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Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00BB/LSC/2009/0543

DETERMINATION OF LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A of The Landlord and Tenant Act 1985 CONCERNING Bridgepoint Lofts 6 Shaftesbury Road, London E7 8PL

Applicant :	Various Leaseholders of Bridgepoint Lofts
Represented by:	Ms Tapping Mr Patel M Hodgson of Counsel Ms Dattani
Respondents Represented by :	Quadron Investment Ltd Ms Worton
In Attendance On behalf of the Applicant	Mr Darkwah
In Attendance On behalf of the Respondent	
Hearing Dates:	8 & 9 February 2010
Tribunal:	Ms M W Daley LLB (Hons) Mr T Johnson FRICS Mr P Roberts Dip Arch RIBA
Date of Decision:	31 March 2010

The Application

The Applicant seeks a determination pursuant to section27A of the Landlord and Tenant Act 1985 of the liability to pay service charges for the years 2006/07, 2007/08 and for 2008/09 (year ending 25.12.09). The Tribunal note that Trebor Works (RTM) Company Ltd took over the management in November 2009, accordingly the determination relates to the actual costs to year ended 25.12.2008, and as the charges are not yet finalised, the estimated charges up to end of October 2009.

The Background

1. The background to these proceedings is that the parties have previously sought determinations from the Tribunal. On 27 July 2006 a determination was issued in respect of an application transferred from Barnet County Court on behalf of the Freeholder for 2004, 2005 and 2006. There was also a further application in respect of this period, on behalf of leaseholders who were not parties to this application.

2. In February 2009, the Tribunal also made a further determination in respect of service charges for year ending 2006.

3. The Tribunal have not inspected the premises and has adopted the description of the property in the determination dated 27 July 2006 –" *The premises is a 4 storey (plus penthouse) former sweet factory, built circa 1930 and converted in 2003 to a block of 51 flats arranged around an open court yard with bridges.*

   There is a car park with 19 spaces on the lower ground floor; these spaces are separately let from the flats.

   There is a raised narrow L shaped strip along the frontages of the block, which is planted with shrubs.....

   The bundle included some photographs of the property.

The Law

Section 19) 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 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** 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.*

The hearing

4. At the hearing the Applicants were represented by Ms Tapping, Mr Patel and Ms Dattani. Ms Tapping was the lead applicant who set out the details of the Applicants objections to the service charges.

5. Mr Patel made submissions on behalf of the Applicants concerning the Respondent's failure to comply with directions. He asked the Tribunal to consider

whether the Respondent should be allowed to rely upon their statement of claim. The directions required the Respondents to serve their statement of case by 30 October 2009. The Respondent had not served their statement of case until 24 November 2009.

6. Mr Patel explained that this was not the first occasion in which the parties had been involved in Tribunal proceedings, and that the Respondent had acted in this way before. The Tribunal asked the Respondent for an explanation as to the cause of the delay.

7. Ms Worton counsel for the Respondent stated that she could not advance any particular explanation for the Respondent's delay in complying with the directions. Counsel stated that the initial request had been sent to Mr Stanley, a partner at Salter Rex, who had not responded to the request, although Counsel made no criticism of Mr Darkwah who was the day-to-day property manager.

8. Ms Worton stated that the Respondents had asked the Tribunal for an extension of time to serve their reply, which was refused. Ms Worton stated that although there had been delay there was now no prejudice to the Applicants. Ms Worton considered that although the statement was served late, the statementwas a relatively detailed document and had taken some time to prepare, she was also aware that Mr Darkwah had some medical problems, which affected his eyesight, and this had not helped.

9. The Tribunal determined that the statement of case ought to be admitted. The Tribunal considered that it was in the interest of justice for the Tribunal to be presented with all of the relevant evidence.The Tribunal noted that the Respondent had not provided any real explanation for the delay. However the Tribunal accepted that any prejudice to the Applicants, had been militated against, as there had been sufficient time for them to consider the documents.

10. The Tribunal noted that, the Applicant could, if they chose apply for a cost order under schedule 12 Paragraph 10 of the Commonhold Leasehold and Reform Act 2002.

11. Mr Patel noted that cost orders had been made against the Respondent before, and that they had not complied with them.

12. The Tribunal noted that the Applicant had set out each of the charges and the amounts that were disputed and the amount considered to be reasonable. The Tribunal decided that it would deal with the matters in the order adopted by the Applicant in their claim.

The insurance

13. The first item was insurance, the amount charged for this was £15,054.48 for the year ended 25.12.2007. The Insurance provider was Towergate Insurance; all 20 of the properties owned by Quadrant and managed by Salter Rex were placed with the same broker under a block policy. Ms Worton stated that the cost of insurance was based on the claims history for the building.

14. Ms Tapping stated that although the applicants had seen a copy of the policy they did not know whether it was value for money, as they had been able to obtain insurance estimates at a lower cost since the RTM Company had been implemented. Ms Tapping stated that the same issue applied for both years.

