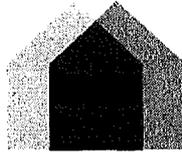


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**Residential  
Property**  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00BG/LSC/2010/0534**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON  
APPLICATIONS UNDER:**

- (1) SECTION 24(1) OF THE LANDLORD & TENANT ACT 1987  
(2) SECTION 27A OF THE LANDLORD & TENANT ACT 1985**

**Address:** Walker House, 6-8 Boundary Street, London, E2 7JE

**Applicants:** Mr T. Michell & Others

**Respondent:** Mosaic Property Developments Ltd

**Applications:** 1 August 2010

**Inspection:** 6 December 2010

**Hearing:** 6-7 December 2010

Appearances

Applicant

Mr T. Michell Leaseholder (Flat 9)

Mr A Minter Leaseholder (Flat 8)

Respondent

Mr Blau Director of Respondent company

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Mr W R Shaw FRICS

Mrs L Walter

## DECISION

### *Introduction*

1. The Applicants make two substantive applications in this matter. These are:
  - (a) under section 24(1) of the Landlord and Tenant Act 1987 (as amended) for the appointment of a manager in relation to Walker House, 6-8 Boundary Street, London, E2 7JE ("the appointment of a manager application").
  - (b) under section 27(A) of the Landlord and Tenant Act 1985 (as amended) for a determination of their liability to pay and/or the reasonableness of various service charges claimed by the Respondent for each of the service charges years ended 24 March 2008, 2009 and 2010 ("the service charge application").
2. The Applicants are long leaseholders of various flats in the subject property. The Tribunal was provided with a specimen lease relating to Flat 9 dated 14 July 2000 and made between the Respondent company and P J Budd for a term 125 years from the same date ("the lease"). It is assumed, and the Tribunal was not told otherwise, that the leases held by the Applicants were all granted on the same terms.
3. The subject property is a converted five-storey warehouse containing 15 residential flats and three commercial units with the first floor remaining undeveloped. The property is comprised of two blocks linked by a passageway. The service charges payable by the leaseholders are split between those costs attributable to the property generally and those costs attributable to the particular block in which a leaseholder's flat is situated. It should be noted that the service charge year adopted by Hathaways does not in fact accord with the lease, which stipulates that it should be the calendar year.
4. Since the subject property had been developed by the Respondent, it had been managed by the managing agent known as HML Hathaways Ltd

("Hathaways"). Over time, the Applicants became increasingly dissatisfied with various perceived management failures on the part of Hathaways. Eventually, on 14 June 2010, the lead Applicant, Mr Michell, served a preliminary notice on the Respondent under section 22 of the Landlord and Tenant Act 1987 as a precursor to an application under section 24 of the same Act for the appointment of a manager in place of Hathaways. Annexed to this Decision is a Schedule ("the Schedule") specifying the grounds on which the Tribunal would be asked to make a management order and those matters relied on for the purpose of establishing those grounds. Unless stated otherwise, all further references in this Decision regarding the appointment of manager application is to this Schedule. In part, the service charge challenges separately made by the Applicants arise from some of the grounds specified in the preliminary notice. The service charge costs that fall to be determined are particularised below.

5. The Schedule was served with the section 22 notice and, where appropriate, set out those matters which were capable of being remedied by the Respondent within a reasonable period. It seems that no remedial action was taken by the Respondent and/or Hathaways within the prescribed time limits. On 1 August 2010, the Applicants issued these applications. A pre-trial review was held on 25 August 2010 when the Tribunal gave Directions in relation to both applications. The Applicants formally joined in these applications were Sarah Adams, Peter Osborn, Jim Doran, Andrew and Sophie Minter and Heidi Forbes. The Respondent did not attend the hearing and has not complied with any of the Directions or participated in these proceedings until the final hearing.

### ***The Relevant Law***

6. Section 24 of the Landlord and Tenant Act 1987 provides:

*"(1) A leasehold valuation tribunal may, on an application for an order under this section, by order 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) without any relevant person... 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...
- (ii) ...
- (iii) that it is just a 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 a convenient to make the order in all the circumstances of the case;

(aba)...

(abb)...

