

the ground floor. The first Applicant, Mrs. Fran Adair, is the owner of the lease of flat 10 which is in the penthouse on the 2nd floor. The second Applicant, Mr. Simon Vincent, is the owner of the lease of flat 4 which is on the first floor.

2. The freehold of the Property is vested in the Respondent, Paul Alan House Property Management Limited ("the Company"). As freeholder, the Company owes certain obligations to the Applicants and the other leaseholders under the terms of their leases.
3. On 11 March 2009, the Applicants served on Grovewood Property Management ("Grovewood") a notice dated 11 March 2009 under Section 22 of the Landlord and Tenant Act 1987 (as amended) ("the Act") setting out the grounds on which they intended to apply for an order under Section 24 of the Act.
4. By an application dated 10 March 2009, the Applicants applied to the Tribunal under Section 21 of the Act for an order appointing a manager to manage the Property. In the application, the Applicants named Grovewood as the respondent but the hearing proceeded on the basis that the Company was the correct respondent to the application. The Applicant nominated Louise Williams of Twelve Trees Accommodation Agency as manager. The grounds of the application are that the Company is in breach of obligations owed to the Applicants under their leases (Section 24(2)(a)) and that the Company had made or proposed unreasonable service charges (Section 24(2)(ab)). In addition, the Applicants asked the Tribunal to make an order under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act").
5. The application followed on from the hearing on 4 February 2009 of 2 applications and a reference from the Bristol County Court under Section 27A of the 1985 Act for a determination of the liability of the Applicants and Mr. Gregory Forward (the owner of the lease of flat 11) to pay and the reasonableness of service charges raised in respect of the Property. The Leasehold Valuation Tribunal issued its decision in relation to those matters on 24 April 2009 under reference CHI/00HB/LIS/2008/0037.
6. On 20 March 2009 the Tribunal issued preliminary directions providing for the parties to exchange written statements of case and for a copy of the directions to be served on Louise Williams inviting her to submit to the Tribunal in writing details of her qualifications to act as manager and confirmation that she was willing to accept such an appointment. The Tribunal received nothing in writing from Louise Williams.
7. By letters dated 5 May and 13 May 2009 from HML Andertons, who are the managing agents employed by the Company, the Company challenged the jurisdiction of the Tribunal to hear the application and applied for the application to be dismissed pursuant to regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations

2003 on the basis that it was frivolous or vexatious. The Tribunal issued further directions on 22 May 2009 providing for the Company's applications to be dealt with by way of preliminary issues at a separate hearing. That hearing took place on 31 July 2009 and the Tribunal issued its decision on 12 August 2009. It determined that the Tribunal had jurisdiction to determine the application and that it should not be dismissed under regulation 11. The Tribunal went on to give further directions extending the time for the parties to exchange statements of their cases and listing the application for a substantive hearing. Both parties have subsequently submitted written statements of case. The applications under Section 24 of the Act and under Section 20C of the 1985 Act were subsequently listed for hearing on 29 October 2009.

The inspection

9. The Tribunal inspected the exterior and the common parts of the Property on 29 March in the presence of Mr Vincent and Mrs Darby, an employee of HML Andertons.
10. The Property is a large building on the corner of Church Road and Witchell Road at Redfield. The building appears to have been converted at some time into its present form. In its present form the building contains a retail shop on the ground floor on the Church Road frontage. The shop has its own access. The remainder of the building has been converted into 11 flats. Flats 1 and 2 are on the ground floor and have separate entrances from Witchell Road. The entrance to flats 3 to 11 is through a common entrance from Witchell Road. Flats 3 to 9 are on the first floor. Flats 10 and 11 are in the converted roof space of the building. Access is gained to them via the communal staircase and across a flat roof.
11. The communal hall and stairs have painted walls and a carpeted floor. There was evidence of water penetration in the wall beneath a velux window between ground and first floor levels. The carpet was showing signs of wear and staining. In the hall there are post boxes for all the flats, cupboards housing water and electricity supply equipment and a fire alarm panel.
12. Some of the slabs laid across the flat roof leading to flats 10 and 11 were wobbly and in need of attention. There was water lying between them.
13. On the ground floor, located between the entrance to flat 2 and the entrance to the upper flats, there is a former garage or store which is now used as a bin store and cycle storage area. At the time of the inspection, this appeared in a clean and tidy state.

