MIDLAND LEASEHOLD VALUATION TRIBUNAL

DETERMINATION OF LIABILITY TO PAY SERVICE CHARGES UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985 AND FOR AN ORDER UNDER SECTION 20C OF THE LANDLORD & TENANT ACT 1985

BIR/41UF/LSC/2006/0012

G M Thompson and others — **Applicants**

- and –

S M Properties (21) Limited — **Respondent**

In respect of Properties at

ENVILLE MANOR
(also known as ENVILLE RECTORY AND THE OLD RECTORY),
BRIDGNORTH ROAD, ENVILLE DY7 5JA

Tribunal: Michael Tildesley OBE (Chairman)
Professor Nigel Gravells
Nigel R Thompson

Sitting in public in Birmingham on 7 July 2006
Deliberation of decision reserved until 8 August 2006

DECISION

The Application

1. On 4 May 2006 Mr G M Thompson of 3 Enville Manor submitted an Application to the Midland Leasehold Valuation Tribunal for determination of liability to pay services charges in respect of Enville Manor under section 27A of the Landlord and Tenant Act 1985 (hereinafter referred to as the 1985 Act) and an Application for an order under section 20C of the 1985 Act.

2. Mr Thompson was joined in the Application with:

1 Enville Manor: Mr Stephen Morley and Mrs Susan Morley/Mrs D E K Day

2 Enville Manor: Mr Roy Benard

4 Enville Manor: Mr Ken James

5 Enville Manor: Mr Richard Tait

7 Enville Manor: Ms Carol Emery

8 Enville Manor: Mr Jim Evans

3. Mr Thompson was appointed as the Applicants' representative.

4. The Application related to service charges for the years 2001, 2003, 2004 and 2005. The disputed matters are set out later in the decision.

5. The Applicants are lessees of their respective flats in Enville Manor under individual leases granted at various dates in 1988 for terms of 99 years at an initial ground rent of £35 per annum rising progressively to £105 per annum.

6. SM Properties (21) Ltd held the freehold for Enville Manor and was the landlord for the leases held by the Applicants.

7. On 7 April 2005 Enville Manor Right to Manage Company Limited (hereinafter known as RTM) acquired the right to manage the property.

The Leases

8. Under the terms of the leases each lessee was required to contribute and pay a percentage of the costs, expenses, outgoings and other specified matters incurred by the landlord. The percentage varied between the lessees.

9. Schedule 5 of the leases particularised the costs, expenses, outgoings and other matters which were:

(1) The expenses of and incidental to the running and administration of the services provided by the landlord including management agent and auditors fees.

(2) Building insurance.

(3) Repair, maintenance, decoration and renew of the main structure of the building, common parts, water pipes and drainage, gas pipes, and electricity cables and wiring.

(4) Septic tank.

(5) The cleaning and lighting of common areas.

(6) Decoration of the exterior including windows and ironwork.

(7) Maintenance of gardens, common grounds and vehicular access ways.

(8) Communal television aerials.

(9) Entry-phone.

(10) All rates including water rates, taxes and outgoings.

(11) Reserve fund for items of future expenditure likely to be incurred in the following three-year period.

(12) All other expenses incurred by the landlord in and about the maintenance and proper management of the property including interest incurred on borrowings of the landlord to discharge the services and reasonable legal charges borne by the landlord in connection with proceedings arising from the lease.

10. The lessees were required to pay the estimated service charge for each year in two instalments on the 1 January and 1 July. Further, once the actual amount of costs had been ascertained for the year, the lessees were obliged to pay forthwith the balance owing on being supplied with a sufficient statement of account.

11. Under the terms of the lease the landlord or his managing agent was required to keep proper books of account for expenditure incurred on services. Further, reserve funds were to be kept in a separate account held on trust for the lessees with any interest received to be added to the fund.

The Properties

12. Enville Manor was a substantial period building converted into eight self-contained flats, set in substantial grounds on the outskirts of Enville Village. Access to the property was gained by a drive. There was a separate block of garages which were leased to the lessees under the terms of the individual leases.

13. We inspected the properties on 7 July 2006. Mr Thompson was present. The Respondents did not attend. We inspected the outside of Enville Manor, the common areas and Flat 6.

14. We observed the different textures of the tarmac on the drive, the irregular and unsealed joints between the bays of tarmac and the unfinished edges where the tarmac abutted the garages. Mr Thompson showed us the improvements made to the property after the acquisition of the right to manage by the RTM which included repairs to the guttering, block paving and extensive grounds maintenance. We saw the damage to flat 6 which we were told arose from the non-repair of the guttering by the landlords.

The History of the Application

15. The RTM issued proceedings in the County Court against the Respondent to obtain details of the 2003 and 2004 service charges, reserve fund account for the property and information relating to insurance claims for the property for the period 7 April 2000 to 7 April 2005.

16. On 31 January 2006 Deputy District Judge Boynton made an order in favour of the RTM with costs.

17. On 23 February 2006 Mr Thompson informed Buller Jeffries, solicitors, the Respondent's representative that the lessees at Enville Manor intended to make application to the Leasehold Valuation Tribunal for determination of the reasonableness of the service charges for 2003 and 2004. Mr Thompson issued the application on 4 May 2006 which was served on the Respondent by the Tribunal on 12 May 2006.

18. On 8 May 2006 directions were issued requiring the Applicants to provide a statement of case by no later than 31 May 2006 and requiring the Respondent to provide its response by no later than 19 June 2006. The directions also set a timetable for the disclosure of documents, witness statements, exchange of skeleton arguments, and the provision of a paginated bundle of documents. The directions ended with the warning that failure to comply may result in prejudice to a party's case.

