

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985, AS AMENDED**

SECTIONS 27A and 20C

REFERENCE: LON/OOAG/LSC/2008/0548

Property: Flat 3 South Mansions, Goudar Gardens, London NW6 1QF
Applicant: Sidonsound Ltd.
Respondent: Mrs M Adie
Appearances: Mr J Thornton, Director, Hurford Salvi Carr Property
Management Ltd.

For the Applicant

Mr D Jones, Trainee Solicitor, Freshfields Bruckhaus Deringer
LLP
Mr O Fry, Trainee Solicitor, Freshfields Bruckhaus Deringer
LLP
Mrs M Adie
Ms C Adie

For the Respondent

Date of hearing: 16 April 2009

Date of the Tribunal's Decision: 5 May 2009

Members of the Tribunal: Mrs J S L Goulden JP
Mr W R Shaw FRICS
Mr L G Packer

REFERENCE: LON/OOAG/LSC/2008/0548

**PROPERTY: FLAT 3 SOUTH MANSIONS, GONDAR GARDENS, LONDON
NW6 1QF**

Background

1. The Tribunal was dealing with the following applications:-

(a) an application dated 27 November 2008 (and received by the Tribunal on 2 December 2008) under S 27A of the Landlord and Tenant Act 1985, as amended ("the Act") 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

(b) a cross application made by the Respondent at the hearing under S20C of the Act to limit the landlord's costs of proceedings before the Tribunal.

2. The service charge years in dispute set out in the application were for the years ended 31 December 1999, 31 December 2002 and the estimated budget for the year ended 31 December 2008.

3. The Applicant landlord is Sidonsound Ltd. and the Respondent tenant is Mrs M Adie.

4. Mrs Adie holds Flat 3 South Mansions, Gondar Gardens, London NW6 1QF ("the property") by a lease dated 28 March 1969 and made between Green Park Securities Ltd (1) and Kenneth Scott Adie (2). The lease, a copy of which was provided to the Tribunal, was for a term of 99 years from 25 March 1968 at the rent and subject to the terms and conditions therein contained.

5. South Mansions was described in the application as a purpose-built Victorian/Edwardian block of seven flats. The Respondent's flat is on the first floor. The Tribunal was advised that all leases were not in essentially the same form. Neither the parties nor the Tribunal considered that in view of the issues raised, an inspection of the property or the building would not assist the Tribunal.

Hearing

6. The hearing took place on 16 April 2009

7. The Applicant, Sidonsound Ltd., was represented by Mr J Thornton of Hurford Salvi Carr Property Management Ltd ("HSC"), the Applicant's managing agents. The

Respondent, Mrs M Adie, accompanied by her daughter, Ms C Adie, was represented by Mr D Jones and Mr O Fry, Trainee Solicitors with Freshfields Bruckhaus Deringer LLP.

8. The Tribunal offered several adjournments during the hearing in order that the parties could discuss and, if possible, narrow the issues. This proved partially successful in that the challenges made by the Respondent as to lack of consultation in respect of management fees and works to the path were withdrawn, as was the challenge in respect of audit fees. The challenge in respect of damp proofing was also withdrawn, the Applicant having agreed with the Respondent a settlement figure of £250. Although the Applicant offered to settle the cost of the works to the path at £250, this was rejected by the Respondent whereupon the offer was withdrawn and thus remained an issue to be determined by the Tribunal.

9. Although Mr Thornton initially requested the Tribunal to consider making an order for the Respondent to reimburse the application and/or hearing fees, he subsequently withdrew this request

10. The issues which remained outstanding, and which required the determination of the Tribunal were as follows:-

Management fees
Reserve fund
Path
Professional fees
Limitation of landlord's costs of proceedings

11. The salient points of the evidence and the Tribunal's determinations are given under each head.

12. The contract between the parties is the lease between them and both sides are bound by the contractual terms contained therein. Whilst the Tribunal is advised that other leases within the block contain different covenants and conditions, this is of no concern to this Tribunal. The Tribunal is concerned only with the particular terms of this particular lease between this particular landlord and tenant.

Management fees

13. The Respondent's challenge, despite the service charge years referred to in the application, was in respect of all management fees since 1999. It was argued that there was no provision in the lease for management of services and therefore if the landlord appoints managing agents, this would be at its discretion and no costs could be passed on under the lease terms.

14. Mr Thornton said that his firm had been appointed on 29 January 2008 and he provided, on request, a copy of the management agreement. Mr Thornton said that the

Applicant's case was as set out in a letter to the Respondent's solicitors dated 18 February 2009 as follows:-

"Your client claims that she is not obliged to pay management fees. May I respond as follows:-

i) The term "management fees" means the cost of collecting service charges, placing orders with suppliers and contractors, paying bills and providing a file of vouchers and schedules to an auditor so that accounts can be prepared in accordance with clause 4(6).

ii) In practice there is more to management than this, given the changes in the law but in essence this is what a Managing agent does.

iii) Clause 4 (1) requires the lessor whenever reasonably necessary to maintain, repair, redecorate and renew the building and its services.

iv) Maintenance repairing, redecoration and renewal does not happen in a vacuum, and will not happen unless somebody makes it happen. While we could take this point to the Leasehold Valuation Tribunal, I would be surprised if the Tribunal refused to allow the Landlord to include within the costs of maintenance, repairing, redecoration and renewal the direct costs of obtaining tenders and prices, placing orders for the work and monitoring the quality of the work.

v) I note further that in Clause 2(3)(ii) and in Clause 2(4) reference is made to the Landlord's surveyor. No surveyor works free of charge and I believe the lease implies that where the surveyor is working for the lessor on maintenance, repair, redecoration and renewal, then the fees of such a surveyor are recoverable from the lessees.

vi) There are two possible situations:

- (a) the Landlord appoints a building surveyor to specify and carry out the works, or*
- (b) the Landlord appoints a managing agent to carry out the same activities.*

