S992

Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AL/LSC/2010/0820

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT 1985

Applicants / Tenants:	17 Leaseholders at Farndale Court
Respondent / Landlord:	G & O Rents Limited
Premises:	Farndale Court, 1-3 Master Gunners Place Woolwich London SE18 3NR
Appearances for Applicant:	Mr R Southam, FRICS
Appearances for Respondent:	Mr A Swirsky, counsel Instructed by Hubbard Pegman & Whitney LLP
Leasehold Valuation Tribunal:	Ms F Dickie, Barrister (Chairman) Mr H Geddes, RIBA MRTPI JP Mr A Ring
Date of Hearing:	3 and 4 May 2011
Date of Decision	20 June 2011

Summary of Decision

The Tribunal has jurisdiction in respect of this matter under s.27A of the Act. By operation of s.20B, no service charges may be demanded (1) for the year 2006/07 or (2) in excess of the estimated service charge demand for 2007/08. No expenditure incurred in the year 2008/09 as demanded on 1 November 2009 falls foul of s.20B. The amount allowed in respect of each disputed item is clearly set out below. The Tribunal has not engaged in calculating the total payable in respect of each year, which will be ascertainable to the parties. The application for an order under s.20C is granted only in part. There is no order for costs.

Introduction

1. The subject premises are a purpose built block in Woolwich constructed in or shortly before 2007 and comprising 30 residential units. Each unit contains a number of bedrooms each with its own en suite bathroom, together with a communal kitchen / reception area. The majority of the units have 6 such bedrooms and the building contains 176 such bedrooms in total. The 30 units are let under individual leases, the freehold of which is now vested in the Respondent. Exchange of contracts for the purchase of the freehold took place on 10 September 2008 and completion on 6 April 2009. The Applicants are the leaseholders of various units in the building. The managing agent since about October 2007 has been Blue Property Management UK Ltd.

2. By an application dated 2 December 2010 the Applicants sought a determination under s.27A of the Landlord and Tenant Act 1985 ("the Act") as to their liability to pay service charges for the 4 years ending 30 September 2007 to 30 September 2010 inclusive. The hearing of that application took place on 3 and 4 May 2011, at which the Applicants were represented by Mr R Southam, Chartered Surveyor of Chainbow Ltd., and the Respondents were represented by Mr Swirsky of counsel.

3. In the presence of the parties' representatives the Tribunal carried out an inspection of the premises on the morning of 3 May 2011, before the commencement of the hearing. The building has 4 separately accessed staircases of 3 or 4 stories and no lifts. There is a single mailbox for every unit at each main entrance. There is no communal heating – each unit has electric space heaters and independent water heating. There is a communal laundry room and a stand-alone open external bin store.

Statutory Provisions

4. Landlord and Tenant Act 1985, Sections 18, 19, 20B, 27A and 38 (not reproduced).

The Lease

5. The units are let on traditional residential long leases. A sample lease dated 4 June 2007 was produced in evidence and is for a term of 99 years starting on 20 February 2007. The Tribunal understands that there are no variations in the lease terms that are relevant to the issues in these proceedings.

6. The Tenant covenants in Clause 2.3 of the lease to pay to the Landlord the service charge in accordance with the Fourth Schedule, and in Clause 3 to observe and comply with the Regulations in so far as they relate to the premises. Regulation 1, in the First Schedule to the Lease, is:

> *Not to use or suffer to be used the Premises for any purpose whatsoever other than as a private residence for occupation by a single household...*

7. The Fourth Schedule, so far as is relevant, provides:

> *1. In this Schedule:*
>
> *1.1. "the Expenditure" means:*

1.1.1. All reasonable and proper expenses incurred by the Landlord in complying with the Landlord's obligations under Clause 5 of this Lease in and about the maintenance and proper and convenient management and running of the Development including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying or making food any inherent structural defect in the Development (except insofar as the cost thereof is recoverable under any insurance policy for the time being in force or from a third party who is or who may be liable therefore

1.1.2. Any interest paid on any money borrowed by the Landlord to defray any expenses incurred by him and specified in this Schedule

1.1.3. ....

1.1.4. on a full indemnity basis any legal and other costs reasonably and properly incurred by the Landlord and otherwise not recovered in taking or defending proceedings (including any arbitration) arising out of any transfer or lease of any part of the Development or any claim by or against any transferee lessee or tenant thereof or by any third party against the Development as owner of any part of the Development

1.1.5. on a full indemnity basis any costs charges and expenses (including Solicitors and Surveyors fees) reasonably incurred by the Landlord and his agents in the collection of rents (if any) service charges and other sums due to the Landlord under this Lease and the enforcement of the covenants and conditions and regulations contained in the lease of Apartments to the extent not recoverable from individual lessees

1.1.6. any reasonable provision as a reserve fund for future expenditure to be expected to be incurred at any time in connection with the Development

1.1.7. ....

1.2. ...

