

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**Case Number: CHI/00HC/LSC/2010/0079**

**In the matter of 10 South Parade, Weston-super-Mare, BS23 1JN**

**And in the matter of an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) for a determination of liability to pay service charges.**

**Between:**

**United Pension Trustees Limited Applicant**

**1. Mr. David P. James**  
**2. Mrs. Maureen Slavin**  
**3. Mr. Jeremy P. Potter** Respondents

**Date of application: 4 May 2010**

**Date of hearing: 20 October 2010**

**Members of the Tribunal: Mr. J. G. Orme (Lawyer Chairman)**  
**Mr. M. Ayres FRICS (Chartered Surveyor member)**

**Date of decision: 22 October 2010**

**Decision of the Leasehold Valuation Tribunal.**

- 1. For the reasons set out below, the Tribunal determines that no interim charge was payable by the Respondents Mr. David P. James, Mrs. Maureen Slavin and Mr. Jeremy P. Potter to United Pension Trustees Limited in respect of 10 South Parade, Weston-super-Mare, BS23 1JN on 24 June 2009.**
- 2. Further, the Tribunal orders that, pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended), all costs incurred by the Applicant in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.**

## The Application

1. The application concerns service charges claimed to be due in respect of 10 South Parade, Weston-super-Mare ("the Property"). United Pension Trustees Limited ("the Applicant") is the freehold owner of the Property.
2. On 11 December 2009, the Applicant issued a claim in the Weston-super-Mare County Court under case number 9WM01135 against Mr. Jeremy Potter ("the 3<sup>rd</sup> Respondent") claiming outstanding service charges in respect of Flat 3 at the Property. The claim was for £23.04 being the balance of the service charge due for the year ended 31 December 2008 and £2,400 interim service charge for the year ended 31 December 2009. There was a claim for continuing interest and costs. Judgment was entered against the 3<sup>rd</sup> Respondent in default of a defence on 13 January 2010.
3. On 13 January 2010, the Applicant issued a claim in the Weston-super-Mare County Court under case number 0WM00018 against Mr. D P James ("the 1<sup>st</sup> Respondent") claiming outstanding service charges in respect of Flat 2, 10 South Parade, Weston-super-Mare. The claim was for £193.10 being the balance of the service charge due for the year ended 31 December 2008 and £2,200 interim service charge for the year ended 31 December 2009. There was a claim for continuing interest and costs. On 21 January 2010, the 1<sup>st</sup> Respondent filed a defence disputing the full amount claimed. On 25 February 2010, District Judge Daniel made an order that *"the case be stayed so that parties can apply to the LVT and upon the LVT accepting the referral this claim be struck out."*
4. On 4 May 2010 the Applicant applied to the Tribunal for a determination of the liability of the 1<sup>st</sup> Respondent to pay the service charges claimed in case number 0WM00018.
5. On 28 June 2010 the Tribunal issued directions providing for the parties to exchange written statements of case and for the application to be listed for hearing.
6. Mrs. Maureen Slavin ("the 2<sup>nd</sup> Respondent"), the leasehold owner of Flat 1 applied to be joined as a respondent. On 23 August 2010 the Tribunal directed that she be joined as a respondent. By notice dated 3 September 2010, she applied to the Tribunal for an order to be made pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act").
7. The 3<sup>rd</sup> Respondent applied to be joined as a respondent and on 7 September 2010 the Tribunal directed that he be joined as a respondent. By letter dated 9 September 2010 the Applicant objected to the 3<sup>rd</sup> Respondent being joined as a party on the basis

that it already had a judgment against the 3<sup>rd</sup> Respondent for the sums which are the subject of the application and he was therefore not in a position to challenge the service charges. The Tribunal made no further direction and he remains a party to the application.

8. The Applicant filed its written statement of case on 25 August 2010. The Respondents filed their written statement of case on 27 August 2010. The application was listed for hearing on 20 October 2010.

