

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

Case numbers: CHI/00HX/LSC/2010/0109 and CHI/00HX/LSC/2010/0110

In the matter of: 63 and 67 Lynmouth Road, Swindon, Wiltshire, SN2 2DL

And in the matter of: applications under Section 27A of the Landlord and Tenant Act 1985 (as amended) for a determination of liability to pay service charges and under Section 20C of that Act.

Between:

1. Josephine Gray 1st Applicant

2. Anna Onufrieva 2nd Applicant

and

**Armstrong Court (Swindon)
Management Company Limited** Respondent

Date of applications: 26 and 27 July 2010

Date of hearing: 18 November 2010

Members of the Tribunal: Mr. J G Orme (lawyer chairman)
Mr. S J Hodges FRICS (valuer member)

Date of decision: 30 November 2010

Decision of the Leasehold Valuation Tribunal

For the reasons set out below, the Tribunal determines that:

- 1. The sums payable by way of estimated service charge by Josephine Gray in respect of 63 Lynmouth Road, Swindon SN2 2DL and by Anna Onufrieva in respect of 67 Lynmouth Road, Swindon SN2 2DL to the Respondent, Armstrong Court (Swindon) Management Company Limited are:
for the year ended 30 April 2010, the sum of £1,101.18;
for the year ending 30 April 2011, the sum of £985.44. Credit is to be given for any money paid by the Applicants on account of those sums.**
- 2. The Tribunal makes no order pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended).**

Reasons

The Application

1. Armstrong Court, Swindon is a development built in about 2002. It consists of 33 leasehold flats arranged around 9 staircases and 13 freehold terraced houses fronting onto Lynmouth and Bude Roads, Swindon. The common parts of the development are managed by the Respondent, Armstrong Court (Swindon) Management Company Limited ("the Company"). The leasehold owners of the 33 flats and the freehold owners of the 13 houses are members of the Company and all contribute towards the costs of maintaining the common parts.
2. Josephine Gray, the 1st Applicant, is the leasehold owner of flat 63, Lynmouth Road. Anna Onufrieva, the 2nd Applicant, is the leasehold owner of flat 67 Lynmouth Road. Both flats are accessed by the same communal staircase.
3. On 27 July 2010, Miss Gray applied to the Tribunal to determine the reasonableness of the estimated service charges demanded by the Company for the years 2009 and 2010 in respect of 63 Lynmouth Road. On 26 July 2010, Miss Onufrieva applied to the Tribunal to determine the reasonableness of the estimated service charges demanded by the Company for the years 2009 and 2010 in respect of 67 Lynmouth Road.
4. On 8 September 2010, the Tribunal issued directions consolidating the 2 applications, directing the Applicants to file a written statement of case by 6 October 2010 and directing the Company to file a written statement of case by 3 November 2010. All parties filed written statements in accordance with the directions.
5. The applications were listed for hearing together on 18 November 2010.
6. Neither application contained an application for an order to be made pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act"). At the hearing, Miss Onufrieva made an oral application for such an order.

The Law

7. The statutory provisions primarily relevant to matters of this nature are to be found in Sections 18, 19, 20C and 27A of the Act.
8. Section 18 provides:-
 - 1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to rent- a. which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of*

management, and

b. the whole or part of which varies or may vary according to the relevant costs.

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

3) For this purpose-

a. "costs" includes overheads, and

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

9. Section 19 provides:-

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

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

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

and the amount payable shall be limited accordingly.

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

10. Section 27A provides:-

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

a. the person by whom it is payable,

b. the person to whom it is payable,

c. the amount which is payable,

d. the date at or by which it is payable, and

e. the manner in which it is payable.

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

Subsections 3 to 7 of Section 27A are not relevant in this application.

11. Section 20C of the Act provides:-

1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a ... leasehold valuation tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

2) ...

3) *The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

The Leases

12. The Tribunal had before it copies of 2 leases.

13. Miss Gray submitted with her application a copy of a lease dated 9 July 2003 relating to Plot 100, Armstrong Court. It was made between Kingsoak Homes Limited as Lessor, the Company as management company, Barratt Homes Limited as the builder and Martyn Edward Peebles as Lessee. It demised Plot 100 to the lessee for a term of 155 years from 1 January 2002 at a yearly rent of £150. Miss Gray was registered as the leasehold owner of the lease with effect from 22 April 2008. Plot 100 is now known as 63 Lynmouth Road.

