

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

**Decision of the Leasehold Valuation Tribunal
On applications under
The Landlord and Tenant Act 1985 (as amended) Sections 27A & 20C**

Case No: CHI/19UG/LIS/2004/0047

Property: Elm House
16 North Street
Wareham
Dorset BH20 4AG

Applicants: G C Pitt and 4 Others

Respondent: Mrs Janet Leatham

Date of Application: 20 December 2004

Members of Tribunal: L H Parkyn, Lawyer (Chairman)
A J Mellery-Pratt FRICS
K M Lyons FRICS

Date decision issued: 23rd September 2005

1. Introduction

1.1 This was an application ("the Application") to the Tribunal relating to Elm House, 16 North Street, Wareham, Dorset BH20 4AG ("the Premises") under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") originally for the Tribunal to determine the reasonableness and payability of service charges said to have been incurred during the years ended 31 March 1998 to 31 March 2003 and, further, as to service charges to be incurred in the year ended 31 March 2004; and secondly, for the Tribunal to make an Order under Section 20C of the 1985 Act preventing the Respondent from recovering costs incurred in connection with the Application as part of the service charge.

1.2 On 4 March 2005, following the hearing of the pre-trial review, the Tribunal made a Directions Order for the future conduct of the Application with which the parties broadly complied although not necessarily within the timetable set.

1.3 The material provisions of the 1985 Act are set out in the Appendix to this Decision.

2. Inspection

2.1 The Tribunal inspected the Premises on 24 June 2005 in the presence of Mr G C Pitt of the Applicants, their Solicitor, Mr R A Humble-Smith and the Respondent with her Solicitor, Mr R Dollimore.

2.2 The Tribunal noted that the Premises comprised a three-storey house, said to be 18th century and a building listed under the planning regulations. The Premises had been converted into six self-contained flats, two on each floor, partly contained within the main building, fronting directly on to North Street and partly (flats 2 and 4), contained within a two-storey extension to the rear. The Premises had the benefit of a small garden to the rear with off-road car parking with access over a private drive from Bonnett's Lane.

2.3 During the course of the inspection the Tribunal had brought to its attention or noted that:-

- The roof was said to be satisfactory but there were areas of suspected water penetration around the chimney stacks.
- The paintwork on the exterior was generally poor and in need of redecoration although the rear extension appeared to be in good condition having been more recently redecorated. Minor repairs were needed to the guttering on the front elevation.
- The southern gable end had not been redecorated when the Premises were last repainted although access over the roof of the adjacent premises would not have been easy and was likely to have required scaffolding.
- Some of the window frames on the rear elevation appeared rotten and in urgent need of repair.
- A small paved area had been laid outside adjacent to the back door.
- The rotary clothes line was said not to have been sited within the communal area.
- A low retaining wall had been constructed at the rear of the car parking area to give a small raised bed.
- Although there were no hedges to cut there was an area of ivy on the adjacent wall forming the northern boundary of the garden/driveway of the Premises which would require trimming.

2.4 The Tribunal also inspected the common parts of the Premises comprising the central hall, landing and stairs and noted the same were decorated and carpeted to a basic standard. Each flat appeared to have been fitted with a fire resistant door.

3. Hearing

3.1 The hearing was also held on 24 June 2005 at which the Applicants were represented by Mr R A Humble-Smith and the Respondent by Miss Natalie Wood of Counsel.

3.2 As a preliminary, the Tribunal established that:-

- The Applicants had accepted the income and expenditure accounts for the years ended 31 March 1998, 1999 and 2000 leaving in issue the service charges shown in the accounts for the years ended 31 March 2001, 2002, 2003 and 2004.

- The Tribunal were not required to consider any service charges “to be incurred” as those that initially appeared to be within this category were covered by the accounts for the year ended 31 March 2004.
- Miss Wood tabled a schedule of differences to the maintenance provisions within the Leases of flats at the Premises.
- The main issues for determination by the Tribunal appeared in the Scott Schedule, prepared by the Parties in compliance with the Tribunal’s Directions but, in the main, concerned:-
 - property maintenance
 - garden maintenance
 - printing, postage and stationery
 - management fees
 - accountancy
 - bank charges.

3.3 In addition, the Tribunal identified other issues which might have required the Tribunal’s consideration:-

- (a) Relating to the construction of the leases including:-
 - the extent of the Landlord’s obligations and the effect of the ejusdem generis rule (i.e. matters of the same kind or nature)
 - the extent of the tenant’s liability to pay
 - whether the accounting provisions created a condition precedent as to the tenant’s liability to pay.
- (b) The provisions of Section 20 of the 1985 Act concerning estimates and consultation for “qualifying works”, principally for works with a cost in excess of £1,000.
- (c) The provisions of 20B of the 1985 Act relating to the limitation of service charges and the time limit on making demands for payment.

3.4 The Application had been cast in wide terms:-

“The Landlord has failed to supply satisfactory evidence that the expenditure said to have been undertaken has, in fact, been incurred, or properly incurred. Suitable invoices should be made available to support every item in the expenditure summary, with sufficient details

to ensure that the expenditure was properly carried out. Details of the bank account should be supplied to enable a correlation with the expenditure said to have been incurred”.

Then, the Tribunal was asked to decide:-

“Whether the items of expenditure had been properly incurred by the Landlord under the terms of the Lease.....and.....should (the Respondent) repay surplus money collected”.

3.5 The Tribunal heard evidence from the parties on the issues raised in the Scott Schedule, for the four years in issue, a copy of which is attached to this decision.

3.6 In addition the Tribunal heard evidence from the Respondent and the Applicants on the basis of witness statements which had been exchanged between the parties in accordance with the Tribunal’s Directions.

3.7 The main elements in the Respondent’s case can be summarised as follows:-

- She had lived at the Premises since 1995, although took over the freehold in 1992, prior to which the Premises had been managed by Symonds & Sampson, professional managing agents, who neither produced any formal accounts nor charged a management fee. The tenants were simply informed how much should be paid by way of maintenance and when the Respondent took over there was a weekly maintenance charge of £4.00. She did not receive any books or accounts from the Agents.
- When the Respondent took over the management of the Premises she simply followed the same arrangement as the Agents had done.
- She found that the flat owners were generally apathetic and had an attitude for paying as little as possible towards maintenance. Initially, she held annual meetings but these did not continue as the other flat owners stopped attending.
- Until about 2001 there was never any request to see any accounts and, until more recently, the flat owners had not expressed any concerns or problems with the way in which the management was being handled.
- She was a lay person and had had no prior experience of property management, dealing with accounts or understanding legal matters such as the

terms of the lease. She had endeavoured to run the management to the best of her ability and, where possible, to keep the maintenance to a minimum for the benefit of all the flat owners.

- Records had been maintained and retained as would be apparent from the documents before the Tribunal.
- The aim had been to try to keep the service charge to a reasonable level balancing the wishes of the flat owners to pay as little as possible but having sufficient funds to carry out works at the Premises: the reality was that for the upkeep of an old building the service charge payments should have been greater than the flat owners were willing to pay.
- “Cash in hand” tradesmen were employed to keep costs down.
- She had attempted to “sort out” the windows at the Premises which included instructing J Burgess & Associates Ltd, architectural consultants and surveyors, to deal with the planning issues relating to this listed building and obtained quotations for the works although matters had not proceeded as the flat owners had not paid their contributions towards the anticipated costs.
- When she took over the management of the Premises it was agreed by all the residents that she should carry out and be paid for the maintenance of the gardens and external communal areas for which it was agreed that she would charge at the basic rate £25 per month. On occasions it was necessary for her to carry out additional works particularly following the redecoration of the internal hall landing and stairs.
- From June 2002 she increased her maintenance charge to £65 per month due to an increase in the work in the garden and due to the fact that she took over cleaning the common parts. This sum was increased to £85 per month from September 2003.
- All the flat owners were aware that she was carrying out these works and charging for them and no complaint was raised until relatively recently.
- Receipts had been produced for many items of expenditure although this was not always possible with cash transactions. Although initially no management fees were charged, partly due to a misunderstanding of the provisions of the various leases, in 2003 she decided she should receive a reasonable management fee for the works she was undertaking and, on discussions with

her accountant "...it was felt a reasonable sum would be £300-£400 per year". When accounts were requested in 2001 arrangements were made for this to be dealt with by an independent accountant although until recently she was not aware of the terms of the lease in this respect.

- Throughout her period of management "...I have done it to the best of my ability as a lay person without any specific training or experience. I truly believe that I have not paid out anything or retained any monies which have not been for the appropriate maintenance of the (Premises) or dealing with the management of the (Premises) or for which I was genuinely entitled for works carried out on behalf of and for the benefit of the (Premises)".

3.8 Mr Humble-Smith did not put any questions in cross-examination but in answer to questions from the Tribunal the Respondent stated:-

- She was not aware of the Service Charge Residential Management Code published by the Royal Institution of Chartered Surveyors approved by the Secretaries of State under the Leasehold Reform Housing and Urban Development Act 1993,
- Symonds & Sampson had suggested that it would be reasonable to charge £21.66 per month for the gardening work.
- She had no record of the meeting in 1992 when the flat owners were said to have agreed to her making a charge for the garden maintenance work.

3.9 Mr G C Pitt gave evidence for the Applicants the main points of which are summarised as follows:-

- Most of the matters to which he referred were from his own direct knowledge but some were based upon information given to him by others.
- The present lessees were extremely interested in how the maintenance contributions had been expended and the Application to the Tribunal was only made when it appeared as the only method available to obtain the information sought.
- Fully audited accounts had never been produced and those prepared had been qualified as having been prepared "in accordance with instructions

given to us.....from the accounting records of Mrs Leatham and from the information and explanations provided to us”.

