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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of Applications under:
Sections 27A (and 19) of the Landlord & Tenant Act 1985
(Liability to Pay and Reasonableness of Service Charges)
Section 20C of the Landlord & Tenant Act 1985
(Limitation of Costs)

Case No. CHI/21UG/LIS/2012/0016

Property: Strand Court
Strand Quay
Rye
East Sussex
TN31 7AY

Between:

Mr. A.E.G. White
And
Mr. E. Matthews
("the Applicants")

And

Proxima GR Properties Ltd.
("the Respondent")
Represented by
Peverel Retirement

Date of Hearing: 18th April 2012

**Members of the
Tribunal:** Mr. R. Norman
Miss C.D. Barton BSc MRICS

**Date Decision
Issued:** 10th May 2012

STRAND COURT, STRAND QUAY, RYE, EAST SUSSEX TN31 7AY

Decision

1. The Tribunal made the following decisions:

(a) Within 28 days of the date of issue of this decision Proxima GR Properties Ltd (“the Respondent”) is to pay to the Strand Quay Right to Manage Company the sum of £11,475.34 calculated as follows:

(i) In respect of the upgrade of the emergency call and door entry system the sum of £3,445.98.

(ii) In respect of insurance commission £8,029.36.

(b) An order is made under Section 20C of the Landlord and Tenant Act 1985 (“the Act”) that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Mr. A.E.G. White and Mr. E. Matthews (“the Applicants”).

Background

2. The Respondent is the landlord of Strand Court, Strand Quay, Rye, East Sussex TN31 7AY (“the subject property”) and the Applicants are two of the lessees at the subject property.

3. Peverel Retirement was the manager of the subject property but on 15th November 2011 the lessees’ Right to Manage Company took over the management.

4. From the time when Peverel Retirement was managing the subject property the Applicants dispute the following two items of expenditure:

(a) The charge of £9,143.85 being the cost of an upgrade to the emergency call and door entry system.

(b) Insurance commission of Kingsborough Insurance from 2005 to 2011.

5. Statements of case and accompanying documents have been received from the Applicants and from Peverel Retirement on behalf of the Respondent.

Inspection

6. On 18th April 2012 the Tribunal inspected the emergency call and door entry system at the subject property. The Applicants and Ms Jobling the House Manager showed us the equipment in the House Manager’s Office which included the Tunstall Piper system. We were also shown a handset, similar in appearance to a mobile phone,

and some of the DECT repeaters in the corridors. The lessee of one of the flats allowed us access to her flat and we could see the emergency pull cords and buttons and system for allowing door entry. There were also emergency pull cords in the communal rooms. There was no attendance at the inspection by anybody on behalf of the Respondent.

Hearing

7. Present at the hearing were the Applicants and on behalf of the Respondents Mrs. Barton and Mr. Richardson of Peverel Retirement. Also present were a number of residents of the subject property and Ms Jobling the House Manager.

8. It was confirmed that the statements of case and accompanying documents had been received by the Applicants and by Mrs. Barton.

9. Mrs. Barton confirmed the following:

- (a) That the Respondent was the landlord of the subject property.
- (b) That Peverel Retirement is a division of the Peverel Group. Three companies: Peverel Management Services Ltd. which manages the portfolio in England and Wales, Peverel Retirement Homesearch Ltd. which acts as an estate agent and Peverel Scotland Ltd. which manages the portfolio in Scotland are collectively known as Peverel Retirement which is the trading name for the three companies.
- (c) That any charges which the Tribunal found should be disallowed would be paid by the Respondent.

10. Mr. White addressed the Tribunal about the emergency alarm system upgrade which was disputed in two respects: first as to the necessity for the upgrade and secondly as to the cost.

