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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CG/LSC/2015/0114** **MAN/00CG/LAM/2015/0016**
Property	:	**Flat 9 and 26 Oakwood, 84 Norwood Road Sheffield, S5 7BE**
Applicant	:	**Mr David Simon McDonald and Mrs Deborah Jane McDonald**
Respondent	:	**Mr K. Rodney Marshall and Mrs Marilyn Marshall, trading as, Whiston Property Management**
Type of Application	:	**Service charges, Section 27A of the Landlord and Tenant Act 1985. Appointment of manager, Section 24 of the Landlord and Tenant Act 1987.**
Tribunal Members	:	**Judge C. P. Tonge, LLB, BA.** **Mrs S. A. Kendall, BSc, MRICS**
Date	:	**3 March 2016**

DECISION

The background to the application

1. This case comes before the Tribunal by way of two applications dated 13 November 2015 from "the Applicants", Mr David Simon McDonald and Mrs Deborah Jane McDonald, the long leaseholders of flat 9 and 26 Oakwood, 84 Norwood Road, Sheffield, S5 7BE, "the property".

2. "The complex" is comprised of three purpose built blocks of flats, the ground plan of which forms a capital H. The 'cross bar' contains six flats and the two 'uprights' contain ten flats each, making a total of 26 flats. These were built in one complex in 1976 and the three buildings are joined together by canopied areas. The buildings are surrounded by private gardens and there is a private car park.

3. The Freeholders and managers of "the complex" are Mr K. Rodney Marshall and Mrs Marilyn Marshall, trading as, Whiston Property Management.

4. The Applicants' hold the remainder of a 200 year lease to each of the flats that form part of the "the property", commencing on 25 December 1974.

5. Directions were issued on 9 December 2015, when it was ordered that both applications be dealt with together. These directions contain the usual warning that failure to comply with them may result in detriment to that party's case. However, the Respondent breached several of the Directions and as a result this case has had to proceed without a joint hearing bundle and without all the invoices necessary to support the Respondents' case.

6. The Applicants' bundle is not properly paginated, but is divided into sections, each section being paginated and is 326 pages in length. To that it has been necessary to add the applications and the copy lease for each flat that accompanied the applications.

7. The Respondents' bundle is not properly paginated, but is divided into sections, each section being paginated and is 189 pages in length.

8. The application relates to service charge years 2009, 2010, 2011, 2012, 2013, 2014 and 2015. The Applicants' have commenced a Scott Schedule, but the Respondents' have failed to complete it.

9. In the part of the case in which the Applicants asks that the Tribunal appoint a manager, the Applicants seeks to rely upon the facts that the Respondent has demanded unreasonable service charges, is in breach of the terms of the lease, has breached the RICS Service Charge Residential Management Code, health and safety requirements, fire safety requirements and various other guidance.

10. The Tribunal inspected "the complex" at 10 am on 29 February 2016, with a hearing after the inspection. The hearing taking place at the Employment Tribunal Building, Sheffield.

The inspection

11. The Tribunal inspected "the complex" in the presence of one of the Applicants, Mr David Simon McDonald, accompanied by the prospective manager, Mr Richard Britton, of RDB Estates Limited. Mr K. Rodney Marshall was present on behalf of the Respondents, accompanied by his son and prospective partner, Mr Ashley Marshall. The complex is relatively close to Sheffield Northern General Hospital.

12. The three blocks of flats have brick walls, pitched and tiled roofs and they are two storey's high. One of the rain water down pipes has evidently leaked because there are water marks on the exterior of the building on both sides of the down pipe. There are grates set into the ground along the exterior walls of the buildings, one of which was seen to be backing up, permitting soap suds to escape from the grate.

13. Many of the windows are single glazed and set in wooden frames, some of which have been effected by wood rot. Most of this rot appears to have been repaired and painted over. Some residents have fitted PVCu double glazed widows. This includes the Applicant who has paid to have such windows fitted at both of the flats that make up "the property". The Tribunal noted that the windows fitted to flat 9 had not been well fitted. Each window has two areas, one at each side of the exterior window sill that has been filled with expanding foam that is still exposed.

14. There is a private car park situated to the south side of "the complex". Access to this car park is through a drive, off Crabtree Road, that is provided with a barrier and a code operated lock. The surface of the car park is, in places, in need of attention, where the surface is not level and is breaking up. There are however, large areas without such problems and the whole surface is still useable.

15. The surface of the car park is not painted to divide it up into parking bays. The Respondent indicated that 28 vehicles can park in the car park, the Applicant disputed this. The Tribunal has checked the site plan in the Deeds and in the plan the car park is marked as having 26 parking spaces. Mr McDonald asked the Tribunal to check the plan and note that it contains an 'additional parking' space to the west of the current parking area. The Tribunal confirms that this is correct, however that 'additional parking' has not been installed.

16. "The complex" is surrounded by lawns and gardens, all of which appear to be well kept. The Tribunal noted that tree branches had been lopped, shrubs neatly cut back and "the complex" is generally clean and tidy.

17. The Tribunal noted that a tree on the eastern Crabtree Road boundary of "the complex" has roots that are causing the local authority pavement to lift upwards and thereby be damaged. The Respondent stated that he has been in touch with the local authority regarding this and has been told that at the moment he should do nothing about this. It should be noted that there is political controversy in Sheffield at the moment relating to local authority trees that have been planted on many roads in the city causing damage to pavements. Residents of the city are expressing views for and against chopping down the trees in question.

18. It is an agreed fact that garden waste is being left on the garden facing onto Norwood Road. The Tribunal inspected the wall at this boundary and agrees with the Applicants that it is need of repair and possibly rebuilding in parts of it. The garden waste is not contributing to this. The wall is old and is being pushed sideways by trees growing close to it.

19. The northern boundary has suffered damage in recent years. The owner of the neighbouring property decided that the hedge and fence that were in situ were his property (this is disputed). He brought a JCB onto his land and used it to pull out the hedge and fence, also causing damage to some of the drains that serve "the complex", causing £3,500 damage, resulting in an insurance claim, the excess of £250 being charged as a service charge cost. The boundary is now partly formed from Leylandi and partly from wooden fencing, all of which have been put in place by the Respondent.