1.3. "the Account Year" means the annual period from time to time nominated by the Landlord for the purposes of this Schedule

2. *The Landlord shall cause proper books of account to be kept in respect of the Expenditure and as soon as convenient after the end of each Account Year shall prepare and submit to the Tenant a statement showing a summary of the Expenditure for such Account Year the Tenant's Proportion and the calculation thereof and if required by the Tenant such statement shall be prepared by an Accountant falling within the definition of "a qualified accountant" for the purposes of the Housing Act 1980 (as amended) and shall be accompanied by a certificate that in the opinion of such accountant the statement is a fair summary of the Expenditure set out in a way that shows how the Tenant's Proportion is*

calculated and is sufficiently supported by accounts receipts and other documents that have been produced to such accountant

3. *If the Landlord shall require the Tenant shall in respect of any Account Year pay such provisional sum in respect of the Tenant's Proportion for the relevant Account Year as the Landlord (or in the case of dispute the Surveyor) shall reasonably determine by equal quarterly payments on dates specified by the Landlord*

4. *On the final ascertainment of the Tenant's Proportion for each Account Year then if the Tenants Proportion shall:*

   4.1. *exceed the provisional sum or sums paid by the Tenant in respect of the relevant Account Year the excess shall forthwith be paid to the Landlord on demand*

   4.2. *be less than the provisional sum or sums paid by the Tenant in respect of the relevant Account Year the overpayment shall be credited to the Tenant's account for the then current Account Year or if the Term shall have come to an end the Landlord shall forthwith repay the overpayment to the Tenant*

.....

Preliminary Issues

Jurisdiction of the Tribunal

8. A number of preliminary issues were raised at the hearing. Firstly, Mr Swirsky for the Respondent contended that the Leasehold Valuation Tribunal had no jurisdiction under section 27A of the Act in respect of this matter. He disputed that the units fell within the definition of "a dwelling" in section 38 of the Act, namely "a building or part of a building occupied or intended to be occupied as a separate dwelling...". Since they were not dwellings, he said, the disputed sums were not "service charges" as defined by section 18 of the Act, since they were not amounts "payable by a tenant of a dwelling". Mr Swirsky argued that the leases were for units that were not occupied, or intended for occupation, as separate dwellings, but were each made up of several dwellings (rooms with en suite bathrooms) that are occupied under licences. He submitted that, notwithstanding the terms of the lease prohibiting the use of the premises other than for use for occupation by a single household, they had never been intended to be occupied as separate dwellings and had not been constructed for that purpose. All parties had always known that these properties, purchased as investments, would be let on an individual single room basis in the way that the Respondent understands that they are. Mr Swirsky observed however that the Applicants had never provided the Respondent with adequate information about the sublettings. The landlord has never taken any steps to enforce Regulation 1.

9. For the Applicant, Mr Southam said that some of the units are let as single units, and some are let as rooms, on assured shorthold tenancies. However, no evidence of this was produced. He

argued that the structure of the leases of the units fell clearly within the Tribunal's jurisdiction under s.27A.

10. The Tribunal is satisfied that it does have jurisdiction in respect of this matter, and gave oral judgment on this issue at the hearing. A dwelling as defined by section 38 is a building or part of a building occupied or intended to be occupied as a separate dwelling. The Tribunal has heard no evidence as to the manner in which these units are let – be it as single rooms or as a tenancy of the unit in total. It has not concluded on the evidence whether these units are occupied as separate dwellings. However, it is clear upon inspection, and not in dispute, that they are capable of such occupation. The leases are in the form of an entirely standard residential lease, and paragraph 1 of The First Schedule prohibits the use of the premises "for any purpose whatsoever other than as a private residence for occupation by a single household". Accordingly, the Tribunal is able to conclude that at the granting of the lease there was a clear intention that each unit be occupied as a separate dwelling, having heard no evidence to the contrary. The units therefore meet the definition of a "dwelling" in section 38 and the Tribunal finds that the charges that are the subject of this application are service charges within the definition of s.18 of the Act.

Service Charge demands

11. At the hearing Mr Southam abandoned his contention that there had been a failure to provide a summary of rights and obligations that complied with section 21B of the 1985 Act and the Service Charges (Summary of Rights and Obligations, and Transitional Provisions)(England) Regulations 2007.

12. Since the appointment of Blue Property Management UK Ltd. demands for estimated service charges had been issued each year but no demands for a balancing charge had been made after the year end. Mr Southam contended that recovery of service charges was now out of time by virtue of section 20B of the 1985 Act, which provides:

> *(1) 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.*
>
> *(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.*

13. Mr Southam argued that no service charges were recoverable from the Applicants for the years in dispute since no effective demand had been made during the limitation period. Mr Swirsky relied on the Court of Appeal decision in Gilge v Charlgrove Securities Ltd. [2003] EWHC 1284 (Ch) as authority for the proposition that section 20B of the Act is of no application to estimated on account service charges. Demands had been issued for the advance service

charges for 2007/08 on 1 February 2008 and for 2008/09 on 1 October 2008, in both cases in the name of the previous freeholder, care of Blue Property Management UK Ltd. The demand for the advance service charge for 2009/10 had been issued on 1 October 2009 in the name of G&O Rents Ltd., but care of Blue Property Management Ltd. All invoices had subsequently been corrected and reissued.