11. As to necessity, Peverel Retirement ("Peverel") produced a quote for this work from Cirrus in the sum of £7,782 plus VAT giving a total of £9,143.85. There was a meeting and it was suggested by Peverel that there was an urgent need for the upgrade in order to keep the system functioning but in fact there was no urgent need. It was accepted that the cost of the works was not sufficient to trigger the consultation provisions of Section 20 of the Act but there had been a promise of consultation and there had never been full consultation. At the meeting two years ago the greater proportion of the residents were very elderly ladies and were prepared to accept whatever was told to them by Peverel. However Mr. Matthews was not satisfied of the need to upgrade the system and had correspondence with various members of Peverel. Mr. Matthews is not without ability in this area. He has experience in civil aviation and during the Second World War he was in air traffic control with the RAF. Later, he designed and oversaw all the air traffic control at Heathrow and in his opinion there was no necessity whatsoever for an upgrade. The original system as seen at the inspection still works. There are emergency call system pull cords in every flat and in corridors and common areas. In each flat and at various points there are telephones which connect direct to the office. Before the upgrade the House Manager had a mobile phone which was part of the Tunstall installation which was installed 23 years ago and it worked but had to be

plugged in to points when it rang in order to be answered. Each flat and public areas had smoke detectors installed when the building was constructed. When the Right to Manage Company took over and had an inspection the smoke detectors in 17 flats did not work even though the residents had been charged for inspections by Cirrus. The detectors have now been replaced with a hardwired system. Peverel decided that it was necessary to introduce a new phone into the Tunstall system. The only virtue of the upgrade is that the House Manager can respond to calls without the necessity of plugging her phone into a socket. This could have been achieved simply by purchasing a mobile phone at a cost of £200 but instead an upgrade was installed. After upgrade the system was found not to be able to pick up a signal anywhere other than the House Manager's office and therefore it was necessary to install 17 repeaters in corridors and other equipment to join in to the Careline system. The bill was over £9,000 and Mr. Matthews was appalled at that expenditure. At that time it was not known that Cirrus was another wholly owned subsidiary of the Peverel group. That only became clear when the right to manage negotiations commenced. Those involved in the negotiations made enquiries of the Land Registry and Companies House. The last accounts of Peverel Ltd revealed that all the companies used and advocated by Peverel were in fact wholly owned subsidiaries. There were 23 of them including Cirrus, Careline and Kingsborough Insurance services Ltd. Two years ago it had been thought that Cirrus was acting at arms length from Peverel. An edited bundle of correspondence had been produced with the statement of case and Mr. White drew attention to particular paragraphs. As the letters progressed the assertions became more exaggerated and the residents were expected to believe the exaggeration. That the existing system was working was ignored and Peverel was intransigent. As to necessity, it could be said that the simple answer was that the system was working and there was no need to meddle. Peverel made great play of the duty to ensure that the system was working properly. Mrs. Griffiths, the Regional Manager said it could put peoples' lives at risk.

12. Looking at necessity from another angle, Careline was efficient, though now replaced by a cheaper but just as efficient company, and gave cover 7 days a week 24 hours a day. The House Manager using her phone is only involved during working hours. At weekends, when on holiday, sick or out of the building Careline cover takes over. So in proportion to the permanent Careline cover it could be said that the work of the House Manager is so proportionately less that it is tantamount to being interlocutory. When she comes on duty she connects into the system and relieves Careline. If she is away from the office and in an area where responders do not give a signal, for example the garden, then there is no signal but nobody is at risk because if she does not respond the call automatically reverts to Careline. Therefore the phone is not a critical piece of equipment. The reason for the upgrade is therefore difficult to comprehend save that Mrs. Barton in her response says that it has been carried out at a number of other Peverel sites at about the same price. Mr. White suggested that that was curious when one considered the vast range of developments from small to very large and so on. He also suggested that looking at the company accounts of Cirrus it may be that Cirrus was in need of work, perhaps because at that time Cirrus was saddled with part of the cost of the parent company.

13. Mr. White submitted that no necessity existed. Ultimately the system would fail but until it did there was no justification for its replacement and that as the Respondent had failed to justify the expenditure it should be totally disallowed.