(ac) where the tribunal is satisfied-

- (i) where any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
- (ii) that it is just a convenient to make the order in all the circumstances of the case;

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

7. Section 27A of the Landlord and Tenant Act 1985 provides, *inter alia*, that:

"(1) An application may be made to a leasehold valuation 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."

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

8. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

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

### ***Inspection***

9. The Tribunal inspected the subject property on 6 December 2010. Walker House was built pre-war, mainly of brick construction, and originally used for warehousing. It has been converted with two commercial premises on the ground floor and one in the basement. The first floor is vacant and awaiting further development/conversion. There are 14 flats on the 2<sup>nd</sup>, 3<sup>rd</sup> and recently added 4<sup>th</sup> floors. Flats 1 – 10 are accessed from the lobby on the corner of Boundary Street with Calvert Avenue. Flats 11 – 14 are accessed from the lobby, next to the basement entrance, at the other end of the building. On the top floor is an external walkway connecting the two stair-wells/entrance lobbies. There is a good height, gated, vehicle entrance tunnel through the building to the rear car park. This car park appears to be now shared with the new adjoining building in Calvert Avenue.

### ***Decision***

10. The hearing in this matter commenced on 6 December and continued on the following day. The Applicants were represented by Mr Michell and Mr Minter in person. Although the Respondent had not participated in these proceedings until then, Mr Blau, a Director, attended the hearing on its behalf.
11. At the commencement of the hearing, Mr Blau made an application to adjourn on the basis that he had only received the hearing bundle from Hathaways a few days earlier. The application was refused by the Tribunal because it was satisfied that the Respondent had been properly served with a hearing bundle by the Applicants in compliance with the Directions. Furthermore, Mr Blau

had been put on notice of the proceedings by Hathaways as long ago as August and, therefore, the application to adjourn had been made too late.

### *Appointment of Manager Application*

12. The Applicants proposed manager, Mr Southam FRICS of Chainbow Ltd, was called to give evidence regarding his suitability to be appointed as the manager of the subject property. He had prepared an undated report setting out his qualifications and management experience, the structure and staffing of his firm and proposed remuneration.
13. He told the Tribunal that he had visited the subject property and was familiar with the lease terms including the repairing obligations on the part of the landlord and the service charge liability of the lessees. Mr Southam said that he had already identified a number of problems with the building. These included:
  - The use of the car park to the rear of the building by parties who are not paying a service charge contribution for that use.
  - The need to repair the security gates and changes to the security code. This would have the effect of revealing the users of the car park who are not paying a service charge contribution. This was the method he had adopted on another property which had resolved this particular issue.
  - The possibility of reviewing the service charge contributions paid by lessees to ensure fairness.
  - The building had been poorly managed and the condition was bad. Furthermore, repairs that had been carried out had not been done properly.
  - The buildings insurance premium was too high. A valuation report had to be commissioned with a view to effecting proper insurance. Mr Southam confirmed that his firm would take no commission for arranging such insurance.
14. Mr Southam confirmed that his firm was regulated by the RICS and ARMA. It had an out of hours service which directed all calls to his mobile telephone.

He also confirmed that he and or his firm had been appointed by the LVT as a manager for another property in SW11. If appointed, he proposed to put the repair of the building immediately in hand and to commence debt recovery proceedings in relation to the outstanding service charge arrears. His firm could take over the management of the property on 1 January 2011 if required.

15. Mr Blau said that the Respondent had no objections to Mr Southam being appointed as the manager except his appointment should not be made pursuant to a Tribunal order.
16. On the basis of the evidence adduced by the Applicants, the Tribunal concluded that an order should be made appointing Mr Southam as the Manager/Receiver for the property. The management order setting out the terms of his appointment is annexed to this Decision. By reference to the paragraphs in the Schedule also annexed to this Decision, the Tribunal made the following findings.

Under section 24(2)(a)(i) and (iii) – paragraph 1

17. The Respondent had breached paragraph 3 of the Seventh Schedule of the lease by failing to credit the Applicants' service charge accounts with the surpluses for the years ended March 2008 and 2009.
18. The Respondent had breached paragraph 5 of the Seventh Schedule of lease by failing to provide service charge accounts in accordance with this provision in relation to earlier years or at all in relation to the year ended 24 March 2010.
19. The Respondent had breached paragraph 7 of the Fifth Schedule of the lease by failing to keep the common parts of the building cleansed, repaired and a number of light fittings and/or switches were in disrepair. Furthermore, as a result of a leak to a corridor on the second floor on 4 February 2010, a large area of box work has not been repaired. It should be noted that the Tribunal does not find that the Respondent's failure to make an insurance claim for the cost of this work is a breach of any term of the lease because no such obligation exists.

