

1. Background

(a) The property is a Victorian double-fronted property converted into ten flats. The premises contain a small section of garden. The property was converted in 1986. The front of the property has nine parking spaces. The leases of three of the flats are owned by Mr Taylor. Two of the flats are owned by Mr N Taylor.

(b) The Applicant together with his brother own the freehold of the premises.

2. On the 8 February 2010 the applicant applied to the tribunal for a determination of reasonableness and payability of service charges for 2008- 2009.

On 23 April 2010, directions were given by the Tribunal and the issues were identified as follows:- The reasonableness and payability of service charges for the year ending 2009.

3. The Law

Section 18(1) of the Landlord and Tenant Act 1985 (“the Act”) provides that, for the purposes of the relevant parts of the Act, “service charge” 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) 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 or works 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 or subsequent charges or otherwise.

Section 27A (1) of the Act provides that 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 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.]

The Hearing

3. At the hearing the Applicant Mr Taylor represented himself and the first respondent Ms Bradford also represented herself. Ms Denham was not in attendance and had sent representations via an email dated 30 June 2010. Ms Denham in addition to the issues raised by the service charge demands also had as a separate issue the cost of the heating, which was provided by a communal boiler.

The service charge amounts were as follows:-

Service charge headings	Total Charge
Insurance	£2972.09
External Redecoration	£2800
Damp Works in Garden Flat	£2641.77
Management Fee	£1500
Common Parts Redecoration	£1350
Leak Repairs	£1000
Garden Maintenance	£915
Accountancy	£745
Cleaning Common Parts & Refuge area	£730
General Repairs	£320
Drain repairs	£233.50
Installation of aerial	£229.13
Sundries	£220.84
Lighting of common parts	£146.64
Total	£16,803.97

The insurance

- Mr Taylor informed the Tribunal that the insurance had been obtained, from a Broker in Chiswick. However he had received a recommendation for Brokers (whom he subsequently nominated), situated in Southampton. Three or four quotations had been obtained from Lloyds, Axia and Norwich Union. The Applicant had chosen Norwich Union. The basic cost of the insurance was £2,200. The inclusion of Terrorism cover and the cost of the credit agreement (which was necessary as the

insurance was paid by ten instalments, meant that the total cost of the insurance was £2972.09. The insurance excess was £500.

5. Mr Taylor submitted that he had used a reputable Broker (recommended by the Leaseholder); no commission was paid to Mr Taylor. Accordingly he considered the cost of the insurance to be reasonable and payable.

The cost of Redecoration

6. Mr Taylor referred the Tribunal to page The Lease, (the Tribunal noted that both Respondents had slight variations their lease and that the clauses and numbering differed.) 21(iii) of the lease which required the exterior of the property to be decorated every third year. He stated that he had carried out external re-decoration works. Mr Taylor informed the Tribunal that he was the managing director of a property business which carried out development, property valuation and a small section that dealt with repairs (predominantly his own properties) this aspect of the business was run on a 'without profit' basis. He had sub-contracted the work to two independent builders (whom he believed to be Polish). He had arranged for the painting of the walls which lead to the basement stair case which had not been decorated for 10 years.
7. He had also had the barge boards which ran for approximately 10 meters in two sections at the front and sides painted. The work had involved scaffolding, timber repairs and priming undercoat and then weather treating with gloss paint. The total cost of the work included the cost of erecting of the scaffolding, rubbing down the areas and applying the undercoat and the finish.
8. The breakdown of the cost of the work was as follows:- he had paid the builder £200-300. There was the cost of materials, and scaffolding (for £100 for two weeks).
9. The painting of the barge board cost and the stairwell including the materials cost £2800 and had also included the work of painting of the front door. Mr Taylor stated that he had obtained alternative quotations from JAB builders prior to using his own building contractors.
10. The Tribunal had invited the Respondent Ms Bradford to provide her response on these two issues. Ms Bradford had obtained advice from her brother-in-law, who was a builder and had provided a commentary

concerning the work that had been undertaken. The Tribunal explained that this could not be considered evidence, as her brother-in-law had not attended the hearing, and been questioned on his credentials, to give expert evidence, given this his evidence was at best merely his opinion.