The Law

14. Part II of the Act provides a mechanism enabling a tenant of a flat who is dissatisfied with the standard of management of the building which

contains the flat, to apply for a manager to be appointed to manage the building. Section 21(1) of the Act gives the tenant of a flat contained in premises containing 2 or more flats, a right, subject to certain exceptions and conditions, to apply to a leasehold valuation tribunal for an order under Section 24 appointing a manager to act in relation to the premises.

15. Before making an application under Section 24, the tenant must serve on his landlord and any other person responsible for managing the property, a notice under Section 22 warning that he intends to make such an application; specifying the grounds on which he intends to do so and the matters on which he intends to rely to establish those grounds; and giving a reasonable time for those items which are capable of being remedied to be remedied.

16. Section 24 of the Act provides:

(1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies-

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver, or both, as the tribunal thinks fit.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely -

(a) where the tribunal is satisfied -

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii)

(iii) that it is just and convenient to make the order in all the circumstances of the case:

(ab) where the tribunal is satisfied -

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case:

(aba) ...

(abb) ...

(ac) ... or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section "relevant person" means a person -

(a) on whom a notice has been served under Section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

- (2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable
- (a) if the amount is unreasonable having regard to the items for which it is payable
- (b) if the items for which it is payable are of an unnecessarily high standard, or
- (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) ...

(11) References in this part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.

Subsections 3 to 10 are not relevant to this application.

17 Section 20C(1) of the 1985 Act provides that "a tenant may make an application for an order that all or any costs incurred, or to be incurred, by the landlord in connection with proceedings before a leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application." Subsection 20C(3) provides that "the court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."

The Lease

18 The Tribunal was provided with a copy of the lease of flat 4. The lease is dated 16 January 2004 and was made between Alarm Service Group Limited as lessor and Leigh Ashley Lawrance and Pauline Mary Lawrance as lessees. It records that the Property has been divided into flats and that it was intended to grant leases of the other flats on similar terms. The lease is for a term of 999 years from 1 September 2003 at a rent of £10 per year.

19 The lessor's covenants are set out in Schedule 7. They include covenants to insure the Property, to keep the structure and common parts in good and tenable repair and decoration, to decorate the exterior of the Property, to keep the common parts and the bin store clean, lit and decorated and to keep proper books of account.

20 The lessee's covenants are set out in Schedule 6 and include a covenant to pay an annual subscription in respect of the costs incurred

by the lessor in carrying out its obligations under Schedule 7. Schedule 8 sets out the provisions for calculating the service charge.

21. There is no direct provision in the lease providing for the setting up of a management company other than paragraph 12 of Schedule 7 which provides "*The lessor will not grant a lease nor accept an assignment of the premises to a person who does not upon or before such lease or assignment accept a share of a transfer of the lessee's share as the case may be in such management company as may have been formed for the management of the property.*"
22. It was accepted at the hearing by all parties that the freehold of the Property is now vested in the Company and that the Company is responsible for performing the obligations of the lessor under the lease.

The hearing and the issues

23. The hearing took place at the Holiday Inn, Filton Road, Bristol on 29 October 2009. The Applicants appeared in person. The Company was represented by Mr. Forward, a director of the Company, Mr. G Brown, associate director of HML Andertons and by Mrs. Darby who manages the Bristol office of HML Andertons.
24. Both parties had lodged written statements setting out their respective cases accompanied by bundles of documentation. At the outset of the hearing, it was clear to the Tribunal that the Applicants did not fully understand the nature of the application which they were making. At the time when the application was made, the Applicants were not fully aware that it was the Company that was responsible for management of the Property and that they were members of the Company. They understood that they were applying to the Tribunal to appoint managing agents in place of Grovewood and/or HML Andertons.
25. At the outset of the hearing, the Chairman informed the parties that he had obtained from Companies House copies of the memorandum and articles of association of the Company together with a list of current appointments. These show that the Company is a company limited by guarantee not having a share capital and that the current directors are Mr. Gregory Forward (appointed 4 March 2009), Mr. Prakash Patel (appointed 5 September 2008), Mr. Zia Rahman (appointed 5 September 2008) and Mr. Matthew Williams (appointed 19 March 2009). Paragraph 5.2 of the articles of association provides that no person may be a director of the Company unless he is a member of the Company. Paragraph 3.1 of the articles provides that no person may be a member of the Company other than a leaseholder of the Property.
26. The Tribunal identified the issues to be:
- a. Is the Tribunal satisfied that the Company is in breach of any obligation owed to the Applicants under their tenancies relating to the management of the Property?

the Tribunal is satisfied that unreasonable service charges have been made or are proposed or are likely to be made? Are there other circumstances which make it just and convenient for an order to be made under Section 24(2)(b)?