19. On 30 May 2006 the Applicants requested in writing disclosure of documents from the Respondent.

20. On 31 May 2006 the Tribunal Office received the Applicants' statement of case which was served on the Respondent by recorded delivery at two addresses: Five Ways House, St Andrew's Street, Netherton, Dudley DY2 0QB; 152 Halesowen Road, Cradley Heath, West Midlands, B64 5LP.

21. On 2 June 2006 the Tribunal Office sent to the Respondent and its representative, Buller Jeffries, solicitors, the Applicants' statement of case and other correspondence with a request that the Respondent confirm in writing within seven days its address for future correspondence.

22. The Tribunal Office received no response to its correspondence issued on 2 June 2006. The Office contacted Buller Jeffries, which advised that they had not been instructed to act for the Respondent in relation to the present Application and that all

future correspondence to the Respondent should be addressed to the Respondent's Halesowen address.

23. On 9 June 2006 the Tribunal Office notified both parties of the hearing date of 7 July 2006 at 12 midday at Ladywood House, Birmingham. The inspection of the property would take place at 10am on the same date.

24. The Respondent did not provide any response to the Applicants' statement of case by 19 June 2006.

25. On 23 June 2006 the Tribunal Office wrote to the Respondent stating that it had not received the Respondent's response. Further the letter emphasised the importance of supplying the necessary documentation prior to the hearing date.

26. On 28 June 2006 the Applicants provided a paginated bundle of documents which was also served on the Respondent by recorded delivery. The Applicants pointed out that the Respondent had not complied with their request for disclosure of documents dated 30 May 2006.

27. On 6 July at 15:31 hours the Tribunal Office received a fax from Buller Jeffries advising that they had been instructed by the Respondent to apply for an adjournment of the hearing on 7 July 2006.

Application for Adjournment

28. We dealt with the Respondent's Application as a preliminary matter at the hearing on 7 July 2006. Mr Thompson represented the Applicants. Mr Rumney, counsel represented the Respondent.

29. Mr Rumney informed the Tribunal that Ms Fletcher, the principal witness for the Respondent, had taken ill suffering chest pains for which she had an appointment with her doctor on the day of the hearing. Ms Fletcher was, therefore, unable to attend to give her evidence. Although Mr Rumney acknowledged that an adjournment would be inconvenient, he submitted that the health condition of the principal witness was a justifiable ground to grant the application. Also, if an adjournment were granted, it would enable the Respondent to provide a properly formulated response for the Tribunal.

30. Mr Rumney was unable to supply independent corroboration of Ms Fletcher's health condition, such as a doctor's letter. He believed that Ms Fletcher's heart condition was of recent origin. Mr Rumney could not explain the failure of the Respondent to comply with the Tribunal directions and to respond to the Applicants' disclosure request. He did not know why it was not possible for Ms Fletcher's line manager to attend the hearing to give evidence on behalf of the Respondent. Mr Rumney accepted that the Respondent instructed Buller Jeffries late on 6 July 2006.

31. Mr Thompson opposed the Application for adjournment. He pointed out that Ms Fletcher had been fit to attend the Tribunal hearing on 13 June 2006 in connection with an Application for enfranchisement of Enville Manor. Mr Thompson informed

the Tribunal that Susan Griffiths, a director of the Respondent company, was the line manager for Ms Fletcher. He referred to the Respondent's complete failure to comply with requests for information and the Tribunal directions. Mr Thompson commented that the Respondent had behaved in the same manner in respect of previous Applications by the Applicants for determination of service charges. He had no confidence that the Respondent would provide a properly formulated response if granted an adjournment of four weeks.

The Decision on the Application for Adjournment

32. Regulation 17(2) of the Leasehold Valuation Tribunals (Procedure) Regulations 2003 provides that

> "Where a postponement or adjournment has been requested the tribunal shall not postpone or adjourn the hearing except where it considers it is reasonable to do so having regard to –
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> a) the grounds for the request;
>
> b) the time at which the request is made;
>
> c) the convenience of the other parties".

33. We found the following facts in relation to the Application:

(1) SM Properties (21) Ltd was the Respondent to the service charge Application not Ms Yvonne Fletcher.

(2) The Respondent offered no explanation as to why Ms Griffiths, a director and line manager to Ms Yvonne Fletcher, could not give evidence on its behalf.

(3) The Respondent had completely failed to comply with Tribunal directions and the Applicants' disclosure request.

(4) Ms Fletcher's state of health was not the cause of the Respondent's complete failure to prepare for the Tribunal hearing. She was fit to attend the Tribunal hearing in connection with another application on 13 June 2006.

(5) The Respondent followed the same pattern of non-compliance with requests for information and Tribunal directions in previous Applications before the Tribunal by the Applicants.

(6) The Respondent supplied no independent corroboration of Ms Fletcher's medical condition.

(7) The Respondent instructed solicitors on the day prior to the hearing.

(8) The Respondent left notification of its Application for adjournment until 15:36 hours on the day before the hearing. It did not notify the Applicants of its Application.

(9) The Applicants would suffer considerable inconvenience and additional cost if the application was adjourned.

34. We conclude from the above facts when taken together that the Respondent's Application for adjournment was consistent with Mr Thompson's submission that the Respondent has attempted to frustrate and delay the hearing of the Applicants' Application. Even if Ms Fletcher was too ill to attend the Tribunal hearing, her illness was of recent origin and, therefore, was not the reason for the Respondent's complete failure to prepare for the hearing as directed by the Tribunal. Also the Respondent offered no explanation why Ms Griffiths could not give evidence. In all the circumstances we hold that it would not be reasonable to grant an adjournment. **We refuse the Respondents' Application for adjournment of the substantive hearing.** On announcing the Tribunal decision Mr Rumney withdrew from the hearing.

The Evidence

35. We heard from Mr Thompson on behalf of the Applicants. Mr Thompson provided the Tribunal with a paginated bundle of documents. We also watched a video of the works carried out on the tarmacadam of the drive. Mr James of Flat 4 Enville Manor compiled the video.