14. The Tribunal is satisfied that on its correct interpretation s.20B does not apply to estimated amounts that have been demanded. No good reason has been advanced why it should depart from the authority in Gilge. Estimated on account charges are payable before the costs are incurred and section 20B only applies where costs were incurred before the amount of any service charge became payable. Recovery of estimated on account service charges is governed by section 19(2):

> *"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."*

15. Mr Southam contended that no service charge demands for the year 2006/07 had been made at all. There was a concession by Mr Swirsky that an invoice dated 5 March 2006 from Key Services Ltd in the sum of £129.60, paid by the Respondent on 21 March 2008 in order to obtain their continued services, was not recoverable by virtue of section 20B. Other than that item, the Respondent had no knowledge of expenditure by the former freeholder during the year 2006/07, of any demands having been made or service charge income received. There being no evidence of demands for the year in question, the Tribunal finds that by operation of s.20B no service charges may now be demanded.

16. Actual service charge expenditure for the years 2007/08 and 2008/09 was greater than the estimated amount demanded. Unless the balancing charge has been demanded in accordance with s.20B the landlord is out of time to recover it. For the year 2007/08 the excess was said by the landlord to be £103.53 per leaseholder (as per an invoice produced at the hearing dated 1 November 2009 which includes a demand for this figure). This invoice is in conflict with another produced in response to the Tribunal's directions which is dated the same day but includes no mention of a charge for the year 2007/08. Mr Southam did not have the opportunity to take instructions on the newly produced invoice. No request for an adjournment was made by either party to allow him the opportunity to do so. The Tribunal did not in any event consider it reasonable to adjourn in the circumstances, directions having been given that all documents on which the parties relied should have been included in the hearing bundle. The Tribunal could not in the circumstances place reliance on the new document produced, and there was insufficient evidence as to its service. On the balance of probabilities and on the evidence now available it is satisfied that the version of the invoice previously disclosed (which does not include a balancing charge for 2007/08) was issued to the leaseholders on 1 November 2009, and the different invoice produced at the hearing was not issued to them. Accordingly, the Tribunal finds that the Respondent is out of time to demand a balancing charge for this year. Therefore, in the event that reasonable expenditure as determined by this Tribunal exceeds the

estimated expenditure demanded, any such balancing payment is irrecoverable from the Applicants.

17. Mr Southam disputed that the service charges had been properly demanded, in that the required notification under section 47 and 48 of the Landlord and Tenant Act 1987 (namely the Landlord's name and address) had not been included in service charge invoices. He argued that subsequent service of valid and corrected demands that were issued more than 18 months after the relevant costs were incurred were not demands or notices complying with section 20B.

18. The Tribunal does not concur with Mr Southam's interpretation of section 47, subsection 2(a) of which provides that where a tenant is given a service charge demand without the required information, those charges *"shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant."* The section does not say that in such circumstances those charges shall be treated as not having been demanded, and the Tribunal finds no reason to interpret it in that way. It is satisfied that a demand without the s.47 information is still capable of being a demand for the purposes of s.20B, even though the charges are not due until the Landlord's name and address has been provided.

19. Regarding the year 2008/09, Mr Southam argued that the excess demanded (which was dated 1 November 2009 and demanded in the sum of £2137.36, including major works)) bears no relation to the certified accounts. The unaudited accounts showed expenditure of £107802.00 whereas the audited accounted showed expenditure of £38132.00. By virtue of paragraph 2 of the Fourth Schedule, in the absence of being required by the tenant to produce certified accounts, the landlord covenants only to produce a summary of expenditure.

20. The Tribunal finds on the evidence that no request for certified accounts had been received on or before 1 November 2009. It is therefore satisfied that the service charge demand made on that day for an excess charge based on the summary of expenditure was properly made in accordance with the terms of the lease. Notwithstanding that there appear to have been particular circumstances which might explain why the uncertified accounts were at variance with the audited ones (circumstances regarding which evidence presented for the Respondent is not set out in this decision), none of the costs for the year 2008/09 as demanded on 1 November 2009 fall foul of the limitation period in s.20B, insofar as they represent expenditure incurred during that year and not amounts carried forward from previous years.

Challenges to Service Charge Invoices

21. Mr Southam addressed the Tribunal regarding the Applicants' challenge to a number of specific items of expenditure. He did not rely on any witness evidence. The Tribunal was presented with hearing bundles containing approximately 1000 pages, and Mr Southam directed its attention to those which were relevant to his disputes. There was no issue as to the proper apportionment of the service charges.

22. Mr Swirsky conceded that the cost of major works incurred in the year 2008/09 exceeded the statutory cap of £250, and that adequate consultation in compliance under section 20 of the Act had not been carried out. He acknowledged therefore that costs above the statutory cap were irrecoverable from the Applicants unless the Tribunal granted dispensation on an application under s.20ZA of the Act. The Respondent does intend shortly to make such an application, on which all leaseholders will have the opportunity to make representations. Mr Southam confirmed that the Applicants he represented did not dispute the reasonableness of the cost of £10834.00 plus VAT invoiced to Blue Property Management UK Ltd. by Firefly on 1 August 2008, save with regard to the issue of whether they had been prejudiced by the Landlord's failure to consult.

23. Mr Southam challenged various specific items of expenditure as evidenced by invoices produced by the Respondent. He made a general challenge to duplication of invoices for work which he considered should have been carried out under the general garden maintenance contract. Where no such challenge has been brought the Tribunal finds the expenditure to be payable and reasonable. The following items were in dispute:

Bank charges

24. The following bank charges were shown in the annual accounts:

2007/08	£68
2008/09	£842
2009/10	£354.