20. There are five areas used to store refuse bins. Two of these areas situated near the car park have been modified by making the opening to each area wider, so as to accommodate larger bins. A temporary gate and fence is being used to cordon off a length of about six feet, pending a more permanent structure.

21. "The complex" has a number of Sky dishes, installed by the residents and TV aerials that are lifted on masts, due to poor reception.

22. In each of the blocks that contain ten flats, there are two common entry doors, each giving access to four flats, with stairs to the upper floor flats. The two remaining flats in each block have exterior doors that let out straight onto paved pathways and not into the interior common areas. The third block contains six flats, four accessed by a common entry door and two with exterior doors straight out onto paved pathways. With the exception of one short series of steps, all these interior common spaces are carpeted. Only three out of five of these interior common areas have electricity sockets, so that electricity for carpet vacuum cleaners has to be supplied to the other two areas via an extension lead.

23. The interior common areas are not heated. Fire safety advice and fire emergency plans signs are displayed on the common area walls.

24. There are two electric lights in each interior common area. These come on when it is dark by sensor switches. There are also exterior common lights.

25. All 26 flats have fire doors.

26. The five common entrance doors all have door closers fitted. One is a wooden door which, when fitted, would have been a fire door, but it would no longer reach the specifications required. This door is fitted with a Yale lock that is provided with a turning mechanism on the interior side of the lock, to provide easy escape in the event of a fire.

27. The remaining common entrance doors have been replaced by the Respondent and are now PVCu. These are not fire doors. Three have 'thumb nail' locks, provided for easy escape in the event of a fire. The remaining PVCu door has not yet been fitted with a 'thumb nail' lock.

28. The interior common area in the third block is provided with two fire extinguishers, a fire alarm and emergency lighting. This is one of the blocks fitted with a PVCu exterior door. All the long leases in this block are owned by a Care Company that is linked to the local authority and maintains an office in one of these flats.

29. In relation to other specific complaints raised within the evidence. The Tribunal notes that ridge tiles on the roof above flat 26 have recently been repaired. The southern boundary wall has new coping stones on it. An estate path at the side of the western block of flats is no longer a trip hazard. There is an electric cable contained within a plastic conduit that runs over a water drainage system hopper at the side of the western block, this did not constitute a hazard. There is a short length of stair nosing missing to the side of the bottom stair in one of the interior common areas in the same building.

THE LAW

Landlord and Tenant Act 1985

Section 18, meaning of service charge and relevant costs.

Briefly this defines a service charge and associated costs as the variable cost of providing the service.

Section 27A, Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

Section 19, Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions 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.

Section 22 of the Landlord and Tenant Act 1987 deals with a preliminary notice that has been served in this case. This is a preliminary stage to the appointment of a manager.

Section 24 of the Landlord and Tenant Act 1987 deals with the appointment of a manager by this Tribunal. The section sets out the circumstances in which such an order can be made. It suffices in this case to point out that each set of circumstances also requires that the Tribunal decide "that it just and convenient to make the order".

Relevant provisions of the lease

30. It should be noted that both flats that make up "the property" are contained within a block of flats that contains ten flats.

31. The lease for flat 9 and the lease for flat 26 contain clauses that are, in so far as this case is concerned, in the same terms. The Applicants' hold the remainder of a 200 year lease to each of the flats, commencing on 25 December 1974.

32. Half of the exterior walls of each flat are part of the demised flat, the inner part is demised and the outer half is not (the Demise in clause 1). The lease is silent in so far as windows are concerned. Even if the lease is written in a way that the demise of the walls is also meant to apply to the windows in the wall (which the Tribunal doubts), it would be wrong to attempt to apply this to a replacement window. As a matter of common sense the replacement window must belong to either the freeholder or the long leaseholder. The Tribunal takes into account evidence given by the Respondent that when long leaseholders replace windows, they do so at their own expense and the Tribunal therefore decides that a replacement window becomes the property of the long leaseholder, under the terms of the demise.

33. Clause 5 (6) makes the Respondents responsible for decorating the exterior of both flats, which would include painting the windows if they had remained wooden.

34. A ground rent of £25 per year is to be paid in equal halves on 24 June and 25 December each year (page 2 of the lease, clause 1).

35. Additional rent to cover the cost of insuring the buildings on the estate is covered in the same clause and the long leaseholder is required to contribute a one tenth share of the cost of this. A literal reading of this part of the clause makes the Applicants liable to pay a total of one fifth of the insurance costs for the whole estate, the Applicants' holding long leases to two flats.

36. Clause 4 (2) requires the long leaseholder to pay a one tenth share of the costs, expenses and outgoings incurred in complying with the Fourth Schedule.

37. The Fourth Schedule includes all cost and expenses incurred by the Respondent in fulfilment of obligations in clause 5 (4), (5) and (6). In order to make these provisions workable, they must be read to include the service charges for the whole estate. As such the Applicants would then be liable to pay one fifth of the service charges for the estate. It is not necessary to read these provisions of the lease in such a way as to require the service charges here dealt with to be paid on the same dates as the ground rent and additional rent for insurance, although it might be convenient to do so as the cost of the insurance is a service charge cost.

38. In short these leases are defective. As they stand at the moment the long leaseholders of each block of ten flats are liable to pay for the whole of the services on the estate. The Tribunal is confident from the terms of the leases that have been considered that the middle block is in a similar position. As such the leases would permit the Respondents to recover service charges three times in full, once from each block. The Respondents should seek to vary them, either by agreement or by application to this Tribunal. For present purposes the Tribunal will apply a one twenty-sixth share of service charge costs to each flat, which is the basis on which service charges are in fact being apportioned by the Respondents.

Summary of the written case on behalf of the Applicants

39. The Applicants' have provided a statement of their case in which they contend that service charges are not being collected in compliance with the provisions of the leases on their flats and therefore they contend that there is no liability to pay service charges at all.

