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HM Courts & Tribunals Service

Eastern Rent Assessment Panel
Leasehold Valuation Tribunal
Case Ref: CAM/22UK/LSC/2012/0083

Properties	:	2,3,4,5,6,9,10,11,12 and 14 Kirk Mews Burnham Road, Althorne, Essex CM3 6GL
Applicants	:	The lessees of the above Properties
Represented by	:	Mr Martin Kent, Chairman Kirk Mews Residents Association
Respondents	:	(1) Kirk Care Limited (2) Mansion Care Limited
Represented by	:	Mr James Davies Counsel
Date of Applications	:	26 June 2012
Type of Applications	:	(1) To determine the amount of service charges payable – Section 27A Landlord and Tenant Act 1985 (the 1985 Act) (2) To appoint a manager – Section 24 Landlord and Tenant Act 1987 (the 1987 Act)
Date of Directions	:	28 June 2012
Dates of Hearing	:	2, 3 and 16 October 2012
Date of Decision	:	23 October 2012
Tribunal	:	Mr John Hewitt Chairman Mr Stephen Moll FRICS Mr Neil Martindale FRICS

DECISION

Decision

1. The decision of the Tribunal is that:

1.1 The current service charges payable are:

2006/7	£17,572.33
2007/8	£24,526.87
2008/9	£26,558.48
2009/10	£25,867.84
2010/11	£23,147.94

1.2 There are no sums by way of service charges which may be lawfully drawn down from or debited to the sinking fund save to the extent that the Second Respondent does have the power, under clause 3.5 of the lease, to apportion such of the above specified current service charges to the sinking fund (instead of collecting those sums from the Applicants as current service charges) if it so wishes;

1.3 An order shall be made (and is hereby made) pursuant to section 20C of the 1985 Act that none of the costs of these proceedings incurred or to be incurred by the Respondents are to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by any of the Applicants;

1.4 The Tribunal requires that the Second Respondent shall by 5pm Friday 23 November 2012 reimburse to the Applicants (via Mr Kent) the fees of £500 paid by the Applicants to the Tribunal in connection with these proceedings; and

1.5 Any application to the Tribunal to settle or reconcile the individual cash accounts of each Applicant with the Second Respondent shall be made in accordance with the directions set out in paragraph 125 below.

NB Later reference in this Decision to a letter and number in square brackets ([ ]) is a reference to the folder and page number of the hearing files provided to us for use at the hearing. Those files are labelled as follows:

Section 27A Application:

A1	Applicants' hearing file	Page numbered 1-120
R1	Respondents' hearing file	Page numbered 1-215.11
R2	Respondents' file of invoices	Page numbered 216-626

Section 24 Application:

A2	Applicants' hearing file	Page numbered 1-185
R3	Respondents hearing file	Page numbered 1-83

Background

2. The subject Properties are part of a modern development of fourteen 2 bed-roomed single storey bungalows constructed in brick beneath a tiled pitched roof.

The Properties were constructed in or about 2006 pursuant to a planning permission reference FUL/MAL/04/00677 [R1 p116]

The Properties are adjacent to and partly connected to a former farmhouse, now known as the Mansion House, or the Mansion House Care Home and sometimes, the Mansion House Retirement Home (for ease of reference referred to as the Mansion House in this Decision).

3. The layout of the Properties and the scheme is shown on Plan 2 annexed to the leases [A1 p74]. Evidently the Properties were constructed with the benefit of the NHBC Buildmark Cover. A sample certificate in respect of 5 Kirk Mews is at [A2 p179]. This records the Builder as being Kirk Construction Services LLP NHBC Registration Number 87716.

4. The freehold interest in the Mansion House, the adjacent Properties and other land is registered at the Land Registry under Title Numbers EX732819 and EX597397. The registered proprietor is Francis George Kirk (Mr Kirk).

5. The business of a residential care home is operated from the Mansion House. We were told that the business comprises a partnership between Mr Kirk and a company known as Mansion Care Limited (MCL). This company was incorporated in 1999 as Lyonrex Limited. In March 2000 it changed its name to Kirk Nursing Limited and in August 2005 it changed its name to its present name of MCL.
It appears that Mr Kirk is an investor in MCL. He is its sole director. His step-daughter, Ms Simone Walmsley, is recorded at Companies House as being the secretary of the company.

6. On 14 June 2006 Mr Kirk granted a lease of land adjoining the Mansion House to Kirk Care Limited (KCL). The lease was for a term of 999 years from 25 March 2006. The lease is registered at the Land Registry with Title Number EX769440. KCL was incorporated in March 2005. Mr Kirk is its sole director. Ms Walmsley is recorded at Companies House as being the secretary of the company.

7. The subject Properties have been constructed on the land demised to KCL and are clearly shown on the Title Plan of Title Number EX769440 but the leases of the bungalows are not recorded in the Charges Register of that title. Instead, they are recorded in the Charges Register of Title Number EX732819 of which Mr Kirk is the registered proprietor.

8. Condition 2 of the above mentioned planning permission states:

"The development hereby permitted shall be used solely as close care accommodation and occupied by persons over the age of 55 years in conjunction with the existing residential care home, Mansion House, and their spouses, partners, and dependants unless the Local Planning Authority gives written consent for a variation."

9. The leases of the Properties provide for the Manager to insure the development, to carry out repairs and redecorations and to provide certain services. The leases provide for the lessee to contribute to certain costs incurred by the Manager. Some of those costs are said to be current service charges and payable on an annual basis, by way of monthly payments on account and some costs are to be debited to a sinking fund. The material terms of the lease will be set out in more detail later.

10. Issues have arisen between the parties as to the amounts claimed by MCL (as the Manager) to be current service charges and as to amounts which have been debited by MCL to the sinking fund.

11. The two applications were brought by Mr Kent who, we were told, is the chairman of the Kirk Mews Residents Association. Evidently he and his mother are joint owners of 5 Kirk Mews.
Directions were given in respect of both applications and the parties served statements of case and gave disclosure. As will become apparent shortly Mr Kent was critical of the disclosure given by the Respondents on a number of key matters in dispute and which he contended was inadequate.

Partway through the hearing Mr Kent decided to withdraw the application to appoint a manager made pursuant to section 24 of the 1987 Act. This was due to a potential difficulty over the nature and extent of the property demised by the leases and whether they were flats within the definition set out in section 60 of the 1987 Act.
Thus it was at the hearing the focus of the evidence and submissions was on the application under 27A of the 1985 Act and the related application under section 20C of that Act. However some of the materials contained within the section 24 application trial bundles were relevant to the section 27A application and reference was made to them as necessary.

Inspection and hearing

12. On the morning of Monday 2 October 2012 the members of the Tribunal had the benefit of a site visit. Mr Kent was present and was accompanied by a number of Applicants. Mr Kirk was present with Ms Walmsley and Mrs Sue Garrett the Care Manager together with Mr James Davies of counsel, and Mr Edward Worthy, a solicitor.

13. We were walked around the outside of the development and a number of physical features were drawn to our attention, including the lighting,

security gates and fencing. We were also shown around the communal living room, sometimes known as the Day Centre or 1 Kirk Mews, and the amenity rooms leading off it, particularly the kitchen and the equipment within it and the office. We were also taken through a corridor which links the communal living room to the adjacent Mansion House where we were able to see some of the bedrooms and a common room relevant to an issue about electricity consumed in those rooms but which, for a while, was charged to the Kirk Mews service charge account.

The leases of the Properties

14. We were told that the individual leases of the subject Properties had been granted in common form. We were provided with a sample copy lease, that relating to Plot Number 8. It is at [A1 p53]. It is dated 5 September 2008.

15. We need to set out a number of key provisions in the lease.

16. There are three parties to the lease:
    1. KCL defined as the Landlord;
    2. Bernard Sidney Thirsk and Stephen Bernard Thirsk defined as the Tenant; and
    3. MCL defined as the Manager

Definitions

Property: *"Plot Number 8 Kirk Mews Burnham Road ... shown edged red on the attached plan marked 1"*

Estate: *"The land and buildings known as Kirk Mews, Burnham Road ... shown edged green on the attached plan marked 2"* to include the gardens and grounds and all buildings erected thereon.

Mansion House: *"The Mansion House Residential Care Home and adjoining land shown edged blue on the attached plan marked 3"*

Initial Service Charge: *"£133.33 per month"*

Service Charge Proportion: *"1/14th"*

Sinking Fund Percentage: *"1%"*

Approved Occupier: *"a person who is 55 years of age or over and who is in the opinion of the Care Manager a suitable occupier"*

Care Charge: *"The sum to be paid for the care to be provided under clause 4.1 (iii) as set out in Schedule 8"*

Code: *"the National House Building Council Sheltered Housing Code as brought into force on 1st April 1990 reference HB520 September 1995"*

Care Manager: *"A suitably qualified person for the time being employed by the Manager* [MCL] *to be responsible for the day to day care of the Approved Occupier*

Service Charge Year: the period 1 April to the following 31 March

Sinking Fund Contribution: *"The contribution payable under the provisions of clause 3.4 below and Schedule 6"*

17. The Property was demised for the term from and including 25 March 2006 to and including 24 March 2156 at the following rents:
    1. The current service charge in accordance with the provisions under clauses 3.1 and 3.2;
    2. The sinking fund contribution in accordance with clauses 3.4 and 3.5; and
    3. The Care Charge in accordance with clauses 4.1 and 8.1.3.

18. The first part of Clause 3 is a covenant on the part of the tenant to pay the current service charge. The lease states that this is to be paid to the Landlord but as the scheme of the lease is for the services to be provided by the Manager, we infer the lease is in error and the intention was that the current service charge was to be paid to the Manager. In essence the scheme is that MCL is to prepare an estimate for the ensuing year and the tenant's 1/14th share is payable in advance by way of monthly payments on the 1st of each month. As soon as practicable at the end of each service charge year MCL is to supply the tenant with a copy of audited accounts showing *"a summary of the amounts expended provided and receivable in respect of the said services for that Service Charge Year"*
    We observe that there is no express provision made for accounting matters and how any balancing debits or credits are to be dealt with. There is indirect reference in clause 3.2.2 to suggest that any excess or shortfall is to be taken into account in setting the budget for a future year.

19. Clause 3.4 is a covenant on the part of the tenant to pay the Manger [MCL]:

> *"... the sinking fund contribution to provide for a sinking fund for depreciation and the costs and anticipated costs of renewal and replacement of the lifts (if any) and plant within the Estate and of upgrading and improving the Estate and other future or contingent capital expenditure together with the fees of the Manager so far as not included within the current service charge and as more particularly specified in Part II of Schedule 3."*

20. Clause 3.5 provides:

> *"If the sinking fund referred to in clause 3.4 above proves to be insufficient for the purposes set out in Part II of Schedule 3 the Manager may treat the whole or part of any insufficiency as if it were an expense falling within Part I of Schedule 3 and if the sinking fund shall in the opinion of the Manager exceed what is reasonably necessary for the purposes set out in Part II of Schedule 3 the whole or any part of such excess may at the absolute discretion of the*

Manager be used for the benefit of the tenants of dwellings on the Estate as a whole whether by setting it against the expenses falling within Part I of Schedule 3 or otherwise"

21. Clause 3.7 provides for the Manager to maintain separate accounts in respect of payments made in respect of the sinking fund and to account for interest earned thereon.

22. Clause 4.1 sets out a further covenant on the part of the tenant to pay without deduction or set-off the current service charge monthly and the Care Charge as set out in Schedule 8 monthly in advance.

23. Clause 5 is at [A1 p61] and sets out covenants on the part of the Manager. It is not necessary to set them out in detail. There are the usual covenants in respect of estate management to insure and keep insured the Estate and for repairs and redecorations. Included is a covenant to employ a Care Manager.

24. Clause 8 is at [A1 p63] and is a covenant on the part of the tenant. This was not in dispute. The gist of the covenant is that the tenant is to meet with the Care Manager every three months for a well-being assessment with a view to agreeing the level of care required by the tenant. We infer this is lax drafting because it appears the care may be required for an Approved Occupier, rather than the tenant himself or herself. Of course the tenant might not reside in the property personally. There are provisions for the payment of the level of care agreed upon.