Mr Southam did not dispute that bank charges were recoverable under the terms of the lease, but observed these charges were not broken down or supported by any document. The Respondent has not broken down these charges but produced bank statements without a schedule which would have enabled the Tribunal easily to identify and analyse the charges. The entirety of the Respondent's submissions are as follows "Copies of bank statements showing bank charges (described as commission or bank charges) have been provided to the Tribunal by Peter Evans of B. The amount charged by the bank is a reasonable and proper amount which R is entitled to recover". Mr Southam states that the total of amounts shown in the bank statements for 2009/10 is £262.62 compared to £354 in the audited accounts. He argues the level of charges is excessive and improperly incurred, in that the bank account should (as required in the RICS Service Charge Residential Management Code" not be overdrawn. He submits that, Blue being in control of the client account, budgeting and demanding service charge monies, they do not exercise sufficient control. The Tribunal considers the Respondent has provided insufficient justification for these large bank charges. It is not persuaded on the case put forward by the Respondent that they were reasonable or reasonably incurred. It allows reasonable bank charges of £100 for each of the years 2008/09 and 2009/10.

Accountancy fees

25. Mr Southam acknowledged that he was now satisfied as to the consistency between the invoices for the accountancy services of David Harrison and the amounts shown in the accounts. To the extent that he challenged the reasonableness of these fees, he did not provide comparative quotations. The Tribunal is satisfied that the Landlord is entitled to charge accountancy fees in addition to management charges, and is not persuaded on the evidence that unreasonable charges have been made.

Year 2007/2008

26. *Repairs and Maintenance*

30/09/08 - Various invoices from Blue Property Maintenance Ltd. for work recorded as having been undertaken on 8 September 2008.

26.1. The total of the invoices was £1563.45 including VAT, which Mr Southam argued was unreasonable for work carried out by one man on a single day.

26.2. The Tribunal heard evidence from Mr Popperwell, Area Manager of Blue Property Maintenance Ltd., part of the same group of companies as the Respondent. He confirmed that he was the person who carried out all of these items of work, and that all of these jobs were not carried out on the same day. He could not explain why all the invoices recorded the date of work carried out was 8 September 2008, but said that he but only writes job sheets which he submits to the office for invoicing, where the information is input and the invoices generated.

26.3. The Tribunal is satisfied that the evidence of Mr Popperwell is reliable and that all of these items of work had indeed been carried out. It finds that the individual costs (which were not in all cases broken down between labour and materials) were reasonable, and is satisfied that the work was not in fact done on the same day. It is more likely than not that there was an administrative error in the creation of these invoices. The Tribunal allows these sums in their entirety.

26/08/08 – invoice from Delta Security which recorded "release not working since connection was broken when new fire alarms were fitted. Rewire all four blocks as required".

26.4. Mr Southam argued that this demonstrated the damage had been caused by Firefly on installing new alarms and that this repair should consequently have been recharged to them. Mr Evans, a director of Blue Property Management UK Ltd., gave evidence for the Respondent that the wording of this invoice was based on Delta's own incorrect assumption as to the cause of the defect and that rewiring the 4 blocks was an item of work not related to the repair of the connection referred to in the invoice. The Tribunal is satisfied with Mr Evans' explanation and finds that the cost is reasonable, was reasonably incurred, and is payable in full.

21/1/08 and 31/01/08

26.5. Two invoices from RJB for gardening, both for work purportedly carried out in January 2008. The larger, for £850 plus VAT, was for garden maintenance for January 2008 and initial clean up of site upon commencement of the regular gardening contract. The invoice includes the comment "Normal two-weekly maintenance will start in February". The other invoice in the sum of £125 plus VAT is for garden maintenance for January 2008 under that regular gardening contract.

26.6. The Tribunal agrees with Mr Southam's contention that no cost should have been incurred under the regular gardening contract for January 2008 in light of the initial site clearance work that was undertaken. The Tribunal was not persuaded by Mr Evans' belief that normal maintenance did take place in January 2008, and such maintenance would not have been reasonable. The Tribunal therefore disallows the invoice for £125 plus VAT (total £146.88) as not payable or reasonably incurred. Although the point was not taken in evidence, the Tribunal is puzzled to note that a number of RJB gardening invoices were paid twice and appear twice on the breakdown of expenditure for that year, as well as a refund from RJB in the sum of £1586.27.

Invoice from RJB for garden maintenance for September 2008 onwards in the sum of £150 plus VAT per month

26.7. These charges represent an increase of £25 plus VAT per month, which Mr Southam considered was unreasonable. Mr Evans explained that RJB had increased their monthly fee and he considered the total amount to be reasonable.

26.8. The Tribunal has had the benefit of inspecting the site and, in the absence of comparable evidence of contract prices from either party, considers that the monthly cost of the gardening contract at £150 plus VAT is reasonable, notwithstanding that it represented an above inflation increase. It therefore allows the cost of the gardening contract in full. However, the Tribunal makes comment hereafter about the cost of additional items of gardening invoices outside of this contract fee.