- The works for the replacement windows had not proceeded as the proper legal procedures had not been followed.
- Any agreement which might have been reached with the previous residents should have been confirmed with any new lessees. None of the current lessees were aware of any ongoing agreements.
- Although the lessees were aware the Respondent was carrying out some garden maintenance, they had no idea how much she was charging.
- The Respondent was not entitled to charge a management fee.

3.10 Under cross-examination by Miss Wood, Mr Pitt stated:-

- He bought Flat 1 at the Premises in September 2003 and moved in on 14 October 2003.
- He was aware that the Respondent was doing various items of work although it was difficult to assess how much she was doing. Some work was done but nothing that would justify the amount the Respondent had charged.
- The garden works could be satisfactorily undertaken by two persons spending 2 hours per month at the Premises.
- The Applicants remained totally dissatisfied with the Respondent's management of the Premises and did not agree that she had done the best she could within the limited funds available. In his opinion, there was nothing to show for her 15 years of management and the Applicants did not accept that the works that had been carried out had been carried out to a sufficient standard.

[The hearing was adjourned at this point in the proceedings (about 17.30) when the Advocates for the parties agreed that the hearing could be concluded by each sending to the Tribunal's office their closing submissions in which the Tribunal requested them to address, if thought appropriate, not only the issues that they considered relevant to their cases but also those issues identified by the Tribunal when opening the hearing and referred to in para 3.3 above].

3.11 In her closing submission on behalf of the Respondent, Miss Wood referred to Sections 18 and 19 of the 1985 Act and stated :-

- All the amounts which had been paid to the Respondent Landlord by the Applicants were for relevant costs which had been reasonably incurred by the Respondent.
- As a lay person, the Respondent had done her best to produce accounts during the accounting periods in question. She was entitled to rely upon the advice given by the Accountants and that they had completed the records appropriately.
- Whilst acknowledging that the accounts had not been audited in accordance with the strict terms of the lease the lessees had not suffered any loss as a result.
- Although it was accepted that the records could not be said to wholly cross-reference it was a fact that vouchers had been produced to support the majority of the expenditure on the accounts which were relevant costs within the meaning of the 1985 Act.
- The Tribunal was invited to apply a commonsense approach.
- The production of audited accounts was not a condition precedent in respect of the payability of service charges. The leases did not specify that the lessees' obligations should only be complied with once the lessor's obligations had been complied with and therefore it was not expressly a condition precedent. Further it was submitted that a condition precedent could not be implied. Clause 18 of the 6th Schedule of the lease required the lessees to indemnify the lessor against all costs and expenses incurred in carrying out the obligations in the 7th Schedule, which suggested payments prior to the production of the accounts, and Clause 19 required payments on account in relation to the lessees' obligations to pay a contribution under Clause 18. The production of audited accounts was one in a list of obligations upon the lessor and was not expressed as being the most important of those obligations. Any failure on the part of the lessor to produce audited accounts in accordance with the strict terms of the lease did not negate the fact that the relevant costs had been incurred.

- The cost of the gardening and cleaning work fell within the definition of “all costs and expenses incurred by the lessor” and that the lease should be interpreted in such a way as to include the cost of such works. The works had been undertaken in pursuance of the lessor’s obligations under the 7th Schedule and that the lease had anticipated that the upkeep of the common parts and the gardens attracted a service charge.
- In submitting that the freeholder was entitled to make a reasonable charge for the garden maintenance and cleaning at the Premises she was entitled to employ any person to undertake such works relying on (1) Malt Mill Developments Ltd (2) Anchor Brewhouse Management Co Ltd v Norman Harold Davis (2002), in which the lessee was employed to undertake similar works, as authority for the proposition that the lessor was therefore entitled to employ herself to undertake the works.
- The lessees had conceded that the service charges for the periods from 1998-2000 were incurred and were reasonable and it was therefore submitted that this represented an agreement that the freeholder was entitled to charge for work done personally provided the extent of the charge was reasonable and the work was completed to a reasonable standard.
- Alternatively that if the lessor was not entitled to charge personally for these works any loss to the lessees in respect of gardening and maintenance charges was mitigated by the fact that the employment of third parties would have been at a much greater cost.
- Concerning legal fees it was submitted that those incurred by the lessor were included within the definition of “all costs and expenses” in respect of maintenance of the property and, given the onerous duties of the lessor in meeting obligations under the terms of the leases it was not unreasonable to obtain professional advice in relation to compulsory works necessary for the safety of the lessees.
- The leases for Flats 2 and 4 provided explicitly for the payment of management charges and therefore such charges applied subject to reasonableness. Further, it was submitted that the management charges were encompassed in “all costs and expenses” in Clause 18 of the 6th

Schedule. In order to undertake the obligations in the 7th Schedule it was necessary for the lessor to spend time and effort managing the Premises and it was not therefore unreasonable for the lessor to be compensated for such matters. Further, as certain of the lessees were paying £20 in addition to the ground rent there was a custom that a reasonable sum be paid to the lessor in respect of her management of the property.

- Further it was submitted that the sums charged for the management were not excessive and below the level likely to be charged by independent managing agents.
- Any adjustments to the service charge should take into account the schedule of non-payment of service charges and ground rent by the lessees to the lessor during the periods in question.
- Finally she submitted that, taking into account her earlier submissions, there should be no Order preventing the recovery of legal fees from the service charge account occasioned by the proceedings before the Tribunal.

3.12 In his final submission on behalf of the Applicants, Mr Humble-Smith stated:-

- The application launched on 20 December 2004 was the culmination of efforts to obtain accounts and information from the Respondent over about 8 months leading to increasing concern amongst the Applicants as to the way in which the Premises appeared to have been managed.
- Section 18 of the 1985 Act refers specifically to costs being incurred (i.e. something which the Respondent had to pay to someone else rather than to herself).
- He had found some authority to support this proposition in Hill & Redman from the statement that “a landlord is not entitled to, in the absence of very clear words indeed, to profit from the provision of services” (para A4627) a statement supported by a similar reference in the Encyclopaedia of Forms & Precedents – Landlord & Tenant (Residential Tenancies) Volume 23(i).

- Many of the vouchers produced by the Respondent to support small payments made gave no indication as to the purpose of those payments which clearly went to reasonableness.
- Whilst it might be reasonable for individual property owners to undertake work on a DIY basis, if undertaken collectively the person responsible should employ reliable contractors: the inspection would have indicated the present condition of the Premises which were extremely run down, and perhaps had given some idea of the standard of any work undertaken.
- The audit requirement should be interpreted as a condition precedent because until the Accountant had certified the amount of the costs, charges and expenses there was no known amount from which the lessor could calculate the proportion payable the lessees.
- The Lessors' obligations set out in the 7th Schedule to the Leases were quite straightforward. The clause was not open ended and the Respondent should have worked through it.
- Clause 4 of the 7th Schedule was the main clause covering what the lessor could do. It did not, for example, permit her to consult solicitors.
- Apart from the leases for Flats 2 and 4 management charges were not an expenditure which could be claimed as the other leases did not include power to charge these. The item in the accounts for printing stationery etc seemed frequently to be an arbitrary amount except for some small items which should be treated as management charges.
- As the preparation of the accounts, which had been charged, for had not been prepared in accordance with the terms of the lease then such charges could not be allowed.
- Concerning the Application under Section 20C of 1985 Act, the Respondent had only had to incur costs because she failed to provide information to the lessees as she was obliged to do both under the lease and under the general law. Even when the Application commenced she had still failed to provide a great deal of information.

4. Decision

4.1 The Tribunal made the following findings of fact:-

- The main part of the Premises was maintained only to a fair to poor standard, and was in need of external redecoration and minor repairs (e.g. guttering) although the extension to the rear (said to contain, in part Flats 2 and 4), appeared to have been maintained to a satisfactory standard.
- A number of the windows needed repair or replacement.
- The paved area to the rear of the Premises provided a hard surface but was too small to be of any particular benefit for the residents as a whole.
- The garden and car parking area were, together, relatively small and would have required minimal maintenance to be kept to a reasonable standard.
- Internally, the hall, landings and stairways were maintained to a fair standard if somewhat austere in appearance.
- There was no evidence of any agreement between the lessor and lessees for the lessor to charge for work done herself and the current lessees were unaware of any such agreement.
- The Respondent had not put in place any satisfactory administrative arrangements for the management of the Premises particularly with regard to consultation with the other lessees in connection with an annual budget of proposed works, annual service charges, or otherwise.
- The service charge accounts were neither audited nor certified in accordance with the terms of the lease.
- The Respondent had not served on the lessees formal notice stating the total proportionate amounts payable by each in respect of the service charges as provided for in the 7th Schedule to the Lease
- The Respondent's level of management of the Premises was minimal.
- The leases of the Premises were poorly drafted and not entirely in common form although the differences, save as identified in this Decision, did not appear to be particularly material to the issues before the Tribunal.
- The annual service charge accounts had been prepared to 31st March in each year rather than to 30th September as provided for in the lease, although the Applicants' solicitor confirmed that no issue was being taken in this respect.

- The Applicants had taken a pragmatic view when “accepting” the income and expenditure accounts for the years 1998-2000

4.2 Four of the leases of the flats at the Premises (i.e. Nos 1, 3, 5 & 6) had been granted in 1983 by Mr and Mrs S C Leatham with the remaining two (i.e. Nos 2 and 4) in 1991 and 1992 respectively by H Leatham and R Hughes and, apart from the Respondent, none of the parties to the Application were original lessees.

