

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION  
TRIBUNAL Case No. CHI/43UK/LSC/2009/0063  
Premises: Flat 3 Mulberry Court 130 Croydon Road, Caterham Surrey, CR3  
6QD  
IN THE MATTER OF an application under section 27A of the Landlord and Tenant Act  
1985 (“the 1985 Act”)  
AND IN THE MATTER OF an application under Schedule 11 of the of the Commonhold  
& Leasehold Reform Act 2002 (“the 2002 Act”)

**TRIBUNAL MEMBERS** Mr HD Lederman  
Mr D Lintott FRICS

Mikkel Paris

Applicant

and

Newservice Limited

Respondent

### DECISION OF THE TRIBUNAL

I. The Tribunal determines that:

a. The amounts payable for service charges under clause 4.4 and the Fifth Schedule to the Lease dated 7<sup>th</sup> August 2004 (insofar as such charges have been demanded) for service charge years 2007/2008 and 2008/2009 are as set out in the table below.

b. This determination is made under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) and under Schedule 11 of the 2002 Act.

c. The Applicant was entitled, and remains entitled, to withhold payment of the sums which this Tribunal have found are payable (set out below) until service charge demands have been served which are accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges complying with The Service Charges Summary of Rights and Obligations and Transitional Provisions) (England) Regulations 2007 (“the 2007 Regulations”). This

conclusion does not apply to the opening balance of service charges which the Tribunal has found to be due for 2006/2007 namely £381.20 being part of a sum initially demanded on 1<sup>st</sup> May 2007. The Applicant may properly withhold the opening balance until Newservice Limited has accounted to him for payments made to service charges during the 2008/2009 service charge year which have not been accounted for.

d. No interest is payable by the Applicant upon any of the sums which may ultimately be payable to the Respondent under the terms of the Lease or as an administration charge, as he is entitled to withhold payment of service charges by virtue of section 21B(4) of the 1985 Act, or by virtue of a claim to set off payments made in the service charge year 2008/2009 until these have been accounted for.

e. None of the administration charges claimed by Newservice Limited in the various service charge demands and demands for administration charges are reasonable or payable.

2. The Tribunal orders that none of the costs of these proceedings should be put through service charge under section 20C of the 1985 Act.
3. The Respondent is required to reimburse the Applicant for the fees paid by him for this application to the Tribunal.

**Determination of service charges and administration charges payable by Flat 3 Mulberry Court if demands complying with relevant legislation are served**

4.

**2007/2008**

<b>Head of expenditure</b>	<b>Amount payable £</b>
Opening balance from 2006/2007	381.20
Communal cleaning & windows	114.16
Landlord electricity supply (not challenged)	24.21
Repairs and maintenance	148.56
Legal and professional fees (not challenged)	13.48
Asbestos reporting	Nil
Health and safety work (not challenged)	23.50
Management fee	154.22
Administration fee (non-payment for insurance premium)	Nil
Subtotal	859.33
Less payments (excluding insurance and ground rent) of £500.00 (£1228.88 payments less £722.88 for insurance and ground rent)	
Balance service charges and administration charges payable 2007/2008	359.33

<b>2008/2009 (only insurance demanded)</b>	
Landlord electricity supply	29.04
Entry phone system	Nil
Communal cleaning & windows	95.46
Front and rear gardens	Nil
Health and safety	Nil
Legal and professional fees	Nil
Contingency	Nil
Management fees	Nil
Administration charge and interest claimed	Nil
Insurance 01 05 2008 to 23 06 2008	Nil
Balance service charges and administration charges payable 2008/2009	124.50
Add balance from 2007/2008	359.33
Total payable if appropriate demands served	483.83
Service charge year 2009/2010	No determination

## Reasons

### Preliminaries

- On 17<sup>th</sup> February 2009 the Applicant (Mr Mikkel Parris) a leaseholder of Flat 3 Mulberry Court applied for a determination whether the sums claimed (or which might be demanded) as service charges for service charge years 2007/2008, 2008-2009 and 2009/2010 were payable under section 27A of the 1985 Act. He also sought a determination that administration charges levied by the Respondent or its agent were unreasonable under Schedule 11 of the 2002 Act. In these Reasons references to page numbers and appendices are to the bundle of documents produced by the Applicant following the Tribunal's directions given in June 2009, unless stated otherwise.

### The protagonists

- Initially the former managing agents acting on behalf of Newservice Limited Chatfield Property Limited Property Limited (company no 43078005 registered in England and Wales) ("Chatfield") had been named as Respondents to the application. The directions issue by the tribunal on 9<sup>th</sup> June 2009 identified Newservice Limited as the landlord of Flat 3 and all the other flats in Mulberry Court. Those directions also determined that this would be determined by way of written representations only with no hearing.
- At some point in 2009 probably before 27<sup>th</sup> May 2009 administrators were appointed to Newservice Limited, James Joseph Bannon and Malcolm Cohen both partners in BDO Binder Hamlyn LLP accountants ("the administrators"). The

administration had the legal effect of depriving the directors of Newservice Limited of effective control of that company. Nevertheless the administrators are empowered by the provisions of the Insolvency Act 1986 to defend these proceedings on behalf of the Respondent, if so advised. The administrators appointed new managing agents of Mulberry Court, namely Salter Rex Chartered Surveyors and Estate Agents. Mr Edward Stanley AssocRICS MIRPM of Salter Rex is now responsible for the management of Mulberry Court, and attended on behalf of the Respondent at the pre-trial review on 27<sup>th</sup> May 2009 and at the inspection of Mulberry Court which took place before the determination on 9<sup>th</sup> November 2009. For the purpose of this determination, the Tribunal has treated Salter Rex as acting for the Respondent, even though the matters which are complained of took place before their appointment.

#### **The evidence available to the Tribunal**

8. The directions made on 09 06 2009 among other things required the Respondent to reply to the Statement of Case prepared in a bundle form by the Applicant. Salter Rex stated in its letter of 7th August 2009, that “little or no financial information has been forthcoming from the former managing agents of [Mulberry Court] we on behalf of the Administrators .... cannot offer any evidence against the evidence presented by Mr Paris and on the face of all of the information that he has given would accept the facts to be true and correct”.
9. As recently as 15<sup>th</sup> December 2008 and 15<sup>th</sup> March 2009 Chatfield wrote to the Applicant and his co-lessee Mrs. Paris page [A10] and [A13]. Chatfield also acted as managing agents on behalf of Blackacre Property Limited the previous landlord of Mulberry Court. On 17th July 2007 another Leasehold Valuation Tribunal made a determination as to the payability and reasonableness of service charges for service charge years 2004/2005, 2005/2006 and 2006/2007 (Reference CHI/43UK/LSC/2007/0020) (“the earlier Tribunal”). One of the members of this Tribunal was also a member of the earlier Tribunal. The effect of this is that the Tribunal has only had representations and evidence from one of the parties.

#### **Service charges and administration charges**

10. “Service charges” are the name given by Acts of Parliament such as the 1985 Act to monies payable under a lease of a dwelling like the property for services and works provided to the lessee (the Applicant) by the landlord (Newservice Limited). In the Lease the phrase “maintenance charge” or similar phrases are used to refer to service charge. “Administration charge” is defined by the 2002 Act to include an amount payable by a tenant of a dwelling as part of or in addition to the rent payable directly or indirectly “in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is a party to his lease otherwise than as landlord or tenant”.

## Relevant provisions of the Lease

11. The principal provisions in the Lease relevant to the service charges may be summarised as follows:

a. by clause 4.4 of the Lease the lessee covenants to “pay the Maintenance Service Charges at the times and in the manner provide in the Fifth Schedule hereto.....”

b. by clause 6.2 of the Lease the Landlord covenants “Subject to and conditional upon payment being made by the Lessee of the Interim Maintenance Charges and Further Interim Maintenance Charges (as appropriate) at the time and in the manner hereinbefore provided....

6.2.1 To maintain and keep in good repair and substantial repair and condition;

6.2.1.1 The main structure of the Building;

6.2.1.2 All such gas and water mains and pipes drains waste water and sewerage ducts and electric cables as may by virtue of the terms of this Lease be enjoyed or used by the lessee in common with the lessees of occupiers or other residential units in the Building.....

6.2.1.3 the Common Parts of the Building (including re-carpeting redecoration and furnishing where necessary.

6.2.4 At all times to keep the Common Parts adequately lit and cleaned”

Clause 1.9 defines the Common Parts to means “the pathways, entrance arrears dustbin areas staircases passageways lifts and landings included in the Building the garden area at the front of the building (if any) not granted in any of the leases of other parts in the building and used by the Lessee in common with the owners lessees or occupiers of the other residential units in the Building”

b. The Fifth Schedule requires the lessee to contribute the portion specified in paragraph 8 of the Particulars of the “Total Maintenance Expenditure”. That portion is defined as one eighth in the Lease. This apportionment remains in place despite the existence of the 9 flats in Mulberry Court and the earlier Tribunal’s observation to the effect that the top floor flat should contribute to the expenses of maintenance of the Mulberry Court. Paragraph 3 of the Fifth Schedule requires payment of the Interim Maintenance Charge to be made “by equal payments in advance on the first of April and the first day of October in very year (or upon such other dates as the Lessor may specify in writing from time to time.”

c. The accounting period is defined in clause 1.6 of the Lease as “a period commencing on 1<sup>st</sup> April and ending on 31<sup>st</sup> March in the following year”.

d. By clause 6.3 of the Lease it is the landlord's obligation to insure the Building.

e. By clause 6.4 of the Lease the Landlord is empowered to employ managing agents and chartered accountants tradesman or other professionals "as may be necessary or desirable for the proper maintenance safety and administration of the Building".

f. The "Total Maintenance Expenditure" to which the lessee is required to contribute by way of service charge is stated to "comprise the total expenditure incurred by the landlord in any accounting period in carrying out its obligations specified in clauses 6.2, 6.3 and 6.4" of the Lease: see paragraph 1.1 of the Fifth Schedule to the Lease.

All definitions in clause 1 of the Lease are expressed to apply "where the context so admits or requires". Except where quotations are made, the above are intended as paraphrases of relevant provisions of the Lease. It is notable there is no express definition of the term "the Building" in the Lease.

#### Relevant legislation

12. Sections 18–30 of the 1985 Act refer to restrictions on "Service Charges". The relevant provisions are:

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

(a) which is payable directly or indirectly for services ... or insurance or the landlord's cost 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.