Are there other circumstances which make it just and convenient for an order to be made under Section 24(2)(b)?

e. If the Tribunal is minded to appoint a manager, is the manager nominated by the Applicants suitable?

ii. What functions and powers should she have and for what period should she be appointed?

f. Is it appropriate to make an order under Section 20C of the 1985 Act?

The Applicants' Evidence

27. Both Applicants submitted written evidence and gave oral evidence at the hearing.

28. Mrs. Adair gave evidence that she purchased her flat in 2002 through Moorfields estate agents and that very loose and unprofessional arrangements had been made for the Company to be established. Moorfields failed to explain to her and the other leaseholders that, as members of the Company, they had the right to manage the Property. Instead, the management of the Property was put in the hands of Grovewood, a company operated by Mr. and Mrs. Land. She paid a monthly service charge to Grovewood but the state of the interior decorations and the state of repair and maintenance of the Property declined at an alarming rate. Matters came to a head when, unable to obtain any answer to complaints about the state of the bin store, Mrs. Adair obtained publicity through Radio Bristol.

29. Mr. Vincent gave evidence that he purchased his flat in 2007. Shortly after that he tried to contact Grovewood to complain about the management of the Property but he was unable to speak to anyone. He wanted to organise a meeting of the leaseholders but Grovewood would not give him the names and addresses of the other leaseholders. Such was his frustration that he was forced to make the applications to the Tribunal firstly in relation to service charges and then for the appointment of a manager. He said that no one was aware that the leaseholders owned the freehold until 6 months after the application was made. He said that Mr. and Mrs. Land were directors of the Company, but they were not entitled to be directors as they were not leaseholders. He challenged the legality of acts carried out by the Company whilst they were directors.

30. In the Section 22 notice, the only breaches of obligation relied on by the Applicants were that Grovewood had failed to change the locks to the Property after the keys had been lost by Moorfields resulting in several break-ins at the Property in 2007 and that £2000 had been spent on unsuccessful repairs to the fire alarm between 2005 and 2007.
31. At the hearing, the Applicants relied on the following further breaches of obligation:
- a. A small drain on the flat roof which Mrs. Adair said is inappropriately sited and has not been cleaned for 5 or 6 years resulting in a permanent pool of water on the roof. Mrs. Adair said that this had still not been cleaned when she last looked in August 2009.
 - b. Mrs. Adair was not aware of any general maintenance having been done over a number of years and this was continuing.
 - c. Lack of cleaning in the communal areas. Mrs. Adair could not say whether this was continuing as she had let her flat in August and was no longer living at the Property. Mr. Vincent said that cleaning is now being done.
 - d. Mrs. Adair said that the door bell entry system to her flat had been vandalized and had not worked for 4 to 5 years. Grovewood had refused to repair it. She had not asked the Company or HML Andertons to repair it and she did not know if it had now been repaired.
 - e. Mrs. Adair said that the fire alarm system did not work and had been disconnected. She did not know if it is now working. Mr. Vincent said that it is now working partially but not to full capacity. There have been false alarms in the last few months. When that happens, one of the occupiers turns the alarm off by putting a screw driver in the system. The alarm goes off about once or twice each month.
 - f. Mrs. Adair complained that there were no fire extinguishers in the communal areas.
 - g. Mrs. Adair said that the bin store is now kept clean following her complaints to Radio Bristol. She accepted that the problems had been before HML Andertons were in charge.
32. Mr. Vincent said that there had been improvements in the last 18 months. The locks had still not been changed but the cleaning is now being done and the bin store is kept clean. He is now receiving information about the Company when he asks for it. He considered that the improvements were due to him making the applications to the Tribunal. Notwithstanding the improvements, he wanted to proceed

with the application. Mrs Adair said that she had not approached HML Andertons recently as she associates them with Grovewood and has chosen to withdraw from the situation by not living at the Property any more as not only were the parties to the Application but also the other 37 leaseholders who were not parties to the Application.

33. The section 22 notice lists a number of items in support of the waiver allegation of unreasonable service charges. Mr Vincent accepted that these had now been the subject of a determination by another Tribunal. He relied on the decision of that Tribunal as evidence of the fact that unreasonable service charges had been made. His main complaint was that the service charge had been increased by 35% in 2008 and it remained high. The budget proposed by the nominee suggested a service charge of £27.12 per flat per month compared to the existing charge of £45 per month.