36. We concluded hearing the evidence on 7 July but adjourned the deliberation of our decision to 8 August 2006. We directed Mr Thompson to supply details of the individual lessee's payments of service charges for the periods in question, which were subsequently received in accordance with the Tribunal directions.

The Jurisdiction of the Leasehold Valuation Tribunal

37. Under section 27A of the 1985 Act the Tribunal is given the jurisdiction to decide whether a service charge is payable and if it is the Tribunal may also decide:

> the person by whom it is payable;
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> the person to whom it is payable;
>
> the amount which is payable;
>
> the date at or by which it is payable; and
>
> the manner in which it is payable.

38. Section 19 of the 1985 Act provides that

> "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 and the carrying out of works, only if the services or works are of a reasonable standard;
>
> and the amount payable shall be limited accordingly.

39. The fact that the tenant has paid the service charge does not preclude the Tribunal from determining whether the service charge is payable. Equally the mere act of payment of the disputed service charge by the tenant is not an admission on his part on the validity of the service charge.

40. Section 20B of the 1985 Act states that all service charges must be demanded within 18 months of the costs being incurred. Otherwise, subject to certain exceptions, there is no liability on the tenant to pay them.

41. Under Section 20 of the 1985 Act the landlord is required to consult with the tenant on qualifying works. If the landlord fails to consult or the consultation does not meet the statutory requirements the amount that can be charged by the landlord for the qualifying works is capped.

42. The Commonhold and Leasehold Reform Act 2002 changed the consultation requirements for qualifying works commenced in the first accounting period on or after 30 October 2003 where no Section 20 Notice had been issued prior to 30 October 2003

43. Under the old consultation arrangements prior to 30 October 2003 the cost threshold for qualifying works is the greater of £1,000 or £50 multiplied by the number of tenants liable to pay the relevant service charge. In the case of qualifying works the landlord is required to notify the tenants of the proposed works, copies of two estimates at least one of which must be wholly unconnected with the landlord and give the tenants at least one month to make observations on the proposal. If the landlord does not meet the consultation requirements the service charge is capped at the threshold.

44. The new consultation procedures apply where the cost of the qualifying works results in the relevant contribution of any tenant being more than £250. If the consultation requirements are not complied with then the relevant contribution from each of the tenants shall be capped at £250.

45. Essentially the new procedures require the landlord to go through a two stage process, namely an outline proposal followed by estimates and responses to observations. At each of the stages the landlord is under a legal duty to have regard to the tenants' observations.

Reasons and Decisions on the Application

46. The format of our reasons and decision is in the same sequence as presented in the Applicant's statement of case.

Service Charges for Year Ending 2004

47. **Provision for Future Decorating in the sum of £2,012.50**

(1) Mr Thompson referred the Tribunal to the clause in the lease which required the landlord to keep funds held on reserve in a separate account on trust for the lessees. The official transcript of the County Court proceedings held on 31 January 2006 revealed that the Respondent did not comply with the separate account requirement and used the reserve funds to meet day-to-day expenditure on Enville Manor. Mr Thompson confirmed that the lessees had not given permission to the Respondent to

mix the reserve fund with the current account. In view of the Respondent's failure to comply with the terms of the lease Mr Thompson contended that it was unreasonable to pay the charge or in the alternative the charge should be paid to the RTM.

(2) **Decision:** We took account of the size and age of the property, and considered that a provision for future decorating in the sum specified was both reasonable and payable under section 19(1)(a) of the 1985 Act. However, as the RTM had now assumed the right to manage the property and the Respondent had failed to comply with the terms of the lease in respect of the separate reserve fund account, we order that the provision in the specified sum be paid to the RTM.

48. **Provision for Future Major Repairs in the sum of £2,725**

(1) Mr Thompson repeated the points made in paragraph 47(1) above.

(2) **Decision:** We took account of the size, age and state of disrepair of the property. The witness statements and the inspection revealed that the previous managing agents had not maintained the property to a reasonable standard, which had contributed to the state of disrepair. We considered that a provision for future major repairs in the sum specified was both reasonable and payable under section 19(1)(a) of the 1985 Act. However, as the RTM had now assumed the right to manage the property and the Respondent had failed to comply with the terms of the lease in respect of the separate reserve fund account, we order that the provision in the specified sum be paid to the RTM.

49. **Building Insurance Premium in the sum of £2,829.98**

(1) Mr Thompson pointed out that the Respondent had failed to provide the Tribunal and the Applicants with a copy of the insurance policy. The Respondent disregarded the Order of the Deputy District Judge on 31 January 2006 to provide the Applicants with details of insurance claims by no later than 4pm on 23 February 2006. The Applicants supplied details of the insurance cover obtained by the RTM for the period after the RTM assumed responsibility for the management of the properties. The annual premium payable was £1,740 plus tax. Mr Thompson accepted that the Respondent was not obliged to insure the property at the cheapest rate available. However, he considered that the insurance premium of £2,893 demanded by the Respondent was manifestly unreasonable, being 50 per cent higher than the 2005 premium paid by the RTM. Mr Thompson was of the view that £1,800 was a reasonable sum for the insurance charge.

(2) **Decision:** The Respondent produced no documentary evidence to substantiate the insurance premium in the sum of £2,893. In the light of the Applicants' evidence of the insurance premium for the same property paid by the RTM in 2005, we consider that the charge of £2,893 is unreasonable. We are satisfied that the charge in the sum of £1,800 proposed by the Applicants is reasonable. We decide that the charge for

building insurance premium is limited to £1,800 and payable to the Respondent.

50. **General Maintenance/Repairs/Septic Tank in the sum of £13,356.77**

(1) According to Mr Thompson this was made up of £11,327 for resurfacing the driveway with the remainder £2,029.77 allocated to works which had not been specified by the Respondent and not supported by the receipts. Mr Thompson requested the disallowance of £2,029.77 on the ground that the alleged expenditure had not been substantiated.

