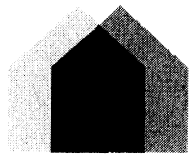

Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AM/LSC/2006/0080

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION

Applicant: London Borough of Hackney

Respondent: Leaseholders in Purpose Built Flats in Hackney

Premises: Leasehold Flats in Purpose Built Blocks in Hackney

Date of Application: 3 March 2006

Date of Hearing: 13 – 14 July and 5 – 6 October

Appearances for Applicant:
Mr N Wijeyesukera – Project Manager, Leasehold Management & Improvement Team
Mr M Ekoja – Leasehold Services Manager
Mr M A Brewer – Neighbourhood Housing Contracts Manager
Mr G Jones – Contract Manager (Pathmeads Housing Association)
Mr D Saxton – Homerton Neighbourhood Manager (Mouchel Parkman (UK) Ltd)
Ms J Fearon – Contract Manager (Pathmeads Housing Association)
Mr E G Nortey – Shoreditch Neighbourhood Area Contract Manager (Pinnacle)
Mr G Quartey – Manager, Suffolk Estate Tenant Management Organisation
Mr R Hollis – Manager, Wyke Estate Tenant Management Organisation

Appearances for Respondent:
Mrs V Carpenter – Chair, North East Leaseholders Association
Mr S Curtis – Chair, Clapton Neighbourhood Leaseholders Association
Mr F Filce – Chair, Borough wide Right to Buy Leaseholders & Freeholders Forum

Leasehold Valuation Tribunal:
Mrs F R Burton LLB LLM MA
Mr P S Roberts Dip Arch RIBA
Mrs G V Barrett JP

Date of Tribunal's Decision: 9 December 2006

LON/00AM/LSC/2006/0080

MULTIPLE RESIDENTIAL LEASEHOLDS IN PURPOSE BUILT BLOCKS IN THE LONDON BOROUGH OF HACKNEY

BACKGROUND

1. This was an application dated 2 March 2006, made pursuant to s 27A of the Landlord and Tenant Act 1985 for determination of liability to pay and reasonableness of a management charge under the terms of Leases of flats in purpose built blocks on estates throughout the London Borough of Hackney, for the service charge year 2006-7

2. On 5 April 2006 the Leasehold Valuation Tribunal issued Directions in the matter requiring the Applicant Council to write to each Lessee affected by the application, detailing the nature and amount of the charge and inviting the Lessees to respond, either to the LVT directly or to their Leasehold Association representatives, and setting the case down for hearing at the LVT's own premises on 13 and 14 July 2006. However a large volume of such responses was received and owing to the local interest in the matter, the venue of the hearing was subsequently changed to larger premises adjacent to the Town Hall in Hackney (and on the second day of the hearings into the Town Hall itself). Finally so as to enable such interested parties to attend and/or their views to be made known, Supplementary Directions were issued on 28 July 2006 to provide for wide advertisement of the resumed hearings, collated representations through the Chairs of the Leaseholders Associations and reconvening of the hearings at the Town Hall (subsequently changed to the superior facilities of the Queensbridge Community Centre).

THE HEARING

3. At the hearing the London Borough of Hackney was represented by Mr Neehara Wijeyesukera, Project Manager of the Leasehold Management and Improvement team of Hackney Homes, a non-profit making limited company which is an arms length organisation ("ALMO") set up by the London Borough of Hackney to manage and improve its housing stock. He explained that Hackney Homes was a management organisation, independent of the Borough Council and managed by a Board with representation of local councillors, local residents and independent members: the London Borough of Hackney remains the Landlord and had received an ISO 9000 quality assurance award. The Lessees were represented by Mrs Violet Carpenter, Chair of the North East Leaseholders Association, Mr Sid Curtis, Chair of the Clapton Neighbourhood Leaseholders Association and Mr Fred Filce, Chair of the Boroughwide Right to Buy Leaseholders and Freeholders Forum. A large number of Lessees attended as observers and a number of individual Lessees also sought permission of the LVT to intervene by raising questions to be answered by the Council's witnesses, separately from those posed by the representatives of the Lessees' associations.

THE CASE FOR THE APPLICANT

4. Mr Wijeyesukera presented the Borough's case in the form of an introductory oral summary, guiding the Tribunal through the 7 volumes of written evidence, which was to be supported by the oral evidence of a number of witnesses who were all tendered for cross examination by the Lessees' representatives. The first of these witnesses was Mr Mike Ekoja, Leasehold Services Manager from the Council's Leasehold and Incomes Services Department. He said that the Borough had entered into contracts with three partners in April 2004 to provide housing management for its tenants and Lessees in the various neighbourhood areas, and the three partners were Mouchel Parkman, Pinnacle PSG and Pathmead Housing Association. Each charged different sums for their management services. These varied between £88.41 and £298.68 per unit per annum depending on the nature and extent of the work required in the area covered by the contract. To begin with the Council had not recharged the costs of these management charges to the Lessees, who had merely paid an administration charge to cover service charge administration and office costs. However there is now an Audit Commission requirement for the Council to recharge these costs in the same way that they recharge the costs of administration (which the Council still retains and which has not been contracted out to the partners). He submitted that the Leases included an obligation on the part of the Lessees to reimburse the Landlord (i.e the Council) for the proper management of the estates and that this obligation included both the administration charges and the new management charges. However the Council was not proposing to charge the full cost of management to the Lessees, and would in fact save further costs (which would otherwise inevitably have to be billed to the Lessees) if instead of charging different amounts in different neighbourhood areas (depending on which of the partners' contracts applied in which neighbourhood) they simply charged a figure in the region of the lowest amount as a flat fee. This would obviate the need to modify computer systems (and increase administration costs). They had therefore decided to charge £87 (£1.41 below the lowest partner's charge to the Council).

5. Mr Ekoja said that the difference between the two charges, which were not duplicated in any way, was that the *administration* charge covered the Council's essential back office functions in collecting and administering service charges i.e the office work connected with the Leases (so the costs included staff salaries and general office expenses besides legal expenses and looking after housing works), whereas the *management* charge and function was to manage the estates in practical terms, such as by providing estate inspections and monitoring, providing neighbourhood offices for contact with Lessees on various matters, dealing with nuisance, harassment and anti social behaviour and generally supporting residents and residents' associations. He said that everything that was done was either expressly stipulated in the Leases, or were associated and necessary for carrying out the Landlord's obligations under the Leases. The administration charge for 2006-7 was estimated to be £122.00 so that with the management charge the total would be £209.00 per Lessee, a relatively low figure amongst London Councils.