30/09/08 – Health and Safety Assessment on 15 September 2008 £447 and Fire Risk Assessment on 15 September 2008

26.9. Mr Southam challenged these invoices as unreasonably high and thought that £500 for both reports was a reasonable fee. Mr Evans confirmed that both reports had been carried out on the same day by the same person from Bluerisk Management, which was part of the same group of companies as Blue Property Management UK Ltd. and not registered for VAT.

26.10. Whilst the Tribunal acknowledges that relevant Regulations place an obligation on the Landlord to carry out such assessments periodically, there was no evidence produced as to the professional qualifications of the person who had carried them out, and the reports were not produced. Based on the knowledge and experience of the Tribunal, the relative newness and simplicity of the block, and in the absence of a copy of the report or

professional standing of their author, the Tribunal finds that a total sum of £500 is reasonable and payable for their production.

Year 2008/2009

27. The following individual invoices were challenged by Mr Southam:

07/01/09 – Blue Property Maintenance Ltd invoice for work which included "pruning trees, bushes and weed killing" for £155 plus VAT.

07/07/09 – Blue Property Maintenance Ltd invoice for work which included "weed kill paths and weed pavement area around outside of site (large amount of weeds) for £170 plus VAT, "pruning trees" for £280 and "cut hedges at front of property" for £80 and "cleaning outside and paths, roads etc. removal and disposal of dead shrubs etc. fill skip with waste (2 visits) for £440 plus VAT.

14/07/09 – Blue Property Maintenance Ltd. invoice for "prune shrubs and weed kill in car park" £170 plus VAT.

29/07/09 – Blue Property Maintenance Ltd. invoice for "removal of rubbish to commercial tip, cut hedges, shrubs and weed killing in car park" for £345 plus VAT. Mr Evans said that this would include a fee of about £100 for commercial dumping. This was not specified on the invoice however. It was not apparent what items had been dumped (garden waste or otherwise).

14 Monthly invoices from August 2008 to October 2009, all charged within the service charge year 2008/09, each for £450 for cleaning, which included "clear any litter and cigarette ends from Car Parks and pathways", "sweep / tidy/ weed car park" and "clear all leaves from site". The first such invoice does not charge VAT, but the remainder do.

27.1. Mr Southam's case was that these items represented duplicate charging for work which ought to have been carried out under the regular gardening contract. The Respondent did not produce a copy of the gardening contract. Mr Evans referred to a detailed invoice dated 1 September 2009 from Blue Property Maintenance Ltd. which set out the work included in the regular maintenance contract, but he said that major pruning and weed killing with spray was not included in it. The Respondent's case was therefore that these additional items invoiced were outside of the contract. RJB were the contractors for part of the year 2008/09 before the contract was taken over by Blue Property Maintenance Ltd., though Mr Evans confirmed that the 2 contracts did not overlap. In evidence Mr Popperwell confirmed that he carried out the work under the gardening contract once awarded to Blue Property Maintenance Ltd. and that he had also carried out the additional items of work invoiced separately to which Mr Southam objected. As evidence that the cost of the cleaning contract was reasonable, Mr Evans produced an alternative quotation from Blue Cleaning (a company with no relationship to the Respondent's group of companies).

27.2. The Tribunal did not have sight of the gardening contract with RJB or Blue Property Maintenance Ltd. It was not persuaded on the evidence that the work carried out and invoiced additionally for July 2009 was beyond regular garden maintenance, which is inevitably greater in the summer. The invoice for 1 September 2009 clearly lists the work carried out under the regular contract for £150 per month plus VAT and an invoice for that amount relates also to July 2009, the month when all the additional items were carried out and invoiced. The Tribunal considers it is unreasonable for these additional charges to have been levied beyond the regular contract gardening. These items are covered by the description of services in the 1 September 2009 invoice, which only makes a distinction in respect of major pruning and root work and dumped rubbish, which must be reported. The Tribunal would expect specialist contractors to carry out this type of work, which is not relevant to the additional invoiced items.

27.3. For the reasons above, the Tribunal disallows the sum of £1640 plus VAT in respect of additional gardening items invoiced for July 2009, since it considers the charges are excessive and they duplicate work which was covered by the regular gardening bill. It furthermore disallows a total sum of £850 including any VAT charged, as a notional figure charged for gardening work within the regular cleaning invoices.

27.4. Mr Southam furthermore made the following challenges to other invoices:

02/11/08 - Firefly Fire Protection Limited invoice for £725 plus VAT in respect of the fire alarm.

27.5. Mr Southam argued that this was an unreasonable increase from the previous year's fee of £600. He produced no evidence of competitive alternative fees. In the absence of this the Tribunal considers that it was reasonable to pay the increased fee for the annual maintenance services of this contractor, being an amount which in itself does not appear unreasonable in spite of it representing an increase above inflation.

21/04/09 - Callout to silence fire alarm £65 plus VAT

27.6. Mr Southam argued that this callout should have been made by the contractor Firefly. Mr Popperwell recalled the event and said the alarm had gone off because someone had burnt toast, he attended to reset it as he had been close by at the time. Mr Evans said the contractor would have charged more than £65 for this attendance. The Tribunal notes an invoice in the sum of £135 plus VAT from Firefly for a call out on 19 March 2009. The Tribunal finds that the invoice is reasonable and payable since the contractor would have been more expensive.