Under section 24(2)(ab)(i) and (ii) – paragraph 2

20. The Respondent had demanded service charges in 2009 the sum of £1,702 for various external works to the front elevation. This had included removing and making good a number of defective and cracked window sills. This work had not been fully carried out.
21. The Respondent had demanded service charges in 2009 in excess of £10,000 for the removal of ivy and repairs to brickwork when it had failed to carry out statutory consultation under section 20 of the Landlord and Tenant Act 1985 prior to the work being commenced.
22. The Respondent had demanded service charge expenditure of £329 in the 2007/08 service charge accounts even though it had no entitlement to recover this expenditure by virtue of section 20B of the Landlord and Tenant Act 1985.
23. The Respondent had unreasonably demanded bank interest and charges incurred as a result of the service charge account becoming overdrawn in 2009 and 2010.

Under section 24(2)(ac)(i) and (ii) – paragraph 3

24. The Tribunal found that all of the breaches of the RICS Service Charge Residential Management Code had occurred for the reasons given by the Applicants in relation to each breach complained of save for those matters below. The Tribunal accepted the Applicants' evidence without qualification given that the Respondent had adduced no evidence in rebuttal.
25. The Tribunal found that the Respondent had not breached paragraph 9.3 of the RICS Management Code by failing to justify any contributions towards a reserve fund because, on the evidence before the Tribunal, no such contribution had been sought by the Respondent or Hathaways.
26. Similarly, the Tribunal found that the Respondent had not breached paragraph 10.16 of the RICS Management Code by failing to comply with a request

made by a tenant or the Secretary of a Recognised Tenants' Association to provide a summary of relevant costs incurred during the last counting year. There was no evidence before the Tribunal of when, if at all, any such request relating to the last accounting year had been made by a tenant or the Residents Association.

27. The Tribunal also found that the Respondent was not in breach of paragraph 13.5 of the RICS Management Code by failing to repair the motor mechanism for the security gates. The gates themselves were not in disrepair. Only the motor mechanism was in disrepair. The Tribunal was told that the mechanism had been installed by one of the commercial lessees and, as such, it is arguable whether the Respondent was obliged to repair and maintain the mechanism under the terms of the lease. Certainly, the Tribunal heard no evidence and the point was not specifically argued by the Applicants to enable it to make this finding. Equally, the Tribunal was also not able to make a finding that the meter room is unsafe because access could not be gained at the time of inspection. In the absence of this, the Tribunal has no other evidence on which it could base such a finding save for the assertion made by the Applicants in those terms, which did not sufficiently discharge the evidential burden in this regard.
28. For the same reasons, found that the Respondent had also not breached paragraph 13.5 of the RICS Management Code regarding the historic disrepair of the entry phone system. This was working at the time the Tribunal inspected the subject property and there was no evidence before it on which to base a finding of historic disrepair.
29. The Tribunal also found that the Respondent had not breached paragraph 18.3 of the RICS Management Code by failing to individually consult tenants and to hold meetings. The Applicants had adduced minutes of meetings between the Residents Association and Hathaways on 12 October 2009 and 1 March 2010. The Tribunal was of the view that these meetings were sufficient to meet the requirements of paragraph 18.3 of the Code.

Under section 24(2)(b) - paragraph 4

30. The other circumstances relied on by the Applicants largely repeated the complaints made under paragraphs 1-3 of the Schedule. In the light of the Tribunal's findings already made above in relation to the same matters, it follows that they sufficiently amounted to other circumstances which make it just and convenient for a management order to be made under this section.

