9645

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/30UF/LSC/2013/0026**
Property	:	**Queens Manor Development, Bailey Avenue, Lytham St Annes, Lancashire FY8 1FJ**
Applicant	:	**Various leaseholders of the Property (see Annex)**
Representatives	:	**Mr S Lavin**
Respondent	:	**QMS (Lytham) Management Company Limited**
Representative	:	**N/A**
Type of Application	:	**Landlord and Tenant Act 1985 – s27A** **Landlord and Tenant Act 1985 – s20C**
Tribunal Members	:	**Judge J Holbrook** **Mr J Faulkner FRICS**
Date and venue of Hearing	:	**26 February 2014** **At St Ives Hotel, Lytham St Annes**
Date of Decision	:	**12 March 2014**

DECISION

DECISION

A. In respect of the service charge years from 2008 to 2012 inclusive, the Respondent has failed to administer the service charge for the Queens Manor Development in accordance with the requirements of the Applicants' leases. No further amounts (over and above any amounts already paid on account) are presently payable by any of the Applicants in respect of service charges for those years.

B. The Respondent remains under a continuing duty to account to each Applicant (as required by the leases) for any service charges he or she has paid. This determination is therefore an interim decision and the parties have the right to re-apply for a final determination of their service charge liability in the circumstances described in paragraph 57 below. Any such application must be made within 12 months of the date of this determination.

C. The Respondent's right to recover service charge expenditure from the Applicants (and/or to retain service charge contributions already paid by them) is in any event limited as described in the following Reasons.

D. The costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs (within the meaning of section 18(2) of the Landlord and Tenant Act 1985) to be taken into account in determining the amount of any service charge payable by any of the leaseholders of the Queens Manor Estate.

E. The Respondent is ordered to reimburse the Applicants for the tribunal fees incurred in these proceedings in the sum of £540.00.

REASONS

Preliminary and background

1. On 18 February 2013 an application was made to a leasehold valuation tribunal under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of liability to pay, and reasonableness of, service charges in relation to in excess of 30 residential apartments forming part of the development known as Queens Manor, Bailey Avenue, Lytham St Annes ("the Development"). The application related to the service charge years from 2008 to 2012 inclusive and was made by the various leaseholders of the apartments. During the course of the proceedings, a number of the original applicants withdrew. A list of the remaining Applicants (and of the apartments owned by them) is annexed to this Decision.

2. As an ancillary matter, an application was also made for an order under section 20C of the 1985 Act for an order preventing the Respondent, QMS

(Lytham) Management Company Limited ("QMSL"), from recovering costs incurred in connection with the proceedings under section 27A as part of the service charge.

3. The freeholder of the Development, BDW Trading Limited ("Barratt") was named as a second respondent. However, as will become apparent, Barratt has no real involvement with the issues with which these proceedings are concerned. It took no active part in the proceedings.

4. On 1 July 2013, the functions of leasehold valuation tribunals transferred to the First-tier Tribunal (Property Chamber) ("the Tribunal") and so this matter now falls to be determined by the Tribunal.

5. Directions were issued following a case management hearing held on 16 October 2013. The Applicants, (who were represented by one of their number, Mr Steve Lavin), submitted a detailed statement of case in response to those directions supported by a bundle of documentary evidence. Following an external inspection of the Development on the morning of 26 February 2014, a hearing was held at the St Ives Hotel in Lytham St Annes. Mr Lavin again represented the Applicants, and was accompanied by Mrs Lavin and by Mr Robert Hutchinson. QMSL was not represented at the hearing – and we say more about this below.

6. At this point it will be helpful to explain something of the history of the Development, not least because this sheds light on the reasons for the stance which QMSL has taken throughout these proceedings.

7. The Development comprises a converted former school building; five new-build apartment blocks; and a small number of new houses. The development was undertaken by Barratt and, in total, comprises 163 residential units. The construction work was completed in phases from 2007 onwards. The apartments owned by the Applicants in these proceedings are in just two of the new-build apartment blocks: Hollinshead House (which was completed in 2007), and Elizabeth Court (completed in 2008).

8. As is common practice in developments of this kind, Barratt established a management company (QMSL) to take over the running of the Development once it was complete. As we shall explain in more detail below, QMSL was made a party to each of the apartment and house leases for the purpose of establishing rights and obligations between it and the individual leaseholders in relation to services and service charges. Barratt handed over responsibility to QMSL for the component parts of the Development as they were completed. The formal handover date for Hollinshead House was 5 November 2007, and for Elizabeth Court it was 14 February 2008. Other parts of the Development were handed over in 2009, 2011 and 2013.

