



Anchor Trust  
Suites A&B  
The Heals Building  
22-24 Torrington Place  
London  
WC1E 7HJ

**SEND VIA EMAIL**

17 November 2015

Dear Sebastian,

**RE: Mr C D Matson; Anchor Housing Association, Cherry Trees Retirement Flats, Coatham Road, Redcar, Cleveland TS10 1RP**

Thank you for your email of 9 November 2015 addressed to Jane Ashcroft. Jane has asked that I investigate the concerns you have raised in relation to the Cherry Trees, Redcar and provide a response within my capacity as General Counsel and Company Secretary.

As you will be aware, whilst the OFT expressed concerns around the fairness of contingency fund fees, the focus of its investigation related to the use of transfer/assignment fees, which represented an income stream to the Landlord. Anchor does not charge such fees. The Law Commission has recently undertaken a study into the charging of 'Event Fees' which scopes charges relating to contingency/sinking funds. Anchor fully supports the proposals outlined by the Law Commission which are detailed within Consultation Paper No 226.

I can confirm that the lease for Cherry Trees has previously been varied by way of a Deed of Variation in 1991. **The original leases granted did not contain any provision for the contribution to the sinking fund to be deferred to the point at which leaseholders sold their properties. Instead, this required leaseholders to pay a sum to be determined each year within the current service charge. This placed an additional financial burden on leaseholders, all of whom were aged 55 and over in respect of the amount of monthly service charge payable. In 1991, all leaseholders entered into a Deed of Variation which formally varied the terms of their individual leases to agree the current mechanism in respect of the calculation and collection of the Sinking Fund contribution. Whilst this was some time ago, I have no reason to believe that this Deed of Variation was entered into otherwise than at the leaseholders' own volition. It would also appear to have been done to enable leaseholders to avoid having to contribute to the sinking fund through their monthly service charges.**

The sinking fund for Cherry Trees is collected for the sole purpose of meeting the cost of future anticipated major expenditure and renewals required at the Estate. Anchor is obliged to provide the services defined under the terms of the lease regardless of whether all properties are occupied or not. It is important that Anchor ensures sufficient contributions are collected to this fund in order that this is able to meet expenditure at

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the point it becomes due. Failing to collect and maintain sufficient reserves would be to the financial detriment of leaseholders, who are liable to meet the cost of any shortfall within the monthly service charge. In addition, Anchor also has a duty to ensure the Estate is kept in suitable repair. Failing to do so would affect the future saleability and value of properties.

Whilst the contribution is calculated at 1% of the purchase price, per year of ownership, the lease (as varied) also makes provision for Anchor to deal with any excess sums contained within the Sinking Fund. This provides that in the event the Sinking Fund contains sums that exceed what is reasonably necessary, such surplus can be used for the benefit of the leaseholders; one of the options being offsetting this against the monthly service charge. To this extent, the level of contributions to the fund, and the reserves contained within this, are assessed against future expenditure on an annual basis.

Over the past two financial years alone, leaseholders have benefitted from the Sinking Fund containing sufficient reserves to meet expenditure in the region of £80,000. As of 31 March 2015, the Sinking Fund at this development held reserves of less than £63,000, with upcoming expenditure to the Estate within the next five years estimated at over £200,000. Ever since the variations were originally made in 1991 we have been able to fund the sinking fund solely through the fees payable on a sale of the property. This is, however, a position which needs to be carefully managed.

In your letter, you have stated that Mr Matson's family believe the provisions contained in the lease for Cherry Trees to be an unfair term. With respect, I do not agree. The original deed of variation was clearly entered into to avoid having to burden leaseholders with contributions to the sinking fund as part of their monthly service costs and over the years, successive leaseholders, including Mr Matson have benefitted from this. Additionally, the provision contains safeguards so that if the sinking fund becomes over-provisioned, any surplus can be applied to the benefit of leaseholders. I also note that both the lease and the deed of variation pre-date relevant legislation regarding unfair terms.

You have also asked whether or not we have any plans to vary the leases. Generally speaking, we are not averse to varying leases where it is appropriate to do so, and as you rightly point out, we have on occasion granted licences to sublet in circumstances where it would be reasonable to do so and the impact on other residents is minimal. With regard to Cherry Trees, were we to agree a variation of the lease to change the basis on which contributions to the sinking fund are paid, we would have to consider the impact on the fund, as well as how essential works would be paid for. If the effect of a variation was that the sinking fund was insufficient to pay for essential works, the balance would have to be paid by leaseholders as part of their service charge. Our experience to date is that leaseholders prefer to contribute to the sinking fund via

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“event fees” paid on a disposal of their property rather than through the service charge. If, however, a majority of leaseholders indicated that they would prefer to make regular contributions to the sinking fund via the service charge we would be happy to explore with them how we could best accommodate that preference.

Lastly, you have pointed out that McCarthy and Stone have varied their provisions requiring contributions to the sinking fund on subletting. As far as I am aware, Anchor has never sought to require a contribution to the sinking fund on a subletting.

I hope that this deals with your with your queries, but if I can be of further assistance please do not hesitate to do so.

Yours sincerely,

David Edwards

Compliance Director and Company Secretary

CC: Jane Ashcroft

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