RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL **CAM/24UD/LSI/2004/0001**

Address of Property :	**157 Laurel Court, Armstrong Road, Thorpe St Andrew, Norwich NR7 0LS**
Applicant Landlord :	**Warden Housing Association, Malt House, 281 Field End Road, Ruislip, Middlesex HA4 9XQ**
Respondent Tenant :	**Mr & Mrs R D Cranswick, 157 Laurel Court, above**

By application dated 30th March 2004 the landlord asks the Tribunal, pursuant to the section 27A of the Landlord and Tenant Act 1985 :

a. **To determine the reasonableness of and the tenant's liability to pay service charges levied for the property for the year 1st October 2002 – 30th September 2003**
b. **To determine the reasonableness of and the tenant's liability to pay service charges levied for the property for the current year 1st October 2003 – 30th September 2004**

Tribunal :	**Mr G K Sinclair (Chairman), Mr J R Humphrys FRICS, Mr W J Tawn FRICS FBEng FNAEA**
For the Applicant :	**Ms Mariam Agbaje (in-house solicitor)**
For the Respondent :	**Richard David Cranswick & Judith Cranswick (in person)**
Hearing date :	**Tuesday 29th June 2004**

THE DECISION OF THE TRIBUNAL

Handed down 30th June 2004

Preliminary

1. This application concerns the ability of Warden Housing Association Ltd ("Warden"), the landlord of a development of managed retirement flats at Laurel Court, Armstrong Road, Thorpe St Andrew, Norwich, to recover amounts levied by it as service charges for the years 2002-2003 and 2003-2004 but which, despite demand being made, the Respondent tenants have so far declined to pay.

2. The services and works were provided, and payment is requested, under the provisions of a 99 year lease between Applicant and Respondents dated and commencing on 27th October 1999. The relevant charging provisions are :

   a. Clause 1 – containing the obligation to pay in advance the annual maintenance and service charge payable in respect of the matters referred to in the First schedule to the lease

   b. Clause 4(1) – the tenants' covenant to pay the service charge

   c. Clause 5 – the landlord's covenants, and in particular sub-clauses 1) (to keep in good and substantial repair, etc), 5) (to provide a warden service), 6) (to insure), and 8) (to pay into a sinking fund the amount referred to in clause 8.5(e))

   d. The First schedule – which provides for certification of the service charge at the end of each financial year and for payment of any undercharged balance, for a list of items of expenditure to be covered by the service charge, and that the service charge attributable to the demised premises shall be 1.520% of the total annual collectable service charge for the whole development.

3. Also relevant is clause 6. 2)(a), a forfeiture clause exercisable contractually if the service charge remains unpaid 21 days after it becomes payable (whether formally demanded or not). This is now subject to statutory restriction, under sections 81 and 82 of the Housing Act 1996, and forfeiture of residential premises due to non-payment of service charges is no longer possible unless or until the amount due is agreed or determined. It is for this reason that the landlord applied to the Leasehold Valuation Tribunal for just such a determination under section 27A of the Landlord and Tenant Act 1985 (as now amended).

4. Between September 2001 and June 2003 the Respondents wrote to Warden, raising various queries concerning the apportionment of the service charge being demanded between the one bedroom flats and those with two bedrooms, seeking a breakdown of the accounts, details of how the sinking fund was being invested, and whether they were being charged any "rent" within the property service charge. These queries were answered by Warden, but on 3rd September 2003 the Respondents wrote stating :

> "We have been advised to withold our Property Service Charge. You will be hearing from our Solicitor."

Details of the name and address of the solicitors were given.

5. On 16th September 2003 the firm of Rogers & Norton wrote a very lengthy and detailed letter to Warden, making a number of serious allegations. The first paragraph reads as follows :

> "We have been instructed by Mr and Mrs Cranswick in connection with issues involving your mis-selling (through fraudulent misrepresentation) to them of their property at 157 Laurel Court, Armstrong Road, Thorpe St Andrew, Norfolk (the property) and also their claims relating to your breaches of the terms of their Lease of the property from you and your raising of inappropriate service charges in respect of the property. This letter is a pre-action letter written in accordance with the general protocol pursuant to the Civil Procedure Rules. The situation is as follows."

