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**HM Courts
& Tribunals
Service**

LEASEHOLD VALUATION TRIBUNAL
Case No.: CAM/34UF/LSC/2012/0035

Subject Property: 47A Merthyr Road, Northampton NN5 7BS

Applicant

Leaseholder: Moji Eletu, 47A Merthyr Road, Northampton NN5 7BS

Respondent:

Landlord: Northampton Borough Council, The Guildhall, St Giles Square,
Northampton NN1 1DE

Application: Application for a determination of the reasonableness and liability to pay service charges (Section 27A Landlord and Tenant Act 1985)

Date of Application: 23rd March 2012

Date of Hearing: 9th July 2012

Tribunal: Dr JR Morris (Lawyer Chair)
Mr GRC Petty FRICS
Mr DS Reeve MVO MBE

Attendance:

Applicant: Ms Moji Eletu, Applicant

Respondent: Ms J Liburd, Housing Solicitor, Legal Services
Mr J Brown, Divisional Accountant
Mrs A Bradbury Leasehold Services Manager

DECISION & STATEMENT OF REASONS

Decision:

The Tribunal determined that the reasonable Service Charge payable by the Applicant to the Respondent for the years in issue is as follows:

£207.20 for the year ending 31st March 2007
£249.54 for the year ending 31st March 2008
£363.04 for the year ending 31st March 2009
£218.73 for the year ending 31st March 2010
£273.68 for the year ending 31st March 2011

Reasons

Application

1. This Application was made on 23rd March 2012 for a Leasehold Valuation Tribunal to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 of the reasonableness and liability to pay service charges.

Issues

2. The issues are as identified in the Application and relate to the reasonableness and payability of the service charges incurred for the years ending 31st March 2007, 2008, 2009 and 2010.

The Law

3. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
4. Section 18 Meaning of "service charge" and "relevant costs"
 - (1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-*
 - (a) *which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and*
 - (b) *the whole or part of which varies or may vary according to the relevant costs*
 - (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.*
 - (3) *for this purpose*
 - (a) *costs includes overheads and*
 - (b) *costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period*
5. Section 19 Limitation of service charges: reasonableness
 - (1) *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.*
 - (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.*

6. Section 21B Notice to accompany demands for service charges
- (1) *A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*
 - (2) *The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
 - (3) *A tenant may withhold payment of a service charge that has been demanded from him if subsection (1) is not complied with in relation to the demand.*
 - (4) *Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.*
 - (5) *Regulations under subsection (2) may make different provision for different purposes.*
 - (6) *Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]*
7. Section 27A Liability to pay service charges: jurisdiction
- (1) *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.*
 - (2) *Subsection (1) applies whether or not any payment has been made.*
 - (3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*
 - (a) the person by whom it would be payable,*
 - (b) the person to whom it would be payable,*
 - (c) the amount which would be payable,*
 - (d) the date at or by which it would be payable, and*
 - (e) the manner in which it would be payable.*

Description and Inspection of the Subject Property

8. The Tribunal inspected the Common Parts and Building in which the Subject Property is situated on the day of the hearing in the presence of the Applicant and the Respondent's Representatives. The Building is a two-storey block of 4 flats or maisonettes, in that each unit has its own front door. The building is in effect in two parts with two flats on one side and two on the other. Each side has a ground floor

extension to the one side of which is the front door to the ground floor flat and to the other side is the front door to the first floor. The door opens into a lobby which is exclusively for the use of the first floor tenant. Stairs rise from the lobby to the first floor. There are no internal common parts.

9. The Building is constructed of brick rendered to the upper part of the first floor under a pitched tile roof. The windows are upvc double glazed units and the front doors, guttering and down pipes are also upvc. There is a lobby to the front of the Building. Externally the only common part is a path that leads from the front gate to the front doors and to the rear of the property where the bins are stored. The Subject Property is a first floor two bedroom flat, with living room, kitchen and bathroom. The demise of the Subject Property includes the front and rear gardens subject to the right of the ground floor tenant to have access to the rear of the Building to store her refuse bin and for the maintenance of her flat. A similar arrangement is understood to exist for the other part of the Building.
10. Externally the Building is in fair to good condition. It was noted that because of the arrangement of the gardens it was necessary to have access to the first floor flat in the other half of the building in order to maintain and repair some of the external pipe work to the Subject Property. This was noted, as there is a reference to such work having been carried out in the evidence adduced.

