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**HM Courts
& Tribunals
Service**

**Leasehold Valuation Tribunal
Case no. CAM/22UQ/LSC/2011/0055**

Premises: 39B The Close, Great Dunmow, Essex CM6 1EW

Hearing: 16 February 2012

Applicants: Mr G B and Mrs M Halibard (landlords)
Managing Agent: Mr C C Woodhouse FRICS of Joscelyne Chase

Respondents: Mr W O Barker (leaseholder - in person)
Ms Cheryl Wass (former lessee)

Represented by: Heckford Norton, Solicitors

Members of Tribunal: Mr G M Jones - Chairman
Mr J R Humphrys FRICS
Mrs C St Clair MBE BA

ORDER

UPON HEARING Mr Woodhouse for the Applicants and the Respondent Mr Barker in person

AND UPON READING the letter dated 15 February 2012 to the Tribunal from Heckford Norton Solicitors for the Respondent Ms Wass

IT IS ORDERED THAT: -

1. By Consent the Tribunal makes an Order in the terms of the draft Order attached hereto.
2. The sum due and owing and payable to the Applicants by the Respondent Mr Barker in respect of rents, insurance contributions and service charge contributions for 39B The Close Great Dunmow Essex CM6 1EW up to 26 December 2011 (but giving credit for the sum of £1,300.00 paid by the Respondent Ms Wass) is £379.49 in accordance with the Appendix to this Order.

3. The Tribunal considering it just so to order the Applicants shall be disentitled from treating their costs of and arising out of the application as relevant costs to be taken into account in determining any service charge relating to 38 or 39 The Close Great Dunmow.
4. Save as aforesaid there shall be no order as to costs.

G M Jones
Chairman
27 March 2012

39b THE CLOSE, GREAT DUNMOW, ESSEX CM6 1EW

Case Ref. CAM/22UQ/LSC/2011/0055

APPENDIX: SERVICE CHARGE ACCOUNT RECAST

| Year | Date | Description | Debit | Credit | Running total |
|----------|--------------------------------|--------------------------------|--------|--------|---------------|
| 2003 | 13/05/03 | Payment of rent | | 30.87 | 0.00 |
| | 25/06/03 | Buildings insurance due | 291.59 | | |
| | | Management fees @ 20% | 63.32 | | |
| | | VAT @ 17.5% | 11.08 | | |
| | 03/07/03 | Payment re rent, ins & VAT | | 390.99 | 0.00 |
| | 18/07/03 | Byford & Co inv 1291 @ 12% | 86.01 | | |
| | | Fees on works @ 20% | 17.20 | | |
| | | VAT on fees @17.5% | 3.01 | | |
| | 02/09/03 | Byford & Co inv 1243 @ 12% | 105.62 | | |
| | | Fees on works @ 20% | 21.12 | | |
| | VAT on fees @17.5% | 3.70 | | | |
| 2004 | 25/12/03 | Ground rent due | 25.00 | | 236.66 |
| | 30/03/04 | Tenant payment | | 236.66 | |
| | 20/07/04 | Chimney repaid Hiskey @ 16% | 261.32 | | |
| | | Management fees @ 20% | 52.26 | | |
| | | VAT @ 17.5% | 9.14 | | |
| | | Proportion of insurance | 263.39 | | |
| | | Management fees @ 20% | 52.67 | | |
| | | VAT @ 17.5% | 9.21 | | |
| | | Ground rent due 25/06/04 | 25.00 | | |
| | | Byfords under-charges 26/06/03 | 28.67 | | |
| | Byfords under-charges 28/04/03 | 35.22 | | | |
| 2005 | 30/12/04 | Ground rent due 25/12/04 | 25.00 | | 761.88 |
| | 04/01/05 | MD Alderton guttering JC0955 | 19.20 | | |
| | | Agency fees on work @ 20% | 3.84 | | |
| | | VAT on fees @ 17.5% | 0.67 | | |
| | 07/03/05 | Payment from tenant | | 804.49 | |
| | 05/04/05 | Insurance Primary Insurance | 273.93 | | |
| | | Agency fees @ 20% | 54.79 | | |
| | | VAT on fees @ 17.5% | 9.59 | | |
| | 24/06/05 | Ground rent due 25/06/05 | 25.00 | | |
| | 08/09/05 | Tenant payment | | 392.98 | |
| 25/12/05 | Ground rent due 25/12/05 | 25.00 | | -23.57 | |
| 2006 | 03/02/06 | Tenant payment | | 30.87 | |
| | 24/04/06 | M D Alderton inv 436 @ 16% | 11.52 | | |
| | 18/05/06 | Primary Insurance 16% | 284.89 | | |
| | 24/06/06 | Ground rent due 25/06/06 | 25.00 | | |

