



## Decision

1. For the reasons set out below, the Tribunal has determined the sums that (subject to proper demands having been made in accordance with the terms of the leases) are payable in respect of service charges for the periods 1<sup>st</sup> February to 31<sup>st</sup> January in each of the years 2005-2006, 2006-2007 and 2007 – 2008, and for the budget for 2008. Those are set out in the Schedule at the end of this decision. (see paragraph 43 as to the periods used). It finds that nothing is payable for the period 1<sup>st</sup> October 2004 – 31<sup>st</sup> January 2005, and in the absence of any other person(s) being named in the application in this respect makes an Order under section 20C of the Landlord & Tenant Act 1985 in respect of Mr Vincent, Ms Adair and Mr Forward, who were the only parties before the Tribunal. It draws the attention of the parties and of any other lessee at Paul Alan House into whose hands this decision may come to the observations it has made in paragraph 82 at the end of this decision (as to which also see paragraph 40 below).

## Reasons

### Applications

2. There were two applications before the Tribunal, as well as a reference to it by Bristol County Court. The Tribunal dealt with the subject matter of the reference by the County Court at the hearing on 4<sup>th</sup> February 2009, and its decision on that point is contained in the preliminary decision dated that it issued shortly after the hearing. In short it found that no sums were payable by Mr Vincent to the Respondent for the amounts claimed as service charges the subject of those proceedings for the reasons that it then gave.
3. The applications were made respectively by Ms Adair and by Mr Vincent. Both were made pursuant to section 27A of the Act. The first of them, made by Ms Adair and as slightly amended by her at the hearing on 4<sup>th</sup> February, required the Tribunal to determine service charges in respect of flat 10 for the period October 2004 when she purchased her flat up to and including the budget for service charges for the year 2009. The second of them, made by Mr Vincent, required the Tribunal to determine service charges in respect of flat 4 for the period October 2004 when he purchased his flat up to and including the budgets for service charges for the years 2007 and 2008. Mr Forward was joined in both applications as an applicant by an order of the Tribunal dated 18<sup>th</sup> September 2009.
4. The Tribunal explained at the outset of the hearing that it was unable to deal as part of these applications with Mr Vincent's request contained in his written statement to the Tribunal that it should appoint a manager of the property pursuant to sections 21-24 of the Landlord & Tenant Act 1987 (as amended). It explained that such an application requires to be made separately after the appropriate notice under section 22 of that Act has been given. Some other elements that Mr Vincent had raised were similarly outside of its jurisdiction as it also explained.

### Inspection

5. The Tribunal inspected the exterior and the common parts of Paul Alan House in the presence of the applicants immediately before the hearing on 5<sup>th</sup> February 2009. It saw a large building on the corner of Church Road and of Witchell Road at Redfield that appeared to have been constructed at around the end of the nineteenth century. In its present form the building contains a retail shop on the ground floor on the Church Road frontage. The remainder of the building has been converted into flats of which the majority at least have a common entrance from Witchell Road and, without having been able to verify the point physically the Tribunal understands that there are eleven flats altogether. Of those, flats 10 and 11 are in the form of penthouse flats that appear to have been erected on the roof of the original building at a time later than the date of the construction of the rest of the building. It also saw the common passageways and staircases, and the bin store.

### The Leases

6. The Tribunal was shown a copy of the lease ("the Lease") of flat 4 Paul Alan House, dated 16<sup>th</sup> January 2004 and made between Alarm Service Group Limited (1) and Leigh Ashley Lawrance and Pauline Mary Lawrance (2). It understands that for the practical purposes of the matters before it the other leases with which it is concerned are in the same form.
7. The combined effect of paragraph 17 of the sixth Schedule to the Lease, of paragraphs 3-11 of the seventh Schedule and of the provisions of the Eighth Schedule is that the lessee of flat 4 shall pay 7.69 per cent of the estimated total cost of the performance of the lessor's obligations under the lease (which for these purposes are effectively those set out in the paragraphs of the Seventh Schedule mentioned) and of any contributions to a reserve fund. The payments are to be made for each of the financial years from 6<sup>th</sup> April by half yearly instalments payable on 6<sup>th</sup> April and 6<sup>th</sup> October in each year. There does not seem to be a mechanism for establishing the amount of those estimated contributions, but for the year 2009 at least a budget has been prepared. Paragraph 3 of Schedule 8 contains a form of balancing mechanism for adjusting the contributions against the amount eventually found to have been actually expended following the taking of an account to 5<sup>th</sup> April in each year.
8. In arriving at this construction of the Lease the Tribunal has concluded that the expression "actual subscription" in paragraph 1(c) of the Eighth Schedule and "annual subscription" in paragraph 2 of that Schedule are intended to refer to the "annual subscription", and that a typing error has occurred. It has not found it possible to give commercial effect to the service charge provisions without reading the lease in that way.
9. The lessor's obligations for which the service charge payments described above include the maintenance and decoration of the structure and exterior of

the building, cleaning and decorating the common parts and paying any taxes in respect of those parts, insuring the building and employing servants agents and contractors (including managing agents).

10. The lease contains somewhat unusual provisions with regard to membership of the Respondent Company. Paragraph 25 of the Sixth Schedule (which contains the Lessee's covenants) reads:

"Not to assign the premises to a person who does not upon or before the assignment accept a transfer of the Lessee's share of such management as they have been formed for the management of the property"

Paragraph 12 of the Seventh Schedule (which contains the Lessor's covenants) reads:

"The Lessor will not grant a lease nor accept an assignment of the premises to a person who does not upon or before such lease or assignment accept a share of a transfer of the Lessee's share as the case may be in such Management Company as may have been formed for the management of the property"

The Tribunal did not hear, and did not require for its purposes to hear, argument upon the effect to be attributed to these clauses. It merely observes that they may or may not be pertinent to the effects that it describes at paragraph 40 below.