It seems to me that there is no difference between asking a building surveyor or asking a managing agent to organise this work and it seems to me that since this is an integral part of making the maintenance, repairing, redecoration and renewals happen that the costs are therefore recoverable under Clause 2(3)

vii) There is an interesting point in that in Clause 2(3) it specifically mentions the performing of the work set out in Clauses 4(1) and 4(4) inclusive, which excludes Clause 4(5) which is the maintaining of books of account. I do not believe that the intention of the lease is to imply that the accounting work is not recoverable from the lessees. I believe that it is not included in Clause 2(3) because the first four sub clauses all relate to work that is done to the building and sub Clauses (5) to (7) inclusive relate to management and accounting work that is necessary so that the lessee can be satisfied

that the lessor has incurred reasonable costs in carrying out the work required under the lessor's covenants.

viii) I would therefore argue to the Tribunal that the cost of organising the maintaining, repairs, redecorations and renewals is deemed to be included in Clauses 4(1) and 4(4) inclusive and the accounting work is covered in Clauses 4(5) and 4(7) inclusive. Under the RICS Management Form of Agreement the organising function and the accounting function are not split, but are combined in one category of "management".

ix) I therefore do not agree with your client's contention that management fees are not recoverable, as it seems clear to me that the cost of arranging and accounting for maintenance, repairs, redecorations and renewals is included in the lease, and this is all that management fees cover".

15. Mr Thornton added that a managing agent had to correspond with the tenants and Mrs Adie had written very many letters. It would be an unreasonable cost for the landlord to bear.

16. Mr Thornton also provided a copy of a letter written by Mr M Garson, partner with Kagan Moss & Co, Solicitors, dated 15 April 2009 as to the previous management arrangements before the appointment of HSC which stated, inter alia, "This firm has acted for many years and prior to 1999 as the managing agents on behalf of the freehold owners Sidonsound Limited. Each year rent has been collected and accounts prepared and submitted to the leaseholders. Correspondence phone calls and queries by tenants addressed to our office have been answered by this firm acting on behalf of the freeholder. In our capacity as managing agents we arranged insurance and handled claims by tenants as well as placing and supervising building repair contracts.....In my private capacity I am a shareholder (not majority owner) in Sidonsound Limited, the freeholder. Correspondence has invariably been documented through this firm acting as managing agent and numerous requests for further information and queries concerning leaks from neighbours and building works or other matters addressed by Mrs Adie to this firm have been answered. We have in the past acted in this capacity in relation to the management of other properties belonging to other clients. This has been part of the work of this firm and covered by our professional indemnity arrangements."

17. The lease appears to be poorly drafted and the tenant is only specifically obliged to contribute within the service charge to "the costs charges expenses and outgoings (of the landlord) from time to time incurred in performing and carrying out the covenants on its part in clause 4(1)(2)(3)and (4)" (save for auditors' fees, which is acknowledged by the Respondent).

18. The legal position is, if a tenant's liability is uncertain from the wording of the lease, even read as a whole, the construction of the allegedly applicable service charge clause will be against the landlord. As Laws LJ stated in the case of *Gilje v Charlegrove Securities Ltd* (2001)EWCA Civ 1777:-

"the landlord seeks to recover money from the tenant. On ordinary principles there must be clear terms in the contractual provisions said to entitle him to do so. The lease, moreover, was drafted or proffered by the landlord. It falls to be construed contra proferentem...."

19. The courts construe service charge provisions restrictively, and, consistent with the restrictive constructions approach, charging provisions in respect of services etc. should be taken to relate to the landlord's actual costs and not be construed so as to include a profit element.

20. This approach is explained in *Woodfall on Landlord and Tenant* where it is stated:

"the general purpose of a service charge clause is to enable a landlord to recoup the cost of services supplied. It is thought that, in the absence of a special context or clear words, service charge provisions will not be construed as entitling the landlord to recover a profit element over and above the costs actually incurred in providing services".

21. The Tribunal has considered the position prior to 1 January 2008 (when the landlord, Sidonsound Ltd. managed the property through Kagan Moss & Co) and that after 1 January 2008 (when HSC were appointed as the landlord's managing agents).

22. From a company search provided by Mr Thornton, it can be seen that Mr Garson is one of two Directors of Sidonsound Ltd. He is also one of three partners with Kagan Moss & Co. The letter heading of that firm indicates that they are solicitors and are regulated by the Solicitors Regulation Authority. There is no mention on the face of that letter heading that they are managing agents. Although the letter provided of 15 April 2009 states that Kagan Moss & Co. act as managing agents for other properties belonging to other clients, no details have been provided. It is the view of this Tribunal that the interests of Mr Garson are entwined with those of Sidonsound and in view of the guidelines as set out in the paragraphs above and the absence of persuasive evidence to the contrary, the Tribunal considers that the management fees are over and above the costs actually incurred in providing services, and are therefore disallowed. Further, there is no provision in the lease which entitles the Applicant to place such fees on the service charge account.

23. With regard to the fees of HSC, which appear from the accounts to be £2,056.25 for the year to December 2008, although the unit cost appears to be within an acceptable band, and the Applicant is free to appoint managing agents, there is no provision in the lease which entitles the Applicant to place such fees on the service charge account. Nor is there an enforceable implication that tenants should pay the cost to the landlord of employing managing agents (*Embassy Court RA v Lipman* (1984) 271 EG 545).

24. Accordingly, for the reasons as set out in paragraphs 22 and 23 above, the Tribunal determines that, in respect of management fees, these are not relevant and therefore not reasonably incurred and not properly chargeable to the service charge account. In

making this Determination, it is acknowledged that four other leases have been varied and may include relevant provisions, but as stated in paragraph 12 above, the Tribunal is dealing with the particular lease terms between the Applicant and Respondent.

Reserve fund

25. The first time a provision for a reserve fund appears was in the 2008 budget in the sum of £1,000. The estimate for the reserve fund in the 2009 budget was £3,000.

26. The Respondent's view is that no sums under this head are recoverable since there was no provision in the lease for collection of a reserve fund. Mrs Adie said that she wished to have control over her own budget.