14. Miss Onufrieva submitted with her application a copy of a lease dated 16 June 2003 relating to Plot 98, Armstrong Court. It was made between Kingsoak Homes Limited as Lessor, the Company as management company, Barratt Homes Limited as the builder and Peter Douglas Trethewey and Anne Jean Trethewey as Lessee. It demised Plot 98 to the lessee for a term of 155 years from 1 January 2002 at a yearly rent of £160. Miss Onufrieva was registered as the leasehold owner of the lease with effect from 10 July 2009. Plot 98 is now known as 67 Lynmouth Road.

15. The material terms of both leases appear to be in the same form and Miss Onufrieva and the Company agreed at the hearing that they are in the same form.

16. By clause 5 of the leases, the Company covenants with the Lessor and the Lessee to observe the covenants set out in the tenth schedule. The tenth schedule includes a covenant *"To carry out the works and do the acts and things set out in the Sixth Schedule as appropriate to each type of dwelling."* It also includes a covenant to ensure that any reserve fund is kept in a separate trust fund account.

17. The sixth schedule is headed *"The Maintenance Expenses"* and contains 15 paragraphs. Paragraph 1 provides for insuring the maintained property and *"insuring any risks for which the Management Company may be liable as an employer of persons working or engaged in business on the Maintained Property ..."* Paragraph 7 provides for *"Generally managing and administering the Maintained Property and protecting the amenities of the Maintained Property ..."* Paragraph 9 provides for employing an accountant to prepare service charge accounts and a certificate of the total amount of the

maintenance expenses in each year. Paragraph 11 allows for *“Providing inspecting maintaining repairing reinstating and renewing any other equipment and providing any other service or facility which in the opinion of the Management Company it is reasonable to provide.”* Paragraph 12 provides for administering the Company. Paragraph 13 allows the Company to accumulate a reserve fund for future expenditure. Paragraph 14 provides for *“Operating maintaining and (if necessary) renewing the lighting heating water and power supply apparatus ...”* Paragraph 15 allows for *“All other expenses (if any) incurred by the Management Company in and about the maintenance and proper and convenient management and running of the Development including in particular but without prejudice to the generality of the foregoing ...”* It then mentions a number of items including legal costs.

18. By clause 3.2 of the leases, the lessees covenant with the Company to observe the covenants set out in parts one and two of the eighth schedule. Paragraph 2 of part one of the eighth schedule contains a covenant *“To pay to the Management Company or its authorised agent on the date hereof the initial sum and thereafter the Lessee’s Proportion at the times and in the manner herein provided.”* In the leases, *“the Lessee’s Proportion”* is defined as *“means 2.87% of the Maintenance Expenses payable by the Lessee in accordance with the provisions of the Seventh Schedule or such other proportion as the Management Company shall reasonably determine.”* *“The Maintenance Expenses”* are defined as *“means the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company or the Lessor at all times during the Term in carrying out the obligations specified in the Sixth Schedule.”*
19. The seventh schedule sets out the provisions for calculating the lessee’s proportion. Paragraph 6 provides for an annual account of the maintenance expenses to be prepared to 30 April in each year. Paragraph 3 (by reference to paragraph 9 of the sixth schedule) provides for the accountant to certify the total amount of the maintenance expenses. Paragraph 7.1 provides for the lessee to pay in advance on 1 November and 1 May in each year *“one half of the Lessee’s Proportion of the amount estimated from time to time by the Management Company or its managing agents as the Maintenance Expenses for the year and on account of the payments to be made by the Lessee pursuant to this clause ..”* Paragraph 7.2 provides for the lessee to pay any balance due to the Company within 21 days after service of the accountant’s certificate and *“any overpayment by the Lessee shall be credited against future payments due from the Lessee to the Management Company.”*

