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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, AS AMENDED – SECTIONS 27A and 20C
COMMONHOLD AND LEASEHOLD REFORM ACT 2002 – SCHEDULE 12

REFERENCES: LON/00AG/LSC/2011/0692 and LON/00AG/LSC/2012/0284

Property: **Flats 8 and 43 Trinity Court, 254 Grays Inn Road, WC1X 8JX**

Applicant: **Trinity Court (RTM) Company Ltd.**

Respondents: **Clare Louise McKenna (Flat 8)**
Victor Richard Stockinger and Irma Maria Stockinger (Flat 43)

Appearances: **Mr S Unsdorfer, Parkgate Aspen**
Mr D Weil, Parkgate Aspen
Mr G House, Director, Trinity Court (RTM) Co. Ltd.
Mr D Lamberton, Director, Trinity Court (RTM) Co. Ltd. K
Mr P Gnongouehi, Caretaker.

For the Applicant

Dr C L McKenna
Mr V R Stockinger
Ms L Vogelle
Mr C J May

For the Respondents

Dates of hearing: **14 November 2012 and 13, 14 and 15 February 2013**

Date of Tribunal's Decision: 16 May 2013

Members of the Tribunal	**Mrs J S L Goulden JP** **Mrs S F Redmond BSc MRICS** **Mr O N Miller BSc**

REFERENCES: LON/00AG/LSC/2011/0692 and LON/00AG/LSC/2012/0284

PROPERTIES: FLATS 8 and 43 TRINITY COURT, 254 GRAYS INN ROAD, LONDON, WC1X 8JX

Background

1.The Tribunal was dealing with the following applications:-

(a) an application by the landlord under S27A of the Landlord and Tenant Act 1985, as amended ("the Act") 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

(b) a cross application by the tenants for limitation of landlord's costs of proceedings before the Tribunal under S20C of the Act. This application was added at a Pre Trial Review held on 7 February 2012.

2. The applications relate to Flats 8 and 43 Trinity Court, 254 Grays Inn Road, London WC1X 8JX ("the properties"). The Applicant landlord is Trinity Court (RTM) Company Ltd. The Respondent tenants are Dr C McKenna (Flat 8) and Mr V R Stockinger and his mother, Mrs I M Stockinger (Flat 43)

3.The leases of both Flat 8 and Flat 43 were provided to the Tribunal. The lease of Flat 8 is dated 29 October 1983 and made between Metropolitan Properties Co. (FGC) Ltd (1) and Jon Andrew Corbett and Sandra Margaret Corbett (2) and is for a term of 99 years from 24 June 1979 at the rising rents and subject to the terms and conditions therein contained. The lease of Flat 43 is dated 24 May 1988 and made between Metropolitan Properties Co. (FGC) Ltd (1) and Victor Richard Stockinger and Irma Maria Stockinger (2) and is for a term of 99 years from 24 May 1988 at the rising rents and subject to the terms and conditions therein contained. The Tribunal was advised that all the residential leases were in essentially the same form.

4.The Applicant had issued a claim in the Clerkenwell and Shoreditch County Court (Claim Number 1BE01427) for payment by Mr V Stockinger and his mother, Mrs I M Stockinger (Flat 43) of his unpaid service charges interest and costs.

5. An Order dated 9 September 2011 was made by District Judge Sterlini transferring the case against Mr Stockinger and Mrs Stockinger to the Leasehold Valuation Tribunal ("LVT") under paragraph 3 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

6. The Applicant had also issued a claim in the Clerkenwell and Shoreditch County Court (Claim Number 1BE02121) for payment by Ms C McKenna (Flat 8) of her unpaid service charges, interest and costs.

7. An Order dated 3 April 2012 was made by District Judge Stary transferring the case against Dr McKenna to the LVT under paragraph 3 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, to be heard with the case relating to Claim Number 1BE01427.

8. It should be noted that the Tribunal's jurisdiction in cases transferred from the county court flows from the county court and such jurisdiction is limited to the amount claimed in respect of the service charge dispute only. Other issues, such as interest and county court costs remain within the jurisdiction of the county court.

9.The service charge year runs from 1 April to 31 March in each year. The years disputed differed for each Respondent. The Tribunal has consolidated those years. The issues in dispute before the county court related to the service charge years ending 31 March 2008, 31 March 2009, 31 March 2010, 31 March 2011 and 31 March 2012.

Inspection

10. In view of the issues raised, the Tribunal considered that an inspection of the property would not be of assistance and would be a disproportionate burden on the public purse.

Hearing

11. The hearing took place on 14 November 2012 and 13, 14 and 15 February 2013.

12. The Applicant company was represented by Mr S Unsdorfer and Mr D Weil, both of Parkgate Aspen, the Applicant's managing agents. Two directors of the management company, namely Mr G House and Mr D Lamberton, attended, and both gave evidence.

13. Of the three Respondents, Mr V R Stockinger and Dr C L McKenna attended. One of the Respondents, Mrs I M Stockinger (Mr Stockinger's mother) did not attend. In his witness statement, Mr Stockinger explained that his mother was in her 80s and he was speaking on her behalf. Evidence for the Respondents was provided by Mr V R Stockinger who is a practising solicitor, Dr C L McKenna, Ms L Vogelle and Mr C J May.

Hearing on 14 November 2012

14. Mr Stockinger produced a large bundle of documentation at the commencement of the hearing which included, inter alia, an unsigned witness statement from Dr McKenna. Mr Stockinger had not provided any statement which he said was still in the process of being prepared.

15. Mr Unsdorfer complained as to the late delivery of the bundle and the lack of any statement from Mr Stockinger and said that he could not consider such a large bundle presented at the last moment. Mr Unsdorfer made an application for penal costs against the Respondents since he claimed that their actions had been an abuse of the process of the Tribunal.

16. The parties were given several opportunities to have private discussions, which proved fruitless.

17. With reluctance, the Tribunal permitted an adjournment requested by both sides since the documentation was in disarray and clearly the Applicant would have been prejudiced by the late delivery of the Respondents' bundle.

18. Further Directions of the Tribunal were issued on 21 November 2012. New hearing dates of 13, 14 and 15 February 2013 were fixed, the length being at the request of the parties.

Hearings on 13, 14 and 15 February 2013

19. Throughout the hearing, the Tribunal offered the parties adjournments in order to see whether any issues could be narrowed, but none of the adjournments were successful.

20. The hearing was acrimonious and the poor preparation of cases from both sides meant that further documentation was handed in to the Tribunal on each hearing date. This has made the task of the Tribunal unduly difficult. Further, challenges by the Respondents were not sufficiently particularised in the agreed form of Scott Schedule. Some challenges merely required explanation, and even when reasonable explanations were forthcoming, the Respondents continued to challenge. The Respondents, in some instances, challenged certain issues in groups, but then also challenged the self same issues individually or under years. In other instances, no challenge was made under the Scott Schedule but was subsequently raised at the hearing itself. Accordingly, the Respondents' case was confused and confusing and, ultimately, unhelpful.

21. The Scott Schedule was some 79 pages in length and, for ease of reference, a copy is attached to this Decision. Certain issues were conceded on behalf of the Applicant or the Respondents withdrew challenges. The references to numbers in the body of this determination is to the item/page reference in the Scott Schedule (although even this is unclear, since it appears that some actually refer to the service charge year). The Tribunal was of the view that some of these concessions or decisions not to pursue challenges could have been agreed in the adjournments offered, rather than hearing evidence and then the Applicant conceding or hearing evidence and then the Respondents withdrawing.

22. The Tribunal wishes to make it clear that whilst it has endeavoured to ensure that the Scott Schedule accords with the Tribunal's determination, in view of the criticisms in paragraphs 20 and 21 above, it should be noted that where there are differences between the Tribunal's views as set out in the Scott Schedule and the body of this Decision, the wording in the Tribunal's Decision takes precedence.

23. The issues in the Scott Schedule conceded by the Applicant related to Property Debt Collection (item/page 1289,1319,1320,1321,1322,1323,1324,1334,1353,1385) and Leafgreen (1192). The Respondents' suggested allowance of £240.50 in respect of 1087 was accepted by the Applicant.The Applicant conceded that the sum of £4,727.25 paid in legal fees in respect of the Right to Manage application was not a service charge item.

24.The issues in the Scott Schedule which were originally challenged, but where the challenge was subsequently withdrawn related to Mac (various) C & C (1120) Best (various) EA Electrics (1131) Daytime Services (1140), postages (1153) Coyle (1175), IDCC (1258), petty cash (1346), land registry search (1381), caretaker training (1392 and 1697), HCL Safety (1650,1352 and 1114), payment schedule (1502), Allclear (1561), memo (1566), heating costs (1573), Audiovu (various) Bond (1619), Extreme Access (1720) pipe repairs (1566) Monarch (1568A). On the Scott Schedule it was noted at point 7 of the general notes *"At the Tribunal's direction on 14 November 2012, the Respondents do not challenge many small items, on which our position is reserved".* The Respondents' challenges still included many small items. In view of the criticisms as set out in paragraphs 20 and 21 in respect of the muddled Scott Schedule presented to the Tribunal, the Tribunal cannot be certain that the list of all those items where challenges were withdrawn by the Respondents is complete.

25. Item 1071/2 (Delta) and 1146 had not been placed on the service charge account and therefore were not for determination by the Tribunal. Item 1465 had been recharged to the leaseholder and therefore is no longer a service charge item. Item 1568A had originally been charged to the service charge account, but the charge had been reversed in 2009. Accordingly no determination is required of the Tribunal in respect of these issues.

26. Dr Mckenna, on the last day of the hearing, wished to challenge the cost of replacement of a door panel in the sum of £1,468.55, but the Tribunal refused to entertain this challenge at such a late stage of proceedings, since this item did not appear on the Scott Schedule before the Tribunal.

27. The burden is on the Applicant to prove its case with such relevant evidence provided at the hearing as is sufficient to persuade the Tribunal of the merits of their arguments. The Tribunal is not permitted to take into account the personal circumstances of the parties when making its decision. It should also be pointed out that the absence of invoices in themselves is no bar to the Tribunal finding that costs had been reasonably incurred.

28. However, the Tribunal also wishes to point out that it is insufficient for the Respondents to seek to put the Applicant to strict proof. In a recent case of **Assethold Ltd v 14 Stansfield Road RTM Co.Ltd.** which had been appealed from the LVT and determined by the President of the Upper Tribunal (Lands Chamber) on 30 July 2012, it was stated in relation to the "strict proof" point that it was insufficient to **"then sit back and contend before the LVT (or this Tribunal on appeal) that compliance has not been strictly proved. Saying that the company is put to proof does not create a presumption of non- compliance..."**

29. The contract between the parties is the lease between them and both sides are bound by the contractual terms contained therein.

30. The salient points of the evidence presented, and the Tribunal's determination, is given under each head. It is not to be inferred that evidence not referred to in this Determination has been disregarded. It should also be noted that individual invoices have been referred to under some heads, but the Tribunal does not consider that it is appropriate to refer to individual invoices where many have been challenged, and in such cases will only make a determination on the global issue in dispute. Where this is the case, the parties are to conclude that the Tribunal's determination refers to all the invoices under that head. The Tribunal's determinations are, (subject to paragraph 22 above) therefore to be read in conjunction with the Scott Schedule attached which had been agreed between the parties.

31. The Tribunal considers that it might be helpful to the parties if it sets out the basis on which its considerations are made.

32.The Tribunal has to decide not whether the cost of any particular service charge item is necessarily the cheapest available or the most reasonable, but whether the charge that was made was **"reasonably incurred"** by the landlord i.e. was the action taken in incurring the costs and also the amount of those costs both reasonable.

33.The difference in the words "reasonable" and "reasonably incurred" was set out in the Lands Tribunal case of **Forcelux Ltd -v- Sweetman and Parker (8 May 2001)** in which it was stated, inter alia,

> *"....there are, in my judgment, two distinctly separate matters I have to consider. Firstly the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market. It has to be a question of degree...."*

34. The Tribunal also considered the definitions set out in S 18 which provides as follows:-

"(1) In the following provisions of this Act "service charge" means an amount payable by the tenant of a dwelling as part of or in addition to the rent

(a) which is payable, directly or indirectly, for services, repairs, maintenance or improvements or insurance or the landlord's cost 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 for 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 an earlier or later period"

35. Costs are incurred when the liability arises.

36.The issues which require the determination of the Tribunal are as follows and in no particular order since the Respondents had not followed the order as set out in the Scott Schedule:-

- Couriers
- Lift maintenance and repair
- Legal and professional fees
- Blackthorn Property Services ("BPS")
- F & D Services Ltd
- Best Insurance
- TLC
- Pipeline
- Coyle Personnel
- Peninsula Business Services Ltd.
- JMW Consultancy
- Flat 3 redecoration works and Bloomsbury Property Services – Flat 68
- Newsletters
- NE Services
- Electricity, telephone and internet to the porter's flat
- Electricity to common parts and lift
- TV aerial
- Asbestos management
- Water treatment
- Fees of Garson & Co.
- Account papers
- Pest control
- Post room
- Directors' liability insurance
- Window cleaning
- Cleaning - materials
- Interior common parts refurbishment works
- Reserve fund
- Service costs account shortfall
- Management fees
- Entryphone
- Monarch invoices
- Bond Fire
- Carpet City invoice
- Extreme Access invoices

- Managing agents' fees for previous LVT hearing
- Key money
- Designs
- Limitation of landlord's costs of proceedings
- Reimbursement of hearing fee
- Penal costs

Evidence

- **Couriers**

37. There were seven invoices under this head. The Tribunal does not intend to set out each and every one and the list can be found on page 5 of the Scott Schedule attached. The total sum charged was £337.80.The Respondents' challenge under this head was that no explanation had been provided for the use of couriers, but they conceded an allowance of £30 not against any specific invoice but, in the words of Mr Stockinger, because the Respondents were *"being gracious"*. In the Scott Schedule it was suggested that second class post could have been used.

38. Mr Unsdorfer said that couriers were not sent out for nothing and there had to be urgency. They were responsive to specific circumstances. He referred to an example of a notice which had been couriered advising residents of the shut down of the water supply due to imminent emergency works.

The Tribunal's Determination

39. The Respondents have not made out their case. No cogent reason was given for their proposed allowance. The Tribunal does not consider that the use of a second class post would be appropriate where there was an emergency. The amounts placed to the service charge account in total were £337.80, or £3.75 per flat. It is considered that the total is de minimis and the consideration of the issues under this head is a disproportionate use of the Tribunal's time.

40. The Tribunal determines that all costs incurred in respect of couriers are relevant and reasonably incurred and properly chargeable to the service charge account. In making this determination, the Tribunal expects managing agents to restrict the use of couriers for emergency situations only.

- **Lift maintenance and repair**

41. The Respondents' challenge said that the contracts for Crown Lifts Ltd. and R & R Lift Co. Ltd. were *"unreasonably high in cost but within scope"*. There were 28 invoices challenged for periods covering 2008 to 2011 which totalled £22,530.79. It was suggested that 35% (£5,935.78) should be disallowed.

42. Dr McKenna said that R & R lifts had been paid separately for repairs and maintenance. They did not attend each month and the caretaker had told her that they were unreliable. She said that Jackson Lifts' contract was for maintenance and repairs and they still carried out work for the managing agents, but had never carried out

work on Trinity Court. The Respondents suggestion that 35% should be disallowed was *"a guestimate"*.

43. The Applicant's case was that the there had been failures by the previous contractors to deal with the lifts on a preventative basis and the managing agents had a responsibility to the tenants. The Scott Schedule said that the managing agents' experience with Jackson Lifts *"has been poor mostly due to slow response to call-outs and repairs not carried out correctly and a number of contracts with them have been cancelled. R & R Lifts specialise in maintaining old lifts such as those at Trinity Court and we would have serious doubts that Jackson Lifts could offer the same level of service especially for half the price"* This was a nine storey property with 2 lifts. R & R lifts had been instructed on the basis that they were most effective. Mr Weil said that they had terminated the contracts from Jackson Lifts on 3 blocks where there were old fashioned cage lifts (as in Trinity Court), which they had advised they could not do. Parkgate Aspen still used Jackson Lifts on more modern lifts. He acknowledged that R & R lifts may not have completed their call out log, but were reliable.

<u>The Tribunal's Determination</u>

44. This issue has caused the Tribunal some concern. Whilst the Applicant's case is noted, the contractor appointed charges more than the previous contractor when taking into account additional call out charges (which in some instances appear to be considerable) and inspection of the lifts for insurance purposes. However, the Respondents produced no expert evidence to rebut the Applicant's contentions. The Respondents did provide an email from Jackson Lifts dated 8 February 2013 which appeared to confirm that they still maintained older lifts, but there was no representative from that firm who could be questioned. Neither Respondent has any in depth knowledge of lift maintenance and/or repairs. The Respondents' suggested disallowance of 35% is without cogent evidence in support. On that basis, it cannot be accepted by the Tribunal.

45. The Tribunal determines that all the invoices under the head of lift maintenance and repairs are relevant and reasonably incurred and properly chargeable to the service charge account. It is assumed that, as it is stated in the Scott Schedule on behalf of the Respondent *"for the avoidance of doubt, the cost of repairs following the lift accident was covered by the building's engineering policy"*, on that basis, the costs have been credited back to the service charge account. It is presumed that the Applicant company will keep the cost of the two lifts under review.

- **Legal and professional fees**

46. These were set out in the Scott Schedule under the years 2008 (£5,517), 2010 (£4,145) and 2011 (£7,866). The Respondents said that £4,000 should be disallowed for 2008, £2,500 for 2010 and £6,000 for 2011. No reason for the challenges or the amount to disallow was set out in the Scott Schedule.

47. Mr Unsdorfer provided, during the hearing, a faxed schedule for costs in respect of the disputed years which had been sent by Kybert Carroll, Chartered Accountants, and on which he was questioned. The Applicant conceded that the sum of £4,727.25

paid to solicitors for their work on the Right to Manage application were not a service charge item and the sum of £150 in the 2011 account was a county court fee ,which will remain within the county court's jurisdiction (see paragraph 8 above)

The Tribunal's Determination

48. Save for the sum of £4,727.25 conceded by the Applicant during the hearing in respect of 2008, and the county court fee of £150 which remains at the county court, and in view also of the paucity of the Respondents' challenges, the Tribunal determines that the remaining sums under this head are relevant and reasonably incurred and properly chargeable to the service charge account.

- **Blackthorn Property Services ("BPS")**

49. The Respondents challenged several items under this head. Their challenges appeared in the Scott Schedule both under collective items and also individual items. The Respondents' *"general approach"* was that Ms Vogelle's report should be relied on, and that 50% should be disallowed *"because BPS failed to organise prime stock (eg light bulbs) being kept on site.....the caretaker is evidently able to be taught to make most light bulb changes, but this is not being done; invoice information is limited; many items are listed as "emergency callouts" when they are routine light bulb changes, question whether serially defective light fittings are appropriate to be retained"*. It appears that under individual items, the Respondents challenged items 1034 in the sum of £845.30, 1090 in the sum of £377.98, item 1100 in the sum of £133.37, item 1113 in the sum of £1,035.06,1126 in the sum of £187.69, items 1138, 1139, 1150, 1163, 1167, 1171, 1541 each in the sum of £133.37, item 1161 in the sum of £204.63, 1190 in the sum of £847.21, item 1261 in the sum of £270.03, item 1284 in the sum of £370.62, item1325 in the sum of £130.53, item 1360 in the sum of £130.53, item 1361 in the sum of £628.42, items 1370 and 1379 both in the sum of £389.02, item 1396 in the sum of £130.53, item 1426 in the sum of £90.28, item 1551 in the sum of £378.67, item 1600 in the sum of £236.53, item 1603 in the sum of £100.45, item 1614 in the sum of £92.24, item 1642 in the sum of £344.23 item 1673 in the sum of £282.58, item 1740 in the sum of £954.40 and item 1792 in the sum of £765.08. Under all the individual items, the Respondents contended that these should be disallowed in their entirety or in part.