### The Law

11. The statutory provisions primarily relevant to this application are to be found in section 18, 19, 20C, and 27A of the Act. The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out what it intends shall be a sufficient extract (or a summary, as the case may be) from each to assist the parties in reading this decision.

12. Section 18 provides that the expression "service charge" for these purposes means:

"an amount payable by a tenant of a dwelling as part of or in addition to the rent-

- a. which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- b. the whole or part of which varies or may vary according to relevant costs "

"Relevant costs" are the costs or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable, and the expression "costs" includes overheads.

11. Section 19 provides that:

"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".

It also allows the tribunal to determine whether

12. Subsections (1) (2) and (3) of section 27A of the Act provide that:

"(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 to whom it is payable
- b. the person by whom it is payable,
- c. the amount which is payable,
- d. the date at or by which it is payable, and
- e. the manner in which it is payable.

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

(3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services repairs improvements maintenance insurance or management of any specified description a service charge would be payable for the costs, and if it would –

- a. the person to whom it would be payable
- b. the person by whom it would be payable,
- c. the amount which would be payable,
- d. the date at or by which it would be payable, and
- e. the manner in which it would be payable."

There are certain exceptions that limit the Tribunal's jurisdiction under section 27A, but none of those exceptions has been in issue in any way in this case.

13. To such extent (if at all) as the point is not implicit in the wording of the Act, the Court of Appeal laid down in *Finchbourne v Rodrigues* [1976] 3 AER 581 CA that it could not have been intended for the landlord to have an unfettered discretion to adopt the highest possible standards of maintenance for the property in question and to charge the tenant accordingly. Therefore to give business efficacy to the lease there should be implied a term that the costs recoverable as service charges should be fair and reasonable.

14. Section 20C of the Act empowers the Tribunal to determine that the Respondent's costs in connection with the matter should not 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.

The hearing on 5<sup>th</sup> February

15. The Tribunal first dealt with the make-up of the claim for £481-00 against Mr Vincent that had been referred to it by Bristol County Court. It set out its decision in respect of that claim in the interim decision dated [ ] February 2009 that it has published in the matter and gave its reasons for reaching the decision. Accordingly it is not necessary to deal further with that aspect of the matter here.
16. By way of background to the matter and as a result of a request by Mr Vincent to have the information, Mr Brown said that Paul Alan House Management Limited ("the Company") is the owner of the freehold of the property. The directors of that company are Mr Rahman and Mr Patel. One owns the lease of the ground floor shop, and the other is the lessee of a flat. The lessee of the shop and the lessees of each of the flats are the members of the company. Mr Vincent said that Mr Patel is not registered as a director of the company at Companies House, although he accepted that the Company itself is on the register. The Tribunal explained that issues relating to the governance of the company did not fall within its jurisdiction but were matters for the Court. It was sufficient for the Tribunal's purposes that the Company is in existence and that it is the freeholder.
17. The items of expenditure included in the accounts before the Tribunal that made up the service charges that had been demanded in each year were those of buildings insurance, management fees, accountancy fees, secretarial fees, a cost of the company's annual return, electricity to common parts, communal cleaning, routine repairs and servicing, and contributions to a reserve fund. Not all of these items appeared in every account. Court fees were included in two of the accounts, credit control costs in one of them, and an item simply headed "charges" in another.
18. The matter proceeded on the basis that Mrs Adair might present her case, followed by Mr Vincent who would add his case relating to the lesser period of time the subject of his own application. Mr Brown might then reply on behalf of the freeholder. The note of the evidence given that follows does not pretend to be an exhaustive statement of everything that was said, although the Tribunal has taken note of it. It seeks to record the matters that were relevant to the Tribunal in reaching the decisions that it made.
19. Mrs Adair said that she bought her flat in October 2004, and that she wished her application to be taken as relating to the period from that time onwards. There was no available information for the period 2004 to 2005. At that time a company called Moorfields had collected £20 per month for service charges until Grovewood Management Limited ("Grovewood") was appointed by the

Company on February 4<sup>th</sup> 2005 to manage the property. The first service charge accounts were prepared to 31<sup>st</sup> January 2006. There were no certificates up to January 2005 of the sort required by paragraph 3 of Schedule 8 of the Lease.

20. Mrs Adair dealt with the items making up the service charge in the year 2005-06 following the order on page 1 of the Applicants' bundle that was before the Tribunal. Mr Vincent said that he had prepared that document as a summary of the various accounts, although the variances in the last column were matters that he had calculated. Mrs Adair said that there was no cleaning of any sort in 2005-06. Since she had been given no copy of the insurance certificate she could say nothing about that charge. Despite having asked about any repairs that might have been carried out, she was given no information. She was aware of no repairs in that period. Since she had no copy of the Company's accounts she could say nothing about the charges for secretarial or accountancy work. As to management, she submitted that Grovewood never did anything. She could make no comment about the credit control and court fees, and did not know what the "charge" of £15 was. Mr Vincent pointed out that the agreement between Grovewood and the Company dated 4<sup>th</sup> February 2005 (page 29 et seq in the Respondent's bundle) ("the Agreement") provided for a management fee of £1680 exclusive of Vat in the first accounting period.
21. In reply to questions from Mr Brown and from the Tribunal, Mrs Adair said that she had seen no invoices for 2005-06. Mr Brown said that invoices were available. The Tribunal observes in that connection that the law as it presently stands requires only that the invoices be made available for inspection, and not that copies be provided without more to any inquirer. She had received no accounts until 2008. There may have been one occasion in 2005-06 when cleaning took place. She had written on several occasions to ask about repairs. There was a man named Keith Stanley who she thought had been a contractor to Grovewood, but she said he did no repairs. The year-end accounts had been prepared by Flat Management Accountants Limited ("FMAL") of Downend, who she said were bookkeepers.
22. Mrs Adair said that as to the period 2006-07, and in addition to the same points as she had made about the 2005-06 accounts, her concern remained that no services were being provided. The position was unsatisfactory. She had continued to be concerned that nothing was happening. She had the same points as before to make about the 2008 accounts, and added that work had been done in February 2008 to clear the bin store that had been a subject of concern, and that further work was done there on 8<sup>th</sup> July 2008.
23. Mrs Adair explained that she (and, she believed, the other lessees) had made service charge payments monthly at a rate requested by Grovewood since the time when Grovewood took over the management.
24. In response to Mrs Adair's points Mr Brown said that less cleaning had been done in 2007 because of cash flow problems. There had been debt proceedings in North Somerset Magistrates (he did not say against whom). The charges for administration in the accounts were for administration that lay outside the