| | | | | | |
|------|----------|------------------------------|--------|--------|-----------------|
| | 26/07/06 | Agency charge @ 20% | 2.30 | | |
| | | VAT on agency charge @ 17.5% | 0.40 | | |
| | | Agency charge on insurance | 56.98 | | |
| | | VAT on same @ 17.5% | 9.97 | | |
| | 21/08/06 | Payment from tenant | | 327.28 | |
| 2007 | 25/12/06 | Ground rent 25/12/06 | 25.00 | | |
| | 18/04/07 | Primary Insurance @ 16% | 296.29 | | |
| | | Agency charge @ 20% | 59.26 | | |
| | | VAT on agency charge @ 17.5% | 10.37 | | |
| | 24/06/07 | Ground rent 25/06/07 | 25.00 | | |
| 2008 | 25/12/07 | Ground rent 25/12/07 | 25.00 | | 450.26 |
| | 28/01/08 | Payment from tenant | | 528.18 | |
| | 25/03/08 | Primary Insurance @ 16% | 308.14 | | |
| | | Agency charge @ 20% | 61.63 | | |
| | | VAT on agency charge @ 17.5% | 10.79 | | |
| | 24/06/08 | Ground rent 25/06/08 | 25.00 | | |
| 2009 | 25/12/08 | Ground rent due 25/12/08 | 25.00 | | 958.74 |
| | 06/05/09 | Primary Insurance @ 16% | 320.46 | | |
| | | Agency charge @ 20% | 64.09 | | |
| | | VAT on agency charge @ 15% | 9.61 | | |
| | 24/06/09 | Ground rent due 25/06/09 | 25.00 | | |
| | 08/07/09 | M D Alderton inv 1076 @ 16% | 20.56 | | |
| | | Agency charge @ 20% | 4.11 | | |
| | | VAT on agency charge @ 15% | 0.61 | | |
| 2010 | 25/12/09 | Ground rent due | 25.00 | | 822.08 |
| | 24/06/10 | Ground rent due 25/06/10 | 25.00 | | |
| | 01/07/10 | M D Alderton Inv 1277 | 17.86 | | |
| | | Agency charge @ 20% | 3.57 | | |
| | | VAT on agency charge @ 17.5% | 0.62 | | |
| | 16/08/10 | Primary Insurance | 324.46 | | |
| | | Agency charge @ 20% | 64.89 | | |
| | | VAT on agency charge @ 17.5% | 11.36 | | |
| | 18/08/10 | M D Alderton Inv 1079 extra | 22.27 | | |
| 2011 | 16/12/10 | Ground rent due 25/12/10 | 25.00 | | |
| | 04/01/11 | Payment by W O Barker | | 68.00 | 1,249.11 |
| | 08/06/11 | Insurance Primary Insurance | 329.99 | | |
| | | Agency charge @ 20% | 66.00 | | |
| | | VAT on agency charge @ 20% | 13.20 | | |
| | 24/06/11 | Ground rent due 25/06/11 | 25.00 | | |
| | 27/06/11 | Payment from Barker | | 25.00 | |
| | 20/10/11 | M D Alderton Inv 1487 @ 16% | 21.12 | | |
| | | Agency charge @ 20% | 4.22 | | |
| | | VAT on agency charge @ 20% | 0.85 | | |
| | 22/12/11 | Payment from Barker | | 30.00 | |
| | 25/12/11 | Ground rent due | 25.00 | | 1,679.49 |

REASONS

0. BACKGROUND

The Property

0.1 The property the subject of this application is a very small flat in a converted house, reputedly built as the Manager's house for the adjoining workhouse. The house has been converted into 5 flats, of which this is the smallest, as part of a development of the whole workhouse complex. The building is built of red brick with a slate roof. It presents the appearance of two semi-detached houses, each with its own garden. No 38 comprises two flats and No 39 three flats. At the rear is a communal car park serving the whole complex, with no allocated space for this flat. The conversion appears to have taken place in the 1980's. The structure and exterior of the building do not appear to have been well maintained.

0.2 The flat comprises a small bed-sitting room; hallway; internal bathroom; and a kitchen, housed in a small single storey extension at the rear. Mr Barker, who appears to have maintained the interior and other parts for which he is responsible to a reasonable standard, has had trouble with the roof of this rear extension.

The Lease

0.3 The lease dated 20 May 1988 is for a term of 99 years from 25 December 1987 and contains no particularly unusual or onerous terms. The lessee is responsible for repairing and replacing the windows; but the landlord is responsible for external decorations. The lessee is liable to contribute 16% of the landlord's costs of management, repairs and maintenance and a reasonable proportion of the insurance costs (to be determined by the landlord, but subject to the scrutiny of the Tribunal). There is no provision entitling the landlord to charge a fee for arranging insurance. Under the terms of the lease service charges are recoverable half yearly in arrears on 25 June and 25 December. There is no provision for payment on account. There is, however, provision for the collection in advance of monies for periodic or recurring expenses, though this has never in fact been done.

1. THE DISPUTE

1.1 The application was brought to resolve disputes over service charge payments. The application named the Respondent as Ms Wass, who was the original leaseholder but whose address was said to be unknown. The application also named Mr Barker as current leaseholder. It is clear that Mr Barker was registered at the Land Registry as leaseholder with effect from 30 October 2008, though the landlord was not notified of the assignment. Mr Woodhouse told the Tribunal at a pre-trial review hearing held in August 2011 and the Tribunal accepts that, even after the formal assignment of the lease, it took the landlord some time to discover, following correspondence with Mr Barker (eventually writing on his own behalf, rather than in the name of Ms Wass), that the lease had been assigned. Clearly Ms Wass ought under the provisions of clause 3(k) to have produced to the landlords' solicitors a certified copy of the assignment for registration and paid a reasonable registration fee. Equally, Mr Barker ought reasonably to have made it clear, once the lease had

- been assigned, that he was now the leaseholder.
- 1.2 Mr Barker's case is that he was always beneficial owner of the lease, having paid the deposit in 1994 on the assignment to Ms Wass, who was, at that time, his girlfriend. Later they parted company (in somewhat unfortunate circumstances, from Mr Barker's point of view) and she left the flat in 1995. She acknowledged Mr Barker's right to an assignment, though this was not arranged until much later. Meanwhile, Mr Barker lived at the flat and paid all the bills. Mr Barker admitted that he was liable for all of the service charges as assessed by the Tribunal.
 - 1.3 However, it is clear that for some years, Mr Barker contributed to the landlords' misunderstanding by dealing with correspondence addressed by the landlords' agent to Ms Wass and answering in her name. He says that sums paid to the managing agents by way of rent or service charge contributions were drawn either on his or on his mother's bank account. However, in the judgment of the Tribunal, it is hardly surprising that the landlord and managing agent did not for a considerable period realise that Mr Barker was paying on his own account, rather than as agent for Ms Wass.
 - 1.4 For whatever reason, the Applicants have been unwilling to release Ms Wass from liability, which has considerably complicated proceedings, as she had to be traced and duly served. This process, which has been time-consuming and expensive and included county court proceedings, has, in the end, produced some benefit for the Applicants, though whether it has been an economic exercise seems doubtful. Mr Barker has, throughout, accepted full liability for all service charges due and owing. Ms Wass did not attend the hearing because, as the Tribunal was informed, a form of Consent Order was agreed between her solicitors and the Applicants through Mr Woodhouse. In summary, Ms Wass agreed to pay £1,300.00 in full and final settlement of her liabilities up to 28th October 2008, with no order as to costs.
 - 1.5 The Tribunal is content to make the Order in the form agreed. The Tribunal notes that, on the Applicants' own evidence, the account between the parties on 28 October 2008 stood at £793.22. The Tribunal also notes that Mr Barker was not a party to the agreement incorporating the draft Consent Order and is accordingly not bound by it. However, Mr Barker told the Tribunal he is unhappy about the compromise because he feels a moral obligation to indemnify Ms Wass. We will return to the effects of the compromise in due course.