15. Ms Worton stated that it was not possible to know whether the insurance quoted was like for like and it was subject to survey,. She stated that although the broker received commission the Respondent did not. In the statement of case the Respondent referred to the fact that the findings of the Tribunal in 2009 (relating to the 2006 service charges) were that the charges were reasonable and payable.

16. Ms Worton referred to the case of *Berrycroft –v- Sinclair Gardens (1997) 1 EGLR 47,* which was authority for the proposition that Landlords in these circumstances were not required to "*shop around*" for the cheapest quotation if cover is available under a portfolio policy.

17. The Applicant stated that they had details of the new certificate of insurance which was provided by Aviva effective from 2 February 2010, the Respondent also had details of the policy for the previous year from Allianz Cornhill for the Tribunal to consider.

The Tribunal's findings on the Reasonableness and Payability for 2007 and 2008

18. The Tribunal noted that in the Applicant's submissions, the Applicant queried the cost on the basis of whether it was value for money. The Tribunal noted that full disclosure has now been given of the policy, and given this the only dispute is the

actual cost of the insurance. The Tribunal note that the cost of the insurance for 2007 was £15,054.48 and for 2008 was £15,506.40, this compared to the Applicant's figure, (put forward as reasonable) in their statement of £11,000. The Tribunal noted that the cost of the current insurance policy including terrorism cover was £14,054.05. The Tribunal do not have all of the information that would have been given to the brokers/ insurance company on which they based their decision when they offered the premium.

19. The Tribunal also note that the applicant's figure was based on quotations, which had been put before previous tribunals. The Tribunal note the authority of *Berrycroft –v- Sinclair Gardens (1997) 1 EGLR 47.* The insurance is part of a block policy. The Tribunal having considered all of the evidence finds on a balance of probabilities that although undoubtedly it may have been possible to achieve a savings by shopping around, this on its own is insufficient to say that the cost of the insurance is not reasonable and payable. Given this the Tribunal find that the cost of the insurance for the years 2007 and 2008 is reasonable and payable.

The Water Rates

20. The Applicants had gone through all the bills and the schedule produced by the Respondent and noted that one of the bills relating to the water rates was missing. The Applicants also queried whether the managing agents had properly apportioned the charges between Bridgepoint Lofts and Vineyard Mews, a neighbouring block.

21. Ms Worton accepted that there had been some incorrect apportionment of the bills and that in the schedule there was a typographical error. Ms Worton acknowledged that there had also been overdue charges which were disputed by the Applicant which she stated were payable. There had been no funds to pay the bill at the time and this was the reason that the bill was paid late.

The Decision of the Tribunal on the issue of the water rates

22. The issues concerning the water rates, was the apportionment between Bridgepoint Lofts and Vineyard Mews, which has been the subject of findings in previous Tribunal Decisions. The Respondent has accepted that there are bills that have been incorrectly apportioned and this has been the subject of a

concession, which is dealt with in the agreed schedule attached to this decision. In respect of the missing bill, Ms Worton invited the Tribunal to find that yearly charges were divided by the water company in equal quarters, the Tribunal could consider that although no bill was produced it was likely that the charges of £5745.63 had been incurred as this corresponded with the bills which were produced.

23. The Tribunal's decision is that a utility company provided the water rate bills and it is accepted that the Applicants were provided with water through out the period. The Tribunal find that although there is a missing bill, the onus is on the Applicants to prove that the cost is not reasonable, or that it ought not to be paid without proof of expenditure. The Tribunal finds on a balance of probabilities that the cost of the water rates, (subject to the apportionment in the schedule) is reasonable and payable.

Building Repairs

24. Ms Tapping stated that the issues, concerning the service charge amounts for the building repairs in 2007 and 2008 were as follows: whether the charges for shared services with Vineyard Mews had been correctly apportioned, and whether the charge for rubbish removal was reasonable. Ms Tapping was of the view that the charge for rubbish removal should not be a service charge item, it should be charged to the individual responsible for the dumping.

25. The Tribunal noted that the issue concerning the dumping of rubbish had been considered by the Tribunal in its decision in February 2009, which is referred to below. However Ms Tapping stated that there was a charge of £70.50 for removing debris, as this was the builders own debris, Ms Tapping queried why the cost should be charged to the leaseholders. Ms Worton stated that this was not accepted as being the builders' debris, it was for the removal of glass, and other material caused by a car damaging the car park barrier and included debris from the vehicle.

26. The issues concerning the items of expenditure were identified in the Applicant's reply and they are also follows-:

Building Repairs	2007 Disputed amount	2008	2009
Bex Locksmiths	£39.77		
CCD Pumps		£50.89	
A&B Metalworks		£38.77	
CCD Pumps		£47.09	
Paul Pfiffner		£1580	
Paul Pfiffner		£140.00	
PIMS Group		£152.64	
PJ Builders			£92
Meridan Surveillance			£115
Aton Debris removal		£70.50	
CCD Pumps			£80.25

27. The issues in respect of the first cost were whether the Applicants should be responsible for the amount claimed for keys to the building provided by Bex Locksmiths, when the managing agents should have had keys supplied for the building from the Respondent at the time they took over the management.

