

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

S.27A Landlord & Tenant Act 1985 as amended

Case Number: CHI/29UD/LSC/2008/0091

In the matter of 8 Redwood Court, Norfolk Close, Dartford, Kent, DA1 5PD

Applicant: Louise Dyke

Respondent: (1) Solitaire Property Management
(2) Tower Homes

Date of Application: 28th August 2008

Date of Hearing: 11th November 2008

Tribunal Members: Mr. S Lal LL.M (Legal Chairman)
Mr. C. White FRICS

Representation:

Applicants

Mrs. Louise Dyke and Miss. Dyke

First Respondent: Solitaire Property Management

Claire Banwell-Spencer (Solicitor)
Bethan Wilcox (Solicitor)

Second Respondent: Tower Homes

Annette Prand of Counsel
Sam Dowdle

Decision on Jurisdiction

History

1. The Applicant has applied to the Tribunal to determine whether a service charge will be payable in respect of the property for the years 2006/07, 2007/08 and 2008/09 and, if it is, the amount that is payable in respect of the property and its reasonableness. No dispute has been raised concerning the identity of the person by whom such a service charge would be payable.
2. The matter was listed for a Pre-Trial Review on 10th October 2008 where Mr.Sandler , Company Solicitor for Solitaire Property Management (the “First Respondent) raised the argument that the company he represents cannot be a proper party to the application and that the Tribunal had no jurisdiction to treat them as such.
3. Mr. Cross for Tower Homes, who was unaware the issue was to be raised, wished to consult his solicitor and was unable to address the Tribunal at that time any further in respect of jurisdiction.
4. Having regard to the nature and complexity of the matter raised for the first time at the PTR, the Tribunal directed that the matter be set down for a hearing in respect of jurisdiction only on the 11th November 2008.
5. The Tribunal further directed that the matter to be heard by a Tribunal properly constituted to decide the jurisdiction issue on the above hearing date. It was made clear to all the parties that nothing prevented the Tribunal on that occasion in making any other Directions that it deemed appropriate for the future progression of the matter,
6. The Tribunal directed that Solitaire Property Management serve and file by the 24th October 2008 any witness statements and or other evidence it seeks to rely on for the jurisdiction hearing. This should also contain a skeleton argument that should address the matter of jurisdiction and the bundle should be in a paginated and indexed form. Four copies of this bundle need be sent to the Tribunal by the above date and one each to the Respondents.
7. The Applicant and any other presently listed party (Tower Homes) were also directed to provide, and in any event by the 7th November 2008, a paginated and indexed bundle containing their written response to the jurisdiction argument as above. This bundle should also contain any witness statements or other evidence relied upon in respect of jurisdiction only.
8. The Tribunal were pleased to note that the parties had complied with the above Directions and there had been a mutual exchange of the various written submissions that each of the parties wished to adduce as part of their case.

9. The Tribunal invited further oral submissions from the parties and these are described below. For the purposes of the Jurisdiction hearing, the First Respondent who made the original application to be removed as a party, were invited to address the Tribunal.

The First Respondent's Case

10. The First Respondent submitted that the LVT does not have jurisdiction to deal with the Applicant's claim in so far as it relates to them. It was argued that as the First Respondent is the named manager in a freehold transfer dated 21st January 1994 between Barratt London Limited and the Second Respondent. Under that transfer, effectively an agreement between two freeholders, the First Respondent renders services for the amenity areas to the Second Respondent. Once work has been carried out, the First Respondent bills the Second Respondent and has no further information or input into how the bill is apportioned as between the various lessees. The charges rendered by the First Respondent to the Second Respondent are secured by a rent charge and cannot properly constitute a service charge in respect of the LVT's jurisdiction under Section 27A of the Landlord and Tenant Act 1995.
11. It was advanced that the concept of "dwelling" within the Housing Finance Act 1972 s.104 did not in any event cover the notion of an amenity area.
12. It was further advanced by Miss. Banwell-Spencer that if the First Respondent is successful in resisting the Applicant's challenges as to reasonableness of the service charges, they would not be able to recover their costs from the Second Respondent as they have no legal relationship of landlord and tenant nor in fact do they have any legal relationship with the Applicant. She added that if the Applicant were successful as against the Second Respondent than the Second Respondent could have the right to challenge any charges rendered by the First respondent in the County Court. She sought to distinguish the case of **Oakfern Properties Limited v Ruddy [2006] EWCA Civ 1389**, on the basis that that case related to service charges rendered by a freeholder to head lessee and not as in the instant case by one freeholder to another.
13. Miss. Banwell-Spencer was given leave to submit further written submissions, in direct response to questions raised by the Tribunal, as to whether the Rent Charges Act 1977 abolished this type of transfer. She has done so and argues that the transfer is an "estate rent charge" under s.2 (4) of the Act and as such is not prohibited.