9. In their statement of case, the Respondents alleged that the works required to put the Property into repair had been exacerbated by the failure of the Applicant to carry out repairs in the past. The

Applicant alleged that it had not previously had notice of that issue and applied by letter dated 6 October 2010 for permission to submit further documents. On 7 October 2010, the Tribunal gave the Applicant permission to file further documents by 13 October and invited the Respondents to bring any further documents on which they relied to the hearing on 20 October. Both parties filed further documents in accordance with that direction.

10. By letter dated 14 October the 2<sup>nd</sup> Respondent applied to the Tribunal for the hearing to be adjourned to enable the Respondents to obtain expert evidence as to the effect of the Applicant's failure to carry out repairs in the past. The Tribunal directed that that application should be heard at the hearing.

## The Law

11. The statutory provisions primarily relevant to matters of this nature are to be found in sections 18, 19, 20C and 27A of the Act.

12. Section 18 provides:

1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent:*

- a. *which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and*
- b. *the whole or part of which varies or may vary according to the relevant costs.*

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

3) *For this purpose:-*

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

13. Section 19 provides:-

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

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

14. Section 20C provides:-

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 leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

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.

15. Section 27A provides:-

1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to:-

- a. the person by whom it is payable,
- b. the person to whom it is payable,
- c. the amount which is payable,
- d. the date at or by which it is payable, and
- e. the manner in which it is payable.

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

3) An application may be made to the tribunal under subsection (1) in respect of a matter which-

4) No application under subsection (1) or (3) may be made in respect of a matter which-

(c) has been made the subject of a determination by a court, or

Subsections 5 to 7 of section 27A are not relevant in this application.

## The Lease

16. The Tribunal had before it a copy of the lease of Flat 2. The parties agreed that the terms of the leases of the other flats were substantially in the same terms.

17. The 1<sup>st</sup> Respondent holds Flat 2 by virtue of a lease dated 18 March 1981 ("the Lease"). The Lease demises Flat 2 for a term of 999 years from 25 December 1980 at a yearly rent of £20,000.

18. At clause 5(4) of the Lease, the Landlord covenants to maintain and to keep in good and substantial repair and condition the main structure and the common parts of the Property, to decorate the exterior of the Property, to clean the common parts and to insure the Property.

There is provision for the landlord to employ managing agents and other staff and to provide a sinking fund for future anticipated expenditure.

19. The Lease contains a covenant by the tenant to pay a service charge and an interim charge. The service charge provisions are set out in the sixth schedule to the Lease. In brief, these enable the landlord to recover from the tenants of the Property the total expenditure incurred by the landlord in fulfilling its obligations under clause 5(4) including any contribution to a sinking fund. The landlord is entitled to raise an interim charge "to be paid on account of the Service Charge in respect of each Accounting Period as the Landlord or its Managing Agents shall specify at their discretion to be a fair and reasonable interim payment". The interim charge is payable by 2 equal payments on 24 June and 25 December in each year. As soon as practicable after the expiry of each accounting period, the landlord is to supply to the tenants a certificate from the auditors setting out the total expenditure in that year, the amount of the interim charge paid during the year and the amount of any excess or deficiency.

20. At the hearing it was agreed by the parties that the total expenditure incurred by the Applicant was to be split between the tenants of the Property in the following proportions:

- Flat 1 - 13%
- Flat 2 - 11%
- Flat 3 - 12%
- Flat 4 - 29%
- Shop - 35%

The total of those proportions is 102%. It was noted by the Applicant that the proportions need to be varied so that the landlord does not recover more than 100% of its expenditure.

#### **Inspection**

21. The Tribunal carried out an inspection of the Property prior to the hearing on 20 October 2010 in the presence of Mr. Paul Bliss, a representative of the Applicant, his son, Mr. Oliver Bliss and the Applicant's solicitor, Mr. Addison, a partner at Powells, solicitors, together with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

22. The Property is a terraced property arranged on 4 floors with a shop on the ground floor, Flat 4 on the 1<sup>st</sup> floor, Flats 2 and 3 on the 2<sup>nd</sup>

Flat 5 floor and Flat 1 on the 4<sup>th</sup> floor. In view of the outcome of the hearing set out below, it is not necessary to record the state of the Property as seen by the Tribunal.