50. By way of reply, in the Scott Schedule, the Applicant doubted that Ms Vogelle was qualified *"and would have expected to see alternative quotations from qualified electricians. As the only member of staff, H & S rules dictate that the caretaker cannot use a ladder single handedly. In addition there would be a need to isolate the electrics in the basement switch room which would leave the whole corridor in darkness. This power interruption would be kept to a minimum if two people carry out the job together. Many of the light fittings are no straightforward and easily breakable. In addition, care has to be taken when the bulb is replaced so that no damage occurs to the fragile internal components as many of these lights were installed a very long time ago and although safe they can be easily broken"*.

51. Evidence under this head for the Respondents was provided by Ms L Vogelle, who gave oral evidence as a witness of fact.

52. Ms Vogelle, Electrician and Handywoman, referred to her report dated 29 October 2012 on *"Maintenance Billing Issues at Trinity Court"*. This report stated *"I have been asked to examine bills and invoices for Trinity Court, as there is a concern that the maintenance charges are disproportional in relation to the works carried out. There is a further concern that the invoices are sufficiently imprecise that their Value For Money cannot be clearly ascertained"*. When questioned, Ms Vogelle said that she was concerned that the person paying for the contract was paying a fair deal.

53. Ms Vogelle listed the specific invoices which she had examined and gave her assessment on each. She said that overall there had been problems with electric contractors being called and finding faults, no stock was kept on site and invoices stated that the contractors returned with stock time after time. In her view, it was essential in a block of this size that stock be kept on site. With regard to billing costs, she had looked at some of her own invoices for that time and allowed for inflation. Ms Vogelle said that mostly she dealt with individual flats and accepted that she was not qualified to deal with lifts, but had been a maintenance electrician for office blocks in Euston Road. In answer to a question from the Tribunal, Ms Vogelle accepted that it would not be practical for all stock to be carried on site.

54. Mr Unsdorfer referred to invoices which he said showed that some stock had been kept on site and challenged Ms Vogelle's knowledge, qualifications and expertise. He said it would not be reasonable for a managing agents to approach Ms Vogelle, since she worked alone. Ms Vogelle said that she would bring in colleagues. Ms Vogelle said that she had no minimum call out fee and *"it was a business model that works for me"*. Ms Vogelle said *"it's not always about the bottom line. It's about keeping customers happy"*.

55. In closing submissions, Dr McKenna said, inter alia, that Ms Vogelle's report and extrapolation from that report *"show overspending in many areas. We allow 66%"*.

56.In closing submissions, Mr Unsdorfer said, inter alia, that her evidence was *"overly speculative"* her assessment of invoices was *"overly simplistic"* and *"her experience is clearly limited to work she claims to have done within flats at Trinity Court. But this does not qualify her in relation to issues of common parts, lifts, entryphones and where external repairs are concerned"*.

The Tribunal's Determination

57. Ms Vogelle was clearly an honest and candid witness, but she was not appearing before the Tribunal as an independent expert witness, but as a witness of fact.

58. As was explained to the parties, the Tribunal's remit is to decide whether the landlord's costs were reasonably incurred and not, as Ms Vogelle, stated in evidence whether the tenants were getting *"a fair deal"* or, as she stated in her report on several occasions *"fair value for money"*.

59. She had examined the invoices supplied to her by the Respondents and gave her fair assessment of those invoices. The problem was that she could not, of course, assess what work was actually carried out or how long it took. If she did not have this pertinent information, it is not known how she could deduce that the cost was

excessive. Ms Vogelle's own charging rate was in respect of the time spent carrying out her duties, and did not take into account travel etc. Most of her work at Trinity Court was within tenant's individual flats. A nine storey block of flats with two lifts and common parts be wholly different from the work with which she usually carries out. The two different types of duties cannot be equated and it is felt that Ms Vogelle's approach was too simplistic.

60.It would clearly be a disproportionate use of the Tribunal's time to go through each and every invoice challenged by the Respondents, particularly some sums were de minimis and on the whole, they relied on Ms Vogelle's report.

61. As can be seen, the number of invoices challenged were many, and the Tribunal is uncertain as to whether all of them have been specifically referred to.

62. For the avoidance of doubt, the Tribunal determines that all the costs incurred in respect of all of the invoices of BPS for the service charge years in dispute are relevant and reasonably incurred and properly chargeable to the service charge account.

- **F & D Services Ltd.**

63. The Respondents' challenges under this head appeared under various specific items in the Scott Schedule as follows:-
1073 ,1077,1078,1079,1082,1134,1197,1272,1288,1316,1330,1331,1345,13541362,1363,1377,1382,1388,1389,1400,1402,1403,1463,1520,1525,1526,1527,1535,1536,1559,1583,1584,1596,1634,1645,1646,1686,1710,1711,1736,1741,1742,1743,1759,1760,1761,1762,1763,1764,1765,1766,1767,1772,1774,1775,1779,1782,1783,1785,1804,1805. Ms Vogelle's report was relied on.

64. It would be a wholly disproportionate use of the Tribunal's time to set out each and every challenge in respect of each item.

65. Item 1087 in the sum of £540.50 was conceded by the Applicant in the sum of £240.50, as suggested by the Respondents.

66. In her witness statement, Ms Vogelle referred to specific invoices which she had been asked to examine. The majority of these were invoices issued by F & D Services. She assessed how long some of the work should take. Some invoices were criticised on the basis that they were all dated the same date. One invoice was stated to be *"presumably"* for an emergency callout *"but a local contractor would probably have charged much less for this work"*.

67. Mr Unsdorfer said that Ms Vogelle seemed to have ignored *"contractors like F & D and BPS which evidenced demonstrably low charges"*. He contended that she was an expert witness and her experience was limited to work done within Trinity Court flats and *"her broad brush rejections and reductions."* should be rejected.

The Tribunal's Determination

68. In the view of this Tribunal, the Respondents had embarked on a "fishing" exercise with little or no regard for explanations provided in the Scott Schedule and/or their challenges were not sufficiently particularised. The Respondents therefore continued with their challenges despite the cost of some items being de minimis, some items which were explained as not being on the service charge at all and others which were covered by insurance. This is a clear abuse of process of the Tribunal.

69. The report of Ms Vogelle has been criticised by the Tribunal. Her consideration of some of the invoices under this head were mere speculation. In respect of one invoice, she considered the charge to be excessive, although she acknowledged that it was not clear what work had been undertaken. She did not say why the charge was excessive or what the charge should have been. On another invoice she said that since the price of materials or hours on site or hourly rate are not specified it was *"extremely difficult to analyse if the invoice total is reasonable or not"*. Miss Vogelle is, quite simply, unable to state (as she does) how long a job should or should not take, since she does not have the information on which to base her assessment. It is noted that on an invoice an additional £70 charge was made *"seemingly for picking up and dropping off the keys from the agent at Southampton Row"*. She continues to discuss traffic and parking issues and ways in which this charge could be reduced. This is management of a large block of flats with common parts, with is outwith her own experience. Her evidence is rejected.

70.The Tribunal determines that all the sums incurred under this head are relevant and reasonable incurred and properly chargeable to the service charge account, save for item 1087 which was conceded by the Applicant in the sum of £240.50, items which were not service charge items, and items which were covered by insurance except for the excess. The Tribunal's determinations are set out in the Scott Schedule.

- **Bond Fire**

71. Item 1778 in the sum of £1,335.36 was challenged on the basis that further information was required. It was suggested that 50% should be disallowed. Ms Vogelle's report was relied on.

72. Ms Vogelle said *"it is unclear as to whether the lights were supplied or installed. It is good practice to state the unit price per light and this invoice does not make clear what model of light or how much per light. So it is impossible to state whether or not this is good value"*.

73. In the Scott Schedule, it was stated that Bond Fire repaired the fire alarm system in the building and continue to service the system.

The Tribunal's Determination

74. The Tribunal has considered the invoice dated 4 February 2011 which was for 11 new emergency lights and 2 batteries

75. The Respondents had relied on Ms Vogelle's statement in support of their contention that 50% should be disallowed, but Ms Vogelle was non committal and did not provide cogent evidence to rebut the Applicant's contentions. The Tribunal considers that the amount of information which Ms Vogelle feels should be included in an invoice does not happen in practice. As already stated, the Tribunal's duty is to determine whether a cost has been reasonably incurred by the landlord and not whether it is good value to the tenant.

76. The Tribunal determines that item 1778 under this head in the sum of £1,335.26 is relevant and reasonably incurred and properly chargeable to the service charge account.

- **Best Insurance**

77. According to the Tribunal's notes, item 1141 in the sum of £680 had been withdrawn and item 1128 in the sum of £1,820 was not challenged since it was not on the service charge account, but it appeared that the Respondents continued to challenge item 1149 in the sum of £219 on the same basis as for item 1141, namely that insufficient documentation had been supplied and further information was required. The Respondents suggested that the sum be disallowed.

78. The Applicant said that this formed part of a building insurance claim less the excess which was a service charge cost.

The Tribunal's Determination

79. The Tribunal is unsure of the Respondents' challenge and accepts the Applicant's explanation.

80. The Tribunal determines that the sum of £219 in respect of item 1149 under this head is relevant and reasonably incurred and properly chargeable to the service charge account.

- **TLC invoice**

81. This issue (item 1148) in the sum of £423 was challenged by the Respondents on the basis *"this is payable by the carpet layers' public liability insurance....disallow whole £423"*.

82. Mr Stockinger referred to his witness statement in which it was stated *"A payment of £9,859.09 was paid for repair to damage to the lift. We are led to understand that TC's insurer paid for this. In his recent reply to our 30 questions, Mr Weil says it was the block insurance..but the payout certificate is on Crawford's letterhead. Crawford was not the contractors who were laying the carpet. The carpet layers are required to have public indemnity insurance and this insurance should would have covered this incident. The Respondents request that the insurance premium increase generated by this be disallowed"*

83. The Applicant's reply was *"reasonable cost of lift consultants to check cause of accident and issue follow up report"*

The Tribunal's Determination

84. The Respondents' arguments are not persuasive.

85. The Tribunal determines that the sum of £1,335.36 under this head is relevant and reasonably incurred and properly chargeable to the service charge account.

- **Pipeline**

86. Item 1158 in the sum of £211.50 was challenged on the basis that it duplicated item 1157 (not in Scott Schedule). The Applicant stated *"this was paid once not twice as per page 129 of our original bundle"*.

87. Item 1166 in the sum of £329 was challenged on the basis that *"this seems to be for fixing an earlier job on Flat 81; pipes done by F & D"*. The Applicant stated *"invoice relates to repairs required to communal pipes around flat 81. Costs are reasonable and do not relate to "an earlier job"*

The Tribunal's Determination

88. It is not readily understood why the Respondents continued to challenge either of these items in view of the responses of the Applicant, which are accepted by the Tribunal.

89. The Tribunal determines that the sums of £211.50 (item 1158) and £329 (item 1166) are relevant and reasonably incurred and properly chargeable to the service charge account.

- **Coyle Personnel**

90. The Respondents withdrew their challenge to item 1175 in the sum of £44.65 but still challenged items 1181 in the sum of £446.50 and 1187 in the sum of £273.13 in their entirety on the same basis, namely *"unspecified "general labourer"...Paul's work..."* The Applicant stated *"Coyle Personnel supplied a relief caretaker during Paul's absence"*.

The Tribunal's Determination

91. The Tribunal was not provided with much information in this respect by either side.

92. However, since item 1175 had been challenged on the same basis but presumably the explanation, also on the same basis, had been accepted by the Respondents since the challenge to item 1175 was withdrawn, it is not understood why the Respondents' challenges have been pursued.

93.The Tribunal has considered the invoice in the sum of £273.13 (item 1187) from which it can be seen that Coyle Personnel PLC were recruitment specialists and the Tribunal assumes that that company provided staff to cover work usually carried out

by the caretaker in his absence.The invoices had also, presumably, been authorised as payable by the accountants/auditors.

94. The Tribunal determines that all invoices under this head are relevant and reasonably incurred and properly chargeable to the service charge account.

- **Peninsula Business Services Ltd.**

95. This issue relates to item 1177 in the sum of £246.07 for health and safety services. The Respondents' challenge was that the cost should be shared pro rata between other properties managed by Parkgate Aspen and therefore only £12.30 should be allowed. The Respondents raised the same objection in respect of item 1442 in the sum of £246.07. The Respondents raised the same objection in respect of item 1278, but the Tribunal could not find this item number in the Schedule. There was also an objection to item 1655 in the sum of £83.71 with no reason submitted for the objection.

96. The Applicant, in the Scott Schedule, stated *"Peninsula provide H & S advice, advising on staff issues, and other legal advice for the running of the building. Parkgate Aspen have access 365 days per year if required and we view the cost as reasonable"*.

The Tribunal's Determination

97. It is not readily understood why the Respondents continued to challenge this sum in view of the Applicant's response, which is accepted by the Tribunal. Their suggested allowance of only £12.30 has not been explained. On inspection of invoice dated 18 November 2008 (item 1177) it clearly states that it is the annual invoice for health and safety services relating to Trinity Court.

98. The Tribunal determines that all the sums invoiced by Peninsula under this head are relevant and reasonably incurred and properly chargeable to the service charge account.

- **JHW Consultancy**

99. This issue (item 1540) was in the sum of £798. The Respondents, in the Scott Schedule, stated *"for what? Disallow; insufficient documentation"* The Applicant in reply stated *"out of hours/weekend call out to deal with emergency"*.

The Tribunal's Determination

100. This is a clear example of the Respondents putting the Applicant to proof rejected by the Upper Tribunal in the Assethold case (see paragraph 28 above). Not only was no evidence provided by the Respondents but, even though an explanation was offered, the challenge was still pursued without further reasons being submitted.

101. The Tribunal determines that the sum of £798 under this head is relevant and reasonably incurred and properly chargeable to the service charge account.

- **Flat 3 redecoration works and Bloomsbury Property Services – Flat 68**

102. In the Scott Schedule, the Respondents stated that item 1544 in the sum of £453.44 relating to Flat 3 should be disallowed on the basis that the insurers or the owner of Flat 3 should be responsible. In reply, the Applicant stated *"there is an excess of £500 therefore could not be claimed"*.

103. In the Scott Schedule, the Respondents stated that item 1591 in the sum of £350 should be disallowed in total on the basis that insufficient documentation had been provided and the tenant should pay. In reply, the Applicant stated *"the amount is below the insurance which had been increased to £500 due to the volume of claims"*

<u>The Tribunal's Determination</u>

104. It is not understood why the Respondents have continued to pursue these challenges, having been supplied with a reasonable explanation. It is considered to be an abuse of the process of the Tribunal. No doubt the Respondents will appreciate that if there had been no excess, the insurance premium may well have been higher.

105. The Tribunal determines that the sum of £453.44 in respect of Flat 3 and the sum of £350 in respect of Flat 68 are relevant and reasonably incurred and properly chargeable to the service charge account. It appears from Parkgate Aspen's responses on the Scott Schedule that they reclaim from individual lessees where appropriate in insurance matters. The Tribunal accepts their explanation.

- **Newsletters**

106. The Respondents' challenge under this head was in respect of items 1004 (£100),1015 (£17.86) and 1047 (£88), a total of £205. The Respondents suggested that an allowance of £15 should be made, and the remaining £173 should be allowed to be placed on the service charge account.

107.The Respondents' challenge was set out in the Scott Schedule as *"excessive cost; caretaker has printer to print the newsletters, and time to distribute them; allow cost of colour inks and paper, should be included in management fee, not in my lease; does not enhance my comfort or convenience; disallow"*

108. The Applicant's response in the Scott Schedule was *"there is no charge for the compilation, formatting and design of the newsletters and it is just the printing itself that is charged for. Post room invoices are disbursements.....as per Parkgate Aspen's management contract. The caretaker has a fax machine which could not be used on a regular basis to produce 90 copies of relevant correspondence. Newsletters are well received and appreciated by most residents and are a useful tool for providing information and keeping residents up to date with developments in the building"*

<u>The Tribunal's Determination</u>

109. It is not fully understood why the Respondents continued to pursue their challenge to these invoices which totalled £205.86 (or approximately £2.28 per flat),

and to suggest an allowance of £15 (to cover the actual cost of printing) which would reduce the cost (as they have set out in the Scott Schedule) to £1.92 per flat. There arguments are rejected as being completely unrealistic and ill thought out for a block containing 90 flats. The consideration of this issue is a wholly disproportionate use of the Tribunal's time.

110. The Tribunal determines that the entire cost of the newsletters, totalling £205, is relevant and reasonably incurred and properly chargeable to the service charge account.

- **NE Services**

111.The challenge under this head was in the sum of £380 (item 1610) on the basis, as stated in the Scott Schedule *"NE Services from Chingford fixed wires for internal works; charged for 7.5 hrs work; surely this work should have been included in the quote for interior works...disallow 50% allow £190".*

112. The Applicant in the Scott Schedule stated *"this work was not part of the internal redecorations and was carried out separately. The works were required as previously installed cable clips had been removed by an unknown party and had to be replaced".*

113. Ms Vogelle said *"I am informed that this was a small job, involving clipping of some loose cables throughout Trinity Court. This invoice fails to state how many hours work but, by comparison, my own company would have carried out over 6 hrs work for such a sum. In my opinion, it is poor practice to not specify how many hours that the client is being billed for...and it appears to have not taken 6+ hrs to do the work"*

The Tribunal's Determination

114. The Tribunal has considered the invoice dated 11 May 2010 which stated *"to carry out cable clipping of all hanging wires throughout Trinity Court as directed by Mr Danny Weil".* A handwritten note on the invoice stated *"this work was a small job to tidy up all the cables in the building following phase 1 of the internals...."*

115. The Tribunal does not find Ms Vogelle's evidence on this issue persuasive. No cogent reason was provided by the Respondents for the suggested disallowance. The Respondents' challenge is rejected.

116. The Tribunal determines that the sum of £380 under this head is relevant and reasonably incurred and properly chargeable to the service charge account.

- **Electricity, telephone and internet to the porter's flat**

117. Various items were challenged in the Scott Schedule with suggested amounts to be disallowed although there was nothing in the Scott Schedule to indicate the reason for the challenges or how the amounts to be disallowed were arrived at.

118. It appeared that with regard to the electricity, the challenge was because the sums varied and with regard to the telephone and internet it was stated that the porter had a mobile telephone and therefore the charge was excessive, although the challenge to the porter's mobile telephone was subsequently withdrawn during the hearing. A suggested disallowance for the telephone and internet was *"our estimate"*

119. Mr Unsdorfer said costs varied depending on when the meter was read for electricity and the Respondents had been comparing 15 month audits with 11 month audits. The porter paid for his private telephone.

The Tribunal's Determination

120. The Respondents' challenges under this head are without merit.

121. The Tribunal determines that all charges in respect of electricity, telephone and internet to the porter's flat are relevant and reasonably incurred and properly chargeable to the service charge account.

- **Electricity to common parts and lift**

122.Various items were challenged in the Scott Schedule with suggests amounts to be disallowed, although there was nothing in the Scott Schedule either to indicate the reason for the challenges or how the amounts to be disallowed were arrived at.

123. Mr Unsdorfer said that the disparity in the sums under this head were due to infrequent meter readings. He also said that where contractors had carried out refurbishment works, the common parts electricity supply had been used.

The Tribunal's Determination

124. The Respondents' challenges under this head are without merit. The Applicant's explanations are accepted.

125. The Tribunal determines that all charges in respect of electricity to the common parts and lift are relevant and reasonably incurred and properly chargeable to the service charge account.

- **Asbestos management**

126. This issue appears in several places in the Scott Schedule, and appear to refer to items 1048 (in the sum of £2961), 1305 (in the sum of £2587.50) and 1599 (in the sum of £1,321.88). They also appear under years 2008,2010 and 2011 on page 27 of the Schedule. Under the specific items the Respondents contended that all sums should be disallowed in their entirety. The Respondents challenge was similar in respect of each item, namely *"Transthermal; purported asbestos management; unnecessary service; PA have failed to supply hard copy papers; no legal requirement for this"*. The Applicant's reply was also similar in respect of each item, namely *"under the Control of Asbestos Regulations there is a requirement to manage the asbestos on site"* and *"we cannot disregard asbestos related H & S rules, nor the Control of Asbestos Regulations. Asbestos management is required in a block such as*

this where asbestos is present. This is typical of many old buildings as the construction of buildings at that time frequently made use of asbestos materials".