work specified in paragraph 15 of Schedule 1 of the Agreement and so an additional fee could be charged for it. He could not say if a statement of rights in accordance with The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (SI 2007/1258) had been served with any demand, but confirmed that since his company had taken over the management of Paul Alan House in September 2008 such statements had always been issued with demands.

25. Further discussion, in which Mr Vincent also took a part, at this point revealed that the accounts of Paul Alan House Management Limited had been signed for 2006 and 2007 by Mrs Pauline Land, who was one of the directors of Grovewood. The accounts were prepared to 31 January in each year rather than to 5<sup>th</sup> April, as the Lease requires.
26. The Tribunal was informed that because it had been difficult to find residents prepared to be directors of the Company when Grovewood took over the management Mr & Mrs Land, together the directors of Grovewood, had been appointed also to be the directors of the Company. Thus they had carried out the management, instructed the accountants and signed the accounts. The Tribunal took the view that it was therefore necessary for it to see the vouchers on which the accounts had been prepared since it was apparent that that there had been insufficient independent verification of the accounts of the sort that the Lease envisaged. It therefore gave directions, included with its interim decision concerning the County Court action, for copies of the vouchers to be produced and for appropriate further written representations in respect of them to be submitted by both sides. That interim decision also contained an appropriate notice under regulation 13 (4) of the Leasehold Valuation Tribunal (England) Procedure) Regulations 2003 (SI 2003/2098) that the Tribunal would convene to determine the matter in the light of the information then before it including the copy invoices and the further representations, but without a further oral hearing unless any party had by then requested one, on 2<sup>nd</sup> April 2009.
27. Mr Vincent said that shortly after he had bought his flat in 2007 he had become concerned by the lack of services provided. He itemised an occasion when two burglaries had taken place, and the managers had been unwilling to co-operate in fitting new locks. On another occasion he had received a demand for arrears accompanied by a further demand for £100 in administration charges on the same account. He had not received a statement of rights with any demand until a demand received a few days before the hearing.
28. When he had purchased in July 2007 Grovewood had responded to his solicitors' enquiries by saying that no substantial increase in service charge was anticipated. A copy of the questionnaire and answer was at page 31 of the Applicants' bundle. Despite the statement in that questionnaire that a copy of the fire certificate was to follow, none had ever been produced. He was therefore unhappy when a demand for a 35% increase in service charges followed.



29. Mr Vincent said that the budget for 2009 included £1600 towards the cost of exterior work. He did not envisage any work being required for some time. The redecoration was not due in accordance with the lease until 2013. In reply to the Tribunal he said that he did not think the flat roof adjacent to flats 10 and 11 would need repair for many years and there was no need to start to provide against its cost now. Management fees rose from £2090 in 2007-08 to £2590 in the budget. He was content that the electricity charges appeared to be appropriate. There should only be an ad hoc bin clearance rather than one at a set time. The cost of cleaning appeared to him to be too high. New quotations were anticipated, but had not yet been received.
30. As to the cost of insurance, Mr Vincent had obtained a quotation through brokers with a company called Great Lakes Reinsurance (UK) Ltd.. They would insure the property for £546, whereas the budget figure was £1450. The relevant quotation was at page 73 in the Applicants' bundle.
31. In summary he said that the reserve fund contribution proposed was too great, as was the cost of cleaning. The council remove bins so that the bin store only needed to be cleared as and when necessary rather than every month, and the proposed insurance cost was too high for the reasons he gave.
32. Mr Forward said that having regularly paid his own service charge he was concerned to find that others were in arrears.
33. In reply Mr Brown said that he did not believe Great Lakes could provide a like for like quotation for the insurance. They did not have the financial support behind them that the insurers that his firm would use had. Cover against terrorism was insured by the policy effected by his firm, but apparently not by Great Lakes. However, the matter was ultimately one for the directors of the Company. The budget had increased, but when he had seen the building it needed to be cleaned and to be maintained. There was a cost to all of that, and it was a matter for the decision of the people who lived at Paul Alan House to establish what level of service they wanted. As matters stood, and in his opinion, the building needed better service. The proposed management fee amounted to £132 per flat plus VAT.