14. As to cost, when Mr. Matthews first considered cost it was difficult to see how the upgrade could cost £9,000 including VAT so enquiries were made of suppliers. A copy of the list of equipment had been provided (the annexure to p 26 of the Applicants' bundle of documents). It does not itemise the expenditure. There are no prices. The list shows 2 base station handsets and chargers. It was pointed out that there was only one but no comment was received about that. The costing was kept in the dark. Mr. Richardson in a letter dated 16th August 2011 (p24) stated that he could not help with the details as Peverel did not have them. Mr. White submitted that Mr. Richardson received a quote for £9,000 and signed it off at the drop of a hat and suggested that Mr. Richardson would have been more careful if he had been paying for it himself. Throughout the correspondence as to cost no one had ever been prepared to give detail or to answer points raised. In an effort to find out, Mr. Matthews wrote to the Registered Office of Cirrus. He never received an answer from Cirrus but received a reply from Mr. Richardson, who had not said how the letter from Mr. Matthews came into his possession or who had instructed him to respond. The reply was useless as it did not address the matters raised. There were further letters and telephone calls about cost and the shortfall between Mr. Matthews' calculation of the cost and the amount charged but no useful answer was provided and no mention was made of it in the Respondent's statement of case even though it had been set out clearly and helpfully at p 29 of the Applicants' statement of case.

15. Initially Mr. White had been under the impression that the figure for the shortfall had been correct but on reflection the figures had been recast and a slightly different figure achieved which was to the advantage of the Respondent. The new workings were submitted to Mrs. Barton and to the Tribunal. Greater allowance for labour had been made. Each man, engineer etc. would probably cost £200 per day allowing for wages, pension, National Insurance etc. The Applicants had allowed 2 days work for 2 men so £800 + VAT £140 = £940. They brought tools and equipment and the equipment to install. £60 was added for travel. Therefore labour and travel gave a total of £1,000. From enquiries of Siemens, BT, Tunstall, and in relation to the last 3 items reference to the internet as not available from the 3 suppliers, costs were obtained. The total should not have been more than £5,697.07 which left a shortfall of £3,445.98. Mr. White submitted that as the Respondent had singularly failed to respond to all the enquiries made by the Applicants and had refused to give detail the Respondent should now be excluded from any attempt to justify the cost and that the entirety of the shortfall should be disallowed. If the Tribunal was minded to make disallowance on necessity then the shortfall could be subsumed in the greater sum.

16. Ms Jobling was available to give evidence and Mrs. Barton was asked if she had any questions for her. Mrs. Barton had no questions for Ms Jobling and therefore her statement was relied upon.