The Second Respondent's Case

14. Miss. Prand of Counsel adopted her written submissions of 7th November 2008. She stated Section 27A of the Landlord and Tenant Act 1995 allowed an application to be made to the LVT and Section 18 of the Landlord and Tenant Act 1985 defined a service charge as "an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly for services, repairs, maintenance or insurance on the Landlords cost of management.

15. She argued that the monies levelled by the First Respondent in relation to its management of the amenity areas, although levelled by the Second Respondent, are quite clearly paid by the Applicant either “directly or indirectly” and accordingly fall within the definition of services charges.
16. She said that the case of **Oakfern Properties Limited v Ruddy [2006] EWCA Civ 1389**, was actually authority for the proposition that the LVT has in fact a very wide jurisdiction and it should not be limited in the way suggested by the First Respondent. She added that the Housing Finance Act 1972 submission raised by the First Respondent was in fact a “red herring” and that **Oakfern Properties Limited v Ruddy [2006] EWCA Civ 1389** was about whether a tenant of a dwelling included dwellings in the plural.
17. She added that this was not a case where Regulation 11 of the 2003 Procedure Rules should be used to strike out the application as against the First Respondent as the application was clearly not frivolous.

Submissions of the Applicant

18. Miss. Dyke had very kindly put her submissions into written form dated 7th November 2008. The Tribunal have had regard to these and Miss. Dyke’s observation that she had nothing further to add and was indeed content to adopt the arguments put forward by Miss. Prand on behalf of the Second Respondent.

The Decision on Jurisdiction

19. On the 10th October 2008, the First Respondent effectively asked the Tribunal to dismiss the application in so far as it related to them. The test for doing so is contained in Regulation 11 of the Leasehold Valuation Tribunals (Procedure) (Eng) Regs 2003 and the Tribunal can only do so on the basis that it is frivolous or vexatious or otherwise an abuse of process. This is a high test and is designed to catch those applications that are clearly without merit either in law or in fact.
20. The application by Miss. Dyke cannot be described as such. Clearly she disputes the level of service charge that is levied upon her and part of that contains an element that is rendered by the First Respondent. Although it is appreciated that the First Respondent disputes whether in law that can be described as a service charge, on the face of it the application cannot be described as frivolous or vexatious or an abuse of process. The fact that the amount rendered may not be described as a service charge does not mean that the Tribunal cannot determine the reasonableness of the amount nor determine whether it is a service charge but by another name.

21. To effectively strike out the matter at this stage seems to circumvent the role of the Tribunal as given to it by Parliament when enacting s27A of the Landlord and Tenant Act 1985 to determine by whom a service charge is payable. The power to strike out is a draconian power and should only be used in the clearest of cases and this is not such a case.
22. Further in dealing with the argument that an arrangement between a Freeholder and Freeholder is a matter over which the Tribunal has no jurisdiction for the purposes of determining the reasonableness of a service charge, this is one not supported by authority, indeed in *Oakfern Properties Limited v Ruddy* [2006] EWCA Civ 1389, Lord Justice Parker stated:

"In my judgement there is no justification for implying any restriction into the entirely general words of section 27A of the 1985 Act. In most cases, one may suppose, the applicant for a determination under that section as to the proper amount of service charge will be the party who is seeking to levy it on the applicant; but there is no reason why that should inevitably be the case. In the instant, for example, PPM, as the mesne landlord, may have its own good reasons for not wishing to undertake such a challenge as against Oakfern if one of its subtenants (e.g. Mr. Ruddy) is ready and willing to do so. As to possible abuse of process, the LVT has ample powers to regulate its own procedure, including power to strike out vexatious or abusive applications."