Further consideration on 2<sup>nd</sup> April

34. No request for a further oral hearing was received, but the copy invoices were produced to the Tribunal and to Mr Vincent and Ms Adair. They were for the years to 31 January 2006, 2007 and 2008, and each was accompanied by a statement showing the expenditure incurred in that year. Further written representations were received from each of them in the form of letters to the Tribunal, copied to Messrs hml anderton on behalf of the Respondent as the directions had required and dated respectively 11<sup>th</sup> and 8<sup>th</sup> March 2009, and a responses from Messrs hml anderton on behalf of the Respondent dated respectively 27<sup>th</sup> February and 18<sup>th</sup> March 2009.
35. Ms Adair made the following points pertinent to the Tribunal's considerations:

1. that some of the invoices that had been produced appeared to be spurious and contrived. She referred especially to the invoices for the fire alarm system and those from Mr Stanley
2. that Mr Stanley had been completely ineffectual in terms of maintenance and that she was surprised to see he had received payment
3. that Mr Vincent had uncovered other irregularities for example with regard to the problems that Grovewood had with the Inland Revenue that had been passed on to the lessees
4. that the property insurance policy, of which she knew nothing, had been mishandled because the proceeds of a claim for £650 in respect of a leak in a pipe in the shop had been misappropriated

36. Mr Vincent made the following points:

5. that a large number of the invoices related to works that did not appear to have been carried out, and the authenticity of some of them was questionable.
6. that an invoice from BSPM Ltd for a washing machine repair dated 28.1.07 should not have been charged to the service charge account
7. that the Respondent was responsible for paying the penalties and costs associated with the proceedings in North Somerset Magistrates for late tax returns
8. the keys to the front door had been lost by the original managing agents, but Grovewood had refused to obtain new ones after a burglary
9. the alarms did not work and the monies paid in attempts to repair them were uneconomic and unreasonable
10. the lessees should not be charged for a call out fee on a day when he had no notice that the engineers would want access to his flat
11. the Williams and Crutchfield credit control invoices were dubious because they had not moved to Paul Alan House until after that date
12. there appeared to be five quarterly management invoices in each year
13. that Mr & Mrs Land were not authorised to act as directors of the management company so that the shareholders should not have to bear the expenses incurred whilst they did so
14. there was no clear explanation of all the Court fees
15. 2005-06 repairs totalled £1200 whilst £1615 was charged.
16. The accounts now produced did not take into account the insurance payment of £650 recovered in 2005 from Norwich Union, and when taken together with the inconsistency mentioned in the preceding paragraph this produced an overcharge of between £400 and £1000.

37. Messrs hml anderton responded to these points (using the sub paragraph numbering in the preceding two paragraphs) as follows:

- 1&2. It was unreasonable to say that Mr Stanley did not undertake any works or was ineffectual. He did the work, his charges were reasonable and there was nothing to support an assertion that his invoices were spurious
3. They did not believe that Mr Vincent had discovered many discrepancies. The action in respect of the summonses was a legitimate

- action on behalf of the management company to prevent it being struck off
4. This was an insurance claim made for Mr Patel as the shop who was entitled to make it.
  5. there was no evidence to support a contention that any of the invoices were false
  6. the cost of the washing machine had been recharged to flat 8
  7. that this fine and these costs were incurred was the fault of the previous agents or of the Respondent company. Since the only income of the Respondent is the service charges it had to recover the money that way.
  8. it was contended on behalf of the Respondent that the residents wanted new keys. The cost of replacing locks for security purposes would be reasonably incurred.
  9. There had been a number of attempts to have the fire alarm repaired, though eventually this had proved impossible. It would have been wrong not to attempt repair.
- 10-16 The remaining invoices had been paid and were reasonably incurred. Cleaning had been done, but work had been kept to a minimum because of a lack of funds.

#### Determination

38. As a preliminary point, the Tribunal found that it was faced in this case with a great deal of assertion about events that had happened, some of them some years ago, and with little hard fact other than the copy invoices, some of which it is submitted, albeit without any supporting evidence other than Ms Adair's statements about the amount of repair work and cleaning that she perceives has been done, are apparently spurious. It has done the best it can to find the facts of the matter from all of that material that are stated in successive paragraphs. It noted that of the eleven flat owners only Mr Forward had asked to be joined in the proceedings after they had been brought, but bore in mind that the other lessees, Mr Forward included, might have been influenced in some measure by the fact that it may be necessary for any losses the company sustained in terms of service charge recoverable may have to be made up by its members if no other course was open to it.
39. It is appropriate at an early stage to deal with the contentions that Mr Vincent makes about the position of the Respondent Company. As the Tribunal understands them, they are that Mr & Mrs Land were ineligible to be directors of that company although they were so appointed, and he argues that in consequence the lessees ought not to be called upon to bear any cost that the company incurred and has sought to recharge as service charge whilst that position remained. He has offered no evidence to support those contentions. The Tribunal has not seen a copy of the memorandum and articles of association of the company that might be expected to show eligibility for membership or to be a director. It is aware that it is perfectly possible for a non member to be a director of a company, and it was told in response to a question it raised at the hearing that the company remained on the register throughout. Mr Vincent has not made out his case that the company should not

be able to recover expenditure incurred whilst Mr & Mrs Land were the directors on the basis of any breach of the rules of corporate governance.

40. It is pertinent too to observe that although Mr Brown said that the service charge is the Respondent's sole source of income, that is not strictly the case. So far as its expenditure is not recoverable under the provisions of the lease that indicate what it may recover as service charge, it must look to its members to make up any shortfall. It is possible that the members may have to provide such funds in different proportions from those in which they contribute service charges. The Tribunal has jurisdiction to rule only on the service charges raised under the terms of the lease and not upon charges raised through a management company because the statutory protection afforded by the Landlord & Tenant Act 1985 extends only to the former, a point that was recently emphasised by the Court of Appeal in *Morshhead Mansions Ltd v Leon Di Marco* [2008] EWCA Civ 1371.