34. Mr Vincent said that it was just and convenient to appoint a manager because the applicants had identified a new manager with a good track record who was prepared to take over. Mrs Adair felt that she was being rail-roaded by the directors of the Company whom she considered to have been appointed by Mr Brown. She accepted that there had been a meeting of members of the Company on 17 March 2009. She was not sure whether she had received notice of the meeting but said that she would not have attended if she had known about it because she felt intimidated and bullied by the system that prevails rather than by any particular individual. Mr Vincent said that he had notice of the meeting but could not attend as he was at work.

35. Mr Vincent said that the nominee manager, Louise Williams, could not attend the hearing due to work commitments. He said that she had received a copy of the directions dated 20 March and knew about the hearing. He did not know if she had sent in the information requested by the Tribunal. Mr Vincent's evidence was that the nominee was Louise Williams of Twelve Trees Accommodation Agency of 65 Long Beach Road, Longwell Green, Bristol. He did not know what professional qualifications she possessed. She has 12 years experience of managing residential property consisting of small blocks of flats and homes. She would charge £1200 per annum for her service. They had not discussed the fine detail of the work to be covered by that charge but it would be at least as much as Grovewood. She understands and complies with the RICS Service Charge Residential Management Code. Mr Vincent had no details of her professional indemnity insurance cover. She had produced a budget for service charge showing a monthly charge of £27.12 per flat. The amount for the sinking fund covered the costs of external decorations in 2011. Servicing of the fire alarm was included in the budget for repairs.

36. Mr Vincent said that if a manager was appointed he would want her to deal with day to day management of the Property but he would want the members of the Company to have some say in what happens. He would not want the manager to be able to set the level of service

charge without reference to the members. He said that what he really wanted was a different managing agent.

37. **Section 20C:** The Applicants said that they were asking for an order because making the application was the only option available to him in view of the lack of response from Grovewood. They did not want the members to have to pay extra charges for something which was for their benefit.

The Respondent's evidence

38. Mr. Brown had filed a written statement on behalf of the Company. He gave further oral evidence at the hearing.
39. Mr. Brown explained that Grovewood had taken over management of the Property from Moorfields. In September 2008, HML Andertons had bought the business of Grovewood. Mr. and Mrs. Land are no longer involved in the business and have no further connection with HML Andertons. HML Andertons had taken over as managing agents on the terms of the previous contract with Grovewood.
40. Mr. and Mrs. Land had been directors of the Company because no-one else was prepared to be a director. HML Andertons had discussions with some of the members and, as a result, Mr. Forward had indicated that he was prepared to be a director. A meeting of members was arranged for 17 March 2009. All members had been notified of the meeting. 7 members had attended. There were 2 main topics of discussion. First, HML Andertons presented a budget for the next year and that was approved by a majority of those present. There was an understanding by those present that within reason, they could have what they wanted provided they were prepared to pay for it. Second, the meeting discussed the appointment of HML Andertons as managing agents and it was made clear that the Company had power to change the managing agent. Those members present voted to retain HML Andertons on a year by year basis. As a result of the meeting, more members were aware of the relationship between the Company and the managing agents and more members were becoming involved in the running of the Company. The accounts for the year ended 5 April 2009 had now been prepared and circulated and an AGM had been arranged for 6 November. There had been a number of meetings between the board of directors and HML Andertons to discuss management issues.
41. In relation to the various breaches of obligation relied on by the Applicants, Mr. Brown said that many of these were historic, relating back to the periods when Moorfields and Grovewood were managing the Property. In relation to the specific matters raised, Mr. Brown and Mrs. Darby had the following comments:
- a. The directors believe that the Property is secure and that it is not worth changing the lock and issuing new keys to everyone.

b. The fire alarm is maintained under an annual service agreement. It was serviced in February 2009. The system is not maintained as originally installed because it is not appropriate to a block of flats let on leaseholds. It now operates only in the communal areas. The system needs further work to make the system more reliable and £500 has been set aside in the budget for that work. There was no reference to that work in the Association of Residential Managing Agents or the Association of Residential Managing Agents. The drain on the roof has been inspected and it needs further work. It is checked by Mr Forward on a daily basis as he goes to work. No work has been planned for the roof but Mr Brown could see that work would be required in the foreseeable future. The electricians have provided a quote for a service to provide a proper service to the HAs to general maintenance. Mrs Darby said that the electricians had been checked. She inspects the Property on a quarterly basis to note any problems. Their system has no outstanding tasks logged. Although they are able to deal with urgent matters, they are not able to do routine work as there are no funds available. The Company is owed £2,500 in service charges. On the reserve fund Mr Brown did not consider that for the next year the reserve would be sufficient to decorate the exterior of the Property. Mr Brown accepted that there was a history of the Property being cleaned on an ad hoc basis but their budget now provided for the communal areas and bin store to be cleaned on a regular basis once per month.