### The Hearing

23. The hearing took place at the Town Hall, Wells on 20 October 2010. Mrs Addison represented the Applicant. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents appeared in person. The 1<sup>st</sup> Respondent was accompanied by her partner.

24. The Tribunal considered the application by the 2<sup>nd</sup> Respondent for an adjournment. The 2<sup>nd</sup> Respondent said that she no longer wishes for an adjournment to adduce expert evidence as the Respondents could not afford the cost of such evidence. Instead, she applied for an adjournment on the basis that there was another claim against the previous owner of Flat 1, in relation to service charges which was being referred to the Tribunal and she considered that both ought to be dealt with together. The Applicant opposed the adjournment on the basis that this application only concerns future service charges and the other application concerns historic charges and there would be no benefit obtained by dealing with the 2 applications together.

25. The Tribunal considered the application and refused the application for an adjournment on the basis that the 2 applications related to separate respondents, there was no apparent connection between the issues and there was no apparent benefit to be obtained by dealing with the matters together.

26. The Respondents then submitted further documents and the Applicant was given an opportunity to consider them.

27. The Applicant confirmed that it was not pursuing the claim in respect of the balance of service charges for the year ended 31 December 2008 as the 1<sup>st</sup> Respondent had paid the outstanding sum. The only issue was the demand for an interim charge on account of the year ended 31 December 2009.

### The Applicant's Evidence

28. The documents filed by the Applicant included a copy of the interim demand addressed to the 1<sup>st</sup> Respondent for payment of £2,200 on 25 June 2009. The demand was dated 2 June 2009 and was expressed to be served by Mr. Paul Bliss "As trustees on behalf of and for the Shu Shu Executive Pension Scheme, the freehold owners of the building at 10 South Parade." It was not clear to the Tribunal whether the Shu Shu Executive Pension Scheme is the same as the Applicant. The covering letter indicated that Mr. Bliss had had an initial survey carried out and initial quotes had been obtained for work to be carried out to the Property at a cost of £40,000.

29. The Applicant's bundle contained no description of the works to be carried out, no specification of the works, no estimate for the cost of the works, no details of actual expenditure incurred during 2009 and no final service charge accounts for the year ended 31 December 2009.
30. Mr. Bliss gave oral evidence to the Tribunal that the final service charge accounts for the year ended 31 December 2009 had not been prepared and that although the Applicant anticipated doing the works in 2009, they had not yet been started.
31. The Tribunal invited Mr. Addison to consider how, in the light of that evidence, the Applicant would be able to satisfy the Tribunal that the interim charge was reasonable in view of the definition of Interim Charge in the sixth schedule of the Lease. After a brief adjournment, Mr. Addison indicated that as the expense had not been incurred during 2009, the Applicant would not proceed with the application.
32. The Tribunal invited submissions on the application for an order pursuant to Section 20C of the Act. The 2<sup>nd</sup> Respondent said that it would not be fair for the Respondents to bear the Applicant's costs of the application in the light of its withdrawal. Mr. Addison did not oppose the making of the order.

### Conclusions

33. Based on the documentary and oral evidence before it, the Tribunal considers that the Applicant was correct not to proceed with the application. There was no evidence before the Tribunal on which it could make a finding that the demand for an interim charge was reasonable within the terms of the Lease. The Tribunal concludes that no interim charge was payable by the Respondents on 24 June 2009 pursuant to the demand dated 2 June 2009..
34. The Tribunal has not considered whether the Applicant is entitled under the terms of its Lease to recover any costs incurred in connection with this application through the service charge and it makes no finding in that respect. If the Applicant is entitled to recover its costs, the Tribunal concludes that it would not be just for it to recover its costs from the Respondents through the service charge when it has brought this application and then produced insufficient evidence to substantiate it. The Tribunal is satisfied that it is just and equitable to make an order under Section 20C of the Act.