#### October 2004 to February 2005

41. The Tribunal then considered the initial position in the years 2004-05 before the appointment on 2<sup>nd</sup> February 2005 of Grovewood as manager. Only some five months of that period is in issue since Mrs Adair said at the hearing that she bought her flat in October 2004 and wished to treat her application as starting from then. There is no evidence about that period at all except that the then managers, Moorfields, were charging £20-00 per month per flat as service charge contribution. They appear to have prepared no accounts and no budget, nor to have served any demands for payment. There is no evidence at all that they did anything for or with the money they collected. Nothing was handed over to Grovewood, according to Mr Brown, when it took over. The Tribunal observed that on that occasion Grovewood at once insured the building. It concludes from this that no insurance was previously in force. It therefore has no alternative on the evidence before it but to conclude that there were no services provided in that period and that nothing was properly payable for service charges between October 2004 and 2<sup>nd</sup> February 2005.
42. The Tribunal did not find that it could accept Mr Vincent's suggestion that some of the copy invoices produced were "spurious". No evidence has been brought to support what is no more than an allegation. It accepts that some of the invoices were obviously produced on home computers and printers, and that some do not bear VAT registration numbers (although it does not follow that all would have been required to do so). On the other hand they all appear to have been countersigned by Mr Land to authorise payment (although no other example of his signature has been produced to the Tribunal to compare with those on the accounts), and cheque numbers are recorded on them as one might expect. That is all the evidence it has on the matter, and it finds that it is not sufficient by itself to support Mr Vincent's suggestion.
43. The Tribunal has dealt in detail with the year 2005-2006, but a number of the issues there described repeat themselves in the following years so that it has not set out reasoning in full in those later years in those instances. Plainly the accounting years that have been used are not in accordance with the leases.

The Tribunal has dealt with them as they have been presented to it, because so far as it finds that sums are properly payable otherwise, the figures it has determined can if required be transposed into statements for the years that the Leases require. Finally, so far as audited statements of service charges have not been delivered for 2006, 2007 and 2008 as the parties agreed at the hearing was the case, it may be that such statements will now be required to be delivered, incorporating the Tribunal's figures (subject of course to any appeal) before any outstanding payments fall due, and therefore any statement in the findings that follow that a sum is "payable" must be read subject to this qualification.

Year 1<sup>st</sup> February 2005 to 31<sup>st</sup> January 2006

44. Grovewood took over management of Paul Alan House from Moorfields on 1<sup>st</sup> February 2005. The Tribunal was shown a copy of the agreement that it entered into with the Respondent. The receipts and the accounts based upon them provided to the Tribunal when it reconvened showed detail for the whole year. It worked progressively through the items shown in the account provided by Messrs hml anderton. To some extent the matters that arose in the year were repeated in the subsequent years in question.
45. The insurance payment in the year was £1200.01. The Tribunal treated the insurance cost as having been challenged in the terms put forward by Mr Vincent at the hearing on 5<sup>th</sup> February. He said that the premium was too high and that he had obtained a much cheaper quotation from a company called Great Lakes Insurance. Mr Brown had responded that there was nothing to show that the Great Lakes quote was on a like for like basis, and drew attention as an example of this to the apparent absence of terrorism cover in the quotation that Mr Vincent had produced. He suggested that Great Lakes was not a company of the sort that usually offered, or was able to effect, this cover.
46. The Tribunal was not satisfied that the quotation from Great Lakes (which of course had been obtained in 2008) was on a like for like basis because at the very least it clearly did not cover all the items contained in the policy that had been effected. No evidence was produced to it to show just what was the precise comparison between the two potential policies. It noted too that the quotations for the insurance effected by Grovewood throughout the period under consideration had all been obtained through a broker, namely Messrs John Lampier & Son Limited, and that there was nothing to suggest that that had not been done in the open market.
47. Even if it had been satisfied that the Great Lakes quotation had been on a like for like basis it would, in those circumstances, still have regarded itself as bound by the ruling of the Court of Appeal in *Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd* [1997] 1 EGLR 47. The effect of that decision is that if an insurance quotation is obtained in the open market then, absent any evidence of malpractice, the rate so obtained is to be regarded as reasonable. Accordingly it finds the cost of £1200.01 for

insurance in the year in question to have been reasonably incurred, and to be reasonable.

48. So far as the cleaning was concerned, the invoices totalled a sum of £402-00 in the year rather than the sum of £410 in the accounts produced by FMAI. Ms Adair's evidence was that no cleaning was done, with the possible exception of one visit. Mr Brown's, admittedly at second hand, was that there were invoices for the work done. Mr Land's written statement (pages 50-58 in the bundle before the Tribunal at the time of the pre trial review) gave details at page 55 of the rate at which costs were incurred, but no further detail pertinent to the cost in the year in question. The Tribunal noted that there were only two invoices from Effective Cleaning in the year in question, delivered in May and July, before they were replaced by Spic and Span.
49. Doing the best that the Tribunal could with the limited evidence, the most probable conclusion was that Effective Cleaning had proved ineffective, and were replaced at an early stage. That would fit with Ms Adair's evidence about the work that was done in some measure. On the other hand it seemed that Spic and Span, who charged at a lower rate, might actually have done useful work in the year. It bore in mind that the corridors to be hoovered are of quite considerable extent and that the time recorded would be unlikely to allow for much more work to have been done. Consequently it concluded that the sum of £120-00, the total of the Effective Cleaning invoices does not appear to have been reasonable, even if it had been reasonable to have the work undertaken, but that it is proper to allow the balance of £282-00 for the Spic and Span invoices.
50. There are a number of invoices from A P E Fire & Security Limited ("APE") relating to attempts to repair the fire alarm system. Their attempts apparently failed. The Tribunal understands that the system still does not work as it should. It appears to be the system as it stood when the leases were granted. Ms Adair suggests that the cost of the work by APE should all be disallowed because it was not successful. That is the extent of the case upon that point save to say that Mr Vincent says that on one occasion he waited for APE, they did not call and had failed to tell him that they would not come. The Tribunal finds that it was plainly reasonable to seek to repair the system, and to try to track down its faults.
51. The alternative would apparently have been to reject the system and to incur the cost of a replacement without further enquiry. The fact that the contractors failed to find and to repair the faults is what seems to have been a fairly complicated investigation is not a sufficient ground upon which to find either that the work was unreasonably undertaken, its cost unreasonably incurred. Except to the extent that it is suggested that the contractors failed to find the problem there is nothing to suggest that the amount of the cost of their work was unreasonable, nor any evidence to support that assertion.
52. For the reasons given above the Tribunal sees no reason to doubt Mr Stanley's invoices. Ms Adair told it that she had had conversations with him so that he was clearly at the property from time to time. The works that he did are