11. Ms Bradford stated that she had received no information concerning the alternative quotations that had been obtained, therefore that she could not say whether the cost was reasonable. Ms Bradford also considered that there was a possibility that the cost of the insurance premium may well have been affected by the Claims history of the premises. The Tribunal noted that Ms Bradford had not obtained any alternative quotations in support of her assertions.
12. Of the repairs Ms Bradford stated that she was aware of the scaffolding, although she did not believe that it had been up as long as a week. Ms Bradford stated that she had not been notified that work was likely to be carried out. Ms Bradford accepted that some painting work had been carried out to the stairwell of her property, in her view this was “not done to top standard”.
13. In her opinion this work was a maximum of 6-8 hours work (as there were only 8 steps down) rather than the time claimed by the respondent. Ms Bradford was asked by the Tribunal about the painting of the barge boards. In her evidence she stated that she was unsure about whether the barge boards were painted or not. Ms Bradford had not noticed, and was unable to assist the Tribunal on this issue.

Damp Works in Garden Flat

14. Mr Taylor informed the Tribunal that he had received complaints from the leaseholder of the garden flat about rising damp affecting their premises. On inspection the damp was found to be affecting the bay window, the reception area and the bathroom, the repairs involved injecting damp proof resin into the affected areas and redecorating the bathroom, which involved re-rendering and painting with damp proof paint.
15. The work had not been undertaken as one repair, but had been carried out over a long period of time, and although the total cost was over £250

per leaseholder, Mr Taylor did not consider this to be one job, as the different areas had been dealt with separately.

16. Ms Bradford in her evidence, stated that she was aware that work had been carried out, however she had not seen the work, neither had she spoken to the leaseholders of the flat about it, given this, she could not comment on the standard or reasonableness of the cost of the work undertaken in the flat

The Management fee

17. Mr Taylor informed that Tribunal that he had been informed (by a previous tribunal) that he could not claim for undertaking the management of the property as a freeholder, although the lease allowed managing agents to be engaged, Mr Taylor had set up a limited company to create a separate legal entity, and this company was responsible for carrying out the management of the premises.

18. There was no separate written management agreement, however Mr Taylor was able to provide a list of functions undertaken by the managing agents which were as follows:-

- The collection of the service charges and administering of the account
- The provision of accounts and interim service charge accounts
- Planned maintenance of the building
- Paying bills
- Instructing contractors

19. Mr Taylor stated that there were many small items of maintenance that he carried out around the premises, for which no charge was made to the leaseholders. He stated that the charge made was £150 per leaseholder.

20. In reply Ms Bradford stated that she was not aware of Mr Taylor carrying out vast amounts of work around the premises, she pointed out that on one occasion there was a problem with the drains, the leaseholders had commissioned this work, although Mr Taylor had paid the contractors. Ms Bradford stated that she was mainly aware of the

demands being sent out every year, rather than any of the other work that Mr Taylor claimed to have undertaken.

The Common parts redecoration

21. The total cost of this work was £1350, Mr Taylor had subcontracted this work to Mr Janisherski, Mr Taylor stated that eight flats used this entrance and the work had involved painting one large stairwell which was on three levels of a large Victorian building with high ceilings. This work had taken two decorators 5 working days.
22. Ms Bradford had been advised by her brother-in-law that if the work had been undertaken to a reasonable standard, then the cost was reasonable. On this basis the Tribunal asked the Respondent whether she accepted that the standard of the work was reasonable. Ms Bradford stated that although she occasionally used the hallway to collect her post, she had not noticed whether or not the property was redecorated. Ms Bradford was asked about the colour of the hallway and was unable to assist the Tribunal.