17/8/09 - G&O Rents invoice for £3600 for rent for caretaker's office

27.7. The Respondent conceded this item was not recoverable as a service charge.

19/03/09 - invoice for £894 (no VAT) for fire risk and health and safety assessments.

27.8. For the reasons given in respect of this item in the year 2007/08 the Tribunal allows only the sum of £500 in respect of both reports.

Year 2009/2010

28. Mr Southam challenged the following invoices:

21/10/09 – Lighting Repairs £956.82 plus VAT

28.1. Mr Southam argued that this work duplicated fault finding charged on a different invoice and queried how 14 new lights could be charged for at £487.69 whilst 6 new emergency lights were recorded to have cost only £19.13. He said it was reasonable to pay only half of this charge. Mr Evans said that the items on the invoice did not relate to the costs next to them, but that the total invoice was correct and represented a cost of under £50 per light, which was reasonable. The Tribunal was satisfied with Mr Evan's explanation and that the total costs of this invoice is reasonable and payable.

17/03/10 – Various invoices

28.2. Mr Southam objected to four invoices for work carried out in September 2009 which included weeding, pruning or hedge trimming, with rubbish removal. He considered these items were duplication. Mr Popperwell said that as people were constantly moving in and out of the block the bin store generated a huge volume of rubbish which had to be cleared when it accumulated and could take two attempts to remove.

28.3. The Tribunal notes that only one invoice referred to clearing the bin store of rubbish (for £75 plus VAT for weeding pavement to side of development, clear bin store of rubbish, remove all rubbish). For the reasons stated above, the Tribunal considers that these invoices are not reasonable or payable because they cover work which ought to have been carried out under the regular gardening contract, but allows a notional sum of £60 in respect of the invoice for work on 16 September 2009 for clearing the bin stores of rubbish and £50 in respect of work carried out on 1 September 2009 for "glue and pin side trim to front door block D". The total sum disallowed is therefore £445 plus VAT in respect of these four invoices.

17/03/10 - £220 plus VAT

28.4. Mr Southam said this invoice for work carried out on 3 September 2009 shutting down and rebooting the water system "test for 1 hour" was an unreasonable charge for 1 hour's work. Mr Popperwell gave evidence that this was an out of hours visit, that only the testing period had taken an hour, and the whole job had taken 4-5 hours. The Tribunal was satisfied with Mr Popperwell's explanation and finds that this sum is reasonable and payable.

17/03/10 - £348.75 Fit emergency lights

28.5. Mr Southam considered the charge for £168.75 pus VAT included in this invoice for fitting 3 emergency lights was unreasonable compared with the cost of such lights on the invoice referred to in paragraph 29.1 above. Mr Evans considered the charge was reasonable since the previous invoice had been misunderstood, and the Tribunal agrees and allows the cost in full.

17/03/10 - An invoice for £773.75 plus VAT for "lamping – to fit complete new lights"

28.6. Mr Southam considered this cost was unreasonably high because insufficient details of the work carried out were known. Mr Evans produced the job sheet which Mr Southam was shown and he did not dispute that it recorded the job was for the replacement of 16 lights in stock, and had taken 11 hours. The Tribunal is satisfied that the cost for the replacement of this number of lights is reasonable in the amount invoiced.

13/5/10 - Invoices totalling £272.50 plus VAT

28.7. These invoices were for 3 meetings / discussions on 15 March, 22 March and 22 May 2010 between Mr Popperwell and pump engineers. Mr Southam considered that this should form part of the management service provided. Mr Evans explained that these meetings were to discuss the possible replacement of the pump and that Mr Popperwell was very experienced in this field and it was appropriate for his time in such meetings to be charged separately outside of the management fee, though this was not a common occurrence. This major work was planned and consultation had apparently begun.

28.8. The Tribunal agrees with Mr Southam that such meetings and discussions preliminary to instructing an independent professional are part of the normal management functions for the block. The Tribunal finds it was not reasonable to pay Blue Property Maintenance Ltd for Mr Popperwell's time.

19/05/10 – Court Order £159.63 interest on a judgment debt of £6926.15

28.9. This Order had been obtained by Firefly against Blue Property Management UK Ltd. for an unpaid invoice. Mr Evans said that there had been insufficient funds to pay this invoice owing to service charge arrears. Mr Southam did not dispute that interest was recoverable in principle as a service charge, but argued that it was unreasonable of Blue Property Management UK Ltd to have failed to pay the bill. A default costs order was made on 16 August 2010 in the sum of £4362.06 and Mr Southam argued that it was unreasonable for the Respondent not to have defended that matter. Mr Evans gave evidence that they were advised by solicitors not to challenge these costs as this would only result in further costs being incurred. The Tribunal considers that, having been sued to judgment by Firefly, and accepting on the balance of probabilities that the Respondent sought and followed legal advice, the amount in respect of costs incurred is reasonable and recoverable.

16/6/10 - £100 plus VAT

28.10. This invoice for work carried out 8 April 2010 to "visit to site to reset timers for all lights" and "to examine barrier and liaise with contractor re problem" was unreasonable in Mr Southam's submission because examining the barrier should be part of the normal and the timers should be reset only at the equinoxes. Mr Popperwell said that all the lights had failed and the timer was on a circuit breaker on the fuseboard and had to be reset. Mr Evans said that Mr Popperwell had been on site dealing with the contractor The Tribunal finds the sum is reasonable and payable for the maintenance carried out.