The Lease

11. A copy of the Lease was provided which was between the Northampton Borough Council (1), the Respondent, and Graeme Michael Civil and Barbara Ann Civil Respondent (2) and the Applicant and was dated 27th August 2001. The Lease is for a term commencing on the 27th August 2001 to the 26th August 2126. The Lease was assigned to the Applicant on the 16th March 2006
12. The Respondent covenants under Clause 7 of the Lease:
 - (1) ... *(Not relevant to this Application)*
 - (2) *To keep in repair the structure and exterior of the Flat and the Building (including the drains, gutters and external pipes but excluding glass windows) and to make good any defect affecting the structure...*
 - (3) *To keep in repair the parts of the Building over which the Lessee has rights by virtue of this Lease*
 - (4) *To ensure so far as practicable that all services provide by the Council and to which the Lessee is entitled under this Lease are maintained to a reasonable level and to keep in repair any installation connected with the provision of those services*
13. Clause 12 relates to the payment of the Service Charge as follows:
 - (1) *The Lessee shall contribute towards the expenses of the Council on matters listed below. The inclusion of any item in the list does not of itself create or imply any obligation to provide the service in question*
 - (2) *The Proportion which the Lessee shall contribute shall be the direct proportion of the number of bed spaces in the Flat to the number of bed spaces in all the dwellings in the Building... [It is noted that the Subject Property has two*

bedrooms which equates to 3 bed spaces there being a total of 12 bed spaces in the Building].

(3) *The contribution to be made by the Lessee shall be called the "Service Charge"*

(4) *The List of Expenses*

14. *The list of expenses is lettered A to O. The items in the list relevant to the Application are as follows:*

(A) *The maintenance, repair and renewal of: -*

(a) *The structure and exterior of the Building (including the roof, chimneystacks, gutters and rainwater pipes).*

(B) *Cleaning and lighting the shared parts of the Building*

(C) *Cultivating and maintaining any shared garden, landscaped areas or other ornamental features within or provided for the enhancement of the Building*

(D) *Decorating the exterior and all the shared parts of the Building*

(H) *Insuring against the (a) risk of damage to the Building...(b) third party risks in respect of the Building*

(K) *The cost of electricity or other energy supply consumed in the operation of ...communal facilities*

(L) *All other expenses incurred by the Council in and about the maintenance and proper and convenient management of the Building*

(M) *The establishment of such fund as may be reasonably estimated by the Treasurer for the Council to provide a reserve against major expenditure on any items listed here which the Council anticipate will or may arise during the term of the Lease*

(O) *Any expenses and fees incurred by the Council in relation to sections 18 – 30 of the Landlord and Tenant Act 1985 ...*

15. *Clause 12(6) states that:*

The Service Charge shall be paid in the following manner:

(i) *The likely amount of the service charge for a year will be estimated by the Council and notified to the Lessee. The Lessee shall then make quarterly payments based on the estimate.*

(ii) *As soon as practicable after the end of the year the Council shall prepare and serve on the Lessee a statement containing*

(a) *A summary of the expenditure incurred in that year relevant to the service charge, and*

(b) *The final amount of the service charge.*

The statement shall be accompanied by a certificate of the Council's Treasurer that the said summary of expenditure is a fair summary and sufficiently supported by accounts, receipts and other documents available to him.