28. In reply Mr Darkwah stated that the managing agents required keys as they needed to provide the contractor with them, and they also needed spares in case there was a problem with the intercom system. This was rejected by Ms Tapping, who stated that the managing agents should have had keys when they took over the management of the building.

29. In respect of CCD Pumps and A& B Metal works, and PIMS Group the issue was whether the formula used for apportioning the charges had been applied so as to ensure that the charges were correctly apportioned.

30. The invoices from Paul Pfiffner raised a different issue, and that was whether the leaseholders should be responsible for the charges, or whether they should be paid by the buildings insurer, who had paid for the cost of internal repairs, associated with the damage that had been caused to flat 19. Given this, the Applicants queried why they were being charged for the external repairs.

31. There were a number of concessions from the Respondents in relation to the apportionment. Ms Worton accepted that the invoices from CCD pumps had not been correctly apportioned. Ms Worton, did not accept that the payment to A& B Metal works should be apportioned between Vineyard Mews and Bridgepoint Lofts, as this charge related to a store- room door within the garage, which although used by the cleaner, was in her view part of the structure of the premises, which made up the applicants block, Bridgepoint Lofts.

32. Ms Worton did however concede the invoice from Paul Pfiffner for the work to flat 13 amounting to £140.00.

33. The Applicants also disputed liability for the cost associated with the intercom system. Ms Tapping stated that the system was damaged because it had been placed too low on the wall, and the cleaners had knocked it off when moving the paladin bins. Ms Worton stated that the cleaners had denied causing the damage, and given this the Respondent could not take the issue further as there was a lack of evidence with which to challenge the denials made by the cleaning company. Ms Worton stated that notwithstanding any evidence on this point, clause 9(d) of the lease stated -: *despite anything else in this Lease the parties agree that if the Landlord shall consider that any part or parts of the costs charges and expenses which the Landlord shall incur as aforesaid are reimbursable by persons other than the lessees for the time being of the Estate then the Landlord shall be entitled but not obliged to allocate such lesser amount than is the total of the costs charges and expenses in question as the Landlord shall in its absolute discretion consider reasonable to the sum to which the Tenant shall be obliged to contribute by way of the Service Charge...* "

34. Counsel submitted that this clause gave the Respondent the option of pursing a charge against a third party or in the alternative charging the cost as a service charge item.

35. Mr Patel stated that although the cost had been incurred the intercom system still had not been fixed. Ms Worton stated that the managing agents were awaiting an estimate from one of the leaseholders. If this was not received it was the managing agents' intention to instruct contractors to carry out repairs.

The Decision of the Tribunal on the cost of Repairs

36. The Tribunal having considered the evidence and the concessions made by the Respondent, have determined as follows-: The Tribunal find that the cost of replacement keys is not reasonable and payable, as the managing agents had been given keys on taking over the management of the building, and no explanation was given as to the whereabouts of those keys and why it was necessary to obtain replacement keys.

37. The Tribunal accept the concessions made by the Respondent, which are set out in the schedule attached to the decision.

38. (i)The Tribunal find that the cost of debris removal paid to Aton Builders was reasonable and payable. (ii)The Tribunal have also considered the issue of the charge for repairs to the door, although the door is to the cleaner's storeroom, and the cleaner provides a service for both Bridgepoint Lofts and Vineyard Mews. The Tribunal accept the submissions made by Ms Worton; that the cost is reasonable and payable by the leaseholders as the storage is wholly located within their building. The Tribunal find that the cost is reasonable and payable.

(iii)The Tribunal find that in accordance with clause 9 (d) of the lease, the Respondent has the option of charging the leaseholders for damage incurred by a third party. Given this we find that the Respondent has not acted improperly in levying this charge and we find the cost of £92 (payable on account of work undertaken by PJ Builders) and the sum of £115(payable to Meridan Surveillance) reasonable and payable.

The Cost of the Electrical Repairs

39. The Applicant's case on Electrical Repairs was set out in the Applicants response, which stated *"...[The Respondent states that bulbs are not eco-bulbs but are fluorescent bulbs. Respondent also states that energy saving bulbs... do not work as well as standard bulbs where a motion sensor device is used. The fittings do not accept standard bulbs. This corroborates our argument that the fittings installed are not fit for the purpose and should never have been fitted in the first instance and therefore supports our argument that the fittings are unsuitable for this type of installation and should be replaced under the warranty by the developer(or recourse taken against the electrical installer employed)"*

40. *We therefore dispute the amounts charged by the electrical repairs companies since if there was no fault in the system only bulbs and starters would need to be replaced-note in the case of S& M Electrical the same fitting outside flat 45 was replaced within 2 weeks..."*

41. The Respondent denies this allegation and stated that the electrical charges are reasonable. The Respondent also asserted-: " *that if it is determined that the light fittings are not fit for the purpose, which is denied, the Respondent submits that the cost of replacing all light fittings in the Block would be a service charge item in accordance with Paragraph 12 of the Fourth Schedule and Paragraph 2 of the Sixth Schedule to the Leases"*

42. The Tribunal were also referred by the Applicants to the 2009 decision of the Tribunal. The Applicants had, in support of their claim at that hearing called evidence from an electrician, Stig Slaughter. The Tribunal noted that in his evidence before the 2009 Tribunal Stig Slaughter stated that the light fittings were "inappropriate". The cost of repairs (for the periods in issue) was for 2007 £915.31, for 2008 £1223.27 and for 2009 £144.