17. Mr. White addressed the Tribunal as to insurance commission charged by Kingsborough Insurance Services Ltd.

18. Kingsborough Insurance Services Ltd. is a sister company of Peverel and that was hidden from the residents. Peverel had to insure and could have contracted a legitimate broker in the City used to handling insurance and had they done so the broker would have charged the going rate for commission of 3% to 4%. The broker also gets commission from the insurance company. It appears from the documents in the Respondent's response that Oval Insurance Broking Ltd as a broker also received 4% from the insurance company Zurich because Oval maintains a claims handling unit. This absolves Zurich from having to use its own claims handling department. It would be manifestly straightforward for Peverel to instruct Oval directly but by also using Kingsborough additional money could be made from the residents. Also the residents were offered the services of Kingsborough to insure the residents' contents but they were not told that Kingsborough were part of Peverel. As to the insurance taken out by the Respondent, Kingsborough's charge varied over the years; the highest being 33.05%. The Respondent had now accepted that the commission charged by Kingsborough was excessive and before the hearing offered a reduction based on a calculation of commission at 14% but the Applicants had refused this. The Applicants accept that in a case cited Mrs. Barton had convinced the Tribunal that 14% was reasonable and had told the Tribunal that Kingsborough got involved in management control of the broker; whatever that means. Mr. White submitted that a lay company should not control a legitimate insurance broker. A justification for Kingsborough's charges was said to be that they handle all the enquiries from residents who need assistance and guidance in insurance matters but Mr. White did not accept that. Most residents were totally unaware of Kingsborough. They had forgotten that they had been told that Kingsborough would arrange contents insurance and place it with a broker. The only time residents would raise questions with Kingsborough would be if contents insurance was arranged through Kingsborough and the resident was making a claim. A resident would not have telephoned Kingsborough about buildings insurance because the resident would have no interest in it. The cost of a contents insurance query would fall on the questioner or Kingsborough and that was not a justification for a charge against all residents. The position as to claims handling was not clear. Mrs. Barton suggested that Kingsborough were dealing with claims whereas a decision of a Tribunal in a case cited revealed that Oval was being paid 4% by Zurich for handling claims. At the subject property it was known that Oval was used to deal with claims. They have a claims department and correspondence exists which confirms that. Mr. White could find nothing whatsoever to justify a charge being made of any amount. Since preparing the bundle of documents one decision of the London Tribunal had been found and a filleted version of a very long decision was produced. On insurance commission at p 15 paragraph 60 the Tribunal had expressed concerns about insurance commission. The Tribunal would have expected a policy document to be accurate in this respect and disallowed the commission entirely. Mr. White produced a copy of the part of the decision to Mrs. Barton and to the Tribunal. All cases quoted are not binding precedent but if a precedent is sought then there is a plethora of cases each producing a different decision and not very helpful. As to the case of Charter Quay, Mrs. Barton made the point that it was a very different proposition as that was not a retirement

development but open to anyone and indeed tenants in Charter Quay are professional and quasi professionals and articulate. As they did deal with claims 10% commission was reasonable. Mr. White submitted that in this case Kingsborough did nothing whatsoever of a useful nature to justify a charge of any amount and that in all the years quoted the commission should be disallowed.

19. Mr. White made submissions as to the application as a whole and referred to the cases cited. Because of the total unwillingness of the Respondent or Peverel on its behalf to tell residents what things really cost, what had been done and who did it, the residents would have and did believe that when told that work would be done by Cirrus it was because they were the best and that Peverel had made a choice. The problem is that one can only conclude that to hide that information was part of an intentional hiding of information to which residents would have been entitled. So far as a relationship existed between Peverel and the companies concerned it was clear that nothing had been done at arms length. There was nothing to suggest for example that Kingsborough made sure that Oval was doing its job in the years that the subject property had been insured. For the first years insurance was with Norwich Union and for last nine years with Zurich. It may be that every year consideration had been given to alternative insurers but the fact that insurance had been with the same company for a long time could suggest that alternatives had not been considered. Peverel treated residents with some arrogance as was evidenced by Mr. Richardson's letter when he admitted he simply signed off £9,000 without asking how the figure was made up. It was evident why he had not asked when aware they were sister companies. Mr. White referred to the case of Shanklin Pier and Dettol Products Ltd. as to privity of contract and agency and in support of his submission that when Peverel placed an order, even with Kingsborough or Cirrus, Peverel was doing it as agent of the residents, the payers, either as disclosed or undisclosed agents. Therefore it could be argued that contracts placed by managing agents Peverel must be open to examination and criticism by the payer. There is nothing in statutory law about this but equitable principle says there should be disclosure. There was certainly an overwhelming and binding obligation on managing agents who furtively and secretly employed a fellow company because, in the end, it rebounds against them. When it becomes public knowledge, as here, the fact that there had been a failure to disclose must affect adversely the rights of the agent. Mr. White did not propose to call Mr. Matthews unless the Tribunal or Mrs. Barton wished to ask questions and suggested that his witness statement was sufficient. Ms Jobling's statement was affirmed by the inspection when the Tribunal saw that the emergency alarm call system works perfectly well and that the original telephone system attached to it gives a better service to the user than the upgrade handset and is used by the House Manager as a preference in the office.

20. Mrs. Barton presented the case for the Respondent.

21. She pointed out that the fire alarm system is separate from the emergency call system and not the subject of this application.

