

7775

**H.M. COURTS & TRIBUNALS SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL**

**Sections 19, 27A and 20C of the Landlord and Tenant Act 1985 (as amended)**  
**("the Act")**

<b>Case Number:</b>	<b>CHI/21UG/LIS/2011/0067</b>
<b>Property:</b>	<b>Flats 8,9,10,11,19 &amp; 20 Georgian Close, Hastings Road, Bexhill-on-Sea, East Sussex TN40 2NN</b>
<b>Applicant:</b>	<b>Mr CH Kaye (Flat 10) Mr and Mrs Bellamy (Flat 11) Mr M E Clark (Flat 8) Mrs HM Wright (Flat 9) Mrs JE Roberts (Flat 19) E Dineen (Flat 20)</b>
<b>Respondent:</b>	<b>Ground Rent Investment Corporation Ltd</b>
<b>Appearances for Applicants:</b>	<b>Mr CH Kaye, assisted by Mr Bellamy (Mrs Kaye, Mrs Bellamy and Mrs Wright were also present)</b>
<b>Appearances for Respondent:</b>	<b>Mr G John, assisted by Mr Samuels</b>
<b>Date of hearing</b>	<b>10 April 2012</b>
<b>Tribunal:</b>	<b>Ms E Morrison LLB JD (Lawyer Chairman) Mr A Mackay FRICS (Valuer Member)</b>
<b>Date of the Tribunal's Decision:</b>	<b>18 April 2012</b>

## **The Applications**

1. The Applicant leaseholders applied under section 27A (and 19) of the Act for a determination of their liability to pay service charges for service charge years 2004 – 2010 (seven years). The Respondent is the freeholder of the block.
2. The Tribunal also had before it an application under s 20C of the Act that the Respondent's costs of these proceedings should not be recoverable through future service charges.

## **Summary of Decision**

3. In respect of 2004, the service charges demanded by the Respondent were not disputed. For each year 2005-2010 the Tribunal has determined the service charges recoverable by the Respondent. These are set out in the Appendix to this decision.
4. An order is made under section 20C.

## **Inspection**

5. The Tribunal inspected the subject property on the morning of 10 April 2012, immediately before the hearing. Mr Kaye, Mr Bellamy and Mr John were present.
6. Georgian Close is a purpose-built development circa 1961 consisting of 4 blocks of flats. There are 6 flats in each of blocks A and B, which have three storeys, and 4 flats in each of blocks C and D, which have two storeys. The buildings are of brick with pitched roofs behind a brick parapet. To the rear of the Close, there is a compound of garages. These garages do not form part of the leases of the flats and were excluded for the purposes of this determination. The road, giving access to the garages, runs between blocks A and B on one side, and blocks C and D on the other.
7. Each flat has access onto a common entrance hallway and staircase. The hallways have largely wooden flooring; the stairways are terrazzo. The Tribunal's attention was drawn to the fact that some hallways and stairways were not clean. Many of the flats have replacement uPVC windows. The common parts windows, porches and doors are timber and in need of repair and redecoration. Attention was drawn to the position of the electricity supplies in the communal ways and their unboxed form.
8. There are areas of lawn to the front and rear of each block (save the rear of block B) with narrow borders of plants and shrubs. Mr Kaye pointed out areas of border in the gardens which he said are planted by the lessees at their own expense and tended by them. He also indicated areas of border which he said were neglected and drew the Tribunal's attention to weeds in the lawn and borders adjoining the paths.

## **The Lease**

9. The Tribunal had before it a copy of the lease for Flat 10 and was told that all other leases were in similar form, save in respect of the amount of the on account service charge. The lease was for a term of 999 years from 29 September 1960 with a yearly ground rent of £15.75.

10. The relevant provisions in the lease may be summarised as follows:
- (a) Costs relating to maintenance and repair of the roof are paid for only by the leaseholders in the block in respect of which the costs are incurred;
  - (b) Other service charge costs are apportioned equally among the 20 flats;
  - (c) The managing agents may charge up to 5% of all service charge expenditure as their fee;
  - (d) A payment on account of the service charge is payable on 25 March of each year. In the case of Flat 10 and eleven of the other flats, the sum payable is £30; in the case of seven flats the sum payable is £40; in the case of Flat 12, the Tribunal was told that the sum increased from £40 to £300 in 2006 pursuant to a Deed of Variation;
  - (e) The lessor is to provide each lessee with a statement of expenditure for the previous calendar year as soon as possible after the following 1 January;
  - (f) Any excess paid by a lessee may be carried forward; any deficit is payable by within 21 days.

