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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	: 24 Eliot Court Fulford York North Yorkshire YO10 4LP
Applicants	: John Richard Stroughair and Margaret Ellen Stroughair of 20 Glen Road York North Yorkshire YO31 0XQ
Respondent	: Fenwick Court Management Ltd
Case number	: MAN/00FF/LSC/2011/0105
Date of Application	: 14 October 2011
Type of Application	: Service Charge determination s27A Landlord and Tenant Act 1985
The Committee	: Professor Caroline Hunter Ms. Jenny Jacobs Mr. John Murray
Date of Hearing	: 10 July 2012

DECISION

SUMMARY DECISION

1. The Tribunal finds that the Respondent company have failed to comply with s.21B of the Landlord and Tenant Act 1985 and have not served the required notice to accompany demands for service charges.

2. The Tribunal finds that the following sum is due and owing as a service charge under the lease for 2011: £698.32. In doing so it considered that certain sums charged were not recoverable under the lease and that others were unreasonable. In particular it found that charges sought to be recovered in order to repay loans and accruals in the accounts from earlier years were not recoverable because of the time limit on making demanded in s.20B of the Landlord and Tenant Act 1985.

3. The Tribunal adjourns the application in relation to the year 2012. The applicant can apply to restore this matter if agreement is not reached.

4. The Tribunal finds that legal costs are not recoverable under the terms of the lease. If it is wrong about this, it makes an order under s.20C of the Landlord and Tenant Act 1985 the legal costs incurred by the Respondent in these proceedings are not relevant costs recoverable under the lease. It dismisses the Respondent's application for costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

INTRODUCTION

5. This is an application to determine liability to pay and reasonableness of service charges under s.27A Landlord and Tenant Act 1985 in respect of 24 Eliot Court, Fulford, York ("the Property") and limitation of costs under s20C of the same Act for the years 2011 and 2012. The Applicants are the leaseholders of the property, which is situated in part of a larger estate "Fenwick Court". The Respondent lessor is Fenwick Court Management Company Ltd ("the company"), which is a company wholly owned by the leaseholders on the estate. The applicants are accordingly shareholders in the Respondent company. The case for the Respondents has been conducted by Mr Warren Breeze who is one of the three directors of the company.

6. Fenwick Court comprises a small development of 16 flats and 8 houses. It is laid out in two parallel terraces, with paths, lawned areas and gardens between. At either end of each terrace is a small block of four flats with four houses between each block. Car parks are laid to each end of the

development for flat owners to use. In addition there are parking spaces in front of some of the flats and houses. The estate was completed in the mid-1990s and we were told that at an initial meeting of all the owners the house owners asked that the company also take on painting of the exterior of their properties.

7. Until the end of 2010 the day to day management of the estate was in the hands of managing agents. They, however, retired and the directors of the company decided not to replace them but to take on management themselves. The current dispute seems largely to have arisen after the AGM of the company in July 2011 attended by the Applicants at which they sought to question some of the expenditure in the 2010 accounts. The atmosphere at that AGM was described at the hearing before us as "electric". We have not heard evidence nor questioned the parties in detail about that meeting. We did not think it would be helpful, nor was it relevant to the decisions which we had to take. It is clear, however, that the upshot of that AGM is that the parties have taken a very aggressive stance towards each other throughout this dispute. Accusations have been made relating to the bona fides of Mr Breeze by the Applicants. He has responded through his solicitors with threats of legal action and numerous applications to the Tribunal. None of this is helpful in resolving the very real issues which we consider arise in relation to the reasonableness of the service charges and whether they have been properly accounted for.

8. The application made by the applicants dated 14 October 2011 records concerns about:
    (a) expenditure by the company, following quarterly increases in the service charges from £254.24 per quarter to £302.55;
    (b) failure to provide a summary of leaseholders rights and obligations about service charges;
    (c) accounts for year ending 31.12.10 having not been submitted until 29 June 2011 in breach of covenants in the lease which requires them to be submitted within two months of year end;
    (d) Queries about loans from Mr Breeze to the company which were now listed as accruals in the accounts for 2011 and still partially owing in 2012.

9. The matter therefore largely turns on whether the service charges have been reasonably incurred in accordance with the Landlord and Tenant Act 1985, s.19. A second issue relates to the failure to provide a summary in accordance with s.21B of the Landlord and Tenant Act 1985. A third issue also arises, which was taken by the Tribunal, as to whether there has been compliance with s.20B of the Landlord and Tenant Act 1985. This section prevents recovery of a service charge where a demand for payment has not been made within 18 months of the costs being incurred.