19— (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly ...

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

Section 20B of the 1985 Act provides in effect that if a demand for payment of service charge is made more than 18 months from the date of incurring of costs, the tenant will not be liable unless within that period the tenant was notified in writing that he would later be required to contribute to the payment.

Section 21B of the 1985 Act provides a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. Section 21B(3) states a tenant may withhold payment of a service charge demanded from him if that information did not accompany the demand.

Where a tenant withholds a service charge under section 21B, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it: see section 21B(4) of the 1985 Act. With a small exception, section 21B takes effect in relation to service charge demands served on or after 1<sup>st</sup> October 2007.

Section 27A(1) of the 1985 Act provides the Tribunal with jurisdiction to determine 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.

Subsection 27A(2) of the 1985 Act provides that jurisdiction applies whether or not any payment has been made.

Section 27A(3) of the 1985 Act provides:

“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”

Paragraph 2 of the 11<sup>th</sup> Schedule to the 2002 Act provides “A variable administration charge is payable only to the extent that the amount of the charge is reasonable”. Paragraph 1(3) of the 11<sup>th</sup> Schedule to the 2002 Act defines “variable administration charge” to mean an administration charge payable which is neither (a) specified in [the] lease, nor (b) calculated in accordance with a formula specified in [the] lease. Paragraph 5 of the 11<sup>th</sup> Schedule to the 2002 Act gives the Leasehold Valuation Tribunal jurisdiction to determine the payability of administration charges in the same way as for service charges under section 27A of the 1985 Act. The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (“the Administration Regulations 2007”) require a summary of rights to accompany any demand for an administration charge made on or after 1<sup>st</sup> October 2007. Paragraphs 4(3) and 4(4) of Schedule 11 to the 2002 Act enable the tenant to withhold payment of an administration charge in the same manner and with the same consequences as he could withhold payment of service charge demand which was not accompanied by a demand.

### **Inspection of Mulberry Court**

13. The Tribunal inspected the block of flats known as Mulberry Court on 9<sup>th</sup> November 2009 before the determination. Mr Stanley attended the inspection. No one else was in attendance apart from the Tribunal. This was a purpose built block of flats constructed in the late 20<sup>th</sup> century. The block is set back a little way from the main Croydon Road with a small area for shrubs and a parking area at the front. To the rear of Mulberry Court was a yard, to the rear of which ran a deep and largely inaccessible recess resembling a moat running parallel to the 2 basement flats illustrated in photographs CIMG0985, CIMG0986 and CIMG0977. That recess contained some debris at the time of inspection. Mulberry Court was built into the side of a hill with the incline running roughly west to east so the land to the rear of Mulberry Court was considerably higher than the road and the entrance at the front. The area to the rear of Mulberry Court is located on the plan incorporated into the Lease and described as “Rear Garden”. That plan contained a legend saying it was prepared in 2003.
14. The earlier Tribunal’s decision in 2007 stated that two basement flats were added in 2004/2005 and since that date a further flat had been constructed at the top of the building so there were 9 flats in all. The Tribunal’s inspection of the exterior of the building and the interior common parts was consistent with that history. Like the earlier Tribunal, this Tribunal noted the stairways were carpeted and kept reasonably clean and the light switches to operate the lighting had been caged to



prevent manual operation. The Tribunal observed fire fighting equipment (extinguishers) and smoke detectors. Some of the wires and exterior pipework to the rear and the side of Mulberry Court looked as though they had been attached on a rough and ready basis, presumably as late additions. This Tribunal noted doors to meter cupboards on the outside missing and some doors open, like the earlier Tribunal. The Tribunal also inspected the balcony at first floor level with an asphalt covering. Some of the detail of the lead work connecting the floor of that balcony to the main building appeared to have been carried out recently.

### **The Applicant's case**

15. This is summarised in a 9 page document entitled Statement of Case dated 10<sup>th</sup> July 2009 supplemented by reference to documents correspondence and photographs. His case will be considered by reference to the respective service charge years.

### **Service charge accounting years**

16. Clause 1.6 of the Lease defines the accounting period to mean "a period commencing on 1<sup>st</sup> day of April and ending on 31<sup>st</sup> March in the following year or such other period as the lessor may specify from time to time". In practice, according to the documents placed before this Tribunal, Chatfield appears to have taken the accounting year as ending on 30<sup>th</sup> April 2008 and issued demands on 1<sup>st</sup> May of each year. The Tribunal will take this as the relevant accounting period for convenience for the purpose of this determination. This determination should not be taken as binding the current managing agents or any third party who may wish to take a different period for a different purpose.

### **Service charge year 2007/2008**

#### **Opening balance 2007/2008**

17. In order to consider the Applicant's submissions about the service charge year 2007/2008 it is necessary to start by reference to the finding of the earlier Tribunal for the service charge year 2006/2007 to ascertain the opening balance. Paragraph 10 of that determination (as amended) found that Flat 3 owed £1131.20 for the year 2006/2007 (as amended on 2<sup>nd</sup> April 2008) However, this was calculated on the footing that the maximum of £250.00 was allowed for asphaltting work to the balcony to the first floor on the basis that the managing agents would ensure that the contractor was called back on site to remedy any defect in that work under the guarantee or defects period: see paragraph 8.3 of that the amended determination and Appendix G of the Applicant's submissions. The Applicant produced copies of e-mails sent to Chatfield dated 13 12 2007 (one sent 13.30 and one at 15.00 on that date), 24 03 2008 and 12 04 2008. At least one of those e-mails was responded to by Chatfield. There were other e-mails where Chatfield appear to ignore the question of works to the balcony. The Tribunal finds on the balance of probabilities

that the works to the balcony were not carried out after the end of the 2006/2007 service charge year and £250 should be credited to the service account of Flat 3 for the service charge year 2007/2008.

18. The Tribunal also accepts the Applicant's submission that he paid £500.00 towards service charges for the 2006/2007 service charges account. That is supported by the Chatfield document dated 01 07 2008 described as "Ground Rent and Service Charge Statement" relating to Flat 3 which showed a £500 payment made towards that account on 07 11 2007. On that basis the Tribunal agrees with the Applicant's submission that the opening balance for the service charge account for Flat 3 for 2007-2008 is £381.20 (debit), after credit has been given for the payments of £250.00 and £500.00 mentioned above.

#### **Individual challenges to 2007/2008 service charge account - overview**

19. The Tribunal takes the Statement of Services Charge period ending 30<sup>th</sup> April 2008 (item A4 Appendix A) as the basis for the calculation of the sums claimed by way of expenditure for this service charge year. That copy bears the endorsement of Upton Neenan Lees, a local firm of accountants, and a statement from them to the effect that they have examined the vouchers receipts and other documents and the statement is a fair and accurate summary complying with section 21(5) of the 1985 Act. Unfortunately the signature from that firm is illegible. The absence of a separate document from that firm (as opposed to a printed stamp and an illegible signature) taken with the absence of the voucher and receipts does not give the Tribunal any confidence that that firm have in fact considered the documents giving raise to that statement, in the context of other failures by Chatfield to provide documents which are referred to below.

#### **2007/2008 service charge account – asbestos reporting**

20. £538.75 has been claimed for asbestos reporting of which the Applicant's share is £66.09. The Applicant complains that the budget 2007/2008 made no provision for this expenditure and he has not seen a copy of the report produced. The budget makes no allowance for this expenditure: see A2 Appendix A. The breakdown for the expenditure for this year attached to A4 (appendix A) appears to show that the sum of £528.75 was incurred for an "asbestos survey to communal area". The Control of Asbestos Regulations 2006 only apply to non-domestic premises. This is a relatively modern purpose built block of flats where the presence of asbestos in the common parts is not obvious. There is no obvious or self evident requirement for such a report in relation to the "proper maintenance safety amenity and administration of the Building" which might justify such expenditure under clause 6.5 of the Lease on the evidence put before the Tribunal. A separate sum of £188.00 was claimed for health and safety work Chatfield's letter accompanying the accounts dated 1<sup>st</sup> July 2008 [A5] did not provide an explanation for this unbudgeted expenditure. The Tribunal is not saying that such a report on communal areas of Mulberry Court will never be justified under this Lease. The Tribunal is

prepared to accept that the sum claimed under this head was expended. However the Tribunal is not satisfied that there was a need for such a report within the terms of the Lease, or that on the evidence available, the incurring of such expenditure in the context of Mulberry Court was reasonable.

#### **2007/2008 service charge account – cleaning**

21. A total of £1826.64 was claimed for cleaning to the communal areas and windows for this service charge year which equated to £228.33 for Flat 3: see A4 Statement of Service Charges period 30<sup>th</sup> April 2008 (Appendix A). The Applicant complains and the Tribunal finds that the standard of cleaning carried out was very poor. In particular no sweeping or tidying took place for communal areas in the front balcony and rear garden. The Applicant raised some of these complaints in his e-mails of 06 08 2007, 13 12 2007 and 19<sup>th</sup> May 2008 (appendix B). The Applicant had complained about cement on his windows in the earlier Tribunal and this was not attended to. The minimised photographs of the external areas in August 2007 and December 2007 reveal a very poor standard of cleaning of the rear front and rear gardens of Mulberry Court: see photographs CIMG0262, CIMG0260, CIMG0268, CIMG0269, CIMG0273, CIMG0976, CIMG0977, CIMG0984, CIMG0983, CIMG0985, CIMG0986 For example water and debris had collected in the moat area at the back of Mulberry Court.
22. The Tribunal concludes that although it is not expressly included within the definition of Common Parts in the Lease, the rear courtyard and “moat area” is part of the common parts to which the landlord’s duty of cleaning in clause 6.2.4 of the Lease applies. Chatfield did not seek to dispute that the landlord’s obligations extended to these areas: see their e-mail of 19 05 2008 (appendix B) and the Applicant’s e-mail of 06 08 2007. By and large, the Tribunal finds that the standard of cleaning of the inside of Mulberry Court was reasonable but the cleaning to the exterior and external common parts during this service charge year was either not carried out, or was carried out to an inadequate standard. Doing the best it can on the limited materials available, the Tribunal determines that the cleaning services provided were only worth 50% of the amount claimed and that only 50% of the total sum of £1,826.64 was reasonably incurred.