27. Mr Thornton, whilst accepting that there was no specific clause in the lease requiring the tenant to contribute to a reserve fund, argued that the lease anticipated that the landlord had some discretion to retain funds for future expenditure. This contention was based on Clause 2(3)(ii) of the lease whereby he said that the landlord's surveyor had a discretion *"to make an estimate for future expenditure when deciding whether or not any excess in the current year should be refunded or credited to the lessee"*. Although this discretion was acknowledged by the Respondent's solicitors, it was argued in a letter from them to HSC that *"in any such estimate, the expenditure must be specific and identifiable... The lease does not provide that a further charge may be demanded for an anticipated expenditure..."*

28. Mr Thornton, in a letter to the Respondent's solicitors of 1 April 2009 stated *"at a meeting of the residents, it was agreed in principle that putting money aside each year is wise and prudent. Nobody likes surprises, and regardless of what the lease may or may not say, it is simple common sense to save for the future"*. At the hearing, he advised that the leases of Flats 1, 2 and 4 provided for a reserve fund and the lease of Flat 6 has been varied to also contain a provision for a reserve fund.

29. Whilst Mr Thornton's views may be a matter of common sense, this cannot be *"regardless of what the lease may or may not say"* as he suggests. There is no provision in the lease for collection of funds by way of a reserve fund. Clause 2(3)(ii) relates only to the landlord's discretion to decide whether any excess in service charge provision should be refunded to the tenant or retained for future expenses ie it relates to a discretion as to refunds only. What the lease does not do is to allow the landlord discretion to demand service charge payments for a future identified purpose. Mr Thornton's letter of 1 April 2009 to the Respondent's solicitors states *"on the reserve fund issue, we can accommodate the points you make by a bit of re-drafting"*, but of course this would be subject to the tenant agreeing the same by way of a Deed of Variation.

30. For the reasons as set out above, the Tribunal determines that any sums demanded of the Respondent under the service charge provisions by way of a reserve fund contribution are not relevant and therefore not reasonably incurred and not properly chargeable to the service charge account. In making this Determination, it is

acknowledged that four other leases have been varied and may include relevant provisions in respect of a reserve fund, but as stated in paragraph 12 above, the Tribunal is dealing with the particular lease terms between the Applicant and Respondent.

Path

31. Works to the path were included within the major works, but were carried out earlier than other works in the early part of 2002. The cost was £2,600. No challenge was made as to the cost or standard, but only as to liability.

32. On behalf of the Respondent, her solicitors stated, inter alia, *"the works carried out to the path....have resulted in the path being more accessible and of a higher quality than it was before the works were carried out. Indeed we are told that the works were motivated by a desire to improve the path for wheelchair users. This amounts to more than mere maintenance and repair. It is submitted that the works carried out to the path amount to an improvement rather than maintenance or repair, the costs of which are not recoverable under the terms of the Lease"*. Mrs Adie said that the path had been satisfactory to walk on, but the works had been more extensive because wheelchair access had been required for the tenant of Flat 2A, and it was only that flat owner who benefited. She accepted that the path also led to communal gardens at the rear of the building, but said that the gate was locked preventing access to the gardens. She said that she had understood that the garden was now used solely by a tenant of the ground floor flat, and was no longer communal.

33. Mr Thornton argued that the works to the path certainly comprised an element of repair and maintenance but, in addition, the landlord had no option but to carry out the works since it was a health and safety issue and also a requirement of the local authority. He commented that on visiting South Mansions he had not found the gate to the communal gardens locked, and Mrs Adie clearly had the right under the terms of her lease to use the communal garden.

34. The Tribunal was provided with two quotations in respect of the path. The first quotation was from DBK Builders in the sum of £2,600 and was dated 1 February 2002. No VAT was payable. The works were described as *"dig out existing concrete areas, level, re-hardcore shutter and concrete down to front door of flat 2a"*. The other quotation was from Suttons Joinery in the sum of £3,945 plus VAT and was dated 2 February 2002. The works were described as *"break out existing concrete pathway, lay hardcore and consolidate, lay in place steel road fabric, reset manholes and gullies and lay with a float finish concrete to a depth of .100mm with expansion joints as required and sealed with mastic"*. The lower quotation was chosen and an invoice for £2,600 was provided from DBK Builders which stated *"as instructed lift up all broken pathway of (sic) side way of house"*.

35. Further, from documents supplied after the hearing by Mrs Adie, it was noted that an occupational therapist from the Royal Free Hospital wrote to the freeholder on 19

December 2001 on behalf of the tenant of Flat 2A stating that the path had an "uneven surface and broken slabs of concrete along the pathway".

36. This evidence persuades the Tribunal that the path was not, as suggested by Mrs Adie at the hearing, originally merely sand and/or gravel but was certainly in part of concrete. Mrs Adie said that she had not used the path for a considerable length of time. A letter from Mrs Adie to the landlord's surveyor sent in May 2002 stated "*please note I have not used this path, not even once, in the last twenty years*". She also said at the hearing that the path was in a part of the property which she considered overgrown, and therefore the Tribunal is uncertain as to whether she would be in a position to be aware of its original construction.

37. The Tribunal determines that the works to the path amount to repairs and maintenance (although possibly of an enhanced nature) and not to an improvement of the same. As stated in paragraph 31 above, the Respondent did not challenge the cost or standard, but only liability. However, in order to assist the parties, the Tribunal has considered the cost and determines that it is within an acceptable band.

38. The Tribunal determines that, in respect of works to the path, the sum of £2,600 is relevant and reasonably incurred and properly chargeable to the service charge account.

Professional fees

39. The amounts in dispute were the fees of the Applicant's surveyors, Maunder Taylor, in the sums of £1,163.25 in respect of the service charge 1999/2000 and £2,073.87 in respect of the service charge year 2001/2002. Mr Thornton produced three invoices in support. Two invoices related to major works to the building, service charge disputes, repairs, redecorations, condition including leaks and the entryphone. These totalled 13.5 hours at a charge out rate of £180 per hour plus VAT. The remaining invoice in the sum of £381.87 including VAT was in respect of supervision of the cost of the works to the path ie 12.5% of £2,600.

40. The Scott Schedule indicated that the tenant would agree to pay these if properly incurred and had requested information on a number of occasions which she said had not been provided. At the hearing, it was stated on behalf of Mrs Adie that the landlord's surveyor's fees had not been properly incurred and were "*out of proportion*". Challenges were made in respect of the number of hours and the charge out rate. No alternative costings were provided.

41. In the view of the Tribunal, for the years when costs were incurred, although the number of hours would appear to be within an acceptable band, the charge out rate appears high for the nature of the work specified in the invoices. The supervision fee of £381.87 including VAT is acceptable.