f. Mrs Darby said that no problems with the door entry system had been reported to her since September 2008. She could only check the system by entering individual flats. There is no money available for an inspection. Mrs Darby said that it is the policy of HML Andertons, as recommended by ARMA, that no fire extinguishers are provided in communal areas unless the residents are trained in their use. Mrs Darby said that Mr Brown's brother carries out health and safety and fire risk assessments and he carried out a quick report about 6 months ago which identified some problems which have been acted upon. Some items in the communal hallway and the meter cupboards had been removed and a system had been put in place for removing rubbish from the bin store on a regular basis. A full assessment will be carried out when funds are available.

42. In relation to service charges, Mr Brown relied on the decision of the Tribunal. He accepted that certain items had been removed from the service charge account as they were properly payable as costs of the Company, and there had been an adjustment to the cleaning costs in one year. Otherwise the charges had been upheld as reasonable. The Tribunal dealt with the service charges and decided that they were reasonable. In making that application they thought that they were

43. Mr. Brown relied on what he had already said to support his submission that it was not just and convenient to make an order.
44. Mr. Brown submitted that there was insufficient evidence to show that Louise Williams was a suitable person to be appointed manager. He had looked at the website for Twelve Trees Accommodation Agency and noted that there was no reference to being members of the Association of Residential Managing Agents or the Association of Residential Letting Agents. He did not consider that the budget prepared by Louise Williams provided for sufficient money to cover the day to day running of the Property. He noted that it contained nothing for servicing the fire alarm and only £750 for repairs. He doubted whether she could provide a proper service at a cost of £100 per unit. There was nothing in the budget for running the Company. He thought that the budget of £750 for insurance was inadequate and said that there was no documentary evidence to show that it was on a like for like basis. There was nothing in the budget to cover health and safety obligations.
45. On the reserve fund, Mr. Brown did not consider that £500 per year for 3 years would provide sufficient to decorate the exterior of the Property in 2011. In his own budget, he had agreed to put in a nominal figure for the reserve fund in the current year on the basis that by March 2010, HML Andertons would put in place a 5 year maintenance plan with costs so that a reserve fund could be agreed and put in place by the members.
46. Mr. Forward said that the members of the Company are now aware of their rights to take part in running the Company. He agreed with the criticisms of Grovewood and described them as incompetent. The Company had agreed to appoint HML Andertons as managing agents. He had built up a good relationship with them and was satisfied that the Property was now being run on a professional basis. He did not consider that there were any outstanding breaches of obligation by the Company but accepted that it would take time to get the Property up to a proper standard. He said that the main problem was a lack of funds due to arrears of payment of service charges. He would welcome the Applicants being involved in the running of the Company.

Conclusions

47. No point was taken by the Respondent on the validity of the Section 22 notice and the Tribunal has not considered that issue.
48. It is clear to the Tribunal that the Applicants did not fully appreciate the nature of the application that they were making when the application was issued. They were frustrated and annoyed by the manner in which Grovewood had managed the Property. They felt that the only way in which they could make any progress was by making applications to the Tribunal firstly to deal with the service charges and secondly to appoint a manager. In making that application they thought that they were

applying for a new managing agent to be appointed. The arrival on the scene of HML Andertons as managing agent did not change their intentions because they saw that firm as tarred by the same brush.

49. This Tribunal has no power under Section 24 to appoint a new managing agent. Its power is to appoint a manager to carry out the management functions of the lessor under the leases. If it were to appoint a manager, it would be to replace the Company, not the managing agents.

50. It was accepted by both parties, and the Tribunal finds as a fact that, until September 2008, the level of management under Grovewood was poor and that there was minimal involvement of the members in the running of the Company.