#### **2007/2008 service charge account – repair and maintenance**

23. A total of £1714.90 was claimed for this head of expenditure equating to £214.36 for Flat 3 for this service charge year. Of the items listed in the breakdown on the reverse of A4 the Applicant challenges 3 items on the ground that the work was not carried out. These were (1) 09 12 2007 Replace light switch PIR floodlight £125.00, (2) 25 02 2008 Callout replace broken switches/grills £198.57 and (3) 17 03 2008 Callout repair carpet skirting to balcony £102.81. The Tribunal accepts on the balance of probabilities that these works were not carried out, and reduces Flat 3’s share of these items of expenditure by £65.78 (making its share of the costs of those works) to £148.56.

#### **2007/2008 service charge account – management charges**

24. Chatfield claimed a contribution of £205.63 as management charges from Flat 3 for 2007/2008 in a statement dated 01 05 2007. The earlier Tribunal's reasons and determination published in July 2007 contained serious criticisms of Chatfield's management of Mulberry Court during the 2006/2007 service charge year. The various reductions which this Tribunal has made above in relation to heads of expenditure concerning cleaning and repairs, and the failure to get contractors to return to do asphalt work to the balcony on the evidence available, indicate that the management was below the standard which could reasonably have been expected. The Tribunal also takes into account the fact that many of the matters now complained of were drawn to the attention of Chatfield during this service charge year by the Applicant in the course of e-mail correspondence. No satisfactory response to the Applicant's complaints about service charge items from Chatfield is apparent either during this service charge year or subsequently.
25. The Tribunal has also been informed by Salter Rex in its letter of 7<sup>th</sup> August 2009 that little or no financial information has been passed to them by Chatfield. The failure to provide that information to new managing agents particularly in the context of an administration of the landlord, suggests that appropriate records may not have been kept for this service charge year. This is of particular concern in respect of reports relating to matters such as asbestos which may have health and safety implications. The Tribunal concludes that Chatfield's services in the 2007/2008 service charge year when measured against what could reasonably have been expected in terms of managing works or communicating with lessees or addressing the earlier Tribunal's criticism was below an acceptable standard using the benchmark of the Service Charge Residential Management Code 1<sup>st</sup> edition. In all the circumstances the Tribunal is left to estimate the residual value of services actually provided by Chatfield during this service charge year and reduces the management charges by 25% to bring them to £154.22 for Flat 3.

#### **2007/2008 service charge account – administration charges**

26. The Applicant complains about a late payment fee in his Statement of Case. There are references to a charge for "Non-payment for insurance premium" of £17.63 debited on 11 09 2007 in the documents entitled "Insurance Invoice" dated 23 07 2008 ([A9] Appendix A) and 15 12 2008 ([A12] Appendix A). These documents appear to have been prepared by or in conjunction with Chatfield. For reasons which are at best obscure, Newservice appear to have invoiced Flat 3 separately for insurance. The cost of insurance was one of the landlord's expenses incurred under clause 6.3 of the Lease which formed part of the total "Maintenance Expenditure". It should have formed part of the service charge certificated in accordance with paragraph 7 of the Sixth Schedule.

27. The Tribunal infers the sum of £17.63 represents a charge for late payment of insurance. This is how it is described in the Applicant's e-mail of 13 12 2007 (13.29) to Chatfield (appendix A). In that e-mail he says he was told by Chatfield he did not have to pay that "late payment fee" as it had been made as the result of an "administrative error". The Tribunal has not seen the response to that e-mail (if there was a response). It is unclear what payment is alleged to have been made late or the method of calculating that charge which appears to have been variable. In the absence of an explanation for that charge the Tribunal determines that it is not payable and/or not payable because it is unreasonable. In any event the Tribunal reads the Applicant's e-mail of 13 12 2007 (13.29) to Chatfield as evincing a decision to withhold payment. There is no evidence that a summary of rights and obligations accompanied the Insurance Invoice dated 23 07 2008 or any earlier demand for that payment. The Applicant would also be entitled to withhold payment until that summary was provided under the Administration Regulations 2007.
28. There is also an administration charge demand dated 01 05 2007 served by Chatfield on behalf of Newservice on the reverse of [A3] (appendix A) demanding £160.20 for "reminder letters letter of action and Management fees". The Tribunal infers this sum relates to the service charge year 2006/2007 although it was demanded in the 2007/2008 service charge year. This sum does not appear in the subsequent statements of service charge. Given the significant reductions imposed by the earlier Tribunal upon the service charges for 2006/2007, the Tribunal does not see any basis upon which such a variable administration charge would be justified or reasonable whether or not such a charge could have been made under the Lease. This Tribunal finds this charge is not payable as it is an unreasonable charge.

#### **Service charge year 2008/2009**

##### **Opening balance 2008/2009**

29. The Applicant submits he paid £1222.88 for 2007-2008 service charge year inclusive of insurance (£422.88) and ground rent (£300). It is difficult to reconcile this figure with the Chatfield statements produced which may not be complete and which the Applicant says were not always accurate. The Applicant's case about these payments is partly supported by his e-mails due in the 2007/2008 service charge year which refer to the payments made and the Tribunal see no reason to doubt his account of this. On this footing the opening balance for 2008/2009 is £359.33.

##### **Absence of service charge demands for 2008/2009**

30. For many of the items which are discussed in this part of these reasons there has not been a demand for payment. Accordingly the Respondent may not be able to

enforce payment if a demand is or has not been made in time. Nothing in these reasons should be taken as deciding any question of time limits under section 20B of the 1985 Act in respect of service charges for year 2008/2009. There is insufficient material for this Tribunal to consider this issue. As this issue has not been considered it may be open to the Applicant to rely upon this provision in any subsequent proceedings. Where a demand has not been made, the Tribunal should be treated as considering whether amounts would be payable if the amounts considered were demanded.

#### **2008/2009 service charge account - overview**

31. Unlike the previous service charge year the Tribunal does not have an end of year Statement of Services Charge period ending 30 04 2009 or any documents from a firm of accountants. It has been necessary to attempt to reconstruct expenditure from the incomplete documents put before the Tribunal. This is an extremely unsatisfactory state of affairs. If the documents and records for the service charge year 2008/2009 are not available as Salter Rex appear to have been informed, this represents a serious breach of Chatfield's duties as managing agent and of Newservice Limited as recipients of some of the service charge funds (for insurance for example).

#### **2008/2009 service charge account – landlord's electricity supply**

32. No indication of the actual level of expenditure on this item has been produced.
33. It has been necessary to attempt to reconstruct this account from the budget produced by Chatfield at [A6] (appendix A). This document is undated and from the e-mails passing between the Applicant and Chatfield appears to have been produced between 16<sup>th</sup> June 2008, (as the e-mails of that date speak of that budget in terms that it did not exist) and 1<sup>st</sup> July 2008 when a copy was sent to the Applicant under cover of Chatfield's letter of that date [A5] appendix A. The sum of £232.37 appears a reasonable estimate for this item for Mulberry Court as a whole when compared with the previous year's sum of £193.64 for the same head of expenditure. The Tribunal notes the Applicant's complaint that the sensor lights were set permanently on, so that bulbs had to be replaced more often than necessary. The Tribunal is not persuaded that the sum claimed for this head of expenditure is unreasonable or is significantly greater than it should have been when the electricity expenditure is taken as a whole, if this is what is demanded.

#### **2008/2009 service charge account – entry phone**

34. The Applicant points out a new entry phone was installed in 2007 and this entry in the 2008/2009 budget must be an error. He says he pointed this out to Chatfield but did not receive a response. The earlier Tribunal recorded that lessees at Mulberry Court were indeed each charged £158.63 for entry phone as excess service charge for the year 2006/2007. This item was reduced by the Tribunal. The Tribunal

accepts the Applicant's submission on this point and would disallow this item entirely if it is the subject of a service charge demand.

#### **2008/2009 service charge account – cleaning**

35. A total of £1527.50 was budgeted for cleaning to the communal areas in the 2008/2009 budget. The Applicant complains there was no cleaning carried out between the end of May 2008 to the end of July 2008. His e-mail of 14 07 2008 to Chatfield provides some confirmation of this. The Chatfield e-mail of 23 07 2008 appears to provide some confirmation that new cleaning contractors would attend in the final week of July 2008. The Applicant contends and Tribunal finds that the new Chatfield contractor "Russell" attended and carried out some cleaning of the interior common parts once every 2 weeks until some point around the end of August 2008 when he and other members of the Chatfield workforce were dismissed. This version of the events is supported by the Applicant's letters to Chatfield of 25 11 2008 and 19 12 2008. The Applicant's e-mail of 31 08 2008 to Chatfield also supports his contention that the standard of cleaning carried out was very poor and from about the end of August 2008 non-existent. The Applicant produced a document at Appendix F which purports to be a cleaning record from an entity called Pristine Sparkle to the effect that Mulberry Court had been receiving an "overall clean" since 03 10 2008. The Applicant says (and the Tribunal finds) that the document, a colour photocopy, appeared in the lobby of Mulberry Court on or about 16 02 2009. He challenged Chatfield about this record and its accuracy in his letters to Chatfield of 24 02 2009 and 02 04 2009. As far as the Tribunal can tell from the evidence available no response to those letters was received from Chatfield. The Tribunal accepts the Applicant's complaint to the extent that it accepts that the level of cleaning carried out by Pristine Sparkle from 03 10 2008 to 16 02 2009 was nominal or non-existent. The Tribunal does not need to decide whether the Pristine Sparkle document itself was intended to be a fabrication as the Tribunal finds that document is not persuasive evidence of the dates or amount of cleaning carried out at Mulberry Court. The Applicant appears to accept that "Pristine Sparkle" carried out some vacuuming of the communal areas after 16 02 2009 but not much else: see his letter to Chatfield of 02 04 2009.
36. Accordingly the Tribunal finds that if the entire £1527.50 budget figure was demanded this would be an unreasonable amount for the services actually provided. Doing the best that it can on the limited material available to reflect the residual value of the cleaning service provided the Tribunal takes 50% of the £1527.50 budget figure namely £763.75 for Mulberry Court. Flat 3's share of this figure is £95.46.