2. THE ISSUES

- 2.1 The Application lists service charges accruing from 2003 to 2010 inclusive; the total claim was for £2,335.66. However, the Applicants now accept that their claims against Mr Barker are limited to service charges accruing since 28 October 2008. By Mr Woodhouse's calculation the net sum claimed is £1,541.78, which figure he reached by deducting £793.22 from £2,335.66. However, the Tribunal pointed out that the correct figure reached by that calculation is £1,542.44.
- 2.2 In the end, the argument at the hearing came down to a series of discrete issues, some of general principle and some relating to particular items of expenditure, with which this Decision will deal one at a time. The outcome has been a recast

statement of account, set out in the Appendix hereto.

3. THE EVIDENCE

- 3.1 The disputes as to primary facts in this case are relatively limited. This Decision will not set out all the evidence; facts will be recited without comment if they are undisputed. However, where there are disputes of fact, the case of each party will be set out sufficiently to show how and why those disputes have been resolved.

4. THE LAW

Service and Administrative Charges

- 4.1 Under section 18 of the Landlord & Tenant Act 1985 (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.
- 4.2 Under section 27A the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for those costs and, if so, the amount which would be payable.
- 4.3 In deciding whether costs were reasonably incurred the LVT should consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease and the 1985 Act, bearing in mind RICS Codes. If work is unnecessarily extensive or extravagant, the excess costs cannot be recovered. Recovery may in any event be restricted where the works fell below a reasonable standard.
- 4.4 Under section 158 and Schedule 11 of the Commonhold & Leasehold Reform Act 2002 variable administration charges are payable by a tenant only to the extent that the amount of the charge is reasonable. An application may be made to the LVT to determine whether an administration charge is payable and, if so, how much, by whom and to whom, when and in what manner it is payable. The Tribunal may vary any unreasonable administration charge specified in a lease or any unreasonable formula in the lease in accordance with which an administration charge is calculated.
- 4.5 The Service Charges (Summary of Rights and Obligations) Regulations 2007, made under section 21B of the 1985 Act and taking effect from October 2007, require a landlord serving a demand for service charges to accompany that demand with a statutory notice informing the tenant of his rights. If this is not done, the tenant is entitled to withhold the service charge payments so demanded. The LVT standard

forms of directions may include reference to these Regulations.

Information for tenants

- 4.6 Under section 21 of the Landlord & Tenant Act 1985 a tenant liable to pay service charges may in writing require the landlord, directly or through his agent, to supply him with a written summary of the costs incurred in the last accounting period which are relevant costs in relation to the service charges payable or demanded.
- 4.7 Amongst the information the landlord must provide is the aggregate of any amounts received by the landlord on account of the service charge in respect of relevant dwellings and still standing to the credit of the tenants at the end of the relevant accounting period. The landlord must supply the summary within one month of the request or within 6 months of the end of the accounting period, whichever is the later.
- 4.8 Under section 22 the tenant may, within 6 months of receiving the summary, require the landlord in writing to afford him reasonable facilities for inspecting the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them. The landlord must make those facilities available to the tenant for a period of two months beginning not later than one month after the request was made. Under section 25, failure to comply with the provisions of sections 21 or 22 is a criminal offence. The Commonhold & Leasehold Reform Act 2002 contained provisions amending these sections; but those provisions are not yet in force.
- 4.9 Section 21B(1) provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The summary must be in statutory form, in accordance with the requirements of the Service Charges (Summary of Rights and Obligations and Transitional Provisions) (England) Regulations 2007, which came into force on 1 October 2007. Section 21B(3) provides that a tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand. By section 21B(4), where a tenant withholds a service charge under section 21B any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

Statutory management code

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

retained in the fund and used to defray service charge expenditure.

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

Insurance and Insurance Commissions

- 4.12 Under section 30A of the Landlord & Tenant Act 1985 and the Schedule to the Act, landlords must supply to tenants who contribute to insurance costs a summary of the policy and must also, if the tenant makes a request in writing, permit the tenant to inspect any relevant policy or associated documents and to take copies.
- 4.13 In *Williams –v- Southwark LBC* (2001) 33 HLR 22 (ChD), Lightman J held that an insurance commission payable to a manager is, in effect, a discount on the cost of insurance, which should be passed on to tenants. However, unless the arrangement of insurance is a service included in the management fees under the terms of the management agreement (as the RICS Code recommends), the manager is entitled to make a reasonable charge for arranging insurance. In that case, the Council as manager handled local claims and it was conceded that, in those circumstances, an allowance of 20% made by the insurers was a reasonable fee. However, this type of allowance can be made only where there is evidence of services being performed by the landlord or managing agent for the insurer; also, the amount must be reasonable in all the circumstances.

Costs generally

- 4.14 The Tribunal has no general power to award inter-party costs, though a limited power now exists under Schedule 12 paragraph 10 to the Commonhold & Leasehold Reform Act 2002 to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal from the tenants through the service charge provisions i.e. he is entitled to recover a contribution to such costs not only from the defaulting tenant but from all tenants.
- 4.15 However, under section 20C of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. In the Lands Tribunal case *Tenants of Langford Court –v- Doren Ltd* in 2001 HH Judge Rich QC said that the LVT should use section 20C to avoid injustice. Clearly the manner in which this discretionary power is (or is not) exercised will vary depending upon the facts of each individual case. The relevant factors in this case are discussed in section 5 of this Decision.
- 4.16 In addition, under regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees. This power is likely to be exercised in cases where the applicant is substantially successful, unless he has been guilty of unreasonable conduct in connection with the application, e.g. where he has unreasonably rejected a proposal for mediation or a fair and proper offer of compromise.

