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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/OOHH/LSC/2015/0080
Property:	Spa Court, Stitchill Road, Torquay TQ1 1PZ
Applicant:	Spa Court Management Limited
Representative:	Ms L Hoare
Respondent:	All 17 Leaseholders
Representative:	Mr A Gibb, solicitor, for tenant of Flat 6
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 (Liability to pay service charges) Landlords application for the determination of reasonableness of service charges.
Tribunal Members:	Judge A Cresswell (Chairman) Mr T Dickinson FRICS
Date and venue of Hearing:	30 June 2016 at Torquay County Court
Date of Decision:	7 July 2016

DECISION

The Application

1. This case arises out of the landlord's application, made on 23 November 2015, for the determination of liability to pay service charges for the years 2015 and 2016.

The Issues

2. Both parties agreed that the parapet of the external open part of the second floor of Flat 6, together with the felt downstand and lead flashing attached thereto and also the pipe attached to the drainhole in the roofcrete surface of the external surface of the open part of the second floor and the hopper and downpipe to which that pipe is attached, all form part of the structure of the building and are not included in the demise, Flat 6.
3. The only remaining issue, therefore, for this Tribunal was to determine whether the surface of the open part of the second floor forms a part of the demise and whether works to that surface can be recovered via the Service Charge.
4. The determination of the liability for any losses and damage consequent upon any failure by the landlord to comply with covenants of the lease or negligence either in doing so or otherwise are outwith the jurisdiction of this Tribunal and would be a matter for agreement between the parties or resolution by a court. Similarly the assessment of contribution by a tenant to such losses or damage by reason of any failure to take measures to reduce or prevent same are outwith the jurisdiction of this Tribunal and would be a matter for agreement between the parties or resolution by a court

Inspection and Description of Property

5. The Tribunal inspected the property on 30 June 2016 at 1000. Present at that time were Ms Lucy Hoare and Mr Jonathan Holmes of Blenheims Estate and Asset Management, Ms Abi Da'Bell, daughter of the tenant of Flat 6, Mr Adam Gibb, solicitor, and others. The property in question consists of a Victorian mansion, converted and extended to form 17 self-contained residential flats, situated in its own grounds in the Warberries conservation area. Flat 6 is situated on the first and second floors of the building; on the second floor, there is a tower room and an open area comprising a terrace bordered by a parapet with a pitched roof on one side.

Summary Decision

6. This case arises out of the landlord's application, made on 23 November 2015, for the determination of liability to pay service charges for the years 2015 and 2016. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has determined that the roofcrete surface of the external part of Flat 6 forms part of the demise, such that repair or replacement of that surface is the responsibility of the tenant and costs related thereto should not be included within the Service Charge. Should, however, it be necessary to take up the surface so that the landlord can effect repairs or replacement to the underlying structure, a part of the structure of the building retained by the landlord, then the reasonable cost of replacement of the surface falls properly to the landlord and consequently to the 17 tenants as a Service Charge.

Directions

7. Directions were issued on 26 November 2015.
8. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
9. This determination is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by Mr J Motch, tenant of Flat 3, in writing, and by Ms Hoare and Mr Holmes orally. The Tribunal also heard from Mr Gibbs and Ms Labette. The Tribunal also read the written submissions of tenants contained within the hearing bundle. At the end of the inspection, Mr Gibbs provided the Tribunal with a skeleton argument; at the start of the hearing, he presented a further bundle of papers containing 27 enclosures, but at the end of the hearing informed the Tribunal that it need read only a case report referred to and discussed during the hearing. At the end of the hearing, Ms Hoare and Mr Gibbs told the Tribunal that they had had an opportunity to say all that they wished and had nothing further to add. Ms Labette was content with all that had been said.

The Law

10. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

11. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

12. The relevant law is set out below:

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

18 Meaning of "service charge" and "relevant costs"

(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.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Ownership and Management

13. The Respondent is a company owned by the 17 leaseholders at the property. The Respondent is the owner of the freehold. The property is managed for it by Blenheims Estate And Management.

The Lease

14. Mr T Lowe holds Flat 6 under the terms of a lease dated 15 June 1984, which was made between Milord Homes Limited as lessor and John Michael Griffiths as lessee.

Whilst Flat 6 alone has an open terrace floor, the Tribunal was told that all leases were otherwise written in the same terms.

15. The issue here was solely concerned with the construction of the lease.

16. The construction of a lease is a matter of law and imposes no evidential burden on either party: (**(1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill** [2012] UKUT 373 (LC)).

17. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:

Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

> 15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.
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> 16. For present purposes, I think it is important to emphasise seven factors: □
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> 17. First, the reliance placed in some cases on commercial common sense and □surrounding circumstances .... should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.
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> 18. Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the

clearer the natural meaning the more difficult it is to justify departing from it. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning. If there is a specific error in the drafting, it may often have no relevance to the issue of interpretation which the court has to resolve.