***Service Charge Application***

31. As stated earlier, the challenges made by the Applicants regarding the service charges below arise from, in the main, the management failures complained of and dealt with above. Where relevant, the Tribunal will rely on the findings already made in relation to those matters on the service charge issues.
32. As part of this application, the Applicant had sought an order that a surplus of £1,839.86 and £4,271.06 appearing in the service charge accounts for the years ended 24 March 2008 and 2009 respectively be credited to the service charge account. However, at the hearing, the Tribunal ruled that it did not have jurisdiction to make such an order because these amounts were not "service charges" within the meaning of section 18 of the Landlord and Tenant Act 1985 (as amended). Nevertheless, given the appointment of Mr Southam as Manager, it is hoped that this matter is capable of informal resolution.

***Y/E: 24 March 2008***

***Prompt Refurbishing Ltd Invoice - £329***

33. The Applicant submitted that the service charge expenditure is not recoverable by the Respondent by virtue of section 20B of the Landlord and Tenant Act 1985 because the invoice is dated 31 May 2005 at this expenditure was included in the service charge accounts for this year. Mr Blau offered no explanation and made no submissions on this matter.
34. The Tribunal accepted the Applicants' submission as being correct in law and found that this expenditure was not recoverable under section 20B of the 1985 Act. The date of the invoice is when the expenditure is incurred because it becomes due and payable by the Respondent. For reasons unknown, the

Respondent did not seek to recover this expenditure through the service charge account until it was included in the service charge account for this year. This was in excess of the 18 month time limit permitted under section 20B and it is therefore not recoverable by the Respondent.

***Y/E: 24 March 2008 & 2009***

35. The following service charge is claimed by the Respondent are common to both of these years and can conveniently be dealt with together here.

***Management Fees***

36. Management fees of £3,046.25 and £2,976 are claimed by the Respondent for 2009 and 2010 respectively. The Applicants contended that Hathaways had provided little or poor management. Essentially, they repeated and relied on the management failures set out in paragraph 3 of the Schedule in support of the submission that the management fees claimed were unreasonable and it should be disallowed entirely. Mr Blau offered no evidence and made no submissions on this point.
37. Save for those matters set out at paragraphs 25-29 above, the Tribunal has already found that the Respondent and/or Hathaways had committed numerous breaches of the RICS Management Code as alleged by the Applicants. It is, therefore, not necessary to repeat those findings again. The Tribunal relies on its findings to conclude that the management fees claimed in respect of both of these years are unreasonable. However, the Tribunal did not accept the Applicants' submission that the entire amount for management fees should be disallowed on this basis. It was clear that Hathaways had provided some level of management by preparing service charge budgets, collecting ground rents and service charges (to a degree) and instructing contractors to carry out various works. Accordingly, the Tribunal determined that a reasonable management fee for each of the service charge years was £1,400 plus VAT.

***Bank Charges & Interest***

38. Bank charges and interest of £338.50 and £401 are claimed by the Respondent for 2009 and 2010 respectively. The Applicant submitted that these costs had

not been reasonably incurred because they had only arisen as a result of Hathaways allowing the service charge account to become overdrawn. They were penalty charges imposed by the bank for doing so. Again, Mr Blau offered no evidence and made no submissions on this point.

39. In the absence of any evidence to the contrary from the Respondent, the Tribunal accepted the Applicants' evidence and found that these costs had not been reasonably incurred as a result of the service charge accounts becoming overdrawn. The Tribunal was further supported in this view because, by allowing the service charge account to become overdrawn, Hathaways had committed a serious breach of the RICS Management Code. Therefore, these costs are not recoverable by the Respondent.

*Y/E: 24 March 2010*

*Summit Property Maintenance*

40. The two items of service charge expenditure paid to Summit Property Maintenance in this year were £11,261 for the removal of ivy and repairs to brickwork and a further sum of £1,702 for replacing leaking wood panel sections on the front elevation with new UPVC soffits and broken concrete window ledges and make good defective cracks on other sections.
41. In relation to the sum of £11,261, the Applicants stated that the original estimate for this work was £4,900 plus VAT plus hire charges for equipment. However, the final cost far exceeded this figure. They submitted, therefore, that the Respondent and/or Hathaways were obliged to carry out statutory consultation required by section 20 of the Landlord and Tenant Act 1985 and the failure to do so meant that the maximum contribution the Respondent could recover from each individual residential lessee was £250. The Applicants did not contend that the overall cost of the work was unreasonable. Again, Mr Blau offered no evidence and made no submissions on this point.
42. There was no evidence before the Tribunal that the Respondent and/or Hathaways had carried out statutory consultation before the expenditure of £11,261 was incurred. Therefore, by operation of section 20 of the 1985 Act,

the maximum contribution that the Respondent can recover from each of the residential lessees for this expenditure is £250. It is open to the Respondent to subsequently make an application under section 20ZA of the 1985 Act to retrospectively dispense with the consultation requirements, but this would have to be the subject matter of a separate application.