- (iii) *If the final amount of the service charge exceeds the amount paid under the quarterly payments for the year then the Lessee shall pay the difference to the Council; and if it is less the Council shall pay the difference to the Lessee*
- (iv) *In preparing a statement under sub-paragraph (ii) above the Council may bring into account adjustments relating to earlier years where these are required by reason of more complete information becoming available or otherwise.*
- (v) *For the purposes of these provisions a year shall mean the Council's financial year, namely from 1st April to 31st March; and quarterly payments shall be due on the first days of April, July, October and January into evidence.*

Preliminary Points Regarding Applicant's Case

16. The Application is for a determination of the reasonableness and payability of the service charges incurred for the years ending 31st March 2007, 2008, 2009, 2010 and 2011. The Applicant stated on the Application form that she objected to the service charge that had been made as follows:

Years ending 31 st March	Repairs and Maintenance	Administration	Landscaping
2007	£294.25	£105.00	£14.42
2008	£305.43	£108.99	£19.92
2009	£304.21	£108.55	£19.84
2010	£310.06	£107.52	£21.12
2011	£300.00	£107.00	£21.97

17. In support of her claim the Applicant stated that the charge is unreasonable because no repairs or maintenance of the building or landscaping have been provided and yet the cost of these have been included in the Service Charge.
18. The Applicant provided two written Statements of Case. The first, dated 8th May 2012, says that the Lease was assigned to her on 16th March 2006. She said that the Respondent had not provided her with any documentary evidence to support the actual costs incurred for the years in issue i.e. she had not been provided with insurance certificates, policies or premiums or any documentation in relation to any work for which the procedure pursuant to section 20 Landlord and Tenant Act 1985 was required.
19. The second statement of case dated 15th May 2012 was provided which reiterated the point made in the first statement that there was a lack of documentary evidence and said that the estimated charge is often different from the actual charge but the difference is not justified. She added that the service charge was unreasonable and that the Subject Property did not benefit from the Services set out in Clause 12 of the Lease.

20. The Applicant stated that she had twice visited the Council Offices and complained about the service charges in 2010. The people she saw on each occasion were very helpful but were not able to assist with the query. She said she wrote to the Director of Housing and Leasehold Services.
21. The Applicant pointed out that Clause 12 (6) (iii) states that if there is an overpayment i.e. a credit, the Council should re-pay the difference.
22. The Applicant added that the Respondent was in breach of the covenant for peaceful and quiet enjoyment in the Lease by unjustifiably demanding payment of the Service Charge and that she had been misled when she purchased the Subject property in relation to the amount of the Service Charge. The Tribunal informed the Applicant that these were not matters, which were within the jurisdiction of the Tribunal in relation to this Application.

Preliminary Points Regarding Respondent's Case

23. In response to the Tribunal's questions the Respondent's Representative confirmed that the Summary of Rights and Obligations had been served with the Service Charge demands in accordance with the Service Charges (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257) and copies were provided. The Respondent's Representative stated that the certificate as required by the Lease had been set out on the accounts and the tribunal noted its presence on the copies of the accounts provided.
24. The Respondent provided the service charge accounts headed Summary of Expenditure for the years ending 31st March 2007, 2008, 2009, 2010 and 2011. The amounts for these years were said to be the actual costs. However, on inquiry it was found that the amount recorded for Repair and Maintenance, which was said to be the actual, was in fact merely a repeat of the estimate. The actual cost expended for Repair and Maintenance each year was less than the estimate. The balance between the estimate and the actual cost was placed into the Reserve Fund.
25. The Tribunal commented that this was not in accordance with the Lease. The Lease provided that the Respondent could create a reserve fund but this must be done by making a genuine pre-estimation of major future expenditure for matters such as roof repairs and then making provision in the estimate for the Reserve Fund. It should not be done by diverting leaseholders excess interim payments as a result of an overestimation on a particular item into a reserve fund. There are Leases that do make provision for excess payments due to overestimations to be placed in a reserve fund but this was not such a lease.
26. Dealing with the Service Charge in this way firstly, made the actual cost of repair and maintenance appear more than in fact was the case. Secondly, for the years ending 31st March 2007, 2008 and 2009, made it appear that there was no reserve fund. The actual accounts for the years ending 31st March 2010 and 2011 do make it clear what was done and the practice is explained in the Glossary provided to leaseholders. Thirdly, if the estimated service charge were prepared so that the costs of Repair and Maintenance were identified separately from the Reserve Fund if there were an overestimation in relation to Repair and Maintenance then a credit would be payable. Where a landlord places all over estimations in a reserve fund the leaseholder is never likely to receive a credit. It is appreciated that the Respondent was merely trying to ensure that money was being set aside for future repairs and whereas the Tribunal is critical of this practice, nevertheless, it does understand that