Leak Repairs -£1000

23. There had been three separate repairs one to flat 1A's hallway which caused plaster damage, which because of the small amount of damage was not recoverable from the insurance.(Mr Taylor stated that after the excess of £500, they would have recovered no more than £100 of a £600 repair). This had been caused by a leak from the bathroom in flat 3 above, (the Tribunal were shown an invoice dated 28/2/2009). There had also been a leak to the bathroom of flat 1 A, (there was an invoice dated 25/11/08) this had cost £200 to repair. There had also been a leak to the garden flat; the damage had cost £200 to repair.
24. Mr Taylor had produced invoices in support of these sums. Notwithstanding the invoices, to Mr Taylor's company. Ms Bradford was sceptical, and commented that there were a large number of leaks which should not be occurring at the premises which was suggestive of poor maintenance.

Garden Maintenance

25. Mr Taylor informed the Tribunal that the front garden of the premises had a parking area and three mature trees with tree preservation orders.

There was also a hedge on the side and paved asphalt inlaid with brick. There were also shrubs and plants. And 10 mature trees in the rear as well as a small area of grass.

26. Mr Taylor paid the gardener to sweep and litter pick on an ad hoc basis and to mow the lawn, between 15 March to 15 October, (“the growing season”). For this service he paid approximately £25.00 per session.
27. Mr Taylor stated that there had also been a mound of soil and rubble in the garden that he had arranged to be removed (as he considered it to be unsightly) at a cost of £650.00. Mr Taylor provided invoices in respect of the cost of gardening, which were payable to Middlesex Grass Maintenance.
28. Ms Bradford pointed out that there were weeds growing through the concrete, and that one of the major tasks, of cleaning the bin-stalls was undertaken, by a neighbour, rather than an operative engaged by Mr Taylor. Given this she did not consider the cost of gardening to be reasonable. Mr Taylor accepted that the garden was due another ‘ad hoc’ treatment, however he considered the cost to be reasonable, and pointed out that he undertook some routine work such as the removal of dead branches at no additional cost to the leaseholders.

The Accounts

29. There were two sums for the accounts, which were prepared by IT Accounting Services Limited, and also Mr Waas. Mr Waas was an accountant who was employed by a shipping company. He occupied one of the flats. The sum due was to be split with £500 payable to Mr Waas and the balance payable to IT Accounting Service (for an earlier period). However no invoices or receipts were produced.
30. Ms Bradford acknowledged that she was not querying the standard of the accounts; Ms Bradford accepted that she did not know what accounting services cost, however she was not prepared to concede this item, and simply wanted the Tribunal to use their knowledge and experience as to whether this item was reasonable.

The Cleaning

31. The cleaning was made up of the following items cleaning the wheelie bins, the cleaning of the carpets in the common parts, and the cleaning of

the common areas. Mr Taylor accepted that there was an item in respect of the balcony door (£50.00) which should not have been charged for under this head, as it was a repair and he agreed to its removal.

32. Ms Bradford stated that the common parts did not look particularly clean and on occasion looked messy and untidy. Ms Bradford could not recall the bins having been cleaned, other than by a neighbour as a result she did not accept this item.

Miscellaneous Items and repairs

33. This was for the cost of clearing the valley roof in the sum of £100. Repairing the mains electric housing in the sum of £170, and for attention to the blocked drains in the sum of £233.50 (this later item of work, had been commissioned by the leaseholders). There was also the cost of the installation of an aerial, photocopying, and bin bags for the cleaning up items.
34. Ms Bradford noted that she had problems with her television reception and stated that she was unaware that this had been changed. Mr Taylor offered to connect her to the communal area. However subsequent to the hearing the Tribunal were advised of problems with the tenant's aerial having been disconnected which is dealt with below.
35. Ms Bradford considered that the photocopying and the bin liners should be included within the management and cleaning charges, and should not be the subject of separate charges.
36. There was also an issue raised by the leaseholder that Mr Taylor had not issued demands in accordance with the 2007 regulations (see below) which required a summary of the Tenants Rights and Obligations to be attached to the demand. Mr Taylor was given a copy of the legislation in order to provide further submissions on how he had complied with this. This is dealt with in the decision below.
37. Mr Taylor also applied for reimbursement of his application and hearing in the total sum of £250 and £30 for the cost of preparing for the LVT hearing.
38. In reply Ms Bradford disputed Mr Taylor's entitlement to be reimbursed she stated that Mr Taylor had provided a demand, and as a result of the demand she had legitimate queries and had asked for invoices. Instead of

providing them, Mr Taylor had simply issued an application, and had not given her the chance to scrutinise the invoices.