22. As to the emergency call system Peverel felt this was a clear necessity. The system was failing and if failing it was not an effective system. The emergency call

system was attractive to residents. Not everyone needs it but if not updated it would have been putting residents at risk. The system was put in in 1988. It is an older system and there have been many advances, particularly in recent years. A lot of systems are obsolete and it is difficult to get spares. This is an analogue system and the new system is digital. The cost was considered and a DECT upgrade was considered the most cost effective and reasonable way of dealing with this rather than the reinstatement of a system which was the other option. The upgrade should mean that the system will work for 8 to 10 more years without substantial change. It is expected that there will be more technological progress by then. The current House Manager is not experiencing problems because it is now an upgraded system. Before the upgrade, not all the calls were going through to the House Manager as they should. When the House Manager is on duty the call should first go through to the House Manager and not Careline because the House Manager can respond more quickly. If she is already dealing with an incident then the call will go to Careline. There is an inevitable delay in going to Careline. There is also the difficulty of allowing entry and this system is also linked in with the door release. Since DECT is digital and running alongside the analogue system the analogue system can be used but it is the digital system that will ensure the calls come through on the correct basis to the House Manager. The order was placed with Cirrus because Cirrus was currently maintaining the existing system and any upgrade needed to link with maintenance. As to companies being linked to Peverel it is not unusual to have a group of linked companies. Cirrus is part of the Peverel Group and has been for a considerable number of years. The warden call system is very critical equipment. If it is not working properly lives can be at risk. The landlord would not want to be in a position where something happened to a resident which could have been prevented had the system been working properly. There have been big steps forward in telecare systems. Careline can do so much more now than 20 years ago and there was more reliance on the House Manager but for most retirement developments it is considered necessary to have a House Manager working there although hours will vary according to the size of the development. The cost of the upgrade was considered reasonable. Mr. Richardson had experience of this type of work and was well aware of whether the cost was falling within the parameters of that type of work. He was used to placing contracts. He knew it was a good price because it fitted with prices for similar developments. Contractors for similar upgrades were likely to be those who were maintaining the system and could be Cirrus. Had a full replacement system been the way forward then that would have been put out to various contractors to tender for the work. To put out to various contractors would probably have meant bringing the maintenance contract to an end.

23. Mrs. Barton wished to clarify one element of the Applicants' case. At p 26 the item station handset and charger shows 2 because one set is in the House Manager's office and the other set is in the House Manager's apartment. However, Ms Jobling says there is only one and that there is not one in her apartment. The cost is required to be reasonable, not necessarily the cheapest. The Applicants had provided calculations. It was difficult to comment on those because she did not know how the Cirrus figures were made up. It was a fixed price contract. It was not unusual to place a contract with a global figure without a breakdown to separate elements. The work is to a specification and that is the important element. The specification will be charged for. For example, if

placing an order for external decoration she would not expect a breakdown. Whether or not the managing agents see a breakdown varies and they would look at the reasonableness of the figure. The upgrade was very necessary, was done by the appropriate contractor and the price was reasonable. As to the correspondence with Mr. Matthews, it had gone through the internal complaint process and had been taken seriously. The issues were looked at and due consideration had been given. It was not an automatic response. If during the complaint process the panel considers there is an error then that is dealt with in whatever way is appropriate. In looking at the complaint process they are looking at the landlord's obligations under the terms of the lease. Cirrus is a group company but operates independently. Certainly Peverel is not there solely to provide work for Cirrus, which must operate in the market place.