43. In relation to the sum of £1,702, the Applicants accepted that wood panel sections and some window sills had been replaced. However, they contended that the remaining work that was specified had not been completed and, nevertheless, the lessees had been charged for this work. They submitted, therefore that only half of the cost should be allowed as having been reasonably incurred. Mr Blau offered no evidence and made no submissions on this point.
44. Upon inspection, the Tribunal noted that several concrete window sills were obviously still in disrepair and there was evidence of dislodged masonry. It was clear that this work formed part of the original specification set out in the invoice of Summit Property Maintenance. On balance, therefore, the Tribunal accepted the evidence of the Applicants in relation to this matter and determined that only the sum of £851 including VAT had been reasonably incurred and was recoverable by the Respondent.

#### *Section 20C (Costs) & Fees*

45. The Applicants had also make an application under section 20C of the Landlord and Tenant Act 1985 for an order preventing the Respondent from recovering all or any part of the costs it may have incurred in responding to these applications. Given the complete absence of any participation by the Respondent in these proceedings, it is difficult to imagine what costs may have been incurred. To the extent that they have been incurred, the Tribunal does make an order under section 20C preventing the Respondent from being able to recover all of any such costs through the service charge account. It was just and equitable to do so because the Applicants had succeeded almost entirely on the issues before the Tribunal. For the same reasons, the Tribunal also

orders the Respondent to reimburse the fees of £500 paid by the Applicants to the Tribunal to have these applications issued and heard.

Dated the 21 day of December 2010

CHAIRMAN.....

Mr I Mohabir LLB (Hons)

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**IN THE MATTER OF PART II OF THE LANDLORD & TENANT ACT 1987**

**AND IN THE MATTER OF WALKER HOUSE, 6-8 BOUNDARY STREET,  
LONDON, E2 7JE**

**LON/00BG/LSC/2010/0534**

**BETWEEN:**

**THOMAS MICHELL & OTHERS**

**Applicants**

**-and-**

**MOSAIC PROPERTY DEVELOPMENTS LTD**

**Respondent**

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**ORDER**

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1. That Mr Roger Southam FRICS of Chainbow Ltd of 11 York Road, Waterloo, London, SE1 7NX ("the Receiver/Manager") be appointed as the Receiver and Manager of the land and premises at and known as Walker House, 6-8 Boundary Street, London, E2 7JE ("Walker House") in place of the freeholder, Mosaic Property Developments Limited and its successors in title and to exercise in that capacity the rights of the freeholder and to carry out in that capacity all the responsibilities of the freeholder under and in respect of the various leases granted in respect of Walker House on the terms of this Order.
2. HML Hathaways and/or the Respondent shall provide the Receiver/Manager with all sums of monies held on trust for the lessees together with banks statements, invoices and documents relating to Walker House together with a statement showing all income and expenditure in respect of the property until 31 December 2010. Upon

receipt thereof, the Receiver/Manager shall establish the current balance of the service charge account and reserve account (if any) for the property.

3. In particular the Receiver/Manager shall:
  - (i) account to the freeholder for the payment of the ground rent he receives; and
  - (ii) comply with all applicable statutory provisions, including the Landlord and Tenant Acts 1985 and 1987, as though the Receiver/Manager was the freeholder of Walker House and act in accordance with the duties of a Manager as set out in the Service Charges Residential Management Code ("the Code") published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.
  
4. That the Receiver/Manager be appointed from 1 January 2011 for a period of three years ("the Management Period").
  
5. That the Receiver/Manager shall have permission to apply to the Tribunal for such further directions as he may require in order to give effect to this order and the Applicants, the Respondent and the Receiver/Manager (as an interested party) shall have permission to apply to the Tribunal to vary or extend this Order.
  