20/08/10 - £220 plus VAT

28.11. This invoice was for a callout to flat 205 to drain down the Megaflow. Mr Evans said that the problem was within flat 205 but was affecting the communal area. The Tribunal finds that, this item relating to a defect within flat 205, the cost is not recoverable as a service charge and ought to have been recharged to the leaseholder of that property.

12 monthly invoices for cleaning at £450 per month.

28.12. For the reasons set out above the Tribunal disallows the total sum of £730 inclusive of VAT in respect of gardening work carried out which ought to have been performed under the regular gardening contract which was still in place.

Allowance for the cost of hire of 7 bins from Greenwich Council for 1/4/10 to 31/3/11 - £875 plus VAT.

28.13. Mr Southam said that upon his visits to the site there have not been this many bins at any point during the year. However, the current number was not pointed out to the Tribunal on inspection. On the available evidence the Tribunal is not persuaded that this cost has not been reasonably incurred and allows it in full as payable.

Accrual for G&O Rents invoice for £3600 for rent for caretaker's office

28.14. The Respondent conceded this item was not recoverable as a service charge.

Insurance

29. The parties made further written representations on the question of insurance after the hearing. The Respondent has admitted that there are no insurance charges for the years 2006/07 and 2007/08. Only the charges for the years 2008/09 and 2009/10 are therefore the subject of this determination. Insurance charges for the period 23/09/08 – 23/06/09 are £15350.69 and for the period 26/06/08 – 23/06/20 they are £21,034.47.

30. Mr Southam challenged the insurance charges on 2 grounds, and the Tribunal has considered only these issues advanced.

31. Mr Southam argued:

31.1. Firstly, that insurance charges were not payable under the lease unless they had been charged quarterly and included in the service charge accounts.

31.1.1. He contended the Landlord was improperly billing for insurance outside of the service charge and failing to include it in the audited account, when the terms of the lease provided for its inclusion. He contended that insurance was irrecoverable as it had not been demanded in equal quarterly payments as required by the lease. He relied on the decision of the Court of Appeal in Leonora Investment Company Ltd v Mott Macdonald Ltd [2008] EWCA Civ 857 as authority for the proposition that the Respondent cannot recover insurance charges where it has not demanded them to be paid by four quarterly instalments.

31.1.2. His submission on the application of that judgment are as follows:

31.1.3. "It was decided that if a lease provides for equal quarterly payments of service charge in advance then that is what must be demanded and it cannot have random amounts or payment requests. In the decision Lord Justice Tuckey goes through the steps of the lease from its construction and the decision is that if the lease provides for quarterly payments then that is how the amounts must be demanded. Paragraph 17 to 23". He provides a copy of the Court of Appeal's written reasons. Mr Southam has not made an attempt to compare the precise terms of the present lease with that in Leonora Investments.

31.1.4. In that case, the relevant term of the lease had provided:

"The Landlord may make and send to the Tenant notice in writing of the Landlord's estimate of the anticipated Service Costs and the Service Charge applicable to the Premises for the coming Service Charge Year and the Tenant shall pay such estimate of the Service Charge by equal quarterly instalments in advance of the usual quarter days."

31.1.5. The lease that is the subject of the present proceedings is drafted in different terms. In the absence of further submissions from Mr Southam as to the interpretation of this lease and a comparison with that considered in Leonora Investments, this Tribunal has not undertaken it own detailed comparison. It has indeed considered the paragraphs of the judgment to which Mr Southam has referred, but finds they do not establish the principle he suggests. In that case the Landlord had served a statement at the end of the service charge year which had included the disputed charges. No one disputed that it had been open to the Landlord to issue a revised statement.

31.1.6. The Respondent has properly made further submissions in writing in response to Mr Southam's reliance on this authority. It submits that the clause of the subject leases in these proceedings affords the Landlord discretion, and that the relevant provision for payment on quarter days applied only where the Landlord makes a demand for the payment of a provisional sum in respect of the service charge. Accordingly, the

Respondent argues, the Applicant's argument has no application where charges are demanded in arrears. This logic appears inescapable to the Tribunal.

31.2. Secondly, Mr Southam argued the insurance premiums were unreasonable since his firm had been able to get a much cheaper quotation. Chainbow Ltd.'s broker's Miles Smith Ltd. had approached Amlin Insurance, who on the basis of the current insurance schedule had provided an indication of a premium of £5,871.00 plus terrorism cover and IPT, subject to claims history. The email exchange concerning this indication of premium did not mention the nature of the building's occupation but Mr Southam did not believe that the fact that bedrooms are individually let would make any difference. He has provided an email from Amlin Insurance dated 4 May 2011 confirming its indicative premium subject to claims history and that "as part of the existing Chainbow connection, we would look at the risk in a different light due to the portfolio we hold, therefore we would look to support you in offering terms".