The allegations, which shall be summarised later in this decision, were responded to in detail by Warden, but as recently as 5th March 2004 Rogers & Norton were writing to Warden, asserting that a case had been made out to their clients' insurers and the latter had accepted their recommendation to obtain the independent opinion of counsel. In the circumstances they considered that not only was the make-up of the service charge in dispute but that :

> "our clients anticipate that the claims have the potential to far exceed the £681.77 referred to in your letter of 9th February."

On 25th May 2004, after this application had been issued and directions given, Rogers & Norton wrote to advise that they were no longer instructed to act for Mr & Mrs Cranswick.

6. In their Response to the application [Applicant's bundle, page 9] the Respondents raise two issues :

a. That they are withholding the service charge on the advice of a solicitor, pending the resolution of the exact status of Laurel Court, ie whether it is a "retirement home", because persons in active employment are living there

b. That Warden have been commissioned to provide a service exclusively of people who need and come under the "Supporting People Initiative" and have altered part of their services exclusively to meet their needs; this being reflected in the property service charge.

By doing so, say Mr & Mrs Cranswick, their property has become unmarketable as a home for "the active over 55s", which is how it was sold to them.

7. When submitting their own (not a joint) bundle of evidence to the Tribunal, however, the Respondents attached a further 3 page statement of case dated 22nd May 2004. This document again emphasised the above points but also raised some fresh issues, viz

a. That their flat was "uninhabitable" for about four months after they purchased, but still they were charged (and presumably had paid) a service charge covering that period

b. That Warden are in receipt of a grant to provide the government's "Supporting People" service

c. That Warden had changed the alarm system in the premises "by stealth to a community alarm", purely to meet the criteria for Supporting People

d. That the accounting treatment of telephone calls has changed, and that" business calls can now be apportioned a General Counselling"

e. That the general manager had spent a great deal of time off site during 2003 and, when asked, would state only that "I only have to inform Warden"

f. That the service charge included an element for the sinking fund, when this should be paid (at 2%) only on the resale of the property.

Inspection, hearing and evidence

8. The Tribunal inspected the subject premises at 10:00 am on the morning of the hearing. The weather was warm and sunny. The Tribunal were shown around by Mr John Miller, the resident manager. Accompanying the party were Mr Jim Shephard (Warden's Home Ownership Finance Manager), Ms Agbaje (its in-house solicitor), and the Respondents,

Mr & Mrs Cranswick.

9. The development comprises a series of two storey buildings around a short stretch of public highway - a cul de sac – leading off Armstrong Road. At the head of the cul de sac lies the main building, comprising 40 one bedroom flats, a small office, a small communal kitchen, separate ladies' and gents' WCs, a passenger lift, a large communal lounge, a laundry room, a well-appointed guest bedroom with en suite shower room and a small separate sitting room (charged for at £8.00 per night), and the resident manager's 3 bedroom flat (above the lounge). The Respondents' flat is on the first floor in this block, overlooking the main entrance and a small garden.

10. At their specific request the Tribunal inspected the Respondents' flat. It is a small, well-decorated flat with a sitting room, bathroom/WC, kitchen and bedroom. Both the kitchen and bathroom had been refurbished by the Respondents with modern, attractive equipment and units. Access was obtained to the flat along a well-lit corridor, with the carpet and wall and ceiling finishes in good order. Near to the door of their flat was an alarm, about which the Respondents had complained.

11. The Tribunal inspected the premises externally. Built about 18 to 20 years ago, the buildings are structurally in good order and, like the extensive gardens surrounding the development, looked well maintained. Windows were single glazed throughout, but some tenants had installed secondary double glazing in their own flats. The Tribunal was told by the Respondents that the flats were well-insulated, and that recently cavity wall insulation had been installed. A gardener was seen working on site during the inspection, as was the lift service engineer.