The inspection

20. The Tribunal inspected Armstrong Court on 18 November 2010 in the presence of Miss Onufrieva, the 2nd Applicant; Mr. Morris and Mrs Howard, directors of the Company; Karen Gray, Shelley Heaney and Sophie Archer, employees of Labyrinth Properties (the Company's managing agents); and Helen Macrae MIRPM from Leasehold Legal Services.
21. Armstrong Court was built in about 2002. The main section forms a rectangle with a block of 4 flats at each corner, each accessed by a separate entrance hall and staircase. In between the blocks of flats there are 5 terraced houses on both the North and South sides and 3 terraced houses on the East side. Parking is provided by integral garages and car ports. The area inside the rectangle is divided into gardens, mostly allocated to the houses but 2 parts form communal gardens. There are also bin stores located within the rectangle. There is some planting on the outside corners of the rectangle. There is a separate block of 17 flats to the East accessed by 5 staircases. On the East side of this block is a large area of lawn and garden.
22. The Tribunal inspected the communal entrance hall and staircase in the block on the South-Western corner of the main rectangle. It is arranged on 3 floors and leads to 63, 65, 67 and 69 Lynmouth Road. There were extensive cracks in the plaster on the walls and around the doorways. The plaster had been chipped on exposed corners. The internal face of the mail-boxes was damaged and the plaster around the boxes was damaged. The internal decorations appeared worn. The entrance hall and staircase appeared clean. The doors to the 2 bin stores to the rear of this block were in need of attention to ensure that they closed and locked properly.
23. The Tribunal also inspected the communal entrance hall and staircase in the block on the opposite corner (North-Eastern) of the rectangle leading to 37, 39, 41 and 43 Lynmouth Road. This appeared to be a virtually identical structure but in better decorative order. There were some plaster cracks but no signs of other damage. The bin store to the rear was clean and tidy and the door locked.
24. The Tribunal walked around the external parts of Armstrong Court and noted that it appeared to be well maintained, in a clean and tidy condition. The garden areas appeared to be well maintained.

The hearing and the issues

25. The hearing took place at the Holiday Inn Express, Swindon on 18 November 2010. Miss Onufrieva appeared in person. The Company was represented by Miss Macrae. Miss Gray did not appear. Miss Onufrieva told the Tribunal

that Miss Gray had not been able to take time off work. Miss Onufrieva said that Miss Gray had not asked her to speak on her behalf although they agreed on the issues.

26. In the applications, the Applicants were not specific as to the items which they were challenging other than to say that the property was in need of repair and that the service charge was too high compared to similar properties on other estates. Their written statement of case did not expand on those issues other than to complain about cracks in the walls and damaged mail-boxes and fuse-boxes.

27. At the hearing, Miss Onufrieva confirmed that she was challenging the estimated service charge for the periods ending 30 April 2010 and 2011. She said that her main concerns were the state of internal decoration of the staircase leading to her flat and that, overall, the estimated service charge was too high. When asked to identify which items in the service charge she considered to be too high, she identified the following:

- a. Cleaning
- b. Electrical repairs and light bulbs
- c. General repairs
- d. TV aerial
- e. Postage and copying
- f. Internal decorations reserve
- g. Grounds maintenance
- h. Building insurance
- i. Directors' insurance
- j. Management fees
- k. Company secretarial fees
- l. Refuse management (2010/11 only)
- m. Window cleaning (2010/11 only).

The Applicant's Evidence

28. Miss Onufrieva accepted that the cleaning of the common parts was carried out regularly and to a good standard. She said that the cost was too high bearing in mind the areas involved. She did not put forward any alternative costs other than to say that cleaners ought to charge about £15 per hour and 3 cleaners attend on a weekly basis and spend about 10 minutes on each staircase. Her main concern was that she had been told that her staircase would be decorated when she purchased the flat and it had still not been done. She accepted that some of the damage to her staircase had been caused by the occupants of the ground floor flat but it had been difficult to obtain evidence to prove it.

29. Miss Onufrieva complained that the gardeners were not competent as they had cut down all the trees and made them look bad. She complained about the cost of clearing refuse saying that when the stores were full, the contractor would not empty them. She said that the windows were cleaned too often. This was an unnecessary expense.
30. Miss Onufrieva had no specific evidence in relation to the other heads of expense other than to say that the overall service charge was too high. She challenged the need for directors' insurance.