5. DISCUSSION AND CONCLUSIONS

- 5.1 The Tribunal took as its starting point the statement of account produced by Mr Woodhouse. Although he challenged the lessee's liability for some items in the statement, Mr Barker accepted that it was an accurate record. The Applicants had placed at issue all service charges and administrative charges since 1 January 2003. However, the Tribunal took as its starting point 3 July 2003, when the balance of the account was nil. The only items earlier in 2003 were ground rent, buildings insurance and management fees, all of which the Tribunal would in any event allow. Mr Barker does challenge the management fees, which are dealt with below.
- 5.2 There is no dispute about the ground rent, which is included in the account. However, the collection of ground rents is not a service to lessees and they are not liable to pay the costs thereof. That is a matter between the landlord and the managing agent. Managing agents frequently collect ground rent; but when considering what management charges are reasonable, the Tribunal does not take that service to the landlord into account. Accordingly, the Tribunal disallows (as between landlord and lessee) management fees claimed for collecting ground rents.
- 5.3 The management fees of Joscelyne Chase are 20% of all costs incurred (plus VAT). The Tribunal would not generally consider a 20% fee for general management services reasonable; however, in this case the fees are modest because very little management has taken place. The principal activity of the managing agent has been to pay bills, maintain financial records and collect service charge and insurance contributions, for which the charges rendered are, in the judgment of the Tribunal, not unreasonable.
- 5.4 Mr Woodhouse told the Tribunal and we accept that the landlord arranges the insurance. The Tribunal further accepts the evidence of Mr Woodhouse that the landlord lets other properties; Mr Woodhouse does not manage them all; his firm received no insurance commission; and he was not aware that the landlord did either (though he had no way of knowing). It would, perhaps, be surprising if the landlord did not receive some commission. However, a landlord is entitled to receive and retain a reasonable commission for arranging insurance, provided always that the resulting charge to leaseholders is reasonable.
- 5.5 The RICS Code recommends a flat rate fee for general management services which is, in the judgment of the Tribunal, a fairer basis of charge. A managing agent would, in addition, be entitled to charge separately for supervising major works; but a fee of 20% for that task would be well above the market rate.
- 5.6 Mr Barker conceded that 20% was a reasonable charge for arranging insurance; but he did not at that stage know that Joscelyne Chase did not, in fact, arrange the insurance of the building. Mr Barker further conceded (perhaps rather generously) that his contribution to the insurance premiums was not unreasonable. He did, however, criticize Mr Woodhouse for not making insurance claims on appropriate occasions. We will return to this issue when considering the performance of

Joscelyne Chase as managing agent and the management fees overall.

- 5.7 Mr Barker challenges a claim for £381.88 in respect of fees paid to solicitors Goldberg Linde in 2005. Mr Barker says that these fees related to the recovery of charges which he paid, albeit not in due time. He says these costs were wasted. Mr Woodhouse argues that the costs were reasonably incurred. He had written to Ms Wass on 8 November 2004 and on 13 January 2005 (see his letter of 18 October 2011). Sums were due and owing and he was entitled to take steps, including the instruction of solicitors, to recover them.
- 5.8 The Goldberg Linde invoice is in the hearing bundle. The evidence at the hearing was to the effect that the work done by Goldberg Linde between 31 January 2005 (when they were first instructed) and May 2005 related essentially to correspondence and the service of a statutory demand. Payment of £804.49 (the balance shown on the account as at 30 December 2004) was received on 7 March 2005. The balance of account throughout that period was never substantially more than £750.00, the minimum sum sufficient to support a statutory demand. Service of a statutory demand was, on any view, a heavy handed remedy. The Tribunal has disallowed management charges for collecting ground rents, which mean that the statement of account was, in any event, wrong, as a result of which the sum claimed by the statutory demand was excessive. It should be noted that service charge amounts falling due after 25 December 2004 were not, under the terms of the lease, recoverable until 25 June 2005.
- 5.9 Most importantly, Mr Barker says, and the Tribunal accepts, that the statutory demand was served in May 2005, two months after the sum demanded had been paid. Correspondence before the Tribunal indicates that this has always been the basis of Mr Barker's refusal to pay the legal fees. The Tribunal concludes that the Goldberg Linde fees were not reasonably incurred. No part of them ought to form part of the service charge account. Nor, in the view of the Tribunal, were they ever payable by Mr Barker or Ms Wass directly. There was never any court order to that effect. True, the lease permits the landlord to claim from the lessee costs incurred in connection with the preparation and service of a section 146 notice. But there is no such provision in relation to a statutory demand.
- 5.10 The statement of account mentions a county court fee of £75.00 incurred on 18 March 2010. Mr Woodhouse told the Tribunal that the county court declined to deal with the case and suggested that the landlord should apply to the LVT. In the judgment of the Tribunal this fee was not reasonably incurred. There were clearly genuine areas of dispute and the Tribunal has found generally in favour of the lessees on the disputed points (as to which see further below). The landlord is not entitled to recover this fee through the service charge nor was Mr Barker or Ms Wass liable to pay it on any other basis. The same is true of further court fees incurred on 1 July 2011 in the sum of £100.00.
- 5.11 On 6 October 2010 court fees in the sum of £100.00 were incurred (of which £16.00 was charged to Mr Barker). The Tribunal understands that this also related to the court proceedings against Mr Barker and Ms Wass. In the judgment of the Tribunal these fees were also unreasonably incurred.