19. The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made.

20. Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Experience shows that it is by no means unknown for people to enter into arrangements which are ill-advised, even ignoring the benefit of wisdom of hindsight, and it is not the function of a court when interpreting an agreement to relieve a party from the consequences of his imprudence or poor advice. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party.

21. The fifth point concerns the facts known to the parties. When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties. Given that a contract is a bilateral, or synallagmatic, arrangement involving both parties, it cannot be right, when interpreting a contractual provision, to take into account a fact or circumstance known only to one of the parties.

22. Sixthly, in some cases, an event subsequently occurs which was plainly not intended or contemplated by the parties, judging from the language of their contract. In such a case, if it is clear what the parties would have intended, the court will give effect to that intention. An example of such a case is Aberdeen City Council v Stewart Milne Group Ltd [2011] UKSC 56, 2012 SCLR 114, where the court concluded that "any ... approach" other than that which was adopted "would defeat the parties' clear objectives", but the conclusion was based on what the parties "had in mind when they entered into" the contract (see paras 17 and 22).

23. Seventhly, reference was made in argument to service charge clauses being construed "restrictively". I am unconvinced by the notion that service charge clauses are to be subject to any special rule of interpretation. Even if (which it is unnecessary to decide) a landlord may have simpler remedies than a tenant to enforce service charge provisions, that is not relevant to the issue of how one interprets the contractual machinery for assessing the tenant's contribution. The origin of the adverb was in a judgment of Rix LJ in McHale v Earl Cadogan [2010]

EWCA Civ 14, [2010] 1 EGLR 51, para 17. What he was saying, quite correctly, was that the court should not "bring within the general words of a service charge clause anything which does not clearly belong there". (120. I agree, if by this it is meant that the court should lean towards an interpretation which limits such clauses to their intended purpose of securing fair distribution between the lessees of the reasonable cost of shared services.)

18. Lord Neuberger's final point above is a reference to the doctrine of "*contra proferentem*", which had been understood to require an ambiguity in a clause in a lease to be resolved against a landlord as "*proferor*".

19. The Tribunal details the relevant terms of the lease. Clause 1(a) in part:

..... *HEREBY DEMISES unto the Tenant ALL THAT Flat Number 6 more particularly described in the First Part of the First Schedule hereto and for identification only outlined in red on the Plan No 2 annexed hereto (hereinafter called "the Flat") which expression includes-*

(i) all drains pipes ventilating ducts and wires solely serving the Flat

(iv) the ceilings of the Flat together with the boards or other surface of the floors of the Flat but excluding the floor and ceiling joists

20. Clause 1(b)

to pay to the Landlord by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the Landlord in the repair maintenance renewal and insurance of the Building and the provision of the services therein and the other heads of expenditure as the same are set out in the Fourth Schedule hereto ("the Service Costs") such further and additional rent ("the Service Charge")

.....

21. Clause 4

SUBJECT to contributions by the Tenant as hereinbefore provided the Landlord HEREBY COVENANTS with the Tenant as follows:-

(i) at all times during the said term to take reasonable care to keep in good and substantial repair and in clean and proper order and condition those parts and appurtenances of the Building which are not included in this demise or in a demise of any part of the Building

22. The First Part of the First Schedule of the lease provides:

ALL THAT self-contained Flat on the first and second floor of the Building known as Flat No.6 Spa Court Stitchill Road Torquay in the County of Devon

23. The Fourth Schedule provides:

All costs and expenses whatsoever incurred by the Landlord in and about the discharge of the obligations on the part of the Landlord set out specifically in clause 4 of this Lease

Agreed Facts

24. The parties agreed a number of issues, including a synopsis of the relevant history. The agreed facts are detailed here.

25. Mr T Lowe is the tenant owner of Flat 6, which is situated on the first and second floor of the building. The second floor consists of a tower room reached by a spiral staircase from the first floor and opens out onto an open "flat" area surrounded on 3 sides by a parapet and on the fourth side by the pitch of a roof.

26. Rainwater gathers on the flat area and is added to by run off from the adjacent pitched roof and from a pipe leading from an atrium roof, and there is also what appears to be an overflow pipe from a header tank, which may or may not discharge on a rare occasion.

27. The flat area is covered by roofcrete. The parapet is dressed with a bituminous felt downstand up from the roofcrete surface and this downstand is partly covered by lead flashing.