### **Representation and Evidence at the Hearing**

- 11. Mr Kaye, assisted by Mr Bellamy, presented the case for those Applicants who appeared. There was no appearance by or on behalf of Mr Clark, Mrs Roberts or E Dineen.
- 12. Mr G John of Geoffrey John & Partners, the Respondent's managing agents, assisted by his employee Mr Samuels, presented the case for the Respondent.
- 13. No other witnesses appeared. Both sides relied on and referred to the documents filed and served prior to the hearing.

### **Preliminary Matter**

- 14. The Respondent to the application had been named variously as Mr R T Caine and Holmes Property Group. It was clarified at the outset of the hearing that the freeholder is Ground Rent Investment Corporation Ltd (with which Mr Caine and Holmes Property Group are both connected) and the name of the Respondent is amended accordingly.

### **The Law**

- 15. The Tribunal has power under Section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable. However, no application may be made in respect of a matter which has been admitted or agreed by a tenant.
- 16. By section 19 of the Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
- 17. Section 20B provides that costs incurred more than 18 months before a demand is made for their payment will not be recoverable unless within that period the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the

payment of a service charge. The case of *Gilje v Charlegrove Securities* [2003] EWHC 1284 (Ch) establishes that s20B has no application where on account payments have been made.

18. Under section 20C the a tenant may apply for an order that all or any of the costs incurred in connection with proceedings before a leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

## **Evidence and Submissions**

### **Service Charge Year 2004**

19. It transpired that the Applicants did not actually challenge any of the items of expenditure in the service charge accounts prepared for this year. Mr Kaye's concern was limited to the fact that he and one other leaseholder have received statements of their individual service charge accounts which continue to demand a balance (in Mr Kaye's case the sum is £129.98) due for this year. Mr Kaye contended that no monies were owed and referred to a letter from the previous managing agents SPMC dated 16 January 2006 describing this charge as 'a mystery'.
20. Mr John explained that his firm took over management in March 2006 and the balances due had been taken from a completion statement they had received on the take-over. He had no further information.

### **Service Charge Year 2005**

#### Electricity

21. Mr Kaye challenged the figure of £527.81 on the basis that he had seen no supporting invoices. He referred to a conversation with an electricity supplier employee who had attended the property around the time that the managing agents had changed in March 2006, when the employee said that money had been owing for a long time. He queried why Geoffrey John should seek to collect this money as it related to a period before they took over the management.
22. In response, Mr John relied on the certificate of chartered accountants at the foot of the accounts, confirming that they had 'examined the various vouchers, receipts and other documents provided to us ... and that the above written details are a fair and accurate summary...'. He said that copy invoices for the period prior to his firm taking over management had been supplied to Mr Kaye but some were missing and had not been located.

#### Cleaning

23. Charged at £912.89, Mr Kaye contended that cleaning costs were not covered by the service charge provisions in the lease. Furthermore, the cleaning had been done to a low standard. In Block B the leaseholders had told the managing agents in February 2005 that they no longer required a cleaner.
24. Mr Samuels accepted that the word 'cleaning' did not appear in the lease, and made no other comment.

### Gardening

25. This was charged at £1063.76 and again there were no supporting vouchers. Mr Kaye referred to the previous decision of the Tribunal dated 16 June 2005, which had determined that a reasonable gardening charge was £860 p.a. for years 2001-2003. This was the amount charged in 2004. Mr Kaye contended that in 2005, no gardening had been done until early autumn, by which time the grass was 18" high. It was then mown once, unevenly and badly, and nothing else was done that year. There were no photographs in evidence and Mr Kaye could not produce any contemporaneous letters of complaint, but he said he had not been able to put everything into the Bundle. He thought the charge should be reduced to Nil.
26. Mr John conceded he had no personal knowledge about the gardening in 2005. However he relied on the accountants' certificate to say that there must have been invoices for work done, and the figure appeared reasonable.