4.3 For the purposes of this Application, the material provisions of the lease were:-

(a) The Lessees’ covenants contained in the 6th Schedule particularly that:-

18. The Lessee shall contribute and keep the Lessor indemnified from and against one sixth of all costs and expenses incurred by the Lessor in carrying out its obligations under and giving effect to the provisions of the 7th Schedule hereto including Clauses 6 and 9 inclusive of that Schedule after deducting interest if any received by the Lessor or cash in hand.

(b) The Lessor’s covenants contained in the 7th Schedule particularly that:-

4. The Lessor shall keep the Reserved Property and all fittings and fixtures therein and additions thereto in a good and tenable state of repair and condition including the renewal and replacement of all worn or damaged parts and shall maintain the lawns borders shrubberies paths drives.....and boundary walls and fences thereof and shall at all times keep the main entrance passages and staircases giving access to the Flats clean and tidy and adequately lighted and shall clean the exterior of the windows of the (Premises) as often as may be necessary.....

6. The Lessor shall keep proper books of account of all costs charges and expenses properly and reasonably incurred by him in carrying out his obligations under this Schedule.....and an account shall be taken on the 30th day of September and in every year during the continuance of this demise.....

9. The account taken in pursuance of (Clause 6).... shall be prepared and audited by a competent chartered or incorporated accountant who shall certify the total amount of the said cost charges and expenses (including the audit fee of the said accountant) for the period to which the account relates and that the same have been properly and reasonably incurred and the

proportionate amount due from the Lessee to the Lessor pursuant to(Clause 18)....of the 6th Schedule.

10. The Lessor shall within 3 months of the date to which the account provided for in ... Clause 6...of this Schedule is taken serve on the Lessee a notice in writing stating the said total and proportionate amounts certified in accordance with the last preceding clause and shall on request by the Lessee supply to the Lessee a copy of the said account and (if required by the lessee) produce to the Lessee or his accountant or agent the said books of account and the vouchers for all the said cost charges and expenses:

- (c) In the leases of Flats 2 and 4 at the Premises there was a material difference in Clause 18 of the 6th Schedule:-

18. The Lessee shall keep the Lessor indemnified from and against one-sixth of all cost charges and expenses incurred by the Lessor in carrying out his obligations under the 7th Schedule hereto *and the Lessor shall be entitled to calculate the payment due hereunder by reasonable advance estimation and to make reasonable charges in respect of his management services* (the Tribunal's parenthesis)

- (d) At the hearing the Respondent tabled a schedule of differences in the maintenance provisions within the leases at the Premises the closing paragraph of which read:-

In the main clauses dealing with the lessors' obligations as to maintenance itself is (sic) set out in Clause 4 of the 7th Schedule in the leases to Flats 1,3,5 and 6 and in Clause 5 of the 7th Schedule in leases to Flats 2 and 4. Provisions are largely the same although the provisions in the leases to Flats 1,3 5 and 6 are more detailed in terms of maintenance of lawns border(s) shrubberies paths etc and as to keeping entrances, passageways and staircases etc clean and tidy and adequately lighted

a summary not challenged by the Applicants during the course of the hearing.

- 4.4 In addition to the terms of the leases, the Tribunal had regard to the relevant statutory provisions, particularly:-

Sections 18 and 19 of the 1985 Act dealing with the meaning of "service charges" and "relevant costs" and the reasonableness of service charges.

Section 20 of the 1985 Act dealing with the need for estimates and consultation for certain qualifying works exceeding £1,000;
Section 20B of the 1985 Act imposing an 18 month time limit on making demands for the payment of service charges;
Section 20C of the 1985 Act concerning the recovery of the Respondents costs incurred in connection with the Application; and
Section 27A of the 1985 Act dealing with the liability to pay service charges.

extracts of which are set out in the Appendix to this Decision. However, in the event, the Tribunal were not required to consider any works falling within the provisions of Section 20 and neither party raised any issues for the Tribunal to consider under the provisions of Section 20B.

4.5 The Tribunal considered whether any of the service charges included in the accounts for the years 2001, 2002, 2003 and 2004 and claimed by the Respondent were not recoverable within the provisions of the leases and identified the following items:-

(a) Gardening: Whilst it was clear that the Respondent had an obligation under Clause 4 of the 7th Schedule of the leases to maintain the garden area, the lessees' obligation was to contribute and indemnify, in each case, one-sixth of "...all costs and expenses incurred by the lessor in carrying out its obligations...". Applying the ordinary meaning of "incur" (i.e. to become liable to or subject to) the Tribunal found that the Respondent did not "incur" costs and expenses when making a charge for such work at the Premises she may have done herself. Further, the Tribunal took into account the general principle of construction namely that if the lessee's liability is uncertain from the wording of the lease, even if read as a whole, the construction of where the allegedly applicable service charge falls will be against the lessor.

(b) Legal and professional fees: In considering its finding in relation to these items, the Tribunal also took into account that the lessee's obligation was to contribute to the lessor's expense in carrying out the obligations in the 7th Schedule and to enable any lessor to do so it would be reasonable to imply

the right to obtain legal and professional advice should the circumstances so require and the Tribunal had so found.

(i) An item of £353 (rounded) for legal fees appeared in the accounts for 2001 and was said to have related to advice sought by the Respondent in relation to fire precaution works at a cost of £4,525 (not an issue before the Tribunal) and contributions payable and issues concerning the cost of replacing windows at the Premises. The Tribunal did not consider it unreasonable for the Respondent to seek legal advice on these issues particularly as the fire prevention works were relatively costly and the responsibility for the maintenance and repair of the windows was not entirely clear from the way in which the lease was drafted although, in the event, this did not become an issue for the Tribunal as the cost of repairing or replacing the windows had neither been incurred nor proposed.

(ii) An item of £299.04 paid to J Burgess & Associates Ltd in 2003 (see Scott Schedule para C.5) the Tribunal also considered this a reasonable charge. The Respondent had obtained listed building consent from Purbeck District Council on 17 May 2001 for retaining 5 windows previously replaced (i.e. retrospective permission) and the replacement of 9 further windows on the front elevation and 5 at the rear of the Premises subject to a condition, prior to the commencement of the approved works, for the submission to the Local Planning Authority detailed drawings of all new windows internal and external doors and their openings. It was not reasonable to expect the Respondent to prepare such drawings without professional assistance so reasonably she instructed the Consultants to do so who in turn obtained confirmation from the Local Authority that the condition had been complied with.

(c) Accountancy: It was quite clear under the terms of the lease that the lessor had an obligation to have the service charge accounts prepared by a competent chartered or incorporated accountant whose fees would form a part of the service charge (see Clause 9 of the 7th Schedule above). However, the provisions of the lease were quite specific in that the accountant was required to prepare “audited” accounts, certified as to the total amount for the period of account as properly and reasonably incurred giving the proportionate amount due from the lessee to the lessor (see Clause 9 of the 7th Schedule to the Lease).

However, the accountants did not prepare the account on this basis. For each of the 4 years in question, the accounts contained an accountant's report in the following terms:-

"In accordance with instructions given to us we have prepared, without carrying out an audit, the accounts set out on page 2 from the accounting records of Mrs Leatham and from the information and explanations provided to us".

Fairly, the Respondent and Miss Wood acknowledged that audited accounts had not been prepared but suggested that the Tribunal might reasonably find that those prepared were sufficient for the purpose. The Applicants challenged this approach particularly as they maintained that, in effect, the Respondent had not managed the Premises in a businesslike manner and there was therefore no justification for not complying with the mandatory provisions of the lease. The Respondent maintained that the Tribunal could not determine where the responsibility lay as it had not been necessary to examine the manner in which the accountants were instructed. However, the Tribunal found that the accounts were not prepared in accordance with the mandatory provisions of the lease particularly in circumstances where a proper audit would have been helpful to the parties, and in consequence, it did not find it reasonable for the accountant's charges to be included as part of the service charge for any of the 4 years in question.

(d) Printing, postage and stationery: The Applicants strongly challenged the relatively small amounts in the service charge accounts for these items. The Tribunal found that it was not unreasonable for the Respondent to make a charge for such items which would have been reasonably incurred in carrying out the lessor's obligations in the Lease.

(e) Management fees: Although a reference to management fees was made in the Scott Schedule for each of the 4 years under consideration, the item only appeared in the accounts for 2003 at £300 and 2004 at £350 apparently following accountant's advice to do so. Such work that was done was undertaken by the Respondent personally so no expense was incurred as such. The Tribunal did not accept the Respondent's arguments that such management fees fell within

the phrase “all costs and expenses” found in Clause 18 of the 6th Schedule and was not prepared to imply a provision to this effect again on the basis that the provision must be construed against the lessor if an issue of construction arose and that the provision should be taken to relate to the lessor’s actual costs and not construed to include an element of profit. The Respondent did not seek to justify the time she had spent on any financial basis having apparently relied on the figures suggested by accountants, so the Tribunal had no means of determining how (if at all) the charge had been calculated. Thus the Tribunal did not consider the management charge for the years 2003 and 2004 to be reasonable. Although the Tribunal had found, on the construction of the lease, the Respondent was not entitled to make a management charge, that finding related only to the leases of Flats 1, 3, 5 and 6. The leases of Flats 2 and 4 included a power for the lessor “...to make a reasonable charge for her management services” (6th Schedule Clause 18). However, the Tribunal did not find it reasonable to include a proportionate part of the management charge claimed against the lessee of Flats 2 and 4 as this would only affect the lessee of Flat 4 with the Respondent holding the lease and occupying Flat 2.

