of an “overhead charge” (see as an example page 104 “Certificate of Service Charges for Financial Year 2005-2006” where the charges totalling £977.21 already include “overhead charges”) upon which a further charge of 10 % £97.72 for administration is made does involve, on the finding of the Tribunal an element of duplication not justified by the provisions of the lease. Even if the Tribunal is wrong in this construction of the lease, (which it seems to the Tribunal should be construed “*contra proferentem*”) a very considerable number of the “overheads”, examples

of which are given above, are completely extraneous to this building and not recoverable under the particular terms of this lease.

10.0 CONCLUSION

10.1 The Tribunal's findings in respect of the particular items of challenge listed by the Applicant and ventilated during the course of the hearing are as set out above. The service charge for each of the relevant years should be adjusted as to take these findings into account, and this will be calculated by the parties themselves in accordance with the arrangement reached before the Tribunal at the Hearing. The Respondent confirmed before the Tribunal that it would not be seeking to recover any of the costs incurred by and incidental to this application by way of further service charge, and accordingly it is unnecessary for the Tribunal to make any direction under section 20C of the Act.

Legal Chairman: S Shaw

Date: 13th January 2009