40. That the lease does not permit service charges to be demanded for postage or bank charges.

41. That, if there is liability to pay, then service charges are unreasonably high.

42. That flat 9, being one of the six flats on the estate that has an exit door out onto an exterior paved area, should not be contributing to the service charges for the upkeep of the five interior common areas.

43. That the Respondents have failed to have health and safety and fire safety audits carried out regularly at the complex.

44. That the Applicants have paid £706 and £746 to have PVCu double glazed windows fitted to both of their flats on 24 April 2013. They suggest that these should have been paid for by the Respondent and these costs should be set off against any service that might be payable.

45. That the Respondents have failed to serve a counter notice to the Applicants' preliminary notice served pursuant to section 22 of the Landlord and Tenant Act 1987 and have failed to rectify the faults complained of within that preliminary notice. The Applicants suggest that this establishes that the Respondents have been unreasonable, unprofessional and accept the content of that preliminary notice.

46. That a new manager as proposed by the Applicants should be appointed.

47. The Applicants' submit a Scott Schedule of 21 pages in length, which the Respondents have failed to complete. There are also service charge demands, accounts and budgets for the years in question.

48. The Applicants seek to persuade the Tribunal that the Respondents should be made to pay their costs and refer to legal action and correspondence that has taken place regarding these issues before the application to this Tribunal.

49. Photographs are submitted in support of their case that the complex is not being run properly.

50. A witness statement is included from Richard Britton of RDB Estates Limited, with a management agency agreement, a copy of the company's public liability insurance and a draft order, should the Tribunal decide to make an order appointing a manager.

51. In these documents Mr Britton states that if appointed as manager of this site he will charge a management fee of £130 per flat, making a total annual management fee of £3,380. There is no mention of VAT, so the Tribunal assumes that VAT will be added at 20%, being £676, total £4,056. There is a setting-up fee of £500, which is specified as having VAT added to it, being £100, total £600. Appendix III also contains a list of 30 circumstances in which additional management charges will be payable.

52. Mr Britton will visit the complex once every two months.

53. The company is a newly established management agency and is small, having no employees, with two directors that have 20 years' experience, either with Sheffield Homes or with a local management agent.

Summary of the written case on behalf of the Respondents

54. The Respondents' have provided a document that they describe as a 'Respondents Facts' in which they state their case and answer the allegations made against them. They contend that they have acted reasonably and are competent managers. That none of the arguments raised by the Applicants can justify their failure to pay service charges for four years.

55. That service charges will be increased if the Tribunal appoints the suggested manager, because the management charges that Mr Britton seeks to charge are very much more than the management charges that the Respondents charge.

56. That the Respondents' bought the freehold of the complex in 1999 and in 2000 they appointed Stuart McDonald as their management agent. Mr Stuart McDonald is a Fellow of the Royal Institution of Chartered Surveyors. The firm "Stuart McDonald" had as an associate one of the Applicants, Mr D. Simon McDonald, who at that time was described as being an Associate of the Royal Institution of Chartered Surveyors. That this firm became the McDonald Partnership of which the Applicant was a partner. Mr D. Simon McDonald has in the past been involved in the work of managing this complex, until the services of the McDonald Partnership were dispensed with.

57. That, if the windows in the apartments belong to the Respondents they did not give any permission to the Applicants for them to replace the windows in their flats, which have in any event been badly fitted.

58. That the Respondents can confirm that there have been solicitors involved in the past between the parties, but that the Respondents have always acted reasonably in pursuing the unpaid service charges, relevant to this case.

59. The Respondents include their accounts, electrical report, asbestos report, fire risk assessment and health and safety reports. They also include a few of the many invoices that the Tribunal will need to see in order to decide if the parts of the service charges that relate to electrical repairs and general repairs are reasonable.

60. The Respondent also included evidence that Mr Britton, the prospective management agent, set his company up after the merger of the McDonald Partnership with Trinity Estates and that Mr Britton is a close friend of both Applicants.

The hearing

61. The same persons as were present at the inspection were also present at the hearing. The time remaining before the luncheon adjournment was taken up with preliminary matters.

62. The first preliminary matter raised by Mr McDonald is that there is no joint hearing bundle. Mr McDonald states that this has come about because the Respondents are in breach of the Directions. Mr McDonald wanted to make sure that the Tribunal is in possession of all the evidence that has been served in the case. In fact the Tribunal was not in possession of the Applicants' Reply. This six page document was served by Mr McDonald and the Tribunal agreed to read it over the luncheon adjournment.

63. The Tribunal heard representations from both parties regarding these alleged breaches of the Directions and the Tribunal agreed with the Mr McDonald that the Respondents are in breach.

64. The Respondents should have liaised with the Applicants with a view to preparing and serving a joint hearing bundle upon the Applicants and the Tribunal. At an absolute minimum that bundle, or failing that, the Respondents' bundle should contain all the invoices that are relevant to the case and it clearly does not. The Respondent should have completed the Scott Schedule, commenting upon each item placed in issue and they have not. The Tribunal would also expect to see fire safety reports and health and safety reports covering the years 2009 to 2015, whereas only recent reports have been served.

65. Neither party sought an adjournment. The Tribunal indicated that it would not permit the Applicants' case to be prejudiced by the Respondents' breaches. As a result the Tribunal continues to consider the Scott Schedule as setting out the particulars of the Applicants' case. Where oral evidence assists the Tribunal it will be considered, but where the Scott schedule should be answered by the production of invoices and they have not been produced the Tribunal will be bound to treat such an expense as unreasonable expenditure.

66. The second matter was that in reading the evidence the Tribunal had noted that the Respondents' Income and Expenditure Accounts did not appear to agree with the service charge demands that have been made over some of the years in question. It was ascertained that this is because the cash received column took into account not just the service charge demanded, but also included the ground rent. The Tribunal considered the first two years and decided that it would rely upon the service charge demands, ignoring the accounts, unless a party asked the Tribunal to consider them. The Tribunal points out that ground rent is not a service charge and should be dealt with separately.