- 5.12 Mr Barker does not dispute any other individual payment listed in the account. He says, however, that the management was not carried out diligently; the property was not well maintained; and this caused him considerable inconvenience and expense. He considered that an insurance claim should have been made in respect of a leak in the roof above his kitchen extension, so that he could recover the cost of re-plastering and redecorating internally after the leak had been repaired. He argues that he management fees are excessive, considering the poor quality of management.
- 5.13 Mr Barker's complaint about the leaky roof appears to have played a considerable part in the history of this dispute. Some time in 2004, it appears, heavy rain tore a brick out of the wall above the lean-to roof. The brick was supporting the gutter, which then leaked. The falling brick damaged to roof slates; there was a bad leak which caused damage to internal plasterwork and decorations. A gutter repair was carried out in January 2005 by M D Alterton at a cost of £120.00. But the lean-to roof was not repaired, despite Mr Barker's requests that this be done. Mr Barker arranged repairs at his own expense. No claim was made on the buildings insurance; Mr Barker was left footing the bill. Meanwhile Mr Barker was withholding service charges. It is not an unfamiliar picture, in the experience of this Tribunal.
- 5.14 The Tribunal has considerable sympathy with Mr Barker's point of view. The landlord or his managing agent must arrange insurance, collect service charges and, if necessary, take reasonable steps to recover arrears. But in addition, it is the managing agent's responsibility to ensure that the landlord's covenants for repair, maintenance and redecoration are performed. Mr Woodhouse said he visited the site regularly to inspect and see what needed to be done. However, in the view of the Tribunal, the condition of the building speaks for itself. It has not been maintained to a reasonable standard. Staining on the wall above the kitchen lean-to roof of No 39B suggests that this leak continued for some time before it was repaired. Invoices from M D Alderton in December 2004 and April 2006 suggest that this has happened twice over a relatively short period.
- 5.15 The landlord is, by Mr Woodhouse's own admission, in breach of the covenant for external redecoration. Perhaps Mr Barker need not have replaced his windows had the outside been regularly decorated in accordance with the lease covenant. Moreover, the Tribunal accepts Mr Barker's contention that the landlord was also in breach of covenant in relation to the leaky kitchen roof. The service charge account shows just how little has been done since 2002. Defects in buildings deteriorate if not dealt with promptly and can become much more expensive to deal with. Unless more attention is paid to the state of the exterior of the building, the lessees may well be in for a nasty shock in the not too distant future.
- 5.16 Nevertheless, with the adjustments mentioned above, the management fees have been modest and, in the judgment of the Tribunal, not unreasonable for the work done. The Tribunal points out that, if major works become necessary in the near future (as seems all too likely) some other, more reasonable basis must be found for management charges in connection with such works if further litigation is to be

avoided.

- 5.17 One other matter of obvious concern to Mr Barker and to this Tribunal is that there is no evidence that any annual accounts for the whole building are ever prepared. This is clearly a serious breach of the RICS Code (which is a statutory code any Court or Tribunal must take into account). Lessees contributing to service charges are entitled to see annual accounts which should generally be independently checked by a qualified accountant. A full statement of account for the whole building is necessary in order to achieve transparency in the basis of the charge. Otherwise, leaseholders cannot check whether they, individually or as a group, are being overcharged.
- 5.18 The Tribunal must next consider how to apportion the service charge account between Ms Wass and Mr Barker. As legal lessee and also as agent for an undisclosed principal Ms Wass was undoubtedly liable for service charges up to 28 October 2008. Once the agency was disclosed, the landlord, through his agent, was entitled to choose which to sue in respect of the period when Ms Wass was lessee. Mr Woodhouse elected to pursue Ms Wass. Once Mr Barker had made it clear that he would pay whatever was due and owing, whether incurred before or after the date of assignment, it is not clear why Mr Woodhouse did not follow the simpler course of pursuing Mr Barker who was, after all, the one who was refusing to pay. One possible explanation is that he thought Ms Wass would not be in a good position to mount an effective challenge to the sums claimed up to 28 October 2008, while Mr Barker would be unable to challenge charges prior to 30 October 2008.
- 5.19 Be that as it may, Mr Woodhouse seeks to sever the two liabilities by claiming against Mr Barker only in respect of charges incurred from 30 October 2008 onwards. On that basis, events prior to 30 October 2008 would be irrelevant to the claim against Mr Barker. However, Mr Woodhouse has at all material times treated the account as a single running account and Mr Barker has dealt with it on that basis. Accordingly, the Tribunal considers that, in order to ascertain what Mr Barker is now liable to pay, it is necessary to ascertain the true balance of account as at 30 October 2008 and then to give credit for sums paid by Ms Wass. Thus, for example, Mr Barker will receive credit in respect of the disallowance of the Goldberg Linde fees in 2005.
- 5.20 It is clear that the balance owed by Ms Wass up to the date of assignment was not more than £793.22. An assignee of a lease (as Ms Wass was) is not nowadays generally liable for rents and service charges except during his or her time as leaseholder. It is clear that the Applicants in this case do not hold Ms Wass responsible for rents or service charges arising after 28 October 2008; hence the terms of settlement comprised in the draft Consent Order. But the LVT has no general power to award costs. Accordingly, in the judgment of this Tribunal, as between the Applicants and Mr Barker, the whole sum of £1,300.00 paid by Ms Wass should be regarded as a credit against the service charge account.
- 5.21 As the Appendix hereto shows, the adjusted balance of account as at 26 December 2012 was £1,679.49. Deducting £1,300.00, the Tribunal concludes that the net sum payable by Mr Barker in respect of ground rents, service charges and insurance

contributions is £379.49. The Tribunal makes a declaration accordingly.

