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HM Courts & Tribunals Service

Leasehold Valuation Tribunal
Case no. CAM/26UF/LSC/2012/0059

Premises:	59 Haygarth, Knebworth, Herts SG3 6HF
Hearing:	26 September 2012
Applicants:	Mr Paul Clark (acting in person)
Respondent:	Hightown Praetorian & Churches Housing Association
Represented by:	Mr Peter Ashworth (Senior Home Ownership Officer) Mr Ross Bannerman (Home Ownership Manager)
Members of Tribunal:	Mr G M Jones - Chairman Miss M Krisko BSc (Est Man) FRICS Mr P A Tunley

ORDER

1. By consent, the Applicant shall be entitled to credits against his service charge account in respect of day-to-day estate and building repair costs in the sum of £52.31 for 2010 and £80.98 for 2011.

2. It is declared that the charges rendered to the Applicant in respect of management fees for 2010, 2011 and 2012 have been reasonably incurred and are payable by the Applicant only to the extent of £175.00 for each of those years.

3. It is further declared that the reasonable Trust Fund contribution due and payable by the Applicant for 2012 is £250.00 only.

4. It is further declared that in all other respects the service charges demanded of the Applicant in respect of 2010 and 2011 were reasonably incurred, the budget figures for 2012 are reasonable and the charges are payable by the Applicant.

5. The Respondent shall not be entitled to include in any leasehold service charge account relating to Haygarth any charges in relation to the preparation for or attendance at the Tribunal in connection with this Application, the Tribunal considering it just so to order.

6. The parties have permission to apply if so advised for a further order in relation to the recasting of the service charge accounts provided such application is made within 8 weeks from the date of this order.

7. In the event such application is made the Parties have permission to apply if so advised for a wasted costs order in relation to the process of recasting and agreeing the said accounts only.

G M Jones
Chairman
24 October 2012

8.

REASONS

0. BACKGROUND

The Property

0.1 The subject property is a two bedroom maisonette in a development of 68 dwellings in five blocks dating from the late 1960's. As the Tribunal saw on inspection, the landscaped site is rectangular, with rows of flat-roofed garages along the rear boundary, one for each dwelling. Mr Clark has garage No 29 (not 59 as stated in the lease). 26 of the dwellings are freehold houses and 42 are leasehold flats or two storey maisonettes. Small ground floor studio flats have doors at ground level, while upper maisonettes with two or three bedrooms are reached by external staircases, each leading to a landing serving two dwellings. Each maisonette has an internal staircase to the upper floor. There are thus no internal communal areas. Flat roofed porches, newly refurbished, protect all the landings.

0.2 The blocks are of brick construction with pitched tiled roofs. Most of the windows are replacement double glazed uPVC units. Some doors have been replaced in uPVC and some are the original timber doors. Gutters and downpipes are of plastic. The staircases presently in place are durable replacements made of steel. There are recently installed communal digital TV aerials on all the blocks with awkwardly routed external wiring. A fair number of dwellings also have satellite dishes. Mains gas has recently been brought into the development and gas boilers have been installed in all of the dwellings let by the Association on periodic (weekly or monthly) terms. All the blocks are in fair to good external structural condition. The flat roofed garages, however, are showing signs of wear and tear. The landscaping is plain and simple and the grounds are in reasonable order.

The Lease

0.3 The lease is in the usual right-to-buy format. The landlord is responsible for buildings insurance, for structural and external repair and maintenance and for communal service media. There is reference in the lease to a caretaker service, but there is no resident caretaker; such caretaker services as are provided are provided by a mobile caretaker team.

0.4 Costs are divided into block costs and estate costs. Leaseholders must contribute a fair proportion of estate costs and a specified share of costs attributable to their own block. In the case of No 59 the specified proportion is 9.31% (a figure the basis for which neither party could explain). No evidence is available to show what proportion is attributable to the other leasehold units.

0.5 In practice, the Association has apportioned all costs equally; so that Mr Clark's contribution to estate costs is 1/68 (which he accepts is a fair proportion). There are 12 units in Mr Clark's block, so that he has been asked to contribute 8.33% of block costs. He believes there are 7 apartments in his block let on long leases. The service charge contributions of the remaining five units are met by the Association from periodic rents and service charge contributions paid by periodic tenants. There is provision for the collection of contributions towards a reserve or sinking fund

(known here as the Trust Fund).