39. Ms Denham in her written submissions took issue with many of the matters that had been raised by Ms Bradford. In addition she queried Mr Taylor's right to receive management fees, and queried the standard of management. In a later email dated 6 July 2010 she also raised as an issue the correct percentage payable by herself for her contribution to the service charges whether it should be 7% or 12%.
40. Ms Denham also queried the cost of the replacement boiler and the manner in which Mr Taylor had requested the funds. The Tribunal noted that the cost of the boiler replacement was not in issue in this service charge accounts year, and that as a result the only additional issue was the cost of the communal heating. This was shared by three flats that each had two radiators and hot water. The heating system went on in September until May at 6.30 until 8.30 am and 4pm until 10.30pm.
41. The Tribunal were presented with bills one for £270.35 and one for £804.26 and an additional sum of £24.97 which was in part for the cost of switching from Scottish Power to British Gas.
42. Mr Taylor agreed that the cost was expensive and this had contributed to the decision to switch from Scottish Power back to British Gas. However he presented the Tribunal with the actual bills.
43. The Tribunal noted that both leaseholders also referred to previous decisions concerning findings made by the Tribunal concerning the standard of management and the evidence submitted by Mr Taylor. The Tribunal have not specifically referred to these decisions, and have considered the evidence presented at the hearing and the supporting documents and the written and oral submissions of both parties.

The decision of the Tribunal

44. The Tribunal had been provided with two copies of the lease for Ms Bradford which suggests that the original percentage payable was 12%. It was however agreed between the parties and a copy of the lease which was provided stated 10% in the particulars. The Tribunal accepted that this is the correct percentage for Ms Bradford.

45. The Lease particulars for Ms Denham state 7% to be the correct percentage. This does not include her contribution to the heating and hot water charges (Curiously although the fourth Schedule clause 2 of Ms Bradford lease refers to the heating and hot water, no such reference in clause 2 of the fourth schedule was found in Ms Denham lease.)
46. The Tribunal were not able to determine whether the total percentage of service charges add up to 100%, (as the Tribunal did not have copies of the other leases for the premises). The Tribunal for the purpose of the hearing find that the percentage contributions payable by Ms Bradford is 10% and for Ms Denham 7% as stated in the two lease particulars.
47. The Tribunal find that the service charge demands did not comply with the **Service Charges (Summary of Rights and Obligations) (England) Regulations 2007**, accordingly the sums demanded are not payable until the Applicant serves a demand in the correct format which includes the summary of the tenants' rights and obligations.
48. The Tribunal have in anticipation that the Applicant will either before the determination or shortly afterwards serve a further demand, made findings in respect of the reasonableness and payability of the charges claimed.
49. **The Insurance-** The Tribunal find that the cost of the insurance premium is reasonable and payable. The Tribunal were satisfied by the explanation given by the Applicant that the sum is payable in instalments (The Tribunal were shown a copy of the payment schedule). **The Tribunal determine that the sum claimed is reasonable and payable.**
50. **The cost of the external redecoration-** The Tribunal accept that work was carried out to the premises of decorating the staircase and repainting the bargeboards. The Tribunal note in the evidence that although the invoice is to Mr Taylor he sub-contracted the work. Ms Bradford accepted that there had been scaffolding at the premises. After the hearing (but before the determination) Ms Bradford provided photographs. The Tribunal having seen the photographs consider on balance that this work was carried out to a reasonable standard.
51. The Tribunal noted that no alternative quotations or costing had been provided by the Respondents for this work (although Ms Bradford had a

narrative from her relative/builder). The Tribunal noted that in respect of the stairwell/case, there was agreement that the area had been improved, and Ms Bradford had been aware of the work (she had informed the Tribunal that she had not been given notice that it was due to be carried out).