127. The Respondents said that they had been told that there was asbestos in the building but had not been told where and no asbestos report had been supplied. There was no central boiler or central feeder pipes. Mr Stockinger said that he suspected that if there had been asbestos in the building, there would be no need for a website.

128. The Applicant's case was that there was a lot of asbestos in the artex of the building which must be monitored. The regulations had come into force in 2006. There had to be an asbestos register for contractors to check. Transthermal put all their registers on line. Trinity Court now used another contractor because the contract was re-tendered on a regular basis. The new contractor did not use a website. A copy of the Transthermal website relating to the block was produced.

The Tribunal's Determination

129. The Respondents' challenges are ill conceived. No evidence was produced in support of their contention that all the costs should be disallowed in their entirety. The Applicant would clearly be in dereliction of its duty if it did not comply with current regulations.

130. The Transthermal website indicated that it was assumed that asbestos was present in the lift motor room at the block.

131. The Tribunal determines that all costs incurred in respect of asbestos management are relevant and reasonably incurred and properly chargeable to the service charge account.

- **Water treatment**

132. The challenge under this head was in the sum of £1,527 in 2008 which, it was contended, should be disallowed in its entirety, although no reason was given .

133. In evidence, the Respondents suggested that it was not necessary since there was no air conditioning system. Dr McKenna expressed concerns as to the condition of the water tanks on the roof.

134. Mr Unsdorfer said that the water must be tested every 6 months for legionnaires disease and other matters. The managing agents would not be carrying out their duty. Water was a high risk issue.

The Tribunal's Determination

135. Having been provided with a reasonable explanation, it is not readily understood why the Respondents continued their challenge. No evidence in support of their contention that the entire amount be disallowed was submitted.

136. The Tribunal determines that the costs incurred in respect of water treatment under this head are relevant and reasonably incurred and properly chargeable to the service charge account.

- **TV aerial**

137. There appeared to be four invoices under this head which were challenged by the Respondents, although these appeared in different places in the Scott Schedule. The invoices challenged appear to be £4,689 (2008) , £3,132 (2010) both for a TV aerial with a suggested disallowance in total of £5,500, item 1433 in the sum of £483 for a call out with the suggestion that this should have been covered by the contract and item 1447 in the sum of £92 for a TV aerial service with the suggestions that it should be disallowed. Item 1452 in the sum of £207 was also challenged, although with no specific complaint in the Scott Schedule. The Respondents said that the communal aerial and cables to each flat were meant to be purchased, not rented and the purchase price should be about £1,400 plus VAT.

138. In respect of the sums incurred in 2008 and 2010, the Applicant in the Scott Schedule stated *"The deduction seems entirely arbitrary. There was a contract with Ward Aerials when Parkgate Aspen took over management of the building and this cost may relate to that. The contract was subsequently cancelled as can be seen as the cost of maintenance of the system fell substantially over the period of these...accounts".* In respect of the sum of £483 for the call out, the Applicant stated in the Scott Schedule *"cost is reasonable for fitting a 12 way multi switch and associated works......the contract was previously cancelled and repairs were carried out as and when required".*

<u>The Tribunal's Determination</u>

139. No evidence was produced by the Respondents to support their various challenges.

140. The Tribunal determines that all charges in respect of the TV aerial are relevant and reasonably incurred and properly chargeable to the service charge account. It should be noted that, due to the haphazard manner in which the challenges appeared in the Scott Schedule, it is possible that some invoices may have been overlooked by the Tribunal.

141. It is arguable that the present Tribunal's determination in respect of the 2008 charge is superfluous since the actual expenditure had already been determined by the Tribunal in the 2010 decision and the Respondents are caught by S19(2C)(c) of the Act.

142. For the avoidance of doubt the Tribunal's determination of reasonableness relates to **all** charges in respect of the TV aerial.

- **Fees of Garson & Co**

143. This was in the sum of £146.05 (item 1341). The Respondents in the Scott Schedule stated *"statutory declaration for what? Statutory set swear fee is £8, should be within management fees. Disallow £138.05".*

144. In the Scott Schedule, the Applicant stated *"Garsons Law were employed to advise on a matter of legal paperwork with Freshwater...Cost is reasonable".*

The Tribunal's Determination

145. It is not understood why the Respondents, having been supplied with an explanation, continued to challenge this amount, which is considered de minimis. It is nonsense to suggest that affidavit fees should be included within the management fees. Their suggested disallowance has not been explained, and would mean that the lawyers presumably carried out the work for no fee. The invoice from Garson & Co. stated clearly that the work was in respect of *"Advice on Statutory Declaration"* at a cost of £127 plus VAT which is by no means excessive. Consideration of this issue is considered a wholly disproportionate use of the Tribunal's time.

146. The Tribunal determines that the sum of £146.05 under this head is relevant and reasonably incurred and properly chargeable to the service charge account.

- **Account papers**

147. This was listed as item 1342 in the Scott Schedule in the sum of £3,128. The Respondents' challenge was *"account papers should be partially prepared in house before being sent to accountants; disallow in part, deduct £1,500".*

148. The Applicant, in reply, stated *"the cost is reasonable for specialist service charge accountants to prepare the audited accounts and included in the cost is the attendance at the AGM each year".*

The Tribunal's Determination

149. The Respondents neither presented any evidence in support of their challenge nor did they explain how their suggested disallowance was reached.

150. The invoice dated 18 June 2009 from Kybert Carroll, Chartered Accountants, had included, inter alia, certification of the statement of service charge expenditure for the year ended 31 December 2008 and obtaining agents' statements with vouchers, information and explanations where necessary.

151. The Tribunal determines that the sum of £3,128 under this head is relevant and reasonably incurred and properly chargeable to the service charge account.

- **Pest control**

152. The Respondents' challenge was *"there is no pest problem in the building common parts; unnecessary; not in lease".* It was suggested that the costs should be

disallowed in their entirety save for invoice 1501 in the sum of 278.93, which it was argued should be paid by the lessee, Dr McKenna, and item 1694 in the sum of £117.50 which also related to Dr McKenna's flat. Since Dr McKenna appears to accept that invoice 1501 is her responsibility, that invoice will not be considered. The Respondents' challenge was against Cannon, Euroguard and Integrated and appeared to cover 17 invoices in the Scott Schedule. They also appeared separately in the Scott Schedule for the years 2008,2010 and 2011 and again as individual service charge items

153. Dr McKenna said that the preventative methods used had not addressed the problem. She maintained that there were no mice in the common parts although she accepted that there was a mice problem in some flats. She said *" I don't see why they should have a contract at all"*. With regard to item 1694, it was argued that Camden Council would have charged £103 for 3 visits whereas there had only been 2 visits.

154. Mr Stockinger said that there had only been 3 complaints in respect of mice from flats on the ground, fifth and sixth floors. He said *"it is not a common parts problem. There should be no contract at all. The figures are disproportionate to the number of instances recorded"*.

155. Mr Unsdorfer said that such controls were commonplace in blocks of flats and commonplace in service charge budgets. There was a huge traffic of tenants. He said *"we are obliged to do this...mice do not perish in the bait boxes. They die elsewhere. There is clearly a rodent problem. It is an old building and backs on to the park. We must keep it under control"*. He referred to lease clauses in support. In respect of item 1694, it was stated in the Scott Schedule that the work had been carried out by IPM Pest Control *"who respond quickly and when required. The local authority are much slower to respond and residents always want any pest problems dealt with immediately. For less than a £15 differential we would not want to inconvenience residents by delaying treatment"*.

156. The caretaker confirmed that the residents had asked him to remove the bait boxes in the common parts.

The Tribunal's Determination

157. The Respondents' challenge is without merit. It is not thought that they have the relevant knowledge to maintain that there is no pest problem at the block. The prevention of rodent and other pest problems is good practice, particularly where there is an old building backing on to a park. Mice do not simply appear in flats – they come from somewhere. A contract is desirable.

158. As stated above, the Respondents' challenge under this head were set out under years, collective items and individual items. It is possible therefore that since they appear throughout the Scott Schedule, which is unhelpful. It may be therefore that certain invoices have been overlooked in view of the disorderly manner in which the challenges were put before the Tribunal.

159.Accordingly, and for the avoidance of doubt, all costs in this respect under this head are allowed in full and the Tribunal determines that they are all relevant and

reasonably incurred and properly chargeable to the service charge account, save for item 1694 in the sum of £117.50 including VAT which Dr Stockinger said related to her flat. Item 1694 is therefore not relevant, since it is not a service charge under the Act. It is however reasonably incurred. The sum of £117.50 in respect of item 1694 should therefore be paid by Dr McKenna and not placed to the service charge account. As stated above, item 1501 was accepted by Dr McKenna as her responsibility.

- **Post room**

160. The Respondents challenge was that there could be costs savings if only 2nd class post was used, the Trinity Newsletter should not be posted at all but could be delivered by the caretaker, email could be used for non resident landlord and the invoices were unclear. Mr Stockinger agreed £100, which he considered generous, on the basis that he *"didn't want to annoy the Tribunal by appearing to be bloody minded"*. The challenge to item 1588 was that the cost of photocopying for AGM paperwork was excessive and should be in the management fees. The sum challenged of £82.72 should be disallowed *"beyond basic copying cost"* by £67.72. A similar argument was put forward in respect of item 1601 where it was suggested that the £75.18 should be reduced by £60.18., item 1605 which was in the sum of £28.20 and item 1672 in the sum of £37.97 where it was suggested that it should be disallowed in total.

161. Mr Unsdorfer said that letters are sometimes bundled for the caretaker to deliver to flats but approximately 60% of the landlords were non resident.

The Tribunal's Determination

162. The Respondents' challenge is without merit. The Respondents' suggestions to save costs have not been thought through and are considered to be unworkable. The suggestion that photocopying costs should be within the management fees is rejected.

163. It is considered a disproportionate use of the Tribunal's time to consider such very small amounts. As an example of the Respondents' challenge, item 1588 equated to 91 pence for flat; item 1365 was in respect of stamps in the sum of £33.20 which the Respondents suggested should be disallowed in its entirety on the basis that all letters could be delivered by the porter. This equated to some 38 pence per flat. There was a similar argument in relation to item 1445 being £45.45 petty cash for the post room, and a similar request that the entire sum should be disallowed. This equated to some 50 pence per flat. The Tribunal considers that pursuing amounts such as these on that basis amounts to an abuse of the Tribunal's process.

164. The Tribunal determines that all the sums under this head are relevant and reasonably incurred and properly chargeable to the service charge account.

- **Directors' liability insurance**

165. There were four invoices under this head in the total sum of £2,881.44, but there was a further challenge under the account years which the Tribunal deals with below.

166. The Respondents' challenge was that all should be disallowed as they were outside the scope of the lease. There was no challenge to quantum. In closing submissions, Dr McKenna said that they were not service charges. In his statement of case, Mr Stockinger said, *"....the directors took out "directors liability insurance" to cover themselves as an alternative to actually taking an interest in Parkgate Aspen's spending. We have been paying for that. My understanding of the law is that the general insurance clause in the lease does not cover RTM Co. directors' D & O insurance. The directors have a responsibility to manage the building, but they are protected by the limited liability of the RTM Co......The LVT should consider the recoverability* (of) *directors' liability insurance on the basis of clause 2(2)(a)(ix) in my lease: "the fees of the lessee's managing agent for the collection of the rents of the flats in the said building and for the collection of the rents of the flats in the said building and for general management thereof". It goes beyond reasonableness in scope for this clause in the lease to be tried to be used in this in this way. The directors' liability insurance should be disallowed in whole. This should be done partly because of the directors' irresponsible conduct in abrogating their management duties......There seems to be a strong element here of the "tail wagging the dog". Also the clause refers to rent and general management. It is unreasonable in my belief for director's liability insurance to fall into either category".*

167. The Applicant's case was that Right to Manage companies had not been in existence when the lease was drafted and therefore Directors' Liability Insurance was not specifically referred to. This had been dealt with in the LVT's determination relating to 50 Trinity Court in 2009 where the Tribunal had found in favour of the company. A copy of the determination was provided.

The Tribunal's Determination

168. Mr Stockinger, in evidence, did not appear to challenge the insurance per se, but challenged the *"ongoing conduct of directors"* which in his view invalidated the insurance. This falls within company law which is outside the jurisdiction of the Tribunal. The amounts challenged by the Respondents are set out on pages 14 and 15 of the Scott Schedule which do not tie up with the amounts as set out on page 23. This has caused difficulty to the Tribunal.

169. This Tribunal is not bound by the decision of a previous Tribunal, although it may be persuasive.

170. The Tribunal has considered the Tribunal's determination in respect of 50 Trinity Court with care, and of course it is not known what arguments or evidence were put forward in respect of that case which was heard on 18 February 2010. In that case, the tenants were the Applicants and Freshwater Metropolitan Properties Ltd and the present Applicant company were named as Respondents. The Tribunal's Decision was dated 18 May 2010.

171. Paragraph 27 of the Decision of 18 May 2010 related to Directors' Liability Insurance for 2008 and 2009 and stated *"The Applicants simply submitted that this cost was not recoverable as relevant service charge expenditure. In answer Mr Unsdorfer submitted that this cost fell within the overall cost of management and recoverable under clause 2(2)(a)(ix) and the Tribunal agreed with this submission.*

Accordingly it found that the Applicants were contractually required to pay a service charge contribution in relation to this expenditure". The relevant clause stated that the tenants covenanted to pay a service charge contribution for *"...the fees of the Lessor's Managing Agents for the collection of the rents of the flats in the said Building and for the general management thereof"*

172. The clauses in the leases of Flats 8 and 43 Trinity Court are in essentially the same form.

173. The previous Tribunal, having made a determination under this head for 2008 and 2009, it is not open to the Tribunal to reconsider the same. It is caught under S19(2C) (c) of the Act, being a matter which **"has been the subject of determination by a court or arbitral tribunal".** This issue has been the subject of a determination by a court or arbitral tribunal and therefore this Tribunal has no jurisdiction thereover for the years 2008 and 2009. If the tenants in the 2010 case were dissatisfied, then it was open to them to appeal the Tribunal's decision. No evidence was produced that they did so. As stated above, there was no challenge in the present case as to quantum.

174. Accordingly this Tribunal will only deal with the service charge years 2010 (£945) and 2011 (£993).

175. This Tribunal, whilst fully aware of the fact that this is a tenant led company, and the Directors are providing their services on a voluntary basis, and that this could be a thankless task, determines that this issue is a matter for the RTM company and that directors' liability insurance is not a service charge item for the years 2010 and 2011, and is therefore not relevant and not properly chargeable to the service charge account. This determination relates to the service charge years 2010 (in the sum of £945) and 2011 (in the sum of £993) only.

- **Window cleaning**

176. These were in the sums of £1,110 in 2008, £1,280 in 2010 and £ 1120 in 2011. The Respondents challenge was that the Applicant was *"artificially escalating the service charge for an unnecessary service".* It was suggested that cleaning of the common parts windows, which were at each end of the hallway on all the floors, could be done by the caretaker, the service was unnecessary and/or too frequent. They suggested that £600 for each year should be disallowed. Dr McKenna said that if a contractor was to be used, then they should be called as and when required.

177. Mr Weil said that the caretaker could not reasonably be expected to carry out the service. There were eye bolts in the wall for contractors to attach themselves and it was therefore not a simple matter. The caretaker was not trained or insured to carry out such work. There was a window cleaning contract, although he did not know if this was a formal written contract. The windows were cleaned every 2 months and the costs were reasonably incurred.

178. Oral evidence on this issue was given by Mr P Gnongouehi who said that he could not clean the windows because they were too high. It would be risky and he would need a ladder.

The Tribunal's Determination

179. The Respondents' suggestion is too simplistic. There would clearly be health and safety concerns if the caretaker was requested to carry out this work within his duties. The number of times the windows are cleaned is not considered excessive.

180. The Tribunal determines that the window cleaning charges are all relevant, reasonably incurred and properly chargeable to the service charge account.

- **Cleaning - materials**

181. The Respondents' challenge under this head appeared in the Scott Schedule under "Account Summary Items" where, as a general comment to all items under this heading, it was stated that the totals were *"abnormally high and require explanation otherwise to be disallowed to the extent of the abnormal rise"*. The charges for 2010 was £2,852 with a suggestion that £1,000 should be disallowed and a second charge appeared under the same year in the sum with a suggestion that £1,300 should be disallowed.

182. It is understood that the first charge was an estimate only and therefore should be deleted. The Tribunal is therefore considering the second entry only, where the amount to be disallowed was stated to be £1,300. No reason for the challenge. was indicated in the Scott Schedule and it would appear from her report that Ms Vogelle had not been asked to comment on this issue.

The Tribunal's Determination

183. The Respondents' challenge has not been particularised. Neither has any explanation been provided for the amount to be disallowed. They appear to be putting the Applicant to proof. This approach has been rejected in the Assethold case (see paragraph 28 above). Clearly cleaning of the common parts takes place, for which cleaning materials are required.

184. The Tribunal determines that the sum of £2,852 in respect of cleaning materials under this head is relevant and reasonably incurred and properly chargeable to the service charge account.

- **Interior common parts refurbishment works**

185. The challenge under this head was that the S20 contract sum for the works had been exceeded and the Respondents were not liable for the costs overrun, which should be borne by the contractors. The Respondents said that the overspend was £24,879.76.

186.The Scott Schedule also stated *"Also objection to scope in painting over white corridor and stairwell upper walls and ceilings light brown, instead of repainting as white – Respondents claim cost of repainting white, and additional electricity with uprated light bulbs; cost t.b.a"*. These are not service charge items and the Tribunal has no jurisdiction in this respect.

187. Evidence for the Respondents was given by Mr C J May, the lessee of 51 Trinity Court. He referred to his witness statement dated 12 November 2011 and confirmed that he was an office manager for a company which sold bathroom and plumbing solutions. Based on his product experience he costed the fittings but not installation costs, and acknowledged that he had had little time for detailed analysis. Mr May said he had been provided with documents which *"looked like"* the specification, but which he doubted was the final specification. He said that he had considered the breakdown of the specification and then checked each item. From this, he said that he had come up with *"pretty much the same figure – within 5%"* as that of Pavehall PLC, the contractors. He said *"I would say the original costing was accurate"*. Mr May said that other costs were added which increased the sum, but no documents had been provided to him to allow him to come to a conclusion and he had not asked to see any documents since the date of his statement. He acknowledged that stripping the walls would have taken some time and he had used the Spons guide because *"it is not an area I am expert in. I am only able to use my knowledge of specifications"*. He did not see the work being carried out.

188. Mr Unsdorfer said that there had been no costs overrun and the contract had been administered by Brooke Vincent & Partners who had dealt with the contract, administration and tendering process.

<u>The Tribunal's Determination</u>

189. Mr May, called by the Respondents, was a candid and honest witness. He was a witness of fact, and accepted that his occupation may not have qualified him to comment on the nature of the works carried out to the internal common parts refurbishment works, and in his statement conceded that he had no experience in writing costed specifications on services to be rendered. However, even on his own estimate, his costs were within 5% of the costs of the contractors.

190. The Tribunal went through the costings in some detail with the parties. There was no overspend. The S20 consultation does not appear to be flawed. The Respondents' case has not been substantiated, and in some aspects was not supported by their witness.

191. The Tribunal determines that the costs in respect of the interior common parts refurbishment are relevant and reasonably incurred and properly chargeable to the service charge account.

- **Reserve fund**

192. The Respondents' challenge was that a reserve fund had to be specified in the lease and could not be implied. It was stated in the Scott Schedule *"There is no contractual provision in the leases, or statutory provision, for maintenance of a reserve fund or sinking fund, let alone authority for such a fund to collect (as now) 5+ years in advance of major works. All funds collected to date which should be held in excess of the next immediate major works project approved by the LTA s20 process must be returned to leaseholders..."* On that basis, the Respondents contended that £220,918.76 should be returned to the tenants.