Costs

- 5.22 This Tribunal takes the view that it has a wide discretion to exercise its powers under section 20C in order to avoid injustice to tenants. In many cases, it would be unjust if a successful tenant applicant were obliged to contribute to the legal costs of the unsuccessful landlord or, irrespective of the outcome, if the tenant were obliged to contribute to costs incurred unnecessarily or wastefully. In many cases, it would be equally unjust were non-party tenants obliged to bear any part of the landlord's costs.
- 5.23 However, in some cases, the landlord's conduct of his defence may be a reasonable exercise of management powers even if he loses. The landlord may have made an offer the tenant ought to have accepted. In such cases, it might be reasonable for the tenants generally to bear those costs. In other cases, for example where the non-party tenants supported the unsuccessful landlord, it might be reasonable for the non-party tenants to contribute to the landlord's costs. A wide variety of circumstances may occur and the section permits the Tribunal to make appropriate orders on the facts of each case.
- 5.24 Mr Woodhouse told the Tribunal that he had been instructed by the Applicants to represent them at the hearing. He has provided a costs schedule which can be summarised as follows: -

| | |
|--------------------------------------|-----------------|
| Attendance at County Court July 2010 | 300.00 |
| Attendance at LVT PTR | 350.00 |
| Preparation of LVT papers | 150.00 |
| Correspondence | 120.00 |
| Attendance at hearing of 16 Feb 2012 | 750.00 |
| Travelling expenses | 30.40 |
| Postage and copying | <u>47.42</u> |
| | 1,747.82 |
| VAT @ 20% | <u>349.56</u> |
| TOTAL | <u>2,097.38</u> |

- 5.25 The Applicants have been successful before this Tribunal to the extent that Mr Barker has been found to owe the Applicants money. However, Mr Barker has been overall the winner because he has persuaded the Tribunal on a number of important issues and reduced the values of the claim against him to a relatively small fraction of the sum claimed, which turned out to be £1,542.44. Clearly, there is no question of an award of costs against Mr Barker as the Tribunal has no power to make such an award (and would not make such an order if it did have such power). The Tribunal must, however, consider whether the Applicants should be permitted to add some or all of the costs claimed to the service charge account.
- 5.26 The Tribunal has found that it was unreasonable to bring proceedings in the County Court without first seeking a determination for the Tribunal. The Tribunal also takes the view that the PTR hearing would have been unnecessary had Mr Woodhouse grappled from the start with the necessity to name Mr Barker as a Respondent and

effect due service on Ms Wass.

- 5.27 Accordingly, the Tribunal would, if necessary, find that, in any event, the costs of attendance at the PTR were unreasonably incurred. Moreover, the balance of the profit costs claimed (£1,020 plus VAT) are disproportionate to the sum recovered. In the County Court, fixed costs only would be payable in respect of such a small claim. In the judgment of the Tribunal, by far the most significant cause of this dispute has been poor management and inadequate management practice; in particular serious failure to communicate adequately with Mr Barker and to address the issues raised by him. Broadly, the Tribunal accepts the submissions made by Mr Barker in his letter of 7 February 2011 to the Tribunal
- 5.28 Overall, on the information available to date, the Tribunal concludes that it would be just and equitable in the circumstances of the case to order that the landlord should be disentitled from treating his costs of and arising out of the application as relevant costs to be taken into account in determining any service charge relating to the property. The Tribunal accordingly makes an order under section 20C of the 1985 Act to the effect that neither any part of the costs claimed by Mr Woodhouse nor the Application and Hearing fees shall be included in any service charge account for 38 or 39 The Close, Dunmow.

Geraint M Jones MA LLM (Cantab)
Chairman
27 March 2012



Heckford Norton

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Our ref: MEK/JK/WAS0006-2
Your Ref: CAM/22UQ/LSC/2011/0055

15 February 2012

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URGENT

AND BY FAX 01223 843224

For the attention of Mr J Childe

Dear Sirs

**Re: Our Client: Ms Cheryl Wass
Your Case Ref: CAM/22UQ/LSC/2011/0055
Property: 39b The Close, Great Dunmow, Essex CM6 1EW**



We continue to act for our above-named client, who is, of course, the 1st Respondent, in the above referenced proceedings.

We now enclose a copy of a Consent Order, which records the settlement reached between the Applicants and our client. We would be grateful if our letter and the enclosed Consent Order were to be passed to the Tribunal Chairman.

In the light of the settlement reached, our client will not be attending the Hearing tomorrow, Thursday 16 February. Obviously to save legal costs, our client will not be represented. Mr Woodhouse, who is representing the Applicant, is aware of this. We simply stress that our client wishes to keep legal costs to a minimum and no discourtesy is intended to the Tribunal by nobody appearing on behalf of our client and our client not attending.

You will note that this letter has also been copied to Mr Woodhouse and the 2nd Respondent, Mr Barker. Whilst not strictly a concern of our client, for the sake of clarity, our client's compromise with the Applicant was made without prejudice to the 2nd Respondent's case, which is now limited to any liability for service charge and costs from 28 October 2008.

If you require any further information, then please do not hesitate to contact our reference.

Yours faithfully

HECKFORD NORTON

Encs.

cc. Joscelyne Chase, 16 - 20 Bank Street, Braintree, Essex CM7 1UP
Mr W O Barker, 39b The Close, Great Dunmow, Essex CM6 1EW

Residential Property Tribunal Service
Eastern Region
Unit C4 Quern House
Mill Court, Great Shelford
Cambridgeshire
CB22 5LD

Our ref: MEK/JK/WAS0006-2
Your Ref: CAM/22UQ/LSC/2011/0055

15 February 2012

Litigation Fax: (01438) 357342
Email: mek@heckfordnorton.co.uk

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Mr W O Barker, 39b The Close, Great Dunmow, Essex CM6 1EW

IN THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
EASTERN REGION

CASE NO. CAM/22UQ/LSC/2011/0055

IN THE MATTER OF 39B THE CLOSE, GREAT DUNMOW, ESSEX CM16 1EW
BETWEEN:

MR G B HALIBARD & MRS M HALIBARD

Applicants

and

MS C E WASS (1)
MR W O BARKER (2)

Respondents

CONSENT ORDER
RECORDING SETTLEMENT BETWEEN
APPLICANTS AND 1ST RESPONDENT

UPON the Applicants and 1st Respondent (Ms Wass) having reached terms of settlement

AND UPON the 1st Respondent making no admission of liability

AND UPON it being agreed and accepted by the Applicants that the 1st Respondent assigned the Lease of the Property dated 20 May 1988 ("the Lease") to the 2nd Respondent on 28 October 2008

IT IS AGREED THAT:

1. The 1st Respondent do pay to the Applicants' representatives £1,300.00 (one thousand three hundred pounds) in full and final settlement of:
 - (a) all claims for service charge and ground rent (as set out in the Applicants' representatives' attached Schedule); and