6. That the Receiver/Manager be otherwise appointed under the terms set out in the schedule attached hereto.
  
7. The Receiver/Manager shall serve a copy of this order on each of the non-participating lessees.

Dated the            day of December 2010

CHAIRMAN.....

Mr I Mohabir LLB (Hons)

## SCHEDULE

### 1. General Duty

During the Management Period:

- 1.1 The Respondent does not have the right to carry out any works to Walker House save as such works constitute development works relating to the premises and are agreed in advance with the Receiver/Manager (such agreement not to be unreasonably withheld or delayed) and is not liable to the tenants under the leases for any breach of the landlord's covenants under those leases.
- 1.2 That the Receiver/Manager will manage Walker House in a proper and businesslike manner.
- 1.3 That the Receiver/Manager shall be responsible for carrying out the freeholder's obligations as to the repair, maintenance, decoration, insurance, management and supervision of the premises at Walker House and for the provision of services and upkeep of the amenities thereof and for enforcing against the tenants under the leases their obligations under and in accordance with the terms of those leases and this Order.
- 1.4 Specifically, the Receiver/Manager shall scrutinise all invoices issued in respect of goods and services supplied to Walker House to ensure the property is managed in an economic manner.
- 1.5 The Receiver/Manager owes a duty to the Respondent and to the lessees under the leases to use reasonable skill and care in carrying out the Receiver/Manager's duties and in exercising the Receiver/Manager's powers under this Order.

### 2. Specific Responsibilities

Without prejudice to the generality of the foregoing, it shall be the duty of the Receiver/Manager during the Management Period to do the following:

- (i) To deal in a reasonable fashion with all items of repair and maintenance for which the freeholder is responsible provided that in respect of major works of repair and

maintenance as defined hereafter, the Receiver/Manager shall be entitled to reasonable additional remuneration payable out of the Service Charge Account, which remuneration shall not exceed 10% of the cost of the works (before VAT) involved. For the purpose of this Order "major works" are defined as any works requiring the service of a notice or notices under section 20 of the Landlord and Tenant Act 1985 (as amended).

- (ii) To purchase all such items as may be necessary to effect such aforesaid repair, maintenance, service and amenities. Notwithstanding that responsibility, the Receiver/Manager will not be required to make purchases thereunder if this would result in the Service Charge Account for Walker House becoming overdrawn.
- (iii) To enter into contracts for the maintenance and supply of goods and services.
- (iv) To recruit, employ, supervise and pay the salaries or wages of such residential and non-residential staff as the Receiver/Manager may reasonably consider necessary, at such rates of remuneration as reasonably appear to him to be proper in order to maintain adequate staff and ensure the efficient running of Walker House.
- (v) To deal with all PAYE, VAT and National Insurance matters arising in relation to such staff.
- (vi) To estimate in advance the anticipated cost of services for each year and the cost of each item of expenditure which is other than annual in nature. Such items will include (but will not be limited to) external or internal redecoration and replacement of equipment. The total cost of the services to be provided to Walker House will then be apportioned by the Receiver/Manager among the lessees thereof in accordance with the lease terms.
- (vii) To prepare and serve the ground rent and service charge demands in accordance with the provisions of the leases.
- (viii) To arrange and vary from time to time and keep in force the insurance of Walker House and the contents of the common parts of Walker House against such risks as

the Receiver/Manager reasonably sees fit. The Receiver/Manager will also effect and keep full insurance against public liability. The Receiver/Manager will agree the terms of such insurance and will pursue claims arising therefrom expeditiously. The Receiver/Manager shall endeavour to make payment directly to the insurance company or broker concerned and shall obtain a receipt from such company or broker confirming that such insurance is paid after date. The Receiver/Manager shall declare to all interested parties any commission that he may receive upon and in respect of the placing of any insurance.