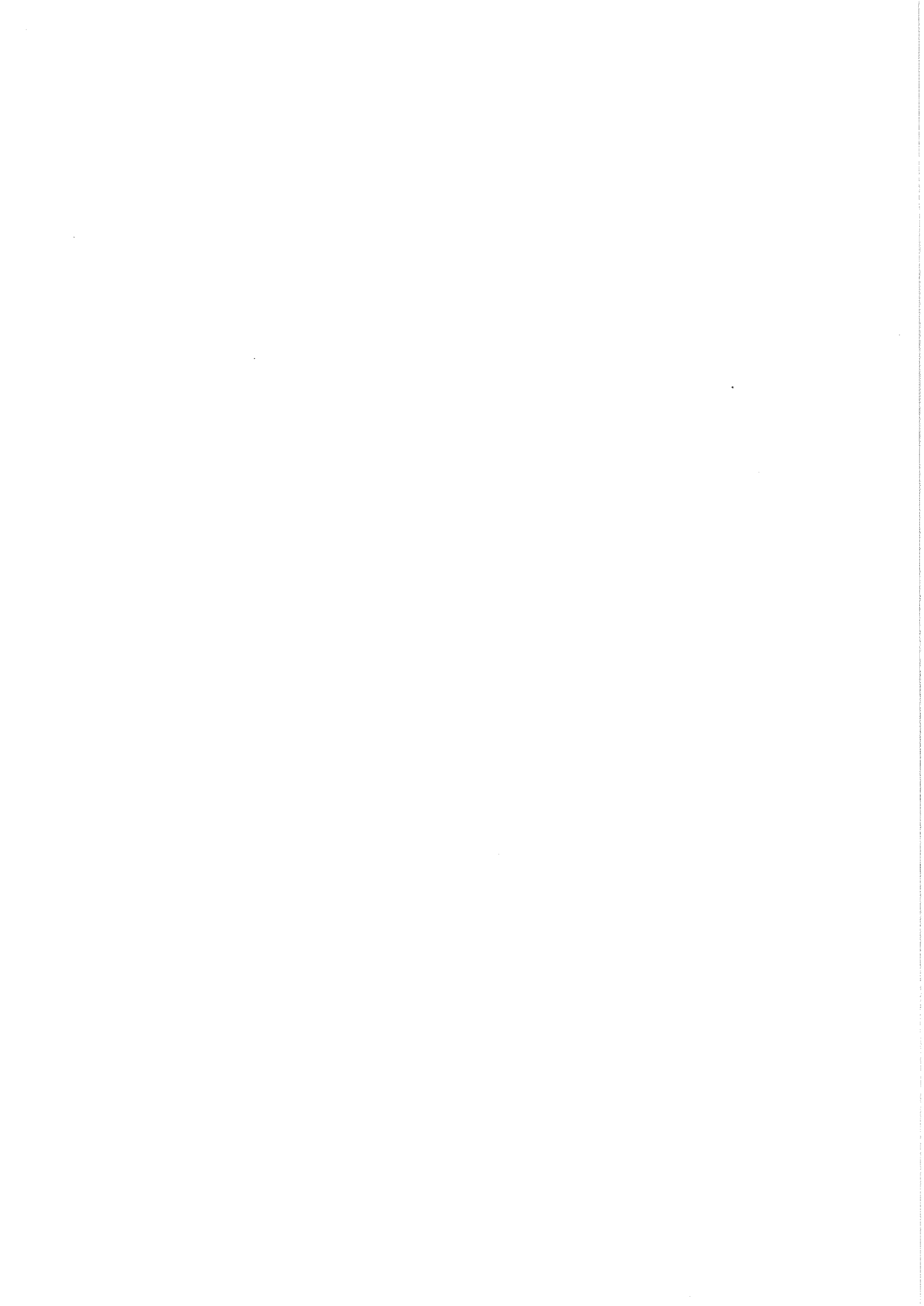
52. Although on balance the Tribunal are satisfied that this work was carried out for both the staircase and the barge boards, we note that although there are receipts from Mr Taylor's building company, there is no breakdown or build up showing how the total cost was incurred. The Tribunal do not consider this to be entirely satisfactory and state that this should be provided in future. **However on a balance of probabilities we accept that the work was undertaken and find that the sum claimed is reasonable and payable.**
53. **The Damp proofing work** – The Tribunal note that no evidence was presented to suggest that this work was not carried out, or that there are any issues with the standard of work. The Tribunal note that a twenty year guarantee has been provided. On a balance of probabilities the Tribunal accepted, that this work was carried, and that there is no complaint about the standard of work.
54. The Tribunal note however, that although there were three receipts this related to two items of work only. The Tribunal also consider that for such an item of work, it would be normal be prudent and good practise to have a survey and ascertain the cost of the work in advance and consult if necessary. Given this, the tribunal find that although this has not been packaged as one item of work, no real reason is put forward as to why this is not the case.
55. For this reason the Tribunal find that given the lack of evidence and no information as to why this ought not to fall under section 20 of the Landlord and Tenant Act 1985 **the total recoverable sum is limited to £250 per leaseholder.**
56. **Management Fee-** The Tribunal noted that there were significant shortcomings with the management of the premises.
57. (1) There was a lack of invoices for smaller items and the invoices were not sufficiently detailed. (2) There was a lack of consultation with the