(2) The resurfacing of the driveway had been the subject of longstanding and contentious correspondence between the Respondent and Mr Thompson. On 22 January 1999 the Respondent wrote to the lessees advising them that it had obtained a competitive quotation of £5,950 from Interclass Surfacing Limited to resurface the drive. The Respondent would fund the majority of the works from the reserve fund. In view of the competitiveness of the quotation, it did not intend to obtain additional quotations. A lessee requested a quotation from a named contractor which came in at £7,775. On 11 March 1999 the Respondent offered the lessees a 28 day consultative period on the two quotations. The Respondent then decided to postpone the resurfacing of the driveway because of repairs to the storm drains. The postponement was communicated to the lessees by correspondence dated 10 February 2000 and 2 January 2001. The Respondent and Mr Thompson then engaged in lengthy correspondence about the driveway between 23 February 2001 and 4 September 2002 with both parties in dispute about whether the lessees had been properly consulted about the works.

(3) The next letter from the Respondent was on 19 February 2004 when it provided Mr Thompson, in his capacity as Secretary of the Residents Association, with details of quotations for resurfacing the car park from three different contractors and offering a 28 day consultation period. Mr Thompson responded on 29 February 2004 pointing out that the Respondent should comply with the new consultation procedures introduced by the Commonhold and Leasehold Reform Act 2002. Further, he claimed that one of the contractors did not exist whilst another shared the same address with the Respondent. The Respondent replied on 17 March 2004 stating that they did not intend to revisit the issue of consultation and rejecting Mr Thompson's claims about the contractors. The resurfacing works were carried out on the 7 and 8 April 2004.

(4) The video taken by Mr James showed that the tarmac was laid on an inadequately prepared surface and that the contractors applied no base coat.

(5) The Applicants obtained an expert opinion on the quality of the resurfacing works on the drive from Michael John Mitchell, a partner with the valuation and building surveyor practice of Lawrence and Wightman. Mr Mitchell had in excess of 30 years experience as building surveyor and

elected as a Fellow of the Royal Institution of Chartered Surveyors in 1987.

(6) Mr Mitchell concluded in his report dated 15 June 2004 that

> "As stated no inspection has been made of the works, other than in their completed state and accordingly, in order for any opinion to be formed as to the suitability of the works reliance must be placed upon the photographic and video tape record produced by Mr James.
>
> It is considered that there is sufficient evidence within this record to illustrate that the base upon which the new surfacing has been laid was inadequate and in sufficiently poor condition as to compromise the soundness of the new surfacing.
>
> As reported, other defects within the surfacing remain evident and include:
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> - Incomplete areas of base course with the granular sub base exposed.
> - Poor compaction of the tarmacadam with resultant open texture.
> - Failure to properly joint abutting areas of tarmacadam to both driveway and garage.
> - The failure to properly finish and retain the edges of the surfacing.
>
> On this basis, it is concluded that the Residents Association's fears are well-found and that the resurfacing works carried out to the driveway and garage compound have been poorly and inadequately executed and are, in consequence, expected to have a limited effective life and to be subject to premature failure".

(7) Mr Thompson submitted that the Respondent had embarked on a fresh consultation exercise with its letter on 19 February 2004. This letter represented a clean break from the previous correspondence on the subject which concluded in September 2002. The Respondent was, therefore, bound by the new consultation procedures introduced from 31 October 2003. In Mr Thompson's view, the Respondent had not complied with the new procedures, in particular the Respondent had provided a fake estimate and not explained its connection with the contractor that shared the Respondent's registered address. In those circumstances Mr Thompson submitted that the Respondent was limited to recovering £250 from each of the lessees making a total of £2,000 for the resurfacing works. In the alternative Mr Thompson contended that the evidence demonstrated that the resurfacing work was of poor standard, and, therefore, the charge of £11,327 should be reduced by 50 per cent to reflect the substandard work.

(8) **Decision:** The proposed cost for the resurfacing of the drive was well in excess of the threshold under section 20 of the 1985 Act. Thus the drive resurfacing fell within the definition of qualifying works, which meant that the Respondent was required to consult with the lessees in accordance with section 20, if it intended to recover from them the full costs of the works done.

(9) We are satisfied that the Respondent's letter of 19 February 2004 constituted new consultation on the proposed works to the drive. The

previous consultation started on 22 January 1999 effectively ended in February 2000 when the Respondent postponed the consultation on the works without setting a date for the resumption of the consultation. Moreover, the contents of the letter of 19 February 2004 signalled a fresh start by providing three quotations for the work, two of which were from contractors not named in the previous round of consultation. If, as the Respondents allege, that the letter of 19 February 2004 amounted to a continuation of the consultation started in 22 January, it would not have been necessary to provide three quotations.

(10) In view of our decision that the Respondent's letter of 19 February 2004 constituted new consultation, the Respondent was obliged to comply with the provisions of schedule 4, part 2 of Service Charges (Consultation etc) (England) Regulations 2003.

(11) We are satisfied that the Respondent has not complied with the Consultation Regulations, in particular:

a) The Respondent has not served a "Notice of Intention" in accordance with regulation 8 of schedule 4, part 2 of 2003 regulations.

b) The period for consultation in the letter of 19 February 2004 was for 28 days as opposed to the requirement of 30 days.

c) Although the Respondent provided three quotations it did not address the Applicants' concerns about two of the contractors. We have inferred from the Respondent's lack of response that one of the contractors did not exist and the other was connected with the Respondent.

d) The Respondent did not meet its legal duty to have regard to the observations made by the Residents Association about the proposed works and estimates.

(12) We, therefore, order that the charge for the drive resurfacing be limited to £250 for each lessee making a total of £2,000 in accordance with section 20(6) of the 1985 Act.