relatively minor and many may easily have gone unnoticed. Some of them could quite readily have been done by the lessees had they been so minded. The Tribunal accepts on the balance of what little evidence there is before it that Mr Stanley did the work the subject of the invoices. There is no challenge in this respect on any other basis. Accordingly the Tribunal finds that the sum of £1684-00 is payable for the APE and Stanley items for the year in question. The FMAL account appears to be wrong when it refers to a total of £1615 for those items.

53. There is nothing before the Tribunal to support the charge of £15 for bank charges that appears in the FMAL account, but not in the hml anderton account supplied, so that the Tribunal finds that nothing is payable under that head for the year in question.
54. The Tribunal finds that the charge of £230-00 (£245 in the FMAL account) for company secretarial charges is not recoverable as part of the service charge. The only provision in the lease that has been put forward as being capable of supporting such a charge is paragraph 10 of Schedule 7, which reads:

“The Lessor shall employ and engage such servants agents and contractors as it considers necessary or desirable (including Managing Agents) for the performance of its obligations under this Schedule and pay their wages commission fees and charges”.

Nothing in the Schedule refers to any obligation to deal with the internal management of the Respondent Company. The reference in paragraph 11 of the Seventh Schedule requiring the Lessor to keep proper books of account falls a long way short of doing so. The cost is not an administrative charge relating to the performance of obligations under the lease referred to in paragraph 1(a) of the Eighth Schedule set out below. Costs so incurred are a proper cost of the company, and if it has no other resources from which to discharge them it must look to its members. The Tribunal has no jurisdiction to determine their reasonableness or otherwise for the reasons mentioned in paragraph 40 above.

55. It is common ground that no statements of account were supplied to the lessees for the year in question. Had that been done, its cost would have been recoverable under paragraph 1(a) of the Eighth Schedule to the Lease. What FMAL did was to prepare accounts of the Respondent Company that included a schedule of expenditure as a part of those accounts. The cost of £141 incurred for FMAL's fees is therefore again a cost to be borne by the Company (for which again it may need to look to its members) over which the Tribunal has no jurisdiction.
56. Grovewood charged management fees of £1960-00 for the year in question. Grovewood's agreement showed that it was to charge £420 per quarter for management. When analysed against the invoices the figure of £1960 is shown to be the cost for fourteen months at that rate, and to cover the period from 1<sup>st</sup> February 2005 to 31<sup>st</sup> March 2006. The rate of £420-00 per quarter works out at £140-00 per unit at the property if one includes the shop. Bearing in mind

that the shop pays 15% of the service charges and each flat 7.69% however, the effective rate payable by each flat lessee for management at that rate is £129.19 (£1680 x 7.69%). Despite the criticism of its methods, in the year Grovewood arranged the insurance, it arranged 18 visits for maintenance of various sorts (whether to the fire alarm system or to the building). It dealt with the appointment of at least two firms of cleaners, and seems to have had to deal with the problems of dispensing with the services of one of them. It seems to have dealt with accounts, even if their cost fell outside the service charge regime, and to have dealt with problems that arose because no lessee wanted to be a director of the Respondent Company. The Tribunal concluded that it would be difficult to find that the cost that it incurred for doing all that work was not reasonable. For the year described in the heading to this section that sum was £1680-00.

57. A credit control fee of £90-00 and a Court fee of £50-00 was incurred in the year in question apparently in respect of alleged infractions of the terms of their lease by Mr Williams and Ms Crutchfield. Mr Vincent suggests that these are inappropriate because Mr Williams and Ms Crutchfield did not move into Paul Alan House until 2007. However the invoices in question supplied to the Tribunal and to the Applicants indicate that Mr Williams and Ms Crutchfield were resident in Stuart Street at the time and clearly indicate that they relate to flat 9. It is immaterial whether the flat was let or unoccupied at the time, but they do appear to have owned it.
58. Paragraph 1(a) of the Eighth Schedule to the Lease permits the recovery as part of the service charge of "administrative costs, professional and management fees and the costs of supplying an audited statement of the actual total service charge cost to each lessee" in performance of its obligations under the lease. The Tribunal finds that these costs were administrative costs within the meaning of paragraph 1(a) because they appear to have related to the cost of recovering arrears due to it under the lease. There is no suggestion before it that the costs so incurred were not reasonable. Accordingly the sum of £140-00 in total is recoverable.

Year 1<sup>st</sup> February 2006 to 31<sup>st</sup> January 2007

59. The insurance cost for the year is £1254-64 according to the account produced by Messrs hml anderton. That figure is the total of the sum of £639-64 that they showed as payable and the credit of £615 that they gave for the proceeds of the insurance claim mentioned below. A duplicate of the policy for the following year appears to have been supplied to the Tribunal for the year in question, but it has no reason to doubt the figures shown. For the same reasons as those indicated above, the Tribunal finds that that sum is reasonable. It deals with the credit under the heading of repairs below. There is an issue over a sum variously stated to be £650, £615 and £600 that should be credited to the service charge accounts arising from repairs to a pipe in the shop. Mr Vincent suggests that it has not been credited. It appears to the Tribunal that a sum of £615 (referred to as "deposit") has been credited against the insurance premium for this item in the account produced by hml anderton. On the other



hand, FMAL credited £650-00 against the cost of repairs in their statement for the same year.