25. Schedule 3 is in two parts.
Part I lists the costs and expenses of running and maintaining the Estate in respect of which the current service charge is payable.
Part II lists costs and expenses of a capital nature and a management fee which are not included in the current service charge but which are to be met from the sinking fund.

It is sensible to set these provisions out in full:

"Part I
Costs and expenses outgoings and matters in respect of which the tenant is to contribute by way of the current service charge

1. *The costs and expenses incurred in carrying out its obligations (except renewal or replacement) in:*
   clause 5.1 (maintenance repair and decoration of the exterior; common parts of the Estate; maintenance of services)
   clause 5.2 (cleaning and lighting and heating (where applicable) of common parts of the Estate; cleaning of outside windows; maintaining driveways forecourts gardens and grounds)

2. *The expenses of any insurance effected pursuant to clause 5.3*

3. *The cost of providing any communal facilities including (without limitation) the office kitchen laundry community room toilet bathroom and bedroom facilities situated in the day centre forming part of the Estate*

4. *All rates (including water rates) taxes and outgoings (if any) payable in respect of the Estate ...*

5. *The fees and disbursements paid to any accountant or other professional person in relation to the preparation auditing or certification of any accounts of the costs expenses outgoings and matters referred to in this Schedule*

6. *All other expenses (if any) incurred by the Landlord and the Manager in and about the maintenance and proper and convenient management and running of the Estate and the gardens and grounds thereof and of the roads and footpaths drains and services serving the Estate including (but without limitation) any minibus transport facilities provided to the Tenant by the Manager*

7. *Any VAT or tax of a similar nature payable in respect of any costs expenses outgoings or matters falling within any paragraph of this Schedule*

8. *Such sum as shall be estimated by the Manager to provide a property repairs fund to meet any of the costs expenses outgoings and matters mentioned in the foregoing paragraphs of a cyclical nature*

9. *Any interest paid on any money borrowed by the Landlord and the Manager to defray any expenses incurred under this Part of this Schedule*

Part II
Costs expenses outgoings and matters in respect of which a contribution is made by the tenant upon assignment or disposition of this lease to provide a sinking fund

1. *All costs and expenses incurred (or anticipated to be incurred in the future) by the Landlord and the Manager in fulfilment of its obligations under clause 5 of this Lease (and VAT thereon) in so*

far as such expenditure is not included in the service charge and relates to the renewal or replacement or major overhaul of any and every part of the Estate (including for the avoidance of doubt contributing towards the cost of renewing or replacing the accessway shown coloured brown on the attached plan marked 2) and the plant and the appurtenances thereof including any expenses incurred in rectifying or making good any inherent structural defect within the Estate; the renewal or replacement of heating apparatus ducts service pipes and wires within the Estate; the employment of a Care Manager Key Worker and (if required) a deputy Care Manager; and interest paid on any money borrowed by the Landlord or the Manager to defray any expenses incurred

2. *All costs and expenses for future liabilities expenses or payments for renewing upgrading or improving the Estate and whether certain or contingent and whether obligatory or discretionary*

3. *The fees and disbursements of the Manager in respect of its management costs (which fees and management costs shall include but without limitation the cost of supervising any staff) which fees and disbursements of the Manager shall be established with reference to the market rate for such services which the Manager provides and for the avoidance of doubt the said fees and disbursements of the Manager shall include but without limitation:*

   (a) the profit of the Manager
   (b) the cost of supervising and staff and
   (c) the cost of maintaining a waiting list of possible assignees and supplying details of the persons therefrom"

26. Schedule 6 sets out the provisions for the payment by the tenant of the sinking fund contributions. These were not in dispute. They may be summarised as follows:
    1. A payment is to be made:
       1.1 on completion of every assignment or disposition of the whole property demised by the lease;
       1.2 upon the expiry of the term granted by the lease; and
       1.3 upon every other occasion when an Approved Occupier or one or more Approved Occupiers ceases to occupy the property
    2. The amount payable is 3% of the amount received by the tenant on his disposal of the property (the disposal price) plus a further 1% of the disposal price for each year in which the lease was vested in the tenant effecting the assignment or disposition, subject to a maximum of 9% of the disposal price.

General background

27. Before dealing with the specific service charges in dispute it may be helpful to set out some general background to this development.

28. The Applicants did not call any oral evidence.

29. The Respondents called three witnesses:

Mrs Sue Garrett	Day to day manager [R1 p215.5]
Ms Simone Walmsley	Registered manager [R1 p215.8]
Mr David Stevens	Partner, Taylor Viney & Marlow Accountants [R1 p215.10]

30. Ms Walmsley's principle role is concerned with the residential care home business operated from the Mansion House; a role she has held for the past 15 years. Her role is care focussed. When the decision was taken by Mr Kirk to develop the 14 fourteen bungalows that now comprise Kirk Mews, Ms Walmsley was seconded to help with the set-up of the scheme to ensure the delivery of the domiciliary care packages to those Approved Occupiers of the bungalows who required such services. This included the recruitment and training of staff and the setting-up of rotas, procedures and communications links.

31. Ms Walmsley explained that close care was to be made available to the Approved Occupiers of Kirk Mews, 24 hours per day, seven days per week for those who required it. Such close care was to be payable on a case by case basis pursuant to clause 8 of and Schedule 8 to the lease. Ms Walmsley explained that this is a distinct and specific level of care and is positioned between that offered in a residential care home on the one hand, and that offered in a retirement complex, which may be warden assisted for all or part the time. Ms Walmsley accepted that the expression 'close care' is not used in the lease. Ms Walmsley also accepted that not all of the current residents in Kirk Mews require a care package. However and nevertheless, care staff are on duty 24/7 in case of emergency and to provide the planned Schedule 8 care, some of which can sometimes be required out of normal day working hours. For this reason Ms Walmsey suggested that it would not be appropriate to reduce the level of staff cover and to rely upon a distant call centre scheme. Ms Walmsley said that the level of care and response times would suffer. Ms Walmsley also suggested that if MCL did not offer the close care service to the occupiers of Kirk Mews on a 24/7 basis some of them would not be able to continue independent living in their own bungalows.

32. The care service offered to the residents of Kirk Mews and the care staff employed are subject to standards set by the Care Quality Commission (CQC). MCL was registered with the CQC some while before Kirk Mews was developed because it has operated a residential care home for some years.

33. A Care Manager was duly appointed. Having seen her settled in post Ms Walmsley returned to her main role of running the care home business in the Mansion House.

34. Mrs Sue Garrett was later appointed as Care Manager and took over in May 2008. Ms Walmsley is Mrs Garrett's line manager and Ms Walmsley remains involved in management decision making but does not get involved in the day to day running of Kirk Mews or the care provided to the residents.

35. Mrs Garrett has three functions:

Estate management
Mrs Garrett has the role of site manager or estate manager and organises and supervises the handyman, gardening, window cleaning and repairs and other maintenance services. A comprehensive list of the tasks and duties she might get involved with as the need arises is at [R1 p90.1]. By way of example a handyman is engaged by MCL on a self-employed hourly rate basis. In addition to dealing with matters on the Estate he is also available to carry out small tasks in individual bungalows, e.g. changing light bulbs, easing sticking doors, unblocking sinks etc. Mrs Garrett maintains a folder. If tasks are required details are entered. Mrs Garrett checks that the task required is appropriate one for the handyman to undertake and if so, she gives him the instruction. Mrs Garrett checks the handyman's invoice for accuracy before passing it to the bookkeeper, duly approved for payment.

Responsive Care
The scheme is that a service is provided whereby a carer will respond to a call from a resident in the event of an emergency. The promotional material in connection with the sales of the leases of the bungalows and the lease itself makes reference to such a service. Mrs Garrett is responsible to manage the delivery of the service. In addition to managing the delivery of the service Mrs Garrett sometimes responds to and provides the care required when she is on duty.

Care Manager
This role is to manage and supervise the delivery of the Schedule 8 planned close care service. In addition to carrying out the quarterly meetings and preparing (and revising) care plans Mrs Garrett also provides some of the care services when she is on duty.

36. Mrs Garrett explained to us that the needs and levels of care required by the Approved Occupiers varies from time to time and of course changes from time to time. Further there is a certain turnover in Approved Occupiers and thus affects the level of care service required. The sole criteria for an Approved Occupier prescribed in the lease, is that one of the occupiers of the bungalow has to be aged over 55 years. Not all Approved Occupiers require care plans. Mrs Garrett said that at the

present time four bungalows are empty, the occupiers of six have care plans and the occupiers of the remaining six do not require care plans.

37. Where care is required it is charged for to the tenant of the bungalow occupied by the person in need of that care, under the provisions of Schedule 8. The Care Charges levied are at market rates and are on a time basis. Care Charges are levied both for planned care and also for care provided in response to an emergency call out. Care is available 24/7, which equates to 8760 hours in a 365 day year. Thus MCL might expect to be able to bill up to 8760 hours per year, assuming one person on duty at any one time. In practice it does not do so because, as Mrs Garrett told us, the care staff are not fully engaged on providing chargeable care hours all day and all night every day of the year. Mrs Garrett said that sometimes the night carer is not required to provide any planned care and sometimes there are no emergency call outs. The care hours not charged to individuals have been referred to as 'Uncharged Care Hours'. In the years 2008/9, 2009/10 and 2010/11 sums of money said to represent Uncharged Care Hours have been debited to the sinking fund, in circumstances which will be explained shortly.

38. In the year 2009/10 Mrs Garrett's hours changed. A deputy care manager was brought in, Mrs Guest, to cover some of Mrs Garrett's duties. This was to enable Mrs Garrett to have more time to help Mr Kirk and MCL set up a new project of providing care services to residents in nearby towns and villages. The project was named 'Care out in the Community'. A sample flyer advertising this new venture is at [R3 p181] which suggests that the service was offered by MCL - *"Mansion Care (Registered Home Care Agency).*

We were told that overall the combined number of hours worked by Mrs Garrett and Mrs Guest in connection with Kirk Mews was slightly less than the number of hours worked by Mrs Garrett alone when she had sole responsibility. This was not seriously disputed by Mr Kent.

39. The third witness who gave oral evidence was Mr David Stevens. He is an accountant and is a partner in the firm of Taylor Viney & Marlow, Chartered Accountants and Business Advisers. Mr Kirk and businesses connected with him have been clients of Mr Stevens for some 17 years and they have a close professional relationship. The registered offices of Mr Kirk's companies are at the office address of Taylor, Viney & Marlow. Evidently the firm provides a range of professional services to Mr Kirk and his businesses. Mr Stevens was instrumental in setting up the Kirk Mews development and the scheme for the service charge regime, the close care service and the sinking fund. Mr Stevens and his firm prepare and submit the statutory and tax accounts for Mr Kirk and his businesses.

40. When Mr Steven's firm was asked to certify the audited accounts for the current service charge and sinking fund at Kirk Mews, the decision was taken internally to have these tasks supervised by a different partner, Mr

Adrian Smith in view of Mr Stevens closeness to Mr Kirk. Evidently, in broad terms the audit is undertaken by staff that check the computer records maintained by MCL on SAGE software, consider the broad nature of the expense incurred, raise any queries with Mr Kirk and his staff and undertake spot checks of supporting invoices against expenditure claimed. The certificates are then signed off by Mr Smith. Mr Stevens was unable to explain to us satisfactorily why the letters or certificates issued by Mr Smith in respect of the current service charge were on plain paper and not the letterhead of the firm. He was unable to explain why none of the certificates in respect of the sinking fund were signed off by Mr Smith or the firm. In both the current service charge certificates and the sinking fund certificates there is no mention of MCL but instead reference to Kirk Care Limited, which does not appear to be a trading company. Mr Stevens was unable to explain this save that he thought Kirk Care Limited was the former name of MCL. He is in error about this because the former name of MCL was Kirk Nursing Limited, not Kirk Care Limited. Further the change of name from Kirk Nursing Limited to MCL took place as long ago as 2005, some while before the Kirk Mews development was set up.