9. Upon purchasing an apartment or house on the Development, each leaseholder became a member of QMSL, and QMSL remains a company which is wholly owned by the leaseholders of the Development. Nevertheless, the initial directors of the company were appointed by Barratt, and professional managing agents were engaged to manage the day to day running of the

Development on behalf of QMSL. The managing agents selected for the task were Residential Management Group Limited ("RMG"), and we understand that an employee of RMG was also appointed as a director of QMSL. In practice, therefore, all decisions about the management of the Development during its early years were taken by RMG.

10. Considerable tension evidently built up between RMG and a number of the leaseholders, including the Applicants, who became dissatisfied with the management of the Development. The growing dispute led to two significant developments: the first was that, during 2012 and 2013, the right to manage three of the blocks on the Development was acquired by a right to manage company under the provisions of the Commonhold and Leasehold Reform Act 2002. Elizabeth Court was one of the three blocks concerned, and the RTM company acquired the right to manage this block from QMSL in February 2013. Mr Lavin was heavily involved in the process which led to the acquisition of the right to manage, and he continues to be involved in the running of the RTM company.

11. The second significant development occurred on 5 June 2013 when, at a general meeting of QMSL, the original directors of that company were removed from office and were replaced by Mr Lavin and Mr Hutchinson. The management agreement with RMG was terminated and control over the management of the remainder of the Development was effectively assumed by Mr Lavin and Mr Hutchinson. This has placed Mr Lavin in the unusual position of being, in effect, both an Applicant in these proceedings and also the Respondent to them – the implications of Mr Lavin's dual status in this matter were discussed at length at both the case management and final hearings. Mr Lavin was very clear in his position that, because the application related to the period prior to the change in control of QMSL, he was pursuing this matter as an Applicant and was not representing QMSL. Similarly, although Mr Hutchinson attended the final hearing, he made it plain that he was not in a position to speak for QMSL in relation to the matters which were the subject of the hearing. The end result, therefore, was that the application was essentially undefended – and this is a matter to which we shall return in our concluding remarks.

The Leases and the service charge machinery

12. Although the Tribunal was not provided with a copy of each Applicant's lease, a number of specimen leases were produced. We understand that (subject to one significant variation) each of the Applicant's apartment leases ("the Leases") are in materially the same form.

13. The Leases are tripartite agreements made between Barratt (referred to as "the Landlord"); QMSL (referred to as "the Company"); and the original purchaser of the apartment in question (referred to as "the Tenant"). The Leases were granted for terms of 155 years from 1 July 2005 at a modest annual rent.

14. Each Lease contains covenants by the Company to provide services. Essentially, these services comprise the insurance, repair and maintenance of

the "Gardens and Grounds" and of "the Block". In return, the Tenant covenants (at paragraph 1 of part 2 of the fourth schedule):

> "To pay to the Company the Maintenance Charge and the Building Service Charge being that proportion specified in paragraphs 20 and 21 of the Particulars of the Maintenance Costs and the Building Service Costs which the Company shall in relation to the Block and the Estate reasonably and properly incur ... the amount of such Maintenance Charge and Building Service Charge to be certified by the Company's Managing Agent or Accountant as soon as conveniently possible after the expiry of each Maintenance Year ...".

15. The covenant goes on to provide, in effect, for quarterly advance payments to be made in each year based on estimated expenditure, and for a balancing charge or credit to be applied "upon the Company's Managing Agents or Accountants' certificate being given as aforesaid".

16. Embedded within these provisions are a number of defined terms, the meaning of which is set out at the beginning of the Lease. In particular:

"the Block" means "the block of apartments of which the apartment hereby demised forms part";

"the Estate" essentially means the whole of the Queens Manor Development;

"the Gardens and Grounds" essentially means the communal external parts of the Development;

"the Maintenance Costs" means "the costs and expenses attributable to the Gardens and Grounds described in Part 1 of the Sixth Schedule ..." (being the costs and expenses of the Company in carrying out its obligations to provide services in respect of the Gardens and Grounds); and

"the Building Service Costs" means "the costs and expenses attributable to the Block described in the Eighth Schedule ..." (being the costs and expenses of the Company in carrying out its obligations to provide services in respect of the Block).