leaseholders and notification of when works were due to be carried out. (3) There was no formal written management agreement or annual meetings with the leaseholders at which issues relating to accountability could be raised. (4) On occasion it was necessary to contact Mr Taylor in Greece, as by his evidence he resided in Greece for part of the year. This had resulted in the leaseholders having to organise drain repairs themselves, and we accept Ms Bradford's evidence that on occasion leaseholders had cleaned the bin stalls.

- 58. The Tribunal determine that the sum recoverable for management fees should be limited to £75 per property.**
- 59. Common Parts Redecoration** - The Tribunal noted that there was no real dispute concerning the reasonableness of the cost of this work and Ms Bradford did not provide the Tribunal with any evidence to suggest that this work had not been carried out. **The Tribunal accept that the cost of this work is reasonable and payable.**
- 60. Leak Repairs-** The Tribunal noted that other than making good the fixtures and plaster, there was no plumbing items and only superficial repairs, such as filling in the cracks. The Tribunal cannot be satisfied that the underlying cause of the leaks has been remedied, we note that there was no plaster specialist engaged to undertake work, and there was also no indication of the time taken to carry out this work. **We therefore find that on a balance of probabilities that the cost of this item is not reasonable and payable.**
- 61. The cost of Gardening** – The Tribunal noted that the bulk of this item was for removal of debris and dumped rubble. No evidence as to how this rubble came to be in the garden was given. Neither was any evidence put forward to show that in the normal course of events, this item was payable by the leaseholders.
- 62.** Although we accept that some ad hoc gardening was undertaken, we are not satisfied as to the reasonableness of the cost of the removal of the debris and rubble. The Tribunal therefore find that the sum of £650 is not reasonable and payable. Ms Bradford raises as an issue the upkeep of the side/passage and bin stall (and photographs have been provided in support of her contention, after the hearing); The Tribunal noted that

although the garden was in need of maintenance, the photograph did not depict a wild unkempt garden. **Therefore not withstanding the complaints we find that on balance, in relation to the maintenance of the garden, the service charges for this item (save for the rubble clearance) are reasonable and payable.**