The Respondent's evidence

31. The Respondent filed a witness statement made by Karen Gray, a client liaison manager employed by Labyrinth Properties. She was responsible for the day to day running of Armstrong Court from February 2009 until recently. The statement was accompanied by a large bundle of documents. Much of the statement deals with the service charge accounts for the year ended 30 April 2009 which are not in dispute. Karen Gray gave further oral evidence at the hearing.
32. Karen Gray explained that Labyrinth Properties was instructed by the Company to act as its managing agents from February 2009 in place of Residential Management Group. She said that RMG had not provided full information about the previous management expenses for Armstrong Court. As a result, their estimates for 2009/10 and 2010/11 were based on the limited information supplied by RMG.
33. The final accounts for the year ended 30 April 2010 were being prepared by the accountants and she anticipated that they would be available to be sent to the leaseholders about 2 to 3 weeks after the hearing. She had seen a copy of the draft accounts which showed that the estimated expenditure was about £3,000 more than the actual expenditure.
34. **Cleaning:** The budget for both years allowed for £5,100. This had been based on a monthly figure of £425. The existing cleaners, Arcadian Living, charged £413.39 per month. The cleaning contract was put out to tender in February 2010 and Karen Gray produced copies of 2 quotations received and a copy of the cleaning specification. Lollypop Cleaning Services Ltd had been employed to clean from January 2010 at an annual cost of £4,260 + VAT (£5,005.50). The cleaning contract covered the 9 shared staircases and included cleaning the inside surface of windows on the staircases.
35. **Electrical repairs and lightbulbs:** The estimates provided for £300 in 2010 and £800 in 2011. Karen Gray said that when Labyrinth took over management, there were a lot of minor electrical problems which needed to

be attended to. She produced a schedule showing expenditure on repairs and light bulbs in the year ended 30 April 2010. It was not clear from that schedule precisely how much had been spent on such repairs as it also included items falling within general repairs.

36. **General repairs:** The estimates provided for £2,500 in both years. Karen Gray referred to the schedule of actual expenses in 2009/10 and pointed to various items which would fall under the heading of general repairs totalling £2,414.26. She said that until the final accounts were prepared, it would not be possible to say precisely which items had been allocated to general repairs and which to electrical repairs. General repairs covered items such as locks on the bin stores, buying new suited keys, hiring a cherry picker to repair windows and repairing a smoke vent.
37. **TV aerial:** The estimates provided for £150 in each year. This covered the cost of repairs to the communal system in the blocks such as when the satellite dishes are knocked out of alignment in bad weather. There had been some additional expenditure due to digital switchover.
38. **Postage and copying:** The estimates provided for £250 in each year. Karen Gray said that this included the cost of hiring a hall for the AGM, providing information to members and the cost of Section 20 consultation notices. Details of the sums expended in 2009/10 were set out in the schedule of expenditure.
39. **Internal decorations reserve:** The estimates provided for £2,356.86 in each year. Karen Gray said that when Labyrinth was appointed, there were no reserves for future works. It was accepted that the communal staircases were in need of decoration. She had obtained a quotation for decorating the 9 staircases in June 2009 at a cost of £14,100. It had been hoped to do the work in April 2010 and the Section 20 consultation process had been started. However, there was not enough money in the reserve to pay for the work and it had been delayed. It was hoped that the work would be carried out in 2011. The Company's directors were discussing the possibility of phasing the work so as to complete the worst areas first. To that end, the exterior doors had been painted externally with an undercoat on the internal surfaces. The reserve fund was augmented by the transfer of a surplus of £4,526.96 from 2008/09 and it was hoped to transfer a further surplus of about £3,000 from 2009/10. There was no explanation for the specific figure of £2,356.86.
40. **Grounds maintenance:** The estimates provided for £3,600 in 2010 and £3,500 in 2011. When Labyrinth took over management, Arcadian Living were contracted to do the grounds maintenance at a cost of £275 per month. Karen Gray obtained a quotation in May 2009 from GWC Cleaning and Maintenance at a cost of £235 per month. She produced a copy of the

specification for the work required. In the end, GWC could not do the work and Karen Gray asked another contractor, Scimitar, to match the price, which it did. That contractor started in September 2009. There had been a further tendering exercise in February 2010 when 2 contractors had quoted. Lollypop was contracted to do the work at about the same price of £235 per month (£3,313.50 per year). There was an additional allowance for replanting some areas but that had been saved by Lollypop splitting existing plants. Karen Gray said that she was very pleased with the work carried out by Lollypop. When Labyrinth took over, some of the planting had been very overgrown and the grass was in poor condition.