the Respondent is having to account differently depending on whether a property is let to a periodic tenant or to a long leaseholder.

27. The table below sets out the actual cost of the Repair and Maintenance for the years in issue and records in the row itemised as Reserve Fund the balance between the estimated Repair and Maintenance and the actual cost for Repair and Maintenance, which was actually placed in the reserve fund. (The £10.00 Ground Rent, which is not within the jurisdiction the Tribunal, has been omitted).

	2006/2007	2007/2008	2008/2009	2009/2010	1010/2011
	£	£	£	£	£
Repair & Maintenance	37.52	73.62	182.22	5.85	72.75
Landscaping	14.42	19.92	19.84	22.04	22.41
Insurance	94.68	98.28	100.67	122.88	100.94
Administration	105.00	108.99	108.55	120.34	116.07
Reserve Fund	256.73	231.81	127.78	304.15	227.25
Total Actual costs	508.35	532.62	533.27	575.26	539.42
Total estimated costs	514.10	539.06	541.80	541.80	559.22
Adjustment	- 5.75	- 2.74	- 8.53	33.46	-19.80

28. The Respondent provided a statement from Mr Alex Bradbury, the Leasehold Services Officer, who stated that in April of each year he sent out an estimated service charge to all leaseholders and in September he sent out the actual service charge account for the preceding year. He said that it was decided to close down the Reserve Fund, which entitled the Applicant to a credit of £988.09, and this amount was set off against her service charge arrears.
29. The respondent also provided a witness statement from Mr John Brown who is the Divisional Accountant for the Respondent. Annexed to the statement is a schedule of the Repairs and Maintenance costs for the years in issue. He stated that in February 2012 the Respondent took the decision to close the Reserve Fund accumulated since 2006 and the Applicant's share was assessed and credited to her.
30. Each of the items of the Service Charge was then considered in turn.

Repair and Maintenance

31. The Applicant then addressed the issue of repairs and maintenance in her written statement. She said that the Council was liable for the repairs but she said that in a letter from the Council the responsibility had been passed to her.
32. The Tribunal considered the letter at the Hearing and noted that the Respondent had received a complaint regarding water from an overflow pipe from the Subject Property that was running down the wall of the Building and causing damage to the ground floor flat 47 Merthyr Road. The tribunal informed the Applicant that, as stated in the Lease the overflow pipe was part of the demised premises as it related to the plumbing within the Subject Property and was not communal. Therefore its maintenance and repair was her responsibility and not that of the Respondent. The letter had required her to remedy the overflowing pipe.
33. As referred to above the Respondent provided a schedule of the repairs and maintenance annexed to the witness statement from Mr John Brown, who is the

Divisional Accountant for the Respondent. Mr Mark Plant, Housing Asset Manager for the Respondent explained aspects of the work. He said that a maintenance team make regular inspections of the Respondent's properties and where possible any remedial work will be carried out there and then by the team. The letters 'DIY' are merely a means of identifying this type of work on the spreadsheet. It was noted that the repair of a pipe included gaining access to the Subject property via a neighbouring property. The Tribunal referred to its inspection and accepted that this was necessary due to the arrangement of the pipes at the rear of the Block.