MS CE Wass / Mr W Barker

Re: 39B The Close, Dunmow

| Date | Description | Debit | Credit | Running Total |
|------------|--|--------|--------|---------------|
| 02.08.2002 | Statement of account due | 376.94 | | 376.94 |
| 10.12.2002 | Tenant Payment of rent | | 376.94 | - |
| 25.12.2002 | Ground rent Due | 25.00 | | 25.00 |
| 25.12.2002 | Management Fees @ 20% | 5.00 | | 30.00 |
| 25.12.2002 | Vat on Managment fees @ 17.50% | 0.87 | | 30.87 |
| 13.05.2003 | Payment of rent | | 30.87 | - |
| 25.06.2003 | Ground rent Due | 25.00 | | 25.00 |
| 25.06.2003 | Building Insurance Due | 291.59 | | 316.59 |
| 25.06.2003 | Management Fees @ 20% | 63.32 | | 379.91 |
| 25.06.2003 | Vat @ 17.50% | 11.08 | | 390.99 |
| 03.07.2003 | Payment of Rent,Bld Insurance & Vat | | 390.99 | 0.00 |
| 18.07.2003 | Byford & Co Inv 1291 Prop @ 12% of £716.75 | 86.01 | | 86.01 |
| 18.07.2003 | Fees on Works @ 20% | 17.20 | | 103.21 |
| 18.07.2003 | Vat on Fees on Works @ 17.5% | 3.01 | | 106.22 |
| 02.09.2003 | Byford & Co Inv 1234 Prop @ 12% of £880.22 | 105.62 | | 211.84 |
| 02.09.2003 | Fees on Works @ 20% | 21.12 | | 232.96 |
| 02.09.2003 | Vat on Fees on Works @ 17.5% | 3.70 | | 236.66 |
| 25.12.2003 | Ground Rent Due | 25.00 | | 261.66 |
| 25.12.2003 | Management Fees @ 20% | 5.00 | | 266.66 |
| 25.12.2003 | Vat on Management Fees @ 17.50% | 0.87 | | 267.53 |
| 30.03.2004 | Tenant Payment of rent | | 236.66 | 30.87 |
| 20.07.2004 | Proportion of Chimney Repairs @ 16%Hiskey | 261.32 | | 292.19 |
| 20.07.2004 | Management Fees @ 20% | 52.26 | | 344.45 |
| 20.07.2004 | Vat on Management Fees @ 17.50% | 9.14 | | 353.59 |
| 20.07.2004 | Proportion of Insurance | 263.39 | | 616.98 |
| 20.07.2004 | Management Fees @ 20% | 52.67 | | 669.65 |
| 20.07.2004 | Vat on Management Fees @ 17.50% | 9.21 | | 678.86 |
| 20.07.2004 | Ground Rent due 24.6.04 | 25.00 | | 703.86 |
| 20.07.2004 | Management Fees @ 20% | 5.00 | | 708.86 |
| 20.07.2004 | Vat on Management Charge @ 17.50% | 0.87 | | 709.73 |
| | Byfords Under-charges 26/06/03 | 28.67 | | 738.40 |
| | Byfords Under-charges 28/04/03 | 35.22 | | 773.62 |
| 30.12.2004 | Ground Rent Due 25.12.2004 | 25.00 | | 798.62 |
| 30.12.2004 | Management Fees @ 20% | 5.00 | | 803.62 |
| 30.12.2004 | Vat on Management Fees @ 17.50% | 0.87 | | 804.49 |
| 04.01.2005 | M D Alderton-Guttering JC 0955 16% Exp | 19.20 | | 823.69 |
| 04.01.2005 | Agency Fees on Works @ 20% | 3.84 | | 827.53 |
| 04.01.2005 | Vat on Fees on Works @ 17.5% | 0.67 | | 828.20 |
| 07.03.2005 | Payment from tenant | | 804.49 | 23.71 |
| 05.04.2005 | Pop.of Ins. Primary Insurance JC 1024 | 273.93 | | 297.64 |
| 05.04.2005 | Agency Fees s @ 20% | 54.79 | | 352.43 |
| 05.04.2005 | Vat on Fees @ 17.5% | 9.59 | | 362.02 |
| 20.06.2005 | Goldberg Linde JC 1074 | 381.88 | | 743.90 |
| 24.06.2005 | Ground Rent Due | 25.00 | | 768.90 |
| 24.06.2005 | Agency Charge @ 20% | 5.00 | | 773.90 |
| 24.06.2005 | Vat @ 17.50% | 0.87 | | 774.77 |
| 08.09.2005 | Tenant Payment of rent | | 392.98 | 381.79 |
| 03.02.2006 | Tenant Payment of rent | | 30.87 | 350.92 |
| 25.12.2005 | Ground Rent Due December 2005 | 25.00 | | 375.92 |
| 25.12.2005 | Agency Charge @ 20% | 5.00 | | 380.92 |
| 25.12.2005 | Vat on Agency Charges @ 17.50% | 0.87 | | 381.79 |
| 24.04.2006 | M D Alderton-Inv 436 JC 1291 16% prop | 11.52 | | 393.31 |
| 18.05.2006 | Primary Ins 16% prop | 284.89 | | 678.20 |
| 24.06.2006 | Ground Rent Due | 25.00 | | 703.20 |
| 24.06.2006 | Agency Charge @ 20% | 5.00 | | 708.20 |
| 24.06.2006 | Balance Carried Forward | | | 708.20 |
| 24.06.2006 | Vat on Agency Charge @ 17.50% | 0.87 | | 709.07 |
| 26.07.2006 | Agency Charge @ 20% | 2.30 | | 711.37 |