193. The Applicant stated in the Scott Schedule, inter alia, that this issue had previously been determined by the LVT in respect of 50 Trinity Court And *"both respective leases...provides for "works of a periodically recurring nature" and for "sums of money by way of reasonable provision for anticipated expenditure"* Mr Unsdorfer described this as *"a classic reserve fund provision"* and the landlord had the ability to allocate to the year in question anticipated expenditure. There was nothing in the leases about returning service charge monies and the only reference to returning monies related to excess or interim charges. The reserve fund was *"fully operating and compliant with the leases"*.He said that the internal parts of the building had been refurbished in 2 phases, the entryphone system had been replaced and a forward plan, which had been sent out with estimates, was in place for renewal of the rear and front passenger lift and external decorations (to be carried out in 2 phases).

<u>The Tribunal's Determination</u>

194. The Tribunal rejects the Respondents' contention that the lease does not provide for a reserve fund and also rejects their contention that a reserve fund must be stated in the lease in specific terms. This Tribunal agrees with paragraph 21 of the Tribunal's Decision on 50 Trinity Court.

195. There are clear provisions in the leases of both Flat 8 and Flat 43 at Clause 2(b)(v).

196. The Memorandum and Articles of the Applicant company includes a provision, inter alia, to establish and maintain capital reserves and any form of sinking fund.

197. The Tribunal determines that there is clear provision for a reserve fund in the leases of both Flat 8 and Flat 43 and it is prudent for the Applicant to make a provision to cover following years.

198. The Tribunal determines that the sums currently collected are reasonable for the budgeted expenditure.

- **Service costs account shortfall**

199. The Respondents' challenge under this head was there was no contractual or statutory authority for the difference or shortfall between the amount accounted for as levied or collected for service costs and the amount to be levied or retained by the managing agents. The shortfall was not quantified.

200. The Respondents' challenge has not been sufficiently particularised. Any information required by them could have been provided during the many adjournments permitted. The Tribunal has been unable to identify any shortfall. No determination is therefore possible.

Management fees

201. The management fees challenged were £21,766 (2008), £24,275 (2010) and £20,006 (2011). The 2008 year was an 11 month year ending 31 December 2008. The next account were for the 15 month period 1 January 2009 to 31 March 2010 and the 2011 year was a 12 month period from 1 April 2010 to 31 March 2011. The Respondents suggested £13,000 should be allowed for 2008 and also for 2010 and £12,000 should be disallowed for 2011.

202. Mr Stockinger said that certain management charges had trebled but there had been no increase in the quality of the services provided. He said that there had not been abject neglect by the previous managing agents, Freshwater. There had been a 4 year recession and there was a need to be frugal. £250,000 had been collected but £150,000 had been spent on ordinary service charges which was *"illegal"*. He said that all decision making had been left to Parkgate Aspen and the directors had taken no interest in the spending but were mere figureheads. Parkgate Aspen had used a *"layered approach"* of outsourcing and then charging for the outsourcing.

203. Dr McKenna, in her witness statement, said *"they have been charging us for things that should have been part of management fees. Despite their extremely high management fees, they charge us separately for photocopying, embossed stationery, first class stamps and 'petty cash' Why should we pay for their petty cash?"*

204. Mr May, in oral evidence, said *"the service charge we have for the general running of the block is reasonable compared with the previous managing agents, but I don't see why they need to collect so much in advance. The amount paid into the sinking fund has not changed but major works are not done"*. In his statement he said *"prior to the RTM company taking over the building was badly managed by Freshwater, but the service charge was much more reasonable than that levied since the RTM Company took over"*.

205. Mr Unsdorfer said that Parkgate Aspen had a totally different management approach to Freshwaters. They outsource the accountants fees, and brought fees down. Freshwater had routinely charge 15% on major works and they did this in house. It was not just that Freshwater did not charge VAT but also no professional indemnity had been needed because Freshwater was their own client. The management fees charged by Parkgate Aspen was £198 per flat which was below the norm. A copy of the management agreement was provided with the Applicant's closing submissions.

206. Mr D Lamberton, one of the Directors of the Applicant company, said that Parkgate Aspen had been appointed to manage the block and it was correct for them to deal with emails, rather than the Directors. He referred to a *"stream of emails"* received by the Directors from the Respondents. Mr Lamberton said that Dr McKenna copied emails to *"a few dozen people"*. He said he did want good communication, but reserved the right to refer emails to Parkgate Aspen. Major decisions were made in consultation with Parkgate Aspen. Freshwaters had done a poor job of managing major works. He accepted that the Directors did delegate tasks and responsibility to Parkgate Aspen and one of their jobs was to deal with substantial correspondence on arrears.

The Tribunal's Determination

207. Although it was argued by the Respondents that there had been no real complaint about management by Freshwaters, this is not borne out by correspondence within the bundle.

208. In a letter to Mr Stockinger of 11 December 2008, Mr Weil states "*we have been informed that Freshwater kept service charge levels artificially low but at the same time charged an excess at the end of each financial year*". In his statement of case dated 23 October 2012, he referred to this as "*effectively generating a third service charge demand annually*".

209. Although on several occasions, both Respondents referred to the management being at cheaper cost by Freshwaters, the previous managing agents, from correspondence it appears that they were not happy with the service provided by Freshwaters. In a letter from Mr Weil to Mr Stockinger of 7 September 2009, he states "*I note your various comments regarding the works carried out by Freshwater and the fact that you feel that they should be held responsible financially for some of the works which, in your opinion, are substandard or incomplete*".

210. In a Newsletter dated February 2008, shortly after Parkgate Aspen were appointed, it was stated, inter alia "*in the past Freshwater did notbuild up any reserve funds, but did subsidise the cash flow themselves, hence the belated occurrence of excess service charges. Along with the benefits of "Right to Manage", there is also a cost: the need to self fund cash flow from your own resources*".

211. In an email sent by Dr McKenna of 29 October 2008 in which she stated that she had cancelled her direct debit for payment of service charges on the basis of her serious concerns about the amount of money being levied and possibly inflated, she commented "*I have been pleased with the work you have done to make the building safe and for the service extended to me in helping to sort out long standing problems with my flat, and have always found Parkgate Aspen staff to be friendly, polite and helpful*".

212. No cogent reason has been supplied for the suggested sums to be disallowed, and the rate per unit is within the range of charges for this type of property.

213. The Tribunal determines that the management fees, in full, are relevant and reasonably incurred and properly chargeable to the service charge account. The management fees for the block for 2008 had already been determined as reasonably incurred, and it is felt that that service charge year did not require to be considered by this Tribunal. However, it has been considered in order to assist the parties.

- **Entryphone**

214. The Respondents' challenge was in respect of certain invoices from Command and Control on the basis that the costs could have been avoided if the entryphone had been replaced earlier and the service was unnecessary. A previous challenge by the Respondents to the invoices of Audiovu (a night response for emergencies) was withdrawn. A further challenge by Dr McKenna in respect of the door panel in the

sum of £1,468.55 was not permitted by the Tribunal since this did not appear on the Scott Schedule, and therefore this sum is to be allowed.

215. Mr Weil said that they had inherited an entryphone with a non functioning panel. The numbering could not be seen and a buzzing noise from the handsets meant that it was beyond economical repair. The main fault was the panel itself, rather than the whole system, and this was replaced, although it was intended that this work should coincide with the internal works to minimise disruption, and did in fact coincide with the tail end of the second phase of the internal works. The cost was in respect of repairs as and when required. No funds were available in 2008. In a letter to Mr Stockinger dated 7 September 2009, Mr Weil stated *"at this stage the only works being carried out in respect of the entryphone are the new cables which are being fitted through the corridors. They will be chased into the walls so that any style of entryphone (audio or visual) can be fitted at a later date. As such no decision has yet been made whether an outright purchase or a rental system would be installed".* Sample invoices were produced.

216. Dr McKenna said *"it was common knowledge in Trinity Court"* that the buzzing noise was because phones were left off the hook, and the caretaker could have asked the relevant tenants to put the phones back on the hook. In closing submissions she said that the costs had been avoidable. Dr McKenna accepted the cost of repairs in 2008 but not subsequent years.

The Tribunal's Determination

217. The Respondents have not made out their case. No firm evidence was produced to support the contention that it was merely because handsets had been left off the hook.

218. The Tribunal determines that all the costs relating to the entryphone are relevant and reasonably incurred and properly chargeable to the service charge account. For the avoidance of doubt, this includes the cost of the door panel in the sum of £1,468.55 which was not in the Scott Schedule but which Dr McKenna attempted to raise on 15 February 2013 (see paragraph 26 above)

- **Monarch invoices**

219. The Respondents challenged invoices 1011 in the sum of £481.75 and invoice 1274 in the sum of £471.50 on the basis that the costs were excessive and only 50% should be allowed.

220. The Applicant said that the cost incurred was in respect of a mandatory safety inspection carried out once a year since the block constituted a place of work.

221. The Respondents contended that it was not a place of work and Dr McKenna said *" I cannot imagine that it would take more than an hour ".*

The Tribunal's Determination

222. The Respondents' challenge is rejected as being without merit. No reason was given for a suggested 50% reduction. The invoices total £953.25 or £10.59 per unit, which is considered a reasonable charge for this annual inspection.

223. The Tribunal determines that all the costs under this head are relevant and reasonably incurred and properly chargeable to the service charge account.

- **Bond invoices**

224. The Respondents' challenge was in respect of item 1778 in the sum of £ 1,335.36 on the basis that the cost was excessive. A prior challenge to invoice 5131 in the sum of £161.26 was not pursued (and although referred to as item 1619, there was no such numbering in the Scott Schedule) The Vogelle report was relied on.

225. In respect of the invoice challenged, Ms Vogelle contended that the invoice was unclear as to whether the lights were supplied or installed. There was no unit price per light, the model of light or how much per light *"so it is impossible to state whether or not this is good value"*.

226. As stated on the Scott Schedule *"Bond Fire repaired the fire alarm system in the building and continue to service the system"*. Mr Unsdorfer said that the cost was not excessive.

The Tribunal's Determination

227. The Respondents' challenge is rejected as being without merit. No alternative quotations were provided. No reason was given for a suggested 50% reduction. As was explained to the Respondents, the Tribunal's duty is to determine whether the landlord was acting reasonably to have incurred the costs challenged and not, as suggested by Ms Vogelle, whether they are good value to the tenants.

228. The Tribunal determines that the costs under this head are relevant and reasonably incurred and properly chargeable to the service charge account.

- **Carpet City invoice**

229. This related to item 1144 in the sum of £2,705 in respect of carpeting the stairwells, which the Respondents said should be disallowed as being unnecessary and excessive. It was suggested that the old linoleum could have been removed.

230. In the Scott Schedule, the Applicant maintained that the cost had been reasonable. It was stated *"this invoice relates to the cost of carpet supplied to the stairwells soon after Parkgate Aspen took over management of the building. It was required to deal with the trip hazards which existed on the stairwells at the time. This was a cost for supplying and fitting carpet to two stairwells of nine floors each"*.

231. Mr Unsdorfer said that only the risk element had been deal with, and it would have been reckless to have left the stairs as they were. The stairs had deteriorated and

there were many trip hazards, so a number of the nosings had been removed. It was not just a case of removing the old linoleum. All the floors were carpeted. The managing agents said that the refurbishment works were to be carried out in 2 phases and it had been reasonable to cover the stairways with cheap carpet at that time. The cost had included removal of old floor covering, and cost of laying the new carpet.

The Tribunal's Determination

232. In an address to the Trinity Court AGM on 2 February 2009 which is unsigned, but appears to have been made by Mr Weil, it was stated *"shortly after Parkgate Aspen took over the management of Trinity Court we received a letter from AXA Insurers highlighting a number of items which required rectification in the immediate to short term.....the largest and most costly item that was brought to our attention was the potential trip hazard posed by the broken stair nosings on the stairwells. It was important that these trip hazards were removed as quickly as possible but at the same time keeping an eye on the costs involved. Bearing in mind that we intended to carry out the internal repair and redecoration project within the first year or two, we endeavoured to keep the cost to a minimum in terms of these works. Therefore carpet was installed at that time. Please be aware that this was only ever intended as a stop gap in order to deal with the trip hazard posed and was never intended as a move to begin the carpeting of the whole of the internal common parts."*

233. The Tribunal has had sight of a Newsletter in which it was stated *".....we were obliged to take urgent action to deal with missing or defective stair nosings on the staircase as one of the safety issues we inherited on the takeover of management. We considered that the most cost effective and quickest ways of removing the trip hazard was to carpet the staircases"*. From the coloured photograph attached, the staircase did appear to be in a poor state.

234. There appeared to have been a health and safety issue and the managing agents had to take into consideration the undoubted trip hazards which would have been present. Indeed, to have done nothing could well have been considered to be negligent. Further this was a request from the insurers and therefore could not have been ignored since it could well have jeopardised the insurance of the block. The costs, which involved carpeting 2 stairwells over 9 floors is not thought to be excessive and seems to suggest that it was, as Mr Unsdorfer said, cheap carpet.

235. The Respondents' arguments are rejected.

236. The Tribunal determines that the sum of £2,705 under this head was relevant and reasonably incurred and properly chargeable to the service charge account.

- **Extreme Access invoices**

237. The Respondents initially challenged invoices in the sum of £6,480 (item 1784) and £646.25 (item 1720). The challenge to the latter invoice, which related to a survey, was subsequently withdrawn. It was also maintained that there had been no consultation under S20 and the cost of painting was contested. It was suggested that there should be a deduction of 50%. There was no objection to the repairs. In the Scott Schedule, it was stated, inter alia *"render repair and external decoration front and*

rear, £6,480 ie half of front of building painted, another example of piecemeal work. There is a plan to paint the entire exterior of the building. Why then waste money painting one small section".

238. In the Scott Schedule, the Applicant stated *"it was never intended to repair the externals in full for some years after the internal redecs were complete. However there was significant damp ingress caused by failed render to the building and this was dealt with by Extreme Access so that the building could dry out before the internal works were carried out,. This was not a waste of money and in fact meant that two elevations would last a lot longer than previously the case before the externals were carried out in full".* Mr Weil said that the works carried out were below the S20 consultation threshold. There were areas of damp around the stairwell which had to be treated. Abseilers had been required.

The Tribunal's Determination

239. The Applicant's case is substantiated. No evidence was produced by or on behalf of the Respondents. No reason for a suggested deduction of 50% was put forward. It is not fully understood why, in view of the Applicant's reply in the Scott Schedule, the Respondents continued with their challenge.

240. It is further noted that in the Newsletter of October 2011 and by way of explanation in respect of this issue, it was stated *"As you will recall, abseilers were employed last year to carry out repairs to the most damaged areas of render, these being the front and rear elevations around the stairwells. At the same time the frames around the windows were checked and sealed where necessary. Abseilers recently returned to carry out some further minor repairs to high level pipework"* .

241. The Tribunal determines that the invoices incurred for work carried out by Extreme Access are relevant and reasonable and properly chargeable to the service charge account.

- **Managing agents' fees for previous LVT hearing**

242. The Respondents' challenge was in respect of Mr Unsdorfer's fees for appearing at a previous Tribunal hearing in the sum of £3,678.92 (item 1630) and contended that it should be disallowed in total.

243. Mr Stockinger, in his witness statement, said that Mr Unsdorfer's fees were *"in excess of what a solicitor with a practising certificate could claim for county court work".*

244. Dr McKenna, in her witness statement, said *"Mr Unsdorfer's fees from first LVT were £3,678.92. He did not need to be there. The Directors could have attended themselves. Mr Weil's attendance was apparently included in management fees, so could Mr Unsdorfer's. This is an example of gross overcharging hourly rate £330 plus £40 car parking and incendiary expenses (no receipts supplied)."*

245. In the Scott Schedule, the Applicant's case was *"like all other agents, Parkgate Aspen's management fee does not include "Attendance at any Court or Tribunal*

hearing involving the Clients/Property including briefings with solicitors and preparatory work" which are classified as "Additional Duties" subject to a separate fee. This would have entitled Parkgate to charge for the attendance by Mr Weil as property manager – but no such charge was made. Further more, Mr Unsdorfer was asked to act for the RTM Company in place of a solicitor (whose fee would have been charged separately to any manager's attendance). Mr Unsdorfer did not attend in the capacity of property manager but as a specialist in service charge disputes and tribunal work and with almost 40 years experience in residential leasehold work".

The Tribunal's Determination

246. The previous case relating to Flat 50 Trinity Court was heard in 2010. It is surprising that this issue has not been aired earlier.

247. This issue has caused the Tribunal some concern. There is no doubt that Mr Unsdorfer is very experienced in Tribunal matters. The directors were entitled to instruct him rather than dealing with the case personally, as suggested by Dr McKenna. There is also no doubt that if a solicitor had been instructed, that solicitor would have been entitled to charge in addition to Mr Unsdorfer's fees. It is also assumed that an additional fee could have been charged for Mr Weil as the property manager who had conduct of the day to day management of Trinity Court. The fees to the tenants could therefore have been substantially higher that those challenged.

248. However, the problem is that no solicitor was instructed and no charge was made for Mr Weil in the 2010 proceedings. The charges were for Mr Unsdorfer alone. The invoice, dated 14 June 2010, covered 7 hours tribunal attendance at £330 per hour (£2,310), 3 hours preparation at £260 per hour (£780) and parking and other disbursements of £41. The total was £3,131 plus VAT at the then current rate. The invoice stated that cheques were to made payable to Commonhold Management Ltd.

249. From Appendix A of the Applicant's closing submissions in the present case, it appears that the additional management fee for conducting the Applicant's case for the collection of service charges due, Mr Unsdorfer's charge out rate for both preparation and attendance is £125 per hour plus VAT (and an additional charge is made for preparation and attendance by Mr Weil, which is understood).

250. The difficulty for the Tribunal is that Mr Unsdorfer's fees before this Tribunal in the present case at £125 per hour plus VAT are considerably lower than the £260 per hour plus VAT for preparation and £330 per hour plus VAT for attendance. No explanation has been supplied as to why the charge out rate for preparation and attendance before this Tribunal has been reduced some three years later.

251. Accordingly, the Tribunal determines that, in respect of the invoice number SU-91 dated 14 June 2010 in respect of the 2010 hearing, Mr Unsdorfer's charge out rate for 3 hours preparation and 7 hours attendance both at £125 per hour plus VAT is relevant and reasonably incurred and properly chargeable to the service charge account. The Tribunal does not intend to disturb the cost of parking and other petty disbursements, and these remain at £41 and are payable through the service charge.

- **Key money**

252. These were in the sums of £108.82 (invoice 1368), £169.97 (invoice 1397), £255 (invoice 1450) and £122.50 (invoice 1648) for keys to the main front door. The Respondents challenge was that no invoices were provided and the residents pay for the keys themselves. suggested that the sums be disallowed by 60%.

253. Mr Weil said that the keys could only be obtained by an authorised person from Banhams. He was that person. He therefore went periodically to Banhams, purchased keys on his own credit card for which he was reimbursed. The keys were sold to the residents who had lost their keys at the same cost. A sample invoice was provided.

The Tribunal's determination

254. The Respondents challenge is without merit. No explanation of their suggested allowance was provided. The Tribunal determines that all the sums for the key money as stated above are relevant and reasonably incurred and properly chargeable to the service charge account.

- **Designs**

255. The sum challenged under this head was £1,500 (item 1739)charged on 20 December 2010 by Acanthus on the basis that, as set out in the Scott Schedule. it was *"not in section 20, work not done to art deco principles, added £14,000 to the cost of interior works, designs were irrelevant and not used, not needed"* Mr Stockinger said that although the designs were useful, they were not necessary and *"they messed up the colours"*. He said that the costs should be disallowed by 50% (although Dr McKenna considered that nothing should be paid).