41. **Building insurance:** The estimates provided for £5,400 in 2010 and £3,800 in 2011. Karen Gray said that when Labyrinth took over management, they discovered that part of the building had not been insured by RMG. She had increased the estimate to allow for that and had estimated £5,400. However, Labyrinth had been able to obtain cover for £3,494 including terrorism cover which she considered reasonable in the light of the premium.
42. **Directors' insurance:** The estimates provided for £350 in 2010 and £200 in 2011. Karen Gray said that this provided cover for the directors personally in respect of any personal liability which they may incur. As they are volunteer resident directors, she considered that it was prudent if allowed by the lease. The actual premium for the 10 months to March 2009 was £183. The Company relied on paragraphs 1 and 15 of the sixth schedule to allow it to charge such a premium to the service charge.
43. **Management fees:** The estimates provided for £5,491.25 in each year. Karen Gray produced a copy of the management agreement with the Company. She said that Labyrinth charges £125 + VAT per flat and £50 + VAT per house.
44. **Company secretarial:** The estimates provide for £450 in 2010 and £420 in 2011. Karen Gray said that this covered the cost of preparing the year end return and filing the company accounts at Companies House, dealing with notices of transfer and mortgage. The work is carried out by CoSec Ltd, a subsidiary of Countrywide Group, the same group to which Labyrinth belongs. The charge agreed is £375 + VAT per year.
45. **Refuse management:** The estimate for 2011 provides for £500. Karen Gray said that this was to cover the cost of additional work to clean out the bin stores over and above that done by the council as the council will only take refuse which is in a bin and it will not take recycling refuse if it is contaminated. She said that a contractor is employed when needed which is approximately quarterly and there is a charge of £35 per kilo to dispose of the waste as it is treated as commercial waste.

46. **Window cleaning:** The 2011 estimate provides for £1,150. Karen Gray said that this covered cleaning of the exterior face of the communal windows as the interior face was part of the cleaning contract. She had put the contract out to tender in May 2009 and February 2010. On each occasion she had received 3 tenders. In May 2009, GWC had been contracted at a monthly cost of £80 + VAT (£1,128 per year). In February 2010, Lollypop had been contracted at a cost of £90 + VAT (£1,269 per year). It had now been decided that the cleaning would take place once a quarter so the cost would be reduced.
47. Karen Gray produced statements for the estimated service charges for both 2010 and 2011 which showed how the costs were apportioned between the flats and the houses. The Applicants were not charged a precise 2.87% of the total cost. 4.75% of the cost of grounds maintenance, insurance, professional fees, general reserve and postage and copying were allocated to the houses with the balance being split equally between the 33 flats. Management fees were allocated in accordance with the basis on which they were charged. The rest of the heads of expense were allocated just to the flats and split equally. The Company relied on the definition of "*Lessee's Proportion*" to entitle it to do so and considered that this was fair and reasonable.
48. Shelley Heaney, the present property manager, gave evidence that 65 Lynmouth Road is owned by Key 2, a social housing provider. She said that it had been alleged that the occupants of that flat had caused damage to the property but, in the absence of evidence, it was not possible to re-charge the cost of repairs to the leaseholder. This was the only social housing unit at Armstrong Court.

Section 20C

49. Miss Onufrieva said that she wished to make an application for an order and that the Tribunal should make an order if the service charge is reduced. Miss Macrae opposed the making of an order. She said that the members of the Company are the leaseholders. The directors are volunteers and they have to pay the service charges as well. The budgets are prepared in advance and sent to leaseholders with an explanation. It is open to the leaseholders to ask questions whether directly of the directors or at the AGM. The Applicants had not done so.

Conclusions

50. The Tribunal sympathises with the complaints made by Miss Gray and Miss Onufrieva about the state of the internal decorations in their staircase which appeared to be worse than the other staircase which was inspected and in

need of re-decoration. However, as there is no suggestion that any such work has been carried out or charged for within the service charge, this is not an issue which is within the jurisdiction of this Tribunal. If the Applicants consider that the Company is in breach of its obligations, they should consider taking steps to enforce those obligations. The Tribunal hopes that that will not be necessary and that the Applicants will take comfort from the suggestion that work will be carried out in 2011.