### Property Repairs and Surveyors Fees

27. Mr Kaye said he did not recall any repairs and did not know what the surveyors fees were for. He had asked for supporting invoices for 2005 but had not been given any at all. Mr John, who took over at the firm when his father Mr John died in early 2010, said there were many boxes of files in the cellar to the office and Mr Samuels said possibly there might be some invoices there, but he didn't know.

### **Service Charge Year 2006**

#### Cleaning

28. Mr Kaye said there had been no cleaning in Block B.

#### Gardening

29. The sum of £381.88 was charged for the period up to 6 March 2006. Mr Kaye said no work was done in this period and there were no supporting invoices. A further £1050 was charged for work in June - December @ £150 p.m. Mr Kaye said the only work done in this period was 6 lawn cuts. Letters of complaint from Mr Kaye dated 3 October 2006 and 14 November 2006 were in the Bundle.
30. Mr John said that when his firm took over management in March 2006 a price was arranged and a specification (in the Bundle) agreed for the gardening. The sum of £150 was payable monthly but not necessarily the same work or amount of work was done each month. He felt the contractor should be trusted. His firm uses a number of garden contactors and he felt that a price of £1800 p.a. was reasonable.

#### Repairs - Davis Electrical £93.04

31. This related to the supply and fitting of a replacement speech/amplifier unit to the door entry system in Block B. Mr Kaye said this work should have been carried out free of charge. He produced a brief extract from a contract (which did not name the parties or subject matter) which referred to free repair and replacement due to wear and tear or faulty workmanship and materials. The fitter had told Mr Kaye he would do it for nothing.

32. Mr Samuels pointed out that the need for the replacement was unknown, but Mr John said he would go along with what Mr Kaye said.

#### Miscellaneous and Bank Charges

33. Mr Kaye contended there was no provision in the lease for such charges to be made. The miscellaneous charges covered postage and the hire of a room for a meeting with the leaseholders when Geoffrey John took over as managing agents.
34. Mr John accepted that if bank charges were not mentioned in the lease, then maybe they could not be charged. He added that any interest earned on the credit balances in the account were deducted from the bank charges that the leaseholders were being asked to pay. He felt the miscellaneous charges were reasonably incurred and pointed out that the cap on management fees in the lease made management of Georgian Close a non-commercial proposition.

#### Audit Fees

35. Mr Kaye objected to the increased audit fee occasioned by having two audits, one for the period up to 6 March 2006 and another at the year end. He thought the first audit was unnecessary.
36. Mr John said it was normal practice to have an audit at the point when one set of managing agents took over from another.

#### **Service Charge Year 2007**

##### Gardening

37. Mr Kaye referred to the charge of £1594.50 as 'silly'. Mr Samuel said that the invoices showed reduction from the agreed £1800 p.a. due to missed visits.

##### Insurance

38. The invoice paid to Barnetts Insurance Brokers for this year's insurance referred to a unspecified 'Administration Charges' included in the amount payable. Mr Kaye queried whether this was chargeable to the leaseholders.
39. Mr Samuels said that an agent of the freeholder dealt with Barnetts to arrange insurance for many properties owned by the freeholder. Barnetts paid the agent a fee for providing the business. In 2007 Geoffrey John was authorised by the FSA to conduct insurance business; that was no longer the case now.

##### Property Repairs

40. A significant number of challenges were made in respect of components of the charge for general property repairs totalling (before crediting £5971.87 insurance receipts) £9112.87. In respect of Block B roof repairs the sum of £646.25 was challenged on the basis that this should have been part of an insurance claim.
- (i) Acorn - £2149.77. Mr Kaye said this was for internal redecoration of Flat 12 consequent to storm damage to the roof of Block B and that the leaseholder of Flat 12 alone, not all the leaseholders of Block B, should pay for this. Mr John did not respond specifically to this. All but £100 of this cost was recovered from the insurers.