256. The Applicant, in the Scott Schedule, stated *"Acanthus were the designers of the refurbished common parts and their fee was agreed in advance with the directors of the RTM Company. The fee included a flat fee of £1,500 for the design work which included initial meetings with the directors, design boards, and residents meetings all of which formed part of the consultation process. They then charge a fee of 15% plus VAT to cover their role as contract administrator and to run the tender process, project management, certify invoices for payment and to attend site meetings. Their designs were followed entirely and we used as the scheme which has been put in place in the building"*

257. Mr May, in his witness statement, confirmed that he had seen *"a colour scheme and a few mood boards"*

The Tribunal's Determination

258. It is noted that in a letter to Mr Stockinger from Mr Weil dated 7 September 2009, it is stated *"following considerable investigation and research it has been decided that the finish to all the corridors within Trinity Court will be a smooth plastered finish and the existing pattern will be removed throughout. It is unclear whether this pattern finish was an original feature in the building but in any event it would be extremely costly to replicate this finish throughout. A specialist company*

looked at Trinity Court for us and advised us of this". The Applicant also explained in its Newsletter of August 2010 why certain finishes were not used. The Tribunal is of the view that this could or should have satisfied Mr Stockinger's complaint about the colours/finishes used. On 15 February 2013, Mr Stockinger had submitted coloured photographs headed *"Influence of Art Deco Buildings in the design of Trinity Court".* Whilst of interest, it is thought that there would have been cost implications which may not have been welcomed by the Respondents or other residents at the block.

259. The Tribunal has considered the documentation in the bundle, one of which was a Newsletter of August 2010. In relation to this issue and under the heading *"Internal Decoration - Phase 2"* it was stated that this phase would *"transform the appearance of the building and, we hope, greatly enhance the experience of living in the block".*
260. The Directors had taken the decision to instruct an interior designer to produce 2 proposals for the redecoration of the internal parts of the building, and the tenants would have an opportunity to view the same for a period of one month during which the tenants would have the opportunity to submit their comments to the managing agents or to the Directors on the form attached to the Newsletter. The proposals were set out in some detail. It was noted *"many of you have in the past expressed views and opinions to the managing agents as well as the Directors of the RTM company regarding your thoughts, feelings and concerns in relation to the redecoration project".* It appears clear to this Tribunal that no only did many tenants have strongly held views, but the Applicant company wished to discuss and explain the proposals. It is also noted that the same Newsletter had arranged for Acanthus to be available for one hour on a certain date to answer any questions.

261. No cogent reason has been given by the Respondents for their challenge and/or the amount which they suggested should be disallowed. The amount shared amongst 90 units is considered de minimis.

262. The Tribunal determines that the sum of £1,500 in respect of designs is relevant and reasonably incurred and properly chargeable to the service charge account.

- **Limitation of landlord's costs of proceedings**

263. The Respondents had made an application under S20C of the Act to limit the landlord's costs of proceedings before the Tribunal.

264. The Applicant, in closing written submissions, contended, inter alia, that the Respondents' arrears totalled some £12,000 which was around 10% of the whole block's annual budget and the Applicant had no choice but to issue proceedings in the county court, which proceedings had been transferred to the LVT. It was contended, inter alia, that the Respondents *"showed no interest in narrowing the issues",* the first hearing dates had to be aborted due lack of presentation of the Respondents' case and the Tribunal had to extend the hearing to 3 days. The Applicant had done its best to narrow the issues and to minimise costs and mitigate losses. It was stated *"on the rate occasion when a cogent challenge was put forward, the claim was conced".* It was also stated *"by the nature of RTM companies set up under the statute, they have no assets or other means to defray the expenses incurred in recovering arrears such as these. Not to grant the means to recover these costs (less whatever the court awards against the Defendants) would put the RTM company into an insolvent*

situation. This would be more prejudicial to its members than paying their 1/90th shares of any residual costs).

265. Dr McKenna, in closing written submissions, contended into alia, that the Applicant had contributed to delays by not attending the Pre Trial Review, not providing invoices on time, by providing invoices in two *"unidentical piles"*, by misplacing their trial bundle, continual refusal to provide the Respondents with relevant information and documentation or to answer questions and denial of contracts with various companies. Mr Stockinger's spreadsheet was simply a summary of the managing agents own accounts and it was inconceivable that this could have adversely influenced proceedings in any way. Dr McKenna said that the allocation of a percentage had been requested by the Tribunal and *"there was of course an element of 'guesstimates being made and these were reasonably adjusted as new information came to light in the hearing"*. Dr Mckenna was of the view that the Directors of the Applicant company should be held responsible for all costs. She said *"they have never replied to any letter from Mr Stockinger. The directors have never tried to discuss any issues with us prior to bringing the action"*.

266. Mr Stockinger had, on two occasions, requested an extension of time in order to submit his closing written submissions. His request was refused. No written submissions were received from him by the deadline, or at all.

<u>The Tribunal's determination</u>

267. S20C of the Act states:-

"(1) a tenant may make an application for an order that all or any of the costs incurred or to be incurred by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made;

- **(a) in the case of court proceedings, to the court before the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;**
- **(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;**
- **(c) in the case of proceedings before the Lands Tribunal, to the tribunal.**
- **(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.**

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."

268. In the view of this Tribunal, the lease terms are wide enough to include the managing agents' costs in connection with proceedings before the Tribunal. The question for the Tribunal is whether it is reasonable to allow the Respondent to place such costs on the service charge account.

269. In applications of this nature, the Tribunal endeavours to view the matter as a whole including, but not limited to, the degree of success, the conduct of the parties and as to whether, in the Tribunal's opinion, resolution could or might have been possible with goodwill on both sides.

270. In the judgement of His Honour Judge Rich in a Lands Tribunal Decision dated 5 March 2001 **(The Tenants of Langford Court v Doren Ltd)** it was stated, inter alia *"where, as in the case of the LVT, there is no power to award costs, there is no automatic expectation of an order under Section 20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs of defending such conduct. In my judgment the primary consideration that the LVT should keep in mind is that the power to make a order under Section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not to be used in circumstances that makes its use unjust".*

271. Under new legislation, there is now a limited power for the Tribunal to order costs, but Judge Rich's comments are still valid.

272. In accordance with S 20C (3) of the Act, the applicable principle is to be a consideration of what is just and equitable in the circumstances. Of course, excessive costs unreasonably incurred would not be recoverable by the landlord in any event (because of S19 of the Act) so the S20C power should be used only to avoid the unjust payment of otherwise recoverable costs.

273. In his judgement, Judge Rich indicated an extra restrictive factor as follows:-

"Oppressive and, even more, unreasonable behaviour however is not found solely amongst landlords. Section 20C is a power to deprive a landlord of a property right. If the landlord has abused his rights or used them oppressively that is a salutary power, which may be used with justice and equity, but those entrusted with the discretion given by Section 20C should be cautious to ensure that it is not itself turned into an instrument of oppression"

274. The Respondents have, in the main, been unsuccessful. The Tribunal does not feel that the Applicant should be burdened with the consequence of that lack of success.

275. In respect of the present proceedings, Mr Stockinger, in his witness statement, states *"I note that Mr Unsdorfer is claiming that he be allowed to recover in full from the RTM company co. the full amount of his "invoice for services" at the given rate. Mr Unsdorfer therefore has absolutely no commercial incentive whatsoever to advise the RTM Co. to concede any real ground in these proceedings. Indeed, quite the opposite: it is against Mr Unsdorfer's commercial advantage to do so. This is not*

what the "right to manage" process was designed for. It is the responsibility of the RTM Co. directors to control this".

276. In the view of this Tribunal, the reason that the proceedings have been protracted is mainly due to the conduct of Respondents and not the Applicant and therefore this argument is rejected. For the avoidance of doubt, Mr Unsdorfer's fees within the present proceedings are considered to be relevant and reasonably incurred and properly chargeable in full to the service charge account.

277. The Tribunal determines that it is just and equitable that the managing agents' costs incurred by the Respondent in connection with proceedings before this Tribunal in the sum of £5,640, plus VAT if applicable, are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.

278. The parties' attention is drawn to paragraphs 247 and 250 above. In making this Determination, the Respondents should not form any opinion that should there be any similar work carried out in the future, it will be at the same charge out rate. This Tribunal is dealing with Mr Unsdorfer's specified charge out rate for this case only.

279. The Applicant, in closing submissions stated that in the event it is the intention of the Applicant to pursue the Respondents personally in this respect when the Tribunal's Determination is returned to the county court.

- **Reimbursement of hearing fee**

280. The only fees over which the Tribunal has jurisdiction are those in respect of the proceedings before the Tribunal. In this particular case it refers to the hearing fee of £150. The Applicant made an application for reimbursement of this sum by the Respondents.

281. The Tribunal considered whether to exercise its discretion under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

282. The Tribunal acknowledges that both sides may have incurred costs which are irrecoverable. However, it is felt that, in the particular circumstances of this case, to make an order for the Respondents to reimburse the hearing fees is appropriate.

283. The Tribunal intends to exercise its discretion under this head and makes an order for reimbursement by the Respondents to the Applicant of the hearing fee of £150. Each Respondent is to pay to the Applicant £75.

- **Penal costs**

284. At the hearing on 14 November 2012, Mr Unsdorfer made an application for penal costs to be ordered against the Respondents for abuse of process.

285. In closing submissions, the Applicant contended, inter alia, that the Respondents *"were already abusing the process by failing to set out a clear case for response and failing to comply with numerous directions. Each of those directions.......were roundly ignored and thus impeded and disrupted the proceedings between the first*

PTR and ultimate hearing 12 months later. These are not callow litigants in person without appreciation for rules and deadlines....,Dr McKenna is in a profession which is regulated by procedures and issues of compliance......Mr Stockinger.....reminded us several times that he was a practising solicitor working in the High Court...Mr Stockinger exploited the more informal setting of the Tribunal for all it was worth". It was argued that Mr Stockinger had been guilty of deliberate obfuscation and that both Respondents had been vexatious and frivolous.

286. In closing submissions under this head, Dr McKenna contended, inter alia that Mr Unsdorfer had given a biased picture by failing to refer to delays caused by Parkgate Aspen. She referred to Mr Unsdorfer's treatment of the Respondents' witnesses. In respect of the Applicant's offer to settle she said *"I did receive one email from Mr Unsdorfer, which I recall was less than the offer he had made earlier in the day and which I had graciously declined, giving my reasons for doing so.....his 'offer to settle' was tokenism as he refused in discussions to include reference to the real reason we were at the LVT, Parkgate Aspen's overspending"* Dr McKenna said that the Respondents had demonstrated in submissions and evidence that the directors of the Applicant company and the managing agents had *"colluded to overspend, waste money, overcharge in dozens of ways already presented. They have rebuffed all efforts on our part to deal with these issues outside of the legal process".*

The Tribunal's determination

287. Schedule 12 of the Commonhold and Leasehold Reform Act 2002 sets out the Leasehold Valuation Tribunals Procedure. Paragraph 10 states:

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where –
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed –
(a) £500, or
(b) such other amount as may be specified in procedure regulations

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

288. His Honour Judge Huskinson in the Lands Tribunal case of **Halliard Property Co. Ltd v Belmont Hall and Elm Court RTM Co. Ltd. (LRX/130/2007 and LRA/85/2008)** stated

"So far as concerns the meaning of the words "otherwise unreasonably" I conclude that they should be construed *ejusdem generis* with the words that have gone before. The words are "frivolously, vexatiously, abusively, disruptively, or otherwise unreasonably". The words "otherwise" confirm that for the purpose of paragraph 10 behaviour which was frivolous or vexatious or abusive or disruptive would properly be described as unreasonable behaviour. The words "or otherwise unreasonably" are intended to cover behaviour which merits criticism at a similar level albeit that the behaviour may not fit within the words frivolously, vexatiously, abusively, disruptively....Thus the acid test is whether the behaviour permits a reasonable explanation."

289. In this case, the Tribunal considers that this case has taken so long to come to completion was due, predominantly, to the actions or inactions of the Respondents, although the Applicant's representatives have been criticised in some respects in the body of this Determination. The Applicant, a tenant led company, has clearly incurred substantial costs in bringing this matter before the Tribunal. The Tribunal considers that the parties could or should have come to some kind of accommodation in respect of the amounts of the service charge arrears claimed of the Respondents which do not seem to be of the highest order.

290. Both Mr Stockinger, a practising solicitor, and Dr McKenna are articulate intelligent people. Their blanket rejection of some explanations proferred and suggestions that costs should be disallowed in their entirety were, in some instances, not reasonable or realistic. In addition, where percentages to be disallowed were suggested, no evidence was provided as to how such percentages were arrived at. In the view of this Tribunal, some issues were pursued for no readily understandable reason. As a result, the number of issues continued to be challenged was far longer that they could or should have been, and it follows therefore that the Tribunal considers that its Decision was also far longer and time consuming than it could or should have been. The Tribunal notes that the Scott Schedule had been headed *"Respondents' joint disallowance schedule"*.

291. Some of the amounts originally challenged were de minimis. An example of this related to item 1153 which related to postages of £13.11 which equates to a cost to each of the 90 flats of approximate 15p per flat. The Respondents initially challenged this on the Scott Schedule as *"send by email take from management fees use second class mail"*. Although the challenge was subsequently withdrawn, there were other similar examples. It was a wholly disproportionate use of the Tribunal's time. However, it is regretted that some issues continued to be pursued (see Newsletters) even though the sums challenged were small, and took up valuable hearing time in perusing examples of the newsletters and discussions as to the state of the printer, all of which was unnecessary when bearing in mind that the Respondents were challenging the difference between the actual costs charged of some £2.28 per flat and their suggested £1.92 per flat. It was noted that in respect of some issues the Respondents clearly disagreed with each other.

292. The Tribunal determines that, in the particular circumstances of this case, the Respondents have acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably. As stated in the case referred to in paragraph 288 above, **"the acid test is whether the behaviour permits a reasonable explanation".** In respect of the matters before this Tribunal, there is no reasonable explanation.

293. The Tribunal orders that the Respondents shall each pay to the Applicant company the sum of £400 (a total of £800).

The Tribunal's determinations as to service charges are binding on the parties and may be enforced through the county courts if service charges determined as payable remain unpaid.

CHAIRMAN: Mrs J S L Goulden

DATE: 16 May 2013

IN THE LONDON RESIDENTIAL PROPERTY TRIBUNAL
FROM THE CLERKENWELL & SHOREDITCH COUNTY COURT

Case Ref.: LON/00AG/LSC/2011/0692
Claim No. 1BE01427

In the Matter of Flats 8 & 43 Trinity Court, 254 Gray's Inn Road, London WC1X 8JZ

BETWEEN:

TRINITY COURT (RTM) COMPANY LIMITED

Applicant

- and -

(1) MR VICTOR RICHARD STOCKINGER
(2) MS IRMA MARIA STOCKINGER

Respondents

IN THE LONDON RESIDENTIAL PROPERTY TRIBUNAL
FROM THE CLERKENWELL & SHOREDITCH COUNTY COURT

Case Ref.: LON/00AG/LSC/2012/0284
Claim No. 1BE02121

BETWEEN:

TRINITY COURT (RTM) COMPANY LIMITED

Applicant

- and -

DR CLARE LOUISE McKENNA

Respondent

RESPONDENTS' JOINT DISALLOWANCE SCHEDULE

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**

GENERAL NOTES

1. For the avoidance of doubt, the Respondents' position is that most account items challenged are unreasonably high in cost but within scope (e.g. Crown and R&R Lifts), although some items are also unreasonable in scope (e.g. Cannon Pest).
2. Further for the avoidance of doubt, the managing agent has a business practice to select more rather than less expensive options as a general course of business conduct, the collective effect of which is to seen in this large number of challenges.
3. This course of business conduct leads to challenges as to both reasonableness and cost because the overall service charge is too high as a result of the managing agent's pattern of business conduct.
4. The general bases of the challenges are that the expense is either outside the terms of the lease and/or not within the law generally.
5. Left-hand column and other page references are to the paginated documents in the hearing bundles.
6. Extensive reference will be made at the full hearing to corresponding spreadsheets and indexes.
7. At the Tribunal's direction on 14th November 2012, the Respondents do not challenge many small individual items, on which our position is reserved.

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**

SECTION 1 : COLLECTIVE ITEMS

(Some also particularised under "Individual Items")

		BLACKTHORN PROPERTY SERVICES ("BPS") (*see* various items in the Individual List *post*): general approach, per LV rpt: disallow 50% because BPS failed to organise prime stock (e.g. light bulbs) being kept on site in TC; Paul the caretaker is evidently able to be taught to make most light bulb changes, but this is not being done; invoice information is limited; many items are listed as "emergency callouts" when they are routine light bulb changes; question whether serially defective light fittings are appropriate to be retained	We do not know if the LV rpt is qualified in anyway and would have expected to see alternative quotations from qualified electricians. As the only member of staff, H&S rules dictate that the caretaker cannot use a ladder single handedly. In addition there would be a need to isolate the electrics in the basement switch room which would leave the whole corridor in darkness. This power	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
			interruption would be kept to a minimum if two people carry out the job together. Many of the light fittings are not straight forward and easily breakable. In addition, care has to be taken when the bulb is replaced so that no damage occurs to the fragile internal components as many of these lights were installed a very long time ago and although safe they can easily be broken.	
		COURIERS (DEADLINE, etc.) Particularisation required of what service was for; no reason given for need for courier (rather	Courier services generally used when urgent delivery is required in order to advise residents of matters	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		thn second class post) despite several requests; unnecessary expense; excessive; allow second class post only; not in my lease; does not enhance my comfort or convenience; disallow	such a lift break downs, power cuts and other emergency works for which no advance notice can be given.	
1009	£91.55	29th February 2008		
1018	£91.55	12th March 2008		
1398	£44.00	10th September 2009		
1424	£23.00	26th October 2009		
1435	£28.00	9th November 2009		
1532	£31.50	7th February 2010		
1757	£28.20	12th January 2011		
allow:	- £30.00			
Total:	£307.80	Pro rata: £307.80 ÷ 90 = £3.42		
		LIFT MAINTENANCE AND REPAIR CONTRACTS: CROWN LIFTS LIMITED and R&R LIFT CO. LTD	Parkgate Aspen's experience with Jackson Lifts has been poor mostly due to slow response to call-outs	Allow in full save where costs covered by insurance.