28. The sole and apparently intended escape for the water gathering on the open area is via a hole in the roofcrete adjacent to the parapet and close to the pitched roof and then via a plastic pipe to a hopper and down a downpipe attached to the side of the building alongside the first floor part of Flat 6 and below. The parties agreed that the design for water egress appeared to be inadequate, particularly at times of high rainfall. (It was apparent to the Tribunal that water was still welling in an area freshly painted/covered adjacent to the pitched roof and elsewhere on the flat area, the required gradients for flow being absent in places. It was also apparent that there was water present behind some parts of the felt downstands and behind the lead flashing, which did not appear to have the correct lead welding.)

29. Water damage to the inside of Flat 6 began in about 2009/2010 and extends to all but the bedroom and hallway of the first floor of that flat.

30. It was agreed (properly in the view of the Tribunal, having regard to the wording of the lease and Plan 2 of the second floor; although not required to determine the point, the Tribunal noted that the plan shows the demised open part of the second floor of Flat 6 as being within and not to include the parapet) that the parapet of the

external part of the second floor of Flat 6, together with the felt downstand and lead flashing attached thereto and also the pipe attached to the drainhole in the roofcrete surface of the external surface of the second floor and the hopper and downpipe to which that pipe is attached, all form part of the structure of the building and are not included in the demise, Flat 6. These parts were accepted to be the responsibility under the lease of the landlord to maintain, the reasonable costs of such maintenance being recoverable by way of Service Charge. The Tribunal was not asked to make a determination about these parts.

31. In 2011 (6 January), a report commissioned from Barbets (R G Spooner FRICS) concluded that there were no defects to the roofcrete surface. The roofcrete was again examined in 2012/2013 by Roofcrete, whilst still under warranty, and found to be in good order. There is no longer a warranty.

32. A report of 17 February 2015 from Croft Surveyors (Kevin Isaacs MRICS) concluded that the water ingress problem was around the perimeters rather than the surfaces of the flat area on the second floor. Mr Isaacs expressed some concerns about the supporting structure of the open area of the second floor.

The Applicant's Case

33. The Applicant landlord explained in its Statement of Case and orally via Ms Hoare and Mr Holmes that it wanted the Tribunal to determine the responsibility associated with the surface of the open area of the second floor.

34. Some advice had been received from the landlord's solicitor, but there was disagreement between the parties and, as an honest broker, the management company wanted to clear the issue up so as to ensure a proper way forward. Ms Hoare and Mr Holmes had no firm views as to the correct view.

The Respondents' Case

35. The position of the tenant Respondents was somewhat varied. Some believed that the landlord was liable for causation of the costs in question associated with water damage to Flat 6, others that responsibility lay at the door of the tenant of Flat 6. Some felt that no costs should be met by their number, whilst others believed that a measure of costs should fall to the collective tenants; there was still some difference amongst the latter group as to the individual costs which would fall to all tenants and which should be borne by the tenant of Flat 6. It was suggested by some that

the tenant of Flat 6 was not free of responsibility because there had been a failure to take steps, such as ventilation and being present regularly to observe and prevent damage by water to the flat.

36. Mr Gibbs's submissions were to the effect that the roofcrete surface was part of the structure of the building and, as such, the responsibility of the landlord, such that costs of repair would be recoverable from all 17 tenants by way of Service Charge.

37. He argued also that, in the event of any finding that the roofcrete surface was the responsibility of the tenant under the lease, because the landlord had collected the costs of some repair work to the roofcrete (the fresh dressing adjacent to the pitched roof) through the Service Charge, the landlord had, by its conduct, assumed responsibility for the roofcrete surface.

Consideration and Determination

38. The Tribunal's jurisdiction does not allow it to answer the disputes identified in paragraph 35 above and the Tribunal must concentrate upon the issue identified in paragraph 3 above.

39. The Tribunal finds it clear from examination of the papers that the issue here is one of construction of the lease. A tenant can only be required to pay a Service Charge if required to do so by the terms of the lease. Generally a lease details who owns what part of a building and the responsibilities of landlord and tenant for repair and decoration. The fact that a party carries a heavy burden consequent upon the terms of a lease is a factor not relevant to the Tribunal's decision; obviously tenants are able to seek legal advice upon the true construction of a lease at the time of purchase and normally that is a constituent part of the preparations for purchase.

40. The Tribunal's jurisdiction does not extend to determining the liability for consequent loss. Put simply, if a failure by a landlord or tenant to comply with the terms of the lease, or negligence in attempting to comply with those terms, leads to loss for other tenants or for the landlord, those losses are generally recoverable, if recoverable at all, by agreement or via civil suit in the courts. The Tribunal's jurisdiction is detailed succinctly in paragraph 11 above.

41. Roofcrete is a durable surface likely to be walked upon, unlike a felt finish, where it is recommended that walking should be avoided as damage would result. Clearly a tenant would choose a waterproof medium for the terrace open area of the second floor of Flat 6, else risk damage to the tenant's own flat and other parts of the

building. Both surfaces described should prevent ingress of water to the parts of the building beneath, but roofcrete provides a further amenity and one for which the open space of the second floor of Flat 6 was clearly intended, i.e. as a terrace with access to the open air and to the magnificent views available across Torbay.