1. THE DISPUTE

1.1 Mr Clark's general complaint is that service charge bills have increased dramatically on an annual basis since 2009, for which no explanation has been given. He considers that increases should be capped or linked to RPI. He also says that the complaints system is a charade and that a better and more well-defined procedure should be incorporated into all the leases. For these reasons, he would like the Tribunal to scrutinise various items on the service charge account in order to ascertain whether the costs in question were reasonably incurred and whether the contributions demanded of him are payable by him.

2. THE ISSUES

2.1 The issues the Tribunal was actually being asked to decide emerged more clearly during the course of the hearing; there is no need to summarise them here.

3. THE EVIDENCE

3.1 At the start of the hearing, the Chairman, who was having some difficulty in analysing the financial information provided by the Respondent Association, raised with the Association's representatives a number of issues in relation to the interpretation of their published accounts. They explained that the purpose of the accounts is to show income received and expenditure payable out of that income. As regards running and management costs, contributions are received from periodic tenants and from leaseholders, in each case through a variable service charge. However, as regards insurance and general repairs, the contribution of periodic tenants is part of their rent, so that only the 42 leaseholders make direct contributions. In the case of leaseholders, there are also regular contributions to the Trust Fund, from which funds may be drawn to pay for major projects. In recent years, these have included the new staircases and the refurbishment of porches.

3.2 The income and expenditure accounts do not show contributions made by the Association out of general funds in respect of the 26 units let on periodic tenancies or the proportion of overall costs covered by those contributions. Nor do the income and expenditure accounts show contributions taken from the Trust Fund. It is hardly surprising that Mr Clark was unable to follow the accounts, which are no doubt useful and appropriate for internal accounting purposes but neither present a full picture of the overall income and expenditure nor show the breakdown of such income and expenditure. However, more complete information has been made available to the Tribunal and with some labour a full analysis can be achieved.

3.3 One fact that emerges clearly from the written representations is that the Association accepts that it made an error in the allocation of costs relating to day-to-day repairs for 2010 and 2011. This error came to light during preparations for the hearing of this Application. Originally, a total of £5,152.10 was allocated to leaseholders for 2010 (£122.67 per unit); the correct figure is £2,242.66 (£70.36 for

No 59 @ 9.31%). Accordingly, the Association concedes that a credit of £52.31.

3.4 For 2011, the allocation to leaseholders for day-to-day repairs was £6,454.78 (£153.68 per unit). The correct figure is £3.053.32 (£72.70 for No 59 @ 9.31%). Accordingly the Association concedes a further credit of £80.98. It is unclear why the Association, having always allocated costs equally between units, now seeks to rely upon the lease terms for this purpose only. It seems more logical to apply the same apportionment as in the original accounts. As it happens, the difference affects only one item of £182.13, of which Mr Clark's equal share would be £15.17, whereas he has been allocated £16.98. This is minimal and not worth arguing about; Mr Clark sensibly did not take the point. He accepts that it is not reasonable to allocate costs equally when there some units are studio apartments, while others are two and three bedroom maisonettes.

3.5 The source of this error was the management practice of treating all costs as estate costs instead of block costs. The Association further concedes that, in the light of the Tribunal's decision, it will be necessary to review costs across the Haygarth Estate. Mr Bannerman pointed out that this will also involve consideration of the fact that Mr Clark should have been paying 9.31% of block costs instead of the 8.33% allocated to him. The Associations written representations indicate that, in respect of the porch works his contribution should have been £803.73 instead of the £719.41 allocated to him.

3.6 In relation to insurance costs, it appears that the Association has entered into a five-year block contract for a number of Estates (30 or 40 in all) from the end of September 2011 with a break clause after three years. The cost is significantly higher than for the previous three years, which were covered by a three-year deal at fixed price. Currently there is no excess provision though from 2013 it is anticipated that there will be a £50 excess per claim.

3.7 The calculation of the management charges allocated to leaseholders in the Haygarth development is difficult to follow. The Association's representatives described it as a complex exercise involving some averaging based on a time management exercise across the Association's entire portfolio of properties. Weekly tenants directly contribute 18% of their rent by way of service charge because that is the figure the Rent Officer has decided to be reasonable; additional costs relating to them (in practice the bulk of the relevant costs) come out of weekly rents.