#### **2008/2009 service charge account – front and rear gardens**

37. The budget allowed for this item was £480.24. There is no evidence any of this work was ever carried out during this service charge year. The photographs of Mulberry Court taken in this year at Appendix E amount to strong and clear evidence of the absence of cleaning (or other work) in the front and rear garden areas for large parts of this period. The Applicant's letter to letter to Chatfield of 02 04 2009 complained that no sweeping of the communal areas took place. Just over a month earlier, a letter from Chatfield dated 31 03 2009 [A13] (appendix A) appeared to acknowledge that "garden maintenance" had not been carried out and asserted that the services of the "individual" who had been required to carry out this service had been "dispensed with". The Applicant responded in his letter of 02 04 2009 that no gardening had been carried out for more than a year. As far as the Tribunal can tell the Applicant's account of this was not challenged by Chatfield or anyone else on behalf of the Respondent.
38. The Tribunal is not satisfied that any work was carried out to the front or back garden during this service charge year or if any sums were expended they were reasonably incurred on this head of expenditure. This Tribunal would not allow anything for this head of expenditure if any was demanded.

#### **2008/2009 service charge account – health and safety**

39. No indication of the actual level of expenditure on this item has been produced. The budget figure for this item was £176.25. The Tribunal is not satisfied that any work of this kind was carried out in this service charge year or if any sums were expended they were reasonably incurred on this head of expenditure. The Tribunal finds the Applicant had to silence the fire alarm and liaise with the Fire Brigade during this service charge year. The Tribunal does not allow anything for this head of expenditure should a demand for this service be made.

#### **2008/2009 service charge account – accountancy**

40. The budget figure was £107.87 for this item. The Tribunal is not satisfied that any work of this kind was carried out in this service charge year or if any sums were expended on such work they were reasonably incurred. There is no evidence that an accountant did any relevant work in this service charge year. The Tribunal does not allow anything for this head of expenditure.

#### **2008/2009 service charge account – contingency**

41. The budget figure was £2350.00 for this item. There is no explanation of this figure or how or why it was calculated. Tribunal is not satisfied that any relevant work or services were provided in this service charge year under this head or if any sums were expended on such work they were reasonably incurred. The Tribunal does not allow anything for this head of expenditure.



#### **2008/2009 service charge account – insurance**

42. The Applicant challenges the total of £93.16 charged to his service charge account for insurance under invoices dated 23 07 2008 and 15 12 2008 from Newservice Limited. £93.16 appears to have been charged for insurance from 01 05 2008 to 23 06 2008 according to the invoices. The Applicant asked for details of the building insurance policy by e-mail to Chatfield dated 02 07 2008 (11.06). He reiterated his concern that he had not seen a copy of the policy schedule in his letters to Chatfield of 25 11 2008 and 14 01 2009. There does not appear to have been a response to the request for the policy which was in effect after June 2008. It appears from his e-mail of 01 08 2008 that the Applicant may have received some details of an insurance policy in force, although the precise period for which it was in force is unclear. The figure of £93.16 appears to comprise £75.13 for insurance from 01 05 2008 to 23 06 2008 and £17.53 for “non-payment for insurance premium”. This latter payment this Tribunal has held to be unreasonable and not payable.
43. The insurance invoices were not accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges under the 2007 Act and so the figure of £75.13 is not payable at the date of this decision by virtue of section 21B of the 1985 Act.

#### **2008/2009 service charge account – management charges**

44. The sum claimed under this head by Chatfield on 01 05 2008 was £205.63. This is evidenced by the Ground Rent and Service Charge Statement dated 23 07 2008 at [A8] and a subsequent statement in similar format dated 15 12 2008 issued by Chatfield at A11 (both in appendix A). The day to day management of Mulberry Court by Chatfield appears to have completely disappeared by about late August 2008 as far as the Tribunal can see from the evidence. Before that on 13 08 2008 Chatfield confirmed by e-mail that it was not able or willing to provide services requested by the Applicant because it did not have the funds. Chatfield alleged there were significant arrears of service charges by Mulberry Court lessees. Legal action to recover those arrears was threatened. The Tribunal does not know whether this legal action materialised or was justified. At all events, Chatfield seems to have been providing little or no service to the residents of Mulberry Court from August 2008.
45. Chatfield’s omission to *effectively* supervise or arrange cleaning of the interior or exterior, or to undertake repairs to external drainpipes or to remedy the matters complained of in the earlier Tribunal’s determination, have not been adequately explained.
46. Chatfield failure to produce or arrange for production accounts of service charges for this year (2008/2009) is a serious omission. It is possible the Administrators of Newservice Limited took control before the service charge year end on 30 04 2009. This may be one explanation why accounts for this year end have not been

provided. This is not an excuse which has been relied upon in the material before the Tribunal.

**Failure to account for payments made by the Applicant for service charges during the 2008/2009 service charge year**

47. Perhaps the most serious of many criticisms that can be leveled against Chatfield and Newservice Limited are that they have failed to account for or acknowledge receipt of a number of payments made to Chatfield. These are evidenced by his bank statements in Appendix D. These payments and the statements produced by Chatfield appears to show payments he made which have not been credited to the service charge account or adequately accounted for by Chatfield or Newservice. In particular his bank statements appear to show he made the following payments which have not been reflected in service charge and ground rent statements issued by Chatfield or Newservice Limited on 23 07 2008 and 23 12 2008 namely 22 07 2008 (£300.00), 23 07 2008 (£100.00), 14 08 2008 (£100.00), 15 09 2008 (£100.00) – see appendix D. His bank statements also show that he made payments of £100.00 and £300.00 on 03 04 2009 to Chatfield. The Tribunal finds that all of these payments were made to Chatfield for service charges.
48. Neither Chatfield nor Newservice appear to have accounted to the Applicant for receipt of these funds despite the complaint raised by the Applicant's letter of 02 04 2009. These payments were paid to Chatfield to hold on behalf of Newservice and (in the absence of further explanation) were held on statutory trusts for these purposes imposed by section 42 of the Landlord and Tenant Act 1987: see generally section 11 of the Service Charge Residential Management Code 1<sup>st</sup> edition.
49. The Applicant also reports (and the Tribunal finds) that his attempts to telephone or contact Chatfield after August 2008 were mostly fruitless. The Applicant states and the Tribunal finds, that fire extinguishers fire alarms and communal lift all needed urgent attention at this time and raised serious and potentially life threatening issues. Chatfield were unable or unwilling or unavailable to deal with these issues. In the Tribunal's view the inability of Chatfield to be available or capable of dealing with these issues or at least to communicate reasons for possible delay goes to the very heart of a service that a managing agent could reasonably have been expected to provide.
50. The Tribunal notes that questions about the availability and existence of the insurance policy raised by the Applicant either went unanswered or were evaded. No proper attempt was made to justify the delay in providing copies of the insurance policy or the apparently unfavourable and expensive terms of that policy. In some cases an apparently expensive premium can be justified by reference to the terms of the Lease or the circumstances of the landlord. In any event it is the managing agents' duty to provide information about the terms of the policy and ensure that it is in force: see generally sections 16 and 4 of the Service Charge

Residential Management Code 1<sup>st</sup> edition. Chatfield failed in this duty as far as the Applicant was concerned.

51. Chatfield appears to have failed to take any steps to ensure that the top floor flat contributed to service charges as the earlier Tribunal recommended. Clause 9 of the Lease makes express provision for variation of the service charge percentage. There is no evidence any attempt was made by Chatfield to address the serious criticisms of the position whereby the top floor flat paid nothing towards any of the services at Mulberry Court made by the earlier Tribunal, or to consider whether an application could be made to vary the Leases under section 35 of the Landlord and tenant Act 1987. This appears to be a serious failure of management on the part of Chatfield. It is possible this could still be addressed by the Lessees making an application to the Tribunal.
52. The Tribunal finds that the residual value of the service provided by Chatfield in the service charge year 2008/2009 was so badly affected by its failures (including those set out below) that a lessee could not reasonably be expected to pay anything for the services of Chatfield.

#### **2008/2009 service charge account – administration charges**

53. The Applicant complains about 5 administration charges of £58.75 totalling £293.75 and an interest charge of £95.54 contained in the Ground Rent and Service Charge Statement dated 15 12 2008 issued by Chatfield at [A11]. Given the findings made by this Tribunal about the level of service provided and the failure to account for monies paid by the Applicant to Chatfield in 2008 and 2009, the Tribunal finds the entire amount of these charges are unjustified and unreasonable. The sums claimed as arrears of service charges for which these administration charges appear to have been levied were not due because of the findings made by this Tribunal. Those alleged arrears of service charges were also not due at any time during 2008 when the administration charges were levied because the demands for the service charges had not been accompanied by a summary of rights complying with the 2007 Regulations. The administration charges themselves were and are in any event not due or payable, because the demands for those charges were not accompanied by a summary of rights and obligations which complied with the Administration Regulations 2007.
54. In addition, it is clear to the Tribunal that the Applicant was during the 2008/2009 service charge year properly withholding a proportion of the service charges demanded pending adequate explanation of his complaints about gardening and management and credit being given for the payments which he actually made. The Applicant was entitled to set off in equity his counterclaims relating to the service provided and failure to account for payments made: see *Continental Property Ventures Inc v White* [2006] 1 EGLR 85 and *Filross Securities Ltd v Midgeley* [1998] 3 EGLR 43. The Tribunal in its discretion permits the Applicant to raise his complaints in respect of services supplied on behalf of Newservice Limited

(itemised above). The effect of such a set off (which has ultimately been found to be a good defence to much of these service charge claims for 2008/2009) is that the sums claimed as arrears from Flat 3 were not due at all. It follows that the administration charges and the interest charges are not justified or valid charges.

#### **2009/2010**

55. The Tribunal has insufficient material to make any finding about the 2009/2010 service charge year and does not do so.

#### **Miscellaneous**

56. The failure by Chatfield to produce financial records to Salter Rex about the management and service charges of Mulberry Court appears to be a serious breach of Chatfield's duty under the Residential Service Charge Management Code 1<sup>st</sup> edition. The requirements of Part 4 of the 2<sup>nd</sup> edition of that Code (in force from 6<sup>th</sup> April 2009) about client money and client accounts are even stricter. On the face of the information provided to the Tribunal there appears to have serious breaches of both of these Codes. These breaches may also amount to breaches of trust and/or of the duties owed by the directors or other officers of Newservice Limited and/or Chatfield under the Companies Acts 1995 and 2006. These issues are not within the jurisdiction of this Tribunal upon this application. However this Tribunal will be referring this decision and the papers to the Department of Trade and Industry for further investigation of whether any steps should be taken in respect of these issues.