24. As to insurance commission, Kingsborough is a Peverel Group company dealing with insurance brokerage. It does work in conjunction with Oval which is again an insurance brokerage. Kingsborough does look at the market place when placing insurance cover. It does place insurance for a large part of the Peverel portfolio and as such does get beneficial terms both in premiums and in the level of insurance cover. The retirement sector is different from the open market where there is no age restriction at the development. The open market has a mixture of lessees. There is a whole range of ages and their requirements are often different to the retirement sector. There is often more independence in the open market. Within the retirement sector it is necessary to consider ages and abilities and needs may be greater. Kingsborough does deal with a lot of enquiries and queries by residents; far more than would be experienced from an open market development. This was recognised in the decision in the Seager and Hughes case which had been cited. However Mrs. Barton could not find mention of that in the decision and apologised for making the submission. The offer of a refund of £3,200.55 had been made and had not been accepted but was still open. It was based on 14%. Copies of two open market cases dealt with a commission rate of 15% being a reasonable rate (paragraph 39 of the Seager and Hughes case and paragraph 25 of the Solitaire Property Management Ltd case). Mrs. Barton realised those decisions were not binding on this Tribunal. She submitted that through Kingsborough and Oval there was a good claims process with more direct access to claims handlers. Oval generally, but liaising with Kingsborough as necessary. The claims service in place with Oval supported by Kingsborough enabled claims to be progressed more quickly which was good for residents. Oval is the claims manager. Mr. White informed the Tribunal that Alison Marson at Oval does this work and asked if there was any evidence that Kingsborough was ever involved in claim management. Mrs. Barton stated that first the claim would go to Kingsborough for a decision whether there was a valid claim and if it could be progressed the claim would then go to Oval. Mr. White knew of claims raised by a person to the House Manager who wrote to Oval and got a reply from Oval. He had a letter written by Oval to the House Manager stating there was no claim. This was in 2008 and there was no involvement of Kingsborough. The House Manager was instructed to contact Oval and Oval maintained a claims department for that purpose. In one of the decisions cited Peverel conceded that Zurich paid 4% commission to Oval to handle claims on its behalf. Mr. White asked if there was any written evidence to support occasions when Kingsborough was involved. The Respondent had had every opportunity

to call a member of staff from Oval or from Kingsborough. Apparently they had appeared in other cases. That there was no confirmation of Kingsborough's involvement was unsatisfactory. Mrs. Barton said there was no evidence to show that except that Mr. Richardson says the claim is sent to him and then he advises the House Manager to send it to Kingsborough. There was no other evidence of this happening. She submitted that Kingsborough did deal with the bulk of administration of policies and queries by residents as necessary. Kingsborough does have a function and does provide services for the money it receives.

25. Mr Richardson was called to give evidence and referred to his statement at pp 56-57 and the annex at pp 58-59 of the Respondent's bundle of documents.

26. He stated that the subject property was built in 1988 and opened in 1989. The Tunstall Piper Haven alarm system had been giving considerable problems to previous House Managers. He had witnessed first hand on a number of visits to the subject property calls bypassing the House Manager and going to Careline. That meant there was a time delay because the internal system was trying to answer first. Along with a number of other schemes with that type of equipment he had looked to extending the life of the current system. It was not necessary to do a total system replacement. Hence the DECT upgrade. The original system used a plug in unit. There was a bleeper in the handset which could then be plugged in. It had broken down. The call was not going to the handset and not beeping if roaming the building and a call was placed. He had never witnessed the bleeper not working but on more than one occasion he had witnessed the system not connecting to the House Manager. In his statement he had said that he had first hand experience of the House Manager's inability to access the system properly on one of his visits and accepted that his statement was not quite right. The original alarm system used a hard wire linkage from apartments to the House Manager's office. The House Manager did have a fixed line in the office also connected to a roaming landline telephone. No mobile phones were provided on the development. It was a roaming land line phone. It was his belief that before the upgrade the House Manager was not able to be the first point of contact; potentially putting residents at risk. He did not know if a mobile phone could be used but they did not use them. In that way the cost was controlled. A mobile network was more expensive. The decision to use DECT was taken purely to save the residents money and funds. It was recognised that the majority of the system was very good and had life expectancy in it. He was not seeking to replace call points in apartments or communal areas, just the operational side of the business and extend life expectancy by 8 – 10 years. He had done the same on a number of schemes successfully. He had nothing to add about insurance.