(13) In view of our decision under subparagraph 12 above, it is not necessary for the Tribunal to determine formally whether the work to the drive was not to a reasonable standard. We would, however, record our view that the evidence was overwhelming that the work was sub-standard so that, even if the Respondent had complied with the consultation requirements, we would have determined that the reasonable sum recoverable from the Applicants would be no more than 50 per cent of the amount demanded by the Respondent..

(14) The Respondent produced no documentation to support the balance of the charge under this heading in the sum of £2,029.77. We, therefore, hold that the balance is unreasonable and not recoverable.

51. **Legal Fees of £5,374.44**

(1) The Applicants were unaware of any outstanding legal costs owed to the Respondent. No receipts have been produced to substantiate the legal fees. Mr Thompson contended that the charge in its entirety was unreasonable.

(2) **Decision:** The Respondent produced no documentation to support the legal charges in the sum of £5,374.44. We, therefore, hold that the charge is unreasonable and not recoverable.

52. **Loan Interest of £834.73**

(1) No receipts have been produced to substantiate the loan interest. Mr Thompson queried whether it was necessary for the Respondent to borrow money to fund service charge expenditure, particularly as it had not issued any demands for charges from the lessee of Flat 2.

(2) **Decision:** Ms Fletcher in her evidence on behalf of the Respondent in the County Court proceedings before Deputy District Judge Peter Boynton on 25 January 2006 explained that the Respondent used the reserve funds for day-to-day expenditure to avoid the lessees paying interest on current expenditure. Ms Fletcher's evidence undermined the Respondent's claim for interest. Further the Respondent has produced no documentation to support the loan interest charge in the sum of £834.73. We, therefore, hold that the charge is unreasonable and not recoverable.

53. **Management Fees and Expenses of £3,055**

(1) Mr Thompson described the Respondent and its managing agent as:

> "an example of the worst kind of landlord and property manager. They have little regard for the basic requirement of providing decent services to the lessees. They are blasé about legislation that govern the relationship between landlord and tenant. Their general conduct throughout my seven years of living at this property has been appalling by any standards".

(2) The witness statements of the lessees gave specific examples of the failure by the Respondent and its managing agent to carry out repairs to the property and the resultant damage caused by the disrepair. The statements recorded the Respondent's refusal to mend the oil central heating system in 2003 which has meant that the flats have been without central heating for the last three years. The lessees testified in their statements about the Respondent's reluctance to provide them with information and accounts for the service charges. Some of the lessees stated that they were intimidated and undermined by the attitude and behaviour of the Respondent's managing agent. The lessees considered that they had paid excessive service charges for no service from the Respondent and its managing agent.

(3) Mr Thompson relied on the lessees' testimony to demonstrate the Respondent's utter disregard for the terms of the lease and lack of compliance with the *"Service Charge Residential Management Code"* issued by The Royal Institution of Chartered Surveyors, citing 19 breaches

of the *"Code"*. Mr Thompson proposed a management fee of £1,800 derived from the standard management charge of £2,700 reduced by 33 per cent for poor standards of service instead of the £3,055 management fee demanded by the Respondent.

(4) **Decision:** The Royal Institution of Chartered Surveyors and other professional organisations advocate a fixed fee per unit as the preferred method of charging for management fees. This was the approach adopted by the previous Tribunal (BIR/41UF/LIC/2004/002) when it considered the 2001 and 2002 service charges for the same property. The Applicants standard management charge of £2,700 was based on a fixed charge of £337.50 per unit which was in line with the fixed charge set by the previous Tribunal. We consider that £2,700 is the reasonable amount for the standard management charge for this property.

(5) We are satisfied from the evidence supplied in the witness statements by Mr Thompson that the Respondent and its managing agent did not meet the required professional standard for managing properties. Further the evidence clearly demonstrated that the Respondent failed to fulfil its obligations under the lease in respect of the provision of service charge information and repairs to the property. In those circumstances the management services provided were not to a reasonable standard. We reduce the standard management charge of £2,700 by 33 per cent to reflect the substandard service. We, therefore, determine that the charge for management fees and expenses shall be limited to £1,800 and payable to the Respondent.

Service Charges for year ending 2003

54. Mr Thompson relied on the evidence and argument advanced under the 2004 service charges for the 2003 service charges where they coincided in description with the 2004 charges.

55. **Provision for Future Decorating in the sum of £2,300**

(1) Mr Thompson contended that the Respondent had failed to comply with the terms of the lease requiring the holding of separate accounts for reserve funds. He suggested that the charge was unreasonable and should not be sanctioned.

(2) **Decision:** We took account of the size and age of the property, and considered that a provision for future decorating in the sum specified was both reasonable and payable under section 19(1)(a) of the 1985 Act. However, as the RTM had now assumed the right to manage the property and the Respondent had failed to comply with the terms of the lease in respect of the separate reserve fund account, we order that the provision in the specified sum be paid to the RTM.

56. **Provision for Future Major Repairs in the sum of £4,000**

(1) Mr Thompson advanced the same argument as in 55 above.

(2) **Decision:** We took account of the size, age and state of disrepair of the property. The witness statements and the inspection revealed that the previous managing agent had not maintained the property to a reasonable standard, which had contributed to the state of disrepair. We considered that a provision for future major repairs in the sum specified was both reasonable and payable under section 19(1)(a) of the 1985 Act. However, as the RTM had now assumed the right to manage the property and the Respondent had failed to comply with the terms of the lease in respect of the separate reserve fund account, we order that the provision in the specified sum be paid to the RTM.

57. **Building Insurance Premium in the sum of £2,588.75**

(1) Mr Thompson considered that £1,800 was reasonable, which was the premium paid by the RTM in respect of the year commencing in 2005.