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		Jackson Lifts [*see* VRS p. 700H (para. 246), pp. 868-872] offer comparable services at *c.*65% of the cost of Crown, and of R&R. General disallowance of 35%; allow 65%	and repairs not carried out correctly and a number of contracts with them have been cancelled. R&R Lifts specialise in maintaining old lifts such as those at Trinity Court and we would have serious doubts that Jackson Lifts could offer the same level of service especially for half the price. For the avoidance of doubt, the cost of repairs following the lift accident was covered by the building's engineering policy. We assume that all other costs are	
1121	£1,236.04	31st July 2008 (lift damage; carpet layer)		
1122	£1,130.68	31st July 2008 (half year maintenance)		
1143	£1,452.35	12th September 2008 (post lift damage)		
1145	£1,545.28	16th September 2008 (post lift damage)		
1151	£5,426.04	26th September 2008 (post lift damage)		
1174	£8,139.07	14th November 2008 (post lift damage)		
1262	£1,106.62	28th January 2009 (half yearly maintenance)		
1306	£176.59	28th April 2009		
1367	£1,139.82	29th July 2009 (Crown half yearly maintenance)		
1376	£57.50	11th August 2009 (Crown call out)		
1458	£229.93	16th September 2009 (Crown call out)		

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
1505	£234.93	12th January 2010 (Crown call out)	either routine call-outs or maintenance visits.	
1523	£173.45	26th January 2010 (half yearly maintenance)		
1531	£2,203.00	5th February 2010 (R&R half year maintenance)		
1546	£234.93	16th February 2010 (Crown call out)		
1574-5	£366.60	29th March 2010 (R&R)		
1593	£183.30	19th April 2010 (R&R)		
1608	£185.65	6th May 2010 (R&R)		
1647	£137.48	13th July 2010 (R&R)		
1657	£209.15	28th July 2010 (R&R)		
1701	£185.65	21st October 2010 (R&R)		
1706	£185.65	2nd November 2010 (R&R)		
1709	£139.24	8th November 2010 (R&R)		
1727	£183.30	6th December 2010 (R&R)		
1728	£164.97	6th December 2010 (R&R)		
1745	£444.39	26th December 2010 (R&R)		
1746	£816.63	26th December 2010 (R&R)		

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
1781 Total: @ 65%	£2,352.00 £22,530.79 £16,595.01	9th February 2011 (R&R maintenance) Disallow: £5,935.78 Pro rata: £5,935.78 ÷ 90 = £65.95		
1004 1015 1047 allow: Total:	£100.00 £17.86 £88.00 - £15.00 £173.00	NEWSLETTERS (KALLKWIK and POSTROOM) excessive cost; caretaker has printer to print the newsletters, and time to distribute them; allow cost of colour inks and paper; should be included in management fee; not in my lease; does not enhance my comfort or convenience; disallow. 31st January 2008 7th March 2008 31st January 2008 Pro rata: (173.00 ÷ 90 = £1.92)	There is no charge for the compilation, formatting and design of the newsletters and it is just the printing itself that is charged for. Post room invoices are disbursements (disbursements will be referred to below in various responses) as per Parkgate Aspen's management contract. The caretaker has a fax machine which could not be used on a regular basis to produce 90 copies	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
			of relevant correspondence. Newsletters are well received and appreciated by most residents and are a useful tool for providing information and keeping residents up to date with developments in the building.	
		PEST CONTROL: CANNON, EUROGUARD and INTEGRATED. There is no pest problem in the building common parts; unnecessary; not in lease; disallow in whole (save for 1501, 1694)	Along with any other building in central London, pest control must be preventative rather than reactive. This is even more the case in a building such as Trinity Court which backs on to a park.	Allow in full save where sole responsibility of a lessee.
1092	£267.82	20th June 2008 Cannon		
1102	£270.83	1st July 2008 Cannon		
1155	£270.83	6th October 2008 Cannon		
1156	£?	3rd October 2008 Euroguard job description		

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		unreadable £; amount unreadable		
1251	£265.06	1st January 2009 Cannon		
1293	£273.00	1st April 2009 Cannon		
1348	£273.00	9th July 2009 Cannon		
1410	£273.00	5th October 2009 Cannon		
1412	£120.75	TC Flat 15; allow in part		
1501	£278.93	1st January 2010 Cannon		
1580	£287.32	1st April 2010 Cannon		
1638	£287.32	1st July 2010 Cannon		
1691	£287.32	1st July 2010 Cannon [duplicate]		
1692	£287.32	1st October 2010 Cannon		
1694	£117.50	IPD TC8?; allow in part (two visits; c.f.		
1747	£176.25	Camden Council £103.00 for three visits)		
1793	£180.00	IPD contract		
Total:	£3,628.93	IPD contract		
		Pro rata: £3,628.93 ÷ 90 = £40.32		

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		POSTROOM Production and distribution of TC newsletters, a.g.m. notices, and the like, for distribution to leaseholders; should be in management fee; please use e-mail to distribute, and distribute by hand through Paul (pp.673-4 (VRS paras 69-70); disallow	Disbursements are as per comments above. The caretaker circulates letters by hand where time permits but certain correspondence such as Section 20 Notices must be posted to all absentee landlords.	Allow in full
1015	£17.86	8th March 2008		
1016	£35.72	10th March 2008		
1029	£5.07	18th April 2008		
1043	£9.40	30th April 2008		
1067	£23.68	21st May 2008		

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
1107	£8.43	14th July 2008		
1108	£8.46	18th July 2008		
1154	£33.84	29th September 2008		
1196	£99.36	15th December 2008		
1253	£24.82	8th January 2009		
1266	£8.56	5th February 2009		
1337	£22.56	11th June 2009		
1366	£20.40	23rd July 2009		
1416	£16.56	13th October 2009		
1443	£16.93	20th November 2009		
1504	£208.66	4th January 2010		
1508	£7.82	14th January 2010		
1563	£25.38	18th March 2010		
1586	£23.15	9th April 2010		
1588	£82.72	8th April 2010		
1601	£75.18	28th April 2010		

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
1605	£28.20	4th May 2010		
1666	£8.46	11th August 2010		
1687	£14.92	16th September 2010		
1738	£145.46	17th December 2010		
1798	£25.92	15th March 2011		
allow	-£100.00			
Total:	<u>£897.52</u>	Pro rata: £897.52 ÷ 90 = £9.97		
		PROPERTY DEBT COLLECTION LIMITED (service charge debt collectors) unnecessary expense; not in my lease; does not enhance my comfort or convenience; disallow; conceded by PA]DW] at LVT hearing	Applicants reply: this matter has been conceded already.	Conceded by Applicant
1289	£146.88	26th March 2009		
1319	£146.88	19th May 2009		

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
1320	£146.88	19th May 2009		
1321	£146.88	19th May 2009		
1322	£146.88	19th May 2009		
1323	£146.88	19th May 2009		
1324	£146.88	19th May 2009		
1334	£150.00	8th June 2009		
1353	£150.00	5th July 2009		
1385	£150.00	20th August 2009	Respondent's comment:	
Total:	£1,488.16	Pro rata: £1,488 ÷ 90 = £16.53	Conceded: see under Teacher Stern	
		ST GILES (Directors' liability insurance); insurance find for 2008, 2009, 2010; disallow all as outside scope of lease (buildings insurance)	Refer to points 26 and 27 in the LVT's determination of the case relating to 50 Trinity Court (Case Ref: LON/00AG/LSC/2009/0748) from 2009 when this point was raised. The LVT panel in that case	See under specific items
1001	£256.44			
1037	£945.00			

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
1311 1598	£945.00 £735.00		agreed that this head of expenditure fell within the overall cost of management and recoverable under the terms of the lease and that the leaseholders were contractually required to pay a service charge contribution in relation to this. In addition the whole concept of Right To Manage Companies was not in existence when the Lease was drafted. As a result Directors' Liability Insurance is not referred to directly in the Lease	
		STERLING (window cleaning) should be within caretaker's duties; service unnecessary, and/or too frequent; p.877; disallow	The external cleaning of the windows is beyond the caretaker's duties and, according to H&S	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		in whole	rules is not permitted in line with regulations regarding working at height. He does not have a second person to hold the ladder, is not trained nor insured to do this work.	
1007	£185.65	20th February 2008		
1044	£185.65	30th April 2008		
1101	£185.65	16th June 2008		
1132	£185.65	27th August 2008		
1169	£185.65	31st October 2008		
1202	£181.70	31st December 2008		
1202A	£181.70	31st December 2008 duplicate		
1275	£181.70	28th February 2009		
1308	£181.70	30th April 2009		
1347	£181.70	30th June 2009		
1390	£181.70	31st August 2009		
1430	£181.70	30th October 2009		
1529	£185.65	30th January 2010		
1577	£185.65	30th March 2010		

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
1616 1658 1690 1691 1692 1716 1771 Total:	£185.65 £185.65 £185.65 287.32 287.32 £185.65 £189.60 £3,796.89	30th May 2010 30th July 2010 30th September 2010 1st October 2010 1st October 2010 23rd December 2010 28th January 2011 Pro rata: (£3,796.89 ÷ 90 = £42.19)		
Interior common parts painting works overspend	£2,021.00 + £84,186.00 + £19,145.00 £105,352.00 -£80,473.24 £24,879.76	Interior common parts repainting major works accounted for as at left per accounts 2008, 2010 and 2011 (*see* accounts pp.101-3 (2008), 106-8 (2010), 111-3 (2011), and account spreadsheet item "major works – expenditure in period"; pp.602-648 (May w.s. and exh., and May spreadsheet), VRS para. 22(3), (7), 28, 30, 32,	What is being challenged and why? We are unable to follow your calculations.	No overspend identified. No determination possible.

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		37-40, 77, 105-10); allow Pavehall plc contract price £70,948.24 + £525.00 insurance + reas. fees (*c.*£9,000.00) = £80,473.24; disallow remainder: £105,352.00 - £80,473.24 = £24,879.76;		
		ALSO objection to scope in painting over white corridor and stairwell upper walls and ceilings light brown, instead of repainting as white – Respondents' claim cost of repainting white, and additional electricity usage with uprated light bulbs (*see* p.687 (VRS paras 139-141) and exhibits); cost t.b.a.	Prior to the major works there were different lining papers in poor condition covering cracked and defective plaster. This was all removed and, where necessary, the walls were skimmed/re-plastered. Thereafter, the walls were painted. Reference to the plaster work and builders work was made in the Section 20 consultation Notice.	Scope in painting not within jurisdiction of the Tribunal.

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
eserve fund or sinking fund	£81,502.00 + £110,000.00 + £109,890.00 £301,392.00 - £80,473.24 £220,918.76	There is no contractual provision in the leases, or statutory provision, for maintenance of a reserve fund or sinking fund, let alone authority for such a fund to collect (as now) 5+ years in advance of major works. All funds collected to date which should be held in excess of the next immediate major works project approved by the LTA s.20 process must be returned to leaseholders (*see* leases pp. 13, 37; accounts pp.101-3 (2008), 106-8 (2010), 111-3 (2011), and account spreadsheet item "reserve for major works"; VRS w.s.	This was agreed by the LVT in the previous case (ref no. above) in points 20 and 21 of the determination. Please refer to clause 2.2 (b) v) in both respective Leases which provides for the collection of funds for "works of a periodically recurring nature" and for "sums of money by way of reasonable provision for anticipated expenditure".	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		pp.681-2 (paras 111-7)): unauthorised reserve funds held at present: £220,918.76 pro rata: £220,918.76 ÷ 90 = £2,454.65		
Service costs account shortfall (invoices 1001 to 1806)	£111,514.00 + £137,057.00 + £119,252.00 £367,823.00 - £ t.b.a (1) £ t.b.a (2)	There is no contractual or statutory authority for the difference or shortfall ("£ t.b.a. (2)") between the amount (1) accounted for as levied or collected for service costs (*see* leases pp. 13, 37; accounts pp.100-2 (2008), 105-7 (2010), 110-2 (2011), account spreadsheet item "total service costs"): £111,514.00 (2008) + £137,057.00 (2010) + £119,252.00 = £367,823.00, and (2) the amount total from the disclosed invoices pp.1001 to 1806 ("£ t.b.a. (1)"), to be levied or retained by the managing agents. This shortfall ("£ t.b.a.	We are unable to follow your calculations and cannot see a specific challenge. There was no service charge excess charged relating to the accounts for the years ending 2008 and 2011 while for the accounts for the year ending 2010 there was an excess of just £24.62 per flat. We do not understand your comments as the excess's prior to the RTM	No shortfall identified. No determination possible.

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		(2)") must therefore be returned or re-credited to the leaseholders. Pro rata: "£ t.b.a. (2)" ÷ 90 = £ t.b.a. (3)	Company were huge.	

SECTION 2 : ACCOUNT SUMMARY ITEMS

See account spreadsheet, and invoice index list sorted by category.

The following account entry totals are abnormally high and require explanation otherwise to be disallowed to the extent of the abnormal rise.

1. For the avoidance of doubt, the Respondents acknowledge that there might be legitimate explanations for the irregularities referred to in this section, but those irregularities have not as yet (despite requests) been explained by the Applicants.
2. These account summaries are subject to specific invoice challenges under the "Individual Items" category.
3. With the queries allowing for the uneven lengths for accounting years.

2010	£1,684.00	Porterage – Electricity; disallow £600.00	On what basis are you disallowing	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
			£600? This level of expenditure relates to 15 months electricity. As clearly indicated these accounts were for 15 months rather than the usual 12 months as the financial year end of the block was moved. Therefore the levels of expenditure were higher across the board in the 2010 accounts.	
2010	£1,177.00	Porterage – Telephone and internet; disallow £400.00	On what basis are you disallowing £400? These disallowances are arbitrary and without scientific basis. See comments above.	Allow in full
2010	£2,852.00	Cleaning – materials; disallow £1,000.00	On what basis are you disallowing £1,000? See comments above.	Delete (Estimate)
2010	£2,852.00	Cleaning – materials; disallow £1,300.00	On what basis are you disallowing	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
			£1,000? See comments above.	
2008	£1,110.00	Cleaning – windows; disallow £600.00	On what basis are you disallowing £600? See comments above.	Allow in full
2010	£1,280.00	Cleaning – windows; disallow £600.00	As above	Allow in full
2011	£1,122.00	Cleaning – windows; disallow £600.00	As above	Allow in full
2008	£6,068.00	Electricity to common parts and lifts; disallow £3,000.00	On what basis are you disallowing £3,000? See comments above.	Allow in full
2011	£2,929.00	Electricity to common parts and lifts; disallow £1,000.00	On what basis are you disallowing £1,000? See comments above.	Allow in full
2008	£864.00	Insurance – directors' & officers' liability; disallow in whole £864.00	See comments provided above regarding directors and officers liability insurance.	No jurisdiction. Dealt with by previous Tribunal in 2010.
2010	£945.00	Insurance – directors' & officers' liability; disallow in whole £945.00	As above	Disallow
2011	£993.00	Insurance – directors' & officers' liability; disallow in whole £993.00	As above	Disallow

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
2010	£2,820.00	Lifts – maintenance contracts; disallow £1,600.00	On what basis are you disallowing £1,600? See comments above.	Allow in full
2011	£3,476.00	Lifts – maintenance contracts; disallow £2,000.00	As above	Allow in full
2008	£5,981.00	Lifts – repairs; disallow £4,000.00	As above. However if this applies to the lift repairs following an accident we can confirm the block's engineering insurance paid out on this item. See comments in determination on previous LVT case under points 16-18.	Allow in full
2008	£2,925.00	Lifts – repairs; disallow £1,400.00	As above	Allow in full
2010	£4,267.00	Repairs and maintenance – plumbing; disallow £2,500.00	On what scientific basis are you disallowing £2,500? See comments above.	Allow in full
2011	£4,598.00	Repairs and maintenance – drains, stacks and gullies; disallow £2,000.00	As above	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
2008	£4,759.00	Repairs and maintenance – electrical; disallow £1,600.00	As above	Allow in full
2010	£4,687.00	Repairs and maintenance – electrical; disallow £1,500.00	As above	Allow in full
2011	£4,166.00	Repairs and maintenance – electrical; disallow £1,100.00	As above	Allow in full
2010	£3,702.00	Repairs and maintenance – water damage; disallow £2,000.00	As above	Allow in full
2011	£2,757.00	Repairs and maintenance – water damage; disallow £1,000.00	As above	Allow in full
2008	£3,246.00	Repairs and maintenance – doors and locks; disallow £2,000.00	As above	Allow in full
2011	£2,591.00	Repairs and maintenance – other; disallow £1,000.00	As above	Allow in full
2010	£1,060.00	Fire security; disallow £400.00	As above	Allow in full
2008	£1,260.00	Pest control; disallow all £1,260.00	Your comments seem to indicate that there should be no pest control at all in the building. Comments	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
			provided above re pest control and bearing in mind its location backing onto park land this would lead to serious problems in the building.	
2010	£1,806.00	Pest control; disallow all £1,806.00	As above	Allow in full
2011	£1,118.00	Pest control; disallow all £1,118.00	As above	Allow in full
2008	£4,689.00	TV aerial; disallow all £3,500.00	The deduction seems entirely arbitrary. There was a contract with Ward Aerials when Parkgate Aspen took over management of the building and this cost may relate to that. This contract was subsequently cancelled as can be seen as the cost of the maintenance of the system fell substantially over	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
			the period of these 3 accounts.	
2010	£3,132.00	TV aerial; disallow all £2,000.00	As above	Allow in full
2008	£2,961.00	Asbestos management; disallow all £2,961.00	Why? We cannot disregard asbestos related H&S rules nor the Control of Asbestos Regulations. Asbestos management is required in a block such as this where asbestos is present. This is typical of many old buildings as the construction of buildings at that time frequently made use of asbestos materials.	Allow in full
2010	£2,588.00	Asbestos management; disallow all £2,588.00	As above	Allow in full
2011	£1,322.00	Asbestos management; disallow all £1,322.00	As above	Allow in full
2008	£1,527.00	Water treatment; disallow £1,527.00	Why? You seem to suggest there should be no water treatment at all.	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
			Water treatment is required to keep the tanks and the water supplied from them safe for use in the flats.	
2008	£5,517.00	Legal and professional; disallow £4,000.00	On what scientific basis are you disallowing £4,000? See comments above.	£4727.25 conceded – not a service charge item. Remainder allow in full.
2010	£4,145.00	Legal and professional; disallow £2,500.00	As above	Allow in full
2011	£7,866.00	Legal and professional; disallow £6,000.00	As above	Allow in full
2008	£21,766.00	Management fees; disallow £13,000.00	Please refer to the previous LVT case mentioned above and the comments made in the LVT's decision in points 22-25 when the Tribunal found the management fees to be reasonable and were allowed in full.	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
2010	£24,275.00	Management fees; disallow £13,000.00	As above	Allow in full
2011	£20,006.00	Management fees; disallow £12,000.00	As above	Allow in full
2010	£137,057.00	Reserve for major works; disallow all £137,057.00	See comments provided above re reserve fund collection.	Allow in full
2011	£119,890.00	Reserve for major works; disallow all £119,890.00	As above	Allow in full

SECTION 3 : INDIVIDUAL ITEMS

(In addition to those collectivised under "Collective Items")

1001	£269.26	St Giles Insurance directors & officers liability; outside lease; disallow whole £269.26	Previously commented on above.	
1004	£100.00	killkwik newsletters; order date: 31.01.2008!; £100.00 is too much; not in my lease; does not enhance my comfort or convenience; disallow	Item of newsletters commented on above	Allow in full
1011	£481.75	Monarch; *see* LV rpt; excessive for inspection visit; disallow 50%; allow £240.87	This was for the Health and Safety Report and Fire Risk Assessment	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
			carried out. This cost is not excessive.	
1012	£1,367.99	St Giles; mandate; words do not mach numbers; match to invoice; further information needed	£1367.99 relates to the monthly instalment for the buildings insurance which was paid by standing order. The amount in words was indeed incorrect but was in any event irrelevant	Allow in full
1015	£17.86	Postroom; should be in management fee; use e-mail; not in my lease; disallow	Disbursements as mentioned above.	Allow in full
1016	£35.72	Postroom; disallow; see above 1015	Disbursements as mentioned above	Allow in full
1028	£705.00	BVP; check note: credit back further information	As stated, this was BVP's invoice relating to their involvement with the first round of repair and redecoration.	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
1034	£845.30	BPS; *see* LV rpt; time excessive for light bulb replacement; would be less if stock kept at TC; disallow £125.30; allow £720.00	Nearly £600 of this invoice was for parts including 5 sets of emergency control gears and 5 lamps. The remaining cost was for the labour which is a reasonable cost.	Allow in full
1037	£945.00	St Giles Insurance directors & officers liability; outside lease; disallow whole £945.00	As previously commented above.	Disallow
1047	£88.10	kallkwik; disallow; what is it?; embossed writing paper as was used to send out first accounts; extravagant; should be in management fee; not adding to my comfort or convenience	There was no "embossed writing paper" and sending out the accounts is a requirement and no an extravagance.	Allow in full
1048	£2,961.00	Transthermal; purported asbestos management; unnecessary service; PA have failed to supply hard copy papers; no legal requirement for this; pp.920-8; disallow whole £2,961.00	Under the Control of Asbestos Regulations there is a requirement to manage the asbestos on site.	Allow in full
1060	£158.63	Mac; *see* LV rpt; excessive for one callout;	This was an out of hours	Challenge withdrawn

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		disallow £68.63; allow £90.00	emergency call-out on Saturday 3rd May 2008 to deal with the faulty entry phone system which affected every flat	
1063	£562.83	IDCC; heater unit: £65; overcharged; *see* LV rpt; unnamed flat; no heating in communal parts; disallow £473.83; allow elect. Repairs £89.00	This work related to the porter's flat.	Allow in full
1071-2	£514.68	dmg Delta; is this for the water heater overflow?; leaseholder responsibility?; *see* LV rpt; excessive time: 7 hrs, allow as 3 hrs; disallow £394.68; allow £120.00	This was recovered under a building insurance claim	Not on service charge account.
1073	£70.50	F&D; flat interior work; leaseholder responsibility; disallow whole £70.50	Historically there has been a number of areas in the building affected by damp. These have frequently been caused by cracked or failed external render, leaking	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
			pipes and other areas which form part of the external common parts. Until these are all checked it would be impossible to determine the cause of damp and it is this checking that this invoice relates to.	
1074	£281.75	service charge apportioned; explain or disallow	This is not an invoice. This is an internal enquiry document from our accounts department and has no bearing on costs incurred.	Not an invoice
1076	£146.88	Pipeline; *see* LV rpt; disallow 50%; allow £73.44	This was a reasonable cost to spend time checking the roof area for leaks	Challenge withdrawn
1077	£940.00	F&D; TC59; should be covered by insurance	Recovered under a building insurance claim	Not a service charge item
1078	£1104.50	F&D; TC49; should be covered by insurance;	Recovered under a building	Not a service charge