23. In the instant case, the Tribunal finds profoundly unattractive the proposition advanced that the Tribunal determine the matter as between the Applicant and the Second Respondent as to reasonableness and if the Second Respondent then went on to dispute or query the amount as rendered by the First Respondent, the matter to be argued in the County Court. Miss. Banwell-Spencer said that the First Respondent would have regard to the decision of the LVT but as Miss. Prand pointed out that an overall desirable objective of civil litigation must be to avoid satellite litigation and the First Respondent ought to remain a party at this stage of the LVT proceedings, thus effectively the Tribunal can examine the matters within its overall jurisdiction under s.27A.
24. The Tribunal did not seek at this stage to make any findings in respect of the Rent Charges Act 1977, in any event it does not dispose of the general arguments for the First Respondent to be included as a party at this stage. Indeed it supports the proposition that the application at this stage is neither frivolous nor vexatious as the exact status of what has been described as a "transfer" in the past and is now described as an "estate transfer" clearly points to some potential dispute as to the legal status of this document. This too would be within the ambit of any substantive Tribunal hearing because it may be argued that the "transfer" is actually a service charge but by a different name and therefore within an overall s.27A consideration.

25. For the Reasons above, the First Respondent has not established at this stage for the purposes of Regulation 11 of the Leasehold Valuation Tribunals (Procedure) (Eng) Regs 2003, that they should be removed from the proceedings. They have failed to show that the application is frivolous or vexatious or otherwise an abuse of process. They remain a party to the proceedings, the LVT retaining the power to regulate its own proceedings in respect of the future conduct of the matter.

Further Directions

26. It was indicated to all the Parties that the Tribunal would issue Directions in any event for the future Disposal of this matter and accordingly the following Directions are made.
27. Your attention is drawn to the notes about the purposes of these directions and about the Tribunal's approach to them, and about the documents to be supplied that appear at the end of this document.
28. The Applicant has applied to the Tribunal to determine whether a service charge will be payable in respect of the property for the years: 2006/07, 2007/08 and 2008/09 and, if it is, the amount that is payable in respect of the property. Disputes have been raised concerning the identity of the person to whom it is payable or when or in what manner it is payable and to reasonableness in any event.
29. Neither party made any concession at the hearing.

Directions

30. Having regard to the nature and complexity of the matter, it is directed that the case is to proceed on the standard track.
31. The First Respondent and Second Respondent must provide and in any event within 28 days of today's date a paginated and indexed bundle containing the service charge accounts for the years in dispute, a schedule of expenses for the years in dispute and also service charge demands for those same years plus any such evidence of the latter having been sent to the Applicant. This Bundle to also contain any additional information including Witness Statements of any witnesses to be relied upon.
32. Four copies of this bundle need be sent to the Tribunal by the above date and one to the all other parties.
33. The Tribunal directs that Skeleton Arguments setting out any submissions relied upon by any party to be served on all parties 7 days prior to any hearing date in any event and four copies to the Tribunal.

34. The Respondent's bundles referred to above shall also contain a copy of any lease or other document that the either of the Respondent's seek to rely on.
35. The Applicant to have 56 days from today's date file and serve a bundle which shall sequentially follow the Respondent's bundle in terms of pagination. This bundle should contain any evidence that the Applicant wishes to rely on at the hearing. It shall include Witness Statements of any witnesses that may wish to give evidence at the substantive hearing. Four copies to be filed with the Tribunal and one each with the Respondents.
36. The proposed date for the hearing is the week beginning the 2nd February 2009 in the Swanley area at a venue to be arranged. Tuesday's and Wednesday's to be avoided. Parties to inform the Tribunal at least 14 days prior to the hearing if they are unable to attend the week beginning date.
37. The Tribunal will wish to inspect the property immediately before the hearing. You will be notified at the same time as you are told of the details of the hearing when the inspection will take place.
38. The parties have leave to apply or vary or amend these directions, but attention is drawn in that connection to note C below.

Dated *Jan Dec* 2008.