34. The Schedule of the repair and maintenance work was as follows:

Description of Work	Cost to Block	Cost to Subject Property
	£	£
Year Ending 31st March 2007		
DIY Inspections & Small Repairs	38.34	
Drain Repair (blockage)	54.20	
DIY Inspections & Small Repairs	57.51	
Total	150.05	37.52
Year Ending 31st March 2008		
DIY Inspections & Small Repairs	38.34	
Gutter Blocked	34.00	
Down Pipe Leaking	99.86	
Cistern Leaking 47A Inspection Only	9.43	
Blocked Drain	27.10	
Renew Down Pipe	85.72	
Total	294.45	73.62
Year Ending 31st March 2009		
Drain Repair	54.20	
Plumbing Repair	139.92	
Roof Leak	38.94	
Roof Leak	496.40	
Total	729.46	182.37
Year Ending 31st March 2010		
Repair Gutter and Brickwork	23.39	
Aerial	97.00	
Aerial	551.62	
Total	672.01	168.00
Year Ending 31st March 2011		
Repair Brickwork	118.66	
Renew Down Pipe	127.78	
Repair Brickwork	44.50	
Total	290.94	72.75
Year Ending 31st March 2012		
DIY Inspections & Small Repairs	38.34	
Blocked Gutter & Down Pipe	34.00	
Down Pipe Leaking	99.86	
Cistern Leaking 47A Inspection Only	9.43	

Blocked Drain	27.10	
Leaking Down Pipe	85.72	
Total	294.45	73.62

35. The Tribunal noted that the cistern to number 47A had been found to be leaking on two occasions. The Tribunal was of the opinion that this was a matter for the Applicant as the Leaseholder of 47A to remedy and that the cost of the inspection should come within the administration or management fee and therefore should not be charged again to the Service Charge.
36. The Applicant said that she considered the repairs relating to blocked drains and leaking gutters should be the subject of an insurance claim. The Respondent in reply said that there were two types of claim under the insurance policy. The first is where a tenant made a claim. An example would be where the roof leaked and damaged the tenant's demise e.g. the ceiling. Such a repair would not be subject to an insurance excess. The second is where the Respondent as Landlord makes a claim. An example would be for a repair to the leaking roof. Such repairs by the Landlord are subject to an excess of £1,000. In the present case all the repairs listed came within the second group and were landlord repairs to the common parts i.e. blocked drains, blocked and leaking gutters and down pipes, and brickwork repairs and so were subject to £1,000.00 excess.
37. The Respondent stated that the work to the aerial costing £551.62 was not a repair but upgrading it to receive the digital signal. The Applicant said that the Subject property was served by cable, which she had installed at her own expense, and therefore she did not use the aerial signal. In response the Respondent's Representatives said that the Applicant should not have been charged for the work. They said that from experience, the vast majority of short and long leasehold tenants used the aerial signal. It was added that with so many properties it relied upon individual long leasehold tenants to say if they were only receiving cable.
38. The Applicant said that the procedure under section 20 Landlord and Tenant Act 1985 should have been followed for all the repairs, as the amount charged each year was over £250.00.
39. In response to the Applicant's submission that the procedure under section 20 Landlord and Tenant Act 1985 should have been followed for all the repairs, the Respondent's Representatives stated that the procedure was not applicable as neither the cost of individual repairs nor the total cost of the annual repairs amounted to a contributions of more that £250 for any one leaseholder. It was noted that unlike with the insurance where a long term qualifying agreement has been entered into and the procedure under section 20 had been followed no such similar agreement had been entered for repairs.

Landscaping

40. The Applicant stated that the garden was within her demise and therefore the cost of landscaping in the service charge was unreasonable.
41. In response to the tribunal's questions the Respondent's Representatives said that this was a standard charge that was made in relation to the long leasehold properties as nearly all had communal grounds. The Tribunal stated that there was no provision in the Lease requiring the Applicant to pay a contribution to landscaping other than in relation to the Subject Property. As the only communal area was the path shared by the ground floor flat the landscaping charge did not appear to be applicable. The

Respondent's Representatives conceded that landscaping should not be included in the Service Charge relating to the Subject Property.