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		same job as 1077	insurance claim	item
1079	£487.63	F&D; TC29; did this need to be done?; disallow	Recovered under a building insurance claim	Not a service charge item
1082	£205.63	F&D; should be covered by insurance	Insurers do not cover maintenance works and would have only covered resultant damage. This was clearly maintenance work.	Allow in full
1087	£540.50	F&D; atrium doormat; *see* LV rpt; £30/sq.m x 4 sq.m = £120.00;change mat in atrium; 2m x 1m mat costs £70; disallow £300.00; allow £240.50	The old door mat was removed and disposed of. A new one was made to measure and then delivered to site. We see the cost as reasonable.	£240.50 conceded by Applicant.
1090	£377.98	BPS; *see* LV rpt; poor documentation; duplicate; changing light bulbs – Paul could do this job; disallow £204.80; allow control gear £173.18	See previous comments re lighting on site.	Allow in full
1092	£267.82	Cannon date unclear contract; disallow £267.82	Canon was the pest control company who managed the pest	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
			control at Trinity Court.	
1099	£493.50	Mac; expensive "periodic" test; require info.	The periodic test is required to ensure the electricity cables, fuses, switches etc in the common parts are safe	Challenge withdrawn
1100	£133.37	BPS; *see* LV rpt; should take 30 mins max. time for task; disallow £88.37; allow £45.00	See previous comments re lighting on site	Allow in full
1113	£1,035.06	BPS; poor documentation; overpriced unit; *see* LV rpt #89; disallow £735.06; allow £30 per unit x 10 = £300.00	This was a reasonable cost to supply 10 sets of control gears for these old lights for which parts are difficult to source	Allow in full
1114	£252.63	HCL Safety; *see* LV rpt; disallow 50%; allow £126.31	HCL carry out the testing of the eye bolts used by the window cleaners and other contractors who may require them. Cost is reasonable	Challenge withdrawn
1118	£514.05	MAC; for what?; estimate where?; disallow	This related to remedial work	Challenge withdrawn

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		50%; allow £257.03	following the periodic inspection of the common parts electrics. The cost was reasonable	
1120	£45.00	C&C; service unnecessary; part of management	This cost relates to the supply of the caretaker's mobile	Challenge withdrawn
1121	£1.236.04	Crown; this is payable by the carpet layers' insurance; disallow whole £1,236.04	Comments previously supplied re lift incident.	Allow in full
1122	£1,130.68	Crown; *see* 1121 *ante*	As above.	Allow in full
1124	£12.78	petty cash; disallow; should be within management fees	As stated on the voucher, this related to a "lift out of order" mail out which would obviously have to be sent by courier for immediate delivery rather than relying on the post	Challenge withdrawn
1126	£187.69	BPS; see LV rpt #101; insufficient documentation; disallow 50%; allow £93.85	See previous comments re lighting.	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
1128	£1,820.00	Best; TC39; insurance or leaseholder should pay; disallow whole £1,820.00	This was recovered under a building insurance claim	Not a service charge item
1131	£55.00	EA Electrics; *see* LV rpt; disallow	This is a reasonable cost for works as detailed on the invoice	Challenge withdrawn
1134	£70.50	F&D; insurance payment?	This was a reasonable cost to trace and access a leak	Allow in full
1138	£133.37	BPS; *see* LV rpt; disallow £88.37; allow £45.00	See previous comments re lighting.	Allow in full
1139	£133.37	BPS; paid twice; disallow one £133.37	We do not believe any invoice was paid twice.	Allow in full
1140	£211.50	broken window; window boarded up; not required; disallow 50%; allow £105.75	We do not think it would be reasonable to leave the window un-boarded prior to repairs to being carried out.	Challenge withdrawn
1141	£680.00	memo Best Insurance; insufficient documentation; further info.; disallow	This formed part of a claim under the building insurance	Any part not recovered under building claim

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
				allowed in full.
1143	£1.452.35	Crown repair after accident; insurance paid; disallow in whole £1,452.35	As you have stated, the insurance paid. Therefore what is the query?	Any part not recovered under building insurance claim allowed in full.
1144	£2,705.61	Carpet City; is this 1st floor landing carpet (12sq.m)?: unnecessary and excessive; *see* expenditure doc.; disallow in whole £2,705.61	This invoice relates to the cost of carpet supplied to the stairwells soon after Parkgate Aspen took over management of the building. It was required to deal with the trip hazards which existed on the stairwells at the time. This was a cost for supplying and fitting carpet to two stairwells of nine floors each. We believe the cost was reasonable.	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
1145	£855.00 £784.32	Crown Lifts; further repairs after accident; this is a quotation, not a payment; disallow if claimed	This is a quote.	Allow in full
1146	£3,082.50 £2770.80 £602.16 £3,450.00	continued; this is a quotation, not a payment; insurance paid? ; disallow if claimed	As above.	Not a service charge item
1148	£423 00	TLC; this is payable by the carpet layers' public liability insurance; p.700J (VRS paras 248-9); disallow whole £423.00	Reasonable cost of lift consultants to check cause of accident and issue follow up report.	Allow in full
1149	£219.00	DJ Best; see 1141; insufficient info.	This formed part of a building insurance claim less the excess which was a service charge cost	Allow in full
1150	£133.37	BPS; *see* LV rpt; disallow £88.37; allow £45.00	This was a reasonable cost to attend and repair a faulty light	Allow in full
1151	£5,426.04	Crown (the start of payment for above quote); carpet layer's insurance should pay; p.700J	As previously dealt with re lift incident. To confirm, however, the	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		(VRS paras 248-9); disallow in whole £5,426.04	accident was not the fault of the carpet fitters and therefore the block's' engineering policy paid. Had it been caused by the carpet fitters they may not have paid out.	
1152	£5,426.04	Crown; duplicate; disallow whole £5,426.04	This was not paid twice.	Deleted
1153	£13.11	postage disallowed send by e-mail take from management fees use second class mail	Postage is a reasonable disbursement.	Challenge withdrawn
1158	£211.50	Pipeline; duplicates 1157; paid twice; disallow	This was paid once not twice as per page 129 of our original bundle.	Allow in full
1161	£204.63	BPS; *see* LV rpt; disallow 30% £64.63; allow £140.00	This was a reasonable cost to attend and repair a faulty light	Allow in full
1163	£133.37	BPS; *see* LV rpt; disallow £88.37; allow £45.00	As above	Allow in full
1166	£329.00	Pipeline; this seems to be for fixing an earlier job on Flat 81; pipes done by F&D	Invoice relates to repairs required to communal pipes around flat 81. Costs are reasonable and do not	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
			relate to "an earlier job"	
1167	£133.37	BPS; *see* LV rpt; excessive time (2 hrs instead of 30 mins); disallow £88.37; allow £45.00	As per previous comments relating to BPS	Allow in full
1171	£133.37	BPS; *see* LV rpt; disallow £73.37; allow £60.00	As per previous comments relating to BPS	Allow in full
1174	£8,193.07	Crown Lifts; paid by insurance; disallow	Previously explained re lift accident.	Allow in full
1175	£44.65	Coyle; unspecified "general labourer, 4 hrs"; Paul's work; disallow in whole £44.65	Coyle Personnel supplied a relief caretaker during Paul's absence	Challenge withdrawn
1177	£246.07	Peninsula; H&S service; pro rate amongst PA properties [*see* 1278] [*see* 1442]; disallow 95%; allow £12.30	Peninsula provide H&S advice, advise on staffing issues, and other legal advice for the running of the building. Parkgate Aspen have access 365 days per year if required and we view the cost as reasonable.	Allow in full
1178	£2,000.00	PA [DW] memo; re: IDCC repairs; require info.,	The full cost of the IDCC invoices	Any part not covered

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		and invoice, otherwise disallow	were covered by the block's insurance company. IDCC dealt with a large leak out of normal working hours and then had to return to the block on 7 separate occasions until all the damaged flats were repaired.	by insurance allowed in full
1181	£446.50	Coyle; unspecified "general labourer, 40 hrs"; Paul's work; disallow in whole £446.50	Coyle provided relief staff in Paul's absence	Allow in full
1184	£390.00	memo Bloomsbury Property Services (property managers); leaseholder's responsibility; document cost; disallow in whole £390.00	This would not have been the leaseholder's responsibility. Cost was covered by insurance.	Any part not covered by insurance allowed in full
1187	£273.13	Coyle; unspecified "general labourer, 4 hrs"; Paul's work; disallow in whole £273.13	See comments above re Coyle	Allow in full
1190	£847.21	BPS; *see* LV rpt; should keep spares on site; disallow £139.21; allow £708.00	As can be seen from the invoice narrative, new stock of spare parts	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
			was required and which would have been payable whenever purchased. In this case, around £600 related to parts while the balance was reasonable labour costs	
1192	£355.01	Leafgreen Christmas tree; disallow; unnecessary; too expensive; T.C.R.A. had offered to put one up for free; not in my lease; did not add to my comfort or convenience; disallow whole £355.01	We were not aware of any offer for the unofficial Residents Assoc. to erect a Christmas tree. The tree was well received by the majority of residents, no complaints were received and the matter was discussed and agreed in advance with the directors of the RTM company in any event.	Conceded by Applicant
1193	£355.01	Leafgreen; duplicates 1192; paid twice; disallow	We do not believe it was paid twice.	Deleted

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
1197	£132.25	F&D; leak in toilet; flat owner should pay	This invoice related to tracing and finding the leaking pipe which eventually was found to be located on hidden pipe work located behind fixed wall panels. The owner could not have reasonably been expected to check these pipes on a regular basis and therefore service charges paid these costs	Allow in full
1258	£3.429.68	IDCC; memo ?; more info.; insurance paid	See comments above re IDCC work.	Challenge withdrawn
1261	£270.03	BPS; *see* LV rpt; disallow £85.03; allow £185.00	See previous comments re BPS	Allow in full
1272	£101.59	F&D; flat owner should pay	This was covered by a building insurance claim	Any part not covered by insurance allow in full
1273	£481.75	Monarch; invoiced twice 1274; disallow £481.75	This was not paid twice.	Deleted

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
1274	£471.50	Monarch; *see* LV rpt; vagueness; no detail; disallow £50%; allow £235.75	Monarch carry out the H&S Survey and Fire Risk Assessment in the building as mentioned above. Cost is reasonable.	Allow in full
1280	£138.00	To hours to find a leak; flat owner should pay; disallow 50%; allow £69.00	Reasonable trace and access cost to find a leak.	Allow in full
1283	£207.00	Pipeline; water leak; flat owner should pay; disallow whole £207.00	Invoice relates to clearing of gullies and down pipes where required. Comment on invoice relating to water cylinder on balcony were not connected to cost of labour incurred.	Allow in full
1284	£370.62	BPS; heater in Paul's flat; replacement too expensive; disallow £220.62; allow £150.00	The cost was reasonable for supplying and fitting a new heater in the caretaker's flat.	Allow in full
1288	£299.00	F&D; for what ?; disallow	On what basis is this disallowed?	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
			With multiple flats effected by low water pressure it must be regarded as a communal problem.	
1290	£180.00	Wheeler; painting cupboard; flat owner or insurance should pay	Damage was caused by leaking pipe. Would not have been worth claiming for just £80 over the insurance excess	
1294	£172.50	Command; avoidable if entryphone replaced earlier; service unnecessary; disallow	The entry phone was replaced in conjunction with the second phase of the internal redecorations in order to minimise disruption and therefore any repairs required were carried out as and when needed.	Allow in full
1300	£749.80	CD Associates; *see* LV rpt; survey unnecessary when tender imminent; disallow all £749.80	CD Associates are mechanical service engineers and were employed to examine the	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
			possibility of carrying out various electrical works prior to the internal works going ahead. They had nothing to do with the tender for the internal works as the electrical works would have been separate in any event.	
1304	£164.00	leak in bath panel; *see* LV rpt; leaseholder should pay; disallow in whole £164.00	This formed part of a building insurance claim	Allow in full
1305	£2,587.50	Transthermal; asbestos management; no legal need; unnecessary service; pp.920-8; disallow £2,587.50	See previous comments re asbestos management.	Allow in full
1313	£257.09	MAC; job not done; *see* LV rpt; disallow whole job £257.09	This invoice relates to a trial cable pull as specified and in conjunction with CD Associates' report as mentioned above	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
1315	£172.50	Command; service unnecessary; entryphone should have been replaced earlier; disallow whole £172.50	See previous comment re entry phone.	Allow in full
1316	£822.25	F&D; TC9; *see* LV rpt; insurance or flat owner responsibility; disallow 50%; allow £406.12	This was recovered under a building insurance claim, less the excess	Any part not covered by insurance allow in full
1325	£130.53	BPS; *see* LV rpt; disallow £85.53; allow £45.00	See previous comments re BPS	Allow in full
1326	£224.25	Command; service unnecessary; *see* 1326; disallow in whole £224.25	No paperwork therefore unclear what this is for.	Allow in full
1329	£92.00	Pipeline; hot water cylinder repair; flat owner should pay	The cost of the callout was recharged to the tenant and does not form a service charge cost.	Not a service charge item
1330	£69.00	F&D; inspect flat for condensation; leaseholder's responsibility; disallow in whole £69.00	See earlier comments re investigation of damp problems in and around the building	Allow in full
1331	£69.00	F&D leak; one of several leaks involved in leak;	Reasonable cost and below	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		covered by insurance	insurance excess in any event.	
1339	£322.00	IPD balcony cleanup and bird net; flat owner should pay; disallow whole £322.00	It is unclear whose demise the balconies are and when external works are carried out they will be included in the scope of works. Therefore these works were paid for by service charges.	Allow in full
1341	£146.05	Garson; statutory declaration for what ?; ; statutory set swear fee is £8.00; should be within management fees; disallow £138.05	Garsons Law were employed to advise on a matter of legal paperwork with Freshwater (freeholders of the building). Cost is reasonable.	Allow in full
1342	£3,128.00	account papers should be partially prepared in-house before being sent to accountants; disallow in part; deduct £1,500.00	The cost is reasonable for specialist service charge accountants to prepare the audited accounts and included in the cost is the	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
			attendance at the AGM each year.	
1345	£517.50	F&D; TC46; repairs for breaking down door; unauthorised entry; disallow whole £517.50	Both the caretaker and the resident's cleaner were under the impression that an accident had occurred and for this reason the front door was not being answered. Therefore police were asked to attend and gain entry.	Allow in full
1346	£32.40	petty cash; 1st class stamps; disallow; use 2nd class; should be in management fee; disallow whole £32.40	The LVT stated at the last hearing that they were not going to discuss matters as "petty" as the issue of 1st or 2nd class stamps.	Allow in full
1350	£264.50	RTM tax return; why does RTM pay tax?	The RTM does not pay tax but as limited company they must still file accounts at Companies House.	Disallow. RTM company matter
1351	£97.75	Command; service unnecessary; *see* 1315;	Reasonable cost to fix faulty door	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		disallow in whole £97.75	entry system	
1352	£247.25	HCL Safety; *see* LV rpt; disallow 50%; allow £123.62	See previous comments re HCL.	Challenge withdrawn
1354	£161.00	F&D leak; insurance or flat owner; 'the owner of the flat said she would do the work herself and send you the invoice': Flat 39; disallow whole	Reasonable cost for tracing and finding leak, removing panel and isolating the leak	Allow in full
1357	£106.00	TC39; memo insufficient documentation; disallow whole £106.00	Payment was to leaseholder's own plumbers who were called out to trace and access a leak	Allow in full
1360	£130.53	BPS; *see* LV rpt; disallow £85.53; allow £45.00	See previous comments re BPS	Allow in full
1361	£628.42	BPS; *see* LV rpt; cf. 1373; excessive time; cf. 1373; disallow 50%; allow £314.21	As above	Allow in full
1362	£586.50	F&D; TC9; *see* LV rpt; insurance or flat owner responsibility; disallow 50%; allow £293.25	£486 was re-imbursed under a building insurance claim (less £100 excess)	Any part not covered by insurance allow in full
1363	£678.50	F&D; TC9; *see* LV rpt; *see* 1362; two rooms in	£578.50 was re-imbursed under a	Any part not covered

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		one flat; insurance or flat owner responsibility; disallow 50%; allow £339.25	building insurance claim (less £100 excess)	by insurance allow in full
1365	£33.20	stamps; Paul to deliver by hand; disallow £33.20	The Tribunal have already indicated they did not wish to discuss matters such as postage stamps. Certain correspondence such as Section 20 notices are always sent by post to all leaseholders.	Allow in full
1368	£108.82	29.07.2009 PA [DW] key money; *see* 1450	Key money is the reimbursement to Danny Weil for when he has spare keys cut for the block. He is the authorised person to do this at Banham Locks and therefore pays on his own credit card and is then	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
			reimbursed by the block. There is no charge made for this service and the cost of keys purchased by individual residents is the same cost as Banham's charge.	
1377	£126.50	F&D; 11.08.2009 refers to them putting right a job they did on 26.06.2009; see 1335, £517.50, on Flat 46 after Paul had the Police break the door down; disallow second visit	Damage was not caused by owner and cost was reasonable to restore flat to previous condition	Allow in full
1379	£389.02	BPS; *see* LV rpt; £90 delivery fee; disallow £139.02; allow £250.00	See previous comments re BPS	Allow in full
1381	£23.00	Land Registry search fee; no reasons given; disallow whole £23.00	Land Registry information may be required when preparing a trial bundle for a case such as this or for use in tracking a non paying leaseholder.	Challenge withdrawn