- (ii) Ray Bowles - £211.50. Mr Kaye said this charge for repairing the entrance door to Flat 14, which was broken to gain access when the occupant died, was not a proper service charge item. Mr John said this was subject to an insurance claim and as such it was reasonable to charge the excess of £100 not met by the insurers to the service charge.
- (iii) Draincall - £246.75. A second invoice for £1410.00 had been subject to an insurance claim and Mr Kaye contended that this invoice, for a CCTV camera survey of the drains 3 weeks earlier, should also have been claimed under the insurance. Mr Samuels said the insurance only covered repair of damage caused by an insured peril. The camera survey was not covered by insurance.
- (iv) Benbec - £575.00. This was for internal works to Flat 5 which Mr Kaye contended were chargeable only to Flat 5. Mr Samuels said they were necessitated by water damage for which an insurance claim had been made, and all but £100 was recovered.
- (v) Welfords - £998.75. This was for a Fire Risk Assessment Survey. Mr Kaye argued that it should only have been necessary to survey one of the 4 blocks, instead of all of them, as they all had the same electrical installations. Surveying all 4 blocks had unreasonably bulked up the cost. Mr Samuels said that it could not be assumed that all the blocks were in the same condition and the work was reasonable.
- (vi) Bexhill Locksmiths - £8. Mr Kaye queried why he should have to pay for new keys to be cut. Mr Samuels said they were probably for the block front doors and were needed.
- (vii) ASAP - £58.50. Mr Samuels accepted Mr Kaye's contention that this charge for cleaning out the gutters to Block A should be charged only to Block A.
- (viii) Acorn - £646.25. This was a charge to Block B for roof repairs carried out 8 days after more substantial storm damage repairs that were subject to an insurance claim. Mr Kaye contended the second invoice should have been included in the claim as it was so close in time and the invoice referred to 'additional works'. Mr Samuels said the contractors had been asked to inspect the roof while attending to the storm damage to see if anything else was in need of repair. The need for replacement valley was identified but it was not part of the storm damage.

#### Bank charges

41. These were challenged as before.

#### **Service Charge Year 2008**

42. Mr Kaye's primary contention was that S 20B applied to bar recovery of the service charges for 2008 because no accounts or final demand for payment had been received until shortly after 4 February 2011, the date on the accounts. He accepted that during 2008 there had been demands in respect of the on account sum due under the lease and in respect of the insurance premium with 5% mark-up for the managing agents.
43. Mr Samuels referred to the *Gilje* case and argued that s20B would only bite if the leaseholders were taken by surprise by the charges. As Mr Kaye had been at the property for years he knew what charges to expect. Mr Samuels accepted there had been no demands between 2008 and 4 February 2011 for the charges other than as mentioned above.
44. At this point the Tribunal considered the point under s 20B and indicated to the parties its decision that s 20B would apply to limit recovery of the service charges in 2008 to those demanded within 18 months of being incurred or those covered by on account

payments. In light of this ruling there were no further submissions with respect to 2008.

### **Service Charge Year 2009**

45. Mr Kaye submitted that s 20B applied again, and that as he had not received the accounts and final demand until 12 February 2011, costs incurred prior to 12 August 2009 (other than those demanded within 18 months or covered by payments on account) could not be recovered. In light of the Tribunal's earlier ruling on s 20B, Mr John accepted this proposition. The Tribunal then considered the costs incurred from 12 August onwards.

#### Gardening

46. The invoices totalled £610.00 but Mr Kaye suggested a reasonable figure for 12 August to year end would be £250.00. He disputed the truth of an invoice which referred to work being done on Christmas Eve.

#### Property Repairs

47. Mr John identified general building repair costs incurred from 12 August 2009 onwards as being Davis Electrical £43.00 and Robin Mundy £750.00, plus Block B roof repairs Crown Roofing £310.50.

#### Insurance

48. Mr Kaye queried this as for 2007, save that in this year the broker's invoice specifically refers to an 'administration charge' of £600.89 being included in the total payable.

### **Service Charge Year 2010**

#### Electricity

49. Mr Kaye disputed the sum charged of £1202.08 as he had only been provided with 4 invoices that added up to £256.15. Mr John then produced a large bundle of invoices, including many Mr Kaye said he had never seen.

#### Gardening

50. Mr Kaye suggested that £500.00 would be a generous figure, compared with £1240.00 claimed. Mr John relied on the invoices, pointing out that not the same work was done on each attendance. An annual sum had been agreed with the contractor. Although there was no written contract or specification, the sum was based on an hourly rate of £15.00.