H Lederman  
Chairman  
04 01 2010

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION  
TRIBUNAL Case No. CHI/43UK/LSC/2009/0063  
Premises: Flat 3 Mulberry Court 130 Croydon Road, Caterham Surrey, CR3  
6QD  
IN THE MATTER OF an application under section 27A of the Landlord and Tenant Act  
1985 (“the 1985 Act”)  
AND IN THE MATTER OF an application under Schedule 11 of the of the Commonhold  
& Leasehold Reform Act 2002 (“the 2002 Act”)

**TRIBUNAL MEMBERS**

**Mr HD Lederman  
Mr D Lintott FRICS**

Mikkel Paris

Applicant

and

Newservice Limited

Respondent

**DECISION OF THE TRIBUNAL**

1. The Tribunal determines that:

a. The amounts payable for service charges under clause 4.4 and the Fifth Schedule to the Lease dated 7<sup>th</sup> August 2004 (insofar as such charges have been demanded) for service charge years 2007/2008 and 2008/2009 are as set out in the table below.

b. This determination is made under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) and under Schedule 11 of the 2002 Act.

c. The Applicant was entitled, and remains entitled, to withhold payment of the sums which this Tribunal have found are payable (set out below) until service charge demands have been served which are accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges complying with The Service Charges Summary of Rights and Obligations and Transitional Provisions) (England) Regulations 2007 (“the 2007 Regulations”). This

conclusion does not apply to the opening balance of service charges which the Tribunal has found to be due for 2006/2007 namely £381.20 being part of a sum initially demanded on 01 05 2007. The Applicant may properly withhold the opening balance until Newservice Limited has accounted to him for payments made to service charges during the 2008/2009 service charge year which have not been accounted for.

d. No interest is payable by the Applicant upon any of the sums which may ultimately be payable to the Respondent under the terms of the Lease or as an administration charge, as he is entitled to withhold payment of service charges by virtue of section 21B(4) of the 1985 Act, or by virtue of a claim to set off payments made in the service charge year 2008/2009 until these have been accounted for.

e. None of the administration charges claimed by Newservice Limited in the various service charge demands and demands for administration charges are reasonable or payable.

2. The Tribunal orders that none of the costs of these proceedings should be put through service charge under section 20C of the 1985 Act.
3. The Respondent is required to reimburse the Applicant for the fees paid by him for this application to the Tribunal.

**Determination of service charges and administration charges payable by Flat 3 Mulberry Court if demands complying with relevant legislation are served**

4.	<b>2007/2008</b>	
	<b>Head of expenditure</b>	<b>Amount payable £</b>
	Opening balance from 2006/2007	381.20
	Communal cleaning & windows	114.16
	Landlord electricity supply (not challenged)	24.21
	Repairs and maintenance	148.56
	Legal and professional fees (not challenged)	13.48
	Asbestos reporting	Nil
	Health and safety work (not challenged)	23.50
	Management fee	154.22
	Administration fee (non-payment for insurance premium)	Nil
	<b>Subtotal</b>	<b>859.33</b>
	Less payments (excluding insurance and ground rent) of £500.00 (£1228.88 payments less £722.88 for insurance and ground rent)	
	<b>Balance service charges and administration charges payable 2007/2008</b>	<b>359.33</b>

<b>2008/2009 (only insurance demanded)</b>	
Landlord electricity supply	29.04
Entry phone system	Nil
Communal cleaning & windows	95.46
Front and rear gardens	Nil
Health and safety	Nil
Legal and professional fees	Nil
Contingency	Nil
Management fees	Nil
Administration charge and interest claimed	Nil
Insurance 01 05 2008 to 23 06 2008	Nil
Balance service charges and administration charges payable 2008/2009	124.50
Add balance from 2007/2008	359.33
Total payable if appropriate demands served	483.83
Service charge year 2009/2010	No determination

## **Reasons**

### **Preliminaries**

- On 17<sup>th</sup> February 2009 the Applicant (Mr Mikkel Parris) a leaseholder of Flat 3 Mulberry Court applied for a determination whether the sums claimed (or which might be demanded) as service charges for service charge years 2007/2008, 2008-2009 and 2009/2010 were payable under section 27A of the 1985 Act. He also sought a determination that administration charges levied by the Respondent or its agent were unreasonable under Schedule 11 of the 2002 Act. In these Reasons references to page numbers and appendices are to the bundle of documents produced by the Applicant following the Tribunal's directions given in June 2009, unless stated otherwise.

### **The protagonists**

- Initially the former managing agents acting on behalf of Newservice Limited Chatfield Property Limited Property Limited (company no 43078005 registered in England and Wales) ("Chatfield") had been named as Respondents to the application. The directions issued by the Tribunal on 09 06 2009 identified Newservice Limited as the landlord of Flat 3 and all the other flats in Mulberry Court. Those directions also determined that this would be determined by way of written representations only with no hearing.
- At some point in 2009 probably before 27 05 2009, administrators were appointed to Newservice Limited, James Joseph Bannon and Malcolm Cohen both partners in BDO Binder Hamlyn LLP accountants ("the administrators"). The administration

had the legal effect of depriving the directors of Newservice Limited of effective control of that company. Nevertheless the administrators are empowered by the provisions of the Insolvency Act 1986 to defend these proceedings on behalf of the Respondent, if so advised. The administrators appointed new managing agents of Mulberry Court, namely Salter Rex Chartered Surveyors and Estate Agents. Mr Edward Stanley AssocRICS MIRPM of Salter Rex is now responsible for the management of Mulberry Court, and attended on behalf of the Respondent at the pre-trial review on 27<sup>th</sup> May 2009 and at the inspection of Mulberry Court which took place before the consideration on 09 11 2009. For the purpose of this determination, the Tribunal has treated Salter Rex as acting for the Respondent, even though the matters which are complained of took place before their appointment.

#### **The evidence available to the Tribunal**

8. The directions made on 09 06 2009 among other things required the Respondent to reply to the Statement of Case prepared in a bundle form by the Applicant. Salter Rex stated in its letter of 7th August 2009, that “little or no financial information has been forthcoming from the former managing agents of [Mulberry Court] we on behalf of the Administrators .... cannot offer any evidence against the evidence presented by Mr Paris and on the face of all of the information that he has given would accept the facts to be true and correct”.
9. As recently as 15<sup>th</sup> December 2008 and 15<sup>th</sup> March 2009 Chatfield wrote to the Applicant and his co-lessee Mrs. Paris page [A10] and [A13]. Chatfield also acted as managing agents on behalf of Blackacre Property Limited the previous landlord of Mulberry Court. On 17th July 2007 another Leasehold Valuation Tribunal made a determination as to the payability and reasonableness of service charges for service charge years 2004/2005, 2005/2006 and 2006/2007 (Reference CHI/43UK/LSC/2007/0020) (“the earlier Tribunal”). One of the members of this Tribunal was also a member of the earlier Tribunal. The effect of this is that the Tribunal has only had representations and evidence from one of the parties.

#### **Service charges and administration charges**

10. “Service charges” are the name given by Acts of Parliament such as the 1985 Act to monies payable under a lease of a dwelling like the property for services and works provided to the lessee (the Applicant) by the landlord (Newservice Limited). In the Lease the phrase “maintenance charge” or similar phrases are used to refer to service charge. “Administration charge” is defined by the 2002 Act to include an amount payable by a tenant of a dwelling as part of or in addition to the rent payable directly or indirectly “in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is a party to his lease otherwise than as landlord or tenant”.



## Relevant provisions of the Lease

11. The principal provisions in the Lease relevant to the service charges may be summarised as follows:

a. by clause 4.4 of the Lease the lessee covenants to “pay the Maintenance Service Charges at the times and in the manner provide in the Fifth Schedule hereto.....”

b. by clause 6.2 of the Lease the Landlord covenants “Subject to and conditional upon payment being made by the Lessee of the Interim Maintenance Charges and Further Interim Maintenance Charges (as appropriate) at the time and in the manner hereinbefore provided....

6.2.1 To maintain and keep in good repair and substantial repair and condition;

6.2.1.1 The main structure of the Building;

6.2.1.2 All such gas and water mains and pipes drains waste water and sewerage ducts and electric cables as may by virtue of the terms of this Lease be enjoyed or used by the lessee in common with the lessees of occupiers or other residential units in the Building.....

6.2.1.3 the Common Parts of the Building (including re-carpeting redecoration and furnishing where necessary.

6.2.4 At all times to keep the Common Parts adequately lit and cleaned”

Clause 1.9 defines the Common Parts to means “the pathways, entrance arrears dustbin areas staircases passageways lifts and landings included in the Building the garden area at the front of the building (if any) not granted in any of the leases of other parts in the building and used by the Lessee in common with the owners lessees or occupiers of the other residential units in the Building”

b. The Fifth Schedule requires the lessee to contribute the portion specified in paragraph 8 of the Particulars of the “Total Maintenance Expenditure”. That portion is defined as one eighth in the Lease. This apportionment remains in place despite the existence of the 9 flats in Mulberry Court and the earlier Tribunal’s observation to the effect that the top floor flat should contribute to the expenses of maintenance of the Mulberry Court. Paragraph 3 of the Fifth Schedule requires payment of the Interim Maintenance Charge to be made “by equal payments in advance on the first of April and the first day of October in very year (or upon such other dates as the Lessor may specify in writing from time to time.”

c. The accounting period is defined in clause 1.6 of the Lease as “a period commencing on 1<sup>st</sup> April and ending on 31<sup>st</sup> March in the following year”.

d. By clause 6.3 of the Lease it is the landlord's obligation to insure the Building.

e. By clause 6.4 of the Lease the Landlord is empowered to employ managing agents and chartered accountants tradesman or other professionals "as may be necessary or desirable for the proper maintenance safety and administration of the Building".

f. The "Total Maintenance Expenditure" to which the lessee is required to contribute by way of service charge is stated to "comprise the total expenditure incurred by the landlord in any accounting period in carrying out its obligations specified in clauses 6.2, 6.3 and 6.4" of the Lease: see paragraph 1.1 of the Fifth Schedule to the Lease.

All definitions in clause 1 of the Lease are expressed to apply "where the context so admits or requires". Except where quotations are made, the above are intended as paraphrases of relevant provisions of the Lease. It is notable there is no express definition of the term "the Building" in the Lease.

### **Relevant legislation**

12. Sections 18–30 of the 1985 Act refer to restrictions on "Service Charges". The relevant provisions are:

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

- (a) which is payable directly or indirectly for services ... or insurance or the landlord's cost 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.

19— (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly ...

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

Section 20B of the 1985 Act provides in effect that if a demand for payment of service charge is made more than 18 months from the date of incurring of costs, the tenant will not be liable unless within that period the tenant was notified in writing that he would later be required to contribute to the payment.