42. Accordingly, the Tribunal determines that, in respect of the professional fees of the landlord's surveyor, the invoice dated 28 January 2002 (which followed his account of 6

December 2000) shall be reduced (from £990 plus VAT) to £825 plus VAT of £144.38 and the invoice dated 11 June 2002 shall be reduced (from £1,440 plus VAT) to £1,200 plus VAT of £210, in each case representing an hourly rate of £150 plus VAT. The invoice dated 11 June 2002 remains as drawn at £325 plus VAT of £56.87.

43. The Tribunal determines that the professional fees, as revised, are relevant and reasonably incurred and properly chargeable to the service charge account.

Limitation of landlord's costs of proceedings

44. Mr Thornton confirmed that it was intended to place landlord's costs of proceedings on the service charge account if permitted to do so. He estimated that the costs amounted to £1,880 plus VAT. He said that this was broken down to 16 hours of his time at £105 per hour plus VAT (£1,680 plus VAT) and 5 hours for clerical work at £40 per hour plus VAT (£200 plus VAT).

45. Mr Thornton relied on Clause 2 (13) of the lease, which related to forfeiture proceedings. He said that if a landlord now contemplated issuing forfeiture proceedings, this could not be done (as previously) through the county court, but only by way of a prior application to the Tribunal. It was therefore reasonable that the costs in connection with the present application before the Tribunal should be placed on the service charge. He thought that Mrs Adie had misunderstood the lease and the law and she had never asked to examine vouchers.

46. Mr Fry argued on behalf of the Respondent that she had been consistent in that she had been willing to pay her service charges for costs reasonably incurred and for which she was liable. He said that there had been a lack of transparency and a number of issues could have been settled if the Applicant had agreed to mediation.

47. Clause 2(13) states:

"To pay all expenses (including solicitors costs and surveyors fee) which may be incurred by the Lessor in or in contemplation of the service of any notice under Section 146 of the Law of Property Act 1925 notwithstanding that forfeiture of the term hereby granted may be waived or avoided otherwise than by relief granted by the Court"

48. The Tribunal does not consider on the facts of this case that the fees sought to be placed on the service charge account are "in or in contemplation of the service of any notice under Section 146 of the Law of Property Act 1925". The application before the Tribunal is under S27A of the Act and it not considered that this falls within the wording of Clause 2(13). Further, it is arguable that any costs "in or in contemplation" of the service of a S146 Notice should be borne by the defaulting tenant and are not service charge matters.

49. However, if the Tribunal is incorrect in this assessment, and in order to assist the parties, the Tribunal has considered the lease terms.

50. Under Clause 2(3) the tenant covenants:

"to contribute and pay a proportionate part of the costs charges expenses and outgoings from time to time incurred in performing and carrying out the covenants on its part in Clause 4(1)(2)(3) and (4)....."

51. In Clause 4(1) the landlord covenants

"whenever reasonably necessary maintain repair redecorate and renew:-

- (a) the external walls and structure and in particular the foundations roof chimney stacks gutters and rainwater pipes of the Building
- (b) The gas and water pipes water tanks drains and electric cables and wires in under and upon the Building and enjoyed or used by the Lessee in common with the lessees of the other flats in the Building
- (c) The main entrances common passages landings and staircases and other parts of the Building so enjoyed or used by the Lessee in common as aforesaid"

52. In the view of this Tribunal, a landlord cannot maintain its property if starved of funds and therefore this clause is wide enough to permit the landlord's costs of proceedings to be placed to the service charge account (but would not be wide enough to encompass legal fees). The question for the Tribunal is whether it is reasonable to do so, this being a discretionary power.

53. S20C of the Act states:-

"(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 or leasehold valuation tribunal, or the Lands 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 the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (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 Lands 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."

54. In applications of this nature, the Tribunal endeavours to view the matter as a whole including, but not limited to, the degree of success, the conduct of the parties and as to whether, in the Tribunal's opinion, resolution could or might have been possible with goodwill on both sides.

55. In the judgement of His Honour Judge Rich in a Lands Tribunal Decision dated 5 March 2001 (*The Tenants of Langford Court v Doren*), it was stated, inter alia, *"where, as in the case of the LVT, there is no power to award costs, there is no automatic expectation of an order under Section 20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs of defending such conduct. In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under Section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not to be used in circumstances that makes its use unjust"*.

56. Under new legislation, there is now a limited power for the Tribunal to order costs, but Judge Rich's comments are still valid.

57. In accordance with Section 20C(3), the applicable principle is to be the consideration of what is just and equitable in the circumstances. Of course, excessive costs unreasonably incurred would not be recoverable by the landlord in any event (because of Section 19 of the 1985 Act) so the Section 20C power should be used only to avoid the unjust payment of otherwise recoverable costs.

58. In the judgement, Judge Rich indicated an extra restrictive factor as follows:-

"Oppressive and, even more, unreasonable behaviour however is not found solely amongst landlords. Section 20C is a power to deprive a landlord of a property right. If the landlord has abused his rights or used them oppressively that is a salutary power, which may be used with justice and equity, but those entrusted with the discretion given by Section 20C should be cautious to ensure that it is not itself turned into an instrument of oppression".

59. Since the close of the hearing, Mrs Adie has complained to the Tribunal that she was not given the opportunity to have any input in the documents included in the bundle and felt that her case had been *"inadequately represented as you did not have all the right documents to support my arguments"*. The contention as to inadequate representation is rejected. It would appear from the papers in the bundle that Mrs Adie sought, and obtained, legal advice over a number of years on various issues, including those issues

now before the Tribunal. This advice was obtained from, inter alia, Camden Housing Advice Centre (2000) The College of Law (2005), Ms H Platt of Counsel (2005), Linklaters, Solicitors (2006) and Freshfields Bruckhaus Deringer, Solicitors, (2007 to 2009). Further the Directions issued by the Tribunal on 21 January 2009 clearly provided that if the bundle of documents were not agreed between the parties, then a further bundle should have been provided (Direction 5 (c)). Mrs Adie cannot absolve herself from this matter entirely.