60. It is clear that a credit has been given, but it has appeared in two different ways and in two slightly different amounts. The Tribunal has dealt with the matter by setting the credit against the repair costs mentioned below at paragraph 63. It determines that the amount payable for insurance including insurance premium tax in the year is £1313-39
61. The cleaning cost is much reduced in 2007. Mr Brown suggests that this is because insufficient funds were available. The Tribunal accepts that some work was done and accepts that the figure of £210-34 provided by Messrs hml anderton is reasonable. The FMAL figure does not seem to accord with the total of the invoices produced.
62. There is no challenge to the electricity charge that Messrs hml anderton have accurately stated as £259-50 rather than £260-00 as stated by FMAL.
63. The great majority of the cost of repairs in the year in question were represented by an invoice of £865 from Keith Stanley for what appears to have been the repairs consequent upon the pipe damage in the shop. There is no evidence to suggest that work was not done nor any representation that it should not have been done or that its cost was not reasonable. Otherwise the sums relate to a few very small accounts from Mr Stanley, and some small accounts relating to further work in respect of the fire alarm system. Adopting the previous reasoning in respect of the fire alarm work, the total cost of £1127-19 appears to have been reasonably incurred and to have been reasonable in amount.
64. The discrepancy in the figures for the insurance repayment variously used has not been explained to the Tribunal. However, Keith Stanley's invoice for £865-00, which appears to have been for the repair work in question, bears a note in manuscript that states "£650 payment from insurance co.". The Tribunal has treated that as the best evidence of the sum to be credited that it has. Accordingly it determines that the amount payable for repairs is £477-19 (£1127-19 - £650-00). That figure does not include the cost of washing machine repairs that were properly challenged by Mr Vincent. They have as the Tribunal understands the position now been charged as they should initially have been to the owner of the flat in question.
65. The company secretarial fees and accountancy fees do not fall to be paid as service charges in the year for the reasons stated earlier in respect of each of these items.
66. The cost of management in the year is shown by Messrs hml anderton as £2089-75. The basic cost of management was increased by £6-75 per quarter to £426-75 per quarter for three of the four quarters in the year. The agreement entered into between the Respondent Company and Grovewood allows for such an increase, and the Tribunal does not find a small increase of that order

to deal with the effects of inflation at that time to be unreasonable. Of itself that increase would have produced a charge of £1700-25 for the year.

67. The total charge of £2089-75 is made up of:

One quarter @ £420-00	420-00
Three quarters @ £426-25	1278-75
Tax levied for 2006	66-00
Administration fee for preparing dormant Company accounts and annual return	75-00
Corporation Tax penalties and costs	250-00
	<u>2089-75</u>

68. The Tribunal is satisfied having considered the level of work relevant to the service charge account for the year that the sum of £1700-25 is properly payable as service charge. However, the remaining sums are not and fall once more as charges to the Company, to be recovered from its members in the absence of any other assets. It appears that the Company was found to have failed to lodge returns with Companies House, as it is required by law to do. As part of that investigation it also transpired that it should have made payments of corporation tax. It received a summons in respect of those matters in North Somerset Magistrates Court and was required to pay penalties of £100 for each of two years default, and costs of £50, making £250 in all.

69. These were not at all the cost of some debt collecting exercise by the Company as Mr Brown had originally suggested at the hearing (and perhaps before he had been able fully to look into the matter). The Company was assessed to £66 arrears of Corporation Tax, and Grovewood raised an invoice for £75 for preparing returns and accounts for a dormant period that was not specified but which the Tribunal assumes may have been 2004. All of those items are administrative charges associated with the Company and not in any way payable under the terms of the Leases, so that in the absence of other funds they will have to be recovered from its members. Mr Brown makes the point that none of this arose as a result of the fault of Grovewood. That may be so, but does not alter the fact that the resultant cost does not fall to be recovered as service charge.

70. Finally in the year to 31<sup>st</sup> January 2007 there are two invoices in respect of what appear to be proceedings relating to further alleged infractions by Mr Williams and Ms Crutchfield. They amount in all to £130-00 and appear to be properly payable for the reasons given above in respect of similar charges in the year to 2006.

#### Year 1<sup>st</sup> February 2007 to 31<sup>st</sup> January 2008

71. The amount of the insurance premium, again arranged through Messrs John Lampier Limited was £1313-69, and for the reasons stated earlier the Tribunal finds that that sum is payable.

72. Cleaning in this year was arranged through Sovereign Cleaning, and the evidence available to the Tribunal suggests that rather more cleaning was done. It finds that sum to be payable.
73. There is no challenge to the electricity charge of £220-89.
74. The invoices for repairs amount to £614-37 and not £705 as stated by FMAL. The works were in part further work to the fire alarm by BAC, work to the light switches in the common parts by KMS Electrics, roof and rendering repairs by MYS Property Services Limited and a small amount of work by Mr Stanley in connection with the fire alarm. There is no challenge to these sums and the tribunal finds them to be payable.
75. The Company Secretarial and accountancy fees are not recoverable as part of the service charge payments for the reasons previously given in respect of earlier years.
76. For this year Grovewood's management fees amount to £2532-69. This amounts to four charges of £426-25 plus VAT amounting to £500-84 in total, or £2003-46 for the year. It appears to have been established that Grovewood was liable to be registered for VAT from July 2005. It therefore also raised an invoice as it was entitled under the relevant legislation to do for retrospective VAT on management charges from that time amounting to £529-23, and that amount represents the balance of the total of £2532-69. The Tribunal observes that the invoice of the arrears of VAT does not bear a VAT registration number. That does not invalidate it, but may present difficulties to any lessee who was entitled to reclaim their portion of the sum so demanded.
77. Sums originally charged in the year in respect of Mr Williams and Ms Crutchfield have been credited back so that no charge arises.