17. Definitions are also provided of "the Maintenance Charge" and "the Building Service Charge". However, the manner in which these expressions are defined differs according to which of two alternative approaches has been adopted in the particular Lease (this is the significant variation between the Leases referred to above). In some of the Leases, the Maintenance Charge and the Building Service Charge are defined to mean a fixed percentage of the total Maintenance Costs and of the total Building Services Costs respectively. However, in other Leases, the meaning of these expressions has been more fluidly defined as "a reasonable proportion of" the total Maintenance Costs or, as the case may be, the total Building Services Costs.

Law

18. Section 27A(1) of the 1985 Act provides:

> *An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-*
> *(a) the person by whom it is payable,*
> *(b) the person to whom it is payable,*
> *(c) the amount which is payable,*
> *(d) the date at or by which it is payable, and*
> *(e) the manner in which it is payable.*

19. The Tribunal is "the appropriate tribunal" for these purposes, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

20. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

21. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

> *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 or works are of a reasonable standard;*
> *and the amount payable shall be limited accordingly.*

22. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

> *the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

23. Section 20B(1) of the 1985 Act provides:

> *If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the*

tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

24. Section 20B(2) provides an exception from this principle for cases where, during the initial 18 month period, the tenant has been given written notice that the costs in question have been incurred and that he or she will subsequently be required to contribute to them.

25. Section 20ZA(2) provides that an agreement is a "qualifying long term agreement" if it is entered into by or on behalf of a landlord (or management company) for a term of more than 12 months. Statutory consultation requirements apply in relation to such agreements (pursuant to section 20 of the 1985 Act). If those consultation requirements are not complied with, then (unless they have been dispensed with by order of the Tribunal), the amount which a tenant may be required to contribute by means of service charges to relevant costs incurred under the agreement is limited to a maximum of £100 per annum.

The Issues

26. The Applicants complain that the service charge has not been operated in accordance with the requirements of the Leases. They raise a number of issues in relation to the administration of the service charge and as to the reasonableness of certain costs comprised within it. The various issues that arise are considered below.

The basis of accounting

27. The Applicants assert that QMSL has failed to demand service charge contributions from the leaseholders of the Development on the basis required by the Leases. We agree.

28. It is plain that the service charge provisions in the Leases (as described above) contemplate that each leaseholder will, in effect, contribute to two separate service charges. The first (referred to in the Leases as "the Maintenance Charge") concerns an estate-wide charge payable by every leaseholder of the Development to cover the costs of maintaining the external common areas. The second charge (referred to as "the Building Service Charge") concerns the maintenance of the particular block in which the apartment concerned is located. It is implicit that, whilst the intention is that QMSL should operate a single Maintenance Charge, it should operate a number of separate Building Service Charges, so that a leaseholder of a particular block contributes to the general costs of estate maintenance, but only contributes to building maintenance costs which are particular to their own block. This intention is reflected by the fact that the Leases provide that a leaseholder will contribute to the Maintenance Costs and to the relevant Building Services Costs in differing proportions.

29. Copies of the annual service charge accounts were produced in evidence. In respect of the years 2008 – 2011, the accounts show a summary of total service charge expenditure for the Development. There is no indication of how (or,

indeed, whether) this expenditure is apportioned between Maintenance Costs and Building Services Costs for the various blocks. Nor can any clarity be gained by inspecting the demands or statements that RMG sent to individual leaseholders. Taking Mr Lavin's lease of 47 Hollinshead House as an example, we note that during the 2008 service charge year, RMG invoiced him for £703.95 in advance service charge contributions. In August 2012, Mr Lavin was asked to pay a further £495.15 in respect of the property for the 2008 service charge year, making his total bill for this period £1,199.10. However, we have seen no explanation as to how much of this sum represents Mr Lavin's 2008 Maintenance Charge for the property and how much represents his Building Service Charge. Nor is there any explanation as to how the total expenditure of £63,374.00 shown in the 2008 accounts has been apportioned to produce the contribution demanded in respect of this apartment.

30. The position is the same for 2009, 2010 and 2011. For 2012 it is even less clear. The accounts produced for this period suggest that QMSL had no income or outgoings and that it was inactive. This is in spite of the fact that service charges continued to be demanded from the leaseholders during this period, and services were presumably being provided at the Development.