41. Mr Stevens was rarely able to answer specific questions on expenditure incurred and was unable to explain why many supporting documents identified by Mr Kent in the Application form had still not been provided or their absence explained. It was not clear to us why Mr Stevens was called to give evidence instead of Mr Smith, who having been responsible for the audit might have been better placed to explain issues arising from the certificates issued pursuant to the audit.

Accounting issues

42. The current service charges claimed by MCL and the services charges originally debited to the sinking fund are set out in the following schedules:

		Current S/C	**Sinking Fund**
Schedule 1	2006/7	£32,461.45	£44,334.51
Schedule 2	2007/8	£24,443.15	£44,001.61
Schedule 3	2008/9	£26,855.23	£46,747.94
Schedule 4	2009/10	£27,743.95	£50,422.35
Schedule 5	2010/11	£33,324.08	£52,596.27
Schedule 6	Sinking Fund Summary.		

During the course of these proceedings and during the hearing both sides have felt able to make concessions. The Respondents having produced documents in connection with insurance, Mr Kent felt able to agree that the sums claimed for insurance were reasonable in amount, although he was (in our view rightly) highly critical of the long delay on the part of the Respondents in producing the relevant paperwork. Also for expediency Mr Kent felt able to agree and not to pursue certain

relatively modest items of claimed expenditure. In many respects we find that Mr Kent was quite generous in his approach. He was balanced and not penny pinching. He conceded many items even though there was no or little supporting documentation of information provided to support them.

MCL also made concessions on a good number of items. Mr Davies said that as regards the sinking fund the Respondents withdrew all the claimed expenditure save for:

Management Charges;
Depreciation; and
Uncharged Care Hours

43. Before dealing with specific expenditure challenged it may be helpful to set out some general findings in connection with the MCLs approach to bookkeeping and running of the current service charge account and the sinking fund.

44. It was quite clear to us that the driving force behind the running of the Mansion House Care Home and Kirk Mews is Mr Kirk. Plainly he makes the policy decisions which others then carry out. Mrs Garrett did her best to assist us and she is plainly a caring and careful person. Mrs Garrett struggled on occasions. For example, when some invoices came in which covered some services connected with both Kirk Mews and some other business activity carried on by MCL, it was her task to apportion the invoice and identify the amount to be charged to the Kirk Mews current service charge account. Many invoices were apportioned by her contemporaneously on a 50/50 basis. However, later, sometimes a good while later, the apportionment was changed to 75/25 in favour of MCL and against the Kirk Mews current service charge account. An example is at [R2 p515] Mrs Garrett struggled to give a convincing explanation for the reasons behind the change, simply saying that it was done by her on reflection and having spoken with the bookkeeper, Mrs Shadbolt. Mrs Garrett did her best to hold the party line but we find the re-apportionment was undertaken pursuant to a direction emanating from Mr Kirk.

45. The overwhelming impression we gained was that a direction emanated from Mr Kirk to maximise the recovery of expenditure incurred by MCL from the Kirk Mews current service charge account and/or sinking fund.

Some examples may assist in showing why we came to this view:

1. Very substantial advertising costs in excess of £8,000 debited to the sinking fund in fact related to Mr Kirk's marketing of the unsold bungalows. Whilst this debit has now been withdrawn, it was not withdrawn until part way through the second day of the hearing and when there was focus on it.

2. Care staff training costs and clothing costs have been debited to the sinking fund. Care Charges are levied on individual tenants under Schedule 8 of the lease on an as needed basis. It is charged at market rates. Mr Stevens accepted that such rates would include due allowance for management, overheads, staff training, supervision, provision of uniforms, professional memberships, registrations and profit.

3. The Kirk Mews care package on offer is at [R3 p184]. The heading is in these terms:

> *"Bespoke care packages are available on a when and if needed basis creating the possibility of greatly reducing care costs whilst retaining the ownership of a property"*

At [R3 p180] the flyer dated 22 July 2006 states:

> *"Our bungalows suit a wide range of people, from those simply looking for security to people who have immediate need for the care that we are able to provide. The bungalows have their own staff, on duty 24 hours every day, and able to provide the same level of care as is available in in our adjacent Care Home. However the basic service charge paid by bungalow residents is modest, as they purchase additional services only if and when they need them"*

The reality is that care was not charged for on an 'if needed' basis. Schedule 8 Care Charges are levied and paid for by tenants on an individual, as needed, basis but the remaining 'unpurchased' or Uncharged Care Hours have been debited to the sinking fund, to the detriment of the lessees as a body. MCL thus appears to seek from the tenants of the bungalows payment for close care hours whether needed or not.

4. Under the guise of Legal & Professional costs MCL seeks to recover in full from the Kirk Mews current service charge the cost of a mandatory registration with the Commission for Social Care Inspection and membership of the United Kingdom Home Care Association even though MCL operates a number of incoming producing businesses. No effort appears to have been made to apportion as may be appropriate or to recognise that the costs of such memberships/registration will be covered within the Schedule 8 Care Charges charged at the full market, and which Mr Stevens accepts include overheads which we find would include the cost of professional memberships and registrations.

46. We are also very clear that the record keeping and accuracy of the accounts presented and audited cannot be relied upon with any

confidence. We have serious doubts about the accuracy of the audit process. We note from the Respondents' statement of case and their responses to the Scott Schedules that numerous errors and duplications are finally conceded and adjustments are proposed, albeit late in the day. A good number of these errors and duplications appear to have evaded the audit process.

47. We can illustrate insurance as a further example of lax and inaccurate bookkeeping although on this occasion MCL have undercharged. Over a period Mr Kent made several efforts to obtain copies of insurance policies and proof of payment of premiums. These were resisted by the Respondents. The answer given was that the policies were part of a block scheme and the information was simply not available. This did not turn out to be correct. On the second day of the hearing and, in response to a specific direction from the Tribunal, some copy insurance documents were produced. These revealed that there were two policies, a buildings policy, known as a Property Owners policy and a professional liability policy in connection with the provision of domiciliary care, known as a Wellbeing policy. Doing the best we can with the materials provided the insurance details are summarised in Schedule 7 attached to this Decision.
Mr Stevens told us that the accounts were prepared on the accrual and prepayments basis, which is why sums entered on accounts do not always correlate to the supporting invoices and vouchers. Mrs Garrett told us that some of the insurance documents were missing from the file. Mrs Garrett also told us that the intention was the cost of the two policies was to be aggregated and then apportioned as between the Mansion House care home and the Kirk Mews service charge account. It does not appear that actually occurred, ever. For example it would seem that in 2008 and 2009 the whole amount of the Wellbeing policy has been charged to the Kirk Mews service charge account but none of the Property Owners policy has been charged. The same may be true for 2010 where the two figures are remarkably close. We infer from this that the correct approach has not been taken with regard to the apportionment of the cost of insurances. This is yet another example of sloppy bookkeeping and accounting and the unreliability of the current service charge account. Whilst in the event the cost of insurance was resolved during the course of the hearing, we nevertheless regard this as a helpful illustration of MCL's stewardship of the current service charge account.

48. A yet further example of lax accounting/auditing comes from the Mr Steven's own office. It was clear from his evidence that his firm provides a range of services to Mr Kirk, his businesses and his companies. It appears that billing is done on a generic basis from time to time. An example is at [R2 p390] where the invoice is simply addressed to 'Mansion House' and deals with four separate tasks which then appear to have been apportioned to different accounts. A further example is at [R2 p346] which is an invoice addressed to 'F Kirk & Mansion Care Ltd Quilters (Trading as Tudor Grange Nursing Home)' in the sum of

£4,053.75 and sent to Mr Kirk at his home address. Mr Stevens explained that there were no specific invoices raised for the auditing of the Kirk Mews current service charge account and the sinking fund certificates. Evidently a view was taken over the totality of the professional fees billed to Mr Kirk and his businesses and a view was then taken about what portion of that sum should be allocated to the Kirk Mews service charge and the sinking fund. Whether the sum so allocated bears any resemblance to the work involved is anybody's guess. Although several of the amounts claimed were not challenged by Mr Kent for reasons of expediency, it is disappointing that a professional firm and indeed, the auditor, cannot be relied upon to provide a fairly transparent explanation of its professional fees for undertaking the audit.

49. We also find that the Respondents were slow to make documents and supporting information and explanations available to Mr Kent. The strong impression we have arrived at from the documents and evidence before us is that Mr Kirk and his team were deliberately less than helpful and open. They were reluctant to cooperate with Mr Kent and on occasions were disingenuous.

Current Service Charges

50. In the light of the foregoing we find that great care is required when considering claims or assertions made by the Respondents that sums have been expended, were reasonably incurred and are reasonable in amount. The sums claimed to have been expended need to be scrutinised carefully, especially where no supporting invoices or vouchers have been produced. We find that the response from the Respondents that *"Charges [...] have been audited and agreed"* is simply unacceptable and unconvincing. In this context 'agreed' is not agreed as between the parties but agreed as between Mr Kirk and his accountants.

51. Mr Davies submitted, and we accept, that the lease properly construed draws a distinction between three different services to be provided by MCL as the Manager. We have mentioned them before:

> Estate management;
> Responsive care or 24/7 care; and
> Planned Care under clause 8 and schedule 8.

Estate management is a current service charge item under Part I of Schedule 3. The expense of the Care Manager is a Part II Schedule 3 item. The fees and expenses of the Manager including the cost and supervision of staff and profit are also Part II Schedule 3 items.

Costs of planned care payable under Schedule 8 are not service charge items of expenditure. Such care is provided to and paid for by the user at market rates and is plainly outside the service charge regime.

The difficulty we face is that MCL has blurred and overlapped not only the three different services provided but also the allocation of the costs of those services as between Part I and Part II of Schedule 3.

For example Mrs Garrett's duties cover all three services, yet MCL seek to debit the whole of her wages costs to Part I under the rubric of Care Administration. It appears no effort was made to apportionment her time. Nor was effort made to allow that for some of her time on duty she is responding to an emergency call out or providing planned care which is charged out for separately to the user as market rates. Mrs Garrett's time on duty is not exclusively engaged upon service charge or sinking fund expenditure tasks. Matters got more complicated when Mrs Garrett started to spend some of her time on the 'Care out in the Community' project which is run from the Kirk Mews Day Centre office and facilities. The same can be said for the apportionment of other expenses and costs.

52. We can but do the best with the documents and evidence before us, both of which are incomplete. Plainly there were a number of issues where Mr Kirk was best placed to provide assistance to us. Although Mr Kirk had filed a witness statement and although he was present throughout the two days of the substantive hearing Mr Kirk was not, in the event, called to give evidence. We find we can properly draw inferences from this fact. In the circumstances we find that where we are in doubt as to whether sums have been expended, were reasonably incurred, are reasonable in amount and fall within the service charge regime in the lease and where the documents and evidence before us are less than clear and candid we must proceed with caution and draw on the accumulated experience and expertise of the members of the Tribunal all of whom are professionals with considerable years of service in the residential property sector.

53. There are occasions where we simply have to take a broad brush approach to a sum claimed and the level of service supplied.

54. MCL has not provided any information to show how the costs claimed to have been incurred in the performance the estate management service have been arrived at. We draw on our experience. The Applicants have produced some evidence from Blocnet Limited that it would perform the estate management role at £295 + VAT per unit per year [A2 p150] and this proposed fee strikes a chord with the members of the Tribunal. We conclude that a reasonable cost of the provision of the estate management service should not exceed about £355 per unit per year.

55. The responsive care service, that is to say to organise a response to an emergency call out is to be available on a 24/7 basis. It appears to us that what is required to provide this service is to arrange for a carer to make a visit to the person evidently in distress. It appears that currently if that response is provided by a MCL employee, MCL charge for the response under the Schedule 8 Care Charge. Thus is seems to us that no expenses or costs associated with the response to the call out are

properly charged to the service charge or to the sinking fund. However the cost of providing a service to take the call and the cost of arranging for a carer to respond to it is a service embraced within the provisions of the lease and is a service which the parties to the leases expected to be provided.