Insurance

42. Although the amount of the premium for the insurance was not put directly in issue the Applicant expressed concern that according to a communication dated 15th October 2012 the Subject Property had only been valued at £66,495.00 for insurance purposes and yet she had purchased it for £79,995.00 and she had been told in correspondence dated 10th August 2012, relating to the entering of a long term qualifying agreement for insurance (copies provided) that it would be insured for £100,000. She also said that she was concerned that her name was not correctly stated on the insurance documentation.
43. Following some discussion it was explained that the insurance value was not necessarily the market value and may be more or less. It was stated by way of further illustration that were the Subject Property to be destroyed by fire the land would remain and therefore the insurance monies would only be required to rebuild the flats. Therefore although the Lease was purchased for £79,995.00 the subject Property was only valued at £66,495.00 for insurance.
44. It was further stated that the reference to the value of £100,000 in the letter dated 10th August 2012 with reference to the procedure under section 20 was only an illustration in order that tenants could compare 'like with like' when comparing one insurance company against another i.e. if the sum insured was £100,00 the premium would be...
45. The Respondent's Representative stated that the Insurance was a block insurance policy for all the Respondent's properties. A tendering exercise had been carried out together with a section 20 Landlord and Tenant Act 1985 procedure as the policy was to be for more than a year. Seeking to demonstrate that it had sought best value the Respondent stated that it had initially selected one insurance company but subsequently selected another because it provided better value.

Management

46. The Applicant stated that the cost of Administration was unreasonable as it was more than any other item.
47. The Respondent stated that this was based on a standard charge for the arrangement of insurance and repairs and maintenance, preparation of accounts and collection of the service charge. The Tribunal said that it looked at management fees on a unit basis as recommended by the RICS.

Decision

48. The Tribunal considered the evidence submitted by the parties in respect of each of the items of the service charge and made the following determination.

Repair and Maintenance

49. The Tribunal found that the repair of the cistern was a matter for the Applicant and that the cost of the inspection should come within the administration or management fee and therefore should not be charged again to the Service Charge. Therefore the

two charges of £9.43 in the year ending 31st March 2008 and 2012 were determined not to be reasonable.

50. The Tribunal found that the aerial repair and change over to digital were charges that the Respondent conceded should not have been charged to the Applicant. Therefore the two charges of £97.00 and £551.62 in the year ending 31st March 2010 were determined not to be reasonable.
51. However, the other charges relating to the maintenance and repair are all matters which might be expected to be carried out on the Building in which the Subject property is situated and therefore in the absence of evidence to the contrary were in the knowledge and experience of the members of the tribunal determined to be reasonable and payable.
52. The Tribunal accepted the evidence of the Respondent with regard to the ineligibility of the repairs and maintenance to an insurance claim. It was able to confirm the amount of excess by reference to the section 20 procedure documentation provided. It was found that all the repairs and maintenance would have been within the excess of £1,000.00 and therefore were chargeable to the service charge.
53. The following table is a summary of the determination in respect of Repairs and Maintenance:

Description of Work	Cost to Block	Determination
	£	
Year Ending 31st March 2007		
DIY Inspections & Small Repairs	38.34	Determined to be reasonable
Drain Repair (blockage)	54.20	Determined to be reasonable
DIY Inspections & Small Repairs	57.51	Determined to be reasonable
Total	150.05	150.05
Cost to Subject Property (1/4 of Total)	37.52	37.52
Year Ending 31st March 2008		
DIY Inspections & Small Repairs	38.34	Determined to be reasonable
Gutter Blocked	34.00	Determined to be reasonable
Down Pipe Leaking	99.86	Determined to be reasonable
Cistern Leaking 47A Inspection Only	9.43	Determined to be unreasonable
Blocked Drain	27.10	Determined to be reasonable
Renew Down Pipe	85.72	Determined to be reasonable
Total	294.45	285.02
Cost to Subject Property (1/4 of Total)	73.62	71.26
Year Ending 31st March 2009		
Drain Repair	54.20	Determined to be reasonable
Plumbing Repair	139.92	Determined to be reasonable
Roof Leak	38.94	Determined to be reasonable
Roof Leak	496.40	Determined to be reasonable
Total	729.46	729.46
Cost to Subject Property (1/4 of Total)	182.37	182.37
Year Ending 31st March 2010		
Repair Gutter and Brickwork	23.39	Determined to be reasonable