43. The Applicants also raised the issue of the cost of the lamps and cleaning materials, which is dealt with in paragraph 62-63 below.

44. The second item in dispute was in relation to the type of meter that had been installed in the premises At the last Tribunal hearing it had been noted that the Respondent needed to install a three phase check meter. The Applicant queried whether the correct meter had been installed, and whether the cost had been correctly attributed to the leaseholders. The Applicants stated that the cost should

be borne by the Respondents. Ms Worton was not able to confirm the type of meter installed, however she did not accept that the landlord should be responsible for the cost of the meter.

The Decision of the Tribunal

45. The Tribunal having carefully considered the evidence is not satisfied on a balance of probabilities that the lighting system is defective, or unfit for the purpose. The Tribunal noted that the Applicant's expert had stated that he considered the lighting system '*inappropriate*', however this did not mean that it was defective or not fit for the purpose. The Respondent stated that the cost of replacement would be around £12,000. This is a considerable amount and no expert evidence has been put before this Tribunal, which would justify replacement of the existing system.

46. The Tribunal find that the Applicant has failed to satisfy the evidential burden that the cost incurred on electrical work is unreasonable and not justified. Given this the Tribunal find the cost of the electrical repairs reasonable and payable.

Lift Repairs and Lift Maintenance

47. The Tribunal stated that it would be sensible for both these items to be dealt with together. The Applicant queried the call out charges and stated that there should be no call out charges, and that these items should be included in the maintenance agreement. The Applicants also wanted sight of this agreement and details of the missing invoices. The Applicants had also obtained alternative quotes for the cost of the lift maintenance from JDR Lift Services Ltd and the information on the service that they provided was set out in the bundle.

48. The Respondent had supplied a copy of the Lift Maintenance Agreement from Kone Limited. The cover provided was their Kone Platinum Performance. Mr Darkwah stated that they had looked at alternative contractors such as Crown, Ambassador and Otis, and had decided to place the contract with Kone as they had manufactured the lift. This would ensure there were no problems with obtaining parts and there was a guarantee offered of 24 hours service.

49. The Tribunal also had copies of the relevant invoices. The maintenance service included normal office hours call outs which was 9 to 5pm. The Applicants had been charged for call outs, which were outside of these hours, however it was

noted that at least one of these calls, which was made by a leaseholder's tenant, was not in the Applicants' view urgent. Ms Tapping considered that there should be some degree of restriction/ redirection of minor maintenance issues to the managing agents, so as to prevent such call outs.

50. Ms Worton informed the Tribunal that the service provided by Kone Ltd was on the basis that they had installed the lift when the building was converted, and the contract had been taken out post completion, it would be more efficient and effective to deal directly with the manufacturer and installer of the lift.

51. It was acknowledged by Mr Darkwah that there were two call-out charges, which should have been included in the maintenance agreement in the sum of £267.59 for 2007 and £286.85 for 2008. However of those charges, which the Applicants queried, one of the calls was made by a tenant, who heard a scraping noise coming from the lift. The cost of this was £283.50. This cost was reluctantly conceded by the Leaseholders.

The Decision of the Tribunal

52. The Tribunal noted that there were a number of concessions made by the Respondent concerning the call out charges and these are set out in the appendix. The Tribunal noted the explanation provided by the Respondent for the use of the contractor, and the fact that the agreement concerning the lift maintenance was entered into after the lift was installed. The Tribunal consider that it was sensible and indeed reasonable for the Respondent to obtain services from the contractors who installed the lift.

53. The Tribunal note that the contract was for six years and effectively runs until the end of 2010, given this there would almost certainly be a penalty for early termination of the contract. The Tribunal find that on balance, although it is not the cheapest agreement, the Respondent had a good reason for entering into the contract, to ensure availability of parts and expertise. Given this the costs claimed are reasonable and payable.

Garden Maintenance

54. The issue raised by the tenants concerning garden maintenance was the reasonableness of the cost, based on the size of the garden, and the quality of the work undertaken. The Applicant also queried whether there was a duplication of

cost, in that they were paying for the cost of both a gardener and for the cleaning company to carry out gardening.

55. In order to clarify what was undertaken, the Applicants had in their statement of case asked for a copy of the gardening contract. In their reply to the claim the Respondent stated that they did not have a '*gardening contract*' and that the only gardening which was carried out, involved weeding of the common flowerbeds, on an ad hoc basis. The Tribunal were referred to the invoices. One of the disputed charges was in relation to two tree planters , which had to be removed, as they were partially blown down, appeared to have snapped at the root, and was in danger of falling. The Applicant produced photographs of the trees.