56. We find that it is unreasonable to incur the cost of carers on site on a 24/7 basis simply to provide the responsive care service to take a call and then arrange for a carer to attend. We find that MCL, acting reasonably, can provide such a service in a much more cost effective way. Whilst a far distant call centre might not be quite appropriate for this development we have no doubt that MCL acting reasonably and given its clear experience in the provision of care could and should have devised a more effective scheme to deliver this service. Drawing on our experience we find that the reasonable cost of delivering such a service should not exceed about £700 per year per unit.

57. We have therefore concluded that the cost of delivering the estate management service and the responsive call out service which are part of the Care Manager's role should not reasonably exceed £15,000 per year in a full year. We have made an adjustment to £12,500 for the first year to reflect this was not a full year.

58. We should point out that these rates are what we consider a commercial firm providing the service might charge and thus include allowance for supervision, management, overheads and profit so that no additional costs or charges in respect of such matters is justified.

59. Another generic issue which spans most years is the cost of electricity. Evidently during the 2006 construction work some rooms within the Mansion House were connected to the board serving the Kirk Mews Day Centre and common parts. We were told this has now been put right. An adjustment for prior years is required. Mr Kent took us through his careful analysis of the electrical equipment in use and the reasonable cost thereof based on the tariff negotiated by MCL with the current supplier. His analysis has been supported by recent monthly meter readings. MCL has not put any reasoned case forward but has offered a contribution. We found Mr Kent's approach to be methodical and fair and thus more reliable. We prefer it. We have therefore allowed the sums contended for by Mr Kent under the heading 'Heat and Light'.

60. Both parties completed the Scott Schedules. Both parties have made concessions to some extent or another.
The five Schedules are attached to this Decision. Further concessions were made by both parties during the course of the hearing. We have noted these on the Schedules.
The Schedules set out the sums agreed by the parties and the sum (if any) we have allowed in respect of each contested item of expenditure and, in brief, our reasons.

In summary the current service charges determined by us are as follows:

Schedule 1	2006/7	£17,672.33
Schedule 2	2007/8	£24,526.87
Schedule 3	2008/9	£26,558.48
Schedule 4	2009/10	£25,867.84
Schedule 5	2010/11	£23,147.94

The sinking fund

61. As noted above the regime set out in the lease provides for a current service charge which includes a provision for a reserve fund "*to provide a property repairs fund to meet any of the costs expenses outgoings and matters mentioned in the foregoing paragraphs of a cyclical nature*"

In addition there is provision for what was labelled a sinking fund. This is mentioned in some detail in two places in the lease, clause 3.4 in the following terms:

> "*... the sinking fund contribution to provide for a sinking fund for depreciation and the costs and anticipated costs of renewal and replacement of the lifts (if any) and plant within the Estate and of upgrading and improving the Estate and other future or contingent capital expenditure together with the fees of the Manager so far as not included within the current service charge and as more particularly specified in Part II of Schedule 3.*"

and in Part II of Schedule 3 in the following terms:

> "*1. All costs and expenses incurred (or anticipated to be incurred in the future) by the Landlord and the Manager in fulfilment of its obligations under clause 5 of this Lease (and VAT thereon) in so far as such expenditure is not included in the service charge and relates to the renewal or replacement or major overhaul of any and every part of the Estate (including for the avoidance of doubt contributing towards the cost of renewing or replacing the accessway shown coloured brown on the attached plan marked 2) and the plant and the appurtenances thereof including any expenses incurred in rectifying or making good any inherent structural defect within the Estate; the renewal or replacement of heating apparatus ducts service pipes and wires within the Estate; the employment of a Care Manager Key Worker and (if required) a deputy Care Manager; and interest paid on any money borrowed by the Landlord or the Manager to defray any expenses incurred*
>
> *2. All costs and expenses for future liabilities expenses or payments for renewing upgrading or improving the Estate and*

whether certain or contingent and whether obligatory or discretionary

3. *The fees and disbursements of the Manager in respect of its management costs (which fees and management costs shall include but without limitation the cost of supervising any staff) which fees and disbursements of the Manager shall be established with reference to the market rate for such services which the Manager provides and for the avoidance of doubt the said fees and disbursements of the Manager shall include but without limitation:*

   (a) the profit of the Manager
   (b) the cost of supervising and staff and
   (c) the cost of maintaining a waiting list of possible assignees and supplying details of the persons therefrom"

62. There is scope for overlap between the current service charge and the sinking fund. Moreover where the sinking fund is in deficit the Manager has the power under clause 3.5 of the lease to treat the whole or part of any insufficiency as if it were an expense falling within Part I
The following summary of permitted expenditure may be helpful:

Part I	**Part II**
Current Service Charge	**Sinking Fund**
Repair and maintenance of the Estate	Renewal/replacement of every part of the Estate
Cleaning & lighting of the Estate	Renewal of accessway
Insurance	Inherent defects
Cost of communal facilities	Care manager
Rates & taxes	Interest
Fees of professionals	Management costs
VAT	
Reserve fund	
Interest	

63. Schedule 6 to this Decision sets out a list of summary of the certificates of the sinking fund signed off on behalf of the Respondents. The certificates themselves are at [R1 p211 – 215]. The accumulated debit balance stood at £199,373.76. Part way through the hearing the Respondents withdrew a number of debit entries; they are highlighted in yellow on Schedule 6. We were told that the Respondents did not now seek to recover those sums whether from the sinking fund or from the current service charge. In effect they were abandoned for all purposes and for all time.
Schedule 6A shows the withdrawn items removed and the consequent accumulated debit balance reduced to £173,576.26.

64. The principle case for the Respondents was that the payments into the sinking fund were not service charges within the meaning of section 18 of

the 1985 Act. We agree. Mr Davies also submitted that the payments into the sinking fund were not variable administration charges within the meaning of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 because they are payable pursuant to a clear formula set out in the lease. We agree. Mr Davies submitted that the Tribunal did not have jurisdiction to deal with issues concerned with the sinking fund because the payments into it were neither service charges nor administration charges. On that we disagree.

65. Mr Davies submitted that if we were against him on his principle submission MCL's case was that sums debited to it were sums permitted to be debited pursuant to the terms of the lease and were reasonably incurred and are reasonable in amount. The sums in issue are those relating to:

Management;
Depreciation; and
Uncharged Care Hours

66. We should add that Mr Stevens told us that the income of £38,728.92 in the 2010 certificate was based on an assessment carried out by Mr Kirk as to what was received or would be receivable arising from Chargeable Occasions which he considered had occurred. An obligation to make a contribution to the sinking fund arises whenever a 'Chargeable Occasion' arises. In essence that can arise upon an assignment of the lease or other disposal or when an Approved Occupier ceases to occupy the demised premises. The lease provides that in the event of a dispute as to whether an Approved Occupier has ceased to occupy the decision of the Manager shall be final and binding.

67. When a Chargeable Occasion arises which is not an arms' length assignment at the market rate, Mr Kirk has to make an assessment of the market value of the property to ascertain the disposal price so that the 3% payable and the 1% for each year of ownership payable can be calculated. We were told that events occurred during the year in question that, in Mr Kirk's view, triggered obligations on certain tenants to contribute a total of £38,728.92 into the sinking fund. Mr Stevens said it was acceptable accounting practice to include these sums even though they were, in some cases, estimates and even though not all of the monies had not been received by or paid over to MCL.

68. We were not given any details of the events or transactions in issue or any indication as to how the sum of £38,728.92 had been arrived at or as to what sum, if any, had been paid to or received by MCL. In these circumstances we can make no findings or determination as to whether the credit entry on the certificate is correct, fair or reasonable. We will not do so. We would urge the Respondents to give to the Applicants a full and frank account of how the sum has been arrived at and as to how much of it has been received. If there were to be an issue over this a

further application may be necessary, but we very much hope that can be avoided.

69. We are thus limiting our determination as to whether we have jurisdiction in connection with the sinking fund and as to whether the sums debited to the sinking fund are service charges and, if so, whether the sums debited have been expended, were reasonably incurred, are reasonable in amount and are (in effect) payable by the Applicants.

70. First we shall have to construe the provisions of the sinking fund having regard to the words used and against the factual matrix which existed at the time. We have to give meaning to those words as a reasonable person would have understood them to be, such person having the knowledge available to the parties and circumstanced as the parties were at the time when the leases were granted. The Land Registry documents show that the leases were granted between June 2006 and January 2011, with 5 having been granted in 2006, 6 in 2007 2, in 2008 and 1 in 2011.

71. The principles of construction that we have to apply are now well-known. They are summarised in Part 2 of the Schedule to this Decision.

72. It is not unusual that the leases of some developments of sheltered housing or retirement accommodation provide for a sinking fund. Such a fund can be built up in number of different ways. Some schemes provide that some day to day running expenses and service charges are deferred to be paid out of the sinking fund rather than each year as they fall due. We can see the case that some elderly lessees may struggle on fixed incomes and find it difficult to pay full service charges as they fall due and that there is an advantage to them if some charges are deferred and paid from a sinking fund into which they make a contribution in due course when they dispose of their property. In our experience the structure of such schemes varies quite considerably.

73. Mrs Walmsley and Mr Stevens told us that this was the general thinking behind the sinking fund when the Kirk Mews development was set up. Mr Stevens said that at the outset there was no information available as to what the frequency of Chargeable Occasions might be, nor what the disposal prices might amount to and so no firm or reliable estimate could be made as what level of annual routine expenditure it might be possible to draw down from the sinking fund. Thus the scheme was designed to be flexible.

74. The Kirk Mews development comprises 14 self-contained bungalows constructed in or about 2006/7. They appear to have been constructed to an acceptable standard and they have the benefit of NHBC certificates which can be taken as an indication of a certain quality and standard. Each bungalow enables independent living and is fully equipped and fitted out, but such equipment is the responsibility of the individual lessee. Thus as regards the bungalows any substantial expenditure of

repair, replacement or renewal of plant and machinery is unlikely to arise. There is little in the way of external repair or redecoration that is likely to be necessary to any major extent to fall within the definition of permitted expenditure set out in the lease. Re-roofing may be required at some future time but that is probably some 50+ years away.

75. There are no lifts, communal boilers or other plant and machinery which might wear out over time and require renewal or replacement. Evidently the kitchen in the Day Centre is little used and the equipment in it is relatively modest but robust. If a new dishwasher, washing machine, fridge, furniture or carpets or similar equipment is required the cost is likely to be modest in the overall scheme of things. If not paid for from the current service charge or any reserve fund set up within that scheme any future call on the sinking fund will probably be modest and some years away.

The sinking fund can also be utilised to defray the cost of renewing or replacing the accessway coloured brown on Plan 2 but this is not a large area and any costs incurred on it are not, in our view, likely to be significant.

76. Adopting the test we are required to apply on the construction of the lease it seems to us that when the leases were granted the parties did not anticipate that that debits would be drawn on the sinking fund for major works of repair or renewal or replacement of plant, equipment or buildings for some good many years. Thus if a reasonable balance were built up there might well be scope to draw down from the sinking fund sums to cover the cost of the Care Manager as provided in paragraph 1 of Part II of Schedule 3 and fees and disbursements of the Manager properly falling within paragraph 3 of that Part of the Schedule. Further the expectation of the parties was that, in the early years, most if not the bulk of the sums drawn from the sinking would be to cover day to day expenditure which might otherwise be payable under Part 1 of Schedule 4 as the current service charge.

77. It is perhaps curious that the sinking fund has been operated at a substantial deficit for over five years. We were not told the policy or strategic reason for this. Generally, in our experience, the concept of a sinking fund is that usually it will have a credit balance. However, paragraph 1 of Part II of Schedule 3 includes as an allowable expense interest paid on money borrowed to defray costs and expenses and this suggests that the parties anticipated that it might be necessary to borrow money and hence there the fund might have a negative balance. Further clause 3.5 of the lease makes express provision for what might happen in the event of an insufficiency in the sinking fund. Thus an insufficiency in the fund was in contemplation of the parties when the leases were granted.

78. We have considered carefully the rival submissions as to whether the expenses debited to the sinking fund are service charges within the

meaning of section 18 of the 1985 Act. That section includes as a service charge a sum which is *"payable, directly or indirectly, for services, repairs ..."*.