(f) Bank charges: The Respondent maintained two accounts with Barclays Bank plc for the management of the Premises, a business current account and a business premium account. The Applicants challenged the amount of these charges for the years 2002 to 2004, ranging from £197 to £106 on the grounds that charges had been incurred unnecessarily particularly emphasizing that the current account had been allowed to go overdrawn whilst there were funds available in the premium account. With the benefit of hindsight, the Tribunal considered that the Respondent had perhaps been ill-advised to maintain two accounts for a relatively small operation where interest credited for the 4 years under consideration had not exceeded £25 in (2001) and did not amount to more than £2 in any of the remaining years. However, upon analysis the Tribunal found that the majority of the charges were reasonably and properly incurred and so found making any adjustments it found appropriate as set out in the Scott Schedule.

4.5 Apart from the items relating to the interpretation of the Lease and the other items to which reference has already been made, once the Applicants had had the opportunity of inspecting the Respondent's documents a number of the items previously challenged were either agreed or accepted by the Applicants and the Tribunal has noted the Scott Schedule accordingly which the Tribunal has condensed (and occasionally abridged) to include only the years under consideration although, in considering the issues, the Tribunal was not helped by the lack of brevity in the way in which the parties, had completed their respective parts of the Scott Schedule.

4.6 Of the remaining items in issue, the Tribunal's findings are noted in the Scott Schedule so it has nothing further to add.

4.7 Thus, to summarise the Tribunal did not find the following amounts detailed in the Scott Schedule to be reasonable/chargeable:-

A. 5	Property maintenance	456.06	
A. 6	Garden maintenance	48.52	
A. 9	Accountancy	<u>176.00</u>	680.58
B. 5	Property maintenance	360.72	
B. 9	Accountancy	176.00	
B. 10	Bank charges	<u>36.00</u>	572.72
C. 5	Property maintenance (3 items)	940.00	
C. 6	Gardening	300.00	
C. 8	Management	300.00	
C. 9	Accountancy	<u>176.00</u>	1716.00
D. 5	Property maintenance (2 items)	984.10	
D. 6	Garden maintenance	258.00	
D. 8	Management fees	350.00	
D. 9	Accountancy	176.00	

D. 10 Bank charges

20.00

1788.10

Total disallowed:

£4757.40

The Tribunal was not required to consider the state of account between the Applicants and Respondent so made no Order concerning the payment by the Respondent as freeholder/lessor to all lessees of the amount disallowed.

However, the Tribunal anticipated that the amounts due would become apparent when the next accounts are prepared when payment will be due in accordance with the terms of the leases.

4.8 The Tribunal allowed the Applicants' application under Section 20C of the 1985 Act that none of the Respondent's costs incurred or to be incurred in connection with the Application are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the Application on the grounds that many of the items giving rise to a challenge would not have arisen had the Respondent managed the Premises in accordance with the terms of the Lease and provided proper and adequate information in a timely fashion for the benefit of each of the lessees.

4.9 The Tribunal considered it unfortunate the level of distrust and lack of mutual confidence that existed between the parties had led to this application which, with goodwill on each side, and the timely production of the relevant documents should readily have been capable of resolution between them.

4.10 The Tribunal considered all other matters raised but there were none that outweighed those upon which this decision is based.


.....
L H PARKYN (Chairman)

THE APPENDIX

Landlord & Tenant Act 1985 (as amended)

18. Meaning of “service charge” and “relevant costs”

- (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a [dwelling] as part of or in addition to the rent –
- (a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the landlord’s costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.

- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

- (3) For this purpose –
- (a) “costs” includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

19. Limitation of service charges: reasonableness

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
- (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

20. Limitation of service charges: estimates and consultation

- (1) Where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified in subsection (3), the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirements have been either –

- (a) complied with, or
 - (b) dispensed with by the court in accordance with subsection (9);
- and the amount payable shall be limited accordingly.

- (2) In subsection (1) “qualifying works”, in relation to a service charge, means works (whether on a building or on any other premises) to the costs of which the

tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge.

(3) The limit is whichever is the greater of –

(a) £50, or such other amount as may be prescribed by order of the Secretary of State, multiplied by the number of dwellings let to the tenants concerned, or

(b) £1,000, or such other amount as may be so prescribed.

20B Limitation of service charges: time limit on making demands

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

20C Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any costs incurred or to be incurred, by the landlord in connection with proceedings before a court or leasehold tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, 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.

(2)

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances

27A Liability pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to –

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

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

THE SCOTT SCHEDULE

- A Year ended 31.03.2001**
- B Year ended 31.03.2002**
- C Year ended 31.03.2003**
- D Year ended 31.03.2004**

ELM HOUSE -SCOTT SCHEDULE A (RELATING TO YEAR ENDED 31.03.2001)

Item No.	Income Detail	Applicants' Contentions	Respondent's Contentions	Agreement? If so, what?	Tribunal's Comments
A.1	Maintenance charges	Specific information is extremely vague and not clear who contributed what.	<p>Details of maintenance payments made by Mrs Leatham set out on spreadsheets attached. Total payments made by Mrs Leatham as shown on spreadsheets is £390.00</p> <p>Insofar as there is any shortfall in the maintenance due for the year Mrs Leatham believes this is covered by her not taking her ground rent entitlement from the monies paid into Elm House accounts by the flat owners.</p>	Noted but not clear.	<p>This item only concerns the fire protection works of £4525</p> <p>The Applicant confirmed these works were agreed and paid for separately as shown in the accounts. Thus there was no issue for the Tribunal to decide.</p>
A.2	Bank Interest	No disputes	No disputes		
A.3	Insurance	No dispute	No dispute		
A.4	Light and Heat	No dispute	No dispute		

A.5	Property maintenance	<p>Such vouchers as have been supplied have not been cross-referenced to anything, and do not identify any maintenance carried out, i.e. do not show what work was done for the sum of expenditure.</p> <p>All items of money paid out to Mrs J Leatham are not authorised by the terms of the Lease, as authorised expenditure, and so have not been properly and reasonably incurred.</p> <p>From this year Mrs Leatham has been personally charging for cleaning, but has not really done anything to justify this charge, and such payment to her is not authorised by the Lease.</p>	<p>Please see spreadsheets attached showing cheques and cash payments made in respect of maintenance. Where available those payments have been cross-referenced to receipts. The number next to the payment relates to the receipt set out in the bundle attached.</p> <p>In that year a large payment in respect of fire protection due. Although paid for in 2001, receipt is numbered 22 in the bundle of receipts to accounts year-end 2000. These works were required by the local authority.</p> <p>The solicitor's invoice of £352.50 related to advice regarding the application for fire precaution work and thereafter attempting to obtain monies that were due from the various flat owners, some of which were reluctant to contribute. In addition, the solicitors assisted Mrs Leatham with regards to her attempts to get the flat owners to agree to the maintenance and replacement of the windows. All of these costs were reasonably incurred by Mrs Leatham in carrying out her responsibilities under the terms of the lease.</p> <p>Attached receipts show approximately £375.00 paid to Mr Leatham with regards to work he carried out at the property. These works relate to the building of a small wall in the garden to hold back soil and other general garden works.</p> <p>Mrs Leatham purchased the</p>	<p>Please see more detailed spreadsheet attached.</p> <p>Invoiced for and paid separately and individually.</p> <p>There was no reluctance to pay genuine accounts for the benefit of the property.</p> <p>There was no apparent need for this expense as no one objected to paying.</p> <p>It is concerning that Mrs Leatham uses relatives where she is spending money on behalf of other people.</p>	<p>(1) whilst the accounts gave a total of £788 for this item, the Respondent's spreadsheet showed expenditure of only £331.94 after deducting £35 for an over payment due to Lloyds TSB wrongly posted and £1.60 posted in excess of a supporting voucher for £50 for site clearance and preparation. In the absence of any other evidence the Tribunal found the resulting balance of £331.94 reasonable, thus disallowing £456.06 neither supported by the Respondent's spreadsheet nor separate vouchers.</p> <p>(2) the reference to the fire protection is dealt with under item A.1</p> <p>(3) the item for legal and professional fees of £353 appeared as a separate item in the accounts so it was not clear to the Tribunal why it featured under this item in the Scott Schedule. However, the Tribunal did not consider it unreasonable for the Respondent to seek legal advice or assistance on these issues so found the cost reasonable.</p>
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A.6

Garden maintenance

So far as it has been possible to ascertain, all money spent on garden maintenance has been payments made to Mrs Leatham for unidentified work. There is no indication that the work had ever been done, and the Lease does not authorise the freeholder, personally, to carry out such work. There are no invoices in support of it

When Mrs Leatham took over the freehold to the property and therefore the maintenance obligations, it was agreed by all of the residents that she would carry out and be paid for the maintenance of the gardens. It was agreed that Mrs Leatham would charge at the basic rate of £25.00 per month for the general weeding, cutting grass, keeping the borders, cuttings hedges and shrubs, sweeping leaves and the car park and the general up keep of the communal gardens. The charges for such garden maintenance are on par if not less than the cost of employing an external contractor. As such, saving the flat owners money. Mrs Leatham did not always take a full entitlement each month depending upon circumstances and the amount of money in the accounts. This was balanced by taking larger sums on other months. For the year 1998 she actually took £45.00 less than her basic annual entitlement. All of the flat owners were well aware of the garden maintenance charge being made by Mrs Leatham and never challenged this or alleged at any time that such works had not been carried out by Mrs Leatham. Indeed, they often complimented her on her efforts. In this year Mrs Leatham continued to carry out general garden works, but only took £90.00 for such garden maintenance. A certain amount of the garden maintenance was carried out by Mrs Leatham as referred to under property maintenance

The agreement that Mrs Leatham refers to does not exist. It was not agreed. None of the present flat owners are aware of the alleged "agreement" by past Lessees to pay Mrs Leatham £25 p.c.m. for her own work in the communal garden area. No proof has been provided to back this assertion, nor is it written into any of the leases. Why was Mrs Leatham "unaware" that she had to provide proper invoices for any work when that is specifically mentioned in the last paragraph of the lease. The fact is that Mrs Leatham paid herself steadily increasing amounts of money for doing roughly the same amount of work in the same small and established garden. Thus, in 1998 and 1999, she only took £255, but in 2000 this suddenly increased to £355 p.a. Subsequent proper accounts for 2001 to 2005, when finally provided, will show how these amounts increased again in the following 5 years, as such accounts as we have received to date already indicate (e.g. 2004-05 total £580) This is a situation where dissatisfaction gradually increased until, as a result of Mrs Leatham's total failure to provide satisfactory information, this application was commenced. £510 cash withdrawn but the split is difficult to identify for work carried out.