56. On the Respondent's behalf, Ms Worton stated that they were three trees of substantial size, and as they were in danger of falling, they had been secured at a cost of £100.45 (2009). The charge of £114.56 in 2008 relates to a one off tidy up of the garden area.

57. Ms Worton stated that this charge was for dealing with the flowerbed, however rubbish was dumped in the planters on a fairly regular basis. When this needed clearing it was not included in the regular cleaning contract, and as a result the leaseholders had to pay extra for this. Ms Worton stated that as a result there was no duplication as the charges were for different things.

58. Mr Darkwah gave evidence that after he took over management of the block in November 2007 he visited the property approximately once a month; during the course of his visits he had noted that the planters were over grown and littered and that as a result he had asked Online Maintenance to undertake this work on an ad hoc basis.

59. Ms Tapping did not accept that the charges were reasonable. She stated that there was very little evidence that gardening was undertaken and as a result she invited the Tribunal to determine that the amounts claimed were not reasonable and challenged the payability for this item.

The decision of the Tribunal

60. The Tribunal noted that there was a limited amount of gardening undertaken at the property, and that the building did not have gardens as such, more a verge of planters next to the building. However the cost incurred was ad hoc and limited to

tidying up. Given this the Tribunal find the cost of the gardening reasonable and payable.

61. The Tribunal noted that there was a one off cost for securing and re-planting trees. This work was undertaken on an urgent basis and as a result it was likely to be more expensive than routine garden maintenance, given this the Tribunal find the cost of this item to be reasonable and payable by the leaseholders.

The cost of cleaning

62. The issue concerning the cleaning was whether the cost of the cleaning represented value for money. The Applicant's had obtained comparative quotes and in the course of obtaining these quotes had formed the view that the cost of the cleaning did not represent good value for money. One of the issues concerned the separate charges for cleaning material and the cost of light bulbs. Ms Tapping stated that the other cleaners quoted cost, did include cleaning material.

63. The issue concerning the bulbs was the cost of supply. It was noted that the bulbs were more expensive than the cost that the Applicant had been quoted for bulbs/ lamps. They had found a company that could supply the bulbs at a lower cost and details of this was provided in the bundle of documents. The Respondent did not agree that the cleaning company purchased the bulbs ad hoc. The Respondent stated that they were purchased in bulk.

64. Ms Worton informed the Tribunal that the position concerning the cleaning was that at a previous LVT hearing it was agreed that a lesser cleaning service would be provided, and that the cleaning time would be reduced to 13.5 hours per week. Ms Worton stated that the cleaning had been reduced in line with the agreement. However it had also been agreed to reduce the glass cleaning. This should have been carried out on a quarterly basis rather than monthly, however the cleaners continued to clean on a monthly basis, incurring charges totalling £626.66 per month.

65. Ms Worton accepted that the charge of £2585 from March 2007-December 2008 should not have been made. The charge should have been £940 for a 10-month period. Accordingly the Respondent's conceded that there should be a refund of £1645.00 for the period in 2007 and 2008.

66. Mr Darkwah, stated that the cost of cleaning materials had always been included as a separate item in alternative quotes that had been received from other cleaning contractors. The Respondents had also renegotiated the charges with Online Maintenance and were satisfied that it was competitive.

67. The Applicants had stated that there was a duplication in the schedule of charges but this was not accepted by Ms Worton who stated that there was a difference of £15.74 between the two invoices that were stated to be duplicates; this was due to rectifying a VAT error. Ms Worton however agreed that there was a missing invoice for the cleaning in the sum of £626.66. Ms Worton submitted on behalf of the Respondent that the cleaning had been undertaken, however she could give no explanation for the missing invoice other than to state that the cleaning had been carried out, in accordance with the normal cleaning program.

The Decision concerning the Cleaning

68. The Tribunal noted that there was a concession concerning the overcharges as it was agreed that services should have been reduced in line with a previous Tribunal decision. The Tribunal however accept that cleaning was carried out throughout the period and noted that no evidence has been presented that the cleaning was unsatisfactory. The Tribunal having considered the cost of the cleaning materials consider that the cost is de minimus, and given this, the Tribunal consider that the separate charge for cleaning material is reasonable and payable.

69. The Tribunal noted that no evidence was presented concerning the on-cost of the bulbs such as the delivery charges etc, There was also the issue of the convenience of the supply, and the fact that the Respondent's had reasonably delegated the task of obtaining the bulbs to the contractor responsible for fitting them. There was no obligation on the Respondent to shop around for the cheapest price, rather the Respondent needed to ensure that the costs charged were reasonable, 'reasonable' suggesting that there is a range which will include prices which may be higher than the cheapest price available. The Tribunal find that the cost of the light bulbs is reasonable and payable.