79. There was a debate with Mr Davies as to the nature of the sinking fund and whether it was subject to the trust provisions of section 42 of the 1987 Act. We accept Mr Davies submission that the funds paid into the sinking are not paid in as service charges. However once paid in they can plainly be used to defray service charges payable by the tenants. Indeed, as we have found the intention of the parties was that subject to the fund being in surplus sums would be paid out to defray service charge expenditure. It is perhaps a moot point.

80. We conclude that on any view MCL holds the proceeds of the sinking fund as trustee for the tenants and may only draw from it sums permitted by the terms of the lease. The sinking fund is thus a trust fund. The fourteen tenants of the bungalows are the beneficiaries of the trust. When Chargeable Occasions arise they trigger an obligation on a party to make a contribution into the sinking fund. Thus where there is a credit balance on the account it can be said that each of the fourteen tenants has a one fourteenth share of the fund. If expenses are defrayed from the fund each tenants' share of the fund is diminished pro rata. They suffer a lessening of their share of the fund. Where the sum is withdrawn from the fund to defray the cost of a service, that loss is directly related to the cost of a service charge item of expenditure payable by the tenant. Thus the tenant thereby effects payment of an amount payable for the cost of services. It comes to the same thing if a tenants' liability to pay an amount for the cost of service charge is discharged by way of a direct payment by the tenant, or by way of a transfer from or debit to the tenant's share of a trust fund. Either way, the tenant bears the burden of the expense and he pays it.

81. Thus where sums are debited to the sinking fund to pay for a service charge item of expense the tenants have contributed, in our view, both directly and, in a sense, indirectly to the cost of that service charge item in question.

82. The same logic can be applied even where the sinking fund has a negative value. As time goes on inevitably more Chargeable Occasions will arise and contributions will be made into the sinking fund.
Eventually it will come into credit. Of course that credit would have been greater had the debits not been made and the amount of the lessee's share would have been correspondingly greater.
Accordingly, in our view whether the fund is in debit or in credit all and every payment out of the fund is a payment made by the tenant.

83. Thus we conclude that the three items of expenditure in issue are service charges within the meaning of sections 18 and 27A of the 1985 Act such that we have jurisdiction to consider whether, and to what extent, they are payable by the Applicants.

84. We are reinforced in this conclusion by the evidence given on behalf of the Respondents to the effect that the sinking fund was set up and intended to act as a means whereby service charges accruing due are deferred to be paid by way of drawdowns from the sinking fund.

85. Having made this finding we go on to consider each of the three items of expenditure in issue.

Management charge

86. In most years this has been charged at £30,000. Mr Stevens told us that this was intended to reflect MCL's management costs in providing the services and its profit in doing so. Evidently at the outset Mr Kirk and Mr Stevens had no estimate of what the management charge might amount to. The view was taken that staff wages might amount to £30,000 per year and a mark up of 100% would be about right to reflect costs of management, contribution to overheads and profit.

87. Mr Stevens was unable to explain why the full £30,000 was charged in year 1 when that was not a full year and he was unable to explain the reduction to £25,000 in 2009.

88. We were not told what the actual staff wages bill was for any of the years in issue. We were not given any other information or evidence by MCL to justify the assertion that the sums claimed do in fact reflect a 100% mark up of wages costs and/or do reflect a reasonable cost of management.

89. From what we can make out from the imperfect accounts provided is that the wages bill for the Care Manager and, in later years, her deputy have been debited in full to the current service charge account as Care administration. No allocation has been made to allow that a proportion of the time of those persons will be spent on providing care charged for at market rates under Schedule 8. There is no reference in the accounts that we can see that relates to staff wages of the other carers employed. It may be because such costs are covered by Care Charges levied under Schedule 8.

90. We have concluded that the reasonable costs of delivering the estate management service and the responsive care service amount to no more than £15,000 per year and that such sum is a commercial rate fully inclusive of all supervision, management, contribution to overheads and profit such that no additional charge for management or contribution to profits is reasonable.

91. We therefore decide that none of the management charges claimed are properly to be debited to the sinking fund.

Depreciation

92. Clause 3.4 of the lease provides that the purpose of the sinking fund contribution is *"to provide a sinking fund for depreciation and the costs*

and anticipated costs of repair and renewal of the lifts (if any) and the plant within the Estate and upgrading and improving the Estate..."
There are no lifts and there is no significant plant to speak of. Such plant and equipment as there is, is modest and any replacement or renewal costs are likely to be relatively small, e.g. the cost of buying a new washing a machine or dishwasher, even if of industrial grade or size. It is therefore difficult to envisage what plant or equipment might be properly subject to a depreciation provision.

93. Depreciation is a well-known accounting technique or practice. It is intended to reflect the reduction in value of a fixed asset due to its use in the business or due to obsolescence. In the business context an amount for depreciation is often deducted from gross profit as part of the exercise to calculate net profit. In determining the net profits of an activity the receipts of that activity must be reduced by the appropriate costs incurred. One such cost is the cost of the use of the assets used or deployed but not wholly consumed in the activity. Such costs of use are usually allocated to the period of use. The cost of an asset so allocated is the difference between the amount paid for the asset and the amount expected to be received (if any) upon its disposition. Depreciation is the means by which net cost of the use of an asset is allocated to those periods expected to benefit from the use of it. Depreciation is a method of allocation, not valuation. There are several different methods of depreciation, the straight-line method being a common and simple one. In essence in business accounts depreciation is used to write off the value of assets over a period of time, but it has no other purpose or effect. As Mr Stevens told us depreciation is also not relevant to tax accounts.

94. The sinking fund is not a business account or a profit and loss account. We find there is no valid reason why the sinking fund should bear a debit to reflect depreciation. It is not necessary that the sinking fund should reflect that some plant and equipment has been used during the accounting period, or indeed that some plant and equipment might have lessened in value during that period. There might arguably be an exception as regards the minibus and we shall deal with that shortly.

95. Under the scheme for the sinking fund as set out in the lease, as and when plant and equipment is required to be renewed or replaced it will be simply be purchased by drawing down the purchase price from the sinking fund and paying the price over to the supplier. There will be a debit entry in the sinking to reflect the payment so made.

96. For every debit there must be a corresponding credit. If a sum for depreciation is debited to the sinking fund it will have to be credited to an account or paid over to someone. If money is taken out of an account it must be paid over to someone, it cannot just vanish. Thus if depreciation is debited to a sinking to whom is it paid? This point was debated with Mr Davies during the course of submissions. He was

unable to tell us to whom the sum for depreciation should be paid over if it was debited to the sinking fund and the reasons why.

97. Schedule 6 shows that over a five year period £20,725.68 has been debited to the sinking fund in respect of depreciation. We do not know to whom that sum has been paid or why.
The Respondents have not adduced any evidence to show what plant and/or equipment has been depreciated or why. No supporting calculations have been provided. The method of depreciation deployed has not been explained.
In his evidence Mr Stevens said that he thought that several items of plant had been depreciated, the largest being the minibus but he was not able to give us any details or any figures at all.

98. There is something of a mystery surrounding the minibus. Paragraph 6 of Part 1 of Schedule 3 includes as a permissible item of current service charge expenditure expenses incurred by the Manager in respect of any minibus transport facilities provided to the Tenant by the Manager. Part II of that Schedule which is concerned with the sinking fund does not mention the minibus in express terms at all.

99. No evidence was adduced by the Respondents as to the circumstances of the acquisition of the minibus. There is no evidence as to when it was purchased or by whom or at what cost. There appeared to be a general understanding by those present at the hearing that the minibus was purchased by MCL. The cost of purchase has not been debited to the Kirk Mews service charge account or sinking fund. Some running expenses have been debited to the current service charge account e.g. insurance in 2007/8 and motor expenses of £690.88 in 2009/10. These have been agreed by the Applicants for expediency. In 2010/11 the Respondents sought to debit from the sinking fund £32.87 for motor expenses and £1,084 loss on the disposal of the minibus. Both of the latter two debits have subsequently been withdrawn.

100. What little evidence there is available to us suggests to us that an ad hoc minibus service was to be made available to the residents of Kirk Mews by arrangement with care staff, see e.g. the flyer at [R3 p183] which says, amongst other things:

> *"**Transport***
>
> *A Wheelchair accessible vehicle is available, by arrangement with care staff, for visits to hospitals doctors and shopping. Mansion House Residential Home has outings and functions, which will be available to residents subject to availability."*

We infer that the minibus was owned by MCL as part of its wider business activities and was used by Mr Kirk and MCL in connection

with those businesses. We infer that when the minibus was used for the benefit of a Kirk Mews resident an internal expense for that particular and specific use was debited to the Kirk Mews current service charge account, much in the same way that a taxi fare or mileage charge might be imposed. Such fare or charge would usually include a contribution to the running costs of the vehicle and the time of the driver. We can see no justification for the whole of the costs incurred on the running of the minibus to be charged to the Kirk Mews service charge account.

101. In the event it appears that there was not much take up of the use of the minibus service offered to the residents of Kirk Mews. The Respondents took the decision to dispose of the minibus. We were not told the reasons for that decision or the circumstances of the disposal. MCL has conceded that the debit in the sinking fund to reflect the loss on the sale of the minibus should be withdrawn. On a related point we have also disallowed the cost of legal advice on the sale of the minibus which was charged to the current service charge account.

102. In the light of the foregoing we find that the sums for depreciation debited to the sinking fund have not been expended and, if, which we doubt, they have been incurred, they have not been reasonably incurred.
There is nothing in the evidence before us to suggest that the minibus was owned by the Kirk Mews service current charge account, such that it should bear all or any loss or diminution in the value of the minibus.

103. We find that in principle depreciation is not at item of expense properly debited to the sinking fund. Depreciation is an accounting technique properly used to ascertain net profit for a business venture. We can see that if the minibus was owned by MCL, that company might well have included depreciation in its corporate business accounts but we find it is not appropriate to allocate that depreciation charge as a debit to either the current service charge account or the sinking fund as if it were an expense incurred.

104. Further and in any event the Respondents have failed to produce any evidence to support or justify the substantial debits it has made in respect of any of the depreciation sums, and its claim fails on that ground alone.

Uncharged Care Hours

105. We were told that the sums debited for Uncharged Care Hours represents the difference between the 8,760 hours available in a 365 day year and the total number of Care Hours charged out to tenants under Schedule 8.

106. The Respondents did not provide any evidence of or explanation as to what Care Hours were charged in each year or the rate at which they were charged. Equally they did not provide any evidence as to the

number of Uncharged Care Hours allocated to each year or the rate at which they were charged.

107. We have simply been given the amount allocated to Uncharged Care Hours in each of the three years in which debits have been made. We have to take this information with caution because we note that the precise same sum of £15,421.25 had been debited in both of the years 2008/9 and 2009/10. Of course this may be just a coincidence, but in the light of our findings that the bookkeeping and accounting accuracy of the Respondents is very far from good, we rather doubt that a such a coincidence has in fact occurred.

108. The justification for the debiting Uncharged Care Hours to the sinking fund was said to be that MCL are obliged to have care staff on duty 24/7 and someone has to bear the cost of the Care Hours not invoiced to the individual users of the service. We reject this argument. We find there is a difference between the provision of a responsive care service which we have described above and the provision of the close care service available on 'an as needed' basis and paid for under Schedule 8. We find from the nature of the service on offer as described in the sales materials and as set out in the lease is that the close care is only to be paid for by the tenant as and when needed. We find it was not the expectation that the cost of such service would be passed through the service charge or debited from the tenant's share of the sinking fund whether used or needed or not.

109. We thus find that the sums said to represent Uncharged Care Hours is not an expense incurred, and certainly not reasonably incurred such that MCL can legitimately debit the sinking fund with such sums.

The section 20C Application – limitation of landlord's costs of the proceedings

110. An application was made under s20C of the 1985 Act with regard to the Manager's costs incurred or to be incurred in connection with these proceedings and an order is sought that those costs ought not to be regarded as relevant costs in determining the amount of any service charges payable by the Applicants.