3.8 The spreadsheet at page 159 of the hearing bundle shows that for 2010/11 the charge needed to cover management costs relating to leaseholders was £28.68 per unit per month (a total of £344.16 per month). For 2009/10 it was £24.01 (£288.12 p.a.). The contributions demanded from Mr Clark (see page 68) were £24.01 for 2009 and the same for 2010. The accounts at page 105 show budgeted management fees at £13,292 (£26.37 per unit per month) and actual management costs at £12,839 (£25.47 per unit per month). The discrepancies between the figures on page 159 and those on page 105 may result from the fact that page 159 shows an analysis across a financial year, while page 105 relates to a calendar year; or it may simply represent a shortfall. The Tribunal has not attempted a

complete analysis for reasons that will become apparent.

3.9 Nevertheless, it can safely be said that the differences are not adequately explained. On the information made available to leaseholders at the time, the apportionment would have been impossible to understand or check. However, it does appear that the charges rendered to leaseholders were derived from a genuine attempt to ascertain the actual total management costs and to apportion those fairly between the various types of tenants with whom the Association has to deal. Mr Bannerman said that, nevertheless, the charges rendered to leaseholders did not cover the Associations actual management costs, though the gap between contributions and costs is narrowing.

3.10 Mr Bannerman explained that, while the accounts show only one Trust Fund, the Association in fact keeps records showing the balances available for each block. The Association concedes that Trust Fund contributions have risen considerably in the last year or two. The reason is that works carried out at Haygarth have left the Trust Funds in deficit and it was considered desirable to recoup the deficits and build up the balances over a relatively short period, so that funds would be available for further major works. No such works were, however, identified as being in immediate contemplation at present.

3.11 Mr Clark's oral representations focused on a number of specific issues. He queried whether the Association's staff had appropriate qualifications in the field of Procurement. It appears that there is a Procurement Department comprising two staff. The relevant manager is not, it appears, a member of the Chartered Institute of Purchasing and Supply. Mr Clark says he has knowledge of buildings insurance procurement and considers that the insurance costs are high, bearing in mind that the size of the Association's portfolio (some 4,000 properties). He was unable to get comparable quotes for the whole portfolio because he was not given sufficient information by the Association.

3.12 In Mr Clark's submission, the management costs for Haygarth are unreasonably high. The method of calculation encourages failure because the more errors and complaints there are the more management time will be consumed and the higher will be the charges. The Association had sued him twice in the County Court and on both occasions their claims had been dismissed (he produced copy court orders). Although he now understood the Trust Fund contributions and the basis of calculation of management fees, the Association had failed over a period of years to engage sufficiently with the leaseholders or deal with complaints properly. The consultations carried out appeared to be window dressing because decisions appeared already to have been taken. He had given up responding to consultations because it seemed pointless. Leaseholders needed more and clearer financial information in order to understand the accounts. One particular issue was that he had been seeking for over a year permission to have a pet (the lease requires the landlord's approval) but had not yet received any significant response.

3.13 Mr Clark submitted that the current service charge bill of around £1,200 per annum was excessive for this type of property and was, in his experience, unusually high. He considers that the total should be no more than £600 per annum. He left it to the

Tribunal to decide what would be reasonable charges under individual heads.

4. THE LAW

Service and Administrative Charges

4.1 Under section 18 of the Landlord & Tenant Act 1985 (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

4.2 Under section 27A the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for those costs and, if so, the amount which would be payable.

4.3 In deciding whether costs were reasonably incurred the LVT should consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease and the 1985 Act, bearing in mind RICS Codes. If work is unnecessarily extensive or extravagant, the excess costs cannot be recovered. Recovery may in any event be restricted where the works fell below a reasonable standard.

4.4 Under section 158 and Schedule 11 of the Commonhold & Leasehold Reform Act 2002 variable administration charges are payable by a tenant only to the extent that the amount of the charge is reasonable. An application may be made to the LVT to determine whether an administration charge is payable and, if so, how much, by whom and to whom, when and in what manner it is payable. The Tribunal may vary any unreasonable administration charge specified in a lease or any unreasonable formula in the lease in accordance with which an administration charge is calculated.

Consultation

4.5 Under section 20 of the 1985 Act (as substituted by section 151 of the Commonhold & Leasehold Reform Act 2002 with effect from 31 October 2003) and the Service Charges (Consultation Requirements) (England) Regulations 2003 landlords must carry out due consultation with tenants before undertaking works likely to result in a charge of more than £250.00 to any tenant ("qualifying works") or entering into long term agreements costing any tenant more than £100.00 p.a. This process is designed to ensure that tenants are kept informed and have a fair opportunity to express their views on proposals for substantial works or on substantial long term contracts.