A Member of the Panel appointed
By the Lord Chancellor

The notes mentioned in paragraph 1 of these directions are as follows:

A. Purpose

The purpose of these directions is:

- (a) To identify the issues that have arisen between the parties which the Tribunal is to determine, and to set a timetable to enable that to be done as promptly as the nature of the case will allow.
- (b) To ensure that each party are aware of the details of the cases that the other will bring before the hearing takes places so that, as far as may be, neither will be taken by surprise at the hearing.

CHI/29UD/LSC/2008/0091

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATION UNDER SECTION 27A OF
THE LANDLORD & TENANT ACT 1985**

Address: Redwood Court, Norfolk Close, Dartford, DA1
5PD

Applicants: (1) Miss Dyke (2) Mr Fishpool

Respondents: (1) Solitaire Property Management Limited (2)
Tower Homes

Application: 28 August 2008

Inspection: 9 March 2009

Hearings: 9 March 2009 and 12 May 2009

Reconvene: 19 June 2009

Appearances:

Applicants	
Miss Dyke	Leasholder
Mrs Dyke	Representative
Mr Fishpool	Leaseholder

For the Applicants

First Respondent

Ms C Banwell-Spencer	Solicitor, Peverel OM Ltd
Ms B Willcocks	Solitaire Property Management Ltd

Second Respondent

Miss Prand	Counsel
Mr G Cross	Tower Homes

For the
Respondents

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mr C White FRICS
Mr T Wakelin

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UD/LSC/2008/0091

**IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT
1985**

**AND IN THE MATTER OF REDWOOD COURT, NORFOLK CLOSE,
DARTFORD, DA1 5PD**

BETWEEN:

**(1) Ms LOISE DYKE
(2) MR MICHAEL FISHPOOL**

Applicants

-and-

**(1) SOLITAIRE PROPERTY MANAGEMENT LIMITED
(2) TOWER HOMES**

Respondents

THE TRIBUNAL'S DECISION

Introduction

1. This is an application made by the Applicants pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the reasonableness of various actual service charges incurred for the years 2006/07, 2007/08 and the estimated expenditure for 2008/09. Each of the disputed service charges for each of these years is considered below by the Tribunal.
2. The First Applicant had also issued a parallel application under s.24 of the Landlord and Tenant Act 1987 (as amended) for the appointment of a manager. However, at the first hearing she withdrew this application.

3. The First Applicant is the leaseholder of Flat 8 in the subject property by virtue of a lease dated 28 November 1994 and made between (1) Tower Housing Association Ltd and (2) Julie Patricia Townsend. It is the Tribunal's understanding that the Second Applicant, who is the leaseholder of Flat 4, has a lease granted on the same terms. It is not the Applicants' case that the disputed costs are not relevant service charge expenditure under the terms of their leases nor that the Second Respondent does not have a contractual entitlement to recover a service charge contribution from each of them in relation to that expenditure. The Applicants' case is limited to the issue of the reasonableness of the costs claimed by the Second Respondent. It is, therefore, not necessary to set out here the relevant lease terms that gives rise to the Applicants' service charge liability. It is sufficient to note that their individual liability is 10% of the overall expenditure claimed by the Second Respondent.

4. The Applicants' service charge liability arises in the following way. The Second Respondent is the freehold owner of the subject property, which consists of 10 flats. It is part of an estate comprised of two other blocks of flats, where the freehold is owned by the First Respondent, and 12 freehold houses. The Second Respondent is obliged to repair and maintain the internal communal areas and structure of the subject property. The management of the external communal areas of Redwood Court generally falls to the First Respondent. These are referred to and considered separately below as the First and Second Respondents costs respectively.

5. By a Transfer between the First and the Second Respondent dated 21 January 1994, the Second Respondent is obliged to pay the First Respondent a rent charge, being the costs incurred by it in relation to the external communal areas of Redwood Court. This is expressed as a maintenance fund by the First Respondent and is comprised of a number of heads of expenditure. The Second Respondents liability under clause 2 of the Fifth Schedule of the Transfer is 10/48ths of the overall expenditure incurred by the First Respondent. Those costs are payable by the Second Respondent in two equal instalments in advance on 1 July and 1 January in each rent charge year. The Second Respondent then equally apportioned the overall cost as between the

respective lessees in the block. Effectively, the Second Respondent seeks an indemnity from the lessees for the costs incurred by the First Respondent and for which it is liable. It was, therefore, necessary for the Tribunal to consider each of the heads of expenditure incurred by the First Respondent to determine the reasonableness of the service charge contribution claimed by the Second Respondent for each of the relevant service charge years. Its evidence in these proceedings was limited to those costs.