6. He said that the Council's Leases were not all identical but the relevant clauses were the same in their effect. By Clause 3(a) the Lessees bind themselves by covenant to pay a due and proper proportion of the costs and expenses incurred by the

Council in carrying out its obligations and functions as Landlord as set out in Clauses 3(a), 6 and 8 and the covenants within Schedule 9. Clause 8 (a) requires the Council to manage each Estate and Block in a reasonable manner and by Clause 8 (a) (1) they are entitled to appoint managers and to pay them properly for their services. Schedule 9 lists the obligations of the Council as set out in the covenants, including, in Paragraph 6, proper maintenance and management of Blocks and Estates. In addition. s 27 of the Housing Act 1985 gives the Council a general power to delegate the management of all or part of their housing stock to another. In April 2004 the preferred bidders were assigned as follows for 7 years: Mouchel Parkman Ltd to Homerton, De Beauvoir and Queensbridge Neighbourhood Areas, Pathmeads Housing Association (formerly Paddington Churches Housing Association) to the North West Neighbourhood Area (Stoke Newington). There were also older contracts: in 1998 Pinnacle PSG Housing Ltd was assigned to Shoreditch Neighbourhood Area and Paddington Churches Housing Association (now Pathmeads) to the North East Neighbourhood Area. The Council had also entered into a number of agreements with Tenant Management Organisations ("TMO"s) who carry out housing management functions for the Council for which standard Modular Management Agreements were used. There was a wider range of unit management costs amongst TMOs (between £108.58 and £482.82 p.a.) for which the TMOs were all paid a management allowance although the Council intended only to recover the same £87 per Lessee as elsewhere.

7. Mr Ekoja said that following the introduction of consultation for "Qualifying Long Term Agreements" (i.e. those entered into by a Landlord for more than 12 months) the Council was obliged to consult Lessees before entering into any agreement for more than 12 months that would cost a Lessee more than £100 per year. He said that as the 2004 contracts with Mouchel Parkman and Pathmeads were Qualifying Long Term Agreements and the statutory consultation was not carried out the Council was limiting its recovery to £87 per Lessee in respect of the 2004 contracts; however, although the 1998 contracts and those with the TMOs were outside the consultation requirements of the Act the same limit of £87 per Lessee was voluntarily being applied to them for the reasons of cost effectiveness and consistency which he had already explained. He added that all Lessees had been informed of these arrangements by letters dated 11 April 2006.

8. In response to questions from the Tribunal, Mr Ekoja said that the Council's tenants (as opposed to the Lessees who had purchased their flats through the Right to Buy Scheme) paid towards all service charges through their rents (so that their service charge element was, of course, not within the LVT's jurisdiction since the 1985 Act only applied to Lessees). He said that the significant variation between the charges of the different partners could be better addressed by a later witness, Malcolm Brewer.

9. Cross examined by Mrs Carpenter, Mr Ekoja said that he did not know why the audit report which had generated the requirement to charge the Lessees for the management costs had not been shown to Lessees. He insisted that the management charge did not duplicate any aspect of the administration charge already levied and that there was no provision in the Council Tax budget to address anti social behaviour, as that budget was directed to other Council expenditure, whereas security on council estates was the province of housing management. In response to Mr Filce,

who wanted to know how much tenants were paying towards the management and administration elements of the Lessees' service charges, Mr Ekoja pointed out that this was irrelevant as the LVT only had jurisdiction over Lessees ' service charges. Mr Curtis questioned the wide variation in the contract prices over the different neighbourhood areas and expressed concern that the 2 older contracts are due for re-tendering to come into effect in 2007. Further questions from individual Lessees (despite a clear explanation from the Tribunal of the nature of the evidence which they needed to hear) unfortunately confirmed Lessees' widespread misunderstanding of the nature of the hearing which they saw as a forum for complaint rather than for investigation of the validity and reasonable quantum of the Council's charges to Lessees: however some useful queries were raised (i) as to whether the information services in the neighbourhood offices were effective and offered value, since some Lessees reported that they could not get information from that source and were simply passed from person to person and (ii) whether there was in fact some duplication between the administration and management charges, but it appeared that Mr Ekoja was not the witness who was able to answer such queries, which were the province of the partners' managers who were yet to give evidence. In re-examination Mr Wijeyesukera pointed out that the information services at neighbourhood offices included advice on debt and welfare.

10. Mr Wijeyesukera next called Mr Malcolm Alexander Brewer, Neighbourhood Housing Contracts Manager for Hackney Homes. He had prior to April 2006 occupied the same position with Hackney Housing Services. He said that he oversaw two neighbourhood areas, Shoreditch and De Beauvoir and Queensbridge. There were 5 Neighbourhood Offices located at Shoreditch, De Beauvoir and Queensbridge, Homerton, North East and North West, with Sub-Offices in Shoreditch and North East . He said that his areas had 24% of the Borough's total managed housing stock. The Neighbourhood Offices were intended to be a "one stop shop" for both tenants and Lessees: all the residents associations were called "Tenants' and Residents' Associations" so there was no discrimination between the two types of residents. He set out the services which were provided by the offices. These basically provided a customer focused reception delivering customer handling through personal visit, telephone, written or electronic communication. This covered consultation on all sorts of issues, monitoring of and addressing problems with contractor services: it covered questionnaires on cleaning, ground maintenance, refuse collection (including abandoned vehicles and fly tipping) repairs and improvements, besides handling queries and complaints of all sorts, including neighbourhood disputes, anti social behaviour and noise nuisance, and authorising changes to Lessees' homes. He detailed the meetings attended, mostly directed to quarterly monitoring for quality assurance including the Neighbourhood Leaseholder Forum and other public meetings of various groups as required. He mentioned that there was also attendance at walkabouts, exhibitions and open evenings. In answer to questions from the Tribunal as to why all these services which he had previously delivered for the Council "in house" were now farmed out to the partners, Mr Brewer said that in 2002 they had decided to trial 3 neighbourhoods not already managed by contractors (North East and Shoreditch). He then described the tendering process for the long list of services provided, in respect of which he insisted there was no overlap between administration and management charges.