THE PROCEEDINGS

10. A Pre Trial Review was held on 24 January 2012 at York County Court when Directions were issued by Professor Caroline Hunter, procedural chairman. The parties have generally complied with the Directions.

11. A Leasehold Valuation Tribunal comprising, Professor Caroline Hunter, Ms. Jenny Jacobs and Mr. John Murray was appointed and an external inspection of the Property took place on the morning of 10 July 2012 at 10am. The Applicant and Respondent attended the inspection.

12. The substantive hearing of the application was on 10 July 2010 at York Magistrates Court. At the substantive hearing, both the Applicants were present, although the case was largely conducted by Mr. Stroughair. The Respondent company was represented by Mr. Breeze and the solicitor instructed by the company, Mrs. Barrington Binns.

THE PROPERTY INSPECTION

13. The property itself is situated on the ground floor of one of the blocks. It is a 2 bedroom ground floor flat with a private rear garden. Prior to the hearing the Tribunal inspected Fenwick Court. We noted at that inspection the very high standard to which the properties on the estate and the common grounds are kept.

14. The Tribunal looked in particular at Fenwick Lane which runs to the rear of one of the terraces. The private gardens to some the ground floor flats and the four houses in the terrace back on to the lane, as does one of the car parking areas.

THE LEASE

15. The lease of the property is for 999 years. Under its terms, the lessor is obliged to carry out the various obligations set out in the Seventh and Eighth Schedule.

16. The Seventh Schedule refers to the First Reserved Property, identified in the preamble to the lease by reference to Part 1 of the Second Schedule – in summary the outside areas as shown cross hatched black on the lease plan.

17. The Eighth Schedule refers to the Second Reserved Property, identified in the preamble to the lease by reference to Part 2 of the Second Schedule – in summary the structural, external and communal parts of the Flats – as opposed to the Houses - that form part of the development shown coloured black on the plan.

18. Both Schedules include a provision permitting the keeping of a reserve fund in order to equalize costs and expenses in carrying out the obligations in the Schedules. Any overpayments from the sums demanded by way of service charges are held upon trust to be expended in subsequent years.

19. The Sixth Schedule sets out the lessee's covenants. By clause 22, the Respondent reserves a general right to recover costs of providing services for flat or house owners in pursuance of its obligations under the Seventh Schedule (the outside areas).

20. By clause 26 the lessee is required to contribute one 24th of the costs of the lessor carrying out the services in the seventh schedule. Clause 27 provides a similar obligation to pay one 16th of the costs of the lessor carrying out its obligations in the eighth schedule.

PRELIMINARY APPLICATION

21. Ms.Barrington Binns made a preliminary application for the Respondent company to dismiss the application under the Commonhold and Leasehold Reform Act 2002, Sch. 12, para. 7 and the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (SI 2003/2099), reg. 11 on the basis that it was frivolous or vexatious or otherwise an abuse of process.

22. Prior to the pre-trial review Mr Breeze alleged that Mr Stroughair had defamed him by comments made in his statements to the Tribunal and in a letter sent to the Department for Business, Innovation and Skills, complaining about Mr Breeze's actions as a Director. A further application by the Respondent's solicitors was made in June 2012 that certain allegations made by the Applicants should not be repeated by the Tribunal because they were defamatory and that Mr Stroughair's statement be redacted. By a letter dated June 11, 2011 the Respondent's solicitor applied to have the application struck out under regulation 11. The Tribunal had in response pointed out that it was covered by litigation privilege. It determined that it would hear the application under regulation 11 at the full hearing should the Respondent wish to repeat it.

23. The application was repeated and the Tribunal heard it as a preliminary matter. The Respondent now accepted that there could not be defamation before the Tribunal, but the derogatory comments which had been repeated in correspondence to the Department for Business, Innovation and Skills outside the Tribunal was evidence of a vexatious litigator, and that the applicants had started the proceedings for reasons of malice towards a particular Director, i.e. Mr Breeze. Mrs Barrington-Binns referred the Tribunal to the case of *Wallace v Valentine* [2002] EWCA Civ 1034 which is an appeal in libel proceedings against a decision that the case was an abuse of process. In that case it was held that it was an abuse of process to bring proceedings

not so as to vindicate a right "but rather in a manner designed to cause the defendant problems of expense, harassment, commercial prejudice of the like beyond those ordinarily encountered in the course of properly conducted litigation" (para [31]). Mrs Barrington-Binns suggested, as in that case, the LVT proceedings were being brought as an abuse of process in order to make allegations under litigation privilege. She also referred to the case of *A-G v Baker* (2000) Times, March 7, where Lord Bingham stated that the "hallmark of a vexatious proceeding was that it had little or no basis in law".

24. Mr. Stroughair countered this by saying he could only write to the Respondent about this matter, and he had no intention to defame. He saw no reason he could not complain to the Department for Business, Innovation and Skills. He denied suggesting fraudulent conduct.

25. At the hearing the Tribunal dismissed the application to strike out. It was quite clear that there were a number of factual and legal issues for the Tribunal to determine, and, whilst the evidence of both parties had led to the application being less than cordial, that was a reflection on the strength of feeling and frustration of both parties, as opposed to being fuelled by malice.

THE EVIDENCE AND SUBMISSIONS

26. At the outset of proceedings, the Tribunal stressed the need for the parties to focus on the 2011 accounts that had been produced, the Scott Schedule prepared by the parties, and what items might be charged for under the terms of the lease. The Tribunal noted that many personal comments had been made in statements which did not progress either party's case, nor assist the Tribunal in determining the issues, but reflected perhaps the frustration of the parties.

27. An application was made by the Respondent to consider late evidence put in response to the Applicant's further submissions, which it was suggested raised new issues. It was submitted that it would be a breach of natural justice should the evidence not be allowed. The Tribunal noted that little, if any, of that evidence was relevant to the points for determination, however it did not exclude the evidence.

28. The Tribunal heard oral evidence and submissions from Mr and Mrs. Stroughair, the Applicants and Mr. Breeze for the Respondent. In addition submissions were made by Mrs Barrington Binns on behalf of the Respondent company. The Tribunal also had before them voluminous written evidence by the applicants and Mr Breeze, documentation and submissions of the parties.

29. Mr. Stroughair summarized his concerns as follows:-

(a) He had been taken aback when it was decided in late 2010 that there should be no managing agents employed. In his view agents could often provide an invaluable service;
(b) The service charges were to be substantially increased, despite the lack of a managing agent, and no budget was provided to shareholders to help explain this;
(c) Shareholders were already paying £85 pcm, which he felt was high compared to other schemes of which he provided evidence;
(d) There was no opportunity for them to have proper discussions about the proposed changes, no transparency or fairness;
(e) The gardening, in light of the size of the grounds involved, was an extravagance. He felt the weekly grass cutting was excessive.
(f) He questioned why the company was in debt, and borrowing money it didn't have, to do works it didn't necessarily need to carry out;
(g) No sinking fund or reserve fund had been built up; he did not feel that the Estate had been well managed;
(h) He queried the joinery and maintenance works to numbers 7 and 8;
(i) He queried why 55%of the hedge had been removed on Fenwick Lane, and why the hedge had been removed next to the Property;
(j) He felt that the dispute could have been resolved at a local level had communication been better; there had been no requirement for expenditure on legal expenses which were included in the 2011 accounts;
(k) He was pleased to have finally seen the invoices; he said that there still some "grey areas", but the main issues that the accounts and invoices threw up for him were the gardening, painting, and legal costs – which he felt were a complete waste of money.
(l) He produced some written submissions as to what he felt reasonable service charges might be – which he could see reducing to around £40 pcm from the £85 previously charged.

30. Mrs. Barrington Binns made the following submissions on behalf of the Respondent Company in relation to the service charges;

(a) The applicant had, in her view failed to produce evidence that the service charge was not reasonable.
(b) Reasonableness should be given its common sense meaning, taking into account the quality of the works, and the rates for services. The Respondent company had provided details of rates for comparable services.
(c) Clause 22 of the Sixth Schedule enabled the Respondent Company to claim for works carried out in connection with the Seventh Schedule, enabling the Respondent to carry out works of improvement.

(d) Clause 26 of the Sixth Schedule would be relied upon by the Respondent Company to recover legal costs under the terms of the lease.