#### Surveyors Fees

51. An invoice dated 13 February 2009 for a survey in connection with S 20 consultation in the sum of £1163.57 had been included in the 2010 accounts. Mr Bellamy said the quotes for the work obtained by the managing agents had been so high that the residents all asked the managing agents not to proceed and had obtained their own estimate (the work has not been done). Mr John could not say why this invoice had been charged for in 2009 rather than 2008.

### Block B Roof Repairs

52. Mr Bellamy explained that his flat on the top floor had suffered from water ingress from the roof. The contractor sent by the managing agents had charged £360.00 for repairs which were wholly ineffective and made things worse. He complained to Geoffrey John but nothing was done. In the end the leaseholders in Block B arranged and paid for their own contractor to do the work successfully. Mr Bellamy therefore contended that the charge for £360 was unreasonable. Mr John accepted that a complaint had been made by Mr Bellamy, but made no further comment.

### Insurance

53. Queried as for 2007, save that in this year the broker's invoice specifically includes an 'administration charge' of £618.92 as part of the total charged.

### **Section 20C**

54. Mr Kaye contended that if the leaseholders had been given what they were promised there would have been no need for the LVT application. At this point, he also requested reimbursement of his application fee.
55. Mr John said that despite spending time and effort he had no intention of charging the costs of the proceedings to the service charge.

### **The Tribunal's Determination**

#### **Service Charge Year 2004**

56. The service charge accounts not being disputed at the hearing, the Tribunal makes no determination. It is noted that the figures in these accounts incorporate adjustments made at the previous Tribunal hearing in 2005 with respect to service charge years 2001-2003.
57. The Tribunal can make no determination as whether any particular leaseholder may owe monies in respect of this or earlier years. That is a matter of accounting over which the Tribunal has no jurisdiction. Whatever the position, the lease reserves service charges as rent. The parties' attention is drawn to Section 19 Limitation Act 1980 which provides that no action may be brought to recover rent arrears more than 6 years after the date when they fell due.

#### **Service Charge Year 2005**

### Electricity

58. The charges of £527.81 are allowed. The fact the bills may have been unpaid at one stage does not mean that the costs were not incurred. The charges are not dissimilar to those incurred in 2004 and 2006, and the accountants' certificate provides support for the charges. It makes no difference that there were different managing agents at the time. The service charges are payable to the freeholder.

### Cleaning

59. The Tribunal determines that there is no provision in the lease for cleaning of the common parts to be included in the service charge. Accordingly all cleaning charges are disallowed.

### Gardening

60. Despite the lack of copy invoices, the Tribunal relies on the accountants' certificate that invoices were seen supporting the charges. The only evidence of lack of work, or inadequate standard of work, was Mr Kaye's oral evidence given 7 years after the event. There was no other corroborative evidence. The Tribunal does not consider the available evidence is sufficiently cogent to support a finding of fact in 2012 that either no gardening or sub-standard gardening was carried out in 2005, so the only issue is the amount charged. Costs would have increased since 2001-03, the period considered by the previous Tribunal and this Tribunal finds that a charge of £1063.76 for the year is reasonable in 2005. The garden area is fairly substantial and the Tribunal determines that it would be reasonable for an allowance of £100 p.m. for March – October and £75 p.m. for November – February to be made. This equates to £1100.00 p.a., slightly more than the charge actually made.

### Property Repairs and Surveyors Fees

61. These charges are upheld. They are covered by the accountants' certificate and Mr Kaye's lack of knowledge about these cannot alone support a finding that they were unreasonable.
62. The general expenditure for the year is therefore determined at £6829.46 , plus Block A roof repairs in the sum of £130.15. A full breakdown is found in the Appendix

### **Service Charge Year 2006**

#### Cleaning

63. Disallowed as not provided for in the Lease.

#### Gardening

64. In contrast to 2005, for this year there was corroboration for Mr Kaye's complaints in letters he sent to the managing agents at the time, saying little work was being done. In the absence of evidence to the contrary, the Tribunal finds, on a balance of probabilities, that gardening was not carried out throughout this year. However, no finding is made as to sub-standard work, there being insufficient evidence. Doing the best it can on the sparse evidence available, the Tribunal determines that a sum of £550.00 is payable in respect of gardening for this year, being half of a reasonable charge for work done throughout the year.