11. Cross examined by Mrs Carpenter, Mr Filce and Mr Curtis, Mr Brewer insisted that even if Neighbourhood Office staff were not yet adequately trained to answer all Lessees' queries they were still receiving extra training. He insisted that the Council had done its best to investigate the ability to deliver the required services when choosing from tenderers. He agreed that not all the contractual services were always delivered satisfactorily but pointed out that there was a process for obtaining refunds for such non-delivery (although the Chairs of the Associations all insisted that any such complaints took a very long time to resolve, and any refunds even longer). In answer to questions from the Tribunal as to the wide divergence between the partners' tender figures for essentially the same menu of services, Mr Brewer said that there might be many commercial reasons for tendering at low rates, such as a desire to obtain the contract besides which there were differences between the respective demands presented by the differing neighbourhoods. He insisted that the full range of services were being provided and that there were no problems with the successful bidders. In re-examination, Mr Wijeyesukera established that the ISO auditor had checked the menu of services to see if the partners were delivering the programme.

12. Mr Wijeyesukera then called Mr Glyn Jones, a Contract Manager employed by Pathmeads Housing Association in the North East Neighbourhood area of Stamford Hill and Clapton. Mr Jones said he had been employed by Pathmeads since 1999. The company was responsible for delivering housing management to 7,500 residents in the area, including 2,000 Lessees' property, and 80 of Pathmeads' 200 staff were deployed in the North East Neighbourhood. He set out the menu of services provided (which were not dissimilar to those already described by Mr Ekoja and Mr Brewer save for the greater emphasis on control of anti social behaviour, noise nuisance and negligent property damage, together with the provision of a Street Warden Scheme). He said that the fee charged was £386 for managing each property in his area regardless of whether it is tenanted or leasehold, and that the fee was higher than other contracts administered by Pathmeads because of the wider range of services provided to the North East Neighbourhood. He added that he considered that there was an obligation to consult with the residents about services to be delivered and that this had been inspired by the growing number of Right to Buy residents which had generated positive results outside the normal remit of estate management. In answer to questions from the Tribunal he insisted that he was able to distinguish between feedback from Lessees and from tenants since there were specific leasehold associations. He agreed that the unit charge was at the high end of the scale but explained that Hackney in general generated high management costs: the partners had had to take on the existing Hackney Council staff and although the cost of any major works and emergency out of hours cover were not included in Pathmeads' management charges, repairs and maintenance were. He admitted that Pathmeads' delivery had not always been successful but insisted that it had improved in the current year.

13. Cross examined by Mrs Carpenter, Mr Filce and Mr Curtis, Mr Jones agreed that some of his staff might well be the same as those whom Lessees had found unsatisfactory when they worked for the Council but this was being addressed by training. He also agreed that if a manager is not performing satisfactorily residents probably would suffer from neighbourhood disturbance and that there were instances of repairs uncompleted and not satisfactorily signed off, although he insisted that in his own case he had always attempted to resolve ongoing issues despite Mrs

Carpenter's claims that she was herself still not getting service despite repeatedly trying to obtain it. He conceded that there probably were examples of other Lessees with the same problem in the North East Neighbourhood Area. In re-examination Mr Wijeyesukera established that the obligation to keep former Hackney Council staff in the partners' organisations was dictated by the TUPE regulations which were an integral part of employment legislation dictating arrangements for employees when a business was taken over (and not by the Council).

14. Mr Wijeyesukera next called Mr David Saxton, a Neighbourhood Manager employed by Mouchel Parkman (UK) Limited for the Homerton Neighbourhood Area. He said that the company manages 8000 properties in the area of which 1661 are leasehold and that Mouchel Parkman employs 53 staff in the Homerton, De Beauvoir and Queensbridge Neighbourhood offices. He added that the partnership provides a comprehensive range of services to both tenanted and leasehold properties in line with other areas but that in his Neighbourhood leaseholders specifically benefited from an anti-social behaviour casework resolution service, Witness and Victim Support, youth intervention and support (specifically by diverting energy in this age group into football with which he had helpful assistance from Arsenal), complaints resolution and neighbourhood disputes resolution, as well as the standard services such as car parking, tenant consultation, walkabout inspections and a wide variety of meetings. He said that anti social behaviour was a general problem, involving gangs, criminal activity of all sorts, drugs and harassment, and that the benefit of addressing these problems in the neighbourhood programme was available to everyone, tenants and leaseholders alike. There was also a valuable programme to address social exclusion. In answer to questions from the Tribunal as to whether the provision of football was within the Landlord's obligations, he said that it was a proactive method for addressing the proper management of the estate in an area where anti social behaviour was present.

15. Cross examined by Mrs Carpenter, Mr Curtis and Mr Filce, Mr Saxton confirmed that copies of the 3 types of the Borough's Leases were kept in his Neighbourhood Office but that he personally had not read them. He said that he did not manage repairs as this was done by the administration function of Hackney Homes and not by the partners, but that he could confirm that the Neighbourhood Office staff had been given training in answering queries in relation to obligations of both Landlord and Lessees under the leases and that more was being provided. He said he was aware that one officer had not engaged properly with the training session which he attended but that this had been the subject of disciplinary action. He insisted that there was comprehensive staff training in place and continuing and that there had been discussion of developing a programme of competences so that it was possible to ensure that all neighbourhood office staff were adequately prepared to provide answers to residents.

INSPECTION OF THE ESTATES

16. Following the conclusion of the second morning's hearing, the Tribunal spent a day and a half inspecting the estates Borough wide, specifically seeking out a wide variety of typical examples of estates and blocks within them. After a half day orientation tour, they set out (on a further day and without prior notice either to the

Council or to Lessees) to familiarise themselves with the Borough's estate housing stock, looking at as many estates as possible, and seeking a cross section by age and date of construction, neighbourhood and area within neighbourhoods, and by type of property (high rise, low rise and mixed design profile). At the same time they were careful to ensure that a fair cross section of the partnerships' work was seen in all areas and types, and that they included in their sample a Neighbourhood Office and other community buildings. They noted numerous instances of very large estates under renovation and many heavily scaffolded buildings. They also noted that throughout the Borough there was a surprisingly low incidence of graffiti and rubbish nuisance, together with little evidence of unkempt vegetation, tired, shabby or neglected buildings not apparently part of current renovation programmes or of a police presence, although all of these were present in those locations in which the Tribunal had been warned such problems were currently routine, notably in parts of the North East Neighbourhood area. Most external areas were well landscaped and maintained and there was evidence of regular cleaning.