111. The gist of the case submitted by Mr Kent was that he and his association had made efforts to obtain details of the service charge accounts for 2010/11 and the sinking fund but had been thwarted on the direction of Mr Kirk. Eventually, and through Mr Kirk's solicitors some accounts were provided albeit much later than the six months recommended in the Code. The accounts threw up so many anomalies that Mr Kent was alerted to delve into prior years accounts. Having done so he identified so many errors that he raised a number of questions. Mr Kirk and his advisers failed to deal with his enquiries properly that the Applicants were forced to bring the applications to try and get matters sorted out. Having done so, MCL has made numerous

concessions during the course of the proceedings and the hearing which would not have been made otherwise.

112. The application was opposed. Mr Davies submitted that the lease permitted the recovery of such sums through the current service charge under paragraph 6 of Part I of Schedule 3. He submitted that the proceedings were to do with the proper determination of the amounts of service charges payable and thus came within the expression *"in and about the maintenance and proper and convenient management and running of the Estate..."*. That may be a moot point. There may be arguments about whether legal costs in seeking to defend what we have found to be poorly kept and inept service charge accounts are clearly and unambiguously embraced within the wording relied upon. As it is we do not have to decide that point.

113. Mr Davies also submitted that full and comprehensive supporting documents had been provided to Mr Kent such that it enabled him to make the detailed challenges he has.

114. Mr Davies submitted that the lease enables MCL to put its costs of these proceedings through the service charge and that it is just and equitable that it be allowed to do so.

115. We have no hesitation in preferring the submissions of Mr Kent. The overwhelming evidence is that the service accounts and certificates were wholly inaccurate and unreliable. Efforts by Mr Kent to resolve matters were rebuffed. The Applicants brought the application to get matters resolved. Numerous concessions were made by MCL because many entries in the accounts were untenable as drawn. Whilst the Applicants have not succeeded on every issue raised they have succeeded on many, probably most. In these circumstances it would be wholly unfair, unjust and inequitable for the Respondents to be allowed to put their costs of the proceedings through the service charge. We have therefore made an order prohibiting them from doing so. For avoidance of doubt the order we have made shall apply equally to any costs which the Respondents might incur in connection with the settling of the cash accounts mentioned in paragraphs 123 to 125 below.

Reimbursement of Fees

116. An application was made for the reimbursement of fees of £500 paid in connection with these proceedings.

117. The gist of the submissions by Mr Kent were much the same as those in relation to the section 20C application.

118. The application was opposed by Mr Davies. The gist of his submissions were much the same as above

119. Again we preferred the submissions of Mr Kent for the reasons given above.

120. We have therefore required MCL to reimburse the fees of £500.

Next Steps

121. We have decided the amounts payable some of which are current service charges and some of which fall within Part II of Schedule 3 and may be debited to the sinking fund. MCL took the view that it would debit the Care Managers costs (which are Part II costs) to the current service charge as if they were Part I costs due to the insufficiency in the sinking fund. We find they were quite entitled to do that. For ease of reference we have similarly entered the costs attributable to the provision of the estate management service and to the provision of the responsive care service to the current service charge account under the heading 'Care Adminsiration'. It is however open to MCL to allocate some of those costs to the sinking fund instead should it so wish. Of course if it does so it will not be able to recover such allocated sum under Part I.

122. Thus the first step is for MCL to decide what portion (if any) of the Part I current service charges we have found to be payable should be transferred to the sinking fund.

123. When that has been done, in the light of our findings, MCL will require to adjustment the individual cash accounts of each of the Applicants as regards their own bungalow. What is required is to aggregate the current service charges payable by tenant for each of the years in issue as determined by the Tribunal and set out in paragraph 60 above and then to credit against that sum the aggregate of the sums paid actually paid on account by the tenant in respect of those years. The resulting debit or credit figure should provide an opening balance for the year 2011/12. We suggest that the adjusted cash accounts in this format are produced by MCL and given to the Applicants by Friday 16 November 2012.

124. The preparation of the adjusted reconciliation accounts should simply be a matter of arithmetic. We hope the parties, acting reasonably, will be able agree the arithmetic fairly promptly. If they cannot do so we shall settle the cash accounts.

125. If the parties cannot agree the individual cash accounts the following directions shall apply:

    125.1 Any application to the Tribunal to settle the cash accounts shall be made no later than by **5pm Friday 7 December 2012**. The application shall be accompanied by a summary of the matters in dispute, the position contended for by the applicant and the

position contended for by the opposite party to the application. The application shall be copied to the opposite party at the same time as it is sent to the Tribunal.

125.2 The opposite party to the application shall by **5pm Friday 21 December 2012** file with the Tribunal and serve on the applicant a statement of case in answer setting out his, her or its position as the case may be.

125.3 Further directions will then be given appropriate to the nature and extent of the dispute between the parties.

126. If no application to settle the cash accounts is made by the time and date specified above it will be assumed that the cash accounts are agreed and that the Tribunal has discharged all of its functions under the substantive application pursuant to section 27A of the 1985 Act such that it no longer has any jurisdiction on that application.

Applications for permission to appeal

127. Notwithstanding that cash accounts may still require to be settled, this Decision is intended to be a substantive decision recording the reasons for our decision on the application made pursuant section 27A of the 1985 Act, for the purposes of Regulation 18 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. Accordingly as provided for in Regulation 20 any application for permission to appeal this Decision shall be made within the period of 21 days starting with the date on which this Decision was sent to the parties.

.....
John Hewitt
Chairman
23 October 2012

The Schedule - The Relevant Law

Part 1
Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

Section 19(1) of the Act provides that 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 of works, only if the services are of a reasonable standard;
and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise.

Reasonableness: The application of the test:

The application of the test was helpfully explained by HHJ Karen Walden-Smith in *Havering LBC v Macdonald* [2012] UKUT 154 LC (17 May 2012) and may be summarised as follows:

1. It is by virtue of the provisions of section 27A of the Landlord and Tenant Act 1987 (inserted by the Commonhold and Leasehold Reform Act 2002) that an application may be made to the LVT for a determination whether a service charge is payable and, if it is, as to the amount which is payable.

2. As is consistent with other decisions as to what is meant by "reasonableness", in determining the reasonableness of a service charge the LVT has to take into account all relevant circumstances as they exist at the date of the hearing in a broad, common sense way giving weight as the LVT thinks right to the various factors in the situation in order to determine whether a charge is reasonable. The test is "whether the service charge that was made was a reasonable one; not whether there were other possible ways of charging that might have been thought better or more reasonable. There may be several different ways of dealing with a particular problem. All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT may have its own view. If the choice had been left to the LVT it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable" per His Honour Judge Mole QC in *Regent Management v Jones* [2010] UKUT 369 (LC).

3. Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available: see *Yorkbrook Investments Ltd v Batten* (1986) 19 HLR 25 (as applied in *Schilling v Canary Riverside Development PTD Limited* LRX/26/2005 and *Regent Management Limited* (supra).

Section 20C(1) of the Act provides that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Section 20C(3) of the Act provides that the tribunal may make such order on the application as it considers just and equitable in the circumstances.

Section 27A of the Act provides that 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.

Section 27A(3) of the Act provides that an application may be made to a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9(1) provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

Part 2

The Construction of Leases

1. The definitive modern approach comes from Lord Hoffman in *Investors' Compensation Scheme Limited v. West Bromwich Building Society* [1998] 1 WLR 896, 912H - 913F in which he set out the modern rules of interpretation.

'***The principles may be summarised as follows:***

(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

(2) The background was famously referred to by Lord Wilberforce as the 'matrix of fact', but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and subject to the exception to be mentioned next, includes absolutely anything which could have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their subjective intent. They are inadmissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: See Mannai Investments Co. Ltd v. Eagle Star Life Assurance Co. Ltd. [1997] A C 749.

(5) The rule that words should be given their 'natural and ordinary meaning' reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes,

particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had...'

2. The principles were re-stated in the recent Supreme Court judgment in *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50; [2011] 1 WLR 2900, which may be summarised as follows:

   The court is required to determine what the parties meant by the language used and that involved ascertaining what a reasonable person would have understood the parties to have meant, that the relevant person for the purpose was one who had all the background knowledge which would have reasonably been available to the parties in the situation which they were in at the time of the contract; where the parties had used unambiguous language the court had to apply it; but it was not necessary to conclude that unless the most natural meaning of the words produced a result so extreme as to suggest that it was unintended, the court had to give effect of the meaning; but the court had to have regard to all relevant surrounding circumstances and if there were two possible constructions the court was entitled to prefer the construction which was consistent with business common sense and to reject the other.; that it was not necessary to conclude a particular construction would that it was not necessary to conclude that a particular construction would [produce] an absurd or irrational result before having regard to [the] commercial purpose of the agreement.

3. Where words or provisions are included in an instrument it is to be inferred that the parties intended to include them and that it was intended they should have some meaning. The golden rule is that the words of a contract should be interpreted in their grammatical and ordinary sense in context, except to the extent that some modification is necessary in order to avoid absurdity, inconsistency or repugnancy.

4. Sometimes as part of the process of construction of a document it is necessary to imply a term or terms into it. In order for a term to be implied the following conditions must be fulfilled:

   1. the term must be reasonable;
   2. the term must be necessary to give business efficacy to the contract so that no term will be implied if the contract is effective without it;
   3. the term must be so obvious that it goes without saying;
   4. the term must be capable of clear expression;
   5. the term must not contradict any express term of the contract.

A clear statement of the criteria was set out in *B.P. Refinery (Westernport) Pty Ltd v Shire of Hastings* [1978] 52 ALJR 20.

5. However, in the context of residential leases a more restrictive approach is generally taken. See *Woodtrek v Jezek* [1982] 1 EGLR 45. Similarly sweeping up clauses tend to be restrictively construed. See *Jacob Isbicki & Co Ltd v Goulding & Bird Ltd* [1989] 1 EGLR 236. An entitlement to recover interest on money borrowed to fund the cost of services will not be implied. See *Boldmark Limited v Cohen* [1986] 1 EGLR 47.

1	2	3	4	5	6	7
2006/7						
Item	Sum claimed	A's comments (in brief) and proposed sum	R's comments (in brief)	Agreed by As Y/N	LVT Determination	LVT Comments
Care Administration	£ 7,279.46	Care Manager salary.		N	£ 12,500.00	See para [] of Decision
		Should be paid from sinking fund. Lease schedule 3 part 2.1	i) under Schedule 3 the allocation of expenses between Part I and II is at the sole determination of the Manager. Part I para 6 allows all other expenses incurred in proper and convenient management of the Estate as a service charge expense. Part II para 1 provides for costs to be recovered from sinking fund to the extent not recovered from service charge.			
			ii) Under clause 3.5 of the lease the Manager may transfer the whole or part of any sinking fund insufficieny to the service charge. The sinking fund is and has always been in deficit			
		(Any cost to service charge should be	iii) Denied that £5000 constitutes market rate and in particular to the extent that A relies on Blocnet it is denied that is a like for like comparison. Mrs Walmsley managed the service from opening in June 2006 incorporating the probationary period for the manager = £11,838 which has not been charged. To minimize the service charge this cost was omitted.			
		capped at market rate of £5000).				
Community Bdg Utilities	£ 5,421.12	R has agreed to remove £2254 invalid	Agreed refund of £2,277.90	N	£ 1,405.00	
		charge on empty bungalows.				Inadequate supporting invoices and explanations from Rs. Adjustments to electricity claims required prefer A's approach but can only be made on a broad brush approach.
		R agreed rates £23.90 invalid.	Nearly impossible			
		Electricity for 1 Kirk Mews over-	to estimate time equipment used.			
		charged due to Mansion House	R decided to use yearly comparison.			
		connection. Should be typically £1200.	System corrected 17.10.11 & figures			
		Gas invoices total £209.90.	available post 16.10.12. Additional			
		Proposed sum £1405.	refund to be agreed after this date			
Insurance	£ 1,329.83	Policy document still not	Insurance refer to Section 27A	N	£ 1,329.83	Not in dispute
		provided to allow review of cover	Page 22 item 3 and page 36-37			
		or costs.	This is a bulk policy.			