(2) **Decision:** The Respondent produced no documentary evidence to substantiate the insurance premium in the sum of £2,588.75. In the light of the Applicants' evidence of the insurance premium for the same property paid by the RTM in 2005, we consider that the charge of £2,893 is unreasonable. We are satisfied that the charge in the sum of £1,800 proposed by the Applicants is reasonable. We decide that the charge for building insurance premium is limited to £1,800 and payable to the Respondent.

58. **General Maintenance/Repairs/Septic Tank in the sum of £4,354.15**

(1) The Respondent did not supply details and receipts for the charge despite requests for the information. In Mr Thompson's opinion no charge was payable.

(2) **Decision:** The Respondent produced no documentation to support the charges in the sum of £4,354.15. We, therefore, hold that the charge is unreasonable and not recoverable.

59. **Legal Fees of £230**

(1) The Respondent had provided no details or receipts. The amount considered reasonable is nil.

(2) **Decision:** The Respondent produced no documentation to support the legal fees in the sum of £230. We, therefore, hold that the charge is unreasonable and not recoverable.

60. **Loan Interest of £834.73:**

(1) The Respondent had provided no details or receipts. The amount considered reasonable is nil.

(2) **Decision:** Ms Fletcher in her evidence on behalf of the Respondent in the County Court proceedings before Deputy District Judge Peter Boynton

on 25 January 2006 explained that the Respondent used the reserve funds for day-to-day expenditure to avoid the lessees paying interest on current expenditure. Ms Fletcher's evidence undermined the Respondent's claim for interest. Further the Respondent has produced no documentation to support the loan interest charge in the sum of £834.73. We, therefore, hold that the charge is unreasonable and not recoverable.

61. **Management Fees and Expenses of £2,881.44:**

(1) The amount considered reasonable by Mr Thompson was £1,733 derived from the standard management charge of £2,600 reduced by 33 per cent for sub-standard service.

(2) **Decision:** The Royal Institution of Chartered Surveyors and other professional organisations advocate a fixed fee per unit as the preferred method of charging for management fees. This was the approach adopted by the previous Tribunal (BIR/41UF/LIC/2004/002) when it considered the 2001 and 2002 service charges for the same property. The Applicants standard management charge of £2,600 was based on a fixed charge of £325 per unit which was in line with the fixed charge set by the previous Tribunal. We consider that £2,600 is the reasonable amount for the standard management charge for this property.

(3) We are satisfied from the evidence supplied in the witness statements by Mr Thompson that the Respondent and its managing agent did not meet the required professional standard for managing properties. Further the evidence clearly demonstrated that the Respondent failed to fulfil its obligations under the lease in respect of the provision of service charge information and repairs to the property. In those circumstances the management services provided were not to a reasonable standard. We reduce the standard management charge of £2,600 by 33 per cent to reflect the substandard service. We, therefore, determine that the charge for management fees and expenses shall be limited to £1,733 and payable to the Respondent.

Service Charge for year ending 2001

62. **Legal Fees in the sum of £11,381.57**

(1) Mr Thompson submitted in the Applicants' statement of case that the proper sum was £7,077.33 being the amount ordered by the Court. The Tribunal informed Mr Thompson that it had no jurisdiction to deal with the reasonableness of the amount of legal fees because the Leasehold Valuation Tribunal had previously determined this issue in its decision dated 17 September 2004. The Leasehold Valuation Tribunal and the Lands Tribunal refused Leave to Appeal against the decision.

(2) **Decision:** Mr Thompson accepted the Tribunal ruling and withdrew the Application.

Service Charges for year ending 2005

63. Mr Thompson relied on the evidence and argument advanced under the 2004 service charges for the 2005 service charges where the circumstances corresponded with 2004. Mr Thompson reminded us that the RTM assumed responsibility for the management of the property on 7 April 2005. Thus the Respondent's responsibility for services was restricted to the first three months of 2005. Mr Thompson also stated that the Respondent had effectively abandoned the property from 1 January 2005

64. **Future Decorating in the sum of £1,150**

(1) Mr Thompson considered that no amount was due for the charge. He relied on the Respondent's failure to comply with the lease regarding separate accounts for reserve funds. Also the Respondent had no need for a provision as its responsibility for the building ceased on 7 April 2005.

(2) **Decision:** We took account of the size and age of the property, and considered that a provision for future decorating in the sum specified was both reasonable and payable under section 19(1)(a) of the 1985 Act. However, as the RTM had now assumed the right to manage the property and the Respondent had failed to comply with the terms of the lease in respect of the separate reserve fund account, we order that the provision in the specified sum be paid to the RTM.

65. **Future Repairs in the sum of £862.50**

(1) Mr Thompson rehearsed the same argument as in 64(1) above.

(2) **Decision:** We took account of the size, age and state of disrepair of the property. The witness statements and the inspection revealed that the previous managing agent had not maintained the property to a reasonable standard, which had contributed to the state of disrepair. We considered that a provision for future major repairs in the sum specified was both reasonable and payable under section 19(1)(a) of the 1985 Act. However, as the RTM had now assumed the right to manage the property and the Respondent had failed to comply with the terms of the lease in respect of the separate reserve fund account, we order that the provision in the specified sum be paid to the RTM.

66. **Building Insurance in the sum of £1,385**

(1) Mr Thompson submitted that no amount was payable because the Respondent's insurance ran from July 2004 to July 2005 so that the premium for the period to 7 April 2005 had already been paid as part of the 2004 service charge.

(2) **Decision:** A letter dated 10 May 2005 from S.M. Properties (the Respondent's managing agent) to the RTM stated that the insurance policy expired on 10 July 2005. We find that the premium was paid in 2004 and covered by the service charges for that year. We are satisfied that no

payment is due for buildings insurance in 2005. Thus the charge is unreasonable and not recoverable.