As the Tribunal had decided that the Respondent, within the terms of the lease, was not entitled to make a charge for work carried out herself, the Tribunal found a total of £221.48 for this item to be reasonable made up as follows:-

Rubbish removal	£20
Garden maintenance etc	£65
Rubbish clearance	£35
Labour re garden	£35
Garden wall labour	£30
Garden plants	£18.76
Garden plants	<u>£17.72</u>
	<u>£221.48</u>

thus disallowing £48.52

A.7	Printing, post, stationery	There is no evidence that such expenditure is necessary. There is virtually no communication in writing from Mrs Leatham.	No such expenditure charged for by Mrs Leatham.	-	There was no amount for such an item in the accounts so there was no issue for the Tribunal to determine.
A.8	Management fees	There is no provision in the Lease for any such fees to be charged. In addition, the management has not been carried out properly. Proper records have not been kept, and no proper maintenance has been carried out to the property itself, which is now in a bad state of repair and decoration, internally and externally.	<p>In accordance with clause 18 of Schedule 6 to Mrs Leatham's lease she was entitled to make a reasonable charge in respect of her management services.</p> <p>She was aware that Symonds & Sampson, who had previously acted as managing agents, had charged a maintenance fee without keeping any books of accounts. Despite this for many years she did not to take any management fee in respect of her management of the block, despite being entitled to it.</p>	<p>We have never seen a copy of Mrs Leatham's lease but clause 18 to Schedule 6 of the remaining leases makes no mention of Mrs Leatham being "entitled to make a reasonable charge in respect of her management services".</p> <p>Meanwhile, our contention is that as this £300 annual fee is an item costing the other 5 flat owners more than £50 p.a., this should have been agreed with the present lessees, and again written into their leases.</p> <p>This does not seem to be relevant</p>	There was no amount for such an item in the accounts so there was no issue for the Tribunal to determine.

A.9	Accountancy	<p>Such fees should not be allowed, as the accounts prepared have not been prepared in accordance with the provisions of the Lease. Expenditure which is not permitted under the Lease has been included in these accounts, and the accounts are not supported by appropriate vouchers to authorise any particular work, or to show authorisation by the Lease. In these circumstances, no accountancy fees should have been charged to the Lessees.</p>	<p>From and including year-end March 2001 financial accounts prepared by independent accountants, Hendersons of Wareham Dorset. As far as Mrs Leatham was aware, the accounts were prepared in accordance with the requirements of the lease and all signed off by the accountants. All the expenditure was just and reasonable and in accordance with market rates.</p> <p>No previous complaints that the accounts did not provide adequate information or were in breach of the terms of the lease.</p>	<p>The lease is quite clear in paragraph 9 of Schedule 7 and this has not been complied with. It is difficult to see how this provision can have been overlooked.</p>	<p>Although the Applicants acknowledged that the item of £176, by itself was not unreasonable, as the Tribunal had decided that the Respondent, with her accountants had not followed the requirements in the lease covering the accounts, it decided that this cost was not reasonable.</p>
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A.10	Bank charges	<p>These have been caused entirely by excessive withdrawals by Mrs Leatham and by her not properly managing the accounts. She appears to have used the Deposit Account as a second Current Account, and created overdrafts not authorised by the Lease.</p>	<p>Mrs Leatham opened two bank accounts. The business premium account paid a reasonable rate of interest but did not allow for the use of a cheque book and therefore Mrs Leatham needed to open a current account. Her intention being that any surplus monies should remain in the premium account to attract the maximum interest and be transferred into the current account as and when necessary for the purpose of writing cheques, direct debits etc.</p> <p>Most if not all of the charges are unavoidable and for the general use of the current account.</p> <p>In respect of any overdraft, the cause of this was the none or late payment of service charge due and not due to any action of Mrs Leatham. The applicants are asked to provide specific details as to the sums it is claimed are due to any overdraft.</p>	<p>Mrs Leatham should have managed these bank accounts properly. In the six years that are under review the accounts have become overdrawn on 22 occasions, and most often there was money in the deposit account which could have been used.</p> <p>Mrs Leatham also should not have made payments out of any account if there was no money in it, and ensuring this was the case was part of her management duties.</p> <p>Attached is copy letter number 6, written to Mrs Edmonds, as recently as 21st May 2004, by Mrs Leatham's solicitors, that there was a sinking fund: no evidence has been produced to show that such a fund was set up, or, if it was, where the money is.</p>	<p>The Applicants accepted this was a charge for operating the banking account, the item was accepted as reasonable and there was no issue for the Tribunal to determine</p>
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A.11	Generally	<p>The vouchers have not been cross-referenced to the bank statements or to the accounts as was required by the Tribunal's Directions, nor have the accounts been certified in accordance with the provisions of the Lease.</p> <p>Few, if any, invoices have been produced.</p>	<p>Mrs Leatham has provided such receipts as she still has and these are attached.</p> <p>The spreadsheets produced cross-reference cheque numbers and the date of cash payments to Mrs Leatham in respect of property maintenance and garden maintenance. In addition, where available, invoices have been cross-referenced against such payments as set out on the spreadsheets.</p>	—	This raised no issue for the Tribunal to decide.
A.12	Cheques	See attached list for queries about specific cheques	Please see schedule attached to schedule B. In addition, see cheque details as set out on relevant spreadsheets.	—	This raised no issue for the Tribunal to decide; the parties accepted that the Tribunal did not have an audit function

ELM HOUSE- SCOTT SCHEDULE B (RELATING TO YEAR ENDED 31.03.1999)

Item No.	Income Detail	Applicants' Contentions	Respondent's Contentions	Agreement? If so, what?	Tribunal's Comments
B.1	Maintenance charges	Specific information is extremely vague and not clear who contributed what.	<p>Details of maintenance payments made by Mrs Leatham set out on spreadsheets attached. Total payments made by Mrs Leatham as shown on spreadsheets is £567.77</p> <p>Insofar as there is any shortfall in the maintenance due for the year Mrs Leatham believes this is covered by her not taking her ground rent entitlement from the monies paid into Elm House accounts by the flat owners.</p>	Noted	As this item related to a total paid by the lessees, the issues for determination related to specific items of expenditure as detailed below.
B.2	Bank Interest	No dispute	No dispute	-	-
B.3	Insurance	No dispute	No dispute	-	-
B.4	Light and Heat	No dispute	No dispute	-	-

B.5	Property maintenance	<p>Such vouchers as have been supplied have not been cross-referenced to anything, and do not identify any maintenance carried out, i.e. do not show what work was done for the sum of expenditure. All items of money paid out to Mrs J Leatham are not authorised by the terms of the Lease, as authorised expenditure, and so have not been properly and reasonably incurred.</p> <p>Mrs Leatham has personally charged for cleaning, but has not really done anything to justify this charge, and such payment to her is not authorised by the Lease.</p>	<p>Please see spreadsheets attached showing cheques and cash payments made in respect of maintenance.</p> <p>Where available those payments have been cross-referenced to receipts. The number next to the payment relates to the receipt set out in the bundle attached.</p> <p>£615.60 paid to Mr D Wheatly with regards to general maintenance and painting works at the property, including painting the iron staircase to Flat 4, sorting out flagstones and dealing with all interior. Mr D Riley of Flat 4 had requested work with regards to the flagstones. All costs incurred in respect of general maintenance as required to be dealt with by Mrs Leatham under the terms of the lease.</p> <p>£185.00 spent in replacing guttering. Guttering needed replacing due to damage.</p> <p>During this year a cleaner was employed to deal with the cleaning of the internal communal areas. She was paid £145.00.</p> <p>There are a number of receipts attached, which do not have any clear specific entry on the spreadsheets. The expenditure incurred under these invoices 10, 14, 19, 20, 23, 24, 25, 27, 28, 29, 31 and 33 was £58.03.</p>	<p>During this period Mrs Leatham withdrew from the current account the sum of £976.77 in cash to pay herself for 'gardening and maintenance'. All items of money paid out to Mrs Leatham are not authorised by the terms of the lease and so have not been properly and reasonably incurred.</p> <p>She withdrew £80 cash, which is not allocated or substantiated.</p> <p>She paid to Lord Hardware two cheques, one for £50 and one for £20 allocated on the bank statements as garden tools and materials. These payments and the round sum figures give rise to suspicion.</p> <p>Other payments may be accepted although there is very little in the way of substantiating invoices or receipts.</p>	<p>Whilst the accounts gave a total of £2032 for this item, the spreadsheet showed expenditure of only £1475.45 which the Applicants accepted as reasonable. In addition the Respondent was able to vouch payments for:-</p> <table><tr><td>Richard Collings for new locks and door fixture</td><td>£ 51.85</td></tr><tr><td>B&Q for paint</td><td></td></tr><tr><td>Etc</td><td>£103.98</td></tr><tr><td>D Wheatly Rubbish removal</td><td>£ 10.00</td></tr><tr><td>General Mtce</td><td><u>£ 30.00</u></td></tr><tr><td></td><td><u>£195.83</u></td></tr></table> <p>which the Tribunal considered reasonable, allowing £1671.28 for this item and, thus, disallowing £360.72</p>	Richard Collings for new locks and door fixture	£ 51.85	B&Q for paint		Etc	£103.98	D Wheatly Rubbish removal	£ 10.00	General Mtce	<u>£ 30.00</u>		<u>£195.83</u>
Richard Collings for new locks and door fixture	£ 51.85																
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D Wheatly Rubbish removal	£ 10.00																
General Mtce	<u>£ 30.00</u>																
	<u>£195.83</u>																