Mr. J G Orme  
Chairman

Dated 22 October 2010

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**Between:**

**United Pension Trustees Limited**                      Applicant

and

**1. Mr. David P James**  
**2. Mrs. Maureen Slavin**  
**3. Mr. Jeremy P Potter**                      Respondents

Date of application:                      4 May 2010  
Date of hearing:                              20 October 2010  
Members of the Tribunal:              Mr. J. G. Orme (Lawyer Chairman)  
                                                            Mr. M. Ayres FRICS (Chartered Surveyor member)  
Date of decision:                              22 October 2010

**Decision of the Leasehold Valuation Tribunal**

- 1. For the reasons set out below, the Tribunal determines that no interim charge was payable by the Respondents Mr. David P James, Mrs. Maureen Slavin and Mr. Jeremy P Potter to United Pension Trustees Limited in respect of 10 South Parade, Weston-super-Mare, BS23 1JN on 24 June 2009.**
  
- 2. Further, the Tribunal orders that, pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended), all costs incurred by the Applicant in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.**



## Reasons

### The Application

1. The application concerns service charges claimed to be due in respect of 10 South Parade, Weston-super-Mare ("the Property"). United Pension Trustees Limited ("the Applicant") is the freehold owner of the Property.
2. On 11 December 2009, the Applicant issued a claim in the Weston-super-Mare County Court under case number 9WM01135 against Mr. Jeremy Potter ("the 3<sup>rd</sup> Respondent") claiming outstanding service charges in respect of Flat 3 at the Property. The claim was for £23.04 being the balance of the service charge due for the year ended 31 December 2008 and £2,400 interim service charge for the year ended 31 December 2009. There was a claim for continuing interest and costs. Judgment was entered against the 3<sup>rd</sup> Respondent in default of a defence on 13 January 2010.
3. On 13 January 2010, the Applicant issued a claim in the Weston-super-Mare County Court under case number 0WM00018 against Mr. D P James ("the 1<sup>st</sup> Respondent") claiming outstanding service charges in respect of Flat 2, 10 South Parade, Weston-super-Mare. The claim was for £193.10 being the balance of the service charge due for the year ended 31 December 2008 and £2,200 interim service charge for the year ended 31 December 2009. There was a claim for continuing interest and costs. On 21 January 2010, the 1<sup>st</sup> Respondent filed a defence disputing the full amount claimed. On 25 February 2010, District Judge Daniel made an order that *"the case be stayed so that parties can apply to the LVT and upon the LVT accepting the referral this claim be struck out."*
4. On 4 May 2010 the Applicant applied to the Tribunal for a determination of the liability of the 1<sup>st</sup> Respondent to pay the service charges claimed in case number 0WM00018.
5. On 28 June 2010 the Tribunal issued directions providing for the parties to exchange written statements of case and for the application to be listed for hearing.
6. Mrs. Maureen Slavin ("the 2<sup>nd</sup> Respondent"), the leasehold owner of Flat 1 applied to be joined as a respondent. On 23 August 2010 The Tribunal directed that she be joined as a respondent. By notice dated 3 September 2010, she applied to the Tribunal for an order to be made pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act")
7. The 3<sup>rd</sup> Respondent applied to be joined as a respondent and on 7 September 2010 the Tribunal directed that he be joined as a respondent. By letter dated 9 September 2010 the Applicant objected to the 3<sup>rd</sup> Respondent being joined as a party on the basis

that it already had a judgment against the 3<sup>rd</sup> Respondent for the sums which are the subject of the application and he was therefore not in a position to challenge the service charges. The Tribunal made no further direction and he remains a party to the application.

8. The Applicant filed its written statement of case on 25 August 2010. The Respondents filed their written statement of case on 27 August 2010. The application was listed for hearing on 20 October 2010.
9. In their statement of case, the Respondents alleged that the works required to put the Property into repair had been exacerbated by the failure of the Applicant to carry out repairs in the past. The Applicant alleged that it had not previously had notice of that issue and applied by letter dated 6 October 2010 for permission to submit further documents. On 7 October 2010, the Tribunal gave the Applicant permission to file further documents by 13 October and for the Respondents to bring any further documents on which they relied to the hearing on 20 October. Both parties filed further documents in accordance with that direction.
10. By letter dated 14 October, the 2<sup>nd</sup> Respondent applied to the Tribunal for the hearing to be adjourned to enable the Respondents to obtain expert evidence as to the effect of the Applicant's failure to carry out repairs in the past. The Tribunal directed that that application should be heard at the hearing.