| | | | | |
|------------|--|--------|-----------|----------|
| 26.07.2006 | Vat on Agency Charge @ 17.50% | 0.40 | -£ | 711.77 |
| 26.07.2006 | Agency Charge @ 20% on Prop Ins | 56.98 | -£ | 768.75 |
| 26.07.2006 | Vat on Agency Charge @ 17.50% | 9.97 | -£ | 778.72 |
| 21.08.2006 | Payment from tenant | | 327.28 -£ | 451.44 |
| 25.12.2006 | Ground Rent Due | 25.00 | -£ | 476.44 |
| 25.12.2006 | Agency Charge @ 20% | 5.00 | -£ | 481.44 |
| 25.12.2006 | Vat on Agency Charge @ 17.50% | 0.87 | -£ | 482.31 |
| 18.04.2007 | Primary Insurance | 296.29 | -£ | 778.60 |
| 18.04.2007 | Agency Charge @ 20% | 59.26 | -£ | 837.86 |
| 18.04.2007 | Vat on Agency Charge @ 17.50% | 10.37 | -£ | 848.23 |
| 24.06.2007 | Ground Rent Due | 25.00 | -£ | 873.23 |
| 24.06.2007 | Agency Charge @ 20% | 5.00 | -£ | 878.23 |
| 24.06.2007 | Vat on Agency Charge @ 17.50% | 0.87 | -£ | 879.10 |
| 25.12.2007 | Ground Rent Due | 25.00 | -£ | 904.10 |
| 25.12.2007 | Agency Charge @ 20% | 5.00 | -£ | 909.10 |
| 25.12.2007 | Vat on Agency Charge @ 17.50% | 0.87 | -£ | 909.97 |
| 28.01.2008 | Payment from tenant | | 528.18 -£ | 381.79 |
| 25.03.2008 | primary Insurance | 308.14 | -£ | 689.93 |
| 25.03.2008 | Agency Charge @ 20% | 61.63 | -£ | 751.56 |
| 25.03.2008 | Vat on Agency Charge @ 17.50% | 10.79 | -£ | 762.35 |
| 24.06.2008 | Ground Rent Due June 2008 | 25.00 | -£ | 787.35 |
| 24.06.2008 | Agency Charge @ 20% | 5.00 | -£ | 792.35 |
| 24.06.2008 | Vat on Agency Charge @ 17.50% | 0.87 | -£ | 793.22 |
| 25.12.2008 | Ground Rent Due | 25.00 | -£ | 818.22 |
| 25.12.2008 | Agency Charge @ 20% | 5.00 | -£ | 823.22 |
| 25.12.2008 | Vat on Agency Charge @ 15% | 0.75 | -£ | 823.97 |
| 06.05.2009 | Primary Insurance | 320.46 | -£ | 1,144.43 |
| 06.05.2009 | Agency Charge @ 20% | 64.09 | -£ | 1,208.52 |
| 06.05.2009 | Vat on Agency Charge @ 15% | 9.61 | -£ | 1,218.13 |
| 24.06.2009 | Ground Rent Due | 25.00 | -£ | 1,243.13 |
| 24.06.2009 | Agency Charge @ 20% | 5.00 | -£ | 1,248.13 |
| 24.06.2009 | Vat on Agency Charge @ 15% | 0.75 | -£ | 1,248.88 |
| 08.07.2009 | M D Alderton Inv 1076 JC 2094 | 20.56 | -£ | 1,269.44 |
| 08.07.2009 | Agency Charge @ 20% | 4.11 | -£ | 1,273.55 |
| 08.07.2009 | Vat on Agency Charge @ 15% | 0.61 | -£ | 1,274.16 |
| 25.12.2009 | Ground Rent Due | 25.00 | -£ | 1,299.16 |
| 25.12.2009 | Agency Charge @ 20% | 5.00 | -£ | 1,304.16 |
| 25.12.2009 | Vat on Agency Charge @ 15% | 0.75 | -£ | 1,304.91 |
| 18.03.2010 | County Court Fee | 75.00 | -£ | 1,379.91 |
| 24.06.2010 | Ground rent due 24.06.10, stmt 11098 | 25.00 | -£ | 1,404.91 |
| 24.06.2010 | Agency charge @ 20% | 5.00 | -£ | 1,409.91 |
| 24.06.2010 | Vat on agency charge at 17.5% | 0.88 | -£ | 1,410.79 |
| 01.07.2010 | M D Alderton inv 1277 PL 10748 | 17.86 | -£ | 1,428.65 |
| 01.07.2010 | Agency charge @ 20% | 3.57 | -£ | 1,432.22 |
| 01.07.2010 | Vat on agency charge @ 17.5% | 0.62 | -£ | 1,432.84 |
| 16.08.2010 | Primary insurance Apr 10-Apr 11 | 324.46 | -£ | 1,757.30 |
| 16.08.2010 | Agency charge @ 20% on insurance | 64.89 | -£ | 1,822.19 |
| 16.08.2010 | VAT on agency charge @ 17.5% | 11.36 | -£ | 1,833.55 |
| 18.08.2010 | M D Alderton inv 1076 re-decs extra charge | 22.27 | -£ | 1,855.82 |
| 06.10.2010 | HMCS court fee @ £100 | 16.00 | -£ | 1,871.82 |
| 16.12.2010 | Ground rent due 25th Dec 10 half yrly | 25.00 | -£ | 1,896.82 |
| 16.12.2010 | Agency fees @ 20% | 12.65 | -£ | 1,909.47 |
| 16.12.2010 | Vat on agency fees @ 17.5% | 2.21 | -£ | 1,911.68 |
| 04.01.2011 | Contribution by chq from W O Barker | | 68.00 -£ | 1,843.68 |
| 08.06.2011 | Insurance apr 11 to apr 12 | 329.99 | -£ | 2,173.67 |
| 08.06.2011 | Agency fee on insurance @ 20% | 66.00 | -£ | 2,239.67 |
| 08.06.2011 | Vat on agency fee @ 20% | 13.20 | -£ | 2,252.87 |
| 24.06.2011 | Ground rent due 24th June | 25.00 | -£ | 2,277.87 |
| 24.06.2011 | Agency fee @ 20% on ground rent | 5.00 | -£ | 2,282.87 |
| 24.06.2011 | Vat on agency fee @ 20% | 1.00 | -£ | 2,283.87 |
| 27.06.2011 | Payment by chq from Barker | | 25.00 -£ | 2,258.87 |