<p>B.5 Continued</p>			<p>No money has been paid out to Mrs Leatham improperly as alleged</p> <p>All sums have been properly and reasonably incurred in respect of keeping the building and all fixtures and fittings therein in a good and tenatable state of repair and decoration.</p>	<p>Not agreed</p> <p>Not agreed</p>	
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B.6	Garden maintenance	<p>So far as it has been possible to ascertain, all money spent on garden maintenance has been payments made to Mrs Leatham for unidentified work. There is no indication that the work had ever been done, and the Lease does not authorise the freeholder, personally, to carry out such work. There are no invoices in support of it. A Hedge Trimmer was hired but there is no hedge: a shredder was bought on the 15.03.02 but there is no need for such an item.</p>	<p>See reply to A.6 above. When Mrs Leatham took over the freehold to the property and therefore the maintenance obligations, it was agreed by all of the residents that she would carry out and be paid for the maintenance of the gardens. It was agreed that Mrs Leatham would charge at the basic rate of £25.00 per month for the general weeding, cutting grass, keeping the borders, cuttings hedges and shrubs, sweeping leaves and the car park and the general up keep of the communal gardens. The charges for such garden maintenance are on par if not less than the cost of employing an external contractor. As such, saving the flat owners money. Mrs Leatham did not always take a full entitlement each month depending upon circumstances and the amount of money in the accounts. This was balanced by taking larger sums on other months. For the year 1998 she actually took £45.00 less than her basic annual entitlement. During this year, Mrs Leatham started to charge £65.00 per month with regards to general garden maintenance and the cleaning of the property. During this year, Mrs Leatham believes she received the total sum of £430.00 with regards to the works she carried out on the property. In respect of the hedge trimmer this was hired to deal with the ivy growing out of the walls. The shredder was purchased in respect of the numerous shrubs in the garden and is for the benefit of the property and the residents as a whole. The shredder remains as a capital asset of the maintenance company.</p>	<p>The accountants allocated a nominal sum of £346 to gardening and then rolled all other cash and cheque withdrawals into 'property maintenance' without properly apportioning payments or seeing receipts or invoices.</p>	<p>The Applicants accepted this item as reasonable having had the opportunity of perusing the vouchers.</p>
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B.7	Printing, post, stationery	<p>There is no evidence that such expenditure is necessary. There is virtually no communication in writing from Mrs Leatham.</p>	<p>in dealing with her obligations under the lease it was necessary for Mrs Leatham to correspond with flat owners in respect of the payment of service charge, breaches of the lease etc and with outside agencies. In addition, at times she required hardware such as folders, pens, papers etc.</p> <p>It was also necessary to send faxes to the owners of Flat 4 who were living abroad in order to deal with various matters.</p> <p>The costs incurred were minimal and in this year £24.62. Also attached are receipts in respect of stationery expenses. Receipts numbers 2-6,8,9,11,12,13,17 and 18 totalled £36.42.</p>	<p>None of the lessees ever recalls receiving a fax.</p>	<p>This item was shown in the accounts rounded up to £75 which was said to represent</p> <table><tr><td>Telephone</td><td>£50.00</td></tr><tr><td>Stationery</td><td><u>£24.62</u></td></tr><tr><td></td><td><u>£74.62</u></td></tr></table> <p>which the Tribunal found to be reasonable</p>	Telephone	£50.00	Stationery	<u>£24.62</u>		<u>£74.62</u>
Telephone	£50.00										
Stationery	<u>£24.62</u>										
	<u>£74.62</u>										
B.8	Management fees	<p>There is no provision in the Lease for any such fees to be charged. In addition, the management has not been carried out properly. Proper records have not been kept, and no proper maintenance has been carried out to the property itself, which is now in a bad state of repair and decoration, internally and externally.</p>	<p>In accordance with clause 18 of Schedule 6 to Mrs Leatham's lease she was entitled to make a reasonable charge in respect of her management services.</p> <p>She was aware that Symonds & Sampson, who had previously acted as managing agents, had charged a maintenance fee without keeping any books of accounts. Despite this for many years she did not to take any management fee in respect of her management of the block despite being entitled to it.</p>	<p>We have never seen a copy of Mrs Leatham's lease but clause 18 to Schedule 6 of the remaining leases makes no mention of Mrs Leatham being "entitled to make a reasonable charge in respect of her management services".</p> <p>Meanwhile, our contention is that as this £300 annual fee is an item costing the other 5 flat owners more than £50 p.a., this should have been agreed with the present lessees, and again written into their leases.</p>	<p>No item under this heading appeared in the accounts so there was no issue for the Tribunal to determine.</p>						

B.9	Accountancy	Such fees should not be allowed, as the accounts prepared have not been prepared in accordance with the provisions of the Lease. Expenditure, which is not permitted under the Lease, has been included in these accounts, and the accounts are not supported by appropriate vouchers to authorise any particular work, or to show authorisation by the Lease. In these circumstances, no accountancy fees should have been charged to the Lessees.	see reply to A.9	Monies paid to Domestic Insurance Services on a Standing Order were included with the Building Insurance and no explanation has been received for this regular debit except it being a mistake	The Tribunal decided this item was not reasonable on the same basis as that set out in item A.9
B.10	Bank charges	These have been caused entirely by excessive withdrawals by Mrs Leatham and by her not properly managing the accounts. She appears to have used the Deposit Account as a second Current Account, and created overdrafts not authorised by the Lease.	Reply as A.10 Reason for payments of £47.08, £36.36 and £20.97 is because they were busy months in terms of payments made. In addition, an a/c control fee of £12.00 was payable each of these months.	Large bank charges accrued as a consequence of the current account going overdrawn although sufficient covering funds in the Business Premium Account. This is poor money management.	The Tribunal accepted the Applicants' argument that some account charges appeared to have been incurred unreasonably as funds were available in the Business Premium Account. However, this was only significantly so in June 2001 when the current account went overdrawn when there was a balance of c. £600 in the deposit account. In consequence the account was charged £36 in control fees which the Tribunal disallowed as unreasonably incurred. For the remaining periods the balances on both accounts were relatively low so the Tribunal did not consider the charges to have been unreasonably incurred.

B.11	Fax machine	<p>There is no possible indication of why such a machine is necessary: none of the tenants can recollect ever receiving a fax from Mrs Leatham.</p>	<p>Mrs Leatham had the opportunity to purchase a fax machine at a reduced rate and because of a flat owner living in South Africa it had become necessary to fax him on numerous occasions. Mrs Leatham felt that this was a good price and would be a benefit to all flat owners. To all flat owners, as amongst other things it saved the cost of sending faxes through a third party. The cost was only £60.00 and the fax machine remains an asset of the management company.</p> <p>The expenditure was incurred during the tax year to March 2003 and not March 2002.</p>	<p>The lessee living in South Africa is David Riley and he says he has never received a fax.</p>	<p>The Tribunal accepted that it was reasonable for the Respondent to require the facility of a fax machine for the management/administration of the flats, whether or not lessees were abroad, and, thus found the item to be reasonable.</p>
B.12	Increases in Maintenance Charge	<p>Her then solicitors, on the 18th May 2001, indicated that increased insurance premium was the reason for increasing the payments from £40 per month to £50 per month, but on the 4th July 2001 they wrote (4th paragraph) that the need to have a Reserve/Sinking Fund was the reason for the increase. No Reserve or Sinking Fund was ever set up.</p>	<p>As with all property maintenance costs increased over time. The previous payment of £40.00 per month was not sufficient to meet all of the ongoing and future liabilities. As such it was sensible to increase the payment due.</p> <p>On speaking with the business manager at Barclays she suggested that there was no point in setting up an additional account and the monies could just be paid into the deposit account. As such, no reserve or sinking fund was ever created, but all monies received were paid into Elm House Accounts.</p>	<p>Two different reasons were given for increasing the charges in letters from Humphries Kirk. One was the increased cost of insurance, and then, two months later, in the letter of the 4th July 2001, reference to a sinking fund. If there was to be no sinking fund, then Mrs Leatham should have notified the lessees appropriately that she was not carrying out what she had agreed.</p>	<p>This raised no issues for the Tribunal to determine</p>