31. The Applicants have made payments on account of their service charge liability (as they are required to do), and they have clearly received benefit for those payments – Mr Lavin confirmed during the hearing that the Applicants have no complaint about the *standard* of services provided. However, based on the evidence produced to the Tribunal, we find that QMSL failed (in respect of each service charge year) to provide the Applicants with the requisite certificates of their individual Maintenance Charge and Building Service Charge liability. For the avoidance of doubt, the fact that the annual accounts contain the usual accountants' certificate that they contain a fair summary of service charge costs is wholly insufficient to satisfy the obligation in the Leases to certify the amounts due on an individual basis.

32. This is not just a technical point: it appears that the Applicants have not been provided with the information necessary to show whether the amounts they have paid on account equate to the appropriate proportion of the costs to which they are required to contribute; whether they exceed that amount; or whether they are insufficient for that purpose. QMSL remains under a continuing duty to account to each Applicant (and, indeed, to every leaseholder) for the service charge contributions paid. In particular, it is under a duty to show how service charge expenditure for each year was apportioned between the external common parts and buildings, and also between each of the blocks of apartments themselves.

Balancing charges

33. As mentioned above, RMG wrote to the Applicants in 2012 demanding payment of "cumulative balancing charges to August 2012". Although it follows from our above conclusions that no balancing charges are payable unless and until QMSL provides the information and certificates required by the Leases, an additional impediment to the recovery of balancing charges arises by virtue of the effect of section 20B of the 1985 Act.

34. Evidence was produced to show that the amounts demanded by RMG on 24 August 2012 comprised a number of balancing charges (and credits) for the 2007 service charge year onwards. We understand that no previous demand had been made for payment of any balancing charge, and that no notice had been given which would satisfy section 20B(2) of the 1985 Act. Leaving aside the fact that the amounts of any balancing charges may need to be recalculated if relevant costs have not been apportioned in the manner contemplated by the Leases, it follows that the Applicants are not liable to pay so much of those balancing charges as reflect any costs incurred more than 18 months before the demand was given (i.e., before 25 February 2011). Consequently, no balancing charges will be payable in respect of any service charge year prior to 2011 (and costs incurred before 25 February 2011) should also be disregarded for the purpose of calculating any balancing charge for 2011).

Buildings insurance

35. The Applicants complain that the total cost incurred in insuring the Development in 2012 was unreasonable. The Applicants also assert that an ancillary credit arrangement (which was put in place to enable the insurance premium to be paid) was a qualifying long term agreement in respect of which QMSL failed to comply with the statutory consultation requirements.

36. Dealing first with the question of the finance arrangement, the Tribunal was referred to a regulated credit agreement entered into between QMSL and Close Premium Finance (a division of RBS) in 2009. This was a rolling credit agreement utilised by QMSL to finance the annual insurance premiums for the Development. The agreement continued until November 2013 – it therefore lasted for more than 12 months. However, the question of whether something is a "qualifying long term agreement" does not depend simply on the fact that the agreement is capable of continuing for more than 12 months if unabated. The statutory definition requires that the agreement is one which, when entered into, will definitely continue for a period of more than 12 months (see *Paddington Walk Management Limited v Peabody Trust* [2010] L&TR 6). In the present case, the finance agreement provided (at clause 17) that:

> "The Customer may terminate this Agreement by giving written notice to the Bank and paying the outstanding balance on the Account ..."

37. In effect, QMSL was entitled to terminate the agreement at any time by giving notice and repaying the outstanding balance of the loan. The loan agreement was therefore not a qualifying long term agreement, and the consultation requirements under section 20 of the 1985 Act did not apply.

38. There is no objection in principle to a credit arrangement being used to insure the Development if the financial situation of the management company is such that it is necessary to do so. It follows that the resulting finance costs (assuming the same are reasonable) will fall to be met by the leaseholders as part of the service charge.

39. Quite apart from the question of the finance arrangement, however, the Applicants object to the level of the insurance premium paid by QMSL in 2012. This amounted to £12,187.00, and was significantly more than the premiums paid in the preceding three years – which did not exceed £8,000.00 for any one year. The Applicants say that the 2012 insurance premium was unreasonably high: they allege that RMG failed to survey the market before renewing the insurance with the same insurer as had been used throughout the Development's history. They also allege that the insurance was arranged by a company connected with RMG and that the existence of a commission arrangement with this company led to the insurance being renewed at an unreasonably high cost.