The Electricity

70. The issue concerning the electricity was the apportionment of the cost of the supply to the water pump. Ms Worton on behalf of the Respondent stated that there were two main supplies to the premises including Vineyard Mews the landlord's supply and the lift supply, the lift supply included the lift and water pumps whilst the landlords supply included lighting of the common parts.

71. The Respondent stated that they had apportioned the water pump charges. In respect of the two supplies the Respondent had divided the charges so that Bridgepoint Lofts paid for the lift supply and Vineyard Mews paid the total cost of the common parts lighting. In accordance with the meter reading the water pump usage by Vineyard Mews was £211 per annum. The Respondent conceded an amount of £106.17 to be credited in respect of the landlords supply in 2008.

The decision of the Tribunal

72. Having considered the evidence the only reservation that the Tribunal had about the charging system used was whether the leaseholders at Vineyard Mews should be solely responsible for the communal lighting. In the Tribunal's opinion it would be reasonable for this cost to be apportioned in the same way that the other charges are apportioned, which would require Bridgepoint Lofts to contribute to some of the charges for the communal lighting.

73. The Tribunal also noted that although the meter installed to the water pump may not have been a three-phase meter, there was no serious suggestion made by the Applicants that it was inaccurate. The Tribunal consider the cost of electricity to be reasonable and payable.

Accountancy Fee and decision on the cost of the accountant's fee

74. The Accountancy fees charged were £ 646.25 for 2007, and £1590.86 for 2008. The Applicants disputed the cost of the accountancy fees on the basis that the accounts were not audited, rather they were certified, and give this, the task was less onerous. The Applicants were also concerned to note that there were missing invoices. Taking all of these factors into account the Applicants considered that the cost had increased without any justification.

75. The Applicants had also undertaken alternative tendering and given this, it was their view that the cost was not competitive and that it was not reasonable for the service provided. Ms Worton provided the Tribunal with a letter from the Accountants Simmons Cainford who stated that the cost of carrying out the audit had increased as a result of the work involved. The Tribunal noted that the accountants were of the view that the cost had increased in line with the amount of work involved.

76. However the Tribunal noted that the letter was largely self-supporting and no reason was given for the amount of work that certifying the accounts involved, and this caused the Tribunal to consider whether the presentation of the accounts could be improved. There was no suggestion of any degree of complexity in the accounts themselves, put forward to justify the increase in cost. The Tribunal also noted that the accountant's certified, rather than audited the accounts and this did suggest that the task could be made less onerous.

77. The Tribunal were informed that the Applicants had been able to obtain estimates for the service to be provided at a lower cost of £400 to £500. The Tribunal consider that the cost provided by the accountants at £646.25 is reasonable, however this cannot be said for the fee for 2008. Tribunal determined that £665.00 is the maximum figure that is reasonable and payable for certifying the accounts for 2008.

Health and Safety inspections and Sundries and the Tribunal's decision

78. The Applicants queried the need for the health and safety inspections carried out which were an asbestos survey and a health and safety fire risk assessment. Copies of the surveys had been provided in the bundle. The Applicants queried the timing of the surveys. Ms Tapping stated that the refurbished building was fairly new, given this why was a report necessary at this stage rather than earlier on when the building was completed.

79. Ms Worton stated that as the building was a conversion it was therefore wrong to assume that there was no asbestos. The Applicant had tried to obtain copies of the M & E documents from the developers and had been unsuccessful. Given this their approach had been to put safety first and ensure compliance by obtaining a report. The Respondents submitted that the cost of the reports was recoverable

under the sixth schedule of the lease and as a result the costs were reasonable and payable.

80. In respect of the sundry item this was for a search at DVLA in pursuit of a dumped vehicle owner. There was no name attached to the search, however the Respondent submitted that the cost was reasonable and payable as the search was in connection with proper management under the lease.

81. The Tribunal accepted that the Respondents had acted reasonably in obtaining copies of health and safety surveys and ensuring that the surveys are to hand. This has benefits for both the Applicants and the Respondent. The Tribunal having seen the surveys consider that the reports were prepared by experts and that the cost is reasonable and payable.

82. The Tribunal are satisfied on a balance of probabilities that the cost of the sundry item is reasonable and payable.

Insurance claims by leaseholders and legal fees

83. The Applicants queried the cost of these items. Ms Worton explained that this was to cover the cost of insurance excesses. The Respondent stated that rather than charge the individual leaseholder the cost of the insurance excess, the Respondent took the view that the excess would be apportioned to all of the leaseholders, on the basis that it was mutually beneficial. The Respondent conceded the amount of £293.88 for Thompsons Maintenance in 2008 as this related to a leak and damage within flat 27.

84. The Respondent conceded the cost of legal fees, as they agreed that these charges should not have been applied; these amounted to £6,100.25 in 2009.

The Tribunal's determination

85. The Tribunal noted that where the Respondent charged the insurance excess to the leaseholders, the insurance company had settled the actual claim. This suggests that it was settled on a 'no fault basis'. Given this the issue was whether the excess should be paid by the leaseholder of the individual flat or contributed to by all leaseholders as a service charge?