### **The Law**

11. The statutory provisions primarily relevant to matters of this nature are to be found in sections 18, 19, 20C and 27A of the Act.
12. Section 18 provides:
  - 1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent:-*
    - a. *which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and*
    - b. *the whole or part of which varies or may vary according to the relevant costs.*
  - 2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*
  - 3) *For this purpose:-*
    - a. *"costs" includes overheads and*
    - b. *costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*

13. Section 19 provides:-

- 1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period:-*
  - a. *only to the extent that they are reasonably incurred, and*
  - b. *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;**and the amount payable shall be limited accordingly.*
- 2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

14. Section 20C provides:-

- 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 leasehold valuation tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.*
- 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.*

15. Section 27A provides:-

- 1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to:-*
  - a. *the person by whom it is payable,*
  - b. *the person to whom it is payable,*
  - c. *the amount which is payable,*
  - d. *the date at or by which it is payable, and*
  - e. *the manner in which it is payable.*
- 2) *Subsection (1) applies whether or not any payment has been made.*
- 3) *...*
- 4) *No application under subsection (1) or (3) may be made in respect of a matter which -*  
*(c) has been made the subject of a determination by a court,*  
*or ...*

Subsections 5 to 7 of section 27A are not relevant in this application.

## **The Lease**

16. *The Tribunal had before it a copy of the lease of Flat 2. The parties agreed that the terms of the leases of the other flats were substantially in the same terms.*

17. The 1<sup>st</sup> Respondent holds Flat 2 by virtue of a lease dated 18 March 1981 ("the Lease"). The Lease demises Flat 2 for a term of 999 years from 25 December 1980 at a yearly rent of £20.
18. At clause 5(4) of the Lease, the Landlord covenants to maintain and keep in good and substantial repair and condition the main structure and the common parts of the Property, to decorate the exterior of the Property, to clean the common parts and to insure the Property. There is provision for the landlord to employ managing agents and other staff and to provide a sinking fund for future anticipated expenditure.
19. The Lease contains a covenant by the tenant to pay a service charge and an interim charge. The service charge provisions are set out in the sixth schedule to the Lease. In brief, these enable the landlord to recover from the tenants of the Property the total expenditure incurred by the landlord in fulfilling its obligations under clause 5(4) including any contribution to a sinking fund. The landlord is entitled to raise an interim charge "*to be paid on account of the Service Charge in respect of each Accounting Period as the Landlord or its Managing Agents shall specify at their discretion to be a fair and reasonable interim payment*". The interim charge is payable by 2 equal payments on 24 June and 25 December in each year. As soon as practicable after the expiry of each accounting period, the landlord is to supply to the tenants a certificate from the auditors setting out the total expenditure in that year, the amount of the interim charge paid during the year and the amount of any excess or deficiency.
20. At the hearing it was agreed by the parties that the total expenditure incurred by the Applicant was to be split between the tenants of the Property in the following proportions:  
Flat 1 – 13%  
Flat 2 – 11%  
Flat 3 – 12%  
Flat 4 - 29%  
Shop - 35%.  
The total of those proportions is 102%. It was noted by the Applicant that the proportions need to be varied so that the landlord does not recover more than 100% of its expenditure.

### **Inspection**

21. The Tribunal carried out an inspection of the Property prior to the hearing on 20 October 2010 in the presence of Mr. Paul Bliss, a representative of the Applicant, his son, Mr. Oliver Bliss and the Applicant's solicitor, Mr. Addison, a partner at Powells, solicitors, together with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
22. The Property is a terraced property arranged on 4 floors with a shop on the ground floor, Flat 4 on the 1<sup>st</sup> floor, Flats 2 and 3 on the 2<sup>nd</sup>

floor and Flat 1 on the 4<sup>th</sup> floor. In view of the outcome of the hearing set out below, it is not necessary to record the state of the Property as seen by the Tribunal.