67. **Cleaning in the sum of £515**

(1) Mr Thompson explained that the cleaning consisted of vacuuming the common areas once a week which took on average 25 minutes. The previous Tribunal (BIR/41UF/LIC/2004/002) dealing with the 2001 and 2002 service charges had fixed a rate of £15 per week which was based on the receipts produced by the Respondents. Mr Thompson suggested that the charge should be limited to £260, which was equivalent to £20 per week for 13 weeks.

(2) **Decision:** We consider that the charge of £515 was unreasonable. It was not supported by receipts and inconsistent with the evidence given at the previous Tribunal. We are satisfied that the charge should be limited to £260 and order that it is payable to the Respondent.

68. **Electricity in the sum of £100**

(1) Mr Thompson was aware that the Respondent had been in possession of a closing invoice since April 2006 but had chosen not to produce it. Mr Thompson advised the Tribunal that the Respondent had a standing order with the electricity company in the sum of £13.50 per month.

(2) **Decision:** We are satisfied that the charge should be limited to £40.50 (£13.50 multiplied by three) and order that the charge is payable to the Respondent.

69. **Ground Maintenance in the sum of £800**

(1) Mr Thompson told the tribunal that no ground maintenance had been carried out between January 2005 and March 2005. The amount considered reasonable was nil.

(2) We consider it highly unlikely that there would be significant work to be done on the grounds during the winter months. The Respondent produced no receipts to contradict Mr Thompson's evidence that no ground maintenance was carried out during the period January 2005 to March 2005. We, therefore, decide that the charge for ground maintenance is unreasonable and not recoverable.

70. **General Repairs in the sum of £2,350**

(1) Mr Thompson told the Tribunal that no repairs and general maintenance had been carried out between January 2005 and March 2005. He cited the example of the septic tank referred to in the witness statement of Mr James of Flat 4. The amount considered reasonable was nil.

(2) The Respondent did not produce receipts to contradict Mr Thompson's evidence that no general repairs were carried out during the period January 2005 to March 2005. We, therefore, decide that the charge for general repairs is unreasonable and not recoverable.

71. **Legal Fees in the sum of £2,000**

(1) The Respondent had provided no details or receipts. The amount considered reasonable is nil.

(2) The Respondent produced no receipts to substantiate the legal fees in the sum of £2,000. We, therefore, decide that the charge for legal fees is unreasonable and not recoverable.

72. **Audit Fee in the sum of £188**

(1) Mr Thompson submitted that it was not possible to determine the reasonableness of the audit fee until production of the invoice.

(2) **Decision:** The Respondent produced no receipts to substantiate the audit fee. We, therefore, decide that the charge for audit fee is unreasonable and not recoverable.

73. **Loan Interest in the sum of £250**

(1) The Respondent had provided no details or receipts. The amount considered reasonable is nil.

(2) **Decision:** Ms Fletcher in her evidence on behalf of the Respondent in the County Court proceedings before Deputy District Judge Peter Boynton on 25 January 2006 explained that the Respondent used the reserve funds for day-to-day expenditure to avoid the lessees paying interest on current expenditure. Ms Fletcher's evidence undermined the Respondent's claim for interest. Further the Respondent has produced no documentation to support the loan interest charge in the sum of £250. We, therefore, hold that the charge is unreasonable and not recoverable.

74. **Management Fees in the sum of £1,690**

(1) Mr Thompson relied upon the Respondent's breaches of the lease and the *RICS Management Code* to support a reduction in the charge to £500.

(2) Mr Thompson told the Tribunal that around March/April 2005 he had reason to believe that Ms Fletcher on behalf of the Respondent had removed the lessees' mail without their knowledge from the hall and returning the mail endorsed with "fake address" to the Post Office. The police warned Ms Fletcher that she had no authority to remove the mail and repetition of such conduct in the future would lead to action being taken against her. There has been no interference with the lessees' mail following the intervention from the police

(3) Mr James of Flat 4 in his witness statement recounted that in March 2005 he told the Respondent about the septic tank overflowing. The Respondent took no action despite the potential health risk to the lessees. The matter was put right immediately by the RTM when it assumed responsibility for the property on 7 April 2005. In Mr Thompson's view, the Respondent effectively abandoned the management of the property from January 2005.

(4) **Decision:** The management fee of £1,690 represented an annual fee of £6,760 which was considerably higher than the management fees claimed by the Respondent in 2003 and 2004. The Applicants' evidence clearly demonstrated that the Respondent interfered with the lessees' quiet enjoyment of the property. Further the Respondent had abandoned its management responsibilities for Enville Manor. The Applicants' proposal of £500 appeared to derive from an annual fee of £2,664 with a 33 per cent discount for substandard service. We consider that the fee of £1,690 is unreasonable. We limit the charge to £500 and order that that sum is payable to the Respondent.

Miscellaneous Applications

75. **Mr James' liability to contribute to the Legal Fees in the sum of £11,393.75**

(1) The legal fees arose from an abortive enfranchisement Application in 2001. Mr James purchased Flat 4 on 19 October 2001. The assignment of the lease to Mr James occurred on 10 December 2001. As a term of the assignment Mr James was required to reimburse the previous lessee a proportion (74/365 days) of the prepaid service charges for 2001. The vendor's solicitor held £1,200 on account for six months to cover a deficit in the service charge for 2001. Mr James assumed that the £1,200 was returned to the vendor on the expiry of the six months.

(2) In June 2002 the Respondent demanded that Mr James pay £1,995.49 for the service charge deficit in 2001, the majority of which related to the legal costs incurred in the abortive enfranchisement application. Mr James denied liability as he was not a party to the legal action. The Respondent told Mr James that he was liable because he inherited the debts of the previous lessee.