31. Mr. Breeze explained that at some time in the past the house owners had asked that the respondent company take on the management of their properties as well. This had involved some maintenance to the houses and of the rear hedge running alongside Fenwick Lane. He made the following representations:

(a) The Hedge in Fenwick Lane had been attended to following an approach by the Local Authority, who wanted action to be taken. The view taken at the time was that it would be appropriate for the Respondent company to take action rather than individual lessees whose properties bordered the hedge. The company had arranged removal of trees and replanting, in consultation with the Local Authority, in view of Fenwick Court being located in a Conservation Area, and notification to the Local Authority in respect of the management of trees being a requirement.
(b) A surplus had been generated through the service charge which was being used for accrued liabilities, in terms of a loan that Mr. Breeze had made to the company to enable it to operate when it held no sinking funds, and works were required.
(c) Mr. Breeze professed he did not totally understand the accounting methods used to record the loans, as the former managing agents had assisted with the preparation of the accounts at that stage. He stated he was owed just under £2,000 as at the date of the hearing - £1865 as demonstrated in the accounts.
(d) In respect of painting the Estate, the company painted each outside entrance every four years, on a rolling programme at a cost of some £1200 per annum. In addition, decorators would "touch up" any paintwork required. They would also attend to the painting of the houses when required on a four year cycle. The Company was in the process of establishing a sinking fund for painting which was visible in the 2011 accounts.
(e) The company had determined to erect Freeview television aerials for the communal use of residents, to avoid a profusion of aerials and satellite dishes on the block, which were prohibited by the lease.
(f) External security lighting in the car park had cost between £1-2,000.
(g) The shareholders had been canvassed at meetings in terms of the gardening of the common parts and were very pleased with the standard of it.

(h) If the Respondent Company was unable to recover legal costs under the terms of the lease, they would, as non expert, volunteer company directors, feel somewhat "marooned".

THE DETERMINATION

32. The matters which the Tribunal had to determine related to both 2011 and 2012 and were:
    (a) Whether a notice complying with section 21B had been served by the Respondents in relation to either 2011 or 2012;
    (b) In relation to 2011, the extent to which certain sums which had been charged to leaseholders fell within the terms of the lease. This is a question under s.27A of the 1985 Act of whether the charge is payable;
    (c) In relation to 2011 where charges did fall within the terms of the lease whether they were reasonable. This is a question of whether the charges are reasonable under s.19 of the 1985 Act;
    (d) In relation to 2012 whether some matters included within the service charges had been incurred 18 months before demand had been made under s.20B of the 1985 Act;
    (e) In relation to 2012 the reasonableness of the service charges.

33. The lease requires that the Accounts are audited. The lease does not say by whom. It has been the practice of the Respondent, presumably on financial grounds, to have them prepared by an accountant, but not formally audited owing to the turnover of the business. At its basic level, an audit is an examination of the accounts of a company by a third party, which is achieved by their preparation by a firm of accountants, who have duties towards all shareholders and directors of the company to portray an accurate picture of the financial position of the company. We considered that the accounts complied with this requirement.

Section 21B notice

34. Section 21B(1) of the Landlord and Tenant Act 1985 requires that "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." Further by subsection (3) a "tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand." In his statement Mr Breeze acknowledged that a s.21B notice had not been served. He, and the former managing agents, had been under the impression that it was sufficient for this to be served once on any leaseholder and was not then required in subsequent years.

35. This impression is clearly wrong in law. The applicants have not withheld their service charges for 2011, but in relation to 2012 the applicants are entitled to

do so. The Respondents should remedy this failure as soon as possible, at which point the service charges will be due.

Reasonableness of service charges

36. The applicants raised a number of issues about the service charges. In general the Tribunal considered that the invoices produced showed that the contractors employed had charged reasonable amounts for the work done. The Tribunal considered the following aspects in detail.

Hedge on Fenwick Lane

37. The parties accepted that the part of the hedge on Fenwick Lane behind gardens of the flats and houses did not form part of the First Reserved Property as it was not hatched in black on the plan as particularly described in the First Part of the Second Schedule of the lease.

38. The hedge behind the Western Car park was shown hatched in black, and consequently did form part of the First Reserved Property and the Respondent could charge and recover costs for work to that part of the hedge.

39. The Respondent accepted that three invoices in 2011had been raised for works to the "non chargeable" section: £60, £75 and £222 (£357 in total). The Applicants' are not liable for these sums under the lease and they cannot therefore be charged.

40. The invoice for £303 for the hedge was found to be a chargeable invoice, as it related to work in the First Reserved Property

Gardening

41. As noted above, the Tribunal found that the garden areas were maintained to an extremely high standard. In 2011 the accounts showed an amount of £3906 having been spent on gardening. After deducting the irrecoverable sum of £357 this amounts to a potentially recoverable amount of £3549. The Tribunal, taking into account the evidence of the Applicant as to what was spent in other developments and their own expertise considered that this amount was unreasonably high. While the charges made by the gardening firm were not unreasonable, the frequency of services and number of hours spent on the work were.