27. Cross examined, Mr. Richardson accepted that the House Manager maintained a diary in which would be entered events of importance and that a malfunction of the Piper Haven phone would have been recorded in the diary. Also that when the Right to Manage Company took over in November 2011 the diary was removed to the Halesowen office and he had not looked at the diary so as to produce written evidence of malfunction of the system. He presumed that every flat had a BT land line and that for a rapid response the resident could dial 999 but that would apply only if the resident was able to

do so. If the resident had fallen the first available means of help would be the pull cord and could be the only means of contact. He did not accept that even if the resident were able to telephone 999 that that would produce a more rapid response than contacting Careline. In such a situation Careline would call the emergency services by a direct line which bypasses the usual 999 system. By going through Careline help will be summoned, a history of the situation will be given and arrangements can be given for the emergency services to be given access to the building and the safe containing a master key. If the resident telephones 999 the resident may not be able to arrange access. As to insurance claims, his instructions were that the House Manager would first raise the matter with him and he would instruct the House Manager as to the next route which was always to alert Kingsborough first. Mr. White said he had evidence of claims going direct to Oval from the House Manager but Mr. Richardson said Kingsborough was the advisor on the insurance industry and advised Peverel on the appropriate wording to use and assisted with difficulties on claims.

28. It was put to Mr. Richardson that approaching the take over by the Right to Manage Company, the subject property was without a House Manager for eight months and yet he was now saying that it was critical to have a House Manager with a telephone. Mr. Richardson said a relief manager would have been employed if the residents had wanted to have a permanent appointment deferred until the new managing agents took over. He had believed the transfer would be completed more speedily than it was.

29. Asked if there was any benchmark by which to judge the quotation for the upgrade works, Mr. Richardson said that there were other developments but they were all different. The subject property is unique in that it has a lot more corridor length which snakes around. No other tenders were obtained. Cirrus was the maintenance company and if another company had been employed to upgrade then the maintenance contract would have been invalidated. If the system had been replaced the cost would have gone above the Section 20 limit and tenders would have been invited from at least three contractors including Cirrus. He could have gone to other companies and asked for a quote for the upgrade and for those companies to take on the maintenance. Then he would have had a benchmark.

30. Asked if there was any evidence to contradict the Applicants' calculation of costs Mrs. Barton said there was not, but submitted that there were no proper estimates from the Applicants and the figures were very much the Applicants' own calculations. No-one from Peverel had asked Cirrus to comment and Mr. Richardson had no comments on the figures.

Reasons

31. The Tribunal considered all the written and oral evidence and the submissions and made findings of fact on a balance of probabilities.

32. The emergency call and door entry system.

- (a) The Tribunal found that such a system is very important and needs to be kept in good working condition.
- (b) It is necessary to have a system which enables assistance to be summoned at any time and if such assistance could be available on site at all times that would be ideal. However, that is not practical and reliance has to be placed on an organisation such as Careline to cover times when the House Manager is not on duty or is already dealing with an incident even though there is inevitably a short delay in the call being redirected. Nevertheless, when the House Manager is on duty it is of benefit that she can be contacted and that she is able to respond. It was suggested that the 999 system would provide a faster response but there will be times when a resident is unable to get to a telephone or make the call but is able to pull the emergency cord or press the emergency button. There is also the problem of emergency services obtaining access to the subject property if the resident is not able to operate the door release.
- (c) It was submitted that the system was working and that nothing needed to be done until it broke down. The Tribunal could not accept that. Notice had to be taken of the age of the system. As time went on, a failure of the system became more likely and it was right for the Respondent through Peverel to take action before the system did fail. There are some aspects of the upgrade which did not appear to be improvements and in fact were submitted to be not as good as the old system but it is also likely that as time went on obtaining replacement parts for the system would become more difficult and would mean either a delay in effecting a repair or the need for a new system or an upgrade arising as an emergency.
- (d) Peverel did not decide simply to install a new system which would have been more expensive for the residents but chose the cheaper alternative of an upgrade; thereby extending the life of the system by 8 to 10 years. The Tribunal acknowledged that the system uses a roaming phone rather than a mobile phone. The suggestion that a cheap alternative to the upgrade would have been to purchase a mobile phone was considered by the Tribunal but not accepted as there would have been the cost of a mobile network.
- (e) The sums involved did not trigger the consultation provisions of Section 20 of the Act but charges still have to be reasonably incurred. It would have been wise to obtain more than one quote for the work (even if it meant changing the maintenance arrangements) especially when the only quote was from a sister company.
- (f) The Applicants made enquiries and found the cost of the equipment used and that apparently two handsets and chargers had been charged for but only one installed. These matters were put to Peverel but no explanation was given. Peverel had been aware for months that the cost was going to be challenged yet even by the hearing had no answer to that challenge. At the hearing it was said that Mr. Richardson had experience of awarding contracts and knew the price was within reasonable parameters because he knew of other similar work carried out at other developments, apparently by Cirrus. This did not form a reliable basis for assessing the reasonableness of the cost of this work. It should have been possible for Peverel to justify the cost when it was raised by the