Relevant oral evidence on behalf of the Respondents

67. Mr K. R. Marshall gave evidence that "the complex" was built in 1976 and they had bought the freehold to "the complex" in 1999. They had appointed the McDonalds as management agents in 2000, but in 2003 both Stuart McDonald and the Applicant, D. Simon McDonald had bought flats on the estate. Mr Marshall considered this to be a conflict of interest and had therefore taken management duties back from the McDonalds, continuing the practices that the McDonalds had established. Management is presently undertaken by himself, his son, his wife and one employee. They manage this complex and a further 15 other sites.

68. Mr K. R. Marshall accepted that the leases were unworkable in their present form and produced a lease for another flat on the complex that has already been varied by agreement between the Respondents and the long leaseholder of that flat, varying the proportion from one tenth to one twenty-sixth. The Respondents apportion service charges to every flat at one twenty-sixth. There followed a close scrutiny of the leases and at the end of this process Mr McDonald indicated that he was comfortable with this practice. The Tribunal notes that this is how the McDonald Partnership proportioned the service charges.

69. Mr K. R. Marshall indicated that he, as freeholder, is responsible for painting the original wooden window frames and minor repairs are carried out to them before they are painted. However, he said that when a long leaseholder decides to replace the wooden frames for PVCu double glazed windows, the long leaseholder concerned will pay for this himself. It is not something that he could authorise as service charge expenditure.

70. In relation to window cleaning in the five common areas Mr K. R. Marshall stated that in the past a gentleman cleaned the windows every two months. Mr K. R. Marshall had told this contractor that he must submit an invoice before he could be paid for this work and when he did so the contractor was paid. However, on lots of occasions no invoice was forthcoming and therefore the window cleaning, although done, was not paid for. As a result window cleaning costs had been very cheap. In 2014, the Respondents had appointed a new contractor who still cleans the windows externally and internally every two months at the reasonable cost of £36 per visit.

71. In relation to the accounts Mr K. R. Marshall agreed that the ground rent was not a service charge and that it complicated matters that this had been included in the accounts in the way that it had. He said that when the accounts were produced he signed the top copy, but that he would not sign the remaining copies. He indicated that his accountant had assured him that the accounts were drawn up in a proper manner.

72. Evidence was given relating to a panel that fell off a wall in 2015, whether this was properly a service charge expense or not. The Tribunal does not dwell on this evidence because the outer half of the wall is retained by the Freeholder and repair to the outer part of the wall must be a chargeable service charge expense.

73. Mr K. R. Marshall agreed that the lease requires certain charges to be demanded on 24 June of each year and accepted that he was charging them from 25 June each year. He had thought that this was the appropriate date to pick, but in any event the service charges are for money that has been properly spent on behalf of the estate and are payable.

74. Mr K. R. Marshall did not agree that the service charge must be demanded in two equal amounts as to do that would prevent the Respondents from seeking to charge more when that was needed in the second half of the year.

75. In relation to the bank charges Mr K. R. Marshall stated that he was charged these figures by the bank which provides business banking so that he can manage the estate. Such charges must be recoverable as a service charge.

76. In relation to postage and stationary Mr K. R. Marshall stated that these were the actual costs to him that he had spent on behalf of the estate.

77. In relation to cleaning, Mr K. R. Marshall stated that this is carried out by an employee, Mrs Addy who is paid £125 per month to clean the five common internal areas and four areas in which rubbish bins are stored. Mrs Addy has to visit the complex every two weeks to carry out this work. In addition the management also have to attend sometimes three times per week to remove unsafe and unsightly rubbish that is left around the complex by residents of the central block e. g. used incontinent pants and the like.

78. In relation to gardening, Mr K. R. Marshall sated that the gardening contract is now with Roy Ashton Garden Services. The gardens are extensive and the firm attends twice per month, 12 months per year. There will be several vans and three to four men working during each visit. The expenses contain VAT and the full amount is charged in the service charge account. This was not put out to tender, but is reasonable for the amount of work that is done. Tree maintenance is done by L. G. Timbers Limited.

79. In relation to insurance for the complex Mr K. R. Marshall stated that in 2012, this was transferred to NIG who sent out an assessor to inspect and value the complex from the point of view of rebuilding it and assessed the complex as having a rebuild value of £2,500,000. Prior to this insurance was with Zurich. The NIG valuation has not been checked by an independent person. As a completely separate matter the Respondents' have their own public liability insurance.

80. Mr K. R. Marshall stated that Management fees are £38 per flat per year which is reasonable, whereas the prospective manager wants to charge £130 per flat per year, plus one off charges, including a £75 call out fee. The Respondents have to attend the complex three times per week to keep it clear of unhygienic rubbish. Mr K. R. Marshall stated that if given the chance management will improve.

81. Mr K. R. Marshall indicated that the Applicants have been very difficult to deal with in recent years, such that he has decided to retire and hand over to his son, who is about to be appointed as a partner of his firm again. Ashley had been a partner years ago but gave that position up to develop his career outside the family firm, part of which had involved him working for the McDonalds.

Relevant oral evidence on behalf of the Applicants

82. Mr McDonald agreed that accountancy fees are reasonable.

83. Mr McDonald was content to let his written case stand as his evidence and sought to address the Tribunal on only a few matters.

84. Mr McDonald stated that he had only changed the windows at his two flats because the wooden frames were rotten. He had not reported this to the Respondents.

85. Mr McDonald stated that invoices for the removal of large items of rubbish from the estate should not be chargeable as service charge expense because the Respondents do not have a licence to carry waste. He did not refer the Tribunal to any regulations that might support this statement. Mr K. R. Marshall made it clear that these items of dumped rubbish had to be moved, otherwise residents would be upset. They could not be left for a fortnight whilst he waited for a special collection from Veolia, who deal with rubbish for the local authority and would also charge to move large items of rubbish. Mr K. R. Marshall moves large items of rubbish in a van and the cost of that is added to the service charge calculation. Mr K. R. Marshall agreed that he does not have a licence to carry waste.

86. Mr McDonald indicated that the recent health and safety report has recommended that emergency lights be fitted to the four common entrance areas that do not have them already, in the two large blocks of flats. This has not been done. The same report has recommended that missing stair nosings be replaced and that this has not been done.