4.6 In cases where the same contractor is employed to carry out items of work on a regular basis, the Tribunal must first consider whether there was a 'long term agreement' within the meaning of the section. There will be many cases in which a single contractor carries out numerous items of work, perhaps over a long period, under a series of individual contracts. Such individual contracts may or may not be awarded under an express or implied umbrella contract specifying rates of remuneration and, perhaps standards of performance. There may or may not be a commitment for the landlord or manager to employ the services of the contractor. In each case, it will be a question of fact whether there is a qualifying long term agreement.

4.7 The consultation requirements vary depending upon the circumstances of the case and, in particular, whether the landlord is a designated public body for the purposes of statutory regulations dealing with public works, services and supplies and, in such case, whether the value of the contract exceeds the relevant threshold set under the Public Contracts Regulations 2006. These regulations are designed to provide a level playing field for contractors from EU member states bidding for large public sector contracts in such states. The threshold is, for obvious reasons, set at a fairly high level.

4.8 In this case the relevant requirements are those set out in Part 2 of Schedule 4 to the 2003 Regulations. The landlord must first provide to the tenants (and, if applicable, to the tenants' association) prescribed information about the proposed works and invite them to put forward a contractor. The consultation period is 30 days. The landlord must have regard to the tenants' observations, which might result in a change in the specification of works. After that, the landlord may be obliged to seek an estimate from a contractor or contractors nominated by the tenants. That is likely to occupy a further period of at least 14 days. The landlord must then inform each tenant of the amounts of at least two estimates and the effect of any observations received and the landlord's responses and invite observations on the estimates. All estimates must be made available for inspection. The second consultation period is also 30 days. The landlord must have regard to any observations made. There are other requirements to provide information; but these should not delay the works.

4.9 Landlords who ignore these requirements do so at their peril. Unless the requirements of the regulations are met the landlord is restricted in his right to recover costs from tenants; he can recover only £250.00 or £100.00 p.a. per tenant (as the case may be) in respect of qualifying works. However, it is recognised that there may be cases in which it would be fair and reasonable to dispense with strict compliance under section 20ZA.

Information for tenants

4.10 Under section 21 of the Landlord & Tenant Act 1985 a tenant liable to pay service charges may in writing require the landlord, directly or through his agent, to supply him with a written summary of the costs incurred in the last accounting period which are relevant costs in relation to the service charges payable or demanded.

4.11 Amongst the information the landlord must provide is the aggregate of any amounts received by the landlord on account of the service charge in respect of relevant dwellings and still standing to the credit of the tenants at the end of the relevant accounting period. The landlord must supply the summary within one month of the request or within 6 months of the end of the accounting period, whichever is the later.

4.12 Under section 22 the tenant may, within 6 months of receiving the summary, require the landlord in writing to afford him reasonable facilities for inspecting the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them. The landlord must make those facilities available to the tenant for a period of two months beginning not later than one month after the request was made. Under section 25, failure to comply with the provisions of sections 21 or 22 is a criminal offence. The Commonhold & Leasehold Reform Act 2002 contained provisions amending these sections; but those provisions are not yet in force.

Service charge funds held by landlords or managing agents

4.13 Under section 42 of the Landlord & Tenant Act 1987, where the tenants of two or more dwellings are liable to contribute towards the same costs by the payment of service charges, any sums paid by contributing tenants must be held on trust to defray costs incurred in connection with the matters for which the relevant service charges were payable and, subject thereto, on trust for the contributing tenants. It follows that the landlord (or his agent) is under a duty to account to the tenants for any interest received on funds so held. The funds are "client funds" and the tenants as well as the landlord are the agent's "clients" for this purpose. However, tenants are not entitled to a refund. On termination of any lease, the leaseholder's share passes to the remaining tenants and upon termination of the last lease, to the landlord.

4.14 The Commonhold & Leasehold Reform Act 2002 contained provisions amending this section and requiring that service charge contributions be held in designated accounts; but those provisions are not yet in force.