- (ix) To maintain efficient records and books of account which will be open to inspection together with relevant vouchers by appointment at all reasonable times by all interested parties and to maintain on trust an interest bearing client account with a bank or building society into which the Service Charge monies will be paid when they fall due (the "Service Charge Account") together with such other accounts as the Receiver/Manager may think necessary and appropriate.
- (x) To deal with all enquiries, reports, complaints and other correspondence with the freeholder, individual lessees, solicitors, accountants and other professional persons in connection with matters arising from the day-to-day management of Walker House. The Receiver/Manager shall, however, be entitled to a reasonable fee additional to the remuneration set out in paragraph 5 of this schedule for the provision whenever so required of a "solicitor's pack" supplied to the solicitor acting for a tenant of a lease who wishes to assign the lease. Such fee will be chargeable to the person requiring such "pack".
- (xi) To advise all interested parties in respect of:
  - (a) essential major repairs, redecoration and maintenance; and
  - (b) improvements or alterations which may be considered desirable.
  - (c) and to provide quarterly reports in relation to (a) and (b) above.
- (xii) To perform such duties as are consistent with the best principles of estate management and as are necessary in order to procure and maintain all services at the most reasonable cost, including the procurement of three quotes for all major services supplied, such quotes to be available for inspection by all or any interested parties.

- (xiii) To collect all service charges and, where this Order applies to other monies, such other monies as may be payable under the lessees' leases.
- (xiv) To take any legal action which the Receiver/Manager is reasonably required to take, to make good such arrears, it being recognised that the Receiver/Manager shall be entitled to an indemnity from the Service Charge Account in respect of any legal or other professional costs arising in connection with such action.
- (xv) To pay and discharge out of the monies so collected (subject to the availability of adequate funds in the Service Charge Account) of all rates, taxes, insurance premiums, rents, wages, water, gas and electricity bills, costs of cleaning materials and other outgoings including payment of the Management Fee for which the Receiver/Manager is responsible pursuant to this appointment. The Receiver/Manager will take all reasonable steps to ensure that no liabilities accrue which cannot be financed from the Service Charge Account.
- (xvi) To manage the common parts and service areas of the building, including the arrangement and supervision of maintenance. The Receiver/Manager will prepare a quarterly statement showing all receipts and payments during the year ending 31 December 2011 and thereafter on an annual basis. Such statement shall be submitted to all interested parties within a reasonable period of the end of the relevant period to which it refers.
- (xvii) To use reasonable endeavours to require any leaseholder who sublets his flat to provide the Receiver/Manager with a written undertaking that any subletting will be for a period of not less than 90 days, and to lodge with the Receiver/Manager a copy of the letting agreement or other relevant document along with the names and principal addresses of all the sub-tenants.
- (xviii) To maintain professional indemnity insurance of at least £1,000,000 per claim.

3. Power to Contract and to Terminate Pre-Existing Contracts

Subject to the foregoing obligations, during the Management Period the Receiver/Manager is empowered to enter into contracts for supplies and services, including items of a non-recurring nature and including with solicitors, accountants, building surveyors and other professional persons, and where necessary to terminate the same. The Receiver/Manager is further empowered to terminate remaining contracts existing prior to 1 January 2010, in his discretion.

4. Authority to Negotiate Adjustments to Service Charge Payments

The Receiver/Manager is empowered to make and agree reasonable adjustments and other reasonable compromises with the tenants as Walker House, in respect of the Service Charges and Interim Charges where appropriate, and also in respect of any outgoings payable.

5. **Remuneration**

As remuneration for his services during the Management Period the Receiver/Manager will be paid a fee as follows:

**Year One**

From 1 January 2011 to 30 June 2011

- Monthly site visits
- Quarterly accounts (Jan-Mar and Apr-Jun)
- Quarterly tenants' meetings

From 1 July 2011 to 31 December 2011

- Quarterly site visits
- Quarterly accounts (Jul-Sep and Oct-Dec)

Quarterly tenants' meetings

Basic fees - £5,200 plus VAT

**Additional costs**

A Fixed fee of £3,000 plus VAT will be charged to resolve any disputes with the freeholder at the Leasehold Valuation Tribunal (LVT).

### **Year 2 and Continuing**

From 1 January 2012 to 31 December 2012

- Bi-annual site visits
- Annual tenants' meetings
- Year End accounts

Fees - £4,000 plus VAT

Total - £4,000 plus VAT and any additional work charged at £100 plus VAT per hour

### **Additional Meetings**

A charge of £200 plus VAT for each additional meeting.

The Receiver/Manager will deduct the fee each quarter from the Service Charge Account as it falls due. The above fee will increase in line with the Retail Price Index during the Management Period.