THE RECONVENED HEARING

17. When the hearing reconvened on 5 October at the Queensbridge Community Centre Mrs Carpenter raised as a preliminary issue concerns about the advertisements placed in accordance with the Supplementary Directions of 28 July 2006. She said that there had been no notices in any language other than English and the Directions had not been displayed in her own residential area of Woodberry Down. Some residents had also written in to the LVT to say that they were confused about the date and location of the reconvene as these had both been changed from the Town Hall where she thought some people she had expected to see at the hearing might have gone by mistake. She said that the wrong date and venue had remained on the Council's website after the changes in both had been made, although there had been ample time for these to be corrected following the decision to move the hearing to the Queensbridge Community Centre and to delay the reconvene date by one day. In response Mr Wijeyesukera said that the change of date and venue had both been advertised in the Hackney Gazette and, to cater for the large Turkish community, in a Turkish newspaper. Notices had also been placed in the Freeholders and Leaseholders Newsletter sent out in September and in the Borough libraries. The website had been amended on 26 September. He did not consider that there was a critical issue in the absence of any Lessees who might have gone to the Town Hall since they would be sent on to the correct venue, and in any case the representatives of the Leaseholders Associations were all present to put the case of the Lessees as stipulated by the Directions, whether or not the individual Lessees turned up to the hearing. The Tribunal then determined that there had been no breach of natural justice which might have prejudiced the individual Lessees in securing a hearing for their views and the hearing duly recommenced.

18. Continuing the case for Hackney Homes, Mr Wijeyesukera called Ms Jacqueline Fearon, a Contract Manager employed by Pathmeads Housing Association and based in the North West Neighbourhood Office. She said she had been employed by Pathmeads since 1 April 2004 and was responsible for delivering the contract services in her area, which managed about 1,450 leasehold properties out of a total of about 5000 properties. She said Pathmeads was registered with the Industrial and

Provident Societies, its activities were supervised by the Genesis Housing Group and The Housing Corporation and it currently employed 200 staff, 34 of whom were deployed on the North West contract area. She detailed the usual range of services provided but also worked with a range of other service providers (Social Services, Environmental Services, Legal Services, Estate Safety, Metropolitan Police, Learning Trust, Youth Services etc) in a collaborative way to achieve performance targets to benefit all the residents of Hackney, including reducing costs and achieving improvements in repairs services. She mentioned annual contract reviews, training and staff development as a means of improving resident satisfaction, ensuring full staff training, supervision and appraisal. She said that Pathmeads rated customer care highly, using newsletters and surveys to monitor customer communication and publishing service standards, in addition to all the usual meetings, walkabouts and other processes used in all the neighbourhood areas, and had a kiosk delivered information service which meant that Lessees did not need their own computers. She added that there was substantial Lessee involvement and any complaints went through a structured process. In answer to questions from the Tribunal, she said that the kiosks had included information about the reconvened LVT hearing, and she had herself been sure to send in details of the changed dates and venue.

19. Cross examined by Mrs Carpenter, Mr Curtis and Mr Filce, Ms Fearon said that if complaints were made they were immediately passed on to the relevant department and followed up to see that action had been taken and when e.g. through the cleaners who would report. She said that if information was required by Lessees about alleged arrears neighbourhood Office staff would have access to computer records and could give out the required information. She confirmed the responses of other managers that there were copies of the main types of Leases in the Neighbourhood Offices (in the case of her area there were 4 types) and that training had been conducted and was ongoing so that staff were able to answer Lessees' queries.

20. Mr Wijeyesukera then called Mr Emmanual George Nortey, a Contract Manager employed by Pinnacle in the Shoreditch Neighbourhood Area. He said he had been employed by Pinnacle for 10 years but had held his present position since June 2004: the contract under which he worked was an old, pre 2004, agreement.. He said Pinnacle managed approximately 6,200 properties in the area of which 1,700 were leasehold. The company employed 60 staff attached to the Shoreditch Neighbourhood Office. He detailed the usual range of services of which the Tribunal had heard from his colleague managers in other areas, but added that in Shoreditch, as in some other areas, there was an incidence of anti social behaviour, including noise nuisance and harassment necessitating working with other agencies to investigate, handle and process cases and taking appropriate legal action through the courts, besides helping with benefits advice. He said he actively looked for resident participation, but as not all estates had a residents association "interested parties" were invited to participate in any case. Repairs were prioritised not only by Health and Safety therefore but where there was an interest by residents also (but Mr Nortey said this was not his area of responsibility, but that of Hackney Homes who had retained that work in their administration division so that he only informed them of the need for repairs). In answer to questions from the Tribunal about the progress of the Decent Homes work in Shoreditch, Mr Nortey said that this was ongoing and was due to be finished in 2010. He agreed that there was an unkempt appearance in some

locations, such as the Arden Estate, where the Tribunal had noted a very dilapidated block. He said he had a staff to property ratio similar to the private sector, with a manager for each 450 properties.

21. Cross examined by Mrs Carpenter, MrCurtis and Mr Filce, Mr Nortey agreed that although the service standard for formal walkabout inspections was apparently at least twice a year, he conducted his only annually (but added that he did in fact conduct a more minor inspection at 6 weekly intervals and was aware that Pathmeads did theirs only quarterly). He said that these arrangements were dictated by the budget, although he did not distinguish between tenants and leaseholders and aimed to deliver his obligation to keep the buildings and environment in good condition. He said there were 4 or 5 different types of lease in his area. He recognised that the Decent Homes initiative would compromise cleaning while the works were ongoing and he tried to add value where possible to compensate. He accepted that grass could not be cut when scaffolding was up around buildings, alhough he logged complaints. However he did accept that complaints might be current for some time as some scaffolding was up for 6 months. He said that where Lessees' property was damaged he helped them as quickly as possible by raising a repair job ticket and sending an invoice as the system did not allow him to carry out the repair directly. In re-examination Mr Wijeyesukera established that 33% of the current year's Decent Homes budget was being spent in the area and that Hackney Homes looked at the trend of spending and took that level into account when deciding which properties to prioritise for refurbishment.