B.13	Generally	<p>The vouchers have not been cross-referenced to the bank statements or to the accounts as was required by the Tribunal's Directions, nor have the Accounts been certified in accordance with the provisions of the Lease.</p> <p>Few, if any, invoices have been produced.</p>	See reply to A.11	Attached is a detailed spreadsheet	This raised no issues for the Tribunal to determine
B.14	Cheques	See attached list for queries about specific cheques	Please see schedule attached to schedule B. In addition, see cheque details as set out on relevant spreadsheets.	Attached is a detailed spreadsheet	This raised no issues for the Tribunal to determine

ELM HOUSE – SCOTT SCHEDULE C (RELATING TO YEAR ENDED 31.03. 2003)

Item No.	Income Detail	Applicants' Contentions	Respondent's Contentions	Agreement? If so, what?	Tribunal's Comments
C.1	Maintenance charges	Specific information is extremely vague and not clear who contributed what	<p>Details of maintenance payments made by Mrs Leatham set out on spreadsheets attached. Total payments made by Mrs Leatham as shown on spreadsheets is £500.00, including the £50.00 referred to in C.5.</p> <p>Insofar as there is any shortfall in the maintenance due for the year Mrs Leatham believes this is covered by her not taking her ground rent entitlement from the monies paid into the Elm House accounts by the flat owners.</p>	Noted	As this item related to the total paid by the lessees, the issues for determination related to specific items of expenditure as detailed below
C.2	Bank Interest	No dispute	No dispute	-	-
C.3	Insurance	No dispute	No dispute	-	-
C.4	Light and Heat	No dispute	No dispute	-	-

C.5	Property maintenance	<p>Such vouchers as have been supplied have not been cross-referenced to anything, and do not identify any maintenance carried out, i.e. do not show what work was done for the sum of expenditure.</p> <p>All items of money paid out to Mrs J Leatham are not authorised by the terms of the Lease, as authorised expenditure, and so have not been properly and reasonably incurred. Mrs Leatham has personally charged for cleaning, but has not really done anything to justify this charge, and such payment to her is not authorised by the Lease.</p>	<p>Please see spreadsheets attached showing cheques and cash payments made in respect of maintenance.</p> <p>Where available those payments have been cross referenced to receipts. The number next to the payment relates to the receipt set out in the bundle attached.</p> <p>£299.04 was spent on architects' fees in relation to the replacement of the windows. This was dealt with because it was necessary to obtain planning permission from Purbeck District Council before any windows could be replaced.</p> <p>Mrs Leatham incurring this cost was necessary reasonable in the circumstances, in order that the windows could be replaced.</p> <p>£50.00 paid out in respect of cheque 186 relates to a ground rent payment due to Mrs Leatham which she paid into the deposit account as part of her maintenance liability.</p>	<p>The spreadsheets are not complete and there is a missing payment from bank statement number 76 and therefore the accounts are incorrect.</p> <p>Mrs Leatham paid to Lord Hardware a cheque for £20.00 allocated on the bank statements as cleaning materials. This payment and the round sum figure gives rise to suspicion, as in previous year.</p> <p>Mrs Leatham paid £220.00 to a Mr D Connor to supply and fit a fire door to flat no. 1. Surely this was the responsibility of the then flat owner and not an expense to General Maintenance.</p>	<p>The accounts gave a total of £1337 for this item including:-</p> <p>(1) Architects fees of £299.04 which the Tribunal found to be reasonably incurred for the reasons given in the Tribunal's Decision.</p> <p>(2) a fire door for Flat 1 of £220 which the Tribunal did not find reasonable as it did not form part of the reserved property so would have been the responsibility of the lessee of that flat or alternatively should have formed part of the fire protection works shown in the 2001 accounts paid for separately by the lessees. Thus the Tribunal disallowed this item</p>
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<p>C.5 Continued</p>			<p>£100.00 excess was payable to the insurance company following a claim by Mrs Leatham for damage caused to her property, following a leak from the bathroom of Flat 4. It was necessary for there to be re-sealing and redecoration and it was appropriate for Mrs Leatham to charge the excess to the general expenditure of the company.</p> <p>There are a number of receipts attached which do not have any clear specific entry on the spreadsheets. The expenditure incurred under these invoices for 4-7, 11 totals £21.93.</p> <p>No money has been paid out to Mrs Leatham improperly as alleged.</p> <p>All the sums have been properly and reasonably incurred in respect of keeping the building and all fixtures and fittings thereon in a good and tenable state of repair and decoration.</p>	<p>We are very concerned that a cash withdrawal of £100 was made and allocated to 'Insurance Excess'. We are unaware of the necessity of an insurance claim being made but are aware that the policy excess is only £50.00. What claims have been made under this policy?</p>	<p>(3) an insurance excess of £100. However, as the Respondent's comments showed the claim arose from a leak from Flat 4 the Tribunal did not consider this reasonable as the claim would have been an issue between the two lessees. Further the Tribunal could not reconcile this excess figure with the sum of £50 shown in the insurance renewal papers for the year commencing 19.05.2004</p> <p>(4) cash payments to the Respondent totalling £620 for unspecified items of maintenance, cleaning and management. However, as the Tribunal had decided that the Respondent was not entitled to make this charge (see A.6 above) the Tribunal did not find this was reasonable. Thus the Tribunal disallowed this item of £620.</p>
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C.6	Garden maintenance	<p>So far as it has been possible to ascertain, all money spent on garden maintenance has been payments made to Mrs Leatham for unidentified work. There is no indication that the work had ever been done, and the Lease does not authorise the freeholder, personally, to carry out such work. There are no invoices in support of it</p>	<p>See reply to B.6 above.</p> <p>Mrs Leatham charged £65.00 per month with regards to general garden maintenance and the cleaning of the property. Maintenance of the garden and the cleaning were general matters to which Mrs Leatham was responsible for dealing with and were part of her responsibilities under the terms of the lease.</p> <p>As necessary, Mrs Leatham carried out further works over and above the general garden maintenance and cleaning of the property for which she was paid additional sums. The costs incurred were for necessary works required to be dealt with by Mrs Leatham under the terms of the Lease and by carrying out the works personally was able to save the additional costs of employing an outside contractor.</p> <p>The charge of £65.00 per month was in line with market rates and during the course of the year Mrs Leatham received the total sum of £750.00 with regards to the works she carried out on the property, of which she paid approximately £80.00 to the cleaner for two months work.</p>	<p>During this period Mrs Leatham withdrew from the current account the sum of £765.00 in cash to pay herself for 'gardening and maintenance'. All items of money paid out to Mrs Leatham are not authorised by the terms of the lease and so have not been properly and reasonably incurred.</p>	<p>The accounts gave a total of £300 for this item. However, in the absence of any detailed evidence for this item at the hearing or in the Respondent's spreadsheet to substantiate any expense incurred and having decided the Respondent could not charge for such work as she carried out herself the Tribunal disallowed this item.</p>
C.7	Printing, post, stationery	<p>There is no evidence that such expenditure is necessary. There is virtually no communication in writing from Mrs Leatham.</p>	<p>See response to B.7</p> <p>The total costs during this year not including the fax machine which is dealt with in B.7 was only £51.31</p>	<p>Noted</p>	<p>The accounts gave a total of £51 for this item which the Tribunal considered reasonable.</p>

C.8	Management fees	<p>There is no provision in the Lease for any such fees to be charged. In addition, the management has not been carried out properly. Proper records have not been kept, and no proper maintenance has been carried out to the property itself, which is now in a bad state of repair and decoration, internally and externally.</p>	<p>In accordance with clause 18 of Schedule 6 to Mrs Leatham's lease she was entitled to make a reasonable charge in respect of her management services. She was aware that Symonds & Sampson, who had previously acted as managing agents, had charged a maintenance fee without keeping any books of accounts. Despite this for many years she did not to take any management fee in respect of her management of the block despite being entitled to it. As set out on the attached letter from Humphries Kirk of the 4 July 2001, it would seem that there was some misunderstanding as to the amount of ground rent payable to Mrs Leatham. This mistake would seem to be born by the fact that her ground rent is greater than the ground rent provided for in the other leases. At the end of the first paragraph it suggests that the payment of £50.00 should continue, with the additional £20.00 per annum being some recompense for her management. This was acknowledged at the time and until now; nobody has queried or objected to this additional payment. Indeed, Mrs Leatham has received further ground rent cheques for £50.00 recently.</p> <p>Mrs Leatham finally decided after nearly 10 years that she should be paid a reasonable amount for the time and effort she put into managing the property as previously mentioned. On discussions with the accountant, the figure of £300.00-£400.00 was felt appropriate.</p> <p>This sum was less than the cost of placing the management with an outside agency, which Mrs Leatham was reconsidering at the time. She recalls being quoted £750.00 + VAT by Goadsby & Harding and Castleford Managements costs who she had previously got involved were £600.00 + VAT. As such, saving the flat owners maintenance charge.</p>	<p>Mrs Leatham assumed the authority to pay herself £300.00 in cash for 'Management' without consultation or receiving the authority of the other lessees. This charge is not authorised by the terms of the lease and so has not been properly and reasonably incurred.</p>	<p>The accounts gave a total of £300 for this item and whilst this item would have been reasonable had it been authorised expenditure under the terms of the leases, as it was not the Tribunal disallowed it for the reasons given in the Tribunal's decision.</p>
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C.9	Accountancy	Such fees should not be allowed, as the accounts prepared have not been prepared in accordance with the provisions of the Lease. Expenditure which is not permitted under the Lease has been included in these accounts, and the accounts are not supported by appropriate vouchers to authorise any particular work, or to show authorisation by the Lease. In these circumstances, no accountancy fees should have been charged to the Lessees.	Please see our reply to A.9	See reply to A.9	The Tribunal disallowed this item of £176 on the same basis as previously given.
C.10	Bank charges	These have been caused entirely by excessive withdrawals by Mrs Leatham and by her not properly managing the accounts. She appears to have used the Deposit Account as a second Current Account, and created overdrafts not authorised by the Lease.	Please see reply to A.10	Please see reply to A.10	The accounts gave £69 for this item which the Tribunal considered reasonable: analysis of the bank statements showed only regular bank charges for this period.
C.11	Generally	The vouchers have not been cross-referenced to the bank statements or to the accounts as was required by the Tribunal's Directions, nor have the accounts been certified in accordance with the provisions of the Lease. Few, if any, invoices have been produced.			This raised no issues for the Tribunal to decide.
C.12	Cheques	See attached list for queries about specific cheques	Please see schedule attached to schedule B. In addition, see cheque detail as set out on relevant accounts page.	See attached more complete spreadsheet	This raised no issues for the Tribunal to decide (see A.12 above)