42. The Tribunal determined that the amount overall charged for gardening services should be reduced to £2400.

Painting

43. Under the terms of the lease, the Respondent company was able only to charge the Applicants for a contribution towards painting the Second Reserved Property – i.e. the flats, and not the houses.

44. If it was the view of the Respondent company and the owners of the houses that the houses should be painted by the Respondent for the good of the whole development, separate agreements (and separate payment) should be entered into between those parties. However, on the face of the documents it was not possible to discern how the painting costs could be divided. Taking a broad brush approach the sums spent on the painting seemed reasonable.

Legal Costs

45. The 2011 accounts include a sum of £1325 for legal and professional costs, which have been included in the service charge. They relate entirely to costs paid to the Respondent's solicitor. The question was whether these were recoverable under the lease. The Tribunal found no clause that enabled the Respondent to recover legal costs in relation to Tribunal proceedings in accordance with the decision in *St Mary's Mansions Ltd v Limegate Investment Co Ltd & Sarruf* [2003] 05 EG 146. This case approved the earlier decision in *Sella House v Mears* (1989) 21 H.L.R. 147 where Taylor LJ said:

> "For my part, I should require to see a clause in clear and unambiguous terms before being persuaded that that result was intended by the parties".

46. Whilst it is an unfortunate situation to be in, it is not in the Tribunal's experience unusual. The Contra Proferentum rule must be applied in these circumstances. It is open to the Respondent Company to apply to amend leases where they feel it appropriate.

Other Miscellaneous Items of expenditure

47. Other items of "improvement" had been provided to the First Reserve Property, in the form of lighting to the car park, and communal Freeview television aerials, to address specific issues and concerns that had arisen.

48. The Tribunal determined that clause 22 of the Sixth Schedule entitled the Respondent to charge for these provisions and that they were reasonable.

Accruals – section 20B

49. A major point of contention between the parties was the provision in the 2011 accounts for accruals. As at the end of financial year 2010, the sum of £20,813 was recorded as being due to creditors; as at the end of financial year 2011, that figure had been reduced to £12,535. In 2011 the accounts show that £16,159 was spent on the estate – a considerable reduction from 2010 because of the saving on managing agent's fees. Nevertheless £27,956 was collected by way of ground rents and service charges. This gave an operating profit of £11,797 of which the majority was set against these sums

due to creditors. A large part of this was due to the service charge being set at £1210 per annum.

50. Mr. Breeze confirmed that he had loaned the Respondent company monies in around 2005 to carry out works as no sinking fund was available. The Tribunal indicated it was unable to form a view on this aspect of the accounts without having evidence of demands made in terms of the services provided, to ensure s20B Landlord and Tenant Act 1985 had been complied with. With the consent of both parties, this element of the application was adjourned with further directions for each party to provide written evidence in relation to this and for the matter then to be decided without a further hearing. Both parties made further written submissions.

51. Section 20B provides:

> "(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
> (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs have been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge."

52. Following the hearing both sides submitted written evidence. Mr Breeze provided a statement from the company's accountants that the following sums included in the accruals and sundry creditors were owed to him:

> Loan account: £3500
> Expenses 2008: £9203.76
> Expenses 2010: £6630.45 and £738.03.

It should be noted, however, that there was no loss on the accounts in 2010, so that it would seem that enough was collected by way of service charges to cover all the sums expended.

53. He also provided us with copies of the accounts between 2005 and 2008 (those from 2009 were already before the Tribunal). It would appear that the loan related to expenditure in 2005. The accounts show that in that year while turnover for ground rents and service charges was £15,508 expenditure was £29,305. This included a large sum £22,750 expended on repairs and maintenance. They also disclose a loan of £8082 from Mr Breeze. By 2007 that loan was reduced to £7541. The 2008 accounts provided to us are in much shorter form. They do not include any record of the income and expenditure, although this is included in all the other accounts with which we have been provided.