42. Key, however, to the Tribunal's decision are the terms of the lease. A Service Charge can only be demanded of tenants where the lease requires. In this lease, the terms, when read together, specifically exclude the surface of the open area from the parts of the building which the landlord is required to maintain and for which it can demand a Service Charge.

43. There was some discussion as to the meaning of "*or other surface of the floors of the Flat*" within Clause 1(iv). Solicitors had advised the landlord's managing agent, in somewhat confusing terms, that "*surface*" in the context of the lease meant "*just the part which one sees*" "*the fraction of an inch which one sees of an object*" and the advice goes on to say that the tenant is "*only responsible for the surface of the flat roof but not the fabric of the flat roof*". Whilst the latter statement is clearly correct in accordance with the wording of Clause 1(iv), the former statement does not make sense when the word "*surface*" in the clause is read with the words which precede it, "*the boards or other*", and when noting that excluded are "*the floor and ceiling joists*". The roofcrete surface cannot be described as a "*joist*", but can be described as a "*surface*". Just as the tenant has responsibility for what is placed above the first floor joists as a surface, so that tenant has responsibility for what is placed above the second floor joists as a surface, i.e. the roofcrete or whatever other surface the tenant chooses to employ. Further, the advice of the solicitors would mean that the tenant owned the visible surface of the roofcrete, but that neither party owned the part of the roofcrete not visible to the eye, which assessment lacked logic and force. It is perfectly logical that the tenant of Flat 6 should be responsible for the costs associated with the surface of Flat 6 as, whilst other tenants may benefit from the exclusion of water, that tenant alone enjoys the benefit of the use of the terrace.

44. Mr Gibbs asked the Tribunal to find that the (currently roofcrete) surface of the second floor open area is a part of the structure of the building maintainable by the landlord, but that would be to ignore the clear terms of the lease. It was clear to the Tribunal that the lease in the case relied upon by Mr Gibbs (**Hallisey v Petmoor Developments Limited** (2000) WLR) was drafted in different terms. A decision

by a court in relation to a lease is generally guidance only about that lease or one written in the same terms. In **Hallisey**, Mr J Patten highlighted *"the need to construe particular terms in a lease in the context of the lease as a whole and in the light of the relevant surrounding circumstances."* The Tribunal finds that its assessment of the meaning of Clause 1(iv) is *"what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean."*

45. The Fourth Schedule restricts the Service Charge to costs associated with the discharge of the landlord's obligations set out specifically in Clause 4. Specifically excepted in Clause 4 are *those parts and appurtenances of the Building which are not included in this demise or in a demise of any part of the Building.* The Tribunal has determined that the surface of the open area of the second floor of Flat 6, currently roofcrete, is included in the demise of Flat 6 and, subject to what the Tribunal has said in paragraph 46 below, the costs of repairs cannot form part of the Service Charge demanded of all tenants.

46. Should it be necessary to take up the surface of the open area of the second floor of Flat 6 so that the landlord can effect repairs or replacement to the underlying structure, a part of the structure of the building retained by the landlord, then the reasonable cost of replacement of the surface falls properly to the landlord and consequently to the 17 tenants as a Service Charge. This is because the Fourth Schedule covers *All costs and expenses whatsoever incurred by the Landlord in and about the discharge of the obligations on the part of the Landlord set out specifically in clause 4 of this Lease.* Nobody is generally entitled to effect works, the necessary consequence of which is to destroy property belonging to another, without compensating that other either by reinstatement or payment.

47. The lease could have been better written, but the Tribunal finds that its interpretation complies with the actual wording of the lease and judicial guidance.

48. Mr Gibbs submitted that, because the landlord had collected the costs of some repair work to the roofcrete (a fresh dressing adjacent to the pitched roof) through the Service Charge, the landlord had, by its conduct, assumed responsibility for the roofcrete surface. He provided no legal basis (statute or case law) for this proposition. The Tribunal's reading of the advice of HH Judge Huskinson in **Swanston Grange (Luton) Management Limited v Langley-Essen** (LRX/12/2007), by reference to Halsbury's Laws of England and the **High Trees**

doctrine and the nature of promissory estoppel, does not support an argument that there is here any form of permanent estoppel for a landlord such as to oblige it to regard the clear terms of the lease as being rewritten so as to make maintenance of the surface of the open area of the second floor of Flat 6 its ongoing responsibility. Tenants are protected by Section 27A(5) of the 1985 Act. It appears to the Tribunal to be entirely proper that the landlord should have sought clarification of the meaning of the lease so as to provide certainty for the way forward.

A Cresswell (Judge)

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.