6. There is no privity of contract between the First Respondent and the Applicants. The First Respondent had initially submitted that it should not be a party in these proceedings because the Tribunal had no jurisdiction under section 27A of the Act in relation to the costs it sought to recover from the Second Respondent, by way of an indemnity, because it was a rent charge and not a service charge. This point was considered by an earlier Tribunal and, in a decision dated 3 December 2008, it found that although the rent charge may not be described as a service charge, it did not mean that the Tribunal could not determine the reasonableness of the amount nor determine whether it is a service charge by another name. The Tribunal, therefore, concluded that the costs incurred by the First Respondent fell within its overall jurisdiction under section 27A and that it should remain a party to these proceedings.

The Relevant Law

7. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, 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 by whom it is payable,*
- (b) the person to whom it is payable,*
- (c) the amount which is payable,*
- (d) the date at or by which it is payable, and*
- (e) the manner in which it is payable.*

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

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

8. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

"(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly."

Inspection

9. The Tribunal inspected the subject property on 9 March 2009. Redwood Court is a three storied block of ten flats, probably identical with a common entrance hall and staircase. It forms part of a development of flats and houses on a fairly long site. The block and the common parts were inspected. The condition of the block and the common parts were noted to be worn and deteriorating. The Tribunal also inspected the service road, parking spaces and noted the street lighting, the areas of communal gardens and the drainage pump housing.

Decision

10. The hearings in this matter took place on 9 March and 12 May 2009. The Applicants were represented by Mrs Dyke, the mother of the First Applicant. The First Respondent was represented by Ms Banwell-Spencer, a company solicitor from Peverell OM Ltd. The Second Respondent was represented by Miss Prand of Counsel.

The First Respondent's Costs

Pump Repairs and Repairs & Maintenance (All Years)

11. The actual and estimated costs claimed by the First Respondent are set out in the maintenance fund accounts for each of the relevant service charge years¹. These costs were considered together because they all arise from blockages to the drains serving the estate.

¹ see R1/58/100/170/271

12. The First Respondent's evidence in relation to this matter is set out at paragraphs 19 and 20 of the witness statement of Ms Wilcox, it's Property Manager. She states that the pump has been replaced twice in the last eight years due to residents flushing away inappropriate materials. In addition, there has been one instance of vandalism when paving blocks were placed in the drainage system. Over the years, she has attempted to minimise the possibility of further blockages by writing to each of the lessees advising them about what items should not be flushed into the drainage system. However, she contends that when the pump is blocked there is no other choice but to repair it.
13. The Applicants simply submitted that these costs were not reasonably incurred because the installation of an impeller would either prevent or reduce the number of blockages that had occurred.
14. The Tribunal accepted the evidence given in cross-examination by Ms Willcocks that the cost of purchasing and installing an impeller would be uneconomic. The cost of installing an impeller had been considered and rejected on a cost/benefit analysis. The Tribunal also accepted her evidence that when the blockages in the drains occurred, they had to be cleared. From the correspondence seen by the Tribunal, it was clear that Ms Willcocks had attempted to minimise the possibility of further blockages occurring by writing to the lessees. However, this action could not ultimately prevent one or more tenants from flushing inappropriate waste into the drains. Using a contractor with a base a considerable distance away was also queried but it was pointed out by Ms Wilcocks that the contractor was often in the area and that travelling from their base was not charged. In cross-examination, the Applicants accepted that there was no evidence that these costs were too high. The Tribunal, therefore, found that these costs had been reasonably incurred and were reasonable in amount.

Landscape Maintenance Contract (2008)

15. The First Respondent had initially estimated this cost to be £3,377. However, the sum of £4,153.39 had been incurred. The Applicants contended that the

cost of this contract had increased by 23%. They submitted that, in principle, this was unreasonable and put the First Respondent to proof.