22. Mr Wijeyesukera next called Mr Griffith Quartey, a Tenant Management Organisation ("TMO"), Manager for the Suffolk Estate. He said he was responsible for managing the resources of the TMO (which comprised an allowance from the Council for housing management) in providing housing services to residents on the Suffolk Estate, and was responsible to the Suffolk TMO Management Committee which was comprised of 9 tenants and 1 Lessee. The TMO was registered with the Industrial and Provident Society now administered by the Financial Services Authority. His responsibilities were very similar to the menu of services described by other managers. He managed 298 units including about 80 leaseholder properties. He said he had 6 staff including caretakers, who inspected fortnightly, mowed and swept the grounds and saw that lamps were working (which was a Health and Safety requirement). In answer to questions from the Tribunal he agreed that his service charge costs represented £1,000 p.a. per unit, but that included horticulture, repairs and maintenance, and pointed the Tribunal to his accounts on the file which showed how the money was deployed. He said that the accounts were audited and estimates were based on the previous year's costs. The blocks were ageing (dating from the 1960s) and generated problems such as rubbish. The actual costs of managing the TMO were £503.30 per unit p.a. but in common with the other areas only £87 would be charged. Mrs Carpenter and Mr Filce had no questions to ask of Mr Quartey but in response to Mr Curtis Mr Quartey confirmed that he did check whether services were delivered or not.

23. Mr Wijeyesukera then called Mr Roger Hollis, a manager employed by the Wyke Estae TMO. He said he had been employed by the TMO since 1999, managed 3 staff and 415 properties of which 76 were leasehold, and was responsible to the Wyke Estate Management Board of 13. The democratic structure was the same as in

other TMOs whereby the residents had to buy shares which enabled them to be members and to vote at Annual General Meetings. His menu of services was very similar to Mr Quartey's and those of the Neighbourhood Managers, and like Mr Quartey he had an allowance for housing management from the Council (Hackney Homes) which he administered under the supervision of the Management Board comprised of tenants and leaseholders. His accounts were audited as Mr Quartey's. Mr Hollis directed the Tribunal to the breakdown of costs on the file. In answer to questions from the Tribunal as to why the Wyke Estate was apparently managed for half the cost (and with half the staff) of the Suffolk Estate, he was unable to assist save to say that although the Wyke Estate buildings were of 1960s vintage, of mixed high and low rise, there were no particular structural or inherent social problems, although they did suffer from vandalism and graffiti. The Chairs of the Leaseholders Associations had no questions to ask of Mr Hollis.

24. As no manager was available from Queensbridge Neighbourhood Office to give evidence, Mr Wijeyesukera recalled Mr David Saxton, a Senior Manager whose own area engaged in certain elements of cooperative work with Queensbridge. Asked by the Tribunal to highlight difference between his own (Homerton) area and Queensbridge practice, Mr Saxton said that there was much anti social behaviour in the Queensbridge Neighbourhood: only one person had gone into the Queensbridge Neighbourhood Office to see the files of evidence for the LVT hearing. He said that the football coaching which was a successful tool in controlling anti social behaviour in Homerton was also available to Queensbridge residents. The Chartermark inspector had met residents who were complimentary about this scheme. Otherwise he was aware that the menu of services was very similar to those in his own area, and Queensbridge like all areas were turning performance round within the Council target times. Systems were cost effective at keeping costs down. Complaints were automatically logged and actioned as in other areas and the workflow management system was automated. Tenants were supportive of these systems since it was realised that if Lessees did not pay their share of services the tenants would pay in increased rent. In answer to questions from the Tribunal, Mr Saxton was unable to explain in any detail why charges in Homerton and Queensbridge were cheaper than others, but agreed that there were economies of scale in that some facilities were shared and some staff worked in both areas. He said that the Decent Homes Initiative work had not yet begun in the area, but when it did this would help in controlling the current anti social behaviour. In answer to cross-examination from Mrs Carpenter, he said that Lessee queries were answered by customer service staff all of whom had had customer service training (early in 2006). This process was the same as in Homerton, all staff having access to the sample leases, working closely with Hackney Homes, which enabled the team managers to refer residents' concerns, and using the same practices as in Homerton. The same services were supplied to tenants and Lessees, and all residents were kept informed through Newsletters (which were required by the contract). He said there was a contract with the cleaners for delivery of the Newsletters to each unit.

THE CASE FOR THE RESPONDENTS

25. Mr Curtis, for the Clapton Leaseholders Association, said that he had no further evidence to present on behalf of the Respondents who had approached him.

He pointed to the numerous statements in support of the Lessees' resistance to the Council's application which were in the files before the Tribunal. He said that some services were simply not being provided. Higher service standards were required and should have been achieved before the charges were levied. Sometimes surgeries and other meetings were not provided although promised and monitoring not done, for example an instance of lighting left on from August to Christmas despite complaints, which must have been missed by inspections or simply not actioned; also a leaking boiler in a small block in Clapton. He conceded that rubbish was collected and graffiti controlled, external repairs done, and that anti social behaviour was rare in his area. He said that where this existed it was usually due to Lessees subletting to noisy tenants, although he had seen no backing of police or community support officers and did not himself use the kiosk information areas. Accordingly, it would have been nice to have had some warning of the proposed charge as it had come as "a blow" to people to have 2 charges, with bills in effect suddenly doubling. As Mrs Carpenter had already commented, it would have been better to have had an improvement in service first and the new charge afterwards, rather than the other way around.