40. The Applicants also pointed to evidence as to the current cost of insuring the Development. The insurance position has been reviewed by a new insurance broker, appointed following the change in management of QSML in 2013. Following a 10% uplift in the sum insured, the Development was insured in 2013 for a total premium of £7,835.20. In the absence of any evidence from the Respondent, and taking account of the fact that insurance rates have, if anything, risen over the period in question, we accept that the 2012 insurance costs were not reasonable. The amount which would have been reasonable is the amount for which insurance was obtained in 2013.

Electricity costs

41. Throughout the service charge years with which these proceedings are concerned, electricity was supplied to the common parts of the Development by QMSL by virtue of one or more contractual arrangements with Eon. It is apparent that these arrangements were terminable by QMSL upon 28 days' notice. Consequently, they were not qualifying long term agreements (notwithstanding that, as a matter of fact, the arrangements lasted for more than 12 months).

42. There are separate electricity meters for each block – and, indeed, for each stairwell/core within each block – and it is apparent that the electricity consumed was billed and paid for on a meter by meter basis. No doubt this would enable the costs to be apportioned on a building by building basis although (as noted above) this is not the approach which QMSL/RMG appears to have taken in practice.

43. The service charge accounts state that the total costs incurred on electricity (on a Development-wide basis) in 2008 – 2011 were:

	£
2008	7,200
2009	26,632
2010	21,396
2011	10,719

44. The Applicants contend that the amount of this expenditure in each of those years was unreasonable (no objection is raised in relation to electricity costs in 2012). They assert that QMSL failed to manage the electricity supply properly

and that it entered into rolling supply agreements with Eon on disadvantageous terms rather than surveying the market for a better deal. The Applicants also assert that QMSL neglected to obtain meter readings when the various blocks were handed over by Barrett; the result being that leaseholders have been asked to bear electricity costs which should have been paid by the developer. Finally, it is argued that QMSL did not check on electricity use on a regular basis, and that it therefore failed to deal with misuse/theft of electricity by a number of the Development's occupiers.

45. In the absence of any competing evidence or arguments, we accept these arguments at face value. We understand that, under its new management, common parts electricity is being supplied at a total cost of approximately £9,000 per annum. We therefore find that, for each of the disputed years, £9,000 would have been the reasonable cost of common parts electricity for the Development as a whole.

Management fees

46. The Applicants contend that the contractual arrangements that were in place between QMSL and RMG in respect of each of the disputed service charge years were qualifying long term agreements and that, as a consequence of the statutory consultation requirements not having been complied with, the amount which any one leaseholder may be required to contribute by means of service charges to relevant costs incurred under those agreements is limited to a maximum of £100 per annum. We agree.

47. The Applicants produced copies of the management agreements entered into between QMSL and RMG in respect of 2011-12 and 2012-13. These agreements are in materially identical terms. Although copies of earlier agreements could not be found, we were satisfied from the evidence that such agreements had been entered into in respect of relevant previous years and that the probability is that the terms of those agreements were also in materially identical form. Clause 3 of the agreement provides that:

> "... this Agreement shall commence on the date of this Agreement and shall terminate upon three months' notice in writing by either party to the other provided that such notice may not be served before the expiry of one year less one day from the date of this Agreement"

48. As the proviso to this clause makes clear, each management agreement was bound to continue for a period of more that 12 months.

49. As a separate issue, the Applicants challenged the reasonableness of the management fees of £16,500 charged for the 2008 service charge year. Mr Lavin justified this challenge on the basis that, as only 75 apartments had been handed over by Barrett by this time, this equated to a management fee of £219 per unit, which he considered to be unreasonable. No evidence was offered of management fees charged for comparable developments, however, and we were not persuaded that a fee per unit of £219 was unreasonable in the circumstances. This, of course, is now likely to be of little practical importance because – absent a successful application to the Tribunal by QMSL for

retrospective dispensation of the consultation requirements – liability for management fees will be capped at £100 per unit per annum in any event.

50. We do agree, however, with the Applicants' contention that management fees attributable to a particular block in respect of a period prior to the date of its handover to QMSL by Barrett are not properly recoverable as service charges.