12. The hearing began at 11:15am. Mr Miller and Mr Shephard gave evidence in answer to questions from the Respondents. As evidence the Respondents relied principally upon the documents they had included in their bundle, but there were a number of issues on which they orally asserted a position diametrically opposed to that of Mr Miller.

13. As it appeared to be the issue of principal concern to the Respondents, although not

wholly relevant to the issues which the Tribunal had to determine, Ms Agbaje began by referring to the lengthy letter dated 16th September 2003 from Rogers & Norton. The letter alleged :

a. That the property had been advertised as being for active over 55s , and on this basis the Respondents had made up their minds to buy their flat.

b. That the landlord was renting and selling on basis of "supported housing" – for people with mental health needs, subject to local authority financing. At page 56 in the Applicant's bundle it says that by changing the type of people living at the development to those requiring a higher level of care the landlord has breached terms of the lease, listing various covenants in the lease. [see also paragraphs 4 & 6 in the letter]. It then lists behaviour constituting a nuisance and annoyance at the property.

c. At paragraph 10 – that "supported housing" is an extra item which has made its way on to the service charge budget. In addition, 52% of manager's costs are attributable to the Supporting People initiative.

d. At paragraph 13 – that all leases should be let on substantially the same terms

e. At paragraph 14 – that the tenants believe that the landlord is renting out properties on the scheme, and that some flats are in shared ownership.

14. Warden's response [at 62] (undated, but received on 5th November 2003) explained that "Supporting People" was a new form of state benefit. Warden had sent information about this new government scheme to the tenants, the Respondents in turn did ask for further information from the scheme manager, but this was aimed at associated properties run by Warden and led the tenants to believe, wrongly, that properties were being rented out at Laurel Court. The landlord, the reply emphasised, is NOT a care home provider. The letter also made clear that the "Supporting People" fund covers only certain elements of the normal service charge, and also dealt with the complaint about alarm noise and the discrepancy in the service charge percentage apportionment between the 1 and 2 bed flats.

15. A letter in reply from Rogers & Norton dated 17th November 2003 [page 65] reiterated that the Respondents had extensive evidence concerning misrepresentation, etc.

Warden asked for sight of such evidence but never received any reply. Eventually Rogers & Norton replied, saying that they were seeking counsel's opinion, and that the matter had been referred to insurers. Warden never received any further details of complaints, nor (understandably) of counsel's opinion and whether it was favourable.

16. In summary, Mr Miller's evidence was that the fire alarm system had been changed from a series of internal smoke detectors (which were too sensitive, and were regularly going off) to a mixture of heat detectors within flats and smoke detectors in corridors. He also discussed the cord-operated alarms within flats (for summoning assistance), the nature of which had not altered. He did not understand what the Respondents meant by the term "community alarm", and confirmed that the only alteration to the system was to the fire alarm detectors, mentioned above. He stated that he was not employed as a carer, that his function was to manage the property and provide assistance to the residents, and that if his job function changed to require him to provide care services he would leave. He denied that the mix of residents had altered, stated that he interviewed all before they were admitted to ensure that they were able to cope with independent living, and denied that any incapable of independent living had taken up residence during his three years there as manager. He signed out officially but notified residents only informally if he left the site during the day, attended a number of courses on first aid, fire safety, people skills (required of all Warden staff), but also an Excel course (paid for by Norfolk County Council) on exercise to music, which he used in order to lead a one hour class in the residents' lounge every fortnight.

17. Mr Shephard denied that the service charge was being loaded with additional, care costs under the Supporting People scheme. This was merely a different form of state benefit and, in order to apportion responsibility for funding between two different government departments, housing needs were assessed separately from "people" needs. Rather than rely upon varied and inaccurate guesses by claimants, the retirement unit manager (Warden) was therefore asked to apportion the different elements of the service charge between the two functions and those entitled to claim such benefit would be funded appropriately. There was no question of Warden receiving a grant, or of it benefiting in any way by carrying out this apportionment exercise.

18. On the subject of the service charge accounts Mr Shephard stated that, although the issue was not specifically mentioned in the lease, if there was a surplus in any one year it would be carried forward as a credit when budgeting (and levying a charge in advance) for the following year. The aim was always to break even, and not to carry any large surplus or deficit. He confirmed his understanding, from paragraph 2.2) of the First schedule to the lease [at page 100], that Warden was entitled to include an element towards the sinking fund in each service charge, not merely upon the sale of a flat [as dealt with in clause 7. 4)(e) – NOT clause 8. 5)(e), as stated in clause 5. 8)].

19. Throughout the hearing it was clear to the Tribunal that what principally exercised the minds of the Respondents was their claim that they had bought their flat as the result of Warden's misrepresentation as to the true nature of the development and its letting policy and they had thereby suffered substantial loss and damage (which claim, they asserted, was still being investigated despite the departure of Rogers & Norton). This is a matter outwith the jurisdiction of the Tribunal, and it is of only marginal relevance to the questions to be addressed under section 27A of the Landlord and Tenant Act 1985.

20. The Respondents were informed of this fact more than once during the hearing but the answers they were seeking to elicit by their questioning kept focussing upon their belief that Laurel Court was a retirement home, that to comply with the Supporting People scheme the services provided by Warden had been adjusted from a strict property base to one heavily influenced by a care element, and that they had been misled about this when purchasing. When the Tribunal kept trying to persuade the Respondents to focus upon specific items they wished to challenge in the service charge account the Respondents finally had enough, decided to withdraw from the hearing at about 13:20, and stated that the monies they had withheld would now be paid in full.

21. The Tribunal asked Mr Shephard a few questions about the source, in the bundle, of certain figures alleged in the application to be outstanding and closed the hearing at 13:25.

The relevant law

22. The Tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in the new section 27A of the 1985 Act. The overall amount payable remains governed by section 19, which limits relevant costs :

    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.

23. No issue arises in this case concerning the applicability of or the landlord's compliance with the consultation requirements imposed by section 20 of the Act (the advance payment having fallen due prior to the coming into force of the new section 20ZA).

Findings & decision

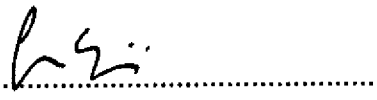
24. Whether the Respondents purchased their flat in reliance upon any misrepresentation by Warden and have thereby suffered damages due to it being now unmarketable, or marketable only at a much reduced price, is not relevant to the Tribunal's task in this application. However, whether Warden is in fact providing care services and including the cost within the property service charge is relevant. The Tribunal note that, when asked, Rogers & Norton seemed unable to provide details of the evidence supporting such an allegation. The Tribunal take no account, however, of the fact that Rogers & Norton have ceased to act. This can be for a variety of reasons, including a conflict of interest and professional embarrassment. (We do not know, for example, whether that firm had acted for the Respondents when they purchased the flat, and might therefore face the possibility of being joined as a Defendant in any action brought by them).

25. However, on the evidence before it the Tribunal are satisfied that the Respondents have simply misunderstood the purpose of Warden apportioning elements of the service charge under the Supporting People benefit scheme. The Tribunal accept the evidence of Mr Miller and Mr Shephard and are satisfied that no care services are being provided

or charged for by Warden, and that the service charges levied for the two years in question are for items authorised by the lease which have actually been done, have reasonably been done, and at a price which is reasonable. So far as the travelling costs incurred by Mr Miller in connection with the Excel course are concerned, the Tribunal are satisfied that the fostering of a community spirit among the residents is a function ordinarily undertaken by managers of such developments with communal facilities, and the cost involved in his leading a fortnightly class falls within the duties reasonably to be expected as part of the "warden service" mentioned in the First schedule. In any case, the salary of the warden or resident manager is regarded as very reasonable.

26. The Tribunal therefore allow the application and determine that the sums claimed in respect of the accounting years 2002-2003 and 2003-2004 (the latter being the budgeted figure payable in advance) are reasonable and the Respondents are liable to pay them in full.

Dated 30th June 2004



Graham K Sinclair, Chairman

for the Leasehold Valuation Tribunal