4.15 The RICS Service Charge Residential Management Code (2nd Edition) approved by the Secretary of State under the terms of section 87 of the Leasehold Reform Housing & Urban Development Act 1993 sets out good practice for landlords' agents and managers of residential blocks. Part 10 of The RICS Code deals with "Accounting for Service Charges". Agents and managers are advised that accounts should reflect all expenditure in respect of the relevant accounting period, whether paid or accrued and should indicate clearly all the income in respect of the accounting period, whether received or receivable. Copies of such accounts should be made available to all those contributing to them. Service charge funds for each property should be identifiable and either placed in a separate bank account or in a single client/trust account. Where interest is received this belongs to the fund collectively; it should be shown as a credit in the service charge accounts and retained in the fund and used to defray service charge expenditure.

4.16 All chartered surveyors and others engaged by way of business in residential property management should be familiar with the provisions of this Code, to which the LVT is required to have regard.

Insurance

4.17 Under section 30A of the Landlord & Tenant Act 1985 and the Schedule to the Act, landlords must supply to tenants who contribute to insurance costs a summary of the policy and must also, if the tenant makes a request in writing, permit the tenant to inspect any relevant policy or associated documents and to take copies.

Costs generally

4.18 The Tribunal has no general power to award inter-party costs, though a limited power now exists under Schedule 12 paragraph 10 to the Commonhold & Leasehold Reform Act 2002 to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal from the tenants through the service charge provisions i.e. he is entitled to recover a contribution to such costs not only from the defaulting tenant but from all tenants.

4.19 However, under section 20C of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. In the Lands Tribunal case Tenants of ***Langford Court –v- Doren Ltd*** in 2001 HH Judge Rich QC said that the LVT should use section 20C to avoid injustice. Clearly the manner in which this discretionary power is (or is not) exercised will vary depending upon the facts of each individual case. The relevant factors in this case are discussed in section 5 of this Decision.

4.20 In addition, under regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees. This power is likely to be exercised in cases where the applicant is substantially successful, unless he has been guilty of unreasonable conduct in connection with the application, e.g. where he has unreasonably rejected a proposal for mediation or a fair and proper offer of compromise.

5. DISCUSSION AND CONCLUSIONS

5.1 Although Mr Clark questioned the service charge accounts generally, he did not make out any detailed case in relation to the majority of items in the accounts. For the avoidance of doubt, the Tribunal considers that, on the evidence, the charges other than those specifically dealt with in these Conclusions were reasonably incurred and contributions to the same are payable by Mr Clark. The contribution payable is, in the judgment of the Tribunal 1/68 of insurance and estate costs and 9.31% of block costs. Since the Trust Fund is intended to collect in advance funds needed for building works on the blocks, Mr Clark's contribution towards the Trust Fund ought properly to be calculated as 9.31% of total allocation for his block.

5.2 However, it seems doubtful whether it is reasonable for the Respondent to reallocate retrospectively contributions which all leaseholders appear to have paid without question. While some (the lessees of studio apartments) might be pleased to receive a credit, the majority are likely to face increases which some of them may consider unfair. Some fairly substantial items treated as estate costs will have to be reallocated as block costs. Some blocks will benefit and others will suffer increases for all leaseholders. The correction exercise and the collection of the corrected totals will undoubtedly add considerably to the administration costs relating to Haygarth and might well lead to further contentious and expensive disputes. Whether it will be reasonable to seek to recover contributions to these additional costs from leaseholders appears doubtful. While the Tribunal cannot make any determination in relation to this issue, the respondent may like to consider its position carefully before reopening the accounts for previous years.

5.3 The Tribunal approaches the issue of insurance costs cautiously, given the difficult position in which Mr Clark found himself in relation to obtaining alternative quotations. The Tribunal cannot give any weight to Mr Clark's claim of expertise, both because the nature and extent of his experience is unclear and because there was no provision in the directions order for expert evidence. However, the Tribunal is able to make use of the knowledge and experience of its members in this field. The insurance of rented blocks is generally dealt with by specialist insurers who must have regard to the potential liabilities of the landlord, the location and character of the buildings concerned and the mix of occupants, which in this case may include leaseholders, the private tenants of leaseholders and those in need (for a variety of reasons) of social housing. Insurance costs have increased significantly in real terms in recent years. In the judgment of the Tribunal the insurance costs for Haygarth are not unreasonable and due contribution is payable by Mr Clark.

5.4 The Tribunal accepts that the concessions allowed by the Respondent Association to Mr Clark by way of credits for 2010 and 2011 are appropriate and will make a consent order accordingly.

5.5 In relation to management fees, the Tribunal considers that there is considerable force in Mr Clark's submissions. Firstly, the method by which the Association allocates management costs involves value judgments which are open to question. Secondly, the assessment of the overall costs of management does not involve any assessment of the quality of management or the reasonableness of the charges to leaseholders. While the Association is entitled to manage the development itself, there is a market in residential property management and, in the judgment of the Tribunal, the sums charged to leaseholders ought to have some correlation with the open market price for this type of management.

5.6 There appear to be only relatively minor criticisms of the actual management of the development; though the undisputed failure to respond to Mr Clark's enquiries in relation to pet ownership does not impress the Tribunal. However, there have been substantial failures of communication between landlord and leaseholder.

5.7 The Tribunal is not satisfied that there has been any failure of the statutory obligation to consult in relation to major projects or long-term contracts. But there has been a dismal failure to provide appropriate financial information sufficient to enable to leaseholders to gain an overview of the costs of the provision of services and management of Haygarth and also substantial and fundamental accounting errors that might not have come to light had Mr Clark not brought this Application.

5.8 The management charges to Mr Clark (treated correctly as estate costs) have been £288.12 for 2010; £293.88 for 2011; and £311.76 for 2012; these are the annual management charges per unit for Haygarth leaseholders in general. In the judgment of the Tribunal, these figures are far too high. Haygarth is not a luxury development but a development of fairly basic buildings of relatively low capital value for Knebworth with a mixed bag of residents. Doing the best we can on the evidence, having regard to the number of units; the amount of work involved; and the quality of management, and applying our knowledge and experience of management charges in the locality, we assess the reasonable figure for management fees for 2010, 2011 and 2012 at £175.00 per unit per annum. If the Association is able to put its house in order by correcting accounting anomalies, responding promptly to leaseholder enquires and providing full and clear financial information to leaseholders, then an increase to £200.00 per unit for 2013 would not be unreasonable. This may not cover the Respondents' actual costs; but, in the view of the Tribunal, there appears to be a good deal of scope for cost saving by increased efficiency.

5.9 Where, as in this case, the lease makes provision for contributions towards reserve funds, the landlord is entitled to require the leaseholders to make reasonable contributions towards such funds. These contributions must have due regard to the actual expectation of expenditure in the foreseeable future, as to which the leaseholders are entitled to expect that the landlord or managing agent will have a plan (probably at least a five-year plan) and that the plan will be reviewed annually. Also, regard must be had to the funds already in hand and to the leaseholders' likely ability to pay. A social landlord might reasonably be expected to have some regard to the financial circumstances of individual leaseholders.

5.10 Overall, the Tribunal considers that the Trust Fund contribution of £258.00 for 2010 was reasonable; the figure of £390.00 for 2011 was on the high side but not unreasonable, having regard to the fact that the fund was in deficit; but the contribution for 2012 of £552.84 (confusingly set out at page 74) was unreasonably high. Assessing a figure from first principles, the Tribunal allows £250.00 for 2012. As no major works are contemplated in the near future, the Trust Fund will be back in credit by the end of 2013 if the same figure is collected in that year.

5.11 Clearly, in the light of the Tribunal's decision, the service charge accounts must be recast, at least insofar as they affect Mr Clark. It appears to the Tribunal that it ought to be possible for the parties to agree figures; however, in case that proves not to be so, both parties have permission to apply to the Tribunal for a further Order. In order to ensure that the matter is concluded within a reasonable time, there will be a time limit attached to that permission. The parties are reminded that, if either party acts

unreasonably in this regard, a wasted costs application can be made.

Costs

5.12 This Tribunal takes the view that it has a wide discretion to exercise its powers under section 20C in order to avoid injustice to tenants. In many cases, it would be unjust if a successful tenant applicant were obliged to contribute to the legal costs of the unsuccessful landlord or, irrespective of the outcome, if the tenant were obliged to contribute to costs incurred unnecessarily or wastefully. In many cases, it would be equally unjust were non-party tenants obliged to bear any part of the landlord's costs.

5.13 It does not appear that the Respondent has incurred any specific costs in relation to this Application. However, the Tribunal is mindful of the principle that a party before a Tribunal is entitled to charge for the time of any in-house advocate. Overall, the Tribunal considers that it would be unjust were any leaseholder required to contribute to the costs of the Respondent and accordingly will make an order under section 20C. As the Applicant has not paid an Application fee or a Hearing fee, the question of reimbursement of those costs does not arise.

Geraint M Jones MA LLM (Cantab)
Chairman
24 October 2012