Legal costs

51. The Applicants have requested that the Tribunal rule on the recoverability (by means of service charges) of certain legal costs incurred by QMSL in connection with the proceedings by which the right to manage parts of the Development was acquired from it by the RTM company. The costs in question were incurred in 2013: they do not form part of the service charge expenditure which QMSL has sought to recover from leaseholders to date. It is therefore unnecessary for us to make such a ruling for the purpose of determining the amount of the service charge payable by the Applicants for 2008 – 2012. Nevertheless, in the hope of assisting the parties to avoid further litigation, we offer the following brief guidance.

52. The first set of costs in question concerns an award of £1,500 which QMSL was ordered to pay to the RTM company by a leasehold valuation tribunal following a finding that QMSL had conducted itself unreasonably in connection with the right to manage proceedings before the LVT. The LVT's order is plainly sufficient to establish QMSL's liability to pay the award of costs. However, the question of whether QMSL is entitled to pass on liability for that award by means of service charges depends, in the first instance, on the provisions of the Leases. The same applies in relation to the second set of costs - £9,000 paid to QMSL's solicitors at the time who acted for it in relation to the right to manage claims.

53. It appears to us that the only provision in the Leases which has the potential to legitimise such costs as a service charge item is to be found in part 1 of the sixth schedule (which lists the items which may be included in the Maintenance Costs). Paragraph 7.2 refers to all legal and other proper costs incurred by QMSL:

> "in making such applications and representations and taking such action as the Company shall reasonably think necessary in respect of any notice or order or proposal for a notice or order served under any statute or order regulation or bye-law on the Tenant or any underlessee of the Demised Premises or on any tenant or underlessee of the Other Demised Premises or on the Landlord in respect of the Estate or all or any parts thereof"

54. We agree with the Applicants' view that this provision is not apt to permit QMSL to pass on as service charges any costs incurred by it in contesting the right to manage claims. The provision refers to costs incurred in respect of notices served on tenants or on the landlord. It does not refer to costs incurred in respect of notices served on QMSL – but it is precisely such costs which are

now in contemplation (the landlord did not contest the right to manage claims: QMSL did).

Costs

55. Section 20C of the 1985 Act permits the Tribunal to order that the costs incurred by QMSL in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any leaseholder of the Development. Whilst it is hard to see how QMSL could have incurred any costs at all in these proceedings, given its lack of participation, we consider it to be just and equitable to grant the application for such an order in the present circumstances.

56. We also consider it appropriate to order QMSL to reimburse the Applicants for the tribunal fees which they have incurred in these proceedings.

Concluding remarks

57. The absence of any meaningful response from QMSL in these proceedings and, in particular, the lack of evidence to explain the basis on which service charge expenditure should properly be apportioned between the constituent parts of the Development (and thus between the leaseholders) has made it impossible for the Tribunal to determine with precision the amount of the Applicants' service charge liability for the service charge years in question. It remains incumbent on QMSL – and thus on its new management – to account to the Development's leaseholders for service charge income and expenditure in the manner required by the Leases. If, within the next 12 months, the necessary accounting evidence becomes available to determine the actual amount of an individual Applicant's liability, the Tribunal would entertain an application for a final determination. Any such determination would, of course, be based on the findings set out in this decision.

58. The practical realities of the matter, however, suggest that such further application may be of limited benefit. QMSL is now under the day to day control of Mr Lavin and other leaseholders of the Development. It is they who will administer the service charge for the future, and it is they who will have to decide how to finance any of QMSL's outstanding financial liabilities. Nothing in this decision affects any such liabilities and in the event that QMSL is unable to secure the necessary funds from its members (i.e. from the leaseholders) – whether by means of service charges or by some other consensual arrangement – the probability is that QMSL (and thus the Development) will become insolvent.

ANNEX

List of Applicants

Applicant's Name	**Apartment**
Mrs Erskine	4 Elizabeth Court
Mr & Mrs McLafferty	11 Elizabeth Court
Mr B Charlesworth	14 Hollinshead House
Mr & Mrs Barrett	1 Hollinshead House
Mr & Mrs Taras	50 Hollinshead House
Mr & Mrs Wright	10 Hollinshead House
Mr & Mrs Mottershead	6 Hollinshead House
Mr K Andrew	8 Hollinshead House
Mr Markovic	7 Hollinshead House
Mr & Mrs Cook	41 Hollinshead House
Mrs Cash	4 Hollinshead House
Mr S Lavin	5 Elizabeth Court 47 Hollinshead House