51. The Applicants' main complaint about the estimated service charge is that it is too high compared with that paid by acquaintances in other properties elsewhere. The Applicants did not produce any evidence to show the terms of the leases of those other properties or what services were provided. The Applicants produced no evidence to establish that the costs estimated by the Company were unreasonable apart from vague evidence in relation to the cost of cleaning. They produced no evidence to show that the services provided were not to a reasonable standard or were unnecessary apart from vague allegations about the standard of grounds maintenance and a suggestion that the windows are cleaned too frequently.
52. Having considered the Company's evidence, the Tribunal is satisfied that the services proposed by the Company fall within the definition of maintenance expenses as set out in the sixth schedule of the leases. That schedule is drawn in wide terms. The only item meriting closer attention is the expenditure on directors' insurance. The Tribunal is satisfied that that expenditure is allowed by paragraph 15 of the sixth schedule. Furthermore, the Tribunal accepts the Company's reasons for taking out that insurance and considers that it is reasonably incurred.
53. The Tribunal is satisfied that the estimates for the expenditure are reasonable in the light of the information available to the Company when the estimates were prepared. The estimate for 2009/10 was prepared at a time when Labyrinth had only just taken over management of Armstrong Court and it was dependent on information provided by the previous agents. The estimate for 2010/11 was prepared in the light of experience in the first year of management but at a time when final accounts had not been prepared. It is likely that some of the actual costs will turn out to be lower than the estimates and some will be higher but there is no evidence before the Tribunal to show that the estimates are unreasonable.
54. The Tribunal does not accept Miss Onufrieva's assertion that the overall estimated service charge is too high. The inspection of Armstrong Court shows that it is well maintained in a clean and tidy condition and that will be reflected in the service charge.

55. The Tribunal accepts the Company's explanation as to how the expenses are divided between the houses and the flats rather than on a strict percentage of 2.87%. The Tribunal concludes that the method adopted by the Company is fair and reasonable and within the terms of the leases. That view is reinforced by a simple calculation taking 2.87% of the total estimated expenditure. For 2010, that gives £1,084.19 compared to the amount demanded £1,101.18. For 2011, it gives £968.40 compared to the amount demanded £985.44.
56. The Tribunal stresses that these findings apply only to the estimated service charges. As and when final accounts are produced to leaseholders, it will be open to the Applicants (or other leaseholders) to challenge those accounts if they consider that certain costs have not been reasonably incurred or if the services or works were not carried out to a reasonable standard but they will need evidence to support their contentions.
57. If the evidence given by Karen Gray about the draft accounts for 2009/10 proves to be correct then there may be a surplus of about £3,000 in that year's accounts. The leases provide (paragraph 7.2 of the seventh schedule) that that surplus should be credited against future payments due from lessees. The Company's suggestion that it be transferred to the internal decorations reserve is not strictly in accordance with the terms of the leases. It is for the Applicants and other leaseholders to consider whether they wish to object to such a transfer bearing in mind that it is likely to result in a delay to the internal decorations or a special levy to pay for those decorations.
58. For those reasons, the Tribunal is satisfied that the amounts demanded for estimated service charges of £1,101.18 for the year ended 30 April 2010 and £985.44 for the year ending 30 April 2011 are reasonable and are payable by the Applicants. Documents filed with the Tribunal suggest that both Applicants have made some payments on account and credit will have to be given for those payments. The Tribunal notes that Miss Onufrieva became the registered proprietor of the lease of 63 Lynmouth Road during the course of the year ended 30 April 2010 and there may be that she is only liable to pay a proportion of the service charge for that year. That issue was not considered at the hearing.
59. **Section 20C:** The Tribunal is not required to determine whether the terms of the leases allow the Company to recover its costs of proceedings through the service charge and it makes no finding in that respect. The Tribunal concludes that it is not appropriate to make an order under Section 20C preventing the Company from recovering the costs which it has incurred in these proceedings through the service charge if the leases do entitle it to do so. The Tribunal has found that the estimated service charges are reasonable. The Applicants have failed to produce any evidence to support

their contention that they are unreasonable. It, therefore, would not be just and equitable to make an order.

Signed

J G Orme

Chairman

30 November 2010