#### Repairs – Davis Electrical £93.04

65. Given Mr John's concession at the hearing, this charge is disallowed.

### Miscellaneous and Bank Charges

66. The Tribunal determines that these charges are not payable. They are not covered by the service charge provisions in the lease. It is also pointed out that interest accruing on the service charge bank account belongs to the leaseholders.

### Audit Fees

67. The Tribunal can see no good reason why it would have been reasonable to carry out an additional audit when there was a change in managing agents in March 2006. Indeed, had this not been done, it may well have resulted in a better handover of paperwork to Geoffrey John & Partners, which would have been to everyone's benefit. Accordingly the audit fee is reduced to £352.50, the amount charged in 2005 and 2007.
68. The general expenditure for the year is therefore determined at £6609.92 plus Block A roof repairs in the sum of £89.99 and Block B roof repairs in the sum of £117.50. A full breakdown is found in the Appendix.

### **Service Charge Year 2007**

#### Gardening

69. For the reasons stated above at paragraph 60, the Tribunal determines that a figure of £1100.00 is reasonable for gardening at the property in 2007.

#### Insurance

70. The position is unclear. The broker's invoice, addressed to the freeholder's holding company, does not disclose any connection between the broker and the freeholder, or any payment to the freeholder. However if the freeholder is directly or indirectly benefiting from the commission received by the broker (seemingly referred to misleadingly as an administration charge) without performing a service in return, this commission should be credited to the leaseholders: *Williams v Southwark LBC* [2001] 33 HLR 224 (Ch). There was no evidence before the Tribunal as to what, if any, commission is paid to the freeholder and whether services are provided in return. Accordingly the Tribunal makes no adjustment to the charge for insurance. However the Tribunal recommends that in future any commission arrangements are disclosed in a fully transparent way to the leaseholders. If this is not done, further challenges can be expected.

#### Property Repairs

71. (l) Acorn - £2149.77. This work was required due to storm damage to the roof of Block B which forms part of the retained parts that are the freeholder's responsibility. The damage, which extended into Flat 12 on the top floor, was covered by an insurance claim and the excess not covered by the insurers is properly chargeable to the leaseholders as part of the service charge.

- (ii) Ray Bowles - £211.50. The front door of a flat is not within the common or retained parts under the lease and therefore this charge and the corresponding insurance credit should be removed from the service charge account.
- (iii) Draincall - £246.75. In the absence of any evidence that this charge could have been subject to an insurance claim this item is allowed.
- (iv) Benbec - £575.00. This work was also required following damage to the retained parts for which an insurance claim was made. The excess not paid by the insurers is therefore properly part of the service charge.
- (v) Welfords - £998.75. This charge is allowed. Mr Kaye's argument that the survey should have been limited to one block is unreasonable and unsustainable. There could have been risks in any of the blocks and it was entirely right and proper to survey all of them.
- (vi) Bexhill Locksmiths - £8. This is allowed as a reasonable cost in connection with the common parts.
- (vii) ASAP - £58.50. This charge is reallocated so it is charged only to Block A, as accepted by the Respondent.
- (viii) Acorn - £646.25. This charge is upheld. There is no evidence that it was part of the storm damage for which an insurance claim could be made.

#### Bank charges

- 72. These are disallowed for the reasons already given.
- 73. The general expenditure for the year is therefore determined at £11452.01 plus Block A roof repairs in the sum of £510.19, and Block B roof repairs in the sum of £1179.47. A full breakdown is found in the Appendix.