Section 21B of the 1985 Act provides a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. Section 21B(3) states a tenant may withhold payment of a service charge demanded from him if that information did not accompany the demand.

Where a tenant withholds a service charge under section 21B, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it: see section 21B(4) of the 1985 Act. With a small exception, section 21B takes effect in relation to service charge demands served on or after 1<sup>st</sup> October 2007.

Section 27A(1) of the 1985 Act provides the Tribunal with jurisdiction to determine 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.

Subsection 27A(2) of the 1985 Act provides that jurisdiction applies whether or not any payment has been made.

Section 27A(3) of the 1985 Act provides:

“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”

Paragraph 2 of the 11<sup>th</sup> Schedule to the 2002 Act provides “A variable administration charge is payable only to the extent that the amount of the charge is reasonable”. Paragraph 1(3) of the 11<sup>th</sup> Schedule to the 2002 Act defines “variable administration charge” to mean an administration charge payable which is neither (a) specified in [the] lease, nor (b) calculated in accordance with a formula specified in [the] lease. Paragraph 5 of the 11<sup>th</sup> Schedule to the 2002 Act gives the Leasehold Valuation Tribunal jurisdiction to determine the payability of administration charges in the same way as for service charges under section 27A of the 1985 Act. The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (“the Administration Regulations 2007”) require a summary of rights to accompany any demand for an administration charge made on or after 1<sup>st</sup> October 2007. Paragraphs 4(3) and 4(4) of Schedule 11 to the 2002 Act enable the tenant to withhold payment of an administration charge in the same manner and with the same consequences as he could withhold payment of service charge demand which was not accompanied by a demand.

### **Inspection of Mulberry Court**

13. The Tribunal inspected the block of flats known as Mulberry Court on 09 11 2009 before the consideration. Mr Stanley attended the inspection. No one else was in attendance apart from the Tribunal. This was a purpose built block of flats constructed in the late 20<sup>th</sup> century. The block is set back a little way from the main Croydon Road with a small area for shrubs and a parking area at the front. To the rear of Mulberry Court was a yard, to the rear of which ran a deep and largely inaccessible recess resembling a moat running parallel to the 2 basement flats illustrated in photographs CIMG0985, CIMG0986 and CIMG0977. That recess contained some debris at the time of inspection. Mulberry Court was built into the side of a hill with the incline running roughly west to east so the land to the rear of Mulberry Court was considerably higher than the road and the entrance at the front. The area to the rear of Mulberry Court is located on the plan incorporated into the Lease and described as “Rear Garden”. That plan contained a legend saying it was prepared in 2003.
14. The earlier Tribunal’s decision in 2007 stated that two basement flats were added in 2004/2005 and since that date a further flat had been constructed at the top of the building so there were 9 flats in all. The Tribunal’s inspection of the exterior of the building and the interior common parts was consistent with that history. Like the earlier Tribunal, this Tribunal noted the stairways were carpeted and kept reasonably clean and the light switches to operate the lighting had been caged to

prevent manual operation. The Tribunal observed fire fighting equipment (extinguishers) and smoke detectors. Some of the wires and exterior pipework to the rear and the side of Mulberry Court looked as though they had been attached on a rough and ready basis, presumably as late additions. This Tribunal noted doors to meter cupboards on the outside missing and some doors open, like the earlier Tribunal. The Tribunal also inspected the balcony at first floor level with an asphalt covering. Some of the detail of the lead work connecting the floor of that balcony to the main building appeared to have been carried out recently.

### **The Applicant's case**

15. This is summarised in a 9 page document entitled Statement of Case dated 10<sup>th</sup> July 2009 supplemented by reference to documents correspondence and photographs. His case will be considered by reference to the respective service charge years.

### **Service charge accounting years**

16. Clause 1.6 of the Lease defines the accounting period to mean "a period commencing on 1<sup>st</sup> day of April and ending on 31<sup>st</sup> March in the following year or such other period as the lessor may specify from time to time". In practice, according to the documents placed before this Tribunal, Chatfield appears to have taken the accounting year as ending on 30<sup>th</sup> April 2008 and issued demands on 1<sup>st</sup> May of each year. The Tribunal will take this as the relevant accounting period for convenience for the purpose of this determination. This determination should not be taken as binding the current managing agents or any third party who may wish to take a different period for a different purpose.

### **Service charge year 2007/2008**

#### **Opening balance 2007/2008**

17. In order to consider the Applicant's submissions about the service charge year 2007/2008 it is necessary to start by reference to the finding of the earlier Tribunal for the service charge year 2006/2007 to ascertain the opening balance. Paragraph 10 of that determination (as amended) found that Flat 3 owed £1131.20 for the year 2006/2007 (as amended on 2<sup>nd</sup> April 2008) However, this was calculated on the footing that the maximum of £250.00 was allowed for asphaltting work to the balcony to the first floor on the basis that the managing agents would ensure that the contractor was called back on site to remedy any defect in that work under the guarantee or defects period: see paragraph 8.3 of that the amended determination and Appendix G of the Applicant's submissions. The Applicant produced copies of e-mails sent to Chatfield dated 13 12 2007 (one sent 13.30 and one at 15.00 on that date), 24 03 2008 and 12 04 2008. At least one of those e-mails was responded to by Chatfield. There were other e-mails where Chatfield appear to ignore the question of works to the balcony. The Tribunal finds on the balance of probabilities

that the works to the balcony were not carried out after the end of the 2006/2007 service charge year and £250 should be credited to the service account of Flat 3 for the service charge year 2007/2008.

18. The Tribunal also accepts the Applicant's submission that he paid £500.00 towards service charges for the 2006/2007 service charges account. That is supported by the Chatfield document dated 01 07 2008 described as "Ground Rent and Service Charge Statement" relating to Flat 3 which showed a £500 payment made towards that account on 07 11 2007. On that basis the Tribunal agrees with the Applicant's submission that the opening balance for the service charge account for Flat 3 for 2007-2008 is £381.20 (debit), after credit has been given for the payments of £250.00 and £500.00 mentioned above.

#### **Individual challenges to 2007/2008 service charge account - overview**

19. The Tribunal takes the Statement of Services Charge period ending 30<sup>th</sup> April 2008 (item A4 Appendix A) as the basis for the calculation of the sums claimed by way of expenditure for this service charge year. That copy bears the endorsement of Upton Neenan Lees, a local firm of accountants, and a statement from them to the effect that they have examined the vouchers receipts and other documents and the statement is a fair and accurate summary complying with section 21(5) of the 1985 Act. Unfortunately the signature from that firm is illegible. The absence of a separate document from that firm (as opposed to a printed stamp and an illegible signature) taken with the absence of the voucher and receipts does not give the Tribunal any confidence that that firm have in fact considered the documents giving raise to that statement, in the context of other failures by Chatfield to provide documents which are referred to below.

#### **2007/2008 service charge account – asbestos reporting**

20. £538.75 has been claimed for asbestos reporting of which the Applicant's share is £66.09. The Applicant complains that the budget 2007/2008 made no provision for this expenditure and he has not seen a copy of the report produced. The budget makes no allowance for this expenditure: see A2 Appendix A. The breakdown for the expenditure for this year attached to A4 (appendix A) appears to show that the sum of £528.75 was incurred for an "asbestos survey to communal area". The Control of Asbestos Regulations 2006 only apply to non-domestic premises. The Management of Health and Safety at Work Regulations 1999 might in some cases require an assessment about the presence of asbestos. This is a relatively modern purpose built block of flats where the presence of asbestos in the common parts is not obvious. There is no obvious or self evident requirement for such a report in relation to the "proper maintenance safety amenity and administration of the Building" which might justify such expenditure under clause 6.5 of the Lease on the evidence put before the Tribunal. A separate sum of £188.00 was claimed for health and safety work Chatfield's letter accompanying the accounts dated 1<sup>st</sup> July 2008 [A5] did not provide an explanation for this unbudgeted expenditure. The Tribunal

is not saying that such a report (or an asbestos report) on communal areas of Mulberry Court will never be justified under this Lease. The Tribunal is prepared to accept that the sum claimed under this head was expended. However the Tribunal is not satisfied that there was a need for such a report within the terms of the Lease, or that on the evidence available, the incurring of such expenditure in the context of Mulberry Court was reasonable.

#### **2007/2008 service charge account – cleaning**

21. A total of £1826.64 was claimed for cleaning to the communal areas and windows for this service charge year which equated to £228.33 for Flat 3: see A4 Statement of Service Charges period 30<sup>th</sup> April 2008 (Appendix A). The Applicant complains and the Tribunal finds that the standard of cleaning carried out was very poor. In particular no sweeping or tidying took place for communal areas in the front balcony and rear garden. The Applicant raised some of these complaints in his e-mails of 06 08 2007, 13 12 2007 and 19<sup>th</sup> May 2008 (appendix B). The Applicant had complained about cement on his windows in the earlier Tribunal and this was not attended to. The minimised photographs of the external areas in August 2007 and December 2007 reveal a very poor standard of cleaning of the rear front and rear gardens of Mulberry Court: see photographs CIMG0262, CIMG0260, CIMG0268, CIMG0269, CIMG0273, CIMG0976, CIMG0977, CIMG0984, CIMG0983, CIMG0985, CIMG0986 For example water and debris had collected in the moat area at the back of Mulberry Court.
22. The Tribunal concludes that although it is not expressly included within the definition of Common Parts in the Lease, the rear courtyard and “moat area” is part of the common parts to which the landlord’s duty of cleaning in clause 6.2.4 of the Lease applies. Chatfield did not seek to dispute that the landlord’s obligations extended to these areas: see their e-mail of 19 05 2008 (appendix B) and the Applicant’s e-mail of 06 08 2007. By and large, the Tribunal finds that the standard of cleaning of the inside of Mulberry Court was reasonable but the cleaning to the exterior and external common parts during this service charge year was either not carried out, or was carried out to an inadequate standard. Doing the best it can on the limited materials available, the Tribunal determines that the cleaning services provided were only worth 50% of the amount claimed and that only 50% of the total sum of £1,826.64 was reasonably incurred.