87. Mr McDonald stated that the Respondents may be providing reasonable services, although he stated that he is concerned about the safety of the boundary wall facing onto Norwood Road. However, Mr McDonald stated that in his opinion the Respondents' are forgetting about their legal responsibilities in so far as health and safety and fire safety are concerned.

88. The prospective manager, Richard Britton gave evidence that he has worked for the McDonald partnership for nine years until that merged with Trinity Estates. He left Trinity Estates five months ago and is now setting up his own management agency. The company has two directors, he and his brother and no employees. He has managed one site since 1 December 2015.

89. Mr McDonald also requests that an order be made under section 20C of the Landlord and Tenant Act 1985, preventing the Landlord from recovering any costs involved in this case from the Applicant in a service charge. Mr K. R. Marshall stated that in any event he would not include his expenses involved in this case in calculating service charges.

The deliberations

90. The Applicants criticise the Respondents for changing common entrance doors from wooden fire doors to PVCu doors that are not fire doors. The Applicants bring the attention of the Tribunal to guidance in the Association of Residential Management Agents "Advice Note. Fire Safety In Flats", pages 8 and 9 dealing with, "Principles of Fire Safety In Flats". The Tribunal decides that fitting external doors that are not fire doors is not contrary to this guidance.

91. The Tribunal also considers the LACORS Housing Fire Safety Guidance, which deals with exit doors at part C.16. There is nothing in this guidance that is contravened by fitting PVCu doors to the common entrances. Such doors should have closing mechanisms and thumb nail locks that are either in place or are in the process of being fitted by the Respondents.

92. The Applicants criticise the Respondents for failing to maintain the trees that grow on two boundaries of the complex. The Tribunal decides that the trees are being maintained. The Tribunal saw evidence that the trees are being lopped during the inspection and the Tribunal accepts the evidence given by Mr K. R. Marshall that he is waiting for instructions from the City Council as to how the Respondent's should deal with the tree that is causing damage to the pavement on Crabtree Road.

93. The Applicants criticise the Respondents in regard to the proliferation of Sky dish receivers and TV aerials in the complex. The Tribunal agrees that these are in situ at the complex, but they are part of modern life, they are not unsightly, hazardous or damaging to the fabric of the buildings. The presence of these items does not put the Respondents in breach of the terms of the lease.

94. The Applicants criticise the Respondents in regard to their failure to maintain the car park area and possibly for failure to build the 'additional parking' area shown upon the site plans. The Tribunal decides that, based upon the site plan, the present car park should be large enough for 26 average sized cars to park within it. It can be kept private by the entry bar and code lock. The surface of the car park is useable, although its condition should be monitored. There has been no breach of the terms of the lease by failure to install the 'additional parking', this simply shows an area that could be used in this way.

95. The Applicants criticise the Respondents in relation to the condition of the boundary wall on Norwood Road, particularly criticising the Respondents' view that no major expenditure is being considered.

96. The Tribunal agrees with the Applicants that this wall is in need of urgent attention. Part of the wall is starting to lean forward over the pavement in such a way that the Tribunal decides that it should be assessed by a competent trade person as soon as possible. It is evident that some expenditure is required to put parts of this wall back into the condition that the wall should be in.

97. The Applicants criticise the Respondents in relation to making temporary alteration to the boundary of one of the bin stores on the basis that a more permanent structure will have to be fitted at some point, causing extra cost.

98. The Tribunal agrees that it is possible that extra cost may be involved in the future, but in a situation where the Respondents are attempting to a improve the disposal of refuse from the complex, resulting in a wider entrance being required to the bin store areas, the Tribunal sees nothing wrong with the Respondents adopting a temporary possible solution, which may require alteration in due course.

99. The Tribunal has noted a leaking rain water down pipe and a grate that is permitting water to 'back up' and these need attention by a competent plumber.

100. The Applicants submit that a flat having a door leading out onto a paved external area should not be required to contribute to the service charges for the upkeep of the five internal common areas. The Tribunal decides that there is no justification for this approach. The long leaseholder of each flat is required to contribute in an equal proportion to all service charge costs.

101. The Tribunal now considers the items raised in the Scott Schedule.

102. Financial year 2009. Service charges for this year are in the total sum of £450 per flat per year.

103. The first box in the Scott Schedule raises a number of issues. The first of these are that the Applicants contend that service charges are not being demanded in accordance with the provisions of the lease as to when they should be demanded and that this means that the service charges are not payable. Further, they must be demanded in two equal halves. The lease (page 2) requires that ground rent be paid in equal instalments on 24 June and 25 December each year. The same clause deals with insurance in the same way.

104. Doing the best that the Tribunal can to make sense of a badly drafted lease, the Tribunal decides that ground rent, although not being a service charge, must be paid as described above. The cost of providing insurance should be paid on the same dates, after being fairly apportioned to a one twenty-sixth share. The remaining service charges can be calculated in any manner that results in a fair apportionment. The essence of the provisions of the lease is to attempt to provide for fair apportionment and it fails to do so. In so far as service charges are concerned the Tribunal notes that Mr McDonald indicated that he was, after due consideration of the terms of the lease, content with apportionment at a one twenty-sixth share per flat.

105. The choice of the days to calculate the service charge year start and end date does not appear to the Tribunal to be sufficiently critical for the Tribunal to take the drastic step of disallowing service charges in their entirety. Further, the Tribunal agrees with the Respondents in that where service charges involve a cost that may differ from the budgeted cost, it is open to them to ask for a higher second instalment to cover that extra cost.

106. The second issue is the lack of budgets. They are in fact contained within the Applicants' bundle (last tab, pages 50 to 54). The Tribunal notes that there is no budget for 2009, but can see that the budget for 2010 recites the actuals for 2009. The Tribunal is satisfied with the written evidence produced.