31.3. Mr O'Dell, Director of the Respondent company, gave evidence at the hearing and explained that the freeholder, owning 4 – 5,000 freeholds, insures the premises in its own portfolio and premiums are collected by its managing agent Urbanpoint Property Management (which is FSA registered for the purpose of handling the insurance money). The demands for insurance placed with Axa were produced to the Tribunal. The brokers Genavco (with whom the freeholder had no connection) had instructed the preparation of a risk report for insurance purposes, which was prepared by GenCom Risk Consultants Ltd. after an inspection on 2 March 2011. This report had been undertaken because the brokers were aware that the building was being occupied in the nature of a hall of residence and was not a normal risk. It referred to a previous survey carried out in April 2009. Factors mentioned included the freeholder's ignorance of the nature and tenure of occupants letting the rooms. Mr O'Dell said that each year Genavco approaches 3 or 4 insurance companies and he produced a letter dated 28 April 2011 from Genavco concerning the result of several unsuccessful recent approaches to several insurers for comparison quotes. In particular, the letter records that Amlin, who had quoted to Miles Smith, had withdrawn their quotation which had been based on a false assumption concerning the nature of this insurance risk, and that they now declined to quote based on full and correct risk information. Mr O'Dell said that G and O Rents charges a commission of 20% on the cost of insurance, but no challenge was brought by Mr Southam regarding this.

31.4. It is apparent to the Tribunal that the indicative premium offered by Amlin is not a comparator to the premiums obtained by the landlord since it is not available on the market to the Landlord, and may be available only to Chainbow as part of its own portfolio. The Tribunal is satisfied on the evidence that the landlord has taken a professional approach to obtaining insurance through an independent agent, which has been unable to obtain cheaper insurance based on full disclosure of relevant facts about the property. The Tribunal was not persuaded on the evidence that the cost of insurance was unreasonable, and finds that it is payable in full.

31.5. A significant aspect of the dispute between the parties was the landlord's insistence on having further information about the subletting of the units / rooms, whilst insisting on administration charges for handling that information. However, these charges have been demanded from 3 September 2009, by which time insurance for 2008/09 and 2009/10 had already been obtained. The landlord appears to be linking a charge for the approval of subletting arrangements with obtaining insurance based on the information to be provided by the leaseholders in relation to such approvals. At the present time however the Tribunal has not been asked to determine whether such amounts are payable under the terms of the leases, whether they fall within the definition of an administration charge in Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and if so whether they are reasonable in their amount. If the Landlord has demanded sums that are unreasonable or not payable under the leases, there may be argument concerning the reasonableness of insurance premiums in subsequent years.

Management Fees

32. Generally Mr Southam considered the quality of management service and record keeping did not justify the level of fee charged and disputed whether VAT was chargeable as no VAT number appeared on the invoice for 2007/08. He pointed to an invoice dated 18 September 2008 for the replacement of old exposed wiring as a specific example that the site had been poorly managed. Mr Evans recalled that this old wiring was inside the light fittings and only discovered when these were opened up. The Tribunal considered that Mr Southam's successful challenges to some of the invoices charged to the service charge account, as well as accounting delays (such as that of a year in responding to a request made in December 2009 for audited accounts for the year 2008/09) demonstrated limited shortcomings in management. There was no criticism about the standard of any of the work carried out. The Tribunal considers that a modest reduction on the management fee of £250 to reflect the few areas where there has a credible criticism of the management company. The Tribunal determines that an inclusive reduction of £50 plus VAT per property per annum is appropriate to arrive at a reasonable management fee.

Costs

33. The Tribunal gave directions at the close of the hearing for the parties to submit written representations regarding the Tenants' s.20C application. Mr Southam contended that it would be inequitable for the leaseholds to bear any of the costs of the Respondent, and that the disorganisation and confusion in the bundles was due to late disclosure by Blue Property Management UK Ltd. in breach of the directions of the Tribunal. He argued that the accounting records had been shown during the hearing to be in confusion and a muddle, and that there had been a complete failure by the Landlord to keep any reasonable or reliable accounting records. He observed that the landlord had improperly applied charges for office rent as a service charge. He also asked for an award of costs limited to £500. The Tribunal has the power to make an order for costs against a party under Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 in the sum of up to £500 in specified circumstances which include

where that party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

34. The Respondent contends that Mr Southam took a scatter gun approach to this litigation and pointed out that the Applicants produced no evidence – their case was based on representations on the documents alone. It was observed that therefore there had been no challenge to the quality of services provided. Mr Swirsky observed that Mr Southam's arguments that the service charge demands were invalid did not have merit and he had challenged virtually every one of the Respondent's service charge costs.

35. The Tribunal notes that the hearing was largely taken up with argument on unmeritorious preliminary points raised by both parties (the parties did not begin to present their evidence regarding the substantive dispute until after lunch on the second day of the hearing). At the conclusion of that hearing the Tribunal made further Directions for the parties to make written representations regarding the leaseholders' s.20C application, disputed bank charges for 2008/09 and 2009/10, and insurance premium demands.

36. The Tribunal is satisfied that neither party has acted frivolously, vexatiously or otherwise unreasonably, and that an award of costs is therefore inappropriate. However, the length and relative complexity of the hearing was partly the product of apparently indiscriminate challenges by the Applicants to a very substantial number of invoices. The Applicants have, however, achieved a measure of success in challenging some invoices. In all the circumstances the Tribunal considers it appropriate to make an order under s.20C that 50% of the Respondent's costs in these proceedings shall not be treated as relevant costs for the purpose of calculating the service charge.

Chairman: 

Ms F DICKIE

20 June 2011