#### **2007/2008 service charge account – repair and maintenance**

23. A total of £1714.90 was claimed for this head of expenditure equating to £214.36 for Flat 3 for this service charge year. Of the items listed in the breakdown on the reverse of A4 the Applicant challenges 3 items on the ground that the work was not carried out. These were (1) 09 12 2007 Replace light switch PIR floodlight £125.00, (2) 25 02 2008 Callout replace broken switches/grills £198.57 and (3) 17 03 2008 Callout repair carpet skirting to balcony £102.81. The Tribunal accepts on the balance of probabilities that these works were not carried out, and reduces Flat 3’s

share of these items of expenditure by £65.78 (making its share of the costs of those works) to £148.56.

#### **2007/2008 service charge account – management charges**

24. Chatfield claimed a contribution of £205.63 as management charges from Flat 3 for 2007/2008 in a statement dated 01 05 2007. The earlier Tribunal's reasons and determination published in July 2007 contained serious criticisms of Chatfield's management of Mulberry Court during the 2006/2007 service charge year. The various reductions which this Tribunal has made above in relation to heads of expenditure concerning cleaning and repairs, and the failure to get contractors to return to do asphalt work to the balcony on the evidence available, indicate that the management was below the standard which could reasonably have been expected. The Tribunal also takes into account the fact that many of the matters now complained of were drawn to the attention of Chatfield during this service charge year by the Applicant in the course of e-mail correspondence. No satisfactory response to the Applicant's complaints about service charge items from Chatfield is apparent either during this service charge year or subsequently.
25. The Tribunal has also been informed by Salter Rex in its letter of 7<sup>th</sup> August 2009 that little or no financial information has been passed to them by Chatfield. The failure to provide that information to new managing agents particularly in the context of an administration of the landlord, suggests that appropriate records may not have been kept for this service charge year. This is of particular concern in respect of reports relating to matters such as asbestos which may have health and safety implications. The Tribunal concludes that Chatfield's services in the 2007/2008 service charge year when measured against what could reasonably have been expected in terms of managing works or communicating with lessees or addressing the earlier Tribunal's criticism was below an acceptable standard using the benchmark of the Service Charge Residential Management Code 1<sup>st</sup> edition. In all the circumstances the Tribunal is left to estimate the residual value of services actually provided by Chatfield during this service charge year and reduces the management charges by 25% to bring them to £154.22 for Flat 3.

#### **2007/2008 service charge account – administration charges**

26. The Applicant complains about a late payment fee in his Statement of Case. There are references to a charge for "Non-payment for insurance premium" of £17.63 debited on 11 09 2007 in the documents entitled "Insurance Invoice" dated 23 07 2008 ([A9] Appendix A) and 15 12 2008 ([A12] Appendix A). These documents appear to have been prepared by or in conjunction with Chatfield. For reasons which are at best obscure, Newservice appear to have invoiced Flat 3 separately for insurance. The cost of insurance was one of the landlord's expenses incurred under clause 6.3 of the Lease which formed part of the total "Maintenance Expenditure". It should have formed part of the service charge certificated in accordance with paragraph 7 of the Sixth Schedule.



27. The Tribunal infers the sum of £17.63 represents a charge for late payment of insurance. This is how it is described in the Applicant's e-mail of 13 12 2007 (13.29) to Chatfield (appendix A). In that e-mail he says he was told by Chatfield he did not have to pay that "late payment fee" as it had been made as the result of an "administrative error". The Tribunal has not seen the response to that e-mail (if there was a response). It is unclear what payment is alleged to have been made late or the method of calculating that charge which appears to have been variable. In the absence of an explanation for that charge the Tribunal determines that it is not payable and/or not payable because it is unreasonable. In any event the Tribunal reads the Applicant's e-mail of 13 12 2007 (13.29) to Chatfield as evincing a decision to withhold payment. There is no evidence that a summary of rights and obligations accompanied the Insurance Invoice dated 23 07 2008 or any earlier demand for that payment. The Applicant would also be entitled to withhold payment until that summary was provided under the Administration Regulations 2007.
28. There is also an administration charge demand dated 01 05 2007 served by Chatfield on behalf of Newservice on the reverse of [A3] (appendix A) demanding £160.20 for "reminder letters letter of action and Management fees". The Tribunal infers this sum relates to the service charge year 2006/2007 although it was demanded in the 2007/2008 service charge year. This sum does not appear in the subsequent statements of service charge. Given the significant reductions imposed by the earlier Tribunal upon the service charges for 2006/2007, the Tribunal does not see any basis upon which such a variable administration charge would be justified or reasonable whether or not such a charge could have been made under the Lease. This Tribunal finds this charge is not payable as it is an unreasonable charge.

#### **Service charge year 2008/2009**

##### **Opening balance 2008/2009**

29. The Applicant submits he paid £1222.88 for 2007-2008 service charge year inclusive of insurance (£422.88) and ground rent (£300). It is difficult to reconcile this figure with the Chatfield statements produced which may not be complete and which the Applicant says were not always accurate. The Applicant's case about these payments is partly supported by his e-mails due in the 2007/2008 service charge year which refer to the payments made and the Tribunal see no reason to doubt his account of this. On this footing the opening balance for 2008/2009 is £359.33.

### **Absence of service charge demands for 2008/2009**

30. For many of the items which are discussed in this part of these reasons there has not been a demand for payment. Accordingly the Respondent may not be able to enforce payment if a demand is or has not been made in time. Nothing in these reasons should be taken as deciding any question of time limits under section 20B of the 1985 Act in respect of service charges for year 2008/2009. There is insufficient material for this Tribunal to consider this issue. As this issue has not been considered it may be open to the Applicant to rely upon this provision in any subsequent proceedings. Where a demand has not been made, the Tribunal should be treated as considering whether amounts would be payable if the amounts considered were demanded.

### **2008/2009 service charge account - overview**

31. Unlike the previous service charge year the Tribunal does not have an end of year Statement of Services Charge period ending 30 04 2009 or any documents from a firm of accountants. It has been necessary to attempt to reconstruct expenditure from the incomplete documents put before the Tribunal. This is an extremely unsatisfactory state of affairs. If the documents and records for the service charge year 2008/2009 are not available as Salter Rex appear to have been informed, this represents a serious breach of Chatfield's duties as managing agent and of Newservice Limited as recipients of some of the service charge funds (for insurance for example).

### **2008/2009 service charge account – landlord's electricity supply**

32. No indication of the actual level of expenditure on this item has been produced.
33. It has been necessary to attempt to reconstruct this account from the budget produced by Chatfield at [A6] (appendix A). This document is undated and from the e-mails passing between the Applicant and Chatfield appears to have been produced between 16<sup>th</sup> June 2008, (as the e-mails of that date speak of that budget in terms that it did not exist) and 1<sup>st</sup> July 2008 when a copy was sent to the Applicant under cover of Chatfield's letter of that date [A5] appendix A. The sum of £232.37 appears a reasonable estimate for this item for Mulberry Court as a whole when compared with the previous year's sum of £193.64 for the same head of expenditure. The Tribunal notes the Applicant's complaint that the sensor lights were set permanently on, so that bulbs had to be replaced more often than necessary. The Tribunal is not persuaded that the sum claimed for this head of expenditure is unreasonable or is significantly greater than it should have been when the electricity expenditure is taken as a whole, if this is what is demanded.

### **2008/2009 service charge account – entry phone**

34. The Applicant points out a new entry phone was installed in 2007 and this entry in the 2008/2009 budget must be an error. He says he pointed this out to Chatfield but did not receive a response. The earlier Tribunal recorded that lessees at Mulberry Court were indeed each charged £158.63 for entry phone as excess service charge for the year 2006/2007. This item was reduced by the Tribunal. The Tribunal accepts the Applicant's submission on this point and would disallow this item entirely if it is the subject of a service charge demand.

#### **2008/2009 service charge account – cleaning**

35. A total of £1527.50 was budgeted for cleaning to the communal areas in the 2008/2009 budget. The Applicant complains there was no cleaning carried out between the end of May 2008 to the end of July 2008. His e-mail of 14 07 2008 to Chatfield provides some confirmation of this. The Chatfield e-mail of 23 07 2008 appears to provide some confirmation that new cleaning contractors would attend in the final week of July 2008. The Applicant contends and Tribunal finds that the new Chatfield contractor "Russell" attended and carried out some cleaning of the interior common parts once every 2 weeks until some point around the end of August 2008 when he and other members of the Chatfield workforce were dismissed. This version of the events is supported by the Applicant's letters to Chatfield of 25 11 2008 and 19 12 2008. The Applicant's e-mail of 31 08 2008 to Chatfield also supports his contention that the standard of cleaning carried out was very poor and from about the end of August 2008 non-existent. The Applicant produced a document at Appendix F which purports to be a cleaning record from an entity called Pristine Sparkle to the effect that Mulberry Court had been receiving an "overall clean" since 03 10 2008. The Applicant says (and the Tribunal finds) that the document, a colour photocopy, appeared in the lobby of Mulberry Court on or about 16 02 2009. He challenged Chatfield about this record and its accuracy in his letters to Chatfield of 24 02 2009 and 02 04 2009. As far as the Tribunal can tell from the evidence available no response to those letters was received from Chatfield. The Tribunal accepts the Applicant's complaint to the extent that it accepts that the level of cleaning carried out by Pristine Sparkle from 03 10 2008 to 16 02 2009 was nominal or non-existent. The Tribunal does not need to decide whether the Pristine Sparkle document itself was intended to be a fabrication as the Tribunal finds that document is not persuasive evidence of the dates or amount of cleaning carried out at Mulberry Court. The Applicant appears to accept that "Pristine Sparkle" carried out some vacuuming of the communal areas after 16 02 2009 but not much else: see his letter to Chatfield of 02 04 2009.
36. Accordingly the Tribunal finds that if the entire £1527.50 budget figure was demanded this would be an unreasonable amount for the services actually provided. Doing the best that it can on the limited material available to reflect the residual value of the cleaning service provided the Tribunal takes 50% of the £1527.50 budget figure namely £763.75 for Mulberry Court. Flat 3's share of this figure is £95.46.

#### **2008/2009 service charge account – front and rear gardens**

37. The budget allowed for this item was £480.24. There is no evidence any of this work was ever carried out during this service charge year. The photographs of Mulberry Court taken in this year at Appendix E amount to strong and clear evidence of the absence of cleaning (or other work) in the front and rear garden areas for large parts of this period. The Applicant's letter to letter to Chatfield of 02 04 2009 complained that no sweeping of the communal areas took place. Just over a month earlier, a letter from Chatfield dated 31 03 2009 [A13] (appendix A) appeared to acknowledge that "garden maintenance" had not been carried out and asserted that the services of the "individual" who had been required to carry out this service had been "dispensed with". The Applicant responded in his letter of 02 04 2009 that no gardening had been carried out for more than a year. As far as the Tribunal can tell the Applicant's account of this was not challenged by Chatfield or anyone else on behalf of the Respondent.
38. The Tribunal is not satisfied that any work was carried out to the front or back garden during this service charge year or if any sums were expended they were reasonably incurred on this head of expenditure. This Tribunal would not allow anything for this head of expenditure if any was demanded.