54. By 2009 the loan had been reduced to £5000. However, that year also saw a considerable operating loss. Rather than this being shown in the accounts as a loan from Mr Breeze, this now appears as an accrual. It would appear that from 2008 Mr Breeze simply paid for various costs incurred on the estate and reclaimed these by way of an expenses claim to the company. To run the company at such losses is in our view extremely unfortunate, and probably precipitated by a lack of clear budgeting for each year. Rather than just letting these debts accumulate, the directors ought to have ensured that expenditure was reduced or that the service charges were sufficient to cover the outgoings. However generous Mr Breeze's willingness to cover these costs from his own pocket, this has not been a sensible, nor transparent, way of running the company.

55. The question for the Tribunal is whether the inclusion in the 2011 service charges of large sums effectively to repay Mr Breeze for the sums he had expended in previous years is prevented by s.20B? In his further statement Mr Breeze contended that there was sufficient compliance with s.20B(2) through the sending of the accounts to the Applicants in the years in question.

56. In our view simply sending accounts to a leaseholder at the end of each year is not a sufficient compliance with s.20B. It does not comply with the specific requirement in subsection(2) to notify that the costs have been incurred – in our view this must point to particular costs, not those aggregated together for accounting purposes. Further the notification must set out that the leaseholder would be required to contribute towards these costs – again the accounts do no such thing.

57. Accordingly we conclude that any sums over and above those actually expended in 2011 are for payment of costs incurred more than 18 months prior to the demand being made and are irrecoverable.

Conclusion on reasonable sums for 2011

58. In total we determine that the sums spent on recoverable items under the lease are as follows:

Under the Seventh Schedule:

Insurance: £3105

Gardening: £2400

Repairs and Maintenance: £960 (being the sums paid to York City Council for repairs to the car park)

Total: £6465

The Applicants' share: £6465 / 24 = £269.38

Under the Eighth Schedule:

Light, heat and power: £969

Repairs and maintenance: £3246

Decorating: £1115

Cleaning: £518

Accountancy and sundries: £1015

Total: £6863

The Applicants' share: £6863/15 = £429.94

59. This gives a total charge for 2011 of £698.32 which is payable under Landlord and Tenant Act 1985, s.27A.

2012 Service charges

60. Mr Stroughair also sought a determination in relation to 2012. Without a budget which sets out what sums are included within the service charges being demanded, we considered we were not in a position to make a determination on this matter until the accounts are provided at the end of the year. We have accordingly not made any determination in relation to 2012. We adjourn the application in relation to 2012 and hope that in the light of our decision regarding 2011 the parties can reach an agreement. We note that the 2011 accounts do not include any sums by way of a sinking fund. Had such a reasonable sum been included in the service charges we would have considered it allowable and we would expect to see such a sum in 2012.

GUIDANCE

61. Although not part of the Tribunals' function, the parties did seek guidance from the Tribunal, having not been fully advised by their agents in the past as to the nature of their rights and obligations under the lease. Although not required by the lease we would suggest:
    (a) At the beginning of each financial year a budget is produced that sets out the proposed expenditure for the estate;
    (b) That this separates out the different items under the seventh and eight schedule of the lease (i.e. whether they will be divided by 16ths or 24ths);
    (c) That any sums to be expended on houses which are the liability of the house owners are dealt with entirely separately from the service charge accounts and are billed on an individual basis to those house owners;

(c) That any sums to be expended on houses which are the liability of the house owners are dealt with entirely separately from the service charge accounts and are billed on an individual basis to those house owners;
(d) That the sums budgeted to be expended do not exceed the service charge demanded save to include sums by way of setting aside a sinking fund in accordance with the lease.
(e) That the sinking fund is held separately and is separately accounted for.

COSTS

62. As the Tribunal found that no legal costs were recoverable under the Lease, there was no reason to make an order under s.20C, Landlord and Tenant Act 1985. In our view the problems that have arisen have done so from the Directors (and the managing agents they employed until 2010) not running the service charges in accordance with the lease and failing to make adequate provision for a sinking fund. It has taken these proceedings brought by the Applicants for the matters to become transparent. The response of the Directors has been to take a very aggressive stand and to instruct their legal representatives to take a similar stand. This is a matter which could and should have been resolved without the necessity for these proceedings. Accordingly should we be wrong about the legal costs being irrecoverable we make an order under s.20C that none of the costs incurred should be regarded as relevant costs.

63. The Respondent's also made an application for a costs order limited to £500 under Paragraph 10 Schedule 12 Commonhold and Leasehold Reform Act 2002. This application is rejected. The Tribunal did not find the application to be vexatious. There were a number of valid concerns that the Applicants had that had not been addressed until the proceedings were brought.

Professor Caroline Hunter,
3 October 2012