16. The evidence of Ms Willcocks was that this contract covered the gardening of the communal estate areas and included one visit per month from November to February and two visits per month from March to October in each year. In chief, she said that the main reason for the increase in the cost was because the contractor had increased its costs. In addition to the contract price there had been additional costs for planting, weeding and feeding. Nevertheless, she submitted that the cost was reasonable because a good service had been provided by the contractor and there had been no complaints from any of the tenants. In cross-examination, she said that this contract was in the process of being re-tendered because she was aware that the cost of maintaining this contract was going to increase.
17. Having considered and accepted the evidence of Ms Willcocks, the Tribunal found that the cost of the landscape maintenance contract had been reasonably incurred and was reasonable in amount for the work that had been carried out. The Tribunal was also satisfied that the First Respondent was actively monitoring these costs to provide the best value for the occupants of the estate, as it was currently being re-tendered.

Audit Fees (All Years)

18. The Applicants withdrew their challenge in relation to these costs at the hearing.

Management Fees (All Years)

19. These costs relate to the administration/management fees plus VAT charged by the First Respondent to the Second Respondent and is set out in the various maintenance fund accounts for each of the service charge years in issue. They are further particularised at paragraph 22 of the witness statement of Ms Willcocks.
20. The Applicant submitted that these costs were unreasonable because they had increased significantly in each of the relevant service charge years and

represented approximately 31-32% of the total costs incurred by the First Respondent.

21. In chief, Ms Willcocks said that the management fee represented one tenth of the total cost incurred by the First Respondent in each of the service charge years. In each of the subsequent service charge years after 2006, an increase of approximately 5% had been applied to the management fee. Miss Willcocks explained that she made one visit each month to the estate. Her duties also included complying, where necessary, with any statutory obligations under the Act, signing off the maintenance fund accounts and invoices, dealing with queries, supervising and tendering the main contracts, the placing of insurance and dealing with any claims arising therefrom. She said that she spent in excess of 10 hours per month approximately in carrying out these duties and that the tenants received the benefit of the services.
22. The management fee of the First Respondent represented a charge of approximately £100 per flat per year. In view of the duties carried out and, in particular, the recurring problems with the drains, the Tribunal found the management fee to be reasonable. However, the Tribunal makes it clear that this finding should not be interpreted by the Second Respondent as being an automatic entitlement to pass on the entire cost to the lessees. The automatic increase of 5% applied by the First Respondent annually is, of course, subject to the test that the cost must be reasonably incurred.

Electricity (2009)

23. The Applicants submitted that the estimated budget figure of £2,500 was too high given that the same estimate for the preceding year was £1,000. This effectively represented a 150% increase and was unreasonable.
24. Ms Willcocks explained that the budget figure had been increased because of the bills that had been received in 2008. However, this was an error on the part of the supplier and no expenditure had been incurred in that year because of the credit that would be applied retrospectively by the supplier. Consequently, she had revised the budget estimate downwards to a figure of £1,000.

25. Having regard to the fact that the budget estimate for electricity for 2009 had been revised to £1,000 and that the Applicants had been contending for this figure, the Tribunal determined that the estimate of £1,000 for the supply of electricity was reasonable.

General Reserve (2006/07 & 2007/08)

26. The Applicants did not appear to specifically make a challenge about the reserve fund contribution claimed by the First Respondent. They complained that the total reserve fund contribution sought for each of these years was £5,000. For the year 2008/09, the First Respondent had reduced the figure to a total of £2,000. The Applicants simply wanted an explanation as to why the figure had historically remained high.
27. In evidence, Ms Willcocks said that the reserve fund provision was to cover the cost of any large items of repairs. Redwood Court pays a contribution of one tenth of the total sum. These monies are held in a separate bank account. In the 2007/08 year, expenditure from the reserve fund had been required to install a new pump for the drains². This was the reason for the reserve fund provision remaining at the same level as the previous year. Generally, she attempted to keep the total reserve fund at around £15,000. Ms Willcox submitted that the total reserve fund provision was reasonable having regard to the size and characteristics of the estate.
28. Having heard the evidence given by Ms Willcocks, the Applicants did not expressly maintain any further challenge in relation to this head of expenditure. For the avoidance of doubt, the Tribunal accepted the evidence given by Miss Willcocks regarding the reserve fund provision maintained by the First Respondent and determined that, for the years 2006/07 and 2007/08, it had been reasonably incurred and was reasonable in amount.