Aerial	97.00	Determined to be unreasonable
Aerial	551.62	Determined to be unreasonable
Total	672.01	23.39
Cost to Subject Property (1/4 of Total)	168.00	5.85
Year Ending 31st March 2011		
Repair Brickwork	118.66	Determined to be reasonable
Renew Down Pipe	127.78	Determined to be reasonable
Repair Brickwork	44.50	Determined to be reasonable
Total	290.94	290.94
Cost to Subject Property (1/4 of Total)	72.74	72.74

Insurance

54. The Tribunal determined that the insurance policy had been obtained at arms' length in the market place in accordance with *Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd* (1996) 29 HLR 444 CA. In that case it was held that a landlord is not obliged to obtain the lowest premium but must agree the premium at the market rate or negotiate the insurance contract at arms' length in the market place. This was demonstrated in the present case by following the section 20 procedure.
55. The Tribunal referred to *Forcelux Ltd v Sweetman and another* [2001] 2 EGLR 173 (LT) where it was held that a direct comparison cannot be drawn between a commercial landlord and an individual leaseholder. Commercial landlords have access to a limited pool of insurers prepared to provide commercial cover for individual properties. The Tribunal also noted that the courts accepted the practice of commercial landlords with a portfolio of properties insuring a block of properties as a single entity. The Tribunal found that local authorities like commercial landlords could obtain best value through the purchase of block policies.
56. Also in *Forcelux Ltd v Sweetman and another* it was stated that the question the Tribunal has "to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred." In doing so it has to be considered upon looking at the evidence "whether the landlord's actions were appropriate, properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act". The Tribunal found the Respondent's actions were appropriate and determined that the insurance premium was reasonable and payable.

Landscaping

57. The Tribunal found that the garden was within the Applicant's demise and therefore the cost of landscaping in the service charge was unreasonable.

Management

58. The Tribunal determined that the management charge itemised as Administration in the Service Charge was high. The management role was limited to arranging insurance and repairs. This was a small block and it was accepted that there is an optimum charge below which it would not be economic for a managing agent to carry out the work. In the knowledge and experience of its members the Tribunal determined that a reasonable annual unit charge for the management would be

£75.00 for the year ending 31st March 2007 rising broadly in line with the RPI to £80.00 for 2008 and 2009, £90.00 for 2010 and £100.00 for 2011.

Reserve Fund

59. The Tribunal found that the Reserve Fund had been distributed and was no longer in existence.

Summary

60. The Tribunal found that the Total Service Charge determined to be reasonable and payable was as follows:

Years ending 31 st March	Repairs and Maintenance		Insurance		Administration		Total	
	£		£		£		£	
	Block Total	1/4	Block Total	1/4	Block Total	1/4	Block Total	1/4
2007	150.05	37.52	378.72	94.68	300.00	75.00	828.77	207.20
2008	285.02	71.26	393.12	98.28	320.00	80.00	998.14	249.54
2009	729.46	182.37	402.68	100.67	320.00	80.00	1,452.14	363.04
2010	23.39	5.85	491.52	122.88	360.00	90.00	874.91	218.73
2011	290.94	72.74	403.76	100.94	400.00	100.00	1,094.70	273.68

61. The Tribunal determined that the reasonable Service Charge payable by the Applicant to the Respondent for the years in issues is as follows:
 £207.20 for the year ending 31st March 2007
 £249.54 for the year ending 31st March 2008
 £363.04 for the year ending 31st March 2009
 £218.73 for the year ending 31st March 2010
 £273.68 for the year ending 31st March 2011

JR Morris (Chair)

31st August 2012