### **The Hearing**

23. The hearing took place at the Town Hall, Wells on 20 October 2010. Mr. Addison represented the Applicant. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents appeared in person.
24. The Tribunal considered the application by the 2<sup>nd</sup> Respondent for an adjournment. The 2<sup>nd</sup> Respondent said that she no longer wishes for an adjournment to adduce expert evidence as the Respondents could not afford the cost of such evidence. Instead, she applied for an adjournment on the basis that there was another claim against the previous owner of Flat 1 in relation to service charges which was being referred to the Tribunal and she considered that both ought to be dealt with together. The Applicant opposed the adjournment on the basis that this application concerns future service charges and the other application concerns historic charges and there would be no benefit obtained by dealing with the 2 applications together.
25. The Tribunal considered the application and refused the application for an adjournment on the basis that the 2 applications related to separate respondents, there was no apparent connection between the issues and there was no apparent benefit to be obtained by dealing with the matters together.
26. The Respondents then submitted further documents and the Applicant was given an opportunity to consider them.
27. The Applicant confirmed that it was not pursuing the claim in respect of the balance of service charges for the year ended 31 December 2008 as the 1<sup>st</sup> Respondent had paid the outstanding sum. The only issue was the demand for an interim charge on account of the year ended 31 December 2009.

### **The Applicant's Evidence**

28. The documents filed by the Applicant included a copy of the interim demand addressed to the 1<sup>st</sup> Respondent for payment of £2,200 on 25 June 2009. The demand was dated 2 June 2009 and was expressed to be served by Mr. Paul Bliss "*As trustees on behalf of the Shu Shu Executive Pension Scheme, the freehold owners of the building at 10 South Parade.*" It was not clear to the Tribunal whether the Shu Shu Executive Pension Scheme is the same as the Applicant. The covering letter indicated that Mr. Bliss had had an initial survey carried out and initial quotes had been obtained for work to be carried out to the Property at a cost of £40,000.

29. The Applicant's bundle contained no description of the works to be carried out, no specification of the works, no estimate for the cost of the works, no details of actual expenditure incurred during 2009 and no final service charge accounts for the year ended 31 December 2009.
30. Mr. Bliss gave oral evidence to the Tribunal that the final service charge accounts for the year ended 31 December 2009 had not been prepared and that although the Applicant anticipated doing the works in 2009, they had not yet been started.
31. The Tribunal invited Mr. Addison to consider how, in the light of that evidence, the Applicant would be able to satisfy the Tribunal that the interim charge was reasonable in view of the definition of Interim Charge in the sixth schedule of the Lease. After a brief adjournment, Mr. Addison indicated that as the expense had not been incurred during 2009, the Applicant would not proceed with the application.
32. The Tribunal invited submissions on the application for an order pursuant to Section 20C of the Act. The 2<sup>nd</sup> Respondent said that it would not be fair for the Respondents to bear the Applicant's costs of the application in the light of its withdrawal. Mr. Addison did not oppose the making of the order.

### **Conclusions**

33. Based on the documentary and oral evidence before it, the Tribunal considers that the Applicant was correct not to proceed with the application. There was no evidence before the Tribunal on which it could make a finding that the demand for an interim charge was reasonable within the terms of the Lease. The Tribunal concludes that no interim charge was payable by the Respondents on 24 June 2009 pursuant to the demand dated 2 June 2009..
34. The Tribunal has not considered whether the Applicant is entitled under the terms of its Lease to recover any costs incurred in connection with this application through the service charge and it makes no finding in that respect. If the Applicant is entitled to recover its costs, the Tribunal concludes that it would not be just for it to recover its costs from the Respondents through the service charge when it has brought this application and then produced insufficient evidence to substantiate it. The Tribunal is satisfied that it is just and equitable to make an order under Section 20C of the Act.

*Signed*  
Mr. J G Orme  
Chairman  
Dated 22 October 2010