² see R1/173

The Second Respondent's Costs

Cleaning Costs (All Years)

29. The communal cleaning cost incurred by the Second Respondent for 2006/07 and 2007/08 was £105.25 and £106.62 per flat per year respectively. The estimated cost in 2008/09 is £130.
30. The Applicants did not challenge the standard of the cleaning carried out. They submitted that the costs were too high having regard to the very small size of the communal areas. They contended that the total cost should be £950 per annum. In cross-examination, it was accepted that this figure was unsupported by any evidence and they had not obtained any alternative quotes for the cost of cleaning the communal areas.
31. Evidence on this issue was given on behalf of the Second Respondent by Mr Cross, who was employed as a Leasehold Services Manager. In chief, he said that the cleaning contract had been widely tendered³ and that the present contractor used represented the best value for money. The statutory consultation with the lessees had taken place in accordance with section 20 of the Act.
32. The cost of cleaning the communal areas resulted in a service charge liability of approximately £10 per month. This equated to a figure of approximately one pound per month for each lessee. Although the communal areas in the property are relatively small, the Tribunal found the cost incurred to be reasonable. It did not actually represent the time taken to clean those areas but also included the indirect cost of travelling, cleaning materials and labour costs of the contractor. In any event, the cost to each lessee was *de minimis* and the Tribunal found them to be entirely reasonable.

Sinking Fund (All Years)

33. A total sinking fund contribution of £600 per flat is claimed by the Second Respondent for the years 2006/07 and 2007/08 and £700 for the year 2008/09 based on a breakdown of anticipated capital expenditure on various items over

³ see R2/278 & 294

a term of 5-30 years⁴. The anticipated capital expenditure relies on a stock condition survey prepared by the Second Respondent which sets out, for example, what future cyclical redecoration, new windows and roof works may be required in the future. The survey is usually commissioned every five years and the last survey was carried out in 2006. This indicated that the building was in generally good condition. However, substantial decoration works will be required within the next 2-3 years in relation to External repair and decoration and internal decoration of the common parts.

34. The Applicant submitted that the sinking fund contributions sought by the Second Respondent were unreasonable given the minimal maintenance requirements of the block. They contended that a figure of £300 per flat was reasonable based on the (accepted) need to do the proposed works set out in the Second Respondent's breakdown, save for the windows. By way of comparison, the Applicants referred to another older block of flats where the Second Respondent, as the immediate landlord, sought a lower sinking fund contribution⁵.
35. The Applicants accepted in principle that there was a need to collect a sinking fund contribution. Their only argument was in relation to the quantum of the contribution. The evidence given by Mr Cross was that the sinking fund contribution was based on anticipated capital expenditure envisaged by a stock condition survey report carried out by the Second Respondent approximately every five years. The Tribunal considered that it was good practice to build up a sinking or reserve fund to meet large items of capital expenditure both in the short and medium term. This prevents tenants from having to face large bills for such major items of work, which in turn could lead to financial hardship for them. Mr Cross said that the sinking fund only held the sum of £20,000 at present. The Tribunal did not consider this to be a large sum given the size and nature of the subject property and, given the potential cost of any major item of capital expenditure, the sum could be quickly extinguished. Therefore, the Tribunal found the sinking fund contributions claimed by the Second Respondent of £600 and £700 respectively was reasonable in amount.