Site maintenance etc	£ 7,843.54	R agreed Travis P overcharged by £66.	Refer to Section 27A	N	£ 1,750.00	
		R agreed MPE £71.09 invalid.	page 22 (iii) - £510 to be transferred to sinking fund			Development in early phase and not all bungalows sold. Most issues arising should have been dealt with by the Developer under snagging. Repairs and maintenance should have been minimal. The supporting documents relied upon by Rs are inadequate and many sums claimed appear to be developer's costs, including the new fencing it had decided to erect. Unreasonable to have incurred more than £1,750 on this item
		Remove MPE £734 cap ex invoice	page 22 (vi) £66.10 refund agreed for Mansion House use of rock salt			
		page 236 to sinking fund.	page 23 (viii) £199.00 refund decking for one bungalow only			
		From miscellaneous costs of £1074	page 24 (xv) £71.09			
		this leaves £203.	page 25 (xxvii) £30.34			
			total - £876.53			
			page 25 (xxv) undercharged £62.68			
			refund = £813.85			
		Balance is huge labour and material	proposed sum = £7843.54-£813.85			
		costs totalling £6769, many invoiced	total - £7,029.69			
		to Mansion House and split 50/50				
		with Kirk Mews service charge without	Page 23 (xi)-(xiii) - fencing works - individual invoices minor and accounting policy not to charge such items to balance sheet. Further Clause 3.4 of lease allows			
		any reasoning. R has conceded some	manager to charge capital costs to service charge if insufficiency of sinking fund			
		refunds are necessary. It is evident	Page 23 (xx)-(xxix) handyman invoices			
		that there was a large amount of	split by manager at time between			
		work undertaken to erect fencing & to	Kirk Mews and Mansion House			
		complete the development. This is not				
		service charge maintenance work.				
		Labour cost of £1377 in the next year				
		is more reallstic cost for true				
		maintenance work.				
		Proposed sum £1580.				
Accountancy	£ 587.50	Agreed.		Y	£ 587.50	Not in dispute
Total	**£ 22,461.45**				**£ 17,572.33**	

1	2	3	4	5	6	7
2007/8						
Item	Sum claimed	A's comments (in brief) and proposed sum	R's comments (in brief)	Agreed by As Y/N	LVT Determination	LVT Comments
Care Administration	£ 11,527.45	Care Manager salary.	See comments on Schedule 1	N	£ 15,000.00	See para [] of Decision
		Unreasonable 58% increase of	In addition it is noted that no increase			
		£4279 from previous year.	In market rate is proposed on 2007			
		Should be paid from sinking				
		fund. Lease schedule 3 part 2.1 .	In 2007/8 a manager was at the site for			
		(Any cost to service charge should be	the whole of the year whereas in 2006/7 Mrs Walmsley undertook the management role prior to a manager being appointed.			
		capped at market rate of £5000).				
Rates	£ 871.53	Agreed		Y	£ 871.53	Not in dispute
Insurance	£ 2,316.27	Policy document / renewal	Refer to Section 27A page 22 item 3	N	£ 2,316.27	Not in dispute
		schedule still not provided to	Motor Insurance schedule file 5 p.321 Minibus was available at all times			
		permit review of cover or cost.	for the residents. This part of cost of providing that facility. When Mansion House uses it is charged			
		Motor Insurance of £740 should be split	Mr Kirks's recollection is that on one			
		50/50 as there are no contributions to	occasion he was collected from			
		Motor Expenses this year from Mansion	hospital after complicated surgery			
		House or Mr Kirk for his personal use,	which he believes would have been			
		to airport, etc.	paid for. He cannot recollect using			
			minibus on any other occasions but number of airport trips			
			is very small.			

Heat and Light	£ 3,743.59	Electricity for 1 Kirk Mews over-	See Schedule 1	N	£ 1,423.00	
		charged due to Mansion House connection. Should be typically £1200. Gas invoices total £223.33. Proposed sum £1423.	At hearing R proposed £2,863.46.			An adjustment for the connection to MH is required. Given the lighting arrangements and usage at Kirk Mews we prefer the approach adopted by A's is the more realistic and is to be preferred; it strikes a chord with the Tribunal.
Site maintenance etc	£ 2,933.84	R agreed invoice SC13 p329 overcharged by £198. Proposed sum £2735.	Agreed	Y	£ 2,735.00	Not in dispute
Accountancy	£ 587.50	Agreed.	Agreed	Y	£ 587.50	Not in dispute
Telephone	£ 807.57	Agreed for expediency.	Agreed	Y	£ 807.57	Not in dispute
Motor Expenses	£ 177.50	Agreed.	Agreed	Y	£ 177.50	Not in dispute
Legal & Professional	£ 869.40	Unable to agree, documentation still not supplied.	Page 21 Item 8 - mandatory registration fee for providing the care facility	N	£ -	No supporting documentation provided. The Schedule 8 Care Charges are levied at full market rate and it is reasonable to infer that all and any necessary professional memberships costs have been factored in. No separate charge is justified or reasonable. Further, and in any event the memberships which span the various MCL businesses should be apportioned in an appropriate manner

Bank Charges	£ 608.50	No documentation, twice the cost of most other years.	Charges £608.50 these have been audited and agreed by TVM	Y	£ 608.50	Not in dispute. We note that As do not now dispute the sum claimed which we find to be a generous gesture given that Rs have not provided any explanation or supporting documents.
		Proposed sum £300.				
Total	**£ 24,443.15**				**£ 24,526.87**	

1	2	3	4	5	6	7
2008/9						
Item	**Sum claimed**	**A's comments (in brief) and proposed sum**	**R's comments (in brief)**	**Agreed by As Y/N**	**LVT Determination**	**LVT Comments**
Care Administration	£ 9,485.70	Care Manager salary.	See Schedule 1	N	£ 15,000.00	As before
		Should be paid from sinking	It is again noted that no increase in			
		fund. Lease schedule 3 part 2.1	market rate proposed from 2007			
		(Any cost to service charge should be				
		capped at market rate of £5000).				
Rates	£ 962.74	Mansion Care Agency has not	Section 27A refer to page 12 Item 2	N	£ 842.74	Agreed by parties at the hearing
		contributed to 1 Kirk Mews over-	Care out in the Community commenced only part way through the year. It is run from the			
		heads. Should be shared 50/50.	office in the communal building.			
		Proposed sum £482.	It is not a full time activity. See comments next to insurance below. Proposed reduction £120			
Insurance	£ 1,575.00	Policy document / renewal	Community activity for 6 months	N	£ 1,378.13	Agreed by parties at the hearing
		schedule still not provided to	agreed as 12 1/2% Refund as agreed			
		permit review of cover or cost.	as page 2 i.e. 25% for full year			
		R's file p2 indicates refund verification	Refund of £196.87			
		required.	NB. Only 2/3 community clients at			
			this time - proposed sum £1378.13			
Heat and Light	£ 4,537.21	Mansion Care Agency has not	Page 13 Item 4	N	£ 1,254.00	
		contributed.	Refund agreed £8.49			As before, prefer A's approach
		Electricity for 1 Kirk Mews over-				
		charged due to Mansion House	See comments on Schedule 1			
		connection. Should be typically £1300.				
		Gas original invoices total £1208.				
		Elec & gas should be shared 50/50	First Community Care client 22/9/08 - numbers very low in first year. No split required.			
		with Mansion Care Agency.	£3,696.42 proposed by R at the hearing			
		Proposed sum £1254.				

Site maintenance etc	£ 4,989.40	No documentation for several entries.	Refer to page 13 Item 5		£ 4,959.20	
		Mansion Care Agency should	(i) refund agreed £21.76			Not in dispute. In the light of Inadequate supporting documents, As agreement is generous to the Rs
		share cost of cleaning 1 Kirk	(ix) refund agreed £8.44			
		Mews.	any shared cleaning de minimis			
		Proposed sum £4400.				
			proposed sum = £4,959.20	Y		
Accountancy	£ 850.00	Inadequate documentation.	Invoice at R's s.27A bundle p.80	Y	£ 850.00	Not in dispute
		Previous year £587.	invoice split between Mansion House			
		Following year £600.	and Mansion Care on reasonable basis.			
		Proposed sum £600.				
Telephone	£ 792.92	R has offered numerous refunds.	Page 15 Item 7 (i) - (vii) refunds proposed for split use with Community		£ 638.40	Not in dispute
		Proposed sum £600.	proposed refund - £154.52			
			proposed sum - £638.40	Y		
Motor Expenses	£ 1,454.75	Much higher than any other year.	Refer to Section 27A page 22 item 3	N	£ 1,000.00	
		No contribution from Mansion	and Schedule 2			No adequate explanation By Rs that costs reasonably incurred or the extent of personal use by Mr Kirk. As proposed sum is reasonable.
		House, or Mr Kirk for his personal use	Motor expenses will obviously vary with			
		to airport, etc	use which is not constant from year			
		Proposed sum £1000.	to year			

Legal & Professional	£ 1,571.50	R has offered refund of £362 due	Page 16 item 9	N	£ -	
		to error in prepayment.	Proposed sum - £1208.90			These again relate to professional memberships. Our comments in respect of prior years hold good for this year. Again, even if the CSCI registration fee were a proper service charge item it should be apportioned across the MCL businesses.
		UKHCA £339 is invalid.	Refund of £362.60 on account of error in calculating prepayment			
		CSCI balance of £870 should be 50/50	UKHCA membership is an industry norm - inv at invoices bundle p.388 - helps maintain CQC compliance			
		with MCA and charged to sinking fund.	CSCI invoice at p.389 of invoice bundle			
		Proposed sum £0.	See comments on Schedule 1 re: Managers choice as to charging costs to sinking fund or service charge			
Bank Charges	£ 636.01	No documentation, twice the cost of	Page 16 item 11 - costs only incurred by Mansion Care and checked by auditors	Y	£ 636.01	Not in dispute
		most other years.				
		Proposed sum £300.				
Total	**£ 26,855.23**				**£ 26,558.48**	

1	2	3	4	5	6	7
2009/10						
Item	**Sum claimed**	**A's comments (in brief) and proposed sum**	**R's comments (in brief)**	**Agreed by As Y/N**	**LVT Determination**	**LVT Comments**
Care Administration	£ 9,962.60	Care Manager salary.	See Schedule 1	N	£ 15,000.00	As before
		New Deputy Care Manager	Manager originally employed for			
		included without consultation.	Kirk Mews only. Hours (and cost) reduced			
		Both should be paid from sinking	for Kirk Mews to incorporate care			
		fund. Lease schedule 3 part 2.1 .	in community - V. Guess employed			
		(Any cost to service charge should be	to make up shortfall			
		capped at market rate of £5000).	Again noted that no increase in market rate proposed on 2007			
Rates	£ 660.53	Manslon Care Agency made no	R's s.27A bundle Page 9 item 2 and supporting calc at p.81 - apportionment reflects office space and percentage use by Community Care	N	£ 578.03	As accepted Rs revised proposed sum
		contribution. Should be shared 50/50.	Refund proposed £33.40			
		Proposed sum £330.	Proposed sum - £627.13			
			£578.03 proposed at hearing			
Insurance	£ 1,582.29	Policy document / renewal	See Schedule 1	N	£ 1,186.71	Not in dispute
		schedule still not provided to				
		permit review of cover or cost.	Proposed sum - £1186.71			
		R's file p2 indicates refund verification				
		required.				