60. Further, although Mrs Adie has succeeded in some challenges, she has failed in others and also shown some intransigence in the proceedings. Offers of settlement, for example in respect of the cost of the works to the path, were made during the hearing, but rejected by Mrs Adie whereupon the settlement offer was withdrawn. Counsel's Opinion, obtained as long ago as July 2005, expressed some concerns as to possible weaknesses in the Respondent's case. Mrs Adie is, it is understood, still in arrears. Although the Respondent complained that the Applicant did not attend a proposed mediation, it was explained that certain issues related to interpretation of the lease and therefore mediation was not thought to be a suitable forum.

61. The Tribunal determines that it is just and equitable that the costs incurred by the Applicant in connection with proceedings before this Tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable but, in view of its Determinations under the respective heads, limits this to £500 plus VAT.

The Tribunal's determinations as to service charges are binding on the parties and may be enforced through the county courts if service charges determined as payable remain unpaid.

CHAIRMAN.....

DATE.....5...May..2009.....

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the,
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985, AS AMENDED**

SECTIONS 27A and 20C

REFERENCE: LON/OOAG/LSC/2008/0548

Property: Flat 3 South Mansions, Gondar Gardens, London NW6 1QF

Applicant: Sidonsound Ltd.

Respondent: Mrs M Adie

**Appearances: Mr J Thoruton, Director, Hurford Salvi Carr Property
Management Ltd.**

For the Applicant

**Mr D Jones, Trainee Solicitor, Freshfields Bruckhaus Deringer
LLP**

**Mr O Fry, Trainee Solicitor, Freshfields Bruckhaus Deringer
LLP**

Mrs M Adie

Ms C Adie

For the Respondent

Date of hearing: 16 April 2009

Date of the Tribunal's Decision: 5 May 2009

**Members of the Tribunal: Mrs J S L Goulden JP
Mr W R Shaw FRICS
Mr L G Packer**

Respondent, Mrs M Adie, accompanied by her daughter, Ms C Adie, was represented by Mr D Jones and Mr O Fry, Trainee Solicitors with Freshfields Bruckhaus Deringer LLP.

8. The Tribunal offered several adjournments during the hearing in order that the parties could discuss and, if possible, narrow the issues. This proved partially successful in that the challenges made by the Respondent as to lack of consultation in respect of management fees and works to the path were withdrawn, as was the challenge in respect of audit fees. The challenge in respect of damp proofing was also withdrawn, the Applicant having agreed with the Respondent a settlement figure of £250. Although the Applicant offered to settle the cost of the works to the path at £250, this was rejected by the Respondent whereupon the offer was withdrawn and thus remained an issue to be determined by the Tribunal.

9. Although Mr Thornton initially requested the Tribunal to consider making an order for the Respondent to reimburse the application and/or hearing fees, he subsequently withdrew this request

10. The issues which remained outstanding, and which required the determination of the Tribunal were as follows:-

Management fees
Reserve fund
Path
Professional fees
Limitation of landlord's costs of proceedings

11. The salient points of the evidence and the Tribunal's determinations are given under each head.

12. The contract between the parties is the lease between them and both sides are bound by the contractual terms contained therein. Whilst the Tribunal is advised that other leases within the block contain different covenants and conditions, this is of no concern to this Tribunal. The Tribunal is concerned only with the particular terms of this particular lease between this particular landlord and tenant.

Management fees

13. The Respondent's challenge, despite the service charge years referred to in the application, was in respect of all management fees since 1999. It was argued that there was no provision in the lease for management of services and therefore if the landlord appoints managing agents, this would be at its discretion and no costs could be passed on under the lease terms.

14. Mr Thornton said that his firm had been appointed on 29 January 2008 and he provided, on request, a copy of the management agreement. Mr Thornton said that the

Applicant's case was as set out in a letter to the Respondent's solicitors dated 18 February 2009 as follows:-

"Your client claims that she is not obliged to pay management fees. May I respond as follows:-

i) The term "management fees" means the cost of collecting service charges, placing orders with suppliers and contractors, paying bills and providing a file of vouchers and schedules to an auditor so that accounts can be prepared in accordance with clause 4(6).

ii) In practice there is more to management than this, given the changes in the law but in essence this is what a Managing agent does.

iii) Clause 4 (1) requires the lessor whenever reasonably necessary to maintain, repair, redecorate and renew the building and its services.

iv) Maintenance repairing, redecoration and renewal does not happen in a vacuum, and will not happen unless somebody makes it happen. While we could take this point to the Leasehold Valuation Tribunal, I would be surprised if the Tribunal refused to allow the Landlord to include within the costs of maintenance, repairing, redecoration and renewal the direct costs of obtaining tenders and prices, placing orders for the work and monitoring the quality of the work.

v) I note further that in Clause 2(3)(ii) and in Clause 2(4) reference is made to the Landlord's surveyor. No surveyor works free of charge and I believe the lease implies that where the surveyor is working for the lessor on maintenance, repair, redecoration and renewal, then the fees of such a surveyor are recoverable from the lessees.

vi) There are two possible situations:

- (a) the Landlord appoints a building surveyor to specify and carry out the works, or*
- (b) the Landlord appoints a managing agent to carry out the same activities.*

It seems to me that there is no difference between asking a building surveyor or asking a managing agent to organise this work and it seems to me that since this is an integral part of making the maintenance, repairing, redecoration and renewals happen that the costs are therefore recoverable under Clause 2(3)

vii) There is an interesting point in that in Clause 2(3) it specifically mentions the performing of the work set out in Clauses 4(1) and 4(4) inclusive, which excludes Clause 4(5) which is the maintaining of books of account. I do not believe that the intention of the lease is to imply that the accounting work is not recoverable from the lessees. I believe that it is not included in Clause 2(3) because the first four sub clauses all relate to work that is done to the building and sub Clauses (5) to (7) inclusive relate to management and accounting work that is necessary so that the lessee can be satisfied

that the lessor has incurred reasonable costs in carrying out the work required under the lessor's covenants.

viii) I would therefore argue to the Tribunal that the cost of organising the maintaining, repairs, redecorations and renewals is deemed to be included in Clauses 4(1) and 4(4) inclusive and the accounting work is covered in Clauses 4(5) and 4(7) inclusive. Under the RICS Management Form of Agreement the organising function and the accounting function are not split, but are combined in one category of "management".

ix) I therefore do not agree with your client's contention that management fees are not recoverable, as it seems clear to me that the cost of arranging and accounting for maintenance, repairs, redecorations and renewals is included in the lease, and this is all that management fees cover".