C.13	Insurance claim	On the 10 th March 2003 Mrs Leatham drew from the Bank £100 excess in respect of an insurance claim, the details of which have never been made known to the flat owners, and no information seems to have been included in any accounts at any time.	The insurance claim relates to a leak through the ceiling from flat 4 into flat 2. Please see reply to C.5	We are very concerned that a cash withdrawal of £100 was made and allocated to 'Insurance Excess'. We are unaware of the necessity of an insurance claim being made but are aware that the policy excess is only £50.00. What claims have been made under this policy?	This did not appear as a separate item in the accounts and has been covered in C.5 (3) above.
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ELM HOUSE – SCOTT SCHEDULE D (RELATING TO YEAR ENDED 31.03. 2004)

Item No.	Income Detail	Applicants' Contentions	Respondent's Contentions	Agreement? If so, what?	Tribunal's Comments
D.1	Maintenance charges	Specific information is extremely vague and not clear who contributed what	<p>Details of maintenance payments made by Mrs Leatham set out on spreadsheets attached. Total payments made by Mrs Leatham as shown on spreadsheets is £855.00.</p> <p>Insofar as there is any shortfall in the maintenance due for the year Mrs Leatham believes this is covered by her not taking her ground rent entitlement from the monies paid into the Elm House accounts by the flat owners.</p>	Noted	As this item related to the total paid by the lessees, the issues for determination related to specific items of expenditure as detailed below.
D.2	Bank Interest	No dispute	No dispute	-	-
D.3	Insurance	No dispute	No dispute	-	-
D.4	Light and Heat	No dispute	No dispute	-	-

D.5	Property maintenance	<p>Such vouchers as have been supplied have not been cross-referenced to anything, and do not identify any maintenance carried out, i.e. do not show what work was done for the sum of expenditure. All items of money paid out to Mrs J Leatham are not authorised by the terms of the Lease, as authorised expenditure, and so have not been properly and reasonably incurred. Mrs Leatham has personally charged for cleaning, but has not really done anything to justify this charge, and such payment to her is not authorised by the Lease.</p>	<p>Please see spreadsheets attached showing cheques and cash payments made in respect of maintenance.</p> <p>Where available those payments have been cross referenced to receipts. The number next to the payment relates to the receipt set out in the bundle attached.</p> <p>£831.82 was paid to a Mr A Joyce with regards to work on the patio and other general works. These works were necessary because of water logging outside of the property and generally for the upkeep and maintenance of the property.</p> <p>In accordance with invoices attached the cost of materials was £111.19.</p> <p>£227.10 was spent on doors for the fitting of intermittent strips as required re fire regulations.</p> <p>There are a number of receipts attached which do not have any clear specific entry on the spreadsheets. The total expenditure incurred under those invoice numbers 4,9,16 was £8.67.</p> <p>No money has been paid out to Mrs Leatham improperly as alleged.</p> <p>All sums have been properly and reasonably incurred in respect of keeping the building and all fixtures and fittings therein in a good and tenable state of repair and decoration.</p>	<p>The accountants allocated a nominal sum of £300 to gardening and then rolled all other cash and cheque withdrawals into 'property maintenance' without properly apportioning payments or seeing receipts or invoices.</p> <p>During June 2003 Mrs Leatham employed a Mr Joyce to create a patio with sundry work and withdrew the total sum of £848.43 to pay for this work. No notice of intention was issued, no estimates were sought or produced and no authority was sought or given for this expenditure.</p>	<p>The accounts gave a total of £2490 for this item including:-</p> <p>(1) Patio and other works £831.82 paid to A. Joyce which the Applicants accepted and the Tribunal found reasonable.</p> <p>(2) Similarly, the Tribunal found the cost of materials vouched at £111.99 reasonable</p> <p>(3) Concerning the item of £227.10 for fitting intumescent strip, the Tribunal did not find this item reasonable accepting the Applicants evidence that this was or should have been covered by the fire prevention works shown in the 2001 accounts. Thus the Tribunal disallowed £227.10.</p> <p>(4) Cash payments to the Respondent totalled £1015 for garden, cleaning, maintenance, rubbish removal and unspecified works leaving £757 net after allowing for the amount attributed to garden maintenance (see D.6). However, as the Tribunal had decided that the Respondent was not entitled to make a charge for work the Respondent might have carried out herself, the Tribunal did not find the sum of £757 reasonable.</p>
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D.6	Garden maintenance	So far as it has been possible to ascertain, all money spent on garden maintenance has been payments made to Mrs Leatham for unidentified work. There is no indication that the work had ever been done, and the Lease does not authorise the freeholder, personally, to carry out such work. There are no invoices in support of it	See replies A.6, E.6 and F.6 above. In this year Mrs Leatham increased her general monthly charge to £80.00 and received approximately £1,000.00 in respect of the works she carried out.	During this period Mrs Leatham withdrew from the current account the sum of £1085.00 in cash for 'gardening and maintenance' without authority. All items paid out to Mrs Leatham are not authorised by the terms of the lease and so have not been properly and reasonably incurred.	The accounts gave £300 for this item. The Respondent's spreadsheet gave items for rubbish removal (£20) and Oakwood Nurseries for plants (£22) which the Tribunal found reasonable, but disallowed the balance of £258 cash payments to the Respondent for the reasons already given.
D.7	Printing, post, stationery	There is no evidence that such expenditure is necessary. There is virtually no communication in writing from Mrs Leatham.	<p>Please see reply to E.7 above. The total costs in year only £49.40.</p> <p>The £30.00 spent on R Green business letters was in relation to letters from solicitors to Flat 5 regarding a breach of the lease.</p> <p>There are a number of receipts attached which do not have any clear specific entry on the spreadsheets. These invoice numbers 7, 8, 12, 13 and 15 total £5.53.</p>	Noted	The Tribunal found this item reasonable

D.8	Management fees	There is no provision in the Lease for any such fees to be charged. In addition, the management has not been carried out properly. Proper records have not been kept, and no proper maintenance has been carried out to the property itself, which is now in a bad state of repair and decoration, internally and externally.	See reply to C.8 above. In this year Mrs Leatham charged £350.00 for management fees, an increase of £50.00 from the previous year.	Mrs Leatham assumed the authority to pay herself £700.00 in cash for 'Management' without consultation or receiving the authority of the other lessees. This charge is not authorised by the terms of the lease and so has not been properly and reasonably incurred. Where is the sinking fund money? Jacobs & Reeves' letter dated 21 st May 2004 clearly states that Mrs Leatham created a sinking fund in October 2003 and specific monies for this fund have been paid over to Mrs Leatham to be held in trust but this money does not seem to have been accounted for.	The accounts gave a total of £350 for this item which the Tribunal disallowed for the reasons already given.
D.9	Accountancy	Such fees should not be allowed, as the accounts prepared have not been prepared in accordance with the provisions of the Lease. Expenditure which is not permitted under the Lease has been included in these accounts, and the accounts are not supported by appropriate vouchers to authorise any particular work, or to show authorisation by the Lease. In these circumstances, no accountancy fees should have been charged to the Lessees.	Please see reply to D.9 above. In this year accounts payment for 2 years worth of accounts, year end 2003 and year end 2004. The work for 2003 accounts not previously billed.	Please see reply to A.9.	The Tribunal disallowed this item of £176 on the same basis as previously given.

D.10	Bank charges	These have been caused entirely by excessive withdrawals by Mrs Leatham and by her not properly managing the accounts. She appears to have used the Deposit Account as a second Current Account, and created overdrafts not authorised by the Lease.	<p>Please see reply to A.10.</p> <p>The reason for the £58.62 payment is that the bank changed its charging regime so rather than charging monthly it began to charge quarterly and as such the individual sums shown on the accounts as being charged are greater.</p>	Please see reply to A.10.	The accounts gave £106 for this item which the Tribunal found reasonable at £86 after deducting the account control fee £20 incurred whilst the account was overdrawn and the deposit account in credit.
D.11	Generally	<p>The vouchers have not been cross-referenced to the bank statements or to the accounts as was required by the Tribunal's Directions, nor have the accounts been certified in accordance with the provisions of the Lease.</p> <p>Few, if any, invoices have been produced.</p>	Please see reply to A.11	Monies paid to Domestic Insurance Services on a Standing Order were included with the building insurance and we have not received an explanation for this regular debit except Mrs Leatham saying it was a mistake.	This raised no issues for the Tribunal to decide
D.12	Cheques	See attached list for queries about specific cheques	Please see schedule attached to schedule B. In addition, see cheque details as set out on relevant spreadsheets.	Please see more detailed spreadsheet attached.	This raised no issues for the Tribunal to decide (see A.12 above).