#### Budget 2008

78. Finally, both Mr Vincent and Ms Adair's applications asked the Tribunal to consider the budget for the year 2008. They challenged the buildings insurance figure of £1450, the management fees of £1980, the reserve fund of £1650 and the cleaning costs of £660. In reaching its conclusions about these matters the Tribunal had regard to the evidence it had heard about the costs in question for in earlier years.
79. Given the evidence that it had heard about the cost of insurance, the Tribunal was of the view that it would not have expected to see a substantial increase in premium for the year in question unless the burglaries have had any major effect upon the quotations received. Because that may be a minor factor it determined that a figure of £1450 for budgeting purposes would not be unreasonable when compared with the other premiums that it has considered for earlier years. It hopes that perhaps a slightly lower figure might have been achieved.

80. The management fee of £1980-00 does not appear unreasonable for a normal year when compared with the levels encountered in the earlier years dealt with above, given that VAT is now chargeable.
81. This is a large building that is around a hundred years old. It will require very extensive external decoration in 2013 in accordance with the leases, there is a large flat roof whose useful life may not extend much beyond 2020, and a building of this age and nature is inherently likely to develop defects. In the Tribunal's judgement a sinking fund is a sensible precaution to protect the residents as far as may reasonably be done from having to find unexpectedly large sums from time to time. The figure of £1650-00 proposed is reasonable in the Tribunal's judgement for such a building as this bearing those aspects in mind.
82. It is to be hoped and expected that more and more regular cleaning may be done as a result of the publicity that Ms Adair told the Tribunal she had given to the matter. Again given the size and nature of the building a cost of £660-00 per annum to achieve a reasonable standard of work would appear to be appropriate.
83. However, the company secretarial and accountancy fees in the budget are not recoverable for the reasons given in respect of such charges earlier in this decision. They are a charge to the members of the Company.
84. The Tribunal was not able to deal with the budgets for 2009 and 2010 that were put before it. That is not because of any lack of willingness on its part to try to assist the parties as far as possible, but because other residents would not have been aware that it was considering matters that might affect them and upon which they may wish to have made representations, so that to do so would infringe their rights in the matter.

#### Section 20C

85. Both Mr Vincent and Ms Adair made application under section 20C of the Landlord and Tenant Act 1985 for an Order that the costs incurred by the Respondent Company in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by them or by any other person or persons specified in the application. Save to the extent that Mr Forward is joined as a party to the proceedings and thus falls within that definition, no other person was named in the application.
86. Whilst it has heard no argument upon the point the Tribunal was doubtful that the wording of the lease might allow the recovery of such costs as service charges. However, to such extent as it may entitle the Respondent Company to recover its costs of the incurred in connection with the application the Tribunal makes the Order sought. It is plain that there have been a number of issues of mismanagement that have arisen in the past and that have materially contributed to the applications being made in order that they may be properly aired in the Tribunal and it would be wrong within the terms of the section that

**Paul Alan House**

**Schedule of amounts found to be payable as service charges (subject to any formalities that remain to be carried out) in the years mentioned**

**October 2004-1 February 2005**

Service charges Nil

**2005-06**

Insurance	1200-01
Cleaning	282-00
Repairs	1684-00
Company Secretarial	Nil
Accountancy	Nil
Management Fees	1680-00
Credit control	90-00
Court Fee	50-00

**2006-07**

Insurance	1254-64
Cleaning	210-34
Electricity	259-50
Repairs	477-19
Company Secretarial	Nil
Accountancy	Nil
Management Fees	1700-25
Credit control	100-00
Court Fee	30-00

**2007-08**

Insurance	1313-69
Cleaning	413-60
Electricity	220-89
Repairs	614-37
Company Secretarial	Nil
Accountancy	Nil
Management Fees	2532-69

**Budget 2008**

Insurance	1450-00
Cleaning	660-00
Repairs	750-00
Management Fees	1980-00
Reserve Fund	1650-00

the applicants should have to contribute in these circumstances to the Lessor's costs. However, that Order applies only to the service charge regime because that is the limit of the Tribunal's jurisdiction. It does not mean that any member of the company is thereby absolved from contributing to the cost of the matter in their capacity of member.

### Generally

87. The amounts that will be payable in each year by any lessee will be derived by preparing and serving the audited statements that the leases require and appropriate demands, giving credit for whatever sums have already been paid under the monthly system that has been in operations and as to which the Tribunal has no detail. Any sums unpaid for the years in question will then be due. No issue has been raised as to the identity of the persons responsible for service charge payments, or as to the manner in which they are to be made.
88. A result of the Tribunal's decisions in this matter may well be that the Company, if it has no other sources open to it, may find itself having to look to its members to make up any shortfall of funds that it sustains. The lease suggests, albeit in what are possibly slightly ambiguous terms, that each lessee is required to be a member. The Tribunal has not seen the Company's memorandum and articles and it must be advised upon the matter, but it may be that the contributions by each member in that capacity will not be in the proportions contained in the lease. If the directors were to consider an alternative to seeking contributions that was based in insolvency, they would be well advised first to seek competent legal advice about the possible adverse effects upon the lessees as a whole of following that course before they considered embarking upon it.

Robert Lane

Chairman

21st April 2009.