#### **Service Charge Year 2008**

- 74. Mr Samuel's argument that s 20B of the Act would not apply because leaseholders knew what charges to expect is not accepted. The recent case of *LB of Brent v Shulem B Association Ltd* [2011] EWHC 1663 (Ch) makes clear what degree of notification of costs has to be given to a tenant under s 20(B)(2) to avoid the costs limitation of s20(B)(1). Knowledge of costs in previous years will not suffice.
- 75. As it is accepted that the final accounts and demand for 2008 were sent outside the 18 month period the Tribunal determines that s 20B of the Act applies to limit recovery of service charges to those paid on account or specifically demanded within 18 months of being incurred. There were demands for on account payments totalling £940.00 but there was no evidence before the Tribunal of how much was actually paid. There was a specific demand for the insurance premium totalling £4785.40; the final account shows that the actual cost was £4785.25. The recoverable service charges for the year are therefore limited to £4785.25 plus any payments on account that were made. In the case of Flat 12, if the amount of the insurance premium and any on account payment made exceeds the actual service charge attributable, ignoring the S20B limitation, for Flat 12 for that year (£462.07) the surplus must be carried forward to Flat 12's credit in 2009.
- 76. The general expenditure for the year is therefore determined at £4785.25 and payments on account as set out above.

#### **Service Charge Year 2009**

- 77. The Tribunal finds, and Mr John conceded, that as the final accounts and demand for 2009 were not sent until 12 February 2011, s20B applies to disallow recovery of costs incurred before 12 August 2009, save to the extent these are covered by payments on account or were specifically demanded within 18 months of being incurred. As for 2008, there were demands for on account payments totalling £940.00 but there was no

evidence how much was actually paid. There was also a specific demand for the insurance premium totalling £4606.80.

78. The costs incurred before 12 August 2009, and which are disallowed save as covered above, total £1294.09. These may be recovered only to the extent there were payments on account that may be applied towards these. In the case of Flat 12, if the on account payment made exceeds Flat 12's share of these costs (£64.70) the surplus must be applied to the Flat 12's share of costs incurred after 12 August 2009 or (if appropriate) carried forward to Flat 12's credit in the following year.

The Tribunal then considered the expenditure from 12 August – 31 December 2009.

#### Gardening

79. In 2009 there was a new gardening contractor with whom an hourly rate of £15 was agreed. The Tribunal finds, based on its own knowledge and experience, that this is a reasonable rate for 2009. Between 12 August – 31 December 2009 there are itemised invoices totalling £610.00. There is no reliable evidence that this work was not done or not done to a reasonable standard. Mr Kaye's expectations of a near immaculate garden area are unrealistic given the costs constraints he also demands. The sum of £610.00 is therefore allowed.

#### Property Repairs/Electricity

80. The general building repair costs incurred from 12 August 2009 onwards, being Davis Electrical £43.00 and Robin Mundy £750.00, and Block B roof repairs Crown Roofing £310.50 are allowed, as these were not challenged. Electricity invoices for £224.84 dated November 2009 are also allowed.

#### Insurance

81. No adjustment is made, for the reasons set out at paragraph 70.
82. The general expenditure for the year is therefore determined at £7027.94, Block B roof repairs in the sum of £164.37 and Block D roof repairs in the sum of £164.37. A full breakdown is found in the Appendix. In addition the pre-12 August 2009 expenditure in the sum of £1294.09 may be recovered to the extent it is covered by payments on account.

### **Service Charge Year 2010**

#### Electricity

83. The invoices having been produced at the hearing, the electricity charges are allowed.

#### Gardening

84. The sum of £1240.00 is allowed for the reasons given at paragraph 79 above. The Tribunal notes that this equates to an average of just over £100 p.m., a reasonable amount given the size of the gardens.

#### Surveyors Fees

85. This Invoice is disallowed. It was incurred in February 2009 and was not demanded until after 25 March 2011. It should have been included in the 2009 accounts and is disallowed by virtue of S 20B.

### Block B Roof Repairs

86. In the absence of any real challenge from the managing agents, Mr Bellamy's credible evidence as to the defective nature of the repair work is accepted. The work was not of a reasonable standard as required by s19 and the charge is disallowed.

### Insurance

87. No adjustment is made, for the reasons set out in paragraph 70.
88. The general expenditure for the year is therefore determined at £8568.37, with no recoverable block roof repairs. A full breakdown is found in the Appendix.

### **Section 20C Application**

89. In deciding whether to make an order under section 20C a Tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings. Given the number of service charge years in question and the significant number of disputed charges, it was appropriate to bring this application, meetings having failed to reach a resolution. The recoverable charges for all years save 2004 have been reduced by the Tribunal. The late production of accounts for 2008 and 2009 has contributed to the prolongation of this dispute. Accordingly the Tribunal orders that the Respondent's costs of these proceedings should not be recoverable through future service charges.