15. Mr Thornton added that a managing agent had to correspond with the tenants and Mrs Adie had written very many letters. It would be an unreasonable cost for the landlord to bear.

16. Mr Thornton also provided a copy of a letter written by Mr M Garson, partner with Kagan Moss & Co, Solicitors, dated 15 April 2009 as to the previous management arrangements before the appointment of HSC which stated, inter alia,

"This firm has acted for many years and prior to 1999 as the managing agents on behalf of the freehold owners Sidonsound Limited. Each year rent has been collected and accounts prepared and submitted to the leaseholders. Correspondence phone calls and queries by tenants addressed to our office have been answered by this firm acting on behalf of the freeholder. In our capacity as managing agents we arranged insurance and handled claims by tenants as well as placing and supervising building repair contracts.....In my private capacity I am a shareholder (not majority owner) in Sidonsound Limited, the freeholder. Correspondence has invariably been documented through this firm acting as managing agent and numerous requests for further information and queries concerning leaks from neighbours and building works or other matters addressed by Mrs Adie to this firm have been answered. We have in the past acted in this capacity in relation to the management of other properties belonging to other clients. This has been part of the work of this firm and covered by our professional indemnity arrangements."

17. The lease appears to be poorly drafted and the tenant is only specifically obliged to contribute within the service charge to "the costs charges expenses and outgoings (of the landlord) from time to time incurred in performing and carrying out the covenants on its part in clause 4(1)(2)(3) and (4)" (save for auditors' fees, which is acknowledged by the Respondent).

18. The legal position is, if a tenant's liability is uncertain from the wording of the lease, even read as a whole, the construction of the allegedly applicable service charge clause will be against the landlord. As Laws LJ stated in the case of *Gilje v Charlegrave Securities Ltd* (2001)EWCA Civ 1777:-

"the landlord seeks to recover money from the tenant. On ordinary principles there must be clear terms in the contractual provisions said to entitle him to do so. The lease, moreover, was drafted or proffered by the landlord. It falls to be construed contra proferentem...."

19. The courts construe service charge provisions restrictively, and, consistent with the restrictive constructions approach, charging provisions in respect of services etc. should be taken to relate to the landlord's actual costs and not be construed so as to include a profit element.

20. This approach is explained in *Woodfall on Landlord and Tenant* where it is stated:

"the general purpose of a service charge clause is to enable a landlord to recoup the cost of services supplied. It is thought that, in the absence of a special context or clear words, service charge provisions will not be construed as entitling the landlord to recover a profit element over and above the costs actually incurred in providing services".

21. The Tribunal has considered the position prior to 1 January 2008 (when the landlord, Sidonsound Ltd. managed the property through Kagan Moss & Co) and that after 1 January 2008 (when HSC were appointed as the landlord's managing agents).

22. From a company search provided by Mr Thornton, it can be seen that Mr Garson is one of two Directors of Sidonsound Ltd. He is also one of three partners with Kagan Moss & Co. The letter heading of that firm indicates that they are solicitors and are regulated by the Solicitors Regulation Authority. There is no mention on the face of that letter heading that they are managing agents. Although the letter provided of 15 April 2009 states that Kagan Moss & Co. act as managing agents for other properties belonging to other clients, no details have been provided. It is the view of this Tribunal that the interests of Mr Garson are entwined with those of Sidonsound and in view of the guidelines as set out in the paragraphs above and the absence of persuasive evidence to the contrary, the Tribunal considers that the management fees are over and above the costs actually incurred in providing services, and are therefore disallowed. Further, there is no provision in the lease which entitles the Applicant to place such fees on the service charge account.

23. With regard to the fees of HSC, which appear from the accounts to be £2,056.25 for the year to December 2008, although the unit cost appears to be within an acceptable band, and the Applicant is free to appoint managing agents, there is no provision in the lease which entitles the Applicant to place such fees on the service charge account. Nor is there an enforceable implication that tenants should pay the cost to the landlord of employing managing agents (*Embassy Court RA v Lipman* (1984) 271 EG 545).

24. Accordingly, for the reasons as set out in paragraphs 22 and 23 above, the Tribunal determines that, in respect of management fees, these are not relevant and therefore not reasonably incurred and not properly chargeable to the service charge account. In

making this Determination, it is acknowledged that four other leases have been varied and may include relevant provisions, but as stated in paragraph 12 above, the Tribunal is dealing with the particular lease terms between the Applicant and Respondent.

Reserve fund

25. The first time a provision for a reserve fund appears was in the 2008 budget in the sum of £1,000. The estimate for the reserve fund in the 2009 budget was £3,000.

26. The Respondent's view is that no sums under this head are recoverable since there was no provision in the lease for collection of a reserve fund. Mrs Adie said that she wished to have control over her own budget.

27. Mr Thornton, whilst accepting that there was no specific clause in the lease requiring the tenant to contribute to a reserve fund, argued that the lease anticipated that the landlord had some discretion to retain funds for future expenditure. This contention was based on Clause 2(3)(ii) of the lease whereby he said that the landlord's surveyor had a discretion *"to make an estimate for future expenditure when deciding whether or not any excess in the current year should be refunded or credited to the lessee"*. Although this discretion was acknowledged by the Respondent's solicitors, it was argued in a letter from them to HSC that *"in any such estimate, the expenditure must be specific and identifiable... The lease does not provide that a further charge may be demanded for an anticipated expenditure..."*

28. Mr Thornton, in a letter to the Respondent's solicitors of 1 April 2009 stated *"at a meeting of the residents, it was agreed in principle that putting money aside each year is wise and prudent. Nobody likes surprises, and regardless of what the lease may or may not say, it is simple common sense to save for the future"*. At the hearing, he advised that the leases of Flats 1, 2 and 4 provided for a reserve fund and the lease of Flat 6 has been varied to also contain a provision for a reserve fund.