51. The Tribunal is satisfied that there have been serious breaches of the lessor's obligations over a long period in earlier years, but what the Tribunal has to consider under Section 24(2)(a) is whether there are any present breaches of obligations. From its own inspection of the Property and the evidence of the parties, the Tribunal finds as a fact that there are some existing breaches such as damaged decorations in the hall, wobbly slabs on the roof and faults with the fire alarm system. Although they are breaches, the Tribunal does not consider them to be substantial and is satisfied that the Company is taking steps to address these matters through HML Andertons. The Tribunal is satisfied that HML Andertons are managing the Property on a professional basis within the limitation of the funds available to them. The Tribunal does not intend to make a finding of fact in relation to each alleged breach as that is not necessary in the circumstances.

52. From the decision of the Tribunal in application number CHI/00HB/LIS/2008/0037, it is clear that the Tribunal in that application decided that unreasonable service charges have been made in the past. In particular, it concluded that no service charge was payable by Mrs Adair for the period from October 2004 to February 2005 and that the cleaning charge for 2005 to 2006 should be reduced by £120. To that extent, the Tribunal finds that unreasonable service charges have been made within the meaning of Section 24(2)(ab).

53. The Tribunal in that application concluded that the company secretarial costs and administrative charges charged in each of the years 2005/06, 2006/07 and 2007/08 were not recoverable as service charges under the terms of the leases and, instead, should have been charged to the members of the Company as expenses. The Tribunal did not criticise the amount of those charges nor the level of service provided for those charges. For that reason, those items were removed from the service charge list and so cannot be considered to be unreasonable service charges within the meaning of Section 24(2)(ab).

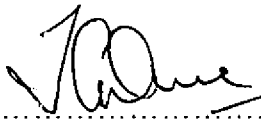
54. Although the Tribunal has found that there are breaches of obligations and that unreasonable service charges have been made, the Tribunal was not satisfied that it is just and convenient for an order to be made in all the circumstances of the case. The Tribunal finds that the standard of management has improved dramatically since HML Andertons took over as managing agents in September 2008. The Tribunal accepts that that firm has taken steps to ensure that members of the Company know that they are responsible for running the Company and to encourage them to take an active part in doing so. The Tribunal considers that the directors of the Company, all of whom have been appointed since September 2008, should be given an opportunity to show that they are able to manage the Property on a proper basis. The Tribunal is satisfied that the directors are aware of their rights and obligations and that they know that they are able to remove HML Andertons as managing agents if they wish to do so.
55. For the same reasons, the Tribunal is not satisfied that other circumstances exist which make it just and convenient for the order to be made.
56. Mrs. Adair said that she feels intimidated and bullied. She said that she was intimidated by the system rather than by any particular individual. The Tribunal considers that that is as a result of her unhappy experiences with Grovewood over the period from 2004 to 2008. There was no evidence before the Tribunal that she has been prevented from taking part in the running and management of the Company. Mr. Forward said that he would welcome the Applicants being involved in the running of the Company and the Tribunal hopes that they will accept that offer.
57. Although the Tribunal is refusing to make the order requested by the Applicants, the Tribunal considers that they must be applauded for having taken steps to put right a situation which was clearly unsatisfactory. Although this application was misconceived, it was well motivated and it may be that it has resulted in an improvement in the standard of management of the Property and in the knowledge of the roles of the members in running the Company.
58. Even if the Tribunal had been minded to appoint a manager, the Tribunal would not have been prepared to appoint Louise Williams on the basis of the limited evidence which was before it. The only evidence was second hand and that was incomplete. There was no satisfactory evidence of her ability to properly manage the Property. There was no evidence of her professional qualifications nor of her affiliation to a professional body.

Application under Section 20C of the 1985 Act

59. Although the Tribunal has heard no argument on the point, it is doubtful that the wording of the lease allows the Company to recover its costs as service charges. Notwithstanding that point, the Tribunal is not

prepared to make an order under Section 20C. It has already been stated that the application was misconceived. It was not properly thought through by the Applicants before it was made. There is no evidence that they sought advice about the merits of making such an application. The Applicants admitted at the hearing that they did not want a manager to be appointed if the members could not have a say in the running of the Property. The Applicants admitted that the management of the Property has improved since the application was made. They could have withdrawn the application and saved some expense. Although the Tribunal has applauded the Applicants for taking steps to improve the management of the Property, they could have achieved the same result by entering into discussions with the directors of the Company and with HML Andertons. In those circumstances, it would not be just and fair to the Company to prevent it from recovering its costs through the service charge if the leases entitle it to do so.

Dated 9 November 2009

A handwritten signature in black ink, appearing to read 'J G Orme', written over a horizontal dotted line.

Mr. J G Orme
Chairman