#### **2008/2009 service charge account – health and safety**

39. No indication of the actual level of expenditure on this item has been produced. The budget figure for this item was £176.25. The Tribunal is not satisfied that any work of this kind was carried out in this service charge year or if any sums were expended they were reasonably incurred on this head of expenditure. The Tribunal finds the Applicant had to silence the fire alarm and liaise with the Fire Brigade during this service charge year. The Tribunal does not allow anything for this head of expenditure should a demand for this service be made.

#### **2008/2009 service charge account – accountancy**

40. The budget figure was £107.87 for this item. The Tribunal is not satisfied that any work of this kind was carried out in this service charge year or if any sums were expended on such work they were reasonably incurred. There is no evidence that an accountant did any relevant work in this service charge year. The Tribunal does not allow anything for this head of expenditure.

#### **2008/2009 service charge account – contingency**

41. The budget figure was £2350.00 for this item. There is no explanation of this figure or how or why it was calculated. Tribunal is not satisfied that any relevant work or services were provided in this service charge year under this head or if any sums were expended on such work they were reasonably incurred. The Tribunal does not allow anything for this head of expenditure.

#### **2008/2009 service charge account – insurance**

42. The Applicant challenges the total of £93.16 charged to his service charge account for insurance under invoices dated 23 07 2008 and 15 12 2008 from Newservice Limited. £93.16 appears to have been charged for insurance from 01 05 2008 to 23 06 2008 according to the invoices. The Applicant asked for details of the building insurance policy by e-mail to Chatfield dated 02 07 2008 (11.06). He reiterated his concern that he had not seen a copy of the policy schedule in his letters to Chatfield of 25 11 2008 and 14 01 2009. There does not appear to have been a response to the request for the policy which was in effect after June 2008. It appears from his e-mail of 01 08 2008 that the Applicant may have received some details of an insurance policy in force, although the precise period for which it was in force is unclear. The figure of £93.16 appears to comprise £75.13 for insurance from 01 05 2008 to 23 06 2008 and £17.53 for “non-payment for insurance premium”. This latter payment this Tribunal has held to be unreasonable and not payable.
43. The insurance invoices were not accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges under the 2007 Act and so the figure of £75.13 is not payable at the date of this decision by virtue of section 21B of the 1985 Act.

#### **2008/2009 service charge account – management charges**

44. The sum claimed under this head by Chatfield on 01 05 2008 was £205.63. This is evidenced by the Ground Rent and Service Charge Statement dated 23 07 2008 at [A8] and a subsequent statement in similar format dated 15 12 2008 issued by Chatfield at A11 (both in appendix A). The day to day management of Mulberry Court by Chatfield appears to have completely disappeared by about late August 2008 as far as the Tribunal can see from the evidence. Before that on 13 08 2008 Chatfield confirmed by e-mail that it was not able or willing to provide services requested by the Applicant because it did not have the funds. Chatfield alleged there were significant arrears of service charges by Mulberry Court lessees. Legal action to recover those arrears was threatened. The Tribunal does not know whether this legal action materialised or was justified. At all events, Chatfield seems to have been providing little or no service to the residents of Mulberry Court from August 2008.
45. Chatfield’s omission to *effectively* supervise or arrange cleaning of the interior or exterior, or to undertake repairs to external drainpipes or to remedy the matters complained of in the earlier Tribunal’s determination, have not been adequately explained.
46. Chatfield failure to produce or arrange for production accounts of service charges for this year (2008/2009) is a serious omission. It is possible the Administrators of Newservice Limited took control before the service charge year end on 30 04 2009. This may be one explanation why accounts for this year end have not been

provided. This is not an excuse which has been relied upon in the material before the Tribunal.

**Failure to account for payments made by the Applicant for service charges during the 2008/2009 service charge year**

47. Perhaps the most serious of many criticisms that can be leveled against Chatfield and Newservice Limited are that they have failed to account for or acknowledge receipt of a number of payments made to Chatfield. These are evidenced by his bank statements in Appendix D. These payments and the statements produced by Chatfield appears to show payments he made which have not been credited to the service charge account or adequately accounted for by Chatfield or Newservice. In particular his bank statements appear to show he made the following payments which have not been reflected in service charge and ground rent statements issued by Chatfield or Newservice Limited on 23 07 2008 and 23 12 2008 namely 22 07 2008 (£300.00), 23 07 2008 (£100.00), 14 08 2008 (£100.00), 15 09 2008 (£100.00) – see appendix D. His bank statements also show that he made payments of £100.00 and £300.00 on 03 04 2009 to Chatfield. The Tribunal finds that all of these payments were made to Chatfield for service charges.
48. Neither Chatfield nor Newservice appear to have accounted to the Applicant for receipt of these funds despite the complaint raised by the Applicant's letter of 02 04 2009. These payments were paid to Chatfield to hold on behalf of Newservice and (in the absence of further explanation) were held on statutory trusts for these purposes imposed by section 42 of the Landlord and Tenant Act 1987: see generally section 11 of the Service Charge Residential Management Code 1<sup>st</sup> edition.
49. The Applicant also reports (and the Tribunal finds) that his attempts to telephone or contact Chatfield after August 2008 were mostly fruitless. The Applicant states and the Tribunal finds, that fire extinguishers fire alarms and communal lift all needed urgent attention at this time and raised serious and potentially life threatening issues. Chatfield were unable or unwilling or unavailable to deal with these issues. In the Tribunal's view the inability of Chatfield to be available or capable of dealing with these issues or at least to communicate reasons for possible delay goes to the very heart of a service that a managing agent could reasonably have been expected to provide.
50. The Tribunal notes that questions about the availability and existence of the insurance policy raised by the Applicant either went unanswered or were evaded. No proper attempt was made to justify the delay in providing copies of the insurance policy or the apparently unfavourable and expensive terms of that policy. In some cases an apparently expensive premium can be justified by reference to the terms of the Lease or the circumstances of the landlord. In any event it is the managing agents' duty to provide information about the terms of the policy and ensure that it is in force: see generally sections 16 and 4 of the Service Charge

Residential Management Code 1<sup>st</sup> edition. Chatfield failed in this duty as far as the Applicant was concerned.

51. Chatfield appears to have failed to take any steps to ensure that the top floor flat contributed to service charges as the earlier Tribunal recommended. Clause 9 of the Lease makes express provision for variation of the service charge percentage. There is no evidence any attempt was made by Chatfield to address the serious criticisms of the position whereby the top floor flat paid nothing towards any of the services at Mulberry Court made by the earlier Tribunal, or to consider whether an application could be made to vary the Leases under section 35 of the Landlord and tenant Act 1987. This appears to be a serious failure of management on the part of Chatfield. It is possible this could still be addressed by the Lessees making an application to the Tribunal.
52. The Tribunal finds that the residual value of the service provided by Chatfield in the service charge year 2008/2009 was so badly affected by its failures (including those set out below) that a lessee could not reasonably be expected to pay anything for the services of Chatfield.

#### **2008/2009 service charge account – administration charges**

53. The Applicant complains about 5 administration charges of £58.75 totalling £293.75 and an interest charge of £95.54 contained in the Ground Rent and Service Charge Statement dated 15 12 2008 issued by Chatfield at [A11]. Given the findings made by this Tribunal about the level of service provided and the failure to account for monies paid by the Applicant to Chatfield in 2008 and 2009, the Tribunal finds the entire amount of these charges are unjustified and unreasonable. The sums claimed as arrears of service charges for which these administration charges appear to have been levied were not due because of the findings made by this Tribunal. Those alleged arrears of service charges were also not due at any time during 2008 when the administration charges were levied because the demands for the service charges had not been accompanied by a summary of rights complying with the 2007 Regulations. The administration charges themselves were and are in any event not due or payable, because the demands for those charges were not accompanied by a summary of rights and obligations which complied with the Administration Regulations 2007.
54. In addition, it is clear to the Tribunal that the Applicant was during the 2008/2009 service charge year properly withholding a proportion of the service charges demanded pending adequate explanation of his complaints about gardening and management and credit being given for the payments which he actually made. The Applicant was entitled to set off in equity his counterclaims relating to the service provided and failure to account for payments made: see *Continental Property Ventures Inc v White* [2006] 1 EGLR 85 and *Filross Securities Ltd v Midgeley* [1998] 3 EGLR 43. The Tribunal in its discretion permits the Applicant to raise his complaints in respect of services supplied on behalf of Newservice Limited

(itemised above). The effect of such a set off (which has ultimately been found to be a good defence to much of these service charge claims for 2008/2009) is that the sums claimed as arrears from Flat 3 were not due at all. It follows that the administration charges and the interest charges are not justified or valid charges.

### **2009/2010**

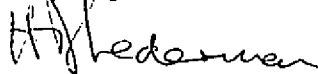
55. The Tribunal has insufficient material to make any finding about the 2009/2010 service charge year and does not do so.

### **Miscellaneous**

56. The failure by Chatfield to produce financial records to Salter Rex about the management and service charges of Mulberry Court appears to be a serious breach of Chatfield's duty under the Residential Service Charge Management Code 1<sup>st</sup> edition. The requirements of Part 4 of the 2<sup>nd</sup> edition of that Code (in force from 6<sup>th</sup> April 2009) about client money and client accounts are even stricter. On the face of the information provided to the Tribunal there appears to have serious breaches of both of these Codes. These breaches may also amount to breaches of trust and/or of the duties owed by the directors or other officers of Newservice Limited and/or Chatfield under the Companies Acts 1995 and 2006. These issues are not within the jurisdiction of this Tribunal upon this application. However this Tribunal will be referring this decision and the papers to the Department of Trade and Industry for further investigation of whether any steps should be taken in respect of these issues.

H Lederman  
Chairman  
04 01 2010

Paragraph 20 amended pursuant to regulation 18(7) of the Leasehold Valuation Tribunal (Procedure) Regulations 2003 on 14 01 2010



H Lederman  
Chairman