29. Whilst Mr Thornton's views may be a matter of common sense, this cannot be *"regardless of what the lease may or may not say"* as he suggests. There is no provision in the lease for collection of funds by way of a reserve fund. Clause 2(3)(ii) relates only to the landlord's discretion to decide whether any excess in service charge provision should be refunded to the tenant or retained for future expenses ie it relates to a discretion as to refunds only. What the lease does not do is to allow the landlord discretion to demand service charge payments for a future identified purpose. Mr Thornton's letter of 1 April 2009 to the Respondent's solicitors states *"on the reserve fund issue, we can accommodate the points you make by a bit of re-drafting"*, but of course this would be subject to the tenant agreeing the same by way of a Deed of Variation.

30. For the reasons as set out above, the Tribunal determines that any sums demanded of the Respondent under the service charge provisions by way of a reserve fund contribution are not relevant and therefore not reasonably incurred and not properly chargeable to the service charge account. In making this Determination, it is

acknowledged that four other leases have been varied and may include relevant provisions in respect of a reserve fund, but as stated in paragraph 12 above, the Tribunal is dealing with the particular lease terms between the Applicant and Respondent.

Path

31. Works to the path were included within the major works, but were carried out earlier than other works in the early part of 2002. The cost was £2,600. No challenge was made as to the cost or standard, but only as to liability.

32. On behalf of the Respondent, her solicitors stated, inter alia, *"the works carried out to the path...have resulted in the path being more accessible and of a higher quality than it was before the works were carried out. Indeed we are told that the works were motivated by a desire to improve the path for wheelchair users. This amounts to more than mere maintenance and repair. It is submitted that the works carried out to the path amount to an improvement rather than maintenance or repair, the costs of which are not recoverable under the terms of the Lease"*. Mrs Adie said that the path had been satisfactory to walk on, but the works had been more extensive because wheelchair access had been required for the tenant of Flat 2A, and it was only that flat owner who benefited. She accepted that the path also led to communal gardens at the rear of the building, but said that the gate was locked preventing access to the gardens. She said that she had understood that the garden was now used solely by a tenant of the ground floor flat, and was no longer communal.

33. Mr Thornton argued that the works to the path certainly comprised an element of repair and maintenance but, in addition, the landlord had no option but to carry out the works since it was a health and safety issue and also a requirement of the local authority. He commented that on visiting South Mansions he had not found the gate to the communal gardens locked, and Mrs Adie clearly had the right under the terms of her lease to use the communal garden.

34. The Tribunal was provided with two quotations in respect of the path. The first quotation was from DBK Builders in the sum of £2,600 and was dated 1 February 2002. No VAT was payable. The works were described as *"dig out existing concrete areas, level, re-hardcore shutter and concrete down to front door of flat 2a"*. The other quotation was from Suttons Joinery in the sum of £3,945 plus VAT and was dated 2 February 2002. The works were described as *"break out existing concrete pathway, lay hardcore and consolidate, lay in place steel road fabric, reset manholes and gullies and lay with a float finish concrete to a depth of .100mm with expansion joints as required and sealed with mastic"*. The lower quotation was chosen and an invoice for £2,600 was provided from DBK Builders which stated *"as instructed lift up all broken pathway of (sic) side way of house"*.

35. Further, from documents supplied after the hearing by Mrs Adie, it was noted that an occupational therapist from the Royal Free Hospital wrote to the freeholder on 19

December 2001 on behalf of the tenant of Flat 2A stating that the path had an "uneven surface and broken slabs of concrete along the pathway".

36. This evidence persuades the Tribunal that the path was not, as suggested by Mrs Adie at the hearing, originally merely sand and/or gravel but was certainly in part of concrete. Mrs Adie said that she had not used the path for a considerable length of time. A letter from Mrs Adie to the landlord's surveyor sent in May 2002 stated "please note I have not used this path, not even once, in the last twenty years". She also said at the hearing that the path was in a part of the property which she considered overgrown, and therefore the Tribunal is uncertain as to whether she would be in a position to be aware of its original construction.

37. The Tribunal determines that the works to the path amount to repairs and maintenance (although possibly of an enhanced nature) and not to an improvement of the same. As stated in paragraph 31 above, the Respondent did not challenge the cost or standard, but only liability. However, in order to assist the parties, the Tribunal has considered the cost and determines that it is within an acceptable band.

38. The Tribunal determines that, in respect of works to the path, the sum of £2,600 is relevant and reasonably incurred and properly chargeable to the service charge account.

Professional fees

39. The amounts in dispute were the fees of the Applicant's surveyors, Maunder Taylor, in the sums of £1,163.25 in respect of the service charge 1999/2000 and £2,073.87 in respect of the service charge year 2001/2002. Mr Thornton produced three invoices in support. Two invoices related to major works to the building, service charge disputes, repairs, redecorations, condition including leaks and the entryphone. These totalled 13.5 hours at a charge out rate of £180 per hour plus VAT. The remaining invoice in the sum of £381.87 including VAT was in respect of supervision of the cost of the works to the path ie 12.5% of £2,600.

40. The Scott Schedule indicated that the tenant would agree to pay these if properly incurred and had requested information on a number of occasions which she said had not been provided. At the hearing, it was stated on behalf of Mrs Adie that the landlord's surveyor's fees had not been properly incurred and were "out of proportion". Challenges were made in respect of the number of hours and the charge out rate. No alternative costings were provided.

41. In the view of the Tribunal, for the years when costs were incurred, although the number of hours would appear to be within an acceptable band, the charge out rate appears high for the nature of the work specified in the invoices. The supervision fee of £381.87 including VAT is acceptable.

42. Accordingly, the Tribunal determines that, in respect of the professional fees of the landlord's surveyor, the invoice dated 28 January 2002 (which followed his account of 6

December 2000) shall be reduced (from £990 plus VAT) to £825 plus VAT of £144.38 and the invoice dated 11 June 2002 shall be reduced (from £1,440 plus VAT) to £1,200 plus VAT of £210, in each case representing an hourly rate of £150 plus VAT. The invoice dated 11 June 2002 remains as drawn at £325 plus VAT of £56.87.

43. The Tribunal determines that the professional fees, as revised, are relevant and reasonably incurred and properly chargeable to the service charge account.

Limitation of landlord's costs of proceedings

44. Mr Thornton confirmed that it was intended to place landlord's costs of proceedings on the service charge account if permitted to do so. He estimated that the costs amounted to £1,880 plus VAT. He said that this was broken down to 16 hours of his time at £105 per hour plus VAT (£1,680 plus VAT) and 5 hours for clerical work at £40 per hour plus VAT (£200 plus VAT).