26. For the Boroughwide Forum, Mr Filce said that his Respondent members' case could be summarised briefly. They did not agree with an extra £87 p.a. being charged to them. The Neighbourhood Offices were not effective and should have been so before the charge was levied, although he and his members preferred little or nothing to do with offices in which they had no confidence because the staff there always "passed the buck" and did not deal with queries. Moreover he considered that leases were written for solicitors, the Neighbourhood Office staff did not understand them. He said that services were better when management was run by the Council, and although he could "get sense" from some employees from that time who remained working for the partners through the TUPE provisions, there were others who were "useless": for example, despite all the talk of inspections and walkabouts there was a recent example of a rusty unusable rubbish bin which had not been replaced after 4 weeks of reported complaints. There was graffiti, and anti social behaviour incidents had not been addressed until he personally went to the Chief Executive whom he happened to know. He did not agree that the management contracts helped to reduce crime, as when this arose he always had to visit a councillor in order to get something done. Some of Mouchel Parkman's employees were hopelessly incompetent, although he considered it would not matter if they were not, as the point was that Mouchel Parkman hated the idea of having to deal with Lessees. Cross examined by MrWijeyesukera, Mr Filce conceded that the Council had assisted in arranging a Forum Awareness Day in order to help build membership of the organisation which Mr Filce represented, and to introduce the partners to them, but did not agree that training of the partners' employees was effective or that the services allegedly being provided were working as the staff were so unprofessional. He reiterated that the "pillar to post" syndrome continued, preventing any real change taking place. The dustbin was a case in point – it had been reported by 2 Lessees and 3 tenants and himself and was still in situ and not dealt with.

27. For the North East Leasehold Association, Mrs Violet Carpenter said that her Association had grown out of an earlier one set up in the late 1990s which had more recently been developed in response to Lessees' desire to have an effective voice of their own after Pathmeads had set up a Tenants' and Residents' Association in 2001. Surveys had shown that Lessees were not happy with the services being

provided by the Council's partners under present arrangements. She quoted from the Council Leasehold manual, displayed on the Council website, which explained that the Council was obliged to recover its costs of providing its leasehold management service which they did by dividing the total costs by the number of freeholder and leaseholder units in a "straight line apportionment method" so that everyone paid the same and was said to include "supervising and managing services". She said there had never been any definition of these "supervising and managing services". It was her Association's experience that Pathmeads was not yet equipped to offer a full service to leaseholders: for example in 2000 in the Stamford Hill area they had requested a dedicated Leasehold Support Officer but this had not been actioned until 2003 and the Leasehold Support Officer had stayed only 6 months. A replacement was in post for only 12 months, and a third had been offered permanent employment in January 2006 after 6 months in post. She added that the Audit Commission had carried out a mock inspection in 2005 and had apparently found the Leaseholder Service weak, although no one outside the Council had ultimately been allowed to see their report, despite its general circulation having initially been promised. However, this had generated a programme of training for Estate Managers, which Lessees had been invited to attend; nevertheless, during these sessions it had become apparent to Leaseholders that the staff who were being trained were unable to deliver a suitable service since they had never even seen the relevant Leases and the training time allocated was insufficient to address the many questions that these Estate Managers wished to ask. She said that this unsatisfactory state of affairs had since been confirmed by Lessees who had attended the neighbourhood offices and had been passed on from the office without obtaining the service required.

28. Mrs Carpenter continued that the range of services provided varied from estate to estate. She considered the estate inspections and systems for dealing with anti social behaviour, harassment ad neighbourhood disputes were inadequate and that some other services were duplicated, for example the administration charge on top of major works bills, since Lessees were already paying an administration charge before the new management charge was proposed. She said that estate inspections and walkabouts did not happen if there was no Residents Association to see that they took place. Moreover, there appeared to be no definitive list of the services which were supposed to be covered by "management", for example at a meeting at Joseph Court at which an Estates Manager had distributed a paper listing her duties it had been noted that nowhere in the paper was there any reference to leasehold management.

29 Mrs Carpenter said that the 2006 Hackney Homes Audit Report had identified issues not addressed since the previous audit. In particular she pointed to cleaning issues and produced photographs (taken in September 2006) of extensive accumulated rubbish lying about uncollected. The report had identified inadequate knowledge and training of managers, incomplete records, inconsistent quality and systems, insufficiently regular meetings, consultation and feedback, and insufficient resident involvement. She said that some Lessees waited for a year for refunds for unsatisfactory services such as repairs. They were quite willing to pay for services but not for services not received and/or of an inadequate standard. Cross examined by Mr Wijeyesukera, she did not agree that there had been any improvement in recent times.

30. With the Tribunal's consent, Mr Wijeyesukera recalled Mr Glyn Jones to

address Mrs Carpenter's concerns, in particular in relation to the Woodberry Down Estate. He said that Pathmeads had sub-contracted the cleaning in the Stamford Hill area to a company called ISS Ltd. He said that Lessees paid a separate sum for cleaning which was not related to the management charge, and that if they are dissatisfied with the cleaning service they can apply for a refund: Mrs Carpenter had made several complaints in the past and, after investigation, refunds had been authorised. He said that the Woodberry Down area highlighted by Mrs Carpenter was currently the subject of a large scale regeneration programme taking place over a period of 15 years. He said the specific area which she had pointed to was behind a row of shops to Woodberry Grove where there was a high level of fly tipping by shop owners, people moving out and people actually coming on to the estate specifically to dump rubbish. Rubbish collected in the area had more than doubled in the past 2 years. A CCTV camera had been installed to try to address the problem. He had personally arranged a bulk rubbish collection on 5 September 2006 and considered that the rubbish identified by Mrs Carpenter might have been the subject of that collection. He said that Pathmeads accepted that there was room for improvement and the Woodberry Down projects were attempting to address this sort of problem. He also produced some photographs showing the areas which were apparently previously covered in rubbish duly cleared.

31. Cross examined by Mrs Carpenter, Mr Jones conceded that refunds did take some time to obtain, as there would be a period of negotiation in which he would employ an expert, and refunds had been dealt with going back as far as 2001. He said the expert had said that Lessees should have a refund in May 2006 of 40% of the relevant charges (although Lessees had asked for 60%). In answer to Mrs Carpenter's question as to why Lessees should have to pay service charges during the regeneration works which left the estates in such a mess, he said that inevitably some estates were harder than others to keep clear during such periods, and that Woodberry Down was more problematic than others, but that regeneration would produce good results in the end. He declined to agree with her that but for the Residents Associations nothing would be done, but did concede that their monitoring was helpful as their hands on interest "got things done".