(3) Mr Thompson relied on the decision of the Leasehold Valuation Tribunal in *Ground Floor Flat, 6 Hanover Road, Brondesbury Park, London NW10 3DS* dated 3 March 2004 chaired by Professor Farrand (Reference: LON/00AE/LSI/2003/0025). The Tribunal stated at paragraph 7 on the issue of liability for previous lessee's arrears:

> "In view of the Tribunal the Respondent's concluding assertion is wrong in law (*When you purchase the flat you take over all liabilities relating to the flat, my italics*). A new tenant does not become directly liable for a predecessor's breaches of covenant. The risk for a new tenant is that a landlord may seek to forfeit the lease because of a breach involving service charge arrears when payment of the arrears would be necessary to obtain relief against forfeiture. In conveyancing practice, as here, this eventuality is catered for by arrangements between the solicitors acting which are based on the correct proposition that any personal liability to make payment will be on the part of the predecessor/vendor tenant".

(4) **Decision:** The facts of the London Tribunal decision of 3 March 2004 were different from the facts of this case. In the London case the landlord served notice of service charge arrears on the outgoing lessee before the lease was assigned and sold to the Applicant. In this case the Respondent

served notice of the service charge deficit for the year ended 31 December 2001 on Mr James on 1 June 2002, eight months after the assignment of the lease to Mr James.

(5) The liability of the lessee to pay service charges depends upon the construction of the lease. The lease between the Respondent and Mr James required the lessee to pay forthwith the balance of service charges due for the preceding year when the actual amount of the service charges had been ascertained. We consider the liability to pay a service charge subject to reasonableness crystallises when it is due under the terms of the lease. In Mr James' case, the lease permitted the Respondent to levy the service charge deficit for 2001 against Mr James as soon as reasonably after the end of 2001 when the actual amount of service charges had been ascertained. The Respondent's notice of 1 June 2002 demanding Mr James to pay the 2001 service charge deficit of £1,995.49 met the requirements of the lease.

(6) The London case dealt with the situation about whether the new lessee inherited the outgoing lessee's liability under the alleged breach of covenant to pay the service charge deficit. With Mr James the previous lessee had not breached his covenant to pay service charges because he had paid the 2001 service charges in accordance with the lease and was not the lessee when the liability to pay the deficit crystallized under the terms of the lease. In those circumstances we are satisfied that Mr James is liable for the 2001 service charge deficit of £1,995.49 provided the charge has been substantiated and is reasonable.

76. **Mr Bernard of Flat 2**

(1) Mr Bernard considered that he was not liable to pay the service charges for years ending 2003 and 2004 because the Respondents had not served him with a demand for service charges. Mr Thompson referred to the Respondent's defence and counter claim in the County Court proceedings 4BM79420 where the Respondent stated that it did not recognise Mr Bernard as the proprietor of Flat 2 and had never issued Mr Bernard with a demand for service charges.

(2) **Decision:** Section 20B of the 1985 Act provides that a lessee shall not be liable to pay a service charge if he has not been served with a demand for it within 18 months from when the costs constituting the charge were incurred. The Respondent confirmed in the County Court proceedings that it had not served Mr Bernard with a demand for service charges because the Respondent did not recognize Mr Bernard as the lessee of Flat 2. More than 18 months have elapsed since the Respondent incurred the costs included in the 2003 and 2004 service charges. We, therefore, hold that Mr Bernard is not liable for the 2003 and 2004 service charges that would otherwise be payable under the terms of his lease.

Application for Costs

77. Mr Thompson made the following Applications for costs:

> (1) **An order under section 20C of the 1985 Act** prohibiting the Respondent from treating its costs incurred in these proceedings as relevant costs for any service charges payable by the lessees.
>
> (2) **An order under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003** requiring the Respondent to reimburse the Applicants for the fee paid by them in respect of the proceedings.
>
> (3) **An order for costs under paragraph 10 of schedule 12 of Commonhold and Leasehold Reform Act 2002** requiring the Respondents to pay the Applicants' costs incurred in these proceedings to a maximum of £500 on the ground that the Respondent has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

78. Mr Thompson estimated that he had spent five days on preparation and attendance at a daily rate of £150. In support of his Application for costs he relied on the Respondent's failure to comply with Tribunal directions and with the Applicant's requests for disclosure of documents.

Decisions on Costs

Section 20C Order

79. Under section 20C of the 1985 Act the Tribunal may make such order as it considers just and equitable in the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.

80. We have decided that the Applicants have been successful with their challenge to the reasonableness of the service charges for 2003, 2004 and 2005. The sole matter where they have not persuaded us concerned the liability of Mr James to pay the service charge deficit for 2001. We also agreed with Mr Thompson's submission that the Respondent attempted to frustrate and delay the hearing of the Applicants' application. In those circumstances it would be unjust and inequitable if the Respondent was able to include its costs in connection with the proceedings in a service charge. We, therefore, make an order under section 20C of the 1985 Act prohibiting the Respondent from regarding its costs in connection with the proceedings as relevant costs to be taken into account in determining the amount of any service charge payable by the lessees specified in the Application.

Regulation 9 of the Leasehold Valuation Tribunals

81. Having regard to the outcome of the Application and the Respondent's conduct in relation to the proceedings, we order that the Respondent reimburse the Applicants with the fees paid by them in connection with the proceedings.

Costs order under paragraph 10 of schedule 12 of Commonhold and Leasehold Reform Act 2002

82. The 2002 Act gives the Tribunal the discretion to order the Respondent to pay the Applicant's costs to a maximum of £500 if in its opinion the Respondent acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

83. The Respondent was a party to the proceedings. The Respondent offered no explanation for its failure to comply with the Tribunal directions. We agreed with Mr Thompson's submission that the Respondent attempted to frustrate and delay the hearing of the Application by its late application to adjourn the proceedings. Having regard to the circumstances we are satisfied that the Respondent acted unreasonably in connection with the proceedings. Mr Thompson incurred costs in excess of £500. We, therefore, order that the Respondent pay £500 costs to the Applicants.

Michael Tildesley

WMS TILDESLEY

CHAIRMAN
RELEASE DATE: