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Case Reference	:	CAM/00KC/LSC/0068-9
Property	:	24 and 25 Bedford Wing, Fairfield Hall, Stotfold, Hitchin SG5 4FX
Applicants	:	No 24: Ian Jones No 25: Peta Stratford-Johns Isobel Scott In Person
Respondent	:	Fairfield Hospital Management Co Ltd Represented by Directors Ramon Wilkinson, Sharon Jones, Terence Glockler and Patricia Hargraves
Dates of Applications	:	No 24: 7th May 2013 No 25: 1st May 2013
Type of Application	:	Determination of reasonableness and payability of service charges
Tribunal	:	Tribunal Judge G M Jones Miss M Krisko BSc (Est Man) FRICS Ms C St Clair MBE BA
Date and venue of Hearing	:	13th September 2013 at The Sun Hotel, Hitchin

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DECISION

ORDER

UPON HEARING the Applicants in person and the Respondent through its said Directors

IT IS ORDERED THAT:

1. The Applications herein are dismissed.

2. The interim service charges rendered in respect of Apartments 24 and 25 Bedford Wing, Fairfield Hall for year ending 31st March 2014 were reasonable and are payable by the Applicants.

3. There be no order as to costs.

Tribunal Judge G M Jones
Chairman
21st October 2013

REASONS

0. BACKGROUND

The Property

0.1 Fairfield Hall was originally built as a Victorian asylum or psychiatric hospital, as we would call it. It operated as Fairfield Hospital throughout most of the 20th Century. It is a Grade II Listed Building, lying in substantial grounds. The site included a detached Isolation Wing, outbuildings and a church. Eventually the hospital was closed down and in the early 2000's P J Livesey Country Homes (Southern) Ltd undertook an ambitious development project to restore and convert the main building into apartments and a Leisure Centre. The former Isolation Wing was modernised and converted to cottages. Outbuildings were converted into additional residential units. The Church was de-consecrated and has since been vacant. Parts of the site were separately developed by the construction of new dwellings. Funds were provided to improve the bowling club premises and cricket pavilion adjoining the sports ground which lies to the south of the complex. The Manager's house, a substantial detached property called Icknield House, was retained by one of the directors of the development company, who also owns the Church.

0.2 The Respondent is a management company owned by the residents. It is the designated Manager in the leases. It is responsible for management of the main building and some of the other residential units on the site (227 in all); also of the lease of the Leisure Centre, which is let to and managed by a commercial operator. Residents and non-residents can join the Leisure Centre. The current operator, Bannatyne Fitness Ltd, also manages two car park areas; the main car park for their operation, where some residents also have parking spaces, and an overflow car park on the periphery of the site. The Respondent is responsible for the remainder of the grounds and for the private road which serves what the lease calls "the Development" and also serves other dwellings and groups of dwellings not managed by the Respondent. In theory, none of the dwellings on the Estate (part of the Development) have their own gardens though, in practice, there are areas that offer amenity only to individual dwellings. This is particularly the case in the Mews, formerly the Isolation Ward, where a large garden area is in fact occupied exclusively by the residents of each of the six dwellings, but maintained at common expense.

0.3 The Directors of the Respondent are volunteer leaseholders. Currently they are Ramon Wilkinson, Sharon Jones, Terence Glockler and Patricia Hargraves. They employ as managing agent Hazelvine Ltd who, in practice, carries out most management functions. The directors have employed Allsquare Solicitors to prepare their Statement of Case and evidence but represented the company themselves at the hearing. Hazelvine has provided relevant documentation but otherwise little has been heard from that company, which is rather disappointing.

0.4 The freeholder of the Development is now a corporate entity called Hotbed General Partner (Ground Rents 2010) Limited Partnership, a name unlikely to inspire confidence amongst leaseholders. As will become apparent, Hotbed has only a minor role in this dispute because its only involvement is, under clause 8.7 of the residential leases, to choose the insurer. The Applicants complain of recent

substantial increases in overheads, not the least in the buildings insurance premium.

0.5 It appears that there have been several rather expensive insurance claims relating to water damage caused by residents and their appliances. Technically, these may amount to breaches of covenant; but recovering costs from those responsible is likely to be problematic. In the experience of the Tribunal, it is often difficult to obtain satisfaction in such cases. Meanwhile, the building appears to represent a poor insurance risk.

0.6 The Applicants' properties are apartments in the Bedford Wing of the main building. They are sizeable and attractive one bedroom apartments with separate entrances. No 25 has a master bedroom with en-suite shower room on the ground floor and a separate bathroom upstairs; also a mezzanine area that opens onto the double height living room but could be used as a sleeping area for visitors. The layout of No 24 (Exhibit A1) is the same. Obviously layouts and apartment sizes vary considerably, by reason of the nature of the building. It should be noted that many – but by no means all – of the apartments share entrances and are accordingly liable to contribute to the maintenance of internal common parts. Some benefit from access to a lift. As will be seen, there are a number of anomalies in the arrangements for sharing the costs of maintaining communal gardens and outdoor facilities.

The Lease

0.7 The sample lease for 25 Bedford Wing (Plot G21) is dated 1st March 2007 and grants a term of 999 years from that date at a ground rent of £150 per annum. Lease Plan 1, of which we have a legible copy at G18, defines the Development as the land within the blue lines. This is not to be confused with Lease Plan 2, on which the green line (defining the Estate) includes the former church but excludes some apartments, adjoining one of the Leisure Centre car parks, which are in converted hospital buildings. These buildings and that car park are managed by the Respondent. Next to this group of apartments is a separate new development called Middlemarch, not part of the Development. Beyond that are buildings and yards used by the grounds maintenance staff; these are part of the Development but not included in the Estate and are, indeed, essential to the management of the extensive grounds.

0.8 However, comparing Plan 1 with the Google satellite view, it is clear that "the Development" includes The Mews; Icknield House; the cricket ground and pavilion, bowling green and clubhouse (which have separate leases and are not managed by the Respondent); and (anomalously) Middlemarch. Although the Tribunal has not seen the documentation, it appears probable that, when the site of Middlemarch was sold, no obligation to provide management services was granted and, accordingly, no rights to collect service charges reserved. Moreover, if Middlemarch was not there when the leases were granted, the proper construction of the leases may exclude Middlemarch from the service charge calculation.

0.9 However, residents of Middlemarch do use the Development roadways and possibly service media; presumably rights for them to do so were granted to the site purchaser. It is unclear whether the current owners of Middlemarch are under any obligation to contribute to the maintenance of roadways etc. The exclusion of Middlemarch from the management and service charge arrangements does not impact greatly on the allocation of service charge costs (as to which see below) because the area was treated as an open space when the leases were granted. The

Respondent is not liable to maintain the buildings or provide management services.

0.10 If necessary, no doubt the lease plans could all be varied to give effect to the events which have occurred: i.e. to exclude Middlemarch from the Estate and from the Development as defined. Meanwhile it appears to be accepted by all concerned that Middlemarch is no longer part of the Development, although it does benefit from Development roadways, street lighting and landscaping – and possibly service media – free of charge. That is another issue that may need to be resolved.

0.11 Service charges are dealt with in Clauses 1 and 2 of the lease (which contain definitions) and in the Second Schedule to the lease. The Retained Parts are defined as those parts of the Development including the Estate and the Service Installations apparatus plant machinery and equipment and roads drives paths and forecourt ... not included in any demise. By paragraph 3 of the Schedule, it is provided that expenses incurred in relation to the Estate and not to any other part of the Development shall be divided between the tenants of the Estate. By paragraph 5, surpluses in the service charge accounts may be refunded or carried forward as the Management Company may think fit. Obviously, the company must act reasonably.

0.12 The apportionment of service charges between properties in the Estate is set out in clause 1.9. Basically, it is by floor area, as a proportion of the total floor area of all the properties on the Estate or Development, as the case may be. The Leisure Club is clearly included in both. Obviously, if the floor area of the Church and Middlemarch is included (as the definition implies) in the Estate calculation, but the owners of the Church and Middlemarch are not liable to contribute to the Estate service charge, the Respondent will be unable to collect 100% of the costs incurred. However, if "properties" are defined as including only leasehold properties (which accords with the practical solution adopted by the Respondent), the issue is perhaps resolved.

0.13 It is simple enough to bring into the Estate service charge accounts the apartments and car park next to Middlemarch; but the former Church presents a potential difficulty. It is not entirely clear whether the Church, which is clearly part of the Estate, is freehold or leasehold. If it is freehold, then the owner would not appear to be a "tenant of the Estate" for service charge purposes and is thus not liable to contribute to Estate service charges, only to Development service charges. On the other hand, if the Church is freehold, then the tenants of the Estate do not have to contribute to its maintenance. That is the basis on which the service charge accounts have always been prepared. The Respondent believes that the Church is, in fact, freehold. A Land Registry search (at a cost of £4.00 online) would tell.

0.14 The use of the phrase "tenant of the Estate" in the service charge definition might create an issue in relation to the other freehold properties within the Estate. However, the owners of these appear to be under a clear obligation to contribute to service charges and thus, for this limited purpose, are properly treated as tenants of the Estate. There is, of course, this distinction; the Tribunal can under section 38 of the Landlord & Tenant Act 1987 vary service charge provisions in leases but not freehold covenants. However, that issue is not before the Tribunal.

0.15 In addition, there are currently negotiations in progress with the owner of Icknield House to determine what contribution that property should make to Development

service charges; so far, nothing has been collected from that property at all.

0.16 In practice, the Respondent (as has been stated) apportions block internal costs only amongst those apartments with internal common parts. Also lift costs are apportioned only between those who (in theory at least) have access to a lift. There is one additional complication, namely, that there are seven freehold properties amongst the 227 apartments. These do not contribute to block external or insurance costs for obvious reasons. These arrangements, however, appear to have caused no problems in practice, perhaps because until now the leaseholders have considered them to be fair and reasonable (or at least not worth challenging).

0.17 The Respondent asks the Tribunal to approve these arrangements; but on the present application the Tribunal is not able to determine any issue in relation to them. In principle the Respondent ought to follow the lease provisions. If, in consequence, the Respondent is is obliged to apportion service charges in a manner that appears to be unfair, so be it. If the lease provisions are considered unsatisfactory, an application could, perhaps be made to vary all the leases under the provisions of the 1987 Act.

0.18 The position of the gardens at Fairfield Mews (effectively private gardens but currently maintained by the Respondent) is uncertain because the Respondent has not seen the leases. It seems possible that the gardens are included in the demise of the six apartments and maintainable by the leaseholders.

0.19 The Applicants have pointed out that Hazelvine, as agent for the Respondent, has been collecting too much in service charges from residential leaseholders. This appears to have been the result of the practical difficulties involved in securing appropriate contributions from the Leisure Club; the Church; and Icknield House. In order to ensure that costs would be covered, Hazelvine (on behalf of the Respondent) has been collecting 100% of the costs from those who accept they are under an obligation to contribute. It is a practical solution; but not in accordance with the lease provisions. But steps are now being taken to resolve that issue.

0.20 There is one other major unresolved issue about service charge apportionment, namely, the assessment of Bannatynes' contribution. The Leisure Club was until July 2011 operated by the developer's daughter under an informal lease and did not, it appears, make any contribution to the service charge account. A formal lease dated 18th July 2011 was entered into in preparation for a sale of the Leisure Club, Bannatynes now hold the lease under which the tenant is responsible for structural repairs to the Leisure Club premises. Quite how this will work in practice is unclear, as the Leisure Club is an integral part of the main building.

0.21 In addition, Bannatynes are required to contribute to the maintenance of the Development and Estate in like manner to the residential leaseholders, by reference to the "square footage" of their premises which are, of course, much larger than any apartment. There is a mezzanine floor area in the Club and Bannatynes argue that this should not be included in the square footage for the purposes of the calculation. It is not obvious why this should be the case; usable floor area seems the most reasonable measure. Negotiations are ongoing, though Bannatynes have paid £12,000 on account. However, the Tribunal cannot determine this issue, as it has jurisdiction only over residential service charges. Otherwise, there is nothing

remarkable about the service charge provisions.

1. THE DISPUTE AND THE ISSUES

1.1 The original source of the Applicants' complaint was that service charges for year ending 31 March 2014 are 22% higher than for the previous year, well beyond the rate of inflation (and even further beyond the rate of increase of most citizens' incomes). The Applicants have identified the insurance premium as a major item that has increased to an extent that calls for explanation.

1.2 Moreover, it appears that the actual buildings insurance costs incurred during the financial year totalled £99,819.14 (page B30), whereas the anticipated insurance charges for the purpose of collecting interim service charge contributions were £120,000 plus £25,000 in respect of insurance excesses (page A11). This obviously calls for explanation and the Applicants have asked for an explanation and, indeed, revision of the interim service charges.

1.3 Sums totalling £16,000 are being collected by way of reserves under the heading Estate Expenditure and a further £34,050 under the heading Block External Costs. Other items (Tree Maintenance £4,000 and General Block Maintenance £10,000 include an element of reserves). These items also call for explanation. Total anticipated expenditure does not include managing agents' fees, the basis for assessment of which is unclear. The Applicants remain dissatisfied about the level of interim service charges for year ending 31st March 2013 and seek the Tribunal's determination accordingly.

1.4 All the other issues in relation to the drafting of the leases and the service charge apportionment appear to have been under discussion for some time without much progress being made towards finding solutions, though it appears that some progress is now being made. Of course, it is not really an option for the Respondent to run the service charge account at a deficit because, ultimately, the company would become insolvent and, unless the shareholders bailed it out, would be forced to cease trading. It seems unlikely that such an outcome would benefit anyone.

3. THE HEARING AND THE EVIDENCE

3.1 As has been indicated, there are unresolved issues which affect the service charge account. Before July 2011 the operator of the Leisure Club had no obligation to contribute. Bannatynes have been operating the Club since about March 2012 and were not at first asked to contribute to service charges. The Respondent has recently raised a service charge demand against Bannatynes for the period since it purchased the lease in March 2012 but this (as has been explained) is in dispute. In addition, there are unresolved issues about the contributions due to the Development service charge from the Church and from Icknield House.

3.2 Meanwhile the service charge demands to residential leaseholders for the years ending 31st March 2013 and 31st March 2014 were prepared on the basis of ignoring Bannatynes' contribution, an adjustment to be made once the dispute with Bannatynes has been resolved. Likewise, possible contributions from the owner of the Church and Icknield House have been ignored for budgetary purposes. The Respondent's evidence (for example at page G6) speaks of re-casting the budget; but this depends upon uncertain events and will involve management time and has not

yet been done. At some stage, hopefully soon, it must be done.

3.3 Overall, according to the Respondent's statement, total anticipated expenditure for year ending 31st March 2013 was £414,780 and for year ending 31st March 2014 £460,086, an increase of just under 11%. However, this increase impacts different leaseholders differently. In particular, block internal costs decreased 23%; block external costs increased 27%; and insurance costs increased 35%. Thus the Applicants have been hit by substantial increases in some parts of the budget but have not benefited from the reductions elsewhere.

3.4 The Respondent's statement explains the various items included in the overall budget figures for 2013-14. Most of the headings appear not unreasonable and are not in dispute. As regards insurance, the premium increased sharply by reason of the poor claims record (which the Applicants do not dispute). Water damage claims now have an excess of £5,000 per claim. The Respondent has allowed in the budget for 5 such claims. The Tribunal is not told how many such claims there were in earlier years; but no doubt it is wise to be cautious. In future years, the level of this element of the charge will no doubt depend upon how the claims record develops.

3.5 The actual insurance costs were not known when the budget was prepared. The insurers had indicated a substantial increase in view of the claims record and a number of outstanding maintenance issues. The Respondent undertook the maintenance work and notified the insurer, thereby reducing the premium significantly. Thus the budget estimate was somewhat too high. It might have been wise to explain this very clearly to leaseholders at the time.

3.6 It is hoped that Estate Expenditure will be reduced in future by the employment of two extra members of staff, who will deal with routine maintenance issues formerly handled by contractors. It is hoped that this will save more than £20,000 per annum. The outcome of this decision remains to be seen; but it does not appear to be an unreasonable management decision and the Applicants do not challenge it.

3.7 The waste compaction plant and refuse collection are subsidised by the local authority to the tune of £7,000 per annum as they reduce rubbish collection costs otherwise chargeable to the public purse. Managing agent's fees agreed between the Respondent and Hazelvine for year ending 31st March 2012 were £47,110.94 plus VAT. That amounts to £207.50 plus VAT per unit, which appears to be a reasonable figure, bearing in mind the complexity of the task, and which the Applicants do not challenge. That is the basis of the budget figure for 2013-14.

3.8 The Respondent says that reserve charges for the year totaled £56,050 and as at 31st March 2013 reserves totaled £135,538.13, which is just under £490 per apartment, which does not seem unreasonable for such a complex structure.

3.9 For some unexplained reason, we do not have the final figures for year ending 31st March 2103. However, it is not uncommon for the preparation of final accounts to take six months or so. The final accounts for year ending 31st March 2012 show that the budget estimate was very accurate, leaving a surplus of less than £3,500. There is no suggestion that there is a history of over-budgeting.

3.10 In his statement, Mr Wilkinson says that the developer controlled the delivery of service charges and maintained them at a low level until all the properties on the Estate were sold and that some service charge anomalies were created deliberately to achieve higher selling prices for some units. Also reserves were kept at a dangerously low level. This had to change. In addition, Fairfield Hall does not yet have a final occupation licence because the developer left substantial items of snagging undone, which the Respondent has been forced to address. This issue is in the hands of solicitors. There is no reason to doubt what he says.

3.11 Fairfield Hall is an expensive building to maintain and the standard of maintenance works must be high to satisfy the local planning authority's Listed Building Officer. There are substantial internal common parts, including long corridors, all of which are emergency escape routes which must have adequate lighting, including security lighting. There are lifts. The grounds are extensive and, although not complicated, contain 299 protected trees and 141 other trees identified for protection in groups, as well as 7 acres of woodland. There are significant stretches of private roadways in daily use and parking areas for all the apartments and the Leisure Club. The apartments are not cheap. Service charges are likely to be fairly high.

4. THE LAW

Service and Administrative Charges

4.1 Under section 18 of the Landlord & Tenant Act 1985 (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, 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. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

4.2 Under section 27A the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for those costs and, if so, the amount which would be payable.

4.3 In deciding whether costs were reasonably incurred the Tribunal should consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease and the 1985 Act, bearing in mind RICS Codes. If work is unnecessarily extensive or extravagant, the excess costs cannot be recovered. Recovery may be restricted where works fell below a reasonable standard.

4.4 Under section 158 and Schedule 11 of the Commonhold & Leasehold Reform Act 2002 variable administration charges are payable by a tenant only to the extent that the amount of the charge is reasonable. An administration charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent which is

payable, directly or indirectly –

(a) For or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) For or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) In respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) In connection with a breach (or alleged breach) of a covenant or condition in his lease.

4.5 An application may be made to the Tribunal to determine whether an administration charge is payable and, if so, how much, by whom and to whom, when and in what manner it is payable. The Tribunal may vary any unreasonable administration charge specified in a lease or any unreasonable formula in the lease in accordance with which an administration charge is calculated.

4.6 An important distinction between service charges and administration charges is that the former are payable by tenants generally while the latter are payable by a particular tenant in relation to dealings between that tenant and the landlord of managing agent.

4.7 The Service Charges (Summary of Rights and Obligations) Regulations 2007, made under section 21B of the 1985 Act and taking effect from October 2007, require a landlord serving a demand for service charges to accompany that demand with a statutory notice informing the tenant of his rights. If this is not done, the tenant is entitled to withhold the service charge payments so demanded. However, Regulation 2 makes it clear that this does not apply where the landlord is a local authority. The TRIBUNAL standard forms of directions may include reference to these Regulations. However, any such direction given in a case where the landlord is a local authority is unlawful and need not be complied with.

Consultation

4.8 Under section 20 of the 1985 Act (as substituted by section 151 of the Commonhold & Leasehold Reform Act 2002 with effect from 31 October 2003) and the Service Charges (Consultation Requirements) (England) Regulations 2003 landlords must carry out due consultation with tenants before undertaking works likely to result in a charge of more than £250.00 to any tenant ("qualifying works") or entering into long term agreements costing any tenant more than £100.00 p.a. This process is designed to ensure that tenants are kept informed and have a fair opportunity to express their views on proposals for substantial works or on substantial long term contracts.

4.9 In cases where the same contractor is employed to carry out items of work on a regular basis, the Tribunal must first consider whether there was a 'long term agreement' within the meaning of the section. There will be many cases in which a single contractor carries out numerous items of work, perhaps over a long period, under a series of individual contracts. Such individual contracts may or may not be

awarded under an express or implied umbrella contract specifying rates of remuneration and, perhaps standards of performance. There may or may not be a commitment for the landlord or manager to employ the services of the contractor. In each case, it will be a question of fact whether there is a qualifying long term agreement.

4.10 The consultation requirements vary depending upon the circumstances of the case. In this case the relevant requirements are those set out in Part 2 of Schedule 4 to the 2003 Regulations. Landlords who ignore these requirements do so at their peril. Unless the requirements of the regulations are met the landlord is restricted in his right to recover costs from tenants; he can recover only £250.00 or £100.00 p.a. per tenant (as the case may be) in respect of qualifying works. However, it is recognised that there may be cases in which it would be fair and reasonable to dispense with strict compliance.

4.11 Accordingly, under section 20ZA (inserted by section 151 of the Commonhold & Leasehold Reform Act 2002) the Leasehold Valuation Tribunal may dispense with all or any of the consultation requirements if satisfied that it is reasonable to do so. This may be done prospectively or retrospectively.

Information for tenants

4.12 Under Landlord & Tenant Act 1985 section 21a tenant liable to pay service charges may in writing require the landlord, directly or through his agent, to supply him with a written summary of the costs incurred in the last accounting period which are relevant costs in relation to the service charges payable or demanded. Amongst the information the landlord must provide is the aggregate of any amounts received by the landlord on account of the service charge in respect of relevant dwellings and still standing to the credit of the tenants at the end of the relevant accounting period. The landlord must supply the summary within one month of the request or within 6 months of the end of the accounting period, whichever is the later.

4.13 Under section 22 the tenant may, within 6 months of receiving the summary, require the landlord in writing to afford him reasonable facilities for inspecting the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them. The landlord must make those facilities available to the tenant for a period of two months beginning not later than one month after the request was made. Under section 25, failure to comply with the provisions of sections 21 or 22 is a criminal offence. The Commonhold & Leasehold Reform Act 2002 contained provisions amending these sections; but those provisions are not yet in force.

4.14 Section 21B(1) provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The summary must be in statutory form, in accordance with the requirements of the Service Charges (Summary of Rights and Obligations and Transitional Provisions) (England) Regulations 2007, which came into force on 1 October 2007. Section 21B(3) provides that a tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand. By section 21B(4), where a tenant withholds a service charge under section 21B any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he

so withholds it.

Service charge funds held by landlords or managing agents

4.15 Under section 42 of the Landlord & Tenant Act 1987, where the tenants of two or more dwellings are liable to contribute towards the same costs by the payment of service charges, any sums paid by contributing tenants must be held on trust to defray costs incurred in connection with the matters for which the relevant service charges were payable and, subject thereto, on trust for the contributing tenants. It follows that the landlord (or his agent) is under a duty to account to the tenants for any interest received on funds so held. The funds are "client funds" and the tenants as well as the landlord are the agent's "clients" for this purpose. However, tenants are not entitled to a refund. On termination of any lease, the leaseholder's share passes to the remaining tenants and upon termination of the last lease, to the landlord.

4.16 The RICS Service Charge Residential Management Code (2nd Edition) approved by the Secretary of State under the terms of section 87 of the Leasehold Reform Housing & Urban Development Act 1993 sets out good practice for landlords' agents and managers of residential blocks. Part 10 of The RICS Code deals with "Accounting for Service Charges". Agents and managers are advised that accounts should reflect all expenditure in respect of the relevant accounting period, whether paid or accrued and should indicate clearly all the income in respect of the accounting period, whether received or receivable. Copies of such accounts should be made available to all those contributing to them. Service charge funds for each property should be identifiable and either placed in a separate bank account or in a single client/trust account. Where interest is received this belongs to the fund collectively; it should be shown as a credit in the service charge accounts and retained in the fund and used to defray service charge expenditure.

4.17 All chartered surveyors and others engaged by way of business in residential property management should be familiar with the provisions of this Code, to which the Tribunal is required to have regard.

Insurance and Insurance Commissions

4.18 Under section 30A of the Landlord & Tenant Act 1985 and the Schedule to the Act, landlords must supply to tenants who contribute to insurance costs a summary of the policy and must also, if the tenant makes a request in writing, permit the tenant to inspect any relevant policy or associated documents and to take copies. In ***Williams –v- Southwark LBC*** (2001) 33 HLR 22 (ChD), Lightman J held that an insurance commission payable to a manager is, in effect, a discount on the cost of insurance, which should be passed on to tenants.

4.19 However, unless the arrangement of insurance is a service included in the management fees under the terms of the management agreement (as the RICS Code recommends), the manager is entitled to make a reasonable charge for arranging insurance. In that case, the Council as manager handled local claims and it was conceded that, in those circumstances, an allowance of 20% made by the insurers was a reasonable fee. However, this type of allowance can be made only where there is evidence of services being performed by the landlord or managing agent for the insurer; also, the amount must be reasonable in all the circumstances.

Costs generally

4.20 The Tribunal has no general power to award inter-party costs, though a general power now exists under Rule 13(1) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 to make costs orders in cases where costs are wasted or a party has acted unreasonably. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal from the tenants through the service charge provisions i.e. he is entitled to recover a contribution to such costs not only from the defaulting tenant but from all tenants.

4.21 However, under section 20C of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. The Lands Tribunal has said that the Tribunal should use section 20C to avoid injustice. Clearly the manner in which this discretionary power is exercised will depend upon the facts of the case. The relevant factors in this case are discussed in section 5 of this Decision.

4.22 In addition, under Rule 13(2) of the 2013 Rules the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees. This power is likely to be exercised in cases where the applicant is substantially successful, unless he has been guilty of unreasonable conduct in connection with the application, e.g. where he has unreasonably rejected a proposal for mediation or a fair and proper offer of compromise.

5. DISCUSSION AND CONCLUSIONS

5.1 Interim service charges to the Applicants were £346.32 per apartment for year ending 31st March 2013 and £422.50 for year ending 31st March 2014. This represents an increase of 22% but is not, after all, a high level of charge in the circumstances of the case. A leaseholder unaware of the previous year's charge would almost certainly consider the level of charge for 2013-14 very reasonable. The Applicants are entitled to challenge the charges but, in the judgment of the Tribunal, all the charges are perfectly reasonable and are payable by the Applicants. The Tribunal takes into account the promise of the Respondent to review the situation when the final accounts for 2013-14 are prepared and, if appropriate, make a refund (or give a credit against the next year's charges, which might be a better course).

5.2 The perfectly reasonable enquiries raised by Ms Stratford Johns and Ms Scott were not, in the judgment of the Tribunal adequately addressed in Hazelvine's letter of 19th March 2013. However, the managing agents may have felt that there were confidentiality issues surrounding negotiations with Bannatynes and the owner of the church, which would not be an unreasonable concern. This appears to have made the Applicants suspicious and reluctant to accept further explanations that were offered. The tone adopted by Ms Stratford-Johns in later e-mails became quite strident. Of course, she knew quite a lot about the management because she had only recently resigned her directorship of the Respondent. That knowledge may have encouraged her to demand rather more detailed information from Hazelvine than was, perhaps, proportionate to the issues involved. Overall, the Tribunal concludes that there was some fault on both sides in consequence of which the parties' failed to

resolve the issues raised by the Applicants.

5.3 It is, however, perfectly clear that the residential tenants of Fairfield Hall have been overcharged because the Respondents and their managing agents Hazelvine have not been able to resolve the issue of contributions to be made by others who ought to have been contributing to the service charges from the outset. The Tribunal cannot really reach any clear conclusion as to who is to blame for this. As regards the Leisure Club contribution, the shortfall up to July 2011 appears, on the evidence currently available, to have been the responsibility of the developer. Hopefully the issue with Bannatynes can be resolved and will be resolved soon.

5.4 It is not clear what contribution the owners of Icknield House and the Church ought to have made (to Development costs only, probably). The position of Middlemarch remains a grey area. It remains unclear whether the Respondent has been inappropriately maintaining the gardens in The Mews at communal expense. There is also the question of the seven freehold houses. It is to be hoped that these issues can be resolved, appropriate contributions recovered and redress made to those who have been over-paying. Otherwise further applications to the Tribunal seem almost inevitable.

Costs

5.5 This Tribunal has a wide discretion to exercise its powers under section 20C in order to avoid injustice to tenants. In many cases, it would be unjust if a successful tenant applicant were obliged to contribute to the legal costs of the unsuccessful landlord or, irrespective of the outcome, if the tenant were obliged to contribute to costs incurred unnecessarily or wastefully. In many cases, it would be equally unjust were non-party tenants obliged to bear any part of the landlord's costs.

5.6 However, in some cases, the landlord's conduct of his defence may be a reasonable exercise of management powers even if he loses. The landlord may have made an offer the tenant ought to have accepted. In such cases, it might be reasonable for the tenants generally to bear those costs. In other cases, for example where the non-party tenants supported the unsuccessful landlord, it might be reasonable for the non-party tenants to contribute to the landlord's costs. A wide variety of circumstances may occur and the section permits the Tribunal to make appropriate orders on the facts of each case.

5.7 In this case, the directors of the Respondent and their managing agent Hazelvine were struggling with complex issues, some of which it would be difficult, and perhaps unwise, to put in the public domain. The Tribunal takes the view that they appear to have by now acquired a good understanding of what needs to be done. They are doing their best to resolve all the outstanding issues and have taken appropriate professional advice. But it will take time.

5.8 Meanwhile, it is necessary to collect sufficient funds to insure and maintain the building and grounds and deliver necessary service from those who do not dispute their liability to pay. The Tribunal takes into account the fact that the Respondent is a non-profit making management company owned by the leaseholders and managed by elected volunteer directors. If and insofar as the Respondent has incurred costs in defending these Applications, such reasonable costs should be recoverable from

those liable to contribute to the service charge account.

5.9 Overall, on the information available to date, the Tribunal concludes that it would not be just and equitable in the circumstances of the case to order that the landlord should be disentitled from treating his costs of and arising out of the application as relevant costs to be taken into account in determining any service charge relating to the property nor would it be reasonable to order the Respondents to reimburse the Application or Hearing fees.

Tribunal Judge G M Jones
Chairman
21st October 2013