Applicants in correspondence but that was not done. It should have been possible for Peverel to produce evidence of cost at the hearing but they did not. The only evidence of cost came from the Applicants and the Tribunal found that that evidence was acceptable. There was no effective challenge to that evidence. Consequently, the Tribunal found that the difference between the cost as charged and the cost as calculated by the Applicants was not reasonably incurred and should be paid by the Respondent to the Strand Court Right to Manage Company.

33. The commission charged by Kingsborough Insurance Services Ltd.

(a) Kingsborough had charged between 12.80% and 33.05% over the years in question. The Respondent admitted that the commission was excessive and offered a refund of commission based on 14%. That was not accepted by the Applicants. The Tribunal was satisfied that the commission charged was excessive.

(b) There was no evidence from Kingsborough or from Oval, the brokers.

(c) On behalf of the Respondent, Mrs. Barton submitted that:

(i) Kingsborough worked in conjunction with Oval which is again an insurance brokerage and that Kingsborough did look at the market place when placing insurance cover.

(ii) Because Kingsborough placed insurance for a large part of the Peverel portfolio beneficial terms both in premiums and in the level of insurance cover were obtained.

(iii) The retirement sector is different from the open market, with different requirements and that Kingsborough dealt with a lot of enquiries and queries by residents; far more than they would experience from an open market development.

(iv) Oval was the claims manager but through Kingsborough and there was a good claims process with more direct access to claims handlers: Oval generally, but liaising with Kingsborough as necessary.

(v) The claims service in place with Oval supported by Kingsborough enabled claims to be progressed more quickly which was good for residents.

(vi) First the claim would go to Kingsborough for them to decide whether there was a valid claim and if it could be progressed the claim would then go to Oval.

(vii) Kingsborough did deal with the bulk of administration of policies and queries by residents as necessary.

(viii) Kingsborough did have a function and did provide services for the money it received.

(d) No evidence was produced to support those submissions except from Mr. Richardson who stated that when a claim was submitted to him his instruction to House Managers was to send the claim to Kingsborough. However, Mr. White had evidence of a claim apparently being sent direct to Oval and bypassing Kingsborough. Mr. White submitted that Zurich paid Oval 4% commission to handle claims on its behalf and that was not challenged.

(e) On the evidence produced, the Tribunal could not be satisfied that Kingsborough added anything to the work carried out by Oval and Mr. Richardson and that, as a result, no commission was payable. Consequently, a refund of £8,029.36 should be paid by the Respondent to the Strand Court Right to Manage Company.

34. There is before us an application for an order under Section 20C of the Act. No challenge was made by the Respondent to that application and it is unlikely that any costs incurred or to be incurred by the Respondent in connection with these proceedings could be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants. However, for the avoidance of doubt we find that it is just and equitable in the circumstances to make such an order because the Applicants were justified in bringing these proceedings to clarify the position.

Signed

R. Norman

Chairman