32. Mrs Carpenter then called Mrs Maureen Irvine, a resident of Seaton Point, Clapton, a tower block refurbished in 2000 and run by Pathmeads. She said that her estate had 400 properties, and services such as a nursery, youth facility and a pensioners' club, but she considered that the Pathmeads management did not contribute significantly as the staff could not answer Lessees' questions, there were repetitive problems, the Clock House kiosk was not helpful (as access to it was necessary by bus and Lessees had to be computer literate in order to use it) and the (unrecognised) Nightingale Tenants Association was the catalyst for getting things done. There were significant Anti Social Behaviour and vandalism problems. There were numerous issues not addressed, for example an oil spillage, 5 foot high weeds, a basement not padlocked, lights left on for months on end (Christmas to August in 2006). The tenants had monitored all these and eventually gone to a councillor at a surgery. She said staff apparently did not see any of these problems although there was always a spectacular improvement on monitoring days which led her to ask why tenants should give up 2 hours for such a visit which would find nothing wrong for that reason. Cross examined by Mr Wijeyesukera, who put it to her that the concierges in blocks such as hers were subsidised, she insisted that the new contracts

were worse than the old arrangements, and although she was aware that the wardens were a new service, problems in fact arose after 9 p.m. when the wardens went off duty (which Mr Wijeyesukera considered demonstrated the need for estate management). Mrs Irvine however countered that anyone minded to disrupt the area and who had any intelligence simply waited for the wardens to go off before doing so. She said that when she went to the neighbourhood office the telephone was always ringing all the time as the staff were speaking to Landlord Services since they were unable to answer questions themselves.

FINAL SUBMISSIONS

ON BEHALF OF THE RESPONDENTS

33 . Summing up the case for the Lessees, Mrs Carpenter said that she was sure that the reduced attendance at the reconvened hearing was the result of the Council's conflicting information given on their website and that we should not underestimate the strength of feeling amongst the Lessees. She considered that 100 people had been misled about the venue and dates of the reconvene and she knew that at least one TMO manager had gone to the Town Hall. She submitted that standards were inadequate, the neighbourhood office staff had inadequate knowledge of leases and their operation, and the cleaning was certainly inadequate as had been demonstrated. She considered that Lessees should have sat on the panels which had considered the tenders; two current contracts were being retendered and if new companies were appointed she feared there would be a new contract with less services. She further considered that Joseph Court was a well run estate and that it should be used as a training facility for managers of other estates. She said that the Chief Executive had written a letter stating that all estates should achieve the same high standards (a sentiment with which she agreed) but she submitted that residents should not have to be proactive to see that services were delivered in order to maintain high standards. She said that the Council's application to the LVT showed that they were not confident of their standards. She submitted that no management charge should be levied until standards were acceptable, in particular at Woodberry Down where monitoring of standards had clearly been relinquished to residents. She further submitted that the Council should not be allowed to recharge the costs of the application to Lessees and asked for a s 20C order to be made to prevent this.

ON BEHALF OF THE APPLICANTS

34. For the Council, Mr Wijeyesukera submitted that there was a clear basis in law for levying the new charge, which was, together with the charges currently made for the administrative (office) function of dealing with the Lessees and their Leases, the "management charge" permitted by the Leases in clauses 3, 6 and 8, and Schedule 9, as set out in Mr Ekoja's witness statement. He referred the Tribunal to these documents in Volume 1 of the files before them. He said that Hackney Homes ensured standards across the 5 neighbourhoods as part of its obligations under the Leases. He said that the mixed estates, whose residents were both tenants and Lessees, were difficult to manage and the costs of doing so exceeded the proposed charge. The standard rate of £87 had been chosen for the reasons set out in the documentation in Volume 2 of the files so as not to disadvantage any Lessee no matter on which estate they resided, although some areas generated huge costs. He

submitted that even where some services were not provided the Lessees were nevertheless pleased with the housing management, and that shared training and other facilities reduced costs in some areas. He said that Hackney Homes was anxious to maintain a good standard and that competitive forces and market conditions were ensuring a reasonable charge and setting benchmarks. He submitted that some other London councils were charging much more, and that the Council had not applied to the LVT out of any lack of confidence but to make sure that the charge was considered reasonable and to uphold themselves to a public process.

35. Mr Wijeyesukera conceded that the case of the Lessees had been well put by the Associations, especially in highlighting discrepancies in delivery despite an overall improving service in which government funding, the service charges and rents were all contributing to improvements borough wide and the improving overall service to which he had referred. He said the capital costs being incurred now would contribute to lower costs in the future especially in relation to the Decent Homes Initiative. Certain areas of the Borough's housing stock would need more spent than others. He submitted that there was an auditing and monitoring system in place as set out in the documentation in Volumes 3 and 4 which would lead to better standards: Shoreditch already had the Customer Chartermark and the rest of the Borough would get it in due course: the mechanisms and processes were in place to provide the services, monitor and improve them even if everything was not yet provided at the optimum level of perfection. The Council had to charge in order to improve, there was no possibility of improving first and only charging later. He said there was in fact no duplication. Major works were always separate from management and administration functions. Reduction of costs could be achieved in various ways and estimates were done each year even if ultimately the actual cost was different. In particular the TMOs were given an annual allowance which permitted them to develop their own services and as a registered social landlord the Council backed TMOs where appropriate. He said there were already savings in the current contracts.

COSTS OF THE HEARING

36. Mr Wijeyesukera said that he would supply a breakdown of the costs of the hearing which would be charged to the administration element of the service charge. There would be a figure in the administration charge for legal services, but the costs of counsel had been saved by doing all the work within the Council's existing legal services. There would clearly be a cost for hire of halls, the public address system and the refreshments, plus advertising and printing.

DECISION

38. The Tribunal approached the decision on three points: (1) Whether the Leases permitted the new management charge to be made in addition to the administration charge already levied; (2) Whether all services were within the terms of the Leases; (3) Whether there was any duplication. The Tribunal also considered the costs of the application to the LVT and the Lessees' application for a s 20C order to prevent these costs being applied to the service charge.

(1) The right to levy the charge

39. The right of the Council to charge a management charge in addition to the existing administration charge is clearly established by the terms of the Leases which permit an interim charge. The Landlord has clear obligations under the terms of the Leases as set out in the Council's statement on pages 25-27 of Volume 1 of the files before us, which reproduce the relevant clauses of the Leases which define the relationship between the Landlord and the Lessees: Clause 3(A) requires the Lessees to pay a "due and proper proportion of the costs and expenses incurred by the Council in carrying out the obligations and functions set out in Clauses 3(A), 6 and 8 and the Covenants in Schedule 9; by Clause 8 (A) the Council covenants to manage the Estate and Block in a reasonable manner and Clause 8(a) (1) entitles the Council to appoint managing agents for the purposes of managing the Estate and Block and to remunerate them properly for their services. At page 25 of the Council's statement the services are detailed which will be provided by the partners appointed to manage the estates in a list numbered (a) to (n) all of which are necessary to or associated with the proper delivery of the Landlord's obligations. While the Lessees say that some of these services are not delivered, there does appear to us to be ongoing training designed to deliver an improving service. The administration charge is totally separate as is made clear at page 26 and is justified by Clause 8 of the Lease and Clause 6 of Schedule 9.