86. The Tribunal consider that the Respondents have not acted unreasonably in claiming the amount as a service charge. The justification for this is that all

leaseholders who are not at fault would be treated the same way and that this would ensure that no leaseholder (unless at fault) solely bore the cost of the excess. The Tribunal find on a balance of probabilities that the cost of this item is reasonable and payable by the leaseholders.

87. The Tribunal noted that the legal fees have been conceded and this is set out in the document appended to the decision.

Management Agreement and section 10 Schedule 12 of CLARA 2002

88. The Applicants disputed the cost of the management fees. The Applicants also wanted to see a copy of the management agreement and were critical of the standard to which the management was carried out. For example they stated that the bare minimum was provided. They stated that Mr Darkwah was not available whenever they had queries, and did not respond to their complaints. Ms Tapping stated that there was no reserve fund or maintenance plan. She cited as an example, the fact that the common parts had not been re-decorated, and window frames and external vent covers had deteriorated in condition. She also considered that the cleaning and other contracts needed more robust management and cited that the bin room was not cleaned on a regular basis.

89. Ms Tapping also stated that they were unhappy with the financial management of the building. They were unhappy with inaccuracies in internal ledgers, and the fact that the managing agents had made very little effort to obtain value for money by changing contractors, insurance providers and otherwise seeking more competitive prices.

90. The Applicants were also unhappy about the lack of communication with the managing agents on issues that affected the building and the lack of pro-activity from the managing agents in managing the building. In their submission, no more than 50% of the cost of the managing agents' fees were due, as this was the value of the service that they were receiving.

91. Ms Tapping also considered that the managing agents' response to the LVT hearing by late production of documents was typical of the attitude of the managing agents, given this the Applicants sought cost under schedule 12 of CLARA 2002.

92. In reply Ms Worton acknowledged that there was no formal management agreement. However she stated that the building was managed in accordance with the principles set out in the RICS Service Charge Residential Management Code. The current fee for managing the building was £234. plus VAT (per unit per annum). She suggested that this was a discounted rate. In her experience an average fee would be £300 per unit for a London property and the Applicants were paying less than this.

93. Ms Worton stated that Salter Rex had not fallen short, although there were errors, this did not mean that the service provided was not reasonable. She did not accept that the managing agents had failed to manage the budget properly, and pointed out that there was very little difference between the actual and the budgeted amount for the two years

94. In dealing with the application for cost under section 10 Schedule 12 of the Common hold and Leasehold Reform Act. Ms Worton stated that although the Respondents had been late in complying with Directions Mr Darkwah had been away on sick leave, and no disrespect was intended to the Applicants or the Tribunal. Albeit late the Respondents had replied and had produced a detailed response. There had been no prejudice suffered by the Applicant. The conduct did not meet the threshold of being frivolous and vexatious or otherwise abuse of process.

95. The Applicants replied by stating that the conduct was egregious , and the Tribunal should take into account the fact that this was not the first occasion upon which the Respondent had failed to comply with directions. Ms Tapping had been prejudiced as she had been in the course of moving home, and had been put to considerable inconvenience in dealing with this matter.

The Tribunal's decision on management fee and the section 10 Schedule 12 Application

96. The Tribunal noted the submissions of both parties on the management fees and The section 10 Sch. 12 of CLARA Application. The Tribunal has determined that the managing agents' fees should to be reduced. The Tribunal accepts that there was a lack of communication and responsiveness from the managing agents to the Leaseholders.

97. The Tribunal noted that although there had been two previous LVT determinations, the Respondent demonstrated that they have paid little regard to what previous Tribunals had stated and as a result many of the issues which have been conceded, arose as a result of the failure of the managing agents to acknowledge that there were errors and then to put them right.

98. The Tribunal noted that previous tribunals had reached determinations on issues of cost that had not been complied with. In these circumstances the Tribunal consider that the managing agent's fee ought to be reduced to reflect the fact that the managing agents have failed to fully comply with the RICS code of practice. There was no evidence of a management agreement, or complaints handling process and scant regard to Part 3 of the Code.

99. The Tribunal have determined that a reasonable fee for managing the properties to a reasonable standard would be £275 (plus vat) per annum. The managing agents did not manage the building to the required standard .The Tribunal considered that this requires a deduction, against the figure given above of 40 % for the two years. Accordingly the Tribunal determines that managing agents' fee is limited to £165 plus VAT per unit.

100. The Tribunal find, on a balance of probabilities that the Respondent did not act "*frivolously or vexatiously*". However it acknowledges that the managing agents did not act promptly or alert the Tribunal to difficulties in producing the statement of case. These failing have occurred before, and are symptomatic of the poor communication and lack of responsiveness of the managing agents. This issue has been addressed in the reduction of the management fees and accordingly the Tribunal have determined that the application under section 10 Schedule 12 of CLARA 2002 ought not to be granted.