107. The issue of apportionment has already been dealt with.

108. The accounts are criticised and the Tribunal decides that they are defective. Firstly, they treat ground rent in the same manner as a service charge. Secondly, they should be drawn up in accordance with the guidance given Part 10 of the Royal Institute of Charted Surveyors Service Charge Residential Code, 2nd Edition, approved by the Secretary of State for England under section 87 of the Leasehold Reform, Housing and Urban Development act 1993. The Tribunal concludes that any accountant drawing up accounts of this nature should be conversant with Part 10 of the RICS code.

109. The accounts are also criticised on the basis that they are not signed by the manager. The Tribunal accepts the evidence of Mr Marshall, that he signs the top copy of each set of accounts.

110. The accounts are criticised on the basis that they have not been audited. This is an agreed fact. The Applicants' produce for the Tribunals consideration TECH 03/11, an 'ICAEW Technical Release'. The Tribunal has considered this guidance and the terms of the lease and concludes that there is no requirement for these accounts to be subject to audit.

111. The Tribunal decides that the accounts that are contained within the Applicants' bundle (last tab, page 44 to 49) and drawn up by UHY Hacker Young Chartered Accountants provide sufficient detail as the income and expenditure of this complex, for the Applicants and the Tribunal to deal with the case.

112. The complaints raised within the first box of the Scott Schedule for each year in issue have been considered and the Tribunal decides that the service charges for each year in issue are payable under the terms of the lease. This issue will not be dealt with again.

113. Bank charges of £265.77 are put in issue on the basis that they are not provided for under the terms of the lease. The Tribunal agrees that there is no specific mention of bank charges in the lease, but acting in a management capacity requires that business banking must be obtained and paid for. This would normally for part of the management fee and the Tribunal deals with it as such. These charges are reasonable, as charges in the following years. This issue is raised in each year in question and will not be dealt with again.

114. Electrical repairs of £247.88 are placed in issue. The Tribunal accepts the evidence that electrical work is undertaken by P. K. Electric. No invoices have been produced and they are required for the Tribunal to determine whether the costs are reasonable. The Respondents cannot be expected to remember how this money was spent. As such the Tribunal decides that the whole amount is unreasonable and a one twenty-sixth share must be credited to the service charge account for each fat, being £9.53 per flat. (See paragraph 65, above.)

115. The cost of cleaning of £1618 is put in issue. The Tribunal accepts the evidence given by Mr Marshall (paragraph 77, above). The Tribunal decides that this is reasonable and notes that this cost is put in issue every year. The Tribunal considers the charge each year to be reasonable and will not deal with this issue again.

116. The Tribunal decides that ground rent is not a service charge, but points out that although it has been included in the accounts, it has not been included in the service charge demanded for each year.

117. Postage and stationary is put in issue in that the lease does not permit these to be charged for as part of the service charge. The Tribunal agrees that there is no specific mention of postage and stationary charges in the lease, but acting in a management capacity requires that these must be used and paid for. This would normally for part of the management fee and the Tribunal deals with it as such. These charges are reasonable. They are put in issue in some of the subsequent years and in each year that they are raised the Tribunal decides that they are reasonable. This issue will not be dealt with again.

118. Gardening expenses of £2944 are put in issue. The Tribunal accepts the evidence of Mr Marshall (paragraph 78, above). This cost is reasonable. This cost is put in issue in every year covered by this claim. The Tribunal has considered the cost in each and decides that each year is reasonable. The Tribunal will not return to this issue again.

119. Management fees of £1006 are put in issue. The Tribunal adds onto the cost of management the cost of providing business banking and postage and stationary. The Tribunal accepts the evidence of Mr Marshall (paragraph 80, above) and decides that these costs are reasonable. In this year the total cost adding all three heads of cost together is £52.58, per flat, per year. This cost is put in issue in every year covered by this claim. The Tribunal has considered the cost in each and decides that each year is reasonable. The Tribunal will not return to this issue again.

120. The cost of accountancy, although put in issue by the Scott Schedule is now accepted as reasonable by the Applicants. The issue is raised in every year of this claim. It will not be returned to again.

121. The cost of insurance of £2744.75 is put in issue. The Tribunal accepts the evidence of Mr Marshall (paragraph 79, above). The cost is reasonable. This cost is placed in issue in every year of the case and each year has been considered. The Tribunal decides that the cost in each year is reasonable and will not return to this issue again.

122. The cost of general repairs of £1219.52 is put in issue. The Respondent is able to produce three invoices for general repairs during this period. One relates to work on gutters £165.77 and two relate to the removal of large items of rubbish £169. The Tribunal decides that these costs are reasonable but that the remainder are not (paragraph 65, above). The Tribunal therefore deducts the reasonable expenditure of £234.77 from the total expenditure of £1219.52, which leaves£984.75 that is unreasonable and a one twenty-sixth share of that is £37.88 par flat, which should be credited to the service charge account for each of the Applicants' flats.

123. Scott Schedule for financial year 2010. Most of the points raised in the Scott Schedule for this year have been dealt with in considering financial year 2009. The service charge is £453 per flat.

124. The third heading of the schedule is electrical repairs of £332.95 and the Tribunal has not been provided with any invoices by the Respondent. The Tribunal decides that the whole amount is unreasonable expenditure (paragraph 65, above). One twenty- sixth of £332.95 is £12.81 per flat and this must be credited to the service charge account for each flat.

125. The eleventh heading of the schedule is general repairs of £2352.66 and the Tribunal has not been provided with any invoices by the Respondent. The Tribunal decides that the whole amount is unreasonable expenditure (paragraph 65, above). One twenty- sixth of £2352.66 is £90.49 per flat and this must be credited to the service charge account for each flat.

126. Scott Schedule for financial year 2011. Most of the points raised in the Scott Schedule for this year have been dealt with in considering financial year 2009. The service charge is £446 per flat.

127. The third heading of the schedule is electrical repairs of £980.83. The Tribunal has been provided with two invoices by the Respondent. These relate to the provision of community TV aerials, but Mr Marshall gave evidence that such aerials should be paid for by the individual long leaseholder and the Tribunal therefore decides that these are not charges that can be considered as part of the service charges for "the complex". The Tribunal decides that the whole amount is unreasonable expenditure (paragraph 65, above). One twenty- sixth of £980.83 is £37.72 per flat and this must be credited to the service charge account for each flat.