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
1382	£477.25	F&D; found leak, but did not fix it; insurance; disallow 50%; allow £238.62	This formed part of a building insurance claim	Any part not covered by insurance allow in full
1383	£580.75	F&D; fixed leak; insurance should pay; same leak as in 1382; disallow 50%; allow £290.38	Pipe repairs are not covered until the building insurance policy	Challenge withdrawn
1388	£1,023.50	F&D; TC41; *see* LVT rpt; insurance should pay; disallow 50%; allow £511.75 if not insurance	This was recovered under a building insurance claim, less the excess	Any part not covered by insurance allow in full
1389	£138.00	F&D; same job as 1382, 1383; insurance should pay; disallow whole £138.00	This formed part of a building insurance claim	Any part not covered by insurance allow in full
1392	£224.25	Paul's (caretaker's) training day; why is there no invoice from whoever provided the service?	The training was organised for a large number of porters and they did not issue individual invoices for each person involved.	Challenge withdrawn
1396	£130.53	BPS; *see* LV rpt; job should take 30 minutes;	See previous comments re BPS	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		disallow £80.53; allow ££50.00		
1397	£169.97	08.09.2009 PA [DW] key money; *see* 1450	See previous comment re key money.	Allow in full
1398	£44.00	courier; disallow; Paul says nothing is delivered by courier, also insufficient documentation	Couriers were used when delivery was urgent (such as a memo re power outages, lift problems and so on) or if the item would be too large/fragile to send in the post.	Allow in full
1400	£368.00	F&D; TC9; flat interior work; leaseholder responsibility; leaking stopcock overhauled and refitted; disallow all £368.00	This was a mains stop cock to the building and therefore a service chargeable item	Allow in full
1402	£161.00	F&D; TC9; insurance for whole job; *see* 1400	Reasonable cost to check all possible sources of water ingress including under floor. Cause found to be failed damp proof course on external wall. See below	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
1403	£621.00	F&D; TC9; *see* 1400; disallow whole £621.00	Reasonable cost to repair and reinstate damp proof course on external wall to prevent water ingress in to flat 9 as per comment above	Allow in full
1404	£69.00	F&D; TC9; *see* 1400; disallow whole £69.00	The cost of the callout was recharged to the tenant and does not form a service charge cost.	Not a service charge item
1412	£120.75	Cannon; TC15; duplicates 1410?; allow in part?	We do not believe this is a duplicate.	Allow in full
1418	£521.75	MAC to instal a light in the lift motor room; excessive cost; *see* LV rpt; disallow in part	We do not believe the cost is excessive.	Allow in full
1424	£23.00	PA memo courier; disallow; for what?; no documentation; should be in management fees	Courier charges explained above.	Allow in full
1426	£90.28	BPS; same as 1396; *see* LV rpt; disallow £40.28; allow £50.00	See previous comments re BPS	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
1433	£483.00	TV callout; *see* LV rpt; not covered by expensive contract?; *see* also 1024, 1447	Cost is reasonable for fitting a 12 way multi switch and associated works. As stated above the contract was previously cancelled and repairs were carried out as and when required.	Allow in full
1437	£172.50	Command; service unnecessary; *see* 1315; disallow in whole £172.50	Reasonable cost to trace fault and repair door entry system	Allow in full
1442	£246.07	Peninsula; H&S service; pro rate amongst PA properties [*see* 1278] [*see* 11177]; disallow 95%; allow £12.30	See previous comments re Peninsula.	Allow in full
1445	£45.45	petty cash; disallow; postage; see above	See previous comments re petty cash.	Allow in full
1447	£92.00	TV aerial service; disallow; see 1433 above	See comments above re TV aerial.	Allow in full
1450	£255.00	02.12.2009 - these three are for Mr Weil's key	The keys were for residents and	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		money, i.e. money he has been paid after submitting memos that he bought front door keys and would like to be reimbursed; no invoices provided; if the keys are to sell to residents the money is then recouped; if they are to give to workers they should give them back when they have finished the job; *see also* 1368, 1397, 1648	credit card invoices were always supplied to the Accounts dept.	
1452	£207.00	TV aerial; disallow; see above	See previous comments re TV aerial.	Allow in full or Challenge withdrawn
1463	£644.00	F&D flat 77; unclear as to work done; insurance or flat owner responsibility; disallow all £644.00	Works required to mains cold water feed pipe to this flat	Allow in full
1465	£143.75	EA Electrics; *see* LV rpt; payable by leaseholder; or disallow £63.75, allow £80.00	This was re-charged to the leaseholder	Not a service charge item
1502	£887.57	clarify purpose of payment schedule, or disallow	This is the payment schedule for the caretaker's Council Tax.	Challenge withdrawn
1512	£146.88	Command; service unnecessary; *see* 1315;	If referring to TV aerial or entry	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		disallow in whole £146.88	phone, this has previously been addressed above.	
1513	£146.88	Command; service unnecessary; *see* 1315; disallow in whole £146.88	As above	Allow in full
1517	£52.00	memo to Duncan Lamberton for 'cost of AGM'; disallow; the only cost is the rent of a room in a pub - £8 in the *Calthorpe Arms*, which is the most convenient pub to Trinity Court	This related to costs incurred by Mr Lamberton in organising the AGM including the room hire.	Conceded by Applicant
1518	£246.75	Command; service unnecessary; *see* 1315; disallow in whole £246.75	As above re Command and Control and TV/entry phone system.	Allow in full
1520	£152.75	F&D; TC83; excessive to find but not fix leak; leaseholder expense; disallow	As a cost to trace and access the leak this seems reasonable bearing in mind the toilet pan and cistern had to be removed and re-fitted and as the cause of the leak was found to be a main cold water pipe	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
1524	£94.00	F&D; water cylinder overflow; flat owner should pay; disallow £94.00	Cost was re-charged to owner	Not a service charge item.
1525	£94.00	F&D; insurance?; as usual with F&D, no date of job; disallow 50%; allow £47.00	Trace and find cause of problem as mains cold water pipe entering flat	Allow in full
1526	£70.50	F&D; owner did not report a leak; disallow whole £70.50	See previous comments re damp ingress in building. Obviously the damp problem was reported by someone as otherwise F&D would have been unaware	Allow in full
1527	£70.50	F&D; *see* LV rpt; disallow	Problem with condensing pipe in caretaker's store room	Allow in full
1535	£122.20	F&D; *see* LV rpt; for one hour work max finding the source of a leak; excessive; disallow 50%; allow £61.20	Reasonable charge for attending site and inspecting roof area	Allow in full
1536	£916.50	F&D repairing 1535; *see* LV rpt; excessive; difficult to quantify as no mention of time spent	Reasonable cost for 2 visits to carry out work detailed on the invoice	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		or cost calculation; disallow 33%; allow £605.50		
1540	£798.00	jmw consultancy; for what?; disallow; insufficient documentation	Out of hours/weekend call-out to deal with emergency	Allow in full
1541	£133.37	BPS; *see* LV rpt; disallow £83.37; allow £50.00	See previous comments re BPS	Allow in full
1544	£453.44	Selwyn Ettienne; Flat 3 redecorating works; disallow; insurance or flat owner	There is an excess of £500 therefore could not be claimed.	Allow in full
1551	£378.67	BPS; TC1 – Paul's flat; *see* LV rpt; excessive charge; disallow 50%; allow £189.33	As per previous comments regarding replacement heater in caretaker's flat, we view this cost as reasonable	Allow in full
1554	£117.50	F&D; not an emergency – low water pressure; leaseholder responsibility; disallow £117.50	This was re-charged to the leaseholder	Recharged to leaseholder
1559	£752.00	F&D; TC7; insurance or leaseholder's responsibility; disallow whole	£652 was recovered under a building insurance claim (less £100 excess)	Any part not covered by insurance allow in full
1561	£58.75	AllClear; illegal removal of leaseholder's	The owner of flat 43, Mr	Challenge withdrawn

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		property; return property to leaseholder in TC43; in any event, allow £25; Camden Council will remove any three items for £25; no need to send a van from Hertfordshire	Stockinger, dumped a broken bookcase in the corridor of the building. He was written to on the 15th Feb 2010 and 25th Feb 2010 asking him to remove the item and that if it was not removed it would be disposed of. He did not remove it and so it was disposed of by All Clear, a clearance company who operate in the area.	but this cost should be borne by lessee.
1566	£47.00	memo; insufficient documentation; insurance	This was a partial re-imbursement for pipe repairs required as some of them related to communal pipes/gullies	Challenge withdrawn
1568A	£481.75	Monarch; paid twice; cf. 1273, 1274; disallow whole: £481.75	They were not paid twice. The amount of £481.75 was credited	Challenge withdrawn

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
			back to the block.	
1573	£30.35	TC39 "additional heating costs"; justify; leaseholder expense; disallow in whole £30.35	During the course of the internal redecorations an area above this flat's front door was left open and as a result the flat was very cold. The resident incurred additional heating costs in order to keep warm until repairs could be effected	Challenge withdrawn
1580	£287.32	01.04.10 Cannon; service unnecessary; disallow	Canon provided the pest control in the building and therefore the cost incurred was a service reasonably required.	Allow in full
1583	£329.00	F&D; TC80; insurance, or flat owner should pay	This amount is below the insurance which had been increased to £500 due to the volume of claims.	Allow in full
1584	£564.00	F&D; TC36; unblocking a pipe; excessive;	If large amounts of work were	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		disallow 50% £282.00, or leaseholder should pay	needed and the blockage was on communal pipes then the costs were reasonably incurred. However no paperwork provided.	
1588	£82.72	Postroom; AGM paperwork, i.e. photocopying?; excessive cost; should be in management fees; *see* 1015; disallow beyond basic copying cost; disallow £67.72; allow 5p x 4pgs x 90 = £15.00	Disbursements as previously explained.	Allow in full
1591	£350.00	Bloomsbury Ppty Svcs; TC68; memo; insufficient documentation; leaseholder should pay; disallow whole £350.00	This amount is below the insurance which had been increased to £500 due to the volume of claims	Allow in full
1596	£105.75	F&D; Flat 14; condensation; flat owner shld pay	See previous comments re damp investigation in building	Allow in full
1599	£1,321.88	Transthermal; unnecessary service; pp.920-8; disallow whole £1,321.88	See previous comments re asbestos management.	Allow in full
1600	£236.53	BPS; *see* LV rpt; lack of stock; disallow 66%	See previous comments re BPS	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		£156.11; allow £80.42		
1601	£75.18	Postroom; AGM cost again; hand deliver; colour print by Paul; *see* 1588; disallow £60.18; allow basic copying cost £15.00	Disbursements as previously explained.	Allow in full
1603	£100.45	BPS; *see* LV rpt; £8 units could be obtained for £3; could be done by Paul; disallow all £100.45	See previous comments re BPS	Allow in full
1605	£28.20	Postroom; more AGM costs; see 1601 and 1588; disallow; see previous	Disbursements as previously explained.	Allow in full
1606	£658.00	F&D; owner should pay; caused by renovations as documented on invoice; disallow all £380.00	The cost of the callout was recharged to the tenant and does not form a service charge cost.	Not a service charge item
1610	£380.00	NE services from CHINGFORD fixed wires for internal works; charged for 7.5 hrs work; surely this work should have been included in the quote for interior works see LV rpt; disallow 50%;	This work was not part of the internal redecorations and was carried out separately. The works were required as previously	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		allow £190.00	installed cable clips had been removed by an unknown party and had to be replaced.	
1611	£188.00	Command; service unnecessary; disallow	See previous comments re Command and Control.	Allow in full
1614	£92.24	BPS; *see* LV rpt; for changing light bulbs?; disallow 50%; allow £46.12	See previous comments re BPS	Allow in full
1620	£176.25	Command; service unnecessary; disallow	See previous comments re Command and Control.	Allow in full
1621	£176.25	Command; service unnecessary; disallow	As above	Allow in full
1622	£146.88	Command; service unnecessary; disallow	As above	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
1630	£3,678.92	Sol Unsdorfer for appearing at the first LVT; no authorised in lease; disallow whole £3,678.92	Like all other agents, Parkgate Aspen's management fee does not include "*Attendance at any Court or Tribunal hearing in connection with action involving the Clients/Property including briefings with solicitors and preparatory work*" which are classified as "Additional Duties" subject to separate fee. This would have entitled Parkgate to charge for the attendance by Mr Weil as property manager – but no such charge was made. Furthermore, Mr Unsdorfer was asked to act for the RTM Company	Allow in part

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
			in place of a solicitor (whose fee would have been charged separately to any manager's attendance). Mr Unsdorfer did not attend in the capacity of property manager but as a specialist in service charge disputes & tribunal work and with almost 40 years experience in residential leasehold work.	
1634	£99.88	F&D repaired roof above Flat 82 again; see *ante*	The repairs were on a different area of the roof to those previously carried out	Allow in full
1638	£287.32	01.07.10 Cannon; service unnecessary; disallow	Pest control as above.	Allow in full
1642	£344.23	BPS; *see* LV rpt; disallow 50%; allow £172.11	See previous comments re BPS	Allow in full
1645	£611.00	F&D; *see* LV rpt; unnecessary temporary	Why do you say they were	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		decoration work in foyer done prior to impending second phase of Interior works; disallow whole £611.00	unnecessary? The repair works were to the skirting boards which were coming away from the walls and were a potential trip hazard in the common parts	
1646	£329.00	F&D; more repairs to roof over Flat 82	See previous comments re roof works.	Allow in full
1648	£122.50	Danny's key money; *see* 1450	See previous comments re key money.	Allow in full
1650	£252.63	HCL Safety; *see* LV rpt; disallow 50%; allow £126.81	See previous comments re HCL.	Challenge withdrawn
1653	£176.25	Command; service unnecessary; disallow	See previous comments re TV aerial and entry phone.	Allow in full
1655	£83.71	Peninsula; management fees; disallow £83.71	See previous comment re Peninsula.	Allow in full
1672	£37.97	petty cash; 1st class stamps; should be hand	See previous comments re stamps.	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		delivery by Paul; disallow in whole £37.97		
1673	£282.58	BPS, but belongs with lift; *see* LV rpt; disallow 50%; allow £141.29	See previous comments re BPS	Allow in full
1680	£24.24	Audiovu; unnecessary, unparticularised service; disallow whole £24.24	They provide the out of hours call centre to deal with out of hours emergencies	Challenge withdrawn
1686	£411.25	F&D Flat 83; too much ?	On what basis were the costs too much? Reasonable cost for cutting out waste pipe and replacing with new	Allow in full
1694	£117.50	IPD; Flat 8?; allow in part; two visits; c.f. Camden Council £103.00 for three visits; disallow £39.50; allow £68.00	We assume you are referring to IPM Pest Control who respond quickly and when required. The local authority are much slower to respond and residents always want any pest problems dealt with	Allow in full if not borne by lessee

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
			immediately. For less than a £15 differential we would not want to inconvenience residents by delaying treatment	
1697	£229.13	PA Paul's health and safety day; why no invoice from service provider?	The training was centrally organised by Parkgate Aspen for a large number of porters and each respective block paid their proportion	Challenge withdrawn
1710-1	£881.25	F&D; TC9; insurance, and flat owner's responsibility; disallow in whole £881.25	£252 was recovered under a building insurance claim after the £500 excess was deducted	Any part not covered by insurance allow in full
1719	£24.24	Audiovu; unnecessary service; disallow £24.24	They provide the out of hours call centre to deal with out of hours emergencies.	Challenge withdrawn
1720	£646.25	Extreme Access; abseilers; unnecessary service;	Abseilers were employed to deal	Challenge withdrawn

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		disallow whole £646.25	with failed render and damp ingress into the building. This service was not unnecessary as the damp had to be dealt with. See further comments below.	
1736	£141.00	F&D; leak; covered by insurance	Below insurance excess.	Allow in full
1739	£1,500.00	ACANTHUS; not in section 20; work not done to art deco principles; added £14,000 to the cost of the interior works, designs were irrelevant and not used; not needed; disallow in part	Acanthus were the designers of the refurbished internal common parts and their fee was agreed in advance with the directors of the RTM Company. The fee included a flat fee of £1,500 for the design work which included initial meetings with the directors, design boards, and residents meetings all of which formed part of the consultation	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
			process. They then charged a fee of 15% plus VAT to cover their role as contract administrator and to run the tender process, project management, certify invoices for payment and to attend site meetings. Their designs were followed entirely and were used as the scheme which has been put in place in the building.	
1740	£954.40	BPS; *see* LV rpt; came without parts; second call-out charged; disallow 33%; allow £636.58	Nearly £800 of this invoice was for parts including 5 sets of emergency control gears and 25 lamps. The remaining cost was for the labour which is a reasonable cost.	Allow in full
1741	£235.00	F&D; TC72; *see* LV rpt; brushed down balcony	Cost is reasonable for works carried	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
		applied heat to remove cold and damp; applied acropol; disallow 50%; allow £118.50	out.	
1742	£287.88	F&D; TC89; *see* LV rpt; similar to above; disallow 50%; allow £143.94	As above.	Allow in full
1743	£305.50	F&D; TC44; *see* LV rpt; repairs to leak in TC44 causing leak into TC34 balcony; disallow 50%; allow £152.75	As above.	Allow in full
1759	£168.00	F&D 18.1.11 'arranged visits to Flats 32, 39, 84, 73 and 41 on arrival porter had no keys for flats, only Flat 39, in Flat 39 gap between floor and door concrete floor low from door laid new section of floor with self levelling concrete'; disallow in part	The cost covers the works carried out on that visit to the block.	Allow in full
1760	£144.00	F&D; TC39; 'lock on balcony door jamming removed lock from door could not find new lock to replace it Locksmith overhauled original lock refitted lock; disallow; leaseholder	The cost of the callout was recharged to the tenant and does not form a service charge cost.	Allow in part

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		responsibility; disallow whole £144.00		
1761	£192.00	F&D; TC42 - Freshwater flat; this is the leaseholder's responsibility; disallow all £192.00	Why? This was for repairs and sealing works to external communal pipe work located on the balcony. The work was required to deal with sources of damp/water ingress into the building before the internal redecoration of the common parts was carried out. This work was carried out on a number of balconies to deal with similar problems. See below.	Allow in full
1762	£192.00	F&D; TC62; same day as TC42 above in 1761; work on these invoices 1761 to 1766 totals £1,152 for the day; *see* LV rpt; excessive; disallow 50%; allow £96.00	As above	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
1763	£192.00	F&D; TC72; same day as TC42 above in 1761; disallow 50%; allow £96.00	As above	Allow in full
1764	£192.00	F&D; TC82; same day as TC42 above in 1761; disallow 50%; allow £96.00	As above	Allow in full
1765	£192.00	F&D; TC79; same day as TC42 above in 1761; disallow 50%; allow £96.00	As above	Allow in full
1766	£192.00	F&D; TC89; ditto £192, without sufficient data on the invoices it is difficult to say whether these costs are justified; disallow 50%; allow £96.00	As above	Allow in full
1767	£132.00	F&D; cracks to roof above TC86	What is the objection? These are the reasonable repair costs.	Allow in full
1772	£144.00	F&D; TC88; *see* LV rpt; main stop valve leaking; disallow 50%; allow £72.00	These are the reasonable repair costs	Allow in full
1774	£216.00	F&D; TC52; *see* LV rpt; repaired balcony around soil pipe and painted wall; disallow 50%; allow £108.00	These are the reasonable repair costs	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
1775	£216.00	F&D; Flat 32; ditto per 1774	These are the reasonable repair costs	Allow in full
1776	£144.00	Command; service unnecessary; disallow	See previous comments re Command and Control.	Allow in full
1777	£180.00	Command; service unnecessary; disallow	AS above	Allow in full
1778	£1,335.36	BondFire; *see* LV rpt; further info. required; disallow £50%; allow £667.68	On what scientific basis are you disallowing this? Bond Fire repaired the fire alarm system in the building and continue to service the system.	Allow in full
1779	£144.00	F&D; damp under window in Flat 84; leaseholder's responsibility; disallow £144.00	Damp is most likely caused by external factors.	Allow in full
1782	£132.00	F&D; 15.02.11 nose cone and carpet off on stairs fixed; a "short" time before carpet removed for interior works	What is the objection? This was a trip hazard that had to be dealt with no matter how close to the new flooring being fitted.	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
1783	£144.00	F&D asked to investigate leak into flat, asked to look in Flat 73 because problem could be overflow on their balcony, went up to Flat 73... leak not from this balcony asked porter where the water had been coming from He did not know'; disallow 50%; allow £72.00	Reasonable cost for attending site and investigating	Allow in full
1784		Extreme Access; abseilers; render repair and external decoration front and rear £6,480 ie half of front of building painted, another example of piecemeal work . There is a plan to paint the entire exterior of the building. Why then waste money painting one small section?	It was never intended to repair the externals in full for some years after the internal redecs were complete. However there was significant damp ingress caused by failed render to the building and this was dealt with by Extreme Access so that the building could dry out before the internal works	Allow in full

Item/Page	Amount	Respondents' Objection	Applicant's Reply	Tribunal's Remarks
			were carried out. This was not a waste of money and in fact meant that two elevations would last a lot longer than previously the case before the externals were carried out in full.	
1785	£204.00	F&D removed mattress from Flat 12 balcony, loaded on van and disposed of at dump; allow £25 (Camden Council) or better yet flat owner should pay; deduct £179.00	The mattress was sodden following a large leak and had to be disposed of as quickly as possible. Camden council were not able to respond quickly.	Allow in full if payment cannot be obtained from relevant lessee
1789	£24.70	audiovu; unclear what they are paid for; unnecessary service; disallow whole £24.70	See comments above re Aduivo.	Allow in full
1792	£765.08	BPS; *see* LV rpt; disallow 20% £153.01; allow £612.07	See previous comments re BPS.	Allow in full
1804	£96.00	F&D; TC53; overflow from Flat 53; overflow	Reasonable cost to investigate	Allow in full

Item/Page	**Amount**	**Respondents' Objection**	**Applicant's Reply**	**Tribunal's Remarks**
		water tank into Flat 3, the person in Flat 53 said he would carry out the repairs; disallow whole £96.00	cause of damp	
1805	£144.00	F&D; TC55; leak around bath panel; leaseholder should pay, or disallow 50%; allow £72.00	The cost of the callout was recharged to the tenant and does not form a service charge cost.	Not a service charge item

Notes:

1. References to "LV rpt" are to the report of Ms Leia Vogelle dated 29th October 2012, in the Respondents' evidence bundle at pp. 649 to 659.
2. References to "VRS" are to the witness statement of Mr Stockinger dated 28th November 2012, in the Respondents' evidence at pp660 to 700R
3. Further evidence cross-references are available to witness statements as filed.

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