101. The Tribunal having considered the submissions of both parties have determined that the Section 20C application made by the Applicants to limit the cost of these proceedings ought to be granted. The Tribunal are satisfied that it is reasonable in all of the circumstances, as considerable concessions were made by the Respondent, which were only made on the back of the Applicants' application.

Signed M O'Daly

Dated 31st March 2010

Bridgepoint Lofts
6 Shaftesbury Road
London
E7 8PL

(LON/00BB/LSC/2009/0543)

Table of Concessions for 2007-2009

Item	Total amount disputed as per applicant response's dated 24th December 2009	Amount conceded by applicants post LVT hearing 8-9/2/10	Comments of the Respondent's Counsel, Louise Worton
Insurance	4,054.48 per annum (difference between current premium without terrorism insurance provided by HML Andertons and Quadron block policy insurance)	£12163.44	
Water Rates	4018.00	**2007:** a) £1430.90 (conceded – Thames Water missing invoice supplied) b)Applicantsere also conceding £4,508.11 in relation to water charges for 2007 based on the invoice produced at the hearing dated 22//01/07. This invoice was for £5,745.63 and a credit of £1,237.52 was applied for apportionment.	- - In addition, it had been understood that the Applicants were also conceding £2,271.74 on a water invoice dated 23/06/08 (TAB 8) on the basis that there had been a typographical error when this item was inserted into the Schedule for 2008 with an incorrect date of 23/08/**07.** - The Respondent conceded £769.29 in relation to the invoice dated 22/12/08 (TAB 8)
Building Repairs	2406.91	Conceded: £70.50 Aton (noted as F Siddoli in response); Meridian Invoice 9864 £146.05	- At the hearing the Applicants also conceded (i) £1,500 Paul Pfiffner 14/08/08 (TAB 10)

			(ii) £80 Paul Pfiffner 27/08/08 (Tab 10) and (iii) £115 Meridian 13/08/09 (TAB 38) - The Respondent conceded (i) £50.89 Part of CCD Pumps 19/03/08 (TAB 10) (ii) £47.09 Part of CCD Pumps 23/04/08 (TAB 10) (iii) £140.00 Paul Pfiffner 24/09/08 (TAB 10) (iv) £152.64 Part of PIMS Group 30/11/08 (TAB 10) (v) £80.25 Part of CCD Pumps 22/04/09 (TAB 38)
Electrical Repairs	2792.08		- £96.17 conceded S & M Electrical Ltd 19/03/08 (TAB 12)
Lift Repairs	1281.52	2009: £312 Kone out of hours charge for call out at 18.04 conceded.	- The Respondent conceded: (i) £267.59 Kone 31/01/07 (TAB 14) (ii) £286.85 Kone 03/10/08 (TAB 15) - It had been understood that at the hearing the Applicants were also conceding £333.11 Kone 30/04/08 (TAB 15)
Garden Maintenance	114.56		
Cleaning	2529.78		- At the hearing Mr Patel conceded £15.74 in relation to the VAT error rectified on 28/11/08 - The Respondent conceded £1,645 in relation to glass cleaning in 2007 and 2008 and £587.50 in relation to 2009
Gardening	3287.45		
Lift Maintenance	2543.05		-At the hearing the Applicants conceded that £945.88 per annum (£805

			plus VAT) would have been a reasonable amount for lift maintenance, based on a Type B contract from JDR Lift Services Ltd (TAB 41) -The Respondent conceded £20.77 as part of PIMS Invoice 13/02/08 (TAB 21)
Entry Phone	2,083.28		
Electricity	357.32		- The Respondent conceded £106.17 in relation to the Landlord's Supply in 2008 (TAB 26)
Accountancy Fees	1572.11		- At the hearing the Applicants conceded that £587.50 per annum (£500 plus VAT) would have been a reasonable amount for accountancy fees, based on the letter from J K Shah dated 04/11/08 (TAB 403)
Material & Lamps	Materials: 818.31/ Lamps (See Table)		- At the hearing the Applicants conceded the existence of the charge for £319.96 based on the invoice supplied at the hearing dated 14/07/08. However they maintained their argument in relation to the broader principle of recoverability and cost.
Health & Safety Insp. (Asbestos survey)	681.50		
Sundries	5.00		
Insurance Claim	597.73		- The Respondent conceded £293.88 Thompson's Maintenance 30/09/08 (TAB 35)
Car Park Barrier	0.00		
Legal fees	6100.25		- The Respondent conceded £6,100.25.
Management fee	£38551.02		-At the Hearing, the Applicants conceded that a reasonable charge would

			have been £180 per unit, based on the current agreement with HML Andertons Ltd (TAB 42). – However, the Applicants maintained that there should be a 50% reduction. Accordingly; 2007 – 51 units at £180 plus VAT (£215) = £10,786.50. Less 50% = £5,393.25 2008 – 51 units at £180 plus VAT (£215) = £10,786.50. Less 50% = £5,393.25 2009 – 51 units at £180 plus VAT (£207) = £10,557. Less 50% = £5,278.50

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