⁴ see R2/397

⁵ see A/101

Management Fee (All Years)

36. The management fee claimed by the Second Respondent for the years ended 31 March 2007 and 31 March 2008 was £1,765 and £1,738 respectively. The Applicants estimated individual liability for the management fee for the year ended 31 March 2009 is £117. An explanation as to how these management fees were calculated is set out in paragraphs 5 and 12 of the witness' statement prepared by Mr Cross. He stated that the leaseholders who have a shared ownership status rather than having 100% of the equity in their properties pay a slightly higher management fee to cover the additional cost of shared ownership administration and staircasing by leaseholders. The management fee is calculated on the basis of the staffing and administrative costs of the Leasehold Services Department of the Second Respondent divided between all leasehold, ALMA and shared ownership properties. The residents who own 100% of their properties do not need access to all of the services, in particular with regard to shared ownership staircasing. Consequently, they pay less than those who occupy a shared ownership property. In evidence, Mr Cross said that the management fee of the Second Respondent could not be compared with other management fees charged in the market because it included the staircasing costs. He maintained that, in the event the managing agent was changed, the staircasing costs would remain.
37. The Applicants argued that the method by which the Second Respondent calculates the management fee is not provided for in the lease. In the alternative, they argued that the method of calculation is unfair because, in effect, they are subsidising the other properties. Leaseholders are paying an additional management fee for shared ownership and this is not provided for in their leases. The Applicant submitted that they should only be charged a management fee in relation to the building and common parts.
38. The Tribunal was, firstly, satisfied that clause 7(5) of their leases allowed the Second Respondent to recover both the direct and indirect costs of management, including the staircasing costs. This clause allows the Second Respondent to recover "*all expenditure reasonably incurred by the Landlord in connection with the repair management maintenance and provision of*

services for the Building and Common Parts...". The Tribunal construed this clause as being sufficiently wide to enable these indirect costs to be recovered as part of the management fee. The clause appeared to provide the Second Respondent with an absolute discretion about what the direct and indirect costs may be recovered in this way. Moreover, the Tribunal accepted the evidence of Mr Cross that leaseholders will not subsidising the shared ownership tenants. They were in fact being charged less because they did not require access to all of the services provided to the shared ownership tenants. Therefore, the Tribunal did not accept the Applicants argument that the method of calculating the management fees was unfair.

39. As to the amount of the management fees, they represent approximately 13% of the total costs incurred by the Second Respondent. The Tribunal was satisfied that the management functions performed by the Second Respondent include arranging the cleaning of the common parts, paying invoices, arranging the buildings insurance, employing staff, arranging 24-hour cover, preparing and issuing service charge accounts and demands and answering queries generally. The Tribunal also accepted the evidence of Mr Cross that, whilst the management fee appeared to be slightly higher than would otherwise be the case in the market, the reason was it included the additional indirect costs of management attributable to mixed tenure of the tenants of this block. The Applicants accepted in cross examination that they had provided no alternative quotes the management fees. Therefore, the Tribunal found the management fees of the Second respondent to be reasonably incurred and reasonable in amount.

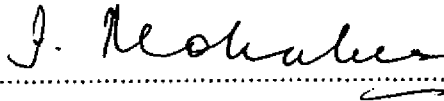
Section 20C & Fees

40. The Applicants, as part of the substantive application, had made a further application under section 20C of the Act inviting the Tribunal to make an order preventing the Second Respondent from being able to recover all or part of the costs it had incurred in these proceedings. Given that there is no privity of contract between the Applicants and the First Respondent, it is clear that the latter has no entitlement to recover any costs it had incurred in these proceedings from the Applicants.

41. Section 20C of the Act gives the Tribunal a discretion to make an order preventing a landlord from recovering all or part of its costs where it is just and equitable to do so having regard to all the circumstances of the case. In the present case, it was clear to the Tribunal that the Applicants had unsuccessfully sought clarification from the Second Respondent about the service charge costs that form the subject matter of the application. It seems that they were only able to obtain an explanation about some of those costs in the course of these proceedings. The Tribunal was satisfied that the Applicants would not have been able to do so without issuing this application. Therefore, even though the Applicants had not succeeded on any of the contested issues, the Tribunal was of the view that it would not be just or equitable for them to be liable for the Second Respondent's costs. Accordingly, the Tribunal made in order under section 20C preventing the Second Respondent from being able to recover any of the costs it had incurred in these proceedings. For the same reasons, the Second Respondent is directed to reimburse the Applicants the fees of £250 paid to the Tribunal to have this application issued and heard.

Dated the 3 day of July 2009

CHAIRMAN.....



Mr I Mohabir LLB (Hons)