128. The twelfth heading of the schedule is general repairs of £389.11 and the Tribunal has not been provided with any invoices by the Respondent. The Tribunal decides that the whole amount is unreasonable expenditure (paragraph 65, above). One twenty- sixth of £389.11 is £14.96 per flat and this must be credited to the service charge account for each flat.

129. Scott Schedule for financial year 2012. Most of the points raised in the Scott Schedule for this year have been dealt with in considering financial year 2009. The service charge is £451.50 per flat.

130. The third heading of the schedule is electrical repairs of £100.96. The Tribunal has not been provided with any invoices by the Respondent. The Tribunal decides that the whole amount is unreasonable expenditure (paragraph 65, above). One twenty- sixth of £100.96 is £3.88 per flat and this must be credited to the service charge account for each flat.

131. The twelfth heading of the schedule is general repairs of £2036.28. The Tribunal has been provided with four invoices by the Respondents' and these are:

• Roofing tile work	£62.64
• Dealing with water ingress	£115.32
• Repointing a gable end	£55.32
• Taking down a wall	£1182
Total	£1415.28

132. The Tribunal considers all of this work to be chargeable and reasonable. The Tribunal therefore deducts this amount from £2036.28which leaves £621 that the Tribunal decides is not reasonable expenditure (paragraph 65, above) and a one twenty- sixth share of that is £23.88 per flat that must be credited to the service charge account for each flat.

133. Scott Schedule for financial year 2013. Most of the points raised in the Scott Schedule for this year have been dealt with in considering financial year 2009. The service charge is £472 per flat.

134. The third heading of the schedule is electrical repairs of £446.66. The Tribunal has not been provided with any invoices by the Respondent. The Tribunal decides that the whole amount is unreasonable expenditure (paragraph 65, above). One twenty- sixth of £446.66 is £17.18 per flat and this must be credited to the service charge account for each flat.

135. The sixth heading is gardening in which the Tribunal makes it clear that in considering the reasonableness of these costs the Tribunal decided that the extra cost of planting the new Leylandi hedge of £780 is chargeable and reasonable.

136. The twelfth heading of the schedule is general repairs of £4068.25 The Tribunal has been provided with four invoices by the Respondents' and these are:

▪ External door	£1176
▪ Removing tyres	£33
▪ Removing piano	£60
▪ Removing mattress	£99
Total	£1368

137. The Tribunal considers all of this work to be chargeable and reasonable. The Tribunal therefore deducts this amount from £1368 which leaves £2700.25 that the Tribunal decides is not reasonable expenditure (paragraph 65, above) and a one twenty- sixth share of that is £103.85 per flat that must be credited to the service charge account for each flat.

138. Scott Schedule for financial year 2014. Most of the points raised in the Scott Schedule for this year have been dealt with in considering financial year 2009. The service charge is £497 per flat.

139. The third heading of the schedule is electrical repairs of £36.94. The Tribunal has not been provided with any invoices by the Respondent. The Tribunal decides that the whole amount is unreasonable expenditure (paragraph 65, above). One twenty- sixth of £36.94 is £1.42 per flat and this must be credited to the service charge account for each flat.

140. The twelfth heading of the schedule is general repairs of £1634.46.The Tribunal has been provided with two invoices by the Respondents' of £123.12 in respect of ridge tiles and £393.36 in relation to gutters. The Tribunal considers this work to be chargeable and reasonable. The Tribunal therefore deducts this amount from £1634.46 which leaves £1117.98 that the Tribunal decides is not reasonable expenditure (paragraph 65, above) and a one twenty- sixth share of that is £42.99 per flat that must be credited to the service charge account for each flat.

141. Scott Schedule for financial year 2015. Most of the points raised in the Scott Schedule for this year have been dealt with in considering financial year 2009. The service charge is £520 per flat.

142. The third heading of the schedule is electrical repairs of £350. The Tribunal has not been provided with any invoices by the Respondent. The Tribunal decides that the whole amount is unreasonable expenditure (paragraph 65, above). One twenty- sixth of £350 is £13.46 per flat and this must be credited to the service charge account for each flat.

143. The tenth heading of the schedule is general repairs of £2600.The Tribunal has been provided with an invoice by the Respondents' of £320.78 in respect of work done to the exterior wall of flat 26, fitting framework and a new PVCu panel.

144. The Tribunal heard evidence about the work involved in this invoice, photographs were considered and the panel was inspected.

145. The Tribunal decides that the panel, being the outer part of the wall was not part of the demised property in the lease. It remains part of "the estate" and is therefore the responsibility of the freeholder to repair. The cost is chargeable and reasonable and is deducted from £2600, leaving £2279.22 that is unreasonable expenditure, there being no invoices for the Tribunal to consider (paragraph 65, above). A one twenty- sixth share of that is £87.66 per flat that must be credited to the service charge account for each flat.

146. A further general complaint has been raised that the Respondents have failed to comply with section 21B of the Landlord and Tenant Act 1985 in that they continue to serve "A summary of tenants' rights and obligations" in the unamend form that states that the tenant can ask a Leasehold Valuation Tribunal to determine certain issues. This form should now refer to this Tribunal.

147. The Tribunal considers the copied summaries (Applicants' bundle, behind the pink tab) and decides that this is correct. However, the Tribunal does not consider this change to be of any significance in this case at all. It simply denotes that there has been a change in the title of the Tribunal that deals with this type of case. The Tribunal decides that the summaries are valid, but the Respondents' should henceforth use the amended form.

148. The Applicants have paid for new PVCu windows to be fitted to their two flats, but seek to claim that this should be "set off" in some way against the service charges that are owed, if they owe any. The Tribunal accepts the evidence of Mr Marshall to the effect that long leaseholders pay for these replacements themselves. This accords with a common sense approach to the terms of the lease. In any event, this Tribunal has no power to "set off" in these circumstances.

149. The Tribunal considers the Applicants suggestion that any invoices that relate to the Respondents moving large items of rubbish from the site should be disallowed. The Tribunal does not agree, the Respondents are carrying out the business of being a management agent, they are not trading as waste carriers.