### **Reimbursement of Fee**

90. At the conclusion of the hearing Mr Kaye asked the Tribunal to order that his application fee be reimbursed by the Respondent. An order to this effect may be made under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. The Tribunal declines to make such an order, considering it equitable that some financial cost should be borne by the Applicants. They have not succeeded on many points, and the contentious tone of some of Mr Kaye's correspondence has not assisted in resolving matters.

### **Concluding Remarks**

91. Inter-action between the managing agents and at least some of the Applicants has hitherto been characterised by animosity and lack of cooperation. This is not conducive to the proper management of the flats or the effective performance of the freeholder's repairing obligations under the lease. The Tribunal expresses the hope that now the service charges for 2004-2010 have been finally determined, any outstanding balances will be promptly paid. In the event that there are queries with respect to 2011 or future charges, or other management issues, these should be put in writing promptly to the managing agents and the points addressed by them without delay.

Signed

E Morrison

Chairman

Dated: 18 April 2012

**APPENDIX - SERVICE CHARGE ACCOUNTS following LVT's determination**

2005	£
<b>General Expenditure</b>	
Property Insurance	2750.69
Electricity	527.81
Gardening	1063.76
Entry phone system	200
Property Repairs	1112.35
Surveyors Fees	443.38
Audit fees	352.5
	<u>6450.49</u>
Management fees thereon	378.97
	<u>6829.46</u>
<b>Other Expenditure</b>	
Block A roof repairs	122.93
Management fees thereon	7.22
	<u>130.15</u>
<b>2006</b>	
<b>General Expenditure</b>	
Property Insurance	4331.56
Electricity	550.13
Gardening	550
Entry Phone system	200
Property repairs	273.09
Accountancy fees	352.5
	<u>6257.28</u>
Management fees thereon	367.61
	<u>6624.89</u>
Less bank interest received	-14.97
	<u>6609.92</u>
<b>Other Expenditure</b>	
Block A roof repairs	85
Management fees thereon	4.99
	<u>89.99</u>
Block B roof repairs	110.98
Management fees thereon	6.52
	<u>117.5</u>

**2007**

**General Expenditure**

Property insurance	4793.53
Electricity	682.83
Gardening	1100
Entry phone system	200
Property repairs	8842.87
Surveyors fees	399.5
Accountancy fees	352.5
	<u>16371.23</u>
Management fees thereon	961.8
	<u>17333.03</u>
Less insurance monies received	-5860.37
Less bank interest received	-20.65
	<u>11452.01</u>
Block A roof repairs	590.5
Management fees thereon	34.69
Less insurance monies received	-115
	<u>510.19</u>
Block B roof repairs	2693.05
Management fees thereon	158.22
Less insurance monies received	-1671.8
	<u>1179.47</u>

**2008**

**General Expenditure**

Property Insurance	4519.71
Management fees thereon	265.54
	<u>4785.25</u>

Payments on account from individual leaseholders (up to a total of £940.00)  
may also be applied towards other expenditure incurred as explained in the Decision.

**2009**

## General Expenditure

Property Insurance	4606.86
Electricity	224.84
Gardening	610
Property repairs	793
Accountancy fees	<u>412.5</u>
	6647.2
Management fees thereon	<u>382.21</u>
	7029.41
Less bank interest received	<u>-1.47</u>
	<u>7027.94</u>
Block B roof repairs	155.25
Management fees thereon	<u>9.12</u>
	<u>164.37</u>
Block D roof repairs	155.25
Management fees thereon	<u>9.12</u>
	<u>164.37</u>

Payments on account from individual leaseholders (up to a total of £940.00) may also be applied towards pre 12 August 2009 expenditure incurred as explained in the Decision.

## 2010

### General Expenditure

Property Insurance	4745.07
Electricity	1202.08
Gardening	1240
Entry phone	200
Property repairs	286.5
Accountancy fees	<u>420</u>
	8093.65
Management fees thereon	<u>475.5</u>
	8569.15
Less bank interest received	<u>-0.78</u>
	<u>8568.37</u>