63. **The Accountancy fee-** The Tribunal noted that page 6 of the lease enabled the cost of auditing the accounts to be charged as a service charge item. The cost for this item were split into the previous years accounts (£245) plus £500 for this year. The Tribunal noted that the accounts did not include the qualifications of the accountant, neither were the accounts formally certified. Neither was there an accountant's statement.
64. Given the considerable drawbacks with the accounts, The Tribunal are not satisfied that the cost is reasonable and payable. The Tribunal note that there was no receipt or qualifications given for Mr Waas (the accountant who Mr Taylor had engaged). **Given the lack of formality and non compliance with the provisions in the lease in relation to auditing the accounts, the Tribunal find that the cost of this item is not reasonable and payable,**
65. **Cleaning the Common Parts-** The Tribunal having considered the invoices and the evidence of Mr Taylor, **find that the cost of cleaning the common parts is reasonable and payable.**
66. **General Repairs-**The invoices for this were set out in paragraph 33 above. The total sum due is £270. There was also the cost of the clearing the block drain in the sum of £233. The Tribunal in considering this matter noted that no evidence had been put forward by the Respondents to either refute that the work was carried out, or to dispute the reasonableness of the charges. The Tribunal note that Mr Taylor has agreed to removal the sum of £50.00 which relates to the balcony door repair. The Tribunal in using its knowledge and experience determine that the total cost of the repairs is in keeping with the age and character of the building. **Given the lack of evidence to the contrary, we accept on a balance of probabilities that the cost is reasonable and payable.**




67. **The cost of the aerial-** The Tribunal noted that the demised premise includes a supporting right to the conduits and the provision of an aerial. **In accordance with the terms of the lease the Tribunal consider that the cost of the aerial is reasonable and payable.**
68. **The Tribunal is concerned to note that the basement tenant's aerial was disconnected, although not within the jurisdiction of the Tribunal, this represents a potential breach of the Covenant Of Quiet Enjoyment, and should be remedied by the Applicant.**
69. **The Miscellaneous Items-** The Tribunal noted that this included lighting of the common parts in the sum of £146.64 this was an actual cost and not based on an estimate. **This sum is reasonable and payable in accordance with the terms of the lease.**
70. **The Tribunal noted that there were various sundry items such as photocopies and bin bags.** In the Tribunal's view these are normal charges associated with the incidental management of the building, accordingly the Tribunal determine that this cost should be part of the management fee for the building and nothing further should be payable in relation to these items. **We accordingly find that the additional sundry items are not reasonable and payable.**
71. **Heating and Hot Water- Flat 4-** The Tribunal noted that Ms Denham complains about the cost of the heating and hot water. The Tribunal noted that the cost was high. It was however supported with invoices.
72. This flat enjoyed the benefit of heating and hot water, however there was no obligation to have this service, and the only obligation that we could see, was implied, that is, if the leaseholder had the benefit of the service, then she ought to share the burden of the cost. Given the lack of formality, The Tribunal considered that Ms Denham could if she wished make her own arrangement for the supply of heating and hot water.
73. However at the time of the hearing, she had not chosen to have a separate supply. The Tribunal determined this on the basis of information put forward by the leaseholder. The Tribunal noted that although the charges are high they can be supported by evidence. **Accordingly we accept that the charges for this item are reasonable and payable.**

74. The Tribunal were not asked by Mr Taylor to determine the reasonableness of the cost of the boiler, and have made no determination on this issue, the leaseholder Ms Denham, may if she considers it necessary make her own separate application in respect of these charges.

The Application for cost and section 20C

75. At the hearing Mr Taylor asked for the hearing fee to be reimbursed. The Tribunal have determined that as the Applicant did not comply with the Service Charge Regulations 2007 the charges are not payable until he has complied, given this it is not appropriate for the cost to be reimbursed as his Application was premature, given this the Tribunal consider it appropriate to grant the Respondent's an application under Section 20C of the Landlord and Tenant Act 1985.

76. The Tribunal determine that the Applicant shall within 56 days issue a revised demand in accordance with the Tribunal's determination.

CHAIRMAN...*Ms M W Daley*.....

DATE...30 September 2010.....