150. The Tribunal now considers the application for the Tribunal to appointment a manager, section 24 of the Landlord and Tenant Act 1987.

151. The Tribunal decides that the Applicants have served a valid preliminary notice (section 22 of the same Act.) This has not been subject to a formal response, although the Tribunal accepts that work has been carried out as a result of it. It is very clear that the Respondents do not agree that a management order should be made.

152. The Tribunal has decided that the Respondents have made unreasonable service charge demands. In this regard the Tribunal further notes that the vast majority of these decisions are based on the need to be fair and just in circumstances where the Respondents have failed to adhere to Directions requiring that invoices be put before the Tribunal.

153. The Tribunal has decided that the accounts do not adhere to guidance in the RICS code and cause confusion by adding ground rent to service charges.

154. The Tribunal considers the absence of emergency lighting in four internal common areas to be a health and safety risk that requires urgent attention, lighting should be installed.

155. The Tribunal is concerned about the absence of earlier Fire Risk Assessments and Health and Safety Audits, but notes the existence of current reports.

156. The Tribunal does not find that use of an extension lead from one interior common area to provide electricity to the next to be a health and safety breach.

157. The Tribunal decides that the Respondents are not in breach of the terms of the lease in managing this complex. The leases are defective and in need of variation. The Respondents are dealing with these problems in a proper manner.

158. On the whole the Tribunal decides that from a practical point of view the Respondents are providing satisfactory management and that "the complex" needs their 'hands on' style on management, especially due to the way that insanitary items are left about "the complex". On the other hand they are failing to deal efficiently with the technical part of management work. A good example of this is the lack of earlier Fire Risk Assessments and Health and Safety Audits.

159. There is no doubt at all that the Tribunal can appoint a manager in this case if the Tribunal decides that it is just and convenient to make such an order. It is this question that is difficult to resolve.

160. The Tribunal is asked to appoint Mr Britton, from the newly set up company RDB Estates Limited. The company has two directors with 20 years' experience. Mr Britton's 9 years of experience has been gained whilst working with the McDonald partnership where no doubt he was supervised by, and could seek advice from, senior members of the Royal Institution of Chartered Surveyors, themselves expert in management. That is not the case here. Mr Britton's company has managed one site for two to three months. The company does not have a proven record of good management to put before the Tribunal.

161. Appointment of Mr Britton to manage "the complex" would increase management costs, the Tribunal concludes that the increase would be huge for a complex that requires frequent visits.

162. It is clear that as a result of these proceedings the Respondents know what is required of them. There are failings, but they ask for a chance to do better. The Tribunal reminds itself of its overriding objective to be fair and just, Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169). The Tribunal concludes that the Respondents should be given that chance.

163. The Tribunal does not think that it is just and convenient to make a management order. However, the Tribunal concludes that the Applicants should not have to pay for the fact that they brought the application to appoint a manager before the Tribunal. The Tribunal makes an order that the Respondents reimburse the sum of £315 to the Applicants, being the part of the application fee attributable to the appointment of manager part of the case, forthwith. (Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169).

164. The Applicants seek an order pursuant to section 20C of the Landlord and Tenant act 1985 that the Landlord cannot regard any costs in connection with these proceedings as relevant costs to be taken into account in determining the amount of service charges to be payable by the Applicants and the Tribunal decides that it is just and equitable to make such an order.

165. No further orders are made as to costs. The Tribunal is satisfied that both parties have acted properly.

The Decision

166. Mr Marshall gave evidence that the Applicants have not paid service charges over the last four years. The Tribunal therefore calculates the total service charge that are payable for each of the years covered by this case and orders that the Respondents credit, from their own funds, the service charge accounts of these two flats as detailed in the following paragraphs. Then the amount that remains payable as a result of this Decision must be paid without delay, by the Applicants to the Respondents, for the service charge accounts in respect of these two flats.

167. Financial year 2009, the service charge demanded per flat is £450 and the Tribunal decides that £9.53 (paragraph 114, above) and £37.88 (paragraph 122, above) must be credited to the service charge account for each flat. There is therefore a service charge of £402.59, per flat to pay, if not already paid.

168. Financial year 2010, the service charge demanded per flat is £453 and the Tribunal decides that £12.81 (paragraph 124, above) and £90.49 (paragraph 125, above) must be credited to the service charge account for each flat. There is therefore a service charge of £349.70, per flat to pay, if not already paid.

169. Financial year 2011, the service charge demanded per flat is £446 and the Tribunal decides that £37.72 (paragraph 127, above) and £14.96 (paragraph 128, above) must be credited to the service charge account for each flat. There is therefore a service charge of £393.32, per flat to pay, if not already paid.

170. Financial year 2012, the service charge demanded per flat is £451.50 and the Tribunal decides that £3.88 (paragraph 130, above) and £23.88 (paragraph 132, above) must be credited to the service charge account for each flat. There is therefore a service charge of £423.74, per flat to pay, if not already paid.

171. Financial year 2013, the service charge demanded per flat is £472 and the Tribunal decides that £17.18 (paragraph 134, above) and £103.85 (paragraph 137, above) must be credited to the service charge account for each flat. There is therefore a service charge of £350.97, per flat to pay, if not already paid.

172. Financial year 2014, the service charge demanded per flat is £497 and the Tribunal decides that £1.42 (paragraph 139, above) and £42.99 (paragraph 140, above) must be credited to the service charge account for each flat. There is therefore a service charge of £452.59, per flat to pay, if not already paid.

173. Financial year 2015, the service charge demanded per flat is £520 and the Tribunal decides that £13.46 (paragraph 142, above) and £87.66 (paragraph 145, above) must be credited to the service charge account for each flat. There is therefore a service charge of £418.88, per flat to pay, if not already paid.

174. The Landlords shall not consider any costs incurred in conducting this case as relevant costs when calculating a service charge in respect of the Applicant. (Section 20C of the Landlord and tenant act 1985)

175. The Respondents shall, as soon as is possible, reimburse to the Applicants part of the application fee of £315. (Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169).