45. Mr Thornton relied on Clause 2 (13) of the lease, which related to forfeiture proceedings. He said that if a landlord now contemplated issuing forfeiture proceedings, this could not be done (as previously) through the county court, but only by way of a prior application to the Tribunal. It was therefore reasonable that the costs in connection with the present application before the Tribunal should be placed on the service charge. He thought that Mrs Adie had misunderstood the lease and the law and she had never asked to examine vouchers.

46. Mr Fry argued on behalf of the Respondent that she had been consistent in that she had been willing to pay her service charges for costs reasonably incurred and for which she was liable. He said that there had been a lack of transparency and a number of issues could have been settled if the Applicant had agreed to mediation.

47. Clause 2(13) states:

"To pay all expenses (including solicitors costs and surveyors fee) which may be incurred by the Lessor in or in contemplation of the service of any notice under Section 146 of the Law of Property Act 1925 notwithstanding that forfeiture of the term hereby granted may be waived or avoided otherwise than by relief granted by the Court"

48. The Tribunal does not consider on the facts of this case that the fees sought to be placed on the service charge account are "in or in contemplation of the service of any notice under Section 146 of the Law of Property Act 1925". The application before the Tribunal is under S27A of the Act and it is not considered that this falls within the wording of Clause 2(13). Further, it is arguable that any costs "in or in contemplation" of the service of a S146 Notice should be borne by the defaulting tenant and are not service charge matters.

49. However, if the Tribunal is incorrect in this assessment, and in order to assist the parties, the Tribunal has considered the lease terms.

50. Under Clause 2(3) the tenant covenants:

"to contribute and pay a proportionate part of the costs charges expenses and outgoings from time to time incurred in performing and carrying out the covenants on its part in Clause 4(1)(2)(3) and (4)....."

51. In Clause 4(1) the landlord covenants

"whenever reasonably necessary maintain repair redecorate and renew:-

- (a) the external walls and structure and in particular the foundations roof chimney stacks gutters and rainwater pipes of the Building
- (b) The gas and water pipes water tanks drains and electric cables and wires in under and upon the Building and enjoyed or used by the Lessee in common with the lessees of the other flats in the Building
- (c) The main entrances common passages landings and staircases and other parts of the Building so enjoyed or used by the Lessee in common as aforesaid"

52. In the view of this Tribunal, a landlord cannot maintain its property if starved of funds and therefore this clause is wide enough to permit the landlord's costs of proceedings to be placed to the service charge account (but would not be wide enough to encompass legal fees). The question for the Tribunal is whether it is reasonable to do so, this being a discretionary power.

53. S20C of the Act states:-

"(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 or leasehold valuation tribunal, or the Lands 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 the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (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 Lands 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."

54. In applications of this nature, the Tribunal endeavours to view the matter as a whole including, but not limited to, the degree of success, the conduct of the parties and as to whether, in the Tribunal's opinion, resolution could or might have been possible with goodwill on both sides.

55. In the judgement of His Honour Judge Rich in a Lands Tribunal Decision dated 5 March 2001 (*The Tenants of Langford Court v Doren*), it was stated, inter alia, *"where, as in the case of the LVT, there is no power to award costs, there is no automatic expectation of an order under Section 20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs of defending such conduct. In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under Section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not to be used in circumstances that makes its use unjust"*.

56. Under new legislation, there is now a limited power for the Tribunal to order costs, but Judge Rich's comments are still valid.

57. In accordance with Section 20C(3), the applicable principle is to be the consideration of what is just and equitable in the circumstances. Of course, excessive costs unreasonably incurred would not be recoverable by the landlord in any event (because of Section 19 of the 1985 Act) so the Section 20C power should be used only to avoid the unjust payment of otherwise recoverable costs.

58. In the judgement, Judge Rich indicated an extra restrictive factor as follows:-

"Oppressive and, even more, unreasonable behaviour however is not found solely amongst landlords. Section 20C is a power to deprive a landlord of a property right. If the landlord has abused his rights or used them oppressively that is a salutary power, which may be used with justice and equity, but those entrusted with the discretion given by Section 20C should be cautious to ensure that it is not itself turned into an instrument of oppression".

59. Since the close of the hearing, Mrs Adie has complained to the Tribunal that she was not given the opportunity to have any input in the documents included in the bundle and felt that her case had been *"inadequately represented as you did not have all the right documents to support my arguments"*. The contention as to inadequate representation is rejected. It would appear from the papers in the bundle that Mrs Adie sought, and obtained, legal advice over a number of years on various issues, including those issues

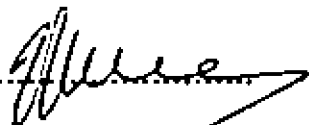
now before the Tribunal. This advice was obtained from, inter alia, Camden Housing Advice Centre (2000) The College of Law (2005), Ms H Platt of Counsel (2005), Linklaters, Solicitors (2006) and Freshfields Bruckhaus Deringer, Solicitors, (2007 to 2009). Further the Directions issued by the Tribunal on 21 January 2009 clearly provided that if the bundle of documents were not agreed between the parties, then a further bundle should have been provided (Direction 5 (c)). Mrs Adie cannot absolve herself from this matter entirely.

60. Further, although Mrs Adie has succeeded in some challenges, she has failed in others and also shown some intransigence in the proceedings. Offers of settlement, for example in respect of the cost of the works to the path, were made during the hearing, but rejected by Mrs Adie whereupon the settlement offer was withdrawn. Counsel's Opinion, obtained as long ago as July 2005, expressed some concerns as to possible weaknesses in the Respondent's case. Mrs Adie is, it is understood, still in arrears. Although the Respondent complained that the Applicant did not attend a proposed mediation, it was explained that certain issues related to interpretation of the lease and therefore mediation was not thought to be a suitable forum.

61. The Tribunal determines that it is just and equitable that the costs incurred by the Applicant in connection with proceedings before this Tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable but, in view of its Determinations under the respective heads, limits this to £500 plus VAT.

The Tribunal's determinations as to service charges are binding on the parties and may be enforced through the county courts if service charges determined as payable remain unpaid.

CHAIRMAN.....



DATE.....5...May..2009.....