40. If there is a criticism that may be made of the Council it is that the existing "administration charge" is a misnomer and that it has been notified to the Lessees in terms which have created a public relations disaster. The Leases permit the Council to charge both for the administration function and the management function, but *both* are properly termed the "management charge", the result being that in addition to the existing (office work) administration charge which they have always paid the Lessees must now also pay the estate management element so that the *total* "management charge" under the terms of the Lease is the sum of the two, in the current year the inclusive sum of £209. This is due to the fact that the management element has been pegged at £87 event though in most neighbourhoods the actual costs are more. In short the Lessees should be glad that they have *previously* not been paying for the new services, which were formerly provided by the Council without charge, instead of complaining that it is now to be levied, since the alternative would doubtless be an increase in some other liability, such as the council tax, since the Council must balance its books, and has a duty to do so. However, by designating the two elements of the duly payable service charge as an "administration" and a "management" charge the Council has invited precisely the resistance which has occurred. There are other irritants which could have been avoided, for example charging for cleaning within the so called administration charge (as seen on page 576 of Volume 2) has simply confused the Lessees, although there is in fact no duplication since cleaning is not arranged or charged for through the management contracts.

(2) Are all the services within the terms of the Leases?

41. The answer to this question must be Yes, as set out on page 532 of Volume 2, in the statement of Mr Ekoja. Clauses 3(A) and 8 provide clearly for what the Landlord must do and the Lessee must pay for. While the Lessees complain that the services are sometimes not complete or satisfactory, there should be an improvement with the partners in funds to perform and when more training has been completed. It

certainly cannot be justified either in law or in practice that payment should be delayed until services are established at an optimum level. The position is that the services have been in place and costing the Council money for some time: the proposal is now to charge for them, but not at the full cost, largely because the auditors picked up that the Lessees were not being charged in previous years. Clearly Tenants (as opposed to Lessees) are probably already paying their share through their rent and there is no justification for the Lessees not to pay their share as well. It will obviously be expected that Lessees see value for money for their service charges in the current and future years, and a better explanation from the Council would certainly help in this respect. As to the Lessees' concern that the management element of the charge will simply rise, their protection in this respect is that they can always make an application to the LVT to determine the reasonableness of any service charge and their liability to pay (although it appears that the charges are now capped till the end of 2011 except in the case of two old contracts which will shortly be retendered on their expiry). In respect of major works or ongoing contracts which may increase the service charge the law requires that there should be consultation if any Lessee is to pay more than £100 in respect of such items in any year, but in general terms Lessees now need to adjust to an annual basic service charge of £200-£220 with rises for inflation, and this is not a high service charge in comparison with service charges elsewhere in London. With regard to any application to the LVT for determination of the reasonableness of actual or estimated costs to be incurred, Lessees should be aware that such applications may be made if necessary every year, application and hearing fees are low and completely free if applicants are on benefits. Moreover, the leasehold advisory service LEASE offers advice to applicants and the Free Student Representation services provided by the College of Law and BPP Law School enable applicants to be advised about their applications and be represented without charge at hearings. In all the circumstances, there is adequate protection provided for Lessees.

(3) Is there any duplication of services or charges between the "administration" element and the "management element"?

42. The Tribunal has not been able to identify any duplication of charges. Where there is an "administration charge" included in major works, this is not the same as the administration element of the service charge which is wholly concerned with the "office" work occasioned in dealing with Lessees and their Leases, for example collecting the service charge, giving licences for alterations of Lessees' property or to sub-let, or in executing paperwork for other purposes. Major works still have to be tendered, monitored and contractors supervised and controlled which is not without cost. A 10% charge for this service is not generally considered unreasonable. Additionally the management charge is added for the specific services provided under the different partnering contracts.

THE s 20C APPLICATION

43. The Council's submissions in this respect, in response to Mrs Carpenter's application for a s 20C order, were to the effect that the Council would need to recharge the costs of the application to the administration element of the service charge. Figures supplied by Mr Wijeyesukera indicate that the total costs of £63,880 divided between 7010 Lessees will result in a charge of £9.11 per Lessee. The breakdown indicates a printing cost of £5,000, legal costs (the Council's legal

department) of £16, 590, advertising £3,694, and special project staff £34,005 (agency personnel) together with hire of hearing premises (£788), public address system (£1,100), radio control security (£273), administration (£1,690) and travel (£147). This certainly seems a high overall cost, though divided between the 7010 Lessees results in a relatively small figure. However both the Applicants and the Respondents must bear some responsibility for these high costs: the Council must take some responsiblity because they could have avoided the hearing by a more sensible approach to the Lessees in explaining at the outset that both charges were justifiable in the terms of the Leases, since both qualified as the "service charge" for which the Lessees were liable. The Lessees were also responsible for some of the costs, as their approach in treating the hearing as a forum for general complaint, when it was clearly explained to them that the issues were much narrower, doubled the number of hearing days. They also vastly increased the documentation by sending in voluminous and often irrelevant representations. The problem in the Tribunal's making a s 20C order is that someone will have to pay these costs, and if they are not to be added to the service charge they will inevitably fall on the Tenants through their rent or the Tenants and Lessees through the council tax as the Council has no other obvious funds from which they can pay; moreover, the Council has a fiduciary duty to recover its expenditure. In the circumstances the fairest order is that the parties should bear these costs equally, that the Council be restricted in the amount which it shall apply to the service charge, and must make other economies in order to apply no more to any service charge than results in £4.55 per Lessee, and to meet the remaining £4.56 per Lessee out of other funds.

44. Accordingly, the Tribunal determines that the proposed service charge per lessee of £209 for the current year, including both the administrative and management elements, is reasonable and reasonably incurred.

Chairman..... P. R. Boardman.....

Date..... 9 . 12 . 06 .....