Heat and Light	£ 3,449.03	Invoices 9 p403 & 11 p405 have been	R's s.27A bundle Page 9 Item 4	N	£ 903.00	As before
		fabricated.	As to corrections for Mansion House connection see			
		Electricity for 1 Kirk Mews over-	earlier schedules.			
		charged due to Mansion House				
		connection. Should be typically £1300.	Invoices at p.403 and p.405 have not been fabricated			
		Gas original invoices 10 p404 & 12 p406	the November invoice was paid twice - firstly on the invoice and secondly on the reminder. When the February 2010 invoice was received the account balance was only £61.35 taking into the earlier double payment			
		total £507.54.				
		Elec & gas should be shared 50/50	Any split should be on same basis as other premises costs			
		with Mansion Care Agency.				
		Proposed sum £903.				
Site maintenance etc	£ 7,959.76	Cost of cleaning 1 Kirk Mews £1641	Page 9 Item 5	N	£ 5,700.00	
		almost double that of previous year,	Propose £77.20 refund on same basis as rates			Inadequate supporting documents. Apportionment of some sums with MCL is appropriate. We prefer As analysis
		no documentation, no contribution	cleaning costs previously charged at £4 per hour - increase to reflect reality			
		from Mansion Care Agency.				
		Labour cost of handyman £4169 is	Time sheets for handyman provided			
		twice previous year and not properly	labour costs will vary year on year			
		documented to verify.				
		MPE invoice £370.87 at p85 invalid,	MPE invoice clearly relates to both			
		predominantly Mansion House, is	Mansion House and Kirk Mews			
		annotated "Kirk Mews done as favour",	split is valid			
		cost of Kirk Mews alarm maintenance				
		in 2007/8 p54 £141, 2008/9 p73 £146.				
		Proposed sum £5700.	Proposed sum - £7882.56			

Accountancy	£ 600.00	Agreed.		Y	£ 600.00	Not in dispute
Telephone	£ 1,510.24	Almost twice the amount charged	Page 10 item 6	N	£ 750.00	
		previous year and next year.				No persuasive explanation from R to justify the full sum claimed and the substantial increase on previous years. A broad view is taken.
		Inadequate documentation.	Telephone costs were much			
		Contributions to three telephone lines	higher in this year due to the high			
		at Mansion House and 1 Kirk Mews	dependency & vulnerability of our			
		charged.	residents. Was also 'movement'			
		Explosion in mobile phone charges.	with properties numerous			
			incoming phone calls. During the course of the year because of the cost of using a top-up mobile Sue Garrett was added to an existing Mansion House contract.			
		Proposed sum £750.	Proposed sum - £1578.50 - revised to £1,442.06 at hearing			
Motor Expenses	£ 690.88	Agreed for expediency.		Y	£ 690.88	Not in dispute
Legal & Professional	£ 869.40	Unable to agree, no documentation	Page 11 item 8 - this is the Annual Care Fee and is a legitimate cost	N	£ -	
						No supporting documents and the same reasoning as for prior years holds good.
Bank Charges	£ 326.57	No documents. Agreed for expediency.		Y	£ 326.57	Not in dispute
Clothing Costs	£ 132.65	Agreed for expediency.		Y	£ 132.65	Not in dispute
Total	**£ 27,743.95**				**£ 25,867.84**	

1	2	3	4	5	6	7
2010/11						
Item	**Sum claimed**	**A's comments (in brief) and proposed sum**	**R's comments (in brief)**	**Agreed by As Y/N**	**LVT Determination**	**LVT Comments**
Care Administration	£ 14,245.13	Unreasonable 43% increase £4283	Sum claimed £14235.00 based on	N	£ 15,000.00	As before
		from previous year.	draft accounts. £12912.00 obtained			
		New Deputy Care Manager	from final accounts - supporting			
		included without consultation.	documentation is available.			
		Both should be paid from sinking	increase from 2010 due to salary			
		fund. Lease schedule 3 part 2.1 .	increase for S. Garrett & V. Guess			
		(Any cost to service charge should be	See comments on Schedule 1 re: this item being taken to service charge account1			
		capped at market rate of £5000).	Again noted no increase proposed on market rate from 2007			
Rates	£ 787.64	R agreed £271.70 accrual invalid.	Total rates charge before apportion-	N	£ 515.94	Agreed by parties at hearing
		Balance of £516 should be 50% of share	ments is £787.64. Backed by			
		with Mansion Care Agency not 75%=£344.	supporting documentation - invoice			
		Proposed sum £344.	invoice file 484-488 & 491			
			Account records of company show			
			remaining amount of £326.26 which			
			was paid to Essex & Suffolk on 14.12.10			
			No invoice was received prior to year			
			end or accounts produced. Accrual			
			of £326.26 is valid. Apportionment			
			of 75% was applied to total £1015.19			
			to arrive at sum claim - £787.64			
Insurance	£ 1,568.37	Policy document / renewal	Section 27A	N	£ 1,176.27	Not in dispute
		schedule still not provided to	Page 2 item 4			
		permit review of cover or cost.	75% apportionment proposed to reflect			
		R's file p2 indicates refund verification	Community Care even though this activity has not caused the insurance charge to increase			
		required.	Proposed sum - £1176.27			

Heat and Light	£ 2,490.42	Electricity for 1 Kirk Mews over-	Nearly impossible to estimate time	N	£ 595.00	
		charged due to Mansion House	& equipment used. R decided to			In adequate documents and as before
		connection. Should be typically £1300.	use yearly comparison - system			
		Gas original invoices total £964..	corrected 17.10.2011 & figures			
		Elec & gas should be shared 50/50	available after 16.10.2012			
		with Mansion Care Agency.				
		Total to service charge £1132.	Split should be on same basis as other premises costs namely 75%/25%			
		Accrual reversal of £537 to be credited	Reversal should take account of fact			
		to service charge as all the accrual was	that a reversal of £403.31 has already			
		charged to it the previous year.	been made			
		Proposed sum £595.	£1,822.61 proposed at hearing			
Site maintenance etc	£ 3,825.84	R agreed invoice 151 p623 £123 not	Agreed		£ 3,667.00	Not in dispute
		valid and agreed invoice 129 p601 has				
		been overcharged £35.				
		Proposed sum £3667.		Y		
Accountancy	£ 1,442.02	No justification for such a large	Charge in 2010/2011 is partly based	N	£ 600.00	
		increase over the usual £600 p.a.	on an estimate of cost to produce			Inadequate documents and explanations. Anything more than £600 would be unreasonable given the circumstances and also the poor quality of the materials and audit undertaken.
		Proposed amount £600.	the accounts. After year end (Sep 11)			
			TVM was paid £1680 for time incurred			
			to 30.06.11 re: preparation of			
			service charge for year end 31.03.11			
			TVM state charge is insufficient			
Telephone	£ 877.23	R agreed invoices 64,75,76,82 over-	Agreed		£ 724.00	Not in dispute
		charged by £107.				
		R agreed inovice 68 £46 invalid.				
		Proposed sum £724.		Y		

Motor Expenses	£ 282.83	Agreed for expediency.	Agreed	Y	£ 282.83	Not in dispute
Legal & Professional	£ 2,049.99	R has agreed to remove Gepp £304.92.	Agreed.		£ -	
		Gepp £271.43 invalid, Mr Kirk on record	See comments on Schedule 1 re:			In adequate documents and as before
		"solicitors expenses would come out of	Manager's choice as to whether to charge			
		sale price of minibus". App File p110.	costs to service charge or sinking fund			
		Gepp £407.14 should be sinking fund.				
		EICA charge £135 is invalid.	Valid expense for Kirk Mews, 50% apportionment should be applied for Community Care			
		CQC £931 should be 50/50 with MCA not	Split of 50% accepted - chargeable to			
		75/25 and charged to sinking fund.	service charge for same reasons as			
		Proposed sum £0.	above			
			Proposed sum £1,745.07	N		
Bank Charges	£ 325.86	No documents. Agreed for expediency.	Agreed	Y	£ 325.86	Not in dispute
Clothing Costs	£ 81.40	Agreed for expediency.	Agreed	Y	£ 81.40	Not in dispute
Training	£ 19.64	Agreed for expediency.	Agreed	Y	£ 19.64	Not in dispute
Printing, postage etc	£ 2,922.46	Photocopying charge of £1589 absurd,	Section 27A	N	£ 700.00	
		50% of maintenance charge + sensible	Page 4 Item 7			Inadequate supporting documents and explanations. Rival arguments over the need for and cost of colour copying. Many documents copied appear to be related to the Schedule 8 Planned Care and thus not S/C expenditure. A broad brush approach leads us to find that no more than £700 would be reasonable.
		usage would be £250.	not just photocopying but also printing a large amount of documents, care plans, menus, etc are printed in colour along with rotas. 75%/25% split valid			
		Computer support charge £623 absurd,				
		realistic cost £200.				
		R has offered numerous refunds on the	set out at page 4-5 item 7 to reflect split			
		balance due to overcharged entries.				
		Proposed sum £700.	Proposed sum - £1535.00			

Bookkeeping expenses	£ 2,574.00	No consultation prior to new long-term agreement, maximum that can be recovered is £100/bungalow. Excessive in light of accounting errors. Proposed sum £1000.	This was not a new arrangement. It had not been charged in earlier years denied excessive	N	£ -	No evidence that there is a long term qualifying agreement in place. Inadequate documentation and explanations from Rs to justify the substantial cost claimed. It is reasonable to infer that the bookkeeping costs associated with the Schedule 8 Care Charges are covered by the market rates charged for those services. As to the Estate management work the cost of booking is usually included in the unit fee charged by the managing agent.
Sundry exps & adjs	-£ 168.75	UKHCA invoice £371.25 is invalid. Proposed sum - £540.	UKHCA invoice is valid Considered good practice to belong to this association - R are supplied with updated training techniques/ information - handbooks via UKHCA & are kept updated with legislation	N	-£ 540.00	Prior comments on the UKHCA membership hold good. We prefer the As submissions.
Total	**£ 33,324.08**				**£ 23,147.94**	

Item	2007	2008	2009	2010	2011	Deficit Balance
Staff training	£ 3,753.35					
Management charge	£ 30,000.00	£ 30,000.00	£ 25,000.00	£ 30,000.00	£ 30,000.00	
Garden equipment, alarm mtce	£ 3,043.73	£ 1,260.69	£ 63.45	£ 215.05	£ 2,640.38	
Printing, postage & stationery	£ 434.83	£ 137.46				
Advertising	£ 3,450.46	£ 4,574.32	£ 82.25			
Telephone	£ 231.27					
Legal fees	£ 310.00					
Accountancy fees	£ 587.50	£ 587.50	£ 600.00	£ 600.00	£ 1,442.02	
Clothing costs	£ 666.37					
Depreciation	£ 1,857.00	£ 7,441.64	£ 5,580.99	£ 4,186.05	£ 1,660.00	£ 20,725.68
Uncharged Care Hours			£ 15,421.25	£ 15,421.25	£ 15,737.00	
Motor Expenses					£ 32.87	
Loss on disposal of mini bus					£ 1,084.00	
Income received or receivable				-£38,728.92		
Total	**£ 44,334.51**	**£ 44,001.61**	**£ 46,747.94**	**£ 11,693.43**	**£ 52,596.27**	**£ 199,373.76**
Debit Sums withdrawn by Rs						

Item		2007	2008	2009	2010	2011	Debit Balance
Management charge		£ 30,000.00	£ 30,000.00	£ 25,000.00	£ 30,000.00	£ 30,000.00	
Depreciation		£ 1,857.00	£ 7,441.64	£ 5,580.99	£ 4,186.05	£ 1,660.00	
Uncharged Care Hours				£ 15,421.25	£ 15,421.25	£ 15,737.00	
Income received or receivable					-£38,728.92		
Total		**£ 31,857.00**	**£ 37,441.64**	**£ 46,002.24**	**£ 10,878.38**	**£ 47,397.00**	**£ 173,576.26**

Insurer	AVIVA (Norwich Union)		AVIVA (Norwich Union)	
Policy Holder	Francis George Kirk and Kirk Care Limited		Mansion Care Limited	
Type of Policy	Property Owners		Leisure & Wellbeing	
Policy No.	16 RPP 2528439		24571817 CCI	
Premises insured	Retirement Bungalows situate at Mansion House Residential Home, Burnham Road Chelmsford CM3 6 DR			
Date	Premium	Sum Insured	Premium	Service Charge Claim
16.06.2006	£ 2,438.02	£ 1,600,000.00		£ 1,329.83
21.05.2007				£ 2,316.27
21.05.2008	£ 2,625.00	£ 1,768,956.00	£ 1,575.00	£ 1,575.00
21.05.2009	£ 2,576.65		£ 1,582.29	£ 1,582.29
21.05.2010	?		£ 1,556.21	£ 1,568.37
21.05.2011	£ 1,256.17	£ 1,975,108.00	£ 2,008.49	
21.05.2012	£ 1,858.74	£ 2,034,361.00	£ 2,035.37	